

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

Transcript of Proceedings

and

Testimony before the Commission
sitting at the
Delta Bessborough Hotel at
Saskatoon, Saskatchewan

On Monday, January 30th, 2006

Volume 114

Inquiry Proceedings



Commission Staff:

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Ms. Candace D. Congram, Executive Director
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Ms. Kara Isabelle, Document Assistant

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INDEX OF PROCEEDINGS

<u>DESCRIPTION:</u>	<u>PAGE:</u>
<u>DR. PATRICK HUGH FORSYTH BAILLIE, SWORN</u>	
- BY MR. WOLCH: (ON QUALIFICATIONS)	23012
- BY MR. ELSON: (ON QUALIFICATIONS)	23026
- BY MR. WOLCH	23036
- BY MR. ELSON	23089
- BY MR. FOX	23112



Transcript of Proceedings

(Reconvened a 1:30 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

MR. HODSON: We are scheduled, for today and tomorrow, to hear the application brought by Mr. Wolch on behalf of David Milgaard for an order accommodating the manner in which Mr. Milgaard provides evidence to this Commission.

You will recall that, earlier, Mr. Wolch had indicated that he intended to bring an application for an exemption, he modified that position on January 16th, and is seeking an accommodation by way of written interrogatories.

In accordance with your earlier directions we scheduled a date where Mr. Wolch could give -- have his experts and medical people give viva voce evidence. In his notice of motion he relies upon the report of Dr. Baillie and the report of Mr. Grymaloski, who is a therapist of David Milgaard's, I believe. They are both present today, the Commission has arranged to have them here.

The process will be as follows:
Mr. Wolch will lead the evidence first of Dr.



1 Baillie, then of Mr. Grymaloski. You had earlier
2 asked the parties, Mr. Commissioner, to identify
3 for me or for the Commission their position on
4 the motion, and I communicated to all the
5 parties, and I understand -- and I stand to be
6 corrected -- but I understand that the Government
7 of Saskatchewan, Federal Justice, and the RCMP
8 take no position on the application; is that
9 correct?

10 MR. GIBSON: Right.

11 MR. HODSON: And the other parties, other
12 than Mrs. Milgaard, the other parties provided me
13 with a memorandum on Thursday outlining their
14 position on the motion. And keep in mind what I
15 had asked the parties is two things; 1) are
16 opposed to any accommodation; and secondly, are
17 you prepared to live with some type of
18 accommodation. So I think we have made some
19 movement on that.

20 Perhaps, before we start, I
21 would ask counsel for the parties who will be
22 opposing the specific relief perhaps just to
23 briefly state their position before Mr. Wolch
24 proceeds with the evidence.

25 And the last bit of



1 housekeeping, the report of Dr. Baillie you had
2 put a publication ban on pending this motion,
3 Mr. Wolch advises me he has no difficulty with
4 that ban now being lifted and the report being
5 made public, so if you would lift the order we'll
6 make arrangements to have the report made public.

7 COMMISSIONER MacCALLUM: Yes, it's lifted
8 then, thank you.

9 MR. HODSON: Then maybe, Mr. Elson, if you
10 wish to speak on your behalf or that of others?

11 MR. ELSON: Mr. Commissioner, I was the
12 author of the memorandum that was provided to
13 Commission Counsel on Thursday. I did so at the
14 request of my client and also at the request of
15 the other clients, the other parties with
16 standing, that Mr. Hodson has identified.

17 Perhaps the best way I can do
18 this is refer to the memorandum that I asked all
19 counsel to approve before I submitted it to Mr.
20 Hodson. I don't know whether or not a copy can
21 be placed on the screen. It is a memorandum
22 dated January 26th, 2006, I don't believe it was
23 actually provided to Mr. Hodson until the next
24 day, January 27th, although I did advise him
25 generally as to its contents on the 26th. As



1 indicated:

2 "This memorandum is prepared for the
3 purpose of setting out the position of
4 certain parties, with standing, in
5 response to the application of David
6 Milgaard for an accommodation for the
7 receipt of his evidence. These parties
8 are Mr. Justice ... Tallis, T.D.R.
9 Caldwell Q.C., Serge Kujawa, Q.C., the
10 Saskatoon Police Service, Eddie Karst
11 and Larry Fisher. For the purpose of
12 this memorandum, these parties are
13 simply referred to as the Respondents.

14 There is general consensus
15 among the Respondents, and their
16 counsel, that there are several
17 shortcomings in the evidence filed in
18 support of the Milgaard application, and
19 that it does not come close to
20 justifying any form of accommodation.
21 Despite these shortcomings, the
22 Respondents agree that it would not be
23 unreasonable for Mr. Milgaard to be
24 given some form of accommodation which
25 would be sensitive to his circumstances



1 and, at the same time, permit the
2 Inquiry to ask him some important
3 questions.

4 As to the form of the
5 accommodation, it is the Respondents'
6 position that Mr. Milgaard's evidence be
7 received through a video and audio
8 recording, much in the same way as it
9 was done for Mrs. and Mrs. Danchuk and
10 for Elmer Ullrich. However, given the
11 particular importance of Mr. Milgaard's
12 testimony, it is the Respondents'
13 submission that the receipt of this
14 testimony be subject to specific
15 conditions, the particulars of which are
16 as follows:

- 17 1. The evidence must be given under oath;
- 18 2. The examination of Mr. Milgaard must be
19 conducted, in person, by Commission
20 Counsel;
- 21 3. Counsel for all parties with standing
22 would be encouraged to present
23 Commission Counsel, on a strictly
24 confidential basis, with specific
25 questions they wish to have put to Mr.



1 Milgaard, with the understanding that
2 Commission Counsel has the final
3 decision on the order and wording of all
4 questions put to the witness;

5 4. Copies of the video and audio recording
6 must be provided to counsel for all
7 parties with standing well in advance of
8 its presentation to the Inquiry. If any
9 counsel is of the opinion that further
10 questioning is called for, such further
11 questions can be given to Commission
12 Counsel for the purposes of re-direct
13 examination. If there is any
14 disagreement as to the propriety, use or
15 necessity of such further questioning,
16 it would be open for counsel to apply to
17 ...",

18 you, Mr. Commissioner:

19 "... for a ruling.

20 Although ...",

21 we have:

22 "... not stipulated it in the above
23 conditions, ...",

24 I must advise you, Mr. Commissioner, that:

25 "... certain of the Respondents believe



1 it may be advisable for ..."

2 you, sir:

3 "... to be present at the examination.

4 It may assist in the receipt of the
5 evidence and in maintaining the order
6 and solemnity of the proceeding. Having
7 said this, it is a matter which the
8 Respondents leave to the Commissioner's
9 discretion."

10 Mr. Commissioner, that
11 summarizes the position on behalf of the parties
12 that I generally described as the Respondents,
13 and certainly includes my client, the Saskatoon
14 Police Service. I don't know whether or not any
15 of the other counsel for the parties with
16 standing to which I have referred in this
17 memorandum wish to add any comments but I'm -- I
18 take it that they are welcome to do so.

19 MR. HODSON: I think not. So perhaps, with
20 that, Mr. Wolch can proceed with his application.

21 COMMISSIONER MacCALLUM: We should mark
22 that memorandum I guess.

23 MR. HODSON: Certainly. We'll maybe --
24 I'll have Commission's staff put it a doc. ID,
25 and we'll put it in the system and it will become



1 a public document, and as well we'll have Dr.
2 Baillie's document marked with a doc. ID as well,
3 and Mr. Grymaloski's report as well, Mr. Wolch,
4 should be included as well.

5 COMMISSIONER MacCALLUM: Okay. Mr. Hodson,
6 just before you sit down, I understand from you
7 that we can't find a witness to use on Friday of
8 this week. I had intimated that we might sit
9 this Friday but, apparently, that is not
10 possible?

11 MR. HODSON: That's correct. We have Mr.
12 Tallis on this week with Dr. Ferris in the
13 middle, and Friday Mr. Tallis, his counsel is not
14 available on this short notice. I think the
15 following Friday will be available so I think,
16 according to our plans, is that we will not sit
17 on this Friday but likely February 10th.

18 COMMISSIONER MacCALLUM: Thank you very
19 much. Mr. Wolch?

20 MR. WOLCH: Yes, thank you, Mr.
21 Commissioner. I call Dr. Baillie.

22 **DR. PATRICK HUGH FORSYTH BAILLIE, sworn:**

23 COMMISSIONER MacCALLUM: It is
24 B-A-I-L-L-I-E, I understand?

25 A Yes sir.



1 COMMISSIONER MacCALLUM: Thank you.

2 BY MR. WOLCH: (ON QUALIFICATIONS)

3 Q Dr. Baillie, before I begin I want to take you
4 through a -- your curriculum vitae fairly quickly.
5 It might be easier if we had it on the screen, I
6 suppose.

7 MR. HODSON: I can arrange that.

8 MR. WOLCH: If that can be done, that would
9 expedite matters, I would think.

10 Just starting on the first
11 page, you work out of the Peter Lougheed Centre
12 of the Calgary General Hospital?

13 A That's correct.

14 Q And your occupation is?

15 A I'm a psychologist with the Calgary Health Region.

16 Q And you indicate Registration, Chartered
17 Psychologist, and a number of others factors, a
18 Diplomate, American Board of Forensic Examiners;
19 what is that exactly?

20 A The American Board of Forensic Examiners was set
21 up in the mid-1990s. It was established as an
22 agency that would evaluate credentials of people
23 working in different aspects of forensic
24 psychiatry and forensic psychology, primarily it
25 was a clearing house that simply reviewed



1 credentials and decided whether somebody met a
2 particular standard.

3 **Q** Okay. And the fact that I may skip through some
4 of these doesn't mean that I am ignoring it, just
5 it's on the record, so to speak, and I don't think
6 everything has to be explained.

7 Under your academic
8 qualifications you indicate the Faculty of Law,
9 University of Calgary; can you tell us about that?

10 **A** In 1998 I took a sabbatical from the hospital and
11 completed the first year of my law school studies
12 and then over the next four years, on a half-time
13 basis, completed the rest of my degree, so I
14 earned my Bachelor of Laws in 2003.

15 **Q** Could I ask you to move the mic' a little closer
16 to you, I have kind of plugged ears, I'm having a
17 hard time hearing.

18 **A** Certainly.

19 **Q** You say you took a sabbatical from?

20 **A** In '98-'99, and then the rest of the program was
21 completed on a half-time basis, with the degree
22 being earned in 2003.

23 **Q** And so you are a member of the bar?

24 **A** No, I have not done my articles or been called to
25 the bar at this point, I simply have my degree.



1 There's an outstanding plan for articles, but
2 other factors have postponed that.

3 **Q** I see. And your previous education in graduate
4 studies would be generally what?

5 **A** In the field of clinical psychology. In 1992 I
6 completed by Doctoral Degree through Virginia
7 Commonwealth University, that was preceded by a
8 Masters Degree in 1990 from Virginia Commonwealth,
9 and a Masters Degree in 1987 from the Ontario
10 Institute for Studies and Education, which is part
11 of University of Toronto, and then prior to that
12 my Bachelor of Science Degree completed in 1983 at
13 McGill University.

14 **Q** And if we can just turn the page, and it indicates
15 your undergraduate studies were at McGill
16 University?

17 **A** Yes, they were.

18 **Q** And you took what there?

19 **A** A major in psychology and Bachelor of Science
20 Degree.

21 **Q** And you indicated you are currently working out of
22 the Peter Lougheed Centre in Calgary?

23 **A** Yes. I started with the Calgary Health Region in
24 1991 as an intern, at the end of the internship I
25 was offered a position within the forensic



1 program, so I started that in November of 1992 and
2 I have been there since that time.

3 Q And you list the activities, under number 1 it
4 talks about "clinical psychological assessment",
5 and can you elaborate on that?

6 A That would typically involve doing a clinical
7 interview and psychological testing of individuals
8 who had been referred to our program.

9 My work has two primary sources
10 of referrals, I do pre-sentence assessments for
11 the courts in Alberta, and then I do assessments
12 for individuals who have been referred for
13 treatment, those being primarily referred from
14 probation for my role as a coordinator of the Sex
15 Offender Treatment Program. So about half of my
16 work are the presentence Court assessments, the
17 other half is treatment related.

18 Q Okay. You've indicated you've done 1,389
19 assessments?

20 A Up until the date of the CV which is January 1st
21 of this year.

22 Q And under heading number 2 you talk about reports
23 for the three levels of court in Alberta?

24 A Yes.

25 Q How is it you had come to do reports for them, how



1 does that start?

2 A The program has an arrangement through Alberta
3 Justice for funding related to the provision of
4 those reports, so although my paycheque is from
5 Alberta Health, there's some indirect funding from
6 Alberta Justice to Health to cover the costs
7 related to our program. In Calgary we have a
8 standard form that is used for a judge who is
9 requesting a pre-sentence assessment, that may be
10 at the request of counsel or it may be on the
11 judge's own motion, and for those patients who are
12 in an out-patient capacity, they would be referred
13 to our program and one of the psychiatrists or one
14 of the psychologists would undertake to do the
15 pre-sentence assessment.

16 Q Okay. You also refer to the National Parole
17 Board?

18 A Yes.

19 Q How does your work take you to the National Parole
20 Board?

21 A Well, my work takes me there in two routes; one,
22 through the hospital from time to time the
23 National Parole Board has requested assessments.
24 In addition, since 1994, I have been a contractor
25 with Correctional Services Canada which has led to



1 the writing of approximately 600 assessments for
2 the parole board in that private practice sort of
3 capacity.

4 Q And under heading 3, provide expert evidence, you
5 have testified in the courts?

6 A Yes, I have.

7 Q And you've been qualified as an expert?

8 A Yes, I have.

9 Q I won't take you through any of the other four
10 activities. And I see you've listed also your
11 previous work experience prior to 1991?

12 A Yes.

13 Q If we can just turn the page, you've listed here
14 conferences and workshop attendance. They sort of
15 speak for themselves I suppose. I count
16 approximately 13 there?

17 A And those are conferences that provide a mix
18 between my two areas of interest. The more recent
19 conferences have been primarily with the Canadian
20 Institute for Administration of Justice, I was
21 asked to sit on their board of directors for a
22 period of four years and have continued my
23 involvement with the association after completing
24 my term on the board, and then other conferences
25 have been for things like treatment of sexual



1 offenders, risk assessments, those sorts of
2 issues.

3 Q If we can just scroll down I suppose the page a
4 bit here, psychological assessment, you've got
5 patient-participatory instruments administered,
6 scored and interpreted -- here's where it gets a
7 bit difficult for most of us. What does this all
8 mean?

9 A As I indicated, in doing an assessment, it's
10 typically a combination of a clinical interview
11 and psychological testing, so in an optimal
12 situation, the testing provides me some additional
13 information comparing this individual to many
14 other individuals who have completed these tests.
15 All of these tests have standardization samples,
16 so I know where this person sits in terms of
17 things like their IQ, their memory, their academic
18 achievement and various personality
19 characteristics as well as some of these tests
20 look at neuropsychological functioning.

21 Q Okay. If we can just turn the page, please.

22 A These are simply more tests in different
23 categories, objective personality measures, career
24 vocational inventories, and then the risk
25 assessment measures are listed in the middle of



1 the page towards the bottom of the screen.

2 Q Okay, if we can just scroll up, please, and you
3 have your teaching experience, you've been a guest
4 instructor at the faculty of law recently?

5 A Yes. For the last three years I've been teaching
6 part of a required second year law course on
7 interviewing, negotiating and counselling. Prior
8 to that at the University of Calgary I was a
9 sessional instructor for three years teaching in
10 the faculty of kinesiology and then there was some
11 teaching experience when I was doing my degree in
12 Virginia.

13 Q If we just turn the page, I take it the top of the
14 page is your previous teaching experiences?

15 A Yes.

16 Q And if we just roll it up a little bit, please,
17 and under other professional activities you've got
18 consultation and outreach?

19 A Yes.

20 Q And it appears to be the last 10 years I take it
21 you've worked with the Calgary Police Service?

22 A Yes, since September, 1995 I've been the
23 consulting psychologist with the police service
24 doing critical incident debriefings, crisis
25 management sorts of activities, so if an officer,



1 for example, is involved in a shooting, either
2 discharging his weapon or being shot at, then
3 typically I would be paged and sent out to meet
4 with that officer as soon as possible and then to
5 do some follow-up treatment as well. I also do
6 the psychological testing for the recruit
7 candidates who have applied to the police service
8 for employment and then provide a small part of
9 the employee assistance program that is offered to
10 all members of the service and their families.

11 Q It also indicates the clinical psychologist,
12 that's what we touched on earlier is it?

13 A Yes, contract positions. I don't maintain what I
14 would consider to be a traditional private
15 practice, I have contracts with Corrections
16 Canada, I have the position with the police
17 service, but I do very little independent work. I
18 do some immigration assessments and those sorts of
19 intermittent applications that come up, but
20 because of my relationship as often the court's
21 expert in pre-sentence assessments, it's my
22 position that I will not do any pretrial work for
23 defence or for Crown, although I have done
24 pre-sentence work on things like long-term
25 offender applications and dangerous offender



1 applications.

2 Q If we can just turn the page then, the top of the
3 page, other consultation that you've done, I won't
4 take you through it, it speaks for itself. If I
5 can go down to the invited presentations and
6 workshops, and I take it that the title speaks for
7 itself. Can you elaborate a bit on what's
8 involved here?

9 A Well, if I look at the second one, standards of
10 conduct, codes of practice, and other ethical
11 confusions, since September of 2003 I have been
12 the chair of the discipline committee of the
13 College of Alberta Psychologists. That's the
14 committee that's responsible for dealing with any
15 ethics complaints. The Province of Alberta has
16 been going through a restructuring of all of the
17 health-related professions in terms of discipline
18 and self regulation, so this was a presentation
19 that was done at the annual meeting late last year
20 to address some of those changes which, as of
21 January 15th, came into effect.

22 Q And if we can just turn the page, and as
23 indicated, these are all papers you've presented
24 or you've attended at workshops and presented with
25 the assistance of others?



1 A Yes.

2 Q And I note that you had certain other
3 appointments, you were an ombudsman at McGill
4 University and a governor when you were a student?

5 A Yes, that's correct.

6 Q And if we can go to extra-curricular, you've got a
7 wide range of writing for the *New York Times*,
8 *Toronto Star*, *Globe and Mail*, etcetera, etcetera,
9 various other things I won't take you through, and
10 if we can turn the page, please, and we have here
11 reviewed papers, posters, and presentations. Can
12 you tell us the significance of the term reviewed
13 papers, etcetera?

14 A The majority of these are papers or presentations
15 that have only occurred as a result of peer
16 review, somebody would read the paper or assess
17 the proposed presentation and make a determination
18 as to whether or not it was worthy of inclusion in
19 a particular program or journal.

20 Q And I count approximately 30 there, I'm not going
21 to take you through it, but I note that you were
22 published in the *Alberta Crown Attorney's*
23 *Newsletter* as well?

24 A Yes, and again, the papers reflect a mix of my
25 interests in sports psychology and forensic



1 psychology.

2 Q Okay. And if we can turn the page, please, and
3 continue with the papers, they pretty well speak
4 for themselves, and scroll down to the bottom,
5 please, and then turn the page, and you've listed
6 reported cases and I believe there's approximately
7 18 or so that you've listed here, and I take it
8 it's all levels of court?

9 A Yes. Well, I haven't had any cases at the Supreme
10 Court yet, but certainly the three levels in
11 Alberta.

12 Q Okay. And I take it they speak for themselves in
13 terms of who you appeared in front of and,
14 generally speaking, the evidence you give to court
15 covers a wide range does it?

16 A Yes.

17 Q Depending on what's at issue and what's at stake?

18 A Everything from risk for sexual re-offence to
19 assisting the court in understanding factors that
20 may make a breach of trust theft fall into the
21 category of extraordinary circumstances for the
22 purposes of sentencing.

23 Q And just perhaps for completeness we can scroll
24 down and turn the page?

25 A I would just emphasize that of course these are



1 the reported decisions, and as, Mr. Commissioner,
2 you are well aware, the number of written reports
3 is only a fraction of the actual decisions, so I
4 would estimate that I've provided in excess of 500
5 reports to the courts.

6 Q Dr. Baillie, I've gone through it fairly quickly
7 with you. I would like to now turn to your actual
8 report, and perhaps we can get that up, I'm not
9 sure by number or by document.

10 MR. ELSON: Mr. Commissioner, I rise just
11 at this point, I appreciate that this witness has
12 been qualified, My Friend is seeking to qualify
13 this witness to give an opinion with respect to
14 the matters that are contained in the report, and
15 obviously from the CV and from this witness'
16 testimony he's obviously qualified on a number of
17 issues, but I was listening very closely to the
18 questions My Learned Friend was putting and also
19 to the answers that Dr. Baillie was giving and I
20 heard nothing with respect to the subject matter
21 that has been raised in the report which we've
22 all received copies of; namely, post-traumatic
23 stress disorder, and then secondly I heard
24 nothing with respect to the ability of this
25 witness to express an opinion in those cases



1 where he was not actually assessing the patient
2 in question, but was rather giving, as he
3 describes it, a commentary with respect to
4 historical information but without the kind of
5 clinical interview that he described in his
6 testimony. I think, with the greatest of
7 respect, it's incumbent upon Mr. Wolch to qualify
8 the witness with respect to those specific
9 subject matters. Clearly this witness is
10 qualified to express opinions on matters that
11 were identified in his CV and identified in his
12 testimony, but it doesn't touch upon the specific
13 circumstances of this case and I think at the
14 very least there should be some general
15 description of that.

16 COMMISSIONER MacCALLUM: You could either
17 get into that, Mr. Wolch, on your own accord or
18 we can allow cross-examination on the subject of
19 the witness' qualifications to give opinion
20 evidence, or, as a further alternative, we could
21 simply await cross-examination at large to cover
22 those aspects of the matter.

23 MR. WOLCH: Well, I was going to elaborate
24 a bit during the report, but if counsel wants to
25 question, I have no problem.



1 COMMISSIONER MacCALLUM: We'll allow
2 cross-examination on the witness' credentials
3 then with respect to the offering of an opinion
4 as he has done in his report of the 13th of
5 January, 2006.

6 **BY MR. ELSON: (ON QUALIFICATIONS)**

7 **Q** Mr. Commissioner, since I was the one that raised
8 the objection, I guess it's incumbent upon me to
9 lead off in whatever cross-examination might be
10 conducted.

11 Dr. Baillie, my name is Richard
12 Elson, I'm counsel for the Saskatoon Police
13 Service. I don't want to ask you any specific
14 questions about your report, but I would like to
15 cover some of your experience in the subject
16 matter which you have identified in the report,
17 and you would agree with me that part of the
18 subject matter in the report relates to the
19 subject of post-traumatic stress disorder; is that
20 correct?

21 **A** Yes.

22 **Q** I was reviewing your CV and very carefully hearing
23 the questions that were put by Mr. Wolch to you
24 and also your answers. In the cases where you
25 have either testified or provided a written report



1 to the court as an expert for the court, have you
2 ever had to deal with an instance in which a
3 prisoner or the person subject of your testimony
4 or subject to your report was indeed found to
5 suffer from post-traumatic stress disorder?

6 A Yes.

7 Q And specifically in what type of circumstances
8 would you have been called upon either to provide
9 expert testimony or a report with respect to such
10 a patient?

11 A I think it's actually occurred in all three areas
12 of my work, or all four areas in fact. It has
13 been through the police service with an officer
14 who had been involved in a shooting incident
15 making some recommendations to the service. Now,
16 granted, this is not in a court setting, making
17 recommendations to the service about that
18 officer's capability for return to work.

19 In the court setting or, more
20 broadly, before administrative tribunals,
21 certainly that's been the issue that has been
22 raised in a number of reports to the National
23 Parole Board and has been raised in civil
24 assessments for damages flowing from a particular
25 tort, so it has been addressed in the Court of



1 Queen's Bench, it has been addressed in the parole
2 board. I cannot think of a specific case where it
3 would have been addressed in the Provincial Court
4 in a pre-sentence report, but I don't doubt that
5 it has been, and then it's also been addressed in
6 my clinical work with the police service.

7 Q Now, in those cases where you have dealt with
8 persons found to be suffering from post-traumatic
9 stress disorder, would that diagnosis have been
10 made by you or would it have been made by a
11 psychiatrist?

12 A In those cases the diagnosis would have been made
13 by me.

14 Q Right. Now, I have heard it said, and correct me
15 if I'm wrong, that there was a dispute between the
16 fields of clinical psychology and psychiatry as to
17 which of those two professions is better able to
18 make a diagnosis of post-traumatic stress
19 disorder. Is it fair to say that there is a
20 dispute between those two professions as to who is
21 better equipped professionally to make that
22 diagnosis?

23 A I think there may be some individuals who are
24 plotting territory and setting up camp on
25 particular diagnoses, but I think in general the



1 professions understand that each has something to
2 contribute to the process.

3 Q All right. Now, with respect to those patients
4 where you had arrived at a diagnosis of
5 post-traumatic stress disorder, would it be fair
6 to say that those patients would have been
7 subjected to a clinical interview conducted by
8 yourself; is that a fair assessment?

9 A Ordinarily, yes.

10 Q When you say ordinarily, that suggests to me that
11 there might be an exception to the rule.

12 A Some individuals where I'm doing an assessment for
13 the parole board may choose not to participate in
14 the interview because, frankly, they are not going
15 to participate in the parole hearing, but there is
16 still an administrative requirement for a report
17 to be drafted. In those circumstances, my opinion
18 would be based on a file review, but as in the
19 case of the letter that I provided to Mr. Wolch, I
20 would not consider that to be a comprehensive
21 assessment because the individual hasn't
22 participated.

23 Q Right. So if we go back to the situation with
24 somebody with the parole board, if you've been
25 asked to express an opinion as to whether or not



1 someone is suffering from post-traumatic stress
2 disorder, in those instances where you do it
3 without a clinical interview, would you agree with
4 me that the weight of your opinion would perhaps
5 be, and I say this with the greatest of respect,
6 arguably less than it would be if it had been done
7 with a clinical interview?

8 A I appreciate your respect, but I don't think that
9 it's even necessary. There is a limitation when I
10 am unable to have first-hand clinical observation.
11 I don't think that that makes the report useless,
12 but it is a limitation that I respect.

13 Q And by virtue of it being a limitation, it might
14 arguably be seen to have less value and less force
15 than would otherwise be the case with a clinical
16 interview?

17 A I think that's fair.

18 Q And would that also apply with respect to
19 psychological testing; in other words, I take it
20 that in most of the cases -- forgive me if I'm
21 confusing, I have unfortunately the bad habit of
22 doing that from time to time with witnesses -- but
23 in those cases where you have made a diagnosis of
24 post-traumatic stress disorder, it invariably
25 comes with a clinical interview and a set of



1 psychological tests; is that correct?

2 A I don't know if I would say invariably. Certainly
3 that would be my preference.

4 Q And again, if the person in question were not
5 subjected to the psychological testing you've
6 described, again your opinion as to whether or not
7 that person had such a condition as post-traumatic
8 stress disorder, for example, would have less
9 value than might otherwise be the case?

10 A The diagnosis of PTSD -- sorry, post-traumatic
11 stress disorder is abbreviated as PTSD often --
12 the diagnosis of PTSD is based on criteria that
13 have been established by the American Psychiatric
14 Association and laid out in their diagnostic and
15 statistical manual of mental disorders. There is
16 no criteria that is related to a test result.
17 Where the testing can be helpful is for the
18 personality measures such as the Minnesota
19 multiphasic personality inventory in its second
20 edition or the Millon clinical multiaxial
21 inventory. Those tests include what are called
22 validity scales which give me information about
23 how this person is presenting himself or herself
24 in the assessment process. Some people may choose
25 to present themselves in a glowingly positive



1 manner because they are looking for a positive
2 evaluation. Other individuals may amplify the
3 degree of distress that they are experiencing and
4 so skew the results in a negative direction. So
5 while there are scales on those tests that can
6 address characteristics of post-traumatic stress
7 disorder, the primary utility of them in doing an
8 assessment like this doesn't relate to the
9 diagnostic criteria per se, it gives me additional
10 information about whether the person is faking
11 good or faking bad in the vernacular.

12 Q I understand that. While we're talking about
13 additional information per se, it's my
14 understanding that in the last number of years in
15 addition to clinical interviews, in addition to
16 testing, to the extent that they might be of some
17 assistance to you, there are also laboratory tests
18 done, and when I talk about that, I'm talking
19 about medical laboratory tests. For example, MRI
20 examinations, it's my understanding that there is
21 some evidence to the effect that individuals with
22 PTSD, post-traumatic stress disorder, have a
23 smaller hippocampus, for example, than might
24 otherwise be the case. Are you aware of clinical
25 evidence in that regard that has been used notably



1 by psychiatrists in making the diagnosis of
2 post-traumatic stress disorder?

3 A There is a limitation in that line of research
4 that there are certainly some individuals and
5 therefore a trend towards different morphology
6 between individuals with depression, individuals
7 with not, individuals with psychopathy,
8 individuals who don't meet that criteria, but
9 there is so much variability within subjects that
10 by no means is that a diagnostic criteria at this
11 point, so again I go back to the diagnostic
12 criteria as outlined in the DSM don't make
13 reference to those sorts of testing because it's
14 simply not at the level of scientific rigor that
15 we know this is a definitive marker.

16 Q I appreciate that. Do you from time to time,
17 though -- I take it you are aware of the research
18 that suggests that an MRI may be helpful in the
19 assessment of a PTSD patient?

20 A I haven't read it in any detail. I'm simply aware
21 that that sort of research is going on.

22 Q There's also evidence with respect to ketone
23 secretions as I understand it, that individuals
24 with post-traumatic stress disorder may have
25 abnormal levels of ketones?



1 A May have, yes.

2 Q May have. Does information, blood tests or
3 laboratory tests that may be provided to you in
4 that respect, is that of any value to you in your
5 assessment?

6 A It really has limited value because I go back to
7 the issue of the diagnostic criteria. We don't
8 add on other factors. Again, the testing may tell
9 you whether a person is presenting in one
10 direction or the other, but if the symptoms are
11 present and the four criteria are met, then the
12 diagnosis is established. The test results may
13 enhance that diagnosis, strengthen that diagnosis
14 or weaken that diagnosis, but the test results per
15 se do not change whether or not the diagnosis is
16 made.

17 Q Thank you. I was listening very carefully to the
18 evidence you gave in response to my earlier
19 question about cases where you were called upon
20 either to give expert testimony or reports with
21 respect to persons suffering from post-traumatic
22 stress disorder, and correct me if I'm wrong, but
23 I did not hear you say in your answer to my
24 question that you have ever been called upon to
25 assess a person with that condition in order to



1 determine whether or not they could testify either
2 in a court of law or in some other form of
3 judicial proceeding. Have you ever had occasion
4 to assess a patient that was believed to be
5 suffering from post-traumatic stress disorder in
6 order to assess the ability of that person to give
7 evidence in a judicial proceeding?

8 A I think the closest that would have come up is an
9 assessment for fitness to stand trial which, as
10 you know, the criteria are outlined in section 2
11 of the *Criminal Code* and relate to the ability to
12 communicate with counsel, not a willingness to
13 communicate with counsel, and most of the
14 individuals that I've seen for assessments of
15 fitness to stand trial have been fit, so even if
16 the diagnosis of PTSD had existed in those cases,
17 I would have been making an opinion to the court
18 that the individual was fit to stand trial.

19 Q Now, I take it then from that answer that you have
20 never then dealt with an occasion -- you say that
21 that's the closest you've come, so I take it then
22 in answer to my specific question, you have never
23 dealt with the assessment or, for that matter,
24 even the commentary of a patient with
25 post-traumatic stress disorder in determining



1 whether or not that person would be fit and
2 competent to give evidence in a judicial
3 proceeding?

4 A To the best of my recollection, I have not done
5 that.

6 MR. ELSON: Thank you, Dr. Baillie. I have
7 no further questions.

8 COMMISSIONER MacCALLUM: Thanks. Anybody
9 else?

10 MR. WOLCH: Thank you, Mr. Commissioner.

11 COMMISSIONER MacCALLUM: Any submissions?

12 MR. WOLCH: No. I prefer to proceed and --

13 COMMISSIONER MacCALLUM: I'm satisfied that
14 Dr. Baillie has the requisite combination of
15 experience and academic qualifications in the
16 area of psychology and particularly with respect
17 to post-traumatic stress syndrome to offer his
18 opinion on that subject. Any limitations upon
19 his ability to do so are ones to be attributed to
20 weight as opposed to qualification.

21 **BY MR. WOLCH:**

22 Q Thank you, sir. Perhaps I could have the report
23 brought up then.

24 Now, Dr. Baillie, on the screen
25 is the report of January 13th, 2006 and I'm going



1 to skip the first page which, as you indicate
2 yourself, is background and turn to the second
3 page if I could, and I would like to start with
4 your involvement. Could you -- I don't want to
5 have you just read it out. Could you tell us
6 about your involvement and what you did?

7 A After my receipt of an Email from you on December
8 7th indicating that you wanted me to go ahead with
9 doing this assessment, I made arrangements with
10 the Commission office to come to Saskatoon and
11 review some of the documents, some of the huge
12 volume of documents that's available to the
13 Commission. Through the assistance of people like
14 John Agioritis and Mel Thoen, I was able to get
15 access to many of the documents that I was looking
16 for which primarily related to mental health
17 assessments giving me a general understanding of
18 some of the issues that would need to be addressed
19 in the questioning of Mr. Milgaard and dealing
20 with his appearances before the parole board, for
21 example.

22 At the offices I also had the
23 opportunity to have a brief conversation with Mr.
24 Hodson about the application process and I think
25 by the end of that involvement had a sense of



1 where things were going. What was very helpful to
2 me was to then have a telephone conversation with
3 Mr. Grymaloski in early January where he, in the
4 course of that 30 minute conversation, was able to
5 describe to me some of the concerns that he had
6 from his professional experience providing
7 treatment with Mr. Milgaard over the last 10 years
8 or so.

9 Q If I could interrupt you, I know you are not
10 reading from your report, but we should try to
11 keep up with it. I think you are on the next
12 page. Okay, I'm sorry to interrupt you, but just
13 carry on so we can perhaps read it if we want, or
14 do both hopefully.

15 A Well, as you know, by early January a circumstance
16 had arisen where I was asking for arrangements to
17 be made that I could go to Vancouver and do the
18 clinical interview with Mr. Milgaard. I had also
19 spoken with my psychological assistant, who is
20 very much my right arm and does all of the testing
21 for me, and, frankly, many of the courts are more
22 interested in the test results than they are in my
23 opinion so she is a very important part of the
24 process, and we had made tentative arrangements to
25 go to Vancouver to meet with your client.



1 However, as you indicated to me, your client had
2 some resistance to that process going ahead, and
3 when I was able to chat with Mr. Grymaloski I
4 became more aware of what those concerns were;
5 specifically the potentially debilitating nature
6 that even that interview could have if I was to
7 start to touch on issues that may be of relevance
8 to the Inquiry, so at that point I sought your
9 guidance as to whether you wanted me to proceed
10 with writing some sort of a report or to abandon
11 the process, and you indicated that even in the
12 absence of the interview you would like me to
13 provide some of the commentary that is provided in
14 this letter.

15 **Q** You mentioned that speaking to you could have a
16 debilitating effect?

17 **A** I think, in my review of the documents, it became
18 clear that Mr. Milgaard has seen a wide range of
19 mental health professionals, I would estimate
20 probably 20 if not more psychiatrists and
21 psychologists within the correctional system, and
22 from my conversation with Mr. Grymaloski I can
23 understand Mr. Milgaard's reluctance to want to
24 meet with somebody who he doesn't really know,
25 therefore doesn't trust, and who is another mental



1 health professional coming in to poke and prod and
2 see what sort of reaction I get from him. So
3 Mr. Milgaard's primary concern, as relayed to me
4 by you and by Mr. Grymaloski, was that talking
5 about the circumstances of his conviction and
6 incarceration forces him to relive some of those
7 memories which he has worked so hard to get past
8 and, therefore, has the potential to be
9 debilitating for him.

10 My understanding has been in the
11 past, when he has had those sorts of
12 recollections, it has led to hospitalization or at
13 least the possibility of hospitalization. So I'm
14 in no position to force him to participate in that
15 interview, ethically it would be inappropriate for
16 me to do that, and functionally it was extremely
17 difficult to do, I had no way of arranging the
18 interview, and, frankly, no desire to want to put
19 him through that, recognizing that that would
20 therefore place some limitations on the
21 information that I could provide to the
22 Commission.

23 Q Would that reaction that he has be consistent with
24 a person who does have the disorder?

25 A Yes.



1 Q It comes as no surprise to you in particular that
2 he doesn't want to talk to you?

3 A Not at all. The -- apart from the events that
4 give rise to an individual having post-traumatic
5 stress disorder, that is going through some sort
6 of typically life-threatening event and having had
7 a strong fear reaction to it, the primary symptom
8 of a person with post-traumatic stress disorder
9 are the efforts that are put into avoiding
10 anything that has anything to do with the
11 provoking stimulus with that life-threatening
12 event.

13 Q And now you mentioned that he may have been seen
14 by about 20 different people in the mental health
15 field; I take it that information comes to you
16 from the reports you saw from the Commission's
17 office?

18 A Yes.

19 Q And in a general sense, those type of assessments,
20 what are -- given your correctional experience,
21 which is considerable, how does the normal
22 psychiatrist or psychologist approach the
23 individual in custody to assess them?

24 A You would -- well, first it depends on the purpose
25 of the assessment, and most of my assessments



1 would be for individuals who will be appearing in
2 front of the parole board. So that would begin by
3 doing a file review of -- there are four different
4 categories of files that I would typically look
5 at; the sentence/administration files would tell
6 me the details of the current sentence and the
7 transcripts from sentencing if they are available;
8 the -- I'm blanking on the name of the second
9 file, I'll come back to it; the third would be the
10 psychology file, which would indicate to me
11 whether the person has had any previous
12 assessments, including test assessments; there is
13 a discipline and dissociation file which gives me
14 information about the person's disciplinary
15 conduct while in custody, so violations of
16 everything from the wake-up time to having shown
17 disrespect towards staff; and then the one that I
18 am forgetting, the official name for it is sort of
19 the progress reports that looks at everything from
20 the correctional plan to participation in
21 treatment programs to interactions with parole
22 officers to the development of release plans.

23 And having reviewed those
24 documents, and sort of having a mental framework
25 of the type of individual that I would be likely



1 to assess, I would then arrange to do an interview
2 with that person.

3 Q How does the person speaking to the --

4 A Case -- sorry -- case management files, as it
5 comes back to me.

6 Q Case management files. How does the professional
7 look at the conviction that placed the person in
8 that position?

9 A I would -- I can only say that it varies. In my
10 experience, in my personal experience, my
11 professional experience is that simply because an
12 individual denies having participated in a
13 particular offence is not diagnostic in and of
14 itself. Some of my colleagues take a different
15 view and would come to the conclusion that the
16 denial is part of the symptomology of the
17 individual. My perspective is that the individual
18 can take a position either telling me his version
19 of it or saying that "I didn't, I wasn't involved,
20 it wasn't me". But certainly there are many, many
21 people who practice in this area -- and I think I
22 would fall victim to the, this myself to a
23 degree -- that it is not my position to retry the
24 case.

25 And a wise mentor of mine -- and



1 I should probably mention the name so that we know
2 where some of my biases come from -- the
3 Honourable Alan Gold was my mentor for years and,
4 as I'm sure everyone here knows, assisted in the
5 negotiations of the compensation package for Mr.
6 Milgaard and his mother. Alan Gold's first piece
7 of advice to me in 1982 was "it's really easy to
8 make up your mind when you've only heard one side
9 of the story", and so when someone comes to me in
10 a correctional facility and says, "here's my
11 version of why I didn't do it", you can easily get
12 drawn into saying "oh, well that seems reasonable"
13 without having reviewed the files; similarly, when
14 you only review the files and have the official
15 version of what happened, it may lead to certain
16 biases that say "well, then anything that this
17 individual tells me is going to be irrelevant
18 unless he wants to accept responsibility for
19 having engaged in the offence." So in some
20 circumstances the interviews can become quite
21 adversarial, and the person doesn't want to
22 participate, because they feel as though they have
23 already been labelled before walking into the
24 room.

25 Q Would I be correct in thinking that, if you walk



1 and murder, for the assessor to swing so far as to
2 give a positive evaluation.

3 Q Are you able to comment on, let's say, David being
4 there in front of 20 or so psychiatrists
5 proclaiming innocence and appreciating that it's
6 not being accepted, not being believed?

7 A The only word that I can think of is
8 "frustrating", and clearly that's an
9 understatement.

10 Q You also mentioned that you might use descriptors
11 instead of a name that might mean different things
12 to different people; what do you mean by a
13 "descriptor"?

14 A I think it may be more useful to the board or to
15 the courts, if I go back to that context, in
16 describing this individual, describing his
17 behaviours, describing what does or does not
18 create a significant risk for this individual
19 engaging in future violence and behaviour for
20 example, rather than using a label.

21 So let's take the term
22 "psychopathy". It tends to be rather inflammatory
23 when somebody sees it as a diagnosis on an
24 institutional file, there are certain preconceived
25 notions about psychopathy that are immediately



1 generated, but even within psychopathy there are a
2 range of possible behaviours. The label of
3 psychopathy isn't even a diagnosis, it's based
4 primarily on a test score that's derived from an
5 instrument developed in British Columbia, the
6 Psychopathy Checklist, now in its revised version.
7 The cutoff score is 20 for an individual to be
8 considered moderate and the absolute cutoff score
9 is 30 for a person to then be given the diagnosis
10 of psychopathy, but there are a number of ways of
11 getting to a score of 30, and so when I use the
12 term it may mean something different to you than
13 it does to me, and it may mean something different
14 to a person who has even been trained on the
15 instrument, because they may have derived the
16 score from a different mechanism.

17 So, again, there's an inherent
18 limitation in the label unless everybody
19 understands what it is that is being described, so
20 I go back to using paragraphs instead of an
21 individual label to describe what it is that makes
22 this person tick.

23 Q If you can, in the file review that follows, could
24 you take us through some of these terms and how
25 you saw it being used and what, perhaps, they



1 mean?

2 A You are referring to about half-way down page 3?

3 Q Under -- yeah.

4 A Yeah.

5 Q If you look at the big screen you can see where I
6 put the red arrow.

7 A Thank you. These are labels that I found in
8 various documents that I was able to locate in the
9 Commission files. They tend to fall into a number
10 of different clusters. The schizoid,
11 psychopathic, sociopathic character disorder, and
12 then there is a personality disorder unspecified;
13 those are labels that typically refer to what we
14 would call axis 2 diagnoses.

15 The DSM is set up as a five-axis
16 model; axis 1 are primarily the organic sorts of
17 disorders, so depression, anxiety, schizophrenia,
18 substance abuse, etcetera; axis 2 are the
19 personality disorders, the enduring
20 characteristics of an individual that are unlikely
21 to be situation-specific, and so these diagnoses
22 fall under that general category of axis 2 labels.

23 A schizoid individual is someone
24 who tends to be a little bit of a -- sorry --
25 tends to be a loner, not a little bit but



1 significantly a loner, primarily because of
2 distance and aloofness from people, difficulty
3 forming close relationships, and a lack of
4 interest in pursuing those relationships.

5 The psychopathic personality
6 type or the sociopathic personality type are these
7 criminally entrenched, glib, manipulative,
8 superficial, parasitic individuals who offend at
9 essentially any opportunity that they are given,
10 or at least take advantage of other people at any
11 opportunity that they are given.

12 Similarly, the character
13 disorder with strong antisocial features, again a
14 formal diagnosis but indicative of somebody who is
15 chronically using others to get ahead.

16 And then, in the way that I have
17 presented them, there is a bit of a bridge there.

18 The situational psychotic
19 illness, schizophrenia, manic depressive phase or
20 manic depressive illness or manic depressive
21 disease or manic depressive disorder, all of these
22 labels are used to describe somebody who is
23 showing some bizarre behaviour.

24 The fundamental characteristics
25 of schizophrenia include hallucinations and



1 delusions. Hallucinations are what we think -- or
2 sorry -- what we hear or smell or taste or see
3 that other people around us don't see, so we may
4 be hearing voices inside our head, we may be
5 seeing people that aren't actually in the room;
6 and the delusions are the distortions in thought
7 where an individual believes something that is
8 simply demonstrably untrue.

9 I've also included the substance
10 abuse and acute psychotic reaction as other labels
11 that are given in that area.

12 The manic depressive or bipolar
13 illness is also identified in the last of the
14 footnotes as a major affective disorder. Bipolar
15 individuals tend to be restless, impulsive,
16 hyperactive, and go through periods of up to
17 several days of not requiring any sleep, having
18 sort of frenetic behaviour. It can be
19 goal-directed behaviour in the sense of "you know,
20 I need to get this project done", but it's done
21 over a period of several days without any
22 appreciable awareness of what else is going on in
23 their surroundings.

24 So there are personality
25 disorders, there is psychosis, there is substance



1 abuse, and there is this reference bipolar or
2 manic depressive disorder.

3 Q Just in a general sense, in terms of age, how does
4 age affect diagnoses, I mean as a person is being
5 diagnosed?

6 A Well a personality disorder is, according to the
7 diagnostic criteria, not to be labelled, not to be
8 given, when an individual is under the age of 18
9 years. I would certainly prefer, and I think most
10 of my colleagues at the hospital would agree, that
11 we're looking for a longer period of those
12 symptoms having been present. So the fact that
13 somebody turned 18 two weeks ago, yes they may
14 technically meet the diagnostic criteria, but in
15 giving somebody a diagnosis of a personality
16 disorder I'm referring to long-standing
17 characteristics that are causing clinically
18 significant impairment in social or occupational
19 functioning, and so somebody would ordinarily need
20 to be older before they are given that particular
21 category of diagnosis.

22 Q Now you mentioned, pursuant to my question, that
23 the nature of the crime will play a part in these
24 interviews?

25 A Yes.



1 Q It's almost impossible to be human and not look at
2 somebody and say "look, if you are a
3 rapist/killer, there is something wrong with you"?

4 A The first file that I had after starting my work
5 at the Calgary General Hospital was an individual
6 who had used an axe in what was assessed as being
7 an attempted suicide -- or sorry -- an assisted
8 suicide of his girlfriend. Without getting into
9 the details of why he used an axe rather than
10 anything else, when I met with my supervisor to
11 talk about the fact that that act in and of itself
12 did not yield a particular diagnosis, my
13 supervisor's response was "then we have a problem
14 with our diagnostic categories".

15 The fact is that a single act
16 like that does not generate a diagnosis. If it
17 points to a pattern of behaviour, criminogenic,
18 non-compliant, antisocial behaviour, then other
19 diagnoses may become viable, but a single act
20 typically doesn't get you a full-blown diagnosis.

21 The latest revision of the
22 Diagnostic Manual includes what are called V
23 codes, which are allowed as a way of indicating
24 when treatment is taking place for something other
25 than a standard diagnosis. One of the V codes is



1 for adult antisocial behaviour, so under newest
2 criteria a single act would get you that
3 diagnosis, but a single act does not get you any
4 of the diagnoses that I have just read.

5 Q Or shouldn't get you that?

6 A Should not, yes.

7 Q And if David was, in the interview, protesting
8 innocence or getting agitated about not being
9 believed, could that affect how the interviewer
10 looks at him, as if he is blocking it out or not
11 accepting, or things like that?

12 A Yes. And there are multiple references to that in
13 the therapy notes that I was able to find in the
14 files.

15 In one circumstance they
16 referred to Mr. Milgaard as being agitated by
17 another issue that was going on at the time and,
18 therefore, was not showing any remorse and was not
19 open to any discussion about "his offence", and I
20 thought that the language was interesting in that
21 I would refer to it as "the offence", but this
22 mental health professional labelled it as "his
23 offence", thereby suggesting that there was a need
24 for him to take responsibility regarding what he
25 had done in order for therapy to move forward.



1 Q And I take it David's not showing remorse for the,
2 for the action, would have an effect in the penal
3 system?

4 A Yes. Despite documents to the contrary, my
5 experience with the parole board is that accepting
6 responsibility is one of the preconditions to be
7 granted any form of conditional release.

8 Q So David would have the experience of going in
9 front of all these assessors, plus the parole
10 board and everybody else, and not being listened
11 to so to speak?

12 A Correct.

13 Q And I take it you are aware that, between the time
14 of the conviction and the time of the
15 assessments -- I don't want to go into vivid
16 detail -- but there were some horrific experiences
17 in the jail?

18 A Yes.

19 Q And if we can just turn the page. So David would
20 have been prescribed medication I take it?

21 A Yes. Some of them were given as mood stabilizers,
22 some were given to reduce his level of anxiety,
23 some were given for sleep, and then certainly
24 there were a range of other medications given for
25 health complications that he had over the years.



1 Q And, from the files that you saw, how did he
2 appear to react to stress?

3 A Repeatedly the files suggested that Mr. Milgaard
4 did not respond at all well to stress. The parole
5 board made a number of references to it, I've
6 cited one of them on the top of page 4, which is
7 the parole board reviewing the documentation and
8 saying:

9 "You have demonstrated, on previous
10 occasions, your difficulties in coping
11 with stressful situations. You have
12 provided also evidence of your
13 unpredictability when attempting to cope
14 with anxiety and/or personal
15 difficulties."

16 Other National Parole Board panels refer to his
17 impulsivity when under periods of stress and
18 suggested, and I quote:

19 "... when frustrated he is
20 unpredictable.",
21 close quotes.

22 Q I noted, and I thank you for not going into in
23 your report, into the details of the early years
24 in jail, but you do indicate, and I have to go
25 through it; can you tell us what you were



1 referring to in this sentence regarding multiple
2 suicide attempts?

3 A The documentation described four attempts that I
4 was able to discern. That's not to suggest that
5 there were or were not others, there were simply
6 four that I located documentation, including
7 swallowing barbed wire, which resulted in him
8 requiring surgery in hospital, having perforated
9 part of his intestine; ingesting leather dye;
10 cutting himself on his arms; and on at least one
11 occasion attempting to hang himself.

12 Q You indicate that some of the professionals viewed
13 that as manipulative but it could have been fatal?

14 A Yes.

15 Q Is that --

16 A Certainly the, he came very close to death in the
17 swallowing the barbed wire and ingesting the
18 leather dye, I'm not aware of the severity of the
19 cuts that he administered and I don't know the
20 details of the circumstances of at least the one
21 hanging that I located, but the other two clearly
22 had the potential to be lethal.

23 Q And I take it, as a rapist/murderer, he wouldn't
24 get the greatest amount of sympathy?

25 A No.



1 Q And you say here in terms of mental health
2 information; can you elaborate on that please?

3 A Generally despite the labels, despite the multiple
4 reports, the notes that I was able to find
5 coalesced around this idea that he had that Mr.
6 Milgaard does not tolerate stressful situations,
7 that he has a poor capacity for dealing with those
8 situations, and that his behaviour can become
9 unpredictable and, at times, pose a risk of
10 injuring himself.

11 Q Okay. If we can just scroll down that page,
12 please. So it might be more -- a bit helpful
13 doctor, occasionally if you glance at the screen
14 you will see I highlight portions of the report --

15 A Good.

16 Q -- that I am referring to, and feel free to refer
17 to your report that's in front of you, but just so
18 you see what we're talking about.

19 A Thank you.

20 Q Now this talks about the issues related to the
21 diagnosis of PSD or PTSD, and you indicate that
22 Dr. (sic) Grymaloski's report where he indicates
23 that David met the diagnostic criteria, can you
24 take us through that portion please?

25 A Mr. Grymaloski's report, and the one that I am



1 referring to is the document that was provided to
2 the Commission back in November, should not be
3 viewed as being an assessment report because that
4 has not been Mr. Grymaloski's role in providing
5 services to Mr. Milgaard. Mr. Grymaloski has
6 served as a therapist and that establishes a
7 different agenda for the process of treatment.

8 Mr. Grymaloski is much more
9 likely to follow along the issues that his clients
10 is raising rather than pushing for certain areas
11 of exploration, particularly when an individual is
12 resistant to discussing those issues, so what Mr.
13 Grymaloski is able to describe in his report as
14 the foundation for the diagnosis of post-traumatic
15 stress disorder is based on the contact that he
16 has had with Mr. Milgaard and on his professional
17 experience, even without having done the sort of
18 pre-sentence-like assessment that I might have
19 undertaken.

20 Q You say here that:

21 "In short, Mr. Grymaloski's diagnosis of
22 Posttraumatic Stress Disorder ... is
23 made on the basis of ... clinical
24 observation and professional experience
25 ... Nonetheless, I have no quarrel with



1 the diagnosis in this case."

2 Can you elaborate on that, please?

3 A There's nothing in the information that I have
4 reviewed that would cause me to believe that that
5 diagnosis is inaccurate. To the contrary, the
6 information that I have seen supports the
7 appropriateness of that label being given in this
8 case.

9 You have an individual -- I
10 mean, again, there are four diagnostic criteria;
11 the first is the exposure to that particular
12 event -- and, I mean, we're moving on to the next
13 paragraph here -- but in my opinion those four
14 elements are present here.

15 Q Can you go through them, please?

16 A Sure. And, if I may, I've brought a copy of the
17 DSM so that we can look at them specifically and I
18 can, at the very least, read them into the record.
19 The:

20 "Diagnostic criteria for ... Posttraumatic
21 Stress Disorder:

22 A. The person has been exposed to a
23 traumatic event in which both of the
24 following were present:

25 (1) the person experienced, witnessed,



1 or was confronted with an event or
2 events that involved actual or
3 threatened death or serious injury, or a
4 threat to the physical integrity of self
5 or others

6 (2) the person's response involved
7 intense fear, helplessness, or horror."

8 "B. The traumatic event is persistently
9 reexperienced in one (or more) of the
10 following ways:

11 (1) recurrent and intrusive distressing
12 recollections of the event, including
13 images, thoughts, or perceptions."

14 "(2) recurrent distressing dreams of the
15 event."

16 "(3) acting or feeling as if the
17 traumatic event were recurring (includes
18 a sense of reliving the experience,
19 illusions, hallucinations, and
20 dissociative flashback episodes,
21 including those that occur on awakening
22 or when intoxicated)."

23 "(4) intense psychological distress at
24 exposure to internal or external cues
25 that symbolize or resemble an aspect of



1 the traumatic event
2 (5) physiological reactivity on exposure
3 to internal or external cues that
4 symbolize or resemble an aspect of the
5 traumatic event".

6 The third criteria:

7 "C. Persistent avoidance of stimuli
8 associated with the trauma and numbing of
9 general responsiveness (not present before
10 the trauma), as indicated by three (or more)
11 of the following:

12 (1) efforts to avoid thoughts, feelings,
13 or conversations associated with the
14 trauma

15 (2) efforts to avoid activities, places
16 or people that arouse recollections of
17 the trauma

18 (3) inability to recall an important
19 aspect of the trauma

20 (4) markedly diminished interest or
21 participation in significant activities

22 (5) feeling of detachment or
23 estrangement from others

24 (6) restricted range of affect (e.g.,
25 unable to have loving feelings)



1 (7) sense of a foreshortened future
2 (e.g., does not expect to have a career,
3 marriage, children, or a normal life
4 span)"

5 The fourth criteria:

6 "D. Persistent symptoms of increased
7 arousal (not present before the trauma), as
8 indicated by two (or more) of the following:

- 9 (1) difficulty falling or staying asleep
10 (2) irritability or outburst of anger
11 (3) difficulty concentrating
12 (4) hypervigilance
13 (5) exaggerated startle response".

14 There are two other criteria that I would not
15 consider to be part of the four core criteria;
16 first is that the:

17 "Duration of the disturbance ...",
18 has to be:

19 "... more than 1 month.",

20 and the last is that:

21 "The disturbance causes clinically
22 significant distress or impairment in
23 social, occupational, or other important
24 areas of functioning.

25 Q And how do you relate that to David?



1 A I think that he meets the diagnostic criteria
2 having had the threat to his personal integrity
3 played out by the conviction and incarceration,
4 having had feelings of helplessness in the face of
5 that particular event or process of events, having
6 the avoidance of stimuli that are associated with
7 that experience. That's not to say that Mr.
8 Milgaard can't appear in public and talk about
9 issues that are tangentially related to his
10 incarceration, for example, his appearance here in
11 October to advocate on behalf of two other
12 individuals, he can talk about the circumstances
13 of other individuals much more capably than he can
14 talk about his own experiences.

15 I viewed part of the videotape
16 from his presentation before the Morin Inquiry
17 which I believe was in 1997 and at that time Mr.
18 Milgaard in his first response to a question
19 before the Commission said, "What if I don't want
20 to talk about it," and then followed it up with,
21 "I may not feel like talking about it," and during
22 the part of the interview that I've been able to
23 watch, at no time did he make any reference to his
24 own incarceration or his own case. This was
25 obviously a Commission looking into a wrongful



1 conviction that wanted to obtain evidence about
2 the effects of wrongful conviction. Mr. Milgaard
3 made some other comments later on in the day about
4 the effects that it may have on some individuals,
5 but at no time did I see him making any reference
6 to how it had affected him personally, it's simply
7 a topic that, in my experience, he doesn't want to
8 go anywhere near, and in terms of the other
9 symptoms, things like the flashbacks, the
10 nightmares, etcetera, those have been documented
11 in institutional files and the ongoing issues
12 about distractibility, concentration, etcetera,
13 have been reported to me by Mr. Grymaloski.

14 MR. WOLCH: Mr. Commissioner, I'm happy to
15 keep going. I'm not sure when you want us to
16 break. I leave it to you.

17 COMMISSIONER MacCALLUM: Let's go another
18 15 minutes.

19 MR. WOLCH: I'll just keep going until I'm
20 advised.

21 COMMISSIONER MacCALLUM: Okay. Maybe you
22 could ask the witness if the traumatic events to
23 which he refers, I specifically refer to the
24 first criteria in what seems to involve exposure
25 to a life threatening event, I wonder if that



1 relates to post-conviction matters or is he
2 meaning to imply that Gail Miller's murder
3 somehow does this?

4 BY MR. WOLCH:

5 Q Dr. Baillie, rather than me doing a bad job on
6 that, maybe you can just directly focus on the
7 Commissioner's --

8 A And let me be perfectly clear about that. No, I'm
9 referring to the conviction and to the sequelae
10 that flow from the conviction. I think that this
11 is a particularly unique case in that in response
12 to the questions that I was asked earlier about
13 other assessments of PTSD, in most of those cases
14 there has been a discrete event or an event that
15 was relatively circumscribed in time in refugee
16 applications. For example, there may be an
17 individual who was tortured during incarceration
18 over a period of, let's say, six months, we can
19 then define that six month period as being the
20 event. In Mr. Milgaard's case, there was not only
21 the conviction itself, but the sequelae that then
22 went on for at least 23 years.

23 COMMISSIONER MacCALLUM: Could we just have
24 that up, just scroll back and let's look at the
25 one then, please.



1 A So again --

2 COMMISSIONER MacCALLUM: I would have
3 thought, sir, that that meant personal exposure
4 to the traumatic event, seeing a death, for
5 example, or experiencing a threat to one's own
6 well-being, physical well-being.

7 A Yes, the threat to one's --

8 COMMISSIONER MacCALLUM: But here the
9 evidence seems to be that Mr. Milgaard had
10 nothing to do with the death, nor did he know
11 anything about it.

12 A And I'm not referring at all to Gail Miller's
13 death, I'm referring to the threat to his personal
14 integrity that comes from the wrongful conviction
15 and incarceration and various things that happened
16 to him during that incarceration.

17 COMMISSIONER MacCALLUM: So you are getting
18 into post-conviction matters then?

19 A Yes.

20 COMMISSIONER MacCALLUM: On a personal
21 level of Mr. Milgaard, it means post-conviction,
22 not pre-conviction?

23 A Yes, that's correct.

24 COMMISSIONER MacCALLUM: Okay, thanks.

25 BY MR. WOLCH:



1 Q So just to follow up on that, obviously being
2 found guilty of a crime you didn't commit would
3 have an horrific effect on you?

4 A Yes, and certainly the horror would be
5 proportionate to the seriousness of the
6 allegations.

7 Q If you are sentenced to life for a rape and murder
8 you didn't do, your feeling with your family and
9 community and everything else would be difficult
10 to describe?

11 A Yes.

12 Q And then if you go into jail and you suffer
13 indignities in jail which cause you to even try to
14 take your own life, that would -- would that be
15 separate or compounding?

16 A I think that it would be compounding, and
17 that's -- you may be using better language than
18 mine, that's what I meant by this is not a
19 discrete event, it is a mixture of characteristics
20 that go back to his arrest in May of 1969 probably
21 up until the present. I'm sure that there are
22 some individuals who still don't accept that this
23 was a wrongful conviction and that he may from
24 time to time face questions about that issue, so
25 every time that those sorts of questions come



1 up -- I have not assessed him and therefore there
2 are limitations to my opinion, but I would expect
3 that those questions would be difficult for him to
4 respond to and address.

5 Q You mention you saw a video and I believe that was
6 after you wrote your report?

7 A Yes.

8 Q I would like to go into that a little more. That
9 was the Morin Inquiry?

10 A Yes.

11 Q And the video is about how long?

12 A I've looked at about three hours of it so far. It
13 was a panel discussion that was generated through
14 AIDWC and included Rubin Carter and Mrs. Milgaard
15 as moderators of a discussion amongst a number of
16 individuals, male and female, who had been
17 wrongfully convicted and demonstrably found
18 innocent and released from custody.

19 Q And out of the three plus hours, what portion
20 would David have actually been speaking?

21 A He was asked a number of questions, but I would
22 suggest that his presentation out of that time
23 probably amounts to sort of seven to 10 minutes.

24 Q And how did he appear to you?

25 A He appeared quite reluctant. Mr. Carter as



1 moderator asks him the first question and asks Mr.
2 Milgaard to speak about his experiences in custody
3 and, as I indicated, his first response is, "Maybe
4 I don't want to talk about it," and when
5 Mr. Carter pushes him and says you need to talk
6 about it, you need to tell this Commission what
7 happened to you, he repeats, in essence, the
8 response by saying, "I may not want to talk about
9 it."

10 COMMISSIONER MacCALLUM: This is '97 was it
11 did you say?

12 BY MR. WOLCH:

13 Q Yes, sir. And how was his demeanour, how would
14 you describe him, or can you, I don't know.

15 A Compared to the intensity and passion of everyone
16 else on the panel when talking about their
17 experiences, Mr. Milgaard seemed quite clearly to
18 struggle with the sorts of issues that were being
19 addressed. He was vague, he was scattered, it was
20 clear that, it was clear to me that he was
21 uncomfortable in the situation.

22 Q Now, what is the effect of this disorder, and
23 specifically in David's case what are the things
24 we should worry about?

25 A Given that the primary ongoing symptom of



1 post-traumatic stress disorder is this attempt to
2 avoid elements that are associated with the
3 original traumatic event, forcing a person to
4 experience those is likely to create significant
5 anxiety or, in the vernacular, stress.

6 Q And in this case what may very well happen?

7 A Well, the information available to me says that in
8 the face of significant stress, Mr. Milgaard's
9 behaviour can become unpredictable and potentially
10 self-injurious. Mr. Grymaloski advises me that on
11 occasions when he had asked questions about what
12 had happened to him, it was not infrequent that
13 Mr. Milgaard would flee and not be seen for a
14 period of time, so I think if faced with the sort
15 of anxiety provoked by coming here and testifying
16 in this sort of a forum, it's entirely possible
17 that he would flee and therefore be of no service
18 to himself or anybody else. That's how he would
19 deal with the anxiety of the situation.

20 COMMISSIONER MacCALLUM: That's according
21 to Mr. Grymaloski, not you?

22 A No, that's my opinion, sir.

23 COMMISSIONER MacCALLUM: But you mentioned
24 Mr. Grymaloski?

25 A Mr. Grymaloski has had the experience of asking,



1 and Mr. Grymaloski is here, he can testify for
2 himself, but he certainly in his report indicated
3 some issues in his experience with Mr. Milgaard
4 and described to me that when pressing questions
5 were put to Mr. Milgaard, that Mr. Milgaard would
6 often flee and not be seen for a period of time.
7 I raise it simply because that's consistent with
8 the post-traumatic stress disorder.

9 BY MR. WOLCH:

10 Q So just turn the page on the report, you've
11 indicated that, I believe, that when you do a
12 diagnosis or offer an opinion, you try and look at
13 the entire picture?

14 A Yes.

15 Q And I take it in some assessments you do, the
16 individual may have potentially a motive to be
17 diagnosed in a certain way?

18 A Yes.

19 Q For example, if somebody is charged with a crime
20 of a serious nature, they may want to be judged to
21 be mentally unfit or mentally incompetent or
22 whatever it might be?

23 A That's correct.

24 Q So do you take into account the other motives that
25 may give rise to the symptoms that you are being



1 told about?

2 A Yes. I think in undertaking an evaluation in the
3 context that you are describing, I have to keep in
4 mind that the person may have a motive to present
5 one way or the other. Again, when I was referring
6 to the value of testing, I said that the two
7 primary personality scales include these validity
8 measures that give me some indication of how
9 strongly a person is presenting in one direction
10 or the other, trying to fake good or fake bad as
11 the terms can be simply summarized.

12 In this case, my -- the
13 information available to me includes Mr.
14 Grymaloski's 10 years of experience with Mr.
15 Milgaard never wanting to discuss these issues,
16 the videotape that you provided to me that shows
17 Mr. Milgaard being extremely reluctant to discuss
18 these issues, and so unless we're of the opinion
19 that he has spent the last 10 years trying to
20 build his case for not wanting to appear before a
21 Commission that obviously 10 years ago he didn't
22 know was going to exist, then it is more likely
23 that his behaviour has been consistent over that
24 time and reflects his genuine intentions.

25 Q As you are aware, Mr. Milgaard has been declared



1 innocent?

2 A Yes.

3 Q And another man has been convicted of the crime?

4 A Yes.

5 Q Mr. Milgaard has been compensated?

6 A Yes.

7 Q Other than suffering from the disorder which
8 brings back horrific memories, is there any other
9 rational conclusion as to why he wouldn't want to
10 talk about it?

11 A Other than the diagnosis, I think that there is
12 likely to be a general sense of wanting to put it
13 past him, wanting to leave it as history and not
14 be constantly bringing it up. As you are well
15 aware, Mr. Milgaard has moved to a different phase
16 of his life and has recently become a father. I
17 think that it's unfortunate, but when Mr.
18 Milgaard's obituary is written, at hopefully a
19 distant point in the future, the obituary will
20 almost invariably start, "David Milgaard, who
21 spent 23 years in jail for a crime that he did not
22 commit."

23 His life has been defined on the
24 basis of something that he didn't do and he's now
25 in a position, like many of us, to be able to



1 choose how his life, from this point forward, is
2 going to be defined, and so he's very much focused
3 on the issues related to his fatherhood. Each of
4 us wants to have some sort of a, I'm not going to
5 use the term legacy, but we want to have our own
6 reputation that's consistent with how we view
7 ourselves, and so his reputation to this point has
8 been largely defined by something over which he
9 had no responsibility.

10 To go back to that, he sees,
11 from his comments, and sorry, I'm reflecting on
12 his comments in the press conference and to Mr.
13 Grymaloski, to go back to that is to distract him
14 from the new focus that he has. He wants to be
15 focused on being a responsible father and looking
16 to the future rather than dealing with these
17 extremely difficult issues from his past.

18 MR. WOLCH: This might be an appropriate
19 time, sir.

20 *(Adjourned at 3:12 p.m.)*

21 *(Reconvened at 3:33 p.m.)*

22 BY MR. WOLCH:

23 Q If we can bring the document back up. Thank you.
24 I think we're roughly at the point on page 5 where
25 you offer an opinion regarding psychological



1 fitness to testify and you allude to your
2 conversation with Mr. Hodson and I would like you
3 to elaborate on this, I don't want to put -- I
4 would like to hear from you.

5 A What I discussed with Mr. Hodson was my view that
6 there needed to be some sort of balancing test
7 here and the balance is between the relevance of
8 the evidence that Mr. Milgaard may be able to
9 provide to this Commission and the effect that
10 providing that evidence may have on his mental
11 health. In other words, if the evidence was of
12 limited relevance but was likely to have a
13 significant effect on his health, then I think it
14 would be more difficult to suggest that he needs
15 to be here.

16 Conversely, if the effect on his
17 mental health could be limited with information
18 that is highly relevant to the proceedings, then
19 that would establish a different balance and
20 hopefully the opportunity to make some
21 arrangements for that evidence to be admitted.

22 Q And you refer to some suggested areas that Mr.
23 Hodson referred to. Can you tell us about that?

24 A Well, I can't really do that balancing test
25 without knowing the areas of potential inquiry,



1 and so Mr. Hodson was kind enough to provide me
2 with a copy of the proposed list of the 12 subject
3 areas and they are simply reviewed in that
4 paragraph that you've highlighted.

5 My conclusion was that some, if
6 not all, of those areas could leave him with the
7 sense that he was once again being put on trial,
8 being asked, for example, about the allegations of
9 activities or conversations that took place during
10 the drive from Regina to Saskatoon, being asked
11 about possession of a knife, being asked why he
12 had changed his pants at Mr. Cadrain's house,
13 being asked why he was eager to leave Saskatoon
14 and checking the car when it was at the Hillcrest
15 Texaco, I think that each of those areas of
16 inquiry has a significant potential for him to
17 feel as though he's being called to task and has
18 to answer for his behaviour.

19 Q And you say this, there would likely be a sense of
20 him being held in some way, even if only slightly,
21 responsible for his own wrongful conviction?

22 A What I mean there is that there's a sense that had
23 he done things differently or had the
24 circumstances been different for those elements
25 that were under his control, that perhaps the



1 outcome would not have been what it was and
2 therefore there is a suggestion that he would be
3 in that small way responsible for the outcome that
4 had eventually befallen him.

5 Q And what would be the effect of that feeling on
6 him?

7 A I can't even imagine how devastating that would
8 be, but an implication that he was responsible for
9 his own incarceration I suspect would be an
10 overwhelmingly difficult prospect for him to face
11 and could result in a serious deterioration in his
12 mental health.

13 Q If we could just turn the page there, just
14 highlight that top paragraph. Can you tell us
15 about the manner of questioning, how it can be
16 less offensive or less triggering of emotional
17 harm?

18 A I think the questions that are asked broadly in
19 terms of what can you tell us about the drive from
20 Regina to Saskatoon, what can you tell us about
21 the first time that you were interviewed by the
22 police, what can you tell us about arriving at
23 Albert Cadrain's house, those sorts of questions
24 are less likely to trigger the difficulties that
25 I've alluded to than would a question, for



1 example, of did you tell anybody that you had
2 committed this crime, did you reenact it, why
3 didn't you tell the police that you never left the
4 car for that period of time, why didn't you tell
5 the police about X, Y and Z, the sorts of why
6 questions or how questions tend to convey more of
7 a sense of responsibility on the actor for the
8 outcome, whereas a can you tell us about
9 recollection type of question I think would be
10 less debilitating for him.

11 Q And can you highlight the paragraph in your report
12 here, can you tell us what you were saying in this
13 paragraph?

14 A I think what I'm referring to in terms of this
15 type of question is any question that raises the
16 implication that he was in even a small way the
17 architect of his own misfortune could cause him to
18 flee, so potentially he could be here for the
19 first few questions and then may quite literally
20 dart out of the room, if not dart out of town, and
21 that doesn't help him, doesn't help the
22 Commission, significantly responds to the distress
23 that he's feeling, but I don't think responds in
24 any effective way, so the more difficult the
25 questioning, the more likely it is for Mr.



1 Milgaard to have that sort of panic response and
2 want to flee.

3 Q Okay. And when you say panic response, that's
4 because of his condition I take it?

5 A Yes, that -- I mean, I want to avoid this at all
6 cost is the third criteria of PTSD and in this
7 case my way of avoiding it is to metaphorically
8 get out of town.

9 Q You talk about how he perceives the questioning.
10 What are you referring to there?

11 A I think that we can be careful about how we ask an
12 individual a question, but we cannot control the
13 way that the individual perceives that question,
14 and I think given Mr. Milgaard's sensitivity
15 following his incarceration to any suggestion that
16 he was responsible for that fate, his sensitivity
17 is a whole lot higher than the rest of us would
18 have and therefore even a well-crafted sentence
19 has the potential for causing him difficulty.

20 Q And how serious could the difficulty be?

21 A It's difficult for me to estimate. Again, it
22 depends on what reaction he has to the question.
23 The potential is there, and I emphasize I'm being
24 speculative at this point, but the potential is
25 there for a marked deterioration in his level of



1 functioning.

2 Q Now, you talk about possible accommodations, and
3 can you tell us about what you foresee as possibly
4 ways of accommodating David?

5 A Well, I see three potential accommodations that
6 are discrete and then of course they could be
7 mixed in varying degrees. The first is the issue
8 of Mr. Milgaard providing written responses to
9 written questions. That's a proposal that you've
10 described to me and Mr. Grymaloski has described
11 to me that Mr. Milgaard would be open to; in other
12 words, Commission Counsel and other parties would
13 sit down and draft the sorts of questions dealing
14 with relevant material that would be provided by
15 Mr. Milgaard. Those questions would be provided
16 to him, he would then have an opportunity to
17 provide written responses that would be returned
18 to the Commission. I have some concern about that
19 from a psychological point of view because it
20 strikes me as being a labour-intensive approach.
21 Yes, he doesn't have to appear here, the
22 adversarial nature of cross-examination isn't
23 necessarily as significant, but this is likely to
24 be a process that takes a fair amount of time.

25 The second option would be for



1 an accommodation that would include the videotape
2 and audiotape that was described earlier today,
3 if, for example, you and Mr. Hodson and
4 potentially the Commissioner were to travel to
5 Vancouver and meet with Mr. Milgaard there, it
6 would not bring him back to Saskatoon, it would
7 potentially have him in a more comfortable
8 environment, whether it's Mr. Grymaloski's office
9 or somewhere that he's more familiar with and he
10 could answer questions in a format of questions
11 posed primarily by Mr. Hodson without marked
12 cross-examination.

13 The third option would be to
14 look at other sources of information that have
15 already been provided by Mr. Milgaard, his
16 depositions and testimony in various proceedings
17 relating to his appeal of his wrongful conviction,
18 the hearing before the Supreme Court, for example,
19 the depositions that are given as part of his
20 civil suit against the various levels of
21 government. My understanding is that there have
22 been repeated occasions when Mr. Milgaard has been
23 asked literally thousands of questions when under
24 oath that may deal with some of the subject areas
25 that are of relevance to this Commission.



1 The then integration of the
2 various approaches, for example, if that other
3 evidence was to be read into the record or
4 introduced in one way or another to the record and
5 the number of questions was to be therefore
6 significantly reduced that needed to be put to Mr.
7 Milgaard, perhaps those could be provided to him
8 in writing and then clarification sought by doing
9 the video and audiotaped interview. I simply put
10 that forward as one of the suggestions that in my
11 mind would abbreviate the amount of time that Mr.
12 Milgaard is dealing with this and would be less
13 intrusive than having him come and appear before
14 the Commission.

15 Q Let me share with you the difficulty I have, and
16 maybe you can help me, and that is this, the idea
17 of having the suggestion that he testify in
18 Vancouver comfortably and as best we can seems to
19 be the best idea, I don't quarrel with that, that
20 it's easier on David, it's quicker than writing,
21 it's easier on everybody. How do I cope with the
22 idea that David is prepared to write, he thinks
23 that's the less stressful, whether it is or not
24 he'll learn differently, but he believes it, how
25 do we deal with that?



1 A I think that he believes it for a particular set
2 of reasons, and I don't know what those reasons
3 are, clearly I haven't had the opportunity to
4 discuss that with him, but there are individuals
5 who could be influential in, (a), challenging some
6 of the beliefs that he has about why that would be
7 his preferred method, and (b), encouraging him to
8 then look at the alternative of doing the
9 videotaping. In my mind the videotaping is
10 preferred because it is discrete in the sense of
11 it's over and done and is not the sort of
12 labour-intensive process that goes along with
13 providing written responses to many questions, and
14 almost invariably those written responses may lead
15 to other questions, so the process goes through
16 several iterations and takes a great deal of time.
17 I think if people who have persuasion with Mr.
18 Milgaard were to propose that to him, potentially
19 he may be more amenable to doing the videotaped
20 approach.

21 Q Okay. See, because the difficulty is David
22 perceives having the writing putting him in
23 control in terms of nobody around him, nobody
24 hassling him, he can take it home, do it, hand it
25 in, and he hasn't been intimidated, threatened, or



1 he has control over the triggers.

2 A And I don't mean to put a question back to you,
3 but I don't know if he is aware of the volume of
4 questions that may need to be addressed, and how
5 much time he is looking at. He may be thinking
6 that -- and I don't mean to be glib -- he may be
7 thinking that 'this is sort of a final exam and I
8 will be done in three hours'. I would be
9 surprised if the questions coming from the
10 Commission could be condensed into that period of
11 written responses. So he may be working under the
12 assumption there is a short period of time
13 involved in the written questions and, therefore,
14 knowing that there is a short period of time
15 involved in the video questions may be a
16 preferable option. I don't know.

17 Q So that what you are saying is that perhaps Mr.
18 Grymaloski in further sessions, or David's family,
19 or even myself, might be able to bring him around?

20 A I'd just be reluctant about having Mr. Grymaloski
21 put into that role, because he is there to provide
22 assistance to David, and yes there is a measure of
23 assistance in recommending the less-intrusive
24 option, but if David is resistant to it, then I
25 wouldn't want that to become a factor in their



1 therapeutic relationship. So Mr. Grymaloski could
2 raise it, but if there was significant objection
3 to it, then my recommendation as a therapist would
4 be that he drop it and move on.

5 That doesn't necessarily hold
6 for other individuals of his family, or for you,
7 in terms of encouraging him to look at that
8 option.

9 Q Okay. And, as you are aware, David became a
10 father over the weekend.

11 A Yes.

12 Q Is there a way to approach him, at this point in
13 time, that wouldn't be harmful?

14 A Well, and I mean he, my understanding is that he
15 became a father on Friday --

16 Q Yes.

17 A -- and so we're three days down the road. I think
18 that he is going through the, a period of
19 adjustment as anybody might to those sorts of
20 circumstances, but knowing whether or not now is a
21 good time or two weeks from now would be a good
22 time would be entirely speculative on my part.

23 Q So that I take it in summary, then, you are
24 comfortable with the diagnosis of post-traumatic
25 stress disorder?



1 A Yes.

2 Q And you are also comfortable there is the
3 potential to do David serious harm if he is forced
4 to re-trigger memories?

5 A Yes.

6 Q Is there anything else you can add, Dr. Baillie,
7 or is -- that I may have skipped out or skipped
8 over?

9 A Not that comes to mind, no.

10 Q Thank you.

11 Those are my questions, Mr.
12 Commissioner.

13 COMMISSIONER MacCALLUM: Thanks.

14 MR. HODSON: Mr. Commissioner, if I could
15 just address one point, and it may cause
16 Mr. Wolch to ask some further questions.

17 This witness, in giving
18 evidence and the report, referred to the outline
19 of questions. And obviously it's my role, if Mr.
20 Milgaard appears in the normal fashion, to ask
21 the questions, unless Mr. Wolch reads. One of
22 the difficulties that -- and he also talked about
23 the nature of the questions, and I certainly
24 provided him with an outline of the areas, and
25 the witness responded about with concerns about



1 the "why" questions, asking why, but why he would
2 have a knife or why he would drive around. And
3 I've looked at my outline, the "why" question
4 isn't there, it's primarily the "what" question,
5 a recollection of facts as to what happened as
6 opposed to challenging him why he did certain
7 things. That's not to say that it might not be
8 appropriate, if it's relevant, to ask a why
9 question; for example "what, was there a reason
10 that you changed your pants", that might give an
11 innocent explanation for that, for example that
12 would be relevant, as opposed to challenging him.

13 So I just wanted to point that
14 out, and I appreciate (a) I don't want to be
15 giving evidence, but (b) I think it's
16 particularly important if we're looking at an
17 accommodation that involves being very precise
18 and careful about the questions, and I just
19 didn't want this witness to take from my outline,
20 which was given to Mr. Wolch and others so that
21 we knew subject areas -- and I'm not faulting him
22 for that, I'm just pointing out -- that it would
23 not have been my intent to challenge the witness
24 and say, "well why did you get out of the car",
25 "why did you do this", "why did you do that", but



1 rather "tell us what you did".

2 So, again, and so I wanted to
3 raise on that point before Mr. Wolch was finished
4 in the event that he had some questions.

5 COMMISSIONER MacCALLUM: Thanks.

6 BY MR. WOLCH:

7 Q Just on that point, Dr. Baillie -- and I
8 appreciate Mr. Hodson's position, and if he has
9 any direct questions to ask I encourage him to do
10 it -- if I understand you right you are saying
11 that the open-ended questions are less threatening
12 than the why questions?

13 A Yes.

14 Q That doesn't mean an open-ended question will not
15 cause harm?

16 A That's correct, because -- and that goes to the
17 issue that you raised from my report about how Mr.
18 Milgaard perceives the question. I appreciate the
19 clarification that Mr. Hodson is offering. I
20 think that it has the potential to remove some of
21 the concern that I have, but the overriding
22 concern persists regarding the way that Mr.
23 Milgaard views the questions and whether they,
24 from his perspective, are seen as putting him on
25 trial.



1 Q Yes, and can then re-trigger the horrific
2 circumstances of being convicted of a terrible
3 crime he didn't commit, triggering horrific
4 experiences in jail that I've deliberately
5 avoided, triggering meeting with professionals who
6 believe you are a killer, etcetera, etcetera, and
7 multiple suicide attempts?

8 A All of which are things that he has indicated that
9 he would like to put in his past and leave there.

10 Q Thank you.

11 MR. HODSON: I understand Mr. Elson,
12 Mr. Fox, Mr. Wilson, and anybody else wish to
13 cross-examine?

14 BY MR. ELSON:

15 Q Dr. Baillie, we've met. Again, for the record, my
16 name is Richard Elson and I represent the
17 Saskatoon Police Service at this Commission of
18 Inquiry.

19 Mr. Commissioner asked you a
20 question that I wanted to pursue a little bit
21 further, and he was asking you a question with
22 respect to the traumatic event, and I actually had
23 that listed as one of the first questions I wanted
24 to put to you as well.

25 I take it that you are familiar



1 with the National Center for Posttraumatic Stress
2 Disorder in the United States; are you aware of
3 that institution? I understand it primarily deals
4 with post-traumatic stress disorder in the context
5 of American military veterans?

6 A Correct.

7 Q And, as I read from their web site, the National
8 Center for Posttraumatic Stress Disorder Fact
9 Sheet, it indicates that:

10 "Posttraumatic Stress Disorder, or PTSD,
11 is a psychiatric disorder that can occur
12 following the experience or witnessing
13 of life-threatening events such as
14 military combat, natural disasters,
15 terrorist incidents, serious accidents,
16 or violent personal assaults like rape".

17 Now, granted, that's not an exhaustive
18 definition, but it prompted me to do some further
19 research through the Internet and elsewhere, and
20 I certainly was not able to find any literature
21 that specifically dealt with the traumatic event
22 being the conviction of an offence, whether or
23 not the accused had committed the offence. Are
24 you aware of any literature that identifies the
25 conviction as being the traumatic event to



1 trigger the PTSD? And I'm dealing simply with
2 the conviction as opposed to the incarceration,
3 which I will get to in a moment.

4 A First, I would emphasize that what's on that
5 organization's web site is not the diagnostic
6 criteria.

7 Q I appreciate that.

8 A And I accept your reservation that it was not
9 intended to be an exhaustive list because one of
10 the events can be an event that challenges the
11 integrity of the person.

12 As I've indicated on the bottom
13 of page 4, "threat to the physical integrity", and
14 so the circumstances that you have described are
15 certainly the more common circumstances in which
16 PTSD can be developed. As I indicated in response
17 to I believe your question earlier, working with
18 police officers who have either had to discharge
19 their weapon or been on the receiving end of
20 shots, the circumstances under which an officer
21 would discharge his weapon is when he perceives
22 his life to be threatened and the use of force is
23 necessary. So that, I would agree with you, is
24 the more common circumstance.

25 I am not aware of a large-scale



1 study that would have looked at the conviction
2 itself as having been that traumatic event, at
3 least in part because we would hope that the
4 number of individuals exposed to that consequence
5 is relatively limited, so it would be difficult to
6 do the research. In fairness to your question,
7 no, I have not seen a study that defines wrongful
8 conviction as that traumatic event.

9 Q Right. And, in fairness, I didn't confine my
10 question to wrongful conviction, --

11 A Sorry, right.

12 Q -- I confined my question to conviction per se.
13 So if I could re-put the question, and I
14 appreciate your answer, but if I could re-put the
15 question: You are not aware of any literature or
16 any studies or any analysis that finds the
17 conviction per se to be the triggering traumatic
18 event?

19 A I'm not aware of any studies, no.

20 Q All right. Now when we talk about -- and I also
21 appreciate the answer that you gave when I put the
22 definition to you from the National Center for
23 Posttraumatic Stress Disorder, it's not taken out
24 of the DSM-IV, and you are quite right, the DSM-IV
25 criteria talks about the person experiencing,



1 witnessing, or:

2 "... confronted with an event or events
3 that involved actual or threatened death
4 or serious injury, or a threat to the
5 physical integrity of self or others."

6 You would agree with me -- I'm referring to the
7 Coles notes version of the DSM-IV, not the
8 version you have, but I believe I'm referring to
9 that criteria correctly -- you would agree with
10 me that the question really depends on whether or
11 not the threat to physical integrity is of such a
12 degree that it could constitute a traumatic
13 event? We're not saying that any threat to
14 physical integrity could constitute such a
15 traumatic event; you would agree with that
16 proposition?

17 A Yes, and in fact I would emphasize that
18 proposition, because criteria (a) is actually that
19 two-part definition in which both parts have to be
20 present, so we're talking about part A.:

21 "the person experienced, witnessed, or
22 was confronted with an event or events
23 that involved actual or threatened death
24 or serious injury, or a threat to the
25 physical integrity of self or others",



1 and:

2 "(2) the person's response involved
3 intense fear, helplessness, or horror."

4 So simply the exposure does not get you the
5 diagnosis unless that second criteria is also
6 met.

7 Q And the response has to be the immediate response,
8 is that correct?

9 A Not necessarily, no.

10 Q It's my understanding -- as I read the definition, the
11 person has been exposed -- we've gone over it a
12 thousand times and forgive me for going over it
13 again -- the person has been exposed to a
14 traumatic event in which both of the following
15 were present; I read that as saying that the
16 response has to be relatively close in time to the
17 traumatic event?

18 A And that's the only distinction that I'm drawing,
19 I'm not saying that it has to be simultaneous, but
20 clearly a response that is generated years later
21 would not fall into the "in which" language that's
22 used in that sentence.

23 Q So in the case dealing with David Milgaard, if the
24 conviction per se of an offence he did not commit
25 were to be the traumatic event, it would have to



1 be regarded as a threat to his physical integrity
2 as you described, and the response by Mr. Milgaard
3 to the conviction per se would have to be one
4 involving intense fear, helplessness, or horror.
5 It would be fair to say that, in the information
6 you received, you did not find evidence of a
7 response of intense fear, helplessness, or horror
8 that was relatively close in time to the traumatic
9 event, namely the conviction?

10 A One of the reasons that I have difficulty
11 isolating the traumatic event to simply the
12 conviction is that during the first year of his
13 incarceration one of the coping strategies was to
14 be focused on the outcome of the appeal process.
15 As you know, the appeal decision came down exactly
16 one year after the conviction, and his appeal was
17 denied. There are multiple references in the file
18 documents to how he was looking forward to that
19 appeal as his exoneration, so he may have delayed
20 the sense of helplessness by believing that he
21 sort of had one more option available to him.

22 Even after that appeal decision
23 came down in January of 1970, he then had hope
24 regarding the appeal to the Supreme Court of
25 Canada, so again the feeling of helplessness may



1 have been delayed by a focus on those things that
2 were still to come that he saw as having the
3 potential for exoneration.

4 **Q** Let's talk a little bit about the incarceration.
5 It's my understanding -- and, again, maybe I'll
6 put the same question I put to you before but
7 except do so in the context of an incarceration
8 rather than a conviction: Are you aware of any
9 literature or study that has identified the
10 traumatic event being the simple incarceration,
11 ignoring for a moment what occurs in the
12 incarceration, --

13 **A** Yes.

14 **Q** -- but the simple incarceration as being the
15 traumatic event?

16 **A** Yes.

17 **Q** And what type of literature are you aware of in
18 that respect?

19 **A** Primarily in the context of refugee applications
20 for individuals who had been incarcerated in their
21 home country.

22 **Q** Would it not be fair to say that, for individuals
23 who had been incarcerated in their home country
24 with respect to refugee applications, it was the
25 event or the events which occurred during



1 incarceration which were essentially the traumatic
2 event? I'm referring to acts of torture or
3 violence while in custody.

4 A Not necessarily. And in some of the applications
5 it would be an individual who for political
6 reasons was incarcerated, and, as a result of that
7 incarceration or as a result of events associated
8 with the incarceration, lost their standing in the
9 community, lost their employment, lost their home,
10 etcetera, and so by the time the incarceration was
11 done, even if nothing happened of particular note
12 during the incarceration, that period of time
13 became a significant trigger for the
14 post-traumatic stress.

15 Q All right. And in those proceedings, though,
16 where a person is making an application for
17 refugee status, presumably that incarceration, if
18 it was the triggering event for post-traumatic
19 stress disorder, did not prevent them from giving
20 evidence in support of their refugee status
21 application?

22 A And I grant that in most of the cases the
23 individual has been forthcoming in describing to
24 me the nature of their incarceration, yes.

25 Q And certainly has been forthcoming in describing



1 the events leading up to the incarceration?

2 A Yes.

3 Q You --

4 A Let me just -- if I can take it a step further?

5 Q By all means.

6 A There is a body of research that says that, for
7 some individuals, retelling their story is
8 therapeutic. The context in which they tell the
9 story, the support that they are given for the
10 story, helps them to overcome the trauma. It has
11 to be handled carefully by a therapist, but I will
12 fully accept that there is some research that
13 points to that.

14 That's not to say that every
15 individual with PTSD is going to respond to that
16 particular intervention. Certainly, from a
17 critical incident approach, there is a belief that
18 if we get front-line responders to tell us what
19 happened to normalize the process for them and
20 allow them to move on, that that may mitigate
21 against the production of symptoms of PTSD, but it
22 is not universal and so the fact that one
23 individual responds positively to telling the
24 story repeatedly doesn't mean that all individuals
25 with PTSD are necessarily going to benefit from



1 that approach.

2 **Q** The therapy, or the treatment that you are
3 referring to in that respect I understand is
4 referred to as exposure therapy?

5 **A** Broadly, yes.

6 **Q** On that same point, I understand that prosecutors
7 from time to time have had to deal with victims
8 coming forward and giving evidence with respect to
9 traumatic events they have experienced, notably
10 victims of rape or sexual assault, and I take it
11 that you would have had occasion perhaps, from
12 time to time, to deal with such witnesses?

13 **A** Yes.

14 **Q** Is it not fair to say that some of those witnesses
15 indicate an extreme reluctance to testify and to
16 relive the events of their experience, but that
17 when ultimately compelled to give evidence they
18 find the actual giving of the evidence to be
19 therapeutic in nature, that it's good sometimes to
20 get off their chest and they are able to give
21 evidence in a manner that surprised even
22 themselves?

23 **A** There are certainly some individuals who have that
24 experience. I would caution, though, that there
25 are other individuals who find the process to be



1 extremely frustrating and, therefore, the giving
2 of the evidence and the outcome to that evidence
3 being provided to the Court can be detrimental for
4 them. I am certainly aware of both scenarios
5 playing out.

6 Q Now in the case of Mr. Milgaard, when you were
7 conducting the file review I understood -- and
8 correct me if I'm wrong -- I understood from your
9 report and from your evidence that primarily the
10 material you reviewed consisted of mental health
11 records relating to Mr. Milgaard and also related
12 to transcripts of this Commission of Inquiry?

13 A Yeah.

14 Q Is that correct?

15 A I -- that was primarily what I was looking for,
16 yes.

17 Q Did you review any other statements or evidence
18 given by Mr. Milgaard in related proceedings?

19 A Umm, I had the, the tape from the -- sorry, prior
20 to writing my report I had some of the questions
21 and answers that were given in other proceedings;
22 since writing the report I have had the
23 opportunity to review the video tape, part of
24 video tape from the Morin Inquiry.

25 Q Let me be somewhat more specific; did you have



1 occasion to review the testimony or the transcript
2 of the testimony that Mr. Milgaard gave before the
3 Supreme Court of Canada?

4 A Not in its entirety. I looked at parts of it.

5 Q Right. And when you read parts of it you were
6 able to discern that Mr. Milgaard did, at that
7 time, give evidence with respect to specific
8 events leading up to the events involving himself,
9 Mr. Cadrain, and Ms. John, and Mr. Wilson in
10 January of 1969?

11 A I am aware that he gave those answers. I'm also
12 aware of some information relating to his
13 functioning during the time that he was in Ottawa,
14 including a communication -- I'm not sure who the
15 author, I believe it was David Asper who was the
16 author of the letter that was sent to the parole
17 board regarding some observations that Mr. Asper
18 had made, I may be in error, it's in my binder --
19 regarding some observations that Mr. Asper had
20 made about Mr. Milgaard's functioning; the sense
21 that he was out of it, the sense that he was
22 distressed by the process before the Supreme
23 Court.

24 So yes, he gave the evidence,
25 I'm not disputing that at all. The question that



1 I keep coming back to, though, is the effect of
2 giving that evidence.

3 I think that it's -- to go back
4 to my report, Mr. Milgaard could sit here and
5 answer some of the questions, potentially all of
6 the questions that are put to him, particularly if
7 Mr. Hodson is able to phrase those questions in an
8 appropriate manner, and other counsel as well. My
9 concern is about what happens after he has left
10 the Inquiry and the effect that could come to him
11 at that point.

12 Q Now --

13 COMMISSIONER MacCALLUM: Sorry, Mr. Elson,
14 I didn't get a date on the most recent date of
15 mental health records that you examined?

16 A Well, Mr. Grymaloski's report from November of
17 2005, the last before that I believe would have
18 been 1993.

19 COMMISSIONER MacCALLUM: Okay.

20 BY MR. ELSON:

21 Q So there would have been nothing -- it's a fair
22 point that Mr. Commissioner raises -- there would
23 have been nothing that you would have reviewed
24 between 1993 and 2005?

25 A That's correct.



1 Q Now were you aware that Mr. Milgaard had submitted
2 to an examination for discovery in the civil
3 proceeding he had commenced in May of 1996?

4 A Yes.

5 Q And did you have occasion to read the transcript
6 of the examinations for discovery which were
7 conducted by Mr. Halyk, Mr. Kennedy, and
8 Mr. Kovatch, as he then was?

9 A I did not review that material. I was aware of
10 the availability of the transcript but I did not
11 review it.

12 Q And were you aware that, at the time of that
13 examination for discovery, Mr. Milgaard had
14 already begun the therapeutic relationship with
15 Mr. Grymaloski, which I understand began in May of
16 1995, exactly one year prior?

17 A Given the chronology, yes.

18 Q And are you aware of any occasion in which Mr.
19 Milgaard required hospitalization or medical care
20 as a consequence of testifying at the examination
21 for discovery?

22 A There is some uncertainty regarding when the
23 hospitalizations have or may have occurred. The
24 information that was provided to me is that there
25 may have been as many as six periods of



1 hospitalization over the last decade. I indicated
2 to Mr. Wolch, as I did in my report, that having
3 access to that information may be useful, but that
4 requires us to determine which hospitals the
5 admissions occurred at and to have Mr. Milgaard's
6 consent for the release of those records, and that
7 would require me or somebody having some
8 communication with Mr. Milgaard about when those
9 hospitalizations occurred. So I can't say, one
10 way or another, whether it occurred shortly after
11 his appearance at the Supreme Court, shortly after
12 the deposition given in the civil proceeding, or
13 completely unrelated to those events.

14 Q It would seem to me, in my own simple way of
15 thinking, that Mr. Grymaloski would have been
16 aware of whatever consequences would have occurred
17 if they occurred subsequent to the examination for
18 discovery in 1996. Mr. Grymaloski was of no
19 assistance to you in providing information as to
20 what may have occurred subsequent to that
21 examination for discovery?

22 A In fairness to him, I don't recall asking him
23 about that specific time period.

24 Q Now, having said that, you indicate that the
25 information with respect to those hospital



1 admissions would have been of some use to you --

2 A Yes.

3 Q -- in making your assessment?

4 A Yes.

5 Q And it may very well be that those hospital
6 admissions had absolutely nothing to do with him
7 having to -- Mr. Milgaard having to remember
8 events of 1969, 1970, or 1971?

9 A As I've indicated, they may or may not be related
10 to that circumstance.

11 Q And I take it that you were not aware as to the
12 nature of the testimony Mr. Milgaard gave in May
13 of 1996 at the examination for discovery
14 specifically dealing with the events of January
15 31st, 1969, and the events for some days
16 thereafter?

17 A I am not aware of the specific information, no.

18 Q Now when you talk about Mr. Milgaard may find or
19 may perceive some responsibility on his own part
20 for his wrongful conviction, am I off base in
21 suggesting that that opinion of yours really has
22 nothing to do with whether or not David Milgaard
23 is suffering from post-traumatic stress disorder,
24 somebody may feel responsible for the consequences
25 which befall them innocently in the absence of



1 suffering from post-traumatic stress disorder?

2 A Somebody -- I agree with that last sentiment,
3 yeah, somebody may feel that sense of
4 responsibility. In the context of an individual
5 who has post-traumatic stress disorder there would
6 be a heightened sensitivity to that implication
7 and there would likely be a heightened response to
8 the anxiety that flows from his understanding of a
9 sense that he had a role to play.

10 Q And, as to the degree that there is that
11 heightened response, it would be very subjective
12 to identify that, would it not, there is really no
13 objective criteria by which we could do it?

14 A I think that it -- well, certainly for me it would
15 be speculative because I haven't had the
16 opportunity to do an interview with him. In terms
17 of assessing severity, I mean we can pull out
18 various scales, but ultimately they come down to a
19 sort of "on a scale of 1 to 10 how much this is
20 affecting you", and that is subjective, based on
21 the experiences of the individual.

22 Q So to rephrase, perhaps, the answer you've given
23 and the question I put, perhaps not as eloquently
24 as I should have: If you have somebody who has no
25 mental disorder whatsoever, who has been



1 wrongfully convicted, there is no mental history,
2 there is no even remote suggestion of
3 post-traumatic stress disorder, no schizoid
4 personality disorder, no borderline or bipolar, it
5 is still conceivable in those circumstances that
6 such a person, when confronted with some perhaps
7 embarrassing questions, might feel a degree of
8 responsibility for the consequences that befell
9 them and might feel very badly about it?

10 A Yes.

11 Q So we don't confine that experience to individuals
12 who suffer from any kind of a particular
13 personality disorder?

14 A Well, and to be clear, post-traumatic stress
15 disorder is not a personality disorder.

16 Q I'm sorry.

17 A It's okay, it's a mental disorder but it's not
18 axis 2, it's axis 1.

19 But, no, we do not confine that
20 consequence to those individuals that have a
21 mental disorder. What I'm saying is that, in the
22 context of the likely diagnosis of post-traumatic
23 stress disorder, the response that Mr. Milgaard or
24 any individual with that diagnosis might have to
25 that suggestion would be significantly higher than



1 an individual who does not have that diagnosis.

2 Q Now the C. criteria out of the DSM-IV is:

3 "Persistent avoidance of stimuli
4 associated with the trauma and numbing
5 of general responsiveness (not present
6 before the trauma), as indicated by
7 three (or more) of the following:",
8 and then it proceeds to describe seven
9 sub-criteria. And I won't repeat those now but
10 it basically, as you've indicated, talks about
11 avoidance of stimuli, and I believe you answered
12 Mr. Wolch's question with respect to the presence
13 of Mr. Milgaard in the Commission hearing room on
14 October 24th of 2005. To actually come before
15 the Commission hearing room, a Commission that is
16 charged with the responsibility of determining
17 the circumstances and how it may have occurred or
18 how it did occur that David Milgaard was
19 wrongfully convicted, actually coming into the
20 hearing room; would you not agree with me that
21 that is inconsistent with him attempting,
22 repeatedly, to avoid stimuli associated with the
23 trauma, assuming the trauma is the conviction and
24 incarceration?

25 A I would agree that that act, in and of itself, is



1 inconsistent.

2 My understanding is that when
3 Mr. Milgaard appeared at that time, that he had in
4 effect a written statement that he wished to read,
5 that was then followed by a question and answer
6 with the media, and by having the written
7 statement, that may have been a way of him
8 managing his anxiety about the situation. As I
9 believe he indicated, he came here because he saw
10 this as being the optimal environment in which to
11 make his point.

12 I agree with your premise that
13 it's inconsistent with the general issue of
14 avoidance, but I think there may have been some
15 overriding features of his decision to do that, or
16 his way of managing the anxiety, that made it
17 possible for him to enter into that situation.

18 Q On those same lines, would you agree with me that
19 his attendance at an examination for discovery for
20 a period of three to four days, if my memory
21 serves me correctly, I stand to be corrected by
22 counsel who is more familiar with the transcript
23 than I am, but I understand he was in Saskatoon
24 attending an examination for discovery on May 6th,
25 7th and 8th and maybe the 9th of May. Would you



1 agree with me that his attendance at an
2 examination for discovery in a civil proceeding
3 answering questions by opposing counsel with
4 respect to the events and circumstances leading up
5 to his conviction would also be inconsistent with
6 the category C., namely, repeatedly trying to
7 avoid the stimuli in question?

8 A Well, first I think we need to be clear that
9 avoidance for many individuals of PTSD cannot be
10 universal. If there was a very serious car
11 accident, for example, that doesn't mean that the
12 person will never again get into a car, there
13 would be a level of anxiety associated with every
14 time that they get into the car and as time goes
15 by that level of anxiety may be diminished, so
16 it's not that you end up with absolute 100 percent
17 complete avoidance of anything to do with the
18 stimuli, so I accept the notion that him coming
19 and participating in the deposition would have
20 been an indication that he wasn't avoiding
21 Saskatoon and wasn't avoiding that sort of
22 adversarial questioning. Again, I don't know what
23 effect that appearance would have had on him and I
24 don't know what other strategies he might have had
25 in place for how to deal with the anxiety of that



1 situation.

2 Q I understand. I wonder if I could have the
3 memorandum of January 26, 2006 from the
4 Respondents to Mr. Hodson placed on the screen.
5 That's today's memorandum that had been earlier
6 read. If we could just scroll down to this part
7 here. Dr. Baillie, I understand you were present
8 when I read this memorandum into the record this
9 afternoon?

10 A Yes, I was.

11 Q And I take it that until today you were not aware
12 that the parties who submitted this memorandum had
13 stated this particular position; is that correct?

14 A That's correct.

15 Q What is your response to the conditions that the
16 Respondents are suggesting to the Commissioner
17 with respect to the receipt of Mr. Milgaard's
18 evidence; namely, that it be a video and audio
19 recording subject to the four conditions that are
20 enumerated in the memorandum?

21 A My first reaction is that it is consistent with
22 one of the options that I had put forward as
23 showing an accommodation. It says the examination
24 must be conducted in person, it doesn't say where.
25 I would suggest that if the examination was to



1 take place in Vancouver, that that might address
2 some of the concerns that have been raised as
3 opposed to another room here or for an extended
4 period of time here.

5 Q If I could interrupt you, the omission as to where
6 was deliberate --

7 A Okay.

8 Q -- because that has been left open to be
9 determined by either the Commission or Commission
10 Counsel and Mr. Wolch, so we take no position as
11 to where it occur.

12 A Okay. Apart from that issue, I see the proposal
13 as being consistent with one of the options that I
14 presented and therefore I'm comfortable with it.

15 Q And in your mind, would this represent a
16 reasonable middle ground?

17 A Yes.

18 MR. ELSON: Thank you, Dr. Baillie. I have
19 no further questions.

20 **BY MR. FOX:**

21 Q Dr. Baillie, my name is Aaron Fox, I'm the lawyer
22 for Eddie Karst, he was one of the original police
23 investigators. I'm sure you've probably seen his
24 name mentioned a few times when you went through
25 the material. You've covered most of the ground



1 and I'm just going to try and sort of sum up what
2 my limited understanding is of what you've said
3 and make sure I've got it right.

4 I think it would probably go
5 without saying that as a professional, and a
6 medical professional in your particular field,
7 prior to making a diagnosis or rendering an
8 opinion, you obviously would like to have access
9 to as much relevant information as possible?

10 A Yes.

11 Q And in a perfect world, if there are medical
12 records available, you would like to see those
13 medical records?

14 A That's correct.

15 Q They might have information that's relevant, they
16 might have information that's irrelevant, but you
17 would like to cover that base off, see the medical
18 records and see if there's anything that helps you
19 with the diagnosis?

20 A Yes.

21 Q And in a perfect world you would like to obviously
22 meet with the individual if you can and make some
23 assessment there, either through your discussions
24 with them, whatever checks you might make of them,
25 whatever tests you might administer, again, just



1 to help you make your diagnosis?

2 A Yes.

3 Q You might also in a perfect world, and depending
4 on the particular case, but maybe access
5 information from third parties, others who have
6 dealt with the individual, and that could be
7 family or whoever and sometimes those opinions may
8 be tainted or jaded or whatever, but it's just
9 more information that you can get to put in there
10 and help you make your assessment?

11 A Referred to as collateral sources, yes, they are
12 helpful.

13 Q Right. Now, in this case I think it's -- you
14 haven't spoken to David Milgaard yourself?

15 A That's correct.

16 Q Okay. And as I understand it, you've not seen any
17 medical records in relation to David Milgaard that
18 have been generated since 1993 other than
19 Mr. Grymaloski's report of November 4th, 2005?

20 A That's correct.

21 Q Okay. And have you had occasion to review Mr.
22 Grymaloski's file?

23 A No, I have not, simply the report that was put
24 before the Commission, and then my conversation
25 with Mr. Grymaloski earlier in January.



1 Q What I'm getting at though, did you ask him to,
2 for example, release to you his file, his notes,
3 that sort of thing?

4 A No, I did not.

5 Q Did it occur to you that you might want to do
6 that?

7 A Not in these circumstances. Again, it's quite
8 clear that Mr. Grymaloski has worked hard to
9 develop a therapeutic relationship with Mr.
10 Milgaard and I think that asking for disclosure of
11 notes from a 10 year period had the significant
12 potential to jeopardize that relationship. Mr.
13 Grymaloski was useful in giving me a summary of
14 some of those contacts, so I did not push with him
15 the issue of wanting to access the entire file.

16 Q You see of course the difficult position that that
17 puts us all in, you appreciate that?

18 A Yes.

19 Q And I think in fairness, you've recognized that
20 yourself when you've testified today and
21 recognized that in your report?

22 A There are limitations that take my report out of
23 the realm of being a "assessment" and into, as was
24 characterized earlier, a commentary or opinion.

25 Q Sure. And I think page 3 of the report, and I'm



1 not sure if it needs to be brought up, but the
2 last full paragraph on that page and the
3 concluding sentence in that page, or paragraph:

4 "... I accepted the information provided
5 by you --"

6 That's referring to Mr. Wolch,

7 "-- and by Mr. Grymaloski regarding Mr.
8 Milgaard's reluctance to meet with me
9 and I did not have any contact with him.
10 I am, therefore, unable to offer what
11 could be called an "assessment" of him,
12 but I can provide commentary related to
13 other information made available to me."

14 That would be that portion right there?

15 A Yes.

16 Q And we can just highlight that.

17 A Yes.

18 Q And so it would be fair to say that in looking at
19 your document dated January 13th, 2006, which is
20 what I've highlighted here, that portion, this
21 would be referred to by you as a commentary on Mr.
22 Milgaard's situation as opposed to an assessment?

23 A That's correct.

24 Q And in your commentary you make reference to real
25 and substantial harm, I think I saw those words



1 mentioned a couple of times?

2 A Yes.

3 Q And that's really what you are attempting to
4 comment on, what might cause real and substantial
5 harm to Mr. Milgaard; correct?

6 A Yes.

7 Q And it obviously goes without saying, none of us
8 want to see any real and substantial harm caused
9 to him, and again, the somewhat difficult position
10 you are left with is that it's, I think you are
11 comfortable in agreeing with Mr. Grymaloski's
12 diagnosis that there's a post-traumatic stress
13 disorder condition that Mr. Milgaard suffers from?

14 A Yes.

15 Q Correct? The somewhat difficult part for you is
16 to assess, okay, if he's going to be questioned
17 about the events, say, of January 31st, 1969, what
18 impact is that going to have on him.

19 A It is undeniably more difficult for me to form a
20 comprehensive opinion on that point without some
21 of the sources of information that you've
22 described.

23 Q Sure. And not very hard for any of us, even me
24 being a cynical defence lawyer, to recognize that
25 speaking about all of these events is probably



1 very uncomfortable and would not be very pleasant.
2 The bigger step or the bigger question I guess is
3 will it cause real and substantial harm if that
4 takes place.

5 A And I think as I've indicated in the report, if
6 not in my oral testimony today, there are two
7 issues, one is the effect that testifying may have
8 on him, it's not necessarily purely related to the
9 ability to testify, but the effect that it could
10 have on him, and some indications, although I
11 haven't been able to get access to the records, of
12 past occasions of testifying causing him to have
13 mental breakdowns, for lack of a better word.

14 Q Sure. And that was the next point I was going to
15 get at, is that obviously in making that
16 assessment, one of the logical things you would
17 look to is what has happened in the past?

18 A Yes.

19 Q Mr. Elson questioned you about, or asked you
20 questions about the examination for discovery and
21 that would be fair to say would have been a fairly
22 adversarial situation, you would have enough
23 knowledge of the court process to recognize he's
24 being questioned in a fairly adversarial
25 circumstance?



1 A And again, my understanding of the chronology is
2 at that time the DNA results hadn't yet been
3 produced and so the sense of exoneration was still
4 a significant question mark in some people's
5 minds.

6 Q Sure. Would you understand, or are you aware at
7 this point in time that there is no issue with the
8 factual statement that David Milgaard was not
9 responsible for the death of Gail Miller?

10 A Oh, of course there's absolutely no doubt about
11 that in my mind.

12 Q But you understand -- but do you understand that
13 that's more or less the premise on which we're
14 here?

15 A Yes.

16 Q In other words, it's not really open to anybody to
17 suggest the contrary?

18 A Well, the title of the Commission is the
19 Commission of inquiry into the wrongful
20 conviction, so I would assume from that that
21 everybody is working from that premise.

22 Q And that would be a dramatically different
23 situation, say, for example, in 1996 where that
24 issue still seemed to be a live issue at that
25 point in time?



1 A I would say it's a potentially different scenario.

2 I can't say that it's dramatically different

3 because I don't know how he would perceive it.

4 Q I'm wondering, Dr. Baillie, why you didn't read
5 the transcripts of the examination for discovery?

6 A In part because the content of the answers isn't
7 particularly relevant to the question that the
8 effect of giving those answers may have.

9 Q Do you think it might be useful, though, to see,
10 for example, if there were any questions put to
11 him about how he was doing, how he was feeling
12 while the discovery was going on, that sort of
13 thing?

14 A It's certainly possible, yes.

15 Q And it didn't occur to you that you might want to
16 look at that to see what is in there?

17 A In part my oversight was because I wasn't aware
18 until relatively late in the process of those
19 transcripts and that I had made two trips to
20 Saskatoon and reviewed a pile of documents and
21 frankly hadn't come across those yet.

22 Q Okay.

23 A And so didn't have the time to be able to respond
24 to the Commission's desire to have this report
25 addressed and go through all of that information.



1 Q And I appreciate what you say about the large
2 volume of material. Were you aware when you
3 prepared your commentary that those examinations
4 for discovery had taken place?

5 A I had become aware of it during that week.

6 Q And I was curious, as I understand it, you made no
7 specific inquiries of Mr. Grymaloski as to how Mr.
8 Milgaard dealt with the aftermath of those exams
9 for discovery? That was I believe the answer that
10 you gave to Mr. Elson.

11 A That's the best of my recollection. I can look at
12 my handwritten notes from that telephone
13 conversation. Obviously the 30 minute
14 conversation was not transcribed into my letter to
15 Mr. Wolch.

16 Q Sure.

17 A To the best of my recollection, I did not ask
18 specifically how Mr. Milgaard had dealt with that
19 situation, but the information that was provided
20 to me indicated that there had been the six
21 hospitalizations over the last 10 years that may
22 have been related to those sorts of occurrences.

23 Q Well, you see, that doesn't get us very far.

24 A I understand.

25 Q You see, and what I was just wondering, Dr.



1 Baillie, is here's a circumstance where Mr.
2 Milgaard was questioned for, it looks like, three
3 days by three different lawyers about a lot of
4 aspects of this particular matter and it would
5 seem that in assessing how he might respond to
6 some questioning now, how he responded at that
7 time, whether he in fact needed hospitalization or
8 treatment or whatever, would be fairly important?

9 A And I don't quarrel with you. I think in a
10 perfect world, as I indicated, to use your
11 language, as I indicated in the report, had I had
12 information based on the hospital admissions to
13 which I was being led, if I had been able to see
14 that information it would have clarified that
15 question for me. There are hurdles, as I
16 indicated, in obtaining that information. I don't
17 dispute with anybody that having that information
18 would have been useful.

19 Q Did you ask for that information?

20 A I wasn't able to decide -- I was unable to
21 determine, (a), where the hospitalizations had
22 occurred, or (b), to be able to get Mr. Milgaard's
23 consent for the release of that information.

24 COMMISSIONER MacCALLUM: Was that "or" or
25 "and"?



1 A Sorry? That was an and.

2 COMMISSIONER MacCALLUM: Yeah, he didn't
3 consent.

4 BY MR. FOX:

5 Q So Mr. Milgaard wouldn't consent?

6 A No, I didn't ask for it because again --

7 Q I think that's what you wanted clarified,
8 Mr. Commissioner?

9 COMMISSIONER MacCALLUM: It is.

10 A I did not ask for his consent. My comment was I
11 didn't have his consent.

12 BY MR. FOX:

13 Q Yeah, okay.

14 A And I didn't know where those hospitalizations had
15 occurred. To say they occurred in, let's say,
16 Toronto, still leaves me with many, many hospitals
17 to which those admissions could have occurred.

18 Q Did you ask Mr. Grymaloski to provide what
19 information he could as to where those
20 hospitalizations occurred, when they occurred and
21 if consents would be provided?

22 A Well, I asked Mr. Grymaloski if he knew where
23 those hospitalizations had occurred and when those
24 hospitalizations occurred. I did not ask him
25 regarding the issue of consent.



1 Q And what Mr. Grymaloski was able to tell you is
2 that he was aware that there may have been as many
3 as six hospitalizations, but doesn't know if they
4 directly related to Mr. Milgaard speaking about
5 the events of his conviction or what led up to it
6 or his incarceration afterwards?

7 A That was my understanding, yes.

8 Q Would I be correct as well that in terms of his
9 attendance, for example, at the Supreme Court of
10 Canada, you didn't follow up or check to see if
11 there were any specific medical records that
12 related to any treatment that occurred after he
13 testified at the Supreme Court of Canada?

14 A Again, there was no follow-up in terms of medical
15 records, but as I've indicated, there were some
16 documents I believe, although I could be in error,
17 that it was a letter from Mr. Asper describing his
18 observations of Mr. Milgaard's behaviour.

19 Q We've heard the statement made that the problem
20 that Mr. Milgaard has isn't with speaking of it,
21 it's just that afterwards -- maybe I'll read it,
22 and I think this is on page 2 of your report,
23 right there, the point -- this is Mr. Wolch:

24 "The point that has to be realized is
25 it's not the testifying that's the



1 BY MR. FOX:

2 Q Thanks. Have you been able, Mr. Baillie, or Dr.
3 Baillie, I'm sorry, have you been able to make any
4 distinction between the effect of Mr. Hodson
5 speaking with Mr. Milgaard versus, say, you as a
6 medical professional speaking with Mr. Milgaard?
7 Do you understand the point I'm, what I'm getting
8 at there? I appreciate why his experience with
9 speaking with medical people over an extended
10 period of time and them frankly not believing him
11 and throwing that back at him I'm sure has had a
12 significant effect on him. Of course Mr. Hodson
13 to my knowledge isn't a medical man, but that
14 might be a less stressful situation than another
15 medical professional such as yourself perhaps
16 speaking to him directly?

17 A I'm sorry, I'm getting caught up in the question.

18 Q Yeah.

19 A And if you are asking -- well, sorry, let me see
20 if I can have you ask it again.

21 Q Sure, and what I was just saying, are you able to
22 comment on the distinction between Mr. Hodson
23 speaking with Mr. Milgaard about some of these
24 matters versus you as a medical professional?

25 A I think that the distinction can be drawn that Mr.



1 Hodson has in fact met with Mr. Milgaard on I
2 believe November the 17th and has had some
3 discussion with Mr. Milgaard in the presence of
4 Mr. Wolch and I believe Mr. Grymaloski, so Mr.
5 Milgaard was open to that meeting, but expressed
6 through Mr. Wolch and through Mr. Grymaloski his
7 reluctance to meet with me, so that would suggest
8 to me that there's a difference in his approach to
9 the two different types of questions.

10 Q One might take from that that he's more
11 comfortable speaking -- nothing personal here --
12 more comfortable speaking with Mr. Hodson than
13 another medical person?

14 A I think the overall context is different. If it
15 was Mr. Hodson and Mr. Milgaard only, I don't know
16 what that scenario would lead to, but in the
17 meeting that I understand to have occurred in
18 November, Mr. Milgaard was assisted by people whom
19 he trusts.

20 Q The last thing I wanted to just ask you about was
21 there is, you talked about tangential questions
22 which might not cause as much of a problem versus,
23 I think you used the word pressing questions, and
24 an example of a pressing question would have been
25 when you saw the Morin tape, and we haven't seen



1 the Morin tape, so I'm speaking just from what
2 you've told us, but there is, as I understand it,
3 Mr. Carter specifically was asking him to describe
4 his experience while incarcerated and that's what
5 you would view as a very pressing question?

6 A Yes.

7 Q And again, one doesn't know because you haven't
8 spoke with David or looked at the medical records,
9 but, for example, speaking about friends or
10 activities of January 31st, 1969, which was the
11 day they were in Saskatoon, but he was not
12 involved in the death of Gail Miller, might not be
13 as pressing or as traumatic to deal with as, say,
14 actually speaking about the incarceration?

15 A Again, the only information that I have is his
16 statement of every time I talk about it, I get
17 physically sick, I don't want to go there. I
18 don't know -- and I think I actually said in the
19 report that I had to make a certain degree of
20 assumption as to what it was that he was referring
21 to.

22 Q Yeah. And I think -- and that was my next
23 question, I think you've already answered it, when
24 you say, you know, he said in the past every time
25 I have to go there, not exactly sure what there is



1 when he's referring to that; would that be fair?

2 A Yes.

3 MR. FOX: Thank you, Doctor. Those are all
4 the questions I have.

5 MR. HODSON: Mr. Commissioner, I canvassed
6 to see whether if we pushed we might get Dr.
7 Baillie done today and I don't think we will.
8 Mr. Wilson has perhaps 15 to 20 minutes and Mr.
9 Wolch has some redirect, so I apologize, Dr.
10 Baillie, but I think probably tomorrow morning
11 then followed by Mr. Grymaloski, but probably
12 another 45 minutes to an hour, not even that.
13 Okay?

14 COMMISSIONER MacCALLUM: Yes, thanks.

15 (Adjourned at 4:39 p.m.)

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Karen Hinz, CSR

Official Queen's Bench Court Reporter

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Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



	1998 [1] - 23013:10 1:30 [1] - 23004:2 1st [1] - 23015:20	23061:20, 23062:12, 23091:13 45 [1] - 23129:12 4:39 [1] - 23129:15 4th [1] - 23114:19	23102:7, 23118:11, 23120:23, 23122:13, 23122:20, 23122:22, 23124:1, 23126:2, 23126:3, 23126:21 abnormal [1] - 23033:25 absence [2] - 23039:12, 23105:25 absolute [2] - 23047:8, 23110:16 absolutely [2] - 23105:6, 23119:10 abuse [3] - 23048:18, 23050:10, 23051:1 academic [3] - 23013:7, 23018:17, 23036:15 accept [5] - 23044:18, 23067:22, 23091:8, 23098:12, 23110:18 accepted [2] - 23046:6, 23116:4 accepting [2] - 23053:11, 23054:5 access [6] - 23037:15, 23104:3, 23113:8, 23114:4, 23115:15, 23118:11 accident [1] - 23110:11 accidents [1] - 23090:15 accommodating [2] - 23004:8, 23080:4 accommodation [10] - 23004:14, 23005:16, 23005:18, 23007:6, 23007:20, 23007:24, 23008:5, 23081:1, 23087:17, 23111:23 accommodations [2] - 23080:2, 23080:5 accord [1] - 23025:17 accordance [1] - 23004:15 according [3] - 23011:16, 23051:6, 23070:20 account [1] - 23071:24 accused [2] - 23045:25, 23090:23 achievement [1] - 23018:18 act [6] - 23052:11, 23052:15, 23052:19, 23053:2, 23053:3, 23108:25 acting [1] - 23060:16 action [1] - 23054:2 activities [8] - 23015:3, 23017:10, 23019:17,	23019:25, 23061:15, 23061:21, 23076:9, 23128:10 actor [1] - 23078:7 acts [1] - 23097:2 actual [6] - 23024:3, 23024:7, 23060:2, 23093:3, 23093:23, 23099:18 acute [1] - 23050:10 add [3] - 23010:17, 23034:8, 23086:6 addition [3] - 23016:24, 23032:15 additional [3] - 23018:12, 23032:9, 23032:13 address [5] - 23021:20, 23032:6, 23068:4, 23086:15, 23112:1 addressed [8] - 23027:25, 23028:1, 23028:3, 23028:5, 23037:18, 23069:19, 23084:4, 23120:25 Adjoined [2] - 23074:20, 23129:15 adjustment [1] - 23085:19 administer [1] - 23113:25 administered [2] - 23018:5, 23056:19 Administration [1] - 23017:20 administrative [2] - 23027:20, 23029:16 admissions [5] - 23104:5, 23105:1, 23105:6, 23122:12, 23123:17 admitted [1] - 23075:21 adult [1] - 23053:1 advance [1] - 23009:7 advantage [1] - 23049:10 adversarial [5] - 23044:21, 23080:22, 23110:22, 23118:22, 23118:24 advice [1] - 23044:7 advisable [1] - 23010:1 advise [2] - 23006:24, 23009:24 advised [1] - 23064:20 advises [2] - 23006:3, 23070:10 advocate [1] - 23063:11 affect [3] - 23051:4, 23053:9, 23061:24
'97 [1] - 23069:10 '98-'99 [1] - 23013:20 'this [1] - 23084:7	2	5		
1	2 [13] - 23008:18, 23015:22, 23035:10, 23048:14, 23048:18, 23048:22, 23060:6, 23060:14, 23061:15, 23062:10, 23094:2, 23107:18, 23124:22 20 [5] - 23039:20, 23041:14, 23046:4, 23047:7, 23129:8 2003 [3] - 23013:14, 23013:22, 23021:11 2005 [4] - 23102:17, 23102:24, 23108:14, 23114:19 2006 [6] - 23000:21, 23006:22, 23026:5, 23036:25, 23111:3, 23116:19 23 [2] - 23065:22, 23073:21 23012 [1] - 23003:4 23026 [1] - 23003:5 23036 [1] - 23003:6 23089 [1] - 23003:7 23112 [1] - 23003:8 24th [1] - 23108:14 26 [1] - 23111:3 26th [2] - 23006:22, 23006:25 27th [1] - 23006:24	5 [4] - 23061:2, 23061:22, 23062:13, 23074:24 500 [1] - 23024:4		
1 [11] - 23005:15, 23008:17, 23015:3, 23048:16, 23059:25, 23060:11, 23061:12, 23062:9, 23062:19, 23106:19, 23107:18 1,389 [1] - 23015:18 10 [9] - 23019:20, 23038:7, 23068:23, 23072:14, 23072:19, 23072:21, 23106:19, 23115:11, 23121:21 100 [1] - 23110:16 10th [1] - 23011:17 114 [1] - 23000:22 12 [1] - 23076:2 13 [1] - 23017:16 13th [3] - 23026:4, 23036:25, 23116:19 15 [2] - 23064:18, 23129:8 15th [1] - 23021:21 16th [1] - 23004:13 17th [1] - 23127:2 18 [3] - 23023:7, 23051:8, 23051:13 1969 [6] - 23067:20, 23101:10, 23105:8, 23105:15, 23117:17, 23128:10 1970 [2] - 23095:23, 23105:8 1971 [1] - 23105:8 1982 [1] - 23044:7 1983 [1] - 23014:12 1987 [1] - 23014:9 1990 [1] - 23014:8 1991 [2] - 23014:24, 23017:11 1992 [2] - 23014:5, 23015:1 1993 [3] - 23102:18, 23102:24, 23114:18 1994 [1] - 23016:24 1995 [2] - 23019:22, 23103:16 1996 [4] - 23103:3, 23104:18, 23105:13, 23119:23 1997 [1] - 23063:17	20 [5] - 23039:20, 23041:14, 23046:4, 23047:7, 23129:8 2003 [3] - 23013:14, 23013:22, 23021:11 2005 [4] - 23102:17, 23102:24, 23108:14, 23114:19 2006 [6] - 23000:21, 23006:22, 23026:5, 23036:25, 23111:3, 23116:19 23 [2] - 23065:22, 23073:21 23012 [1] - 23003:4 23026 [1] - 23003:5 23036 [1] - 23003:6 23089 [1] - 23003:7 23112 [1] - 23003:8 24th [1] - 23108:14 26 [1] - 23111:3 26th [2] - 23006:22, 23006:25 27th [1] - 23006:24	6		
	3	6 [1] - 23061:24 600 [1] - 23017:1 6th [1] - 23109:24		
	4	7		
		7 [1] - 23062:1 7th [2] - 23037:8, 23109:25		
		8		
		8th [1] - 23109:25		
		9		
		9th [1] - 23109:25		
		A		
		Aaron [2] - 23002:8, 23112:21 abandon [1] - 23039:10 abbreviate [1] - 23082:11 abbreviated [1] - 23031:11 ability [6] - 23024:24, 23035:6, 23035:11, 23036:19, 23118:9, 23130:7 able [27] - 23028:17, 23037:14, 23038:4, 23039:3, 23046:3, 23048:8, 23053:13, 23056:4, 23057:4, 23058:13, 23063:22, 23073:25, 23075:8, 23084:19, 23090:20, 23099:20, 23101:6,		



<p>affected [1] - 23064:6 affecting [1] - 23106:20 affective [1] - 23050:14 aftermath [1] - 23121:8 afternoon [3] - 23004:3, 23004:4, 23111:9 afterwards [2] - 23124:6, 23124:21 age [3] - 23051:3, 23051:4, 23051:8 agency [1] - 23012:22 agenda [1] - 23058:7 Agioritis[1] - 23037:14 agitated [2] - 23053:8, 23053:16 ago [2] - 23051:13, 23072:21 agree [14] - 23007:22, 23026:17, 23030:3, 23051:10, 23091:23, 23093:6, 23093:9, 23093:15, 23106:2, 23108:20, 23108:25, 23109:12, 23109:18, 23110:1 agreeing [1] - 23117:11 ahead [3] - 23037:8, 23039:2, 23049:15 Aidwc[1] - 23068:14 Alan[2] - 23044:3, 23044:6 Albert[1] - 23077:23 Alberta[9] - 23015:11, 23015:23, 23016:2, 23016:5, 23016:6, 23021:13, 23021:15, 23022:22, 23023:11 Alexander[1] - 23002:13 allegations [2] - 23067:6, 23076:8 allow [3] - 23025:18, 23026:1, 23098:20 allowed [1] - 23052:23 allude [1] - 23075:1 alluded [1] - 23077:25 almost [4] - 23045:2, 23052:1, 23073:20, 23083:14 aloofness [1] - 23049:2 alternative [2] - 23025:20, 23083:8 amenable [1] - 23083:19 American[4] - 23012:18, 23012:20, 23031:13, 23090:5 amount [3] - 23056:24, 23080:24, 23082:11 amounts [1] - 23068:23</p>	<p>amplify [1] - 23032:2 analysis [1] - 23092:16 anger [1] - 23062:10 annual [1] - 23021:19 answer [12] - 23034:23, 23035:19, 23035:22, 23045:24, 23076:18, 23081:10, 23092:14, 23092:21, 23102:5, 23106:22, 23109:5, 23121:9 answered [2] - 23108:11, 23128:23 answering [1] - 23110:3 answers [6] - 23024:19, 23026:24, 23100:21, 23101:11, 23120:6, 23120:8 antisocial [3] - 23049:13, 23052:18, 23053:1 anxiety [12] - 23048:17, 23054:22, 23055:14, 23070:5, 23070:15, 23070:19, 23106:8, 23109:8, 23109:16, 23110:13, 23110:15, 23110:25 apart [1] - 23041:3 Apartment[1] - 23112:12 apologize [1] - 23129:9 appeal [7] - 23081:17, 23095:14, 23095:15, 23095:16, 23095:19, 23095:22, 23095:24 appear [6] - 23055:2, 23063:8, 23068:24, 23072:20, 23080:21, 23082:13 appearance [3] - 23063:10, 23104:11, 23110:23 appearances [1] - 23037:20 Appearances[1] - 23002:1 appeared [3] - 23023:13, 23068:25, 23109:3 appearing [1] - 23042:1 application [9] - 23004:6, 23004:12, 23005:8, 23007:5, 23007:18, 23010:20, 23037:24, 23097:16, 23097:21 applications [7] - 23020:19, 23020:25, 23021:1, 23065:16, 23096:19, 23096:24,</p>	<p>23097:4 applied [1] - 23020:7 apply [2] - 23009:16, 23030:18 appointments [1] - 23022:3 appreciable [1] - 23050:22 appreciate [12] - 23024:11, 23030:8, 23033:16, 23087:14, 23088:8, 23088:18, 23091:7, 23092:14, 23092:21, 23115:17, 23121:1, 23126:8 appreciating [1] - 23046:5 approach [8] - 23041:22, 23045:19, 23080:20, 23083:20, 23085:12, 23098:17, 23099:1, 23127:8 approaches [2] - 23045:16, 23082:2 appropriate [3] - 23074:18, 23087:8, 23102:8 appropriateness [1] - 23059:7 approve [1] - 23006:19 architect [1] - 23078:17 area [3] - 23036:16, 23043:21, 23050:11 areas [13] - 23017:18, 23027:11, 23027:12, 23058:10, 23062:24, 23075:22, 23075:25, 23076:3, 23076:6, 23076:15, 23081:24, 23086:24, 23087:21 arguably [2] - 23030:6, 23030:14 arisen [1] - 23038:16 arm [1] - 23038:20 arms [1] - 23056:10 arousal [1] - 23062:7 arouse [1] - 23061:16 arrange [2] - 23012:7, 23043:1 arranged [1] - 23004:22 arrangement [1] - 23016:2 arrangements [5] - 23006:6, 23037:9, 23038:16, 23038:24, 23075:21 arranging [1] - 23040:17 arrest [1] - 23067:20 arrived [1] - 23029:4</p>	<p>arriving [1] - 23077:22 arrow [1] - 23048:6 articles [2] - 23013:24, 23014:1 asleep [1] - 23062:9 aspect [3] - 23060:25, 23061:4, 23061:19 aspects [3] - 23012:23, 23025:22, 23122:4 Asper[4] - 23101:15, 23101:17, 23101:19, 23124:17 assault [1] - 23099:10 assaults [1] - 23090:16 assess [7] - 23022:16, 23034:25, 23035:4, 23035:6, 23041:23, 23043:1, 23117:16 assessed [3] - 23045:22, 23052:6, 23068:1 assessing [3] - 23025:1, 23106:17, 23122:5 assessment [26] - 23015:4, 23016:9, 23016:15, 23018:4, 23018:9, 23018:25, 23029:8, 23029:12, 23029:21, 23031:24, 23032:8, 23033:19, 23034:5, 23035:9, 23035:23, 23037:9, 23041:25, 23058:3, 23058:18, 23105:3, 23113:23, 23114:10, 23115:23, 23116:11, 23116:22, 23118:16 assessments [19] - 23015:10, 23015:11, 23015:16, 23015:19, 23016:23, 23017:1, 23018:1, 23020:18, 23020:21, 23027:24, 23035:14, 23037:17, 23041:19, 23041:25, 23042:12, 23054:15, 23065:13, 23071:15 assessor [2] - 23045:20, 23046:1 assessors [1] - 23054:9 assist [1] - 23010:4 assistance [7] - 23020:9, 23021:25, 23032:17, 23037:13, 23084:22, 23084:23, 23104:19 Assistant[1] - 23001:5 assistant [1] - 23038:19 assisted [3] - 23044:4,</p>	<p>23052:7, 23127:18 assisting [1] - 23023:19 associated [8] - 23061:8, 23061:13, 23063:6, 23070:2, 23097:7, 23108:4, 23108:22, 23110:13 Association[1] - 23031:14 association [1] - 23017:23 assume [1] - 23119:20 assuming [1] - 23108:23 assumption [2] - 23034:12, 23128:20 attempt [1] - 23070:1 attempted [1] - 23052:7 attempting [4] - 23055:13, 23056:11, 23108:21, 23117:3 attempts [3] - 23056:2, 23056:3, 23089:7 attendance [4] - 23017:14, 23109:19, 23110:1, 23124:9 attended [1] - 23021:24 attending [1] - 23109:24 Attorney's [1] - 23022:22 attributed [1] - 23036:19 audio [3] - 23008:7, 23009:5, 23111:18 Audio[1] - 23001:12 audiotape [1] - 23081:2 audiotaped [1] - 23082:9 author [3] - 23006:12, 23101:15, 23101:16 availability [1] - 23103:10 available [9] - 23011:14, 23011:15, 23037:12, 23042:7, 23070:7, 23072:13, 23095:21, 23113:12, 23116:13 avoid [6] - 23061:12, 23061:15, 23070:2, 23079:5, 23108:22, 23110:7 avoidance [7] - 23061:7, 23063:6, 23108:3, 23108:11, 23109:14, 23110:9, 23110:17 avoided [1] - 23089:5 avoiding [4] - 23041:9,</p>
--	--	--	--	--



<p>23079:7, 23110:20, 23110:21 await [1] - 23025:21 awakening [1] - 23060:21 aware [34] - 23024:2, 23032:24, 23033:17, 23033:20, 23039:4, 23054:13, 23056:18, 23072:25, 23073:15, 23084:3, 23085:9, 23090:2, 23090:24, 23091:25, 23092:15, 23092:19, 23096:8, 23096:17, 23100:4, 23101:11, 23101:12, 23103:1, 23103:9, 23103:12, 23103:18, 23104:16, 23105:11, 23105:17, 23111:11, 23119:6, 23120:17, 23121:2, 23121:5, 23124:2 awareness [1] - 23050:22 axe [2] - 23052:6, 23052:9 axis [7] - 23048:14, 23048:15, 23048:16, 23048:18, 23048:22, 23107:18</p>	<p>balance [2] - 23075:7, 23075:19 balancing [2] - 23075:6, 23075:24 ban [2] - 23006:2, 23006:4 bar [2] - 23013:23, 23013:25 barbed [2] - 23056:7, 23056:17 base [2] - 23105:20, 23113:17 based [6] - 23029:18, 23031:12, 23047:3, 23058:15, 23106:20, 23122:12 basis [5] - 23008:24, 23013:13, 23013:21, 23058:23, 23073:24 became [5] - 23039:4, 23039:17, 23085:9, 23085:15, 23097:13 become [8] - 23010:25, 23044:20, 23052:19, 23057:8, 23070:9, 23073:16, 23084:25, 23121:5 befall [1] - 23105:25 befallen [1] - 23077:4 befell [1] - 23107:8 began [1] - 23103:15 begin [2] - 23012:3, 23042:2 begun [1] - 23103:14 behalf [4] - 23004:7, 23006:10, 23010:11, 23063:11 behaviour [12] - 23046:19, 23049:23, 23050:18, 23050:19, 23052:17, 23052:18, 23053:1, 23057:8, 23070:9, 23072:23, 23076:18, 23124:18 behaviours [2] - 23046:17, 23047:2 Beitel [1] - 23001:8 belief [1] - 23098:17 beliefs [1] - 23083:6 believes [3] - 23050:7, 23082:24, 23083:1 Bench [5] - 23028:1, 23130:1, 23130:3, 23130:14, 23130:18 benefit [1] - 23098:25 Bessborough [1] - 23000:16 best [7] - 23006:17, 23036:4, 23082:18, 23082:19, 23121:11,</p>	<p>23121:17, 23130:6 better [4] - 23028:17, 23028:21, 23067:17, 23118:13 between [10] - 23017:18, 23028:15, 23028:20, 23033:6, 23045:6, 23054:13, 23075:7, 23102:24, 23126:4, 23126:22 biases [2] - 23044:2, 23044:16 big [1] - 23048:5 bigger [2] - 23118:2 binder [1] - 23101:18 Bipolar [1] - 23050:14 bipolar [3] - 23050:12, 23051:1, 23107:4 bit [12] - 23005:25, 23018:4, 23018:7, 23019:16, 23021:7, 23025:24, 23048:24, 23048:25, 23049:17, 23057:12, 23089:20, 23096:4 bizarre [1] - 23049:23 blanking [1] - 23042:8 blocking [1] - 23053:10 blood [1] - 23034:2 blown [1] - 23052:20 Board [7] - 23012:18, 23012:20, 23016:17, 23016:20, 23016:23, 23027:23, 23055:16 board [16] - 23017:2, 23017:21, 23017:24, 23028:2, 23029:13, 23029:24, 23037:20, 23042:2, 23045:10, 23045:13, 23046:14, 23054:5, 23054:10, 23055:5, 23055:7, 23051:17 Bobs [1] - 23002:5 body [1] - 23098:6 borderline [1] - 23107:4 Boswell [1] - 23001:4 bottom [3] - 23019:1, 23023:4, 23091:12 Boychuk [1] - 23002:8 breach [1] - 23023:20 break [1] - 23064:16 breakdowns [1] - 23118:13 bridge [1] - 23049:17 brief [1] - 23037:23 briefly [1] - 23005:23 bring [4] - 23004:11, 23074:23, 23081:6, 23084:19</p>	<p>bringing [1] - 23073:14 brings [1] - 23073:8 British [1] - 23047:5 Broadly [1] - 23099:5 broadly [2] - 23027:20, 23077:18 brought [4] - 23004:6, 23036:23, 23059:16, 23116:1 Bruce [1] - 23002:10 build [1] - 23072:20</p>	<p>23043:6 case [23] - 23025:13, 23028:2, 23029:19, 23030:15, 23031:9, 23032:24, 23043:4, 23043:24, 23045:25, 23059:1, 23059:8, 23063:24, 23065:11, 23065:20, 23069:23, 23070:6, 23072:12, 23072:20, 23079:7, 23094:23, 23100:6, 23114:4, 23114:13 cases [12] - 23023:6, 23023:9, 23024:25, 23026:24, 23028:7, 23028:12, 23030:20, 23030:23, 23034:19, 23035:16, 23065:13, 23097:22 categories [3] - 23018:23, 23042:4, 23052:14 category [4] - 23023:21, 23048:22, 23051:21, 23110:6 Catherine [1] - 23002:5 caught [1] - 23126:17 caused [1] - 23117:8 causes [1] - 23062:21 causing [3] - 23051:17, 23079:19, 23118:12 caution [1] - 23099:24 Center [3] - 23090:1, 23090:8, 23092:22 Centre [2] - 23012:11, 23014:22 certain [10] - 23007:4, 23009:25, 23022:2, 23044:15, 23045:21, 23046:24, 23058:10, 23071:17, 23087:6, 23128:19 certainly [17] - 23010:13, 23023:10, 23027:21, 23033:4, 23043:20, 23051:9, 23054:23, 23067:4, 23071:2, 23086:23, 23090:20, 23091:15, 23097:25, 23099:23, 23100:4, 23106:14, 23120:14 Certainly [6] - 23010:23, 23013:18, 23031:2, 23045:15, 23056:16, 23098:16 Certificate [1] - 23130:1 certify [1] - 23130:4 chair [1] - 23021:12</p>
<p>B</p>			<p>C</p>	
<p>Bachelor [3] - 23013:14, 23014:12, 23014:19 background [1] - 23037:2 bad [4] - 23030:21, 23032:11, 23065:5, 23072:10 badly [1] - 23107:9 Baillie [28] - 23003:3, 23004:19, 23005:1, 23006:1, 23011:21, 23011:22, 23011:24, 23012:3, 23024:6, 23024:19, 23026:11, 23036:6, 23036:14, 23036:24, 23065:5, 23086:6, 23088:7, 23089:15, 23111:7, 23112:18, 23112:21, 23120:4, 23122:1, 23125:13, 23126:2, 23126:3, 23129:7, 23129:10 Baillie's [1] - 23011:2</p>			<p>Cadrain [1] - 23101:9 Cadrain's [2] - 23076:12, 23077:23 Caldwell [2] - 23002:5, 23007:9 Calgary [9] - 23012:12, 23012:15, 23013:9, 23014:22, 23014:23, 23016:7, 23019:8, 23019:21, 23052:5 Calvin [1] - 23002:14 camp [1] - 23028:24 Canada [7] - 23002:12, 23016:25, 23020:16, 23095:25, 23101:3, 23124:10, 23124:13 Canadian [1] - 23017:19 Candace [1] - 23001:3 candidates [1] - 23020:7 cannot [3] - 23028:2, 23079:12, 23110:9 canvassed [1] - 23129:5 capability [1] - 23027:18 capably [1] - 23063:13 capacity [3] - 23016:12, 23017:3, 23057:7 car [6] - 23076:14, 23078:4, 23087:24, 23110:10, 23110:12, 23110:14 care [1] - 23103:19 career [2] - 23018:23, 23062:2 careful [2] - 23079:11, 23087:18 carefully [3] - 23026:22, 23034:17, 23098:11 carry [1] - 23038:13 Carter [4] - 23068:14, 23068:25, 23069:5, 23128:3 Case [2] - 23043:4,</p>	



<p>challenge [1] - 23087:23</p> <p>challenges [1] - 23091:10</p> <p>challenging [3] - 23083:5, 23087:6, 23087:12</p> <p>change [1] - 23034:15</p> <p>changed [2] - 23076:12, 23087:10</p> <p>changes [1] - 23021:20</p> <p>character [2] - 23048:11, 23049:12</p> <p>characteristics [6] - 23018:19, 23032:6, 23048:20, 23049:24, 23051:17, 23067:19</p> <p>characterized [1] - 23115:24</p> <p>charged [2] - 23071:19, 23108:16</p> <p>Chartered [1] - 23012:16</p> <p>chat [1] - 23039:3</p> <p>check [1] - 23124:10</p> <p>checking [1] - 23076:14</p> <p>Checklist [1] - 23047:6</p> <p>checks [1] - 23113:24</p> <p>chest [1] - 23099:20</p> <p>children [1] - 23062:3</p> <p>choose [3] - 23029:13, 23031:24, 23074:1</p> <p>Chris [1] - 23002:8</p> <p>chronically [1] - 23049:15</p> <p>chronology [2] - 23103:17, 23119:1</p> <p>circumscribed [1] - 23065:15</p> <p>circumstance [6] - 23038:15, 23053:15, 23091:24, 23105:10, 23118:25, 23122:1</p> <p>circumstances [19] - 23007:25, 23023:21, 23025:13, 23027:7, 23029:17, 23040:5, 23044:20, 23056:20, 23063:12, 23076:24, 23085:20, 23089:2, 23091:14, 23091:15, 23091:20, 23107:5, 23108:17, 23110:4, 23115:7</p> <p>cited [1] - 23055:6</p> <p>civil [5] - 23027:23, 23081:20, 23103:2, 23104:12, 23110:2</p> <p>clarification [2] - 23082:8, 23088:19</p>	<p>clarified [2] - 23122:14, 23123:7</p> <p>clear [7] - 23039:18, 23065:8, 23069:20, 23107:14, 23110:8, 23115:8</p> <p>clearing [1] - 23012:25</p> <p>clearly [5] - 23046:8, 23056:21, 23069:17, 23083:3, 23094:20</p> <p>Clearly [1] - 23025:9</p> <p>Clerk [1] - 23001:8</p> <p>client [4] - 23006:14, 23010:13, 23038:25, 23039:1</p> <p>clients [2] - 23006:15, 23058:9</p> <p>clinical [19] - 23014:5, 23015:4, 23015:6, 23018:10, 23020:11, 23025:5, 23028:6, 23028:16, 23029:7, 23030:3, 23030:7, 23030:10, 23030:15, 23030:25, 23031:20, 23032:15, 23032:24, 23038:18, 23058:23</p> <p>clinically [2] - 23051:17, 23062:21</p> <p>close [6] - 23007:19, 23049:3, 23055:21, 23056:16, 23094:16, 23095:8</p> <p>closely [1] - 23024:17</p> <p>closer [1] - 23013:15</p> <p>closest [2] - 23035:8, 23035:21</p> <p>clusters [1] - 23048:10</p> <p>coalesced [1] - 23057:5</p> <p>Code [1] - 23035:11</p> <p>codes [3] - 23021:10, 23052:23, 23052:25</p> <p>Coles [1] - 23093:7</p> <p>collateral [1] - 23114:11</p> <p>colleagues [2] - 23043:14, 23051:10</p> <p>College [1] - 23021:13</p> <p>Columbia [1] - 23047:5</p> <p>combat [1] - 23090:14</p> <p>combination [2] - 23018:10, 23036:14</p> <p>comfortable [7] - 23081:7, 23085:24, 23086:2, 23112:14, 23117:11, 23127:11, 23127:12</p> <p>comfortably [1] - 23082:18</p> <p>coming [7] - 23040:1, 23070:15, 23084:9,</p>	<p>23099:8, 23102:1, 23108:19, 23110:18</p> <p>commenced [1] - 23103:3</p> <p>comment [4] - 23046:3, 23117:4, 23123:10, 23126:22</p> <p>commentary [8] - 23025:3, 23035:24, 23039:13, 23115:24, 23116:12, 23116:21, 23116:24, 23121:3</p> <p>comments [4] - 23010:17, 23064:3, 23074:11, 23074:12</p> <p>Commission [40] - 23000:2, 23000:14, 23001:1, 23001:2, 23001:8, 23004:9, 23004:22, 23005:3, 23006:13, 23008:19, 23008:23, 23009:2, 23009:11, 23037:10, 23037:13, 23040:22, 23048:9, 23058:2, 23063:19, 23063:25, 23069:6, 23072:21, 23075:9, 23078:22, 23080:12, 23080:18, 23081:25, 23082:14, 23084:10, 23089:17, 23100:12, 23108:13, 23108:15, 23112:9, 23114:24, 23119:18, 23119:19, 23125:11</p> <p>Commission's [3] - 23010:24, 23041:16, 23120:24</p> <p>Commissioner [53] - 23004:3, 23005:2, 23006:7, 23006:11, 23009:18, 23009:24, 23010:10, 23010:21, 23011:5, 23011:18, 23011:21, 23011:23, 23012:1, 23024:1, 23024:10, 23025:16, 23026:1, 23026:7, 23036:8, 23036:10, 23036:11, 23036:13, 23064:14, 23064:17, 23064:21, 23065:23, 23066:2, 23066:8, 23066:17, 23066:20, 23066:24, 23069:10, 23070:20, 23070:23, 23081:4, 23086:12, 23086:13, 23086:14, 23088:5, 23089:19, 23102:13, 23102:19,</p>	<p>23102:22, 23111:16, 23122:24, 23123:2, 23123:8, 23123:9, 23125:19, 23125:24, 23125:25, 23129:5, 23129:14</p> <p>Commissioner's [2] - 23010:8, 23065:7</p> <p>commit [4] - 23067:2, 23073:22, 23089:3, 23094:24</p> <p>committed [2] - 23078:2, 23090:23</p> <p>committee [2] - 23021:12, 23021:14</p> <p>common [2] - 23091:15, 23091:24</p> <p>Commonwealth [2] - 23014:7, 23014:8</p> <p>communicate [2] - 23035:12, 23035:13</p> <p>communicated [1] - 23005:4</p> <p>communication [3] - 23045:6, 23101:14, 23104:8</p> <p>community [2] - 23067:9, 23097:9</p> <p>Compared [1] - 23069:15</p> <p>comparing [1] - 23018:13</p> <p>compelled [1] - 23099:17</p> <p>compensated [1] - 23073:5</p> <p>compensation [1] - 23044:5</p> <p>competent [1] - 23036:2</p> <p>complaints [1] - 23021:15</p> <p>complete [1] - 23110:17</p> <p>completed [6] - 23013:11, 23013:13, 23013:21, 23014:6, 23014:12, 23018:14</p> <p>completely [1] - 23104:13</p> <p>completeness [1] - 23023:23</p> <p>completing [1] - 23017:23</p> <p>compliant [1] - 23052:18</p> <p>complications [1] - 23054:25</p> <p>compounding [2] - 23067:15, 23067:16</p> <p>comprehensive [2] -</p>	<p>23029:20, 23117:20</p> <p>conceivable [1] - 23107:5</p> <p>concentrating [1] - 23062:11</p> <p>concentration [1] - 23064:12</p> <p>concern [5] - 23040:3, 23080:18, 23088:21, 23088:22, 23102:9</p> <p>concerns [4] - 23038:5, 23039:4, 23086:25, 23112:2</p> <p>concluding [1] - 23116:3</p> <p>conclusion [3] - 23043:15, 23073:9, 23076:5</p> <p>condensed [1] - 23084:10</p> <p>condition [4] - 23031:7, 23034:25, 23079:4, 23117:13</p> <p>conditional [1] - 23054:7</p> <p>conditions [4] - 23008:15, 23009:23, 23111:15, 23111:19</p> <p>conduct [2] - 23021:10, 23042:15</p> <p>conducted [5] - 23008:19, 23026:10, 23029:7, 23103:7, 23111:24</p> <p>conducting [1] - 23100:7</p> <p>conference [1] - 23074:12</p> <p>conferences [4] - 23017:14, 23017:17, 23017:19, 23017:24</p> <p>confidential [1] - 23008:24</p> <p>confine [3] - 23092:9, 23107:11, 23107:19</p> <p>confined [1] - 23092:12</p> <p>confronted [4] - 23060:1, 23093:2, 23093:22, 23107:6</p> <p>confused [1] - 23045:13</p> <p>confusing [1] - 23030:21</p> <p>confusions [1] - 23021:11</p> <p>Congram [1] - 23001:3</p> <p>consensus [1] - 23007:14</p> <p>consent [7] - 23104:6, 23122:23, 23123:3,</p>
---	---	---	--	---



<p>23123:5, 23123:10, 23123:11, 23123:25 consents [1] - 23123:21 consequence [3] - 23092:4, 23103:20, 23107:20 consequences [3] - 23104:16, 23105:24, 23107:8 consider [3] - 23020:14, 23029:20, 23062:15 considerable [1] - 23041:21 considered [1] - 23047:8 consisted [1] - 23100:10 consistent [6] - 23040:23, 23071:7, 23072:23, 23074:6, 23111:21, 23112:13 constantly [1] - 23073:14 constitute [2] - 23093:12, 23093:14 consultation [2] - 23019:18, 23021:3 consulting [1] - 23019:23 contact [2] - 23058:15, 23116:9 contacts [1] - 23115:14 contain [1] - 23130:5 contained [1] - 23024:14 content [1] - 23120:6 contents [1] - 23006:25 context [9] - 23046:15, 23072:3, 23090:4, 23096:7, 23096:19, 23098:8, 23106:4, 23107:22, 23127:14 continue [1] - 23023:3 continued [1] - 23017:22 contract [1] - 23020:13 contractor [1] - 23016:24 contracts [1] - 23020:15 contrary [3] - 23054:4, 23059:5, 23119:17 contribute [1] - 23029:2 control [4] - 23076:25, 23079:12, 23083:23, 23084:1 conversation [8] - 23037:23, 23038:2, 23038:4, 23039:22,</p>	<p>23075:2, 23114:24, 23121:13, 23121:14 conversations [2] - 23061:13, 23076:9 Conversely [1] - 23075:16 convey [1] - 23078:6 convicted [6] - 23045:1, 23068:17, 23073:3, 23089:2, 23107:1, 23108:19 Conviction [1] - 23000:4 conviction [37] - 23040:5, 23043:7, 23054:14, 23063:3, 23064:1, 23064:2, 23065:1, 23065:9, 23065:10, 23065:21, 23066:14, 23066:18, 23066:21, 23066:22, 23067:23, 23076:21, 23081:17, 23090:22, 23090:25, 23091:2, 23092:1, 23092:8, 23092:10, 23092:12, 23092:17, 23094:24, 23095:3, 23095:9, 23095:12, 23095:16, 23096:8, 23105:20, 23108:23, 23110:5, 23119:20, 23124:5, 23125:17 coordinator [1] - 23015:14 cope [2] - 23055:13, 23082:21 copies [1] - 23024:22 Copies [1] - 23009:5 coping [2] - 23055:10, 23095:13 copy [3] - 23006:20, 23059:16, 23076:2 core [1] - 23062:15 correct [27] - 23005:9, 23011:11, 23012:13, 23022:5, 23026:20, 23028:14, 23031:1, 23034:22, 23044:25, 23066:23, 23071:23, 23088:16, 23094:8, 23100:8, 23100:14, 23102:25, 23111:13, 23111:14, 23113:14, 23114:15, 23114:20, 23116:23, 23117:5, 23124:8, 23125:13, 23125:18, 23130:5 Correct [3] - 23054:12, 23090:6, 23117:15</p>	<p>corrected [2] - 23005:6, 23109:21 correctional [4] - 23039:21, 23041:20, 23042:20, 23044:10 Correctional [1] - 23016:25 Corrections [1] - 23020:15 correctly [2] - 23093:9, 23109:21 cost [1] - 23079:6 costs [1] - 23016:6 Cotler [1] - 23002:12 counsel [16] - 23005:21, 23006:19, 23007:16, 23009:6, 23009:9, 23009:16, 23010:15, 23011:13, 23016:10, 23025:24, 23026:12, 23035:12, 23035:13, 23102:8, 23109:22, 23110:3 Counsel [10] - 23001:2, 23004:4, 23006:13, 23008:20, 23008:21, 23008:23, 23009:2, 23009:12, 23080:12, 23112:10 counselling [1] - 23019:7 count [2] - 23017:15, 23022:20 country [2] - 23096:21, 23096:23 couple [1] - 23117:1 course [7] - 23019:6, 23023:25, 23038:4, 23080:6, 23115:16, 23119:10, 23126:12 court [11] - 23015:23, 23023:8, 23023:14, 23023:19, 23027:1, 23027:16, 23027:19, 23035:2, 23035:17, 23118:23 Court [17] - 23001:9, 23015:16, 23023:10, 23027:25, 23028:3, 23081:18, 23095:24, 23100:3, 23101:3, 23101:23, 23104:11, 23124:9, 23124:13, 23130:1, 23130:3, 23130:14, 23130:18 court's [1] - 23020:20 courts [5] - 23015:11, 23017:5, 23024:5, 23038:21, 23046:15 cover [4] - 23016:6,</p>	<p>23025:21, 23026:15, 23113:17 covered [1] - 23112:25 covers [1] - 23023:15 Cox [1] - 23002:11 crafted [1] - 23079:18 create [2] - 23046:18, 23070:4 credentials [3] - 23012:22, 23013:1, 23026:2 crime [7] - 23051:23, 23067:2, 23071:19, 23073:3, 23073:21, 23078:2, 23089:3 Criminal [1] - 23035:11 criminally [1] - 23049:7 criminogenic [1] - 23052:17 crisis [1] - 23019:24 criteria [30] - 23031:12, 23031:16, 23032:9, 23033:8, 23033:10, 23033:12, 23034:7, 23034:11, 23035:10, 23051:7, 23051:14, 23053:2, 23057:23, 23059:10, 23059:20, 23061:6, 23062:5, 23062:14, 23062:15, 23063:1, 23064:24, 23079:6, 23091:6, 23092:25, 23093:9, 23093:18, 23094:5, 23106:13, 23108:2, 23108:9 critical [2] - 23019:24, 23098:17 cross [7] - 23025:18, 23025:21, 23026:2, 23026:9, 23080:22, 23081:12, 23089:13 cross-examination [6] - 23025:18, 23025:21, 23026:2, 23026:9, 23080:22, 23081:12 cross-examine [1] - 23089:13 Crown [2] - 23020:23, 23022:22 Csr [8] - 23001:9, 23001:10, 23130:2, 23130:12, 23130:13, 23130:16, 23130:17 cues [2] - 23060:24, 23061:3 curious [1] - 23121:6 current [1] - 23042:6 curricular [1] - 23022:6 curriculum [1] -</p>	<p>23012:4 custody [5] - 23041:23, 23042:15, 23068:18, 23069:2, 23097:3 cutoff [2] - 23047:7, 23047:8 cuts [1] - 23056:19 cutting [1] - 23056:10 Cv [4] - 23015:20, 23024:15, 23025:11, 23026:22 cynical [1] - 23117:24</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>damages [1] - 23027:24 Danchuk [1] - 23008:9 dangerous [1] - 23020:25 dart [2] - 23078:20 date [4] - 23004:16, 23015:20, 23102:14 dated [2] - 23006:22, 23116:19 David [31] - 23000:4, 23002:2, 23004:7, 23004:21, 23007:5, 23046:3, 23053:7, 23054:8, 23054:19, 23057:23, 23062:25, 23068:20, 23073:20, 23080:4, 23082:20, 23082:22, 23083:21, 23084:22, 23084:24, 23085:9, 23086:3, 23094:23, 23101:15, 23105:22, 23108:18, 23114:14, 23114:17, 23119:8, 23125:4, 23125:15, 23128:8 David's [3] - 23054:1, 23069:23, 23084:18 days [6] - 23050:17, 23050:21, 23085:17, 23105:15, 23109:20, 23122:3 deal [9] - 23027:2, 23070:19, 23081:24, 23082:25, 23083:16, 23099:7, 23099:12, 23110:25, 23128:13 dealing [9] - 23021:14, 23037:19, 23057:7, 23074:16, 23080:13, 23082:12, 23091:1, 23094:23, 23105:14 deals [1] - 23090:3 dealt [7] - 23028:7, 23035:20, 23035:23,</p>
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<p>23090:21, 23114:6, 23121:8, 23121:18 death [9] - 23056:16, 23060:3, 23066:4, 23066:10, 23066:13, 23093:3, 23093:23, 23119:9, 23128:12 debilitating [4] - 23039:5, 23039:16, 23040:9, 23078:10 debriefings [1] - 23019:24 decade [1] - 23104:1 December [1] - 23037:7 decide [1] - 23122:20 decided [1] - 23013:1 decision [4] - 23009:3, 23095:15, 23095:22, 23109:15 decisions [2] - 23024:1, 23024:3 declared [1] - 23072:25 defence [2] - 23020:23, 23117:24 define [1] - 23065:19 defined [3] - 23073:23, 23074:2, 23074:8 defines [1] - 23092:7 definition [4] - 23090:18, 23092:22, 23093:19, 23094:10 definitive [1] - 23033:15 degree [10] - 23013:13, 23013:21, 23013:25, 23019:11, 23032:3, 23043:23, 23093:12, 23106:10, 23107:7, 23128:19 Degree [5] - 23014:6, 23014:8, 23014:9, 23014:12, 23014:20 degrees [1] - 23080:7 delayed [2] - 23095:19, 23096:1 deliberate [1] - 23112:6 deliberately [1] - 23089:4 Delta [1] - 23000:16 delusions [2] - 23050:1, 23050:6 demeanour [1] - 23069:13 demonstrably [2] - 23050:8, 23068:17 demonstrated [1] - 23055:9 denial [1] - 23043:16 denied [1] - 23095:17 denies [1] - 23043:12 deposition [2] -</p>	<p>23104:12, 23110:19 depositions [2] - 23081:16, 23081:19 depression [2] - 23033:6, 23048:17 depressive [6] - 23049:19, 23049:20, 23049:21, 23050:12, 23051:2 derived [2] - 23047:4, 23047:15 describe [8] - 23038:5, 23047:21, 23049:22, 23058:13, 23067:10, 23069:14, 23108:8, 23128:3 described [12] - 23010:12, 23025:5, 23031:6, 23047:19, 23056:3, 23071:4, 23080:10, 23081:2, 23091:14, 23095:2, 23117:22 describes [1] - 23025:3 describing [7] - 23046:16, 23046:17, 23072:3, 23097:23, 23097:25, 23124:17 description [1] - 23025:15 Description [1] - 23003:2 descriptor [2] - 23045:18, 23046:13 descriptors [2] - 23045:12, 23046:10 desire [2] - 23040:18, 23120:24 despite [2] - 23057:3 Despite [2] - 23007:21, 23054:4 detachment [1] - 23061:22 detail [2] - 23033:20, 23054:16 details [4] - 23042:6, 23052:9, 23055:23, 23056:20 deterioration [2] - 23077:11, 23079:25 determination [1] - 23022:17 determine [4] - 23035:1, 23104:4, 23122:21, 23125:11 determined [1] - 23112:9 determining [2] - 23035:25, 23108:16 detrimental [1] -</p>	<p>23100:3 devastating [1] - 23077:7 develop [1] - 23115:9 developed [2] - 23047:5, 23091:16 development [1] - 23042:22 diagnosed [2] - 23051:5, 23071:17 diagnoses [7] - 23028:25, 23045:12, 23048:14, 23048:21, 23051:4, 23052:19, 23053:4 diagnosis [46] - 23028:9, 23028:12, 23028:18, 23028:22, 23029:4, 23030:23, 23031:10, 23031:12, 23033:1, 23034:12, 23034:13, 23034:14, 23034:15, 23035:16, 23045:3, 23045:5, 23045:6, 23045:7, 23046:23, 23047:3, 23047:9, 23049:14, 23051:15, 23051:21, 23052:12, 23052:16, 23052:20, 23052:25, 23053:3, 23057:21, 23058:14, 23058:21, 23059:1, 23059:5, 23071:12, 23073:11, 23085:24, 23094:5, 23107:22, 23107:24, 23108:1, 23113:7, 23113:19, 23114:1, 23117:12 diagnostic [13] - 23031:14, 23032:9, 23033:10, 23033:11, 23034:7, 23043:13, 23051:7, 23051:14, 23052:14, 23057:23, 23059:10, 23063:1, 23091:5 Diagnostic [2] - 23052:22, 23059:20 difference [1] - 23127:8 different [22] - 23012:23, 23018:22, 23033:5, 23041:14, 23042:3, 23043:14, 23046:11, 23046:12, 23047:12, 23047:13, 23047:16, 23048:10, 23058:7, 23073:15, 23075:19, 23076:24, 23119:22, 23120:1,</p>	<p>23120:2, 23122:3, 23127:9, 23127:14 differently [2] - 23076:23, 23082:24 difficult [15] - 23018:7, 23040:17, 23045:24, 23067:9, 23068:3, 23074:17, 23075:14, 23077:10, 23078:24, 23079:21, 23092:5, 23115:16, 23117:9, 23117:15, 23117:19 difficulties [4] - 23055:10, 23055:15, 23077:24, 23086:22 difficulty [9] - 23006:3, 23049:2, 23062:9, 23062:11, 23079:19, 23079:20, 23082:15, 23083:21, 23095:10 diminished [2] - 23061:20, 23110:15 Diplomate [1] - 23012:18 direct [2] - 23009:12, 23088:9 directed [1] - 23050:19 direction [3] - 23032:4, 23034:10, 23072:9 directions [1] - 23004:16 directly [3] - 23065:6, 23124:4, 23126:16 Director [1] - 23001:3 directors [1] - 23017:21 disagreement [1] - 23009:14 disasters [1] - 23090:14 discern [2] - 23056:4, 23101:6 discharge [2] - 23091:18, 23091:21 discharging [1] - 23020:2 disciplinary [1] - 23042:14 discipline [3] - 23021:12, 23021:17, 23042:13 disclosure [1] - 23115:10 discovery [15] - 23103:2, 23103:6, 23103:13, 23103:21, 23104:18, 23104:21, 23105:13, 23109:19, 23109:24, 23110:2, 23118:20, 23120:5, 23120:12, 23121:4, 23121:9</p>	<p>discrete [4] - 23065:14, 23067:19, 23080:6, 23083:10 discretion [1] - 23010:9 discuss [3] - 23072:15, 23072:17, 23083:4 discussed [1] - 23075:5 discussing [1] - 23058:12 discussion [4] - 23053:19, 23068:13, 23068:15, 23127:3 discussions [1] - 23113:23 disease [1] - 23049:21 disorder [50] - 23024:23, 23026:19, 23027:5, 23028:9, 23028:19, 23029:5, 23030:2, 23030:24, 23031:8, 23031:11, 23032:7, 23032:22, 23033:2, 23033:24, 23034:22, 23035:5, 23035:25, 23040:24, 23041:5, 23041:8, 23048:11, 23048:12, 23049:13, 23049:21, 23050:14, 23051:2, 23051:6, 23051:16, 23058:15, 23069:22, 23070:1, 23071:8, 23073:7, 23085:25, 23090:4, 23090:11, 23097:19, 23105:23, 23106:1, 23106:5, 23106:25, 23107:3, 23107:4, 23107:13, 23107:15, 23107:17, 23107:21, 23107:23, 23117:13 Disorder [6] - 23058:22, 23059:21, 23090:2, 23090:8, 23090:10, 23092:23 disorders [4] - 23031:15, 23048:17, 23048:19, 23050:25 dispute [3] - 23028:15, 23028:20, 23122:17 disputing [1] - 23101:25 disrespect [1] - 23042:17 dissociation [1] - 23042:13 dissociative [1] - 23060:20 distance [1] - 23049:2 distant [1] - 23073:19</p>
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<p>distinction [4] - 23094:18, 23126:4, 23126:22, 23126:25 distortions [1] - 23050:6 distract [1] - 23074:13 distractibility [1] - 23064:12 distress [4] - 23032:3, 23060:23, 23062:22, 23078:22 distressed [1] - 23101:22 distressing [2] - 23060:11, 23060:14 disturbance [2] - 23062:17, 23062:21 Dna [1] - 23119:2 doc [2] - 23010:24, 23011:2 doctor [1] - 23057:13 Doctor [1] - 23129:3 Doctoral [1] - 23014:6 Document [2] - 23001:4, 23001:5 document [6] - 23011:1, 23011:2, 23024:9, 23058:1, 23074:23, 23116:19 documentation [3] - 23055:7, 23056:3, 23056:6 documented [1] - 23064:10 documents [11] - 23037:11, 23037:12, 23037:15, 23039:17, 23042:24, 23045:16, 23048:8, 23054:4, 23095:18, 23120:20, 23124:16 Don [1] - 23001:10 Donald [2] - 23130:2, 23130:17 done [20] - 23008:9, 23012:8, 23013:24, 23015:18, 23020:23, 23021:3, 23021:19, 23026:4, 23030:6, 23032:18, 23036:4, 23050:20, 23053:25, 23058:17, 23076:23, 23083:11, 23084:8, 23097:11, 23129:7 doubt [2] - 23028:4, 23119:10 Douglas [1] - 23001:2 down [13] - 23011:6, 23018:3, 23021:5, 23023:4, 23023:24,</p>	<p>23048:2, 23057:11, 23080:13, 23085:17, 23095:15, 23095:23, 23106:18, 23111:6 Dr [29] - 23003:3, 23004:19, 23004:25, 23006:1, 23011:1, 23011:12, 23011:21, 23011:22, 23012:3, 23024:6, 23024:19, 23026:11, 23036:6, 23036:14, 23036:24, 23057:22, 23065:5, 23086:6, 23088:7, 23089:15, 23111:7, 23112:18, 23112:21, 23120:4, 23121:25, 23125:13, 23126:2, 23129:6, 23129:9 draft [1] - 23080:13 drafted [1] - 23029:17 dramatically [2] - 23119:22, 23120:2 drawing [1] - 23094:18 drawn [2] - 23044:12, 23126:25 dreams [1] - 23060:14 drive [3] - 23076:10, 23077:19, 23087:2 drop [1] - 23085:4 Dsm [7] - 23033:12, 23048:15, 23059:17, 23092:24, 23093:7, 23108:2 Dsm-iv [4] - 23092:24, 23093:7, 23108:2 Duration [1] - 23062:17 during [10] - 23025:24, 23063:21, 23065:17, 23066:16, 23076:9, 23095:12, 23096:25, 23097:12, 23101:13, 23121:5 dye [2] - 23056:9, 23056:18</p>	<p>23007:10, 23112:22 edition [1] - 23031:20 education [1] - 23014:3 Education [1] - 23014:10 Edward [1] - 23000:7 effect [20] - 23021:21, 23032:21, 23039:16, 23054:2, 23067:3, 23069:22, 23075:9, 23075:13, 23075:16, 23077:5, 23102:1, 23102:10, 23109:4, 23110:23, 23118:7, 23118:9, 23120:8, 23125:9, 23126:4, 23126:12 effective [1] - 23078:24 effects [2] - 23064:2, 23064:4 efforts [3] - 23041:9, 23061:12, 23061:15 Eg [2] - 23061:24, 23062:2 either [10] - 23020:1, 23025:16, 23026:25, 23027:8, 23034:20, 23035:1, 23043:18, 23091:18, 23112:9, 23113:23 elaborate [6] - 23015:5, 23021:7, 23025:23, 23057:2, 23059:2, 23075:3 elements [3] - 23059:14, 23070:2, 23076:24 Elmer [1] - 23008:10 eloquently [1] - 23106:23 elsewhere [1] - 23090:19 Elson [17] - 23002:7, 23003:5, 23003:7, 23006:9, 23006:11, 23024:10, 23026:6, 23026:12, 23036:6, 23089:11, 23089:14, 23089:16, 23102:13, 23102:20, 23112:18, 23118:19, 23121:10 Email [1] - 23037:7 embarrassing [1] - 23107:7 emotional [1] - 23077:16 emphasize [4] - 23023:25, 23079:23, 23091:4, 23093:17 employee [1] - 23020:9</p>	<p>employment [2] - 23020:8, 23097:9 encourage [1] - 23088:9 encouraged [1] - 23008:22 encouraging [2] - 23083:7, 23085:7 end [4] - 23014:24, 23037:25, 23091:19, 23110:16 ended [2] - 23088:11, 23088:14 enduring [1] - 23048:19 engaged [1] - 23044:19 engaging [1] - 23046:19 enhance [1] - 23034:13 enter [1] - 23109:17 entire [2] - 23071:13, 23115:15 entirely [2] - 23070:16, 23085:22 entirety [1] - 23101:4 entrenched [1] - 23049:7 enumerated [1] - 23111:20 environment [2] - 23081:8, 23109:10 episodes [1] - 23060:20 equipped [1] - 23028:21 error [2] - 23101:18, 23124:16 Esq [3] - 23002:7, 23002:8, 23002:14 Esq, for [1] - 23002:10 essence [1] - 23069:7 essentially [2] - 23049:9, 23097:1 establish [1] - 23075:19 established [3] - 23012:21, 23031:13, 23034:12 establishes [1] - 23058:6 estimate [3] - 23024:4, 23039:19, 23079:21 estrangement [1] - 23061:23 etcetera [9] - 23022:8, 23022:13, 23048:18, 23064:10, 23064:12, 23089:6, 23097:10 ethical [1] - 23021:10 ethically [1] - 23040:15 ethics [1] - 23021:15 evaluate [1] - 23012:22 evaluation [4] -</p>	<p>23032:2, 23045:23, 23046:2, 23072:2 event [41] - 23041:6, 23041:12, 23059:12, 23059:23, 23060:1, 23060:8, 23060:12, 23060:15, 23060:17, 23061:1, 23061:5, 23063:5, 23064:25, 23065:14, 23065:20, 23066:4, 23067:19, 23070:3, 23088:4, 23089:22, 23090:21, 23090:25, 23091:10, 23092:2, 23092:8, 23092:18, 23093:2, 23093:13, 23093:15, 23093:22, 23094:14, 23094:17, 23094:25, 23095:9, 23095:11, 23096:10, 23096:15, 23096:25, 23097:2, 23097:18 events [23] - 23041:3, 23060:2, 23063:5, 23064:22, 23090:13, 23091:10, 23093:2, 23093:22, 23096:25, 23097:7, 23098:1, 23099:9, 23099:16, 23101:8, 23104:13, 23105:8, 23105:14, 23105:15, 23110:4, 23117:17, 23117:25, 23124:5 eventually [1] - 23077:4 evidence [42] - 23004:9, 23004:18, 23004:25, 23005:24, 23007:7, 23007:17, 23008:6, 23008:17, 23010:5, 23017:4, 23023:14, 23025:20, 23032:21, 23032:25, 23033:22, 23034:18, 23035:7, 23036:2, 23055:12, 23064:1, 23066:9, 23075:8, 23075:10, 23075:11, 23075:21, 23082:3, 23086:18, 23087:15, 23095:6, 23097:20, 23099:8, 23099:17, 23099:18, 23099:21, 23100:2, 23100:9, 23100:17, 23101:7, 23101:24, 23102:2, 23111:18 exactly [4] - 23012:19, 23095:15, 23103:16, 23128:25</p>
E				
	<p>eager [1] - 23076:13 early [3] - 23038:3, 23038:15, 23055:23 earned [2] - 23013:14, 23013:22 ears [1] - 23013:16 easier [3] - 23012:5, 23082:20, 23082:21 easily [1] - 23044:11 easy [1] - 23044:7 Eddie [3] - 23002:9,</p>			



<p>exaggerated [1] - 23062:13 exam [1] - 23084:7 examination [22] - 23008:18, 23009:13, 23010:3, 23025:18, 23025:21, 23026:2, 23026:9, 23080:22, 23081:12, 23103:2, 23103:13, 23103:20, 23104:17, 23104:21, 23105:13, 23109:19, 23109:24, 23110:2, 23111:23, 23111:25, 23118:20, 23120:5 examinations [3] - 23032:20, 23103:6, 23121:3 examine [1] - 23089:13 examined [1] - 23102:15 Examiners [2] - 23012:18, 23012:20 example [24] - 23020:1, 23031:8, 23032:19, 23032:23, 23037:21, 23046:20, 23063:10, 23065:16, 23066:5, 23071:19, 23076:8, 23078:1, 23081:3, 23081:18, 23082:2, 23087:9, 23087:11, 23110:11, 23115:2, 23119:23, 23120:10, 23124:9, 23127:24, 23128:9 exams [1] - 23121:8 except [1] - 23096:7 exception [1] - 23029:11 excess [1] - 23024:4 Executive [1] - 23001:3 exemption [1] - 23004:12 exhaustive [2] - 23090:17, 23091:9 exist [1] - 23072:22 existed [1] - 23035:16 exoneration [3] - 23095:19, 23096:3, 23119:3 expect [2] - 23062:2, 23068:2 expedite [1] - 23012:9 experience [27] - 23017:11, 23019:3, 23019:11, 23026:15, 23036:15, 23038:6, 23041:20, 23043:10, 23043:11, 23054:5,</p>	<p>23054:8, 23058:17, 23058:24, 23060:18, 23063:7, 23064:7, 23070:4, 23070:25, 23071:3, 23072:14, 23090:12, 23099:16, 23099:24, 23107:11, 23126:8, 23128:4 experienced [3] - 23059:25, 23093:21, 23099:9 experiences [7] - 23019:14, 23054:16, 23063:14, 23069:2, 23069:17, 23089:4, 23106:21 experiencing [3] - 23032:3, 23066:5, 23092:25 expert [6] - 23017:4, 23017:7, 23020:21, 23027:1, 23027:9, 23034:20 experts [1] - 23004:17 explained [1] - 23013:6 explanation [1] - 23087:11 exploration [1] - 23058:11 exposed [4] - 23059:22, 23092:4, 23094:11, 23094:13 exposure [7] - 23059:11, 23060:24, 23061:2, 23064:24, 23066:3, 23094:4, 23099:4 express [3] - 23024:25, 23025:10, 23029:25 expressed [1] - 23127:5 extended [2] - 23112:3, 23126:9 extent [1] - 23032:16 external [2] - 23060:24, 23061:3 extra [1] - 23022:6 extra-curricular [1] - 23022:6 extraordinary [1] - 23023:21 extreme [1] - 23099:15 extremely [4] - 23040:16, 23072:17, 23074:17, 23100:1</p>	<p>23077:10 faced [1] - 23070:14 facilitate [1] - 23045:6 facility [1] - 23044:10 Fact[1] - 23090:8 fact [9] - 23013:3, 23027:12, 23051:12, 23052:11, 23052:15, 23093:17, 23098:22, 23122:7, 23127:1 factor [1] - 23084:25 factors [4] - 23012:17, 23014:2, 23023:19, 23034:8 facts [1] - 23087:5 factual [1] - 23119:8 faculty [2] - 23019:4, 23019:10 Faculty[1] - 23013:8 fair [12] - 23028:19, 23029:5, 23029:8, 23030:17, 23080:24, 23095:5, 23096:22, 23099:14, 23102:21, 23116:18, 23118:21, 23129:1 fairly [5] - 23012:4, 23024:6, 23118:21, 23118:24, 23122:8 fairness [4] - 23092:6, 23092:9, 23104:22, 23115:19 fake [2] - 23072:10 faking [2] - 23032:10, 23032:11 fall [5] - 23023:20, 23043:22, 23048:9, 23048:22, 23094:21 falling [1] - 23062:9 familiar [3] - 23081:9, 23089:25, 23109:22 families [1] - 23020:10 family [4] - 23067:8, 23084:18, 23085:6, 23114:7 far [3] - 23046:1, 23068:12, 23121:23 fashion [1] - 23086:20 fatal [1] - 23056:13 fate [1] - 23079:16 father [4] - 23073:16, 23074:15, 23085:10, 23085:15 fatherhood [1] - 23074:3 faulting [1] - 23087:21 fear [5] - 23041:7, 23060:7, 23094:3, 23095:4, 23095:7 features [2] - 23049:13,</p>	<p>23109:15 February[1] - 23011:17 Federal[1] - 23005:7 feelings [3] - 23061:12, 23061:25, 23063:4 female [1] - 23068:16 Ferris[1] - 23011:12 few [3] - 23078:19, 23112:24, 23125:6 field [3] - 23014:5, 23041:15, 23113:6 fields [1] - 23028:16 file [13] - 23029:18, 23042:3, 23042:9, 23042:10, 23042:13, 23046:24, 23047:23, 23052:4, 23095:17, 23100:7, 23114:22, 23115:2, 23115:15 filed [1] - 23007:17 files [11] - 23042:4, 23042:5, 23043:4, 23043:6, 23044:13, 23044:14, 23048:9, 23053:14, 23055:1, 23055:3, 23064:11 final [2] - 23009:2, 23084:7 finished [2] - 23088:3, 23125:22 First[1] - 23091:4 first [21] - 23004:25, 23012:10, 23013:11, 23030:10, 23037:1, 23041:24, 23044:6, 23052:4, 23059:11, 23062:16, 23063:18, 23064:24, 23069:1, 23069:3, 23077:21, 23078:19, 23080:7, 23089:23, 23095:12, 23110:8, 23111:21 first-hand [1] - 23030:10 Fisher[1] - 23007:11 fit [3] - 23035:15, 23035:18, 23036:1 fitness [3] - 23035:9, 23035:15, 23075:1 five [1] - 23048:15 five-axis [1] - 23048:15 flashback [1] - 23060:20 flashbacks [1] - 23064:9 flee [5] - 23070:13, 23070:17, 23071:6, 23078:18, 23079:2 flow [1] - 23065:10 flowing [1] - 23027:24</p>	<p>flows [1] - 23106:8 focus [3] - 23065:6, 23074:14, 23096:1 focused [3] - 23074:2, 23074:15, 23095:14 follow [5] - 23020:5, 23058:9, 23067:1, 23124:10, 23124:14 follow-up [2] - 23020:5, 23124:14 followed [3] - 23063:20, 23109:5, 23129:11 following [9] - 23011:15, 23059:24, 23060:10, 23061:11, 23062:8, 23079:15, 23090:12, 23094:14, 23108:7 follows [3] - 23004:24, 23008:16, 23047:23 footnotes [1] - 23050:14 force [3] - 23030:14, 23040:14, 23091:22 forced [1] - 23086:3 forces [1] - 23040:6 forcing [1] - 23070:3 foregoing [1] - 23130:4 Forensic[2] - 23012:18, 23012:20 forensic [4] - 23012:23, 23012:24, 23014:25, 23022:25 foresee [1] - 23080:3 foreshortened [1] - 23062:1 forgetting [1] - 23042:18 forgive [2] - 23030:20, 23094:12 form [7] - 23007:20, 23007:24, 23008:4, 23016:8, 23035:2, 23054:7, 23117:19 formal [1] - 23049:14 format [1] - 23081:10 forming [1] - 23049:3 Forsyth[2] - 23003:3, 23011:22 forthcoming [2] - 23097:23, 23097:25 forum [1] - 23070:16 forward [6] - 23053:25, 23074:1, 23082:10, 23095:18, 23099:8, 23111:22 foundation [1] - 23058:14 four [13] - 23013:12, 23017:9, 23017:22,</p>
	<p>F</p>			
	<p>face [4] - 23063:4, 23067:24, 23070:8,</p>			



<p>23027:12, 23034:11, 23042:3, 23056:3, 23056:6, 23059:10, 23059:13, 23062:15, 23109:20, 23111:19 fourth [1] - 23062:5 Fox[11] - 23002:8, 23003:8, 23089:12, 23112:20, 23112:21, 23123:4, 23123:12, 23125:20, 23125:22, 23126:1, 23129:3 fraction [1] - 23024:3 framework [1] - 23042:24 frankly [5] - 23029:14, 23038:21, 23040:18, 23120:21, 23126:10 free [1] - 23057:16 frenetic [1] - 23050:18 Friday[6] - 23011:7, 23011:9, 23011:13, 23011:15, 23011:17, 23085:15 Friend[2] - 23024:12, 23024:18 friends [1] - 23128:9 front [6] - 23023:13, 23042:2, 23046:4, 23054:9, 23057:17, 23098:18 front-line [1] - 23098:18 frustrated [1] - 23055:19 frustrating [2] - 23046:8, 23100:1 full [2] - 23052:20, 23116:2 full-blown [1] - 23052:20 fully [1] - 23098:12 functionally [1] - 23040:16 functioning [6] - 23018:20, 23051:19, 23062:24, 23080:1, 23101:13, 23101:20 fundamental [1] - 23049:24 funding [2] - 23016:3, 23016:5 future [4] - 23046:19, 23062:1, 23073:19, 23074:16</p>	<p>23125:16, 23128:12 Garrett [1] - 23002:6 general [11] - 23007:14, 23025:14, 23028:25, 23037:17, 23041:19, 23048:22, 23051:3, 23061:9, 23073:12, 23108:5, 23109:13 General[2] - 23012:12, 23052:5 generally [4] - 23006:25, 23010:12, 23014:4, 23023:14 Generally[1] - 23057:3 generate [1] - 23052:16 generated [4] - 23047:1, 23068:13, 23094:20, 23114:18 genuine [1] - 23072:24 Gibson[2] - 23002:10, 23005:10 girlfriend [1] - 23052:8 gist [1] - 23045:19 given [25] - 23007:24, 23008:10, 23008:17, 23009:11, 23041:20, 23045:5, 23047:9, 23049:9, 23049:11, 23050:11, 23051:8, 23051:20, 23054:21, 23054:22, 23054:23, 23054:24, 23059:7, 23079:14, 23081:19, 23087:20, 23098:9, 23100:18, 23100:21, 23104:12, 23106:22 Given[2] - 23069:25, 23103:17 glance [1] - 23057:13 glib [2] - 23049:7, 23084:6 Globe[1] - 23022:8 glowingly [1] - 23031:25 goal [1] - 23050:19 goal-directed [1] - 23050:19 Gold[1] - 23044:3 Gold's [1] - 23044:6 government [1] - 23081:21 Government[2] - 23002:4, 23005:6 governor [1] - 23022:4 graduate [1] - 23014:3 grant [1] - 23097:22 granted [3] - 23027:16, 23054:7, 23090:17 great [1] - 23083:16 greatest [3] - 23025:6,</p>	<p>23030:5, 23056:24 ground [2] - 23112:16, 23112:25 Grymaloski[34] - 23004:20, 23005:1, 23038:3, 23039:3, 23039:22, 23040:4, 23058:5, 23058:8, 23058:13, 23064:13, 23070:10, 23070:21, 23070:24, 23070:25, 23071:1, 23074:13, 23080:10, 23084:18, 23084:20, 23085:1, 23103:15, 23104:15, 23104:18, 23114:25, 23115:8, 23115:13, 23116:7, 23121:7, 23123:18, 23123:22, 23124:1, 23127:4, 23127:6, 23129:11 Grymaloski's [11] - 23011:3, 23057:22, 23057:25, 23058:4, 23058:21, 23072:14, 23081:8, 23102:16, 23114:19, 23114:22, 23117:11 guess [3] - 23010:22, 23026:8, 23118:2 guest [1] - 23019:3 guidance [1] - 23039:9 guilty [1] - 23067:2</p>	<p>harm [7] - 23077:17, 23086:3, 23088:15, 23116:25, 23117:5, 23117:8, 23118:3 harmful [1] - 23085:13 hassling [1] - 23083:24 head [1] - 23050:4 heading [2] - 23015:22, 23017:4 health [14] - 23021:17, 23037:16, 23039:19, 23040:1, 23041:14, 23053:22, 23054:25, 23057:1, 23075:11, 23075:13, 23075:17, 23077:12, 23100:10, 23102:15 Health [4] - 23012:15, 23014:23, 23016:5, 23016:6 health-related [1] - 23021:17 hear [4] - 23004:6, 23034:23, 23050:2, 23075:4 heard [5] - 23024:20, 23024:23, 23028:14, 23044:8, 23124:19 hearing [8] - 23013:17, 23026:22, 23029:15, 23050:4, 23081:18, 23108:13, 23108:15, 23108:20 heightened [3] - 23106:6, 23106:7, 23106:11 held [1] - 23076:20 help [5] - 23078:21, 23082:16, 23114:1, 23114:10 helpful [5] - 23031:17, 23033:18, 23038:1, 23057:12, 23114:12 helplessness [7] - 23060:7, 23063:4, 23094:3, 23095:4, 23095:7, 23095:20, 23095:25 helps [2] - 23098:10, 23113:18 hereby [1] - 23130:4 herein [1] - 23130:6 herself [1] - 23031:23 Hersh [1] - 23002:2 higher [2] - 23079:17, 23107:25 highlight [4] - 23057:14, 23077:14, 23078:11, 23116:16 highlighted [2] -</p>	<p>23076:4, 23116:20 highly [1] - 23075:18 Hillcrest [1] - 23076:14 himself [7] - 23031:23, 23056:10, 23056:11, 23057:10, 23070:18, 23071:2, 23101:8 Hinz [3] - 23001:9, 23130:2, 23130:13 hippocampus [1] - 23032:23 historical [1] - 23025:4 history [2] - 23073:13, 23107:1 Hodson [31] - 23001:2, 23004:5, 23005:11, 23006:9, 23006:16, 23006:20, 23006:23, 23010:19, 23010:23, 23011:5, 23011:11, 23012:7, 23037:24, 23075:2, 23075:5, 23075:23, 23076:1, 23081:3, 23081:11, 23086:14, 23088:19, 23089:11, 23102:7, 23111:4, 23126:4, 23126:12, 23126:22, 23127:1, 23127:12, 23127:15, 23129:5 Hodson's [1] - 23088:8 hold [1] - 23085:5 home [4] - 23083:24, 23096:21, 23096:23, 23097:9 Hon [1] - 23002:12 Honourable [2] - 23000:6, 23044:3 hope [2] - 23092:3, 23095:23 hopefully [3] - 23038:14, 23073:18, 23075:20 Hopkins [1] - 23002:13 horrific [6] - 23045:1, 23054:16, 23067:3, 23073:8, 23089:1, 23089:3 horror [5] - 23060:7, 23067:4, 23094:3, 23095:4, 23095:7 Hospital [2] - 23012:12, 23052:5 hospital [8] - 23013:10, 23016:22, 23051:10, 23056:8, 23104:25, 23105:5, 23122:12, 23125:5 hospitalization [6] - 23040:12, 23040:13,</p>
G		H		
<p>Gail[5] - 23065:2, 23066:12, 23119:9,</p>				



<p>23103:19, 23104:1, 23122:7, 23125:15 hospitalizations [9] - 23103:23, 23104:9, 23121:21, 23122:21, 23123:14, 23123:20, 23123:23, 23123:24, 23124:3 hospitalized [1] - 23125:7 hospitals [2] - 23104:4, 23123:16 Hotel [1] - 23000:16 hour [1] - 23129:12 hours [2] - 23068:12, 23068:19 hours' [1] - 23084:8 house [3] - 23012:25, 23076:12, 23077:23 housekeeping [1] - 23006:1 huge [1] - 23037:11 Hugh [2] - 23003:3, 23011:22 human [1] - 23052:1 hurdles [1] - 23122:15 hyperactive [1] - 23050:16 hypervigilance [1] - 23062:12</p>	<p>23051:18, 23062:22 implication [3] - 23077:8, 23078:16, 23106:6 imply [1] - 23065:2 importance [1] - 23008:11 important [6] - 23008:2, 23038:23, 23061:18, 23062:23, 23087:16, 23122:8 impossible [2] - 23045:2, 23052:1 impulsive [1] - 23050:15 impulsivity [1] - 23055:17 inability [1] - 23061:18 inaccurate [1] - 23059:5 inappropriate [1] - 23040:15 incarcerated [4] - 23096:20, 23096:23, 23097:6, 23128:4 incarceration [27] - 23040:6, 23063:3, 23063:10, 23063:24, 23065:17, 23066:15, 23066:16, 23077:9, 23079:15, 23091:2, 23095:13, 23096:4, 23096:7, 23096:10, 23096:12, 23096:14, 23097:1, 23097:7, 23097:8, 23097:10, 23097:12, 23097:17, 23097:24, 23098:1, 23108:24, 23124:6, 23128:14 incident [4] - 23019:24, 23027:14, 23098:17, 23125:7 incidents [1] - 23090:15 include [4] - 23031:21, 23049:25, 23072:7, 23081:1 included [3] - 23011:4, 23050:9, 23068:14 includes [4] - 23010:13, 23052:22, 23060:17, 23072:13 including [5] - 23042:12, 23056:6, 23060:12, 23060:21, 23101:14 inclusion [1] - 23022:18 incompetent [1] - 23071:21</p>	<p>inconsistent [4] - 23108:21, 23109:1, 23109:13, 23110:5 increased [1] - 23062:6 incumbent [2] - 23025:7, 23026:8 indeed [1] - 23027:4 independent [1] - 23020:17 Index [1] - 23003:1 indicate [9] - 23012:16, 23013:8, 23037:1, 23042:10, 23055:24, 23056:12, 23057:21, 23099:15, 23104:24 indicated [27] - 23004:11, 23007:1, 23014:21, 23015:18, 23018:9, 23021:23, 23039:1, 23039:11, 23061:10, 23062:8, 23069:3, 23071:2, 23071:11, 23089:8, 23091:12, 23091:16, 23104:1, 23105:9, 23108:6, 23108:10, 23109:9, 23118:5, 23121:20, 23122:10, 23122:11, 23122:16, 23124:15 indicates [4] - 23014:14, 23020:11, 23057:22, 23090:9 indicating [2] - 23037:8, 23052:23 indication [2] - 23072:8, 23110:20 indications [1] - 23118:10 indicative [1] - 23049:14 indignities [1] - 23067:13 indirect [1] - 23016:5 individual [37] - 23018:13, 23029:21, 23035:18, 23041:4, 23041:23, 23042:25, 23043:12, 23043:17, 23044:17, 23045:21, 23045:23, 23046:16, 23046:18, 23047:7, 23047:21, 23048:20, 23048:23, 23050:7, 23051:8, 23052:5, 23058:11, 23059:9, 23065:17, 23071:16, 23079:12, 23079:13, 23097:5, 23097:23, 23098:15, 23098:23,</p>	<p>23106:4, 23106:21, 23107:24, 23108:1, 23113:22, 23114:6 individuals [34] - 23015:7, 23015:12, 23018:14, 23028:23, 23029:12, 23032:2, 23032:21, 23033:4, 23033:6, 23033:7, 23033:8, 23033:23, 23035:14, 23042:1, 23049:8, 23050:15, 23063:12, 23063:13, 23064:4, 23067:22, 23068:16, 23083:4, 23085:6, 23092:4, 23096:20, 23096:22, 23098:7, 23098:24, 23099:23, 23099:25, 23107:11, 23107:20, 23110:9 inflammatory [1] - 23046:22 influential [1] - 23083:5 information [41] - 23018:13, 23025:4, 23031:22, 23032:10, 23032:13, 23034:2, 23040:21, 23041:15, 23042:14, 23057:2, 23059:3, 23059:6, 23070:7, 23072:13, 23075:17, 23081:14, 23095:5, 23101:12, 23103:24, 23104:3, 23104:19, 23104:25, 23105:17, 23113:9, 23113:15, 23113:16, 23114:5, 23114:9, 23116:4, 23116:13, 23117:21, 23120:25, 23121:19, 23122:12, 23122:14, 23122:16, 23122:17, 23122:19, 23122:23, 23123:19, 23128:15 infrequent [1] - 23070:12 ingesting [2] - 23056:9, 23056:17 inherent [1] - 23047:17 injuring [1] - 23057:10 injurious [1] - 23070:10 injury [3] - 23060:3, 23093:4, 23093:24 Inland [1] - 23001:12 innocence [2] - 23046:5, 23053:8 innocent [3] - 23068:18, 23073:1,</p>	<p>23087:11 innocently [1] - 23105:25 inquiries [1] - 23121:7 inquiry [3] - 23075:25, 23076:16, 23119:19 Inquiry [11] - 23000:2, 23000:23, 23008:2, 23009:8, 23039:8, 23063:16, 23068:9, 23089:18, 23100:12, 23100:24, 23102:10 inside [1] - 23050:4 instance [1] - 23027:2 instances [1] - 23030:2 instead [2] - 23046:11, 23047:20 Institute [2] - 23014:10, 23017:20 institution [1] - 23090:3 institutional [2] - 23046:24, 23064:11 instructor [2] - 23019:4, 23019:9 instrument [2] - 23047:5, 23047:15 instruments [1] - 23018:5 integration [1] - 23082:1 integrity [10] - 23060:4, 23063:2, 23066:14, 23091:11, 23091:13, 23093:5, 23093:11, 23093:14, 23093:25, 23095:1 intended [2] - 23004:11, 23091:9 intense [5] - 23060:7, 23060:23, 23094:3, 23095:4, 23095:7 intensity [1] - 23069:15 intensive [2] - 23080:20, 23083:12 intent [1] - 23087:23 intentions [1] - 23072:24 interactions [1] - 23042:21 interest [3] - 23017:18, 23049:4, 23061:20 interested [1] - 23038:22 interesting [1] - 23053:20 interests [1] - 23022:25 intermittent [1] - 23020:19 intern [1] - 23014:24 internal [2] - 23060:24,</p>
<p>I</p>				
<p>Id [2] - 23010:24, 23011:2 idea [4] - 23057:5, 23082:16, 23082:19, 23082:22 identified [6] - 23006:16, 23025:11, 23026:16, 23050:13, 23096:9 identifies [1] - 23090:24 identify [2] - 23005:2, 23106:12 ignoring [2] - 23013:4, 23096:11 illness [3] - 23049:19, 23049:20, 23050:13 illusions [1] - 23060:19 images [1] - 23060:13 imagine [1] - 23077:7 immediate [1] - 23094:7 immediately [1] - 23046:25 immigration [1] - 23020:18 impact [1] - 23117:18 impairment [2] -</p>				



<p>23061:3 Internet [1] - 23090:19 internship [1] - 23014:24 interpreted [1] - 23018:6 interrogatories [1] - 23004:14 interrupt [3] - 23038:9, 23038:12, 23112:5 intervention [1] - 23098:16 interview [19] - 23015:7, 23018:10, 23025:5, 23029:7, 23029:14, 23030:3, 23030:7, 23030:16, 23030:25, 23038:18, 23039:6, 23039:12, 23040:15, 23040:18, 23043:1, 23053:7, 23063:22, 23082:9, 23106:16 interviewed [1] - 23077:21 interviewer [1] - 23053:9 interviewing [1] - 23019:7 interviews [3] - 23032:15, 23044:20, 23051:24 intestine [1] - 23056:9 intimidated [1] - 23011:8 intimidated [1] - 23083:25 intoxicated [1] - 23060:22 introduced [1] - 23082:4 intrusive [3] - 23060:11, 23082:13, 23084:23 invariably [4] - 23030:24, 23031:2, 23073:20, 23083:14 inventories [1] - 23018:24 inventory [2] - 23031:19, 23031:21 investigators [1] - 23112:23 invited [1] - 23021:5 involve [2] - 23015:6, 23064:24 involved [12] - 23020:1, 23021:8, 23027:14, 23043:19, 23060:2, 23060:6, 23084:13, 23084:15, 23093:3,</p>	<p>23093:23, 23094:2, 23128:12 involvement [4] - 23017:23, 23037:4, 23037:6, 23037:25 involves [1] - 23087:17 involving [2] - 23095:4, 23101:8 iq [1] - 23018:17 Irene [1] - 23001:8 irrelevant [2] - 23044:17, 23113:16 irritability [1] - 23062:10 Irwin [1] - 23002:12 Isabelle [1] - 23001:5 isolating [1] - 23095:11 issue [14] - 23023:17, 23027:21, 23034:7, 23053:17, 23067:24, 23080:7, 23088:17, 23109:13, 23112:12, 23115:15, 23119:7, 23119:24, 23123:25 issues [16] - 23018:2, 23024:17, 23037:18, 23039:7, 23057:20, 23058:9, 23058:12, 23063:9, 23064:11, 23069:18, 23071:3, 23072:15, 23072:18, 23074:3, 23074:17, 23118:7 iterations [1] - 23083:16 itself [7] - 23021:4, 23021:7, 23043:14, 23052:11, 23065:21, 23092:2, 23108:25 iv [4] - 23092:24, 23093:7, 23108:2</p>	<p>Jennifer[1] - 23002:11 jeopardize [1] - 23115:12 Jerry[1] - 23001:11 Joanne[1] - 23002:3 job [1] - 23065:5 John[2] - 23037:14, 23101:9 journal [1] - 23022:19 Joyce[1] - 23002:3 judge [1] - 23016:8 judge's [1] - 23016:11 judged [1] - 23071:20 judicial [3] - 23035:3, 23035:7, 23036:2 Justice[8] - 23000:6, 23002:11, 23002:14, 23005:7, 23007:8, 23016:3, 23016:6, 23017:20 justifying [1] - 23007:20</p>	<p style="text-align: center;">L</p> <p>label [7] - 23045:9, 23046:20, 23047:2, 23047:18, 23047:21, 23059:7 labelled [3] - 23044:23, 23051:7, 23053:22 labels [7] - 23045:18, 23048:7, 23048:13, 23048:22, 23049:22, 23050:10, 23057:3 laboratory [3] - 23032:17, 23032:19, 23034:3 labour [2] - 23080:20, 23083:12 labour-intensive [2] - 23080:20, 23083:12 lack [2] - 23049:3, 23118:13 laid [1] - 23031:14 Lana[1] - 23002:4 language [5] - 23045:14, 23053:20, 23067:17, 23094:21, 23122:11 large [3] - 23025:21, 23091:25, 23121:1 large-scale [1] - 23091:25 largely [1] - 23074:8 Larry[2] - 23001:12, 23007:11 last [16] - 23005:25, 23019:5, 23019:20, 23021:19, 23032:14, 23038:7, 23050:13, 23062:20, 23072:19, 23102:17, 23104:1, 23106:2, 23116:2, 23121:21, 23125:6, 23127:20 late [2] - 23021:19, 23120:18 latest [1] - 23052:21 Law[1] - 23013:8 law [4] - 23013:11, 23019:4, 23019:6, 23035:2 Laws[1] - 23013:14 lawyer [2] - 23112:21, 23117:24 lawyers [1] - 23122:3 lead [5] - 23004:25, 23026:9, 23044:15, 23083:14, 23127:16 leading [3] - 23098:1, 23101:8, 23110:4</p>	<p>learn [1] - 23082:24 Learned[1] - 23024:18 least [8] - 23025:14, 23040:13, 23049:10, 23056:10, 23056:20, 23059:18, 23065:22, 23092:3 leather [2] - 23056:9, 23056:18 leave [6] - 23010:8, 23064:16, 23073:13, 23076:6, 23076:13, 23089:9 leaves [1] - 23123:16 led [4] - 23016:25, 23040:12, 23122:13, 23124:5 left [4] - 23078:3, 23102:9, 23112:8, 23117:10 legacy [1] - 23074:5 less [14] - 23030:6, 23030:14, 23031:8, 23077:16, 23077:24, 23078:10, 23082:12, 23082:23, 23084:23, 23088:11, 23119:13, 23126:14 less-intrusive [1] - 23084:23 lethal [1] - 23056:22 letter [5] - 23029:19, 23039:14, 23101:16, 23121:14, 23124:17 level [6] - 23033:14, 23054:22, 23066:21, 23079:25, 23110:13, 23110:15 levels [5] - 23015:23, 23023:8, 23023:10, 23033:25, 23081:20 life [11] - 23041:6, 23041:11, 23062:3, 23064:25, 23067:7, 23067:14, 23073:16, 23073:23, 23074:1, 23090:13, 23091:22 life-threatening [3] - 23041:6, 23041:11, 23090:13 lift [1] - 23006:5 lifted [2] - 23006:4, 23006:7 likely [13] - 23011:17, 23042:25, 23058:9, 23070:4, 23072:22, 23073:12, 23075:12, 23076:19, 23077:24, 23078:25, 23080:23, 23106:7, 23107:22</p>
	<p style="text-align: center;">J</p> <p>jaded [1] - 23114:8 jail [6] - 23054:17, 23055:24, 23067:12, 23067:13, 23073:21, 23089:4 January[18] - 23000:21, 23004:13, 23006:22, 23006:24, 23015:20, 23021:21, 23026:5, 23036:25, 23038:3, 23038:15, 23095:23, 23101:10, 23105:14, 23111:3, 23114:25, 23116:19, 23117:17, 23128:10</p>	<p style="text-align: center;">K</p> <p>Kara[1] - 23001:5 Karen[3] - 23001:9, 23130:2, 23130:13 Karst[3] - 23002:9, 23007:10, 23112:22 keep [6] - 23005:14, 23038:11, 23064:15, 23064:19, 23072:3, 23102:1 Kennedy[1] - 23103:7 ketone [1] - 23033:22 ketones [1] - 23033:25 killer [1] - 23089:6 kind [4] - 23013:16, 23025:4, 23076:1, 23107:12 kinesiology [1] - 23019:10 knife [2] - 23076:11, 23087:2 knowing [3] - 23075:25, 23084:14, 23085:20 knowledge [3] - 23118:23, 23126:13, 23130:6 knows [1] - 23044:4 Knox[1] - 23002:5 Kovatch[1] - 23103:8 Krogan[1] - 23002:4 Kujawa[2] - 23002:6, 23007:9</p>		



<p>limitation [5] - 23030:9, 23030:12, 23030:13, 23033:3, 23047:18</p> <p>limitations [4] - 23036:18, 23040:20, 23068:2, 23115:22</p> <p>limited [5] - 23034:6, 23075:12, 23075:17, 23092:5, 23113:2</p> <p>line [2] - 23033:3, 23098:18</p> <p>lines [1] - 23109:18</p> <p>list [3] - 23015:3, 23076:2, 23091:9</p> <p>listed [6] - 23017:10, 23017:13, 23018:25, 23023:5, 23023:7, 23089:23</p> <p>listened [1] - 23054:10</p> <p>listening [2] - 23024:17, 23034:17</p> <p>literally [2] - 23078:19, 23081:23</p> <p>literature [5] - 23090:20, 23090:24, 23092:15, 23096:9, 23096:17</p> <p>live [2] - 23005:17, 23119:24</p> <p>locate [1] - 23048:8</p> <p>located [2] - 23056:6, 23056:21</p> <p>logical [1] - 23118:16</p> <p>loner [2] - 23048:25, 23049:1</p> <p>long-standing [1] - 23051:16</p> <p>long-term [1] - 23020:24</p> <p>look [16] - 23018:20, 23021:9, 23042:4, 23043:7, 23048:5, 23052:1, 23052:2, 23059:17, 23065:24, 23071:12, 23081:14, 23083:8, 23085:7, 23118:17, 23120:16, 23121:11</p> <p>looked [5] - 23068:12, 23087:3, 23092:1, 23101:4, 23128:8</p> <p>looking [10] - 23032:1, 23037:15, 23051:11, 23063:25, 23074:15, 23084:5, 23087:16, 23095:18, 23100:15, 23116:18</p> <p>looks [3] - 23042:19, 23053:10, 23122:2</p> <p>lost [3] - 23097:8,</p>	<p>23097:9</p> <p>Lougheed [2] - 23012:11, 23014:22</p> <p>loving [1] - 23061:25</p> <p style="text-align: center;">M</p> <p>Maccallum [34] - 23000:7, 23004:3, 23006:7, 23010:21, 23011:5, 23011:18, 23011:23, 23012:1, 23025:16, 23026:1, 23036:8, 23036:11, 23036:13, 23064:17, 23064:21, 23065:23, 23066:2, 23066:8, 23066:17, 23066:20, 23066:24, 23069:10, 23070:20, 23070:23, 23086:13, 23088:5, 23102:13, 23102:19, 23122:24, 23123:2, 23123:9, 23125:19, 23125:25, 23129:14</p> <p>Mail [1] - 23022:8</p> <p>maintain [1] - 23020:13</p> <p>maintaining [1] - 23010:5</p> <p>major [2] - 23014:19, 23050:14</p> <p>majority [1] - 23022:14</p> <p>male [1] - 23068:16</p> <p>man [2] - 23073:3, 23126:13</p> <p>management [3] - 23019:25, 23043:4, 23043:6</p> <p>Manager [1] - 23001:4</p> <p>managing [2] - 23109:8, 23109:16</p> <p>manic [6] - 23049:19, 23049:20, 23049:21, 23050:12, 23051:2</p> <p>manipulative [2] - 23049:7, 23056:13</p> <p>manner [5] - 23004:8, 23032:1, 23077:15, 23099:21, 23102:8</p> <p>Manual [1] - 23052:22</p> <p>manual [1] - 23031:15</p> <p>mark [2] - 23010:21, 23119:4</p> <p>marked [3] - 23011:2, 23079:25, 23081:11</p> <p>markedly [1] - 23061:20</p> <p>marker [1] - 23033:15</p> <p>marriage [1] - 23062:3</p> <p>Marshall [1] - 23002:13</p>	<p>Masters [2] - 23014:8, 23014:9</p> <p>material [5] - 23080:14, 23100:10, 23103:9, 23112:25, 23121:2</p> <p>matter [7] - 23010:7, 23024:20, 23025:22, 23026:16, 23026:18, 23035:23, 23122:4</p> <p>matters [7] - 23012:9, 23024:14, 23025:9, 23025:10, 23065:1, 23066:18, 23126:24</p> <p>Mcgill [3] - 23014:13, 23014:15, 23022:3</p> <p>Mclean [1] - 23002:3</p> <p>mean [19] - 23013:4, 23018:8, 23046:11, 23046:12, 23047:12, 23047:13, 23048:1, 23051:4, 23059:10, 23059:12, 23076:22, 23079:5, 23084:2, 23084:6, 23085:14, 23088:14, 23098:24, 23106:17, 23110:11</p> <p>meaning [1] - 23065:2</p> <p>meaningful [1] - 23045:9</p> <p>means [4] - 23033:10, 23045:7, 23066:21, 23098:5</p> <p>meant [2] - 23066:3, 23067:18</p> <p>measure [1] - 23084:22</p> <p>measures [4] - 23018:23, 23018:25, 23031:18, 23072:8</p> <p>mechanism [1] - 23047:16</p> <p>media [1] - 23109:6</p> <p>medical [18] - 23004:17, 23032:19, 23103:19, 23113:6, 23113:11, 23113:13, 23113:17, 23114:17, 23124:11, 23124:14, 23125:14, 23126:6, 23126:9, 23126:13, 23126:15, 23126:24, 23127:13, 23128:8</p> <p>medication [1] - 23054:20</p> <p>medications [1] - 23054:24</p> <p>meet [9] - 23020:3, 23033:8, 23038:25, 23039:24, 23051:14, 23081:5, 23113:22, 23116:8, 23127:7</p>	<p>meeting [4] - 23021:19, 23089:5, 23127:5, 23127:17</p> <p>meets [1] - 23063:1</p> <p>Mel [1] - 23037:14</p> <p>member [1] - 23013:23</p> <p>members [3] - 23020:10, 23045:10, 23045:13</p> <p>memorandum [13] - 23005:13, 23006:12, 23006:18, 23006:21, 23007:2, 23007:12, 23010:17, 23010:22, 23111:3, 23111:5, 23111:8, 23111:12, 23111:20</p> <p>memories [4] - 23040:7, 23073:8, 23086:4, 23125:2</p> <p>memory [2] - 23018:17, 23109:20</p> <p>mental [18] - 23031:15, 23037:16, 23039:19, 23039:25, 23041:14, 23042:24, 23053:22, 23057:1, 23075:10, 23075:17, 23077:12, 23100:10, 23102:15, 23106:25, 23107:1, 23107:17, 23107:21, 23118:13</p> <p>mentally [2] - 23071:21</p> <p>mention [2] - 23044:1, 23068:5</p> <p>mentioned [7] - 23039:15, 23041:13, 23046:10, 23051:22, 23070:23, 23112:24, 23117:1</p> <p>mentor [2] - 23043:25, 23044:3</p> <p>met [7] - 23013:1, 23034:11, 23052:10, 23057:23, 23089:15, 23094:6, 23127:1</p> <p>metaphorically [1] - 23079:7</p> <p>method [1] - 23083:7</p> <p>Meyer [3] - 23001:10, 23130:2, 23130:17</p> <p>mic [1] - 23013:15</p> <p>mid-1990s [1] - 23012:21</p> <p>middle [3] - 23011:13, 23018:25, 23112:16</p> <p>might [38] - 23011:8, 23012:5, 23026:9, 23029:11, 23030:13, 23031:9, 23032:16,</p>	<p>23032:23, 23046:10, 23046:11, 23057:12, 23058:18, 23071:22, 23074:18, 23084:19, 23085:19, 23087:7, 23087:10, 23107:7, 23107:9, 23107:24, 23110:24, 23112:1, 23113:15, 23113:16, 23113:24, 23113:25, 23114:3, 23115:5, 23117:4, 23120:9, 23120:15, 23122:5, 23126:14, 23127:10, 23127:22, 23128:12, 23129:6</p> <p>Milgaard [94] - 23000:4, 23002:2, 23002:3, 23004:7, 23004:9, 23005:12, 23007:6, 23007:18, 23007:23, 23008:18, 23009:1, 23037:19, 23038:7, 23038:18, 23039:18, 23044:6, 23053:16, 23055:3, 23057:6, 23058:5, 23058:16, 23063:8, 23063:18, 23064:2, 23066:9, 23066:21, 23068:14, 23069:2, 23069:17, 23070:13, 23071:3, 23071:5, 23072:15, 23072:17, 23072:25, 23073:5, 23073:15, 23073:20, 23075:8, 23079:1, 23080:8, 23080:11, 23080:15, 23081:5, 23081:15, 23081:22, 23082:7, 23082:12, 23083:18, 23086:20, 23088:18, 23088:23, 23094:23, 23095:2, 23100:6, 23100:11, 23100:18, 23101:2, 23101:6, 23102:4, 23103:1, 23103:13, 23103:19, 23104:8, 23105:7, 23105:12, 23105:18, 23105:22, 23107:23, 23108:13, 23108:18, 23109:3, 23114:14, 23114:17, 23115:10, 23117:5, 23117:13, 23119:8, 23121:8, 23121:18, 23122:2, 23123:5, 23124:4, 23124:20, 23125:15, 23126:5, 23126:6, 23126:23, 23127:1,</p>
--	--	---	---	---



<p>23127:3, 23127:5, 23127:15, 23127:18 Milgaard's [17] - 23004:21, 23008:6, 23008:11, 23039:23, 23040:3, 23045:16, 23065:20, 23070:8, 23073:18, 23079:14, 23101:20, 23104:5, 23111:17, 23116:8, 23116:22, 23122:22, 23124:18 military [2] - 23090:5, 23090:14 Miller [3] - 23119:9, 23125:16, 23128:12 Miller's [2] - 23065:2, 23066:12 Millon [1] - 23031:20 mind [8] - 23005:14, 23044:8, 23072:4, 23082:11, 23083:9, 23086:9, 23112:15, 23119:11 minds [1] - 23119:5 mine [2] - 23043:25, 23067:18 Minister [1] - 23002:11 Minnesota [1] - 23031:18 minute [3] - 23038:4, 23121:13, 23125:23 minutes [4] - 23064:18, 23068:23, 23129:8, 23129:12 misfortune [1] - 23078:17 mitigate [1] - 23098:20 mix [2] - 23017:17, 23022:24 mixed [1] - 23080:7 mixture [1] - 23067:19 model [1] - 23048:16 moderate [1] - 23047:8 moderator [1] - 23069:1 moderators [1] - 23068:15 modified [1] - 23004:12 moment [2] - 23091:3, 23096:11 Monday [1] - 23000:21 month [2] - 23062:19, 23065:19 months [1] - 23065:18 mood [1] - 23054:21 Morin [5] - 23063:16, 23068:9, 23100:24, 23127:25, 23128:1 morning [1] - 23129:10 morphology [1] -</p>	<p>23033:5 most [9] - 23018:7, 23030:20, 23035:13, 23041:25, 23051:9, 23065:13, 23097:22, 23102:14, 23112:25 mother [1] - 23044:6 motion [5] - 23004:18, 23005:4, 23005:14, 23006:2, 23016:11 motive [2] - 23071:16, 23072:4 motives [1] - 23071:24 move [4] - 23013:15, 23053:25, 23085:4, 23098:20 moved [1] - 23073:15 movement [1] - 23005:19 moving [1] - 23059:12 Mri [2] - 23032:19, 23033:18 multiaxial [1] - 23031:20 multiphasic [1] - 23031:19 multiple [5] - 23053:12, 23056:1, 23057:3, 23089:7, 23095:17 murder [5] - 23045:2, 23046:1, 23065:2, 23067:7, 23125:16 must [5] - 23008:17, 23008:18, 23009:6, 23009:24, 23111:24</p>	<p>23080:23, 23085:5, 23094:9, 23097:4, 23098:25, 23118:8 necessary [3] - 23030:9, 23045:4, 23091:23 necessity [1] - 23009:15 need [8] - 23037:18, 23050:20, 23051:19, 23053:23, 23069:5, 23069:6, 23084:4, 23110:8 needed [3] - 23075:6, 23082:6, 23122:7 needs [2] - 23075:14, 23116:1 negative [1] - 23032:4 negotiating [1] - 23019:7 negotiations [1] - 23044:5 neuropsychological [1] - 23018:20 never [5] - 23035:20, 23035:22, 23072:15, 23078:3, 23110:12 New [1] - 23022:7 new [1] - 23074:14 newest [1] - 23053:1 Newsletter [1] - 23022:23 next [6] - 23006:23, 23013:12, 23038:11, 23059:12, 23118:14, 23128:22 nightmares [1] - 23064:10 nobody [2] - 23083:23 non [1] - 23052:18 non-compliant [1] - 23052:18 none [1] - 23117:7 Nonetheless [1] - 23058:25 normal [3] - 23041:21, 23062:3, 23086:20 normalize [1] - 23098:19 notably [2] - 23032:25, 23099:9 note [3] - 23022:2, 23022:21, 23097:11 noted [1] - 23055:22 notes [7] - 23053:13, 23057:4, 23093:7, 23115:2, 23115:11, 23121:12, 23130:6 nothing [10] - 23024:20, 23024:24, 23059:3,</p>	<p>23066:10, 23097:11, 23102:21, 23102:23, 23105:6, 23105:22, 23127:11 notice [2] - 23004:18, 23011:14 notion [1] - 23110:18 notions [2] - 23045:21, 23046:25 November [6] - 23015:1, 23058:2, 23102:16, 23114:19, 23127:2, 23127:18 number [15] - 23012:17, 23015:3, 23015:22, 23024:2, 23024:9, 23024:16, 23027:22, 23032:14, 23047:10, 23048:9, 23055:5, 23068:15, 23068:21, 23082:5, 23092:4 numbing [2] - 23061:8, 23108:4</p>	<p>23081:22, 23118:12 occupation [1] - 23012:14 occupational [2] - 23051:18, 23062:23 occur [6] - 23060:21, 23090:11, 23108:18, 23112:11, 23115:5, 23120:15 occurred [21] - 23022:15, 23027:11, 23096:25, 23103:23, 23104:5, 23104:9, 23104:10, 23104:16, 23104:17, 23104:20, 23108:17, 23122:22, 23123:15, 23123:17, 23123:20, 23123:23, 23123:24, 23124:12, 23127:17 occurrences [1] - 23121:22 occurs [1] - 23096:11 October [2] - 23063:11, 23108:14 offence [9] - 23023:18, 23043:13, 23044:19, 23053:19, 23053:21, 23053:23, 23090:22, 23090:23, 23094:24 offend [1] - 23049:8 Offender [1] - 23015:15 offender [2] - 23020:25 offenders [1] - 23018:1 offensive [1] - 23077:16 offer [4] - 23036:17, 23071:12, 23074:25, 23116:10 offered [2] - 23014:25, 23020:9 offering [2] - 23026:3, 23088:19 office [3] - 23037:10, 23041:17, 23081:8 officer [4] - 23019:25, 23020:4, 23027:13, 23091:20 Officer [1] - 23001:11 officer's [1] - 23027:18 officers [2] - 23042:22, 23091:18 offices [1] - 23037:22 Official [5] - 23001:9, 23130:1, 23130:3, 23130:14, 23130:18 official [2] - 23042:18, 23044:14 often [3] - 23020:20, 23031:11, 23071:6 older [1] - 23051:20</p>
N		<p>name [8] - 23026:11, 23042:8, 23042:18, 23044:1, 23046:11, 23089:16, 23112:21, 23112:24 namely [4] - 23024:22, 23095:9, 23110:6, 23111:18 National [8] - 23016:16, 23016:19, 23016:23, 23027:22, 23055:16, 23090:1, 23090:7, 23092:22 natural [1] - 23090:14 nature [8] - 23039:5, 23051:23, 23071:20, 23080:22, 23086:23, 23097:24, 23099:19, 23105:12 near [1] - 23064:8 necessarily [6] -</p>	O	<p>oath [2] - 23008:17, 23081:24 obituary [2] - 23073:18, 23073:19 objection [2] - 23026:8, 23085:2 objective [2] - 23018:23, 23106:13 observation [2] - 23030:10, 23058:24 observations [3] - 23101:17, 23101:19, 23124:18 obtain [1] - 23064:1 obtaining [1] - 23122:16 obviously [10] - 23024:15, 23024:16, 23063:25, 23067:1, 23072:21, 23086:19, 23113:8, 23113:21, 23117:7, 23118:15 Obviously [1] - 23121:13 occasion [8] - 23035:3, 23035:20, 23056:11, 23099:11, 23101:1, 23103:5, 23103:18, 23114:21 occasionally [1] - 23057:13 occasions [4] - 23055:10, 23070:11,</p>



<p>ombudsman [1] - 23022:3</p> <p>omission [1] - 23112:5</p> <p>once [1] - 23076:7</p> <p>one [36] - 23016:13, 23016:21, 23021:9, 23026:7, 23034:9, 23042:17, 23044:8, 23053:15, 23054:6, 23055:6, 23056:10, 23056:20, 23057:25, 23060:9, 23065:25, 23072:5, 23072:9, 23082:4, 23082:10, 23086:15, 23089:23, 23091:9, 23095:3, 23095:13, 23095:16, 23095:21, 23098:22, 23103:16, 23104:9, 23111:22, 23112:13, 23112:22, 23118:7, 23118:16, 23128:7</p> <p>One [4] - 23052:25, 23086:21, 23095:10, 23127:10</p> <p>one's [2] - 23066:5, 23066:7</p> <p>ones [1] - 23036:19</p> <p>ongoing [2] - 23064:11, 23069:25</p> <p>Ontario [1] - 23014:9</p> <p>open [8] - 23009:16, 23053:19, 23080:11, 23088:11, 23088:14, 23112:8, 23119:16, 23127:5</p> <p>open-ended [2] - 23088:11, 23088:14</p> <p>opinion [22] - 23009:9, 23024:13, 23024:25, 23025:19, 23026:3, 23029:17, 23029:25, 23030:4, 23031:6, 23035:17, 23036:18, 23038:23, 23059:13, 23068:2, 23070:22, 23071:12, 23072:18, 23074:25, 23105:21, 23113:8, 23115:24, 23117:20</p> <p>opinions [2] - 23025:10, 23114:7</p> <p>opportunity [8] - 23037:23, 23049:9, 23049:11, 23075:20, 23080:16, 23083:3, 23100:23, 23106:16</p> <p>opposed [7] - 23005:16, 23036:20, 23087:6, 23087:12,</p>	<p>23091:2, 23112:3, 23116:22</p> <p>opposing [2] - 23005:22, 23110:3</p> <p>optimal [2] - 23018:11, 23109:10</p> <p>option [6] - 23080:25, 23081:13, 23084:16, 23084:24, 23085:8, 23095:21</p> <p>options [2] - 23111:22, 23112:13</p> <p>oral [1] - 23118:6</p> <p>order [7] - 23004:8, 23006:5, 23009:3, 23010:5, 23034:25, 23035:6, 23053:25</p> <p>Ordinarily [1] - 23029:9</p> <p>ordinarily [2] - 23029:10, 23051:19</p> <p>organic [1] - 23048:16</p> <p>organization's [1] - 23091:5</p> <p>original [2] - 23070:3, 23112:22</p> <p>otherwise [3] - 23030:15, 23031:9, 23032:24</p> <p>Ottawa [1] - 23101:13</p> <p>ourselves [1] - 23074:7</p> <p>out-patient [1] - 23016:12</p> <p>outburst [1] - 23062:10</p> <p>outcome [5] - 23077:1, 23077:3, 23078:8, 23095:14, 23100:2</p> <p>outline [4] - 23086:18, 23086:24, 23087:3, 23087:19</p> <p>outlined [2] - 23033:12, 23035:10</p> <p>outlining [1] - 23005:13</p> <p>outreach [1] - 23019:18</p> <p>outstanding [1] - 23014:1</p> <p>overall [1] - 23127:14</p> <p>overcome [1] - 23098:10</p> <p>overriding [2] - 23088:21, 23109:15</p> <p>oversight [1] - 23120:17</p> <p>overwhelmingly [1] - 23077:10</p> <p>own [13] - 23016:11, 23025:17, 23063:14, 23063:24, 23066:5, 23067:14, 23074:5, 23076:21, 23077:9, 23078:17, 23104:14,</p>	<p>23105:19</p> <p style="text-align: center;">P</p> <p>package [1] - 23044:5</p> <p>page [30] - 23012:11, 23014:14, 23017:13, 23018:3, 23018:21, 23019:1, 23019:13, 23019:14, 23021:2, 23021:3, 23021:22, 23022:10, 23023:2, 23023:5, 23023:24, 23037:1, 23037:3, 23038:12, 23048:2, 23054:19, 23055:6, 23057:11, 23071:10, 23074:24, 23077:13, 23091:13, 23115:25, 23116:2, 23116:3, 23124:22</p> <p>Page [1] - 23003:2</p> <p>paged [1] - 23020:3</p> <p>pages [1] - 23130:4</p> <p>panel [2] - 23068:13, 23069:16</p> <p>panels [1] - 23055:16</p> <p>panic [2] - 23079:1, 23079:3</p> <p>pants [2] - 23076:12, 23087:10</p> <p>paper [1] - 23022:16</p> <p>papers [6] - 23021:23, 23022:11, 23022:13, 23022:14, 23022:24, 23023:3</p> <p>paragraph [7] - 23059:13, 23076:4, 23077:14, 23078:11, 23078:13, 23116:2, 23116:3</p> <p>paragraphs [1] - 23047:20</p> <p>parasitic [1] - 23049:8</p> <p>Parole [5] - 23016:16, 23016:19, 23016:23, 23027:23, 23055:16</p> <p>parole [15] - 23017:2, 23028:1, 23029:13, 23029:15, 23029:24, 23037:20, 23042:2, 23042:21, 23045:8, 23045:10, 23054:5, 23054:9, 23055:4, 23055:7, 23101:16</p> <p>part [22] - 23014:10, 23019:6, 23020:8, 23026:17, 23038:23, 23043:16, 23051:23,</p>	<p>23056:9, 23062:15, 23063:15, 23063:22, 23081:19, 23085:22, 23092:3, 23093:19, 23093:20, 23100:23, 23105:19, 23111:6, 23117:15, 23120:6, 23120:17</p> <p>participate [4] - 23029:13, 23029:15, 23040:14, 23044:22</p> <p>participated [2] - 23029:22, 23043:12</p> <p>participating [1] - 23110:19</p> <p>participation [2] - 23042:20, 23061:21</p> <p>participatory [1] - 23018:5</p> <p>particular [20] - 23008:11, 23013:2, 23022:19, 23027:24, 23028:25, 23041:1, 23043:13, 23045:9, 23051:20, 23052:12, 23059:11, 23063:5, 23083:1, 23097:11, 23098:16, 23107:12, 23111:13, 23113:6, 23114:4, 23122:4</p> <p>particularly [6] - 23036:16, 23058:11, 23065:11, 23087:16, 23102:6, 23120:7</p> <p>particulars [1] - 23008:15</p> <p>parties [17] - 23005:2, 23005:5, 23005:11, 23005:12, 23005:15, 23005:21, 23006:15, 23007:4, 23007:7, 23007:12, 23008:21, 23009:7, 23010:11, 23010:15, 23080:12, 23111:12, 23114:5</p> <p>parts [3] - 23093:19, 23101:4, 23101:5</p> <p>passion [1] - 23069:15</p> <p>past [8] - 23040:7, 23040:11, 23073:13, 23074:17, 23089:9, 23118:12, 23118:17, 23128:24</p> <p>patient [7] - 23016:12, 23018:5, 23025:1, 23027:10, 23033:19, 23035:4, 23035:24</p> <p>patient-participatory [1] - 23018:5</p> <p>patients [3] - 23016:11,</p>	<p>23029:3, 23029:6</p> <p>Patrick [2] - 23003:3, 23011:22</p> <p>pattern [1] - 23052:17</p> <p>paycheque [1] - 23016:4</p> <p>peer [1] - 23022:15</p> <p>penal [1] - 23054:2</p> <p>pending [1] - 23006:2</p> <p>people [16] - 23004:17, 23012:22, 23031:24, 23037:13, 23041:14, 23043:21, 23045:7, 23046:12, 23049:2, 23049:10, 23050:3, 23050:5, 23061:16, 23083:17, 23126:9, 23127:18</p> <p>people's [1] - 23119:4</p> <p>per [7] - 23032:9, 23032:13, 23034:14, 23092:12, 23092:17, 23094:24, 23095:3</p> <p>perceive [2] - 23105:19, 23120:3</p> <p>perceives [5] - 23079:9, 23079:13, 23083:22, 23088:18, 23091:21</p> <p>percent [1] - 23110:16</p> <p>perceptions [1] - 23060:13</p> <p>perfect [4] - 23113:11, 23113:21, 23114:3, 23122:10</p> <p>perfectly [1] - 23065:8</p> <p>perforated [1] - 23056:8</p> <p>Perhaps [3] - 23005:20, 23006:17, 23036:22</p> <p>perhaps [16] - 23005:22, 23010:19, 23023:23, 23024:8, 23030:4, 23038:13, 23047:25, 23076:25, 23082:7, 23084:17, 23099:11, 23106:22, 23106:23, 23107:6, 23126:15, 23129:8</p> <p>period [18] - 23017:22, 23050:21, 23051:11, 23065:18, 23065:19, 23070:14, 23071:6, 23078:4, 23084:10, 23084:12, 23084:14, 23085:18, 23097:12, 23104:23, 23109:20, 23112:4, 23115:11, 23126:10</p> <p>periods [3] - 23050:16, 23055:17, 23103:25</p> <p>permit [1] - 23008:1</p>
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<p>Persistent [3] - 23061:7, 23062:6, 23108:3</p> <p>persistently [1] - 23060:8</p> <p>persists [1] - 23088:22</p> <p>person [37] - 23008:19, 23018:16, 23027:3, 23031:4, 23031:7, 23031:23, 23032:10, 23034:9, 23034:25, 23035:6, 23036:1, 23040:24, 23041:8, 23042:11, 23043:2, 23043:3, 23043:7, 23044:21, 23047:9, 23047:14, 23047:22, 23051:4, 23059:22, 23059:25, 23070:3, 23072:4, 23072:9, 23091:11, 23092:25, 23093:21, 23094:11, 23094:13, 23097:16, 23107:6, 23110:12, 23111:24, 23127:13</p> <p>person's [3] - 23042:14, 23060:6, 23094:2</p> <p>personal [8] - 23043:10, 23055:14, 23063:2, 23066:3, 23066:13, 23066:20, 23090:16, 23127:11</p> <p>personality [15] - 23018:18, 23018:23, 23031:18, 23031:19, 23048:12, 23048:19, 23049:5, 23049:6, 23050:24, 23051:6, 23051:15, 23072:7, 23107:4, 23107:13, 23107:15</p> <p>personally [1] - 23064:6</p> <p>persons [2] - 23028:8, 23034:21</p> <p>perspective [2] - 23043:17, 23088:24</p> <p>persuasion [1] - 23083:17</p> <p>Peter [2] - 23012:11, 23014:22</p> <p>phase [2] - 23049:19, 23073:15</p> <p>phrase [1] - 23102:7</p> <p>physical [8] - 23060:4, 23066:6, 23091:13, 23093:5, 23093:11, 23093:14, 23093:25, 23095:1</p> <p>physically [1] -</p>	<p>23128:17</p> <p>physiological [1] - 23061:2</p> <p>picture [1] - 23071:13</p> <p>piece [1] - 23044:6</p> <p>pile [1] - 23120:20</p> <p>place [7] - 23040:20, 23052:24, 23076:9, 23110:25, 23112:1, 23118:4, 23121:4</p> <p>placed [3] - 23006:21, 23043:7, 23111:4</p> <p>places [1] - 23061:15</p> <p>plan [2] - 23014:1, 23042:20</p> <p>plans [2] - 23011:16, 23042:22</p> <p>play [2] - 23051:23, 23106:9</p> <p>played [1] - 23063:3</p> <p>playing [1] - 23100:5</p> <p>pleasant [1] - 23118:1</p> <p>plotting [1] - 23028:24</p> <p>plugged [1] - 23013:16</p> <p>plus [2] - 23054:9, 23068:19</p> <p>Pm [4] - 23004:2, 23074:20, 23074:21, 23129:15</p> <p>point [27] - 23013:25, 23024:11, 23033:11, 23039:8, 23045:22, 23073:19, 23074:1, 23074:7, 23074:24, 23079:24, 23080:19, 23085:12, 23086:15, 23087:13, 23088:3, 23088:7, 23099:6, 23102:11, 23102:22, 23109:11, 23117:20, 23118:14, 23119:7, 23119:25, 23124:23, 23124:24, 23126:7</p> <p>pointing [1] - 23087:22</p> <p>points [2] - 23052:17, 23098:13</p> <p>poke [1] - 23040:1</p> <p>Police [6] - 23002:7, 23007:10, 23010:14, 23019:21, 23026:12, 23089:17</p> <p>police [10] - 23019:23, 23020:7, 23020:16, 23027:13, 23028:6, 23077:22, 23078:3, 23078:5, 23091:18, 23112:22</p> <p>political [1] - 23097:5</p> <p>poor [1] - 23057:7</p> <p>portion [4] - 23057:24,</p>	<p>23068:19, 23116:14, 23116:20</p> <p>portions [1] - 23057:14</p> <p>pose [1] - 23057:9</p> <p>posed [1] - 23081:11</p> <p>position [22] - 23004:13, 23005:3, 23005:8, 23005:14, 23005:23, 23007:3, 23008:6, 23010:11, 23014:25, 23020:16, 23020:22, 23040:14, 23043:8, 23043:18, 23043:23, 23073:25, 23088:8, 23111:13, 23112:10, 23115:16, 23117:9, 23125:12</p> <p>positions [1] - 23020:13</p> <p>positive [5] - 23031:25, 23032:1, 23045:3, 23045:23, 23046:2</p> <p>positively [1] - 23098:23</p> <p>possession [1] - 23076:11</p> <p>possibility [1] - 23040:13</p> <p>possible [8] - 23011:10, 23020:4, 23047:2, 23070:16, 23080:2, 23109:17, 23113:9, 23120:14</p> <p>possibly [1] - 23080:3</p> <p>post [37] - 23024:22, 23026:19, 23027:5, 23028:8, 23028:18, 23029:5, 23030:1, 23030:24, 23031:7, 23031:10, 23032:6, 23032:22, 23033:2, 23033:24, 23034:21, 23035:5, 23035:25, 23036:17, 23041:4, 23041:8, 23058:14, 23065:1, 23066:18, 23066:21, 23070:1, 23071:8, 23085:24, 23090:4, 23097:14, 23097:18, 23105:23, 23106:1, 23106:5, 23107:3, 23107:14, 23107:22, 23117:12</p> <p>post-conviction [3] - 23065:1, 23066:18, 23066:21</p> <p>post-traumatic [34] - 23024:22, 23026:19, 23027:5, 23028:8, 23028:18, 23029:5,</p>	<p>23030:1, 23030:24, 23031:7, 23031:10, 23032:6, 23032:22, 23033:2, 23033:24, 23034:21, 23035:5, 23035:25, 23036:17, 23041:4, 23041:8, 23058:14, 23070:1, 23071:8, 23085:24, 23090:4, 23097:14, 23097:18, 23105:23, 23106:1, 23106:5, 23107:3, 23107:14, 23107:22, 23117:12</p> <p>posters [1] - 23022:11</p> <p>postponed [1] - 23014:2</p> <p>Posttraumatic [6] - 23058:22, 23059:20, 23090:1, 23090:8, 23090:10, 23092:23</p> <p>potential [12] - 23040:8, 23056:22, 23075:25, 23076:16, 23079:19, 23079:23, 23079:24, 23080:5, 23086:3, 23088:20, 23096:3, 23115:12</p> <p>potentially [9] - 23039:5, 23070:9, 23071:16, 23078:18, 23081:4, 23081:7, 23083:18, 23102:5, 23120:1</p> <p>practice [4] - 23017:2, 23020:15, 23021:10, 23043:21</p> <p>pre [8] - 23015:10, 23016:9, 23016:15, 23020:21, 23020:24, 23028:4, 23058:18, 23066:22</p> <p>pre-conviction [1] - 23066:22</p> <p>pre-sentence [6] - 23015:10, 23016:9, 23016:15, 23020:21, 23020:24, 23028:4</p> <p>pre-sentence-like [1] - 23058:18</p> <p>preceded [1] - 23014:7</p> <p>precise [1] - 23087:17</p> <p>preconceived [1] - 23046:24</p> <p>preconditions [1] - 23054:6</p> <p>prefer [3] - 23036:12, 23045:18, 23051:9</p> <p>preferable [1] - 23084:16</p>	<p>preference [2] - 23031:3, 23045:11</p> <p>preferred [2] - 23083:7, 23083:10</p> <p>Prehodchenko [1] - 23001:12</p> <p>premise [3] - 23109:12, 23119:13, 23119:21</p> <p>prepared [4] - 23005:17, 23007:2, 23082:22, 23121:3</p> <p>prescribed [1] - 23054:20</p> <p>presence [2] - 23108:12, 23127:3</p> <p>present [16] - 23004:22, 23008:22, 23010:3, 23031:25, 23034:11, 23051:12, 23059:14, 23059:24, 23061:9, 23062:7, 23067:21, 23072:4, 23093:20, 23094:15, 23108:5, 23111:7</p> <p>presentation [5] - 23009:8, 23021:18, 23022:17, 23063:16, 23068:22</p> <p>presentations [3] - 23021:5, 23022:11, 23022:14</p> <p>presented [4] - 23021:23, 23021:24, 23049:17, 23112:14</p> <p>presentence [1] - 23015:16</p> <p>presenting [3] - 23031:23, 23034:9, 23072:9</p> <p>press [1] - 23074:12</p> <p>pressing [5] - 23071:4, 23127:23, 23127:24, 23128:5, 23128:13</p> <p>presumably [1] - 23097:17</p> <p>pretrial [1] - 23020:22</p> <p>pretty [1] - 23023:3</p> <p>prevent [1] - 23097:19</p> <p>previous [5] - 23014:3, 23017:11, 23019:14, 23042:11, 23055:9</p> <p>primarily [12] - 23012:24, 23015:13, 23017:19, 23037:16, 23047:4, 23048:16, 23049:1, 23081:11, 23087:4, 23090:3, 23100:9, 23100:15</p> <p>Primarily [1] - 23096:19</p> <p>primary [6] - 23015:9,</p>
---	---	--	---	---



<p>23032:7, 23040:3, 23041:7, 23069:25, 23072:7 Pringle [1] - 23002:13 prisoner [1] - 23027:3 private [2] - 23017:2, 23020:14 probation [1] - 23015:14 problem [7] - 23025:25, 23052:13, 23124:19, 23125:1, 23125:3, 23125:8, 23127:22 proceed [3] - 23010:20, 23036:12, 23039:9 proceeding [7] - 23010:6, 23035:3, 23035:7, 23036:3, 23103:3, 23104:12, 23110:2 proceedings [5] - 23075:18, 23081:16, 23097:15, 23100:18, 23100:21 Proceedings [4] - 23000:12, 23000:23, 23003:1, 23004:1 proceeds [2] - 23005:24, 23108:8 process [18] - 23004:24, 23029:2, 23031:24, 23037:24, 23038:24, 23039:2, 23039:11, 23058:7, 23063:5, 23080:24, 23083:12, 23083:15, 23095:14, 23098:19, 23099:25, 23101:22, 23118:23, 23120:18 proclaiming [1] - 23046:5 prod [1] - 23040:1 produced [1] - 23119:3 production [1] - 23098:21 professional [13] - 23019:17, 23038:6, 23040:1, 23043:6, 23043:11, 23053:22, 23058:16, 23058:24, 23113:5, 23113:6, 23126:6, 23126:15, 23126:24 professionally [1] - 23028:21 professionals [3] - 23039:19, 23056:12, 23089:5 professions [4] - 23021:17, 23028:17,</p>	<p>23028:20, 23029:1 program [8] - 23013:20, 23015:1, 23015:8, 23016:2, 23016:7, 23016:13, 23020:9, 23022:19 Program [1] - 23015:15 programs [1] - 23042:21 progress [1] - 23042:19 project [1] - 23050:20 prompted [1] - 23090:18 proportionate [1] - 23067:5 proposal [2] - 23080:9, 23112:12 propose [1] - 23083:18 proposed [2] - 23022:17, 23076:2 proposition [2] - 23093:16, 23093:18 propriety [1] - 23009:14 prosecutors [1] - 23099:6 prospect [1] - 23077:10 protesting [1] - 23053:7 provide [12] - 23017:4, 23017:17, 23020:8, 23027:8, 23039:13, 23040:21, 23075:9, 23076:1, 23080:17, 23084:21, 23116:12, 23123:18 provided [22] - 23005:12, 23006:12, 23006:23, 23009:6, 23024:4, 23026:25, 23029:19, 23034:3, 23039:13, 23055:12, 23058:1, 23072:16, 23080:14, 23080:15, 23081:15, 23082:7, 23086:24, 23100:3, 23103:24, 23116:4, 23121:19, 23123:21 provides [2] - 23004:9, 23018:12 providing [6] - 23038:6, 23058:4, 23075:10, 23080:8, 23083:13, 23104:19 Province [2] - 23021:15, 23130:3 Provincial [1] - 23028:3 provision [1] - 23016:3 provoked [1] - 23070:15 provoking [1] - 23041:11</p>	<p>Psd [1] - 23057:21 psychiatric [1] - 23090:11 Psychiatric [1] - 23031:13 psychiatrist [3] - 23028:11, 23041:22, 23045:8 psychiatrists [5] - 23016:13, 23033:1, 23039:20, 23045:17, 23046:4 psychiatry [2] - 23012:24, 23028:16 psychological [12] - 23015:4, 23015:7, 23018:4, 23018:11, 23020:6, 23030:19, 23031:1, 23031:5, 23038:19, 23060:23, 23074:25, 23080:19 psychologist [4] - 23012:15, 23019:23, 23020:11, 23041:22 Psychologist [1] - 23012:17 psychologists [3] - 23016:14, 23039:21, 23045:17 Psychologists [1] - 23021:13 psychology [8] - 23012:24, 23014:5, 23014:19, 23022:25, 23023:1, 23028:16, 23036:16, 23042:10 psychopathic [2] - 23048:11, 23049:5 psychopathy [6] - 23033:7, 23046:22, 23046:25, 23047:1, 23047:3, 23047:10 Psychopathy [1] - 23047:6 psychosis [1] - 23050:25 psychotic [2] - 23049:18, 23050:10 Ptsd [16] - 23031:10, 23031:11, 23031:12, 23032:22, 23033:19, 23035:16, 23057:21, 23065:13, 23079:6, 23090:10, 23091:1, 23091:16, 23098:15, 23098:21, 23098:25, 23110:9 public [4] - 23006:5, 23006:6, 23011:1, 23063:8</p>	<p>publication [1] - 23006:2 published [1] - 23022:22 pull [1] - 23106:17 purely [1] - 23118:8 purpose [4] - 23007:3, 23007:11, 23041:24, 23045:5 purposes [2] - 23009:12, 23023:22 pursuant [1] - 23051:22 pursue [1] - 23089:20 pursuing [1] - 23049:4 push [1] - 23115:14 pushed [1] - 23129:6 pushes [1] - 23069:5 pushing [1] - 23058:10 put [34] - 23006:2, 23008:25, 23009:4, 23010:24, 23010:25, 23026:23, 23040:18, 23041:9, 23045:12, 23048:6, 23071:5, 23073:12, 23075:3, 23076:7, 23082:6, 23082:9, 23084:2, 23084:21, 23089:9, 23089:24, 23092:13, 23092:14, 23092:21, 23096:6, 23102:6, 23106:23, 23111:22, 23114:9, 23114:23, 23120:10, 23125:11, 23125:20 puts [1] - 23115:17 putting [3] - 23024:18, 23083:22, 23088:24</p> <p style="text-align: center;">Q</p> <p>Qb[1] - 23001:9 Qc[6] - 23002:2, 23002:6, 23002:8, 23002:13, 23007:9 qualification [1] - 23036:20 qualifications [3] - 23013:8, 23025:19, 23036:15 Qualifications[4] - 23003:4, 23003:5, 23012:2, 23026:6 qualified [4] - 23017:7, 23024:12, 23024:16, 23025:10 qualify [2] - 23024:12, 23025:7 quarrel [3] - 23058:25,</p>	<p>23082:19, 23122:9 Queen's [5] - 23028:1, 23130:1, 23130:3, 23130:14, 23130:18 questioned [4] - 23117:16, 23118:19, 23118:24, 23122:2 questioning [8] - 23009:10, 23009:15, 23037:19, 23077:15, 23078:25, 23079:9, 23110:22, 23122:6 questions [59] - 23008:3, 23008:25, 23009:4, 23009:11, 23024:18, 23026:14, 23026:23, 23036:7, 23065:12, 23067:24, 23067:25, 23068:3, 23068:21, 23070:11, 23071:4, 23077:18, 23077:23, 23078:6, 23078:19, 23080:9, 23080:13, 23080:15, 23081:10, 23081:23, 23082:5, 23083:13, 23083:15, 23084:4, 23084:9, 23084:13, 23084:15, 23086:11, 23086:16, 23086:19, 23086:21, 23086:23, 23087:1, 23087:18, 23088:4, 23088:9, 23088:11, 23088:12, 23088:23, 23089:23, 23100:20, 23102:5, 23102:6, 23102:7, 23107:7, 23110:3, 23112:19, 23118:20, 23120:10, 23127:9, 23127:21, 23127:23, 23129:4 quicker [1] - 23082:20 quickly [2] - 23012:4, 23024:6 quite [6] - 23044:20, 23068:25, 23069:17, 23078:19, 23092:24, 23115:7 quote [1] - 23055:18 quotes [1] - 23055:21</p> <p style="text-align: center;">R</p> <p>raise [3] - 23071:7, 23085:2, 23088:3 raised [6] - 23024:21, 23026:7, 23027:22, 23027:23, 23088:17,</p>
---	---	---	---	---



<p>23112:2 raises [2] - 23078:15, 23102:22 raising [1] - 23058:10 range [7] - 23022:7, 23023:15, 23039:18, 23045:15, 23047:2, 23054:24, 23061:24 rape [5] - 23045:1, 23045:25, 23067:7, 23090:16, 23099:10 rapist/killer [1] - 23052:3 rapist/murderer [1] - 23056:23 rather [9] - 23025:2, 23046:20, 23046:22, 23052:9, 23058:10, 23065:5, 23074:16, 23088:1, 23096:8 rational [1] - 23073:9 Rcmp[2] - 23002:10, 23005:7 re [6] - 23009:12, 23023:18, 23086:4, 23089:1, 23092:13, 23092:14 re-direct [1] - 23009:12 re-offence [1] - 23023:18 re-put [2] - 23092:13, 23092:14 re-trigger [2] - 23086:4, 23089:1 react [1] - 23055:2 reaction [6] - 23040:2, 23040:23, 23041:7, 23050:10, 23079:22, 23111:21 reactivity [1] - 23061:2 read [17] - 23022:16, 23033:20, 23037:5, 23038:13, 23053:4, 23059:18, 23082:3, 23090:7, 23094:10, 23094:15, 23101:5, 23103:5, 23109:4, 23111:6, 23111:8, 23120:4, 23124:21 reading [1] - 23038:10 reads [1] - 23086:21 real [4] - 23116:24, 23117:4, 23117:8, 23118:3 realized [1] - 23124:24 really [10] - 23034:6, 23039:24, 23044:7, 23075:24, 23093:10, 23105:21, 23106:12, 23117:3, 23119:16,</p>	<p>23125:4 realm [1] - 23115:23 reason [1] - 23087:9 reasonable [2] - 23044:12, 23112:16 reasons [4] - 23083:2, 23095:10, 23097:6 receipt [5] - 23007:7, 23008:13, 23010:4, 23037:7, 23111:17 received [3] - 23008:7, 23024:22, 23095:6 receiving [1] - 23091:19 recent [2] - 23017:18, 23102:14 recently [2] - 23019:4, 23073:16 recognize [2] - 23117:24, 23118:23 recognized [2] - 23115:19, 23115:21 recognizing [1] - 23040:19 recollection [5] - 23036:4, 23078:9, 23087:5, 23121:11, 23121:17 recollections [3] - 23040:12, 23060:12, 23061:16 recommendation [1] - 23085:3 recommendations [2] - 23027:15, 23027:17 recommending [1] - 23084:23 Reconvened[2] - 23004:2, 23074:21 record [7] - 23013:5, 23059:18, 23082:3, 23082:4, 23089:15, 23111:8, 23125:14 recording [3] - 23008:8, 23009:5, 23111:19 records [11] - 23100:11, 23102:15, 23104:6, 23113:12, 23113:13, 23113:18, 23114:17, 23118:11, 23124:11, 23124:15, 23128:8 recruit [1] - 23020:6 recurrent [2] - 23060:11, 23060:14 recurring [1] - 23060:17 red [1] - 23048:6 redirect [1] - 23129:9 reduce [1] - 23054:22 reduced [1] - 23082:6 reenact [1] - 23078:2 reexperienced [1] -</p>	<p>23060:9 refer [8] - 23006:18, 23016:16, 23048:13, 23053:21, 23055:16, 23057:16, 23064:23, 23075:22 reference [5] - 23033:13, 23051:1, 23063:23, 23064:5, 23116:24 references [3] - 23053:12, 23055:5, 23095:17 referrals [1] - 23015:10 referred [11] - 23007:13, 23010:16, 23015:8, 23015:12, 23015:13, 23016:12, 23053:16, 23075:23, 23086:18, 23099:4, 23116:21 Referred[1] - 23114:11 referring [18] - 23048:2, 23051:16, 23056:1, 23057:16, 23058:1, 23065:9, 23066:12, 23066:13, 23072:5, 23078:14, 23079:10, 23093:6, 23093:8, 23097:2, 23099:3, 23116:6, 23128:20, 23129:1 refers [1] - 23064:23 reflect [1] - 23022:24 reflecting [1] - 23074:11 reflects [1] - 23072:24 refugee [5] - 23065:15, 23096:19, 23096:24, 23097:17, 23097:20 regard [1] - 23032:25 regarded [1] - 23095:1 regarding [10] - 23053:24, 23056:1, 23074:25, 23088:22, 23095:24, 23101:17, 23101:19, 23103:22, 23116:7, 23123:25 Regina[2] - 23076:10, 23077:20 Region[2] - 23012:15, 23014:23 Registration[1] - 23012:16 regulation [1] - 23021:18 relate [3] - 23032:8, 23035:11, 23062:25 related [17] - 23015:17, 23016:3, 23016:7,</p>	<p>23021:17, 23031:16, 23037:16, 23057:20, 23063:9, 23074:3, 23100:11, 23100:18, 23105:9, 23116:12, 23118:8, 23121:22, 23124:4, 23124:12 relates [2] - 23026:18, 23065:1 relating [3] - 23081:17, 23100:11, 23101:12 relation [1] - 23114:17 relationship [5] - 23020:20, 23085:1, 23103:14, 23115:9, 23115:12 relationships [2] - 23049:3, 23049:4 relatively [5] - 23065:15, 23092:5, 23094:16, 23095:8, 23120:18 relayed [1] - 23040:3 release [5] - 23042:22, 23054:7, 23104:6, 23115:2, 23122:23 released [1] - 23068:18 relevance [4] - 23039:7, 23075:7, 23075:12, 23081:25 relevant [7] - 23075:18, 23080:14, 23087:8, 23087:12, 23113:9, 23113:15, 23120:7 relief [1] - 23005:22 relies [1] - 23004:19 relive [2] - 23040:6, 23099:16 reliving [1] - 23060:18 reluctance [4] - 23039:23, 23099:15, 23116:8, 23127:7 reluctant [3] - 23068:25, 23072:17, 23084:20 remember [1] - 23105:7 remorse [2] - 23053:18, 23054:1 remote [1] - 23107:2 remove [1] - 23088:20 rendering [1] - 23113:7 repeat [1] - 23108:9 repeated [1] - 23081:22 Repeatedly[1] - 23055:3 repeatedly [3] - 23098:24, 23108:22, 23110:6 repeats [1] - 23069:7 rephrase [1] - 23106:22</p>	<p>report [54] - 23004:19, 23004:20, 23006:1, 23006:4, 23006:6, 23011:3, 23024:8, 23024:14, 23024:21, 23025:24, 23026:4, 23026:14, 23026:16, 23026:18, 23026:25, 23027:4, 23027:9, 23028:4, 23029:16, 23030:11, 23036:22, 23036:25, 23038:10, 23039:10, 23045:8, 23055:23, 23057:14, 23057:17, 23057:22, 23057:25, 23058:3, 23058:13, 23068:6, 23071:2, 23071:10, 23078:11, 23086:18, 23088:17, 23100:9, 23100:20, 23100:22, 23102:4, 23102:16, 23104:2, 23114:19, 23114:23, 23115:21, 23115:22, 23115:25, 23118:5, 23120:24, 23122:11, 23124:22, 23128:19 reported [3] - 23023:6, 23024:1, 23064:13 Reporter[2] - 23130:14, 23130:18 Reporters[2] - 23001:9, 23130:3 Reporters [1] - 23130:1 reports [10] - 23015:22, 23015:25, 23016:4, 23024:2, 23024:5, 23027:22, 23034:20, 23041:16, 23042:19, 23057:4 represent [2] - 23089:16, 23112:15 reputation [2] - 23074:6, 23074:7 request [3] - 23006:14, 23016:10 requested [1] - 23016:23 requesting [1] - 23016:9 require [1] - 23104:7 required [2] - 23019:6, 23103:19 requirement [1] - 23029:16 requires [1] - 23104:4 requiring [2] - 23050:17, 23056:8 requisite [1] - 23036:14</p>
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<p>research [7] - 23033:3, 23033:17, 23033:21, 23090:19, 23092:6, 23098:6, 23098:12</p> <p>resemble [2] - 23060:25, 23061:4</p> <p>reservation [1] - 23091:8</p> <p>resistance [1] - 23039:2</p> <p>resistant [2] - 23058:12, 23084:24</p> <p>respect [27] - 23024:13, 23024:20, 23024:24, 23025:3, 23025:7, 23025:8, 23026:3, 23027:9, 23029:3, 23030:5, 23030:8, 23030:12, 23030:18, 23033:22, 23034:4, 23034:21, 23036:16, 23089:22, 23096:18, 23096:24, 23099:3, 23099:8, 23101:7, 23104:25, 23108:12, 23110:4, 23111:17</p> <p>respond [5] - 23055:4, 23068:4, 23098:15, 23120:23, 23122:5</p> <p>responded [2] - 23086:25, 23122:6</p> <p>Respondents [8] - 23007:13, 23007:15, 23007:22, 23009:25, 23010:8, 23010:12, 23111:4, 23111:16</p> <p>Respondents [2] - 23008:5, 23008:12</p> <p>responders [1] - 23098:18</p> <p>responds [3] - 23078:22, 23078:23, 23098:23</p> <p>response [23] - 23007:5, 23034:18, 23052:13, 23060:6, 23062:13, 23063:18, 23065:11, 23069:3, 23069:8, 23079:1, 23079:3, 23091:16, 23094:2, 23094:7, 23094:16, 23094:20, 23095:2, 23095:7, 23106:7, 23106:11, 23107:23, 23111:15</p> <p>responses [5] - 23080:8, 23080:17, 23083:13, 23083:14, 23084:11</p> <p>responsibility [9] - 23044:18, 23053:24,</p>	<p>23054:6, 23074:9, 23078:7, 23105:19, 23106:4, 23107:8, 23108:16</p> <p>responsible [8] - 23021:14, 23074:15, 23076:21, 23077:3, 23077:8, 23079:16, 23105:24, 23119:9</p> <p>responsiveness [2] - 23061:9, 23108:5</p> <p>rest [3] - 23013:13, 23013:20, 23079:17</p> <p>restless [1] - 23050:15</p> <p>restricted [1] - 23061:24</p> <p>restructuring [1] - 23021:16</p> <p>result [6] - 23022:15, 23031:16, 23077:11, 23097:6, 23097:7, 23125:15</p> <p>resulted [1] - 23056:7</p> <p>results [5] - 23032:4, 23034:12, 23034:14, 23038:22, 23119:2</p> <p>retelling [1] - 23098:7</p> <p>Retired [1] - 23002:15</p> <p>retry [1] - 23043:23</p> <p>return [1] - 23027:18</p> <p>returned [1] - 23080:17</p> <p>review [14] - 23022:16, 23029:18, 23037:11, 23039:17, 23042:3, 23044:14, 23047:23, 23100:7, 23100:17, 23100:23, 23101:1, 23103:9, 23103:11, 23114:21</p> <p>reviewed [10] - 23012:25, 23022:11, 23022:12, 23042:23, 23044:13, 23059:4, 23076:3, 23100:10, 23102:23, 23120:20</p> <p>reviewing [2] - 23026:22, 23055:7</p> <p>revised [1] - 23047:6</p> <p>revision [1] - 23052:21</p> <p>Richard [2] - 23026:11, 23089:16</p> <p>Rick [1] - 23002:7</p> <p>rigor [1] - 23033:14</p> <p>rise [3] - 23024:10, 23041:4, 23071:25</p> <p>risk [5] - 23018:1, 23018:24, 23023:18, 23046:18, 23057:9</p> <p>road [1] - 23085:17</p> <p>role [5] - 23015:14,</p>	<p>23058:4, 23084:21, 23086:19, 23106:9</p> <p>roll [1] - 23019:16</p> <p>room [8] - 23044:24, 23045:1, 23050:5, 23078:20, 23108:13, 23108:15, 23108:20, 23112:3</p> <p>roughly [1] - 23074:24</p> <p>routes [1] - 23016:21</p> <p>Rpr [4] - 23001:10, 23130:2, 23130:16, 23130:17</p> <p>Rubin [1] - 23068:14</p> <p>rule [1] - 23029:11</p> <p>ruling [1] - 23009:19</p>	<p>Science [2] - 23014:12, 23014:19</p> <p>scientific [1] - 23033:14</p> <p>score [5] - 23047:4, 23047:7, 23047:8, 23047:11, 23047:16</p> <p>scored [1] - 23018:6</p> <p>screen [7] - 23006:21, 23012:5, 23019:1, 23036:24, 23048:5, 23057:13, 23111:4</p> <p>scroll [7] - 23018:3, 23019:2, 23023:4, 23023:23, 23057:11, 23065:24, 23111:6</p> <p>se [7] - 23032:9, 23032:13, 23034:15, 23092:12, 23092:17, 23094:24, 23095:3</p> <p>second [7] - 23019:6, 23021:9, 23031:19, 23037:2, 23042:8, 23080:25, 23094:5</p> <p>secondly [2] - 23005:16, 23024:23</p> <p>secretions [1] - 23033:23</p> <p>section [1] - 23035:10</p> <p>Security [1] - 23001:11</p> <p>see [25] - 23014:3, 23017:10, 23040:2, 23048:5, 23050:2, 23050:3, 23057:14, 23057:18, 23064:5, 23080:5, 23112:12, 23113:12, 23113:17, 23113:18, 23115:16, 23117:8, 23120:9, 23120:16, 23121:23, 23121:25, 23122:13, 23124:10, 23125:4, 23126:19, 23129:6</p> <p>See [1] - 23083:21</p> <p>seeing [2] - 23050:5, 23066:4</p> <p>seeking [2] - 23004:13, 23024:12</p> <p>seem [2] - 23104:14, 23122:5</p> <p>sees [2] - 23046:23, 23074:10</p> <p>self [5] - 23021:18, 23060:4, 23070:10, 23093:5, 23093:25</p> <p>self-injurious [1] - 23070:10</p> <p>sense [18] - 23037:25, 23041:19, 23050:19, 23051:3, 23060:18, 23062:1, 23073:12,</p>	<p>23076:7, 23076:19, 23076:22, 23078:7, 23083:10, 23095:20, 23101:20, 23101:21, 23106:3, 23106:9, 23119:3</p> <p>sensitive [1] - 23007:25</p> <p>sensitivity [3] - 23079:14, 23079:16, 23106:6</p> <p>sent [2] - 23020:3, 23101:16</p> <p>sentence [12] - 23015:10, 23016:9, 23016:15, 23020:21, 23020:24, 23028:4, 23042:6, 23056:1, 23058:18, 23079:18, 23094:22, 23116:3</p> <p>sentence/ administration [1] - 23042:5</p> <p>sentenced [1] - 23067:7</p> <p>sentencing [2] - 23023:22, 23042:7</p> <p>sentiment [1] - 23106:2</p> <p>separate [1] - 23067:15</p> <p>September [2] - 23019:22, 23021:11</p> <p>sequelae [2] - 23065:9, 23065:21</p> <p>Serge [2] - 23002:6, 23007:9</p> <p>serious [9] - 23060:3, 23071:20, 23077:11, 23079:20, 23086:3, 23090:15, 23093:4, 23093:24, 23110:10</p> <p>seriousness [1] - 23067:5</p> <p>served [1] - 23058:6</p> <p>serves [1] - 23109:21</p> <p>Service [6] - 23002:7, 23007:10, 23010:14, 23019:21, 23026:13, 23089:17</p> <p>service [9] - 23019:23, 23020:7, 23020:10, 23020:17, 23027:13, 23027:15, 23027:17, 23028:6, 23070:17</p> <p>Services [1] - 23016:25</p> <p>services [1] - 23058:5</p> <p>sessional [1] - 23019:9</p> <p>sessions [1] - 23084:18</p> <p>set [4] - 23012:20, 23030:25, 23048:15, 23083:1</p> <p>setting [4] - 23007:3, 23027:16, 23027:19,</p>
S				
<p>sabbatical [2] - 23013:10, 23013:19</p> <p>samples [1] - 23018:15</p> <p>Sandra [1] - 23001:4</p> <p>Saskatchewan [4] - 23000:17, 23002:4, 23005:7, 23130:4</p> <p>Saskatoon [15] - 23000:17, 23002:7, 23007:10, 23010:13, 23026:12, 23037:10, 23076:10, 23076:13, 23077:20, 23081:6, 23089:17, 23109:23, 23110:21, 23120:20, 23128:11</p> <p>satisfied [1] - 23036:13</p> <p>saw [8] - 23041:16, 23047:25, 23055:1, 23068:5, 23096:2, 23109:9, 23116:25, 23127:25</p> <p>scale [2] - 23091:25, 23106:19</p> <p>scales [4] - 23031:22, 23032:5, 23072:7, 23106:18</p> <p>scattered [1] - 23069:19</p> <p>scenario [2] - 23120:1, 23127:16</p> <p>scenarios [1] - 23100:4</p> <p>scheduled [2] - 23004:5, 23004:16</p> <p>schizoid [3] - 23048:10, 23048:23, 23107:3</p> <p>schizophrenia [3] - 23048:17, 23049:19, 23049:25</p> <p>school [1] - 23013:11</p>				



<p>23028:24 seven [2] - 23068:23, 23108:8 several [4] - 23007:16, 23050:17, 23050:21, 23083:16 severity [2] - 23056:18, 23106:17 Sex [1] - 23015:14 sexual [3] - 23017:25, 23023:18, 23099:10 share [1] - 23082:15 Sheet [1] - 23090:9 shooting [2] - 23020:1, 23027:14 short [4] - 23011:14, 23058:21, 23084:12, 23084:14 shortcomings [2] - 23007:17, 23007:21 shorthand [1] - 23130:5 shortly [3] - 23104:10, 23104:11, 23125:8 shot [1] - 23020:2 shots [1] - 23091:20 showing [4] - 23049:23, 23053:18, 23054:1, 23111:23 shown [1] - 23042:16 shows [1] - 23072:16 sic [1] - 23057:22 sick [1] - 23128:17 side [1] - 23044:8 significance [1] - 23022:12 significant [14] - 23046:18, 23051:18, 23061:21, 23062:22, 23070:4, 23070:8, 23075:13, 23076:16, 23080:23, 23085:2, 23097:13, 23115:11, 23119:4, 23126:12 significantly [4] - 23049:1, 23078:22, 23082:6, 23107:25 similarly [1] - 23044:13 Similarly [1] - 23049:12 simple [3] - 23096:10, 23096:14, 23104:14 simply [19] - 23007:13, 23012:25, 23013:25, 23018:22, 23025:21, 23033:14, 23033:20, 23043:11, 23050:8, 23056:5, 23064:6, 23071:7, 23072:11, 23076:3, 23082:9, 23091:1, 23094:4, 23095:11, 23114:23</p>	<p>simultaneous [1] - 23094:19 single [5] - 23052:15, 23052:19, 23053:2, 23053:3, 23125:14 sit [6] - 23011:6, 23011:8, 23011:16, 23017:21, 23080:13, 23102:4 site [2] - 23090:7, 23091:5 sits [1] - 23018:16 sitting [1] - 23000:15 situation [13] - 23018:12, 23029:23, 23048:21, 23069:21, 23070:19, 23109:8, 23109:17, 23111:1, 23116:22, 23118:22, 23119:23, 23121:19, 23126:14 situation-specific [1] - 23048:21 situational [1] - 23049:18 situations [3] - 23055:11, 23057:6, 23057:8 six [5] - 23065:18, 23065:19, 23103:25, 23121:20, 23124:3 skew [1] - 23032:4 skill [1] - 23130:6 skip [2] - 23013:3, 23037:1 skipped [2] - 23086:7 sleep [2] - 23050:17, 23054:23 slightly [1] - 23076:20 small [3] - 23020:8, 23077:3, 23078:16 smaller [1] - 23032:23 smell [1] - 23050:2 social [2] - 23051:18, 23062:23 sociopathic [2] - 23048:11, 23049:6 solemnity [1] - 23010:6 someone [3] - 23030:1, 23044:9, 23048:23 sometimes [2] - 23099:19, 23114:7 somewhat [3] - 23100:25, 23117:9, 23117:15 somewhere [1] - 23081:9 soon [1] - 23020:4 sorry [12] - 23031:10, 23038:12, 23043:4,</p>	<p>23048:24, 23050:2, 23052:7, 23074:11, 23100:19, 23107:16, 23126:3, 23126:17, 23126:19 Sorry [3] - 23092:11, 23102:13, 23123:1 sort [24] - 23017:2, 23017:14, 23033:21, 23039:10, 23040:2, 23041:5, 23042:18, 23042:24, 23050:18, 23058:17, 23068:23, 23070:14, 23070:16, 23074:4, 23075:6, 23079:1, 23083:11, 23084:7, 23095:21, 23106:19, 23110:21, 23113:1, 23115:3, 23120:12 sorts [13] - 23018:1, 23019:25, 23020:18, 23033:13, 23040:11, 23048:16, 23067:25, 23069:18, 23077:23, 23078:5, 23080:13, 23085:19, 23121:22 sought [2] - 23039:8, 23082:8 sources [4] - 23015:9, 23081:14, 23114:11, 23117:21 span [1] - 23062:4 speaking [20] - 23023:14, 23039:15, 23043:3, 23068:20, 23117:25, 23124:4, 23124:20, 23125:1, 23125:9, 23125:16, 23126:5, 23126:6, 23126:9, 23126:16, 23126:23, 23127:11, 23127:12, 23128:1, 23128:9, 23128:14 speaks [2] - 23021:4, 23021:6 specific [16] - 23005:22, 23008:14, 23008:24, 23025:8, 23025:12, 23026:13, 23028:2, 23035:22, 23045:17, 23048:21, 23100:25, 23101:7, 23104:23, 23105:17, 23121:7, 23124:11 specifically [9] - 23027:7, 23039:5, 23059:17, 23064:23, 23069:23, 23090:21, 23105:14, 23121:18,</p>	<p>23128:3 speculative [3] - 23079:24, 23085:22, 23106:15 spent [2] - 23072:19, 23073:21 spoken [2] - 23038:19, 23114:14 sports [1] - 23022:25 stabilizers [1] - 23054:21 Staff [2] - 23001:1, 23001:7 staff [2] - 23010:24, 23042:17 stake [1] - 23023:17 stand [5] - 23005:5, 23035:9, 23035:15, 23035:18, 23109:21 standard [3] - 23013:2, 23016:8, 23052:25 standardization [1] - 23018:15 standards [1] - 23021:9 standing [7] - 23006:16, 23007:4, 23008:21, 23009:7, 23010:16, 23051:16, 23097:8 Star [1] - 23022:8 start [5] - 23005:20, 23016:1, 23037:3, 23039:7, 23073:20 started [2] - 23014:23, 23015:1 starting [2] - 23012:10, 23052:4 startle [1] - 23062:13 state [1] - 23005:23 statement [5] - 23109:4, 23109:7, 23119:8, 23124:19, 23128:16 statements [1] - 23100:17 States [1] - 23090:2 statistical [1] - 23031:15 status [2] - 23097:17, 23097:20 staying [1] - 23062:9 step [2] - 23098:4, 23118:2 still [7] - 23029:16, 23067:22, 23096:2, 23107:5, 23119:3, 23119:24, 23123:16 stimuli [7] - 23061:7, 23063:6, 23108:3, 23108:11, 23108:22,</p>	<p>23110:7, 23110:18 stimulus [1] - 23041:11 stipulated [1] - 23009:22 story [5] - 23044:9, 23098:7, 23098:9, 23098:10, 23098:24 strategies [2] - 23095:13, 23110:24 strengthen [1] - 23034:13 Stress [6] - 23058:22, 23059:21, 23090:1, 23090:8, 23090:10, 23092:23 stress [39] - 23024:23, 23026:19, 23027:5, 23028:9, 23028:18, 23029:5, 23030:1, 23030:24, 23031:8, 23031:11, 23032:6, 23032:22, 23033:2, 23033:24, 23034:22, 23035:5, 23035:25, 23036:17, 23041:5, 23041:8, 23055:2, 23055:4, 23055:17, 23058:15, 23070:1, 23070:5, 23070:8, 23071:8, 23085:25, 23090:4, 23097:14, 23097:19, 23105:23, 23106:1, 23106:5, 23107:3, 23107:14, 23107:23, 23117:12 stressful [4] - 23055:11, 23057:6, 23082:23, 23126:14 strictly [1] - 23008:23 strikes [1] - 23080:20 strong [2] - 23041:7, 23049:13 strongly [1] - 23072:9 struggle [1] - 23069:18 student [1] - 23022:4 studies [5] - 23013:11, 23014:4, 23014:15, 23092:16, 23092:19 Studies [1] - 23014:10 study [3] - 23092:1, 23092:7, 23096:9 sub [1] - 23108:9 sub-criteria [1] - 23108:9 subject [14] - 23008:14, 23024:20, 23025:9, 23025:18, 23026:15, 23026:18, 23026:19, 23027:3, 23027:4, 23036:18, 23076:2,</p>
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<p>23081:24, 23087:21, 23111:19 subjected [2] - 23029:7, 23031:5 subjective [2] - 23106:11, 23106:20 subjects [1] - 23033:9 submission [1] - 23008:13 submissions [1] - 23036:11 submitted [3] - 23006:19, 23103:1, 23111:12 subsequent [2] - 23104:17, 23104:20 substance [3] - 23048:18, 23050:9, 23050:25 substantial [4] - 23116:25, 23117:4, 23117:8, 23118:3 suffer [3] - 23027:5, 23067:12, 23107:12 suffering [7] - 23028:8, 23030:1, 23034:21, 23035:5, 23073:7, 23105:23, 23106:1 suffers [1] - 23117:13 suggest [6] - 23056:4, 23068:22, 23075:14, 23111:25, 23119:17, 23127:7 suggested [3] - 23055:3, 23055:18, 23075:22 suggesting [3] - 23053:23, 23105:21, 23111:16 suggestion [5] - 23077:2, 23079:15, 23082:17, 23107:2, 23107:25 suggestions [1] - 23082:10 suggests [2] - 23029:10, 23033:18 suicide [4] - 23052:7, 23052:8, 23056:2, 23089:7 suit [1] - 23081:20 sum [1] - 23113:1 summarized [1] - 23072:11 summarizes [1] - 23010:11 summary [2] - 23085:23, 23115:13 superficial [1] - 23049:8</p>	<p>supervisor [1] - 23052:10 supervisor's [1] - 23052:13 support [3] - 23007:18, 23097:20, 23098:9 Support [1] - 23001:7 supports [1] - 23059:6 suppose [3] - 23012:6, 23017:15, 23018:3 Supreme [8] - 23023:9, 23081:18, 23095:24, 23101:3, 23101:22, 23104:11, 23124:9, 23124:13 surgery [1] - 23056:8 surprise [1] - 23041:1 surprised [2] - 23084:9, 23099:21 surroundings [1] - 23050:23 suspect [1] - 23077:9 swallowing [2] - 23056:7, 23056:17 swayed [1] - 23045:22 swing [1] - 23046:1 sworn [1] - 23011:22 Sworn [1] - 23003:3 symbolize [2] - 23060:25, 23061:4 sympathy [1] - 23056:24 symptom [2] - 23041:7, 23069:25 symptomology [1] - 23043:16 symptoms [6] - 23034:10, 23051:12, 23062:6, 23064:9, 23071:25, 23098:21 syndrome [1] - 23036:17 system [3] - 23010:25, 23039:21, 23054:3</p>	<p>23100:23, 23100:24, 23127:25, 23128:1 task [1] - 23076:17 taste [1] - 23050:2 Tdr[2] - 23002:5, 23007:8 teaching [5] - 23019:3, 23019:5, 23019:9, 23019:11, 23019:14 technical [1] - 23045:14 technically [1] - 23051:14 Technician[1] - 23001:12 telephone [2] - 23038:2, 23121:12 tend [3] - 23048:9, 23050:15, 23078:6 tends [3] - 23046:22, 23048:24, 23048:25 tentative [1] - 23038:24 term [6] - 23017:24, 23020:24, 23022:12, 23046:21, 23047:12, 23074:5 terms [15] - 23018:16, 23021:17, 23023:13, 23047:24, 23051:3, 23057:1, 23064:8, 23072:11, 23077:19, 23078:14, 23083:23, 23085:7, 23106:16, 23124:8, 23124:14 terrific [1] - 23089:2 territory [1] - 23028:24 terrorist [1] - 23090:15 test [8] - 23031:16, 23034:12, 23034:14, 23038:22, 23042:12, 23047:4, 23075:6, 23075:24 testified [4] - 23017:5, 23026:25, 23115:20, 23124:13 testify [6] - 23035:1, 23071:1, 23075:1, 23082:17, 23099:15, 23118:9 testifying [5] - 23070:15, 23103:20, 23118:7, 23118:12, 23124:25 testimony [13] - 23008:12, 23008:14, 23024:16, 23025:6, 23025:12, 23027:3, 23027:9, 23034:20, 23081:16, 23101:1, 23101:2, 23105:12, 23118:6</p>	<p>Testimony[1] - 23000:14 testing [12] - 23015:7, 23018:11, 23018:12, 23020:6, 23030:19, 23031:5, 23031:17, 23032:16, 23033:13, 23034:8, 23038:20, 23072:6 tests [12] - 23018:14, 23018:15, 23018:19, 23018:22, 23031:1, 23031:21, 23032:5, 23032:17, 23032:19, 23034:2, 23034:3, 23113:25 Texaco[1] - 23076:15 theft [1] - 23023:20 themselves [5] - 23017:15, 23023:4, 23023:12, 23031:25, 23099:22 therapeutic [5] - 23085:1, 23098:8, 23099:19, 23103:14, 23115:9 therapist [4] - 23004:20, 23058:6, 23085:3, 23098:11 therapy [4] - 23053:13, 23053:25, 23099:2, 23099:4 thereafter [2] - 23105:16, 23125:8 thereby [1] - 23053:23 therefore [14] - 23033:5, 23039:25, 23040:8, 23040:20, 23053:18, 23068:1, 23070:17, 23077:2, 23079:18, 23082:5, 23084:13, 23100:1, 23112:14, 23116:10 thinking [4] - 23044:25, 23084:5, 23084:7, 23104:15 thinks [1] - 23082:22 third [5] - 23042:9, 23061:6, 23079:6, 23081:13, 23114:5 Thoen[1] - 23037:14 thoughts [2] - 23060:13, 23061:12 thousand [1] - 23094:12 thousands [1] - 23081:23 threat [11] - 23060:4, 23063:2, 23066:5, 23066:7, 23066:13,</p>	<p>23091:13, 23093:4, 23093:11, 23093:13, 23093:24, 23095:1 threatened [5] - 23060:3, 23083:25, 23091:22, 23093:3, 23093:23 threatening [5] - 23041:6, 23041:11, 23064:25, 23088:11, 23090:13 three [15] - 23015:23, 23019:5, 23019:9, 23023:10, 23027:11, 23061:10, 23068:12, 23068:19, 23080:5, 23084:8, 23085:17, 23108:7, 23109:20, 23122:2, 23122:3 throwing [1] - 23126:11 Thursday[2] - 23005:13, 23006:13 tick [1] - 23047:22 title [2] - 23021:6, 23119:18 today [7] - 23004:5, 23004:22, 23081:2, 23111:11, 23115:20, 23118:6, 23129:7 today's [1] - 23111:5 tolerate [1] - 23057:6 tomorrow [2] - 23004:6, 23129:10 took [4] - 23013:10, 23013:19, 23014:18, 23076:9 top [4] - 23019:13, 23021:2, 23055:6, 23077:14 topic [1] - 23064:7 Toronto[3] - 23014:11, 23022:8, 23123:16 tor [1] - 23027:25 torture [1] - 23097:2 tortured [1] - 23065:17 touch [2] - 23025:12, 23039:7 touched [1] - 23020:12 towards [3] - 23019:1, 23033:5, 23042:17 town [2] - 23078:20, 23079:8 traditional [1] - 23020:14 trained [1] - 23047:14 transcribed [1] - 23121:14 Transcript[2] - 23000:12, 23004:1 transcript [4] - 23101:1,</p>
T				
	<p>tainted [1] - 23114:8 talks [5] - 23015:4, 23057:20, 23092:25, 23108:10, 23125:6 Tallis[4] - 23002:14, 23007:8, 23011:12, 23011:13 tangential [1] - 23127:21 tangentially [1] - 23063:9 tape [5] - 23100:19,</p>			



23103:5, 23103:10, 23109:22 transcription [1] - 23130:5 transcripts [4] - 23042:7, 23100:12, 23120:5, 23120:19 trauma [11] - 23061:8, 23061:10, 23061:14, 23061:17, 23061:19, 23062:7, 23098:10, 23108:4, 23108:6, 23108:23 traumatic [60] - 23024:22, 23026:19, 23027:5, 23028:8, 23028:18, 23029:5, 23030:1, 23030:24, 23031:7, 23031:10, 23032:6, 23032:22, 23033:2, 23033:24, 23034:21, 23035:5, 23035:25, 23036:17, 23041:4, 23041:8, 23058:14, 23059:23, 23060:8, 23060:17, 23061:1, 23061:5, 23064:22, 23066:4, 23070:1, 23070:3, 23071:8, 23085:24, 23089:22, 23090:4, 23090:21, 23090:25, 23092:2, 23092:8, 23092:17, 23093:12, 23093:15, 23094:14, 23094:17, 23094:25, 23095:8, 23095:11, 23096:10, 23096:15, 23097:1, 23097:14, 23097:18, 23099:9, 23105:23, 23106:1, 23106:5, 23107:3, 23107:14, 23107:22, 23117:12, 23128:13 travel [1] - 23081:4 treatment [11] - 23015:13, 23015:17, 23017:25, 23020:5, 23038:7, 23042:21, 23052:24, 23058:7, 23099:2, 23122:8, 23124:12 Treatment [1] - 23015:15 trend [1] - 23033:5 trial [5] - 23035:9, 23035:15, 23035:18, 23076:7, 23088:25 tribunals [1] - 23027:20 trigger [5] - 23077:24,	23086:4, 23089:1, 23091:1, 23097:13 triggered [1] - 23125:2 triggering [5] - 23077:16, 23089:3, 23089:5, 23092:17, 23097:18 triggers [1] - 23084:1 trips [1] - 23120:19 true [1] - 23130:5 trust [2] - 23023:20, 23039:25 trusts [1] - 23127:19 try [4] - 23038:10, 23067:13, 23071:12, 23113:1 trying [4] - 23072:10, 23072:19, 23110:6, 23125:10 turn [15] - 23014:14, 23017:13, 23018:21, 23019:13, 23021:2, 23021:22, 23022:10, 23023:2, 23023:5, 23023:24, 23024:7, 23037:2, 23054:19, 23071:10, 23077:13 turned [1] - 23051:13 two [18] - 23005:15, 23015:9, 23016:21, 23017:18, 23028:17, 23028:20, 23051:13, 23056:21, 23062:8, 23062:14, 23063:11, 23072:6, 23085:21, 23093:19, 23118:6, 23120:19, 23125:23, 23127:9 two-part [1] - 23093:19 type [9] - 23005:17, 23027:7, 23041:19, 23042:25, 23049:6, 23078:9, 23078:15, 23096:17 types [1] - 23127:9 typically [7] - 23015:6, 23018:10, 23020:3, 23041:6, 23042:4, 23048:13, 23052:20	uncertainty [1] - 23103:22 uncomfortable [2] - 23069:21, 23118:1 undeniably [1] - 23117:19 Under [2] - 23013:7, 23048:3 under [14] - 23008:17, 23015:3, 23015:22, 23017:4, 23019:17, 23048:22, 23051:8, 23053:1, 23055:17, 23076:25, 23081:23, 23084:11, 23091:20, 23094:10 undergraduate [1] - 23014:15 understatement [1] - 23046:9 understood [2] - 23100:7, 23100:8 undertake [1] - 23016:14 undertaken [1] - 23058:19 undertaking [1] - 23072:2 unfit [1] - 23071:21 unfortunate [1] - 23073:17 unfortunately [1] - 23030:21 unique [1] - 23065:11 United [1] - 23090:2 universal [2] - 23098:22, 23110:10 University [7] - 23013:9, 23014:7, 23014:11, 23014:13, 23014:16, 23019:8, 23022:4 unless [5] - 23044:18, 23047:18, 23072:18, 23086:21, 23094:5 unlikely [1] - 23048:20 unpredictability [1] - 23055:13 unpredictable [3] - 23055:20, 23057:9, 23070:9 unreasonable [1] - 23007:23 unrelated [1] - 23104:13 unspecified [1] - 23048:12 untrue [1] - 23050:8 Up [1] - 23015:20 up [31] - 23012:21,	23019:2, 23019:16, 23020:5, 23020:19, 23024:8, 23028:24, 23035:8, 23036:23, 23038:11, 23042:16, 23044:8, 23048:15, 23050:16, 23063:20, 23065:24, 23067:1, 23067:21, 23068:1, 23073:14, 23074:23, 23098:1, 23101:8, 23110:4, 23110:16, 23113:1, 23116:1, 23124:5, 23124:10, 23124:14, 23126:17 useful [5] - 23046:14, 23104:3, 23115:13, 23120:9, 23122:18 useless [1] - 23030:11 uses [1] - 23045:8 utility [1] - 23032:7	23100:24, 23111:18 videotape [3] - 23063:15, 23072:16, 23081:1 videotaped [1] - 23083:19 videotaping [2] - 23083:9 view [5] - 23043:15, 23074:6, 23075:5, 23080:19, 23128:5 viewed [3] - 23056:12, 23058:3, 23063:15 views [1] - 23088:23 violations [1] - 23042:15 violence [2] - 23046:19, 23097:3 violent [1] - 23090:16 Virginia [3] - 23014:6, 23014:8, 23019:12 virtue [1] - 23030:13 vitae [1] - 23012:4 viva [1] - 23004:18 vivid [1] - 23054:15 vocational [1] - 23018:24 voce [1] - 23004:18 voices [1] - 23050:4 volume [3] - 23037:12, 23084:3, 23121:2 Volume [1] - 23000:22
			V	
				vague [1] - 23069:19 validity [2] - 23031:22, 23072:7 value [5] - 23030:14, 23031:9, 23034:4, 23034:6, 23072:6 Vancouver [5] - 23038:17, 23038:25, 23081:5, 23082:18, 23112:1 variability [1] - 23033:9 varies [1] - 23043:9 various [8] - 23018:18, 23022:9, 23048:8, 23066:15, 23081:16, 23081:20, 23082:2, 23106:18 varying [1] - 23080:7 vernacular [2] - 23032:11, 23070:5 version [6] - 23043:18, 23044:11, 23044:15, 23047:6, 23093:7, 23093:8 versus [3] - 23126:5, 23126:24, 23127:22 veterans [1] - 23090:5 viable [1] - 23052:19 victim [1] - 23043:22 victims [2] - 23099:7, 23099:10 video [9] - 23008:7, 23009:5, 23068:5, 23068:11, 23082:9, 23084:15, 23100:23,
				W
				wake [1] - 23042:16 wake-up [1] - 23042:16 walk [2] - 23044:25, 23045:2 walking [1] - 23044:23 wants [5] - 23025:24, 23044:18, 23074:4, 23074:14, 23125:4 watch [1] - 23063:23 ways [3] - 23047:10, 23060:10, 23080:4 weaken [1] - 23034:14 weapon [3] - 23020:2, 23091:19, 23091:21 web [2] - 23090:7, 23091:5 week [3] - 23011:8, 23011:12, 23121:5 weekend [1] - 23085:10 weeks [2] - 23051:13, 23085:21 weight [2] - 23030:4, 23036:20 welcome [1] - 23010:18
	U			
	Ullrich [1] - 23008:10 ultimately [2] - 23099:17, 23106:18 Umm [1] - 23100:19 unable [4] - 23030:10, 23061:25, 23116:10, 23122:20			



<p>well-being [2] - 23066:6 well-crafted [1] - 23079:18 whatsoever [1] - 23106:25 whereas [1] - 23078:8 whole [1] - 23079:17 wide [3] - 23022:7, 23023:15, 23039:18 Wilde[1] - 23001:11 willingness [1] - 23035:12 Wilson[4] - 23002:6, 23089:12, 23101:9, 23129:8 wire [2] - 23056:7, 23056:17 wise [1] - 23043:25 wish [4] - 23006:10, 23008:25, 23010:17, 23089:12 wished [1] - 23109:4 witness [12] - 23009:4, 23011:7, 23024:11, 23024:13, 23024:25, 23025:8, 23025:9, 23064:22, 23086:17, 23086:25, 23087:19, 23087:23 witness' [3] - 23024:15, 23025:19, 23026:2 witnessed [2] - 23059:25, 23093:21 witnesses [3] - 23030:22, 23099:12, 23099:14 witnessing [2] - 23090:12, 23093:1 Wolch [44] - 23002:2, 23003:4, 23003:6, 23004:7, 23004:11, 23004:16, 23004:25, 23005:23, 23006:3, 23010:20, 23011:3, 23011:19, 23011:20, 23012:2, 23012:8, 23025:7, 23025:17, 23025:23, 23026:23, 23029:19, 23036:10, 23036:12, 23036:21, 23064:14, 23064:19, 23065:4, 23066:25, 23069:12, 23071:9, 23074:18, 23074:22, 23086:16, 23086:21, 23087:20, 23088:3, 23088:6, 23104:2, 23112:10, 23116:6, 23121:15, 23124:23, 23127:4, 23127:6,</p>	<p>23129:9 Wolch's [1] - 23108:12 wonder [2] - 23064:25, 23111:2 wondering [2] - 23120:4, 23121:25 word [3] - 23046:7, 23118:13, 23127:23 wording [1] - 23009:3 words [5] - 23030:19, 23075:11, 23080:12, 23116:25, 23119:16 workshop [1] - 23017:14 workshops [2] - 23021:6, 23021:24 world [4] - 23113:11, 23113:21, 23114:3, 23122:10 worry [1] - 23069:24 worthy [1] - 23022:18 write [1] - 23082:22 writing [8] - 23017:1, 23022:7, 23039:10, 23082:8, 23082:20, 23083:22, 23100:20, 23100:22 written [13] - 23004:14, 23024:2, 23026:25, 23073:18, 23080:8, 23080:9, 23080:17, 23083:13, 23083:14, 23084:11, 23084:13, 23109:4, 23109:6 wrongful [10] - 23063:25, 23064:2, 23066:14, 23067:23, 23076:21, 23081:17, 23092:7, 23092:10, 23105:20, 23119:19 Wrongful[1] - 23000:3 wrongfully [3] - 23068:17, 23107:1, 23108:19 wrote [1] - 23068:6</p>	<p>23065:22, 23072:14, 23072:19, 23072:21, 23073:21, 23094:20, 23121:21, 23125:6 yield [1] - 23052:12 York[1] - 23022:7 yourself [5] - 23029:8, 23037:2, 23114:14, 23115:20, 23126:15</p>
	<p>Y</p>	
	<p>year [8] - 23013:11, 23015:21, 23019:6, 23021:19, 23095:12, 23095:16, 23103:16, 23115:11 years [19] - 23013:12, 23017:22, 23019:5, 23019:9, 23019:20, 23032:14, 23038:7, 23044:3, 23051:9, 23054:25, 23055:23,</p>	

