

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 15, 2006

Volume 18

INQUIRY PROCEEDINGS

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Mr. D. Abra, Q.C.	For The Estate of Bruce Miller
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INDEX OF PROCEEDINGS

DESCRIPTION:	PAGE
GEORGE DANGERFIELD, continued	
- BY MR. CODE	4142
- BY MR. LOCKYER	4168
- BY MR. GATES	4285
- BY MS. CARSWELL	4287
- BY MR. WOLSON	4315
- BY MR. OLSON	4345
- BY MR. TAPPER	4351
- BY MR. ABRA	4360

## INDEX OF EXHIBITS

31A	Book of documents for examination of Mr. Dangerfield by Mr. Lockyer	4181
31B	Extract of evidence given at the Sophonow Inquiry	4214
31C	August 14, 2006 document addressed to all parties with standing, signed by Mr. Bob Giasson, Chief Administrative Officer	4222
31D	Addendum to the further disclosure received from Lockyer and Libman, counsel for Driskell	4231
32	Witness interviews of Garber, Wyant, Osborne, Williams & Prechniak	4283

1 Tuesday, August 15, 2006

2 Upon commencing at 9:00 a.m.

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

5 MR. CODE: Good morning, Mr. Commissioner. Good  
6 morning, Mr. Dangerfield.

7 THE WITNESS: Good morning, Mr. Code.

8 BY MR. CODE:

9 Q I have one last area and it is a brief area,  
10 just to remember the context of where we left  
11 off last night. We were at tab 67, if I could  
12 just take you back there for a moment to refresh  
13 your memory, and that is the April 13th memo  
14 from Bruce Miller to Stu Whitley, in which he  
15 sets out the consensus that you and he had  
16 arrived at about disclosure of the Quinney  
17 materials; is that correct?

18 A Yes.

19 Q And you drafted a draft letter to Mr. Brodsky  
20 enclosing the materials to be disclosed; is that  
21 correct?

22 A According to this. I have absolutely no memory  
23 of it.

24 Q I appreciate that. But you don't deny Miller's  
25 record of where you and he had ended up, you

1 don't have a contrary recollection?

2 A I don't have a contrary recollection, no, I have  
3 no recollection at all.

4 Q All right. Now, if you could keep the date in  
5 mind there, April 13th, when this is all  
6 apparently sent up to Mr. Whitley's office, or  
7 sent next door to Mr. Whitley's office.

8 Incidentally, the three of you sending memos  
9 back and forth when you were all next to each  
10 other, was that normal practice?

11 A It is hard to say, it depends on the subject  
12 matter. Sometimes we just talked together.

13 Q Obviously there would be lots of informal chats  
14 by the coffee machine?

15 A Not really, but occasionally we chatted  
16 together.

17 Q But when something important like this came up,  
18 you would want to document it; is that fair?

19 A I don't know what prompted Mr. Miller to write  
20 that. He just sent me the memorandum,  
21 apparently by itself from what I can see.

22 Q I think what prompted him to write is quite  
23 apparent from the face of the document. You had  
24 a disclosure problem on your hands, didn't you?

25 A Um-hum.

1 Q So, April 13, that's the last event we left off  
2 at last night. If you flip forward to tab 71 --

3 A Yes.

4 Q -- we see a note dated May 13th, and I will  
5 explain this to you in a minute, but I just  
6 wanted to situate the time frame, we are exactly  
7 a month later, you see. Have you got that note?

8 A Yes, the book of Hall and Ewatski, is that what  
9 you are looking at?

10 Q Yes. And Mr. Commissioner, if you have got a  
11 marked up copy of this, as I do from the last  
12 set of exhibits with Chief Ewatski, it is 28B,  
13 tab 5 we find the same note. So it is either  
14 exhibit 28B, tab 5, or exhibit 30C, tab 71, they  
15 are both exactly the same note.

16 Now, what is happening here,  
17 Mr. Dangerfield, is that as a result of the  
18 media storm that we saw in the articles at tab  
19 65, in mid March, the Chief of the Winnipeg  
20 Police commissions a review of the case by two  
21 senior officers, Hall and Ewatski. And they get  
22 their review under way on the last day of March,  
23 I believe. And obviously, here we are, they are  
24 six weeks into their review and they are coming  
25 to meet with Mr. Miller. So that's the setting

1 for this, or the context for this.

2 And my questions to you in relation to that  
3 are, first of all, were you aware of Hall and  
4 Ewatski's review? Were you aware it was going  
5 on?

6 A I have no recollection of it, if that's what you  
7 are asking.

8 Q Would it have been something that was discussed  
9 in the department, that would have been the  
10 subject of some note within the department?

11 A I couldn't tell you.

12 Q Is it a normal event in your career,  
13 Mr. Dangerfield, to have one of your murder  
14 prosecutions become the subject of a media storm  
15 that leads the police to decide to do a high  
16 level review of the case?

17 A No, it isn't, I just don't recall this review.

18 Q It didn't happen very often in your career, did  
19 it?

20 A No.

21 Q So is it likely that it is a prominent event  
22 that you would have taken note of at the time,  
23 even if you can't recall it now.

24 A Yes, I would have met with them, if that's what  
25 they came to do.



1 Q We are coming to that in a minute, they do meet  
2 with you in August, but we are still in the  
3 spring here.

4 A Yes.

5 Q And my question is, is it likely that this is  
6 something that you would have taken note of and  
7 been aware of at the time, even if you can't  
8 remember it now?

9 A Aware of what, the meeting with Miller that  
10 seems to have occurred?

11 Q No. My question is simply about the fact of the  
12 high level review?

13 A I might have been, yes.

14 Q All right. Let's turn to Hall's note of his  
15 meeting with Miller on May 13th. And you see  
16 the note, his handwriting is quite legible. He  
17 says.

18 "Meet with Bruce Miller 11:30 in the  
19 morning. Perjury concern with Zanidean and  
20 arson."

21 And Chief Ewatski told us last week that was  
22 Miller's response when they raised this concern  
23 with him, Miller responded that it had been  
24 brought to his attention,

25 "Brought to Miller's attention by

1 Saskatchewan Justice, supporting Driskell  
2 more than Zanidean."

3 Do you see that note?

4 A Yes.

5 Q And of course, by this time it had also been  
6 brought to your attention through the same  
7 process; is that correct?

8 A I am sorry?

9 Q By this time, the matter had also been brought  
10 to your attention through the same process? You  
11 too had learned about the concern about  
12 Zanidean's perjury in relation to the arson?

13 A You are referring now to the memorandum of  
14 Mr. Miller of April 13th?

15 Q That's exactly what I'm referring to.

16 A Yes, all right.

17 Q It is the next note that I'm interested in. He  
18 says,

19 "Passed on to Dangerfield."

20 And you would agree with me that the April 13th  
21 memo and the previous memos indicate the process  
22 by which that happened?

23 A They indicate an intention to pass it on,  
24 whether in the first memorandum the documents  
25 arrived, I couldn't tell you.

1 Q We have the whole story about the oversight, but  
2 ultimately it was passed on to you?

3 A Ultimately, I saw it on the 13th of April when I  
4 prepared that, or after is when I prepared that  
5 letter.

6 Q And then the concluding note is the one that I  
7 wanted to ask you about.

8 "Dangerfield of the opinion no effect on  
9 the trial conviction because of  
10 corroboration with witnesses."

11 "Dangerfield of the opinion no effect on  
12 the trial conviction because of  
13 corroboration with witnesses."

14 I believe that's what Chief Ewatski told us is  
15 the correct reading of the note?

16 A Um-hum.

17 Q Do you have any recollection of being of that  
18 view at the time?

19 A In relation to that particular document?

20 Q In relation to the Quinney materials that had  
21 come from Saskatchewan from the RCMP  
22 investigation, the fact that they tended to  
23 suggest that Zanidean may have perjured himself,  
24 do you recall responding to that --

25 A No, I don't.

1 Q -- with the view that it would have no effect on  
2 the conviction?

3 A No, I don't.

4 Q If I could ask you to turn to the next tab, tab  
5 72? And again, Mr. Commissioner, if you want to  
6 stay in exhibit 28B, if you have got marked up  
7 copies of these documents in 28B, this is found  
8 at tab 4. This is a separate document,  
9 Mr. Miller -- it is a log book that Hall and  
10 Ewatski kept. It is written by Hall, but it is  
11 a joint note in essence of both of them. And in  
12 particular what we have at tab 72 is a note of  
13 an August 23rd meeting with you?

14 A Yes.

15 Q Now, Mr. Commissioner, if you are in exhibit 28B  
16 at tab 4, we have got the full log book there,  
17 and you want to be at the end of that tab, at  
18 page 810, the last, it is the third to last page  
19 in the tab, is the same note of the August 23rd  
20 meeting.

21 Now, this appears to be a joint meeting  
22 with both you and Lawlor at the end of the  
23 summer in 1993. Do you recall Hall and Ewatski  
24 coming to meet with you?

25 A I have no independent recollection of it, no,

1 but obviously they did.

2 Q And you see the note, and there is only a few  
3 points here I want to highlight with you.

4 "Meet with Crown attorneys, George  
5 Dangerfield and Greg Lawlor, discuss case.  
6 They are happy with the information  
7 supplied by the police. They had spent a  
8 lot of time with the police before they  
9 would authorize charges laid. They have  
10 absolutely no complaints with how the  
11 investigation was handled by the Winnipeg  
12 Police Department, stressing the fact that  
13 it was a very difficult investigation  
14 dealing with unsavory people."

15 A Um-hum.

16 Q If we could stop there as being the first issue  
17 that's raised in the course of this discussion.  
18 Do you recall telling Dangerfield and Lawlor, or  
19 sorry, telling Hall and Ewatski that you were  
20 happy with the information supplied by the  
21 police?

22 A I don't recall it, no. I mean, you are asking  
23 me to remember now, I don't remember this at  
24 all. But in actual fact, I was happy with the  
25 investigation. Any time we asked for

1 information, it was provided reasonably promptly  
2 and forwarded on to Mr. Brodsky.

3 Q And I'm glad you answered the question that way,  
4 because I appreciate you don't have any present  
5 recollection, so what I'm really getting at is,  
6 what do you recall about your state of mind at  
7 this point? We are now over two years after the  
8 trial, and most importantly, you have now  
9 received the Quinney materials from  
10 Saskatchewan.

11 So my question is, post Quinney, post April  
12 of 1993, were you still happy with the  
13 information supplied by the police?

14 A Yes. I did not know at that time that there was  
15 any arrangement that Zanidean had given the  
16 police a confession or anything of that kind.  
17 I'm dealing only with the information that I  
18 received in the course of the trial and its  
19 preparatory stages. I was satisfied with that,  
20 they had done a good job. It is a difficult  
21 case, as he points out, dealing with unsavory  
22 people.

23 Q If you could go back to the Quinney letter at  
24 tab 61, I need to question you about how that  
25 state of mind of being content with what you

1           were given by the police could still subsist  
2           after Mr. Quinney's letter.

3           If you look at tab 61, remember, we went  
4           through this yesterday, what you learned from  
5           Mr. Quinney is that Zanidean may have perjured  
6           himself, and the perjury could have been exposed  
7           by the material in the RCMP arson file. Do you  
8           remember that, page 1 of the letter? Are you at  
9           tab 61?

10        A     Yes, I am.

11        Q     If you read the last three lines again, his  
12           conclusion is that the RCMP investigation cast  
13           serious doubt on Zanidean's testimony about a  
14           revenge motive?

15        A     Where are you reading from?

16        Q     The last few lines at the bottom of page 1,  
17           "...the motive for burning the house was  
18           reward as opposed to revenge."

19        A     Yes.

20        Q     And over the page, more importantly, on page 2  
21           of the letter you learn that Zanidean has been  
22           speaking to Anderson and has threatened to  
23           recant unless he is not charged in Swift  
24           Current. And then finally, and most  
25           importantly, at the bottom of page 2 you learn

1 Mr. Quinney's conclusion that Zanidean is of the  
2 view that he was granted immunity from  
3 prosecution.

4 A Yes. What is your question?

5 Q So going back to the conversation that you are  
6 having with Hall and Ewatski, how could you have  
7 been happy with the information supplied by the  
8 police after reading the Quinney materials?

9 A The Driskell statement was made post trial.

10 Q Yes.

11 A It was made at the concurrence of Mr. Brodsky,  
12 who negotiated an immunity arrangement. And if  
13 you look at Mr. Brodsky's file, the RCMP were  
14 questioning whether they could interview  
15 Driskell prior to the trial. They didn't have  
16 the time, they would see him afterwards.  
17 Mr. Brodsky knew all of this. And when he --  
18 when Mr. Zanidean went into the box, if you  
19 recall, he opened up the subject of the fire  
20 himself. And Mr. Brodsky let it lie there,  
21 period.

22 Now, what am I supposed to do about this in  
23 relation to a police investigation taking place  
24 in Winnipeg?

25 Q Did Mr. Brodsky have the RCMP arson file which



1 had been sent to the Winnipeg Police?

2 A I didn't have it, I don't know who had it.

3 Q The Winnipeg Police had it, Mr. Dangerfield.

4 A Fine.

5 Q Did Mr. Brodsky have that file?

6 A I don't know.

7 Q He asked for it, did he not?

8 A I don't recall that, but if he did, I couldn't

9 provide it because I didn't get it from them.

10 Q I took you through this yesterday.

11 A All right. I asked, every request that

12 Mr. Brodsky put in letter forms was addressed by

13 the police.

14 Q And they said they had nothing?

15 A That's right.

16 Q So Mr. Brodsky didn't have the arson file?

17 A He did not. And I relied on the police, they

18 were my source of information, I had no reason

19 to question their answers.

20 Q Page 2 of the letter, did Mr. Brodsky have the

21 information in the police file indicating that

22 there was an immunity agreement of some kind

23 with Zanidean? Was that ever disclosed to him?

24 A I didn't know it. They didn't inform me.

25 Q Answer my question, did Mr. Brodsky --

1 A If I didn't know it, Mr. Code, I couldn't  
2 possibly inform Mr. Brodsky.

3 Q So your previous answer about Mr. Brodsky having  
4 the material in the Quinney letter is incorrect?

5 MR. PROBER: I object to that. He didn't say  
6 Mr. Brodsky had the material in the Quinney  
7 letter. He said, with respect,  
8 Mr. Commissioner, that Mr. Brodsky knew about  
9 the arson, that he knew the motive was for  
10 insurance fraud, not for revenge. That's what  
11 Mr. Dangerfield said.

12 Mr. Code asked him one question, and then  
13 he characterizes the response that  
14 Mr. Dangerfield gives to all of the different  
15 areas in the Quinney letter, and that's not what  
16 Mr. Dangerfield says.

17 Now, while I'm on my feet, let me say that  
18 it seems to me that Mr. Code is going far beyond  
19 leading questions and is now, as he did  
20 yesterday, embarked on cross-examination. And  
21 you know, Mr. Commissioner, I know, I have been  
22 counsel to two inquiries at least, and been a  
23 counsel at other inquiries, that in the hands of  
24 Commission Counsel, questioning is a powerful  
25 tool. That's why restraint must be shown.

1 Mr. Code is not showing that restraint. His  
2 cross-examination reminds me of the  
3 cross-examination Roy Cohen embarked on during  
4 the McCarthy hearings, and it is totally unfair,  
5 and totally without restraint, and totally out  
6 of the bounds in terms of what I would  
7 respectfully submit is proper examination.

8 He has embarked on cross-examination more  
9 than once with Mr. Dangerfield, and more than  
10 once with respect to other witnesses. So I  
11 would ask you, Mr. Commissioner, to direct  
12 Mr. Code not to cross-examine Mr. Dangerfield,  
13 and not to cross-examine any other witnesses.  
14 Thank you.

15 THE COMMISSIONER: Thank you, Mr. Prober.

16 Mr. Code, what do you --

17 MR. CODE: Mr. Commissioner, we are at a point  
18 now at the very end of Mr. Dangerfield's  
19 involvement in this matter, where I feel the  
20 discussions he has with Hall and Ewatski on  
21 August 23rd simply don't make sense, and I have  
22 to challenge them. How at this point he could  
23 be asserting that he was happy with the  
24 information he had received -- and you will see  
25 in the very next line he is going on to say that

1 he is happy that full disclosure was given to  
2 Brodsky, exactly as he said in the April 16th  
3 memo to the Minister that he wrote. This simply  
4 can't be a fair and accurate assessment of the  
5 case and I have to challenge him on it. And the  
6 fact that I'm challenging him aggressively with  
7 cross-examination is unfortunately how I  
8 conceive my duty at this point, with this  
9 witness, at this stage of his evidence.

10 THE COMMISSIONER: Well, as you know, Mr. Code,  
11 and as everyone else here knows, I have never  
12 presided at an inquiry before, so I don't know  
13 what the norm is. But I would have thought that  
14 perhaps leading questions are perfectly  
15 acceptable. I would not, let me assure you -- I  
16 think Mr. Prober used a bit of hyperbole in some  
17 of his analogies -- but I'm not sure of the  
18 appropriateness of cross-examination by  
19 Commission Counsel, I am just not sure. Can you  
20 help me with any experience?

21 MR. CODE: Certainly, what I know and what I  
22 have been told, and I consulted with a number of  
23 Commission Counsel, in particular with  
24 Mr. Cavalluzzo and Ms. Edward in Ontario, who  
25 had conducted inquiries with witnesses who they

1 felt they had to challenge. And what I was told  
2 by them is that the norm in their inquiry was  
3 that with certain witnesses and in relation to  
4 certain parts of their evidence,  
5 cross-examination was the norm.

6 THE COMMISSIONER: Anybody else help me on this?

7 MR. PROBER: Well, I can try to help you again,  
8 without the use of any hyperbole. The rules  
9 provide, Mr. Commissioner, that Commission  
10 Counsel will examine the witness -- I'm  
11 referring to part E of the rule, oral  
12 examinations -- commission Counsel will examine  
13 the witness, except as otherwise directed by the  
14 Commissioner, Commission Counsel may adduce  
15 evidence from a witness by way of both leading  
16 and non-leading questions.

17 THE COMMISSIONER: Can you give me the page?

18 MR. PROBER: Yes, page 7 at the bottom.

19 THE COMMISSIONER: Page 7.

20 MR. PROBER: And while Mr. Code may have  
21 consulted with individuals, I can tell you that  
22 I consulted with John Sopinka when I undertook  
23 an inquiry, and discussed the method I should  
24 use in terms of examining witnesses. And I  
25 discussed my role as Commission Counsel with a

1 number of other people, who indicated Commission  
2 Counsel has a powerful tool and should not abuse  
3 it in terms of cross-examining the witnesses.  
4 And I say that is what is happening. In  
5 addition to that, Mr. Code is misinterpreting  
6 what Mr. Dangerfield said.

7 THE COMMISSIONER: I know. They are two  
8 separate issues.

9 MR. PROBER: Right. But if I may finish while  
10 I'm on my feet, Mr. Commissioner.

11 Mr. Dangerfield made it clear that when Ewatski  
12 and Hall spoke to him, and he answered that  
13 question, his understanding was that he was  
14 directing his attention to the trial, the  
15 pre-trial investigation and disclosure at the  
16 trial.

17 We are now talking about post trial  
18 disclosure. Mr. Code is trying to relate the  
19 two and they are different issues. But it seems  
20 to me -- I don't want to be repetitive. You  
21 have my position.

22 THE COMMISSIONER: Thank you.

23 MR. CODE: Mr. Commissioner, I'm happy to move  
24 on. We are taking up too much time I think with  
25 this. I'm quite content to move on.

1 THE COMMISSIONER: Let's, for the purpose of  
2 this, without making a ruling, we will assume  
3 that you will lead but not aggressively  
4 cross-examine, preferably not cross-examine.

5 MR. CODE: Thank you, Mr. Commissioner.

6 BY MR. CODE:

7 Q The next part of the note, Mr. Dangerfield?

8 A Which note are we referring to?

9 Q The same one that we have been at, 71 -- tab 72.

10 THE COMMISSIONER: That's the log book of Hall  
11 and Ewatski.

12 THE WITNESS: Yes.

13 BY MR. CODE:

14 Q Tab 72 in the present exhibit, tab 4 in exhibit  
15 28B. You see in the middle of the page?

16 A Yes.

17 Q They are happy that full disclosure was given to  
18 Greg Brodsky?

19 A Yes.

20 Q My question to you is, how could you have been  
21 happy that full disclosure was given to Brodsky  
22 in light of what you learned from the Quinney  
23 memo?

24 A I was happy at the trial, yes, I was happy with  
25 what I knew. The questions put by Mr. Brodsky

1           were answered completely. I did not know about  
2           the arrangements, even then, between the police  
3           and Mr. Zanidean. I did not know that he had  
4           confessed to the police here in Winnipeg. I did  
5           not know they had the whole fire file here. So  
6           you are asking me about a general feeling I had  
7           with respect to the police investigation, and I  
8           was satisfied with it, and the disclosure it  
9           provided.

10                   As I pointed out, Mr. Brodsky knew all  
11           about the fire way back in January of '91.

12    Q           Is knowing about something from your client the  
13           same as having police reports about the matter?

14    A           When you open the matter yourself in the  
15           cross-examination, the evidence you have from  
16           your client could be extremely helpful. He  
17           didn't use it.

18    Q           Answer my question, is knowing about the matter  
19           from your client the same as having police  
20           reports on the matter?

21    A           Police reports?

22    Q           Having police reports?

23    A           No, it wouldn't be. But I didn't have them  
24           either, so what can I do?

25    Q           He asked for them, did he not?



1 A Yes, but I didn't have them. That question was  
2 put to the police and I did not get a response  
3 to it.

4 Q And we covered that yesterday, Mr. Dangerfield,  
5 and I'm not going to go over it.

6 My question here, simply, is that Quinney  
7 had told you on page 2 of his letter that there  
8 clearly were discussions with Zanidean about  
9 immunity that had lead him to believe he had  
10 immunity. Had those discussions been disclosed  
11 to you by the police, at the time of trial?

12 A No.

13 Q Had they been disclosed to Mr. Brodsky?

14 A I don't know how they could have been, if they  
15 hadn't disclosed them to me. I was funnel  
16 through which the disclosures were being made.

17 Q So the answer is no?

18 A No, they wouldn't have been disclosed.

19 Q They weren't disclosed to you and they weren't  
20 disclosed to Brodsky?

21 A Not that I am aware of.

22 Q And you knew that at this point in time as a  
23 result of the Quinney letter?

24 A Well, we are looking at a note a man made here.  
25 All I was saying is that, yes, I was happy with

1 the disclosure as I understood it at the trial.

2 I don't know whether I related all of that to

3 the recent investigation that was going on.

4 Q Last point at the bottom of the page,

5 Mr. Dangerfield, you see the last two lines at

6 the bottom of the note?

7 A Yes.

8 Q If I could read those with you.

9 "In relation to any deal made with Reath

10 Zanidean, they both emphatically state

11 no...",

12 underlined,

13 "...deals were made or proposed. That they

14 had in fact personally told Zanidean that

15 they could offer no assistance with his

16 Swift Current charges and made no attempt

17 to assist him. They are also adamant the

18 police made no deals with Zanidean."

19 A Yes.

20 Q I stress that last line,

21 "They are also adamant that the police made

22 no deals with Zanidean."

23 A Yes.

24 Q First of all, according to Hall's notes, you and

25 Lawlor had personally told Zanidean that you

1           could offer no assistance with the Swift Current  
2           charges. Do you see that?

3    A       Yes.

4    Q       Do you recall having such discussions with Reath  
5           Zanidean?

6    A       No, I don't.

7    Q       If you put that together with Mr. Brodsky's  
8           trial memos at tab 44, remember back at tab 44  
9           in volume 2 where you were telling Justice Morse  
10          and Mr. Brodsky all about the Swift Current  
11          arson matter?

12   A       Yes. Tab what?

13   Q       Remember tab 44, Brodsky's two memos from the  
14          pre-trial --

15   A       Oh, yes.

16   Q       -- where you are discussing the Swift Current  
17          arson?

18   A       Yes.

19   Q       And now you are telling Ewatski and Hall that  
20          you had personally discussed the matter with  
21          Zanidean and discussed the matter of immunity  
22          with him. Does this not all indicate that you  
23          had considerable involvement in that Swift  
24          Current matter?

25   A       No, it doesn't.

1 Q Explain that to me. How could you be telling  
2 Hall and Ewatski that you had personally had a  
3 conversation with Zanidean about immunity?

4 A I may have met with Zanidean prior to going into  
5 the court. He may have brought the subject up,  
6 we turned him down flat and went on with the  
7 case. That's how I read that. I did not have  
8 lengthy discussions with Zanidean at any time.  
9 I would not discuss matters with Zanidean when  
10 he had a lawyer representing him, and  
11 Mr. Kovnats has no recollection of me being in  
12 any of these discussions where these matters  
13 were raised.

14 Q I was not suggesting that you were present for  
15 the negotiations, Mr. Dangerfield, I'm  
16 suggesting you were involved in informing  
17 Zanidean the results of the negotiations?

18 A If I was, it was like a short comment to a  
19 question put by him prior to going to court.  
20 No, we wouldn't help him, that was the end of  
21 it.

22 Q The last sentence of the note that I read to you  
23 is,

24 "They are also adamant that the police made  
25 no deals with Zanidean."

1 Do you see that?

2 A Yes.

3 Q Was that your state of mind at the time?

4 A Yes, we didn't know of any deals made with  
5 Zanidean.

6 Q The time that I'm talking about is August of '93  
7 when you are meeting with Hall and Ewatski. You  
8 are adamant that the police made no deals with  
9 Zanidean, that's what you are telling Hall and  
10 Ewatski in August of '93?

11 A I think all of this related to the trial. You  
12 are taking questions put to me about the  
13 situation at trial, and advancing them to a time  
14 much later than the trial. And I don't think  
15 that any of those questions related to the  
16 present situation, meaning this situation in  
17 August. They were talking about the trial.

18 Q Look at the start of the note, Mr. Dangerfield.  
19 It says.  
20 "Discussed the case."  
21 It doesn't say the trial, it is discussed the  
22 case.

23 A Yes.

24 Q And what they were doing is they were reviewing  
25 the matter as of 1993, were they not?

1 A Yes.

2 Q As a result of a media storm?

3 A But I say again, Mr. Code, if you look at the  
4 questions relating to the trial, they relate to  
5 the trial.

6 Q So you were allowed to separate out of your mind  
7 everything that you had learned since the trial  
8 and make no mention of that to Hall and Ewatski?

9 A I don't know what I had learned after the trial,  
10 other than what Mr. Quinney had in his letter,  
11 if I knew that too.

12 Q Are you telling this Commission that you, in  
13 answering Hall and Ewatski's questions about the  
14 case in August of '93, compartmentalized your  
15 knowledge and told them only what you knew as of  
16 June of '91?

17 A The question to me apparently appears to have  
18 been, were you satisfied with the investigation  
19 and the disclosure? And we said, yes, we were,  
20 we had dealt with them prior to trial, we had  
21 gone through the trial with them, the  
22 disclosures were complete, as far as we knew.

23 Q So the whole function of a review two years  
24 later is not to look at what you now know?

25 A I don't know what they were talking about, about

1 the present time. They don't even address it, I  
2 don't think. I didn't know a lot of this stuff  
3 anyway. I did not know about arrangements, I  
4 did not know about agreements between the police  
5 and Zanidean, and neither did Mr. Quinney.

6 Q Did you mention to Hall and Ewatski, I know I'm  
7 saying there were no deals as of 1991 at the  
8 time of the trial, but you should know that I  
9 have received this letter from Richard Quinney  
10 where he says it appears that there were  
11 discussions of a deal. Did you bring that to  
12 their attention?

13 A No, I didn't. I don't appear to have.

14 Q Did Quinney's letter suggest to you that there  
15 were discussions with Zanidean about a deal?

16 A I can't remember. I don't remember.

17 MR. CODE: Thank you, those are all of my  
18 questions.

19 BY MR. LOCKYER:

20 Q Mr. Dangerfield, a lot of your answers yesterday  
21 to Commission Counsel resulted in you going back  
22 to this conversation that you had with Miller  
23 and/or Whitley early on in the proceedings, that  
24 you were to stay out of the negotiations; is  
25 that right, sir?

1 A Yes.

2 Q And you described this yesterday, right at the  
3 outset of your questions by Commission Counsel,  
4 sir, you actually described it as a casual  
5 conversation. Do you remember that? It is your  
6 word, your adjective?

7 A Yes, I don't recall a formal meeting or formal  
8 instructions.

9 Q Right.

10 A We were just told that this is what was to  
11 happen, I was to take my instructions from  
12 Miller, which I normally would take them from  
13 Mr. Whitley.

14 Q And this was a casual conversation, sir, you  
15 said you didn't know even whether it was with  
16 Miller or with Whitley, or with both, am I  
17 right?

18 A What I said was, my impressions were that this  
19 was the desire of both men. Now, whether one or  
20 the other or both told me, I don't know.

21 Q And you said, sir, you didn't know when this  
22 conversation took place?

23 A No, I don't have any memory of it.

24 Q And you didn't know where it had taken place?

25 A It would have taken place in the office.



1 Q Somewhere in the office?

2 A Yes.

3 Q And this, what might be considered to be a  
4 rather crucial casual conversation, sir, was  
5 neither memoed nor noted anywhere by either or  
6 any of the parties to it; is that right?

7 A No, that's right.

8 Q And from that, sir, you told Commission Counsel  
9 in your statement, and you can turn to it if you  
10 wish, but I will quote to you from it, it is at  
11 page 7 of your statement. You said,

12 "I didn't know the details..."

13 meaning the details of the negotiations,

14 "...and I didn't want to know them."

15 Is that right?

16 A Yes.

17 Q And so this casual conversation, sir, then in  
18 effect created an artificial wall between you  
19 and the dealings that were going on, whatever  
20 they may have been, with Zanidean, with  
21 Mr. Gumieny, and indeed with any other witnesses  
22 that they may have been negotiating with?

23 A The negotiations that I'm referring to were  
24 directly relating to the Witness Protection  
25 Program, not a blanket prohibition from knowing

1 about deals with other witnesses, or any other,  
2 if there were other deals. It was strictly to  
3 deal with the men who were proposed to go into  
4 the Witness Protection Program. And it was done  
5 to, number one, the obvious one, to prevent me  
6 from being used as a witness in my own case; and  
7 number two, to protect the integrity of the  
8 system, about which I knew very little.

9 Q In effect, Mr. Dangerfield, this casual  
10 conversation that you claim occurred has really  
11 allowed you to create an artificial wall between  
12 information that, information about the  
13 negotiations, that because of this artificial  
14 wall you couldn't pass on to Mr. Brodsky; isn't  
15 that right?

16 A Well, Mr. Lockyer, the full explanation given to  
17 me was that I was allowed to tell the court that  
18 the monies being used to relocate these men were  
19 being used for that purpose only, and no rewards  
20 or other means were being used. So I had no  
21 reason to raise, as you say, an artificial wall,  
22 because I had no reason to suspect that that's  
23 anything more than what they were doing,  
24 protecting the system from discovery. That's  
25 all, they were using money to relocate these

1 men.

2 Q However you describe the wall where you are  
3 concerned, sir, it certainly, as we can see,  
4 created a genuine wall for Mr. Brodsky. He  
5 could ask questions 'til the cows come home, and  
6 indeed did ask questions 'til the cows came  
7 home, but he was never going to get any  
8 information from you; right?

9 A All of the questions Mr. Brodsky asked in those  
10 three letters were addressed by the police. He  
11 was told at the outset certain questions  
12 regarding the placement of these men and matters  
13 relating to the placement of these men could not  
14 be breached for security reasons. That's all.

15 Q But the wall created, sir, wasn't a wall between  
16 you and the police, from what I understand, it  
17 is a wall between you and Miller and/or Whitley  
18 in their negotiations with the witnesses?

19 A In respect of that one matter only. If other  
20 witnesses had asked for relief, that would have  
21 been given to me. It was only with respect to  
22 Zanidean and Gumieny.

23 Q If you didn't feel like you had something to  
24 hide from Mr. Brodsky, Mr. Dangerfield, as he  
25 kept making essentially the same requests and

1 was clearly dissatisfied with your answers, I  
2 must say it is beyond my comprehension why you  
3 wouldn't say to him, you know what, Mr. Brodsky,  
4 you are going to have to address those inquiries  
5 to Mr. Miller or Mr. Whitley. You never did  
6 that, did you?

7 A No, I didn't.

8 Q Why not? It is such an obvious thing to do. He  
9 keeps coming back at you, again and again, with  
10 the same questions, the same concerns about  
11 motivations for witnesses to say what they are  
12 saying. You keep beating him back with  
13 essentially an absence of information, and you  
14 never say to him, you know, better you direct  
15 your questions to Miller or Whitley?

16 A I was told by Miller and/or Whitley that the  
17 only arrangements being made were for protection  
18 and the monetary costs of that, nothing more. I  
19 had no reason to suspect any deals. So I took  
20 them at their word, they were colleagues and  
21 friends, and I just told Mr. Brodsky there was  
22 no other deals. I wasn't aware of any. The  
23 police didn't inform him, I didn't know of them,  
24 they didn't inform me, so I just left it the way  
25 it was.

1 Q But even accepting that, Mr. Dangerfield, that  
2 position falls flat, because you have  
3 acknowledged that it is not just deals that  
4 matter, even taking your own evidence, it is  
5 also demands that matter. And if there is one  
6 thing that you acknowledged yesterday is that  
7 you knew that Zanidean was making a lot of  
8 demands. And yet, once again, this wall  
9 prevents Mr. Brodsky from finding out what those  
10 demands are, if we assume that that wall did  
11 exist; isn't that right?

12 A If you are talking about the meeting between  
13 Zanidean and I on that summer's night, yes,  
14 there was mention that he was having problems  
15 with the negotiations and was thinking of taking  
16 away his client as a witness. That's as far as  
17 I went with it.

18 Q What you said yesterday to Commission Counsel,  
19 sir, was that during that encounter the problem  
20 was arising, the problems had arisen and were  
21 going on because, and I quote,

22 "Zanidean had been advancing more and more  
23 demands and negotiations had broken down  
24 because he was being too demanding."

25 Do you remember say that yesterday?

1 A Yes, I do. It is not quite accurate, but I said  
2 that.

3 Q And the wall prevented Mr. Brodsky knowing what  
4 even you have acknowledged both you knew and is  
5 discloseable material; correct?

6 A Such as?

7 Q Well, you didn't tell Brodsky that, you didn't  
8 say this witness is being extremely demanding.

9 A No, I didn't.

10 Q To which Brodsky would have said how -- what do  
11 you mean he is being demanding, demanding what?  
12 But, of course, Brodsky couldn't ask you that  
13 because he didn't know he was being demanding in  
14 the first place; right?

15 A Yes.

16 Q And then we discover in that last two weeks or  
17 so from that event down at the police station on  
18 May 26th, we discover what has been termed for  
19 several years now, and particularly at this  
20 inquiry, a flurry of activity goes on trying to  
21 satisfy Mr. Zanidean's demands. And you would  
22 have had a fair idea, if not a complete idea of  
23 what was going on, sir, I suggest to you,  
24 because you, in the meantime, are trying to find  
25 out when is this chap available to testify?

1           Isn't that right? You wanted to know, when can  
2           I call him? And you are being told, not yet, we  
3           haven't sorted it out. Isn't that right?

4    A       No, I was just told he wasn't --

5    Q       Wasn't what?

6    A       I don't know. I just think that there was some  
7           scheduling problems in getting him into that  
8           program. That's all I wondered.

9    Q       You just thought that after May 26th, and what  
10           happened at the police station, you just thought  
11           there were some scheduling problems?

12   A       I'm not sure I even considered it, Mr. Lockyer.

13   Q       Not sure you even considered it. Because in  
14           your statement, and Mr. Code took you to this as  
15           well, and I must say it struck me as soon as I  
16           read it -- if you just go back to it, if you  
17           would, it is tab 1 of volume 1, sir, page 23.  
18           This is what you said, last paragraph,

19                        "When Dangerfield was told Zanidean was  
20                        ready to testify, he assumed that the  
21                        matters between Kovnats and Miller had been  
22                        resolved."

23   A       Yes.

24   Q       And Mr. Code took you to this yesterday. Who  
25           told you when Zanidean was ready to testify?

- 1 A I don't know.
- 2 Q Was it a policeman came to you, was it Miller,  
3 walked next door to your office, was it Whitley,  
4 who was it who said, we have got it, Zanidean,  
5 call him now?
- 6 A I don't know.
- 7 Q But someone did?
- 8 A Presumably.
- 9 Q They are your words.
- 10 A Yes.
- 11 Q Because I'm going to suggest to you,  
12 Mr. Dangerfield, that as the trial is  
13 proceeding, you would surely have been  
14 pressuring whoever it was you were talking to  
15 about Zanidean, that you don't remember who it  
16 was, to get on with it and sort things out with  
17 him, weren't you?
- 18 A No.
- 19 Q We only have to look at when you called him,  
20 sir. You called him on Tuesday, June 11th, sir,  
21 you called him. Your last witness, we referred  
22 to yesterday as being a very brief witness,  
23 Detective Paul, who testified on the morning of  
24 June 12th, whereupon you closed your case?
- 25 A Yes.



1 Q So by the time you call Zanidean, sir, by the  
2 time you are told he is available, you are at  
3 the 11th hour. Do you understand that?

4 A Yes.

5 Q And I'm going to suggest to you, sir, that as  
6 the kind of prosecutor that we have heard you  
7 described as, both here and in statements, that  
8 you must have had a lot of trouble tolerating  
9 prosecuting a murder trial when your most  
10 significant witness was not available to be  
11 called until the 11th hour. Whoever was telling  
12 you whether or not he is, is telling you, no, he  
13 is not, no, he is not, no, he is not, and then  
14 finally, late June 10th, early June 11th,  
15 whenever it was, you were told, okay, you can  
16 call him now.

17 You were surely pressuring, weren't you,  
18 sir? I can't imagine being in your situation,  
19 prosecuting a murder case, it must have been  
20 pre-occupying your mind?

21 A I don't have a memory of it, doing that.

22 Q This issue, sir, of what you've referred to as  
23 the casual conversation, creating what I have  
24 called a wall, came up in the post conviction  
25 application of Mr. Driskell for relief to the

1 Justice Minister in Ottawa. And I want to ask  
2 you, sir, first of all, were you consulted at  
3 all in the course of the post-conviction  
4 proceedings that were being brought by  
5 Mr. Driskell to the Minister?

6 A I don't know even know when they were being  
7 brought. Perhaps you could help me with the  
8 date?

9 Q Well, let's take us through 2000, 2001, 2002,  
10 2003, 2004.

11 A I retired from the department in 1996.

12 Q I am well aware of that.

13 A I left the bar in 2000. I took no more interest  
14 in the events of the day. I was done with the  
15 law. And nobody called me and asked me any  
16 questions at all.

17 Q So Manitoba Justice never saw fit to consult  
18 with the prosecutor, the lead prosecutor?

19 A I don't know what the Manitoba Justice system  
20 did, whether they even answered the complaint, I  
21 was never kept in the picture at all.

22 Q We are going to see in a minute how they did in  
23 part, and I'm going to take you to that. But  
24 they never consulted you?

25 A Never asked.

- 1 Q Did Mr. Lawlor talk to you, in this period, sir,  
2 about Mr. Driskell's case at all?
- 3 A In connection with what exactly, some opinion or  
4 other?
- 5 Q In connection with the post-conviction DNA  
6 testing, in connection with the way the media  
7 started to focus on the case again, in  
8 connection with the bail application in 2003,  
9 any of those things?
- 10 A I spoke to Mr. Olson in 2003 about the bail  
11 application.
- 12 Q What about Mr. Lawlor, that was the question?
- 13 A No, I don't recall it at all. I was out of the  
14 department, I was done with them.
- 15 Q It doesn't mean that you and Mr. Lawlor couldn't  
16 talk about this case from the past, sir, that  
17 sort of comes back to haunt you?
- 18 A Well, Mr. Lawlor and I, while we were friends,  
19 didn't hang out together. I didn't have any  
20 reason to see him. I was never near the  
21 department, as far as I know. I didn't bump  
22 into him or phone him up and take him for a  
23 drink, because I don't drink any more. So we  
24 had no social contact at all.
- 25 Q Mr. Commissioner, I have a book of materials

1           that I would like to file as the next exhibit,  
2           if I may.

3           THE COMMISSIONER:   Exhibit 31.

4           MR. LOCKYER:    Could you perhaps make it A,  
5           because there will be a bit more to come.

6           THE COMMISSIONER:   Exhibit 31A.

7                       (EXHIBIT 31A:   Book of documents for  
8                       examination of Mr. Dangerfield by Mr.  
9                       Lockyer)

10          MR. PROBER:   Mr. Commission, if I may for a  
11          moment?

12          THE COMMISSIONER:   Yes.

13          MR. LOCKYER:   It seems to me that there may be  
14          some irrelevant material in this book, but  
15          rather than address it now, I will wait to see  
16          what Mr. Lockyer makes of some of the material,  
17          if anything.   So I'm not objecting to the whole  
18          thing being marked as an exhibit, but there may  
19          be parts of it that I will deal with later.

20          THE COMMISSIONER:   Thank you, Mr. Prober.

21          BY MR. LOCKYER:

22          Q           And if you could go to tab 9, please,  
23                       Mr. Dangerfield?   And what you are going to see  
24                       here, and this is really a lead in to what I  
25                       want to take you to after this, because it is a

1 response to this that I'm interested in, from  
2 Mr. Finlayson, which is at the next tab. What  
3 you are looking at here is -- I don't know how  
4 familiar you are with the procedure on a  
5 application to the Federal Minister, sir, to  
6 review a conviction in which all appeals have  
7 been exhausted, but essentially the procedure  
8 goes something like this. The applicant makes  
9 an application to the Minister. The Minister  
10 then has counsel within his office or outside  
11 counsel, in this case it was counsel within his  
12 office, review the case. And he or she then  
13 produces what is called an investigation report,  
14 and asks counsel for the applicant and also asks  
15 counsel for the prosecutor's office to comment  
16 on the investigative report, do you  
17 understand -- or the investigation report,  
18 should I call it?

19 And what you are looking at here, sir, is  
20 Mr. Driskell's response, if you look at the  
21 front page of tab 9, to the investigation report  
22 prepared by Mr. McNairn of the Criminal  
23 Conviction Review Group of the Department of  
24 Justice. Do you follow? Are you with me? In  
25 the process? And so you know, sir, we are now

1 in the year 2004. So Mr. Driskell has now been  
2 released on bail.

3 I want to read you two or three paragraphs  
4 of this sir. Paragraph 2, it is written,  
5 "At the time the applicant's memorandum of  
6 argument for his release hearing was  
7 prepared in November of 2003, the  
8 documentation available to him disclosed  
9 that payments of \$72,000 had been made by  
10 the authorities to Mr. Zanidean, as well as  
11 the payment of an unknown amount of money  
12 towards his mortgage. The investigation  
13 report establishes that the total sums paid  
14 to Mr. Zanidean actually amounted to  
15 \$84,000. This new figure includes a  
16 previously unknown payment of \$7,000 to  
17 Mr. Zanidean by Manitoba Justice for the  
18 equity interest in his home, a payment made  
19 before Mr. Zanidean testified at the  
20 applicant's trial. Like much of the  
21 undisclosed materials, this previously  
22 unknown payment not only further  
23 demonstrates that Mr. Zanidean was  
24 untruthful in his trial testimony, but also  
25 calls into question the integrity of the

1 prosecution as a whole. The documents that  
2 are now in the applicant's possession  
3 establish beyond doubt that officials in  
4 Manitoba Justice and the two Crown  
5 attorneys who prosecuted the applicant,  
6 Mr. Dangerfield and Mr. Lawlor, knew that  
7 Mr. Zanidean was being untruthful in much  
8 of his testimony, but deliberately chose  
9 not to disclose their knowledge to  
10 Mr. Driskell's defence."

11 There is then a footnote that I want to read to  
12 you.

13 "If the trial Crowns did not know about  
14 Manitoba Justice's dealings with  
15 Mr. Zanidean, it could only be explained by  
16 the senior officials in Manitoba Justice  
17 creating a veil of deniability by design  
18 between them and the trial Crowns."

19 Then one more paragraph, sir, paragraph 9, and  
20 then I will take you to Mr. Finlayson's  
21 response, which is what I'm more interested in.  
22 Paragraph 9,

23 "Only now is Mr. Driskell able to fully  
24 comprehend the actions of his prosecutors  
25 at his trial."

1 THE COMMISSIONER: Just bear with us.

2 BY MR. LOCKYER:

3 Q Paragraph 9, top 12.

4 "Only now is Mr. Driskell able to fully  
5 comprehend the action of his prosecutors at  
6 his trial."

7 THE COMMISSIONER: If you just wait a minute,  
8 Mr. Dangerfield isn't there.

9 MR. LOCKYER: I apologize.

10 THE COMMISSIONER: It is the top page 12.

11 THE WITNESS: Thank you.

12 BY MR. LOCKYER:

13 Q "Only now is Mr. Driskell able to fully  
14 comprehend the actions of his prosecutors  
15 at his trial. It is to be hoped that one  
16 day in the near future those who partook in  
17 this process will be required to explain  
18 their conduct. For 13 years the applicant  
19 was deprived of the knowledge that  
20 Mr. Zanidean was giving perjured evidence,  
21 of which Manitoba Justice at the highest  
22 levels was aware, and it seems reasonable  
23 to suppose likely encouraged. However, for  
24 the purposes of this application for  
25 Ministerial review is its impact on the



1 nature of the remedy that the Minister  
2 should grant, which is important and is  
3 discussed in the conclusion of this  
4 document."

5 Paragraph 10 -- sorry, tab 10 sir, Mr. Finlayson  
6 responds to both the investigation report and  
7 also to the response of Mr. Driskell to the  
8 investigation report. If you turn to the first  
9 page of his response, he says at paragraph 2,  
10 page 124. Do you understand?

11 A I am sorry?

12 Q You are with me, you are following where I'm at?

13 A At page 124.

14 Q Yes, good, you are there. This is a letter to  
15 Mr. McNairn by Mr. Finlayson and he says, dated  
16 November 19, 2004, and he says,

17 "At page 124 of your report, you note that  
18 the purpose of the investigation...",

19 meaning Mr. McNairn,

20 "...you note that the purpose of the  
21 investigation is not to find fault with any  
22 individual, but rather to ascertain the  
23 facts upon which the Minister can render a  
24 decision. Despite that there appears to be  
25 a concerted effort on the part of Mr.

1                   Lockyer et al...",  
2                   and I might say in passing, Mr. Commissioner, I  
3                   don't think that means et al Libman, if I may,  
4                   "...to attribute fault to not only staff  
5                   involved at the time of the Driskell trial,  
6                   but against current staff. There are  
7                   repeated references to a continuing  
8                   cover-up to the present time, and it is  
9                   those submissions to which we wish to  
10                  respond.  
11                  First, it is always difficult to comment  
12                  retrospectively on what was done many years  
13                  earlier, given the evolution of the legal  
14                  principles since that earlier date.  
15                  Generally speaking, however, it would not  
16                  be unreasonable in Manitoba, at the time of  
17                  the original trial, to develop an informal  
18                  Chinese wall whereby prosecutors handling  
19                  the trial would not be materially involved  
20                  in the handling of any witnesses who were  
21                  to be called on behalf of the Crown.  
22                  Furthermore, the practice at the time,  
23                  pre-Stinchcombe, was not to make disclosure  
24                  of all information related to informants or  
25                  witnesses in the Witness Protection Program

1 in so far as any payments to them may be  
2 concerned."

3 That, sir, at least as far as I'm aware, is  
4 the first time we hear anything in this whole  
5 proceeding, so we have really moved on 14 years  
6 plus from Mr. Driskell's arrest, we hear  
7 anything about this notion of a wall being  
8 created between -- at least in writing, we hear  
9 it, and indeed verbally -- between you and  
10 anyone else.

11 A He is talking --

12 Q Sorry, go ahead --

13 A It is all right.

14 Q You will see how it sort of arises in a sense  
15 out of the footnote that I read to you from the  
16 previous document. And it is interesting, sir,  
17 when you look at what Mr. Finlayson says there,  
18 that he doesn't say that there was what he calls  
19 a Chinese wall in this case, he sort of avoids  
20 saying that, it seems almost on purpose. He  
21 just throws it out there as sort of a maybe  
22 that's what it was. Do you see that? If you  
23 read what he said, he doesn't say there was one,  
24 he says it is not unreasonable if there was one.  
25 Right? Do you see that?

1 A Yes, I see it.

2 Q And you say he didn't consult with you before  
3 writing this, sir?

4 A No, because I don't believe that existed.

5 Q And you wouldn't know if he consulted with  
6 Mr. Lawlor?

7 A I don't believe there was an informal, a policy  
8 to create informal Chinese walls, or anything  
9 else you want to call it, between prosecutors  
10 and witnesses.

11 Q It is not what I want to call it, it is what the  
12 Deputy --

13 A Whatever, it was used.

14 Q -- the Assistant Deputy Attorney General was  
15 saying in December of 2004?

16 A I don't recall any such policy. The policies,  
17 in other words, were the other way around. If  
18 deals were made, monies were promised, stays of  
19 proceedings accepted, et cetera and so on, those  
20 were all fixed before the witness ever went near  
21 the witness box, and all revealed.

22 Q And he further says,

23 "It was the practice not to disclose all  
24 information in so far as payments were  
25 made."

1 That seems to be contrary to your evidence  
2 yesterday as well, is that right, sir?

3 A That is contrary to the evidence. We documented  
4 payments where lump sums were given for reward.  
5 The difficulty with the case that we are dealing  
6 with now, with Zanidean and Driskell, was that  
7 they were going into this specialized program.  
8 As I said earlier to Mr. Code, I had no idea  
9 about the complexity of that move, what it would  
10 entail. And when I was told that they didn't  
11 want me to get involved in the negotiations, it  
12 was for those two purposes that I gave you.  
13 This was not a general policy. I have done  
14 other cases where witnesses were fully exposed  
15 to the defence counsel as to what they had got  
16 and what they hadn't got and what they said and  
17 were promised to.

18 Q Mr. Finlayson went on to say, sir,  
19 "Similarly, at the time of the Driskell  
20 trial, the manner in which Manitoba Justice  
21 was organized was such that Bruce Miller,  
22 as a Director of Winnipeg Prosecutions, did  
23 not have direct supervisory responsibility  
24 over George Dangerfield, who was the senior  
25 general counsel. Mr. Dangerfield had what

1           was then a unique position whereby he  
2           handled exclusively major criminal trials  
3           and reported directly to the Assistant  
4           Deputy Minister. Accordingly, Mr. Miller  
5           had no supervisory or directory  
6           responsibility over Mr. Dangerfield other  
7           than to communicate with him from time to  
8           time in respect of matters that he was  
9           handling. Indeed, Mr. Dangerfield had a  
10          high degree of independence in light of his  
11          position at the time."

12          True sir?

13    A     I was told by Mr. Whitley that I would take my  
14          instructions from Mr. Miller, that Mr. Miller  
15          would be the go between the RCMP and the  
16          government in dealing with the payments and the  
17          development of this Witness Protection Program.  
18          So for this trial, the positions were reversed  
19          by Mr. Whitley's instructions.

20    Q     Sorry, go ahead?

21    A     So I took my instructions from Mr. Miller. And  
22          this title of senior general counsel, as  
23          explained to Mr. Code, wasn't really an official  
24          title at all, a courtesy title, if anything.

25    Q     Have you any explanation, sir, for how Manitoba

1 Justice can be so at odds with itself, as we  
2 seem to be finding out in this inquiry, even as  
3 late as November of 2004, where the Assistant  
4 Deputy Minister is saying things that you just  
5 say are wrong?

6 A I left the department in 1996. Other than doing  
7 two prosecutions as a private practitioner, I  
8 had nothing to do with them. I don't know what  
9 they were thinking about. They didn't consult  
10 me, they didn't ask me, they didn't do anything.  
11 I never heard from Mr. Finlayson in connection  
12 with this letter at all.

13 Q Mr. Finlayson goes on,  
14 "Accordingly, comments made at pages 3 and  
15 10..."  
16 that means by Mr. Driskell's counsel, for  
17 example,  
18 "...that Messrs. Dangerfield and Lawlor  
19 knew that Mr. Zanidean was being untruthful  
20 but deliberately chose not to disclose  
21 their knowledge, or that they knew he was  
22 lying and remained mute are, in our  
23 respectful submission, unnecessary,  
24 adversarial in nature and inappropriate, in  
25 the absence of Messrs. Dangerfield, Lawlor,

1 or others being interviewed and the facts  
2 being ascertained. All of this is  
3 particularly so where the purpose of the  
4 investigation is not to find fault with any  
5 individual. Again, at page 12, counsel  
6 submits that Manitoba Justice at the  
7 highest levels likely encouraged perjury.  
8 There is..."

9 says Mr. Finlayson,  
10 "...no factual foundation for such a  
11 statement and such a statement should not  
12 have been made."

13 It would seem, sir, from reading that, at  
14 least my impression of that is not only is  
15 Mr. Finlayson acknowledging that he didn't speak  
16 to you, but he also seems to be stating, in  
17 effect, that he hasn't spoken to Mr. Lawlor in  
18 preparing this letter. Is that how you read  
19 this?

20 A He is stating facts that were never, I was never  
21 asked about, or to comment on.

22 Q Or Mr. Lawlor?

23 A I don't know about Mr. Lawlor, I wasn't on a  
24 day-to-day connection with him at all.

25 Q Well, presumably, the Assistant Deputy could



1 have -- I don't know if it is walk down the hall  
2 or what, I am not quite sure, I think it is walk  
3 down the hall, and spoken with Mr. Lawlor, who  
4 certainly was and still is working at Manitoba  
5 Justice?

6 A I don't know what he could have done or what he  
7 did do. I wasn't there, Mr. Lockyer. I never  
8 saw this letter.

9 Q Let me take you through, sir, because I'm not  
10 entirely sure it is consistent with what  
11 Mr. Finlayson wrote in that document, with what  
12 Mr. Finlayson has said in his statement to  
13 Commission Counsel. Could you turn, please, to  
14 tab 5 of volume 1 of Commission Counsel's book  
15 of documents. And you are going to see there,  
16 Mr. Finlayson's statement to Commission Counsel,  
17 and I would like you to --

18 A Tab 1 of what?

19 Q Tab 5 of volume 1.

20 A Yes.

21 Q I would like you to respond, if you would, to  
22 some of the things that Mr. Finlayson said to  
23 Commission Counsel, really about you, on or just  
24 before July 7th of this year, 2006. Could you  
25 go to page 6, bottom paragraph? This is

1 Mr. Finlayson.

2 "While Miller would not necessarily...",  
3 are you with me?

4 A Yes.

5 Q "...have kept Dangerfield informed about  
6 the details of the negotiations while they  
7 were ongoing, at the end of the day he had  
8 to be informed of the arrangements that had  
9 been made with the witness."

10 That you say, Mr. Dangerfield, I'm now  
11 speaking to you, you say is contrary to the  
12 casual conversation that you had?

13 A Yes.

14 Q Mr. Finlayson goes on, talking to Commission  
15 Counsel,

16 "As the senior prosecutor, Dangerfield was  
17 responsible for making disclosure to the  
18 defence and for presenting the case in  
19 court, so at some point before the trial  
20 started he needed to know what the deals  
21 with the witnesses were so that he could  
22 disclose these details to Greg Brodsky and  
23 to the jury. This is how it was done on  
24 Finlayson's watch -- the prosecutor would  
25 be given enough detail to know how much a

1 witness was receiving and any other  
2 discloseable fact arising out of the  
3 negotiations. At least after the 1988  
4 disclosure directive...",

5 in other words pre-Driskell,

6 "...there was never any practice, to  
7 Finlayson's knowledge, that the final deal  
8 made with a witness was non-discloseable."

9 I think it is fair to say, sir, from having  
10 heard you yesterday, that you would say, well,  
11 that may be so, but that's not what happened in  
12 Driskell. Is that right?

13 A I was never told the details of any of the  
14 arrangements, no. That is with respect to  
15 Zanidean and Gumieny. I knew Mr. Gumieny had  
16 been accepted into the program, I did not know  
17 what it cost. I did not know that Mr. Zanidean  
18 had been considered as not proper to go into the  
19 program and had been advised to try and strike a  
20 deal for a sum of money equivalent to what it  
21 would be to keep him in the program and go on  
22 his way. I did not know any of that.

23 Q I'm going to skip the next paragraph of what  
24 Mr. Finlayson said, sir -- I should say Judge  
25 Finlayson, he is now a member of the bench. His

1 next paragraph,

2 "Finlayson's recollection from his own  
3 involvement in witness protection matters  
4 as director or ADM is that it was generally  
5 considered preferable to have all matters  
6 finalized before the witness testified.

7 While this was not always possible in every  
8 case or in relation to every arrangement,  
9 you tried to have matters finalized as much  
10 as possible so the deal could be disclosed  
11 on the record."

12 That's consistent with what you said yesterday,  
13 right?

14 A It was mandatory, in my view.

15 Q Okay. I'm going to come back to that later in  
16 my questioning, but let me just carry on, if I  
17 may.

18 "Finlayson...",

19 carrying on with what Mr. Finlayson said to  
20 Commission Counsel,

21 "Finlayson cannot think of any reason why  
22 Miller would not have informed Dangerfield  
23 and Lawlor about his negotiations with  
24 Kovnats or about the deals with Zanidean  
25 and Gumieny."

1           The focus yesterday, of course, was on Zanidean,  
2           but there were deals, as we now know, made with  
3           Gumieny too. Presumably, you didn't know about  
4           them either is your position?

5    A       That's right.

6    Q       Mr. Finlayson goes on,

7           "The financial benefits these witnesses  
8           received were not exceptional...",

9           that's Mr. Finlayson's opinion,

10          "...and there was no reason to be  
11          embarrassed about them or try to hide them.  
12          While the Crowns would have to be careful  
13          about how much detail to reveal in order to  
14          avoid inadvertently disclosing the  
15          witnesses' new locations, apart from this  
16          constraint, the financial arrangements were  
17          discloseable."

18          He is talking, I think it is fair to say, about  
19          Mr. Driskell's trial here. That's the context  
20          in which he is talking?

21   A       Yes, it is.

22   Q       "Likewise..."

23          Mr. Finlayson said,

24          "...there was nothing unusual about a  
25          witness asking for benefits in relation to

1 outstanding charges or this kind of benefit  
2 being granted. In other cases, this kind  
3 of information was disclosed to the  
4 defence, even if it may not have been  
5 documented to the same degree it would be  
6 today.

7 In Finlayson's view, if the deal with  
8 Zanidean had not been finalized, Miller  
9 still had an obligation to brief  
10 Dangerfield and Lawlor on the situation.  
11 Conversely, Finlayson would assume that  
12 Dangerfield and Lawlor would have wanted to  
13 know what was going on. While there are  
14 good reasons not to have prosecutors  
15 actively involved in conducting witness  
16 protection negotiations, there is no reason  
17 to conceal the deal or the negotiations  
18 from the prosecutor at the end of the day."

19 Really, part of what Mr. Finlayson is  
20 saying there, sir, is why -- in effect he is  
21 saying, why wouldn't, if Miller or Whitley or  
22 whoever it was didn't tell them, why wouldn't  
23 they have asked what was going on? You see the  
24 point?

25 MR. PROBER: I object to that characterization

1 of what Mr. Lockyer just read. That's not what  
2 it says, with respect, Mr. Commissioner, and --  
3 MR. LOCKYER: I will ask the question a  
4 different way to keep moving. The interruption  
5 is --

6 THE COMMISSIONER: No, it is not an  
7 interruption, it is a valid objection. So ask  
8 it a different way.

9 MR. LOCKYER: I don't concede the validity of  
10 the objection, but I will ask it a different  
11 way.

12 BY MR. LOCKYER:

13 Q One might interpret what Mr. Finlayson is saying  
14 there, sir, as raising an issue that's been  
15 raised with you both by Commission Counsel and  
16 myself, why didn't you ask?

17 A I just never did. That's all. I wasn't aware  
18 what was going on. I was just kept in the dark,  
19 period.

20 Q And you never sought the light; is that right,  
21 sir?

22 A No, I didn't. In the course of the trial, I  
23 didn't.

24 Q Another thing that might raise eyebrows on all  
25 of this is, Mr. Zanidean said what he said,

1 presumably knowing -- in answer to Mr. Brodsky's  
2 questions about deals and negotiations and the  
3 like -- presumably knowing that he was lying. I  
4 mean, we don't -- maybe he has a very fertile  
5 imagination, but if we assume that is not the  
6 case, then it might be reasonable to suppose  
7 that Mr. Zanidean, when he said what he said,  
8 knew that he was lying. Do you agree? That's  
9 not an unreasonable conclusion.

10 A Part of that question might not be untrue, he  
11 might not have known he was being untruthful,  
12 because some of the benefits that he got, that  
13 were revealed to Mr. Brodsky through the special  
14 by Mr. Anderson, were things like rent and other  
15 things which weren't paid to him, they were paid  
16 on his behalf. So many of the benefits that  
17 these men got were benefits paid to others, they  
18 didn't see the money involved, so he may have  
19 thought he was getting some of this. I don't  
20 know.

21 Q Well, I think you have sort of conceded that  
22 certainly some of his answers would reasonably  
23 seem to fall within that category?

24 A And I think during that cross-examination, he  
25 said flat out he was lying.



1 Q Sorry, I don't know what you are talking about?

2 A I think in some of that cross-examination, he

3 admitted he was lying.

4 Q Sorry, when?

5 A I think during the course of -- I think I recall

6 reading it that he made a statement to that

7 effect, "yes, I'm lying."

8 Q Sorry, when?

9 A In the cross-examination, I think.

10 Q I don't know what you are talking about, sir.

11 A Maybe I have got it wrong, sorry.

12 Q I think you have. I am not aware of

13 Mr. Zanidean ever testifying that he was lying.

14 MR. PROBER: I can help on that,

15 Mr. Commissioner. If my friend wants to look at

16 page 122 of the cross-examination by Brodsky,

17 and I have copies of that which I was going to

18 refer to in my examination. Zanidean says --

19 Brodsky says,

20 "Is everything you are saying in court

21 today bullshit too?"

22 A No, sir.

23 Q Some of it?

24 A None.

25 Q I see."

1 Answer from Zanidean,

2 "Except for the stuff I admitted to lying  
3 about like the house and Swift Current and  
4 things like that. It is true that I'm  
5 telling you about it."

6 So that's what I believe the witness may have  
7 been referring to. And I can produce copies of  
8 that when my turn comes. Thank you.

9 THE COMMISSIONER: Thank you, Mr. Prober.

10 BY MR. LOCKYER:

11 Q My question of you, sir, is, do you know how  
12 Zanidean, Mr. Zanidean might have thought he  
13 could get away with lying under oath?

14 A No. I don't follow you, what do you mean?

15 Q I mean, he did get away with it.

16 A I don't know how he would get away with it,  
17 except I might not have known what he was  
18 talking about.

19 Q I want to talk about this issue of whether or  
20 not Mr. Zanidean, sir, had immunity on the Swift  
21 Current charge and move it from there into other  
22 issues.

23 You know now, do you, sir, that Detectives  
24 Anderson and Paul claim that they understood  
25 from early April of 1991 that Mr. Zanidean had

1 immunity from prosecution on the arson charge in  
2 Swift Current?

3 A That's what I understand.

4 Q If so, of course, they kept it from you for two  
5 months?

6 A Yes.

7 Q Right up to the trial and through it, right?

8 A Yes, even though we were requesting information  
9 on that score, we were denied it. They said  
10 that no deals existed.

11 Q Even though, as I understand it, sir, I think  
12 you said in your statement you dealt with  
13 Anderson many times in the past as a prosecutor?

14 A Yes. I liked the man, I relied on him.

15 Q Detective Vandergraaf claimed that he actually  
16 came into your office and told you about this,  
17 in his evidence before the Commission?

18 A No.

19 Q True or false?

20 A No, that didn't happen.

21 Q That didn't happen. There is also a claim, sir,  
22 that there was a meeting held between police  
23 officers and Miller, at the conclusion of which  
24 it was agreed that let's not tell Zanidean that  
25 he won't be prosecuted in Swift Current until

1 his evidence is over. Are you aware of that  
2 claim, sir?

3 A No.

4 Q You are not aware that claim was made here at  
5 this inquiry?

6 A I'm aware of it. I was never told of anything  
7 of this kind .

8 Q You are aware that that is the claim --

9 A I am now aware that was the claim made by those  
10 two men.

11 Q In a sense, taking on the role you might say of  
12 Mr. Miller's counsel, it seems pretty unlikely,  
13 doesn't it, that Mr. Miller would take a  
14 decision like that without consulting you?

15 A I never heard anything about it from anybody.

16 Q I mean, you say, sir, that you routinely  
17 insisted that all of those matters must be dealt  
18 with before the witness goes in the witness box;  
19 right?

20 A All of the matters that I was aware of, yes, Mr.  
21 Lockyer.

22 Q And you expressed the concern that if this  
23 wasn't done in advance, then it could be put to  
24 the witness that, you know, or it could be  
25 suggested to the witness that the stronger your

1 evidence is, the more likely you are to get  
2 immunity?

3 A I made that comment to Mr. Code, yes.

4 Q And then Mr. Code asked you whether you had ever  
5 heard of this kind of arrangement before, where  
6 a benefit was kept from a witness until after he  
7 had testified? And you said no; is that right?

8 A Yes.

9 Q Now, this kind of issue arose, sir, as well, am  
10 I right, in the prosecution of Thomas Sophonow?  
11 You recall, if you remember --

12 MR. PROBER: I have a comment to make,  
13 Mr. Commissioner, and I suppose that explains  
14 what is in Mr. Lockyer's volume related -- I  
15 think there is something relating to Sophonow.  
16 It is my respectful submission, this is not an  
17 inquiry into the wrongful conviction of Thomas  
18 Sophonow. We have already had that. This is an  
19 inquiry into the conviction, wrongful or  
20 otherwise, of Mr. Driskell. And the inquiry,  
21 the terms of reference direct you,  
22 Mr. Commissioner, to look at the conduct of the  
23 police and the prosecutors. And you know the  
24 terms of reference. It is my respectful  
25 submission that Mr. Lockyer's proposed

1           embarkation on a line of questioning with  
2           respect to the Sophonow matter, or the Ostrowski  
3           matter, or the Unger matter, but I will deal  
4           with them as they arise, but with respect to the  
5           Sophonow matter, it is not relevant to the  
6           Order-In-Council and it is not relevant to your  
7           mandate. Thank you.

8           THE COMMISSIONER: Mr. Lockyer, what do you --  
9           just before I hear from Mr. Lockyer, does anyone  
10          else have any comment on Mr. Prober's  
11          submission? All right. I will hear from you,  
12          Mr. Lockyer.

13          MR. LOCKYER: Thank you. Of course this isn't  
14          an inquiry into anyone else's wrongful  
15          conviction or otherwise, but this is an inquiry  
16          into, first of all, the conduct of this witness  
17          in the prosecution of Mr. Driskell. And in so  
18          far as it can be shown that what he did or did  
19          not do in this case, he did or did not do in  
20          other cases, and in so far as it can be shown  
21          that what he claims to always do has, in fact,  
22          not been followed by him in other cases, is, in  
23          my submission, first of all, relevant to this  
24          witness' credibility; secondly, relevant to this  
25          witness' -- to any findings as to this witness'

1           role in this case; and thirdly, is relevant to  
2           systemic issues that are to come as to how we  
3           deal with repeated infractions of the rules of  
4           prosecuting. And one of the things that I am  
5           going to urge this Commission to do is to, at  
6           the conclusion of the inquiry -- and I don't  
7           think this will come as any surprise to  
8           anyone -- is that this Commission should  
9           recommend an examination of Mr. Dangerfield's  
10          cases in the past, in so far as there may be  
11          concerns about the manner in which he has  
12          prosecuted them. And in so far as other cases  
13          can assist this Commission in seeing all of  
14          those issues, in my submission, it is highly  
15          relevant and highly probative.

16                 And obviously, I'm aware that I'm not going  
17          to spend the next three days cross-examining  
18          Mr. Dangerfield on other cases. I'm going to be  
19          very careful to keep it within the bounds of  
20          time, as I have throughout this inquiry. So I'm  
21          not going to go off on frolics, but I am going  
22          to, or do certainly wish to, within well-defined  
23          boundaries, cross-examine Mr. Dangerfield on  
24          some of the other cases in which he has been  
25          involved.

1 MR. PROBER: If Mr. Lockyer is finished, I could  
2 perhaps have the mike? You are bigger than me,  
3 I don't want to fight you for it.

4 It is my respectful submission,  
5 Mr. Commissioner, that whatever we do over the  
6 next three days, Mr. Lockyer should not be  
7 permitted over the next three minutes to  
8 cross-examine on similar fact evidence. And  
9 that's what he is suggesting. And it is my  
10 respectful submission that has no place at this  
11 inquiry.

12 Perhaps when we get to the systemic issues,  
13 if there are matters that Mr. Lockyer wants to  
14 raise with the Commission at that stage of the  
15 proceedings, if he has submissions to make with  
16 the Soponow matter, if he wants to file  
17 Mr. Justice Corey's report, or if he wants to  
18 file material with respect to the Ostrowski  
19 matter, or the Unger matter, or transcripts, or  
20 decisions in the Court of Appeal, which I have  
21 noted are in the exhibit that's been filed, 31A,  
22 I believe, then that would be the appropriate  
23 place, in my respectful submission, when we come  
24 to deal with the systemic issues. But to allow  
25 Mr. Lockyer to cross-examine Mr. Dangerfield on



1           what amounts to similar fact evidence -- it may  
2           or may not be similar fact evidence, but that is  
3           how it has been characterized -- is wrong in my  
4           respectful submission. Thank you.

5           MR. CODE: Perhaps I could make a brief  
6           submission now, having heard both sides,  
7           Mr. Commissioner. I'm sympathetic to Mr.  
8           Prober's view that the systemic issues can be  
9           effectively dealt with on a paper record, and I  
10          don't want to see the witnesses to fact  
11          prolonged by a lot of cross-examination on  
12          systemic issues. However, on the issue of fact  
13          that is before you, the issue of conduct, which  
14          is in our very first term of reference, there is  
15          a serious conflict in the evidence. Staff  
16          Sergeant Vandergraaf has testified, and was  
17          vigorously challenged on this by Mr. Prober,  
18          about a meeting that he had with Mr. Dangerfield  
19          where he briefed him on the secret arrangement  
20          that had been made with Zanidean, and appeared  
21          to have an explicit recollection of this  
22          meeting. Mr. Dangerfield has flatly denied it.  
23          And part of his denial is to advance his  
24          practice, the normal common law practice, if you  
25          make a deal with a witness, you make it in

1 advance, you don't leave contingent benefits  
2 outstanding until after they have performed in  
3 the witness box. You conclude it in advance and  
4 you put it on the record. And he testified in  
5 my examination of him that he had never heard of  
6 a case where this had been done.

7 Now, I don't know anything about the  
8 Sophonow case or the Ostrowski case, but I do  
9 know they are Mr. Dangerfield's cases. And if  
10 there is something that he did in those cases  
11 that is contrary to the evidence he has given  
12 about what his practice was, that may assist you  
13 in resolving the conflict between Staff Sergeant  
14 Vandergraaf and Mr. Dangerfield. So in relation  
15 to the issue of adjudicative fact, depending on  
16 what is in the Sophonow or Ostrowski materials,  
17 I don't know what is in them, it may be of some  
18 assistance on that issue.

19 THE COMMISSIONER: Yes, I want to hear from you  
20 again, Mr. Prober.

21 MR. PROBER: Mr. Commissioner, it doesn't appear  
22 that we are going to be able to resolve this, it  
23 is obviously going to require a ruling. But  
24 Mr. Code has admitted quite candidly that he  
25 doesn't know what is in the material. Mr.

1 Lockyer has characterized it as similar fact  
2 evidence. It seems to me that your assessment  
3 of the evidence should be confined to this case.  
4 You have heard Vandergraaf, you have a long  
5 experience of assessing witnesses and their  
6 evidence and their credibility. And the same  
7 with respect to Mr. Dangerfield, I mean, you  
8 should be able to assess the evidence without  
9 the prejudicial, the very prejudicial line of  
10 questioning that Mr. Lockyer proposes to embark  
11 upon; namely, pointing to other matters that are  
12 not the subject of this Commission's review.

13 Thank you.

14 THE COMMISSIONER: Thank you. Well, I think the  
15 issue is a difficult one. I want to do my best  
16 to try and keep the inquiry on the focus that  
17 the Order-In-Council mandates us to do. I am  
18 very leery about getting into deeds or misdeeds  
19 of other similar cases. I think I may have made  
20 a reference to that earlier, in my general view  
21 and approach to similar fact evidence. However,  
22 it seems to me that if the witness,  
23 Mr. Dangerfield, has testified about a  
24 particular practice in his testimony here at  
25 this inquiry, then he could be, then it would

1 not be inappropriate to have him cross-examined  
2 about whether that practice was followed in  
3 another case. And that, it seems to me, would  
4 be an issue of credibility, would go to the  
5 issue of credibility. But I do not want to get  
6 into an analysis of any other case, particularly  
7 one that, as I understand, maybe one or two of  
8 the names that have been mentioned to me are  
9 matters that are still ongoing.

10 So I will permit the cross-examination only  
11 to the extent that there may be contradictions  
12 in the testimony as to what the practice was,  
13 the testimony here at this inquiry as to what  
14 the practice was, if he can be presented with  
15 another similar situation where the practice was  
16 either similar, or more likely, contradictory.  
17 So to the extent that anyone can understand that  
18 ruling, that's it.

19 MR. LOCKYER: I can, and I will try to be very  
20 confined in what I do, Mr. Commissioner.

21 BY MR. LOCKYER:

22 Q First of all, sir, I have some extracts from the  
23 evidence that you gave at the Sophonow Inquiry,  
24 sir. Could this be the next exhibit, B, please?

25 THE COMMISSIONER: That will be 31B.

1 (EXHIBIT 31B: Extract of evidence given at  
2 the Sophonow Inquiry)

3 BY MR. LOCKYER:

4 Q And first of all, Mr. Dangerfield, do you  
5 remember that one of the witnesses called by you  
6 in one of the prosecutions that you conducted of  
7 Mr. Sophonow was a witness called Thomas Cheng,  
8 who was a jail house informant. Do you remember  
9 that?

10 A Yes.

11 Q And in your evidence, sir, at the Sophonow  
12 Inquiry, you took very much the same position  
13 that you have taken here. In other words, I'm  
14 using your evidence at the Sophonow Inquiry to  
15 show a consistency, where you made it absolutely  
16 clear that --

17 THE COMMISSIONER: Mr. Lockyer, I'm in the  
18 embarrassing position of having to borrow a pen  
19 from someone. Lots of coloured ones but not  
20 black or blue ones. Thank you.

21 BY MR. LOCKYER:

22 Q If you look, sir, at the extracts that you have  
23 there, could you have a look at 8016, line 10,  
24 for example?

25 THE COMMISSIONER: Mr. Dangerfield, if you would

1 like some time to read this transcript --

2 MR. LOCKYER: I think I'm going to make it very  
3 easy for him, Mr. Commissioner.

4 THE COMMISSIONER: Just make sure -- I know you  
5 are not a shrinking violet, that you will tell  
6 us if you want some time? All right. Go ahead.

7 BY MR. LOCKYER:

8 Q Just as an intro, sir, you remember that  
9 Mr. Cheng had a bunch of outstanding charges, a  
10 large number actually, that the Crown had  
11 entered a stay of proceedings on them before he  
12 testified?

13 A Yes.

14 Q And at 8016, line 15 you were asked,

15 "Why did you enter the stay of proceedings  
16 before Mr. Cheng gave evidence?"

17 You said,

18 "Well, in my view, it is the proper way to  
19 do it. It leaves the witness having, in  
20 effect, made his bargain. There is no  
21 question that he is enhancing his evidence  
22 to secure something that is yet to happen,  
23 so that's the way we did it. We got rid of  
24 all of the problems before he gave his  
25 evidence."

1           And that's really quite consistent with what you  
2           are saying now; is that right, sir?

3    A       Yes.

4    Q       And if you look at 8145 of your evidence, sir,  
5           looking at line 12, you are giving an answer to  
6           Mr. Sophonow's counsel and you say,

7                        "What I meant, Mr. Wilson, was that if you  
8                        leave a witness with the prospect say of  
9                        money yet to come, or of a favour such as  
10                      stayed proceedings yet to come, counsel  
11                      with any ability would have him admit that  
12                      he was convinced, the better his evidence,  
13                      the better the chance of reward. You  
14                      eliminate that kind of questioning by  
15                      giving him the reward before he goes into  
16                      the box."

17                     Which, again, is consistent with what you  
18                     are saying today, sir; is that fair?

19   A       Yes.

20   Q       And I now want to move you, sir, from Sophonow  
21           to the case that was raised with you yesterday  
22           by Mr. Code, the case of the prosecution of  
23           Frank Ostrowski back in 1986.

24                     And just by way of introduction --  
25           Mr. Commissioner, Mr. Dangerfield's counsel,

1 Mr. Prober, referred to the Court of Appeal  
2 Judgment being in the materials and so on.  
3 That's really as context for people to read.  
4 I'm not going to be referring to it, for  
5 example. A lot of the documents in this book  
6 are to give context for other counsel to be able  
7 to comprehend what is going on in some of these  
8 references that I'm making.

9 But just to quickly summarize, sir, if I  
10 may, Mr. Ostrowski, he was charged along with  
11 others for the murder by shooting of a man  
12 called Robert Nieman. And for your information,  
13 I doubt that you remember this, sir, the  
14 shooting, he was shot on September 24th of 1986.

15 A Yes.

16 Q A significant Crown witness, what you might call  
17 a Zanidean type Crown witness, sir, against  
18 Mr. Ostrowski was a man called Matthew Lovelace.  
19 Do you remember that name, sir?

20 A Yes, sir.

21 Q And he claimed, and this is a very short summary  
22 of the essence of his evidence, that  
23 Mr. Ostrowski, because he thought the deceased  
24 had informed on him in a drug case, in effect,  
25 hired the co-accused to assassinate Mr. Nieman;



1 correct?

2 A Yes.

3 Q And that was Mr. Lovelace's evidence, that he  
4 was told this by Mr. Ostrowski, that that's what  
5 he was doing and that's what he had done?

6 A Well, he also gave evidence that he was present  
7 at a house of a man named Peyko when a gun was  
8 handed across to Mr. Ostrowski.

9 Q Indeed.

10 A And that Mr. Ostrowski had advised him that he  
11 kept it in a bag so that the prints would be  
12 somebody else's, not his. And that gun was  
13 given to a man named Dunkley, allegedly by a man  
14 named Luzny, yes.

15 Q The only point that I'm trying to establish,  
16 sir, and I think you have emphasized it more, is  
17 that Mr. Lovelace was the key witness against  
18 Mr. Ostrowski and gave some very incriminating  
19 evidence against him?

20 A And a man named Corey, if you recall.

21 Q Well, he actually didn't incriminate Mr.  
22 Ostrowski.

23 A Yes, he did.

24 Q Let's just leave -- I am only focused on Mr.  
25 Lovelace.

1 A Well, I don't like the appellation of  
2 Mr. Ostrowski being the key witness, there were  
3 a number of witnesses.

4 Q Mr. Lovelace --

5 A Mr. Lovelace, I mean.

6 Q Mr. Lovelace was "a", can we say a key witness  
7 and leave it at that?

8 A There were a number of them.

9 Q Fair enough. At the time of the prosecution,  
10 sir, Mr. Lovelace had an outstanding charge of  
11 possession of cocaine for the purpose of  
12 trafficking to the tune of three ounces of  
13 cocaine; is that right?

14 A That's right. That's what brought him to police  
15 attention, and that's what he informed the  
16 police of, was the presence in Mr. Ostrowski's  
17 house of large amounts of drugs and money.

18 Q And he in fact had been arrested just -- and you  
19 won't remember this, I wouldn't think -- just  
20 ten days on that charge, ten days before  
21 Mr. Nieman was shot and he subsequently died?

22 A Yes.

23 Q Correct?

24 MR. PROBER: Is this found in the material?

25 MR. LOCKYER: Yes, it is.

1 MR. PROBER: Where, please?

2 MR. LOCKYER: Well, it is really in the judgment  
3 of the Court of Appeal which sets out the facts  
4 of the case. That's really why I put it in  
5 there. Besides, Mr. Dangerfield is agreeing  
6 with my analysis of the case. I don't know what  
7 tab the judgment is at in the Court of Appeal,  
8 but I did put it in there as background. You  
9 already referred to it, Mr. Prober, as being  
10 there.

11 MR. PROBER: But I can't find it.

12 MR. LOCKYER: Tab 2.

13 MR. PROBER: Has this been marked as an exhibit?

14 MR. LOCKYER: It was disclosed -- through  
15 Commission Counsel it has been disclosed, yes.  
16 By all means, it is part of the Commission  
17 Counsel disclosure. Do you want to mark that  
18 document as an exhibit? It was released by  
19 Commission Counsel this morning.

20 THE COMMISSIONER: And this is?

21 BY MR. LOCKYER:

22 Q Anyway, we are on the same plane, in a sense,  
23 Mr. Dangerfield.

24 A In a very limited sense.

25 Q That's all I'm trying to do.

1 A Mr. Corey, you will recall, was the one who  
2 spoke to Frank Ostrowski and to whom Frank  
3 Ostrowski gave instructions as to people Corey  
4 was to see when he was released from the Remand  
5 Centre, and Mr. Corey did that. And those  
6 instructions are in Mr. Ostrowski's handwriting.  
7 That was a very essential piece of evidence.

8 Q I'm neither agreeing or disagreeing with you, I  
9 have no interest in Mr. Corey. I'm just  
10 interested in you acknowledging Mr. Lovelace was  
11 a significant witness?

12 A He was significant, he started the whole ball  
13 rolling, yes.

14 Q And you recall, sir -- and if you don't, I can  
15 take you to it, but hopefully you remember  
16 this -- that on numerous occasions Mr. Lovelace,  
17 in cross-examination by counsel for both  
18 Mr. Ostrowski and one of the co-accused, denied  
19 there had been any type of deal on his drug  
20 charge? Do you remember that?

21 A Not offhand, no.

22 Q If I could take you, sir, to that, I have it  
23 in-- sorry, is it in the book?

24 MR. LOCKYER: Could we mark that last book as C  
25 of the last exhibit?

1 THE COMMISSIONER: Madam, clerk, do you have an  
2 extra copy of this?

3 THE CLERK: I don't.

4 MR. CODE: Can we identify what has been marked  
5 as exhibit 31C?

6 MR. PROBER: I can't hear what Mr. Code is  
7 saying.

8 MR. CODE: I'm asking if we can identify what  
9 has been marked as exhibit 31C? I'm not sure  
10 that we have what is going on in the record?

11 MR. PROBER: I don't think we have a 31C?

12 MR. LOCKYER: It is the August 14, 2006 document  
13 addressed to all parties with standing, signed  
14 by Mr. Bob Giasson, Chief Administrative  
15 Officer.

16 MR. PROBER: And dated yesterday.

17 THE COMMISSIONER: So that then is to be exhibit  
18 31C.

19 (EXHIBIT 31C: August 14, 2006 document  
20 addressed to all parties with standing,  
21 signed by Mr. Bob Giasson, Chief  
22 Administrative Officer)

23 MR. LOCKYER: Is that before you,  
24 Mr. Dangerfield?

25 THE COMMISSIONER: I don't think it is.

1 MR. LOCKYER: Could we put that before  
2 Mr. Dangerfield?

3 MR. PROBER: Perhaps Mr. Dangerfield could have  
4 an opportunity to review this material, and I  
5 would like an opportunity to review it as well,  
6 Mr. Commissioner.

7 THE COMMISSIONER: And it is also I think about  
8 the time that we would be taking a recess, so  
9 why don't we do that?

10 MR. LOCKYER: Can I just direct Mr. Dangerfield  
11 to the passages that relate to that last  
12 question, during the recess, sir?

13 THE COMMISSIONER: Yes, absolutely.

14 THE WITNESS: Direct Mr. Prober, I have no copy  
15 of it.

16 MR. LOCKYER: You will get it.

17 THE CLERK: This Commission of Inquiry is now in  
18 recess.

19 (Proceedings recessed at 11:15 a.m.  
20 and reconvened at 11:36 a.m.)

21 THE CLERK: Order. All rise. This Commission  
22 of Inquiry is now in session.

23 MR. TAPPER: Before Mr. Lockyer commences, in  
24 the break I had the opportunity to speak to the  
25 other lawyers who were not involved in the

1 skirmish that preceded the break. And I can  
2 tell you that save and except for the ruling and  
3 the one issue that you have carved out pursuant  
4 to your ruling, we are unanimously of the view  
5 that the inquiry should be constrained to and  
6 restricted to the parameters of the  
7 Order-In-Council, and that issues outside of  
8 that ought not to be gone into and are unfair to  
9 both the witness and the participants. Thank  
10 you, sir.

11 THE COMMISSIONER: Thank you, Mr. Tapper.

12 MR. KENNEDY: Unanimously, Mr. Commissioner  
13 didn't include me. I support Mr. Lockyer.

14 BY MR. LOCKYER:

15 Q Mr. Dangerfield, did you get a chance in the  
16 recess to see some of the extracts of  
17 Mr. Lovelace's cross-examination?

18 A Not really.

19 Q Well, I showed them to your counsel, sir, and I  
20 think, hopefully I won't have to read them to  
21 you. Perhaps your counsel, assuming silence on  
22 his part, his silence will tell that my  
23 assertion to you that Mr. Lovelace claimed that  
24 there had been no deal made with respect to his  
25 cocaine charge, that he said that numerous times

1 in the course of his cross-examination, was  
2 challenged on it vigorously by counsel and  
3 maintained his position. All right. Do you  
4 follow?

5 A Yes.

6 Q Do you accept that? Could you accept that?

7 A Well, I have just leafed through it.

8 Q Your counsel is not objecting to my  
9 characterization. Oh, yes he is. Then I will  
10 read it.

11 MR. PROBER: I should address my comments to  
12 Mr. Commissioner. It is my respectful  
13 submission that Mr. Lockyer should take the  
14 witness through it. We had a recess, but by the  
15 time you get to the washroom and back, the  
16 recess is almost gone. Mr. Dangerfield didn't  
17 have a chance to go through it. I would ask  
18 Mr. Lockyer to take him through it.

19 MR. LOCKYER: No problem at all.

20 BY MR. LOCKYER:

21 Q It is the last exhibit, sir, 31C, tab 3, and if  
22 you could go to page 1108?

23 A Yes.

24 Q Which is Mr. Lovelace's cross-examination by  
25 Mr. Brodsky, you will see your name at the top,



1           you finished your examination-in-chief; do you  
2           see that, sir?

3     A     Yes.

4     Q     Mr. Brodsky, third question at line 20,  
5           "Mr. Lovelace, I understand that you have a  
6           pretty serious charge against you at the  
7           present time?

8           A     Yes, sir, I do.

9           Q     I understand that charge involves  
10          possession for the purpose of trafficking  
11          in cocaine?

12          A     Yes, sir.

13          Q     That had not yet been dealt with?

14          A     No, sir.

15          Q     That is a charge that you know without  
16          some police cooperation or Crown  
17          intervention will result in a good number  
18          of years of incarceration for you?"

19     A     Just a minute.

20     Q     Pardon?

21     A     There is a statement by me in between those.  
22           Did you go by it?

23           "Mr. Lovelace, I understand you have a  
24           pretty serious charge outstanding against  
25           you?"

1           Mr. Dangerfield: I'm sorry, Mr. Brodsky,  
2           there are one or two questions that I have  
3           forgot to put, if you don't mind."  
4    Q       Sorry, what page are you looking at?  
5    A       1180.  
6    Q       I have moved to 1181. I didn't start there, I  
7           started at line 20.  
8    A       Well, at 1180, I interrupt the cross-examination  
9           with a suggestion that I have questions to ask  
10           him, and he says he doesn't need them.  
11   Q       That may be so, that's really nothing to do with  
12           what I'm questioning. I started at line 20,  
13           sir?  
14   A       "I'm suggesting to you, Mr. Lovelace...",  
15           That is probably where I was going to go into  
16           the conviction.  
17   Q       Go ahead. I don't know what you are talking  
18           about, but at line 20 I started reading to you  
19           from -- sir?  
20           THE COMMISSIONER: What I will ask is, when you  
21           are reading, slow down.  
22           MR. LOCKYER: Yes, I am sorry.  
23           THE COMMISSIONER: The reporter has to get it.  
24           BY MR. LOCKYER:  
25   Q       Could you just read line 20 through to the top

1 of 1181, as I just read it to you, sir, so I  
2 don't have to read it again into the record?

3 A Yes.

4 Q Top of 1181,

5 "That's a charge that you know without some  
6 police cooperation or Crown intervention  
7 will result in a good number of years of  
8 incarceration for you?

9 A I realize there is very stiff  
10 penalties for that charge, yes.

11 Q Mr. Lovelace, have you made any  
12 arrangement with the police?

13 A No, sir."

14 1184, sir, of the same transcript, line 10,  
15 Mr. Lovelace is in the midst of giving an  
16 answer, perhaps line 8, if you would.

17 "The police told me that the charges  
18 against me were serious. They also told me  
19 they would appreciate any help I can give  
20 them.

21 Q What did they tell you they would give  
22 you in return for this appreciation, how  
23 would they demonstrate their appreciation?

24 A They told me they could promise me  
25 nothing.

1 Q They would just say thank you?

2 A They said they would do what they  
3 could, or they would appreciate what help  
4 I -- they would appreciate if I could give  
5 them any help. They promised me nothing."

6 1282, sir, Mr. Wolch for one of co-accused,  
7 Mr. Luzny, bottom of 1282, last question,

8 "I'm suggesting to you, sir, that it is  
9 clearly in your mind an expectation that  
10 somewhere down the line you are going to  
11 get a break because you testified here?

12 A Well, whatever you may feel in that  
13 respect --

14 Q I didn't ask you what I felt, I said  
15 what you felt?

16 A Well, I wasn't feeling anything of  
17 that nature when I made a phone call to the  
18 vice department.

19 Q I'm not talking about that, I'm  
20 talking about right this minute. Is it not  
21 clearly in your mind that somewhere down  
22 the road you figure you are going to get a  
23 break?"

24 And this is in the context of the cocaine  
25 charge, all right.

1 "A It is not clearly in my mind at all,  
2 no.

3 Q Are you hoping that?

4 A Well, I'm just hoping the truth will  
5 come out of this and when my time -- turn  
6 comes to trial, that I will accept what the  
7 courts decide at that point in time.

8 Q But you hope the court will be  
9 influenced by giving you a break?

10 A I have no hope, sir.

11 Q No hope?

12 A None whatsoever.

13 Q When is your court case set for?

14 A June 2nd.

15 Q Is that a trial or a preliminary  
16 hearing?

17 A I believe it is a preliminary hearing.

18 Q Mr. Lovelace, you have been  
19 interviewed many times, have you not?

20 A Interviewed?

21 Q By the police and by the Crown?

22 A I have been interviewed about, I  
23 believe twice by the Crown and maybe four  
24 times by the police.

25 Q So six times you have gone over your

1 story?

2 A At least, yes, sir.

3 Q And you spoke to Mr. Dangerfield  
4 before court, before the trial?

5 A Not today, but some time in the past  
6 yes, sir."

7 So you see how Mr. Lovelace is saying, no deals  
8 on his cocaine charge. You understand?

9 I have a document, sir, that I would like  
10 to file as D of the present exhibit number,  
11 Mr. Commissioner, if a copy of it could be given  
12 to the witness, please? And the document,  
13 sorry -- may I have it just to say what it is?  
14 It is an addendum to the further disclosures  
15 received from Lockyer and Libman, counsel for  
16 Driskell.

17 (EXHIBIT 31D: Addendum to the further  
18 disclosure received from Lockyer and  
19 Libman, counsel for Driskell)

20 BY MR. LOCKYER:

21 Q Could you go to the second yellow tab, sir? I  
22 put the tabs in the same, Mr. Commissioner, I  
23 put a tab in for you.

24 Now, I have to explain this document  
25 quickly, Mr. Dangerfield. This document --

1 MR. PROBER: Mr. Lockyer, we don't have tabs?

2 MR. LOCKYER: No, I am sorry, you don't.

3 MR. PROBER: That's fine. If you could direct  
4 us, just let us know which document, please?

5 MR. LOCKYER: It is the handwritten document,  
6 there is only one handwritten document in there.

7 THE WITNESS: Tab 1 of the second -- which are  
8 you talking about?

9 BY MR. LOCKYER:

10 Q The second yellow sticky.

11 A Oh, the second one.

12 Q I put a sticky in there for you.

13 This document, Mr. Dangerfield, and indeed  
14 all of the documents in that book were disclosed  
15 to Mr. Ostrowski's counsel in 2004, through a  
16 rather complex route. Essentially, the Federal  
17 Justice Minister's office which deals with  
18 section 696 applications instructed, if not, as  
19 I understand it, subpoenaed the Federal Justice  
20 in Manitoba, and in that way obtained a copy of  
21 Mr. Lovelace's drug file on the charge of  
22 possession for the purpose of trafficking in  
23 cocaine. Do you follow?

24 A Yes.

25 Q Do you understand that? And for everyone's

1 benefit here, Mr. Commissioner, I'm sorry this  
2 is so last minute, but it was only at about -- I  
3 had to sign an undertaking when I received this  
4 that I would share it with no one, and I was  
5 only relieved of that undertaking at about  
6 9:20 this morning by Mr. Scullion of the  
7 Criminal Convictions Review Group in the  
8 Department of Justice in Ottawa, to whom I had  
9 given the undertaking. That's why this is all  
10 quite last minute.

11 And contained in that justice file, sir,  
12 was this handwritten document that you are  
13 looking at. And I want you to particularly look  
14 at the bottom of it where it says 86/12/12, do  
15 you see that? In other words, December 12, '86.  
16 This is before Mr. Lovelace testified. The  
17 evidence that I just read to you, sir, was given  
18 by Mr. Lovelace on March 13th of 1987?

19 A Yes.

20 Q So it is some three months after this entry that  
21 we see sitting in Mr. Lovelace's cocaine file.  
22 And this is what it says. You can read it.  
23 Your last line is missing, but I can read you  
24 the last line, it is on my copy, and Commission  
25 Counsel has the last line as well.



1 "86/12/12, discussed with J. Haasbeek...",  
2 he was a police officer, you are aware of that,  
3 sir, or was?  
4 A Yes.  
5 Q "...who confirmed Tony..."  
6 A Tony Cherniak's.  
7 Q "...earlier discussions."  
8 He, as I understand it, was a Federal  
9 prosecutor; is that right, sir?  
10 A No.  
11 Q What was he?  
12 A He was a policeman, City of Winnipeg policeman.  
13 Q "...told Hymie..."  
14 Hymie would be Mr. Weinstein, who was  
15 Mr. Lovelace's counsel; is that right, sir?  
16 A On the drug matter, I presume.  
17 Q Yes, he was.  
18 A I don't know.  
19 Q "...if Lovelace 'comes through with the  
20 goodies' will stay subject to confirmation  
21 with Provincial Crown. Hymie doesn't want  
22 anything in writing so as not to taint his  
23 client. PMK..."  
24 and you can't read this,  
25 "...PMK said that was okay."

1 And that's the last line on the page as it  
2 exists, sir.

3 First of all, do you know who PMK is?

4 A Haven't a clue.

5 Q No one seems to know. It may be PNK. Does that  
6 help?

7 MR. PROBER: It might have been Peter Kremer.

8 MR. LOCKYER: Who is he?

9 MR. PROBER: He was with the Federal Department  
10 of Justice.

11 MR. LOCKYER: It makes sense.

12 MR. PROBER: It might have been.

13 MR. LOCKYER: Makes a lot of sense.

14 MR. PROBER: Mr. Gates seems to agree with that.

15 BY MR. LOCKYER:

16 Q In fact, it makes complete sense. If you could  
17 go then, if everyone could go back in their  
18 book, in other words, back towards the front of  
19 it, I have yellow stickied it for you, sir, and  
20 for you Mr. Commissioner. What my friend just  
21 said makes complete sense now that I look at the  
22 second document.

23 You will see a memo there, sir, dated  
24 November 16th of 1987, which reads from Pam  
25 Clark, who was a Federal prosecutor --

1 THE COMMISSIONER: Do counsel have the--

2 MR. LOCKYER: It is a document dated

3 November 16, '87.

4 THE WITNESS: It is a letter to Mr. Weinstein,

5 is that what you are looking at?

6 MR. LOCKYER: No.

7 THE COMMISSIONER: I think it is about eight

8 pages in?

9 BY MR. LOCKYER:

10 Q It is from Pam Clark, subject Matthew Lovelace,

11 dated November 16, '87?

12 A It has been mislabeled.

13 Q The first sticky should get you to it?

14 A The first sticky is a letter by Clark to

15 Weinstein re Lovelace, dated November 16, 1987.

16 Q May I borrow yours to give you the right

17 document? This document, sir, says it is dated

18 November 16, '87. Let me give you the history

19 now. Mr. Ostrowski has now been convicted of

20 the murder, sir?

21 A Um-hum.

22 Q And his appeal is pending?

23 A Yes.

24 Q And this memo is written from Pam Clark, a

25 Federal prosecutor, to the file, Re: Matthew

1 Lovelace.

2 "It appears through discussions with Hymie  
3 Weinstein, Peter Kremer and Judith Webster,  
4 that Mr. Weinstein is definitely of the  
5 impression that he was given an undertaking  
6 that charges will be stayed against  
7 Mr. Lovelace once the Ostrowski appeal has  
8 been heard. Accordingly, this matter has  
9 been scheduled for preliminary inquiry on  
10 June 30th, '88, which is approximately one  
11 month past the targeted date for the  
12 Ostrowski appeal. This matter should be  
13 discussed early in June of '88 to let Hymie  
14 know when we will be staying proceedings."

15 To finish the history of this, sir, before I ask  
16 you questions about it, Mr. Ostrowski's appeal  
17 was argued I believe by you, am I right in  
18 saying that?

19 A I don't know, I presume -- it is 20 years ago.

20 Q Yes, sir. You appeared for the Crown, I'm  
21 looking at the Court of Appeal judgment.

22 A Okay.

23 Q On September 23rd of 1988, sir, so some ten  
24 months after this memo was written, and then on  
25 November 16th of 1988, some six weeks later, the

1 Federal Crown offered no evidence on the cocaine  
2 charge?

3 A Give me those dates again?

4 Q The memo that you are looking at is November 16,  
5 '87. The appeal was argued September 23rd,  
6 1988, some ten months later?

7 A Yes.

8 Q Six weeks after that on November 16th of 1988,  
9 sir, the Federal Crown offered no evidence  
10 against Mr. Lovelace on his outstanding cocaine  
11 charge and as a consequence, of course, he was  
12 acquitted. And we have a transcript of that  
13 occasion.

14 A Um-hum.

15 MR. PROBER: Where are those, please?

16 MR. LOCKYER: The transcript?

17 MR. PROBER: Yes.

18 MR. LOCKYER: Do we have it here?

19 MR. LIBMAN: I can --

20 MR. LOCKYER: The transcript is about half a  
21 page.

22 BY MR. LOCKYER:

23 Q Now you have got the history, sir --

24 MR. PROBER: Before we continue, perhaps,  
25 Mr. Commissioner, I could have an opportunity to

1 review this?

2 THE COMMISSIONER: Yes.

3 MR. LOCKYER: It is half a page.

4 MR. PROBER: Well, I am trying to read --

5 THE COMMISSIONER: Mr. Prober --

6 MR. PROBER: Yes.

7 THE COMMISSIONER: -- you take your time.

8 MR. PROBER: Thank you.

9 BY MR. LOCKYER:

10 Q Having set out the history, sir, of what

11 happened with Mr. Lovelace, whom you called as a

12 witness against Mr. Ostrowski, do you have a

13 memory of these events?

14 A Set out in the memorandum?

15 Q Yes?

16 A These are all prosecutors with the Federal

17 Government.

18 Q Yes?

19 A They handle drug prosecutions.

20 Q Yes.

21 A Mr. Lovelace, as I recall, was charged with

22 possession of a drug and arrested, and at the

23 time of his arrest drew the attention of the

24 Drug Enforcement Group to Mr. Ostrowski, a major

25 drug trafficker. What they were doing, I don't

1 know. I was never informed of this. I don't  
2 know about these deals, as far as I'm aware.  
3 These are all Federal prosecutors dealing with  
4 Mr. Weinstein, who was in private practice at  
5 that time, on a matter concerning one of his  
6 clients.

7 Q So, as far as I know, sir, from what I have been  
8 advised by Manitoba Justice, there is no entries  
9 in their file, but this entry in the Federal  
10 file,

11 "If Lovelace comes through with the goodies  
12 will stay, subject to confirmation with  
13 Provincial Crown...",  
14 certainly suggests, sir, as one might expect,  
15 that the Federal Crown consulted with you, which  
16 lead ultimately to what was to happen to those  
17 cocaine charges?

18 MR. PROBER: I object to that question,  
19 Mr. Commissioner. And I will come to the mike  
20 so it gets on the record. I object to the  
21 suggestion that somehow the handwriting, whose  
22 handwriting it is, we don't know. There doesn't  
23 appear to be any date on the document with  
24 respect to what is written in hand. Again, we  
25 don't know who it was. We don't know when it

1 was. And it does not, in my respectful  
2 suggestion, allow Mr. Lockyer to make the  
3 suggestion to Mr. Dangerfield that somehow he  
4 would have been consulted. That is an unfair  
5 comment on what we've received at this last  
6 hour. Thank you.

7 THE COMMISSIONER: Okay. Mr. Lockyer?

8 MR. LOCKYER: It is dated, first of all, I  
9 pointed that out, December 12 of '86.

10 MR. PROBER: Where is that?

11 MR. LOCKYER: It is in the margin there, read  
12 it.

13 MR. PROBER: At the bottom, thank you.

14 MR. LOCKYER: And in my submission,  
15 Mr. Commissioner, this document just speaks for  
16 itself. The circumstantial evidence, when you  
17 then see what happened thereafter, it is quite  
18 clear what happened here with respect to  
19 Mr. Lovelace. And here we are again, the  
20 witness supposedly not being informed of the  
21 deal, and then giving this evidence that there  
22 is no deal when there is a deal.

23 MR. PROBER: If I may --

24 MR. LOCKYER: I am sorry, I am making my  
25 submission.



1 MR. PROBER: Oh, I didn't know. I thought you  
2 were asking a question. I can't tell the  
3 difference.

4 MR. LOCKYER: I'm addressing the Commissioner.  
5 I am sorry.

6 You just have to read what is written  
7 there,

8 "...will stay subject to the Provincial  
9 Crown..."

10 We know the Provincial Crown is Mr. Dangerfield.  
11 And look what happens thereafter, you suddenly  
12 find that then they are adjourning proceedings  
13 until the appeal is heard, which Mr. Dangerfield  
14 is arguing. It can hardly be suggested that the  
15 Federal Crown is acting completely separately  
16 and independently of Mr. Dangerfield. They are  
17 obviously acting with him as a part of  
18 furthering his murder prosecution.

19 The facts are so obvious, in my submission,  
20 the circumstantial evidence is so obvious as to  
21 what happened here that I simply can't fathom my  
22 friend's submissions.

23 MR. PROBER: Well --

24 THE COMMISSIONER: I don't need to hear from  
25 you.

1 MR. PROBER: Thank you.

2 THE COMMISSIONER: You may not pursue it any  
3 further. You were permitted and are permitted  
4 to ask the witness what his simple -- what his  
5 practice was in that case. And I think he has  
6 answered it. If he hasn't, you may -- what he  
7 did in that case. But, otherwise, to allow you  
8 to infer that circumstantially the same thing  
9 happened, it seems to me that that is bringing  
10 us down the road of an inquiry into the  
11 Ostrowski matter, which I think I had indicated  
12 we should not do. And I allowed the  
13 cross-examination only on the issue of practice.  
14 And if the witness says what his practice was at  
15 that time in relation to that case, that's fine.  
16 But it is not an inquiry that allows us to go  
17 behind it. If I could analogize it, it is not a  
18 very good analogy, it is a little bit like  
19 collateral evidence. You can ask the questions,  
20 but you can't go behind the answer.

21 MR. LOCKYER: Okay.

22 BY MR. LOCKYER:

23 Q So it is your position then, Mr. Dangerfield,  
24 that you were not a party to any deal with  
25 Mr. Lovelace to have his cocaine charge

1 dismissed in consideration of his evidence  
2 against Mr. Ostrowski; is that right?

3 A That's my memory of it, yes. It is an odd sort  
4 of --

5 Q It is not quite the same thing then. So you are  
6 saying that you are don't remember?

7 A Mr. Lockyer --

8 Q No, that is fair.

9 A Wait a second, let me finish. The Court of  
10 Appeal decision could have resulted in an  
11 acquittal. What was I going to do with  
12 Mr. Lovelace after that? Absolutely nothing.  
13 The conviction had gone through. I pointed to  
14 you at one point, I tried to start up my  
15 examination again, when Mr. Brodsky stepped in  
16 and said he didn't need to hear my questions. I  
17 was going to bring this matter to the Court's  
18 attention, I believe. However, I don't know  
19 what these people were discussing about. I  
20 don't know what they were doing.

21 Q You mean the Federal Crown?

22 A The Federal Crown. None of this note relates to  
23 me except a reference by, I believe it is  
24 Paulyshyn's handwriting, that I should be  
25 informed. What was I going to do, tell them

1           they couldn't make the deal? It is none of my  
2           business, they could do whatever I wanted.

3       Q     I'm not quite sure you answered my question, I  
4           think you might have, I'm not quite clear.

5           Are you saying, sir, that you think that  
6           that interruption on that first page, on page  
7           1180, you might have been about to advise the  
8           court that there was an intention to drop the  
9           charge against Mr. Lovelace, the cocaine charge?

10      A     No, I think I would have asked him, has he  
11           testified, were there any deals made with you?  
12           And he said he didn't have any deals, he had  
13           hopes, that's all he said. That's not unusual,  
14           Mr --

15      Q     But the question of you, sir, is, were there any  
16           deals with Mr. Lovelace, or do you not remember?

17      A     I don't think there were any deals with  
18           Mr. Lovelace. He says himself --

19           THE COMMISSIONER: I think the real question is,  
20           were you aware of any deals?

21           THE WITNESS: No, I didn't make any deals with  
22           Mr. Lovelace, as far as I remember. And if you  
23           look at the evidence that he gives following  
24           that with Mr. Brodsky's examination, he said  
25           over and over and over again, he had hopes,

1           that's all.

2           BY MR. LOCKYER:

3       Q     I know.  And did you make any deals or enter  
4           into any negotiations, sir, with the Federal  
5           Crown with respect to the cocaine charge?

6       A     No.

7       Q     You did not?

8       A     I honestly cannot remember any.  I don't think I  
9           would have.  I don't know, but --

10      Q     Because if that scenario that we see there in  
11           that note, in fact, happened, it would be quite  
12           contrary to what you have said here and what you  
13           have said at Sophonow as to your practice with  
14           witnesses of this ilk; is that right?

15           MR. PROBER:  Again, before Mr. Dangerfield  
16           answers that, let me object, Mr. Commissioner.  
17           Mr. Lockyer is going beyond what you have  
18           allowed him to.  And let me point out, it says  
19           "with Provincial Crown."  It doesn't say with  
20           Provincial trial Crown, it doesn't say with the  
21           Director of Prosecutions, it doesn't say with  
22           the Assistant Deputy Minister.  We don't know  
23           who the Provincial Crown refers to.  So let's  
24           call whoever wrote that note, or let's call  
25           Mr. Weinstein and find out.  But let's not

1 speculate, with respect.

2 THE WITNESS: Mr. Lockyer, I was going to say  
3 before Mr. Prober --

4 BY MR. LOCKYER:

5 Q Yes, sure.

6 A To make a deal like the one that you are  
7 suggesting, to hang off a prosecution until  
8 another case came to an end, I mean, I don't see  
9 how anybody could advance a case on those terms  
10 at all. It would be a complete abuse of  
11 process.

12 Q All right.

13 A And it certainly wouldn't have been me, because  
14 I never prosecuted drug cases.

15 Q And if we could just go back for a moment, sir,  
16 to the Thomas Cheng case, at the Sophonow  
17 inquiry. If I could ask you to look at tab 15  
18 of the blue book. You will see there, sir, an  
19 extract from Mr. Justice Corey's report in  
20 Sophonow, under the heading, the chapter  
21 entitled "disclosures"?

22 A Um-hum.

23 Q And I wanted to go through the part of what he  
24 says about Thomas Cheng, sir, and that is all.  
25 In fact, there is several pages to this chapter

1           that I put in here, but I'm only going to make  
2           the one reference to it. Do you see the heading  
3           there, Thomas Cheng, sir, on page 75?

4    A       Yes.

5    Q       And bear in mind this is the jail house  
6           informant, the witness of the kind of ilk of  
7           Zanidean?

8    A       Yes.

9    Q       This is what Justice Corey says.

10                 "Sergeant Huff stated in his report that  
11                 the principal reason that Mr. Cheng gave  
12                 for coming forward with the alleged  
13                 confession of Thomas Sophonow was to get  
14                 out of jail, to have charges against him  
15                 withdrawn, to avoid deportation, and to  
16                 avoid disgracing his family. This report  
17                 was in the Crown file. Mr. Dangerfield  
18                 agreed he would have read this report prior  
19                 to Mr. Cheng taking the stand. He also  
20                 agreed that in his taped conversation with  
21                 Mr. Brodsky...",  
22                 this is a phone conversation you have with  
23                 Mr. Brodsky, one of these disclosure phone  
24                 conversations.

25                 "...in a taped conversation with

1 Mr. Brodsky concerning Mr. Cheng, it  
2 appeared he had been referring to some of  
3 the contents of this report. Further,  
4 Mr. Dangerfield agreed that the underlining  
5 which can clearly be seen in the report,  
6 would have been made by someone reading it  
7 and not by the police. Mr. Dangerfield  
8 very fairly agreed that the defence should  
9 have had the report available to it for  
10 cross-examining Mr. Cheng. However, he  
11 stated he did not keep it from Mr. Brodsky  
12 deliberately. I accept that  
13 Mr. Dangerfield did not deliberately keep  
14 the report from Mr. Brodsky."

15 Do you remember that series of events coming to  
16 your attention during your questioning at the  
17 inquiry, sir?

18 A Yes.

19 Q And the reality is, intentional or not, sir, it  
20 was a case where you did not disclose all of the  
21 benefits that the witness was seeking. Is that  
22 right?

23 A I don't know that he did receive any benefits.  
24 In fact, if I recall correctly, he was deported.  
25 But, in any event, I did not bring it to his



1 attention, that's true.

2 Q To Mr. Brodsky's, in other words?

3 A And to the witness in the witness box, as far as  
4 I remember. I don't recall bringing it up to  
5 him. I may have done.

6 Q At tab 14, sir, this is a document that you  
7 likely won't have seen before, it is a document  
8 dated March 3rd of 2005. It is a letter from  
9 Bob Morrison, you know who Bob Morrison is, sir?

10 A Yes.

11 Q He is, I think he is a former Crown in Manitoba  
12 Justice; is that right?

13 A Yes.

14 Q I believe he has now left, yes.

15 And he wrote this letter to the Court of  
16 Queen's Bench on the day that the Minister,  
17 Minister Colter, quashed Mr. Driskell's  
18 conviction and ordered a new trial. He directed  
19 this letter to the court?

20 A Mr. Who -- Colter, I am sorry.

21 Q Yes, Colter, the Federal Minister. He, under  
22 696 of the Criminal Code, quashed the conviction  
23 and ordered a new trial. And Mr. Morrison that  
24 same day, sir, forwarded this letter to the  
25 Court of Queen's Bench explaining why the Crown

1 was staying proceedings against Mr. Driskell. I  
2 wonder if you would go to the third page of that  
3 document, sir?

4 A Um-hum.

5 Q And there is a paragraph beginning,

6 "Far more importantly...",

7 do you see that?

8 A Yes.

9 Q "Far more importantly, there can be no  
10 doubt that Ray Zanidean and John Gumieny  
11 are...",

12 sorry, I can't get the word,

13 "...critical witnesses for the Crown. Both  
14 testified at the first trial that Driskell  
15 was obsessed with killing Harder."

16 THE COMMISSIONER: Not too fast.

17 BY MR. LOCKYER:

18 Q My mistake,

19 "Zanidean testified that following the  
20 murder Driskell confessed to him. Gumieny  
21 can also speak of a confession, albeit in  
22 more oblique terms. There is corroboration  
23 for various aspects of their testimony from  
24 other evidence. While there is a wide  
25 variety of evidence in this case that I

1 referred to generally earlier, my view is  
2 that if the jury doesn't accept the  
3 testimony of Zanidean and Gumieny, then the  
4 case against Mr. Driskell will fail on the  
5 onus criminal law standard of proof beyond  
6 a reasonable doubt. There is a basis to  
7 believe that Zanidean may have committed  
8 perjury at the first trial in at least two  
9 areas. For that reason, the issue of  
10 possible perjury we referred to an outside  
11 police agency for further investigation and  
12 a prosecutor from outside of Manitoba will  
13 be retained to provide advice to them."

14 Were you consulted in this regard, sir,  
15 before this document was drafted and sent to the  
16 Queen's Bench court?

17 A No.

18 Q Are you aware, sir, as to whether any outside  
19 police agency, as promised to court by  
20 Mr. Morrison, was ever retained to conduct a  
21 further investigation --

22 A No.

23 Q -- of Mr. Zanidean and whether a prosecutor from  
24 outside of Manitoba was ever retained to provide  
25 advice to them?

1 A No.

2 Q Certainly we have heard nothing more about that,  
3 sir.

4 And you will see if you turn the page --

5 MR. OLSON: Well, now I rise to object,  
6 Mr. Commissioner. In fact, I have been keeping  
7 Mr. Code and Mr. Dawe fully informed on this  
8 issue on a repeated basis.

9 THE COMMISSIONER: Thank you, Mr. Olson.

10 MR. LOCKYER: Well, could I be enlightened? I  
11 mean, we have moved on what, a year --

12 THE COMMISSIONER: But the reality is this  
13 witness, I mean, this exchange was for you to  
14 introduce this letter, but this witness said he  
15 didn't have anything to do with it, so I don't  
16 see any point in pursuing it with him.

17 MR. LOCKYER: Fair enough.

18 BY MR. LOCKYER:

19 Q One of the items of evidence that you called in  
20 this case, Mr. Dangerfield --

21 A Which case are you referring to?

22 Q Mr. Driskell's case.

23 A All right.

24 Q Was hair microscopy, hair comparison, is that  
25 right?

1 A Yes.

2 Q And tab 2, sir, I put in an extract from

3 Mr. Christianson's evidence in this regard,

4 which was called by Mr. Lawlor?

5 A Tab 2 of which book?

6 Q Of the blue book?

7 A Tab 2 in my blue book is a cross-exam of a man

8 named Krepiakevich.

9 Q That is tab 1 in mine, sir.

10 A Two here.

11 Q Oh, I am sorry, it is at the bottom of that

12 page?

13 A Yes.

14 Q Do you see that?

15 A Yes.

16 Q Page 148, sir, you will see there at line 20,

17 that Mr. Christianson says,

18 "And the point about this type of

19 analysis...",

20 meaning hair microscopy comparison,

21 "...is that it's not a positive

22 identification, all right, because the only

23 way that you could do that is to look at

24 all of the hairs from all of a person's

25 head that exist, and that's an

1           impossibility. But I can tell you, based  
2           on my experience, that the chances of just  
3           accidentally picking up a hair and having  
4           it match to a known sample are very small.  
5           So if the hair is consistent, that means it  
6           either came from the same person as that  
7           known sample, or from somebody else who has  
8           hair exactly like that."

9           Do you remember that evidence, in essence, being  
10          given, sir?

11        A     I remember hair evidence being given, yes.

12        Q     Did you have any reason at the time, sir, to  
13          question the validity of that statement or those  
14          series of statements by Mr. Christianson, in  
15          that he was considerably -- and we will be  
16          coming to this more later -- considerably  
17          exaggerating the ability of hair microscopy  
18          comparison evidence to distinguish between one  
19          hair and another?

20        A     There was a point in this type of examination  
21          when the RCMP examiner seemed to change their  
22          basis of comparison. What he is saying here is,  
23          I expect, is the older argument of the  
24          likelihood of hair of this kind to be found  
25          transferred to a body near the scene or

1 something. We didn't have the benefit of DNA  
2 examination of hair samples at that time. The  
3 DNA sampling, as I recall it, was not as  
4 sophisticated as it is today. So, yes, they  
5 weren't giving, as they do in DNA, percentages.  
6 Normally, in the older, in the older cases you  
7 would get, this is a hair that occurs in say 38  
8 per cent of the population or something like  
9 that. So, yes, it is a rather more precise  
10 definition, yes.

11 Q You remember, sir, that you were the prosecutor  
12 as well in the Starr case, when hair microscopy  
13 comparison evidence was given?

14 A Yes.

15 Q And I'm not going to take you to it, sir, for  
16 time reasons, but it is at tab 6,  
17 Mr. Christianson' evidence in that regard?

18 A Yes.

19 Q You were the prosecutor, sir, in the case of  
20 Kyle Unger.

21 A Yes.

22 Q When a Mr. Cadieux, another hair microscopy  
23 analyst, gave evidence about a hair in  
24 Mr. Unger's case that was very incriminating, is  
25 that right? Do you remember that?

1 A Yes, it was there, yes.

2 Q You were the prosecutor, sir, in the case of  
3 Robert Sanderson?

4 A Robert Sanderson, yes.

5 Q Which is at tab 7, sir, the evidence again of  
6 Mr. Cadieux, who once again gave hair comparison  
7 evidence that was extremely incriminating. Is  
8 that right?

9 A I remember --

10 Q The hair found on the leg of the deceased  
11 supposedly matched a hair from Robert Sanderson,  
12 or one of the deceased, I should say, there was  
13 more than one deceased in Sanderson's case?

14 A I remember the case, yes.

15 Q And in those four cases, sir, I sort of added up  
16 the hairs, there were seven that were supposed  
17 to match someone else's hair in an incriminating  
18 manner?

19 A Um-hum.

20 Q And in the case of each and every one of those  
21 hairs, sir, DNA evidence established that in  
22 each and every case the hair comparison evidence  
23 was wrong. Do you follow?

24 A Yes.

25 Q So, 100 per cent wrong. And this sort of brings



1 me -- did you have any influence over these  
2 people when they were testifying, sir? There is  
3 no other hair cases that have been discovered in  
4 this province, you happened to have prosecuted  
5 all four of them?

6 A No.

7 Q You didn't. And this brings me, sir, to the  
8 point that I raised in submissions to the  
9 Commissioner earlier, that these problems seemed  
10 to keep happening in your cases; is that fair,  
11 sir, the ones that you prosecute?

12 A I don't know what I can say to that. I did a  
13 number of cases. I did not attempt to influence  
14 the evidence of any of these men. It was  
15 impossible to do that. They all say the same  
16 sort of thing, and that was the standard that  
17 was changing in the RCMP, as I understood it,  
18 the RCMP evidence.

19 Q We have got Driskell, Sophonow, Unger, Starr,  
20 Sanderson, perhaps Ostrowski in the net as well,  
21 and I want to ask you, Mr. Dangerfield, if you  
22 think in these circumstances it might not be  
23 appropriate to examine, at a more general level,  
24 the cases that you prosecuted?

25 MR. PROBER: I object to that question,

1 Mr. Commissioner. I will come to the mike and  
2 deal with that.

3 It is my respectful submission that the  
4 question of whether or not Mr. Dangerfield's  
5 cases, where he relied on recognized experts  
6 qualified by the court in which they were  
7 testifying, is not a relevant matter for this  
8 Commission of Inquiry. And to ask that kind of  
9 question goes way beyond the bounds of your  
10 terms of reference, in my respectful submission.  
11 What business is it of any witness commenting  
12 before you, Mr. Commissioner, as to whether or  
13 not all of these cases should be subject to  
14 review because the expert evidence has been  
15 called into question? And an attempt to lay  
16 that at Mr. Dangerfield's doorstep is not only  
17 irrelevant, but unfair. And it should not be  
18 allowed.

19 MR. LOCKYER: The cases referred to, we have  
20 gone through them all, they are not just hair  
21 cases, they are beyond hair as well, including  
22 Mr. Driskell's case which goes beyond hair  
23 issues, Mr. Sophonow's case and Mr. Ostrowski's  
24 case. And it is a submission that I will making  
25 to you, Mr. Commissioner, at the conclusion of

1 this case, and I think it is appropriate to ask  
2 Mr. Dangerfield what he thinks of it.

3 THE COMMISSIONER: Mr. Prober has a sure  
4 rebuttal.

5 MR. PROBER: Well, if it is a submission  
6 Mr. Lockyer wants to make, after he presents  
7 evidence to you about the Unger case, about the  
8 Sanderson case, about the Sophonow case, about  
9 the Ostrowski case, then it may be your decision  
10 to deal with it at a systemic level. But,  
11 again, I submit that it goes far beyond the  
12 bounds of your terms of reference,  
13 Mr. Commissioner. Mr. Lockyer is using this  
14 witness and this soap box to advance his case  
15 perhaps on Ostrowski and others. And it is not  
16 part of the mandate of this Commission. Thank  
17 you.

18 THE COMMISSIONER: Thank you. You may not  
19 pursue the question for a couple of reasons.  
20 One is that it is not up to this witness to  
21 determine whether or not there should be further  
22 examinations. If the witness felt that there  
23 should be an examination of all of those cases  
24 that he was involved in relating to hair and/or  
25 other issues that might have been raised here,

1 I'm sure he could adduce that through his own  
2 counsel.

3 The problem with the question is that a  
4 negative answer is, could be interpreted as  
5 saying, well, he doesn't want them examined.  
6 And that's really irrelevant. It is not for  
7 this witness to determine whether these cases  
8 should be examined, unless he has some very  
9 strong feelings about it, which I would suggest  
10 he could introduce through his own counsel.

11 MR. LOCKYER: Yes, Mr. Commissioner.

12 BY MR. LOCKYER:

13 Q I want to deal, sir, finally with the issues  
14 that arose in this case post conviction. And  
15 the first question that I have for you,  
16 Mr. Dangerfield, that might really be seen as a  
17 systemic question, is this: I note that in  
18 Mr. Driskell's case and, indeed, as we have  
19 noted in Mr. Ostrowski's case as well, that you  
20 conducted the appeal of the case in which you  
21 had been the trial Crown and secured the  
22 conviction. Is that right?

23 A Yes.

24 Q And I'm going to ask you, sir, whether you think  
25 it is appropriate for, or the right thing to do,

1 for Crown counsel who has prosecuted the case to  
2 also then conduct the appeal of the case as  
3 well? And I guess what this arises from is that  
4 it can be argued, whether from the point of view  
5 of appearances or from the point of view of  
6 fact, that the prosecutor may be seen to have a  
7 vested interest in preserving his own  
8 conviction?

9 A Yes, I understand the point that you are trying  
10 to make.

11 Q Right.

12 A I suppose in a perfect world it would be best to  
13 do it your way. I had no feelings one way or  
14 the other at the time. In actual fact, if you  
15 look through the history of my record and my  
16 career, you will see that I was often called  
17 upon to re-prosecute cases that failed at appeal  
18 level, to go back and do them again. Ostrowski  
19 is one. I didn't like doing that, but then  
20 those were my instructions. My only way out was  
21 to resign.

22 When I went into private practice, I was  
23 given this case you mentioned with Sanderson, I  
24 prosecuted it first. The Sanderson and the  
25 Tews, the appeal failed against them. The third

1 Sanderson succeeded.

2 Q Roger Sanderson?

3 A Yes, the younger one, the cousin. The  
4 department asked me to re-prosecute. I said no.  
5 I said no because it wasn't right for me to do a  
6 thing like that, because I just didn't want to  
7 do it, and I didn't want to have go through all  
8 of that again. And the trouble was that knowing  
9 things, and maybe not getting them out in  
10 evidence and saying things that were not proved  
11 was just too difficult. But I had the ability  
12 to say that at that time, because I wasn't  
13 employed by them. But when I was employed by  
14 them, if I refused instructions, my only course  
15 was to resign.

16 Q Of course, if there was a policy directive  
17 within Manitoba Justice that prevented a trial  
18 counsel from arguing his own appeal, so to  
19 speak, that would be --

20 A That would be perfectly fine.

21 Q -- that would solve the problem?

22 A Absolutely, yes.

23 THE COMMISSIONER: You say perfectly fine, do  
24 you think it would be a good policy or are you  
25 indifferent about it?

1 THE WITNESS: I think by and large it would be a  
2 better policy for an independent counsel to do  
3 the thing, yes, do the appeal, yes.

4 BY MR. LOCKYER:

5 Q Certainly that might solve, for example, to take  
6 the Driskell case, some of the post-conviction  
7 pre-appeal disclosure problems that never seem  
8 to have been adequately addressed?

9 A Well, in my opinion, I didn't have the  
10 information to pass along that's -- if you are  
11 thinking of the material sent to me by  
12 Mr. Quinney, allegedly sent to Mr. Miller I  
13 should say, yes, it would in large measure. And  
14 other counsel would look at this file with  
15 different ideas in his head.

16 THE COMMISSIONER: How common is it in Manitoba  
17 for the trial Crown to argue the appeal?

18 THE WITNESS: That's a hard question to answer,  
19 sir. I haven't been in the department for ten  
20 years. I think now, I think occasionally other  
21 counsel do the appeals. It happened in my time  
22 too, occasionally other counsel would do the  
23 appeals that I had prosecuted, because I was  
24 engaged elsewhere. So it wasn't a hard and fast  
25 rule, but it wasn't one that I could escape. As

1           you point out, there was no directive allowing  
2           me to.

3           BY MR. LOCKYER:

4       Q     I mean, certainly one of the remarkable things  
5           about the post-conviction pre-appeal period is  
6           that it seems that the precipitating events for  
7           disclosure were coming to a great degree from  
8           Saskatchewan Justice?

9       A     Yes.

10      Q     As if they seemed to almost, you might say, care  
11           more than Manitoba Justice about Mr. Driskell's  
12           conviction?

13      A     Well, I think it was something that Mr. Quinney  
14           was concerned with.

15      Q     It certainly seems so.

16      A     Yes. I knew Mr. Quinney, he was a very  
17           dedicated, nice man. I don't -- he wrote these  
18           letters, that's all I can say.

19      Q     And post-appeal, sir, as you remember from  
20           Mr. Code's questioning yesterday, in 1993, the  
21           Saskatchewan Justice letters from Mr. Quinney  
22           reared their head again; right?

23      A     Yes.

24      Q     And one of the documents that Commission Counsel  
25           took you to yesterday, sir, was the memorandum



1           that you wrote to Mr. Perozzo on March 16, 1993,  
2           in response to a request to deal with the  
3           articles that appeared in the Winnipeg Sun. Do  
4           you remember that, sir?

5    A       Yes.

6    Q       That is at tab 66, if you could go to it, volume  
7           3 of Commission Counsel's material, sir. And  
8           one of the positions that you took, yesterday,  
9           which I want to further question you about, sir,  
10          is your claim that you made yesterday, that in  
11          drafting this memorandum you were solely dealing  
12          with trial issues; do you remember saying that?

13   A       That was my intention, yes.

14   Q       And I'm going to suggest to you, sir, that just  
15          reading what you have written demonstrates that  
16          that is simply not so.

17                Look at paragraph 2 of page 1, or  
18          paragraphs 1 and 2, you are writing this as a  
19          result of articles appearing in the Winnipeg Sun  
20          and as a result of questions raised by the  
21          opposition; correct?

22   A       Yes.

23   Q       Paragraph 2?

24                MR. PROBER: Again, I'm getting a sign printed  
25          out, Mr. Commissioner, that says objection, so

1           you will know in advance, because I think I'm  
2           going to need it. I'm wearing a path to the  
3           microphone. Mr. Lockyer should read the whole  
4           of paragraph 1, to put it in context. The  
5           writer has been asked for a short commentary on  
6           the trial, on the trial of the captionally noted  
7           Driskell for the murder in first degree of a man  
8           named Perry Harder. Put it fairly to the  
9           witness, please.

10          MR. LOCKYER: Happily. It is the second  
11          paragraph that I'm really interested in, but I  
12          will read the first paragraph, happily, if that  
13          is what your counsel wishes, sir.

14                 "As a result of articles appearing in the  
15                 Winnipeg Sun on March 13th and 14th and as  
16                 a result of questions raised by the  
17                 opposition, the writer has been asked to  
18                 prepare a short commentary on the trial of  
19                 the captionally noted Driskell for the  
20                 murder in the first degree of a man named  
21                 Perry Dean Harder."

22          Paragraph 2, sir, you have written,

23                 "It should be noted that the articles  
24                 present a distorted view of the case made  
25                 against Driskell, the distortion occurs

1 through the use of pejoratives and glosses  
2 which do not accurately portray the facts  
3 as they were put in evidence. Omissions  
4 from the articles of essential facts have  
5 also contributed to the distortion."

6 And then if you could turn to page 3, sir, the  
7 third page, you say, third line,

8 "Turning to the articles themselves, there  
9 was never any arrangement entered into with  
10 Zanidean under which a charge of arson made  
11 against him in Saskatchewan would be stayed  
12 in exchange for his testimony. Nor was  
13 there any high-level meeting between  
14 officials of the Justice Departments of the  
15 two provinces to effect the same result.  
16 The only arrangement entered into with  
17 Zanidean and Gumieny was to get him into  
18 the witness protection program. This  
19 precaution was taken because Driskell was  
20 charged with murdering a would be  
21 informant. In fact, the preliminary was  
22 foregone and Driskell indicted directly so  
23 that Zanidean and Gumieny would not be  
24 unnecessarily exposed to risk."

25 That's written, sir, on Tuesday, March 16th of

1           1993. On the previous Thursday, sir, you had  
2           had, once again on the documents as they appear  
3           before this Commission, had Mr. Quinney's  
4           letters, whom you told us you knew. You had  
5           been asked to comment on them once again, just  
6           less than a week earlier, sir. And you know  
7           very well, from what they say, that what you've  
8           written there is just simply misleading. I  
9           mean, this is going to be used in parliament,  
10          potentially. It is a response to articles in  
11          the media, sir. How do you explain what you  
12          have written there on page 3, in that light?

13          MR. PROBER: Again, Mr. Commissioner, if you  
14          look at the material which -- Mr. Lockyer again  
15          is not being fair to the witness. If you look  
16          at the material to which he is referring, that  
17          is Mr. Lockyer, at tab 64, I believe that's what  
18          he is referring to when he says "the previous  
19          Thursday," March 11th, 1993. It is clear that  
20          Mr. Dangerfield in the note on that says, I  
21          don't recall, I don't recall something. What  
22          does it say, Mr. Dangerfield?

23          MR. LOCKYER: I'm not sure that's a proper  
24          objection.

25          MR. PROBER: Well, I just can't read his

1 writing.

2 "I don't recall getting the material  
3 perhaps you could refresh my memory by  
4 sending it to me. I hesitate to send it to  
5 counsel without first looking at it."

6 THE WITNESS: Yes.

7 THE COMMISSIONER: It is not tab 64 --

8 MR. PROBER: Have you got that, tab 64?

9 THE WITNESS: Yes.

10 THE COMMISSIONER: Last page.

11 MR. PROBER: I just say, number 1, there is no  
12 material attached to this memo. Number 2, it is  
13 clear that he doesn't necessarily have the  
14 material, as Mr. Lockyer stated when he was  
15 making -- when he was asking the question,  
16 Mr. Commissioner. So in my respectful  
17 submission, it was not a fair way of putting the  
18 question to Mr. Dangerfield.

19 BY MR. LOCKYER:

20 Q It is the second time around, Mr. Dangerfield.  
21 And let's even assume for the moment that that  
22 material hadn't arrived. Just read the first  
23 paragraph of the March 11th memo, it is bringing  
24 to your attention that there is problems here in  
25 respect to the alleged activity of Mr. Driskell

1 and Mr. Zanidean.

2 A Which page are you reading from?

3 Q Last page of tab 64, sir. Just look at that  
4 paragraph. Let's assume for a minute that your  
5 memory is gone of what happened a year before,  
6 that the materials haven't arrived.

7 "You will recall some time ago prior to the  
8 Court of Appeal Hearing into the above  
9 matter, my providing you with documentation  
10 which had been submitted to us by our  
11 colleagues in Saskatchewan. That  
12 information related to an investigation  
13 which had been conducted by RCMP in  
14 Saskatchewan in respect to alleged  
15 activities of Mr. Driskell and  
16 Mr. Zanidean.

17 Was that information disclosed to counsel  
18 for Mr. Driskell? If not, should we do so  
19 at this time?"

20 Et cetera?

21 A Where are you reading from?

22 Q The last page of tab 64, sir.

23 A The last page is my letter, or my note.

24 Q Yes, and I'm reading to you the memo itself,  
25 sir. There is a typed memo there, right, I just

1 read you the first two paragraphs.

2 A Oh.

3 Q Why don't you read them to yourself?

4 A I see, all right.

5 Q In that light, sir, do you think what you wrote  
6 five days later was responsible, given where it  
7 was going, to Mr. Perozzo? Let's assume even  
8 for a minute you had forgotten from the previous  
9 year, and you still haven't got the documents as  
10 such that go with the March 11th memo, don't you  
11 think that the March 11th memo alerted you to a  
12 fact, sir, that meant that what you wrote at the  
13 top of page 3 there was just simply  
14 irresponsible, given where it is going and its  
15 purpose, for parliament for Heaven's sake?

16 A I said to Mr. Code I shouldn't have been asked  
17 to write this memorandum. I didn't have the  
18 file, I don't believe. I did the best I could  
19 with my memory and what was being shown me in  
20 the way of documents. And --

21 Q It was really -- sorry, I thought you were  
22 finished.

23 A And I addressed the situation at the trial.  
24 Perhaps in stating it that way, it was  
25 misleading, but I didn't intend it to be.

1 Q And the last two lines of what you wrote are  
2 really quite ironic when you read them.

3 "The articles in question are an example of  
4 irresponsible reporting and commentary by  
5 some members of the bar and police."

6 And of course what you are saying there is you  
7 are really referring to the irresponsible  
8 reporting of Zanidean's recantation and of the  
9 claim that there had been a deal for immunity on  
10 the arson, isn't that it?

11 A As I recall the articles, Mr. Lockyer, they were  
12 replete with accusations of conspiracy, they  
13 were missing vital evidence, essential evidence  
14 that would have explained some of it. These  
15 articles -- and members of the bar had been  
16 asked for comment. Members of the bar that had  
17 no connection with the case, who offered general  
18 comments, would seem to be rather I thought  
19 irresponsible. That's what I was commenting on.

20 Q You don't think on reflection, sir, that if  
21 there was anything irresponsible here it was in  
22 this memo that you wrote?

23 A I did the best I could in restricted time  
24 elements. That memo is written on the 5th. The  
25 instructions to get it I think were the same day



1 or the day before. I did what I could. I put  
2 it together as best I could, and sent it to the  
3 Minister.

4 Q I want to try and finish this before lunch, sir,  
5 so I'm going to skip a few things, but I do want  
6 to take you to a document that I took Chief  
7 Ewatski to as well. It is the Justice  
8 Minister's press release when he quashed  
9 Mr. Driskell's conviction and ordered a new  
10 trial on March 3rd of 2005. You will find it at  
11 tab 13, sir, of the blue book?

12 A Yes, I have it.

13 Q Thank you. On the first page, sir, fourth  
14 paragraph, you will see it says,

15 "Colter said that he 'has concluded that a  
16 miscarriage of justice likely occurred in  
17 Mr. Driskell's case. Accordingly, I am  
18 granting the application for ministerial  
19 review, quashing the conviction, and  
20 ordering a new trial.'

21 The Justice Minister said there were a  
22 number of significant factors which  
23 accounted for the exercise by him of this  
24 rarely used remedy, including,"

25 Turn the page,

1 "The Crown failed to disclose that its two  
2 key witnesses, Reath Zanidean and John  
3 Gumieny, who had testified that  
4 Mr. Driskell planned the murder, had  
5 received substantial financial  
6 consideration. This denied Mr. Driskell's  
7 right to full disclosure and right to  
8 challenge the credibility of key witnesses.  
9 For 11 years after Mr. Driskell's trial,  
10 the Crown failed to disclose information  
11 that Mr. Zanidean likely committed perjury  
12 at the trial."

13 And then skip a dot.

14 "The Crown's two key witnesses, Zanidean  
15 and Gumieny, have, since Mr. Driskell's  
16 trial, either recanted or threatened to  
17 recant their testimony regarding  
18 Mr. Driskell's involvement in the murder.  
19 The failure to disclose this information to  
20 the defence was not only a serious breach  
21 of the constitutional duty to disclose, but  
22 the information also significantly  
23 undermined the credibility of these key  
24 witnesses.  
25 Colter said that these new matters taken

1                   and weighed together..."

2                   And that includes the two that I haven't read,  
3                   "...clearly denied Mr. Driskell the right  
4                   to a full and fair hearing. They so  
5                   seriously prejudiced the fairness of the  
6                   original trial and the validity of the  
7                   original conviction that the only  
8                   appropriate remedy is to quash the  
9                   conviction and grant a new trial."

10                  As the prosecutor, sir, your comment on that?

11        A        My comment?

12        Q        Yes. I mean, that's not directed to you in  
13                  name, but in effect a great deal of that is  
14                  directed at you, like it or not.

15        A        Well, all I can say is that at the trial level,  
16                  when I was most actively involved, I was  
17                  ignorant of some of the problems raised in this  
18                  memorandum, if not all of them, and couldn't  
19                  give full disclosure to the defence counsel  
20                  because I didn't know it myself. In a more  
21                  practical vein, I don't know what the disclosure  
22                  would have accomplished, in any event. No one  
23                  can tell what a jury would do with this  
24                  information. Later on the issues become  
25                  confused because the matters that you have

1 addressed --

2 Q The Minister, not me, sir.

3 A The matters that you have addressed to with me  
4 with respect to the Quinney material, I'm not  
5 certain that I ever saw that until much later  
6 on. And with respect to the 11 years following  
7 the Driskell trial, I wasn't around for most of  
8 that. And so I think one of the really grave  
9 errors that was committed in that trial -- I  
10 shouldn't put it quite that way -- I think one  
11 of the things that contributed to Mr. Driskell's  
12 conviction is his decision to not give any  
13 evidence.

14 So, these are matters that concerned the  
15 Minister. I don't know if you read the whole of  
16 the file or just a summary prepared by, I think  
17 you called it the investigative report or  
18 something, but --

19 Q I can tell you, sir, I happen to know the answer  
20 to that. He read the whole file.

21 A He did?

22 Q Yes?

23 A In any event, that's my view. Yes, there were  
24 mistakes made, they were unintentional to begin  
25 with. I can't remember when I received the

1 material from Saskatchewan. After that I did  
2 what I could. I don't know why the letters  
3 weren't sent, as you remember my evidence. I  
4 can't help any further.

5 Q You said yesterday, sir, something that  
6 Mr. Driskell particularly was troubled by. I  
7 can tell you, you said yesterday that after the  
8 appeal was over, you went on with your life, you  
9 said.

10 A An unhappy choice of phrase, I agree. What I  
11 meant was as the cases went on, I kept doing  
12 more and more cases, that one drifted away from  
13 my memory. I just picked up my job where I had  
14 left it and went on with the next case.

15 Q At tab 8, sir, of the blue book, you made a not  
16 dissimilar comment regarding Mr. Sophonow, or at  
17 least was reported as such in the media. You  
18 said -- are you there?

19 A Yes.

20 Q A little more than about halfway down, your name  
21 appears as the province's most experienced Crown  
22 Attorney, when you prosecuted Sophonow in the  
23 first two trials.

24 "All I did was prosecute a case to which  
25 there was a reasonable possibility of

1           guilt, Dangerfield now retired said. He  
2           laughed when asked he if he had any regrets  
3           about how the case was handled. 'I don't  
4           want to appear rude, but I don't really  
5           care,' Dangerfield said, adding the crime  
6           was nearly 20 years old and his memory had  
7           faded."

8           Is that your attitude your attitude, sir, to a  
9           case when it is alleged that you were involved  
10          in prosecuting a wrongful conviction?

11        A     No.

12        Q     Are you misquoted there?

13        A     I don't know what -- where I made that comment  
14          or to whom. Winnipeg Free Press --

15        Q     Careful what you say, they are in here, sir.

16        A     I don't know. They were pestering me over the  
17          phone. I may have been as rude as I appear  
18          there. But basically at the end of a trial, I  
19          mean, nobody wins these things. The victim is  
20          dead, the perpetrator is off to prison, families  
21          are destroyed on every side. You don't  
22          celebrate. You might have a drink because your  
23          tension is gone.

24                I don't have an opinion as to

25          Mr. Sophonow's guilt or innocence. I don't have

1 an opinion of Mr. Driskell's guilt, or not  
2 guilty. That's what I was really trying to  
3 convey. It was badly done, I agree. But I was  
4 really trying to say that that was done and I  
5 had gone further on with it.

6 Q I asked Chief Ewatski this, sir, and I think I  
7 should ask you as well; is there anything that  
8 you would like to say to Mr. Driskell?

9 A To say to him?

10 Q Yes?

11 A Other than what I have already said, that I  
12 didn't rejoice in his conviction. I thought at  
13 the time that he should have given evidence. He  
14 may have thought so too. If that's troubled him  
15 all of his life, I'm sorry for that, but that  
16 wasn't a decision of mine. I didn't place him  
17 in this position, as far as I'm concerned. I  
18 prosecuted him as well as I could. Nobody  
19 rejoices in a man ruining his life like that.  
20 How could he?

21 Q Anything to say about the years since '91, sir?

22 A In what respect? I think I answered it. I  
23 haven't -- I haven't spent my entire life  
24 mulling over this case.

25 Yes, I'm sorry he put all of that time in

1           prison. But I didn't intentionally try to get  
2           him into prison. I didn't intentionally do  
3           things to damage his chance to acquit himself.  
4           And I honestly think today, as I sit here,  
5           remembering him as he was 15 years ago, a good  
6           looking young man, good appearance, good way  
7           with him, that had he gone in the box, he might  
8           very well have been acquitted. He didn't. I'm  
9           sorry to hear it, and he has been in jail ever  
10          since.

11        Q       All right. Thank you, Mr. Dangerfield, those  
12           are my questions.

13           THE COMMISSIONER: This is a good time for the  
14           lunch break.

15           THE CLERK: All rise. This Commission of  
16           Inquiry is adjourned until 2:00.

17                   (Proceedings recessed at 12:45 p.m. and  
18                   reconvened at 2:00 p.m.)

19           THE CLERK: All rise. This Commission of  
20           inquiry is re-opened, please be seated.

21           MR. PROBER: Mr. Commissioner, somebody kindly  
22           made this for me and left it on my desk. I did  
23           not make it. I did not order it to be made.

24                   (MR. PROBER SHOWS OFF "OBJECTION" SIGN)

25           MR. CODE: Mr. Commissioner, if I could seize



1 the mike --

2 THE COMMISSIONER: Mr. Code, just a sec. At  
3 least they didn't offend you by saying "usual  
4 objection".

5 MR. PROBER: Yes, thank you.

6 MR. TAPPER: My only worry is he wants to mark  
7 it as an exhibit.

8 MR. CODE: If I could seize the microphone while  
9 we have this little pause, Mr. Commissioner,  
10 I've got a brief procedural matter I need to  
11 move along. As I announced on Thursday, I don't  
12 think it's any surprise to anyone what our  
13 anticipated witnesses are and, by default, who  
14 the witnesses are who our preliminary decision  
15 is not to call them. And, accordingly, pursuant  
16 to Rule 18, the rules permit Commission Counsel  
17 to file the witness statements of those  
18 witnesses who it does not consider necessary to  
19 call, and I wish to do that. We have provided  
20 Madam Registrar with copies of the book of  
21 interviews. And there are five such witnesses,  
22 Garber, Wyant, Osborne, Williams and Prechniak.  
23 And, in addition, in the books we have  
24 already filed at various points, we have, for  
25 example, the statement of Inspector Hall, the

1 statement of Rob Finlayson. Those have already  
2 been filed in other exhibits already. I think  
3 those are the only others. But beyond these  
4 five, I think Hall and Finlayson were the only  
5 other two, and they have already been tendered.  
6 So if I could ask that this book be marked,  
7 pursuant to Rule 18 as Exhibit 32, I believe,  
8 Madam Registrar has told me.

9 THE COMMISSIONER: Okay. Exhibit 32.

10 (EXHIBIT 32: Witness interviews of Garber,  
11 Wyant, Osborne, Williams & Prechniak)

12 MR. CODE: And, of course, the reason for my  
13 interrupting and trying to get this done now is  
14 because what this then triggers is the right of  
15 the parties under Rule 27 to bring a motion to  
16 persuade you, Mr. Commissioner, that there are  
17 additional witnesses who are needed for you to  
18 be able to fulfill your terms of reference. And  
19 I would invite my colleagues to bring any such  
20 motions they have, if there are any. I hope  
21 there are none. But if there are any, it would  
22 be very helpful if they could be argued, say, on  
23 the end of the day Thursday, assuming we have  
24 time. So that if you do, if you are persuaded  
25 that additional witnesses are needed, then we

1 can book the time in September or October to try  
2 to accomodate that. And that was all I had to  
3 say.

4 THE COMMISSIONER: Thank you, Mr. Code.

5 MR. GATES: Afternoon, Mr. Commissioner.

6 THE COMMISSIONER: Mr. Gates.

7 MR. GATES: Sir, I only have one question for  
8 Mr. Dangerfield. But before I do that, I want  
9 you to be aware, sir, that the next witness,  
10 Stuart Whitley, is my professional colleague and  
11 that we both work for the Department of Justice.  
12 I have already informed Mr. Tapper. He knew of  
13 it, but I have confirmed with him that that is  
14 the case. And my position is that it wouldn't  
15 be appropriate for me to question Mr. Whitley.  
16 So I want you to know, sir, that we are  
17 colleagues.

18 THE COMMISSIONER: Thank you.

19 MR. GATES: Thank you.

20 THE COMMISSIONER: It may be your one  
21 opportunity. I shouldn't have said that.

22 MR. GATES: I considered that, sir.

23 THE COMMISSIONER: I agree completely with your  
24 position.

25 MR. GATES: Thank you.

1 BY MR. GATES:

2 Q Mr. Dangerfield, I really only have one question  
3 for you, sir. And that is in relation to a  
4 series of questions that Commission Counsel put  
5 to you yesterday regarding your understanding of  
6 your obligations as Crown counsel and as the  
7 counsel who had carriage of the Driskell  
8 prosecution. Yesterday, if I recall, you were  
9 asked about the two appearances that you had  
10 with Mr. Brodsky in front of Chief Justice Hewak  
11 on your motion for an early trial date or for an  
12 expedited trial date; is that correct, sir?

13 A Yes.

14 Q And as a result of that, those appearances  
15 before Chief Justice Hewak, I believe Mr. Code  
16 asked you to articulate your responsibilities  
17 relative to the disclosure matters that have  
18 been raised by Mr. Brodsky during the course of  
19 those applications. Further -- and I'm coming  
20 to the question, I'm sorry, Mr. Dangerfield, to  
21 be so long-winded. Further, I believe you said  
22 that you had an obligation to make inquiries  
23 with respect to the matters that had been raised  
24 by Mr. Brodsky before Chief Justice Hewak that  
25 you did not have an immediate response to; is

1           that correct?

2    A       Yes.

3    Q       And this is my question, Mr. Dangerfield, in  
4           response to that question, did you see your  
5           obligation as extending to actually reviewing,  
6           in its entirety, the police's file?

7    A       No. My obligation was met, I thought, by  
8           referring the questions Mr. Brodsky put in those  
9           several documents he presented, the shopping  
10          lists as they have become called, to the police  
11          because they were my investigative arm, and I  
12          accepted what they told me.

13       MR. GATES: Thank you very much, Mr. Brodsky.  
14       Thank you, Mr. Commissioner.

15       MR. LIBMAN: Mr. Dangerfield.

16       THE WITNESS: It's okay. We are practically  
17       twins.

18       MR. GATES: I called you Mr. Brodsky. I'm very  
19       sorry. Thank you very much, Mr. Dangerfield.

20       THE WITNESS: Don't be sorry.

21       MR. KENNEDY: Good morning, Mr. Dangerfield. My  
22       name is Jerome Kennedy. I represent the  
23       Association for the Defense of the Wrongly  
24       Conflicted. If it please you, Mr. Commissioner,  
25       I have no questions.

1 THE COMMISSIONER: Thank you, Mr. Kennedy. Yes,  
2 go ahead, Miss Carswell.

3 BY MS. CARSWELL:

4 Q Mr. Dangerfield, we know each other, sir?

5 A Yes.

6 Q And you know that in this proceeding I am  
7 representing the Winnipeg Police Service.

8 A All right.

9 Q And for the benefit of the witness, Madam  
10 Registrar, and for other counsel, there are  
11 three volumes I'll be referring to already in  
12 evidence that perhaps could be put before the  
13 witness at this time. And I'll tell counsel now  
14 so that we can get them all in front of the  
15 witness. It's Exhibit 20B as in Bob.

16 THE COMMISSIONER: Which one is that?

17 MS. CARSWELL: That is volume 2, Mr. Brodsky's  
18 volume. Exhibit 20D and that's the index of  
19 material available in Mr. Brodsky's current  
20 file. And, finally, Exhibit 28A, which is  
21 volume 1 of Chief Ewatski's documents.

22 MS. CARSWELL: When you're ready,  
23 Mr. Commissioner, just let me know.

24 THE COMMISSIONER: Yes. I don't have the chart  
25 of materials, but go ahead, I'll locate it.

1 MS. CARSWELL: Yes, all right. And it's later  
2 on, in any event.

3 BY MS. CARSWELL:

4 Q Mr. Dangerfield, we've heard evidence in this  
5 proceeding that negotiations of the benefits for  
6 Mr. Zanidean that would equate to his witness  
7 protection benefits, and allow him to enter into  
8 the RCMP program, were being conducted between  
9 Mr. Miller and Mr. Kovnats. And is it fair to  
10 say that that was your understanding of that as  
11 well?

12 A I was originally told that Mr. Miller was the  
13 go-between the RCMP and the government, so I  
14 assumed that Mr. Kovnats was also talking with  
15 the RCMP, as they were providing the service.

16 Q But clearly the City of Winnipeg Police were not  
17 involved in that negotiation, based on your  
18 understanding?

19 A I can't say that. I can say that they seemed to  
20 have had a hand in some part of it, if what I've  
21 been shown in this hearing is accurate.

22 Q Well, we have heard evidence at this hearing  
23 that Mr. Miller and Mr. Kovnats and Corporal Orr  
24 were involved in the negotiations at some point,  
25 and the Winnipeg City Police were being

1 circumvented in the process, and Mr. Miller and  
2 Mr. Kovnats were dealing with the matter. You  
3 wouldn't take issue with that, would you?

4 A I have never heard the evidence. I don't know  
5 what it refers to, but I couldn't take issue  
6 with it.

7 Q So it would be logical -- if what I have said is  
8 accurate, based on the evidence that we have  
9 heard, that Mr. Miller and Mr. Kovnats were  
10 dealing with the issues of witness protection  
11 with the RCMP, that it would be logical if the  
12 Winnipeg Police Service had issues in relation  
13 to witness protection that they would discuss  
14 those with Mr. Miller, would that be fair?

15 A I guess. I don't know. I think the early  
16 stages -- I don't know if there is any  
17 discussion with them, but the early stages  
18 before the application into the Witness  
19 Protection Program, we have evidence through  
20 Thomas Anderson and a document that was filed,  
21 given to Brodsky, Mr. Brodsky, I should say,  
22 showing that some monies were paid across in  
23 lieu of rent and that everyday living expenses,  
24 Mr. Lawlor was sending the money on to one of  
25 the Winnipeg Policemen.



1 Q Right. And we understand that that took place.  
2 But my question is more along the lines of you  
3 wouldn't have expected the police to approach  
4 you with witness protection issues or issues  
5 arising out of the witness protection because  
6 they understood that they were to deal with  
7 Mr. Miller, would that be fair?

8 A If that was their understanding, no, I wouldn't  
9 expect them to come and see me.

10 Q And certainly it would be reasonable for them to  
11 expect if they went and spoke to Mr. Miller that  
12 he, working with you, would brief you?

13 THE COMMISSIONER: I'm sorry, what was the last  
14 word?

15 BY MS. CARSWELL:

16 Q Sorry. It would be reasonable for the police to  
17 understand that if they briefed Mr. Miller,  
18 Mr. Miller, in turn, would brief  
19 Mr. Dangerfield?

20 A I have no idea what they understood.

21 Q But that would be a reasonable thing for them to  
22 believe, would it not?

23 A It would depend on what they understood of the  
24 relationship between Miller, myself and the RCM  
25 Police and Mr. Kovnats. It seems to me, at some

1 stage, they suggested Miller told them not to  
2 pass on any information to Zanidean, that  
3 certainly wasn't conveyed to me.

4 Q No. And I'm not getting into that. I'm just  
5 saying with respect to Mr. Zanidean's demands  
6 that came under the rubric of witness  
7 protection. And I can take you to Mr. Kovnats'  
8 letter --

9 A Yes.

10 Q -- if you wish, but I don't think it is  
11 necessary for the purposes of my question. With  
12 respect to those type of issues, the intent was  
13 that Mr. Miller would be the front in those  
14 issues and that you would not be involved,  
15 correct?

16 A That's correct. And whether they expected  
17 Miller to tell me or not to tell me would be up  
18 to how much -- however they knew -- whatever  
19 they knew of that relationship, I guess. I'm  
20 not sure I understand your question.

21 Q All right. Certainly you've heard of the saying  
22 the Crown is the Crown. And the expectation  
23 would be that if the police have advised the  
24 Crown of something, the Crown in this particular  
25 case, being Mr. Miller, that they would

1           certainly be reasonable in expecting that  
2           Mr. Miller would pass on anything that would be  
3           important to you to you?

4    A    I don't know what their expectations were.  I  
5           used to deal with the policemen face-to-face,  
6           not through intermediaries, so there was no  
7           question of who they were speaking with and who  
8           they might expect instructions from.

9    Q    And that perhaps gets me into the next area of  
10           question that I can talk to you about, and  
11           that's going back to the time frame that we're  
12           dealing with here and that being 1989, '90 and  
13           '91.  Would it be fair to say that you would  
14           deal with the police officer's face-to-face on a  
15           much more regular basis than you would towards  
16           the end of your career when much more of the  
17           contact was dealt with in writing for requests  
18           and information briefings?

19   A    Well, if you're talking about the very end of my  
20           career, I was in private practice doing two  
21           prosecutions.  And they would come up to my  
22           office and talk with me.  I mean, it was much  
23           simpler than trying to mail stuff through the  
24           mail.  They were talking about things that they  
25           didn't like to be out of the control of what

1           they perceived to be the justice system. And so  
2           I would meet them in my office, or perhaps at  
3           the Woodsworth Building if we could find a room.  
4           And, generally speaking, I spoke to the  
5           policemen face-to-face on day-to-day matters  
6           what witness I needed, this, that and the other  
7           thing.

8        Q     And you would speak to them face-to-face and  
9           they would orally brief you on things that they  
10          were involved with in the file, would that be  
11          fair?

12       A     If it was going to be a major portion of the  
13          investigation it would be in writing.

14       Q     And certainly if they told you something that  
15          you were concerned would be a major portion of  
16          the investigation, I take it from your evidence  
17          yesterday, you said that you could tell them  
18          that and they would provide you with something  
19          in writing, a supplemental report or a special  
20          report?

21       A     Usually they came with those things. If they  
22          had done something else in the investigation,  
23          they would present me with the report and  
24          perhaps explain something about it, but that  
25          would be it.

1 Q I take it you don't take issue with Mr. Code's  
2 suggestion to you that Sergeant Paul's notes  
3 were located in the Crown Attorney's file. And  
4 we have heard his evidence that he provided them  
5 some time after May 17, 1991 to the Crown?

6 A I never saw them in the file.

7 Q You recall that specifically?

8 A Yes.

9 Q You did, though, provide some notes, officers'  
10 notes to counsel, and I am going to take you to  
11 that now. If you take a look at tab 45 of your  
12 volume, which is located in volume number 2 of  
13 your material.

14 A Tab what?

15 Q Tab 45, volume 2.

16 A Yes.

17 Q For the record, Exhibit 30B. This is a response  
18 to Mr. Brodsky's disclosure request dated May 24  
19 of 1991. I'll wait until you get to the tab.

20 A Tab 45?

21 Q 45 in volume 2 --

22 A Yes.

23 Q -- of your material.

24 A Yes. Is this Pilote and Robinson or McCormack  
25 and Hart?

1 Q This is -- the first page is a letter dated  
2 May 24 of 1991.

3 A No. I have a memorandum dated June 25, 1991.

4 Q Do you have your volume, Mr. Dangerfield?

5 A Oh, my volume. My volume, what tab?

6 Q Your volume number 2, tab 45. And if you would  
7 like, have you found it --

8 A I have a memo "re James Driskell typed GGB/VG".

9 MS. CARSWELL: No. Perhaps, Mr. Commissioner,  
10 if I can assist Mr. Brodsky in finding the  
11 correct volume.

12 MR. LIBMAN: Mr. Dangerfield.

13 MS. CARSWELL: Mr. Dangerfield. I've caught the  
14 disease. No, that's Mr. Brodsky's volume.

15 THE COMMISSIONER: We even have the witness  
16 confused.

17 BY MS. CARSWELL:

18 Q All right. And I would like you to take a look  
19 at the appended police report which contains a  
20 number of items. But in handwriting at the  
21 bottom of that, and I take it that that is  
22 Mr. Lawlor's hand?

23 A Yes.

24 Q He has also included Pilote's notes and  
25 Happychuk's notes, do you see that?

- 1 A Yes.
- 2 Q And those notes would have been provided to  
3 Mr. Brodsky as a result of his request?
- 4 A That's right.
- 5 Q Now, if I can take you to Exhibit 20D. And you  
6 don't necessarily have to go here, unless you  
7 disagree with what I am about to --
- 8 A What is 20D?
- 9 Q It's this long document that's a chart prepared  
10 by Commission Counsel of the material that's  
11 currently in Mr. Brodsky's file.
- 12 A M'hm.
- 13 Q And I only want to point out to you, Mr.  
14 Dangerfield, in order to be -- put this in  
15 context. If you take a look at what is page 3  
16 of that document?
- 17 A Yes.
- 18 Q You will see an index of the police officer's  
19 notes that are available in Mr. Brodsky's file  
20 as of today?
- 21 A Yes.
- 22 Q And you will note, I think, that there is no  
23 indication that Pilote or Happychuk's notes are  
24 available in his file?
- 25 A I don't know.

1 Q So at some point it appears that material that  
2 you or Mr. Lawlor sent to Mr. Brodsky is no  
3 longer available in his file.

4 A Okay.

5 Q So I would suggest to you that when you provided  
6 evidence that the police gave you copies of  
7 those reports, you passed them on to  
8 Mr. Brodsky. There may be reports that you  
9 passed on that are no longer available for us to  
10 examine in his file. In other words, they have  
11 gone missing. Material that you provided  
12 Mr. Brodsky may have gone missing.

13 A Where am I supposed to know this from?

14 Q Well, I've just shown you one example.

15 A Mr. Brodsky's file?

16 Q Well, an index from Mr. Brodsky's file.

17 A All right. I only saw Mr. Brodsky's file when  
18 we were looking at it for references to his  
19 knowledge of certain events. But if you say  
20 these documents aren't there, fine, they are not  
21 there. Maybe he threw them away. I don't know  
22 what he did with them.

23 Q All right. And I'm not suggesting,  
24 Mr. Dangerfield, that you know. I'm pointing  
25 out to you that there may be documents that the



1 Crown forwarded to Mr. Brodsky that were  
2 obtained from the police that don't appear in  
3 his file today?

4 A How am I supposed to answer that? I suppose  
5 there could be. There could be some that aren't  
6 in his file. I don't know what you are talking  
7 about, Miss, I'm sorry.

8 Q That's fine. Thank you.

9 A If there are documents missing from his file,  
10 then they are missing from his file. I don't  
11 know how they got missing. I don't know  
12 anything about them.

13 Q No. I'm not suggesting that you know how they  
14 got missing. I'm suggesting that there,  
15 obviously, were documents sent by you. And  
16 there may be others that were sent by you that  
17 are no longer available for to us confirm  
18 arrived to Mr. Brodsky.

19 A Yes. I suspect that those documents were taken  
20 out of the file and used and maybe not placed  
21 back in it again. I don't see -- is there  
22 anything sinister in this that you are worried  
23 about?

24 Q No.

25 A Okay, fine.

1 Q Now, I would like to ask you just a couple of  
2 questions arising out of the issue of access to  
3 notebooks in a courtroom.

4 A Yes.

5 Q And you will note that you were asked questions  
6 by the Commissioner with respect to how that  
7 access would come about.

8 A Yes.

9 Q And in a case like this where the officers,  
10 particularly the officers in a homicide unit,  
11 would have a dedicated notebook for the  
12 investigation, correct? Their notebook would be  
13 only in relation to the one investigation?

14 A Well, I expect that's the case. I mean, when I  
15 first began prosecuting, they carried these  
16 little black books. And they would go from page  
17 1 through to page whatever. And then they would  
18 turn the book over and go backwards. And no  
19 pages were to be removed or X'd out or added to.  
20 And they became a little more sophisticated.  
21 And I remember Ed Paulyshen, for example,  
22 carried around a loose-leaf book. He wrote on  
23 letter-sized documents and that was his murder  
24 investigation book. So there is no real pad or  
25 anything if that's what you are trying to

1 suggest.

2 Q No, I'm not. If you just bear with me a moment,  
3 I will get to my question. And you talked about  
4 a process where the officers would hold the  
5 book. And that was to hold the pages, I  
6 suggest, that didn't relate to an investigation  
7 closed so that the defence counsel couldn't  
8 review those pages, is that what you were  
9 talking about?

10 A No. There were times when the pages in the  
11 book -- my son's a policeman in Calgary. And  
12 when he starts his day, he writes the date, the  
13 cruiser car he's in and the district he's  
14 patrolling.

15 Q Yes.

16 A And he knows that every note in that page and  
17 any subsequent pages relate to that date. And  
18 then the next time he uses that book he puts  
19 another date. And the times I'm speaking about,  
20 the City of Winnipeg Police did not necessarily  
21 identify the notes by the date and location in  
22 their notebooks. So when it came time to use  
23 the notebook in the trial, they would take the  
24 pages and separate them by either a paper clip,  
25 or sometimes by an elastic band, and hand the

1 notebook to the defence counsel saying:  
2 There's -- those are all of the notes I have in  
3 this affair. Now, if they turn the page back,  
4 they might find this particular constable chased  
5 a cat up the tree. I mean, they weren't hiding  
6 things from them, just helping counsel identify  
7 the notes to which he could refer.

8 Q And that's exactly what I was about to ask you,  
9 Mr. Dangerfield. And in a case like this, where  
10 Sergeant Paul's notebook was only in relation to  
11 the homicide --

12 A Yes.

13 Q -- if there had been a request for the notes,  
14 the practice would have been to turn the  
15 notebook over to defence counsel so that he  
16 could look through the notes relative to that  
17 investigation?

18 A Or if he was asking about a specific event,  
19 Mr. Paulyshen, or whoever used his notes, might  
20 turn the pages to that event and give that to  
21 them, not to confuse him or refuse him admission  
22 to the rest of the notebook, but to draw his  
23 attention to the area he was particularly  
24 interested in cross-examining.

25 Q Right.

1 A Okay.

2 Q And I was a bit confused yesterday because, and  
3 I wanted to clear this up, I felt that there was  
4 some indication that the officer would retain  
5 ahold of the notebook, as we have heard, and the  
6 defence counsel would have to read the notebook  
7 while it was in the officer's hands. And it was  
8 my experience that the officers, even during  
9 this time, would turn the notebook over, take  
10 whatever steps they had to to keep the  
11 irrelevant material out of the hands of defence,  
12 but provide them access to the book?

13 A Well, sometimes it actually happened that the  
14 counsel couldn't read the police officer's  
15 handwriting. So the officer would take the  
16 notebook back and trace what he was saying in  
17 the notebook and then hand it back. I mean,  
18 there was no particular significance about who  
19 held the book. As Mr. Commissioner pointed out,  
20 there would be some instances where you couldn't  
21 get close to the officer because of the  
22 configuration of the witness box. So, yeah, I  
23 think any time the counsel handed the book -- or  
24 officers handled the book, it was to facilitate  
25 the use of it in cross-examination.

1 Q Now, if I can take you to the same volume, we  
2 were just in in your book, that's volume 2 at  
3 tab 28.

4 A Yes.

5 Q And there's a memo at the first page. And then  
6 if you could turn to the letter that has been  
7 categorized by Mr. Code a number of times as the  
8 first major disclosure request?

9 A February 7th?

10 Q Yes, thank you. And we've already determined  
11 that this is Mr. Lawlor's handwriting. But that  
12 there was likely some consultation between the  
13 two of you with respect to dividing up this  
14 request?

15 A Could have been, yes.

16 Q Now, when I went through the request, I was  
17 struck by the fact that where the material was  
18 going to be referred to the WPD, as they were  
19 then called, there is a specific reference to  
20 that. And that's at number 1, 3, 8, 9, 11, 13,  
21 14, and you go through and it indicates "WPD".  
22 And I would suggest to you that that meant that  
23 those were the particular instances where the  
24 Winnipeg Police Department was going to have to  
25 be consulted in order to provide an answer?

1 A No, not necessarily. If you look at the area  
2 that Mr. Code referred me to:  
3 "What motives do the police files have for  
4 people to implicate Jim Driskell in the  
5 killing",  
6 for example.

7 Q Yes.

8 A Against that is the word "none".

9 Q Yes.

10 A There is no indication that the WPD were  
11 addressed or that that question was addressed to  
12 WPD. But I don't know who else it would be  
13 addressed to, since it was the police files we  
14 were looking at.

15 Q Right.

16 A So there are some exceptions to your  
17 observation.

18 Q Well, I'm going to suggest that the word  
19 "none" --

20 A Oh, "none", yes.

21 Q -- might refer that Mr. Lawlor and yourself  
22 reviewed the file that you had and determined  
23 from the review of the file that there was no  
24 material?

25 A No.

1 Q And that that would make some sense, given that  
2 the reply at tab 29 is sent the very next day.

3 A All of these references came from police  
4 information. Whether they were sent again to  
5 the police department for an answer or, for  
6 example, in 34:

7 "Might I have a full print on receipt for a  
8 musk oil? No print lifted",  
9 that came from a police file.

10 Q Exactly. And my point is that it seems to me if  
11 you review these, because there is no indication  
12 in the file that we can find that shows us that  
13 any of this material was sent to the Winnipeg  
14 Police Department. There is no faxes. The one  
15 that we've later got, there is no note. There  
16 is no memo to show that any of this was  
17 forwarded to the WPD. And what I'm suggesting  
18 is the point that distinguishes the "none" from  
19 "check with WPD" is that the "none" probably  
20 refers to you and Mr. Lawlor, you or Mr. Lawlor,  
21 or together, you were reviewing the material you  
22 already had at hand in coming to that  
23 determination?

24 MR. PROBER: Well, before the witness answers  
25 that question, Mr. Commissioner, in fairness, my



1 friend did refer to tab 29. But if she's  
2 referring to paragraph 22 and 23, if you look at  
3 tab 29, page 5 of the letter, paragraph 22:

4 "In answer to your paragraph 22",  
5 and that's one that Ms. Carswell is questioning  
6 about, it says:

7 "Police files do not reveal anyone with a  
8 motive for implicating Jim Driskell in the  
9 killing."

10 So I would say that, in fairness, that should be  
11 put to the witness because it makes a specific  
12 reference to police file, if I'm understanding  
13 the question.

14 BY MS. CARSWELL:

15 Q I don't want to get into a matter of argument.  
16 But what it doesn't say is "police files were  
17 checked" or "WPD checked its files" or "we have  
18 referred this matter to the WPD file", as other  
19 matters have been. I will leave my point for  
20 argument.

21 If you could then turn, please, to tab 3.  
22 And this is, again, a disclosure request from  
23 Mr. Brodsky dated April 25 of 1991. Are you  
24 with me?

25 A Yes.

1 Q All right. And there are a number of requests  
2 indicated. And I only would like to refer you  
3 to tab 34, in relation to request number 21,  
4 which is what we have been calling the open box  
5 request. And you will see it is at the last  
6 page of the letter, the last question,  
7 Mr. Brodsky says:

8 "Do you have any objection to my viewing  
9 the Winnipeg Police Department file, either  
10 by myself, by the investigator I have  
11 assisting me, or jointly?"

12 And you will see there is a note there that is  
13 cut off, but appears to be "WPD", correct?

14 A Yes.

15 Q And I take you to Tab 34 and the facsimile  
16 request to Staff Sergeant Vandergraaf dated  
17 April 26 of 1991. You'll see that that matter  
18 was not referred to the Winnipeg Police  
19 Department in that it's a specific request to  
20 assist with a number of paragraphs. Tab 21 is  
21 not included?

22 A No. I don't know why.

23 Q Is it fair to say, Mr. Dangerfield, and this is  
24 not meant in any way in a critical way, that  
25 your recollection of these events is dependent

1 in a great deal on the documents that we have  
2 before us?

3 A I don't -- that doesn't really help me much  
4 either. My memory is very poor about this.  
5 It's 15 years ago.

6 Q No. And I'm not being critical of that. It is  
7 a long time ago.

8 A For example, the first item on page -- or Tab 33  
9 of the Walsh McKay letter, Winnipeg notes on the  
10 interview of Doreen Barons, I don't know who she  
11 was. I cannot imagine that person.

12 Q No, I understand.

13 A I don't know who Allan Moss was and seeing his  
14 name doesn't help me. So you're asking me to  
15 perform feats of memory I'm afraid are beyond  
16 me. And if I have no memory, I don't know how a  
17 note can refresh it.

18 Q All right. That's fine. That's of assistance,  
19 thank you.

20 If I can take you to tab 51. And this is a  
21 memo generated by Mr. Kovnats. It's in the same  
22 book that we're in.

23 A Yes.

24 Q And Mr. Code took you to this yesterday.

25 And this was the memorandum that dealt with

1 Mr. Zanidean meeting with Sergeant Paul, and  
2 there being copies of statements, police  
3 statements with writing on them. And there was  
4 some concern that the statements had been  
5 misunderstood or altered the witness's evidence.

6 A Who's evidence?

7 Q Mr. Zanidean's evidence --

8 A Oh, I see.

9 Q -- may have been not taken down exactly by  
10 police. And if you can look down, it's apparent  
11 that in paragraph -- the fourth paragraph, the  
12 first large one, Mr. Kovnats indicated that he  
13 contacted Mr. Miller about this and discussed it  
14 with him. And, again, I understand your  
15 difficulty with recollection, but do you have  
16 any recollection that Mr. Miller advised you of  
17 this?

18 A No.

19 Q If you would go, then, to tab 56 in the same  
20 volume. And this is the supplemental report  
21 that Mr. Code took you to that is prepared some  
22 two years after the events. Do you recall this  
23 as the telephone call by Mr. Zanidean to  
24 Mr. Brodsky's office?

25 A Yes.

1 Q Okay. This particular incident ends with the  
2 Winnipeg Police Service removing witness  
3 protection from Mr. Zanidean. They are no  
4 longer going to baby-sit him in the hotel room  
5 as of June 21st, the day after this meeting.  
6 Would it be your experience that removal of  
7 witness protection for a Crown witness would be  
8 discussed with the Crown before that was  
9 undertaken? I'm not asking if you have a  
10 specific recollection.

11 A I can't answer that question.

12 Q So you have no experience?

13 A I have had witnesses refuse protection.

14 Q No. I understand that.

15 A But I don't know of any that have had protection  
16 removed from them. That would be a serious sort  
17 of threat.

18 Q Well, if you were going to -- if this was a  
19 witness who was called on behalf of the  
20 prosecution, and we know that Manitoba Justice  
21 is paying the expenses of this witness in the  
22 hotel, and is going to be responsible for the  
23 long-term protection of this witness, it strikes  
24 me that it would be ridiculous to withdraw the  
25 protection from that witness without discussions

1 with representatives from Manitoba Justice who  
2 called the witness?

3 A Is this in some -- I can't read all of this. Is  
4 this somewhere in this briefing note you're  
5 talking about?

6 Q No, it's not. So you don't have any experience  
7 with this?

8 A No.

9 Q Do you recall Mr. Brodsky bringing this  
10 telephone call to your attention?

11 A No.

12 Q You understand now, I take it, that Mr. Brodsky  
13 had a tape-recording of this telephone call?

14 A I expect he did.

15 Q And would it be fair to say, and I've reviewed  
16 the documents, that this call is not mentioned  
17 in any of the appellate materials, you would  
18 agree with me? You would take my word on that?

19 A Is not mentioned in any of the materials?

20 Q It is not mentioned in any of the appellate  
21 materials?

22 A Well, I don't know what the call is about. So  
23 are you asking me why I didn't put it in my  
24 appellate materials?

25 Q No. I am just asking you -- I'm suggesting to

1           you that it wasn't in Mr. Brodsky's materials.  
2           Will you take it from me --  
3       A     I suppose the choice was his. I don't know. I  
4           can't answer that question.  
5       Q     Do you think that if Mr. Brodsky received a  
6           telephone call -- and you can take a look at the  
7           tape-recording of the call and what the witness  
8           says. It's in Exhibit 20.  
9       A     This thing?  
10      Q     20 is the book of Mr. Brodsky's at tab 47. And  
11           if you need assistance, I can --  
12      A     Oh, yes.  
13      Q     Are you with me now? It says: "James Driskell  
14           June 26, '91"?  
15      A     Yes.  
16      Q     All right. And I don't know if you've ever seen  
17           this before. Have you?  
18      A     No.  
19      Q     I think we can safely summarize, based on the  
20           evidence that we've heard at this inquiry, that  
21           Mr. Brodsky receives a telephone call that lasts  
22           approximately seven minutes in which this  
23           individual, who is calling, who we now know to  
24           be Mr. Zanidean, speaks of himself in both the  
25           third and first person?

1 A Yes.

2 Q And indicates that he was lying --

3 A Yes.

4 Q -- when he gave his evidence?

5 A Yes.

6 Q Would counsel have an obligation to bring that

7 kind of information forward, do you believe, to

8 either the -- defence counsel, I'm talking

9 about, to either the Crown or the police, about

10 a witness who may have perjured himself?

11 A I don't know. I mean, this is a -- I don't know

12 what Mr. Brodsky's thinking was.

13 Q Thank you.

14 A I mean, he is the one that has got the phone

15 call. He is the one that got the tape. I don't

16 know what he wanted to do with it. He could

17 have brought the -- he could have brought an

18 application for fresh evidence based on the

19 information given to him by his client, I

20 suppose, on the whole Saskatchewan fire. I

21 don't know. It's up to him. He makes his own

22 decisions.

23 Q Right. And I know -- Mr. Dangerfield, I'm not

24 suggesting in any way it's up to you. But we

25 know that, other than requesting some



1           investigative funding from Legal Aid,  
2           Mr. Brodsky really doesn't do very much with the  
3           tape until 1993, when it's reported in the  
4           series of media stories that you've been  
5           referred to a number of times.

6    A       Oh, yes.  Yes.

7    Q       I take it, from your evidence this morning, that  
8           you don't dispute the meeting that you had with  
9           then Inspectors Hall and Ewatski in 1993?

10   A       No.

11   Q       Or the contents of their notes?  They are at tab  
12           72 in your material.

13   A       Of what?

14   Q       72, it's in book 3 of your material.

15   A       Yes.  No, I don't dispute that.

16   Q       I've one final question to ask you,  
17           Mr. Dangerfield, and it arises out of some  
18           evidence that we have heard from Mr. Kovnats.  
19           Kovnats talks about the incident which occurs on  
20           May 26th at the public safety building.  And I  
21           don't need to go through your evidence, but you  
22           recall having the dispute with him.  And I  
23           believe you characterized it as yelling and  
24           being nose to nose, correct?  Mr. Kovnats  
25           indicates that, while in your presence, two

1 police officers grabbed him and physically threw  
2 him into an interview room?

3 A No.

4 Q So you dispute that that happened?

5 A Yes.

6 MS. CARSWELL: Thank you.

7 THE COMMISSIONER: Thank you, Ms. Carswell.

8 BY MR. WOLSON: Good afternoon,  
9 Mr. Commissioner, Mr. Dangerfield.

10 THE COMMISSIONER: Mr. Wolson.

11 BY BY MR. WOLSON:

12 Q If you could get rid of all of the books, save  
13 for the three books put before you by Mr. Code.  
14 So those would be Exhibits 30A, B and C, which  
15 have the names Dangerfield, Lawlor and Whitley  
16 on top of them, and then we don't have to have  
17 you rummage through a bunch of other books.

18 A All right.

19 Q Mr. Dangerfield, you and I, of course, have  
20 known each other for many years?

21 A Yes.

22 Q And I act for members of the Winnipeg Police  
23 Association, some of them. And in that regard,  
24 I have some questions for you. So if you will  
25 bear with me, I'll ask you my questions. You

1 told Mr. Code -- and I want to focus for just a  
2 minute or two on the arrangement that you had  
3 with Mr. Miller regarding this case, and I will  
4 take to you page 6 of your interview with  
5 Commission Counsel. Page 6, third paragraph,  
6 reading in about three lines from the top of the  
7 third paragraph:

8 "Dangerfield and Lawlor were told at the  
9 outset they would not know any of the  
10 details of the witness protection  
11 arrangements, and that they were to tell  
12 the judge only that witnesses were just  
13 receiving support money and nothing else.  
14 That is not a reward."

15 A That's what I understood, yes.

16 Q And then over at page 10 you comment on it  
17 again, under the point number 4:

18 "What he recalls being told that Miller and  
19 Whitley had to arrange witness protection,  
20 but he wouldn't be involved because  
21 otherwise he would be embarrassed or might  
22 become a witness if he had to address an  
23 issue in court."

24 And that's the clear understanding that you had  
25 from the outset?

1 A Yes.

2 Q Now, you don't know this, but we have heard that  
3 the Winnipeg Police Service, in particular  
4 Sergeants Anderson and Paul, had a lot of  
5 dealings with Bruce Miller on the issue of  
6 witness protection and on the issue of Swift  
7 Current. You weren't told that, were you?

8 A No.

9 Q And you would expect that if there had been  
10 information imparted to a brother senior Crown  
11 counsel regarding matters that may affect the  
12 motivation of a witness, or the credibility of a  
13 witness, you would be told that?

14 A Yes.

15 Q You would be told that by your brother Crown  
16 counsel?

17 A Yes.

18 Q I would like you to turn, please, to tab 20 in  
19 book 1, the same book that you have open.

20 A Yes.

21 Q You were referred to this tab earlier in your  
22 testimony. This is a letter, or a memo, I  
23 should say, written by Tom Anderson, whom you  
24 knew quite well because you had worked with him  
25 in the past?

1 A Yes.

2 Q And it's concurred in by his partner Al Paul.

3 A All right.

4 Q What he said -- and this memo goes back to 1991,  
5 albeit after the trial, but 15 years ago by  
6 today's standard, you agree with that?

7 A By today's standard?

8 Q Well, it was 15 years ago from today?

9 A Oh, yes.

10 Q What he said in the fourth paragraph, and this  
11 deals with -- you've now become aware, have you,  
12 sir, that there were some admissions made by  
13 Zanidean to the Winnipeg Police officers,  
14 Anderson and Paul, in their early dealings with  
15 Mr. Zanidean --

16 A Is this in relation to his statement --

17 Q -- in relation to Swift Current.

18 A His statement that he had set the fire?

19 Q Yes.

20 A Yes.

21 Q If you look at the paragraph of tab 20:  
22 "On the first day of our involvement with  
23 Zanidean, 10th October '90, he revealed to  
24 us his credibility as a witness may present  
25 a problem as he had committed arson in



1 A Yes, I do.

2 Q "And later Crown Attorney Bruce Miller."

3 A All right.

4 Q So these admissions that Zanidean made regarding  
5 his concern about his credibility, regarding the  
6 Swift Current arson that he and Driskell had  
7 committed --

8 A Yes.

9 Q -- they were, according to this memo, at least,  
10 passed on to Bruce Miller. Do you see that?

11 A Yes.

12 Q Now, if you'd jump to the third book. And if  
13 you'd leave that page or tab 20 open, go to the  
14 third book, please, if you will. And go, if you  
15 will, Mr. Dangerfield, to tab 71. And tab 71,  
16 and you've been here before in the examination  
17 of Mr. Code, tab 71, the first couple of pages  
18 deal with an interview in May of 1993 between  
19 Mr. Miller and Inspectors, as they then were,  
20 Hall and Ewatski. But if you would go about  
21 four pages in, you will see an excerpt from the  
22 Hall and Ewatski homicide review. And if you  
23 go, please, to page -- it's the second  
24 typewritten page, page 81. Do you have that?

25 A Yes.

1 Q In the bottom right-hand corner the numbers  
2 "6305" are printed?

3 A Yes.

4 Q Now, result of their interview with Mr. Miller,  
5 they, Hall and Ewatski, write in the last  
6 paragraph:

7 "Miller told us he was satisfied that he  
8 and his prosecuting attorneys had been  
9 fully advised of all aspects of what  
10 Zanidean had told police investigators."  
11 And leaving out "his prosecuting attorneys" for a  
12 second:

13 "...had been fully advised of all aspects  
14 of what Zanidean had told police  
15 investigators during their investigation,  
16 including his involvement in the arson."

17 Do you see that?

18 A Yes.

19 Q So from Miller's account, as noted by Inspectors  
20 Hall and Ewatski --

21 A Is this part of Hall and Ewatski's report?

22 Q That is right. It is part of their review. It  
23 is an excerpt which has been put in this book.  
24 So Hall and Ewatski write, as a result of their  
25 interview with Mr. Miller, that:



1                    "...all aspects of what Zanidean had told  
2                    the police investigators during their  
3                    investigation, including the involvement in  
4                    the arson",  
5                    that Miller knew that. He was given that kind of  
6                    disclosure by the police?

7    A            Yes, it says that here.

8    Q            The only disclosures that Zanidean made  
9                    regarding the Swift Current arson were on  
10                  October 10th, the comment that I had referred  
11                  you to earlier about worrying about his  
12                  credibility --

13   A            Yes.

14   Q            -- because he had done an arson and a later  
15                  disclosure on the 29th that was recorded in  
16                  their notebooks. So it appears that your  
17                  brother senior Crown counsel, Bruce Miller,  
18                  knew, by his own account, of admissions by  
19                  Zanidean?

20   A            Yes. It doesn't say when he got to know it, but  
21                  yes.

22   Q            Well, he got to know it at some point?

23   A            Yes.

24   Q            And he says he was fully satisfied that he was  
25                  given that disclosure. So you could imagine, I

1 would expect, that if he found out a year or two  
2 after the trial he would be pretty ticked off?

3 A M'hm.

4 Q Yes?

5 A Well, I don't know.

6 Q Well, you would know that he was referring in  
7 that particular -- by that particular paragraph,  
8 he was talking about the disclosure he had from  
9 the police?

10 A All right.

11 Q And then if we go to -- so we know from  
12 Anderson, concurred in or concurred with by  
13 Paul, that Miller was aware of these comments  
14 about his credibility, Zanidean's credibility.  
15 We know from Mr. Miller himself that he was  
16 given this disclosure, according to Hall and  
17 Ewatski.

18 And then I would like to take you to tab 44  
19 in the second book, please. And you were here  
20 before. There are two memos. And let me deal  
21 with the memo first, at tab 44 in the right-hand  
22 corner, the pagination is 332.

23 A Yes.

24 Q Are you there?

25 A Yes.

1 Q And let's go to the fourth paragraph:  
2 "They are  
3 not prepared..."  
4 and this is now Brodsky talking about recounting  
5 the pre-trial before Justice Morse in this memo.  
6 "They are  
7 not prepared..."  
8 meaning the Crown,  
9 "...to involve themselves in the Swift  
10 Current fire. That is another police  
11 force. The RCMP were advised, according to  
12 Dangerfield and Lawlor, by Lawlor, in  
13 Dangerfield's presence, in the office of  
14 Mr. Justice Morse, that Zanidean probably  
15 set this fire."  
16 Do you see that?  
17 A Yes.  
18 Q So you had to have been given some information  
19 by either the police or by Mr. Miller regarding  
20 the fire?  
21 A I certainly can't remember this very well. But  
22 yes, it seems that way.  
23 Q All right. And as to who it was that told  
24 you -- because you had to have received this  
25 information from somebody -- you can't say

1           today, I take it, whether it was A, Bruce Miller  
2           or B, the police?

3    A       I have no idea.

4    Q       What you said in your statement, and I don't  
5           know if you have to go there, but if necessary  
6           you can, at tab 1, page 20, when you were asked  
7           about this, that is the Swift Current arson and  
8           how you came to know about it, you said, halfway  
9           through the page:

10                    "He supposes he must have made some  
11                    inquiries with the police about it,  
12                    although he can't recall the specifics."

13           Do you see that?

14   A       Page 20.

15   Q       If you look at page 20 of your statement, and if  
16           you go to the second --

17   A       Oh, I see it, yes.

18   Q       -- to the second large paragraph:

19                    "He supposes he must have made some  
20                    inquiries with the police about it,  
21                    although he can't recall the specifics."

22           Right? Because it is obvious that you knew. You  
23           knew something, at least, you agree with that,  
24           according to the memo?

25   A       It seems that way. I have no memory of it,

1           actually.

2     Q     All right.  It may have been Sergeant

3           Vandergraaf who told you?

4     A     I don't know.

5     Q     Sergeant Vandergraaf, in terms of the officers

6           from the police service, was the one who was

7           the -- where we have been told, and he has

8           accepted this, the one that had the overview of

9           the case.  He was -- he was overseeing the case

10          from the police service?

11    A     He was -- he was one of the policemen who ran

12          that whole division.

13    Q     Sure.

14    A     So he would be aware of cases under that

15          division.

16    Q     And if he was told --

17    A     And the people I dealt with on a regular basis

18          would be the line detectives investigating.

19    Q     But Vandergraaf said he was in court?

20    A     He may have been.  I don't remember.

21    Q     Yes.  And he actually told this court, or this

22          inquiry, that he told you about the Swift

23          Current arson.  So if you piece it together,

24          this may well be who told you.  You don't

25          remember today?

1 A I have no idea.

2 Q Well, okay. I want to go back -- keep the  
3 middle volume at tab 44 open and go back to tab  
4 20 in the first volume, please? And I'm sorry  
5 to have you bounce around like this. I'll try  
6 to limit that as much as I can.

7 Again, this is Sergeant Anderson's memo in  
8 1991. And if you go to page 2 of it, please.  
9 If you go to the third paragraph at page 2,  
10 Mr. Dangerfield.

11 A Yes.

12 Q "During March and April '91, Paul and I",  
13 meaning Anderson,  
14 "...made efforts to facilitate Zanidean's  
15 entry into the RCMP Witness Protection  
16 Program. We learned from Corporal Tom Orr  
17 of D Division that Zanidean would not  
18 qualify for the program if he was the  
19 subject of the RCMP arson investigation."  
20 And then he goes into the fact that he had two  
21 conversations with Constable Burton in Swift  
22 Current. And reading on he says:

23 "I explained the dilemma."

24 The dilemma was the outstanding charge in Swift  
25 Current or the outstanding investigation.

1 "And I believe he had already spoken to  
2 Corporal Orr. In any case, he had given  
3 the matter some thought and he immediately  
4 offered to withdraw their pursuit of  
5 Zanidean entirely."

6 So it appears, from the memo written back in 1991  
7 that, according to Anderson, the RCMP in Swift  
8 Current were choosing to do nothing about the  
9 arson. You see that in the memo?

10 A Yes.

11 Q Now, you wouldn't know this at all and,  
12 therefore, I am not going to take you there.  
13 But just for the record, at tab 22, there was a  
14 conversation with RCMP Officer Orr. Now, I've  
15 noted from your statement, or your evidence to  
16 Commission Counsel of your interview, that is,  
17 that you really didn't know Tom Orr. You had  
18 known the name, but you didn't have much contact  
19 with him?

20 A I think I had met him. If I recall him, he is a  
21 medium to tall man, black hair. I think he wore  
22 glasses.

23 Q So you weren't -- you weren't really having a  
24 lot of conversation with Orr regarding this  
25 case?

1 A I only spoke to him about the complaints by  
2 Gumieny about the failure to pay his  
3 transportation costs.

4 Q All right. But we know at tab 22 that Constable  
5 Orr, as well as Sergeant Anderson, was speaking  
6 to Swift Current. We know that Orr, within a  
7 few days, within a week of Anderson speaking to  
8 Swift Current, at tab 22, we know that Orr also  
9 had a similar conversation where he was told  
10 that Swift Current would be concluding their  
11 file and Ray Zanidean was no longer wanted for  
12 questioning. So a similar result, Swift Current  
13 wasn't doing anything.

14 And then to bring the point along, at tab  
15 24, Mr. Dangerfield, again you were here before  
16 at tab 24, is a conversation which -- or at  
17 least a summary of a conversation between Bruce  
18 Miller and Sergeant Orr. If you would look at  
19 the first page, this is May 29 of 1991, so  
20 shortly before the trial. And Commission  
21 Counsel took you here. There was an ultimatum  
22 given to Mr. Miller. And the ultimatum by  
23 Kovnats is set out in three points. The third  
24 point is the only one of relevance for the  
25 purposes of my questions to you.



1 "Unless his client was given immunity to  
2 prosecution for Swift Current, he would  
3 take steps to ensure that the client wasn't  
4 going to corporate."

5 So there was this kind of discussion between  
6 Miller and Orr. And you'll see what Orr does.  
7 In the middle paragraph, on the same page,  
8 there's a discussion about a single payout to  
9 Zanidean, which we've heard about. But he says:

10 "I advised..."

11 he is now advising Miller:

12 "I would check with Swift Current and see  
13 what the standing was of the Swift Current  
14 charge."

15 And if you turn the page to the next day,  
16 "91/05/30, Constable Burton" -- going down to the  
17 last paragraph:

18 "Constable Burton calls Orr and advised  
19 him: No proceedings against Zanidean,  
20 either as a witness or an accused if he is  
21 accepted into the program."

22 Do you see that?

23 A Yes.

24 Q So it's pretty clear that Anderson -- and by the  
25 way, I can tell that you Orr testified that it

1 was a logical inference that he would have told  
2 Miller about this, he has told this to this  
3 inquiry. So we know that Bruce Miller knows  
4 because Anderson, Paul and Vandergraaf said they  
5 told Bruce Miller about this arrangement in  
6 Swift Current. And we know that Orr likely told  
7 him about the arrangement, as well, that Swift  
8 Current wasn't going to do anything about the  
9 charge or about the investigation of the arson.

10 So now I want to take you back to tab 44  
11 that I asked to you keep open. If you would  
12 look at the second memo, 338, the pagination is  
13 in the right-hand corner. Are you with me on  
14 that?

15 A Yes.

16 Q This is one of Mr. Brodsky's memo to his file,  
17 second paragraph:

18 "The Crown makes the point that the RCMP in  
19 Swift Current were notified of the  
20 involvement of Zanidean, and it's up to  
21 them to pursue or not pursue the  
22 investigation."

23 Do you see that?

24 A Yes.

25 Q So we have the Crown, you or Mr. Lawlor, saying

1 to Mr. Brodsky or to Mr. Justice Morse, that the  
2 RCMP were notified. Now, you would have got  
3 that information either from the police,  
4 Winnipeg Police Service, or Mr. Miller;  
5 otherwise, you wouldn't have known it, true?  
6 You would agree with that?

7 A Yes.

8 Q And then you likely got it from the police,  
9 because you go on to say:

10 "The Winnipeg Police can only make  
11 arrangements with respect to the area they  
12 are responsible for."

13 So you're talking about the Winnipeg Police, you  
14 see that?

15 A Well, yes.

16 Q And now if you would go back to the first memo,  
17 the same tab number with the pagination 332 in  
18 the right-hand corner, back to where I've had  
19 you before, in the third paragraph:

20 "...in Dangerfield's presence, in the  
21 office of Mr. Justice Morse, that Zanidean  
22 probably set this fire. The RCMP chose to  
23 do nothing about it."

24 Do you see that?

25 A Yes.

1 Q That is exactly what -- or, in essence, what  
2 Anderson was told by Swift Current -- what  
3 Burton was told by Swift Current, and then what  
4 you're telling the pre-trial judge at the  
5 pre-trial?

6 A Yes, that opens the door for Mr. Zanidean to go  
7 into the Witness Protection Program.

8 Q So that information --

9 A I have to go to the bathroom.

10 THE COMMISSIONER: We will take our recess now.

11 THE CLERK: All rise. This inquiry is now in  
12 recess.

13 (Proceedings recessed at 3:10

14 and reconvened at 3:27 p.m.)

15 THE CLERK: All rise. This commission of  
16 inquiry is now re-opened.

17 THE COMMISSIONER: Continue, Mr. Wolson.

18 BY MR. WOLSON:

19 Q Thank you. Mr. Dangerfield, while I don't need  
20 to take you there, we know from a trail of  
21 documents in the materials, and I'll just state  
22 them for the record; the December 14th letter of  
23 Kovnats to Miller at tab 11.8, the June 4th  
24 letter of Kovnats to Miller at tab 50.3, and the  
25 tab 24, the ultimatum that Orr and Miller are

1 talking about that Mr. Miller is involved in  
2 negotiations, you know, today regarding Zanidean  
3 and immunity requests by Zanidean through his  
4 counsel?

5 A Yes.

6 Q So it's clear, while Mr. Miller knows all of  
7 this, you don't, you say?

8 A I don't.

9 Q And this arrangement that I started my  
10 questioning of you today, this arrangement of  
11 having Miller deal with witness protection  
12 issues and you dealing with the trial, in  
13 hindsight, was a doomed arrangement. You didn't  
14 get the material and the information you needed  
15 from Mr. Miller, you would agree with that, in  
16 hindsight?

17 A Well it, was a -- in hindsight, it was an  
18 arrangement which would present very difficult  
19 problems.

20 Q Now, there was a miscommunication here. Because  
21 if the police told Miller things that were  
22 important, and they expected Miller to pass it  
23 on to you, you didn't get the material and you  
24 didn't get the information?

25 A No.

1 Q Now, I want to talk to you for a minute about  
2 immunity, the word "immunity". You would agree  
3 with me that immunity means a dispensation from  
4 the Justice Department, whichever Justice  
5 Department it is, regarding -- regarding a  
6 charge?

7 A Yes.

8 Q If there's an investigation outstanding against  
9 someone and the police decide not to pursue the  
10 investigation, that's not, in the true sense,  
11 immunity, is it?

12 A No.

13 Q And in this case, for there to be a true  
14 immunity of the Swift Current allegation of  
15 arson against Zanidean, it would have to be from  
16 the Saskatchewan Justice Department, that's  
17 where the ultimate immunity would come from, if  
18 there were immunity?

19 A Yes.

20 Q Now, we had heard, after the trial, there was a  
21 blow-up at the hotel where Sergeant Paul was  
22 overseeing Zanidean on June 20th. And you've  
23 now become aware of that, although you didn't  
24 know it at the time, you agree with that?  
25 You've become aware of it through this inquiry?

1 A Yes.

2 Q When I say a below-up, there was an argument  
3 between Paul and Zanidean that resulted,  
4 ultimately, from what we have been told, in the  
5 Winnipeg Police stopping protecting Zanidean.  
6 Accept that, that there was that below-up?

7 A Yes.

8 Q You didn't know about it?

9 A No.

10 Q Now, we've been told by Sergeant Paul that he  
11 told his Inspector D.K. Johnson or his  
12 supervisor D.K. Johnson. And you knew D.K.  
13 Johnson, didn't you?

14 A Yes.

15 Q He was an inspector with the Winnipeg Police  
16 Department?

17 A Yes.

18 Q And we were told by Paul, again, double hearsay,  
19 that he was going to tell D.K. Johnson about the  
20 blow-up?

21 A Right.

22 Q But you weren't told about it?

23 A No.

24 Q But if you take a look at tab 61, this is now  
25 post-trial.

1 A Which book are we in?

2 Q The third book.

3 A This is the letter from --

4 Q This is the Quinney letter.

5 A Quinney, yes.

6 Q Now, this -- and the import, I can tell you, of

7 the June 20th blow-up between Paul and Zanidean

8 was Zanidean made some comments that he was

9 going to go to the media or recant his evidence.

10 I'm summarizing now, but that was the import of

11 that blow-up. But if you look at page 2 of this

12 Quinney letter, you'll see in the second

13 paragraph a similar version, although not with

14 Paul, with Anderson.

15 "July 16, '91, Anderson advised them that

16 Zanidean had stated to him after the murder

17 trial that if he was charged with the

18 arsons in Saskatchewan, he would go to the

19 media and state he only told the Winnipeg

20 Police Service 'what they wanted to hear'."

21 Do you see that?

22 A Yes.

23 Q Regarding the murder so that Driskell would be

24 acquitted on appeal or a new trial ordered?

25 A Yes.



1 Q So even if, by some chance, D.K. Johnson didn't  
2 tell Mr. Miller about a recantation, we know  
3 that some months later Quinney tells Miller in a  
4 June 16, '92 letter about this, about a  
5 recantation. Do you see that at the paragraph  
6 that I read to you?

7 A June 16th?

8 Q I'm sorry, January 16, '92, the second  
9 paragraph, there is talk of a recantation of  
10 sorts, isn't there? Look at page 2, second  
11 paragraph, of tab 61?

12 A Yes. Yes. He talks about reversing his  
13 evidence, yes.

14 Q And that document, of course, as you've been  
15 over it in the fourth paragraph, it seems that  
16 Quinney had noted:

17 "With respect to the arson in this province  
18 it, seems clear that Zanidean is of the  
19 view that he was granted immunity from  
20 prosecution, no matter exactly how this  
21 came about."

22 So by January of 1992, the Department of Justice  
23 here in Manitoba was being -- they were given  
24 information by Mr. Quinney in Saskatchewan,  
25 that's quite clear, isn't it?

1 A Yes.

2 Q Now, although you say you didn't see it then?

3 A No. The information appears to be that they

4 have decided not to proceed.

5 Q Right. And more importantly, Zanidean was of

6 the view that he was granted immunity?

7 A That's Zanidean's view of things.

8 Q I understand. But that all, in effect, ties

9 into what we discussed earlier that Mr. Miller

10 knew of immunity or of Swift Current not doing

11 anything with their allegations some months

12 earlier by the route that we discussed when I

13 was questioning you earlier today. This is just

14 further confirmation of it, isn't it?

15 A My head is beginning to swim, Mr. Olson.

16 Q Wolson.

17 A With the to-ing and fro-ing. But yes, all

18 right.

19 Q Well, I should ask you then, as I don't want --

20 it is not fair to you, Mr. Dangerfield, to have

21 you in a position where you're --

22 A I'm beginning to fade a wee bit, but let's

23 continue.

24 Q Well, are you sure? Because I don't -- I never

25 want it to be said that --

1 A Well, if you could keep your questions under  
2 maybe 30 words, I might be able to follow most  
3 of it.

4 Q Well, I am taking --

5 A I understand your dilemma, but it is getting a  
6 little confusing.

7 Q I am taking you under Mr. Lockyer, I am under  
8 100 words. I will continue on. He is not here.  
9 I shouldn't be saying things about him.

10 Do you recall discussing the Quinney letter  
11 of January '92? The one that I just took you  
12 to, do you recall discussing that at length with  
13 Mr. Miller?

14 A No.

15 Q You don't know -- I take it if he were outraged  
16 and caught by surprise, that's something you may  
17 well remember if he came --

18 A If he was?

19 Q Yes.

20 A I guess. I didn't -- I didn't hear anything  
21 about it. He appears to have written me a  
22 memorandum some months later.

23 Q I understand that. But I was asking whether or  
24 not -- given that you were in close proximity to  
25 him in location, whether you had discussions

1 about the Quinney letter prior to -- well, at  
2 any time?

3 A No. I think I would remember if Mr. Miller was  
4 outraged by this letter.

5 Q All right. Now, there's just one last area,  
6 you'll be happy to know, that I want to ask you  
7 about. And it's a document that I don't think  
8 you've been asked much about. It's at tab 69.  
9 And if you go three pages in at tab 69, it's a  
10 letter dated April 28, '93 to Bruce Miller, and  
11 it's again from Mr. Quinney. Are you with me  
12 there?

13 A Yes.

14 Q I wonder if you could read this letter?

15 A Myself or out loud?

16 Q Yes. We don't need to you read it out loud. If  
17 you could just take a look at it and tell us if  
18 you've seen this letter or talked to anyone  
19 about it?

20 A Yes.

21 Q Is that a letter that had been brought to your  
22 attention, to your knowledge?

23 A No. It's an odd sort of letter. The very thing  
24 that they seem to criticize Constable Burton  
25 for, they turned around and tried to do with

1 Mr. Driskell.

2 Q Let me ask you this.

3 A Yes.

4 "We also do nothing to successfully  
5 prosecute Driskell, as he was given  
6 immunity by the Swift Current  
7 investigator."

8 Q What I want you to focus on for a second is  
9 whether or not Mr. Miller shared that letter  
10 with you, to your knowledge?

11 A Not to my knowledge, no. I don't -- the  
12 memorandum he sends me is sometime in -- I  
13 forget now. But there are two letters. There  
14 is one in April. January, containing something,  
15 and this one, apparently.

16 Q Let me focus on one area of this letter, because  
17 I'm going to suggest to you that if Mr. Miller  
18 had raised this letter with you in outrage, it  
19 is something you may well have recalled. And  
20 you would agree with me if he were outraged by  
21 something and raised it with you, it would  
22 likely ring a bell today? You agree with that?

23 A Yes.

24 Q You see, we've been told by a number of  
25 witnesses, Vandergraaf, Paul and Anderson, that

1 after Zanidean had testified, he was then told,  
2 as a result of a direction from Bruce Miller, he  
3 was -- after he testified, he was told he would  
4 not be procecuted for the arson in Saskatchewan,  
5 and this letter sets that out at page 2.

6 A Which letter, April 16th?

7 Q The April 28, 1993 letter at tab 69.

8 A Oh, yes. All right, sir, okay.

9 Q If you look at the second page, with 4033 in the  
10 right-hand corner.

11 A Yes.

12 Q "The Winnipeg City Police investigator..."  
13 and I tell you that would be Anderson,  
14 "...still maintained that he did not tell  
15 Zanidean about the immunity until after  
16 Zanidean had testified."

17 Do you see that?

18 A Yes.

19 Q Now, that's something that you wouldn't have  
20 wanted? If there had been a deal, or any kind  
21 of deal with the witness, you would want to put  
22 it to him right off the bat?

23 A Yes. I would want those deals solidified.

24 Q But Miller has been advised now, and this was  
25 April 28, '93, that what the police did was they

1 told Zanidean after he testified --

2 A Yes.

3 Q -- about the immunity in Swift Current. Do you  
4 see that?

5 A According to this letter, yes.

6 Q And that's not something Miller approached you  
7 on and said, you know, George, we've got to talk  
8 about this, or I'm flabbergasted, that didn't  
9 happen, to your memory?

10 A In respect of this letter?

11 Q Yes.

12 A No. I don't think -- no.

13 Q It may well be, at the end of the day, that  
14 information that you needed was with Mr. Miller,  
15 but not passed on to you, for some reason  
16 unbeknownst to you?

17 A It may be, yes.

18 MR. WOLSON: Thanks very much, Mr. Commissioner.

19 Thank you, Mr. Dangerfield.

20 THE COMMISSIONER: Thank you, Mr. Wolson.

21 Mr. Dangerfield, if at any point you would like  
22 to take a five minute break, don't hesitate to  
23 mention it.

24 THE WITNESS: Well, I'm still all right, sir.

25 THE COMMISSIONER: Well, I know we

1           septuagenarians have to look after one another.

2           THE WITNESS: The chores of the golden years.

3           MR. OLSON: Mr. Commissioner.

4           THE COMMISSIONER: Good afternoon, Mr. Olson.

5           BY MR. OLSON:

6       Q     Mr. Dangerfield, I represent the Attorney  
7           General of Manitoba and Mr. Lawlor in these  
8           proceedings.

9                     I just have several very short areas to ask  
10           for some clarification on, sir. First of all,  
11           if you could turn to tab 29.

12       A     Of?

13       Q     Which is in volume 2 of the materials in front  
14           of you.

15       A     Are all the rest in the same volume?

16       Q     One will be in one other one.

17       A     All right, okay.

18       Q     This is the letter of February 8, '91 to  
19           Mr. Brodsky.

20       A     Yes. This is one of the --

21       Q     Yes. Mr. Code was asking you some questions  
22           about this, sir. And, in particular, you recall  
23           paragraph 16 being put to you, and Mr. Lawlor's  
24           notes in the margin "discuss with George". Do  
25           you recall that?



1 A Yes. "Discuss with George", yes.

2 Q I may have misheard, but I think Mr. Code put it  
3 to you that it is clear from the letter that  
4 these notes would have been put on the letter  
5 shortly after the letter or words to that  
6 effect. And I would ask you, sir, to look at  
7 page 3.

8 A Page 3 of the same letter?

9 Q Yes. Opposite number 11 there appears to be  
10 "ident given April 2" something and it's cut  
11 off?

12 A Yes.

13 Q And, again, at tab -- or page 6, opposite the  
14 "32 - ident given April 2" something. Can you  
15 tell, sir, when the notes were put on by  
16 Mr. Lawlor in this letter?

17 A I think those are my handwriting.

18 Q Is that yours?

19 A It's hard to say. I can't -- I mean, my  
20 handwriting has varied over the years.

21 Q But you're indicating the two, "given April 2"  
22 something may have been your notes, sir?

23 A Well, the "discuss with George" I used to know  
24 as printing. We would print and connect the  
25 letters.

1 Q Right.

2 A Mine seems to have reduced itself to some sort  
3 of scrawl. And I think is that -- what the  
4 fainter writing is, I think, belongs to me.

5 Q All right. And if those are yours, sir, can we  
6 assume that you are making a note on this letter  
7 several months later, in April sometime?

8 A April?

9 Q Yes.

10 A I don't remember.

11 Q Well, it says "given April 2" something?

12 A Perhaps. I think there was some difficulty in  
13 looking at the -- the object of that question  
14 has to do with some identifying evidence on the  
15 musk oil print. I don't know where it went, but  
16 there were some delays.

17 Q The next item, sir, you don't have to go to it  
18 unless you wish to. Several other counsel have  
19 asked you question about it, and that is the  
20 Hall/Ewatski interview of you and Mr. Lawlor in  
21 August 2 of '93. If you want to go to it, the  
22 notes are at tab 72 in the materials, but I  
23 won't specifically take you to those. I have  
24 several questions relating to that, sir.  
25 Mr. Ewatski, at that point, or Chief Ewatski, as

1 he now is, knew and had uncovered that the --  
2 that Zanidean had called Crime Stoppers. Do you  
3 recall whether you were aware of his having  
4 called and collected from Crime Stoppers?

5 A No. No.

6 Q It's also relatively clear from other evidence,  
7 sir, that Mr. Miller may have had some knowledge  
8 of the Swift Current issue. But according to  
9 Chief Ewatski, he certainly didn't know the  
10 details of the Swift Current file. And it is  
11 your evidence you didn't know anything about the  
12 Swift Current file that you can recall, right?

13 A That's right.

14 Q There is also a June 29, '91 call to  
15 Mr. Brodsky, which is referenced by Chief  
16 Ewatski in the Hall report that they call "new  
17 evidence".

18 "Do you recall or do you have any knowledge  
19 of the call from Zanidean to Brodsky after  
20 a blow-up with Paul in late June of '91,  
21 after the trial?"

22 A This is in the section of their report called  
23 "new evidence"?

24 Q Yes.

25 A I wasn't advised of any of it.

1 Q All that leads up to, sir --

2 A I wasn't advised of what they considered to be  
3 new evidence.

4 Q Fair enough. Chief Ewatski has told this  
5 commission that he and Hall, I think he was just  
6 speaking for himself, got the impression, and  
7 that was his word, or the understanding, and  
8 that was his word in a different place of his  
9 evidence, that you and Mr. Lawlor knew  
10 everything he and Hall knew as of August of '93.  
11 Would that be a fair impression for him to get?

12 A I really don't know. I mean he categorized  
13 these pieces of evidence as new evidence. I  
14 don't know whether they were new or not. They  
15 may have been new to him, so I wouldn't -- I  
16 don't recall him bringing them to my attention.  
17 I don't really know where you're going with  
18 this.

19 Q Just whether you had any recollection of him  
20 having relayed those pieces of evidence to you  
21 in that meeting of '93?

22 A I don't think he did. I don't think he did.

23 Q One other matter, Mr. Dangerfield, and that is  
24 on two separate occasions it was put to you that  
25 within the Department of Justice, in mid-'93

1           when the media reports were coming out and so  
2           on, one suggestion to you was that there may  
3           have been a discussion amongst senior officials  
4           in the Department of Justice to not respond to  
5           some of these things because it was better that  
6           it not come out because it would merely fan some  
7           more media attention. And the other suggestion  
8           put to you by Mr. Code was that the whole matter  
9           was just put into a big black hole in the  
10          department because of the media storm.

11                   Now, those were two suggestions put to you,  
12          sir. And it hasn't come out, but I'm aware, and  
13          I ask you to confirm, sir, that you, in fact,  
14          served as a bencher for the Law Society for a  
15          number of years?

16          A        Yes.

17          Q        And you and I had a number of dealings at the  
18          same time during the 1980s?

19          A        Yes.

20          Q        You served on legal and ethics consideration  
21          committees?

22          A        Yes.

23          Q        Over the years, sir, I also have a recollection  
24          of you running into occasional issues that would  
25          arise in a criminal trial involving ethics

1 and/or conflict of interest on one or more  
2 occasions and you retained me to come in and  
3 assist?

4 A Yes.

5 Q If it had been suggested to you by anyone in the  
6 department, sir, that you not respond in  
7 mid-'93, or you bury something, or that it  
8 should not have been revealed because of some  
9 media storm, would you have had any countenance  
10 with that?

11 A No, sir.

12 MR. OLSON: Thank you. Those are my questions.

13 THE COMMISSIONER: Thank you, Mr. Olson.

14 BY MR. TAPPER:

15 Q Mr. Commissioner. Good afternoon,  
16 Mr. Dangerfield. As you are well aware, I act  
17 for Mr. Whitley?

18 A Yes.

19 Q And my concerns and my interests relate  
20 exclusively to the interests of Mr. Whitley.

21 In your statement, and we can go to it, on  
22 the second page you had said --

23 A Second page of what?

24 Q Your statement?

25 A Oh, my statement.

1 Q Just a brief reference, Mr. Dangerfield, you  
2 said this:

3 "While Miller was in charge of the Winnipeg  
4 Prosecutors, in theory the four general  
5 counsel reported directly to the ADM.  
6 However, Whitley was extremely busy as he  
7 had a wide range of other  
8 responsibilities."

9 A Yes.

10 Q You knew, in fact that, Mr. Whitley, as the ADM,  
11 was responsible for a number of things other  
12 than prosecutions?

13 A Yes. The Criminal Justice System looked after  
14 applications under the Law Enforcement Act, the  
15 creation of special constables, the disposition  
16 of firearms, all kinds of things that impacted  
17 on Justice, but weren't directly about Justice,  
18 and he oversaw the whole department. He was the  
19 third in rank in the department.

20 Q He looked after things such as criminal law  
21 policy?

22 A Yes.

23 Q The RCMP contract?

24 A He would be part of the -- he would be part of  
25 the negotiating team, yes.

1 Q Women's Advocacy Group?

2 A I don't know about that, but I think it was  
3 under the aegis of the department. Yes, he  
4 would have some say in it.

5 Q Crime prevention, policy considerations  
6 pertaining to that?

7 A Policy considerations, yes. Yes.

8 Q You already mentioned the Law Review Agency and  
9 firearms, also the Uniform Law Conference?

10 A He would go to that every year. I can remember  
11 him submitting suggestions that he might bring  
12 up.

13 Q He was also involved, to my understanding, in  
14 something called a CCSO or Coordinating  
15 Committee of Senior Officials and National  
16 Policy Works. Were you aware of that?

17 A No. That is another acronym I probably never  
18 even bothered to try to figure out.

19 Q And as a result of his position as ADM, that  
20 caused him to be either a member of, a chair or  
21 co-chair of a number of groups that pertain to  
22 the Justice System; is that correct?

23 A I don't know.

24 Q Winnipeg Police Department Enforcement & Justice  
25 Committee?



- 1 A I don't know.
- 2 Q Aboriginal Justice Working Group?
- 3 A I think there were a lot of people involved with  
4 that. And Les Kee was another one that came  
5 into not necessarily that committee, but dealing  
6 with aboriginal matters.
- 7 Q He would have been a member of the Executive  
8 Management Committee at the Department of  
9 Justice?
- 10 A I don't even know what -- if that's the  
11 Executive Management Committee, it could have  
12 been he and Watson, Kee. And that could be the  
13 Executive Management Committee or it could have  
14 been another body. I don't know. I didn't  
15 actually keep up with a lot of his stuff,  
16 unfortunately.
- 17 Q And were you aware of the Child Death Review  
18 Committee?
- 19 A Child what?
- 20 Q Child Death or Paediatric Review Committee?
- 21 A No.
- 22 Q There was a number of bodies that he would have  
23 had to have a role in, correct?
- 24 A I think I stated that. I can't give you  
25 specifics on any one of them. I can only say

1           that he was a very difficult man to get ahold  
2           of.

3       Q     The point of the department, though, is that the  
4           running of the Department of Justice was a team  
5           effort, a team approach, and people had  
6           different roles within that team.  Would that be  
7           a fair suggestion?

8       A     Well, are you speaking of the line prosecutors?

9       Q     The entire department.  The prosecutors, as you  
10          call them line prosecutors, would be responsible  
11          for the prosecution of criminal offences?

12      A     Yes.  They were divided into -- it is very hard  
13          for me to do this for you, Mr. Tapper, because  
14          the department was in constant shifting.  I  
15          think you recall a matter euphemistically called  
16          the Ticket Gate Affair?

17      Q     Oh, very well.

18      A     After that professional organizers came in and  
19          tried to organize the department.  They changed  
20          everything around.  They did this and did that.  
21          Unhappily, they put the same men running the  
22          mess before into the department afterwards and,  
23          as you might expect, it became a pretty bad mess  
24          again.  So this was always going on.

25                    Could we change the name?  Could we do

1 this? Could we invent a different court to hear  
2 certain cases and so on. I don't really know  
3 what you mean by the Executive Management  
4 Committee, unless you're talking about the  
5 Deputy Attorney General, Mr. Perozzo and  
6 Mr. Miller -- I mean Mr. --

7 THE COMMISSIONER: McFarlane?

8 THE WITNESS: Pardon me? No. Well, he was the  
9 Deputy Attorney General at one point. I don't  
10 know.

11 BY MR. TAPPER:

12 Q And going passed the Executive Management  
13 Committee.

14 A Yes.

15 Q Just as a general proposition --

16 A Yes.

17 Q -- my suggestion to you is there was a team of  
18 people in this administration who had different  
19 roles to play?

20 A Yes. There were key people assigned to Queen's  
21 Bench Prosecution, Family Violence Prosecutions  
22 within the public safety building. There were  
23 people who led small groups of prosecutors in  
24 various kinds of work.

25 Q And each would depend on the other to do their

1 particular function?

2 A Each would depend on the other in the group?

3 Q In the entire system, you wouldn't be overseeing  
4 everybody else in the department. You would  
5 expect them to do their job?

6 A I suppose so. I don't recall whether -- I got  
7 the impression some of them were pretty damn  
8 lazy and didn't do very much.

9 Q That's not an accusation you would make of  
10 Mr. Whitley?

11 A No. No. No. I am talking about some of these  
12 prosecutors that, as you say, had this  
13 camaraderie and were known as the will boys.  
14 There were a number of them who wouldn't do that  
15 at all.

16 Q Well, I am not acting for any of those. I am  
17 only concerned about Mr. Whitley at the moment.  
18 When you were asked to take over the prosecution  
19 of Driskell by Mr. Lawlor --

20 A Yes.

21 Q -- you didn't go to Whitley, for example, and  
22 seek authority to do that? That was just  
23 something that you did.

24 A In those days, I was often asked to take on  
25 prosecutions without any interference by

1 Mr. Whitley or Mr. Miller. They had a thing  
2 called Whit-Nick. I don't intend to try to  
3 explain it. It was Winnipeg Management,  
4 Winnipeg Prosecutorial Management Committee that  
5 met every Tuesday morning. One of its functions  
6 was to assign cases. Some of the cases came to  
7 me through there. Some of them came to me  
8 through help from other prosecutors when they  
9 needed someone to do the thing. So, I mean,  
10 there doesn't seem to be any real flow of work  
11 for the department. It was just happened,  
12 that's all.

13 Q It certainly wasn't something that you discussed  
14 with Mr. Whitley?

15 A What, my assumption of a case?

16 Q Yes.

17 A I can't recall. I may have done on occasion,  
18 but it wasn't a regular thing.

19 Q Now, in your --

20 A We were friends, Mr. Tapper. And I would sit in  
21 his office occasionally and chat with him.  
22 Something, like, that might come up, would you  
23 look into this matter or that matter?

24 Q In your statement you referred to Mr. Whitley  
25 passing memos around the office promoting

1 disclosure?

2 A Well, I put that rather flippantly. He would go  
3 to these meetings. Some discussions would arise  
4 as to what was going on in other areas, and  
5 Mr. Whitley would put that into a brief  
6 memorandum. And some of them actually wound up  
7 in the Crown Attorney's handbook. And prior to  
8 him, other directors had done the same thing.  
9 Mr. Guy, Mr. Goodman. Something of interest  
10 that was happening in the profession and  
11 affected on the way prosecutions were done in  
12 other provinces would be brought to our  
13 attention.

14 Q In fact, did he not convene a meeting, even  
15 before Stinchcombe, some months before  
16 Stinchcombe, of all of the prosecutors in the  
17 department to impose a new policy on disclosure?  
18 Do you recall that?

19 A Yes. That became part of the Crown Attorney's  
20 Handbook, yeah.

21 Q You said in your statement that you did not know  
22 why Sid Learner had become involved in a media  
23 issue of a particular time frame. Do you  
24 remember that?

25 A Yes.

1 Q Would it assist your recollection if I were to  
2 tell you that around that same time frame, in  
3 March of that year, Mr. Whitley was ill with  
4 heart trouble and was hospitalized? Do you  
5 remember anything of that event?

6 A No. What year was that?

7 Q That would be '91.

8 A '91, oh, yeah.

9 MR. CODE: '93.

10 BY MR. TAPPER:

11 Q '93. I've been corrected, '93.

12 A No. I didn't remember that. I still don't  
13 remember it.

14 MR. TAPPER: Those are all my questions. Thank  
15 you.

16 THE COMMISSIONER: Thank you, Mr. Tapper.

17 BY MR. ABRA:

18 Q It's been a long couple of days for you,  
19 Mr. Dangerfield. I don't expect I'll be very  
20 long.

21 A Thank you.

22 Q If you do get tired let me know, please.

23 A I will.

24 THE COMMISSIONER: And I was very sincere when I  
25 mentioned that before. And if at any time you

1 want a break, either for five minutes or want to  
2 break for the balance of the day, don't  
3 hesitate.

4 THE WITNESS: I know you were, sir. Thank you.

5 BY MR. ABRA:

6 Q Mr. Dangerfield, you were asked this morning  
7 about your relationship with some of the  
8 homicide investigators at what was then the  
9 Winnipeg Police Department?

10 A Yes.

11 Q Which we now know as Winnipeg Police Service?

12 A Yes.

13 Q And you said that your general practice was to  
14 deal on a face-to-face basis with most of them,  
15 is that fair?

16 A Yes.

17 Q If you needed information, you would contact  
18 them, and they might come to your office and  
19 provide it to you. But you had a close working  
20 relationship with a number of the homicide  
21 officers?

22 A Yes. If I had -- if I had something that needed  
23 to be done, some further investigation, some  
24 area that seemed should be looked into, I would  
25 call up the lead detectives and they would go



1 about their business. And they would prepare  
2 what was a special for me and for the file, so I  
3 would get that, yes.

4 Q Now, any investigating that you asked them to  
5 do, or any time you had sent a request for  
6 information to them, you expected them to be  
7 forthright?

8 A Oh, yes.

9 Q Reliable?

10 A Most of them were, yes.

11 Q And you would expect them to give you all of the  
12 goods, so to speak, about whatever the situation  
13 was that you were asking them about?

14 A Well, they would give me the product of their  
15 investigation, yes.

16 Q Right. Now, you knew Anderson particularly well  
17 and you knew Paul particularly well? You had  
18 worked with them on cases prior to Driskell?

19 A Yes.

20 Q You also knew Vandergraaf very well?

21 A Oh, yes. He was involved in the Berchinger  
22 murder which took him to Australia.

23 Q Berchinger was the Done Right Chicken?

24 A Yes.

25 Q And that was before this, before Driskell?

1 A Oh, yeah. Yeah.

2 Q But you had worked previously with Anderson and  
3 Paul as well?

4 A Yes.

5 Q And you relied on them?

6 A Yes.

7 Q Now, I would like to take you to tab 41 in  
8 volume 2. We've heard evidence that as early as  
9 approximately the middle of April of 1991,  
10 Anderson and Paul were aware that the RCMP in  
11 Swift Current had decided not to proceed against  
12 Zanidean for the arson in Swift Current?

13 A Yes.

14 Q Partly on the basis and in order that he could  
15 get into the Witness Protection Program?

16 A That's what I understand, yes.

17 Q You understand that now?

18 A Yes.

19 Q You weren't aware of it at the time?

20 A No, sir.

21 Q Now, as a result of the pre-trials that you had  
22 attended with Mr. Brodsky and Mr. Justice Morse,  
23 and as a result of those numerous questions that  
24 Mr. Brodsky had prepared, that were brought up  
25 with Mr. Justice Morse, they were all sent to

1 Winnipeg Police Service for a response. The  
2 questions are at tab 43. And as you know, there  
3 were also a couple of letters that were sent to  
4 Winnipeg Police asking them for information,  
5 both by you and by Lawlor?

6 A Is this the thing marked "index"?

7 Q No. At tab 43 there are questions that had been  
8 prepared by Mr. Brodsky that were discussed at  
9 the pre-trial with Mr. Justice Morse?

10 A Oh, yes, all right.

11 Q All right. Are you with me?

12 A Yes.

13 Q Now, were these questions actually given to you  
14 at the pre-trial, do you remember?

15 A I don't.

16 Q In any event, during February and subsequent,  
17 Mr. Brodsky sent a number of letters to you?

18 A Yes. The shopping list?

19 Q The shopping list, as you referred to them, to  
20 which you replied, as best you could, or Lawlor  
21 replied?

22 A Yes, absolutely.

23 Q And any information you didn't have in your own  
24 files, you sent on to Winnipeg Police for a  
25 response?

1 A Yes.

2 Q Now, the ones that you were working with on --  
3 closest on this particular case were Anderson,  
4 Paul and Vandergraaf, is that fair, to the best  
5 of your memory?

6 A I think it was Anderson and Paul, basically.

7 Q Okay. Now, one of the questions, question  
8 number 6, is one of the issues that Mr. Brodsky  
9 had raised in his letter to you of April?

10 A Yes.

11 Q Which is at tab number 33?

12 A 33.

13 Q I'm sorry, the one of February, which is tab  
14 number 28?

15 A 28.

16 Q Now, you finally got a response to that in the  
17 supplementary, and it's at tab 41. And one of  
18 the questions --

19 A Wait a second. A response to which?

20 THE COMMISSIONER: Okay. Start off at 28, go to  
21 the second page. And, in fact, go over to the  
22 third page, that is the third page in.

23 MR. ABRA: Tab 20. I'm going too fast for you,  
24 George.

25 THE COMMISSIONER: So it is the second page of

1 the letter.

2 THE WITNESS: Yes. Page 2, yes.

3 THE COMMISSIONER: At number 6.

4 THE WITNESS: I see it, yes.

5 THE COMMISSIONER: "We would like to have the  
6 details of the Witness Protection Program."  
7 THE WITNESS: And I write "no", yes. Or  
8 somebody writes "no", Lawlor.

9 BY MR. ABRA:

10 Q But go to Mr. Brodsky's questions, which is at  
11 tab --

12 A It is at tab 43?

13 Q 33. I'm sorry, yes.

14 A 33?

15 Q Yes.

16 A Yes.

17 Q Now, number 5, these are asked, or you are asked  
18 to provide:

19 "What dispositions were made? What  
20 favourable considerations were given to  
21 them for not pressing a charge or laying a  
22 charge and other matters that would  
23 influence them to testify in a particular  
24 fashion?"

25 And then you were asked to provide statements at

1           number 9:

2                    "What do Winnipeg Police have on the fire

3                    in Swift Current, Saskatchewan and the fire

4                    at 1869 Pacific and the fire at Shafik

5                    Kara's shop?"

6           Are you with me so far?

7    A    Yes.

8    Q    Okay. Now, that's then sent on, under Tab 34,

9           by Mr. Lawlor to Winnipeg Police?

10   A    Yes, that's right, sir.

11   Q    Okay. And he lists the numbers he wants answers

12           for?

13   A    Yes.

14   Q    And number 13 --

15   A    13?

16   Q    I'm sorry. Number 9.

17   A    All right. Am I at the right place here?

18   Q    If you go to tab 37?

19   A    Yes.

20   Q    Mr. Lawlor said:

21                    "Re paragraph 9, Winnipeg Police have

22                    nothing on these incidents",

23           which is the Swift Current arsons?

24   A    "These incidents" being what?

25   Q    Number 9 in the April letter:

1 "What do Winnipeg Police have on the fire  
2 in Swift Current, Saskatchewan, the fire at  
3 1869 Pacific and the fire at Shafik Kara's  
4 shop?"

5 A Yes.

6 Q Okay.

7 A That appears to be the information he obtained,  
8 yes.

9 Q And then paragraph 3 or, excuse me, number 3 in  
10 the response to Mr. Brodsky at number 37, or tab  
11 37:

12 "Winnipeg Police have nothing on these  
13 incidents"?

14 A Yes.

15 Q So you weren't told of the fact, by Anderson or  
16 Paul, that Winnipeg Police had that entire RCMP  
17 file or that, in fact, Zanidean had admitted to  
18 them, in as early as October, that he had set  
19 the fire in Swift Current?

20 A Apparently not.

21 Q Pardon me?

22 A Apparently not.

23 Q Okay. Now, when you go to the supplementary at  
24 numbers requested under tab 41?

25 A Yes.

1 Q Number 5.

2 A Number 5?

3 Q Number 5, if you look at the tab where it says:

4 "Criminal records of all witnesses on your

5 list, what charges they had at the time?"

6 A Wait, wait, wait. I don't have a number 5. Oh,

7 5? Wait a second.

8 Q Okay.

9 A Question 5?

10 Q Yes. In the letter at Tab 33.

11 A Tab 33, okay:

12 "Criminal records of all witnesses on your

13 list."

14 Q Okay.

15 A Yes.

16 Q Now, if you go to the supplementary at tab 41?

17 A Right.

18 Q The first paragraph indicates that:

19 "All of the criminal records have been

20 served up."

21 A M'hm.

22 Q The second paragraph goes on:

23 "With respect to the second part of this

24 question, we are not aware of a single

25 criminal charge outstanding against a



1           single subpoenaed witness at the time of  
2           the deceased's disappearance."

3    A    Where is this again?

4           THE COMMISSIONER:  Tab 41.

5           MR. PROBER:  But question 6.

6           MR. ABRA:  Question 6 at the bottom of the page.

7           MR. CODE:  Question 5 becomes question 6.

8           BY MR. ABRA:

9    Q    I'm sorry, Mr. Dangerfield, I didn't make that  
10           clear.  But it is in response to question number  
11           6, but shown as question number 6 on this  
12           supplementary.  I'm sorry, it's been a long day.

13           I'm confusing you.  The second sentence reads:

14                   "Furthermore, protection is the only  
15                   favourable consideration given to any  
16                   witness.  We are not aware of any stayed  
17                   charges or any other deals with any witness  
18                   in exchange for testimony."

19           Now, that was written -- do you see where I'm  
20           reading from?

21    A    Oh, okay.  The second part, yes.

22    Q    That was written by Anderson and his partner  
23           Paul.

24    A    Yes.

25    Q    You had asked -- they were aware, as of the

1 middle of April, that the RCMP in Swift Current  
2 were not going to charge Zanidean?

3 A They hadn't charged him. And they never did,  
4 no.

5 Q Yes. But you knew -- but they were told that  
6 they weren't going to charge him?

7 A Apparently. I don't know that.

8 Q Do you not think you should have been told that  
9 in the response to that supplementary? Zanidean  
10 was a key witness, was he not?

11 A Yes. Yes. I think I should have been told  
12 that.

13 Q Right. Now, assuming for a moment that Miller  
14 was aware of that, would it have been helpful to  
15 you if they had at least put it into the  
16 supplementary, if he required any further  
17 information with respect to Zanidean in  
18 particular, speak to Bruce Miller?

19 A Yes.

20 Q Now, Anderson and Paul have testified, as has  
21 Vandergraaf, that they were meeting on a regular  
22 basis with Bruce Miller to discuss witness  
23 protection. Although there is not a note in  
24 their notebooks, and there is not a  
25 supplementary that relates to it, but that's

1           what they have testified to.

2    A       Yes.

3    Q       Now, as Mr. Wolson suggested to you, Anderson,  
4           Paul and Vandergraaf have all testified that  
5           prior to Zanidean testifying that he was not to  
6           be told that Swift Current RCMP were not going  
7           to be charging him.

8    A       Yes.

9    Q       Do you follow me?

10   A       That's what I'm told, yes.

11   Q       Okay. Now, the essence of that, of course, was  
12           that although the officers, and according to  
13           them Miller, were all aware of the fact that  
14           Zanidean wasn't going to be charged, they didn't  
15           tell him. As a result of which, when he was  
16           cross-examined by Mr. Brodsky at the trial, when  
17           he was asked whether he had any immunity, he  
18           said "no".

19   A       That's the problem with this whole situation  
20           here. You've got people offering immunity, not  
21           charging, none of which they could have done.  
22           They had no authority of their seniors.

23   Q       Well, the essence -- let me ask you this -- what  
24           I'm interested in, Mr. Dangerfield, you knew  
25           Mr. Miller?

1 A Yes.

2 Q As you said to Mr. Code yesterday --

3 A Yes.

4 Q -- there's a duty to put before the court any  
5 immunity offers or immunity with respect to  
6 outstanding charges that may have been given to  
7 a witness?

8 A Yes.

9 Q You were aware of that?

10 A Put before the court, yes.

11 Q Now, to know that Zanidean was not going to be  
12 charged which, in effect, meant he had immunity  
13 for the Swift Current charge?

14 A Yes.

15 Q And to not tell him that, put him in the  
16 position of answering falsely to Brodsky's  
17 question?

18 A Yes.

19 Q But he didn't know it was a false answer?

20 A Yes.

21 Q Do you think it's conceivable that Miller would  
22 give advice of that nature to Anderson, Paul and  
23 Vandergraaf? In other words, let Zanidean lie  
24 and then tell him after the fact that he has got  
25 immunity?

1 A It doesn't sound like him.

2 Q Do you really think he would ever have said  
3 anything of that nature, given advice of that  
4 nature?

5 A I don't believe he would, no, but --

6 Q Did he ever have any discussion with you about  
7 immunity for Zanidean?

8 A No.

9 Q Are you aware of the fact that he later told  
10 Hall and Ewatski that, as far as he was  
11 concerned, there was never any immunity for  
12 Zanidean? Kovnats wanted it. Miller wasn't  
13 going to give it, or even attempt to get it?

14 A I've seen that, yes.

15 Q You've seen that in their notebooks?

16 A I've seen that as has been referred, brought to  
17 my attention here, yeah.

18 Q Similarly, from your perspective, when you were  
19 asked about whether there had been any immunity  
20 for Zanidean, you told Hall and Ewatski that, as  
21 far as you were concerned, there wasn't?

22 A That's right.

23 Q So even as late as August of '93 when you were  
24 interviewed, you still had no knowledge about  
25 what had been told to Anderson and Paul by the

1 Swift Current RCMP?

2 A That's right. As far as I can remember, yes.

3 Q Now, you were asked by Mr. Code this morning  
4 about the fact that by the time you were -- you  
5 met with Anderson and, excuse me, with Ewatski  
6 and Hall, you at least had the opportunity to  
7 review Quinney's two letters, which are at tabs  
8 61 and 62?

9 A Yes.

10 Q Now --

11 A Wait a second. What time is this again?

12 Q You were interviewed or you met with Ewatski and  
13 Hall in August of '93?

14 A M'hm.

15 Q Okay. Now, Quinney's letters are at tabs 61 and  
16 62?

17 A Yes.

18 Q And although there is a reference in there to  
19 Zanidean being under the impression that he had  
20 immunity, on my reading of those letters, there  
21 is no indication that Zanidean got that  
22 information from Anderson and/or Paul. So the  
23 point that I'm attempting to make to you is that  
24 you still didn't have the information when you  
25 met with Ewatski and Hall, as far as what

1 Anderson and Hall had told Zanidean, is that  
2 fair?

3 A I'm just trying to read this. Yes, the letter  
4 says that Zanidean was of the view that he was  
5 granted immunity. He must have got that  
6 impression from somewhere.

7 Q Right.

8 A I don't know where he got it from.

9 Q But what I understood Mr. Code to be asking you,  
10 I'm not trying to re-examine you if I've got it  
11 incorrect, but what I understood him to be  
12 asking you is, you were aware by that time, when  
13 you were interviewed by Ewatski and Hall, that  
14 Paul and Anderson had told Zanidean that Swift  
15 Current RCMP weren't going to be charging them.  
16 What I'm suggesting is that you still didn't  
17 know who it was who had told Zanidean that when  
18 you met with Ewatski and Hall?

19 A I'm so confused now.

20 THE COMMISSIONER: You know, I really think we  
21 should seriously consider breaking for the day.

22 MR. ABRA: I know Mr. Prober wants to, in any  
23 event.

24 MR. PROBER: Well, no. I was wondering how long  
25 Mr. Abra is going to be?

1 MR. ABRA: Just about finished.

2 MR. PROBER: So my suggestion would be to have  
3 Mr. Abra finish. And I know my client's quite  
4 exhausted.

5 THE COURT: Yes, he is, it's apparent.

6 MR. PROBER: But I would rather have Mr. Abra  
7 finished. I know Mr. Dangerfield would, too.  
8 If I'm wrong about that --

9 THE WITNESS: I'm sorry. I am not trying to be  
10 difficult.

11 THE COMMISSIONER: Yes.

12 THE WITNESS: You've got me going around in  
13 circles here today, and I am going from book to  
14 book to book. And I can't honestly tell you  
15 what I answered Mr. Lockyer, Mr. Code, or  
16 anybody else, over the last two days, not you  
17 personally.

18 MR. ABRA: I think we should adjourn now. I  
19 wouldn't expect to be any more than five minutes  
20 tomorrow morning. And I think it would be an  
21 easy way to start the day for Mr. Dangerfield.

22 THE WITNESS: I am not criticizing you. It's  
23 just the whole complex of questions has me  
24 scrambled.

25 MR. ABRA: I have known you long enough in the



1 past and you have criticized me enough over the  
2 years.

3 MR. PROBER: Well, I don't think Mr. Dangerfield  
4 is the only one who is confused.

5 MR. ABRA: If the question is that confusing, I  
6 probably won't ask you it again, either.

7 THE WITNESS: It is not the question so much as  
8 just being taken from book to book to page and  
9 paragraph and back again. And then you ask me:  
10 Do you agree with what you told Mr. Code two  
11 days ago? And I can't remember what I told him.

12 MR. ABRA: No, I can understand that.

13 THE COMMISSIONER: We have the advantage of  
14 having certain things highlighted because we  
15 have been through it. So when I look at tab 41,  
16 I look at that very last subparagraph and I  
17 know.

18 THE WITNESS: Yes.

19 THE COMMISSIONER: But you don't have that.

20 THE WITNESS: Thank you.

21 THE COMMISSIONER: We will adjourn until 9:30  
22 tomorrow morning.

23 THE CLERK: All rise. This Commission of  
24 Inquiry is now adjourned.

25 (Proceeding adjourned at 4:24 p.m.)

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COURT REPORTER'S CERTIFICATE

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  
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<b>A</b>				
<b>ability</b> 4216:11 4255:17 4263:11	<b>acronym</b> 4353:17	<b>admission</b> 4301:21	<b>agreement</b> 4154:22	4374:25 4375:5
<b>able</b> 4184:23 4185:4 4185:13 4211:22 4212:8 4217:6 4283:18 4340:2	<b>act</b> 4315:22 4351:16 4352:14	<b>admissions</b> 4318:12 4320:4 4322:18	<b>agreements</b> 4168:4	4375:22 4376:1 4376:14
<b>aboriginal</b> 4354:2,6	<b>acting</b> 4242:15,17 4357:16	<b>admit</b> 4216:11	<b>ahead</b> 4188:12 4191:20 4215:6 4227:17 4287:2 4287:25	<b>Anderson's</b> 4327:7
<b>Abra</b> 4139:14 4140:12 4360:17 4361:5 4365:23 4366:9 4370:6,8 4376:22,25 4377:1,3,6,18,25 4378:5,12	<b>action</b> 4185:5	<b>admitted</b> 4202:3 4203:2 4211:24 4368:17	<b>ahold</b> 4302:5 4355:1	<b>and/or</b> 4168:23 4172:17 4173:16 4260:24 4351:1 4375:22
<b>absence</b> 4173:13 4192:25	<b>actions</b> 4184:24 4185:14	<b>advance</b> 4205:23 4210:23 4211:1,3 4247:9 4260:14 4267:1	<b>Aid</b> 4314:1	<b>announced</b> 4282:11
<b>absolutely</b> 4142:22 4150:10 4214:15 4223:13 4244:12 4263:22 4364:22	<b>actively</b> 4199:15 4276:16	<b>advancing</b> 4166:13 4174:22	<b>al</b> 4187:1,3 4318:2	<b>answer</b> 4154:25 4155:3 4161:18 4162:17 4201:1 4203:1 4216:5 4228:16 4243:20 4261:4 4264:18 4277:19 4298:4 4303:25 4305:5 4306:4 4310:11 4312:4 4373:19
<b>abuse</b> 4159:2 4247:10	<b>activity</b> 4175:20 4270:25	<b>adversarial</b> 4192:24	<b>Alan</b> 4139:10	<b>answered</b> 4151:3 4159:12 4161:1 4179:20 4243:6 4245:3 4280:22 4377:15
<b>accept</b> 4225:6,6 4230:6 4249:12 4252:2 4336:6	<b>actual</b> 4150:24 4262:14	<b>advice</b> 4252:13,25 4373:22 4374:3	<b>albeit</b> 4251:21 4318:5	<b>answering</b> 4167:13 4373:16
<b>acceptable</b> 4157:15	<b>adamant</b> 4163:17 4163:21 4165:24 4166:8	<b>advise</b> 4245:7	<b>allegation</b> 4335:14	<b>answers</b> 4154:19 4168:20 4173:1 4201:22 4246:16 4305:24 4367:11
<b>accepted</b> 4189:19 4196:16 4286:12 4326:8 4330:21	<b>added</b> 4257:15 4299:19	<b>advised</b> 4196:19 4218:10 4240:8 4291:23 4309:16 4319:16 4321:9 4321:13 4324:11 4330:10,18 4337:15 4343:24 4348:25 4349:2	<b>allegations</b> 4339:11	<b>anticipated</b> 4282:13
<b>accepting</b> 4174:1	<b>addendum</b> 4141:10 4231:14,17	<b>advocacy</b> 4330:11	<b>alleged</b> 4248:12 4270:25 4271:14 4279:9	<b>anybody</b> 4158:6 4205:15 4247:9 4377:16
<b>access</b> 4299:2,7 4302:12	<b>adding</b> 4279:5	<b>advocating</b> 4353:1	<b>allegedly</b> 4218:13 4264:12	<b>anyway</b> 4168:3 4220:22
<b>access</b> 4299:2,7 4302:12	<b>addition</b> 4159:5 4282:23	<b>advocacy</b> 4353:1	<b>allow</b> 4209:24 4241:2 4243:7 4288:7	<b>apart</b> 4198:15
<b>accidentally</b> 4255:3	<b>additional</b> 4283:17 4283:25	<b>advocating</b> 4330:11	<b>allowed</b> 4167:6 4171:11,17 4243:12 4246:18 4259:18	<b>apologize</b> 4185:9
<b>accommodate</b> 4284:2	<b>address</b> 4168:1 4173:4 4181:15 4225:11 4316:22	<b>advocating</b> 4330:11	<b>allowing</b> 4265:1	<b>apparent</b> 4143:23 4309:10 4377:5
<b>accomplished</b> 4276:22	<b>addressed</b> 4141:7 4154:12 4172:10 4222:13,20 4264:8 4272:23 4277:1,3 4304:11 4304:11,13	<b>advocating</b> 4330:11	<b>allows</b> 4243:16	<b>apparently</b> 4143:6 4143:21 4167:17 4342:15 4368:20 4368:22 4371:7
<b>account</b> 4321:19 4322:18	<b>addressing</b> 4242:4	<b>advocating</b> 4330:11	<b>altered</b> 4309:5	<b>appeal</b> 4209:20 4217:1 4220:3,7 4236:22 4237:7 4237:12,16,21 4238:5 4242:13 4244:10 4261:20 4262:2,17,25 4263:18 4264:3 4264:17 4271:8 4278:8 4337:24
<b>accounted</b> 4274:23	<b>adduce</b> 4158:14 4261:1	<b>advocating</b> 4330:11	<b>amount</b> 4183:11	<b>appeals</b> 4182:6 4264:21,23
<b>accurate</b> 4157:4 4175:1 4288:21 4289:8	<b>adequately</b> 4264:8	<b>advocating</b> 4330:11	<b>amounted</b> 4183:14 4219:17	<b>appear</b> 4168:13
<b>accurately</b> 4268:2	<b>adjective</b> 4169:6	<b>advocating</b> 4330:11	<b>amounts</b> 4210:1 4219:17	
<b>accusation</b> 4357:9	<b>adjoin</b> 4377:18 4378:21	<b>advocating</b> 4330:11	<b>analogy</b> 4243:18	
<b>accusations</b> 4273:12	<b>adjourn</b> 4377:18 4378:21	<b>advocating</b> 4330:11	<b>analogy</b> 4243:18	
<b>accused</b> 4330:20	<b>adjourned</b> 4281:16 4378:24,25	<b>advocating</b> 4330:11	<b>analysis</b> 4213:6 4220:6 4254:19	
<b>acknowledged</b> 4174:3,6 4175:4	<b>adjourning</b> 4242:12	<b>advocating</b> 4330:11	<b>analyst</b> 4256:23	
<b>acknowledging</b> 4193:15 4221:10	<b>adjudicative</b> 4211:15	<b>advocating</b> 4330:11	<b>Anderson</b> 4152:22 4201:14 4203:24 4204:13 4289:20 4317:4,23 4318:14 4319:15 4323:12 4327:13 4328:7 4329:5,7 4330:24 4331:4 4333:2 4337:14 4337:15 4342:25 4343:13 4362:16 4363:2,10 4365:3 4365:6 4368:15 4370:22 4371:20 4372:3 4373:22	
<b>acquitted</b> 4238:12 4281:8 4337:24	<b>ADM</b> 4197:4 4352:5,10 4353:19	<b>advocating</b> 4330:11	<b>agreed</b> 4204:24 4248:18,20 4249:4,8	
	<b>administration</b> 4356:18	<b>advocating</b> 4330:11	<b>agreeing</b> 4220:5 4221:8	
	<b>Administrative</b> 4139:4,5,6,7 4141:8 4222:14 4222:22			

<p>4211:21 4240:23 4269:2 4279:4,17 4298:2 <b>appearance</b> 4281:6 <b>appearances</b> 4139:9 4262:5 4285:9,14 <b>appeared</b> 4210:20 4237:20 4249:2 4266:3 <b>appearing</b> 4266:19 4267:14 <b>appears</b> 4149:21 4167:17 4168:10 4186:24 4237:2 4278:21 4297:1 4307:13 4322:16 4328:6 4339:3 4340:21 4346:9 4368:7 <b>appellate</b> 4311:17 4311:20,24 <b>appellation</b> 4219:1 <b>appended</b> 4295:19 <b>applicant</b> 4182:8,14 4184:5 4185:18 <b>applicant's</b> 4183:5 4183:20 4184:2 <b>application</b> 4178:25 4180:8,11 4182:5 4182:9 4185:24 4274:18 4289:18 4313:18 <b>applications</b> 4232:18 4285:19 4352:14 <b>appointed</b> 4379:4 <b>appreciate</b> 4142:24 4151:4 4228:19 4229:3,4 <b>appreciation</b> 4228:22,23 <b>approach</b> 4212:21 4290:3 4355:5 <b>approached</b> 4344:6 <b>appropriate</b> 4209:22 4258:23 4260:1 4261:25 4276:8 4284:15 <b>appropriateness</b> 4157:18 <b>approximately</b> 4237:10 4312:22 4363:9 <b>April</b> 4142:13 4143:5 4144:1 4147:14,20 4148:3 4151:11</p>	<p>4157:2 4203:25 4306:23 4307:17 4327:12 4341:10 4342:14 4343:6,7 4343:25 4346:10 4346:14,21 4347:7,8,11 4363:9 4365:9 4367:25 4371:1 <b>area</b> 4142:9,9 4292:9 4301:23 4304:1 4332:11 4341:5 4342:16 4361:24 <b>areas</b> 4155:15 4252:9 4345:9 4359:4 <b>argue</b> 4264:17 <b>argued</b> 4237:17 4238:5 4262:4 4283:22 <b>arguing</b> 4242:14 4263:18 <b>argument</b> 4183:6 4255:23 4306:15 4306:20 4336:2 <b>arisen</b> 4174:20 <b>arises</b> 4188:14 4262:3 4314:17 <b>arising</b> 4174:20 4196:2 4290:5 4299:2 <b>arm</b> 4286:11 <b>arose</b> 4206:9 4261:14 <b>arrange</b> 4316:19 <b>arrangement</b> 4151:15 4153:12 4197:8 4206:5 4210:19 4228:12 4268:9,16 4316:2 4331:5,7 4334:9 4334:10,13,18 <b>arrangements</b> 4161:2 4168:3 4173:17 4195:8 4196:14 4198:16 4316:11 4332:11 <b>arrest</b> 4188:6 4239:23 <b>arrested</b> 4219:18 4239:22 <b>arrived</b> 4142:16 4147:25 4270:22 4271:6 4298:18 <b>arson</b> 4146:20 4147:12 4152:7</p>	<p>4153:25 4154:16 4155:9 4164:11 4164:17 4204:1 4268:10 4273:10 4318:25 4320:6 4321:16 4322:4,9 4322:14 4325:7 4326:23 4327:19 4328:9 4331:9 4335:15 4338:17 4343:4 4363:12 <b>arsons</b> 4337:18 4367:23 <b>articles</b> 4144:18 4266:3,19 4267:14,23 4268:4,8 4269:10 4273:3,11,15 <b>articulate</b> 4285:16 <b>artificial</b> 4170:18 4171:11,13,21 <b>ascertain</b> 4186:22 <b>ascertained</b> 4193:2 <b>asked</b> 4150:25 4154:7,11 4155:12 4161:25 4172:9,20 4179:15,25 4193:21 4199:23 4206:4 4215:14 4245:10 4263:4 4267:5,17 4269:5 4272:16 4273:16 4279:2 4280:6 4285:9,16 4299:5 4325:6 4331:11 4341:8 4347:19 4357:18,24 4361:6 4362:4 4366:17,17,25 4370:25 4372:17 4374:19 4375:3 <b>asking</b> 4145:7 4150:22 4161:6 4198:25 4222:8 4242:2 4270:15 4301:18 4308:14 4310:9 4311:23 4311:25 4340:23 4345:21 4362:13 4364:4 4376:9,12 <b>asks</b> 4182:14,14 <b>aspects</b> 4138:2 4251:23 4321:9 4321:13 4322:1 <b>assassinate</b> 4217:25 <b>asserting</b> 4156:23</p>	<p><b>assertion</b> 4224:23 <b>assess</b> 4212:8 <b>assessing</b> 4212:5 <b>assessment</b> 4157:4 4212:2 <b>assign</b> 4358:6 <b>assigned</b> 4356:20 <b>assist</b> 4163:17 4208:13 4211:12 4295:10 4307:20 4351:3 4360:1 <b>assistance</b> 4163:15 4164:1 4211:18 4308:18 4312:11 4319:2,11 <b>Assistant</b> 4139:5,6 4189:14 4191:3 4192:3 4193:25 4246:22 <b>assisting</b> 4307:11 <b>Associate</b> 4139:3 <b>Association</b> 4139:20,21 4286:23 4315:23 <b>assume</b> 4160:2 4174:10 4199:11 4201:5 4270:21 4271:4 4272:7 4347:6 <b>assumed</b> 4176:20 4288:14 <b>assuming</b> 4224:21 4283:23 4371:13 <b>assumption</b> 4358:15 <b>assure</b> 4157:15 <b>attached</b> 4270:12 <b>attempt</b> 4163:16 4258:13 4259:15 4374:13 <b>attempting</b> 4375:23 <b>attended</b> 4363:22 <b>attention</b> 4146:24 4146:25 4147:6 4147:10 4159:14 4168:12 4219:15 4239:23 4244:18 4249:16 4250:1 4270:24 4301:23 4311:10 4341:22 4349:16 4350:7 4359:13 4374:17 <b>attitude</b> 4279:8,8 <b>Attorney</b> 4189:14 4278:22 4320:2 4345:6 4356:5,9 <b>attorneys</b> 4150:4</p>	<p>4184:5 4321:8,11 <b>Attorney's</b> 4294:3 4359:7,19 <b>attribute</b> 4187:4 <b>August</b> 4138:17 4141:7 4142:1 4146:2 4149:13 4149:19 4156:21 4166:6,10,17 4167:14 4222:12 4222:19 4347:21 4349:10 4374:23 4375:13 <b>Australia</b> 4362:22 <b>authorities</b> 4183:10 <b>authority</b> 4357:22 4372:22 <b>authorize</b> 4150:9 <b>available</b> 4175:25 4178:2,10 4183:8 4249:9 4287:19 4296:19,24 4297:3,9 4298:17 <b>avoid</b> 4198:14 4248:15,16 <b>avoids</b> 4188:19 <b>aware</b> 4145:3,4 4146:7,9 4162:21 4173:22 4179:12 4185:22 4188:3 4200:17 4202:12 4205:1,4,6,8,9,20 4208:16 4234:2 4240:2 4245:20 4252:18 4284:9 4318:11 4323:13 4326:14 4335:23 4335:25 4348:3 4350:12 4351:16 4353:16 4354:17 4363:10,19 4369:24 4370:16 4370:25 4371:14 4372:13 4373:9 4374:9 4376:12 <b>a.m</b> 4142:2 4223:19 4223:20</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>B</b> 4213:24 4315:14 4325:2 <b>baby-sit</b> 4310:4 <b>back</b> 4142:12 4143:9 4151:23 4153:5 4161:11 4164:8 4168:21 4173:9,12</p>
---	---	---	--	--

<p>4176:16 4180:17 4197:15 4216:23 4225:15 4235:17 4235:18 4247:15 4262:18 4292:11 4298:21 4301:3 4302:16,17 4318:4 4327:2,3 4328:6 4331:10 4332:16,18 4378:9 <b>background</b> 4220:8 <b>backwards</b> 4299:18 <b>bad</b> 4355:23 <b>badly</b> 4280:3 <b>bag</b> 4218:11 <b>bail</b> 4180:8,10 4183:2 <b>balance</b> 4361:2 <b>ball</b> 4221:12 <b>band</b> 4300:25 <b>bar</b> 4179:13 4273:5 4273:15,16 <b>bargain</b> 4215:20 <b>Barons</b> 4308:10 <b>based</b> 4255:1 4288:17 4289:8 4312:19 4313:18 <b>basically</b> 4279:18 4365:6 <b>basis</b> 4252:6 4253:8 4255:22 4292:15 4326:17 4361:14 4363:14 4371:22 <b>bat</b> 4343:22 <b>bathroom</b> 4333:9 <b>bear</b> 4185:1 4248:5 4300:2 4315:25 <b>beating</b> 4173:12 <b>began</b> 4299:15 <b>beginning</b> 4251:5 4339:15,22 <b>behalf</b> 4187:21 4201:16 4310:19 <b>believe</b> 4144:23 4148:14 4162:9 4189:4,7 4203:6 4209:22 4230:17 4230:23 4237:17 4244:18,23 4250:14 4252:7 4269:17 4272:18 4283:7 4285:15 4285:21 4290:22 4313:7 4314:23 4328:1 4374:5 <b>bell</b> 4319:19</p>	<p>4342:22 <b>belongs</b> 4347:4 <b>below-up</b> 4336:2,6 <b>bench</b> 4196:25 4250:16,25 4252:16 4356:21 <b>bencher</b> 4350:14 <b>benefit</b> 4199:1 4206:6 4233:1 4256:1 4287:9 <b>benefits</b> 4198:7,25 4201:12,16,17 4211:1 4249:21 4249:23 4288:5,7 <b>Berchinger</b> 4362:21 4362:23 <b>Bergmann</b> 4139:5 <b>best</b> 4212:15 4262:12 4272:18 4273:23 4274:2 4364:20 4365:4 <b>better</b> 4173:14 4216:12,13 4264:2 4350:5 <b>beyond</b> 4155:18 4173:2 4184:3 4246:17 4252:5 4259:9,21,22 4260:11 4283:3 4308:15 <b>big</b> 4350:9 <b>bigger</b> 4209:2 <b>bit</b> 4157:16 4181:5 4243:18 4302:2 4339:22 <b>black</b> 4214:20 4299:16 4328:21 4350:9 <b>blanket</b> 4170:25 <b>blow-up</b> 4335:21 4336:20 4337:7 4337:11 4348:20 <b>blue</b> 4214:20 4247:18 4254:6,7 4274:11 4278:15 <b>Bob</b> 4139:4 4141:8 4222:14,21 4250:9,9 4287:15 <b>bodies</b> 4354:22 <b>body</b> 4255:25 4354:14 <b>book</b> 4141:3 4144:8 4149:9,16 4160:10 4180:25 4181:7,14 4194:14 4217:5 4221:23,24</p>	<p>4232:14 4235:18 4247:18 4254:5,6 4254:7 4274:11 4278:15 4282:20 4283:6 4284:1 4299:18,22,24 4300:5,11,18 4302:12,19,23,24 4303:2 4308:22 4312:10 4314:14 4317:19,19 4320:12,14 4321:23 4323:19 4337:1,2 4377:13 4377:14,14 4378:8,8 <b>books</b> 4282:23 4299:16 4315:12 4315:13,17 <b>borrow</b> 4214:18 4236:16 <b>bothered</b> 4353:18 <b>bottom</b> 4152:16,25 4158:18 4163:4,6 4194:25 4229:7 4233:14 4241:13 4254:11 4295:21 4321:1 4370:6 <b>bounce</b> 4327:5 <b>boundaries</b> 4208:23 <b>bounds</b> 4156:6 4208:19 4259:9 4260:12 <b>box</b> 4153:18 4189:21 4205:18 4211:3 4216:16 4250:3 4260:14 4281:7 4302:22 4307:4 <b>boys</b> 4357:13 <b>breach</b> 4275:20 <b>breached</b> 4172:14 <b>break</b> 4223:24 4224:1 4229:11 4229:23 4230:9 4281:14 4344:22 4361:1,2 <b>breaking</b> 4376:21 <b>brief</b> 4142:9 4177:22 4199:9 4210:5 4282:10 4290:12,18 4293:9 4352:1 4359:5 <b>briefed</b> 4210:19 4290:17 <b>briefing</b> 4311:4</p>	<p><b>briefings</b> 4292:18 <b>bring</b> 4168:11 4244:17 4249:25 4283:15,19 4313:6 4329:14 4353:11 <b>bringing</b> 4243:9 4250:4 4270:23 4311:9 4349:16 <b>brings</b> 4257:25 4258:7 <b>Brodsky</b> 4142:19 4151:2 4153:11 4153:17,20,25 4154:5,12,16,20 4154:25 4155:2,3 4155:6,8 4157:2 4160:18,21,25 4161:10 4162:13 4162:20 4164:10 4171:14 4172:4,9 4172:24 4173:3 4173:21 4174:9 4175:3,7,10,12 4195:22 4201:13 4202:16,19 4225:25 4226:4 4227:1 4244:15 4248:21,23 4249:1,11,14 4285:10,18,24 4286:8,13,18 4289:21,21 4295:10 4296:3 4297:2,8,12 4298:1,18 4306:23 4307:7 4311:9,12 4312:5 4312:21 4314:2 4324:4 4332:1 4345:19 4348:15 4348:19 4363:22 4363:24 4364:8 4364:17 4365:8 4368:10 4372:16 <b>Brodsky's</b> 4153:13 4164:7,13 4201:1 4245:24 4250:2 4287:17,19 4294:18 4295:14 4296:11,19 4297:15,16,17 4309:24 4312:1 4312:10 4313:12 4331:16 4366:10 4373:16 <b>broken</b> 4174:23</p>	<p><b>brother</b> 4317:10,15 4322:17 <b>brought</b> 4146:24,25 4147:6,9 4165:5 4179:4,7 4219:14 4313:17,17 4341:21 4359:12 4363:24 4374:16 <b>Bruce</b> 4139:14 4142:14 4146:18 4190:21 4317:5 4320:2,10 4322:17 4325:1 4329:17 4331:3,5 4341:10 4343:2 4371:18,22 <b>Bruni</b> 4139:8 <b>building</b> 4293:3 4314:20 4356:22 <b>bullshit</b> 4202:21 <b>bump</b> 4180:21 <b>bunch</b> 4215:9 4315:17 <b>burning</b> 4152:17 <b>Burton</b> 4327:21 4330:16,18 4333:3 4341:24 <b>bury</b> 4351:7 <b>business</b> 4245:2 4259:11 4362:1 <b>busy</b> 4352:6</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>C</b> 4221:24 4315:14 <b>Cadieux</b> 4256:22 4257:6 <b>Calgary</b> 4300:11 <b>call</b> 4176:2 4177:5 4178:1,16 4182:18 4189:9 4189:11 4217:16 4229:17 4246:24 4246:24 4282:15 4282:19 4309:23 4311:10,13,16,22 4312:6,7,21 4313:15 4348:14 4348:16,19 4355:10 4361:25 <b>called</b> 4177:19,20 4177:21 4178:11 4178:24 4179:15 4182:13 4187:21 4214:5,7 4217:12 4217:18 4239:11 4253:19 4254:4 4259:15 4262:16</p>
--	--	---	--	---

<p>4277:17 4286:10                  4286:18 4303:19                  4310:19 4311:2                  4348:2,4,22                  4353:14 4355:15                  4358:2  <b>calling</b> 4307:4                  4312:23  <b>calls</b> 4183:25                  4188:18 4330:18  <b>camaraderie</b>                  4357:13  <b>candidly</b> 4211:24  <b>captionally</b> 4267:6                  4267:19  <b>car</b> 4300:13  <b>care</b> 4265:10                  4279:5  <b>career</b> 4145:12,18                  4262:16 4292:16                  4292:20  <b>careful</b> 4198:12                  4208:19 4279:15  <b>carriage</b> 4285:7  <b>carried</b> 4299:15,22  <b>carry</b> 4197:16  <b>carrying</b> 4197:19  <b>Carswell</b> 4139:17                  4140:8 4287:2,3                  4287:17,22                  4288:1,3 4290:15                  4295:9,13,17                  4306:5,14 4315:6                  4315:7  <b>carved</b> 4224:3  <b>case</b> 4144:20                  4145:16 4150:5                  4151:21 4157:5                  4165:7 4166:20                  4166:22 4167:14                  4171:6 4177:24                  4178:19 4180:2,7                  4180:16 4182:11                  4182:12 4188:19                  4190:5 4195:18                  4197:8 4201:6                  4207:19 4208:1                  4211:6,8,8 4212:3                  4213:3,6 4216:21                  4216:22 4217:24                  4220:4,6 4230:13                  4243:5,7,15                  4247:8,9,16                  4249:20 4251:25                  4252:4 4253:20                  4253:21,22                  4256:12,19,24</p>	<p>4257:2,13,14,20                  4257:22 4259:22                  4259:23,24                  4260:1,7,8,8,9,14                  4261:14,18,19,20                  4262:1,2,23                  4264:6 4267:24                  4273:17 4274:17                  4278:14,24                  4279:3,9 4280:24                  4284:14 4291:25                  4299:9,14 4301:9                  4316:3 4326:9,9                  4328:2,25                  4335:13 4358:15                  4365:3  <b>cases</b> 4190:14                  4199:2 4207:20                  4207:22 4208:10                  4208:12,18,24                  4211:9,10                  4212:19 4247:14                  4256:6 4257:15                  4258:3,10,13,24                  4259:5,13,19,21                  4260:23 4261:7                  4262:17 4278:11                  4278:12 4326:14                  4356:2 4358:6,6                  4362:18  <b>cast</b> 4152:12  <b>casual</b> 4169:4,14                  4170:4,17 4171:9                  4178:23 4195:12  <b>cat</b> 4301:5  <b>categorized</b> 4303:7                  4349:12  <b>category</b> 4201:23  <b>caught</b> 4295:13                  4340:16  <b>caused</b> 4353:20  <b>Cavalluzzo</b> 4157:24  <b>CCSO</b> 4353:14  <b>Cecelia</b> 4379:4,14  <b>celebrate</b> 4279:22  <b>cent</b> 4256:8 4257:25  <b>Centre</b> 4138:13                  4221:5  <b>certain</b> 4138:2                  4139:18,20                  4158:3,4 4172:11                  4277:5 4297:19                  4356:2 4378:14  <b>certainly</b> 4157:21                  4172:3 4194:4                  4201:22 4208:22                  4240:14 4247:13</p>	<p>4253:2 4264:5                  4265:4,15                  4290:10 4291:3                  4291:21 4292:1                  4293:14 4324:21                  4348:9 4358:13  <b>CERTIFICATE</b>                  4379:1  <b>certify</b> 4379:6  <b>cetera</b> 4189:19                  4271:20  <b>chair</b> 4353:20  <b>challenge</b> 4156:22                  4157:5 4158:1                  4275:8  <b>challenged</b> 4210:17                  4225:2  <b>challenging</b> 4157:6  <b>chance</b> 4216:13                  4224:15 4225:17                  4281:3 4338:1  <b>chances</b> 4255:2  <b>change</b> 4255:21                  4355:25  <b>changed</b> 4355:19  <b>changing</b> 4258:17  <b>chap</b> 4175:25  <b>chapter</b> 4247:20,25  <b>characterization</b>                  4199:25 4225:9  <b>characterized</b>                  4210:3 4212:1                  4314:23  <b>characterizes</b>                  4155:13  <b>charge</b> 4203:21                  4204:1 4219:10                  4219:20 4221:20                  4224:25 4226:6,9                  4226:15,24                  4228:5,10                  4229:25 4231:8                  4232:21 4238:2                  4238:11 4243:25                  4245:9,9 4246:5                  4268:10 4319:22                  4327:24 4330:14                  4331:9 4335:6                  4352:3 4366:21                  4366:22 4369:25                  4371:2,6 4373:13  <b>charged</b> 4152:23                  4217:10 4239:21                  4268:20 4337:17                  4371:3 4372:14                  4373:12  <b>charges</b> 4150:9</p>	<p>4163:16 4164:2                  4199:1 4215:9                  4228:17 4237:6                  4240:17 4248:14                  4369:5 4370:17                  4373:6  <b>charging</b> 4372:7,21                  4376:15  <b>chart</b> 4287:24                  4296:9  <b>chased</b> 4301:4  <b>chat</b> 4358:21  <b>chats</b> 4143:13  <b>chatted</b> 4143:15  <b>check</b> 4305:19                  4330:12  <b>checked</b> 4306:17,17  <b>Cheng</b> 4214:7                  4215:9,16                  4247:16,24                  4248:3,11,19                  4249:1,10  <b>Cherniak's</b> 4234:6  <b>Chicken</b> 4362:23  <b>Chief</b> 4139:4                  4141:8 4144:12                  4144:19 4146:21                  4148:14 4222:14                  4222:21 4274:6                  4280:6 4285:10                  4285:15,24                  4287:21 4347:25                  4348:9,15 4349:4  <b>Child</b> 4354:17,19                  4354:20  <b>Chinese</b> 4187:18                  4188:19 4189:8  <b>choice</b> 4278:10                  4312:3  <b>choosing</b> 4328:8  <b>chores</b> 4345:2  <b>chose</b> 4184:8                  4192:20 4332:22  <b>Christianson</b>                  4254:17 4255:14                  4256:17  <b>Christianson's</b>                  4254:3  <b>circles</b> 4377:13  <b>circumstances</b>                  4258:22  <b>circumstantial</b>                  4241:16 4242:20  <b>circumstantially</b>                  4243:8  <b>circumvented</b>                  4289:1</p>	<p><b>City</b> 4234:12                  4288:16,25                  4300:20 4343:12  <b>claim</b> 4171:10                  4203:24 4204:21                  4205:2,4,8,9                  4266:10 4273:9  <b>claimed</b> 4204:15                  4217:21 4224:23  <b>claims</b> 4207:21  <b>clarification</b>                  4345:10  <b>Clark</b> 4235:25                  4236:10,14,24  <b>clear</b> 4159:11                  4214:16 4241:18                  4245:4 4269:19                  4270:13 4302:3                  4316:24 4330:24                  4334:6 4338:18                  4338:25 4346:3                  4348:6 4370:10  <b>clearly</b> 4162:8                  4173:1 4229:9,21                  4230:1 4249:5                  4276:3 4288:16  <b>clerk</b> 4142:3 4222:1                  4222:3 4223:17                  4223:21 4281:15                  4281:19 4333:11                  4333:15 4378:23  <b>client</b> 4161:12,16                  4161:19 4174:16                  4234:23 4313:19                  4330:1,3  <b>clients</b> 4240:6  <b>client's</b> 4377:3  <b>clip</b> 4300:24  <b>close</b> 4302:21                  4340:24 4361:19  <b>closed</b> 4177:24                  4300:7  <b>closest</b> 4365:3  <b>clue</b> 4235:4  <b>cocaine</b> 4219:11,13                  4224:25 4226:11                  4229:24 4231:8                  4232:23 4233:21                  4238:1,10                  4240:17 4243:25                  4245:9 4246:5  <b>Code</b> 4139:2 4140:5                  4142:5,7,8 4155:1                  4155:12,18                  4156:1,12,16,17                  4157:10,21                  4158:20 4159:5</p>
---	---	--	---	---

<p>4159:18,23 4160:5,6,13 4167:3 4168:17 4176:14,24 4190:8 4191:23 4206:3,4 4210:5 4211:24 4216:22 4222:4,6,8 4250:22 4253:7 4272:16 4281:25 4282:2,8 4283:12 4284:4 4285:15 4303:7 4304:2 4308:24 4309:21 4315:13 4316:1 4320:17 4345:21 4346:2 4350:8 4360:9 4370:7 4373:2 4375:3 4376:9 4377:15 4378:10 <b>Code's</b> 4265:20 4294:1 <b>coffee</b> 4143:14 <b>Cohen</b> 4156:3 <b>collateral</b> 4243:19 <b>colleague</b> 4284:10 <b>colleagues</b> 4173:20 4271:11 4283:19 4284:17 <b>collected</b> 4348:4 <b>coloured</b> 4214:19 <b>Colter</b> 4250:17,20 4250:21 4274:15 4275:25 <b>come</b> 4148:21 4172:5 4181:5 4197:15 4208:2,7 4209:23 4216:9 4216:10 4230:5 4240:19 4259:1 4290:9 4292:21 4299:7 4335:17 4350:6,12 4351:2 4358:22 4361:18 <b>comes</b> 4180:17 4203:8 4230:6 4234:19 4240:11 <b>coming</b> 4144:24 4146:1 4149:24 4173:9 4248:12 4249:15 4255:16 4265:7 4285:19 4305:22 4350:1 <b>commences</b> 4223:23 <b>commencing</b> 4142:2 <b>comment</b> 4165:18</p>	<p>4182:15 4187:11 4193:21 4206:3 4206:12 4207:10 4241:5 4269:5 4273:16 4276:10 4276:11 4278:16 4279:13 4316:16 4322:10 <b>commentary</b> 4267:5 4267:18 4273:4 <b>commenting</b> 4259:11 4273:19 <b>comments</b> 4192:14 4225:11 4273:18 4323:13 4337:8 <b>commission</b> 4138:1 4138:12 4139:1,2 4139:3 4142:3 4155:24 4157:19 4157:23 4158:9 4158:12,14,25 4159:1 4167:12 4168:21 4169:3 4170:8 4174:18 4181:10 4194:13 4194:14,16,23 4195:14 4197:20 4200:15 4204:17 4208:5,8,13 4209:14 4220:15 4220:16,19 4223:17,21 4233:24 4259:8 4260:16 4265:24 4266:7 4269:3 4281:15,19 4282:16 4285:4 4296:10 4316:5 4328:16 4329:20 4333:15 4349:5 4378:23 <b>Commissioner</b> 4138:5 4142:5 4144:10 4149:5 4149:15 4155:8 4155:21 4156:11 4156:15,17 4157:10 4158:6,9 4158:14,17,19 4159:7,10,22,23 4160:1,5,10 4180:25 4181:3,6 4181:12,20 4185:1,7,10 4187:2 4200:2,6 4202:15 4203:9 4206:13,22</p>	<p>4207:8 4209:5 4210:7 4211:19 4211:21 4212:14 4213:20,25 4214:17,25 4215:3,4 4216:25 4220:20 4222:1 4222:17,25 4223:6,7,13 4224:11,12 4225:12 4227:20 4227:23 4231:11 4231:22 4233:1 4235:20 4236:1,7 4238:25 4239:2,5 4239:7 4240:19 4241:7,15 4242:4 4242:24 4243:2 4245:19 4246:16 4251:16 4253:6,9 4253:12 4258:9 4259:1,12,25 4260:3,13,18 4261:11 4263:23 4264:16 4266:25 4269:13 4270:7 4270:10,16 4281:13,21,25 4282:2,9 4283:9 4283:16 4284:4,5 4286:14,24 4287:1,16,23,24 4290:13 4295:9 4295:15 4299:6 4302:19 4305:25 4315:7,9,10 4333:10,17 4344:18,20,25 4345:3,4 4351:13 4351:15 4356:7 4360:16,24 4365:20,25 4366:3,5 4370:4 4376:20 4377:11 4378:13,19,21 <b>commissions</b> 4144:20 <b>Commission's</b> 4212:12 <b>committed</b> 4252:7 4275:11 4277:9 4318:25 4320:7 <b>committee</b> 4353:15 4353:25 4354:5,8 4354:11,13,18,20 4356:4,13 4358:4</p>	<p><b>committees</b> 4350:21 <b>common</b> 4210:24 4264:16 <b>communicate</b> 4191:7 <b>comparison</b> 4253:24 4254:20 4255:18,22 4256:13 4257:6 4257:22 <b>compartmentalized</b> 4167:14 <b>complaint</b> 4179:20 <b>complaints</b> 4150:10 4329:1 <b>complete</b> 4167:22 4175:22 4235:16 4235:21 4247:10 <b>completely</b> 4161:1 4242:15 4284:23 <b>complex</b> 4232:16 4377:23 <b>complexity</b> 4190:9 <b>comprehend</b> 4184:24 4185:5 4185:14 4217:7 <b>comprehension</b> 4173:2 <b>conceal</b> 4199:17 <b>concede</b> 4200:9 <b>conceded</b> 4201:21 <b>conceivable</b> 4373:21 <b>conceive</b> 4157:8 <b>concern</b> 4146:19,22 4147:11 4205:22 4309:4 4320:5 <b>concerned</b> 4172:3 4188:2 4265:14 4277:14 4280:17 4293:15 4357:17 4374:11,21 <b>concerning</b> 4240:5 4249:1 <b>concerns</b> 4173:10 4208:11 4351:19 <b>concerted</b> 4186:25 <b>conclude</b> 4211:3 <b>concluded</b> 4274:15 <b>concluding</b> 4148:6 4329:10 <b>conclusion</b> 4152:12 4153:1 4186:3 4201:9 4204:23 4208:6 4259:25 <b>concurred</b> 4318:2 4323:12,12</p>	<p><b>concurrence</b> 4153:11 <b>conduct</b> 4185:18 4206:22 4207:16 4210:13 4252:20 4262:2 <b>conducted</b> 4157:25 4214:6 4261:20 4271:13 4288:8 <b>conducting</b> 4199:15 <b>Conference</b> 4353:9 <b>confessed</b> 4161:4 4251:20 <b>confession</b> 4151:16 4248:13 4251:21 <b>configuration</b> 4302:22 <b>confined</b> 4212:3 4213:20 <b>confirm</b> 4298:17 4350:13 <b>confirmation</b> 4234:20 4240:12 4339:14 <b>confirmed</b> 4234:5 4284:13 <b>conflict</b> 4210:15 4211:13 4351:1 <b>Conflicted</b> 4286:24 <b>confuse</b> 4301:21 <b>confused</b> 4276:25 4295:16 4302:2 4376:19 4378:4 <b>confusing</b> 4340:6 4370:13 4378:5 <b>connect</b> 4346:24 <b>connection</b> 4180:3 4180:5,6,8 4192:11 4193:24 4273:17 <b>consensus</b> 4142:15 <b>consequence</b> 4238:11 <b>consider</b> 4282:18 4376:21 <b>considerable</b> 4164:23 <b>considerably</b> 4255:15,16 <b>consideration</b> 4244:1 4275:6 4350:20 4370:15 <b>considerations</b> 4353:5,7 4366:20 <b>considered</b> 4170:3 4176:12,13 4196:18 4197:5</p>
--	---	---	--	--

4284:22 4349:2 <b>consistency</b> 4214:15 <b>consistent</b> 4194:10 4197:12 4216:1 4216:17 4255:5 <b>conspiracy</b> 4273:12 <b>constable</b> 4301:4 4327:21 4329:4 4330:16,18 4341:24 <b>constables</b> 4352:15 <b>constant</b> 4355:14 <b>constitutional</b> 4275:21 <b>constrained</b> 4224:5 <b>constraint</b> 4198:16 <b>consult</b> 4179:17 4189:2 4192:9 <b>consultation</b> 4303:12 <b>consulted</b> 4157:22 4158:21,22 4179:2,24 4189:5 4240:15 4241:4 4252:14 4303:25 <b>consulting</b> 4205:14 <b>contact</b> 4180:24 4292:17 4328:18 4361:17 <b>contacted</b> 4309:13 <b>contained</b> 4233:11 <b>containing</b> 4342:14 <b>contains</b> 4295:19 <b>content</b> 4151:25 4159:25 <b>contents</b> 4249:3 4314:11 <b>context</b> 4142:10 4145:1 4198:19 4217:3,6 4229:24 4267:4 4296:15 <b>contingent</b> 4211:1 <b>continue</b> 4238:24 4333:17 4339:23 4340:8 <b>continued</b> 4140:4 <b>continuing</b> 4187:7 <b>contract</b> 4352:23 <b>contradictions</b> 4213:11 <b>contradictory</b> 4213:16 <b>contrary</b> 4143:1,2 4190:1,3 4195:11 4211:11 4246:12 <b>contributed</b> 4268:5 4277:11	<b>control</b> 4292:25 <b>convene</b> 4359:14 <b>Convention</b> 4138:13 <b>conversation</b> 4153:5 4165:3 4168:22 4169:5 4169:14,22 4170:4,17 4171:10 4178:23 4195:12 4248:20 4248:22,25 4328:14,24 4329:9,16,17 <b>conversations</b> 4248:24 4327:21 <b>Conversely</b> 4199:11 <b>convey</b> 4280:3 <b>conveyed</b> 4291:3 <b>convicted</b> 4139:23 4236:19 <b>conviction</b> 4138:3 4148:9,12 4149:2 4178:24 4182:6 4182:23 4206:17 4206:19 4207:15 4227:16 4244:13 4250:18,22 4261:14,22 4262:8 4265:12 4274:9,19 4276:7 4276:9 4277:12 4279:10 4280:12 <b>Convictions</b> 4233:7 <b>convinced</b> 4216:12 <b>cooperation</b> 4226:16 4228:6 <b>Coordinating</b> 4353:14 <b>copies</b> 4149:7 4202:17 4203:7 4282:20 4297:6 4309:2 <b>copy</b> 4144:11 4222:2 4223:14 4231:11 4232:20 4233:24 <b>Corey</b> 4218:20 4221:1,3,5,9 4248:9 <b>Corey's</b> 4209:17 4247:19 <b>corner</b> 4321:1 4323:22 4331:13 4332:18 4343:10 <b>Corporal</b> 4288:23 4327:16 4328:2	<b>corporate</b> 4330:4 <b>correct</b> 4142:17,21 4147:7 4148:15 4175:5 4218:1 4219:23 4266:21 4285:12 4286:1 4291:15,16 4295:11 4299:12 4307:13 4314:24 4353:22 4354:23 4379:7 <b>corrected</b> 4360:11 <b>correctly</b> 4249:24 <b>corroboration</b> 4148:10,13 4251:22 <b>cost</b> 4196:17 <b>costs</b> 4173:18 4329:3 <b>counsel</b> 4139:2,3 4141:11 4155:22 4155:23,24 4157:19,23 4158:10,12,14,25 4159:2 4168:21 4169:3 4170:8 4174:18 4182:10 4182:11,11,14,15 4190:15,25 4191:22 4192:16 4193:5 4194:13 4194:16,23 4195:15 4197:20 4200:15 4205:12 4216:6,10,25 4217:6 4220:15 4220:17,19 4221:17 4224:19 4224:21 4225:2,8 4231:15,19 4232:15 4233:25 4234:15 4236:1 4261:2,10 4262:1 4263:18 4264:2 4264:14,21,22 4265:24 4267:13 4270:5 4271:17 4276:19 4282:16 4285:4,6,7 4287:10,13 4294:10 4296:10 4300:7 4301:1,6 4301:15 4302:6 4302:14,23 4313:6,8 4316:5 4317:11,16 4322:17 4328:16	4329:21 4334:4 4347:18 4352:5 <b>Counsel's</b> 4194:14 4266:7 <b>countenance</b> 4351:9 <b>couple</b> 4260:19 4299:1 4320:17 4360:18 4364:3 <b>course</b> 4147:5 4150:17 4151:18 4175:12 4179:3 4198:1 4200:22 4202:5 4204:4 4207:13 4225:1 4238:11 4263:14 4263:16 4273:6 4283:12 4285:18 4315:19 4338:14 4372:11 <b>court</b> 4165:5,19 4171:17 4195:19 4202:20 4209:20 4217:1 4220:3,7 4230:8,13 4231:4 4237:21 4244:9 4245:8 4250:15 4250:19,25 4252:16,19 4259:6 4271:8 4316:23 4326:19 4326:21 4356:1 4373:4,10 4377:5 4379:1,15,19 <b>courtesy</b> 4191:24 <b>courtroom</b> 4299:3 <b>courts</b> 4230:7 <b>Court's</b> 4244:17 <b>cousin</b> 4263:3 <b>covered</b> 4162:4 <b>cover-up</b> 4187:8 <b>cows</b> 4172:5,6 <b>co-accused</b> 4217:25 4221:18 4229:6 <b>co-chair</b> 4353:21 <b>create</b> 4171:11 4189:8 <b>created</b> 4170:18 4172:4,15 4188:8 <b>creating</b> 4178:23 4184:17 <b>creation</b> 4352:15 <b>credibility</b> 4207:24 4212:6 4213:4,5 4275:8,23 4317:12 4318:24 4320:5 4322:12 4323:14,14	<b>crime</b> 4279:5 4348:2,4 4353:5 <b>criminal</b> 4182:22 4191:2 4233:7 4250:22 4252:5 4350:25 4352:13 4352:20 4355:11 4369:4,12,19,25 <b>critical</b> 4251:13 4307:24 4308:6 <b>criticize</b> 4341:24 <b>criticized</b> 4378:1 <b>criticizing</b> 4377:22 <b>cross-exam</b> 4254:7 <b>cross-examination</b> 4155:20 4156:2,3 4156:8 4157:7,18 4158:5 4161:15 4201:24 4202:2,9 4202:16 4210:11 4213:10 4221:17 4224:17 4225:1 4225:24 4227:8 4243:13 4302:25 <b>cross-examine</b> 4156:12,13 4160:4,4 4208:23 4209:8,25 <b>cross-examined</b> 4213:1 4372:16 <b>cross-examining</b> 4159:3 4208:17 4249:10 4301:24 <b>Crown</b> 4150:4 4184:4 4187:21 4215:10 4217:16 4217:17 4226:16 4228:6 4230:21 4230:23 4234:21 4237:20 4238:1,9 4240:13,15 4242:9,10,15 4244:21,22 4246:5,19,20,23 4248:17 4250:11 4250:25 4251:13 4261:21 4262:1 4264:17 4275:1 4275:10 4278:21 4285:6 4291:22 4291:22,24,24 4294:3,5 4298:1 4310:7,8 4313:9 4317:10,15 4320:2 4322:17 4324:8 4331:18 4331:25 4359:7
---	--	---	---	---



<p>4359:19  <b>Crowns</b> 4184:13,18  4198:12  <b>Crown's</b> 4275:14  <b>crucial</b> 4170:4  <b>cruiser</b> 4300:13  <b>current</b> 4152:24  4163:16 4164:1  4164:10,16,24  4187:6 4203:3,21  4204:2,25  4287:19 4317:7  4318:17 4319:1  4319:17 4320:6  4322:9 4324:10  4325:7 4326:23  4327:22,25  4328:8 4329:6,8  4329:10,12  4330:2,12,13  4331:6,8,19  4333:2,3 4335:14  4339:10 4342:6  4344:3 4348:8,10  4348:12 4363:11  4363:12 4367:3  4367:23 4368:2  4368:19 4371:1  4372:6 4373:13  4375:1 4376:15  <b>currently</b> 4296:11  <b>cut</b> 4307:13  4346:10</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p><b>D</b> 4139:14,16  4231:10 4327:17  <b>damage</b> 4281:3  <b>damn</b> 4357:7  <b>Dangerfield</b>  4139:13 4140:4  4141:3 4142:6  4144:17 4145:13  4147:19 4148:8  4148:11 4150:5  4150:18 4154:3  4155:11,14,16  4156:9,12 4159:6  4159:11 4160:7  4162:4 4163:5  4165:15 4166:18  4168:20 4171:9  4172:24 4174:1  4176:19 4177:12  4181:8,23 4184:6  4185:8 4190:24  4190:25 4191:6,9</p>	<p>4192:18,25  4195:5,10,16  4197:22 4199:10  4199:12 4208:18  4208:23 4209:25  4210:18,22  4211:14 4212:7  4212:23 4214:4  4214:25 4220:5  4220:23 4222:24  4223:2,3,10  4224:15 4225:16  4227:1 4231:3,25  4232:13 4241:3  4242:10,13,16  4243:23 4246:15  4248:17 4249:4,7  4249:13 4253:20  4258:21 4260:2  4261:16 4269:20  4269:22 4270:18  4270:20 4279:1,5  4281:11 4284:8  4285:2,20 4286:3  4286:15,19,21  4287:4 4288:4  4290:19 4295:4  4295:12,13  4296:14 4297:24  4301:9 4307:23  4313:23 4314:17  4315:9,15,19  4316:8 4320:15  4324:12 4327:10  4329:15 4333:19  4339:20 4344:19  4344:21 4345:6  4349:23 4351:16  4352:1 4360:19  4361:6 4370:9  4372:24 4377:7  4377:21 4378:3  <b>Dangerfield's</b>  4156:18 4208:9  4211:9 4216:25  4259:4,16  4324:13 4332:20  <b>dark</b> 4200:18  <b>date</b> 4143:4 4179:8  4187:14 4237:11  4240:23 4285:11  4285:12 4300:12  4300:17,19,21  <b>dated</b> 4144:4  4186:15 4222:16  4235:23 4236:2  4236:11,15,17</p>	<p>4241:8 4250:8  4294:18 4295:1,3  4306:23 4307:16  4341:10  <b>dates</b> 4238:3  <b>David</b> 4139:8  <b>Dawe</b> 4139:3  4253:7  <b>day</b> 4144:22  4179:14 4185:16  4195:7 4199:18  4250:16,24  4273:25 4274:1  4283:23 4300:12  4305:2 4310:5  4318:22 4330:15  4344:13 4361:2  4370:12 4376:21  4377:21  <b>days</b> 4208:17  4209:6 4219:20  4219:20 4272:6  4329:7 4357:24  4360:18 4377:16  4378:11  <b>day-to-day</b> 4193:24  4293:5  <b>dead</b> 4279:20  <b>deal</b> 4163:9 4168:11  4168:15 4171:3  4181:19 4196:7  4196:20 4197:10  4199:7,17 4207:3  4208:3 4209:24  4210:25 4221:19  4224:24 4241:21  4241:22,22  4243:24 4245:1  4247:6 4259:2  4260:10 4261:13  4266:2 4273:9  4276:13 4290:6  4292:5,14 4308:1  4320:18 4323:20  4334:11 4343:20  4343:21 4361:14  <b>dealing</b> 4150:14  4151:17,21  4190:5 4191:16  4240:3 4266:11  4289:2,10  4292:12 4334:12  4354:5  <b>dealings</b> 4170:19  4184:14 4317:5  4318:14 4350:17  <b>deals</b> 4163:13,18,22</p>	<p>4165:25 4166:4,8  4168:7 4171:1,2  4173:19,22  4174:3 4189:18  4195:20 4197:24  4198:2 4201:2  4204:10 4231:7  4232:17 4240:2  4245:11,12,16,17  4245:20,21  4246:3 4318:11  4343:23 4370:17  <b>dealt</b> 4167:20  4204:12 4205:17  4210:9 4226:13  4292:17 4308:25  4326:17  <b>Dean</b> 4267:21  <b>Death</b> 4354:17,20  <b>deceased</b> 4217:23  4257:10,12,13  <b>deceased's</b> 4370:2  <b>December</b> 4189:15  4233:15 4241:9  4333:22  <b>decide</b> 4145:15  4230:7 4335:9  <b>decided</b> 4339:4  4363:11  <b>decision</b> 4186:24  4205:14 4244:10  4260:9 4277:12  4280:16 4282:14  <b>decisions</b> 4209:20  4313:22  <b>dedicated</b> 4265:17  4299:11  <b>deeds</b> 4212:18  <b>default</b> 4282:13  <b>defence</b> 4139:22  4184:10 4190:15  4195:18 4199:4  4249:8 4275:20  4276:19 4300:7  4301:1,15 4302:6  4302:11 4313:8  <b>Defense</b> 4286:23  <b>definitely</b> 4237:4  <b>definition</b> 4256:10  <b>degree</b> 4191:10  4199:5 4265:7  4267:7,20  <b>delays</b> 4347:16  <b>deliberately</b> 4184:8  4192:20 4249:12  4249:13  <b>demanding</b> 4174:24</p>	<p>4175:8,11,11,13  <b>demands</b> 4174:5,8  4174:10,23  4175:21 4291:5  <b>demonstrate</b>  4228:23  <b>demonstrates</b>  4183:23 4266:15  <b>deniability</b> 4184:17  <b>denial</b> 4210:23  <b>denied</b> 4204:9  4210:22 4221:18  4275:6 4276:3  <b>deny</b> 4142:24  <b>department</b> 4145:9  4145:10 4150:12  4179:11 4180:14  4180:21 4182:23  4192:6 4229:18  4233:8 4235:9  4263:4 4264:19  4284:11 4303:24  4305:5,14 4307:9  4307:19 4335:4,5  4335:16 4336:16  4338:22 4349:25  4350:4,10 4351:6  4352:18,19  4353:3,24 4354:8  4355:3,4,9,14,19  4355:22 4357:4  4358:11 4359:17  4361:9  <b>Departments</b>  4268:14  <b>depend</b> 4290:23  4356:25 4357:2  <b>dependent</b> 4307:25  <b>depending</b> 4211:15  <b>depends</b> 4143:11  <b>deportation</b>  4248:15  <b>deported</b> 4249:24  <b>deprived</b> 4185:19  <b>Deputy</b> 4189:12,14  4191:4 4192:4  4193:25 4246:22  4356:5,9  <b>describe</b> 4172:2  <b>described</b> 4169:2,4  4178:7  <b>DESCRIPTION</b>  4140:3  <b>design</b> 4184:17  <b>desire</b> 4169:19  <b>desk</b> 4281:22  <b>Despite</b> 4186:24</p>
--	--	--	---	---

<p><b>destroyed</b> 4279:21  <b>detail</b> 4195:25              4198:13  <b>details</b> 4170:12,13              4195:6,22              4196:13 4316:10              4348:10 4366:6  <b>Detective</b> 4177:23              4204:15  <b>detectives</b> 4203:23              4326:18 4361:25  <b>determination</b>              4305:23  <b>determine</b> 4260:21              4261:7  <b>determined</b>              4303:10 4304:22  <b>develop</b> 4187:17  <b>development</b>              4191:17  <b>died</b> 4219:21  <b>difference</b> 4242:3  <b>different</b> 4155:14              4159:19 4200:4,8              4200:10 4264:15              4349:8 4355:6              4356:1,18  <b>difficult</b> 4150:13              4151:20 4187:11              4212:15 4263:11              4334:18 4355:1              4377:10  <b>difficulty</b> 4190:5              4309:15 4347:12  <b>dilemma</b> 4327:23              4327:24 4340:5  <b>direct</b> 4156:11              4173:14 4190:23              4206:21 4223:10              4223:14 4232:3  <b>directed</b> 4158:13              4250:18 4276:12              4276:14  <b>directing</b> 4159:14  <b>direction</b> 4343:2  <b>directive</b> 4196:4              4263:16 4265:1  <b>directly</b> 4170:24              4191:3 4268:22              4352:5,17  <b>director</b> 4190:22              4197:4 4246:21  <b>directors</b> 4359:8  <b>directory</b> 4191:5  <b>disagree</b> 4296:7  <b>disagreeing</b> 4221:8  <b>disappearance</b></p>	<p>4370:2  <b>disclose</b> 4184:9              4189:23 4192:20              4195:22 4249:20              4275:1,10,19,21  <b>discloseable</b> 4175:5              4196:2 4198:17  <b>disclosed</b> 4142:20              4154:23 4162:10              4162:13,15,18,19              4162:20 4183:8              4197:10 4199:3              4220:14,15              4232:14 4271:17  <b>disclosing</b> 4198:14  <b>disclosure</b> 4141:10              4142:16 4143:24              4157:1 4159:15              4159:18 4160:17              4160:21 4161:8              4163:1 4167:19              4187:23 4195:17              4196:4 4220:17              4231:18 4248:23              4264:7 4265:7              4275:7 4276:19              4276:21 4285:17              4294:18 4303:8              4306:22 4322:6              4322:15,25              4323:8,16 4359:1              4359:17  <b>disclosures</b> 4162:16              4167:22 4231:14              4247:21 4322:8  <b>discover</b> 4175:16,18  <b>discovered</b> 4258:3  <b>discovery</b> 4171:24  <b>discuss</b> 4150:5              4165:9 4289:13              4345:24 4346:1              4346:23 4371:22  <b>discussed</b> 4145:8              4158:23,25              4164:20,21              4166:20,21              4186:3 4234:1              4237:13 4309:13              4310:8 4339:9,12              4358:13 4364:8  <b>discussing</b> 4164:16              4244:19 4340:10              4340:12  <b>discussion</b> 4150:17              4289:17 4330:5,8              4350:3 4374:6  <b>discussions</b> 4156:20</p>	<p>4162:8,10 4164:4              4165:8,12              4168:11,15              4234:7 4237:2              4310:25 4340:25              4359:3  <b>disease</b> 4295:14  <b>disgracing</b> 4248:16  <b>dismissed</b> 4244:1  <b>dispensation</b> 4335:3  <b>disposition</b> 4352:15  <b>dispositions</b>              4366:19  <b>dispute</b> 4314:8,15              4314:22 4315:4  <b>dissatisfied</b> 4173:1  <b>dissimilar</b> 4278:16  <b>distinguish</b> 4255:18  <b>distinguishes</b>              4305:18  <b>distorted</b> 4267:24  <b>distortion</b> 4267:25              4268:5  <b>district</b> 4300:13  <b>divided</b> 4355:12  <b>dividing</b> 4303:13  <b>division</b> 4319:18,22              4326:12,15              4327:17  <b>DNA</b> 4180:5 4256:1              4256:3,5 4257:21  <b>document</b> 4141:7              4143:18,23              4148:19 4149:8              4186:4 4188:16              4194:11 4220:18              4222:12,19              4231:9,12,24,25              4232:4,5,6,13              4233:12 4235:22              4236:2,17,17              4240:23 4241:15              4250:6,7 4251:3              4252:15 4274:6              4289:20 4296:9              4296:16 4338:14              4341:7  <b>documentation</b>              4183:8 4271:9  <b>documented</b> 4190:3              4199:5  <b>documents</b> 4141:3              4147:24 4149:7              4181:7 4184:1              4194:15 4217:5              4232:14 4265:24              4269:2 4272:9,20</p>	<p>4286:9 4287:21              4297:20,25              4298:9,15,19              4299:23 4308:1              4311:16 4333:21  <b>doing</b> 4166:24              4171:23 4178:21              4192:6 4218:5              4239:25 4244:20              4262:19 4278:11              4292:20 4329:13              4339:10  <b>doomed</b> 4334:13  <b>door</b> 4143:7 4177:3              4333:6  <b>doorstep</b> 4259:16  <b>Doreen</b> 4308:10  <b>dot</b> 4275:13  <b>double</b> 4336:18  <b>doubt</b> 4152:13              4184:3 4217:13              4251:10 4252:6  <b>draft</b> 4142:19  <b>drafted</b> 4142:19              4252:15  <b>drafting</b> 4266:11  <b>draw</b> 4301:22  <b>drew</b> 4239:23  <b>drifted</b> 4278:12  <b>drink</b> 4180:23,23              4279:22  <b>Driskell</b> 4138:3              4139:11 4141:11              4147:1 4153:9,15              4178:25 4179:5              4183:1 4184:23              4185:4,13 4186:7              4187:5 4190:6,19              4196:12 4206:20              4207:17 4231:16              4231:19 4251:1              4251:14,20              4252:4 4258:19              4264:6 4267:7,19              4267:25 4268:19              4268:22 4270:25              4271:15,18              4275:4 4276:3              4277:7 4278:6              4280:8 4285:7              4295:8 4304:4              4306:8 4312:13              4319:2 4320:6              4337:23 4342:1,5              4357:19 4362:18              4362:25  <b>Driskell's</b> 4180:2</p>	<p>4182:20 4184:10              4188:6 4192:16              4198:19 4250:17              4253:22 4259:22              4261:18 4265:11              4274:9,17 4275:6              4275:9,15,18              4277:11 4280:1  <b>drop</b> 4245:8  <b>drug</b> 4217:24              4221:19 4232:21              4234:16 4239:19              4239:22,24,25              4247:14  <b>drugs</b> 4219:17  <b>duly</b> 4379:4  <b>Dunkley</b> 4218:13  <b>duty</b> 4157:8              4275:21 4373:4  <b>D.K</b> 4336:11,12,12              4336:19 4338:1</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>E</b> 4158:11  <b>earlier</b> 4187:13,14              4190:8 4212:20              4234:7 4252:1              4258:9 4269:6              4317:21 4322:11              4339:9,12,13  <b>early</b> 4168:23              4178:14 4203:25              4237:13 4285:11              4289:15,17              4318:14 4363:8              4368:18  <b>easy</b> 4215:3              4377:21  <b>Ed</b> 4299:21  <b>Edward</b> 4157:24  <b>effect</b> 4148:8,11              4149:1 4170:18              4171:9 4193:17              4199:20 4202:7              4215:20 4217:24              4268:15 4276:13              4339:8 4346:6              4373:12  <b>effectively</b> 4210:9  <b>effort</b> 4186:25              4355:5  <b>efforts</b> 4327:14  <b>eight</b> 4236:7  <b>either</b> 4144:13              4161:24 4170:5              4198:4 4213:16              4255:6 4275:16</p>
---	--	---	---	---

<p>4300:24 4307:9                  4308:4 4313:8,9                  4324:19 4330:20                  4332:3 4353:20                  4361:1 4378:6  <b>elastic</b> 4300:25  <b>elements</b> 4273:24  <b>eliminate</b> 4216:14  <b>else's</b> 4207:14                  4218:12 4257:17  <b>embark</b> 4212:10  <b>embarkation</b>                  4207:1  <b>embarked</b> 4155:20                  4156:3,8  <b>embarrassed</b>                  4198:11 4316:21  <b>embarrassing</b>                  4214:18  <b>emphasized</b>                  4218:16  <b>emphatically</b>                  4163:10  <b>employed</b> 4263:13                  4263:13  <b>enclosing</b> 4142:20  <b>encounter</b> 4174:19  <b>encouraged</b>                  4185:23 4193:7  <b>ended</b> 4142:25  <b>ends</b> 4310:1  <b>Enforcement</b>                  4239:24 4352:14                  4353:24  <b>engaged</b> 4264:24  <b>enhancing</b> 4215:21  <b>enlightened</b>                  4253:10  <b>ensure</b> 4330:3  <b>entail</b> 4190:10  <b>enter</b> 4215:15                  4246:3 4288:7  <b>entered</b> 4215:11                  4268:9,16  <b>entire</b> 4280:23                  4355:9 4357:3                  4368:16  <b>entirely</b> 4194:10                  4328:5  <b>entirety</b> 4286:6  <b>entitled</b> 4247:21  <b>entries</b> 4240:8  <b>entry</b> 4233:20                  4240:9 4327:15  <b>equate</b> 4288:6  <b>equity</b> 4183:18  <b>equivalent</b> 4196:20</p>	<p><b>errors</b> 4277:9  <b>escape</b> 4264:25  <b>essence</b> 4149:11                  4217:22 4255:9                  4333:1 4372:11                  4372:23  <b>essential</b> 4221:7                  4268:4 4273:13  <b>essentially</b> 4172:25                  4173:13 4182:7                  4232:16  <b>establish</b> 4184:3                  4218:15  <b>established</b> 4257:21  <b>establishes</b> 4183:13  <b>Estate</b> 4139:14  <b>et</b> 4187:1,3 4189:19                  4271:20  <b>ethics</b> 4350:20,25  <b>euphemistically</b>                  4355:15  <b>event</b> 4144:1                  4145:12,21                  4175:17 4249:25                  4276:22 4277:23                  4288:2 4301:18                  4301:20 4360:5                  4364:16 4376:23  <b>events</b> 4179:14                  4239:13 4249:15                  4265:6 4297:19                  4307:25 4309:22  <b>everybody</b> 4357:4  <b>everyday</b> 4289:23  <b>everyone's</b> 4232:25  <b>evidence</b> 4141:5                  4157:9 4158:4,15                  4161:15 4174:4                  4185:20 4190:1,3                  4204:17 4205:1                  4206:1 4209:8                  4210:1,2,15                  4211:11 4212:2,3                  4212:6,8,21                  4213:23 4214:1                  4214:11,14                  4215:16,21,25                  4216:4,12                  4217:22 4218:3,6                  4218:19 4221:7                  4233:17 4238:1,9                  4241:16,21                  4242:20 4243:19                  4244:1 4245:23                  4251:24,25                  4253:19 4254:3                  4255:9,11,18</p>	<p>4256:13,17,23                  4257:5,7,21,22                  4258:14,18                  4259:14 4260:7                  4263:10 4268:3                  4273:13,13                  4277:13 4278:3                  4280:13 4287:12                  4288:4,22 4289:4                  4289:8,19                  4293:16 4294:4                  4297:6 4309:5,6,7                  4312:20 4313:4                  4314:18,21                  4328:15 4337:9                  4338:13 4347:14                  4348:6,11,17,23                  4349:3,9,13,13,20                  4363:8  <b>evolution</b> 4187:13  <b>Ewatski</b> 4144:8,12                  4144:21 4146:21                  4148:14 4149:10                  4149:23 4150:19                  4153:6 4156:20                  4159:11 4160:11                  4164:19 4165:2                  4166:7,10 4167:8                  4168:6 4274:7                  4280:6 4314:9                  4320:20,22                  4321:5,20,24                  4323:17 4347:25                  4347:25 4348:9                  4348:16 4349:4                  4374:10,20                  4375:5,12,25                  4376:13,18  <b>Ewatski's</b> 4145:4                  4167:13 4287:21                  4321:21  <b>exactly</b> 4144:6,15                  4147:15 4157:2                  4180:3 4255:8                  4301:8 4305:10                  4309:9 4333:1                  4338:20  <b>exaggerating</b>                  4255:17  <b>examination</b> 4141:3                  4156:7 4181:8                  4202:18 4208:9                  4211:5 4244:15                  4245:24 4255:20                  4256:2 4260:23                  4320:16</p>	<p><b>examinations</b>                  4158:12 4260:22  <b>examination-in-c...</b>                  4226:1  <b>examine</b> 4158:10,12                  4258:23 4297:10  <b>examined</b> 4261:5,8  <b>examiner</b> 4255:21  <b>Examiners</b> 4379:5  <b>examining</b> 4158:24  <b>example</b> 4192:17                  4214:24 4217:5                  4264:5 4273:3                  4282:25 4297:14                  4299:21 4304:6                  4305:6 4308:8                  4357:21  <b>exceptional</b> 4198:8  <b>exceptions</b> 4304:16  <b>excerpt</b> 4320:21                  4321:23  <b>exchange</b> 4253:13                  4268:12 4370:18  <b>exclusively</b> 4191:2                  4351:20  <b>excuse</b> 4368:9                  4375:5  <b>Executive</b> 4354:7                  4354:11,13                  4356:3,12  <b>exercise</b> 4274:23  <b>exhausted</b> 4182:7                  4377:4  <b>exhibit</b> 4144:14,14                  4149:6,15                  4160:14,14                  4181:1,3,6,7,18                  4209:21 4213:24                  4214:1 4220:13                  4220:18 4221:25                  4222:5,9,17,19                  4225:21 4231:10                  4231:17 4282:7                  4283:7,9,10                  4287:15,18,20                  4294:17 4296:5                  4312:8  <b>exhibits</b> 4141:1                  4144:12 4283:2                  4315:14  <b>exist</b> 4174:11                  4254:25  <b>existed</b> 4189:4                  4204:10  <b>exists</b> 4235:2  <b>expect</b> 4240:14                  4255:23 4290:9</p>	<p>4290:11 4292:8                  4299:14 4311:14                  4317:9 4319:11                  4323:1 4355:23                  4357:5 4360:19                  4362:11 4377:19  <b>expectation</b> 4229:9                  4291:22  <b>expectations</b> 4292:4  <b>expected</b> 4290:3                  4291:16 4334:22                  4362:6  <b>expecting</b> 4292:1  <b>expedited</b> 4285:12  <b>expenses</b> 4289:23                  4310:21  <b>experience</b> 4157:20                  4212:5 4255:2                  4302:8 4310:6,12                  4311:6  <b>experienced</b>                  4278:21  <b>expert</b> 4259:14  <b>experts</b> 4259:5  <b>explain</b> 4144:5                  4165:1 4185:17                  4231:24 4269:11                  4293:24 4358:3  <b>explained</b> 4184:15                  4191:23 4273:14                  4319:10 4327:23  <b>explaining</b> 4250:25  <b>explains</b> 4206:13  <b>explanation</b>                  4171:16 4191:25  <b>explicit</b> 4210:21  <b>exposed</b> 4152:6                  4190:14 4268:24  <b>expressed</b> 4205:22  <b>extending</b> 4286:5  <b>extent</b> 4213:11,17  <b>extra</b> 4222:2  <b>extract</b> 4141:5                  4214:1 4247:19                  4254:2  <b>extracts</b> 4213:22                  4214:22 4224:16  <b>extremely</b> 4161:16                  4175:8 4257:7                  4352:6  <b>eyebrows</b> 4200:24  <b>E.W</b> 4139:12</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> 4143:23  <b>face-to-face</b> 4292:5                  4292:14 4293:5,8</p>
---	--	---	---	--

4361:14 <b>facilitate</b> 4302:24 4327:14 <b>facsimile</b> 4307:15 <b>fact</b> 4146:11 4148:22 4150:12 4150:24 4157:6 4163:14 4196:2 4207:21 4209:8 4210:1,2,10,12 4211:15 4212:1 4212:21 4219:18 4235:16 4246:11 4247:25 4249:24 4253:6 4262:6,14 4268:21 4272:12 4303:17 4319:7 4327:20 4350:13 4352:10 4359:14 4365:21 4368:15 4368:17 4372:13 4373:24 4374:9 4375:4 <b>factors</b> 4274:22 <b>facts</b> 4186:23 4193:1,20 4220:3 4242:19 4268:2,4 <b>factual</b> 4193:10 <b>fade</b> 4339:22 <b>faded</b> 4279:7 <b>fail</b> 4252:4 <b>failed</b> 4262:17,25 4275:1,10 <b>failure</b> 4275:19 4329:2 <b>fainter</b> 4347:4 <b>fair</b> 4143:18 4157:4 4175:22 4196:9 4198:18 4216:18 4219:9 4244:8 4253:17 4258:10 4269:15 4270:17 4276:4 4288:9 4289:14 4290:7 4292:13 4293:11 4307:23 4311:15 4339:20 4349:4 4349:11 4355:7 4361:15 4365:4 4376:2 <b>fairly</b> 4249:8 4267:8 <b>fairness</b> 4276:5 4305:25 4306:10 <b>fall</b> 4201:23 <b>falls</b> 4174:2 <b>false</b> 4204:19	4373:19 <b>falsely</b> 4373:16 <b>familiar</b> 4182:4 <b>families</b> 4279:20 <b>family</b> 4248:16 4356:21 <b>fan</b> 4350:6 <b>far</b> 4155:18 4167:22 4174:16 4180:21 4188:1,3 4189:24 4207:18,20 4208:10,12 4240:2,7 4245:22 4250:3 4251:6,9 4260:11 4280:17 4367:6 4374:10 4374:21 4375:2 4375:25 <b>fashion</b> 4366:24 <b>fast</b> 4251:16 4264:24 4365:23 <b>fathom</b> 4242:21 <b>fault</b> 4186:21 4187:4 4193:4 <b>favour</b> 4216:9 <b>favourable</b> 4366:20 4370:15 <b>faxes</b> 4305:14 <b>feats</b> 4308:15 <b>February</b> 4303:9 4345:18 4364:16 4365:13 <b>Federal</b> 4182:5 4232:16,19 4234:8 4235:9,25 4236:25 4238:1,9 4239:16 4240:3,9 4240:15 4242:15 4244:21,22 4246:4 4250:21 <b>feel</b> 4156:19 4172:23 4229:12 <b>feeling</b> 4161:6 4229:16 <b>feelings</b> 4261:9 4262:13 <b>feet</b> 4155:17 4159:10 <b>felt</b> 4158:1 4229:14 4229:15 4260:22 4302:3 <b>fertile</b> 4201:4 <b>fight</b> 4209:3 <b>figure</b> 4183:15 4229:22 4353:18 <b>file</b> 4152:7 4153:13 4153:25 4154:5	4154:16,21 4161:5 4181:1 4209:16,18 4231:10 4232:21 4233:11,21 4236:25 4240:9 4240:10 4248:17 4264:14 4272:18 4277:16,20 4282:17 4286:6 4287:20 4293:10 4294:3,6 4296:11 4296:19,24 4297:3,10,15,16 4297:17 4298:3,6 4298:9,10,20 4304:22,23 4305:9,12 4306:12,18 4307:9 4329:11 4331:16 4348:10 4348:12 4362:2 4368:17 <b>filed</b> 4209:21 4282:24 4283:2 4289:20 <b>files</b> 4304:3,13 4306:7,16,17 4364:24 <b>final</b> 4196:7 4314:16 <b>finalized</b> 4197:6,9 4199:8 <b>finally</b> 4152:24 4178:14 4261:13 4287:20 4365:16 <b>financial</b> 4198:7,16 4275:5 <b>find</b> 4144:13 4175:24 4186:21 4193:4 4220:11 4242:12 4246:25 4274:10 4293:3 4301:4 4305:12 <b>finding</b> 4174:9 4192:2 4295:10 <b>findings</b> 4207:25 <b>fine</b> 4154:4 4232:3 4243:15 4263:20 4263:23 4297:20 4298:8,25 4308:18 <b>finish</b> 4159:9 4237:15 4244:9 4274:4 4377:3 <b>finished</b> 4209:1 4226:1 4272:22	4377:1,7 <b>Finlayson</b> 4182:2 4186:5,15 4188:17 4190:18 4192:11,13 4193:9,15 4194:11,12,22 4195:1,14 4196:24,25 4197:18,19,21 4198:6,23 4199:11,19 4200:13 4283:1,4 <b>Finlayson's</b> 4184:20 4194:16 4195:24 4196:7 4197:2 4198:9 4199:7 <b>fire</b> 4153:19 4161:5 4161:11 4313:20 4318:18 4324:10 4324:15,20 4332:22 4367:2,3 4367:4 4368:1,2,3 4368:19 <b>firearms</b> 4352:16 4353:9 <b>first</b> 4145:3 4147:24 4150:16 4163:24 4175:14 4179:2 4186:8 4187:11 4188:4 4207:16 4207:23 4210:14 4213:22 4214:4 4235:3 4236:13 4236:14 4241:8 4245:6 4251:14 4252:8 4261:15 4262:24 4267:7 4267:12,20 4270:5,22 4272:1 4274:13 4278:23 4295:1 4299:15 4303:5,8 4308:8 4309:12 4312:25 4318:22 4320:17 4323:21 4327:4 4329:19 4332:16 4345:10 4369:18 <b>fit</b> 4179:17 <b>five</b> 4272:6 4282:21 4283:4 4344:22 4361:1 4377:19 <b>fixed</b> 4189:20 <b>flabbergasted</b> 4344:8 <b>flat</b> 4165:6 4174:2 4201:25	<b>flatly</b> 4210:22 <b>flip</b> 4144:2 <b>flippantly</b> 4359:2 <b>flow</b> 4358:10 <b>flurry</b> 4175:20 <b>focus</b> 4180:7 4198:1 4212:16 4316:1 4342:8,16 <b>focused</b> 4218:24 <b>follow</b> 4182:24 4203:14 4225:4 4232:23 4257:23 4340:2 4372:9 <b>followed</b> 4207:22 4213:2 <b>following</b> 4186:12 4245:23 4251:19 4277:6 <b>footnote</b> 4184:11 4188:15 <b>force</b> 4324:11 <b>foregoing</b> 4379:6 <b>foregone</b> 4268:22 <b>forget</b> 4342:13 <b>forgot</b> 4227:3 <b>forgotten</b> 4272:8 <b>formal</b> 4169:7,7 <b>former</b> 4250:11 <b>forms</b> 4154:12 <b>forth</b> 4143:9 <b>forthright</b> 4362:7 <b>forward</b> 4144:2 4248:12 4313:7 <b>forwarded</b> 4151:2 4250:24 4298:1 4305:17 <b>found</b> 4149:7 4219:24 4255:24 4257:10 4295:7 4323:1 <b>foundation</b> 4193:10 <b>four</b> 4230:23 4257:15 4258:5 4320:21 4352:4 <b>fourth</b> 4274:13 4309:11 4318:10 4324:1 4338:15 <b>frame</b> 4144:6 4292:11 4359:23 4360:2 <b>Frank</b> 4216:23 4221:2,2 <b>fraud</b> 4155:10 <b>Free</b> 4279:14 <b>fresh</b> 4313:18 <b>friend</b> 4202:15 4235:20 4306:1
---	---	---	---	--

<p><b>friends</b> 4173:21 4180:18 4358:20 <b>friend's</b> 4242:22 <b>frolics</b> 4208:21 <b>front</b> 4182:21 4235:18 4285:10 4287:14 4291:13 4345:13 <b>fro-ing</b> 4339:17 <b>fulfill</b> 4283:18 <b>full</b> 4149:16 4157:1 4160:17,21 4171:16 4275:7 4276:4,19 4305:7 <b>fully</b> 4184:23 4185:4,13 4190:14 4253:7 4321:9,13 4322:24 <b>function</b> 4167:23 4357:1 <b>functions</b> 4358:5 <b>funding</b> 4314:1 <b>funnel</b> 4162:15 <b>further</b> 4141:10 4183:22 4189:22 4231:14,17 4243:3 4249:3 4252:11,21 4260:21 4266:9 4278:4 4280:5 4285:19,21 4339:14 4361:23 4371:16 <b>furthering</b> 4242:18 <b>Furthermore</b> 4187:22 4370:14 <b>future</b> 4185:16</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>Garber</b> 4141:12 4282:22 4283:10 <b>Gate</b> 4355:16 <b>Gates</b> 4139:16 4140:7 4235:14 4284:5,6,7,19,22 4284:25 4285:1 4286:13,18 <b>general</b> 4161:6 4189:14 4190:13 4190:25 4191:22 4212:20 4258:23 4273:17 4345:7 4352:4 4356:5,9 4356:15 4361:13 <b>generally</b> 4187:15 4197:4 4252:1</p>	<p>4293:4 <b>generated</b> 4308:21 <b>genuine</b> 4172:4 <b>George</b> 4139:13 4140:4 4150:4 4190:24 4344:7 4345:24 4346:1 4346:23 4365:24 <b>getting</b> 4151:5 4176:7 4201:19 4212:18 4263:9 4266:24 4270:2 4291:4 4340:5 <b>GGB/VG</b> 4295:8 <b>Giasson</b> 4139:4 4141:8 4222:14 4222:21 <b>give</b> 4158:17 4217:6 4228:19,21 4229:4 4236:16 4236:18 4238:3 4276:19 4277:12 4301:20 4354:24 4362:11,14 4373:22 4374:13 <b>given</b> 4141:5 4151:15 4152:1 4157:1 4160:17 4160:21 4171:16 4172:21 4187:13 4190:4 4195:25 4211:11 4214:1 4218:13 4231:11 4233:9,17 4237:5 4255:10,11 4256:13 4262:23 4272:6,14 4280:13 4289:21 4305:1 4313:19 4322:5,25 4323:16 4324:18 4328:2 4329:22 4330:1 4338:23 4340:24 4342:5 4346:10,14,21 4347:11 4364:13 4366:20 4370:15 4373:6 4374:3 <b>gives</b> 4155:14 4245:23 <b>giving</b> 4185:20 4216:5,15 4228:15 4230:9 4241:21 4256:5 <b>glad</b> 4151:3 <b>glasses</b> 4328:22 <b>glosses</b> 4268:1</p>	<p><b>go</b> 4151:23 4162:5 4171:3 4176:16 4181:22 4188:12 4191:15,20 4194:25 4196:18 4196:21 4208:21 4213:4 4215:6 4225:17,22 4226:22 4227:15 4227:17 4231:21 4235:17,17 4243:16,20 4247:15,23 4251:2 4262:18 4263:7 4266:6 4272:10 4287:2 4287:25 4296:6 4299:16,18 4303:21 4309:19 4314:21 4320:13 4320:14,20,23 4323:11 4324:1 4325:5,16 4327:2 4327:3,8,9 4332:9 4332:16 4333:6,9 4337:9,18 4341:9 4347:17,21 4351:21 4353:10 4357:21 4359:2 4361:25 4365:20 4365:21 4366:10 4367:18 4368:23 4369:16 <b>goes</b> 4175:20 4182:8 4192:13 4195:14 4198:6 4205:18 4216:15 4259:9,22 4260:11 4318:4 4319:15 4327:20 4369:22 <b>going</b> 4145:4 4153:5 4155:18 4156:25 4162:5 4163:3 4165:4,19 4168:21 4170:19 4172:7 4173:4 4174:21 4175:23 4177:11 4178:5 4179:22,23 4181:23 4190:7 4194:15 4196:23 4197:15 4199:13 4199:23 4200:18 4202:17 4208:5 4208:16,18,21,21 4211:22,23</p>	<p>4215:2 4217:4,7 4222:10 4227:15 4229:10,22 4244:11,17,25 4246:17 4247:2 4248:1 4256:15 4261:24 4266:14 4267:2 4269:9 4272:7,14 4274:5 4292:11 4293:12 4294:10 4303:18 4303:24 4304:18 4310:4,18,22 4328:12 4330:4 4330:16 4331:8 4336:19 4337:9 4342:17 4349:17 4355:24 4356:12 4359:4 4365:23 4371:2,6 4372:6 4372:14 4373:11 4374:13 4376:15 4376:25 4377:12 4377:13 <b>golden</b> 4345:2 <b>good</b> 4142:5,5,7 4151:20 4186:14 4199:14 4226:17 4228:7 4243:18 4263:24 4281:5,6 4281:6,13 4286:21 4315:8 4345:4 4351:15 <b>goodies</b> 4234:20 4240:11 <b>Goodman</b> 4359:9 <b>goods</b> 4362:12 <b>government</b> 4191:16 4239:17 4288:13 <b>go-between</b> 4288:13 <b>grabbed</b> 4315:1 <b>grant</b> 4186:2 4276:9 <b>granted</b> 4153:2 4199:2 4338:19 4339:6 4376:5 <b>granting</b> 4274:18 <b>grave</b> 4277:8 <b>great</b> 4265:7 4276:13 4308:1 <b>Greg</b> 4150:5 4160:18 4195:22 <b>group</b> 4182:23 4233:7 4239:24 4353:1 4354:2</p>	<p>4357:2 <b>groups</b> 4353:21 4356:23 <b>guess</b> 4262:3 4289:15 4291:19 4340:20 <b>guilt</b> 4279:1,25 4280:1 <b>guilty</b> 4280:2 <b>Gumienny</b> 4170:21 4172:22 4196:15 4196:15 4197:25 4198:3 4251:10 4251:20 4252:3 4268:17,23 4275:3,15 4329:2 <b>gun</b> 4218:7,12 <b>Guy</b> 4359:9</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>Haasbeek</b> 4234:1 <b>hair</b> 4253:24,24 4254:20 4255:3,5 4255:8,11,17,19 4255:24 4256:2,7 4256:12,22,23 4257:6,10,11,17 4257:22 4258:3 4259:20,21,22 4260:24 4328:21 <b>hairs</b> 4254:24 4257:16,21 <b>half</b> 4238:20 4239:3 <b>halfway</b> 4278:20 4325:8 <b>hall</b> 4144:8,21 4145:3 4149:9,10 4149:23 4150:19 4153:6 4156:20 4159:12 4160:10 4164:19 4165:2 4166:7,9 4167:8 4167:13 4168:6 4194:1,3 4282:25 4283:4 4314:9 4320:20,22 4321:5,20,21,24 4323:16 4348:16 4349:5,10 4374:10,20 4375:6,13,25 4376:1,13,18 <b>Hall's</b> 4146:14 4163:24 <b>Hall/Ewatski</b> 4347:20 <b>hand</b> 4240:24</p>
--	---	---	---	---

<p>4288:20 4295:22 4300:25 4302:17 4305:22 <b>handbook</b> 4359:7 4359:20 <b>handed</b> 4218:8 4302:23 <b>handle</b> 4239:19 <b>handled</b> 4150:11 4191:2 4279:3 4302:24 <b>handling</b> 4187:18 4187:20 4191:9 <b>hands</b> 4143:24 4155:23 4302:7 4302:11 <b>handwriting</b> 4146:16 4221:6 4240:21,22 4244:24 4295:20 4302:15 4303:11 4346:17,20 <b>handwritten</b> 4232:5 4232:6 4233:12 <b>hang</b> 4180:19 4247:7 <b>happen</b> 4145:18 4169:11 4204:20 4204:21 4215:22 4240:16 4277:19 4344:9 <b>happened</b> 4147:22 4176:10 4196:11 4239:11 4241:17 4241:18 4242:21 4243:9 4246:11 4258:4 4264:21 4271:5 4302:13 4315:4 4358:11 <b>happening</b> 4144:16 4159:4 4258:10 4359:10 <b>happens</b> 4242:11 <b>happily</b> 4267:10,12 <b>happy</b> 4150:6,20,24 4151:12 4153:7 4156:23 4157:1 4159:23 4160:17 4160:21,24,24 4162:25 4341:6 <b>Happychuk's</b> 4295:25 4296:23 <b>hard</b> 4143:11 4264:18,24 4346:19 4355:12 <b>Harder</b> 4251:15 4267:8,21</p>	<p><b>Hart</b> 4294:25 <b>haunt</b> 4180:17 <b>head</b> 4254:25 4264:15 4265:22 4339:15 <b>heading</b> 4247:20 4248:2 <b>hear</b> 4188:4,6,8 4207:9,11 4211:19 4222:6 4242:24 4244:16 4281:9 4337:20 4340:20 4356:1 <b>heard</b> 4178:6 4192:11 4196:10 4205:15 4206:5 4210:6 4211:5 4212:4 4237:8 4242:13 4253:2 4288:4,22 4289:4 4289:9 4291:21 4294:4 4302:5 4312:20 4314:18 4317:2 4330:9 4335:20 4363:8 <b>hearing</b> 4183:6 4230:16,17 4271:8 4276:4 4288:21,22 <b>hearings</b> 4156:4 <b>hearsay</b> 4336:18 <b>heart</b> 4360:4 <b>Heaven's</b> 4272:15 <b>held</b> 4204:22 4302:19 <b>help</b> 4157:20 4158:6,7 4165:20 4179:7 4202:14 4228:19 4229:3,5 4235:6 4278:4 4308:3,14 4358:8 <b>helpful</b> 4161:16 4283:22 4371:14 <b>helping</b> 4301:6 <b>hereinbefore</b> 4379:8 <b>hesitate</b> 4270:4 4344:22 4361:3 <b>Hewak</b> 4285:10,15 4285:24 <b>hide</b> 4172:24 4198:11 <b>hiding</b> 4301:5 <b>high</b> 4145:15 4146:12 4191:10 <b>highest</b> 4185:21 4193:7</p>	<p><b>highlight</b> 4150:3 <b>highlighted</b> 4378:14 <b>highly</b> 4208:14,15 <b>high-level</b> 4268:13 <b>hindsight</b> 4334:13 4334:16,17 <b>hired</b> 4217:25 <b>history</b> 4236:18 4237:15 4238:23 4239:10 4262:15 <b>hold</b> 4300:4,5 <b>hole</b> 4350:9 <b>home</b> 4172:5,7 4183:18 <b>homicide</b> 4299:10 4301:11 4320:22 4361:8,20 <b>honestly</b> 4246:8 4281:4 4377:14 <b>Honourable</b> 4138:5 <b>hope</b> 4230:8,10,11 4283:20 <b>hoped</b> 4185:15 <b>hopefully</b> 4221:15 4224:20 <b>hopes</b> 4245:13,25 <b>hoping</b> 4230:3,4 <b>hospitalized</b> 4360:4 <b>hotel</b> 4310:4,22 4335:21 <b>hour</b> 4178:3,11 4241:6 <b>house</b> 4152:17 4203:3 4214:8 4218:7 4219:17 4248:5 <b>Huff</b> 4248:10 <b>Hymie</b> 4234:13,14 4234:21 4237:2 4237:13 <b>hyperbole</b> 4157:16 4158:8</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>idea</b> 4175:22,22 4190:8 4290:20 4325:3 4327:1 <b>ideas</b> 4264:15 <b>ident</b> 4346:10,14 <b>identification</b> 4254:22 <b>identify</b> 4222:4,8 4300:21 4301:6 <b>identifying</b> 4347:14 <b>ignorant</b> 4276:17 <b>ilk</b> 4246:14 4248:6 <b>ill</b> 4360:3</p>	<p><b>imagination</b> 4201:5 <b>imagine</b> 4178:18 4308:11 4322:25 <b>immediate</b> 4285:25 <b>immediately</b> 4319:18 4328:3 <b>immunity</b> 4153:2 4153:12 4154:22 4162:9,10 4164:21 4165:3 4203:20 4204:1 4206:2 4273:9 4319:9 4330:1 4334:3 4335:2,2,3 4335:11,14,17,18 4338:19 4339:6 4339:10 4342:6 4343:15 4344:3 4372:17,20 4373:5,5,12,25 4374:7,11,19 4375:20 4376:5 <b>impact</b> 4185:25 <b>impacted</b> 4352:16 <b>imparted</b> 4317:10 <b>implicate</b> 4304:4 <b>implicating</b> 4306:8 <b>import</b> 4337:6,10 <b>important</b> 4143:17 4186:2 4292:3 4334:22 <b>importantly</b> 4151:8 4152:20,25 4251:6,9 4339:5 <b>impose</b> 4359:17 <b>impossibility</b> 4255:1 <b>impossible</b> 4258:15 <b>impression</b> 4193:14 4237:5 4349:6,11 4357:7 4375:19 4376:6 <b>impressions</b> 4169:18 <b>inadvertently</b> 4198:14 <b>inappropriate</b> 4192:24 4213:1 <b>incarceration</b> 4226:18 4228:8 <b>incident</b> 4310:1 4314:19 <b>Incidentally</b> 4143:8 <b>incidents</b> 4367:22 4367:24 4368:13 <b>include</b> 4224:13 <b>included</b> 4295:24</p>	<p>4307:21 <b>includes</b> 4183:15 4276:2 <b>including</b> 4259:21 4274:24 4321:16 4322:3 <b>incorrect</b> 4155:4 4376:11 <b>incriminate</b> 4218:21 <b>incriminating</b> 4218:18 4256:24 4257:7,17 <b>independence</b> 4191:10 <b>independent</b> 4149:25 4264:2 <b>independently</b> 4242:16 <b>index</b> 4140:1 4141:1 4287:18 4296:18 4297:16 4364:6 <b>indicate</b> 4147:21,23 4164:22 4319:15 <b>indicated</b> 4159:1 4243:11 4307:2 4309:12 4319:4 <b>indicates</b> 4303:21 4313:2 4314:25 4369:18 <b>indicating</b> 4154:21 4346:21 <b>indication</b> 4296:23 4302:4 4304:10 4305:11 4375:21 <b>indicted</b> 4268:22 <b>indifferent</b> 4263:25 <b>individual</b> 4186:22 4193:5 4312:23 <b>individuals</b> 4158:21 <b>infer</b> 4243:8 <b>inference</b> 4331:1 <b>influence</b> 4258:1,13 4366:23 <b>influenced</b> 4230:9 <b>inform</b> 4154:24 4155:2 4173:23 4173:24 <b>informal</b> 4143:13 4187:17 4189:7,8 <b>informant</b> 4214:8 4248:6 4268:21 <b>informants</b> 4187:24 <b>information</b> 4150:6 4150:20 4151:1 4151:13,17</p>
---	---	--	--	--

<p>4153:7 4154:18 4154:21 4156:24 4171:12,12 4172:8 4173:13 4187:24 4189:24 4199:3 4204:8 4217:12 4264:10 4271:12,17 4275:10,19,22 4276:24 4291:2 4292:18 4305:4 4313:7,19 4317:10 4324:18 4324:25 4332:3 4333:8 4334:14 4334:24 4338:24 4339:3 4344:14 4361:17 4362:6 4364:4,23 4368:7 4371:17 4375:22 4375:24 <b>informed</b> 4195:5,8 4197:22 4217:24 4219:15 4240:1 4241:20 4244:25 4253:7 4284:12 <b>informing</b> 4165:16 <b>infractions</b> 4208:3 <b>innocence</b> 4279:25 <b>inquiries</b> 4155:22 4155:23 4157:25 4173:4 4285:22 4325:11,20 <b>inquiry</b> 4138:1,20 4141:5 4142:4 4157:12 4158:2 4158:23 4175:20 4192:2 4205:5 4206:17,19,20 4207:14,15 4208:6,20 4209:11 4212:16 4212:25 4213:13 4213:23 4214:2 4214:12,14 4223:17,22 4224:5 4237:9 4243:10,16 4247:17 4249:17 4259:8 4281:16 4281:20 4312:20 4326:22 4331:3 4333:11,16 4335:25 4378:24 <b>insisted</b> 4205:17 <b>inspector</b> 4282:25 4319:18 4336:11</p>	<p>4336:15 <b>Inspectors</b> 4314:9 4320:19 4321:19 <b>instances</b> 4302:20 4303:23 <b>instructed</b> 4232:18 <b>instructions</b> 4169:8 4169:11 4191:14 4191:19,21 4221:3,6 4262:20 4263:14 4273:25 4292:8 <b>insurance</b> 4155:10 <b>integrity</b> 4171:7 4183:25 <b>intend</b> 4272:25 4358:2 <b>intended</b> 4319:16 <b>intent</b> 4291:12 <b>intention</b> 4147:23 4245:8 4266:13 <b>intentional</b> 4249:19 <b>intentionally</b> 4281:1,2 <b>interest</b> 4179:13 4183:18 4262:7 4351:1 4359:9 <b>interested</b> 4147:17 4182:1 4184:21 4221:9,10 4267:11 4301:24 4372:24 <b>interesting</b> 4188:16 <b>interests</b> 4351:19 4351:20 <b>interference</b> 4357:25 <b>intermediaries</b> 4292:6 <b>interpret</b> 4200:13 <b>interpreted</b> 4261:4 <b>interrupt</b> 4227:8 <b>interrupting</b> 4283:13 <b>interruption</b> 4200:4 4200:7 4245:6 <b>intervention</b> 4226:17 4228:6 <b>interview</b> 4153:14 4308:10 4315:2 4316:4 4320:18 4321:4,25 4328:16 4347:20 <b>interviewed</b> 4193:1 4230:19,20,22 4374:24 4375:12 4376:13</p>	<p><b>interviews</b> 4141:12 4282:21 4283:10 <b>intro</b> 4215:8 <b>introduce</b> 4253:14 4261:10 <b>introduction</b> 4216:24 <b>invent</b> 4356:1 <b>investigating</b> 4326:18 4362:4 <b>investigation</b> 4148:22 4150:11 4150:13,25 4152:12 4153:23 4159:15 4161:7 4163:3 4167:18 4182:13,17,21 4183:12 4186:6,8 4186:18,21 4193:4 4252:11 4252:21 4271:12 4293:13,16,22 4299:12,13,24 4300:6 4301:17 4321:15 4322:3 4327:19,25 4331:9,22 4335:8 4335:10 4361:23 4362:15 <b>investigative</b> 4182:16 4277:17 4286:11 4314:1 <b>investigator</b> 4307:10 4342:7 4343:12 <b>investigators</b> 4321:10,15 4322:2 4361:8 <b>invite</b> 4283:19 <b>involve</b> 4324:9 <b>involved</b> 4165:16 4187:5,19 4190:11 4199:15 4201:18 4208:25 4223:25 4260:24 4276:16 4279:9 4288:17,24 4291:14 4293:10 4316:20 4334:1 4353:13 4354:3 4359:22 4362:21 <b>involvement</b> 4156:19 4164:23 4197:3 4275:18 4318:22 4321:16 4322:3 4331:20 <b>involves</b> 4226:9</p>	<p><b>involving</b> 4350:25 <b>ironic</b> 4273:2 <b>irrelevant</b> 4181:14 4259:17 4261:6 4302:11 <b>irresponsible</b> 4272:14 4273:4,7 4273:19,21 <b>issue</b> 4150:16 4178:22 4200:14 4203:19 4206:9 4210:12,13 4211:15,18 4212:15 4213:4,5 4224:3 4243:13 4252:9 4253:8 4289:3,5 4294:1 4299:2 4316:23 4317:5,6 4348:8 4359:23 <b>issues</b> 4159:8,19 4203:22 4208:2 4208:14 4209:12 4209:24 4210:8 4210:12 4224:7 4259:23 4260:25 4261:13 4266:12 4276:24 4289:10 4289:12 4290:4,4 4291:12,14 4334:12 4350:24 4365:8 <b>item</b> 4308:8 4347:17 <b>items</b> 4253:19 4295:20</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>J</b> 4139:21 4234:1 <b>jail</b> 4214:8 4248:5 4248:14 4281:9 <b>James</b> 4138:3 4139:11,11 4295:8 4312:13 <b>January</b> 4161:11 4338:8,22 4340:11 4342:14 <b>Jay</b> 4139:13 <b>Jerome</b> 4286:22 <b>Jim</b> 4304:4 4306:8 <b>job</b> 4151:20 4278:13 4357:5 <b>John</b> 4158:22 4251:10 4275:2 <b>Johnson</b> 4336:11,12 4336:13,19 4338:1</p>	<p><b>joint</b> 4149:11,21 <b>jointly</b> 4307:11 <b>Jonathan</b> 4139:3 <b>judge</b> 4196:24 4316:12 4333:4 <b>judgment</b> 4217:2 4220:2,7 4237:21 <b>Judith</b> 4237:3 <b>July</b> 4194:24 4337:15 <b>jump</b> 4320:12 <b>June</b> 4167:16 4177:20,24 4178:14,14 4230:14 4237:10 4237:13 4295:3 4310:5 4312:14 4333:23 4335:22 4337:7 4338:4,7 4348:14,20 <b>jury</b> 4195:23 4252:2 4276:23 <b>justice</b> 4147:1 4164:9 4179:1,17 4179:19 4182:24 4183:17 4184:4 4184:16 4185:21 4190:20 4192:1 4193:6 4194:5 4209:17 4232:17 4232:19 4233:8 4233:11 4235:10 4240:8 4247:19 4248:9 4250:12 4263:17 4265:8 4265:11,21 4268:14 4274:7 4274:16,21 4284:11 4285:10 4285:15,24 4293:1 4310:20 4311:1 4324:5,14 4332:1,21 4335:4 4335:4,16 4338:22 4349:25 4350:4 4352:13 4352:17,17 4353:22,24 4354:2,9 4355:4 4363:22,25 4364:9 <b>Justice's</b> 4184:14</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>K</b> 4139:17 <b>Karamchand</b> 4139:6</p>
--	--	--	---	--

<p><b>Kara's</b> 4367:5 4368:3 <b>Kathy</b> 4139:6 <b>Kee</b> 4354:4,12 <b>keep</b> 4143:4 4173:12 4196:21 4200:4 4208:19 4212:16 4249:11 4249:13 4258:10 4302:10 4327:2 4331:11 4340:1 4354:15 <b>keeping</b> 4253:6 <b>keeps</b> 4173:9 <b>Kennedy</b> 4139:21 4224:12 4286:21 4286:22 4287:1 <b>kept</b> 4149:10 4172:25 4179:21 4195:5 4200:18 4204:4 4206:6 4218:11 4278:11 <b>key</b> 4218:17 4219:2 4219:6 4275:2,8 4275:14,23 4356:20 4371:10 <b>killing</b> 4251:15 4304:5 4306:9 <b>kind</b> 4151:16 4154:22 4178:6 4199:1,2 4205:7 4206:5,9 4216:14 4248:6 4255:24 4259:8 4313:7 4322:5 4330:5 4343:20 <b>kindly</b> 4281:21 <b>kinds</b> 4352:16 4356:24 <b>knew</b> 4153:17 4155:8,9 4160:25 4161:10 4162:22 4167:11,15,22 4171:8 4174:7 4175:4 4184:6 4192:19,21 4196:15 4201:8 4265:16 4269:4 4284:12 4291:18 4291:19 4317:24 4319:20 4322:5 4322:18 4325:22 4325:23 4336:12 4339:10 4348:1 4349:9,10 4352:10 4362:16 4362:17,20</p>	<p>4371:5 4372:24 <b>know</b> 4143:19 4151:14 4154:2,6 4154:24 4155:1 4155:21,21 4157:10,12,21 4159:7 4161:1,3,5 4162:14 4163:2 4166:4 4167:9,24 4167:25 4168:2,3 4168:4,6,8 4169:15,20,21,24 4170:12,14 4173:3,14,23 4175:13 4176:1,6 4177:1,6 4179:6,6 4179:19 4180:21 4182:3,25 4184:13 4189:5 4192:8 4193:23 4194:1,6 4195:20 4195:25 4196:16 4196:17,22 4198:2,3 4199:13 4201:20 4202:1 4202:10 4203:11 4203:16,23 4205:24 4206:23 4211:7,9,17,25 4215:4 4220:6 4226:15 4227:17 4228:5 4232:4 4234:18 4235:3,5 4237:14,19 4240:1,2,7,22,25 4240:25 4242:1 4242:10 4244:18 4244:20 4246:3,9 4246:22 4249:23 4250:9 4258:12 4267:1 4269:6 4276:20,21 4277:15,19 4278:2 4279:13 4279:16 4284:16 4287:4,6,23 4289:4,15,16 4292:4 4296:25 4297:13,21,24 4298:6,11,11,13 4304:12 4307:22 4308:10,13,16 4310:15,20 4311:22 4312:3 4312:16,23 4313:11,11,16,21 4313:23,25</p>	<p>4316:9 4317:2 4319:25 4322:20 4322:22 4323:5,6 4323:11,15 4325:5,8 4326:4 4328:11,17 4329:4,6,8 4331:3 4331:6 4333:20 4334:2 4335:24 4336:8 4338:2 4340:15 4341:6 4344:7,25 4346:23 4347:15 4348:9,11 4349:12,14,17 4353:2,23 4354:1 4354:10,14 4356:2,10 4359:21 4360:22 4361:4,11 4364:2 4371:7 4373:11 4373:19 4376:8 4376:17,20,22 4377:3,7 4378:17 <b>knowing</b> 4161:12 4161:18 4170:25 4175:3 4201:1,3 4263:8 <b>knowledge</b> 4167:15 4184:9 4185:19 4192:21 4196:7 4297:19 4341:22 4342:10,11 4348:7,18 4374:24 <b>known</b> 4201:11 4203:17 4255:4,7 4315:20 4328:18 4332:5 4357:13 4377:25 <b>knows</b> 4157:11 4300:16 4331:3 4334:6 <b>Kovnats</b> 4165:11 4176:21 4197:24 4288:9,14,23 4289:2,9 4290:25 4291:7 4308:21 4309:12 4314:18 4314:19,24 4329:23 4333:23 4333:24 4374:12 <b>Kremer</b> 4235:7 4237:3 <b>Krepiakovich</b> 4254:8 <b>Kyle</b> 4256:20</p>	<p style="text-align: center;"><b>L</b></p> <p><b>laid</b> 4150:9 <b>large</b> 4215:10 4219:17 4264:1 4264:13 4309:12 4325:18 <b>lasts</b> 4312:21 <b>late</b> 4178:14 4192:3 4348:20 4374:23 <b>laughed</b> 4279:2 <b>law</b> 4179:15 4210:24 4252:5 4350:14 4352:14 4352:20 4353:8,9 <b>Lawlor</b> 4149:22 4150:5,18 4163:25 4180:1 4180:12,15,18 4184:6 4189:6 4192:18,25 4193:17,22,23 4194:3 4197:23 4199:10,12 4254:4 4289:24 4297:2 4304:21 4305:20,20 4315:15 4316:8 4324:12,12 4331:25 4345:7 4346:16 4347:20 4349:9 4357:19 4364:5,20 4366:8 4367:9,20 <b>Lawlor's</b> 4295:22 4303:11 4345:23 <b>lawyer</b> 4165:10 <b>lawyers</b> 4223:25 <b>lay</b> 4259:15 <b>laying</b> 4366:21 <b>lazy</b> 4357:8 <b>lead</b> 4160:3 4162:9 4179:18 4181:24 4240:16 4361:25 <b>leading</b> 4155:19 4157:14 4158:15 <b>leads</b> 4145:15 4349:1 <b>leafed</b> 4225:7 <b>learn</b> 4152:21,25 <b>learned</b> 4147:11 4152:4 4160:22 4167:7,9 4327:16 <b>Learner</b> 4359:22 <b>leave</b> 4211:1 4216:8 4218:24 4219:7 4306:19 4320:13</p>	<p><b>leaves</b> 4215:19 <b>leaving</b> 4321:11 <b>led</b> 4356:23 <b>leery</b> 4212:18 <b>left</b> 4142:10 4144:1 4173:24 4179:13 4192:6 4250:14 4278:14 4281:22 <b>leg</b> 4257:10 <b>legal</b> 4139:8 4187:13 4314:1 4350:20 <b>legible</b> 4146:16 <b>length</b> 4340:12 <b>lengthy</b> 4165:8 <b>Les</b> 4354:4 <b>LeSage</b> 4138:5 <b>letter</b> 4142:19 4148:5 4151:23 4152:2,8,21 4154:12,20 4155:4,7,15 4162:7,23 4167:10 4168:9 4168:14 4186:14 4192:12 4193:18 4194:8 4236:4,14 4250:8,15,19,24 4253:14 4271:23 4291:8 4295:1 4303:6 4306:3 4307:6 4308:9 4317:22 4333:22 4333:24 4337:3,4 4337:12 4338:4 4340:10 4341:1,4 4341:10,14,18,21 4341:23 4342:9 4342:16,18 4343:5,6,7 4344:5 4344:10 4345:18 4346:3,4,5,8,16 4347:6 4365:9 4366:1 4367:25 4369:10 4376:3 <b>letters</b> 4172:10 4265:18,21 4269:4 4278:2 4342:13 4346:25 4364:3,17 4375:7 4375:15,20 <b>letter-sized</b> 4299:23 <b>let's</b> 4146:14 4160:1 4179:9 4204:24 4218:24 4246:23 4246:24,25 4270:21 4271:4</p>
---	--	--	---	--



4272:7 4324:1 4339:22 <b>level</b> 4145:16 4146:12 4258:23 4260:10 4262:18 4276:15 <b>levels</b> 4185:22 4193:7 <b>Libman</b> 4139:10 4141:10 4187:3 4231:15,19 4238:19 4286:15 4295:12 <b>lie</b> 4153:20 4373:23 <b>lieu</b> 4289:23 <b>life</b> 4278:8 4280:15 4280:19,23 <b>lifted</b> 4305:8 <b>light</b> 4160:22 4191:10 4200:20 4269:12 4272:5 <b>liked</b> 4204:14 <b>likelihood</b> 4255:24 <b>Likewise</b> 4198:22 <b>limit</b> 4327:6 <b>limited</b> 4220:24 <b>line</b> 4156:25 4163:20 4207:1 4212:9 4214:23 4215:14 4216:5 4226:4 4227:7,12 4227:18,25 4228:14,16 4229:10 4233:23 4233:24,25 4235:1 4254:16 4268:7 4326:18 4355:8,10 <b>lines</b> 4152:11,16 4163:5 4273:1 4290:2 4316:6 <b>Lisa</b> 4379:4,18 <b>list</b> 4364:18,19 4369:5,13 <b>lists</b> 4286:10 4367:11 <b>little</b> 4171:8 4243:18 4278:20 4282:9 4299:16 4299:20 4340:6 <b>living</b> 4289:23 <b>locate</b> 4287:25 <b>located</b> 4294:3,12 <b>location</b> 4300:21 4340:25 <b>locations</b> 4198:15 <b>Lockyer</b> 4139:11	4140:6 4141:3,10 4168:19 4171:16 4176:12 4181:4,9 4181:13,16,21 4185:2,9,12 4187:1 4194:7 4200:1,3,9,12 4203:10 4205:21 4207:8,9,12,13 4209:1,6,13,25 4212:1,10 4213:19,21 4214:3,17,21 4215:2,7 4219:25 4220:2,12,14,21 4221:24 4222:12 4222:23 4223:1 4223:10,16,23 4224:13,14 4225:13,18,19,20 4227:22,24 4231:15,18,20 4232:1,2,5,9 4235:8,11,13,15 4236:2,6,9 4238:16,18,20,22 4239:3,9 4241:2,7 4241:8,11,14,24 4242:4 4243:21 4243:22 4244:7 4246:2,17 4247:2 4247:4 4251:17 4253:10,17,18 4259:19 4260:6 4260:13 4261:11 4261:12 4264:4 4265:3 4267:3,10 4269:14,17,23 4270:14,19 4273:11 4340:7 4377:15 <b>Lockyer's</b> 4206:14 4206:25 <b>log</b> 4149:9,16 4160:10 <b>logical</b> 4289:7,11 4331:1 <b>long</b> 4212:4 4296:9 4308:7 4360:18 4360:20 4370:12 4376:24 4377:25 <b>longer</b> 4297:3,9 4298:17 4310:4 4329:11 <b>long-term</b> 4310:23 <b>long-winded</b> 4285:21	<b>look</b> 4152:3 4153:13 4166:18 4167:3,24 4177:19 4182:20 4188:17 4202:15 4206:22 4214:22 4214:23 4216:4 4233:13 4235:21 4242:11 4245:23 4247:17 4254:23 4262:15 4264:14 4266:17 4269:14 4269:15 4271:3 4294:11 4295:18 4296:15 4301:16 4304:1 4306:2 4309:10 4312:6 4318:21 4325:15 4329:18 4331:12 4336:24 4337:11 4338:10 4341:17 4343:9 4345:1 4346:6 4358:23 4369:3 4378:15 4378:16 <b>looked</b> 4352:13,20 4361:24 <b>looking</b> 4144:9 4162:24 4182:3 4182:19 4216:5 4227:4 4233:13 4236:5 4237:21 4238:4 4270:5 4281:6 4297:18 4304:14 4347:13 <b>loose-leaf</b> 4299:22 <b>lot</b> 4150:8 4168:2 4168:20 4174:7 4178:8 4210:11 4217:5 4235:13 4317:4 4328:24 4354:3,15 <b>lots</b> 4143:13 4214:19 <b>loud</b> 4341:15,16 <b>Lovelace</b> 4217:18 4218:17,25 4219:4,5,6,10 4221:10,16 4224:23 4226:5 4226:23 4227:14 4228:11,15 4230:18 4231:7 4233:16,18 4234:19 4236:10 4236:15 4237:1,7 4238:10 4239:11	4239:21 4240:11 4241:19 4243:25 4244:12 4245:9 4245:16,18,22 <b>Lovelace's</b> 4218:3 4224:17 4225:24 4232:21 4233:21 4234:15 <b>lump</b> 4190:4 <b>lunch</b> 4274:4 4281:14 <b>Luzny</b> 4218:14 4229:7 <b>lying</b> 4192:22 4201:3,8,25 4202:3,7,13 4203:2,13 4313:2 <hr/> <b>M</b> <hr/> <b>M</b> 4139:10 <b>machine</b> 4143:14 <b>Madam</b> 4222:1 4282:20 4283:8 4287:9 <b>mail</b> 4292:23,24 <b>maintained</b> 4225:3 4343:14 <b>major</b> 4191:2 4239:24 4293:12 4293:15 4303:8 <b>making</b> 4160:2 4172:25 4174:7 4195:17 4217:8 4241:24 4259:24 4270:15 4347:6 <b>man</b> 4162:24 4204:14 4217:11 4217:18 4218:7 4218:13,13,20 4254:7 4265:17 4267:7,20 4280:19 4281:6 4328:21 4355:1 <b>Management</b> 4354:8,11,13 4356:3,12 4358:3 4358:4 <b>mandate</b> 4207:7 4260:16 <b>mandates</b> 4212:17 <b>mandatory</b> 4197:14 <b>Manitoba</b> 4138:14 4139:12 4179:17 4179:19 4183:17 4184:4,14,16 4185:21 4187:16 4190:20 4191:25	4193:6 4194:4 4232:20 4240:8 4250:11 4252:12 4252:24 4263:17 4264:16 4265:11 4310:20 4311:1 4338:23 4345:7 4379:5 <b>manner</b> 4190:20 4208:11 4257:18 <b>March</b> 4144:19,22 4233:18 4250:8 4266:1 4267:15 4268:25 4269:19 4270:23 4272:10 4272:11 4274:10 4327:12 4360:3 <b>margin</b> 4241:11 4345:24 <b>mark</b> 4220:17 4221:24 4282:6 <b>marked</b> 4144:11 4149:6 4181:18 4220:13 4222:4,9 4283:6 4364:6 <b>match</b> 4255:4 4257:17 <b>matched</b> 4257:11 <b>material</b> 4152:7 4155:4,6 4175:5 4181:14,16 4209:18 4211:25 4219:24 4223:4 4264:11 4266:7 4269:14,16 4270:2,12,14,22 4277:4 4278:1 4287:19 4294:13 4294:23 4296:10 4297:1,11 4302:11 4303:17 4304:24 4305:13 4305:21 4314:12 4314:14 4334:14 4334:23 <b>materially</b> 4187:19 <b>materials</b> 4142:17 4142:20 4148:20 4151:9 4153:8 4180:25 4183:21 4211:16 4217:2 4271:6 4287:25 4311:17,19,21,24 4312:1 4333:21 4345:13 4347:22 <b>matter</b> 4143:12 4147:9 4156:19
--	---	--	--	---

4161:13,14,18,20 4164:11,20,21,24 4166:25 4172:19 4174:4,5 4207:2,3 4207:3,5 4209:16 4209:19,19 4234:16 4237:8 4237:12 4240:5 4243:11 4244:17 4259:7 4271:9 4282:10 4289:2 4306:15,18 4307:17 4328:3 4338:20 4349:23 4350:8 4355:15 4358:23,23 <b>matters</b> 4165:9,12 4172:12 4176:21 4191:8 4197:3,5,9 4205:17,20 4209:13 4212:11 4213:9 4275:25 4276:25 4277:3 4277:14 4285:17 4285:23 4293:5 4306:19 4317:11 4354:6 4366:22 <b>Matthew</b> 4217:18 4236:10,25 <b>McCarthy</b> 4156:4 <b>McCormack</b> 4294:24 <b>McFarlane</b> 4356:7 <b>McKay</b> 4308:9 <b>McNairn</b> 4182:22 4186:15,19 <b>mean</b> 4150:22 4175:11 4180:15 4201:4 4203:14 4203:15 4205:16 4212:7 4219:5 4244:21 4247:8 4253:11,13 4265:4 4269:9 4276:12 4279:19 4292:22 4299:14 4301:5 4302:17 4313:11,14 4346:19 4349:12 4356:3,6 4358:9 <b>meaning</b> 4166:16 4170:13 4186:19 4254:20 4324:8 4327:13 <b>means</b> 4171:20 4187:3 4192:16 4220:16 4255:5	4335:3 <b>meant</b> 4216:7 4272:12 4278:11 4303:22 4307:24 4373:12 <b>measure</b> 4264:13 <b>media</b> 4144:18 4145:14 4167:2 4180:6 4269:11 4278:17 4314:4 4337:9,19 4350:1 4350:7,10 4351:9 4359:22 <b>medium</b> 4328:21 <b>meet</b> 4144:25 4146:1,18 4149:24 4150:4 4293:2 <b>meeting</b> 4146:9,15 4149:13,20,21 4166:7 4169:7 4174:12 4204:22 4210:18,22 4268:13 4309:1 4310:5 4314:8 4349:21 4359:14 4371:21 <b>meetings</b> 4359:3 <b>member</b> 4196:25 4353:20 4354:7 <b>members</b> 4139:18 4139:20 4273:5 4273:15,16 4315:22 <b>memo</b> 4142:13 4147:21 4157:3 4160:23 4235:23 4236:24 4237:24 4238:4 4270:12 4270:23 4271:24 4271:25 4272:10 4272:11 4273:22 4273:24 4295:8 4303:5 4305:16 4308:21 4317:22 4318:4 4320:9 4323:21 4324:5 4325:24 4327:7 4328:6,9 4331:12 4331:16 4332:16 <b>memoed</b> 4170:5 <b>memorandum</b> 4143:20 4147:13 4147:24 4183:5 4239:14 4265:25 4266:11 4272:17 4276:18 4295:3	4308:25 4340:22 4342:12 4359:6 <b>memory</b> 4142:13,22 4169:23 4178:21 4239:13 4244:3 4270:3 4271:5 4272:19 4278:13 4279:6 4308:4,15 4308:16 4325:25 4344:9 4365:5 <b>memos</b> 4143:8 4147:21 4164:8 4164:13 4323:20 4358:25 <b>men</b> 4169:19 4171:3,18 4172:1 4172:12,13 4201:17 4205:10 4258:14 4355:21 <b>mention</b> 4167:8 4168:6 4174:14 4344:23 <b>mentioned</b> 4213:8 4262:23 4311:16 4311:19,20 4353:8 4360:25 <b>merely</b> 4350:6 <b>mess</b> 4355:22,23 <b>Messrs</b> 4192:18,25 <b>met</b> 4145:24 4165:4 4286:7 4328:20 4358:5 4375:5,12 4375:25 4376:18 <b>method</b> 4158:23 <b>Michael</b> 4139:2 <b>microphone</b> 4267:3 4282:8 <b>microscopy</b> 4253:24 4254:20 4255:17 4256:12 4256:22 <b>mid</b> 4144:19 4349:25 4351:7 <b>middle</b> 4160:15 4327:3 4330:7 4363:9 4371:1 <b>midst</b> 4228:15 <b>mike</b> 4209:2 4240:19 4259:1 4282:1 <b>Miller</b> 4139:14 4142:14 4143:19 4144:25 4146:9 4146:15,18,23 4147:14 4149:9 4168:22 4169:12 4169:16 4172:17	4173:5,15,16 4176:21 4177:2 4190:21 4191:4 4191:14,14,21 4195:2 4197:22 4199:8,21 4204:23 4205:13 4264:12 4288:9 4288:12,23 4289:1,9,14 4290:7,11,17,18 4290:24 4291:1 4291:13,17,25 4292:2 4309:13 4309:16 4316:3 4316:18 4317:5 4320:2,10,19 4321:4,7,25 4322:5,17 4323:13,15 4324:19 4325:1 4329:18,22 4330:6,11 4331:2 4331:3,5 4332:4 4333:23,24,25 4334:1,6,11,15,21 4334:22 4338:2,3 4339:9 4340:13 4341:3,10 4342:9 4342:17 4343:2 4343:24 4344:6 4344:14 4348:7 4352:3 4356:6 4358:1 4371:13 4371:18,22 4372:13,25 4373:21 4374:12 <b>Miller's</b> 4142:24 4146:22,25 4205:12 4321:19 <b>mind</b> 4143:5 4151:6 4151:25 4166:3 4167:6 4178:20 4227:3 4229:9,21 4230:1 4248:5 <b>mine</b> 4254:9 4280:16 4347:2 <b>Minister</b> 4157:3 4179:1,5 4182:5,9 4182:9 4186:1,23 4191:4 4192:4 4246:22 4250:16 4250:17,21 4274:3,21 4277:2 4277:15 <b>ministerial</b> 4185:25 4274:18	<b>Minister's</b> 4232:17 4274:8 <b>minute</b> 4144:5 4146:1 4179:22 4185:7 4226:19 4229:20 4233:2 4233:10 4271:4 4272:8 4316:2 4335:1 4344:22 <b>minutes</b> 4209:7 4312:22 4361:1 4377:19 <b>miscarriage</b> 4274:16 <b>miscommunication</b> 4334:20 <b>misdeeds</b> 4212:18 <b>misheard</b> 4346:2 <b>misinterpreting</b> 4159:5 <b>misabeled</b> 4236:12 <b>misleading</b> 4269:8 4272:25 <b>misquoted</b> 4279:12 <b>missing</b> 4233:23 4273:13 4297:11 4297:12 4298:9 4298:10,11,14 <b>mistake</b> 4251:18 <b>mistakes</b> 4277:24 <b>misunderstood</b> 4309:5 <b>moment</b> 4142:12 4181:11 4247:15 4270:21 4300:2 4357:17 4371:13 <b>monetary</b> 4173:18 <b>money</b> 4171:25 4183:11 4196:20 4201:18 4216:9 4219:17 4289:24 4316:13 <b>monies</b> 4171:18 4189:18 4289:22 <b>month</b> 4144:7 4237:11 <b>months</b> 4204:5 4233:20 4237:24 4238:6 4338:3 4339:11 4340:22 4347:7 4359:15 <b>morning</b> 4142:5,6,7 4146:19 4177:23 4220:19 4233:6 4286:21 4314:7 4358:5 4361:6 4375:3 4377:20
--	---	---	--	---

<p>4378:22  <b>Morrison</b> 4250:9,9  4250:23 4252:20  <b>Morse</b> 4164:9  4324:5,14 4332:1  4332:21 4363:22  4363:25 4364:9  <b>mortgage</b> 4183:12  <b>Moss</b> 4308:13  <b>motion</b> 4283:15  4285:11  <b>motions</b> 4283:20  <b>motivation</b> 4317:12  <b>motivations</b>  4173:11  <b>motive</b> 4152:14,17  4155:9 4306:8  <b>motives</b> 4304:3  <b>move</b> 4159:23,25  4190:9 4203:21  4216:20 4282:11  <b>moved</b> 4188:5  4227:6 4253:11  <b>moving</b> 4200:4  <b>mulling</b> 4280:24  <b>murder</b> 4145:13  4178:9,19  4217:11 4236:20  4242:18 4251:20  4267:7,20 4275:4  4275:18 4299:23  4337:16,23  4362:22  <b>murdering</b> 4268:20  <b>musk</b> 4305:8  4347:15  <b>mute</b> 4192:22  <b>M'hm</b> 4296:12  4323:3 4369:21  4375:14</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>name</b> 4217:19  4225:25 4276:13  4278:20 4286:22  4308:14 4328:18  4355:25  <b>named</b> 4218:7,13  4218:14,20  4254:8 4267:8,20  <b>names</b> 4213:8  4315:15  <b>Nancy</b> 4139:7  <b>National</b> 4353:15  <b>nature</b> 4186:1  4192:24 4229:17  4373:22 4374:3,4</p>	<p><b>near</b> 4180:20  4185:16 4189:20  4255:25  <b>nearly</b> 4279:6  <b>necessarily</b> 4195:2  4270:13 4296:6  4300:20 4304:1  4354:5  <b>necessary</b> 4282:18  4291:11 4325:5  <b>need</b> 4151:24  4227:10 4242:24  4244:16 4267:2  4282:10 4312:11  4314:21 4333:19  4341:16  <b>needed</b> 4195:20  4283:17,25  4293:6 4334:14  4344:14 4358:9  4361:17,22  <b>negative</b> 4261:4  <b>negotiated</b> 4153:12  <b>negotiating</b> 4170:22  4352:25  <b>negotiation</b> 4288:17  <b>negotiations</b>  4165:15,17  4168:24 4170:13  4170:23 4171:13  4172:18 4174:15  4174:23 4190:11  4195:6 4196:3  4197:23 4199:16  4199:17 4201:2  4246:4 4288:5,24  4334:2  <b>neither</b> 4168:5  4170:5 4221:8  <b>net</b> 4258:20  <b>never</b> 4157:11  4172:7 4173:5,14  4179:17,21,24,25  4180:20 4192:11  4193:20,20  4194:7 4196:6,13  4200:17,20  4205:6,15 4211:5  4240:1 4247:14  4264:7 4268:9  4289:4 4294:6  4319:9 4339:24  4353:17 4371:3  4374:11  <b>new</b> 4183:15  4198:15 4250:18  4250:23 4274:9</p>	<p>4274:20 4275:25  4276:9 4337:24  4348:16,23  4349:3,13,14,15  4359:17  <b>nice</b> 4265:17  <b>Nieman</b> 4217:12,25  4219:21  <b>night</b> 4142:11  4144:2 4174:13  <b>non-discloseable</b>  4196:8  <b>non-leading</b>  4158:16  <b>norm</b> 4157:13  4158:2,5  <b>normal</b> 4143:10  4145:12 4210:24  <b>normally</b> 4169:12  4256:6  <b>nose</b> 4314:24,24  <b>note</b> 4144:4,7,13,15  4145:10,22  4146:6,14,16  4147:3,17 4148:6  4148:15 4149:11  4149:12,19  4150:2 4160:7,8  4162:24 4163:6  4165:22 4166:18  4186:17,20  4244:22 4246:11  4246:24 4261:17  4269:20 4271:23  4296:22 4299:5  4300:16 4305:15  4307:12 4308:17  4311:4 4347:6  4371:23  <b>notebook</b> 4299:11  4299:12 4300:23  4301:1,10,15,22  4302:5,6,9,16,17  <b>notebooks</b> 4299:3  4300:22 4322:16  4371:24 4374:15  <b>noted</b> 4170:5  4209:21 4261:19  4267:6,19,23  4321:19 4328:15  4338:16  <b>notes</b> 4163:24  4294:2,9,10  4295:24,25  4296:2,19,23  4300:21 4301:2,7  4301:13,16,19</p>	<p>4308:9 4314:11  4345:24 4346:4  4346:15,22  4347:22 4379:7  <b>notified</b> 4319:18  4331:19 4332:2  <b>notify</b> 4319:16  <b>notion</b> 4188:7  <b>November</b> 4183:7  4186:16 4192:3  4235:24 4236:3  4236:11,15,18  4237:25 4238:4,8  <b>number</b> 4157:22  4159:1 4171:5,7  4215:10 4219:3,8  4226:17 4228:7  4231:10 4258:13  4270:11,12  4274:22 4294:12  4295:6,20 4303:7  4303:20 4307:1,3  4307:20 4314:5  4316:17 4332:17  4342:24 4346:9  4350:15,17  4352:11 4353:21  4354:22 4357:14  4361:20 4364:17  4365:8,11,14  4366:3,17 4367:1  4367:14,16,25  4368:9,10 4369:1  4369:2,3,6  4370:10,11  <b>numbers</b> 4321:1  4367:11 4368:24  <b>numerous</b> 4221:16  4224:25 4363:23</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>oath</b> 4203:13  <b>object</b> 4155:5  4199:25 4240:18  4240:20 4246:16  4253:5 4258:25  4347:13  <b>objecting</b> 4181:17  4225:8  <b>objection</b> 4200:7,10  4266:25 4269:24  4281:24 4282:4  4307:8  <b>obligation</b> 4199:9  4285:22 4286:5,7  4313:6  <b>obligations</b> 4285:6</p>	<p><b>oblique</b> 4251:22  <b>observation</b>  4304:17  <b>obsessed</b> 4251:15  <b>obtained</b> 4232:20  4298:2 4368:7  <b>obvious</b> 4171:5  4173:8 4242:19  4242:20 4325:22  <b>obviously</b> 4143:13  4144:23 4150:1  4208:16 4211:23  4242:17 4298:15  <b>occasion</b> 4238:13  4358:17  <b>occasional</b> 4350:24  <b>occasionally</b>  4143:15 4264:20  4264:22 4358:21  <b>occasions</b> 4221:16  4349:24 4351:2  <b>occurred</b> 4146:10  4171:10 4274:16  <b>occurs</b> 4256:7  4267:25 4314:19  <b>October</b> 4284:1  4318:23 4322:10  4368:18  <b>odd</b> 4244:3 4341:23  <b>odds</b> 4192:1  <b>offences</b> 4355:11  <b>offend</b> 4282:3  <b>offer</b> 4163:15  4164:1  <b>offered</b> 4238:1,9  4273:17 4328:4  <b>offering</b> 4372:20  <b>offers</b> 4373:5  <b>offhand</b> 4221:21  <b>office</b> 4143:6,7  4169:25 4170:1  4177:3 4182:10  4182:12,15  4204:16 4232:17  4292:22 4293:2  4309:24 4324:13  4332:21 4358:21  4358:25 4361:18  <b>officer</b> 4139:4  4141:8 4222:15  4222:22 4234:2  4302:4,15,21  4319:22 4328:14  <b>officers</b> 4144:21  4204:23 4294:9  4299:9,10 4300:4  4302:8,24 4315:1</p>
---	---	--	---	--

4318:13 4326:5 4361:21 4372:12 <b>officer's</b> 4292:14 4296:18 4302:7 4302:14 <b>official</b> 4191:23 4379:5 <b>officials</b> 4184:3,16 4268:14 4350:3 4353:15 <b>oh</b> 4164:15 4225:9 4232:11 4242:1 4254:11 4272:2 4295:5 4304:20 4309:8 4312:12 4314:6 4318:9 4325:17 4343:8 4351:25 4355:17 4360:8 4362:8,21 4363:1 4364:10 4369:6 4370:21 <b>oil</b> 4305:8 4347:15 <b>okay</b> 4178:15 4197:15 4234:25 4237:22 4241:7 4243:21 4283:9 4286:16 4297:4 4298:25 4302:1 4310:1 4327:2 4343:8 4345:17 4365:7,20 4367:8 4367:11 4368:6 4368:23 4369:8 4369:11,14 4370:21 4372:11 4375:15 <b>old</b> 4279:6 <b>older</b> 4255:23 4256:6,6 <b>Olson</b> 4139:12 4140:10 4180:10 4253:5,9 4339:15 4345:3,4,5 4351:12,13 <b>Omissions</b> 4268:3 <b>once</b> 4156:9,10 4174:8 4237:7 4257:6 4269:2,5 <b>ones</b> 4214:19,20 4258:11 4365:2 <b>ongoing</b> 4195:7 4213:9 <b>Ontario</b> 4157:24 <b>onus</b> 4252:5 <b>open</b> 4161:14 4307:4 4317:19 4320:13 4327:3	4331:11 <b>opened</b> 4153:19 <b>opens</b> 4333:6 <b>opinion</b> 4148:8,11 4180:3 4198:9 4264:9 4279:24 4280:1 <b>opportunity</b> 4223:4 4223:5,24 4238:25 4284:21 4375:6 <b>opposed</b> 4152:18 <b>opposite</b> 4346:9,13 <b>opposition</b> 4266:21 4267:17 <b>oral</b> 4158:11 <b>orally</b> 4293:9 <b>order</b> 4198:13 4223:21 4281:23 4296:14 4303:25 4363:14 <b>ordered</b> 4250:18,23 4274:9 4337:24 <b>ordering</b> 4274:20 <b>Order-In-Council</b> 4207:6 4212:17 4224:7 <b>organize</b> 4355:19 <b>organized</b> 4190:21 <b>organizers</b> 4355:18 <b>original</b> 4187:17 4276:6,7 <b>originally</b> 4288:12 <b>Orr</b> 4288:23 4327:16 4328:2 4328:14,17,24 4329:5,6,8,18 4330:6,6,18,25 4331:6 4333:25 <b>Osborne</b> 4141:13 4282:22 4283:11 <b>Ostrowski</b> 4207:2 4209:18 4211:8 4211:16 4216:23 4217:10,18,23 4218:4,8,10,18,22 4219:2 4221:2,3 4221:18 4236:19 4237:7,12 4239:12,24 4243:11 4244:2 4258:20 4260:9 4260:15 4262:18 <b>Ostrowski's</b> 4219:16 4221:6 4232:15 4237:16 4259:23 4261:19	<b>Ottawa</b> 4179:1 4233:8 <b>ought</b> 4224:8 <b>ounces</b> 4219:12 <b>outrage</b> 4342:18 <b>outraged</b> 4340:15 4341:4 4342:20 <b>outset</b> 4169:3 4172:11 4316:9 4316:25 <b>outside</b> 4182:10 4224:7 4252:10 4252:12,18,24 <b>outstanding</b> 4199:1 4211:2 4215:9 4219:10 4226:24 4238:10 4327:24 4327:25 4335:8 4369:25 4373:6 <b>oversaw</b> 4352:18 <b>overseeing</b> 4326:9 4335:22 4357:3 <b>oversight</b> 4148:1 <b>overview</b> 4326:8	4316:16 4320:13 4320:23,24,24 4325:6,9,14,15 4327:8,9 4329:19 4330:7,15 4337:11 4338:10 4343:5,9 4346:7,8 4346:13 4351:22 4351:23 4365:21 4365:22,22,25 4366:2 4370:6 4378:8 <b>pages</b> 4192:14 4236:8 4247:25 4299:19 4300:5,8 4300:10,17,24 4301:20 4320:17 4320:21 4341:9 4379:6 <b>pagination</b> 4323:22 4331:12 4332:17 <b>paid</b> 4183:13 4201:15,15,17 4289:22 <b>Pam</b> 4235:24 4236:10,24 <b>paper</b> 4210:9 4300:24 <b>paragraph</b> 4176:18 4183:4 4184:19 4184:19,22 4185:3 4186:5,9 4194:25 4196:23 4197:1 4251:5 4266:17,23 4267:4,11,12,22 4270:23 4271:4 4274:14 4306:2,3 4306:4 4309:11 4309:11 4316:5,7 4318:10,21 4321:6 4323:7 4324:1 4325:18 4327:9 4330:7,17 4331:17 4332:19 4337:13 4338:5,9 4338:11,15 4345:23 4367:21 4368:9 4369:18 4369:22 4378:9 <b>paragraphs</b> 4183:3 4266:18 4272:1 4307:20 <b>parameters</b> 4224:6 <b>Pardon</b> 4226:20 4356:8 4368:21 <b>parliament</b> 4269:9	4272:15 <b>part</b> 4158:11 4160:7 4179:23 4186:25 4199:19 4201:10 4210:23 4220:16 4224:22 4242:17 4247:23 4260:16 4288:20 4321:21,22 4352:24,24 4359:19 4369:23 4370:21 <b>participants</b> 4224:9 <b>particular</b> 4148:19 4149:12 4157:23 4212:24 4291:24 4301:4 4302:18 4303:23 4310:1 4317:3 4323:7,7 4345:22 4357:1 4359:23 4365:3 4366:23 4371:18 <b>particularly</b> 4175:19 4193:3 4213:6 4233:13 4278:6 4299:10 4301:23 4362:16 4362:17 <b>parties</b> 4141:7 4170:6 4222:13 4222:20 4283:15 <b>Partly</b> 4363:14 <b>partner</b> 4318:2 4370:22 <b>partook</b> 4185:16 <b>parts</b> 4158:4 4181:19 <b>party</b> 4243:24 <b>pass</b> 4147:23 4171:14 4264:10 4291:2 4292:2 4334:22 <b>passages</b> 4223:11 <b>passed</b> 4147:19 4148:2 4297:7,9 4320:10 4344:15 4356:12 <b>passing</b> 4187:2 4358:25 <b>path</b> 4267:2 <b>Patrick</b> 4138:5 <b>patrolling</b> 4300:14 <b>Paul</b> 4177:23 4203:24 4309:1 4317:4 4318:2,14 4319:17 4323:13 4327:12 4331:4
--	--	--	---	---

4335:21 4336:3 4336:10,18 4337:7,14 4342:25 4348:20 4362:17 4363:3 4363:10 4365:4,6 4368:16 4370:23 4371:20 4372:4 4373:22 4374:25 4375:22 4376:14 <b>Paulyshen</b> 4299:21 4301:19 <b>Paulyshyn's</b> 4244:24 <b>Paul's</b> 4294:2 4301:10 <b>pause</b> 4282:9 <b>pay</b> 4329:2 <b>paying</b> 4310:21 <b>payment</b> 4183:11 4183:16,18,22 <b>payments</b> 4183:9 4188:1 4189:24 4190:4 4191:16 <b>payout</b> 4330:8 <b>pejoratives</b> 4268:1 <b>Pelletier</b> 4139:7 <b>pen</b> 4214:18 <b>penalties</b> 4228:10 <b>pending</b> 4236:22 <b>people</b> 4150:14 4151:22 4159:1 4217:3 4221:3 4244:19 4258:2 4304:4 4326:17 4354:3 4355:5 4356:18,20,23 4372:20 <b>perceived</b> 4293:1 <b>percentages</b> 4256:5 <b>perfect</b> 4262:12 <b>perfectly</b> 4157:14 4263:20,23 <b>perform</b> 4308:15 <b>performed</b> 4211:2 <b>period</b> 4153:21 4180:1 4200:19 4265:5 <b>perjured</b> 4148:23 4152:5 4185:20 4313:10 <b>perjury</b> 4146:19 4147:12 4152:6 4193:7 4252:8,10 4275:11 <b>permit</b> 4213:10 4282:16	<b>permitted</b> 4209:7 4243:3,3 <b>Perozzo</b> 4266:1 4272:7 4356:5 <b>perpetrator</b> 4279:20 <b>Perry</b> 4267:8,21 <b>person</b> 4255:6 4308:11 4312:25 <b>personally</b> 4163:14 4163:25 4164:20 4165:2 4377:17 <b>person's</b> 4254:24 <b>perspective</b> 4374:18 <b>persuade</b> 4283:16 <b>persuaded</b> 4283:24 <b>pertain</b> 4353:21 <b>pertaining</b> 4353:6 <b>pestering</b> 4279:16 <b>Peter</b> 4235:7 4237:3 <b>Peyko</b> 4218:7 <b>phone</b> 4180:22 4229:17 4248:22 4248:23 4279:17 4313:14 <b>phrase</b> 4278:10 <b>physically</b> 4315:1 <b>picked</b> 4278:13 <b>picking</b> 4255:3 <b>picture</b> 4179:21 <b>piece</b> 4221:7 4326:23 <b>pieces</b> 4349:13,20 <b>Pilote</b> 4294:24 4296:23 <b>Pilote's</b> 4295:24 <b>place</b> 4153:23 4169:22,24,25 4175:14 4209:10 4209:23 4280:16 4290:1 4349:8 4367:17 4379:8 <b>placed</b> 4298:20 <b>placement</b> 4172:12 4172:13 <b>plane</b> 4220:22 <b>planned</b> 4275:4 <b>play</b> 4356:19 <b>please</b> 4142:4 4181:22 4194:13 4213:24 4220:1 4231:12 4232:4 4238:15 4267:9 4281:20 4286:24 4306:21 4317:18 4320:14,23 4323:19 4327:4,8	4360:22 <b>plus</b> 4188:6 <b>PMK</b> 4234:23,25 4235:3 <b>PNK</b> 4235:5 <b>point</b> 4151:7 4156:17,22 4157:8 4162:22 4163:4 4195:19 4199:24 4218:15 4230:7 4244:14 4246:18 4253:16 4254:18 4255:20 4258:8 4262:4,5,9 4265:1 4288:24 4296:13 4297:1 4305:10,18 4306:19 4316:17 4322:22 4329:14 4329:24 4331:18 4344:21 4347:25 4355:3 4356:9 4375:23 <b>pointed</b> 4161:10 4241:9 4244:13 4302:19 <b>pointing</b> 4212:11 4297:24 <b>points</b> 4150:3 4151:21 4282:24 4329:23 <b>police</b> 4139:17,19 4144:20 4145:15 4150:7,8,12,21 4151:13,16 4152:1 4153:8,23 4154:1,3,13,17,21 4161:2,4,7,13,19 4161:21,22 4162:2,11 4163:18,21 4165:24 4166:8 4168:4 4172:10 4172:16 4173:23 4175:17 4176:10 4204:22 4206:23 4219:14,16 4226:16 4228:6 4228:12,17 4230:21,24 4234:2 4249:7 4252:11,19 4273:5 4286:10 4287:7 4288:16 4288:25 4289:12 4290:3,16,25 4291:23 4292:14	4295:19 4296:18 4297:6 4298:2 4300:20 4302:14 4303:24 4304:3 4304:13 4305:3,5 4305:9,14 4306:7 4306:12,16 4307:9,18 4309:2 4309:10 4310:2 4313:9 4315:1,22 4317:3 4318:13 4321:10,14 4322:2,6 4323:9 4324:10,19 4325:2,11,20 4326:6,10 4332:3 4332:4,8,10,13 4334:21 4335:9 4336:5,15 4337:20 4343:12 4343:25 4353:24 4361:9,11 4364:1 4364:4,24 4367:2 4367:9,21 4368:1 4368:12,16 <b>policeman</b> 4177:2 4234:12,12 4300:11 <b>policemen</b> 4289:25 4292:5 4293:5 4326:11 <b>police's</b> 4286:6 <b>policies</b> 4189:16 <b>policy</b> 4189:7,16 4190:13 4263:16 4263:24 4264:2 4352:21 4353:5,7 4353:16 4359:17 <b>poor</b> 4308:4 <b>population</b> 4256:8 <b>portion</b> 4293:12,15 <b>portray</b> 4268:2 <b>position</b> 4159:21 4174:2 4191:1,11 4198:4 4214:12 4214:18 4225:3 4243:23 4280:17 4284:14,24 4339:21 4353:19 4373:16 <b>positions</b> 4191:18 4266:8 <b>positive</b> 4254:21 <b>possession</b> 4184:2 4219:11 4226:10 4232:22 4239:22 <b>possibility</b> 4278:25	<b>possible</b> 4197:7,10 4252:10 <b>possibly</b> 4155:2 <b>post</b> 4151:11,11 4153:9 4159:17 4178:24 4261:14 <b>post-appeal</b> 4265:19 <b>post-conviction</b> 4179:3 4180:5 4264:6 4265:5 <b>post-trial</b> 4336:25 <b>potentially</b> 4269:10 <b>powerful</b> 4155:24 4159:2 <b>practical</b> 4276:21 <b>practically</b> 4286:16 <b>practice</b> 4143:10 4187:22 4189:23 4196:6 4210:24 4210:24 4211:12 4212:24 4213:2 4213:12,14,15 4240:4 4243:5,13 4243:14 4246:13 4262:22 4292:20 4301:14 4361:13 <b>practitioner</b> 4192:7 <b>precaution</b> 4268:19 <b>preceded</b> 4224:1 <b>Prechniak</b> 4141:13 4282:22 4283:11 <b>precipitating</b> 4265:6 <b>precise</b> 4256:9 <b>preferable</b> 4197:5 <b>preferably</b> 4160:4 <b>prejudiced</b> 4276:5 <b>prejudicial</b> 4212:9 4212:9 <b>preliminary</b> 4230:15,17 4237:9 4268:21 4282:14 <b>preparatory</b> 4151:19 <b>prepare</b> 4267:18 4362:1 <b>prepared</b> 4148:4,4 4182:22 4183:7 4277:16 4296:9 4309:21 4324:3,7 4363:24 4364:8 <b>preparing</b> 4193:18 <b>presence</b> 4219:16 4314:25 4324:13 4332:20
--	--	--	--	--

<p><b>present</b> 4151:4 4160:14 4165:14 4166:16 4168:1 4187:8 4218:6 4226:7 4231:10 4267:24 4293:23 4318:24 4334:18 <b>presented</b> 4213:14 4286:9 <b>presenting</b> 4195:18 <b>presents</b> 4260:6 <b>preserving</b> 4262:7 <b>presided</b> 4157:12 <b>press</b> 4274:8 4279:14 <b>pressing</b> 4366:21 <b>pressuring</b> 4177:14 4178:17 <b>presumably</b> 4177:8 4193:25 4198:3 4201:1,3 <b>presume</b> 4234:16 4237:19 <b>pretty</b> 4205:12 4226:6,24 4323:2 4330:24 4355:23 4357:7 <b>prevent</b> 4171:5 <b>prevented</b> 4175:3 4263:17 <b>prevention</b> 4353:5 <b>prevents</b> 4174:9 <b>previous</b> 4147:21 4155:3 4188:16 4269:1,18 4272:8 <b>previously</b> 4183:16 4183:21 4363:2 <b>pre-appeal</b> 4264:7 4265:5 <b>pre-Driskell</b> 4196:5 <b>pre-occupying</b> 4178:20 <b>pre-Stinchcombe</b> 4187:23 <b>pre-trial</b> 4159:15 4164:14 4324:5 4333:4,5 4364:9 4364:14 <b>pre-trials</b> 4363:21 <b>principal</b> 4248:11 <b>principles</b> 4187:14 <b>print</b> 4305:7,8 4346:24 4347:15 <b>printed</b> 4266:24 4321:2 <b>printing</b> 4346:24 <b>prints</b> 4218:11</p>	<p><b>prior</b> 4153:15 4165:4,19 4167:20 4248:18 4271:7 4341:1 4359:7 4362:18 4372:5 <b>prison</b> 4279:20 4281:1,2 <b>private</b> 4192:7 4240:4 4262:22 4292:20 <b>probably</b> 4227:15 4305:19 4324:14 4332:22 4353:17 4378:6 <b>probative</b> 4208:15 <b>Prober</b> 4139:13 4155:5 4156:15 4157:16 4158:7 4158:18,20 4159:9 4181:10 4181:20 4199:25 4202:14 4203:9 4206:12 4209:1 4210:17 4211:20 4211:21 4217:1 4219:24 4220:1,9 4220:11,13 4222:6,11,16 4223:3,14 4225:11 4232:1,3 4235:7,9,12,14 4238:15,17,24 4239:4,5,6,8 4240:18 4241:10 4241:13,23 4242:1,23 4243:1 4246:15 4247:3 4258:25 4260:3,5 4266:24 4269:13 4269:25 4270:8 4270:11 4281:21 4281:24 4282:5 4305:24 4370:5 4376:22,24 4377:2,6 4378:3 <b>Prober's</b> 4207:10 4210:8 <b>problem</b> 4143:24 4174:19 4225:19 4261:3 4263:21 4318:25 4372:19 <b>problems</b> 4174:14 4174:20 4176:7 4176:11 4215:24 4258:9 4264:7 4270:24 4276:17</p>	<p>4334:19 <b>proceeded</b> 4343:4 <b>procedural</b> 4282:10 <b>procedure</b> 4182:4,7 <b>proceed</b> 4339:4 4363:11 <b>proceeding</b> 4177:13 4188:5 4287:6 4288:5 4378:25 <b>proceedings</b> 4138:11,20 4140:1 4168:23 4179:4 4189:19 4209:15 4215:11 4215:15 4216:10 4223:19 4237:14 4242:12 4251:1 4281:17 4330:19 4333:13 4345:8 <b>process</b> 4147:7,10 4147:21 4182:25 4185:17 4247:11 4289:1 4300:4 <b>produce</b> 4203:7 <b>produces</b> 4182:13 <b>product</b> 4362:14 <b>profession</b> 4359:10 <b>professional</b> 4284:10 4355:18 <b>program</b> 4170:25 4171:4 4176:8 4187:25 4190:7 4191:17 4196:16 4196:19,21 4268:18 4288:8 4289:19 4327:16 4327:18 4330:21 4333:7 4363:15 4366:6 <b>prohibition</b> 4170:25 <b>prolonged</b> 4210:11 <b>prominent</b> 4145:21 <b>promise</b> 4228:24 <b>promised</b> 4189:18 4190:17 4229:5 4252:19 <b>promises</b> 4319:12 <b>promoting</b> 4358:25 <b>prompted</b> 4143:19 4143:22 <b>promptly</b> 4151:1 <b>proof</b> 4252:5 <b>proper</b> 4156:7 4196:18 4215:18 4269:23 <b>proposed</b> 4163:13 4171:3 4206:25</p>	<p><b>proposes</b> 4212:10 <b>proposition</b> 4356:15 <b>prosecute</b> 4258:11 4278:24 4342:5 <b>prosecuted</b> 4184:5 4204:25 4208:12 4247:14 4258:4 4258:24 4262:1 4262:24 4264:23 4278:22 4280:18 <b>prosecuting</b> 4178:9 4178:19 4208:4 4279:10 4299:15 4321:8,11 <b>prosecution</b> 4153:3 4184:1 4204:1 4206:10 4207:17 4216:22 4219:9 4242:18 4247:7 4285:8 4310:20 4330:2 4338:20 4355:11 4356:21 4357:18 <b>prosecutions</b> 4145:14 4190:22 4192:7 4214:6 4239:19 4246:21 4292:21 4352:12 4356:21 4357:25 4359:11 <b>prosecutor</b> 4178:6 4179:18,18 4195:16,24 4199:18 4204:13 4234:9 4235:25 4236:25 4252:12 4252:23 4256:11 4256:19 4257:2 4262:6 4276:10 <b>Prosecutorial</b> 4358:4 <b>prosecutors</b> 4184:24 4185:5 4185:14 4187:18 4189:9 4199:14 4206:23 4239:16 4240:3 4352:4 4355:8,9,10 4356:23 4357:12 4358:8 4359:16 <b>prosecutor's</b> 4182:15 <b>prospect</b> 4216:8 <b>protect</b> 4171:7 <b>protecting</b> 4171:24 4336:5</p>	<p><b>protection</b> 4170:24 4171:4 4173:17 4187:25 4191:17 4197:3 4199:16 4268:18 4288:7 4289:10,13,19 4290:4,5 4291:7 4310:3,7,13,15,23 4310:25 4316:10 4316:19 4317:6 4327:15 4333:7 4334:11 4363:15 4366:6 4370:14 4371:23 <b>proved</b> 4263:10 <b>provide</b> 4154:9 4158:9 4252:13 4252:24 4293:18 4294:9 4302:12 4303:25 4361:19 4366:18,25 <b>provided</b> 4151:1 4161:9 4282:19 4294:4 4296:2 4297:5,11 <b>providing</b> 4271:9 4288:15 <b>province</b> 4139:12 4258:4 4338:17 4379:5 <b>provinces</b> 4268:15 4359:12 <b>province's</b> 4278:21 <b>Provincial</b> 4234:21 4240:13 4242:8 4242:10 4246:19 4246:20,23 <b>proximity</b> 4340:24 <b>public</b> 4314:20 4356:22 <b>purpose</b> 4160:1 4171:19 4186:18 4186:20 4188:20 4193:3 4219:11 4226:10 4232:22 4272:15 <b>purposes</b> 4185:24 4190:12 4291:11 4329:25 <b>pursuant</b> 4224:3 4282:15 4283:7 <b>pursue</b> 4243:2 4260:19 4331:21 4331:21 4335:9 <b>pursuing</b> 4253:16 <b>pursuit</b> 4328:4 <b>put</b> 4154:12</p>
---	--	--	---	---

4160:25 4162:2 4164:7 4165:19 4166:12 4205:23 4211:4 4220:4,8 4223:1 4227:3 4231:22,23 4232:12 4248:1 4254:2 4267:4,8 4268:3 4274:1 4277:10 4280:25 4285:4 4286:8 4287:12 4296:14 4306:11 4311:23 4315:13 4321:23 4343:21 4345:23 4346:2,4,15 4349:24 4350:8,9 4350:11 4355:21 4359:2,5 4371:15 4373:4,10,15 <b>puts</b> 4300:18 <b>putting</b> 4270:17 <b>p.m</b> 4281:17,18 4333:14 4378:25	4292:7,10 4300:3 4304:11 4305:25 4306:13 4307:6 4310:11 4312:4 4314:16 4347:13 4347:19 4365:7 4369:9,24 4370:5 4370:6,7,7,10,11 4373:17 4378:5,7 <b>questioning</b> 4153:14 4155:24 4197:16 4207:1 4212:10 4216:14 4227:12 4249:16 4265:20 4306:5 4329:12 4334:10 4339:13 <b>questions</b> 4145:2 4155:19 4157:14 4158:16 4160:25 4166:12,15 4167:4,13 4168:18 4169:3 4172:5,6,9,11 4173:10,15 4179:16 4201:2 4227:2,9 4237:16 4243:19 4244:16 4266:20 4267:16 4281:12 4285:4 4286:8,25 4299:2 4299:5 4315:24 4315:25 4329:25 4340:1 4345:21 4347:24 4351:12 4360:14 4363:23 4364:2,7,13 4365:7,18 4366:10 4377:23 <b>quickly</b> 4217:9 4231:25 <b>Quinney</b> 4142:16 4148:20 4151:9 4151:11,23 4152:5 4153:8 4155:4,6,15 4160:22 4162:6 4162:23 4167:10 4168:5,9 4264:12 4265:13,16,21 4277:4 4337:4,5 4337:12 4338:3 4338:16,24 4340:10 4341:1 4341:11 <b>Quinney's</b> 4152:2 4153:1 4168:14	4269:3 4375:7,15 <b>quite</b> 4143:22 4146:16 4159:25 4175:1 4194:2 4211:24 4216:1 4233:10 4241:17 4244:5 4245:3,4 4246:11 4273:2 4277:10 4317:24 4319:25 4338:25 4377:3 <b>quote</b> 4170:10 4174:21 <b>Q.C</b> 4138:5 4139:12 4139:14,15,16,19 4139:21	4188:23 4193:18 4200:1 4215:1 4217:3 4224:20 4225:10 4227:25 4228:1,2 4233:17 4233:22,23 4234:24 4239:4 4241:11 4242:6 4248:18 4267:3 4267:12 4269:25 4270:22 4272:1,3 4273:2 4276:2 4277:15,20 4302:6,14 4311:3 4319:8 4338:6 4341:14,16 4376:3 <b>reading</b> 4148:15 4152:15 4153:8 4193:13 4202:6 4227:18,21 4249:6 4266:15 4271:2,21,24 4316:6 4327:22 4370:20 4375:20 <b>reads</b> 4235:24 4370:13 <b>ready</b> 4176:20,25 4287:22 <b>real</b> 4245:19 4299:24 4358:10 <b>reality</b> 4249:19 4253:12 <b>realize</b> 4228:9 <b>really</b> 4143:15 4151:5 4171:10 4181:24 4188:5 4191:23 4194:23 4199:19 4216:1 4217:3 4220:2,4 4224:18 4227:11 4261:6,16 4267:11 4272:21 4273:2,7 4277:8 4279:4 4280:2,4 4285:2 4308:3 4314:2 4328:17 4328:23 4349:12 4349:17 4356:2 4374:2 4376:20 <b>reared</b> 4265:22 <b>reason</b> 4154:18 4171:21,22 4173:19 4180:20 4197:21 4198:10 4199:16 4248:11 4252:9 4255:12	4283:12 4344:15 <b>reasonable</b> 4185:22 4201:6 4252:6 4278:25 4290:10 4290:16,21 4292:1 <b>reasonably</b> 4151:1 4201:22 <b>reasons</b> 4172:14 4199:14 4256:16 4260:19 <b>Reath</b> 4163:9 4164:4 4275:2 <b>rebuttal</b> 4260:4 <b>recall</b> 4145:17,23 4148:24 4149:23 4150:18,22 4151:6 4153:19 4154:8 4164:4 4169:7 4180:13 4189:16 4202:5 4206:11 4218:20 4221:1,14 4239:21 4249:24 4250:4 4256:3 4269:21,21 4270:2 4271:7 4273:11 4285:8 4294:7 4309:22 4311:9 4314:22 4325:12,21 4328:20 4340:10 4340:12 4345:22 4345:25 4348:3 4348:12,18 4349:16 4355:15 4357:6 4358:17 4359:18 <b>recalled</b> 4342:19 <b>recalls</b> 4316:18 <b>recant</b> 4152:23 4275:17 4337:9 <b>recantation</b> 4273:8 4338:2,5,9 <b>recanted</b> 4275:16 <b>receipt</b> 4305:7 <b>receive</b> 4249:23 <b>received</b> 4141:10 4151:9,18 4156:24 4168:9 4198:8 4231:15 4231:18 4233:3 4241:5 4275:5 4277:25 4312:5 4324:24 <b>receives</b> 4312:21 <b>receiving</b> 4196:1
<b>Q</b>		<b>R</b>		
<b>qualified</b> 4259:6 <b>qualify</b> 4327:18 <b>quash</b> 4276:8 <b>quashed</b> 4250:17,22 4274:8 <b>quashing</b> 4274:19 <b>Queen's</b> 4250:16,25 4252:16 4356:20 <b>question</b> 4146:5,11 4151:3,11,24 4153:4 4154:19 4154:25 4155:12 4159:13 4160:20 4161:18 4162:1,6 4165:19 4167:17 4180:12 4183:25 4200:3 4201:10 4203:11 4215:21 4223:12 4226:4 4229:7 4240:18 4242:2 4245:3,15 4245:19 4255:13 4258:25 4259:4,9 4259:15 4260:19 4261:3,15,17 4264:18 4266:9 4270:15,18 4273:3 4284:7,15 4285:2,20 4286:3 4286:4 4290:2 4291:11,20	4139:15,19 <b>raise</b> 4171:21 4200:24 4209:14 <b>raised</b> 4146:22 4150:17 4165:13 4200:15 4216:21 4258:8 4260:25 4266:20 4267:16 4276:17 4285:18 4285:23 4342:18 4342:21 4365:9 <b>raising</b> 4200:14 <b>ran</b> 4326:11 <b>Randy</b> 4319:19 <b>range</b> 4352:7 <b>rank</b> 4352:19 <b>rarely</b> 4274:24 <b>Ray</b> 4251:10 4329:11 <b>RCM</b> 4290:24 <b>RCMP</b> 4139:16 4148:21 4152:7 4152:12 4153:13 4153:25 4191:15 4255:21 4258:17 4258:18 4271:13 4288:8,13,15 4289:11 4324:11 4327:15,19 4328:7,14 4331:18 4332:2 4332:22 4352:23 4363:10 4368:16 4371:1 4372:6 4375:1 4376:15 <b>read</b> 4152:11 4163:8 4165:7,22 4176:16 4183:3 4184:11 4188:15			

<p>4316:13  <b>recess</b> 4223:8,12,18  4224:16 4225:14  4225:16 4333:10  4333:12  <b>recessed</b> 4223:19  4281:17 4333:13  <b>recognized</b> 4259:5  <b>recollection</b> 4143:1  4143:2,3 4145:6  4148:17 4149:25  4151:5 4165:11  4197:2 4210:21  4307:25 4309:15  4309:16 4310:10  4349:19 4350:23  4360:1  <b>recommend</b> 4208:9  <b>reconvened</b>  4223:20 4281:18  4333:14  <b>record</b> 4142:25  4197:11 4210:9  4211:4 4222:10  4228:2 4240:20  4262:15 4294:17  4328:13 4333:22  <b>recorded</b> 4322:15  <b>records</b> 4369:4,12  4369:19  <b>recounting</b> 4324:4  <b>reduced</b> 4347:2  <b>refer</b> 4202:18  4301:7 4304:21  4306:1 4307:2  <b>reference</b> 4206:21  4206:24 4210:14  4212:20 4244:23  4248:2 4259:10  4260:12 4283:18  4303:19 4306:12  4352:1 4375:18  <b>referenced</b> 4348:15  <b>references</b> 4187:7  4217:8 4297:18  4305:3  <b>referred</b> 4177:21  4178:22 4217:1  4220:9 4252:1,10  4259:19 4303:18  4304:2 4306:18  4307:18 4314:5  4317:21 4322:10  4358:24 4364:19  4374:16  <b>referring</b> 4147:13  4147:15 4158:11</p>	<p>4160:8 4170:23  4203:7 4217:4  4249:2 4253:21  4269:16,18  4273:7 4286:8  4287:11 4306:2  4323:6  <b>refers</b> 4246:23  4289:5 4305:20  <b>reflection</b> 4273:20  <b>refresh</b> 4142:12  4270:3 4308:17  <b>refuse</b> 4301:21  4310:13  <b>refused</b> 4263:14  <b>regard</b> 4252:14  4254:3 4256:17  4315:23  <b>regarding</b> 4172:12  4275:17 4278:16  4285:5 4316:3  4317:11 4320:4,5  4322:9 4324:19  4328:24 4334:2  4335:5,5 4337:23  <b>Registrar</b> 4282:20  4283:8 4287:10  <b>regrets</b> 4279:2  <b>regular</b> 4292:15  4326:17 4358:18  4371:21  <b>Reid</b> 4379:4,4,14,18  <b>rejoice</b> 4280:12  <b>rejoices</b> 4280:19  <b>relate</b> 4159:18  4167:4 4223:11  4300:6,17  4351:19  <b>related</b> 4163:2  4166:11,15  4187:24 4206:14  4271:12  <b>relates</b> 4244:22  4371:25  <b>relating</b> 4167:4  4170:24 4172:13  4206:15 4260:24  4347:24  <b>relation</b> 4145:2  4147:12 4148:19  4148:20 4153:23  4158:3 4163:9  4197:8 4198:25  4211:14 4243:15  4285:3 4289:12  4299:13 4301:10  4307:3 4318:16</p>	<p>4318:17  <b>relationship</b>  4290:24 4291:19  4361:7,20  <b>relative</b> 4285:17  4301:16  <b>relatively</b> 4348:6  <b>relayed</b> 4349:20  <b>release</b> 4183:6  4274:8  <b>released</b> 4183:2  4220:18 4221:4  <b>relevance</b> 4329:24  <b>relevant</b> 4207:5,6  4207:23,24  4208:1,15 4259:7  <b>Reliable</b> 4362:9  <b>relied</b> 4154:17  4204:14 4259:5  4363:5  <b>relief</b> 4172:20  4178:25  <b>relieved</b> 4233:5  <b>relocate</b> 4171:18,25  <b>remained</b> 4192:22  <b>Remand</b> 4221:4  <b>remarkable</b> 4265:4  <b>remedy</b> 4186:1  4274:24 4276:8  <b>remember</b> 4142:10  4146:8 4150:23  4150:23 4152:3,8  4164:8,13  4168:16,16  4169:5 4174:25  4177:15 4206:11  4214:5,8 4215:8  4217:13,19  4219:19 4221:15  4221:20 4244:6  4245:16,22  4246:8 4249:15  4250:4 4255:9,11  4256:11,25  4257:9,14  4265:19 4266:4  4266:12 4277:25  4278:3 4299:21  4324:21 4326:20  4326:25 4340:17  4341:3 4347:10  4353:10 4359:24  4360:5,12,13  4364:14 4375:2  4378:11  <b>remembering</b>  4281:5</p>	<p><b>reminds</b> 4156:2  <b>removal</b> 4310:6  <b>removed</b> 4299:19  4310:16  <b>removing</b> 4310:2  <b>render</b> 4186:23  <b>rent</b> 4201:14  4289:23  <b>repeated</b> 4187:7  4208:3 4253:8  <b>repetitive</b> 4159:20  <b>replete</b> 4273:12  <b>replied</b> 4364:20,21  <b>reply</b> 4305:2  <b>report</b> 4182:13,16  4182:17,21  4183:13 4186:6,8  4186:17 4209:17  4247:19 4248:10  4248:16,18  4249:3,5,9,14  4277:17 4293:19  4293:20,23  4295:19 4309:20  4321:21 4348:16  4348:22  <b>reported</b> 4191:3  4278:17 4314:3  4352:5  <b>reporter</b> 4227:23  4379:15,19  <b>REPORTER'S</b>  4379:1  <b>reporting</b> 4273:4,8  <b>reports</b> 4161:13,20  4161:21,22  4297:7,8 4350:1  <b>represent</b> 4286:22  4345:6  <b>representatives</b>  4311:1  <b>representing</b>  4165:10 4287:7  <b>request</b> 4154:11  4266:2 4294:18  4296:3 4301:13  4303:8,14,16  4306:22 4307:3,5  4307:16,19  4362:5  <b>requested</b> 4319:9  4368:24  <b>requesting</b> 4204:8  4313:25  <b>requests</b> 4172:25  4292:17 4307:1  4334:3</p>	<p><b>require</b> 4211:23  <b>required</b> 4185:17  4371:16  <b>resign</b> 4262:21  4263:15  <b>resolve</b> 4211:22  <b>resolved</b> 4176:22  <b>resolving</b> 4211:13  <b>respect</b> 4155:7  4156:10 4161:7  4172:19,21  4191:8 4196:14  4200:2 4207:2,4  4209:18 4212:7  4224:24 4229:13  4240:24 4241:18  4246:5 4247:1  4270:25 4271:14  4277:4,6 4280:22  4285:23 4291:5  4291:12 4299:6  4303:13 4332:11  4338:17 4344:10  4369:23 4371:17  4373:5  <b>respectful</b> 4192:23  4206:16,24  4209:4,10,23  4210:4 4225:12  4241:1 4259:3,10  4270:16  <b>respectfully</b> 4156:7  <b>respond</b> 4187:10  4194:21 4350:4  4351:6  <b>responded</b> 4146:23  <b>responding</b> 4148:24  <b>responds</b> 4186:6  <b>response</b> 4146:22  4155:13 4162:2  4182:1,20  4184:21 4186:7,9  4266:2 4269:10  4285:25 4286:4  4294:17 4364:1  4364:25 4365:16  4365:19 4368:10  4370:10 4371:9  <b>responsibilities</b>  4285:16 4352:8  <b>responsibility</b>  4190:23 4191:6  <b>responsible</b> 4195:17  4272:6 4310:22  4332:12 4352:11  4355:10  <b>rest</b> 4301:22</p>
--	--	---	--	---



<p>4345:15  <b>restraint</b> 4155:25  4156:1,5  <b>restricted</b> 4224:6  4273:23  <b>result</b> 4144:17  4162:23 4167:2  4226:17 4228:7  4266:19,20  4267:14,16  4268:15 4285:14  4296:3 4321:4,24  4329:12 4343:2  4353:19 4363:21  4363:23 4372:15  <b>resulted</b> 4168:21  4244:10 4336:3  <b>results</b> 4165:17  <b>retain</b> 4302:4  <b>retained</b> 4252:13,20  4252:24 4351:2  <b>retired</b> 4179:11  4279:1  <b>retrospectively</b>  4187:12  <b>return</b> 4228:22  <b>reveal</b> 4198:13  4306:7  <b>revealed</b> 4189:21  4201:13 4318:23  4351:8  <b>revelation</b> 4319:17  <b>revenge</b> 4152:14,18  4155:10 4319:4  <b>reversed</b> 4191:18  <b>reversing</b> 4338:12  <b>review</b> 4144:20,22  4144:24 4145:4  4145:16,17  4146:12 4167:23  4182:6,12,23  4185:25 4212:12  4223:4,5 4233:7  4239:1 4259:14  4274:19 4300:8  4304:23 4305:11  4320:22 4321:22  4353:8 4354:17  4354:20 4375:7  <b>reviewed</b> 4304:22  4311:15  <b>reviewing</b> 4166:24  4286:5 4305:21  <b>reward</b> 4152:18  4190:4 4216:13  4216:15 4316:14  <b>rewards</b> 4171:19</p>	<p><b>re-examine</b> 4376:10  <b>re-opened</b> 4281:20  4333:16  <b>re-prosecute</b>  4262:17 4263:4  <b>Richard</b> 4168:9  <b>rid</b> 4215:23 4315:12  <b>ridiculous</b> 4310:24  <b>right</b> 4143:4  4146:14 4147:16  4154:11,15  4159:9 4168:25  4169:2,9,17  4170:6,7,15  4171:15 4172:8  4174:11 4175:14  4176:1,3 4188:13  4188:25 4190:2  4196:12 4197:13  4198:5 4200:20  4204:7,7 4205:19  4206:7,10  4207:11 4215:6  4216:2 4219:13  4219:14 4225:3  4229:20,25  4234:9,15  4236:16 4237:17  4244:2 4246:14  4247:12 4249:22  4250:12 4253:23  4253:25 4254:22  4256:25 4257:8  4261:22,25  4262:11 4263:5  4265:22 4271:25  4272:4 4275:7,7  4276:3 4281:11  4283:14 4287:8  4288:1 4290:1  4291:21 4295:18  4296:4 4297:17  4297:23 4301:25  4304:15 4307:1  4308:18 4312:16  4313:23 4315:18  4318:3 4320:3  4321:22 4323:10  4324:23 4325:22  4326:2 4329:4  4336:21 4339:5  4339:18 4341:5  4343:8,22  4344:24 4345:17  4347:1,5 4348:12  4348:13 4362:16  4362:23 4364:10</p>	<p>4364:11 4367:10  4367:17,17  4369:17 4371:13  4374:22 4375:2  4376:7  <b>rights</b> 4319:8  <b>right-hand</b> 4321:1  4323:21 4331:13  4332:18 4343:10  <b>ring</b> 4342:22  <b>rise</b> 4142:3 4223:21  4253:5 4281:15  4281:19 4333:11  4333:15 4378:23  <b>risk</b> 4268:24  <b>road</b> 4229:22  4243:10  <b>Rob</b> 4283:1  <b>Robert</b> 4217:12  4257:3,4,11  <b>Robinson</b> 4294:24  <b>Roger</b> 4263:2  <b>role</b> 4158:25  4205:11 4208:1  4354:23  <b>roles</b> 4355:6  4356:19  <b>rolling</b> 4221:13  <b>room</b> 4293:3 4310:4  4315:2  <b>route</b> 4232:16  4339:12  <b>routinely</b> 4205:16  <b>Roy</b> 4156:3  <b>rubric</b> 4291:6  <b>rude</b> 4279:4,17  <b>ruining</b> 4280:19  <b>rule</b> 4158:11  4264:25 4282:16  4283:7,15  <b>rules</b> 4158:8 4208:3  4282:16  <b>ruling</b> 4160:2  4211:23 4213:18  4224:2,4  <b>rummage</b> 4315:17  <b>running</b> 4350:24  4355:4,21  <b>R.L</b> 4139:4</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>safely</b> 4312:19  <b>safety</b> 4314:20  4356:22  <b>sake</b> 4272:15  <b>sample</b> 4255:4,7  <b>samples</b> 4256:2</p>	<p><b>sampling</b> 4256:3  <b>Sanderson</b> 4257:3,4  4257:11 4258:20  4260:8 4262:23  4262:24 4263:1,2  <b>Sanderson's</b>  4257:13  <b>Saskatchewan</b>  4147:1 4148:21  4151:10 4265:8  4265:21 4268:11  4271:11,14  4278:1 4313:20  4319:1 4335:16  4337:18 4338:24  4343:4 4367:3  4368:2  <b>satisfied</b> 4151:19  4161:8 4167:18  4321:7 4322:24  <b>satisfy</b> 4175:21  <b>save</b> 4224:2  4315:12  <b>saw</b> 4144:18 4148:3  4179:17 4194:8  4277:5 4294:6  4297:17  <b>saying</b> 4162:25  4168:7 4173:12  4188:20 4189:15  4192:4 4199:20  4199:21 4200:13  4202:20 4216:2  4216:18 4222:7  4231:7 4237:18  4244:6 4245:5  4255:22 4261:5  4263:10 4266:12  4273:6 4282:3  4291:5,21 4301:1  4302:16 4331:25  4340:9  <b>says</b> 4146:17  4147:18 4155:16  4166:19 4168:10  4186:9,15,16  4188:17,24  4189:22 4193:9  4200:2 4202:18  4202:19 4227:10  4233:14,22  4236:17 4243:14  4245:18 4246:18  4247:24 4248:9  4254:17 4266:25  4269:18,20  4274:14 4306:6</p>	<p>4307:7 4312:8,13  4322:7,24  4327:22 4330:9  4347:11 4369:3  4376:4  <b>scenario</b> 4246:10  <b>scene</b> 4255:25  <b>scheduled</b> 4237:9  <b>scheduling</b> 4176:7  4176:11  <b>score</b> 4204:9  <b>scrambled</b> 4377:24  <b>scrawl</b> 4347:3  <b>Scullion</b> 4233:6  <b>seated</b> 4142:4  4281:20  <b>sec</b> 4282:2  <b>second</b> 4231:21  4232:7,10,11  4235:22 4244:9  4267:10 4270:20  4320:23 4321:12  4323:19 4325:16  4325:18 4331:12  4331:17 4337:12  4338:8,10 4342:8  4343:9 4351:22  4351:23 4365:19  4365:21,25  4369:7,22,23  4370:13,21  4375:11  <b>secondly</b> 4207:24  <b>secret</b> 4210:19  <b>section</b> 4232:18  4348:22  <b>secure</b> 4215:22  <b>secured</b> 4261:21  <b>security</b> 4172:14  <b>see</b> 4143:21 4144:4  4144:7 4146:15  4147:3 4150:2  4153:16 4156:24  4160:15 4163:5  4164:2 4166:1  4172:3 4179:22  4180:20 4181:15  4181:23 4188:14  4188:22,25  4189:1 4194:15  4199:23 4201:18  4202:25 4210:10  4221:4 4224:16  4225:25 4226:2  4231:7 4233:15  4233:21 4235:23  4241:17 4246:10</p>
---	---	--	--	---

4247:8,18 4248:2 4251:7 4253:4,16 4254:14,16 4262:16 4272:4 4274:14 4286:4 4290:9 4295:25 4296:18 4298:21 4307:5,12,17 4309:8 4319:12 4320:10,21 4321:17 4324:16 4325:13,17 4328:9 4330:6,12 4330:22 4331:23 4332:14,24 4337:12,21 4338:5 4339:2 4342:24 4343:17 4344:4 4366:4 4370:19 <b>seeing</b> 4208:13 4308:13 <b>seek</b> 4357:22 <b>seeking</b> 4249:21 <b>seen</b> 4249:5 4250:7 4261:16 4262:6 4312:16 4341:18 4374:14,15,16 <b>seize</b> 4281:25 4282:8 <b>send</b> 4270:4 <b>sending</b> 4143:8 4270:4 4289:24 <b>sends</b> 4342:12 <b>senior</b> 4144:21 4184:16 4190:24 4191:22 4195:16 4317:10 4322:17 4350:3 4353:15 <b>seniors</b> 4372:22 <b>sense</b> 4156:21 4188:14 4205:11 4220:22,24 4235:11,13,16,21 4305:1 4335:10 <b>sent</b> 4143:6,7,20 4154:1 4252:15 4264:11,12 4274:2 4278:3 4297:2 4298:15 4298:16 4305:2,4 4305:13 4362:5 4363:25 4364:3 4364:17,24 4367:8 <b>sentence</b> 4165:22 4370:13	<b>separate</b> 4149:8 4159:8 4167:6 4300:24 4349:24 <b>separately</b> 4242:15 <b>September</b> 4217:14 4237:23 4238:5 4284:1 <b>septuagenarians</b> 4345:1 <b>Sergeant</b> 4210:16 4211:13 4248:10 4294:2 4301:10 4307:16 4309:1 4319:24 4326:2,5 4327:7 4329:5,18 4335:21 4336:10 <b>Sergeants</b> 4317:4 <b>series</b> 4249:15 4255:14 4285:4 4314:4 <b>serious</b> 4152:13 4210:15 4226:6 4226:24 4228:18 4275:20 4310:16 <b>seriously</b> 4276:5 4376:21 <b>served</b> 4350:14,20 4369:20 <b>service</b> 4287:7 4288:15 4289:12 4310:2 4317:3 4326:6,10 4332:4 4337:20 4361:11 4364:1 <b>Services</b> 4139:18 <b>session</b> 4142:4 4223:22 <b>set</b> 4144:12 4230:13 4239:10,14 4318:18 4324:15 4329:23 4332:22 4368:18 <b>sets</b> 4142:15 4220:3 4343:5 <b>setting</b> 4144:25 <b>seven</b> 4257:16 4312:22 <b>Shafik</b> 4367:4 4368:3 <b>share</b> 4233:4 <b>shared</b> 4342:9 <b>shifting</b> 4355:14 <b>shooting</b> 4217:11 4217:14 <b>shop</b> 4367:5 4368:4 <b>shopping</b> 4286:9 4364:18,19	<b>short</b> 4165:18 4217:21 4267:5 4267:18 4345:9 <b>shortly</b> 4329:20 4346:5 <b>shot</b> 4217:14 4219:21 <b>show</b> 4214:15 4305:16 <b>showed</b> 4224:19 <b>showing</b> 4156:1 4289:22 <b>shown</b> 4155:25 4207:18,20 4272:19 4288:21 4297:14 4370:11 <b>shows</b> 4281:24 4305:12 <b>shrinking</b> 4215:5 <b>Sid</b> 4359:22 <b>side</b> 4279:21 <b>sides</b> 4210:6 <b>sign</b> 4233:3 4266:24 4281:24 <b>signed</b> 4141:8 4222:13,21 <b>significance</b> 4302:18 <b>significant</b> 4178:10 4217:16 4221:11 4221:12 4274:22 <b>significantly</b> 4275:22 <b>silence</b> 4224:21,22 <b>similar</b> 4209:8 4210:1,2 4212:1 4212:19,21 4213:15,16 4329:9,12 4337:13 <b>Similarly</b> 4190:19 4374:18 <b>simple</b> 4243:4 <b>simpler</b> 4292:23 <b>simply</b> 4146:11 4156:21 4157:3 4162:6 4242:21 4266:16 4269:8 4272:13 <b>sincere</b> 4360:24 <b>single</b> 4330:8 4369:24 4370:1 <b>sinister</b> 4298:22 <b>sir</b> 4168:25 4169:4 4169:14,21 4170:4,8,17 4172:3,15	4174:19 4175:23 4176:17 4177:20 4177:20 4178:1,5 4178:18,22 4179:2 4180:1,16 4182:5,19,25 4183:4 4184:19 4186:5 4188:3,16 4189:3 4190:2,18 4191:12,25 4193:13 4194:9 4196:9,24 4199:20 4200:14 4200:21 4202:10 4202:22 4203:11 4203:20,23 4204:11,21 4205:2,16 4206:9 4213:22,24 4214:11,22 4215:8 4216:2,4 4216:18,20 4217:9,13,17,19 4217:20 4218:16 4219:10 4221:14 4221:22 4223:12 4224:10,19 4225:21 4226:2,8 4226:12,14 4227:13,19 4228:1,13,14 4229:6,8 4230:10 4231:2,6,9,21 4233:11,17 4234:3,9,15 4235:2,19,23 4236:17,20 4237:15,20,23 4238:9,23 4239:10 4240:7 4240:14 4245:5 4245:15 4246:4 4247:15,18,24 4248:3 4249:17 4249:19 4250:6,9 4250:24 4251:3 4252:14,18 4253:3 4254:2,9 4254:16 4255:10 4255:12 4256:11 4256:15,19 4257:2,5,15,21 4258:2,7,11 4261:13,24 4264:19 4265:19 4265:25 4266:4,7 4266:9,14	4267:13,22 4268:6,25 4269:1 4269:6,11 4271:3 4271:22,25 4272:5,12 4273:20 4274:4 4274:11,13 4276:10 4277:2 4277:19 4278:5 4278:15 4279:8 4279:15 4280:6 4280:21 4284:7,9 4284:16,22 4285:3,12 4287:4 4318:12 4343:8 4344:24 4345:10 4345:22 4346:6 4346:15,22 4347:5,17,24 4348:7 4349:1 4350:12,13,23 4351:6,11 4361:4 4363:20 4367:10 <b>sister</b> 4319:6 <b>sit</b> 4281:4 4358:20 <b>sitting</b> 4138:12 4233:21 <b>situate</b> 4144:6 <b>situation</b> 4166:13 4166:16,16 4178:18 4199:10 4213:15 4272:23 4362:12 4372:19 <b>six</b> 4144:24 4230:25 4237:25 4238:8 <b>skip</b> 4196:23 4274:5 4275:13 4319:7 <b>skirmish</b> 4224:1 <b>slow</b> 4227:21 <b>small</b> 4255:4 4356:23 <b>soap</b> 4260:14 <b>social</b> 4180:24 <b>Society</b> 4350:14 <b>solely</b> 4266:11 <b>solidified</b> 4343:23 <b>solve</b> 4263:21 4264:5 <b>somebody</b> 4218:12 4255:7 4281:21 4324:25 4366:8 <b>son's</b> 4300:11 <b>soon</b> 4176:15 <b>sophisticated</b> 4256:4 4299:20 <b>Sophonow</b> 4141:5 4206:10,15,18
---	---	---	--	---

<p>4207:2,5 4209:16 4211:8,16 4213:23 4214:2,7 4214:11,14 4216:20 4246:13 4247:16,20 4248:13 4258:19 4260:8 4278:16 4278:22 <b>Sophonow's</b> 4216:6 4259:23 4279:25 <b>Sopinka</b> 4158:22 <b>sorry</b> 4147:8 4150:19 4186:5 4186:11 4188:12 4191:20 4202:1,4 4202:8,11 4221:23 4227:1,4 4227:22 4231:13 4232:2 4233:1 4241:24 4242:5 4250:20 4251:12 4254:11 4272:21 4280:15,25 4281:9 4285:20 4286:19,20 4290:13,16 4298:7 4327:4 4338:8 4365:13 4366:13 4367:16 4370:9,12 4377:9 <b>sort</b> 4177:16 4180:17 4188:14 4188:19,21 4201:21 4244:3 4257:15,25 4258:16 4310:16 4341:23 4347:2 <b>sorted</b> 4176:3 <b>sorts</b> 4338:10 <b>sought</b> 4200:20 <b>sound</b> 4374:1 <b>source</b> 4154:18 <b>speak</b> 4193:15 4223:24 4251:21 4263:19 4293:8 4362:12 4371:18 <b>speaking</b> 4152:22 4187:15 4195:11 4292:7 4293:4 4300:19 4329:5,7 4349:6 4355:8 <b>speaks</b> 4241:15 4312:24 <b>special</b> 4201:13 4293:19 4352:15 4362:2</p>	<p><b>specialized</b> 4190:7 <b>specific</b> 4301:18 4303:19 4306:11 4307:19 4310:10 <b>specifically</b> 4294:7 4347:23 <b>specifics</b> 4325:12,21 4354:25 <b>speculate</b> 4247:1 <b>spend</b> 4208:17 <b>spent</b> 4150:7 4280:23 <b>spoke</b> 4159:12 4180:10 4221:2 4231:3 4290:11 4293:4 4329:1 <b>spoken</b> 4193:17 4194:3 4328:1 <b>spring</b> 4146:3 <b>staff</b> 4139:1,7,8 4187:4,6 4210:15 4211:13 4307:16 4319:23 <b>stage</b> 4157:9 4209:14 4291:1 <b>stages</b> 4151:19 4289:16,17 <b>stand</b> 4248:19 <b>standard</b> 4252:5 4258:16 4318:6,7 <b>standing</b> 4141:7 4222:13,20 4330:13 <b>Starr</b> 4256:12 4258:19 <b>start</b> 4166:18 4227:6 4244:14 4365:20 4377:21 <b>started</b> 4180:7 4195:20 4221:12 4227:7,12,18 4334:9 <b>starts</b> 4300:12 <b>state</b> 4151:6,25 4163:10 4166:3 4333:21 4337:19 <b>stated</b> 4248:10 4249:11 4270:14 4337:16 4354:24 4379:9 <b>statement</b> 4153:9 4170:9,11 4176:14 4193:11 4193:11 4194:12 4194:16 4202:6 4204:12 4226:21 4255:13 4282:25</p>	<p>4283:1 4318:16 4318:18 4325:4 4325:15 4328:15 4351:21,24,25 4358:24 4359:21 <b>statements</b> 4178:7 4255:14 4282:17 4309:2,3,4 4366:25 <b>stating</b> 4193:16,20 4272:24 <b>station</b> 4175:17 4176:10 <b>stay</b> 4149:6 4168:24 4215:11,15 4234:20 4240:12 4242:8 <b>stayed</b> 4216:10 4237:6 4268:11 4370:16 <b>staying</b> 4237:14 4251:1 <b>stays</b> 4189:18 <b>Stenotype</b> 4379:7 <b>stepped</b> 4244:15 <b>steps</b> 4302:10 4330:3 <b>stickied</b> 4235:19 <b>sticky</b> 4232:10,12 4236:13,14 <b>stiff</b> 4228:9 <b>Stinchcombe</b> 4359:15,16 <b>stop</b> 4150:16 <b>Stoppers</b> 4348:2,4 <b>stopping</b> 4336:5 <b>stories</b> 4314:4 <b>storm</b> 4144:18 4145:14 4167:2 4350:10 4351:9 <b>story</b> 4148:1 4231:1 <b>stress</b> 4163:20 <b>stressing</b> 4150:12 <b>strictly</b> 4171:2 <b>strike</b> 4196:19 <b>strikes</b> 4310:23 <b>strong</b> 4261:9 <b>stronger</b> 4205:25 <b>struck</b> 4176:15 4303:17 <b>Stu</b> 4142:14 <b>Stuart</b> 4139:15 4284:10 <b>stuff</b> 4168:2 4203:2 4292:23 4354:15 <b>subject</b> 4143:11 4145:10,14</p>	<p>4153:19 4165:5 4212:12 4234:20 4236:10 4240:12 4242:8 4259:13 4327:19 <b>submission</b> 4192:23 4206:16,25 4207:11,23 4208:14 4209:4 4209:10,23 4210:4,6 4225:13 4241:14,25 4242:19 4259:3 4259:10,24 4260:5 4270:17 <b>submissions</b> 4187:9 4209:15 4242:22 4258:8 <b>submit</b> 4156:7 4260:11 <b>submits</b> 4193:6 <b>submitted</b> 4271:10 <b>submitting</b> 4353:11 <b>subparagraph</b> 4378:16 <b>subpoenaed</b> 4232:19 4370:1 <b>subsequent</b> 4300:17 4364:16 <b>subsequently</b> 4219:21 <b>subsist</b> 4152:1 <b>substantial</b> 4275:5 <b>succeeded</b> 4263:1 <b>successfully</b> 4342:4 <b>suddenly</b> 4242:11 <b>suggest</b> 4148:23 4168:14 4175:23 4177:11 4178:5 4261:9 4266:14 4297:5 4300:1,6 4303:22 4304:18 4342:17 <b>suggested</b> 4205:25 4242:14 4291:1 4351:5 4372:3 <b>suggesting</b> 4165:14 4165:16 4209:9 4227:14 4229:8 4247:7 4297:23 4298:13,14 4305:17 4311:25 4313:24 4376:16 <b>suggestion</b> 4227:9 4240:21 4241:2,3 4294:2 4350:2,7 4355:7 4356:17</p>	<p>4377:2 <b>suggestions</b> 4350:11 4353:11 <b>suggests</b> 4240:14 <b>sum</b> 4196:20 <b>summarize</b> 4217:9 4312:19 <b>summarizing</b> 4337:10 <b>summary</b> 4217:21 4277:16 4329:17 <b>summer</b> 4149:23 <b>summer's</b> 4174:13 <b>sums</b> 4183:13 4190:4 <b>Sun</b> 4266:3,19 4267:15 <b>supervisor</b> 4336:12 <b>supervisory</b> 4190:23 4191:5 <b>supplemental</b> 4293:19 4309:20 <b>supplementary</b> 4365:17 4368:23 4369:16 4370:12 4371:9,16,25 <b>supplied</b> 4150:7,20 4151:13 4153:7 <b>support</b> 4139:8 4224:13 4316:13 <b>supporting</b> 4147:1 <b>suppose</b> 4185:23 4201:6 4206:13 4262:12 4298:4 4312:3 4313:20 4357:6 <b>supposed</b> 4153:22 4257:16 4297:13 4298:4 <b>supposedly</b> 4241:20 4257:11 <b>supposes</b> 4325:10 4325:19 <b>sure</b> 4157:17,19 4176:12,13 4194:2,10 4215:4 4222:9 4245:3 4247:5 4260:3 4261:1 4269:23 4291:20 4326:13 4339:24 <b>surely</b> 4177:13 4178:17 <b>surprise</b> 4208:7 4282:12 4340:16 <b>suspect</b> 4171:22 4173:19 4298:19</p>
--	---	---	--	---

<p><b>Swift</b> 4152:23                  4163:16 4164:1                  4164:10,16,23                  4203:3,20 4204:2                  4204:25 4317:6                  4318:17 4319:1                  4319:16 4320:6                  4322:9 4324:9                  4325:7 4326:22                  4327:21,24                  4328:7 4329:6,8                  4329:10,12                  4330:2,12,13                  4331:6,7,19                  4333:2,3 4335:14                  4339:10 4342:6                  4344:3 4348:8,10                  4348:12 4363:11                  4363:12 4367:3                  4367:23 4368:2                  4368:19 4371:1                  4372:6 4373:13                  4375:1 4376:14  <b>swim</b> 4339:15  <b>sympathetic</b> 4210:7  <b>system</b> 4171:8,24                  4179:19 4293:1                  4352:13 4353:22                  4357:3  <b>systemic</b> 4208:2                  4209:12,24                  4210:8,12                  4260:10 4261:17</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tab</b> 4142:11 4144:2                  4144:13,14,14,18                  4149:4,4,8,12,16                  4149:17,19                  4151:24 4152:3,9                  4160:9,14,14                  4164:8,8,12,13                  4176:17 4181:22                  4182:2,21 4186:5                  4194:14,18,19                  4220:7,12                  4225:21 4231:21                  4231:23 4232:7                  4247:17 4250:6                  4254:2,5,7,9                  4256:16 4257:5                  4266:6 4269:17                  4270:7,8 4271:3                  4271:22 4274:11                  4278:15 4294:11                  4294:14,15,19,20                  4295:5,6 4303:3</p>	<p>4305:2 4306:1,3                  4306:21 4307:3                  4307:15,20                  4308:8,20                  4309:19 4312:10                  4314:11 4317:18                  4317:21 4318:21                  4320:13,15,15,17                  4323:18,21                  4325:6 4327:3,3                  4328:13 4329:4,8                  4329:14,16                  4331:10 4332:17                  4333:23,24,25                  4336:24 4338:11                  4341:8,9 4343:7                  4345:11 4346:13                  4347:22 4363:7                  4364:2,7 4365:11                  4365:13,17,23                  4366:11,12                  4367:8,18                  4368:10,24                  4369:3,10,11,16                  4370:4 4378:15  <b>tabs</b> 4231:22 4232:1                  4375:7,15  <b>taint</b> 4234:22  <b>take</b> 4142:12                  4169:11,12                  4179:9,23                  4180:22 4181:25                  4184:20 4191:13                  4194:9 4205:13                  4221:15,22                  4225:13,18                  4239:7 4256:15                  4264:5 4274:6                  4289:3,5 4291:7                  4293:16 4294:1,1                  4294:10,11                  4295:18,21                  4296:5,15                  4300:23 4302:9                  4302:15 4303:1                  4307:15 4308:20                  4311:12,18                  4312:2,6 4314:7                  4316:4 4323:18                  4325:1 4328:12                  4330:3 4331:10                  4333:10,20                  4336:24 4340:15                  4341:17 4344:22                  4347:23 4357:18                  4357:24 4363:7  <b>taken</b> 4145:22</p>	<p>4146:6 4169:24                  4169:25 4214:13                  4268:19 4275:25                  4298:19 4309:9                  4378:8 4379:8  <b>talk</b> 4180:1,16                  4203:19 4292:10                  4292:22 4335:1                  4338:9 4344:7  <b>talked</b> 4143:12                  4300:3 4341:18  <b>talking</b> 4159:17                  4166:6,17                  4167:25 4174:12                  4177:14 4188:11                  4195:14 4198:18                  4198:20 4202:1                  4202:10 4203:18                  4227:17 4229:19                  4229:20 4232:8                  4288:14 4292:19                  4292:24 4298:6                  4300:9 4311:5                  4313:8 4323:8                  4324:4 4332:13                  4334:1 4356:4                  4357:11  <b>talks</b> 4314:19                  4338:12  <b>tall</b> 4328:21  <b>tape</b> 4313:15                  4314:3  <b>taped</b> 4248:20,25  <b>tape-recording</b>                  4311:13 4312:7  <b>Tapper</b> 4139:15                  4140:11 4223:23                  4224:11 4282:6                  4284:12 4351:14                  4355:13 4356:11                  4358:20 4360:10                  4360:14,16  <b>targeted</b> 4237:11  <b>team</b> 4352:25                  4355:4,5,6                  4356:17  <b>telephone</b> 4309:23                  4311:10,13                  4312:6,21  <b>tell</b> 4145:11                  4147:25 4158:21                  4171:17 4175:7                  4199:22 4204:24                  4215:5 4224:2,22                  4228:21 4242:2                  4244:25 4255:1                  4276:23 4277:19</p>	<p>4278:7 4287:13                  4291:17,17                  4293:17 4316:11                  4330:25 4336:19                  4337:6 4338:2                  4341:17 4343:13                  4343:14 4346:15                  4360:2 4372:15                  4373:15,24                  4377:14  <b>telling</b> 4150:18,19                  4164:9,19 4165:1                  4166:9 4167:12                  4178:11,12                  4203:5 4333:4  <b>tells</b> 4338:3  <b>ten</b> 4219:20,20                  4237:23 4238:6                  4264:19  <b>tended</b> 4148:22  <b>tendered</b> 4283:5  <b>tension</b> 4279:23  <b>term</b> 4210:14  <b>termed</b> 4175:18  <b>terms</b> 4156:6                  4158:24 4159:3                  4206:21,24                  4247:9 4251:22                  4259:10 4260:12                  4283:18 4326:5  <b>testified</b> 4177:23                  4183:19 4197:6                  4206:7 4210:16                  4211:4 4212:23                  4215:12 4229:11                  4233:16 4245:11                  4251:14,19                  4275:3 4330:25                  4343:1,3,16                  4344:1 4371:20                  4372:1,4  <b>testify</b> 4175:25                  4176:20,25                  4366:23  <b>testifying</b> 4202:13                  4258:2 4259:7                  4372:5  <b>testimony</b> 4152:13                  4183:24 4184:8                  4212:24 4213:12                  4213:13 4251:23                  4252:3 4268:12                  4275:17 4317:22                  4370:18  <b>testing</b> 4180:6  <b>Tews</b> 4262:25  <b>thank</b> 4156:14,15</p>	<p>4159:22 4160:5                  4168:17 4181:20                  4185:11 4203:8,9                  4207:7,13 4210:4                  4212:13,14                  4214:20 4224:9                  4224:11 4229:1                  4239:8 4241:6,13                  4243:1 4253:9                  4260:16,18                  4274:13 4281:11                  4282:5 4284:4,18                  4284:19,25                  4286:13,14,19                  4287:1 4298:8                  4303:10 4308:19                  4313:13 4315:6,7                  4333:19 4344:19                  4344:20 4351:12                  4351:13 4360:14                  4360:16,21                  4361:4 4378:20  <b>Thanks</b> 4344:18  <b>theory</b> 4352:4  <b>thing</b> 4173:8 4174:6                  4181:18 4200:24                  4243:8 4244:5                  4258:16 4261:25                  4263:6 4264:3                  4290:21 4293:7                  4312:9 4341:23                  4358:1,9,18                  4359:8 4364:6  <b>things</b> 4177:16                  4180:9 4192:4                  4194:22 4201:14                  4201:15 4203:4                  4208:4 4263:9,10                  4265:4 4274:5                  4277:11 4279:19                  4281:3 4292:24                  4293:9,21 4301:6                  4334:21 4339:7                  4340:9 4350:5                  4352:11,16,20                  4378:14  <b>think</b> 4143:22                  4157:16 4159:24                  4166:11,14                  4168:2 4176:6                  4187:3 4194:2                  4196:9 4197:21                  4198:18 4201:21                  4201:24 4202:2,5                  4202:5,9,12                  4204:11 4206:15                  4208:7 4212:14</p>
---	--	---	--	---

4212:19 4215:2 4218:16 4219:19 4222:11,25 4223:7 4224:20 4236:7 4243:5,11 4245:4,5,10,17,19 4246:8 4250:11 4258:22 4260:1 4261:24 4263:24 4264:1,20,20 4265:13 4267:1 4272:5,11 4273:20,25 4277:8,10,16 4280:6,22 4281:4 4282:12 4283:2,4 4289:15 4291:10 4296:22 4302:23 4312:5,19 4328:20,21 4341:3,7 4344:12 4346:2,17 4347:3 4347:4,12 4349:5 4349:22,22 4353:2 4354:3,24 4355:15 4365:6 4371:8,11 4373:21 4374:2 4376:20 4377:18 4377:20 4378:3 <b>thinking</b> 4174:15 4192:9 4264:11 4313:12 <b>thinks</b> 4260:2 <b>third</b> 4149:18 4226:4 4251:2 4262:25 4268:7,7 4312:25 4316:5,7 4320:12,14 4327:9 4329:23 4332:19 4337:2 4352:19 4365:22 4365:22 <b>thirdly</b> 4208:1 <b>Thomas</b> 4206:10,17 4214:7 4247:16 4247:24 4248:3 4248:13 4289:20 <b>thought</b> 4157:13 4176:9,10 4201:19 4203:12 4217:23 4242:1 4272:21 4273:18 4280:12,14 4286:7 4328:3 <b>threat</b> 4310:17 <b>threatened</b> 4152:22	4275:16 <b>three</b> 4143:8 4152:11 4172:10 4183:3 4208:17 4209:6,7 4219:12 4233:20 4287:11 4315:13 4316:6 4329:23 4341:9 <b>threw</b> 4297:21 4315:1 <b>throws</b> 4188:21 <b>Thursday</b> 4269:1 4269:19 4282:11 4283:23 <b>ticked</b> 4323:2 <b>Ticket</b> 4355:16 <b>ties</b> 4339:8 <b>time</b> 4144:6 4145:22 4146:7 4147:5,9 4148:18 4150:8,25 4151:14 4153:16 4159:24 4162:11 4162:22 4165:8 4166:3,6,13 4168:1,8 4178:1,2 4183:5 4187:5,8 4187:16,22 4188:4 4190:19 4191:7,8,11 4208:20 4215:1,6 4219:9 4223:8 4225:15 4226:7 4230:5,7 4231:5 4239:7,23 4240:5 4243:15 4255:12 4256:2,16 4262:14 4263:12 4264:21 4270:20 4271:7,19 4273:23 4280:13 4280:25 4281:13 4283:24 4284:1 4287:13 4292:11 4294:5 4300:18 4300:22 4302:9 4302:23 4308:7 4335:24 4341:2 4350:18 4359:23 4360:2,25 4362:5 4363:19 4369:5 4370:1 4375:4,11 4376:12 4379:8 <b>times</b> 4204:13 4224:25 4230:19 4230:24,25 4300:10,19	4303:7 4314:5 <b>tired</b> 4360:22 <b>title</b> 4191:22,24,24 <b>today</b> 4199:6 4202:21 4216:18 4231:5 4256:4 4281:4 4296:20 4298:3 4318:8 4325:1 4326:25 4334:2,10 4339:13 4342:22 4377:13 <b>today's</b> 4318:6,7 <b>told</b> 4146:21 4148:14 4157:22 4158:1 4162:7 4163:14,25 4167:15 4169:10 4169:20 4170:8 4172:11 4173:16 4173:21 4176:2,4 4176:19,25 4178:2,15 4190:10 4191:13 4196:13 4204:16 4205:6 4218:4 4228:17,18,24 4234:13 4269:4 4283:8 4286:12 4288:12 4291:1 4293:14 4316:1,8 4316:18 4317:7 4317:13,15 4321:7,10,14 4322:1 4324:23 4326:3,7,16,21,22 4326:24 4329:9 4331:1,2,5,6 4333:2,3 4334:21 4336:4,10,11,18 4336:22 4337:19 4342:24 4343:1,3 4344:1 4349:4 4368:15 4371:5,8 4371:11 4372:6 4372:10 4374:9 4374:20,25 4376:1,14,17 4378:10,11 <b>tolerating</b> 4178:8 <b>Tom</b> 4317:23 4327:16 4328:17 <b>tomorrow</b> 4377:20 4378:22 <b>Tony</b> 4234:5,6 <b>tool</b> 4155:25 4159:2 <b>top</b> 4185:3,10	4225:25 4227:25 4228:4 4272:13 4315:16 4316:6 <b>total</b> 4183:13 <b>totally</b> 4156:4,5,5 <b>to-ing</b> 4339:17 <b>trace</b> 4302:16 <b>trafficker</b> 4239:25 <b>trafficking</b> 4219:12 4226:10 4232:22 <b>trail</b> 4333:20 <b>transcript</b> 4138:11 4215:1 4228:14 4238:12,16,20 4379:7 <b>transcripts</b> 4209:19 <b>transferred</b> 4255:25 <b>transportation</b> 4329:3 <b>tree</b> 4301:5 <b>trial</b> 4138:2 4148:9 4148:12 4151:8 4151:18 4153:9 4153:15 4159:14 4159:16,17 4160:24 4162:11 4163:1 4164:8 4166:11,13,14,17 4166:21 4167:4,5 4167:7,9,20,21 4168:8 4177:12 4178:9 4183:20 4183:24 4184:13 4184:18,25 4185:6,15 4187:5 4187:17,19 4190:20 4191:18 4195:19 4198:19 4200:22 4204:7 4230:6,15 4231:4 4246:20 4250:18 4250:23 4251:14 4252:8 4261:21 4263:17 4264:17 4266:12 4267:6,6 4267:18 4272:23 4274:10,20 4275:9,12,16 4276:6,9,15 4277:7,9 4279:18 4285:11,12 4300:23 4318:5 4323:2 4329:20 4334:12 4335:20 4337:17,24 4348:21 4350:25	4372:16 <b>trials</b> 4191:2 4278:23 <b>tried</b> 4197:9 4244:14 4341:25 4355:19 <b>triggers</b> 4283:14 <b>trouble</b> 4178:8 4263:8 4360:4 <b>troubled</b> 4278:6 4280:14 <b>true</b> 4191:12 4203:4 4204:19 4250:1 4332:5 4335:10 4335:13 4379:6 <b>truth</b> 4230:4 <b>try</b> 4158:7 4196:19 4198:11 4212:16 4213:19 4274:4 4281:1 4284:1 4327:5 4353:18 4358:2 <b>trying</b> 4159:18 4175:20,24 4218:15 4220:25 4239:4 4262:9 4280:2,4 4283:13 4292:23 4299:25 4376:3,10 4377:9 <b>Tuesday</b> 4138:17 4142:1 4177:20 4268:25 4358:5 <b>tune</b> 4219:12 <b>turn</b> 4146:14 4149:4 4170:9 4186:8 4194:13 4203:8 4230:5 4253:4 4268:6 4274:25 4290:18 4299:18 4301:3 4301:14,20 4302:9 4303:6 4306:21 4317:18 4330:15 4345:11 <b>turned</b> 4165:6 4341:25 <b>Turning</b> 4268:8 <b>twice</b> 4230:23 <b>twins</b> 4286:17 <b>two</b> 4144:20 4151:7 4155:22 4159:7 4159:19 4163:5 4164:13 4167:23 4171:7 4175:16 4183:3 4184:4 4190:12 4192:7 4204:4 4205:10
--	---	--	--	---

<p>4213:7 4227:2 4252:8 4254:10 4268:15 4272:1 4273:1 4275:1,14 4276:2 4278:23 4283:5 4285:9 4292:20 4303:13 4309:22 4314:25 4316:2 4323:1,20 4327:20 4342:13 4346:21 4349:24 4350:11 4375:7 4377:16 4378:10 <b>type</b> 4217:17 4221:19 4254:18 4255:20 4291:12 <b>typed</b> 4271:25 4295:8 <b>typewritten</b> 4320:24</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p><b>ultimate</b> 4335:17 <b>ultimately</b> 4148:2,3 4240:16 4336:4 <b>ultimatum</b> 4329:21 4329:22 4333:25 <b>Um-hum</b> 4143:25 4148:16 4150:15 4236:21 4238:14 4247:22 4251:4 4257:19 <b>unanimously</b> 4224:4,12 <b>unbeknownst</b> 4344:16 <b>uncovered</b> 4348:1 <b>underlined</b> 4163:12 <b>underlining</b> 4249:4 <b>undermined</b> 4275:23 <b>understand</b> 4172:16 4178:3 4182:17 4186:10 4204:3,11 4213:7 4213:17 4226:5,9 4226:23 4231:8 4232:19,25 4234:8 4262:9 4290:1,17 4291:20 4308:12 4309:14 4310:14 4311:12 4339:8 4340:5,23 4363:16,17 4378:12 <b>understanding</b></p>	<p>4159:13 4285:5 4288:10,18 4290:8 4306:12 4316:24 4349:7 4353:13 <b>understood</b> 4163:1 4203:24 4258:17 4290:6,20,23 4316:15 4376:9 4376:11 <b>undertaken</b> 4310:9 <b>undertaking</b> 4233:3 4233:5,9 4237:5 <b>undertook</b> 4158:22 <b>undisclosed</b> 4183:21 <b>unfair</b> 4156:4 4224:8 4241:4 4259:17 <b>unfortunately</b> 4157:7 4354:16 <b>Unger</b> 4207:3 4209:19 4256:20 4258:19 4260:7 <b>Unger's</b> 4256:24 <b>Unhappily</b> 4355:21 <b>unhappy</b> 4278:10 <b>Uniform</b> 4353:9 <b>unintentional</b> 4277:24 <b>unique</b> 4191:1 <b>unit</b> 4299:10 <b>unknown</b> 4183:11 4183:16,22 <b>unnecessarily</b> 4268:24 <b>unnecessary</b> 4192:23 <b>unreasonable</b> 4187:16 4188:24 4201:9 <b>unsavory</b> 4150:14 4151:21 <b>untrue</b> 4201:10 <b>untruthful</b> 4183:24 4184:7 4192:19 4201:11 <b>unusual</b> 4198:24 4245:13 <b>urge</b> 4208:5 <b>use</b> 4158:8,24 4161:17 4268:1 4300:22 4302:25 <b>uses</b> 4300:18 <b>usual</b> 4282:3 <b>Usually</b> 4293:21</p>	<p style="text-align: center;"><b>V</b></p> <p><b>valid</b> 4200:7 <b>validity</b> 4200:9 4255:13 4276:6 <b>Vandergraaf</b> 4204:15 4210:16 4211:14 4212:4 4307:16 4319:24 4326:3,5,19 4331:4 4342:25 4362:20 4365:4 4371:21 4372:4 4373:23 <b>varied</b> 4346:20 <b>variety</b> 4251:25 <b>various</b> 4251:23 4282:24 4356:24 <b>veil</b> 4184:17 <b>veil</b> 4276:21 <b>verbally</b> 4188:9 <b>version</b> 4337:13 <b>vested</b> 4262:7 <b>vice</b> 4229:18 <b>victim</b> 4279:19 <b>view</b> 4148:18 4149:1 4153:2 4197:14 4199:7 4210:8 4212:20 4215:18 4224:4 4252:1 4262:4,5 4267:24 4277:23 4338:19 4339:6,7 4376:4 <b>viewing</b> 4307:8 <b>vigorously</b> 4210:17 4225:2 <b>Violence</b> 4356:21 <b>violet</b> 4215:5 <b>vital</b> 4273:13 <b>volume</b> 4138:18 4164:9 4176:17 4194:14,19 4206:14 4266:6 4287:17,18,21 4294:12,12,15,21 4295:4,5,5,6,11 4295:14 4303:1,2 4309:20 4327:3,4 4345:13,15 4363:8 <b>volumes</b> 4287:11</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p><b>wait</b> 4181:15 4185:7 4244:9 4294:19 4365:19</p>	<p>4369:6,6,6,7 4375:11 <b>walk</b> 4194:1,2 <b>walked</b> 4177:3 <b>wall</b> 4170:18 4171:11,14,21 4172:2,4,15,15,17 4174:8,10 4175:3 4178:24 4187:18 4188:7,19 <b>walls</b> 4189:8 <b>Walsh</b> 4308:9 <b>want</b> 4143:18 4149:5,17 4150:3 4159:20 4170:14 4179:1 4181:25 4183:3 4184:11 4189:9,11 4190:11 4203:19 4209:3 4210:10 4211:19 4212:15 4213:5 4215:6 4216:20 4220:17 4233:13 4234:21 4258:21 4261:5 4261:13 4263:6,7 4266:9 4274:4,5 4279:4 4284:8,16 4296:13 4306:15 4316:1 4327:2 4331:10 4335:1 4339:19,25 4341:6 4342:8 4343:21,23 4347:21 4361:1,1 <b>wanted</b> 4144:6 4148:7 4176:1 4199:12 4245:2 4247:23 4302:3 4313:16 4329:11 4337:20 4343:20 4374:12 <b>wants</b> 4202:15 4209:13,16,17 4260:6 4282:6 4367:11 4376:22 <b>washroom</b> 4225:15 <b>wasn't</b> 4172:15 4173:22 4176:4,5 4191:23 4193:23 4194:7 4200:17 4205:23 4229:16 4263:5,12 4264:24,25 4277:7 4280:16 4291:3 4312:1 4329:13 4330:3</p>	<p>4331:8 4348:25 4349:2 4358:13 4358:18 4372:14 4374:12,21 <b>watch</b> 4195:24 <b>Watson</b> 4354:12 <b>way</b> 4144:22 4151:3 4158:15 4161:11 4173:24 4180:6 4189:17 4196:22 4200:4,8,11 4215:18,23 4216:24 4232:20 4254:23 4259:9 4262:13,13,20 4270:17 4272:20 4272:24 4277:10 4281:6 4307:24 4307:24 4313:24 4324:22 4325:25 4330:25 4359:11 4377:21 <b>wearing</b> 4267:2 <b>Webster</b> 4237:3 <b>wee</b> 4339:22 <b>week</b> 4146:21 4269:6 4329:7 <b>weeks</b> 4144:24 4175:16 4237:25 4238:8 <b>weighed</b> 4276:1 <b>Weinstein</b> 4234:14 4236:4,15 4237:3 4237:4 4240:4 4246:25 <b>well-defined</b> 4208:22 <b>Wendy</b> 4139:5 <b>went</b> 4152:3 4153:18 4165:6 4174:17 4189:20 4190:18 4262:22 4278:8,11,14 4290:11 4303:16 4347:15 <b>weren't</b> 4162:19,19 4177:17 4178:17 4201:15 4256:5 4278:3 4301:5 4317:7 4328:23 4328:23 4336:22 4352:17 4363:19 4368:15 4371:6 4376:15 <b>we're</b> 4292:11 4308:22 <b>we've</b> 4241:5</p>
--	--	--	--	--

4288:4 4303:10 4305:15 4312:20 4330:9 4336:10 4342:24 4344:7 4363:8 <b>whatsoever</b> 4230:12 <b>whichever</b> 4335:4 <b>Whitley</b> 4139:15 4142:14 4168:23 4169:13,16 4172:17 4173:5 4173:15,16 4177:3 4191:13 4199:21 4284:10 4284:15 4315:15 4316:19 4351:17 4351:20 4352:6 4352:10 4357:10 4357:17,21 4358:1,14,24 4359:5 4360:3 <b>Whitley's</b> 4143:6,7 4191:19 <b>Whit-Nick</b> 4358:2 <b>wide</b> 4251:24 4352:7 <b>William</b> 4319:24 <b>Williams</b> 4141:13 4282:22 4283:11 <b>Wilson</b> 4216:7 <b>Winnipeg</b> 4138:13 4138:14 4139:17 4139:19 4144:19 4150:11 4153:24 4154:1,3 4161:4 4190:22 4234:12 4266:3,19 4267:15 4279:14 4287:7 4288:16 4288:25 4289:12 4289:25 4300:20 4303:24 4305:13 4307:9,18 4308:9 4310:2 4315:22 4317:3 4318:13 4332:4,10,13 4336:5,15 4337:19 4343:12 4352:3 4353:24 4358:3,4 4361:9 4361:11 4364:1,4 4364:24 4367:2,9 4367:21 4368:1 4368:12,16 <b>wins</b> 4279:19 <b>wish</b> 4170:10	4187:9 4208:22 4282:19 4291:10 4347:18 <b>wishes</b> 4267:13 <b>withdraw</b> 4310:24 4328:4 <b>withdrawn</b> 4248:15 <b>witness</b> 4141:12 4142:7 4157:9 4158:10,13,15 4160:12 4170:24 4171:4,6 4174:16 4175:8 4177:21 4177:22 4178:10 4185:11 4187:25 4189:20,21 4191:17 4195:9 4196:1,8 4197:3,6 4198:25 4199:15 4203:6 4205:18 4205:18,24,25 4206:6 4207:16 4207:24,25,25 4210:25 4211:3 4212:22 4214:7 4215:19 4216:8 4217:16,17 4218:17 4219:2,6 4221:11 4223:14 4224:9 4225:14 4231:12 4232:7 4236:4 4239:12 4241:20 4243:4 4243:14 4245:21 4247:2 4248:6 4249:21 4250:3,3 4253:13,14 4259:11 4260:14 4260:20,22 4261:7 4264:1,18 4267:9 4268:18 4269:15 4270:6,9 4282:17 4283:10 4284:9 4286:16 4286:20 4287:9 4287:13,15 4288:6 4289:10 4289:13,18 4290:4,5 4291:6 4293:6 4295:15 4302:22 4305:24 4306:11 4310:2,7 4310:7,19,21,23 4310:25 4311:2 4312:7 4313:10 4316:10,19,22 4317:6,12,13	4318:24 4327:15 4330:20 4333:7 4334:11 4343:21 4344:24 4345:2 4356:8 4361:4 4363:15 4366:2,4 4366:6,7 4370:1 4370:16,17 4371:10,22 4373:7 4377:9,12 4377:22 4378:7 4378:18,20 <b>witnesses</b> 4148:10 4148:13 4156:10 4156:13 4157:25 4158:3,24 4159:3 4170:21 4171:1 4172:18,20 4173:11 4187:20 4187:25 4189:10 4190:14 4195:21 4198:7,15 4210:10 4212:5 4214:5 4219:3 4246:14 4251:13 4275:2,8,14,24 4282:13,14,18,21 4283:17,25 4310:13 4316:12 4342:25 4369:4 4369:12 <b>witness's</b> 4309:5 <b>Wolch</b> 4229:6 <b>Wolson</b> 4139:19 4140:9 4315:8,10 4315:11 4333:17 4333:18 4339:16 4344:18,20 4372:3 <b>Women's</b> 4353:1 <b>wonder</b> 4251:2 4341:14 <b>wondered</b> 4176:8 <b>wondering</b> 4376:24 <b>Woodsworth</b> 4293:3 <b>word</b> 4169:6 4173:20 4251:12 4290:14 4304:8 4304:18 4311:18 4335:2 4349:7,8 <b>words</b> 4177:9 4189:17 4196:5 4214:13 4233:15 4235:18 4250:2 4297:10 4340:2,8 4346:5 4373:23	<b>wore</b> 4328:21 <b>work</b> 4284:11 4356:24 4358:10 <b>worked</b> 4317:24 4362:18 4363:2 <b>working</b> 4194:4 4290:12 4354:2 4361:19 4365:2 <b>Works</b> 4353:16 <b>world</b> 4262:12 <b>worried</b> 4298:22 <b>worry</b> 4282:6 <b>worrying</b> 4322:11 <b>wouldn't</b> 4161:23 4162:18 4165:20 4173:3 4189:5 4199:21,22 4219:19 4247:13 4284:14 4289:3 4290:3,8 4316:20 4328:11 4332:5 4343:19 4349:15 4357:3,14 4377:19 <b>wound</b> 4359:6 <b>WPD</b> 4303:18,21 4304:10,12 4305:17,19 4306:17,18 4307:13 <b>write</b> 4143:19,22 4272:17 4321:5 4321:24 4366:7 <b>writer</b> 4267:5,17 <b>writes</b> 4300:12 4366:8 <b>writing</b> 4188:8 4189:3 4234:22 4266:18 4270:1 4292:17 4293:13 4293:19 4309:3 4347:4 <b>written</b> 4149:10 4183:4 4236:24 4237:24 4240:24 4242:6 4266:15 4267:22 4268:25 4269:8,12 4273:24 4317:23 4328:6 4340:21 4370:19,22 <b>wrong</b> 4192:5 4202:11 4210:3 4257:23,25 4377:8 <b>wrongful</b> 4206:17 4206:19 4207:14	4279:10 <b>Wrongly</b> 4139:22 4286:23 <b>wrote</b> 4157:3 4194:11 4246:24 4250:15 4265:17 4266:1 4272:5,12 4273:1,22 4299:22 <b>Wyant</b> 4141:13 4282:22 4283:11 <hr/> <b>X</b> <hr/> <b>Xd</b> 4299:19 <hr/> <b>Y</b> <hr/> <b>yeah</b> 4302:22 4359:20 4360:8 4363:1,1 4374:17 <b>year</b> 4183:1 4194:24 4253:11 4271:5 4272:9 4323:1 4353:10 4360:3,6 <b>years</b> 4151:7 4167:23 4175:19 4185:18 4187:12 4188:5 4226:18 4228:7 4237:19 4264:20 4275:9 4277:6 4279:6 4280:21 4281:5 4308:5 4309:22 4315:20 4318:5,8 4345:2 4346:20 4350:15,23 4378:2 <b>yelling</b> 4314:23 <b>yellow</b> 4231:21 4232:10 4235:19 <b>yesterday</b> 4152:4 4154:10 4155:20 4162:4 4168:20 4169:2 4174:6,18 4174:25 4176:24 4177:22 4190:2 4196:10 4197:12 4198:1 4216:21 4222:16 4265:20 4265:25 4266:8 4266:10 4278:5,7 4285:5,8 4293:17 4302:2 4308:24 4373:2 <b>young</b> 4281:6 <b>younger</b> 4263:3
--	--	---	---	---

<b>Z</b>				
<b>Zanidean</b> 4146:19	4375:19,21	4143:5 4144:4	4186:9 4220:12	<b>26</b> 4307:17 4312:14
4147:2 4148:23	4376:1,4,14,17	4146:15 4147:14	4254:2,5,7	<b>26th</b> 4175:18
4151:15 4152:5	<b>Zanidean's</b> 4147:12	4147:20 4148:3	4266:17,18,23	4176:9 4314:20
4152:21 4153:1	4152:13 4175:21	4233:18 4267:15	4267:22 4270:12	<b>27</b> 4283:15
4153:18 4154:23	4273:8 4291:5	<b>14</b> 4141:7 4188:5	4287:17 4294:12	<b>28</b> 4303:3 4341:10
4161:3 4162:8	4309:7 4323:14	4222:12,19	4294:15,21	4343:7,25
4163:10,14,18,22	4327:14 4339:7	4250:6 4303:21	4295:6 4303:2	4365:14,15,20
4163:25 4164:5	<b>\$</b>	<b>14th</b> 4267:15	4327:8,9 4337:11	<b>28A</b> 4287:20
4164:21 4165:3,4	<b>\$7,000</b> 4183:16	4333:22	4338:10 4343:5	<b>28B</b> 4144:12,14
4165:8,9,17,25	<b>\$72,000</b> 4183:9	<b>148</b> 4254:16	4345:13 4346:10	4149:6,7,15
4166:5,9 4168:5	<b>\$84,000</b> 4183:15	<b>15</b> 4138:17 4142:1	4346:14,21	4160:15
4168:15 4170:20	<b>1</b>	4215:14 4247:17	4347:11,21	<b>29</b> 4305:2 4306:1,3
4172:22 4174:7	<b>1</b> 4152:8,16 4176:17	4281:5 4308:5	4363:8 4366:2	4329:19 4345:11
4174:13,22	4176:17 4194:14	4318:5,8	<b>2nd</b> 4230:14	4348:14
4176:19,25	4194:18,19	<b>16</b> 4236:3,11,15,18	<b>2:00</b> 4281:16,18	<b>29th</b> 4322:15
4177:4,15 4178:1	4232:7 4254:9	4238:4 4266:1	<b>20</b> 4226:4 4227:7,12	<b>3</b>
4183:10,14,17,19	4266:17,18	4337:15 4338:4,8	4227:18,25	<b>3</b> 4192:14 4225:21
4183:23 4184:7	4267:4 4270:11	4345:23	4237:19 4254:16	4266:7 4268:6
4184:15 4185:20	4287:21 4299:17	<b>16th</b> 4157:2	4279:6 4312:8,10	4269:12 4272:13
4190:6 4192:19	4303:20 4317:19	4235:24 4237:25	4317:18 4318:21	4296:15 4303:20
4196:15,17	4325:6	4238:8 4268:25	4320:13 4325:6	4306:21 4314:14
4197:24 4198:1	<b>10</b> 4186:5,5 4192:15	4338:7 4343:6	4325:14,15	4346:7,8 4368:9,9
4199:8 4200:25	4214:23 4228:14	<b>17</b> 4294:5	4327:4 4365:23	<b>3rd</b> 4250:8 4274:10
4201:7 4202:13	4316:16	<b>18</b> 4138:18 4282:16	<b>20B</b> 4287:15	<b>3:10</b> 4333:13
4202:18 4203:1	<b>10th</b> 4178:14	4283:7	<b>20D</b> 4287:18 4296:5	<b>3:27</b> 4333:14
4203:12,12,20,25	4318:23 4322:10	<b>1869</b> 4367:4 4368:3	4296:8	<b>30</b> 4340:2
4204:24 4210:20	<b>100</b> 4257:25 4340:8	<b>19</b> 4186:16	<b>20th</b> 4335:22	<b>30A</b> 4315:14
4217:17 4248:7	<b>11</b> 4275:9 4277:6	<b>1980s</b> 4350:18	4337:7	<b>30B</b> 4294:17
4251:10,19	4303:20 4346:9	<b>1986</b> 4216:23	<b>2000</b> 4179:9,13	<b>30C</b> 4144:14
4252:3,7,23	<b>11th</b> 4177:20	4217:14	<b>2001</b> 4179:9	<b>30th</b> 4237:10
4268:10,17,23	4178:3,11,14	<b>1987</b> 4233:18	<b>2002</b> 4179:9	<b>31</b> 4181:3
4271:1,16 4275:2	4269:19 4270:23	4235:24 4236:15	<b>2003</b> 4179:10	<b>31A</b> 4141:3 4181:6
4275:11,14	4272:10,11	<b>1988</b> 4196:3	4180:8,10 4183:7	4181:7 4209:21
4288:6 4291:2	<b>11.8</b> 4333:23	4237:23,25	<b>2004</b> 4179:10	<b>31B</b> 4141:5 4213:25
4309:1,23 4310:3	<b>11:15</b> 4223:19	4238:6,8	4183:1 4186:16	4214:1
4312:24 4318:13	<b>11:30</b> 4146:18	<b>1989</b> 4292:12	4189:15 4192:3	<b>31C</b> 4141:7 4222:5
4318:15,23	<b>11:36</b> 4223:20	<b>1991</b> 4168:7	4232:15	4222:9,11,18,19
4320:4 4321:10	<b>1108</b> 4225:22	4203:25 4294:5	<b>2005</b> 4250:8	4225:21
4321:14 4322:1,8	<b>1180</b> 4227:5,8	4294:19 4295:2,3	4274:10	<b>31D</b> 4141:10
4322:19 4324:14	4245:7	4306:23 4307:17	<b>2006</b> 4138:17	4231:17
4327:17 4328:5	<b>1181</b> 4227:6 4228:1	4318:4 4327:8	4141:7 4142:1	<b>32</b> 4141:12 4283:7,9
4329:11 4330:9	4228:4	4328:6 4329:19	4194:24 4222:12	4283:10 4346:14
4330:19 4331:20	<b>1184</b> 4228:14	4363:9	4222:19	<b>33</b> 4308:8 4365:11
4332:21 4333:6	<b>12</b> 4185:3,10 4193:5	<b>1992</b> 4338:22	<b>21</b> 4307:3,20	4365:12 4366:13
4334:2,3 4335:15	4216:5 4233:15	<b>1993</b> 4149:23	<b>21st</b> 4310:5	4366:14 4369:10
4335:22 4336:3,5	4241:9	4151:12 4166:25	<b>22</b> 4306:2,3,4	4369:11
4337:7,8,16	<b>12th</b> 4177:24	4265:20 4266:1	4328:13 4329:4,8	<b>332</b> 4323:22
4338:18 4339:5	<b>12:45</b> 4281:17	4269:1,19 4314:3	<b>23</b> 4176:17 4306:2	4332:17
4343:1,15,16	<b>122</b> 4202:16	4314:9 4320:18	4319:18	<b>338</b> 4331:12
4344:1 4348:2,19	<b>124</b> 4186:10,13,17	4343:7	<b>23rd</b> 4149:13,19	<b>34</b> 4305:6 4307:3,15
4363:12 4368:17	<b>1282</b> 4229:6,7	<b>1996</b> 4179:11	4156:21 4237:23	4367:8
4371:2,9,17	<b>13</b> 4144:1 4185:18	4192:6	4238:5	<b>37</b> 4367:18 4368:10
4372:5,14	4274:11 4303:20	<b>2</b>	<b>24</b> 4294:18 4295:2	4368:11
4373:11,23	4367:14,15	<b>2</b> 4152:20,25	4329:15,16	<b>38</b> 4256:7
4374:7,12,20	<b>13th</b> 4142:13	4154:20 4162:7	4333:25	
		4164:9 4183:4	<b>24th</b> 4217:14	<b>4</b>
			<b>25</b> 4295:3 4306:23	



<p><b>4</b> 4149:8,16 4160:14 4316:17 <b>4th</b> 4333:23 <b>4:24</b> 4378:25 <b>4033</b> 4343:9 <b>41</b> 4363:7 4365:17 4368:24 4369:16 4370:4 4378:15 <b>4142</b> 4140:5 <b>4168</b> 4140:6 <b>4181</b> 4141:3 <b>4214</b> 4141:5 <b>4222</b> 4141:7 <b>4231</b> 4141:10 <b>4283</b> 4141:12 <b>4285</b> 4140:7 <b>4287</b> 4140:8 <b>43</b> 4364:2,7 4366:12 <b>4315</b> 4140:9 <b>4345</b> 4140:10 <b>4351</b> 4140:11 <b>4360</b> 4140:12 <b>44</b> 4164:8,8,13 4323:18,21 4327:3 4331:10 <b>45</b> 4294:11,15,20,21 4295:6 <b>47</b> 4312:10</p> <hr/> <p style="text-align: center;"><b>5</b></p> <p><b>5</b> 4144:13,14 4194:14,19 4306:3 4366:17 4369:1,2,3,6,7,9 4370:7 <b>5th</b> 4273:24 <b>50.3</b> 4333:24 <b>51</b> 4308:20 <b>56</b> 4309:19</p> <hr/> <p style="text-align: center;"><b>6</b></p> <p><b>6</b> 4194:25 4256:16 4316:4,5 4346:13 4365:8 4366:3 4370:5,6,7,11,11 <b>61</b> 4151:24 4152:3,9 4336:24 4338:11 4375:8,15 <b>62</b> 4375:8,16 <b>6305</b> 4321:2 <b>64</b> 4269:17 4270:7,8 4271:3,22 <b>65</b> 4144:19 <b>66</b> 4266:6 <b>67</b> 4142:11 <b>69</b> 4341:8,9 4343:7 <b>696</b> 4232:18</p>	<p>4250:22</p> <hr/> <p style="text-align: center;"><b>7</b></p> <p><b>7</b> 4158:18,19 4170:11 4257:5 <b>7th</b> 4194:24 4303:9 <b>71</b> 4144:2,14 4160:9 4320:15,15,17 <b>72</b> 4149:5,12 4160:9 4160:14 4314:12 4314:14 4347:22 <b>75</b> 4248:3</p> <hr/> <p style="text-align: center;"><b>8</b></p> <p><b>8</b> 4228:16 4278:15 4303:20 4345:18 <b>8016</b> 4214:23 4215:14 <b>81</b> 4320:24 <b>810</b> 4149:18 <b>8145</b> 4216:4 <b>86</b> 4233:15 4241:9 <b>86/12/12</b> 4233:14 4234:1 <b>87</b> 4236:3,11,18 4238:5 <b>88</b> 4237:10,13</p> <hr/> <p style="text-align: center;"><b>9</b></p> <p><b>9</b> 4181:22 4182:21 4184:19,22 4185:3 4303:20 4367:1,16,21,25 <b>9:00</b> 4142:2 <b>9:20</b> 4233:6 <b>9:30</b> 4378:21 <b>90</b> 4292:12 4318:23 <b>91</b> 4161:11 4167:16 4280:21 4292:13 4312:14 4327:12 4337:15 4345:18 4348:14,20 4360:7,8 <b>91/05/30</b> 4330:16 <b>92</b> 4338:4,8 4340:11 <b>93</b> 4166:6,10 4167:14 4341:10 4343:25 4347:21 4349:10,21,25 4351:7 4360:9,11 4360:11 4374:23 4375:13</p>			
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