

In the matter of an arbitration  
under the Rules of Arbitration of  
the International Centre for  
Settlement of Investment Disputes

Case No. ARB/14/22

ICC Hearing Centre  
112, avenue Kléber  
Paris, 75016  
France

Day 2 Tuesday, 27th March 2018  
Hearing on Forensic Expert Evidence

Before:

PROFESSOR GABRIELLE KAUFMANN-KOHLER  
PROFESSOR ALBERT JAN VAN DEN BERG  
PROFESSOR PIERRE MAYER

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(1) BSG RESOURCES LIMITED  
(2) BSG RESOURCES (GUINEA) LIMITED  
(3) BSG RESOURCES (GUINEA) SÀRL

Claimants

-v-

THE REPUBLIC OF GUINEA

Respondent

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JAMES LIBSON, KAREL DAELE, KATY COLTON, JENNY HINDLEY and  
MOHAMMED NAZEER, of Mishcon de Reya LLP, and DAVID BARNETT,  
of Barnea & Co, appeared on behalf of the Claimants.

MICHAEL OSTROVE, SCOTT HORTON and THÉOBALD NAUD, of  
DLA Piper, and LAURENT JAEGER, YANN SCHNELLER and AGNÈS  
BIZARD, of Orrick, appeared on behalf of the Respondent.

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Secretary to the Tribunal: BENJAMIN GAREL  
Assistant to the Tribunal: MAGNUS JESKO LANGER

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ALSO APPEARING

FOR CLAIMANTS

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FOR RESPONDENT

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MR ROBERT RADLEY (called) .....	2
Objection to Mr Radley's presentation by .....	4
Respondent	
Submissions by Mr Ostrove .....	4
Submissions by Mr Libson .....	7
Ruling .....	8
Presentation by MR RADLEY .....	9
Tribunal questions .....	20
Cross-examination by MR OSTROVE .....	37
Tribunal questions .....	39
Re-direct examination by MR LIBSON .....	61
Questions from THE TRIBUNAL .....	64
Further cross-examination by MR OSTROVE .....	89
Questions from THE TRIBUNAL .....	90
DR VALERY AGINSKY (called) .....	93
MR RICHARD PICCIOCHI (called) .....	93
Presentation by MR PICCIOCHI .....	95
Tribunal questions .....	105
Cross-examination by MR LIBSON .....	118
Re-direct examination by MR NAUD .....	129
Questions from THE TRIBUNAL .....	131
Further cross-examination by MR LIBSON .....	142
Concluding remarks of the .....	146
Tribunal-appointed experts	
By Mr LaPorte .....	146
By Mr Welch .....	163

By Mr LaPorte .....	171
Questions from THE TRIBUNAL .....	172
Closing statement on behalf of Claimants .....	173
By Mr Libson .....	173
By Mr Daele .....	179
Questions from THE TRIBUNAL .....	200
Closing statement on behalf of Respondent .....	204
By Mr Jaeger .....	204
By Mr Ostrove .....	219
Tribunal questions .....	220
Discussion re procedural matters .....	228

09:00 1 Tuesday, 27th March 2018  
 2 (9.03 am)  
 3 THE PRESIDENT: Good morning to everyone. I hope you had at  
 4 least some rest, and you still have some energy for  
 5 Day 2 that we are starting now. We will hear now  
 6 Mr Radley.  
 7 Is there anything that we should raise in between?  
 8 We have received a number of documents from the  
 9 Claimants now. I understand these are the documents  
 10 that Mr Radley will use for his presentation; is that  
 11 right?  
 12 MR LIBSON: That's right, madam.  
 13 THE PRESIDENT: Also the Secretary has circulated the  
 14 PowerPoint slides that were retained yesterday, and  
 15 I understand that the Respondent has provided a new  
 16 version that includes the old numbers from yesterday, so  
 17 we can refer to the same numbers and don't get confused  
 18 as to the numbers used yesterday in the transcript. Is  
 19 that correct?  
 20 MR OSTROVE: (In English) That's correct with respect to  
 21 Mr Welch's slides, but we have not done that with  
 22 respect to Mr LaPorte's slides.  
 23 MR GAREL: I've done that with Mr LaPorte, and the printed  
 24 version you have has the numbers as well.  
 25 THE PRESIDENT: Thank you very much. Good. If there's

Page 1

09:06 1 MR RADLEY: Just to explain, I will be doing the PowerPoint.  
 2 If there are references to the report, Mr Nazeer will  
 3 have the report to hand, and hopefully that will -- I'm  
 4 aware we are a bit short of time.  
 5 THE PRESIDENT: You are aware, Mr Radley, that you have  
 6 45 minutes, right, for your presentation?  
 7 MR RADLEY: Yes. (Pause)  
 8 MR OSTROVE: As a matter of housekeeping, I see  
 9 a presentation is going up on the screen; is that  
 10 correct?  
 11 MR RADLEY: Yes.  
 12 MR OSTROVE: We received this morning some addended versions  
 13 of the Tribunal experts' slides. Have we received  
 14 a copy of the presentation that's being put up?  
 15 MR RADLEY: You should have, yes.  
 16 PROFESSOR VAN DEN BERG: In the back.  
 17 MR OSTROVE: These slides are, but the presentation that is  
 18 going up there?  
 19 MR RADLEY: That is the presentation.  
 20 THE PRESIDENT: So are the next slides what we have here, or  
 21 is this on the screen something different?  
 22 MR OSTROVE: Could you just flip through the pages of the  
 23 presentation so we can see what's coming?  
 24 MR RADLEY: Right.  
 25 MR OSTROVE: Okay, so this is obviously not in conformity

Page 3

09:05 1 nothing further to be raised at the outset, we can start  
 2 with Mr Radley's examination.  
 3 (9.05 am)  
 4 MR ROBERT RADLEY (called)  
 5 THE PRESIDENT: For the record, sir, you are Robert Radley?  
 6 MR RADLEY: I am.  
 7 THE PRESIDENT: Of Radley Forensic Document Laboratory  
 8 Limited?  
 9 MR RADLEY: That's correct.  
 10 THE PRESIDENT: You have provided comments to the Tribunal  
 11 experts' report on 12th March 2018?  
 12 MR RADLEY: Yes, I have.  
 13 THE PRESIDENT: You are heard now as an expert witness. As  
 14 an expert witness, you are under a duty to make only  
 15 such statements as are in accordance with your sincere  
 16 belief. Could you please read the expert declaration  
 17 that the Secretary will indicate you have.  
 18 MR RADLEY: I solemnly declare upon my honour and conscience  
 19 that my statement will be in accordance with my sincere  
 20 belief.  
 21 THE PRESIDENT: Thank you. So now we can proceed. Can the  
 22 gentleman next to the expert identify himself?  
 23 MR NAZEER: I am Mohammed Nazeer from Mishcon. I will be  
 24 assisting Mr Radley with presenting his presentation.  
 25 THE PRESIDENT: Thank you.

Page 2

09:08 1 with paragraph 20 of Procedural Order 17. So we would  
 2 request either that we receive copies of this --  
 3 MR RADLEY: You should have. There were 15 copies made.  
 4 MR OSTROVE: We haven't received them.  
 5 THE PRESIDENT: Maybe the Claimants can check? It is  
 6 helpful to us to have other paper copies so we can make  
 7 our notes.  
 8 MR LIBSON: Yes. We did send it over this morning.  
 9 MR OSTROVE: I'm sorry, you provided hard copies this  
 10 morning?  
 11 MR LIBSON: Yes.  
 12 MR OSTROVE: We received all the ...  
 13 THE PRESIDENT: We received this (indicating), which ...  
 14 (Pause) Here they come. (Handed)  
 15 So now we are ready to start, Mr Radley.  
 16 MR OSTROVE: Except, Madam President, we have -- I don't  
 17 know if it's a serious concern. I hope that we can  
 18 address it very quickly. We'll do it in English to  
 19 speed things up, if you like. I'll just make sure  
 20 that's okay with my client. (Pause)  
 21 Thank you. I just wanted to get client clearance to  
 22 raise this in English. Thank you, Mr Touré.  
 23 Respondents (sic) seem to be either operating under  
 24 a double standard or there is just a great deal of  
 25 confusion about the terms of PO17.

Page 4

09:11 1 THE PRESIDENT: Claimants.  
 2 MR OSTROVE: I'm sorry, we feel so much like Claimants in  
 3 a corruption case here that we keep making that mistake.  
 4 I'm very sorry about that.  
 5 BSGR made objections yesterday and the night before  
 6 last to the submission of presentation slides by the  
 7 Tribunal's experts, and argued that those slides, the  
 8 presentation slides and their text, should not be  
 9 included in the record. And in fact those were all  
 10 excluded, other than slides which were directly  
 11 mentioned by the Tribunal experts in response to  
 12 questions, as the Tribunal will recall from its  
 13 position.  
 14 What we see on the very first slides here are  
 15 essentially precisely what the Tribunal experts were  
 16 doing, which is indicating quotes from the Tribunal  
 17 experts' reports with comments on them.  
 18 We actually would ordinarily not have any objection  
 19 to this; we think this is perfectly in conformance with  
 20 paragraph 20 of PO17. And we also think that the  
 21 demonstrative exhibits that were handed out this  
 22 morning, in which additional arrows and some indications  
 23 have been made on images from the record, are in  
 24 conformity with paragraph 19 of PO17.  
 25 But we find it troubling that Claimants should have

Page 5

09:13 1 been able, yesterday and the evening before, to raise  
 2 an objection that attempted substantially to derail the  
 3 procedure, and cost us all rather a bit of sleep, for  
 4 the purposes of trying to prevent the Tribunal experts  
 5 from making their presentations as they had prepared to  
 6 do so, and yet today they come in with essentially the  
 7 same procedure.  
 8 So we think the procedure is fine and in conformity  
 9 with the Tribunal's orders, but we are stuck in  
 10 a situation where the Tribunal's experts were not  
 11 allowed to follow that procedure, based on the  
 12 Claimants' objection.  
 13 So I'm just at a loss as to whether, for equality of  
 14 arms, we should ask the Tribunal to reject these things  
 15 and not let Mr Radley refer to them unless they come up  
 16 in a question that is posed to him, or whether we should  
 17 simply ask Claimants to withdraw their objections to the  
 18 Tribunal experts' materials and let them all in the  
 19 record. We can't unscramble the omelette. Yesterday  
 20 the Tribunal experts had to redo their entire  
 21 presentation, at some prejudice to their ability to  
 22 communicate the points they wanted to make.  
 23 I'm sorry I'm not making a clear application,  
 24 because it's a little bit difficult to undo the damage  
 25 done yesterday. So I think that all we would suggest,

Page 6

09:14 1 in the interest of efficiency, is that we proceed with  
 2 these items, but that the Tribunal note our objection to  
 3 the improper procedural positions taken by Claimants.  
 4 THE PRESIDENT: Let me give the floor to the Claimants.  
 5 MR LIBSON: Two points only.  
 6 The first point is that there's a fundamental  
 7 difference between the nature of the presentation that  
 8 Mr Radley wants to make today and the nature of the  
 9 content and material that was in the Tribunal experts'  
 10 presentations. None of this material that is contained  
 11 in this presentation is new material, in answer to what  
 12 was outwith the material that was already on the record.  
 13 This is already on the record and it is just a summary  
 14 of the talking points that Mr Radley is going to talk  
 15 to.  
 16 There was no prejudice suffered yesterday because  
 17 actually, if there was any prejudice, it was prejudice  
 18 to the Claimants yesterday, because Mr Ostrove had the  
 19 script by which he could introduce all of the evidence  
 20 that the Tribunal-appointed experts wanted to address  
 21 and it was introduced. There was no prejudice  
 22 whatsoever. There was prejudice in that new material  
 23 was introduced yesterday that oughtn't to have been  
 24 introduced, and Mr Radley now has to deal with it.  
 25 He's actually dealing with it by way of reference to

Page 7

09:16 1 material that's already on the record. It's a very  
 2 short presentation, leading up to pictorial  
 3 presentations that are already on the record, and there  
 4 is no inequality of arms. And if there is an inequality  
 5 of arms, it is just evening the playing ground over from  
 6 what happened yesterday.  
 7 (The members of the Tribunal confer)  
 8 THE PRESIDENT: At this stage the Tribunal notes the  
 9 objections or the alternatives of objections that the  
 10 Respondent has raised, and it understands that it can  
 11 proceed at this stage, but the objection is noted and  
 12 the Claimants' position is noted as well.  
 13 MR OSTROVE: Thank you, Madam President.  
 14 MR RADLEY: In fact I believe that there is very little in  
 15 this presentation that is not already in my report,  
 16 because I've had to revamp everything last night. As  
 17 I say, a lot of the illustrations are from the report.  
 18 There is a volume of other information, two or three  
 19 papers that we have concerning penmanship ability, in  
 20 response to Mr Welch's comment about the inability of  
 21 anybody to copy signatures of this nature. And the  
 22 other points that I will be raising --  
 23 THE PRESIDENT: Sorry, I just have a practical thought.  
 24 Have we provided the Tribunal experts with these  
 25 additional materials? Because they should be able to

Page 8

09:18 1 follow what is being done.  
 2 You have copies of the presentation and of these  
 3 additional materials?  
 4 MR WELCH: Not the additional material. (Handed)  
 5 THE PRESIDENT: So now the Tribunal-appointed experts do  
 6 receive copies of the additional materials and they also  
 7 have Mr Radley's presentation, and we can proceed now.  
 8 MR RADLEY: In fact, at the back of the paper exhibits there  
 9 are a number of the slides in fact that Mr Welch  
 10 presented yesterday.  
 11 (9.19 am)  
 12 Presentation by MR RADLEY  
 13 MR RADLEY: It will be noted that my report starts by saying  
 14 that what I thought was very significant in the report  
 15 of the Tribunal experts was the absence of certain  
 16 information. Throughout the report -- and we've already  
 17 heard quite a lot on this, so I'll skip through it as  
 18 quickly as possible -- there is the repeated phrase  
 19 "there is no evidence of fraudulent production", or  
 20 words to that effect. There are over 60 examples of  
 21 this within the report. There is no consideration of  
 22 possible alternatives stated in the report, and no  
 23 discussion of why the alternative is not preferred; no  
 24 mention of what the basis of the choice of wording is,  
 25 "no evidence of fraudulent production", or the

Page 9

09:20 1 alternative is "there is no evidence of authenticity".  
 2 We heard from Mr LaPorte at length on the points of  
 3 alternatives, and Mr Riley (sic) also referred to the  
 4 alternatives. Frankly, I could not follow --  
 5 THE PRESIDENT: Mr Welch. Mr Riley is not here.  
 6 MR RADLEY: I beg your pardon.  
 7 So there has been the use of, as I said in my  
 8 earlier report, one side of the coin. Everything is  
 9 directed to "no evidence of fraudulent production". As  
 10 I say, I could not understand really the logic of the  
 11 points that were being put forward by the experts as to  
 12 why there was no statement within the report of a most  
 13 obvious alternative. Mr LaPorte said there are various  
 14 alternatives in certain situations, and I would agree  
 15 with that. But the whole basis of their report is "no  
 16 evidence of fraudulent production".  
 17 My query and my concern is: why was this adopted, as  
 18 opposed to the opposite view, "there is no evidence to  
 19 show authenticity" or "there is no evidence to show the  
 20 dating of the documents is correct". That is a very  
 21 simple point to put in a report of this nature, and to  
 22 my mind it is very significant that we have this  
 23 repeated phrase on so many occasions.  
 24 In my view the evidence is indeterminate or  
 25 inconclusive, and in the report it should, in my view,

Page 10

09:22 1 have been stated as such. Not to do so, to proceed on  
 2 the basis of everything having "no evidence of  
 3 fraudulent production", is not a balanced view. The  
 4 very large number of instances -- and Mr LaPorte  
 5 emphasised this -- the very large number of instances  
 6 where this comes up, it seems to me that this could form  
 7 a bias.  
 8 "Bias" in forensic terms is the buzzword at the  
 9 moment, cognitive bias or contextual bias. Contextual  
 10 bias is where you repeatedly see something, and that  
 11 leads you in one particular direction. I would suggest  
 12 in this case there is possibly a totally unconscious  
 13 bias that it is moving into "no evidence of fraudulent  
 14 production", and in my view that to the reader tends to  
 15 suggest authenticity, whereas in fact, in my opinion,  
 16 the evidence is indeterminate, inconclusive.  
 17 Mr [Welch] and Mr LaPorte undertook a huge amount of  
 18 work, and I have no hesitation in saying they were  
 19 absolutely correct in carrying out all the examinations  
 20 detailed. However, the very large number of "no  
 21 evidence" citations should not mislead the reader into  
 22 considering that the vast accumulation of such phrases  
 23 represents an accumulation of evidence indicating  
 24 authenticity. It does not. And indeed Mr LaPorte  
 25 indicated that he could not say they were genuine.

Page 11

09:25 1 Certainly there is no evidence demonstrating  
 2 authenticity from the findings given.  
 3 In this case there are no techniques available to  
 4 show when a document was created or for what intention,  
 5 and it goes back to the argument within my report that  
 6 you may recall of looking for the elephant in the  
 7 garden: your eyes are not capable of seeing the ants,  
 8 and therefore it's not an appropriate phrase to say  
 9 there is no evidence of ants in the garden unless you  
 10 qualify it by putting the other side: but I cannot  
 11 exclude the possibility that there are, but I just can't  
 12 detect it.  
 13 My report also goes into quite a number of  
 14 instances, and I won't make much reference to them, of  
 15 the "equally likely genuine/forged" proposition. In  
 16 other words, findings are equally likely to be found in  
 17 both a genuine document and a fraudulently produced  
 18 document.  
 19 Whilst the pursuance of points raised in the report  
 20 are fully and properly undertaken by Mr Welch and  
 21 Mr LaPorte, the observations expressed here are  
 22 effectively irrelevant in these circumstances. For  
 23 example, the similarities between the stamp impressions  
 24 on pages 1 and 2 of R-25 are the same, they have the  
 25 same features, but that is expected whether they are

Page 12

09:26 1 a genuine or a fraudulently produced document.  
 2 Their instruction is perhaps slightly different to  
 3 mine. The significance of many of these points pursued  
 4 by the experts are, from my point and from the  
 5 Claimants' point of view, not relevant, as I am  
 6 instructed there has never been an issue as to whether  
 7 the questioned documents are the result of alteration or  
 8 page substitution. Their concern was: the documents are  
 9 fabricated as a whole. (Pause)  
 10 We will now turn to signature evaluation. My report  
 11 details ...  
 12 (Pause to resolve a technical problem)  
 13 THE PRESIDENT: Fine. We can continue, Mr Radley.  
 14 MR RADLEY: Right. We will move on to signature evaluation.  
 15 Again, as detailed in my report, the basis of  
 16 signature comparison, as far as I'm concerned, is one  
 17 looks at all of the questioned, all of the comparison  
 18 documents so as to establish the range of variation of  
 19 each particular minute feature.  
 20 The range will show a particular feature from one  
 21 extreme to the other. The range may represent  
 22 a particular pen movement, such as the degree of  
 23 curvature, whether it's a narrow, thin curve or whether  
 24 it's a broad curve, or it may be a physical measurement:  
 25 how long is this line? And you may have a range of

Page 13

09:29 1 variation of 25 millimetres down to 10. In that case  
 2 you have an absolutely fixed range of variation based on  
 3 the documentation presented.  
 4 Anything inside the range is regarded as  
 5 a similarity. Anything outside the range is  
 6 a difference by definition. One then proceeds to  
 7 identify the similarities and the differences between  
 8 the questioned and comparison materials. One then  
 9 assesses the same. One thing that always has to be  
 10 borne in mind is: is there demonstrable or reasonable  
 11 evidence to consider why a difference is not  
 12 significant?  
 13 When assessing the points, there are several other  
 14 considerations that I view. One looks at the nature of  
 15 the similarity: is it a significant point because it is  
 16 difficult to copy? Is it subtle? Is it likely to be  
 17 copied by an individual? How easy is it to copy the  
 18 signature? How wide is the range of variation of the  
 19 comparison materials?  
 20 This is very important, because there could be  
 21 errors in a copying process, a simulation process, which  
 22 still fall inside the natural range of variation. In  
 23 other words, if somebody is copying an average  
 24 signature, whatever that might be, and they go wrong on  
 25 this particular element, if that particular element is

Page 14

09:31 1 very broad in its range, that error may still be within  
 2 the general range of variation. As such, it will not be  
 3 identified as a difference.  
 4 So the wide range of variation tends to masks some  
 5 errors of forgery. So when we look at a large body of  
 6 comparison signatures, this is a very important  
 7 consideration.  
 8 In my view, caution should be exercised when  
 9 dismissing a difference as a mere variant not seen in  
 10 the known writings presented. Indeed, I think it was  
 11 Mr LaPorte who said that one has to be cautious when  
 12 giving a firm opinion one way or the other. I would  
 13 fully agree with that, not only from the document side  
 14 of things but also from the handwriting point of view.  
 15 One has to assess, when you see a difference -- in  
 16 other words, something that is outside the range of  
 17 variation -- you have to assess: is that of importance?  
 18 What is the basis for that decision?  
 19 If I can refer to page 245, which should be within  
 20 the photocopy bundle of documents. I think it's the  
 21 very back page.  
 22 Differences, in my view, are generally more  
 23 important than similarities. Similarities between known  
 24 and questioned signatures are going to be present. If  
 25 you have a simulation, almost by definition you're going

Page 15

09:34 1 to have a lot of similarities. The better the ability  
 2 of the forger, the fewer dissimilarities you're going to  
 3 have.  
 4 Consequently, one has to be very aware of both  
 5 obvious differences and subtle differences. Subtle  
 6 differences are very easily dispelled as, "Oh, it's just  
 7 another variation not seen in the known writings". But  
 8 one can look at it from the point of view that if, for  
 9 instance, you have two individuals, or you have two  
 10 descriptions of two individuals and you want to see if  
 11 they're the same, they may both be 5 foot 10 tall, they  
 12 may have black hair, they may have brown eyes, they may  
 13 have a 40-inch chest, they may have a scar on their  
 14 cheek, which is quite significant, they both may walk  
 15 with a limp in the right foot -- quite distinctive  
 16 features -- but if one of those is from Japan and one is  
 17 from the West Indies, they are different.  
 18 So this, to my mind, emphasises the caution that you  
 19 have to exercise. It is the same in handwriting,  
 20 especially if potentially dealing with skilled writers:  
 21 that you don't merely dismiss differences as variants,  
 22 variations not seen in the known writings.  
 23 Turning to page 245 -- in fact, we can turn back to  
 24 the last couple of lines of 244. In fact, I will read  
 25 the previous paragraph:

Page 16



09:36 1 "Some of the old discussions of this subject of  
 2 comparison of handwritings contain some curious  
 3 arguments regarding what is described as 'similitude and  
 4 dissimilitude', and it is dogmatically asserted that  
 5 similarities have more force in proving genuineness than  
 6 differences have in proving lack of genuineness, without  
 7 any discussion of the quality or nature of the  
 8 similarities or differences. It is easy to understand  
 9 that this principle is not the basis for intelligent  
 10 comparison.  
 11 "According to the principle stated, it could be  
 12 contended that an individual is proved to be a certain  
 13 person if numerous similarities are shown without regard  
 14 to the presence of a few fundamental differences."  
 15 So that is the example I've just given.  
 16 "The argument is, of course, absurd. A handwriting  
 17 is identified exactly as a person is identified, by  
 18 a comparison of general characteristics that, in the  
 19 case of a person, point to a general class or race, and  
 20 in addition the identification must include that which  
 21 is not general but distinctly individual and personal.  
 22 "In identifying a person, for example, scars,  
 23 deformities, finger-prints or a series of accurate  
 24 measurements, must be depended upon and finally, if the  
 25 conclusion of identity is reached, either in a person or

Page 17

09:37 1 a handwriting, there must not remain significant  
 2 difference that cannot reasonably be explained. This  
 3 ignoring of the differences, or the failure properly to  
 4 account for them, is the cause of most errors in  
 5 handwriting identification."  
 6 In other words, one has to be very cautious, and not  
 7 just dismiss items on a gut feeling or a whim.  
 8 This is particularly true because there are skilled  
 9 penmen out there. Mr Welch said that he thought that no  
 10 penman could reproduce these signatures, and I very  
 11 adamantly -- well, I do not see where the basis of that  
 12 comes from at all. He has said that hesitation, lack of  
 13 fluency, poor line quality, all the rest of it, they are  
 14 typical of forgeries. Yes, I would absolutely agree.  
 15 We have no doubt that is the case in most instances.  
 16 What we have in the normal course of my casework --  
 17 and I think this is probably shared all over the  
 18 world -- is that most forgery is, frankly, rubbish. You  
 19 have silly, illiterate husbands trying to copy the  
 20 scribbled signature of a wife, and this sort of thing.  
 21 However, in my experience, when dealing with the  
 22 larger cases, where there may be more input by people  
 23 producing documents -- as opposed to merely signing  
 24 something on a whim, signing a document on behalf of  
 25 your wife on the kitchen table or whatever -- there are

Page 18

09:40 1 undoubtedly a lot of very skilled penmen out there. And  
 2 there are a lot of skilled penmen out there who can  
 3 write fluently and copy fluently.  
 4 This is not something that you acquire by practice.  
 5 One of the papers I would have liked to produce was  
 6 a paper I did for the American Society of Questioned  
 7 Document Examiners, looking at how practice improves  
 8 an individual's ability to copy a signature; and  
 9 basically, it doesn't, not to a significant extent.  
 10 A good forger is born, and not made through practice.  
 11 I do have a few examples that I haven't referred to  
 12 in the report; everything up to now I think has been  
 13 dealt with. But I would like to draw your attention to  
 14 a couple of papers.  
 15 The first one is "Another Adept Penman" by  
 16 Jim Buglio and Hans Gidion. This is the examination of  
 17 a very talented guy. He's a Native Indian chief, Zug  
 18 Standing Bear. And his task -- or the test was set up  
 19 with ruled sheets of paper, eleven signatures per sheet,  
 20 and one blank line. The blank line was random up to the  
 21 person that was signing. He then has one attempt only  
 22 at duplicating the signature style.  
 23 If we just thumb through these pages, we can see  
 24 that a lot of these are very fluent. And if you look  
 25 through them, even a trained document examiner has real

Page 19

09:43 1 problems in picking out these "forgeries", if you can  
 2 call them "forgeries".  
 3 He doesn't seem to have a problem in copying normal  
 4 forward-sloping writing, like figure 5, Edward  
 5 Frothingham; very fluent. And I would say the copies  
 6 I'm producing are in fact copies of copies scanned over  
 7 to me yesterday. Even so -- and the reproduction is not  
 8 brilliant because they are copies of copies -- I think  
 9 you can appreciate from, for instance, figure 5, Edward  
 10 Frothingham, forward leaning. Then we've got Eleonore  
 11 Gidion, very upright writing. Then we've got Hamby,  
 12 which is barely legible.  
 13 And going through all of these -- Roland Dolle --  
 14 you can see --  
 15 PROFESSOR VAN DEN BERG: Now you raise my curiosity to  
 16 a high level. Which of the twelve is the fraudulent  
 17 one? Or is that what we have to examine? You are going  
 18 to examine us, whether we can figure it out?  
 19 MR RADLEY: It would be very interesting to see if you can.  
 20 Some of these are very good.  
 21 PROFESSOR VAN DEN BERG: Yes, but which of the twelve is the  
 22 copied one?  
 23 MR RADLEY: I think there's 23 examples here; I can't  
 24 honestly recall. You have to take the test and send the  
 25 result in before he will give you an answer.

Page 20

09:45 1 At the back of those various examples, you will see  
 2 two sheets of paper. These were what gave rise to the  
 3 study of this guy. This was in fact a meeting where he  
 4 was effectively collecting attendees' signatures. And  
 5 because he knew that Jim Buglio was a document examiner,  
 6 he said, "Well, I can copy these".  
 7 So if we look at those two pages at the back, one of  
 8 them is --  
 9 THE PRESIDENT: Figures 23 and 24; is that what it is?  
 10 MR RADLEY: I don't think the page is -- it's this page  
 11 (indicating).  
 12 THE PRESIDENT: It's just for the transcript. I'm trying to  
 13 make sure that we identify what we are speaking about.  
 14 MR RADLEY: Yes, sorry. It's figure 1 at the back and  
 15 figure 2 at the back. As I say, these are just what he  
 16 wrote at the time, just copying the register, and there  
 17 is a lovely level of fluency.  
 18 The next paper is "Excellence in Forgery" by dear  
 19 Jack McCarthy, John McCarthy. And again, just very  
 20 quickly going through so as not to waste too much  
 21 time...  
 22 PROFESSOR VAN DEN BERG: May I test you on this figure? Can  
 23 you please go to figure 1 you just pointed us to.  
 24 Simply if you look to the right-hand column.  
 25 MR RADLEY: Yes.

Page 21

09:47 1 PROFESSOR VAN DEN BERG: Then you go over the middle and you  
 2 see "Philip" and something; I don't know what the last  
 3 name is. Do you see that, "Philip"? Right hand column,  
 4 over the middle, you see "Philip". And the last name  
 5 I don't know, I can't read it. If I show it to you  
 6 (indicating).  
 7 THE PRESIDENT: Something like "Shark".  
 8 PROFESSOR VAN DEN BERG: Probably. Do you see that?  
 9 MR RADLEY: Oh, yes, yes.  
 10 PROFESSOR VAN DEN BERG: Okay. Now you compare. You turn  
 11 the page, you go to figure 2, and you see again  
 12 a "Philip". Now, having been versed in handwriting  
 13 analysis yesterday, it seems to me that this is not  
 14 a variation, but there is a difference, if you see the  
 15 "Philip" here.  
 16 MR RADLEY: Oh, there will be differences. Don't forget,  
 17 these are executed outside a meeting, and he's having  
 18 one go at it. He's not practising, he's having one go  
 19 at it. So, yes, they're not going to be superimposable,  
 20 that's for sure. The question is --  
 21 THE PRESIDENT: If I understand it correctly, figure 1 is  
 22 the page that was signed by all the attendees and  
 23 figure 2 is the copy by one forger.  
 24 MR RADLEY: Yes, that's correct.  
 25 PROFESSOR VAN DEN BERG: For example, the "P" is out of

Page 22

09:48 1 line, the last "P"; not to mention the first "P".  
 2 MR RADLEY: Oh, yes. Yes. That might be relevant -- as  
 3 I say, this is the most difficult task of all. He's  
 4 done 44 signatures, one attempt only. The question  
 5 would be -- you quite rightly point out that they are  
 6 different, so he's made an error in the copying  
 7 process -- looking at, say, 30 signatures of Philip,  
 8 would that error still lie within that wide range of  
 9 variation, or potentially wide range of variation? If  
 10 it's a very narrow range of variation, it probably won't  
 11 lie inside. If it's a very wide range, it may well do.  
 12 Just, as I say, very quickly -- I'm very acutely  
 13 aware of time -- if we move on, there is an illustration  
 14 in Jack McCarthy's paper of "Sharon F" -- it looks like  
 15 "Rennaker"; I'm afraid the quality is not very good.  
 16 But again, what we have here is a fluent signature.  
 17 Somebody is copying in a fluent style.  
 18 If we go over the page, we have "Hardy M", it looks  
 19 like "Snow" -- or something like that -- "Junior".  
 20 Again, very reasonable copies; some differences, but  
 21 again it's a one-off example.  
 22 THE PRESIDENT: Just so that we are sure again to identify  
 23 the proper page, now we are speaking about the paper  
 24 that follows the previous one, and that is  
 25 John McCarthy, "Excellence in Forgeries", and you were

Page 23

09:50 1 referring to the pages with signature at the end of the  
 2 actual article.  
 3 MR RADLEY: Yes.  
 4 THE PRESIDENT: And which page were you referring to?  
 5 MR RADLEY: That is the "Sharon F Rennaker".  
 6 THE PRESIDENT: The first one?  
 7 MR RADLEY: The first one.  
 8 THE PRESIDENT: Thank you.  
 9 MR RADLEY: Again, as we just thumb through, we will see  
 10 another page, another example: a single signature at the  
 11 top of the page, trying to mimic the writing of the  
 12 individual concerned.  
 13 And of course there are different standards -- well,  
 14 not "standards"; there are different occasions on which  
 15 one can do a forgery. The best situation for a forger  
 16 is that he has a dozen sheets of paper and he can just  
 17 do one, he can do the next, he can do the next, and then  
 18 choose the best one. In this situation, with all the  
 19 nerves involved as well, no doubt, they're having one  
 20 bite at the cherry, as we say.  
 21 Again, without labouring the point, we can go on and  
 22 see the signature of -- oh dear, I can't really read it.  
 23 It looks like "Gelison M. Gump", or something like that;  
 24 a very fluent signature.  
 25 Again, I won't bother going through the further

Page 24

09:52 1 paper, which is by Dick Totty from the Birmingham  
 2 laboratory. Again, he gives some examples that are very  
 3 good.  
 4 So good, skilled penmen are out there. My daughter,  
 5 who works alongside me, is a very accomplished forger,  
 6 if you like, and I've had the privilege of working with  
 7 a friend both of myself and Mr Welch and Mr LaPorte,  
 8 Lloyd Cunningham, who is a master penman and also  
 9 a document examiner, very interestingly, and his  
 10 specialty is signing the signature as per I think it's  
 11 the Declaration of Independence by John Hancock, which  
 12 is an incredibly beautiful piece of work. There are  
 13 these people out there.  
 14 What do we expect of a skilled forger? He's got to  
 15 have good writing ability, obviously. Good observation  
 16 to detail, that's a very important thing, attention to  
 17 detail. The difficulty is in reproducing the same pen  
 18 movements in the same way as a genuine writer. So you  
 19 may be able to reproduce quite fluently certain points,  
 20 but some of the more subtle detail might be more  
 21 difficult to reproduce.  
 22 The presence of hooks and things can be reproduced.  
 23 With regard to comments that have been made that, for  
 24 instance, there's a nice little hook on the Struik  
 25 signature in question at the beginning: yes, it is, it's

Page 25

09:54 1 a nice little hook. But it is very obvious, if you are  
 2 studying a signature to reproduce it, that is the sort  
 3 of thing that, frankly, you're not going to miss.  
 4 If differences are present, features falling outside  
 5 that range of variation, obviously you have to consider  
 6 whether they are accidentals -- and I accept that  
 7 accidentals happen in everybody's writing from occasion  
 8 to occasion: they are just the result of momentary loss  
 9 of concentration, interruption, something of that  
 10 nature. So are the differences likely to be accidentals  
 11 or variants which are just not represented in the  
 12 comparison material, or are they likely to be errors of  
 13 forgery?  
 14 There is also an issue of: are there enough  
 15 comparison materials to be representative of the  
 16 writer's natural variation, the full range of that  
 17 variation?  
 18 Taking into consideration the accumulation of any  
 19 differences, one then has to ask how likely it is that  
 20 many differences not seen in the comparison material  
 21 should all appear in one questioned signature.  
 22 In my charts, on occasions, I have pointed out where  
 23 there are what I refer to as "rarities". I've done this  
 24 because when you have, say, 47 signatures of Lev Ran,  
 25 you're going to have a wide range of variation, because

Page 26

09:56 1 there are so many. My belief is that when you see  
 2 a signature and it has a number of differences or it has  
 3 a number of very rare features, and if you have a fairly  
 4 large number of rare features, is that coincidence that  
 5 all of those rarities and all of those differences  
 6 appear in one signature going to be the result of  
 7 natural variation, and therefore a very considerable  
 8 coincidence, or is it likely to be the result of  
 9 forgery? Where is the demonstrable evidence to show  
 10 where the truth of the matter lies? And this is the  
 11 difficulty, and in this case this is where Mr Welch and  
 12 I see things differently.  
 13 Some of the features that I will mention, especially  
 14 in the Struik signature -- that's the only one that I'm  
 15 prepared to offer an opinion on -- we have offhand five  
 16 differences, say, and a couple of rarities. And where  
 17 is the evidence to say that they, in combination, are  
 18 the result of a great coincidence of a lot of  
 19 differences coming together, all in one signature, and  
 20 independent features? One has to ask: what is the  
 21 degree of uncertainty, if no demonstrable evidence is  
 22 available, and it boils down to the interpretation of  
 23 the expert, which is where Mr Welch and I are  
 24 disagreeing.  
 25 What I would like to point out now is Osborn,

Page 27

09:58 1 page 230/231. This is the third sheet or so from the  
 2 back of the paper handout. On page [230] it starts:  
 3 "One of the favourite defenses of forgery is the  
 4 argument that numerous damaging divergences in  
 5 a disputed signature, which in combination are highly  
 6 significant as evidence that it is not genuine, can each  
 7 be found separately in one signature out of a great  
 8 number of genuine signatures, and that this proves that  
 9 the disputed signature is genuine. Even if they could  
 10 be found, this would not be proof of genuineness."  
 11 The following point I won't go into because I don't  
 12 think Mr Welch is incompetent or insincere; I think we  
 13 just have different interpretations. But Osborn goes on  
 14 to say that, basically, is it likely that you're going  
 15 to get all of these together? And that is the basis of  
 16 my view on the Struik signature.  
 17 That I'll skip because ...  
 18 Now we come to Lev Ran's signature, and this is just  
 19 a reproduction of what we have in my appendix C. So we  
 20 have all the signatures of Lev Ran; the next lot; the  
 21 next ones; the next ones.  
 22 Can I ask you to turn to ... (Pause)  
 23 There we have the signatures of Lev Ran.  
 24 In paragraph 237 of my report I start and point out  
 25 some of the very big, very substantial ranges of writing

Page 28

10:02 1 variation. Consider the structure of C-271-287.1 and  
 2 281.43. Those, I think ... (Pause)  
 3 We can see C-271-287.1 at the bottom right-hand  
 4 corner of that page. You can see that there is  
 5 effectively an element missing: the terminal element is  
 6 missing. There should be another up-and-down stroke  
 7 that is missing for some reason. 287.2 again doesn't  
 8 show that terminal stroke to be present, but it's  
 9 present in pretty well all the others. So we have quite  
 10 a considerable variation there.  
 11 If we look at points 2 and 4, these are the top  
 12 spikes, if you like, up here -- no, sorry, they're the  
 13 bottom two spikes, although as you're looking at me,  
 14 they would probably be that way to you, yes.  
 15 Well, rather than go through selecting different  
 16 ones, we can see that -- let me go over a page so we've  
 17 got more -- we can see that in the second column, bottom  
 18 row, one of the spikes is incredibly short; the  
 19 signature above it is incredibly long. Without  
 20 labouring the points, I'll just take any illustrations  
 21 here. The top left-hand corner, the two top spikes, the  
 22 right-hand-side one is taller than the left-hand side  
 23 one.  
 24 MS COLTON: Sorry, can I just suggest you get out of the  
 25 presentation view, so that you can use your -- it might

Page 29

10:05 1 be helpful if you use your mouse, so we can see --  
 2 I don't know whether that would be helpful -- so we can  
 3 see what you're looking at, if that's possible.  
 4 MR RADLEY: Oh, right. Okay. (Pause)  
 5 THE PRESIDENT: While you're figuring this out -- and  
 6 Mr Nazeer maybe can help -- the Secretary draws my  
 7 attention to the fact that you have already used  
 8 45 minutes.  
 9 MR RADLEY: Right.  
 10 THE PRESIDENT: So of course I will not cut you off  
 11 abruptly, but I see there is still a good number of  
 12 slides. So you should make sure that you get to  
 13 a conclusion.  
 14 MR OSTROVE: (Interpreted) If I may, he has decided to spend  
 15 approximately 23 minutes, according to my calculations,  
 16 on the 1970 and 1977 conference papers. It's his choice  
 17 to choose how he wants to use his 45 minutes. But  
 18 I think granting him much longer now, obviously we don't  
 19 wish to be too rigid, but it's his strategic decision,  
 20 or that they have taken.  
 21 THE PRESIDENT: (Interpreted) Yes, I understand what you're  
 22 saying, and we also have quite a heavy schedule for the  
 23 day. So if we wish to finish at a more reasonable hour  
 24 than we did yesterday ... It goes without saying that  
 25 the same time will be granted to experts for the

Page 30

10:07 1 Respondent.  
 2 (In English) Mr Radley, to be practical, can you  
 3 close in 5 to 10 minutes?  
 4 MR RADLEY: Yes, I will go through very rapidly.  
 5 So what we have is obviously quite a lot of  
 6 variation. The bottom left-hand corner signature there  
 7 is very unusual. You can see there are different  
 8 lengths, there are different numbers of strokes, there  
 9 are different angles between the various lines. These  
 10 are all detailed in my report.  
 11 I think we've dealt with this. How does a large  
 12 range of variation help a forger if he goes wrong?  
 13 That's that.  
 14 I will very quickly just draw a sketch.  
 15 (The expert approaches the whiteboard)  
 16 THE PRESIDENT: The Tribunal experts could come forward so  
 17 you see the sketch, and the Secretary will take  
 18 a picture of the sketch, because otherwise it will not  
 19 be recorded.  
 20 MR OSTROVE: (In English) I'm sorry, is this now -- I'm  
 21 unsure, given yesterday's objections by Claimants,  
 22 whether that was supposed to indicate the directions of  
 23 the strokes, which were not in the initial report, or  
 24 whether this is a new --  
 25 MR RADLEY: This is in the initial report, with respect.

Page 31

10:09 1 MR OSTROVE: I'll save my questions for cross.  
 2 THE PRESIDENT: Maybe, Mr Radley, you explain what you have  
 3 just sketched.  
 4 MR RADLEY: Yes. I've done a sketch there which is very  
 5 similar to R-24. That to my mind -- one, two, three,  
 6 four, five, six (indicating) -- that, to my view, is not  
 7 a complex signature, it is not difficult to copy. When  
 8 you have a range of variation that is so huge -- I've  
 9 gone wrong and made this line too curved, but I have  
 10 little doubt I could find that in here. One line might  
 11 be too long; I have no doubt I would find -- all those  
 12 lines are so variable, that's going to fall fairly well  
 13 inside the range of variation. The range of variation  
 14 is masking the errors of forgery.  
 15 THE PRESIDENT: Thank you. We will identify this as Radley  
 16 sketch 1.  
 17 MR RADLEY: We have that signature, and there was in fact  
 18 a very interesting point in fact raised by the Tribunal  
 19 with regard to the downstroke. We've got a downstroke  
 20 that comes through here (indicating). The question that  
 21 was in fact put was: what's the sequence of that? And  
 22 in fact Mr Welch didn't reply on the questioned  
 23 signature because he can't determine it. We know in the  
 24 known writings he starts with that, but does it in the  
 25 R-24/R-25?

Page 32

10:11 1 The other point that is of interest is the length of  
 2 this stroke, and I've got that illustrated.  
 3 THE PRESIDENT: Can we do another picture, which will be  
 4 Radley sketch 2.  
 5 MR RADLEY: The relative length of that stroke, I described  
 6 it in the report as a star shape. It makes it look like  
 7 a star, with bits sticking out. If we very rapidly ...  
 8 if we very quickly look through those signatures,  
 9 there's no star shape in the comparison material, in my  
 10 view. They're all relatively short. Next one: they're  
 11 all relatively short, they don't look like star shapes  
 12 to me. These are again relatively short, they don't  
 13 look like star shapes. These again, the second from the  
 14 left has got a bit sticking out, but basically they  
 15 don't look like the questioned one which is at slide 18;  
 16 it doesn't look like R-25.  
 17 If I can refer you now to -- it's in fact --  
 18 THE PRESIDENT: Did you want to say R-25 or R-24?  
 19 MR RADLEY: Well, either of them, because they both have --  
 20 R-25 has a much bigger star shape, if you like. R-24  
 21 certainly sticks out a fair bit.  
 22 If we go to slide 16 that Mr Welch produced  
 23 yesterday, and this is very crude from my point of view.  
 24 It's ... I'm sorry, if we go to 10 first.  
 25 In any signature comparison you can compare the

Page 33

10:14 1 relative length of one element with another, and  
 2 a questioned signature should show the same range. It  
 3 should fall within the range of variation. This is  
 4 Mr Welch -- this is the chart we're looking for.  
 5 THE PRESIDENT: Yes, thank you.  
 6 MR RADLEY: You can look at the proportion of any signature  
 7 and a genuine signature should fall inside that range of  
 8 variation. What I am saying is: the length of that  
 9 downstroke in R-25 compared with, say, the stroke that  
 10 defines the width of the signature -- in other words,  
 11 it's relative to I suppose the top right-hand point and  
 12 the bottom left-hand point. So it's the length of the  
 13 downstroke compared with the overall length here  
 14 (indicating). In R-24 and R-25, the downstroke is less  
 15 than three times the length of the diagonal. In the  
 16 others, you will see this is hugely different. There is  
 17 nothing that approaches this, when you look at the  
 18 proportion of that to that length.  
 19 That is a significant difference in proportion.  
 20 It's a significant difference of the same element in two  
 21 different signatures, two different signatures signed  
 22 months apart. Yet coincidentally R-24 has a very long  
 23 downstroke and coincidentally R-25 has a very long  
 24 downstroke. Now, is this coincidence of two unusual  
 25 strokes demonstrably out of proportion to the rest of

Page 34

10:16 1 the signature, or could this be a misconception by the  
 2 forger of how long it should be? It's just the  
 3 downstroke as far as many people would see it.  
 4 With regard to R-26, what we have here is  
 5 a downstroke with a very distinct hook going into the  
 6 next stroke. If I can just quickly demonstrate.  
 7 (The expert approaches the whiteboard)  
 8 What we have is in the questioned signature, but  
 9 over a bit. So in other words, we've got a gentle  
 10 flick. What we will now look at in the known writings  
 11 is a very emphatic stop, occasionally a little tiny  
 12 flick-off.  
 13 That is a fundamental difference in my mind. The  
 14 emphatic downstroke -- and we can very quickly ... If we  
 15 look there, we can see the downstroke stops, the pen  
 16 stops; it doesn't come off gently. That is  
 17 a fundamentally different pen movement. The fingers are  
 18 doing something totally different in that questioned  
 19 signature relative to these.  
 20 MR OSTROVE: (Interpreted) Madam, I note --  
 21 THE PRESIDENT: (Interpreted) Yes, time is going by, and  
 22 I was going to tell Mr Radley.  
 23 (In English) Mr Radley, we have now exceeded the  
 24 5 to 10 minutes, the 10 minutes that I mentioned a while  
 25 ago. Maybe we should close here, and you will be asked

Page 35

10:19 1 questions as we go along. So there will be other  
 2 opportunities for you to bring forward your opinions.  
 3 Good. Can I then turn to the Respondent for your  
 4 questions to Mr Radley.  
 5 MR OSTROVE: (Interpreted) A question of procedure, to start  
 6 with. Is the scope of the cross-examination supposed to  
 7 be limited to the scope of the presentation itself?  
 8 (In English) Is the scope of cross-examination limited  
 9 to the direct? (Interpreted) Or am I entitled to ask  
 10 questions on other elements? I think that everything is  
 11 allowed, but I'm not sure.  
 12 THE PRESIDENT: (Interpreted) Let me check in Procedural  
 13 Order No. 1. I'm just looking for the answer to your  
 14 question. I don't think there is any such limitation.  
 15 MR OSTROVE: I think this was discussed last May, if  
 16 I remember rightly.  
 17 THE PRESIDENT: (In English) "The adverse Party may then  
 18 cross-examine the witness. The scope of the  
 19 cross-examination shall be limited to the contents of  
 20 the witness's witness statement and the direct  
 21 examination ..."  
 22 This is 18.15.3 of PO1, which is applicable by  
 23 analogy to experts, according to some provision in  
 24 Article 19.  
 25 MR OSTROVE: (In English) If memory serves, this was

Page 36

10:21 1 loosened a little bit during the hearing in May, when  
 2 Claimants wanted to ask questions to certain of the  
 3 ministers that went beyond their witness statements.  
 4 And therefore, as long as it was within the record and  
 5 documents that addressed them -- I just want to make  
 6 sure that I'm not overstepping anything, given the --  
 7 THE PRESIDENT: Are we in agreement on this?  
 8 MR LIBSON: Yes, we are.  
 9 THE PRESIDENT: Fine. Then why don't you proceed, please.  
 10 (10.22 am)  
 11 Cross-examination by MR OSTROVE  
 12 Q. Good morning, Mr Radley, again.  
 13 A. Good morning.  
 14 Q. I'm Michael Ostrove from DLA Piper, counsel to the  
 15 Respondent.  
 16 Just a couple of background questions, before  
 17 addressing some of the things that you just reviewed.  
 18 When were you first contacted about potentially  
 19 assisting in this matter?  
 20 A. It was 8th January of this year.  
 21 Q. And who contacted you, please?  
 22 A. That would have been Katy Colton.  
 23 Q. Katy Colton from Mishcon de Reya?  
 24 A. Yes.  
 25 Q. And when were you first shown the preliminary report in

Page 37

10:23 1 this matter?  
 2 A. I think that came over probably the 9th or the 10th.  
 3 Q. Were you informed, when you were contacted by Ms Colton,  
 4 that there were other experts previously engaged?  
 5 A. Not at that point, no.  
 6 Q. You learned that shortly after?  
 7 A. Yes.  
 8 Q. Do you recall when?  
 9 A. Certainly within the week.  
 10 Q. You did come to understand at some point that they were  
 11 originally engaged to prepare comments on that  
 12 preliminary report?  
 13 A. I was told they attended the examination. They  
 14 presumably made notes on the examination.  
 15 Q. I'm sorry, were you told at some point that those  
 16 initial experts --  
 17 A. At a later stage, I believe I was told they made some  
 18 notes and ... yes, I was given probably -- it wasn't  
 19 even a page and a half of notes. It was just very  
 20 random sentences.  
 21 Q. So you were given a page and a half or so of notes  
 22 prepared by Mr Ryan and Ms Mancebo?  
 23 A. Yes.  
 24 Q. Do you recall approximately when you were given those  
 25 notes?

Page 38

10:25 1 A. I'm afraid I don't. It was probably within the week.  
 2 Q. It was before submitting the comments on the preliminary  
 3 report?  
 4 A. Oh, yes, yes.  
 5 Q. Was it your understanding that you were asked to replace  
 6 them in order to prepare comments on the preliminary  
 7 report?  
 8 A. I didn't -- I wasn't told specifically I was replacing  
 9 them.  
 10 Q. I'm sorry, my question was: was it your understanding  
 11 that you were replacing them?  
 12 A. Not at that stage, no.  
 13 Q. Is it your understanding today that you were asked to  
 14 replace them?  
 15 A. Well, yes, they're not here.  
 16 Q. So your understanding is that originally they were the  
 17 experts who would appear here, and you have replaced  
 18 them and are appearing here?  
 19 A. No, my understanding was that they had attended the  
 20 examination. They'd done the briefest of notes.  
 21 Q. So is it your understanding that they were never  
 22 expected to prepare comments on the preliminary report?  
 23 A. That's beyond my knowledge.  
 24 THE PRESIDENT: Can I just ask one clarification question.  
 25 These one and a half pages of notes by the previous

Page 39

10:26 1 experts, were these notes about the inspection or were  
 2 these notes about the preliminary report, or about  
 3 something else?  
 4 A. To tell you the truth, I don't recall. I did read them,  
 5 and I thought -- I'm just trying to work out how to put  
 6 this politely -- I didn't regard them as being very  
 7 worthwhile.  
 8 MR OSTROVE: Do you still have a copy of those notes?  
 9 A. Not on me. Oh ... no, I'm afraid that's one of the six  
 10 or seven bundles of documents I have not brought.  
 11 Q. But you still possess in London a copy of that?  
 12 A. In Reading, yes.  
 13 Q. In Reading, sorry.  
 14 You mentioned that you were engaged on 9th or  
 15 10th January by Mishcon?  
 16 A. Yes. Yes, after the initial enquiry on the 8th.  
 17 Q. Before being engaged, did you have a chance to peruse  
 18 the preliminary report?  
 19 A. No. Had I done so, because of the enormity of the case  
 20 and the very short period of time, it would not be  
 21 something that I would normally relish taking on.  
 22 Q. You indicated that you received a copy of the  
 23 preliminary report shortly after 8th January?  
 24 A. Yes, I think it was about the 12th or thereabouts.  
 25 I was somewhat horrified at the size of it.

Page 40

10:28 1 Q. Is this an unusually long report in this type of case?  
 2 A. 1,100 documents, 200-page report, for a report to be  
 3 prepared -- or notes to be prepared within two weeks  
 4 was -- well, it just meant everything stopped, all my  
 5 other casework. And it's not the sort of thing that  
 6 I would want to take on normally.  
 7 Q. Sorry, my question was: given you indicated some  
 8 surprise in the size of the report, normally, in a case  
 9 like this, would you expect a report on this number of  
 10 documents to go some 200 pages?  
 11 A. No, nowhere near.  
 12 Q. You have worked with Mishcon de Reya in the past, have  
 13 you not?  
 14 A. Yes, I have.  
 15 Q. Do you recall in approximately how many cases?  
 16 A. Not very many, actually. My experience is they tend to  
 17 instruct Audrey Giles; I'm quite often on the other  
 18 side. I've probably done no more than three or four,  
 19 bearing in mind that I've been engaged in over 13,000 in  
 20 the last 42 years.  
 21 Q. Of those three or four, were any or all of them in the  
 22 last few years?  
 23 A. I've been engaged, since I took this one on, on another  
 24 case. Previously, I really can't say, I'm afraid.  
 25 Q. Do you recall the case of -- excuse my pronunciation --

Page 41

10:30 1 Otkritie v Urumov, 2014 in the High Court?  
 2 A. Sorry, can you say that again?  
 3 Q. Otkritie v Urumov. I believe you were engaged to  
 4 prepare a report for Mrs Urumov?  
 5 A. I'm not very good on names. If you show me the  
 6 signature, I'd identify ...  
 7 Q. You would identify it or you would recognise it?  
 8 A. I would recognise it.  
 9 Q. So if you received a copy of the preliminary report only  
 10 around 12th January, preparing your comments by  
 11 15th January was an impossibility, I suppose, the  
 12 original date?  
 13 A. Yes.  
 14 Q. So did you ask Mishcon de Reya to seek an extension so  
 15 that you would have sufficient time?  
 16 A. Yes.  
 17 Q. And they obtained a week's extension to 22nd January?  
 18 A. Yes.  
 19 Q. It was a busy week?  
 20 A. That's an understatement, yes!  
 21 MR LIBSON: Sorry to interrupt, but you haven't put the date  
 22 correctly to Mr Radley. It wasn't the 15th, it was the  
 23 18th, the original date.  
 24 MR OSTROVE: The original date. Thank you for the  
 25 correction.

Page 42

10:31 1 So an extension from the 18th to the 25th. So it  
 2 was a busy 13 days?  
 3 A. It doesn't make a lot of difference. Yes, very busy.  
 4 Q. I believe we have a document bundle, but I'm going to  
 5 refer to Annex L to the final report of the Tribunal  
 6 experts, which is at tab 1 of the blue bundle that we've  
 7 provided. Annex L, just there.  
 8 A. Yes.  
 9 Q. This is a letter dated 23rd January 2018 from Mishcon  
 10 de Reya to the Tribunal in this case. Did you assist in  
 11 the preparation of this letter?  
 12 A. I provided Mishcon with a lot of information. They were  
 13 the writers of this, based on advice that I gave them.  
 14 When I say "advice", that would be a letter of advice,  
 15 giving at this stage a very basic rundown of what I'd  
 16 been able to ascertain from the documents.  
 17 Q. Did you review these 65 questions or comments before  
 18 they were submitted to the Tribunal?  
 19 A. Oh dear.  
 20 Q. Do you recall --  
 21 A. I don't recall seeing them before they were sent out.  
 22 This is not my work.  
 23 Q. I understand that this is not your drafting. I was just  
 24 wondering whether, when these were submitted as comments  
 25 to the Tribunal, you had had a chance to review these

Page 43

10:33 1 comments before they were submitted to the Tribunal and  
 2 the Tribunal experts.  
 3 A. I don't honestly recall. I'm sorry.  
 4 Q. Perhaps if we look at some specific questions, it might  
 5 refresh your recollection.  
 6 If you could look at question 9 in the Mishcon  
 7 de Reya letter on page 3.  
 8 A. Yes.  
 9 Q. "Please explain whether the Experts identified any  
 10 evidence of security printing on the Disputed Documents,  
 11 and if so, please comment on the findings in the final  
 12 report."  
 13 Do you recall whether you reviewed that question  
 14 before it was submitted?  
 15 A. I know when I did my advice, I raised the question. And  
 16 at this stage I'm looking at only photographs. There is  
 17 one enlarged photograph, which is either an inkjet  
 18 printer which is depositing very discrete yellow dots  
 19 alongside an enlarged outline, it's either an inkjet  
 20 printer or it's a slightly out-of-focus laser printer.  
 21 And this is a problem one always has when looking at  
 22 photographs.  
 23 I merely raised the question with them that if it is  
 24 a laser printer, then it could be CPS codes. The yellow  
 25 dots are a code all over the front of the document, and

Page 44

10:35 1 that would give a dating indication.  
 2 Q. So my question was whether you reviewed question 9  
 3 before it was submitted to the Tribunal experts.  
 4 A. Well, no, as I say, I supplied them with the information  
 5 on it; I don't think I reviewed the material before it  
 6 went out. As I say, I really find it difficult to  
 7 recall when I saw this.  
 8 Q. Have you subsequently reviewed these 65 questions?  
 9 A. Yes, yes, particularly when the answers came in  
 10 obviously.  
 11 Q. And did you consider these to be legitimate questions  
 12 properly posed to the Tribunal experts?  
 13 A. Yes.  
 14 Q. All of them?  
 15 A. If you're asking me to go through all 65 of them --  
 16 Q. Then let me rephrase the question. When you reviewed  
 17 this letter subsequently, do you recall finding that any  
 18 of these questions were, to your mind, inappropriate?  
 19 A. I don't recall thinking that at all.  
 20 Q. You don't recall either way, or you don't recall having  
 21 a positive --  
 22 A. I don't remember thinking there was anything that was  
 23 inappropriate.  
 24 Q. Thank you.  
 25 If I could turn your attention to question 12. It

Page 45

10:37 1 says:  
 2 "C-0112 is a different version of R-28, which was  
 3 received by BSGR and subsequently marked 'Forged'. What  
 4 differences do the Experts identify between the two  
 5 documents? What weight (if any) do the Experts place on  
 6 the differences which exist between C-0112 and R-28? If  
 7 the Experts do not consider the differences (if any) to  
 8 be relevant to their conclusions, please explain why."  
 9 Did that seem to you to be an appropriate question?  
 10 A. I have no idea. I was not instructed to look at C-0112,  
 11 I didn't pull it out of the bundle at any time. This is  
 12 something purely that Mishcon has put; no input at all  
 13 from me.  
 14 Q. So when it refers to differences between the two  
 15 documents, it's not that you had identified differences;  
 16 this is --  
 17 A. No, I haven't -- until it went up today, in fact,  
 18 I haven't really looked at that document -- not today:  
 19 yesterday, when it was raised by the Tribunal.  
 20 Q. Could you confirm then that the same would hold true for  
 21 questions 13 and 14, which relate to other documents  
 22 marked "Forged"?  
 23 A. No, I haven't seen any of those, and I certainly wasn't  
 24 instructed on them.  
 25 Q. Did you ever enquire, after learning of their existence,

Page 46

10:38 1 why they were marked "Forged"?  
 2 A. Only very recently. But that's after everything has --  
 3 all the reports and what have you have gone in.  
 4 Q. So at the time you were preparing your report --  
 5 A. I had better things to do.  
 6 Q. -- it was not of interest to you to know whether other  
 7 forensic examinations had already been performed on  
 8 those documents?  
 9 A. No, no interest at all.  
 10 Q. If we look at questions 35 to 37 regarding Mr Struik's  
 11 signature on R-27. Question 35:  
 12 "As set out in paragraph 19 above, please explain in  
 13 further detail what differences (if any) the  
 14 Tribunal-appointed Experts identified between the  
 15 signature of Marc Struik on R-27 and those in the  
 16 comparator documents and the relevance of each point."  
 17 Had you, prior to the creation of these comments,  
 18 already identified what you considered to be  
 19 differences?  
 20 A. On a preliminary basis, yes.  
 21 Q. Had you indicated to Mishcon de Reya what preliminary  
 22 basis differences you thought existed?  
 23 A. I probably gave a very -- without any diagrams or  
 24 anything, I probably gave a very brief textual paragraph  
 25 or two on it.

Page 47

10:40 1 Q. Explaining what you, on a preliminary basis, considered  
 2 to be differences?  
 3 A. Yes. If I can explain.  
 4 In producing this, because it was all done in  
 5 a great rush, at this stage I had only carried out  
 6 a preliminary examination. There was also some  
 7 considerable confusion over the comparison material.  
 8 And I did an initial examination against I think what  
 9 was a restricted sample and not the full sample that we  
 10 have, and I reported back on that preliminary basis  
 11 suggesting there were differences.  
 12 Q. And indicating, at least at a high level, what some of  
 13 those differences might be?  
 14 A. I would have mentioned them, I think.  
 15 Q. If you had had more time, do you accept that it would  
 16 have been useful if the Tribunal experts could have  
 17 reviewed differences you subsequently identified in  
 18 preparing their final report? If you like, I'll break  
 19 that down into shorter parts.  
 20 A. Yes, I mean, I would think that they would not modify  
 21 their opinion because they've seen my report, or my  
 22 detailing of differences, sorry.  
 23 Q. You ultimately, in your report, note what you consider  
 24 to be differences; correct?  
 25 A. Yes.

Page 48



10:41 1 Q. In the procedure here, there is a preliminary report  
 2 from the experts; correct?  
 3 A. Yes.  
 4 Q. And then there was an opportunity for comment; correct?  
 5 A. Yes.  
 6 Q. And then the Tribunal experts were asked to prepare  
 7 a final report; correct?  
 8 A. Yes.  
 9 Q. Do you think it would have simplified matters if you had  
 10 had time to indicate what you saw as purported  
 11 differences to the experts for them to take into  
 12 consideration for their final report?  
 13 A. I would not expect Mr Welch to take into consideration  
 14 what I have to say when formulating his opinion. One  
 15 does these things independently: you examine the  
 16 document and you come to your own opinion on it. Or  
 17 that is my practice. If there is another report  
 18 involved in a case, usually one doesn't go into the  
 19 detail of it.  
 20 Q. So even today, is it fair to say you are not surprised  
 21 that Mr Welch hasn't changed his conclusions on the  
 22 basis of your report?  
 23 A. Well, I mean, that's his honest belief, and I am sharing  
 24 my honest belief, and I don't think either one of us can  
 25 be swayed by the other, necessarily.

Page 49

10:43 1 Q. So you don't think that there's any signs of animus or  
 2 bias towards you that would cause him to reject out of  
 3 hand your conclusions?  
 4 A. I would hope not. We are good professional colleagues.  
 5 Q. Do you have any reason to believe that there would be  
 6 such animus or bias against you personally?  
 7 A. No, I have no reason to believe at all.  
 8 Q. Or against instructing counsel?  
 9 A. That, I have no idea.  
 10 Q. I believe -- and please correct me if I'm wrong -- that  
 11 there's an overall agreement between you and the  
 12 Tribunal-appointed experts here that the forensic  
 13 examination, other than handwriting, the non-handwriting  
 14 examinations performed are examinations that are  
 15 designed to detect certain kind of fraud or alteration.  
 16 Is that correct?  
 17 A. Yes.  
 18 Q. And the primary difference between you and them in the  
 19 conclusions is that they've repeatedly stated there is  
 20 no evidence of fraudulent modifications or fraud in the  
 21 preparation of these documents, without saying equally  
 22 there is no evidence that they are authentic; correct?  
 23 A. Yes. I think the phrase used is relatively meaningless,  
 24 but when used in volume, as we have here in 65 examples,  
 25 I think it can be misleading to the layman.

Page 50

10:45 1 Q. And you indicated that it could create some kind of  
 2 unconscious bias. I just want to make sure, since there  
 3 have been allegations of bias in this case, that the  
 4 bias you're referring to is a bias by repeated  
 5 statements, not a bias intentionally directed against  
 6 a party?  
 7 A. Oh, it's not direction. This is the whole point of  
 8 looking at things like opinions and how you take on  
 9 a case. You don't want to be unconsciously biased. Had  
 10 I seen the documents marked "Forged", it suggests that  
 11 I might be biased, and somebody else has looked at it or  
 12 stamped it as really not a genuine document, and so on.  
 13 So that sort of thing can happen -- not in those  
 14 circumstances -- if you're given a lot of information  
 15 you shouldn't have been given.  
 16 Q. Going to that example, had you been given information  
 17 that there had been previous reviews of these documents,  
 18 and they had been determined forged by some examiner --  
 19 A. No.  
 20 Q. -- that could have created some kind of unconscious  
 21 bias?  
 22 A. No, well, it wouldn't.  
 23 Q. But it could create in some people an unconscious bias?  
 24 A. In some people it could.  
 25 Q. You refer to the need to consider alternative scenarios

Page 51

10:47 1 at all times; correct?  
 2 A. Yes.  
 3 Q. Would you agree that there are a finite number of ways  
 4 to create forged documents?  
 5 A. Well, not a -- yes, I suppose there are.  
 6 Q. So if you eliminate certain forgeries or certain frauds  
 7 through testing, that reduces the world of possibilities  
 8 that the document is fraudulent, does it not?  
 9 A. It reduces the -- yes, I mean, you either, as we say,  
 10 get a hit or you don't.  
 11 Q. So if you got a hit, that would help the Tribunal: they  
 12 would know the document was created fraudulently?  
 13 A. They would know the document was forged.  
 14 Q. And by excluding that possibility, they know that the  
 15 document was not created fraudulently in that respect?  
 16 A. If you don't find something of significance, the  
 17 evidence, as I say, is in my view wholly inconclusive.  
 18 Q. So in a case where you have authentic documents, this  
 19 kind of searching for fraud will always lead to  
 20 inconclusive results, unless you find a false positive?  
 21 A. Unless you find a positive, you can never prove  
 22 a document genuine, produced on that day. I say  
 23 "never"; there are some circumstances you can, but in  
 24 general terms. In these documents, I would say: no,  
 25 you're not going to ever prove them to be genuine.

Page 52

10:49 1 Q. Just a methodological question regarding the handwriting  
2 review. I note that you took Mr Welch's slide 10. And  
3 if we could put up your version -- I don't know if that  
4 exists in a scanned version or if we only have paper  
5 copies for today? That's quite alright.  
6 I'm taking a look, for the record, at the version of  
7 Mr Welch's slide 10 that you provided this morning.  
8 A. Yes.  
9 Q. I note that it's a reproduction of Mr Welch's  
10 slide 10 --  
11 A. Yes.  
12 Q. -- but it appears that there's an arrow drawn from the  
13 top-right corner down to the left. Did you insert that  
14 arrow?  
15 A. Yes. It's not an arrow; that is just a line of  
16 reference.  
17 Q. Okay.  
18 A. So it's the left-hand side of the signature to the  
19 right.  
20 Q. Very good. In your experience, is it typical in expert  
21 testimony to provide a marked-up document like this?  
22 A. Yes, can be.  
23 Q. Is this what you would consider a demonstrative exhibit?  
24 A. Yes.  
25 Q. Where you've taken an existing image from the record and

Page 53

10:53 1 A. Yes, that was already in my library. I followed on from  
2 my father, and he'd obtained that when he was at ASQDE.  
3 Q. Okay. So that's again a non-published conference paper?  
4 A. Yes, it's more an information for document examiners  
5 paper and, as much as anything, a warning.  
6 Q. You used these examples of falsified signatures with the  
7 Tribunal this morning. Did you undertake any  
8 examinations of the original false signatures used in  
9 these papers?  
10 A. I undertook an examination of first-generation copies.  
11 Q. Did you have an opportunity to perform microscopic  
12 examinations of those first-generation copies?  
13 A. Not microscopic from the point of view of high  
14 magnification, because they were only presented in  
15 colour-copy form.  
16 Q. So ordinarily, if you were testing a signature for  
17 delicate traces and things like that, you would really  
18 want to look at the originals; correct?  
19 A. Oh, in a casework situation, yes.  
20 Q. To look for signs of natural writing, et cetera --  
21 A. Yes --  
22 Q. -- it would be very helpful to have the originals,  
23 wouldn't it?  
24 A. Obviously one looks at the originals, because that's  
25 where the finer detail is reproduced. But the whole

Page 55

10:50 1 you've put something on it to demonstrate a point?  
2 A. Yes, very crudely, because there was obviously no time.  
3 (Pause)  
4 Q. You testified at some length this morning, Mr Radley,  
5 regarding the skills of certain master forgers?  
6 A. Yes.  
7 Q. And you provided the Tribunal with a few examples, with  
8 a paper called "Another Adept Penman" --  
9 A. Yes.  
10 Q. -- by Mr James Buglio and Mr Hans Gidion?  
11 A. Yes.  
12 Q. The version that you provided said it was presented at  
13 the annual meeting of the American Society of Questioned  
14 Document Examiners in San Francisco in August 1977.  
15 A. Yes.  
16 Q. To your knowledge, was this paper ever published  
17 anywhere?  
18 A. No, no. It was resubmitted. It was resubmitted at the  
19 ASQDE meeting in 1987.  
20 Q. Is that why you have this copy?  
21 A. Yes.  
22 Q. Does the same go for the 1970 conference paper that you  
23 also submitted this morning?  
24 A. The 1970? The Jack McCarthy?  
25 Q. Yes.

Page 54

10:55 1 point of these signatures is it just goes to show that  
2 you can -- even from the copies that I examined way  
3 back, even from the copies examined, you can tell they  
4 are very rapidly and fluidly written. Indeed --  
5 Q. But the finer points that are available from an original  
6 can't be tested with these copies; correct?  
7 A. Some of them might not be able to, yes.  
8 Q. You mentioned at one point in your report the fact that  
9 you should take into consideration the fact that there  
10 could be quite a lot of money at stake in this case;  
11 correct?  
12 A. Yes.  
13 Q. Scientifically, that doesn't change anything in the  
14 document analysis, does it?  
15 A. Only from the point of view that, as I said earlier, the  
16 vast majority of low-level crime in forgery is of  
17 a pretty awful nature, it's very ... well, a lot of it's  
18 unbelievably bad. For the last 20 years I've dealt with  
19 almost exclusively the very large cases, where there's  
20 far more at stake. And it is very obvious to my mind  
21 that in cases involving big frauds, you get a better  
22 quality of penman.  
23 Q. Is that because you're often dealing with more  
24 sophisticated parties?  
25 A. Absolutely.

Page 56

10:56 1 Q. Sophisticated parties who would know how to find master  
2 forgers and others?  
3 A. Potentially, yes.  
4 Q. So you took into account the amount of money involved in  
5 this case?  
6 A. I have no idea how much money is involved in this case.  
7 Q. But you indicated that it's a lot?  
8 A. Well, it quite obviously is.  
9 Q. That's just based on your deduction from the  
10 circumstances --  
11 A. We're internationally tribuned in Paris.  
12 Q. So you deduce from that that there's a large amount of  
13 money at stake?  
14 A. I assume so, yes.  
15 Q. So assuming that --  
16 A. I have no background details of the case whatsoever.  
17 Q. Okay. But you take that circumstance into account in  
18 considering the possible alternatives?  
19 A. Well, no. I mean, you always take into consideration  
20 the evidence in front of you. What I'm saying is that  
21 the larger the case, as you said, the more care people  
22 generally take in constructing documents and fabricating  
23 them in a reasonable fashion, as opposed to the sort of  
24 husband and wife spat that you might have.  
25 Q. So is it fair to say -- you just said you take into

Page 57

10:58 1 account the information available to you about the  
2 circumstances?  
3 A. Well, there is obviously the aspect of: you look at any  
4 document from the point of view of what the evidence on  
5 the paper shows you.  
6 Q. Sure. But in terms of considering what the alternative  
7 hypotheses are, I understood you to say you take into  
8 account the global circumstances in trying to determine  
9 what the likely alternatives are. Is that fair?  
10 A. Yes, I think I'm possibly far more wary in this sort of  
11 case than I might be if it was a cheap mortgage fraud.  
12 Not to say that an individual on a low-level case may  
13 not be a very good penman. You base your opinion on the  
14 evidence in front of you.  
15 Q. But when you're considering alternatives about whether  
16 one or many documents were created fraudulently, is it  
17 fair to say you should take into account the  
18 circumstances of that case?  
19 Let me ask a more specific question. If there were  
20 contemporaneous evidence, separate from the document  
21 itself, that a document existed at a certain point of  
22 time, would you take that into account in analysing  
23 forensically the alternatives when a document is alleged  
24 to be fraudulent?  
25 Let me break that down.

Page 58

10:59 1 A. I'm sorry, I don't quite follow.  
2 Q. Let me break that down. Imagine you have a document  
3 from 2006 that's alleged to be fraudulent --  
4 A. Yes.  
5 Q. -- and you're trying to determine whether there are  
6 indications of fraud.  
7 A. Yes.  
8 Q. Does it matter to you if there is contemporaneous  
9 evidence that that document existed in 2006?  
10 A. No.  
11 Q. So if you felt that the scientific evidence showed you  
12 that the document was created in 2010, the fact that  
13 there's some other evidence that that document existed  
14 in 2006 would be irrelevant?  
15 A. Yes.  
16 Q. Okay. That's because you focus only on the science?  
17 A. Yes.  
18 Q. And then it's for the --  
19 A. I mean, we take great precautions about not receiving  
20 information that we shouldn't.  
21 Q. Okay. And then it's for the Tribunal to take your  
22 evidence and to weigh it in light of all this other  
23 evidence; is that correct?  
24 THE PRESIDENT: Mr Ostrove, I see you're probably coming now  
25 to another topic.

Page 59

11:00 1 MR OSTROVE: I was actually coming close to --  
2 THE PRESIDENT: We have been going for two hours. Would  
3 that be a good time for a break, or a little later? It  
4 depends on your sequence of questions.  
5 MR OSTROVE: I think I was actually coming to the end, so...  
6 THE PRESIDENT: Oh, that's even better. Are you at the end  
7 or are you coming to the end?  
8 MR OSTROVE: If you could give me 30 seconds, I'll tell you  
9 whether I'm at the end or ... (Pause)  
10 For once I took less time than anticipated. It  
11 didn't require 30 seconds; in 15 seconds I'm able to  
12 tell you I have come to the end.  
13 Thank you, Mr Radley. I don't have any further  
14 questions.  
15 THE PRESIDENT: So then we would take a break now,  
16 a 15-minute break, and then we would continue with your  
17 re-direct questions and the Tribunal's questions.  
18 Mr Radley, you were here yesterday, so you know what  
19 the rule is: no discussion of your evidence during  
20 breaks with anyone, please. Thank you.  
21 (11.02 am)  
22 (A short break)  
23 (11.21 am)  
24 THE PRESIDENT: Mr Libson, you have the floor for re-direct  
25 examination.

Page 60

11:21 1 MR LIBSON: Thank you. I've just got a couple of questions,  
 2 three questions, I think. Thank you.  
 3 (11.22 am)  
 4 Re-direct examination by MR LIBSON  
 5 Q. At 10.41 this morning (page 48, lines 15 to 18),  
 6 Mr Radley, you were asked about -- sorry, I just want to  
 7 quote the question. You were asked:  
 8 "If you had had more time, do you accept that it  
 9 would have been useful if the Tribunal experts could  
 10 have reviewed differences you subsequently identified in  
 11 preparing their final report?"  
 12 This related to the questions in the letter we sent  
 13 to the Tribunal-appointed experts and in relation to  
 14 Mr Struik's signature.  
 15 Very, very briefly, what were the differences you  
 16 subsequently identified, or could you just point in your  
 17 report to where those differences were?  
 18 MR OSTROVE: Excuse me. I'm terribly sorry. With respect,  
 19 I give credit to Mr Libson for his way of formulating  
 20 the question. As he's aware, Article 18.15.4 of  
 21 Procedural Order 1 states that -- I have it in French:  
 22 (Interpreted) "The Party who has presented the  
 23 witness may then re-examine the witness with respect to  
 24 any matters arising out of the cross-examination ..."  
 25 (In English) The issue raised on cross-examination

Page 61

11:23 1 was the procedure and the timing of the presenting of  
 2 comments to the Tribunal, and now reopening that as  
 3 an excuse to get to points that Mr Radley did not get to  
 4 on his presentation about differences in the Struik  
 5 signature I believe is, although I appreciate the  
 6 finesse with which it was attempted, I consider that it  
 7 would go far beyond the spirit.  
 8 THE PRESIDENT: I do remember the question in a more general  
 9 context of to what extent you had given your input into  
 10 the letter of Mishcon with the questions on the  
 11 preliminary report. I have also noted that you have not  
 12 had a chance to discuss the differences and the  
 13 conclusion that you reached with respect to Mr Struik,  
 14 and I wanted to ask you questions later on on this.  
 15 So maybe you go to the next question, and we will  
 16 come back to this.  
 17 MR LIBSON: I will leave it to the Tribunal, and take  
 18 Mr Ostrove's accusation of finesse as a major  
 19 compliment!  
 20 Turning then to a question Mr Ostrove asked at 10.46  
 21 (page 51, lines 16 to 18) which I don't think you had  
 22 a chance completely to answer. Mr Ostrove's question in  
 23 relation to the documents that bear the forged stickers  
 24 or stamps, and he asked you:  
 25 "... had you been given information that there had

Page 62

11:25 1 been previous reviews of these documents, and that they  
 2 had been determined forged by some examiner --"  
 3 And you didn't quite answer that question, so can  
 4 I ask it again to you.  
 5 Had you been given information that there had been  
 6 previous reviews of these documents and they had been  
 7 determined forged by some examiner?  
 8 A. No. No, sorry.  
 9 Q. Then going to the last questions you were asked by  
 10 Mr Ostrove, at 10.59 (page 59, lines 8 to 9) he asked  
 11 you in a hypothetical about whether it mattered to you  
 12 that there was contemporaneous evidence of the existence  
 13 of a document in 2006 in order for you to be able to  
 14 date that document. So can I just ask you two questions  
 15 following from that.  
 16 Is the date that is typed on the face of a document  
 17 a factor in assessing its actual date of creation?  
 18 A. Not at all.  
 19 Q. Is a stamp placed on a document a factor?  
 20 A. It can be in some circumstances. The whole issue of  
 21 stamps can be very complex, and well beyond what we're  
 22 dealing with here. In some instances it can be of  
 23 significance.  
 24 For instance, certain stamps -- well, no, I won't go  
 25 on, because it doesn't apply in this case. But you can

Page 63

11:26 1 get very good evidence from stamps on occasions, but not  
 2 applicable in this case.  
 3 MR LIBSON: Thank you. Those are all my questions.  
 4 THE PRESIDENT: Thank you.  
 5 Do my co-arbitrators have questions for Mr Radley?  
 6 No.  
 7 (11.27 am)  
 8 Questions from THE TRIBUNAL  
 9 THE PRESIDENT: Mr Radley, in respect of Mr Struik's  
 10 signature, you come to a different conclusion than with  
 11 respect to the two other signatures?  
 12 A. Yes, I wasn't prepared to offer an opinion on the other  
 13 two, but this one I feel the evidence is significant.  
 14 THE PRESIDENT: You have said this earlier on: this is the  
 15 only one on which you are prepared to give an opinion.  
 16 Can you just restate what the opinion is, and then tell  
 17 us what is different, and what causes you to give  
 18 an opinion here where you cannot give one for the other  
 19 signatures.  
 20 A. Yes. In my opinion, there's weak to moderate evidence,  
 21 which is a little over the balance of probability, if  
 22 you like.  
 23 It must also be borne in mind that when we say  
 24 "inconclusive", that's not 50%; it's substantially  
 25 higher than that. "Inconclusive" to a document

Page 64

11:28 1 examiner, or to me, is quite a wide band, because it  
 2 means you've got to have a fair amount of evidence above  
 3 that; otherwise it becomes a flip of a coin. So you've  
 4 got to have a substantial volume of evidence before you  
 5 can offer even a weak opinion. And obviously the  
 6 stronger the evidence, you go up the scale.  
 7 In this case, what led me to this opinion is the  
 8 fact that I believe there are a number of differences,  
 9 which, if I may, I will demonstrate.  
 10 Here we have -- this is one of the illustrations  
 11 from the chart.  
 12 THE PRESIDENT: Let's just identify it. I mean, I recognise  
 13 the image, but let's just identify for the record where  
 14 this is from.  
 15 A. This is from appendix D of my report, and there are  
 16 illustrations attached.  
 17 THE PRESIDENT: Appendix D of your report, thank you.  
 18 MR OSTROVE: Just for the avoidance of confusion, I believe  
 19 that image appears on page 59 of Mr Radley's report, not  
 20 in appendix D.  
 21 A. Appendix D is the photographs. Oh, I beg your pardon,  
 22 I'm looking at the whole thing.  
 23 THE PRESIDENT: Absolutely. Thank you.  
 24 A. Here we have my appendix D. Sorry, I was jumping the  
 25 gun there.

Page 65

11:30 1 The questioned signature is freely and fluently  
 2 executed, I agree with that. But I consider there are  
 3 a number of features which are not in keeping with the  
 4 genuine items.  
 5 If we look first of all at the width of the top  
 6 stroke. This is green arrow number 1. And I actually  
 7 point out in my report: it's green-arrowed because it is  
 8 not a red arrow, total difference. There is a similar  
 9 signature, I acknowledge, with a thin loop, in the  
 10 questioned material. That's one out of I believe it's  
 11 26/27 signatures. So we have only the one.  
 12 If we take this as fairly representative, you can  
 13 see that the first loops are usually quite broad, and  
 14 there are -- well, at the top there, K11.10, it's thin,  
 15 but it's not as thin as the one on the questioned  
 16 signature.  
 17 PROFESSOR VAN DEN BERG: Sorry, what about K17.13? If you  
 18 look here, you're talking about this one here  
 19 (indicating)?  
 20 A. Yes.  
 21 PROFESSOR VAN DEN BERG: So if you look at this one, it's  
 22 also pretty small, isn't it?  
 23 A. It's fairly small. If we go back to the questioned  
 24 signature, you will see in fact that is much thinner.  
 25 PROFESSOR VAN DEN BERG: Yes.

Page 66

11:33 1 A. It is a measurable difference.  
 2 THE PRESIDENT: If you look at K3.1, for instance, that's  
 3 similar to the questioned signature, is it not?  
 4 A. K3.1 is the example that I've given, and that is the  
 5 closest. That's why it's a green arrow, because  
 6 I have -- to present a balanced view, I acknowledge  
 7 there is one out of 26. But --  
 8 PROFESSOR VAN DEN BERG: But then you enter into the range  
 9 of variations and not differences?  
 10 A. It is just -- well, in fact, measurably the questioned  
 11 signature is outside the range of variation, if you  
 12 actually measure it, but it is marginally outside.  
 13 That K3.1, if we look at the others on that page,  
 14 and if we go to the second page, there is quite  
 15 a substantial difference. The pen movement is not quite  
 16 a retrace, but it's really not very far off that.  
 17 The second point that I would point to is that if we  
 18 look at the first very thin loop and the second very  
 19 thin loop, so we've got a combined pen movement, if we  
 20 look at all of the questioned signatures here, there's  
 21 nothing -- if we look at the first page, there's nothing  
 22 remotely like that. If we go to the second page, again  
 23 we have a thin one at K12.1 and K12.17, but we don't  
 24 have that combination of two extremely thin ones.  
 25 The next point relates to the way in which this

Page 67

11:35 1 middle element -- if we follow the loops, you get loop,  
 2 loop, loop, and then it comes up where I've arrowed 4.  
 3 That is where the pen starts to move down to the  
 4 imaginary baseline, and back up at 5.  
 5 Now, I would like to refer to Mr Welch's example.  
 6 If we can look at 31 in the paper bundle, which was the  
 7 chart produced by Mr Welch showing what he says is  
 8 a similar pen movement, what I would like to point out  
 9 is that they are similar, but there is a significant  
 10 difference in their execution. (Pause)  
 11 THE PRESIDENT: Sorry, we're not paying attention, we're  
 12 just looking at the documents and asking ourselves some  
 13 questions.  
 14 A. What I'd like to point out is, to my mind, a quite  
 15 different pen movement here. If we look at K10.3 and  
 16 K12, we have the pen coming down and looping back as in  
 17 an oval type of shape.  
 18 Now, if I can ask you to hold the document up and  
 19 look along that line, if we look at those two loops,  
 20 yes, they look like loops. If we hold the document up  
 21 to the eye and look at the questioned signature, you  
 22 will see, if we look along the paper in this direction,  
 23 what we see is a decidedly different type of pen  
 24 movement, if I can briefly illustrate.  
 25 (The expert approaches the whiteboard)

Page 68

11:39 1 So looking along the paper, what we have with the  
2 two knowns is that the pen comes down, round and back;  
3 it sweeps around. If we look at this one, along there,  
4 what that does is it comes down, and it comes -- that's  
5 a gross exaggeration, a gross exaggeration. But if you  
6 hold it up to the eye, it's more than clear.  
7 PROFESSOR VAN DEN BERG: May I ask a question? It relates  
8 to also Mr Struik's signature, and to the previous point  
9 about the first loop.  
10 Can you be shown document R-182. It's not  
11 a disputed document, I understand. That is the letter  
12 signed by Mr Struik to Pentler Holdings dated  
13 14th February 2006. Do you see that document?  
14 It's a protected document, incidentally, so I don't  
15 know whether you have to push the red flag. (Pause)  
16 Then you go down, and try to enlarge the signature.  
17 I understand this signature is not disputed,  
18 Mr Libson?  
19 MR LIBSON: I need to check.  
20 PROFESSOR VAN DEN BERG: R-182 is not a disputed document?  
21 MR LIBSON: I don't think so, no.  
22 PROFESSOR VAN DEN BERG: If you look at this here, he has  
23 also a very -- at least according to this one -- I see  
24 it is a copy of a copy or something -- it's a very  
25 narrow ellipsis, isn't it, or whatever you call it?

Page 69

11:43 1 this distance, and that's the farthest you can find, but  
2 still you have a fairly small --  
3 A. It is -- it's thin, I would agree. What I'm saying is  
4 you've got something that is poorly reproduced. Now,  
5 what you are seeing is obviously not a true reproduction  
6 of the original document. What those dots represent --  
7 and this is always the question with a photocopy; this  
8 is particularly appalling. Whatever has happened to  
9 this signature may be distorting a number of features,  
10 including line widths. There may be other factors that  
11 you can't see on it. There may be a false start on it.  
12 PROFESSOR VAN DEN BERG: Yes, or it may be something -- the  
13 document is not disputed, so I don't want to complicate  
14 the case further than it already is.  
15 A. No, no --  
16 PROFESSOR VAN DEN BERG: But if you look to the copy itself,  
17 it looks not a bad copy. If you go now --  
18 A. Not a bad copy? No, I'm sorry, I --  
19 PROFESSOR VAN DEN BERG: No, not the signature; if you look  
20 at the rest of the document. You see here the signature  
21 apparently is copied -- or I don't know, but you can  
22 have an opinion on this.  
23 A. I can't see --  
24 PROFESSOR VAN DEN BERG: But if you look at the rest, I can  
25 see this is a clear copy.

Page 71

11:42 1 A. This is not something I've seen.  
2 PROFESSOR VAN DEN BERG: No, you haven't seen it, I know.  
3 But I simply want to see, because you say, "Look, it's  
4 just outside the range of variants", but you say it  
5 enters into, according to you, the differences area.  
6 But if I look at this one -- but I'm a layperson, so  
7 please help me -- then I say: wait a moment, here it is  
8 a non-contested signature, and it's pretty narrow, or  
9 fairly narrow.  
10 A. I'd really prefer to see a better quality copy, to tell  
11 you the truth. To try and assess the width of that  
12 stroke, which is obviously made up of black dots,  
13 I wouldn't really like to comment without seeing a much  
14 better quality copy.  
15 PROFESSOR VAN DEN BERG: Okay. But one signature, you can  
16 say the dots are not far apart from each other in the  
17 loop?  
18 A. But it depends what the dots represent.  
19 PROFESSOR VAN DEN BERG: A signature.  
20 A. I'm sorry --  
21 PROFESSOR VAN DEN BERG: That is as I understand it.  
22 A. -- is the dot the centre of the line, the inside of the  
23 line or the outside of the line? Is it -- the other  
24 question would be --  
25 PROFESSOR VAN DEN BERG: What you are saying is you take

Page 70

11:44 1 A. The signature clearly -- you know, with respect, the  
2 signature clearly is not properly reproduced. I can't  
3 tell -- for instance, in a ballpoint pen you can have  
4 what we call striations, which are white un-inked lines  
5 through them. If you've got one on the outside, and  
6 you've got one on the outside of the other side of the  
7 loop, you may be able to see that on the original or  
8 better quality copy. If you copy a striation, it can  
9 distort the line: it can move them in or it can move  
10 them out.  
11 Again, the size of the dots: what is the dot  
12 representing? I appreciate your point, and you may be  
13 right, but I wouldn't like to --  
14 PROFESSOR VAN DEN BERG: I don't make a point, I only  
15 enquire.  
16 A. Yes. It's --  
17 PROFESSOR VAN DEN BERG: That's my task.  
18 A. No, to be fair, it is a good point. But on that quality  
19 copy document, let's say I wouldn't hang my hat on that.  
20 PROFESSOR VAN DEN BERG: Thank you.  
21 A. It could be distorted.  
22 THE PRESIDENT: You were answering why you have a different  
23 conclusion for Struik than for Lev Ran and Asher Avidan.  
24 Have you concluded this explanation?  
25 A. No, I'm afraid not.

Page 72

11:46 1 THE PRESIDENT: Because we were looking at the first loop  
 2 and then the second loop, and you were looking at the  
 3 document horizontally.  
 4 A. Yes. This is the point: there is a combination of  
 5 points.  
 6 This bending this way (indicating) is totally wrong  
 7 pen movement. If we then look at the arrow in point 5,  
 8 we have a very narrow "U" shape. That is very different  
 9 to the known writings. Mr Welch explained that there is  
 10 a wide range of variation: you recall he did a slide  
 11 showing variations. So instead of having a consistent  
 12 feature with a variation, say -- I'm using my hands --  
 13 a foot wide, in Struik's signature it's quite big: it  
 14 might be 2 feet.  
 15 However, if we look at all of these signatures --  
 16 and I've overwritten this joining stroke in red -- we go  
 17 from there to something over here (indicating), a long  
 18 way outside the range of variation. So we can see the  
 19 red lines there.  
 20 If we go to the next slide --  
 21 MR OSTROVE: I'm sorry, where --  
 22 THE PRESIDENT: I am trying to identify what these images  
 23 are.  
 24 A. Yes, the narrow "U", in comparison with the much, much  
 25 wider "U" shape in the known writings.

Page 73

11:47 1 THE PRESIDENT: Is this in your presentation?  
 2 A. Yes, it is.  
 3 THE PRESIDENT: And this is marked with --  
 4 A. It's marked number 5, I believe. It's the "U" shape  
 5 marked at 5.  
 6 THE PRESIDENT: Yes, I understand that. I'm just trying to  
 7 find the correct slide, and I've found it now.  
 8 MR OSTROVE: We're four slides from the end.  
 9 THE PRESIDENT: Is this in your report in this form, or have  
 10 you added now the red lines?  
 11 A. No, I believe that's in my report.  
 12 THE PRESIDENT: That's in your report?  
 13 A. Yes.  
 14 THE PRESIDENT: Fine, thank you.  
 15 MR OSTROVE: Excuse me. For the record, those are not, as  
 16 far as I'm aware, in Mr Radley's initial report, those  
 17 red lines that were added to this slide. The report  
 18 doesn't include the red line.  
 19 A. Sorry, which red line are you referring to?  
 20 MR LIBSON: I think everyone is at cross-purposes. I think  
 21 Mr Radley is still looking at the red line on R-27, on  
 22 what's on the screen.  
 23 A. Oh, sorry, I'm looking at the screen.  
 24 MR OSTROVE: I think we're looking at your slide. Unless  
 25 I'm mistaken, we're looking at the red-lining added on

Page 74

11:49 1 top of the sections in the various comparative  
 2 signatures in the slide that you produced.  
 3 A. This slide is taken from my report.  
 4 MR OSTROVE: Yes, but the red lines that have been  
 5 emphasising a certain feature --  
 6 A. Oh, yes, sorry. Sorry, we're talking at cross-purposes.  
 7 Yes, yes, I've added those. Yes, I've just drawn in  
 8 a few of the red lines to show the difference.  
 9 As I say, we have a wide range of variation of  
 10 Struik's signatures, but this feature is miles outside  
 11 of that range of variation.  
 12 We see from the arrow at point 6 at the bottom of  
 13 the U, it goes into another vertical. Now, this  
 14 vertical is then retraced. There's absolutely no  
 15 indication of a loop.  
 16 If we look at all of these, the bit in the middle  
 17 I see as a sort of "S" shape, if you like, and the loop  
 18 afterwards in K11.8, wide loop, wide loop going across,  
 19 a thinner loop going across, fat loop; down to K15.1,  
 20 fat loop, fat loop; K17.13, thinner loop, and so on.  
 21 If we then go back to the previous slide, again we  
 22 can see the retraced stroke in the questioned signature  
 23 and just nothing like it, frankly, in the known  
 24 writings. That is a measurable parameter. The width of  
 25 those strokes varies from about 7 millimetres down to,

Page 75

11:51 1 in the case of -- or the loop, I should say -- it varies  
 2 from 7 millimetres down to 0 in the questioned one. The  
 3 nearest we saw on the other slide is 2 or 3 millimetres.  
 4 So again, this is something that we have a range of  
 5 variation that we can physically measure, and this  
 6 stroke, the retrace stroke, is just not seen.  
 7 The next point is a point in green, and I've said  
 8 this is a very unusual point, point 7. There are  
 9 a couple of examples, Mr Welch has illustrated those,  
 10 and I accept there are. There's two examples in R-26.  
 11 If we then go on to point 8, what I'm trying to show  
 12 there is that we've got this dome on the top; the pen  
 13 then moves down, as per the red arrow pointing to  
 14 number 8, and then it makes a significant turn  
 15 horizontally. So this is a very decided turn in the  
 16 shape of the terminal. In other words, it's  
 17 an interesting point, because again it is how the pen is  
 18 being lifted from the paper.  
 19 If we look at the ends of all of these that we see  
 20 here, with the exception possibly of K19.18, but not to  
 21 the same extent, we're looking at a terminal flow where  
 22 the writer is fairly clearly flying the pen off the  
 23 paper. Again, if I may illustrate.  
 24 (The expert approaches the whiteboard)  
 25 So generally in the known writings it comes along,

Page 76

11:54 1 we come up and it's lifting. Sorry, I did the wrong  
 2 one. It can fly off there. It can come off there.  
 3 What I'm concerned about is the fact that in the  
 4 questioned signature it's coming down and we are getting  
 5 effectively that pen movement; it's not a flying off the  
 6 paper. So for that type of bend, it has to be  
 7 a manipulation of the pen in the fingers, and it's not  
 8 just an emphatic flying stroke.  
 9 Let me just go back to the ...  
 10 THE PRESIDENT: This would be Radley sketch 5. Thank you.  
 11 A. The fact that it is a two-piece ending, as I say, to my  
 12 mind the only one that is close is K19.18, where we have  
 13 a much smoother curve, if you like. It's not so  
 14 obviously a manipulation of the fingers.  
 15 So what we have is a very unusual point 1, the  
 16 combined -- oh, actually I haven't spoken of another  
 17 one.  
 18 The blue rectangle is the extremities of the first  
 19 six elements -- five elements; six if you call the  
 20 middle one. The height-to-width ratio is an important  
 21 factor in any signature comparison.  
 22 If we look, Mr Welch produced an example. This is  
 23 Mr Welch's slide 37. This he redrew, but drew it  
 24 somewhat differently to the point that I was making.  
 25 If we look at the top signature, I've redrawn the

Page 77

11:58 1 box, which represents the left-hand edge to the  
 2 outside-inside of that last retraced upright stroke.  
 3 THE PRESIDENT: You've lost me. I have looked at Mr Welch's  
 4 slide, but I should look at your marking of Mr Welch's  
 5 slide?  
 6 A. Yes, because I disagree with Mr Welch.  
 7 THE PRESIDENT: I understand that. Yes, I have it.  
 8 A. So we can look at this on a proportional basis, and in  
 9 fact Mr Welch did actually say he assesses things like  
 10 proportioning. If we measure the height to the width,  
 11 we've got 53 millimetres and 28.5. In the top  
 12 right-hand corner I've very crudely done a calculation:  
 13 that equals 1.86. So that is a mathematical figure.  
 14 In the other one, where I've redrawn -- in fact I've  
 15 redrawn just one line on K14.2 -- the vertical height is  
 16 51, the width is 30. If we calculate that, it works out  
 17 at 1.7. So we have 1.86, as opposed to the closest in  
 18 all of the known writings of 1.7. So we can say the  
 19 range of variation, we have a numerical value: we can  
 20 say it's between 1.7 and -- I don't know, I can't recall  
 21 it, but it's about 0.8, I think.  
 22 If we go back, so we're looking at the box that you  
 23 could put around that element. If we start in the top  
 24 left-hand corner, obviously the box is in fact more  
 25 elongated than vertical. And the same: if we go through

Page 78

12:01 1 all of these, the boxes are quite significantly more  
 2 square, as opposed to a tall rectangle.  
 3 Now, this is a measurable parameter. We can  
 4 actually put this down to millimetres. So we have  
 5 a range of variation in the known writings, the highest  
 6 of which is 1.7, the lowest of which is about 0.8,  
 7 I think. So that's a mathematical range of variation.  
 8 What we have in this questioned signature is something  
 9 that is beyond the upper limit of the range of  
 10 variation.  
 11 I also point out, going back to -- well, I won't go  
 12 back, we'll stay on this slide.  
 13 I also pointed out that the curvature -- if we look  
 14 at these illustrations, the curvature at the bottom  
 15 loops in the questioned signature -- if we look at the  
 16 bottom loops of the questioned signature on slide 37  
 17 perhaps; it's a nice enlarged version -- they are  
 18 relatively angular. If we go through the ones on the  
 19 screen, you can see there is a considerable curvature.  
 20 To be totally balanced, that angularity is possibly  
 21 a contributory factor to the squashed-in effect of those  
 22 elements. But it is still a different pen movement,  
 23 because we're not looking at the sweeping pen movement,  
 24 we're looking at down and up, very exaggerated.  
 25 I just realised I missed a point as well.

Page 79

12:03 1 If we look at point 2, this is the height of the  
 2 little loop at the top of the first element relative to  
 3 the overall height. So again we are back to proportions  
 4 here. We call that "internal proportioning".  
 5 Again, I would refer you to Mr Welch's slide 30.  
 6 What I was trying to indicate on this chart on the  
 7 screen is that if we look at the overall height of that  
 8 element, the top loop is very small, it's right up at  
 9 the top. And we can measure that, as seen on slide 30,  
 10 with 23 millimetres to the middle of the intersection  
 11 point, and 26 millimetres to the baseline. This gives  
 12 us a ratio of 0.88.  
 13 If we look at the example Mr Welch gave, I have to  
 14 say I disagree with where he has put his middle bar, and  
 15 I've drawn it lower. My calculation on that is 25 and  
 16 16; and as you can see there, that's a ratio of 1.56.  
 17 Even if we take Mr Welch's dotted line, it still  
 18 doesn't approach what we have in the questioned  
 19 signature. So these are numerical values to establish  
 20 the range of variation, and the questioned signature is  
 21 outside that range of variation.  
 22 So those are the points that interest me. So I say  
 23 point 2 isn't found in the 26/27 signatures; point 3  
 24 isn't; point 4/5 isn't; point 6 isn't, the retrace.  
 25 Point 7 appears a couple of times that I pointed out in

Page 80



12:06 1 my report; a couple of times in 26 is pretty rare. And  
 2 point 8 I don't think we see to the same extent in any  
 3 of them.  
 4 Now, assessing that, we obviously have to consider  
 5 the nature of the differences, the significance of them,  
 6 and the significance of the accumulation of them. If  
 7 you have a questioned signature and you have one  
 8 difference, yes, that could be an accidental. If it has  
 9 two, it could be two accidentals. If it's got three,  
 10 that's pretty unusual. If it's got four, yes, you might  
 11 be very worried about it.  
 12 If you have six differences, and two of which are  
 13 rarities, that combination of evidence -- and this is  
 14 the important point: it is the combination of all those  
 15 features coincidentally all appearing in one  
 16 signature -- I think I've probably been very  
 17 conservative in saying "weak to moderate", and I think  
 18 some examiners would probably go a lot heavier on it,  
 19 personally. But that number of features leads me to  
 20 a positive opinion: weak to moderate evidence supporting  
 21 the fact -- not the fact, I beg your pardon --  
 22 supporting the proposition of it not being genuine.  
 23 THE PRESIDENT: Thank you.  
 24 PROFESSOR MAYER: If the challenged signature was K19.18,  
 25 the one which has a loop instead of a dome on the

Page 81

12:09 1 extreme right ...  
 2 A. K19.18, yes.  
 3 PROFESSOR MAYER: Wouldn't you say at least that's  
 4 a difference compared with all the others, including the  
 5 one which is actually challenged? Because it almost  
 6 crosses the other line, while you showed earlier that  
 7 normally it doesn't go right, it doesn't go in the  
 8 direction of 3.  
 9 A. You're referring to the way the line is coming across,  
 10 and there's a little dot?  
 11 PROFESSOR MAYER: Exactly.  
 12 A. Yes.  
 13 PROFESSOR MAYER: It seems to me that on some other aspects  
 14 they're different from most others.  
 15 A. No, if I may say, some of these signatures have dots and  
 16 some don't; it's just one of those things. Generally  
 17 speaking, if we look at the top, K12.1, you can see the  
 18 pen is coming off the paper and the dot is pretty well  
 19 in line. And that's very typical of how people -- the  
 20 pen flies off the paper and dots the paper at the end.  
 21 That feature in K19.18 I don't think is, from my  
 22 point of view, particularly problematic. The length of  
 23 that stroke is akin to 21.9. The dot is there, it's in  
 24 line. It's quite a nice feature, as far as I'm  
 25 concerned.

Page 82

12:11 1 PROFESSOR MAYER: But it's more different from all the  
 2 others than the challenged signature is, on this aspect.  
 3 A. I'm afraid I disagree.  
 4 PROFESSOR MAYER: It goes further to the right, in the  
 5 direction of the dot. The hand has hardly lifted.  
 6 A. The line is further to the right.  
 7 PROFESSOR MAYER: Anyway, in fact I have a question,  
 8 a rather scientific one. Is this a difference or  
 9 a variation, supposing this is the challenged signature?  
 10 A. If that's the challenged signature, I don't see any  
 11 problem with it. The length of the stroke is comparable  
 12 with others. The fact that it's ending with a dot,  
 13 okay, there's a little line into the dot, but we see  
 14 that on a lot of the dots. I would say it is  
 15 a similarity.  
 16 PROFESSOR MAYER: Similarity. It's the intermediate notion  
 17 between variation and difference?  
 18 A. No, I would class that as a similarity. You have the  
 19 length, you have the direction, you have the dot.  
 20 PROFESSOR MAYER: Okay, thanks.  
 21 THE PRESIDENT: When you speak of "similarity", you consider  
 22 this to be within the range of variations; is that  
 23 right?  
 24 A. This point we're just addressing?  
 25 THE PRESIDENT: Yes.

Page 83

12:12 1 A. Yes.  
 2 PROFESSOR VAN DEN BERG: Is that -- because now I get also  
 3 scientifically a bit confused. So you have differences,  
 4 variations, and then you have similarities? Or  
 5 similarities is a subset of variations? In my mind, my  
 6 understanding of similarities was it's outside these two  
 7 categories.  
 8 A. Similarities is if it's within the range of variation.  
 9 If we compare the questioned signature with the range of  
 10 variation, if we've got signatures in here which  
 11 correspond, that's a similarity. If the feature in the  
 12 questioned signature is outside, it's a difference. But  
 13 within the actual range of variation, those are the  
 14 variations that we'll see from one extreme to the other,  
 15 so the measurement of 23 to 10. So that's the  
 16 variation.  
 17 Where I'm disagreeing strongly with Mr Welch is:  
 18 when you've got something which is measurable, you can  
 19 put a figure on it, and it's outside the range of  
 20 variation, I'm calling that a difference; Mr Welch is  
 21 calling it a variation. But in that way, if you look at  
 22 things outside the range of variations and say, "No,  
 23 that's a variation", that will explain away any forgery.  
 24 You can say that of any forger's error. You can say,  
 25 "Well, he could do that on some occasion, it's not shown

Page 84

12:14 1 within these 26 signatures but he could do it, therefore  
 2 it's variation". That, to my mind, is not a good  
 3 scientific appraisal.  
 4 THE PRESIDENT: So how do I define the range of variations?  
 5 A. Well, where we have something measurable, like the line  
 6 length, we just measure them all. So we say: yes, it's  
 7 20 millimetres away, and the shortest is --  
 8 THE PRESIDENT: We measure them all on the known signatures?  
 9 A. Yes.  
 10 THE PRESIDENT: So if I have 100, I have 100 measurements;  
 11 if I have 10 known signatures, I have 10 measurements?  
 12 A. Yes.  
 13 THE PRESIDENT: Does this have the same value for your  
 14 analysis?  
 15 A. Obviously the larger the number, possibly the more  
 16 significant the difference. So if we've got  
 17 a difference in the length of that line in Lev Ran's  
 18 signature, we compare that with 46, so there's  
 19 46 signatures that don't show that. If you look at --  
 20 if you had 10 signatures of somebody, and it's outside  
 21 the range of variation, obviously -- well, I mean, 10 is  
 22 not a good sort of number to work from, frankly. You  
 23 normally need more than that.  
 24 THE PRESIDENT: So how many do you need?  
 25 A. It very much depends on the nature of the signature.

Page 85

12:16 1 The more variable the writer, the more signatures you  
 2 need, generally speaking. Mr Welch was saying he has  
 3 a very consistent hand, and from that point of view you  
 4 need a smaller sample. If somebody is very consistent,  
 5 any forgery executing that signature style has got to be  
 6 very precise.  
 7 THE PRESIDENT: So if you do not observe a specific feature  
 8 within the known signatures, it will not be within the  
 9 range of variations?  
 10 A. That's correct.  
 11 THE PRESIDENT: And because it is not within the range of  
 12 variations, you will necessarily characterise it as  
 13 a difference?  
 14 A. Yes.  
 15 THE PRESIDENT: Is that the process?  
 16 A. Yes.  
 17 PROFESSOR MAYER: Even if it's similar, as in the example  
 18 I gave?  
 19 A. If it's outside the range of variation, it's  
 20 a difference. We're talking about the samples we're  
 21 looking at. To categorise it as anything other than  
 22 a difference, you are speculating that somewhere in the  
 23 next 100 signatures, you will see this feature. But  
 24 what we have here is a block of known signatures, and  
 25 from that we establish the range of variation, and it is

Page 86

12:17 1 that which forms the opinion.  
 2 THE PRESIDENT: Does that not mean that your analysis is  
 3 somewhat limited, because you're limited by the number  
 4 of known signatures, and your conclusion is thereby  
 5 limited in its overall value or validity?  
 6 A. You would normally be -- or I would normally be more  
 7 cautious on a small sample. But usually you can get  
 8 adequate -- I mean, as a matter of routine, as  
 9 a laboratory, we ask for 15 to 20.  
 10 PROFESSOR VAN DEN BERG: And what about accidents?  
 11 A. Accidentals?  
 12 PROFESSOR VAN DEN BERG: Yes, or "accidentals", you call  
 13 that.  
 14 A. Yes. It goes back to the quote from Osborn which says:  
 15 yes, you get accidentals, everybody does accidentals.  
 16 But point 1 could be an accidental, so could point 2;  
 17 then you've got point 3 is also an accidental and then  
 18 point 4 is a further accidental, all coincidentally  
 19 happening in one signature, and then 5 and 6 and 7 and  
 20 8. This is why we look at the combination of all the  
 21 points.  
 22 In this case, if it is what I think is a significant  
 23 number -- I mean eight points, six of which are clear  
 24 differences, and measurable, most of them, and two lots  
 25 of rarities -- are those all going to happen in one

Page 87

12:19 1 signature that happens to be questioned? It would be  
 2 a great coincidence.  
 3 I mean, I wouldn't like to -- one thing that a lot  
 4 of people disagree with with Osborn is he quotes  
 5 Professor Newcomb, who points out that the statistical  
 6 probability of an event of 1 in 10, 1 in 10, 1 in 10,  
 7 the likelihood of that happening in one signature is 10  
 8 times 10 times 10.  
 9 We don't put mathematical figures on that, so I'm  
 10 not saying we've got 26 times 26 times 26 times 26, to  
 11 one against. But you've got to look at it from the  
 12 point of view that for eight points of difference or  
 13 very rare features all to coincidentally appear in one  
 14 signature, it has to be a big coincidence, if it is  
 15 genuine.  
 16 THE PRESIDENT: No further questions on the part of the  
 17 Tribunal. Thank you very much, Mr Radley. (Pause)  
 18 Any follow-up questions on the Tribunal's questions?  
 19 I'm looking at my watch, and therefore I'm becoming  
 20 impatient and proceeding further, but I should not cut  
 21 off, yes. We have generally allowed, in the last  
 22 hearing, follow-up questions on Tribunal questions, if  
 23 there are any.  
 24 On the Claimants' side?  
 25 MR LIBSON: I have no questions.

Page 88

12:21 1 THE PRESIDENT: On the Respondent's side?  
 2 MR OSTROVE: Just one moment, please.  
 3 THE PRESIDENT: Sure. (Pause)  
 4 MR OSTROVE: Thank you, Madam President. Just one line of  
 5 questions. In the interests of time, we'll keep it  
 6 short.  
 7 (12.22 pm)  
 8 Further cross-examination by MR OSTROVE  
 9 Q. Mr Radley, you've referred to a text by Mr Osborn from  
 10 the early part of the 20th century as stating the  
 11 guiding principles for this; is that correct?  
 12 A. Yes, it must be the most quoted book in English.  
 13 Q. From memory, it's paragraph 225 of your report, but let  
 14 me just double-check. (Pause) I'm sorry, it was  
 15 paragraph 228 of your report. You've referred to  
 16 "Albert S Osborn's Questioned Documents, 2nd edition",  
 17 and you say:  
 18 "... if the conclusion of identity is reached,  
 19 either in a person or a handwriting, there must not  
 20 remain significant differences that cannot be reasonably  
 21 explained."  
 22 A. Yes.  
 23 Q. And in the next paragraph you reference the SWGDOC  
 24 standard terminology?  
 25 A. Yes.

Page 89

12:23 1 Q. Mr Osborn doesn't refer to finding "rarities", he refers  
 2 to finding "differences"; correct?  
 3 A. Are you referring to the whole book?  
 4 Q. I'm referring to that part where he speaks what you've  
 5 quoted as pointing out the need to find differences. Am  
 6 I correct that he talks about "differences", not  
 7 "rarities"? Is that correct?  
 8 A. In this paragraph, yes; but in the following paragraph,  
 9 no. He talks about rarities or accidentals.  
 10 Q. Okay. And he also talks about the need to find  
 11 "significant differences", as opposed to just any old  
 12 difference; correct?  
 13 A. Well, yes. It's got to be something that is ... it has  
 14 to be a meaningful difference.  
 15 MR OSTROVE: Thank you. No further questions.  
 16 (12.24 pm)  
 17 Questions from THE TRIBUNAL  
 18 THE PRESIDENT: I refrained from asking you about Mr Osborn.  
 19 I was very surprised to see the longevity of his  
 20 writings. In no other science or art would you  
 21 regularly quote someone whose writings date back almost  
 22 a century.  
 23 Is he still regarded as an authority? Does that  
 24 mean --  
 25 A. He is regarded as --

Page 90

12:25 1 THE PRESIDENT: Have there been no evolutions that make some  
 2 of his statements obsolete?  
 3 A. The basic principles and the theories behind it are  
 4 pretty well unchallenged, even now. Obviously with the  
 5 advent of things like ballpoint pens, there's a lot more  
 6 that we regularly refer to.  
 7 But although it's 1929 and it's 635 pages long,  
 8 written by an absolute enthusiast, it is still -- with  
 9 regard to the handwriting, I've only come across this  
 10 one issue that I've heard people say, "Well, Osborn is  
 11 wrong". I've never, ever [encountered] anybody saying,  
 12 you know, "The basic principles of handwriting as he  
 13 laid down, ooh, I don't agree with those".  
 14 THE PRESIDENT: Fine. So that now completes your  
 15 examination, Mr Radley. Thank you for your assistance.  
 16 MR RADLEY: Thank you.  
 17 THE PRESIDENT: It is now 12.30. We had in mind to complete  
 18 this morning the parties' experts, with the idea being  
 19 that the break would then be at a convenient time for  
 20 the Tribunal experts to work on their concluding remarks  
 21 on the basis of the party experts' statements, and  
 22 counsel to work on the closing arguments.  
 23 I don't know how you want to do it. Let me try and  
 24 ask Claimants: do you have an estimate of your  
 25 cross-examination time?

Page 91

12:27 1 MR LIBSON: I know assurances of this nature have been given  
 2 many times during these proceedings, but I don't think  
 3 my cross-examination will take longer than we've been  
 4 assigned. In fact, I will keep to the half-hour.  
 5 THE PRESIDENT: No longer than assigned. And you have  
 6 indicated 30 minutes?  
 7 MR LIBSON: Yes.  
 8 THE PRESIDENT: Yes. And your re-direct will depend on the  
 9 cross, but probably not over that time. (Pause)  
 10 How long is the Respondent's expert presentation?  
 11 MR OSTROVE: The experts have planned their presentation  
 12 according to the 45 minutes allocated to them.  
 13 THE PRESIDENT: If we take 5 minutes now and then continue,  
 14 would that be acceptable? So we will have a late lunch,  
 15 but the longer break we will have at a time where it's  
 16 better used?  
 17 MR OSTROVE: If the Tribunal, the court reporters and  
 18 interpreters can handle it, we are certainly ready to  
 19 proceed.  
 20 MR LIBSON: Us too.  
 21 THE PRESIDENT: Fine. So I think we will survive until  
 22 lunch, and I hope I speak on everyone's behalf, which is  
 23 a little presumptuous. I see nodding, so I think we can  
 24 proceed like this. Let's take 5 minutes now and resume  
 25 with the Respondent's experts.

Page 92

12:32 1 (12.29 pm)  
 2 (A short break)  
 3 (12.45 pm)  
 4 DR VALERY AGINSKY (called)  
 5 MR RICHARD PICCIOCHI (called)  
 6 THE PRESIDENT: For the record, can you please confirm that  
 7 you are Richard Picciochi?  
 8 MR PICCIOCHI: Yes, I am.  
 9 THE PRESIDENT: You are from Access Forensic Group?  
 10 MR PICCIOCHI: Yes, I am. (Pause)  
 11 THE PRESIDENT: You are a forensic document examiner?  
 12 MR PICCIOCHI: That is correct.  
 13 THE PRESIDENT: Can you please for the record confirm that  
 14 you are Valery Aginsky, sir?  
 15 DR AGINSKY: Yes, Madam President.  
 16 THE PRESIDENT: You're from Aginsky Forensic Document Dating  
 17 Laboratory?  
 18 DR AGINSKY: Yes.  
 19 THE PRESIDENT: You're a forensic chemist and an ink and  
 20 document dating specialist?  
 21 DR AGINSKY: Yes.  
 22 THE PRESIDENT: You have together assisted the Respondent in  
 23 preparing its comments of 12th March 2018 on the  
 24 Tribunal experts' report; is that correct?  
 25 MR PICCIOCHI: Yes.

Page 93

12:46 1 DR AGINSKY: Yes.  
 2 THE PRESIDENT: You are both heard as expert witnesses. As  
 3 expert witnesses, you are under a duty to make only such  
 4 statements that are in accordance with your sincere  
 5 belief. Can you please read into the record the expert  
 6 declaration that is on the table.  
 7 MR PICCIOCHI: Yes. I solemnly declare upon my honour and  
 8 conscience that my statement will be in accordance with  
 9 my sincere beliefs.  
 10 THE PRESIDENT: Thank you. Dr Aginsky, please.  
 11 DR AGINSKY: I solemnly declare upon my honour and  
 12 conscience that my statement will be in accordance with  
 13 my sincere beliefs.  
 14 THE PRESIDENT: Thank you.  
 15 So now we will proceed first with your presentation,  
 16 and you have the floor for your presentation. I recall  
 17 that we have allowed 45 minutes. It is true that we  
 18 have allowed the experts of the Claimants to go a little  
 19 beyond that, but if possible, if we can stick within the  
 20 time limit, it's fine.  
 21 While you are getting ready, I should mention that  
 22 we have received a number of documents. I understand  
 23 these are the documents you will use for your  
 24 presentation now?  
 25 MR PICCIOCHI: That is correct.

Page 94

12:48 1 MR NAUD: Madam President, if I may, just as Mr Picciochi  
 2 and Dr Aginsky are getting ready, since the time  
 3 allocated is rather short, 45 minutes, and a lot of time  
 4 has been spent over the past few days looking  
 5 specifically at the signatures and the signature  
 6 examinations, the scope of the presentation of the  
 7 experts presented by the Republic of Guinea will  
 8 concentrate on the signature examinations. So that will  
 9 be essentially Mr Picciochi making that presentation.  
 10 THE PRESIDENT: Fine, thank you.  
 11 And maybe later on, while we're on this topic, when  
 12 you respond to questions, we should try and have only  
 13 one person giving the response, and you will allocate  
 14 between the two of you, depending on the topic and your  
 15 expertise.  
 16 DR AGINSKY: Yes.  
 17 MR PICCIOCHI: Yes.  
 18 THE PRESIDENT: You have the floor then.  
 19 (12.49 pm)  
 20 Presentation by MR PICCIOCHI  
 21 MR PICCIOCHI: Thank you. I have prepared three sets of  
 22 exhibits. These are demonstrative exhibits to help  
 23 explain how I arrived at my opinion and what I have  
 24 observed.  
 25 The first chart I will be looking at is the

Page 95

12:49 1 questioned Marc Struik signature, R-27. The chart is  
 2 constructed in the same way, and each subsequent chart  
 3 labelled by letters. In the bottom-right corner is  
 4 letter A. So they will always have the questioned  
 5 signature on top and a series of known signatures on the  
 6 bottom [RDE-RP-1]. There are six known signatures  
 7 selected for chart A.  
 8 Chart B will be the same thing, but will have  
 9 a different feature. So I'm going to break down each  
 10 feature that is a repetitive characteristic.  
 11 I chose six signatures to represent the range of  
 12 variation in the known writings. However, for my  
 13 analysis I used all the signatures available to reach my  
 14 conclusion.  
 15 So the first feature I would like to point out is  
 16 the hook introductory stroke in the questioned signature  
 17 that is at the bottom left, and I'm kind of circling  
 18 that right now. If you will notice, in the known  
 19 writings, most of them also have a hook introductory  
 20 stroke. I'm just going to circle them quickly, since  
 21 we're running out of time.  
 22 But you will notice an arrow at K6.3. The reason  
 23 why I did that, I wanted to demonstrate that it has no  
 24 hook; kind of both sides of the coin, to represent all  
 25 the known writings. So there's an arrow there. But in

Page 96

12:51 1 the known writings, some have hooks and some don't. So  
 2 the questioned writing falls within the range of writing  
 3 variation for this particular feature, and is not  
 4 inconsistent; it is a consistent feature.  
 5 I would like to move along to the next chart, B.  
 6 You will see the chart is constructed in the same way  
 7 with the exact same known signatures.  
 8 I would like to point out that there are five  
 9 parallel loops, and I have numbered them, in case we  
 10 have to speak about them in specific. There's 1, 2, 3,  
 11 4 and 5, moving from left to right in the questioned  
 12 signature.  
 13 If you will notice, in all the known signatures --  
 14 K12.1, there are five loops; K3.1, there are five loops;  
 15 K6.3, also five loops; K8.5, five loops; K9.1, five  
 16 loops; and no surprise, K19.1, also five loops. So this  
 17 is consistent. Maybe the weight of it is not that  
 18 significant, but every feature has a weight, especially  
 19 in cumulation.  
 20 If we go to the next chart, chart C. I have decided  
 21 to draw my dotted lines around the first three loops.  
 22 It is because I feel that the first three loops  
 23 represent the Latin alphabet letter "M". Even though  
 24 this is a stylised signature, I believe the first  
 25 element is the "M", which is made in garland-type

Page 97

12:52 1 strokes; that is, they are troughs. So if you follow,  
 2 there is one loop, two loops, three loops, and it has  
 3 troughs. Some people make "M"s with an arcade stroke or  
 4 arches on top. So this is an example of a garland-type  
 5 "M" structure.  
 6 I tried to draw to the best of my ability lines for  
 7 the top extremity, the bottom extremity, the left  
 8 extremity and the right extremity. By doing this, I can  
 9 measure approximately the distance across, or the width,  
 10 and the distance down, the length.  
 11 If I take the ratio of those two measurements, that  
 12 is the width over the length, and divide it, I come up  
 13 [with] for R-27 approximately 0.43. If you notice, the  
 14 symbol before the zero is a squiggly line; it is not  
 15 an "equals" sign. What that means is it's approximate.  
 16 When you take measurements and apply numbers to  
 17 handwriting, you can only do that in a relative term,  
 18 an absolute measurement is less meaningful to compare,  
 19 because there's such variation in width and length of  
 20 especially loops that are rapidly written like this.  
 21 But if I do that ratio and draw it to the best of my  
 22 ability for all the known signatures, you will notice,  
 23 with the division of the width over the length, that it  
 24 varies slightly. So for K12.1, it is 0.45; skipping  
 25 down to K6.3, it's 0.42; K9.1 is 0.46; going up to K3.1,

Page 98

12:55 1 it is 0.46; K8.5, 0.46; and K19.1, 0.43.  
 2 So the extremes are [0.42] to 0.46: that's four  
 3 one-hundredths, not very much. So if you look at these  
 4 numbers, is that a significant similarity? I believe  
 5 they're similar. Just look at the boxes: the width is  
 6 a little less than half the length. And that's all I'm  
 7 going to use numbers for.  
 8 If we skip down to the next chart, D, I want to  
 9 point out that there are red lines drawn through the  
 10 first loop and the fourth loop, and I did that for all  
 11 the known signatures. Take a moment and look at them.  
 12 It's obvious that the slant is a back slant for this  
 13 person. Can someone else have back slant? Yes, it's  
 14 not a unique identifying feature. But if you look at  
 15 the relative slant of the first loop to the fourth loop,  
 16 you will notice that the fourth loop has increased slope  
 17 to the left. This is a subtle feature found in this  
 18 person's writing that it's unlikely a forger would pick  
 19 up on. If you look at every one of the known  
 20 signatures, you will notice the distance on top is less  
 21 than the distance on the bottom.  
 22 So this is what we call an individual  
 23 characteristic, a subconscious characteristic. It is  
 24 almost idiosyncratic. Even though it's a straight line  
 25 and two loops, the person is consistent; not only in the

Page 99

12:57 1 six that I pointed out, but all the known signatures  
 2 that are present. I attach much weight to this  
 3 particular feature, and I don't believe anyone mentioned  
 4 it, but this is a significant individual subconscious  
 5 writing characteristic of the person.  
 6 Now just one more thing. If I took the measurement  
 7 of the inclination to the perpendicular, that would come  
 8 up with an absolute number or measurement, just like  
 9 a height or a length or a width.  
 10 Does that really mean anything? To me, no, because  
 11 if you look at the slope of the second red line, which  
 12 is the fourth loop, you notice it varies. If you find  
 13 two within the known, does that mean the absolute  
 14 measurement and degrees is different, and therefore it  
 15 is a different person? No. What's important is the  
 16 relative slant of these loops, and that the fourth one  
 17 is always more of a slope to the left.  
 18 Skip to the next one, chart E, please. You will  
 19 notice that the fourth loop is always the shortest loop.  
 20 Just take a look at the questioned, where the arrow is,  
 21 and every one of the knowns. This is a repetitive  
 22 characteristic in the known samples.  
 23 So I'm looking for patterns and combinations of  
 24 repetitive characteristics. So, so far you've seen  
 25 several repetitive characteristics that are found in the

Page 100

12:58 1 known writings, so that's a writing characteristic of  
2 this person, and you also see that in the questioned  
3 writing. Of course, there are some variations with  
4 that.  
5 The first three loops to me represent the letter  
6 "M". If you look at the fourth loop and actually follow  
7 the movement -- let's go to the next slide, F --  
8 I believe this to be representative or approximating  
9 a cursive letter "S". If you look at the movement from  
10 the bottom of the third loop going into the fourth, and  
11 watch as I trace, it goes up slightly to the left,  
12 partially retraced, down to the right, that's number 1,  
13 then back up forming a loop to 2, to the left, and back  
14 down again to the right, and then up, up again to the  
15 top, and then down. So that's the general formation of  
16 the way we're taught to make a cursive letter "S".  
17 If you look -- I've circled it instead of numbering  
18 it in all the known signatures -- there's quite  
19 a variation in how this boat-tail construction is made,  
20 but it's basically to the right, to the left, and back  
21 to the right. So this is a consistent feature in the  
22 "S" formation of the fourth loop.  
23 If you move to chart G, there is like a trough-like  
24 motion that follows the "S" into an ascending stroke.  
25 That ascending stroke could be a "T", for sure; could be

Page 101

13:00 1 the "K", with the trough. I don't know, and I'm not  
2 going to guess. However, consistently you will see  
3 after the fifth vertical that there is a trough, and  
4 then almost like a compound curve that goes then into  
5 the ending stroke. And this again is repeated in the  
6 known signatures. Not identical every time: we are not  
7 machines, we don't write exactly alike each and every  
8 time. But the spirit of the movement is there all the  
9 time.  
10 Let's move to H. Another obvious feature that maybe  
11 a forger can pick up is the baseline inclination or  
12 slope. That is fairly consistent: it moves from the  
13 left to right upward. So this is a habit of this  
14 person.  
15 I'm looking for subconscious habits, things that  
16 repeat themselves that are done more or less the same  
17 way. So anything you do approximately the same way and  
18 without thought is called a habit. I simply look for  
19 habits in the writings, between two bodies of writing,  
20 the questioned writing and the known writings.  
21 I should further state that when I do  
22 an examination, I look at each body independently, never  
23 start a comparison. So I want to look at the features  
24 of the known writing for the patterns of repetitive  
25 characteristics and range of writing variation, and then

Page 102

13:02 1 I look at the questioned writing at a later date --  
2 because I have a short-term memory -- and look at the  
3 features there, and then I do a side-by-side comparison,  
4 so I don't bias myself, like I'm looking for something  
5 in one body or the other. So I do a side-by-side  
6 comparison, and look: do I find similarities? Do I find  
7 differences or dissimilarities? Do I find absent  
8 characteristics? Do I have any limitations to the  
9 analysis?  
10 So in this particular case, in H, the slope  
11 inclines, varies a little bit. There is a large ending  
12 stroke or rubric, I'm not sure what it's supposed to  
13 represent, but it is present throughout all the samples.  
14 It's something that's easily recognisable.  
15 But the way it is made, it is like a football -- but  
16 that would be an American football, okay? I'm sorry,  
17 we're in Europe -- and you can see that it is  
18 elliptical, and that both extremes, along the long axis,  
19 are a little bit angular. If you look again, the height  
20 and width vary a little bit, but you have to admit it's  
21 basically elliptical, and fairly large in comparison to  
22 the earlier loops. And as I stated, it also has some  
23 angularity in the left-hand side especially, and then it  
24 ends downward. So that's [chart] "J", so it's made in  
25 a clockwise motion.

Page 103

13:04 1 I'd also like to point out -- which is difficult in  
2 this chart -- but if you look at the high-resolution  
3 scans, you will notice that the terminal stroke of this  
4 counter-clockwise loop does not end abruptly: it flies  
5 off the paper and has a nice taper to it. So this means  
6 it's written with speed.  
7 So even from a static image, I can get a feeling for  
8 speed and actually pressure variation. If you notice  
9 the loops of the "M", they vary in thickness, so that is  
10 an indication of speed and naturalness that I'm looking  
11 for.  
12 So I look for letter shapes, how the letters are  
13 formed, how the letters relate to each other; and most  
14 importantly, the movement qualities, how the pen moves.  
15 So that's called line quality, and that is one of the  
16 features that's very important that I'm looking for.  
17 So the arrow points to the terminal stroke. And if  
18 we had this enlarged a lot more -- but look at the high  
19 resolution scans -- you will see that they taper.  
20 The last thing I would like to point out on this  
21 chart is that if you draw a line from the terminal  
22 stroke to the dot that's present just after it, and I've  
23 circled those dots, every time -- you know, my red arrow  
24 might not be perfectly accurate -- if you put a straight  
25 edge at the extreme of the terminal stroke to the dot,

Page 104

13:05 1 they line up. So this shows that the motion and habit  
 2 of this person is to finish the stroke and then make  
 3 a dot after that. And you can see the movement in the  
 4 final dot in K19.1.  
 5 Let's see if I can blow this one up.  
 6 I want you to look very carefully that the dot is  
 7 not round. And it might be a little hard to see, but  
 8 there's a little introductory stroke here, a feathering.  
 9 That means the pen, as it's coming in to the paper,  
 10 lightly touches before it becomes firm; again, a natural  
 11 movement.  
 12 THE PRESIDENT: Do you see the dot in all the known  
 13 signatures?  
 14 MR PICCIOCHI: Yes, yes. And in particular -- it might be  
 15 difficult to see in R-27 -- I have prepared an infrared  
 16 photograph to show that that dot is present, by dropping  
 17 out or making disappear the rubber-stamping. So if that  
 18 becomes an issue, it is certainly present in the  
 19 questioned signature.  
 20 That concludes the presentation for Marc Struik.  
 21 After carefully looking at all the known writings, it is  
 22 my expert opinion that there is strong evidence to  
 23 support that the questioned Marc Struik signature is  
 24 consistent with or genuine when compared to the known  
 25 signatures. Furthermore, there are no fundamental

Page 105

13:07 1 differences that would indicate forgery.  
 2 PROFESSOR VAN DEN BERG: You said for [chart] D, where you  
 3 had the slants, the back slant and the relative slant,  
 4 there you made the observation: unlikely the forger will  
 5 be able to pick this up or to replicate this. Do you  
 6 remember that?  
 7 MR PICCIOCHI: Yes.  
 8 PROFESSOR VAN DEN BERG: Of the other letters you showed to  
 9 us, where would you make a similar remark?  
 10 MR PICCIOCHI: Well, this is a very subtle and very good  
 11 indicator of genuineness. The other ones vary. Some  
 12 are macro, and you can kind of see it, the slant  
 13 backwards. But it's the combination of all these  
 14 features, trying to get them right in relationship to  
 15 each other with natural movement, that counts, that  
 16 allows me to give the opinion.  
 17 So I know I kind of circumvented your question.  
 18 Some of them have different weights. This has very  
 19 strong weight to me, this particular one. Others have  
 20 less weight.  
 21 PROFESSOR VAN DEN BERG: But the master forger, could he or  
 22 she do the others except [chart] D? Could they  
 23 replicate this?  
 24 MR PICCIOCHI: To try to do it is very difficult. What  
 25 you're describing as a "master forger", I suppose people

Page 106

13:09 1 exist that are very attuned to these things, but they  
 2 have to do it naturally, with speed. And I don't  
 3 believe an average person -- certainly this is something  
 4 very subtle that even a "master forger" might not pick  
 5 up on.  
 6 So when you're forging something, please keep in  
 7 mind that you have to recognise what is a subtle,  
 8 unconscious feature in the other person's writing, and  
 9 incorporate it, and realise what your habitual action  
 10 is, and not allow that to happen in the forgery. So  
 11 there's almost a fight between the two people: the  
 12 genuine signature, trying to forge it, and then the  
 13 person actually doing it. So it's a very difficult  
 14 thing.  
 15 PROFESSOR VAN DEN BERG: But is it also your opinion that  
 16 a master forger is born as a master forger, or that you  
 17 can acquire the skills?  
 18 MR PICCIOCHI: I think we're all born with different  
 19 qualities that we can accentuate. But no, I don't think  
 20 there's anything in our genotype that would say that you  
 21 are a master forger or not.  
 22 PROFESSOR VAN DEN BERG: Thank you.  
 23 MR NAUD: Sorry, Mr Picciochi, before you move on to the  
 24 next set of signatures, could you address some of the  
 25 differences which have been identified by Mr Radley with

Page 107

13:10 1 respect to this signature, and perhaps first the --  
 2 MR LIBSON: Madam President, I thought this was the  
 3 presentation, rather than an examination-in-chief.  
 4 THE PRESIDENT: Yes, we have opted for presentations, so  
 5 maybe we'll leave the experts to make their  
 6 presentation. Obviously the Tribunal wants to hear  
 7 these experts on [Mr Radley's assessment of Mr Struik's  
 8 signature] that we heard earlier this morning.  
 9 Mr Picciochi, do you want to carry on?  
 10 MR PICCIOCHI: Yes, ma'am.  
 11 THE PRESIDENT: You can well now address your comments on  
 12 Mr Radley's assessment that you've heard this morning,  
 13 if that is what you have in mind doing.  
 14 MR PICCIOCHI: It was not.  
 15 THE PRESIDENT: Okay, fine.  
 16 MR PICCIOCHI: I can give a general opinion that what  
 17 Mr Radley attributes to being significant fundamental  
 18 differences, I do not see at all. I believe the  
 19 questioned signature, in this particular case [R-27], is  
 20 consistent and falls within the known writing variation.  
 21 I see no fundamental differences.  
 22 THE PRESIDENT: Fine. I will let you carry on with your  
 23 presentation and we can come back to more specific  
 24 questions in this respect.  
 25 MR PICCIOCHI: So the next series of charts, set up in more

Page 108

13:12 1 or less the same way, will be the questioned on top and  
 2 the knowns on the bottom. Again it's set up in the same  
 3 way: six known signatures on the bottom; two questioned  
 4 signatures, R-28 and R-29.  
 5 There are two distinct areas, and I've colourised  
 6 them: on the top, the horizontal --  
 7 THE PRESIDENT: I'm sorry to interrupt you. I don't think  
 8 we have said that we are discussing Asher Avidan's  
 9 signature.  
 10 MR PICCIOCHI: Yes. I said it in my mind, but it didn't  
 11 come out. Sorry. [RDE-RP-2]  
 12 Yes, we are on Asher Avidan, chart A. So if you  
 13 look, I've colourised three portions: the orange on top,  
 14 which is a series of horizontal loops; in yellow in the  
 15 lower right is a "9"-like structure, I show that in the  
 16 known writings; and then a series of vertical dashes or  
 17 dots that are in green; and the "L"-shaped mark in the  
 18 upper right. I think other experts have mentioned these  
 19 particular features.  
 20 So I'm just going to show that all the known  
 21 writings can be segregated mostly in that same manner,  
 22 except for the series of dots. It is my understanding  
 23 in Hebrew writing that this series of dots does not  
 24 always have to be present in the writings.  
 25 So if you look, pictorially the two questioned

Page 109

13:14 1 signatures look very similar to each other. They are  
 2 not identical of course, we know that; we're not  
 3 machines. And then the known writings also look pretty  
 4 similar, there is no feature that really stands out;  
 5 although there is one that I'll address in K13, that  
 6 there is certainly some variation in this compound  
 7 "S"-curve. It looks like a hesitation or an uncertainty  
 8 of movement. So this is something that we might refer  
 9 to as an accidental feature here, because it's not slow,  
 10 hesitating and drawn like here; it's just a variation in  
 11 this person's writing.  
 12 Let's move along to B. I can enlarge this. But if  
 13 you just follow the numbers, you can see in the  
 14 questioned -- I'll do it with K13.4. If you start at 1,  
 15 there's a counter-clockwise motion to 2; the pen moves  
 16 to the right, 3; then the pen moves to the left, to 4;  
 17 then to 5; back to 6; and then back to the right, to  
 18 I believe that's 7; and then 8; in a clockwise motion,  
 19 diagonally down to 9; then off to 10, actually to 11;  
 20 and then counter-clockwise down to the finishing stroke,  
 21 12. Maybe I should have enlarged that even for myself.  
 22 But the general motion is very complex, if you look  
 23 at it. This is not a simple movement, even though  
 24 there's no Roman alphabet letters. This person repeats  
 25 this in every particular signature: in the known

Page 110

13:16 1 writing, and it is congruent in the questioned writings.  
 2 But if you look at the "9"-like structure in R-29,  
 3 as other experts have said, it starts horizontally and  
 4 goes in a counter-clockwise motion and ends downward.  
 5 We know that because there are striations in the  
 6 writing, and the striations go from the inside to the  
 7 outside in a clockwise motion. So that is very easy to  
 8 determine with a ballpoint pen that has striations.  
 9 The R-28 in the lower left-hand corner, believe it  
 10 or not, that's a very similar motion. It's made in the  
 11 same way, almost identical, except that the loop is  
 12 small. So if you look at the known writings in K22.1,  
 13 you'll see a very similar either "F" or backward  
 14 "7"-type design, which is very similar to R-28. But  
 15 I might be getting ahead of myself. So that's B,  
 16 showing the motion.  
 17 There's been some comment about the upper-right tick  
 18 mark, horizontal mark. In R-28, it is something of  
 19 a right angle -- not a perfect 90-degree right angle, as  
 20 I would expect not to find in handwriting -- and the  
 21 similar mark in R-29 is diagonal, ending downward. And  
 22 if you look throughout the known writings, you will see  
 23 that there's some variation in this particular mark:  
 24 some look like a tent, some are diagonal, some are  
 25 "L"-shaped. So you see the questioned writing features

Page 111

13:18 1 in both R-28 and R-29 of this particular mark are found  
 2 within the known writing variation.  
 3 So let's move along to D. If you look at the two  
 4 loops, the major loops, in R-28 you'll notice that they  
 5 approximately line up vertically with each other to the  
 6 right extreme. If you look at R-29 and compare them,  
 7 you'll see the top loop is more to the left, the bottom  
 8 loop is more to the right.  
 9 So what is predominantly found or what is found in  
 10 the known signatures? In a lot of the known signatures  
 11 you'll see if you draw a straight-edge line between the  
 12 top and the bottom loop to the right extreme, you'll see  
 13 that they're slanted or uneven, and you will see that  
 14 throughout the known writings. But if you draw the same  
 15 type of line with K13.2 and K22.1, they're mostly  
 16 vertical or even. So the feature in R-28 is not  
 17 a fundamental difference because it is found in the  
 18 known writings.  
 19 I would like to address the terminal stroke of the  
 20 last loop. It's very hard to see in the small one, but  
 21 if we look at a blow-up -- and we can do that if you'd  
 22 like -- R-28 ends downward vertically -- even though you  
 23 see it predominantly going off to the left at an angle,  
 24 it actually ends downward -- and in R-29 it ends to the  
 25 right. No fundamental difference between these two

Page 112



13:19 1 signatures.  
 2 But if you look at the known writings, you will see  
 3 some end downward, as in K19.18; some end to the left,  
 4 which is K13.2, K13.3, K13.4, K22.1. But if you look at  
 5 CSW10.5, K30.2, it obviously goes to the right in  
 6 a terminal stroke, and that's much like R-29. So I find  
 7 these particular features in the questioned writings,  
 8 even though there's variation in the known writings.  
 9 So this concludes the presentation for the  
 10 questioned Asher Avidan signature. It is my expert  
 11 opinion that there is evidence to support that there are  
 12 features that are consistent with the known writing and  
 13 the questioned writing, so it is my expert opinion that  
 14 they were written by the same person. So the  
 15 proposition that they were written by the same person is  
 16 there. And also I cannot support the proposition that  
 17 there are fundamental differences between the questioned  
 18 and known writings. Anything that may look dissimilar  
 19 is attributed to natural variation.  
 20 If we can move along to the next one [RDE-RP-3].  
 21 So if you look at chart A for Avraham Lev Ran, we  
 22 see that we have three questioned signatures on top and  
 23 we have six known signatures on the bottom. Some people  
 24 have pointed out, previous to me, that there's like  
 25 a star-like structure and a predominantly vertical-like

Page 113

13:22 1 structure, so I've colourised them for the first chart.  
 2 It's a relatively simple formation: there's not many  
 3 curves. But the speed, pressure variation, flying  
 4 starts and stops are definitely present in the  
 5 questioned writing, which is indicative of naturalness.  
 6 We move to chart B. So I've only marked it in R-24,  
 7 and I've only marked the star-like element.  
 8 So if you look at number 1, you'll see that there's  
 9 an introductory stroke: it moves upward to the right to  
 10 number 2; back down to the left diagonally to number 3;  
 11 then up to number 4; back down to the left to number 5;  
 12 and then back up to number 6; and then back down again  
 13 to the terminal stroke, number 7. You'll see that there  
 14 is some feathering in number 7 and there's some  
 15 feathering in number 1, meaning that they're flying  
 16 starts and stops. There is also a predominantly  
 17 vertical stroke, and it's hard to tell from the  
 18 exhibits: some of them do not have drag strokes, but  
 19 some of them do.  
 20 If we go over to R-26, you will notice that this  
 21 vertical line hooks to the right, and it's a very light  
 22 drag stroke to what would be point 1. This tells me  
 23 that it's more likely than not that the vertical stroke  
 24 was formed first, and it goes into the number 1 point of  
 25 this star-like structure.

Page 114

13:24 1 Not all of them have it, but you will notice that  
 2 there are different introductory strokes. So in R-24,  
 3 you'll notice there's a tick on the right side before it  
 4 comes down vertically and a tick to the left. You will  
 5 notice that in R-25 there's an absence of tick marks.  
 6 And then you'll notice, as we said before, in R-26  
 7 there's a tick or connecting curve to the right.  
 8 If we move to one of the known signatures, you'll  
 9 see that it's basically formed in the same manner: we  
 10 have 1, which is to the left; it goes to 2, upward to  
 11 the right; retraces back down diagonally to number 3;  
 12 diagonally up to the right to number 4; back down to  
 13 number 5 to the left; and then up to number 6 at the  
 14 top; and then the terminal stroke number 7. Again, you  
 15 will see a light feathering of speed coming off the  
 16 page. (Pause)  
 17 When I first learned about computers, they were the  
 18 size of this room, and you had to talk to it with a key  
 19 punch. So I'm dating myself: that was in the '70s.  
 20 I have not kept up with computers.  
 21 So, okay, that was the sequence of strokes or the  
 22 order of strokes, and that's very consistent between the  
 23 questioned and the knowns.  
 24 If we move to [chart] C, I've kind of already  
 25 alluded to the intro and terminal strokes of the

Page 115

13:26 1 vertical lines, that they can be ticks, tapers, even  
 2 retraced -- remember when it started off, it went  
 3 a little bit upward to the right and back downward to  
 4 the left: that's a retrace -- or connected, the pen  
 5 actually drags and connects. That's [chart] C.  
 6 [Chart] D, we're looking at the natural execution.  
 7 The lines are not all the same weight or pressure  
 8 involved; the pressure and speed vary, and you can see  
 9 that by the [thick] and thin lines.  
 10 So we look at R-25 in particular. You'll see  
 11 certain strokes, like the downstroke is heavy, the  
 12 upstroke is light -- I'm just going to point it out in  
 13 several places -- and sometimes it gets heavier again.  
 14 So that just shows naturalness in the execution, that  
 15 that's varying speed and pressure.  
 16 If we skip down to [C-0084.7], it's just that it's  
 17 more obvious here. You can see very light lines showing  
 18 speed; it slows down by the curve, and you can see it's  
 19 a little bit heavier pressure; and certainly again the  
 20 terminal stroke is very heavy, as is that near vertical  
 21 stroke, being a short, heavy stroke.  
 22 You will find this feature throughout the known  
 23 writings. So the movement qualities of the known  
 24 writing are very similar and found in the questioned  
 25 writings.

Page 116

13:27 1 In [chart] E, I looked at the angularity of the  
 2 points. So if you look at R-24, R-25 and R-26, they  
 3 vary a little bit, they're not exactly the same, as  
 4 I would expect from something rapidly written,  
 5 a feature.  
 6 Again, if you look at C-0271-287.43 -- that's the  
 7 upper-right known signature -- you can see it's very  
 8 pointed and slightly retraced on the bottom left. Yet  
 9 if you move over to the left, C-0271-287.19, you'll see  
 10 it's a little bit rounder. So you'll certainly see some  
 11 variation in this particular point here, and you will  
 12 see that also in the questioned writings. So you have  
 13 three questioned writings: they have some variation, but  
 14 all that variation fits within the known writings.  
 15 I think that's the last slide for Avraham Lev Ran.  
 16 So there is evidence to support the proposition that the  
 17 questioned signature was made by the author of the known  
 18 writings. There is no evidence to support fundamental  
 19 differences, that these are simulations and not written  
 20 by the same person.  
 21 Any further questions?  
 22 THE PRESIDENT: We may have questions, but maybe we'll keep  
 23 them for afterwards, and give the floor now to the  
 24 Claimants' counsel, and come back at the end if  
 25 something is not covered.

Page 117

13:29 1 MR LIBSON: Thank you. I may even be less than my  
 2 half-hour. I had prepared some questions for Dr Aginsky  
 3 as well, but I'm not going to ask any questions in  
 4 relation to that; I'm going to limit to the presentation  
 5 that we've just heard.  
 6 THE PRESIDENT: As we defined the scope before, you could  
 7 ask these questions if you think you need to.  
 8 MR LIBSON: Yes. I think I will limit myself to the  
 9 handwriting and see how I go. Thank you.  
 10 (1.30 pm)  
 11 Cross-examination by MR LIBSON  
 12 Q. Thank you, Mr Picciochi. Can I ask you: what we heard  
 13 today in your opinions, when did you arrive at those  
 14 opinions?  
 15 A. (Mr Picciochi) Quite some time ago. I was asked to be  
 16 a consulting expert in this matter, to advise retaining  
 17 counsel. I have become a testifying expert. But  
 18 because I can do a comparison, an analysis, early on, as  
 19 soon as I received the preliminary report, I can get the  
 20 data; that is, the raw pictures. So shortly after  
 21 that -- I can't give you an exact date -- I did my own  
 22 independent analysis, before I looked at the preliminary  
 23 report, to see what my findings were.  
 24 As far as when the charts were made -- is that  
 25 a different question?

Page 118

13:31 1 Q. I'll come on to that.  
 2 A. (Mr Picciochi) Sure.  
 3 Q. Did you form your opinion before 12th March 2018?  
 4 A. (Mr Picciochi) Yes.  
 5 Q. Did you see, before it was served on us, the comments of  
 6 the Republic of Guinea? It's at tab [29]. (Pause) It's  
 7 the same bundle as yesterday.  
 8 THE PRESIDENT: The comments of 12th March?  
 9 MR LIBSON: Yes. Tab 29, the comments of the Republic of  
 10 Guinea on the final report of the Tribunal experts.  
 11 Have you got that in front of you?  
 12 A. (Mr Picciochi) 29?  
 13 Q. Yes.  
 14 A. (Mr Picciochi) Yes.  
 15 Q. Have you seen it before?  
 16 A. (Mr Picciochi) I have, yes.  
 17 Q. Did you see it before it was served?  
 18 A. (Mr Picciochi) I did.  
 19 Q. Can you read paragraph 5? I will read it out actually:  
 20 "Mr Picciochi and Dr Aginsky have both studied the  
 21 Final Report in full and consider it to be thorough and  
 22 comprehensive. Mr Picciochi and Dr Aginsky approve of  
 23 the methodologies used by the Experts and agree with  
 24 their conclusion, based on all the observations that  
 25 have been made ..."

Page 119

13:33 1 And then there is the quote:  
 2 "... there is no evidence of page substitution, text  
 3 alteration, text addition, or other irregularities to  
 4 indicate that any of the Disputed Documents were  
 5 fraudulently produced."  
 6 This paragraph -- and I will come on to the next  
 7 paragraph as well -- represents the expression of your  
 8 opinion, but doesn't refer to handwriting at all.  
 9 A. (Mr Picciochi) It does not appear to, no.  
 10 Q. Do you know why that is?  
 11 A. (Mr Picciochi) No. I did not prepare the document.  
 12 Q. Then if you turn over the page and read paragraph 6, it  
 13 says:  
 14 "Consequently, it is Mr Picciochi and Dr Aginsky's  
 15 expert opinion that there is every indication that the  
 16 Disputed Documents are genuine."  
 17 You read and approved that as well?  
 18 A. (Mr Picciochi) I read that. In retrospect, I certainly  
 19 wouldn't use "every". And in conveying information,  
 20 "indications" is a weak opinion, because we're combining  
 21 the document examination with the handwriting  
 22 examination, and they're really not separate. So if you  
 23 do one separately, there might be a different opinion.  
 24 But because the handwriting resides on the documents, it  
 25 is part of the document examination. And certainly the

Page 120

13:34 1 scale is tipped towards genuineness, even though, when  
2 you look at just the document examination itself, it's  
3 basically neutral.  
4 Q. So what does this sentence mean then?  
5 A. (Mr Picciochi) It basically means that in the combined  
6 analyses of all the document examinations and  
7 handwriting examinations, that the indication is that  
8 the documents are genuine. There's no reason to believe  
9 that they are fraudulently prepared.  
10 Q. Just tell me -- and we can turn it up if you need to,  
11 but I'm sure you're very familiar with it -- where in  
12 the SWGDOC definitions that phrase "every indication" is  
13 used.  
14 A. (Mr Picciochi) Again, I did not prepare this document.  
15 So I don't even follow ASTM/SWGDOC for reporting  
16 opinions. There are many different opinions; they're  
17 just guidelines, it's not mandatory. As you can see,  
18 Mr Radley uses different terminology to express his  
19 opinions.  
20 I inspect crime laboratories, and I find that the  
21 FBI, the US Army laboratory I just inspected and other  
22 laboratories do not use this nine-point ASTM/SWGDOC  
23 scale. They are moving away from that to more or less  
24 a five-[point] scale; that is, "evidence to support the  
25 proposition", or "strong evidence to support", or "weak"

Page 121

13:35 1 or "moderate evidence to support".  
2 Q. But this isn't a phrase that's on that scale either,  
3 is it?  
4 A. (Mr Picciochi) It is not.  
5 Q. So up until today, up until an hour ago, the only  
6 indication that this Tribunal and we had of your opinion  
7 was contained within that word "Consequently" in that  
8 sentence?  
9 A. (Mr Picciochi) Unfortunately I don't see, just reading  
10 it very quickly, if there's anything about the  
11 handwriting. But we were looking in totality of the  
12 documents, not breaking it down, since we are two  
13 different experts and we did basically different aspects  
14 of the case: I did predominantly the handwriting and  
15 Dr Aginsky reviewed the document portion.  
16 Q. But now in relation to the "totality", as you put it,  
17 all that we have on the record is your analysis of the  
18 similarities that we've seen today?  
19 A. (Mr Picciochi) Well, the findings of similarities and  
20 the absence of fundamental differences, so that's both  
21 sides of the coin represented. So you have my testimony  
22 today; that is, my expert opinion that it is more likely  
23 to be genuine signatures.  
24 Q. Yes, but the testimony today was focused on the  
25 similarities as between the signatures, rather than the

Page 122

13:37 1 fundamental differences.  
2 A. (Mr Picciochi) That's because there's no fundamental  
3 differences. How can I point out fundamental  
4 differences if they're just not there?  
5 Q. Okay, thank you.  
6 I think we established this yesterday: when you  
7 approach the exercise of giving expert evidence, it's  
8 important not to make any assumptions?  
9 A. (Mr Picciochi) I'd go along with that, sure.  
10 Q. Can you tell me on what basis you thought that the dot  
11 in Mr Avidan's signature related to Hebrew writing?  
12 A. (Mr Picciochi) Part of our training is to look at  
13 foreign languages. So it is from that region.  
14 I believe, since it moves basically from the right to  
15 the left, and there are a series of dashes, what  
16 training I've had in other languages, I believe it to be  
17 Hebrew writing. I didn't say it's Hebrew writing  
18 definitely, but it appears to be to me.  
19 Q. To you?  
20 A. (Mr Picciochi) Yes.  
21 Q. And if I said that it isn't Hebrew writing, and all the  
22 indications are that it's not Hebrew writing, what would  
23 you say to that?  
24 A. (Mr Picciochi) It would not make a difference because  
25 even though these are not recognisable and you put

Page 123

13:38 1 a label on it, such as "Hebrew", I am looking at  
2 patterns. Even if I don't know what the patterns or  
3 letters mean, I'm looking for the same features in the  
4 questioned and the known, regardless of what label you  
5 are putting on it.  
6 Q. I agree with that. But you were looking at a pattern of  
7 dots being applied and you said that the fact that it  
8 was Hebrew writing was relevant to your assessment of  
9 that pattern?  
10 A. (Mr Picciochi) I don't think I used the term "fact".  
11 Q. We can go to it (page 109, lines 14 to 16):  
12 "It is my understanding in Hebrew writing that this  
13 series of dots does not always have to be present in the  
14 writings."  
15 That is what you said, and I understood that to mean  
16 that you had assumed this was Hebrew writing.  
17 A. (Mr Picciochi) Never assume. Okay, so --  
18 Q. So what's the relevance?  
19 A. (Mr Picciochi) The relevance is: it's found in the  
20 questioned and it's not found in the questioned, but it  
21 doesn't have to be in the known writings. So it's  
22 an optional feature. I know very little about Hebrew  
23 writing, but the red flag went up: why is it there or  
24 not? Going to textbooks on different writings, I looked  
25 to see if that's a necessary feature to be there. But

Page 124

13:40 1 it seems to be an optional feature.  
2 Q. Did you go to the textbooks in this case?  
3 A. (Mr Picciochi) Yes, I have several books on  
4 international writings.  
5 Q. I would be very, very interested if you could produce to  
6 the Tribunal that part of the textbook that said that  
7 there were dots in Hebrew signatures. It would be very  
8 interesting to us.  
9 A. (Mr Picciochi) I'll get back to my office. I cannot do  
10 that electronically.  
11 Q. Thank you.  
12 Sorry, I don't know if you've still got it open, but  
13 I'd like to go back to tab 29.  
14 A. (Mr Picciochi) Yes, sir.  
15 Q. The information that's in paragraph 7 that is expressed  
16 properly to be notes from the Republic of Guinea rather  
17 than you, those bullet points, the three bullet points  
18 that they say support the conclusions, were you aware of  
19 those bullet points when you expressed your opinion to  
20 the Republic of Guinea?  
21 A. (Mr Picciochi) I did not sign this report. That part  
22 doesn't pertain to my handwriting examination. So if  
23 they want to present this, the attorneys, that's fine.  
24 That's information I'm not aware of.  
25 Q. Yes, and I'm not -- you're not aware of now?

Page 125

13:44 1 I'm a document examiner and you've learnt a lot about  
2 document examination, but you've left out the movement  
3 qualities; you're just looking at the structural  
4 qualities. And I look at the movement and structural  
5 qualities.  
6 Q. Where have you addressed the movement qualities in here?  
7 A. (Mr Picciochi) I did that verbally. I explained that  
8 there are flying starts and stops, varying pen pressure  
9 and speed in these. So they appear to be naturally  
10 written: there's no evidence of tremor or unusual pen  
11 stops, patching and retouching of the signatures. They  
12 seem to be reflexively written.  
13 I believe Mr Radley also commented that they seem to  
14 be naturally written, but I could be wrong about that.  
15 That's what I heard.  
16 Q. Okay. So if you just turn to J of your charts.  
17 A. Yes, sir.  
18 Q. Just to explore one point. I can see, obviously, the  
19 arrows in relation to each of the loops at the end, the  
20 two arrows. But my education now in relation to the  
21 signature suggests that there should be a third arrow on  
22 the questioned signature because it changes direction.  
23 And you say that doesn't change direction?  
24 A. (Mr Picciochi) First, I can't draw an arrow, with my  
25 ability with this particular program. The main point

Page 127

13:42 1 A. (Mr Picciochi) Anything to do with Mamadie Touré; is  
2 that what you mean?  
3 Q. Any of the facts that are set out in there.  
4 A. Give me a moment to read it, please. (Pause) This  
5 appears to be background information that has nothing to  
6 do with my analysis and I was unaware of it.  
7 MR LIBSON: Okay, thank you. (Pause) I kept to my word.  
8 That's it. (Pause)  
9 Sorry, I do have one further question. Sorry, I'm  
10 prompted by Mr Radley to put one further question to  
11 you.  
12 So we've all had an education over the last 48 hours  
13 or so, and I'm looking at your slides that related to  
14 Marc Struik's signature.  
15 A. (Mr Picciochi) Correct.  
16 Q. The same applies, I think, to the other sets of slides,  
17 but perhaps more obvious in this one.  
18 The similarities that you have identified in  
19 relation to each of these, the hook intro stroke, the  
20 five parallel loops, the ratio width/height for "M", the  
21 back slant, et cetera -- not the relative slant; I might  
22 come back to that, if I may -- the fourth loop shorter,  
23 the small loop, the trough-like formation, are these not  
24 very obvious similarities on the documents?  
25 A. (Mr Picciochi) They may be obvious to you and me, since

Page 126

13:46 1 here is that it's elliptical and that it's curved.  
2 I don't see too much significance in the slight change  
3 in direction at the very end of the signature. And if  
4 you take a look at K19.1, it looks like there's two  
5 distinct movements to the curve. So I would say R-27 is  
6 very similar to K19.1.  
7 Q. To the same angular bend in 19.1?  
8 A. (Mr Picciochi) It's the same motion that there are two  
9 bends to it, however slight.  
10 Q. Is it to the same extent?  
11 A. (Mr Picciochi) I don't know what you mean by that.  
12 Q. Does it turn to the same degree?  
13 A. (Mr Picciochi) It turns twice. I'm not going to get  
14 hung up on measurements or how much the angle is that  
15 it's turning. It's turning; it's not significant.  
16 Q. Okay. But someone may think it is significant?  
17 A. (Mr Picciochi) Every person has a right to their  
18 opinions and the significance they attach to it. It's  
19 up to the trier of fact to determine how significant  
20 they actually are.  
21 Q. Of course. And you would agree that in assessing both  
22 similarities and differences, it's the cumulative  
23 effect, in a sense -- sorry, it's not the cumulative  
24 effect, but it is legitimate to look at the cumulative  
25 effect?

Page 128

13:47 1 A. (Mr Picciochi) I didn't catch that last part, I'm sorry.  
 2 A little fast there.  
 3 Q. Sorry. In assessing similarities and differences,  
 4 an aspect of the assessment is to look at the cumulative  
 5 effect of what you've identified as similarities and  
 6 differences, and/or differences?  
 7 A. (Mr Picciochi) Yes, in totality, the cumulative effect  
 8 of the questioned and known, and any other limitations  
 9 or absent characteristics.  
 10 MR LIBSON: Thank you.  
 11 Thank you, now I am finished.  
 12 THE PRESIDENT: Thank you.  
 13 Any questions in re-direct examination?  
 14 MR NAUD: Madam President, the adverse counsel's questions  
 15 to Mr Picciochi as to whether he sees only similarities,  
 16 and no differences, would normally lead us on re-direct  
 17 to ask questions now as to those differences, which have  
 18 been pointed out by Mr Radley. But to the extent we  
 19 understand the Tribunal intends to ask questions --  
 20 THE PRESIDENT: No, you should go ahead, ask your questions.  
 21 If there are any left, we will catch up there.  
 22 (1.48 pm)  
 23 Re-direct examination by MR NAUD  
 24 Q. Mr Picciochi, if we could turn back to the signature of  
 25 Mr Struik. I believe that was your first slide.

Page 129

13:48 1 A. (Mr Picciochi) Yes.  
 2 Q. It's on the screen. Mr Radley has identified a number  
 3 of what he sees as differences or rare occurrences, and  
 4 I'd like to ask you a couple of questions as to some of  
 5 those, the first one being the first loop, the initial  
 6 loop, which he has identified as being very thin and  
 7 outside the range of variations.  
 8 What is your reaction to that statement?  
 9 A. (Mr Picciochi) Well, these loops are rapidly written,  
 10 just a basically up-and-down motion, and there are many  
 11 loops that are very narrow, just like that particular  
 12 first loop. They may not be in the first position, but  
 13 they are certainly within the known writings. I do not  
 14 consider that a fundamental difference.  
 15 Q. Thank you.  
 16 In reviewing the materials in preparation for the  
 17 hearing, have you reviewed all the differences  
 18 identified by Mr Radley with respect to this signature?  
 19 A. (Mr Picciochi) I have.  
 20 Q. And do you stand by your analysis that there are no  
 21 significant differences?  
 22 A. (Mr Picciochi) Yes, I do.  
 23 Q. With respect to the signatures of Mr Avidan and  
 24 Mr Lev Ran, are there any differences identified by  
 25 Mr Radley which you think merit consideration?

Page 130

13:51 1 A. (Mr Picciochi) I do not.  
 2 MR NAUD: We have no further questions on re-direct.  
 3 THE PRESIDENT: Thank you.  
 4 Any questions by the Tribunal?  
 5 (1.51 pm)  
 6 Questions from THE TRIBUNAL  
 7 THE PRESIDENT: Could we ask Mr Picciochi to look at  
 8 slide 37 of Mr Welch, as marked by Mr Radley this  
 9 morning. (Pause to locate the document)  
 10 Can someone show it on the screen? It will  
 11 simplify. This was among the documents produced by  
 12 Mr Radley with his cross-examination.  
 13 MR OSTROVE: I believe the problem was we only had paper  
 14 copies of Mr Radley's markups of Mr Welch's slides; we  
 15 don't actually have scanned versions.  
 16 THE PRESIDENT: We will have to get those in the course of  
 17 the day. But for now, do you have them? Could you show  
 18 them? Otherwise we will work with paper copies; that  
 19 will work too. It's just it's usually easier, because  
 20 then we are sure that everyone is on the same page.  
 21 It's not been scanned? Fine.  
 22 So can someone show this chart?  
 23 A. (Mr Picciochi) I have it.  
 24 THE PRESIDENT: You have it? It says in handwriting, at the  
 25 bottom-right corner, "37"?

Page 131

13:53 1 A. (Mr Picciochi) Correct.  
 2 THE PRESIDENT: Correct. You've heard this morning  
 3 Mr Radley explain what he draws from this comparison.  
 4 Would you comment for us?  
 5 A. (Mr Picciochi) If someone can actually read it back to  
 6 me, what he said, I'd appreciate that.  
 7 THE PRESIDENT: He commented on the numerical values,  
 8 between 1.86 and 1.7. But I don't have the detail of  
 9 his comments here.  
 10 A. (Mr Picciochi) Okay, I have enough information.  
 11 THE PRESIDENT: I have another question, but maybe you will  
 12 first comment on the numerical values.  
 13 A. (Mr Picciochi) I alluded to not taking absolute  
 14 measurements, only relative measurements. And numbers  
 15 themselves, even though everyone likes numbers because  
 16 it's tangible, it has no significance here. If you look  
 17 at the boxes, they are basically rectangular with  
 18 a certain proportion. Are they exactly the same? No.  
 19 And would you expect them to be exactly the same in two  
 20 signatures by the same person? You would not. So the  
 21 significance of these numbers to me is not significant  
 22 at all.  
 23 THE PRESIDENT: And the shape of the boxes, if you look at  
 24 these two and then you compare with other known  
 25 signatures of Marc Struik, the comment of Mr Radley was

Page 132

13:55 1 that the box would look much broader, horizontally  
 2 broader, and not as high as this one, if we were to draw  
 3 it on other signatures.  
 4 I hope I correctly restate the essence of  
 5 Mr Radley's statement. And I see him nodding, so I am  
 6 reassured.  
 7 A. (Mr Picciochi) There is so much variation in the height  
 8 and width with such a simple signature -- simple loop  
 9 motion, and combined with four or five loops.  
 10 I personally did it with the first three loops, because  
 11 that's the element of a particular letter. If Mr Radley  
 12 wants to do that, that's fine. I don't see anything  
 13 that is so different and out of the norm that I would  
 14 say, "There's a problem here. We need more known  
 15 writing".  
 16 THE PRESIDENT: Fine.  
 17 I think you addressed angularity before. Let me  
 18 just check slide 30, because I had a question on that  
 19 too, and I'm not certain you have addressed it already.  
 20 Do you have slide 30 there?  
 21 A. (Mr Picciochi) I do, Madam President, I do.  
 22 THE PRESIDENT: It may rather be a question for Mr Welch,  
 23 but you may have some comments too. It's again  
 24 a question of measurements. Do you see the relationship  
 25 that is 0.88 in R-27, and in K3 it's 1.56?

Page 133

13:57 1 A. (Mr Picciochi) Yes, I do see that.  
 2 THE PRESIDENT: Any comments that you have on this?  
 3 A. (Mr Picciochi) Yes, absolutely.  
 4 THE PRESIDENT: Yes, please.  
 5 A. (Mr Picciochi) So it appears as if the two extremes are  
 6 being measured, and where the loops criss-cross is the  
 7 point that's being measured. It really depends where  
 8 you start, and that's arbitrary. Some people with these  
 9 red lines measured it from the bottom of the connecting  
 10 loop to the right. But if you start with the hook  
 11 stroke to the left on each of these, then the distance  
 12 from the midpoint intersection to the beginning stroke,  
 13 or the bottom of the beginning stroke, the bottom of the  
 14 hook, now becomes much smaller. And I haven't done the  
 15 math, but it approximates the proportions. So again,  
 16 I don't put much weight on these numbers here.  
 17 THE PRESIDENT: I'm not entirely sure I understood your  
 18 evidence with respect to Mr Avidan's signature, and  
 19 specifically whether it's Hebrew letters or not.  
 20 A. (Mr Picciochi) I don't absolutely know for sure.  
 21 THE PRESIDENT: You don't state an opinion on this?  
 22 A. (Mr Picciochi) It looks like it to me. But I cannot say  
 23 it is Hebrew writing. I did not state that it is Hebrew  
 24 writing. It seems to be Hebrew writing.  
 25 THE PRESIDENT: That's why you said in Hebrew the dots are

Page 134

13:59 1 not necessary, and therefore sometimes they appear and  
 2 sometimes they don't?  
 3 A. (Mr Picciochi) That is correct.  
 4 THE PRESIDENT: But if it is not Hebrew, then that  
 5 explanation of course does not work.  
 6 A. (Mr Picciochi) Well, my best approximation is that it is  
 7 Hebrew writing. Maybe if someone knows if he's Jewish  
 8 and from Israel, that could shed some light --  
 9 THE PRESIDENT: Looking -- yes.  
 10 A. (Mr Picciochi) -- instead of dancing around this.  
 11 THE PRESIDENT: I mean, I'm not giving evidence here. So we  
 12 can sort this out otherwise.  
 13 What difference does it make? Do you do handwriting  
 14 examinations in different characters or not?  
 15 A. (Mr Picciochi) I generally stay away from ideograms like  
 16 Chinese writing, because slight nuances will make  
 17 a difference, and I'm not familiar. I generally stay  
 18 within the Latin/Roman alphabet, even if it's a foreign  
 19 language. But since this was given to me, and I'm  
 20 looking for patterns, and there are strong patterns in  
 21 here, I don't mind giving an opinion, are the patterns  
 22 similar or not, even though I don't know what it says.  
 23 THE PRESIDENT: And your examination would be the same even  
 24 if the characters are from a different alphabet?  
 25 A. (Mr Picciochi) The general principles of handwriting

Page 135

14:01 1 examination --  
 2 THE PRESIDENT: Subject to ideograms. But otherwise?  
 3 A. (Mr Picciochi) Being more familiar with certain nuances  
 4 of languages with the Roman alphabet, I could look at  
 5 what we call "class characteristics", as opposed to  
 6 individual characteristics. We're mostly pointing out  
 7 individual characteristics.  
 8 So with class characteristics, that's how a person  
 9 learns to write, the copy book; and if you don't deviate  
 10 from that, I would probably be out of business. But  
 11 because we don't write exactly like the copy book form,  
 12 we have the individual characteristics.  
 13 So it's important in the Roman alphabet to  
 14 understand what is the class characteristic to attribute  
 15 some weight to the significance of something that  
 16 I find.  
 17 THE PRESIDENT: Can I ask a question to Dr Aginsky. You've  
 18 been there very quiet.  
 19 I understand that the comments that the Respondent  
 20 filed on 12th March have been reviewed by you as well  
 21 before they were filed? Or how did this happen?  
 22 A. (Dr Aginsky) Yes, I did. Not very thoroughly because  
 23 I was preparing to testify the next day in California.  
 24 I testified on the 13th, and I was asked to review that  
 25 on the 12th, as far as I remember.

Page 136

14:03 1 THE PRESIDENT: The comments say that you agree with the  
 2 Tribunal experts' conclusions. How did you get to this  
 3 view? Had you done your own examination of the  
 4 documents before?  
 5 A. (Dr Aginsky) No, I just reviewed the reports.  
 6 THE PRESIDENT: The preliminary report, are you saying?  
 7 A. (Dr Aginsky) Yes.  
 8 THE PRESIDENT: You attended the inspection?  
 9 A. (Dr Aginsky) Yes. Not from the beginning, but for two  
 10 days, I believe. And I have reviewed both reports  
 11 prepared by the experts.  
 12 THE PRESIDENT: And how did you verify their conclusions?  
 13 A. (Dr Aginsky) I couldn't, obviously, verify their  
 14 conclusions on handwriting, because I am not  
 15 a handwriting expert.  
 16 THE PRESIDENT: No, I don't speak of handwriting now. I'd  
 17 like to address the other part on documents.  
 18 A. (Dr Aginsky) As for the other parts of the documents,  
 19 I agree with Mr Picciochi, who said earlier that it is  
 20 a two-part examination. The first part resulted in  
 21 basically an inconclusive result, which relates to  
 22 everything but handwriting. But handwriting examination  
 23 shows some evidence in favour of the document being  
 24 authentic.  
 25 So as a team of experts, I just agreed with that.

Page 137

14:04 1 But my opinion is that that area in which I am  
 2 an expert, it doesn't help one way or the other to  
 3 determine whether the documents are authentic in respect  
 4 of their dates of preparation.  
 5 THE PRESIDENT: So do you agree with the Tribunal's experts,  
 6 who say that there is no evidence of fraud on the  
 7 documents?  
 8 A. (Dr Aginsky) That's correct. And in many of my reports  
 9 I also include this particular sentence that I found no  
 10 evidence that would show, that would indicate that the  
 11 document was not prepared on the date indicated, on the  
 12 date appearing on the document.  
 13 But then I typically explain that my conclusion  
 14 should not be construed as the proof of the authenticity  
 15 of the document with respect to the date of its  
 16 preparation, because basically, like in this case, the  
 17 evidence, if we consider two competing hypotheses --  
 18 there are always two competing hypotheses: one is that  
 19 the document is authentic with respect to the date of  
 20 preparation; and the other is that, no, the document is  
 21 backdated fraud.  
 22 So we are looking, depending on the nature of the  
 23 document and the methods that we apply to the case --  
 24 like in this case, all the results that show no evidence  
 25 that the document was not produced on another date, it's

Page 138

14:06 1 equally applicable to the competing hypothesis that  
 2 there is no evidence that would show that the documents  
 3 are not backdated fraud.  
 4 So in other words, it should have been done, and  
 5 I would do the same approaches, I would apply them. But  
 6 then my result would be that based on this set of  
 7 methods that I used, I cannot come -- I would say my  
 8 results equally support both competing hypotheses. So  
 9 without handwriting, that would be my conclusion.  
 10 THE PRESIDENT: And you focus essentially on date when you  
 11 look at the document itself, irrespective of the  
 12 handwriting? Because you have insisted very much in  
 13 your answer now to my questions on whether it was  
 14 produced on the date on which it was dated.  
 15 A. (Dr Aginsky) Purported date. That's my typical  
 16 assignment. I'm always asked whether this document was  
 17 produced on the date indicated on the document or, if  
 18 there is no date, on the purported date, or  
 19 substantially later. It's not like two days later,  
 20 three days; it's impossible to detect.  
 21 But if it's several years later, or several decades  
 22 later -- there are also situations like that -- then,  
 23 yes, I collect the evidence, everything that is relevant  
 24 to collect or possible to collect in that particular  
 25 case, and then I compare the results that I obtain: so

Page 139

14:08 1 whether I have evidence that would support more  
 2 hypothesis 1, let's say, or defence hypothesis, the  
 3 document is authentic; or whether my results would  
 4 support more the opposite, the competing hypothesis that  
 5 the document is a backdated fraud. We call it  
 6 prosecution hypothesis. Prosecution versus defence.  
 7 THE PRESIDENT: Obviously conceptually you can have  
 8 a document that was produced on the date that it says,  
 9 and yet is a forgery? I can forge a document today and  
 10 date it today, can I not, and it would still be a forged  
 11 document?  
 12 A. (Dr Aginsky) If someone else produced it, yes.  
 13 But usually what I am asked to do is like, for  
 14 example, there is a one-page document with a text  
 15 printed on it, let's say a promissory note, and the  
 16 signature under the text -- it's just one example -- and  
 17 let's say dated ten years ago, but they say this  
 18 document was first known to exist five years ago.  
 19 If it's five years ago, it means that it is outside  
 20 the two-year period of time during which any ink,  
 21 irrespective of the formulation, would stop ageing at  
 22 a measurable rate. Therefore I cannot use the  
 23 ink-ageing analysis, which I developed a couple of  
 24 techniques for that. But what I could use is I could  
 25 determine whether the ink that was used to sign the

Page 140

14:09 1 document was commercially available at the time that  
 2 corresponds to the date appearing on the document.  
 3 So if the ink was available, let's say, ten years  
 4 ago, and it's still available, therefore it means that  
 5 my result again is neutral. I determine that there is  
 6 no evidence that the document was not prepared ten years  
 7 ago, but also I cannot rule out the possibility that it  
 8 was produced five years ago.  
 9 THE PRESIDENT: Yes, I understand that, and I think the  
 10 experts on this seem to agree.  
 11 So when I read paragraph 6 of the comments of the  
 12 Respondent -- that was in tab 29, maybe you can show it  
 13 again, on page 2. Paragraph 6, can you simply read it  
 14 for yourself.  
 15 A. (Dr Aginsky) I have read it.  
 16 THE PRESIDENT: So this is a statement that is largely based  
 17 on Mr Picciochi's results, rather than on yours; do  
 18 I understand this correctly?  
 19 A. (Dr Aginsky) That's exactly correct, yes.  
 20 THE PRESIDENT: Your results do not contradict that, but  
 21 they do not support it either; is that correct?  
 22 A. (Dr Aginsky) Yes, that's correct.  
 23 THE PRESIDENT: Thank you.  
 24 I have no further questions. Any follow-up  
 25 questions on the basis of the Tribunal's questions?

Page 141

14:11 1 MR LIBSON: I have one follow-up question on the basis of  
 2 your questions.  
 3 THE PRESIDENT: Yes, please.  
 4 (2.11 pm)  
 5 Further cross-examination by MR LIBSON  
 6 Q. Dr Aginsky, Madam President asked you the question of  
 7 what you had read at the time that the document in front  
 8 of you was prepared, and I think you answered that you  
 9 had just read the draft report as it had come? The  
 10 preliminary report, sorry.  
 11 A. (Dr Aginsky) I don't remember whether the final report  
 12 was ready for my review by that time.  
 13 Q. The final report, sorry. You've read the final report?  
 14 A. (Dr Aginsky) The final report is dated when? In  
 15 January?  
 16 THE PRESIDENT: I think you said you read the preliminary  
 17 report and the final report --  
 18 A. Yes, that's what I --  
 19 THE PRESIDENT: -- and these comments were made after the  
 20 final report. Just so that you are not confused about  
 21 the timing.  
 22 MR LIBSON: So can I just ask you to look at one paragraph  
 23 in the final report, which is at tab 1 in that bundle in  
 24 front of you. Paragraph 160. It's page 110.  
 25 A. (Dr Aginsky) Page, I'm sorry?

Page 142

14:13 1 Q. Page 110, paragraph 160. Do you want to read it  
 2 through? Do you want to read the paragraph to yourself?  
 3 A. (Dr Aginsky) Yes, I've read it.  
 4 Q. It is in exactly the same form in relation to R-29 at  
 5 paragraph 177. You don't need to read that; it's  
 6 exactly the same. So you would have read that paragraph  
 7 four times by the time you came to approve the document  
 8 at R-29; that's right?  
 9 A. (Dr Aginsky) I apologise, what did you say?  
 10 Q. That paragraph appears twice in the final report and  
 11 twice in the preliminary report --  
 12 A. (Dr Aginsky) Okay.  
 13 Q. -- and therefore you would have read it four times by  
 14 the time you approved the Republic of Guinea's  
 15 submissions to this Tribunal?  
 16 A. (Dr Aginsky) Yes, but I said that my approval is more  
 17 like a team effort, not my approval based on the --  
 18 THE PRESIDENT: I'm sorry, I'm a little confused. Does it  
 19 appear twice in the final report, but with respect to  
 20 different documents?  
 21 MR LIBSON: Yes, I made that clear.  
 22 THE PRESIDENT: Because you referred to 160.  
 23 MR LIBSON: And 177 is in identical form.  
 24 THE PRESIDENT: Fine. So if Dr Aginsky wants to see this as  
 25 well. So one is about R-28 and the other one is about

Page 143

14:14 1 R-29; is that right? Yes.  
 2 MR LIBSON: You read it. Do you agree with that conclusion?  
 3 A. (Dr Aginsky) In these two paragraphs?  
 4 Q. Do you agree with the way in which the assumption is  
 5 drawn in that paragraph?  
 6 A. (Dr Aginsky) Probably with my knowledge of English  
 7 I would say it a little simpler. But as far as  
 8 I understood this paragraph, or these two paragraphs, is  
 9 that experts, they look at the printed date on the  
 10 document and they create a typical situation: that the  
 11 document is as old as it purports to be, based on the  
 12 date appearing on the document. But what I would like  
 13 to see also is the alternative hypothesis: that the  
 14 document was produced substantially later. But I don't  
 15 see any problem with that.  
 16 Q. If you turn back to tab 29, where we were before, and  
 17 your conclusion, paragraph 6, Mr Picciochi agreed with  
 18 me that there's no reference to handwriting analysis in  
 19 this report -- in this document, sorry; it's not  
 20 a report -- so we had always understood that it was  
 21 a representation of your views rather than his, or at  
 22 least a joint representation. And rather than saying  
 23 that there should have been an alternative proposition,  
 24 you actually inflate the proposition from "there is no  
 25 evidence" to "there is every indication". That's a bit

Page 144



14:17 1 misleading, isn't it?  
 2 A. (Dr Aginsky) It's not what I printed; that was printed  
 3 by the law firm.  
 4 Q. But you approved it. We understood it represented your  
 5 and Mr Picciochi's opinion.  
 6 A. (Dr Aginsky) Right, but I would put it in different  
 7 words. As I say, I was preparing to testify, and was  
 8 meeting with a lawyer, and next morning is my testimony.  
 9 And I received it on my telephone, so I've read it, and  
 10 I said: yes, basically I agree, because taking together  
 11 the handwriting, which gives some result, and the other  
 12 part of the examination, which in my opinion gives no  
 13 result, so some plus zero gives us some result.  
 14 So of course I would not include the words "every  
 15 indication"; I don't know what "every indication" means.  
 16 But, yes, taking together handwriting plus the other  
 17 examinations, they -- but I am not a handwriting expert,  
 18 so I didn't object against what was written in this  
 19 letter.  
 20 MR LIBSON: Thank you.  
 21 THE PRESIDENT: Any follow up on the Respondent's side?  
 22 MR OSTROVE: No, Madam President.  
 23 THE PRESIDENT: Then I have good news: we can all have  
 24 lunch. I'm sure you're all very hungry.  
 25 We will resume at 3.15, or we will run a little late

Page 145

14:19 1 compared -- we can start again at 3 o'clock? I'm  
 2 looking at the Tribunal experts, because they are the  
 3 next ones who have to again take the stand to make your  
 4 concluding remarks. Will you have sufficient time if we  
 5 start at 3 o'clock?  
 6 Good, so let's start again at 3.00. Have a good  
 7 lunch, everyone.  
 8 (2.19 pm)  
 9 (Adjourned until 3.00 pm)  
 10 (3.08 pm)  
 11 THE PRESIDENT: So, Mr LaPorte, Mr Welch, you are on again.  
 12 You have heard the views of the party experts commenting  
 13 on your report, and we would be interested in having  
 14 your concluding remarks. You will remember that you  
 15 have, we said, 30 minutes.  
 16 MR LAPORTE: Thank you, Madam President. First of all, we  
 17 apologise for being late. We were looking at our  
 18 watches and we thought we had to be here at 3.15.  
 19 THE PRESIDENT: But you're ready?  
 20 MR LAPORTE: But we're here and we're ready to go.  
 21 Hopefully we should take actually less than 30 minutes.  
 22 (3.09 pm)  
 23 Concluding remarks of the Tribunal-appointed experts  
 24 MR LAPORTE: First of all, we would sincerely like to thank  
 25 the Tribunal for selecting our firm Riley Welch LaPorte

Page 146

15:09 1 & Associates Forensic Laboratories, to serve in this  
 2 matter.  
 3 As well, we would like to thank both parties, and  
 4 their respective experts. I understand there have been  
 5 some contentious issues, but we understand that this is  
 6 part of litigation. But everyone has been professional,  
 7 so over the past couple of days the questioning has been  
 8 fine, and what I would expect from people that may or  
 9 may not agree with what we've opined on.  
 10 Our main objective though was to conduct a thorough  
 11 and comprehensive examination of the disputed documents,  
 12 to provide the Tribunal and the parties with some  
 13 resolution. So although some of these results and  
 14 conclusions may have resulted in some contentious  
 15 beliefs, we still hope that there are some results that  
 16 will be helpful for everyone to help try and resolve  
 17 your individual issues.  
 18 Ultimately though our duty, as we understand, or as  
 19 we take great pride in, was to try and provide the  
 20 Tribunal with as much scientific information as  
 21 possible. We were going to provide you with that  
 22 information regardless of whether it favoured the  
 23 Respondent or the Claimants; we had no affiliation or  
 24 association with any of the parties on both sides. So  
 25 all we wanted to do was give you the truth, and that was

Page 147

15:10 1 it.  
 2 So we've heard testimony over the past couple of  
 3 days, and I just want to sort of bring up this morning.  
 4 So the testimony this morning from Mr Radley was kind of  
 5 eye-opening, for me at least. According to the  
 6 transcript at 09:27:18 (page 13, lines 4 to 8),  
 7 Mr Radley said the following:  
 8 "... as I am instructed, there has never been  
 9 an issue as to whether the questioned documents are the  
 10 result of alteration or page substitution. Their  
 11 concern was: the documents are fabricated as a whole."  
 12 So I found that statement to be a little eye-opening  
 13 for us. First of all, nobody ever told us that there  
 14 was no dispute about the documents being -- whether they  
 15 were altered or page substitution; that they were just  
 16 altogether fabricated as a whole. But as I discussed  
 17 yesterday, you know, this is the type of information  
 18 that can really be biasing for an examiner, and it can  
 19 make you start to sort of think very narrow and focus on  
 20 a certain working assumption when somebody tells you  
 21 that.  
 22 I once again have great respect for Mr Radley, so  
 23 this is not any indictment on Mr Radley; I mean, this is  
 24 the information that was provided to him. But I'm  
 25 certainly glad that we were never given that

Page 148

15:12 1 information. You know, we just proceeded and we  
 2 conducted examinations in every aspect, because we were  
 3 never told anything specific about the documents.  
 4 However, you know, what I do think -- this is just  
 5 us the way we think -- is that this statement made to  
 6 Mr Radley sort of answers the question of why he  
 7 continued to discount all of the findings in our report:  
 8 because he was told that there was no concern about  
 9 alterations or any kind of page substitutions. So when  
 10 he's reading our report and he's reading that, in his  
 11 mind he's thinking, "Well, my client has already told me  
 12 that this isn't in issue, so it's not important".  
 13 I think that's sort of an unfortunate part that may have  
 14 kind of fell into this whole thing. So that means that  
 15 Mr Radley has received a lot of contextual information,  
 16 and now he may have been so strongly focused on the  
 17 proposition and the theory that all of the documents  
 18 were altered as a whole.  
 19 But what's sort of more astonishing to all of this  
 20 is that if Mr Radley was operating on the proposition  
 21 that the documents were fabricated as a whole, then why  
 22 did he not acknowledge and comment on the results from  
 23 all of the ink and paper testing and the indentation  
 24 results in our reports?  
 25 So I know that ink and paper chemistry are not

Page 149

15:13 1 necessarily Mr Radley's expertise, but the results were  
 2 pretty straightforward, and they're at table 1 of our  
 3 report. They have not been disputed by either party;  
 4 everybody has accepted the results.  
 5 That is, there are at least thirteen different  
 6 writing inks, six different types of paper, three  
 7 different toner types, one inkjet printed document.  
 8 There were different signatures used for the  
 9 legalisation stamps. There were rusty staple holes on  
 10 some documents and not on others; that's an important  
 11 thing. In some cases the paper used for the documents  
 12 was significantly weathered. There was no evidence of  
 13 multiple documents from different time periods being  
 14 impressed into each other. But more importantly, we did  
 15 not find a single instance of the writing from  
 16 an earlier-dated document being impressed into  
 17 a later-dated document. I mean, all of that information  
 18 actually discounts the whole idea that the documents  
 19 were fabricated all at once.  
 20 In fact, Mr Radley even stated in his report that if  
 21 the documents were genuinely created on the dates  
 22 indicated, it would be expected that they would have  
 23 been produced on different occasions, under different  
 24 circumstances, hence giving rise to the various  
 25 printers, pens used, et cetera. That's at page 43,

Page 150

15:15 1 paragraph 199 of Mr Radley's report. This is exactly  
 2 what we found. We found what Mr Radley says would have  
 3 supported a genuine document production, if you will, as  
 4 a whole.  
 5 Also the question arises about why Mr Radley would  
 6 apply a positive conclusion in a case like this, where  
 7 we're talking about multiple documents being fabricated  
 8 all at once, but in other instances he would be  
 9 inconclusive, regardless of negative findings, if you  
 10 will.  
 11 Then Mr Radley goes on to admit, both in his  
 12 testimony and in his report, that there is  
 13 a considerable amount of money involved in this case.  
 14 That's at pages 18 to 19, paragraph 2 of his report.  
 15 Frankly, the amount of money involved in a case is  
 16 irrelevant to our scientific analysis, and it should be  
 17 for Mr Radley. Once again, Mr Radley may be focusing on  
 18 this theory of a master forger now, and sort of stuck in  
 19 that rut, because there is a considerable amount of  
 20 money involved.  
 21 Money is relative. I don't know how much it costs  
 22 to get a master forger, but I'm guessing if I had a case  
 23 that was worth \$250,000, maybe I could find a master  
 24 forger for \$25,000, and that would be an excellent  
 25 return on investment, if you will. So this whole thing

Page 151

15:16 1 is sort of relative speaking, right? If we're talking  
 2 billions of dollars or millions of dollars, I'm betting  
 3 that you don't have to pay \$1 billion for a master  
 4 forger, if that's what you were seeking.  
 5 So really the whole idea of there being  
 6 a considerable amount of money, that should have no  
 7 bearing on our scientific analysis.  
 8 Furthermore, under cross-examination this morning  
 9 Mr Radley said that he did not provide more detailed  
 10 comments to the PR regarding the differences he opined  
 11 on in some of the signatures because -- and I quote from  
 12 the record at 10:42:27 (page 49, lines 11 to 12):  
 13 "I would not expect Mr Welch to take into  
 14 consideration what I have to say ..."  
 15 This is not and could not be further from the truth.  
 16 We would have welcomed any substantive comments at that  
 17 time, rather than the 65 open-ended questions that were  
 18 not posed with sufficient background. Had Mr Radley  
 19 provided some information about what he thought were  
 20 differences and so forth, we would have acknowledged  
 21 those, and we would have considered them as well too.  
 22 I'm not saying that the opinion would have changed, but  
 23 we would have welcomed that. I mean, we were the  
 24 Tribunal-appointed experts; there was no affiliation to  
 25 any of the parties. So that would have been extremely

Page 152

15:17 1 helpful.  
2 But more importantly, I think that would have been  
3 helpful for the Tribunal, because Mr Radley could have  
4 provided that information to us, what his beliefs were  
5 at the time, and then we could have addressed them, and  
6 we may have been able to cut down a significant amount  
7 of time on these discussions now because we could have  
8 addressed them in our final report.  
9 I truly and genuinely mean that. Mr Welch and  
10 I have both been in situations before where people have  
11 provided some extra comments and we've changed our  
12 reports in some degree. We do this all the time when we  
13 go through technical reviews -- we both come from  
14 accredited laboratories -- when our peers review our  
15 work and then they start asking us questions, and you  
16 can make changes from that point forward.  
17 In fact, some of the suggestions that Mr Radley  
18 provided, that were more substantive than those  
19 65 questions that were posed to us, we actually did make  
20 some changes. So we were more than willing to make  
21 changes based on what we heard.  
22 Mr Radley went on to state that it is his practice  
23 not to change his opinion once he issues a report. What  
24 this says to me, and what Mr Radley said to this  
25 Tribunal, is that once he states his opinion, then he's

Page 153

15:19 1 not going to change it. That's what that says to me,  
2 regardless of any additional information that we  
3 receive.  
4 As forensic scientists in general -- and I'm not  
5 talking about just forensic document examiners -- it's  
6 our duty to potentially change an opinion or  
7 a conclusion based on new information. In fact --  
8 I don't know what paragraph it is in our report, but  
9 I know it's right at the end of our report -- we  
10 specifically state that we will make changes based on  
11 new information that's provided to us.  
12 One of the other things -- and there have been  
13 a couple of examples in Mr Radley's report that I think  
14 may have caused some confusion. Really what we did --  
15 so the purpose of our final report obviously was to  
16 address some of the questions that were posed by  
17 everyone. We considered all of those questions, and we  
18 have made the assertion that we believe that some of  
19 those 65 questions were misleading if they were read out  
20 of context and if they didn't have the proper background  
21 information.  
22 So, for example, this morning Mr Radley testified in  
23 his testimony that he observed the yellow dots on  
24 an inkjet document, but only used the photograph and not  
25 the digital images. I agree with Mr Radley that when

Page 154

15:20 1 you see yellow dots and it's on a photograph, that that  
2 would be difficult to interpret. I totally understand  
3 that; he's absolutely right. But what he should have  
4 done is he should have looked at the digital images.  
5 And if he didn't look at the digital images, then he  
6 should have put that context in his report, or in those  
7 questions that were posed.  
8 Instead the query came to us:  
9 "Please explain whether the Experts identified any  
10 evidence of security printing on the Disputed Documents,  
11 and if so, please comment on the findings in the Final  
12 Report."  
13 This was question 9.  
14 We responded by saying: we did not observe any CPS  
15 codes. But then Mr Radley goes on to state in his  
16 report that he issued, in paragraph 38:  
17 "I cannot assess certain other features which are  
18 not mentioned in the report but may be of significance  
19 e.g. security printing ... which appear to be present on  
20 some of the documents ..."  
21 He has just told the Tribunal that there "appear to  
22 be" yellow dots that could be of significance that are  
23 CPS codes. This is a highly misleading statement. He  
24 didn't explain in his report that he only looked at  
25 photographs and that he was uncertain. This makes it

Page 155

15:22 1 sound like either Mr Welch and I were keeping  
2 information from the Tribunal or we made some sort of  
3 error in our examination.  
4 So notably, the Respondent's experts, they never  
5 identified the CPS codes. We looked at all the  
6 documents multiple times over, and I went back and  
7 I looked at all of the digital images after Mr Radley's  
8 question that he posed originally, and we did not find  
9 these CPS codes.  
10 In fact, we would have been glad to find CPS codes.  
11 I'm an expert in that area: I know how to decipher them,  
12 and I can sometimes tell the date and time. I've done  
13 that many times with the Secret Service. So it would  
14 have been very helpful for us if there were CPS codes.  
15 Also Mr Radley was asked this morning about whether  
16 he examined the documents marked as "Forged"; I believe  
17 they were C-0122, C-0113, and C-0536. I'm not certain  
18 why Mr Radley wasn't forthright in his report. Instead  
19 he said that consideration of the signatures was not  
20 part of his instruction. That's what he said in the  
21 report.  
22 I don't know why he wouldn't state this. This  
23 morning when he testified, he said that he was never  
24 given these documents. I don't know why he wouldn't say  
25 in his report that he didn't receive the documents and

Page 156

15:23 1 that no examination was conducted, he has no idea what  
 2 was going on with those documents. I think that would  
 3 have been helpful.  
 4 I just feel that some of these things, I think  
 5 Mr Radley could have curbed at least, in terms of  
 6 speculation, once again, for laypeople that are reading  
 7 the report but may get confused over these types of  
 8 things.  
 9 With respect to the document authentication  
 10 examination, I know the Tribunal has heard extensively  
 11 our views, and specifically our rationalisation for  
 12 concluding that there's no evidence of page  
 13 substitution, text alteration, text addition or other  
 14 irregularities to indicate that any of the disputed  
 15 documents were fraudulently produced. So what I'm going  
 16 to say, sort of in a very polite manner, is: welcome to  
 17 our world. There's a lot of controversy over how to  
 18 express conclusions about these types of things.  
 19 I chair a working group of 20 experts in forensic  
 20 document examination, and we all have sort of different  
 21 views on how to express opinions. There's a European  
 22 way, there's an Asian way, there's the American way; and  
 23 then there's multiple American ways, and then there's  
 24 multiple European ways, and then there's Australian  
 25 ways. So I've got people from all over the world on

Page 157

15:24 1 this working group, and we're trying to sort of resolve  
 2 this issue so that everybody is sort of saying the same  
 3 thing.  
 4 So, you know, I'll sort of apologise on behalf of  
 5 the forensic document examiner community that we haven't  
 6 come together and gelled in this way, so that when you  
 7 hear a conclusion from me, Mr Radley and Dr Aginsky,  
 8 you're hearing the same thing. I get the feeling that  
 9 you've heard from the three of us on the document  
 10 authentication part and you kind of all heard something  
 11 a little different.  
 12 But I will go back to that the verbiage that we used  
 13 in our report, that there's "no evidence to support",  
 14 it's an accurate way to put it. So now how to draw that  
 15 final conclusion, I understand that that can be a little  
 16 contentious. But I think at least what we've  
 17 communicated was -- and that's a truthful statement --  
 18 there's just no evidence to indicate fraud or  
 19 alteration. And this verbiage is consistent with some  
 20 of the authoritative texts in the books: one of them by  
 21 Ordway Hilton, and the other edited by Kelly and  
 22 Lindblom.  
 23 Madam, this morning you brought up the idea, "You're  
 24 still using these textbooks that are a century years  
 25 old", and it's true that there are some basic,

Page 158

15:26 1 fundamental things that have carried through over the  
 2 past 100 years, and we're still there.  
 3 The Kelly and Lindblom book is actually a textbook  
 4 from post-2000, I'll say, so it is a more recent  
 5 textbook, but it is based on one of the older textbooks.  
 6 But, you know, they specifically state in there that  
 7 when the combined results of testing reveal no change,  
 8 it can be stated that there is no evidence to support  
 9 that this document was fraudulent. That's what they  
 10 tell us in the book too.  
 11 I know Mr Radley has criticised our report for using  
 12 "there is no evidence", and he says: because we've used  
 13 it so many times. But what he's not acknowledging is  
 14 that's we use it so many times because every time we do  
 15 the test and we get a result, then we say that. So that  
 16 should tell you how many times we do the test, and then  
 17 how many times we get that result.  
 18 Now, I gave you some number numbers yesterday about:  
 19 we did 10 exams on 12 or 13 documents, and that's  
 20 120 tests or so. Mr Welch and I talked about this last  
 21 night. I actually forgot that they were multiple-page  
 22 documents, so there were 22 pages of documents, and we  
 23 actually carried out anywhere from 15 to 20 different  
 24 tests. So we're talking about a lot of tests, and  
 25 that's why the verbiage got repeated so many times.

Page 159

15:27 1 But it certainly was not our intent to mislead you  
 2 in any way, to say that the documents were truly  
 3 genuine. You know, we've talked about how very  
 4 difficult it is to prove genuineness in these types of  
 5 documents.  
 6 So while Mr Radley and us are not likely to reach  
 7 agreement on the use of the terminology, you know,  
 8 I don't think we will get there, Mr Radley does state in  
 9 his report (paragraph 202):  
 10 "On the evidence before me, whilst I appreciate  
 11 there may be 'no evidence' of fraudulent production ..."  
 12 So he agrees with that part. Then he goes on to  
 13 say:  
 14 "... it does not necessarily follow that the  
 15 documents are genuine."  
 16 And we actually agree with that part of the  
 17 statement: that it doesn't necessarily mean that they  
 18 are genuine. What it does show, or at least what we're  
 19 trying to convey that to you, is there is no evidence of  
 20 fraud, and that you should use that when you're  
 21 balancing other information that you should be privy to,  
 22 whether that's eyewitness testimony or other testimony  
 23 from individuals. You know, just keep that in mind.  
 24 But I don't think our examination should just be  
 25 perceived as kind of an equal balance, if you will.

Page 160

15:29 1 Without belabouring this point too much further, you  
 2 know, I'd like to just take sort of one more opportunity  
 3 to convey to the Tribunal how we evaluated our evidence.  
 4 If you think about hypothesis testing -- I think all  
 5 of us are pretty well aware of hypothesis testing; it is  
 6 commonly used in science. I'm a science fair judge, and  
 7 the first thing I do when I go to a science fair is  
 8 I make sure that the individual -- these are kids  
 9 usually, 16 and under -- I make sure that they have  
 10 a hypothesis. That's the first thing that I'm looking  
 11 at as a judge. So I know all about hypothesis testing.  
 12 But if you were to make this some sort of  
 13 congruent-type comparison, so if you were to try and  
 14 create some sort of congruency in hypothesis testing to  
 15 what we do, in this case we cannot prove the hypothesis  
 16 that the disputed documents are fraudulent, so therefore  
 17 we must accept that the disputed documents are genuine.  
 18 So I think that's where some people go. But we're not  
 19 saying that exactly.  
 20 However, if you actually change that hypothesis  
 21 around -- and if you're familiar with hypothesis  
 22 testing, you can switch it around to prove and  
 23 disprove -- but if you change that hypothesis around to  
 24 say that if the disputed documents cannot be proven to  
 25 be genuine, then we must accept that the disputed

Page 161

15:30 1 documents are fraudulent, we can never prove that  
 2 documents are genuine. So when you go to the hypothesis  
 3 testing and you flip them round the other way, it's not  
 4 an equal way to evaluate the evidence.  
 5 So, once again going back to my point, this is where  
 6 we continue to have these conversations in the forensic  
 7 document examiner community about coming together on our  
 8 wording so that people understand it. But I can tell  
 9 you, you know, with just 100% certainty that we have  
 10 never had any intent to mislead. We wanted to just be  
 11 very open and transparent. And when we say there's no  
 12 evidence, that's what we mean: that there's no evidence.  
 13 So I'm going to turn it over to Mr Welch. But  
 14 before I do that, I just wanted to sort of tell you  
 15 a brief story of someone that I used to work with who is  
 16 extremely talented with forging signatures. I've  
 17 watched him forge signatures many times over. He used  
 18 to do work for us, and he'd forge all kinds of different  
 19 documents, for people to go undercover and so forth.  
 20 He's an excellent forger.  
 21 But what he used to do was he would have signatures,  
 22 and then what he would do is he would turn them  
 23 upside-down; and as soon as he turned them upside-down,  
 24 he was a graphic artist. And he would tell us, "What  
 25 that allows me to do, Gerry, is now I can just draw it,

Page 162

15:31 1 and I don't have to follow that. So now I've flipped  
 2 the signature around, and because I'm an artist, to me  
 3 that's just a picture now; it's no longer writing when  
 4 I flip it over". So our brains, when we see writing, we  
 5 see that as writing. And I think Mr Picciochi had led  
 6 to this, is that sometimes you'll get into your own  
 7 habits.  
 8 Now, when a forger flips it around, they're just  
 9 drawing it. But when he drew it, and we had examiners  
 10 look at his writing, we could always tell all of the  
 11 differences, because he was drawing it in a different  
 12 way; and there were all kinds of things, like the pen  
 13 lifts and the flying starts and finishes and all that  
 14 stuff, that wouldn't exactly add up, because he was  
 15 doing it sometimes in a different direction.  
 16 The idea of most forgers is to pictorially fool  
 17 somebody. That's it: pictorially. Now, I'm not  
 18 an expert in this area, but I'll turn over to Mr Welch  
 19 to talk a little bit more about that.  
 20 MR WELCH: Thank you. Yes, I'd like to comment just  
 21 a little bit on the master forger proposition.  
 22 In the paper that Mr Radley presented this morning,  
 23 "Another Adept Penman" by Messrs Buglio and Gidion,  
 24 Mr Brian Smith is, I would say, a very skilled  
 25 simulator. I think it would be fair to say if I were on

Page 163

15:33 1 the other side, the flipside of the coin, in  
 2 a situation, and I needed a master forger, he would  
 3 definitely be the gentleman that I would go to to  
 4 conduct something of that sort.  
 5 That being said, earlier in my career I had the  
 6 opportunity -- he was at one of our professional  
 7 meetings, I believe it was an ASQDE meeting -- with  
 8 Mr Lloyd Cunningham, who Mr Radley mentioned this  
 9 morning, and I had a conversation with him about what he  
 10 can't duplicate. And I asked him, I said, "Can you  
 11 duplicate the fine and subtle detail that  
 12 an individual -- how they write, with all pure  
 13 naturalness, pure fluency, and also obtain the same type  
 14 of pen pressure and pen pressure variation?" And he  
 15 says, "Those are the things that I can't". He says,  
 16 "I can make it look very good, but I can't duplicate the  
 17 things that you're asking me about".  
 18 If you go to the material, the paper that my friend  
 19 and colleague Mr Radley presented this morning, if you  
 20 go to figure 25 -- it's after most of the signature  
 21 examples, towards the end -- it's a photograph of  
 22 Mr Smith, and this is very enlightening.  
 23 THE PRESIDENT: We have it.  
 24 MR WELCH: Okay. If you look at pages 25 and 26, the reason  
 25 why Mr Smith can't obtain the same fine and subtle

Page 164

15:35 1 characteristics, especially when it comes to pen  
 2 pressure and pen pressure variation, is the manner in  
 3 which he writes them. And if you look, he turns the  
 4 page on its side and draws the signature downwards.  
 5 These are the things, when you look at simulations,  
 6 even with a master forger, again, the fine and subtle  
 7 details that I spoke about in my testimony -- and what  
 8 our founding father, Albert S Osborn, even indicates  
 9 throughout his book is: a forger can't duplicate the  
 10 fine and subtle details.  
 11 In fact, Albert Osborn in his book, Questioned  
 12 Documents, page 367, states:  
 13 "It is also reasonable to expect that an imitation  
 14 will resemble in certain ways the writing imitated and  
 15 conclusive evidence of genuine must always be more than  
 16 this general appearance. When, however, the general  
 17 appearance is correct and, as pointed out, there are  
 18 incorporated various delicate qualities of an individual  
 19 character and a freely written signature, and especially  
 20 delicate, occasional or rare qualities, then the  
 21 conclusion must be reached that the writing is genuine."  
 22 And that is what I concluded in this case, based  
 23 upon many of the fine and subtle features that  
 24 I illustrated to the Tribunal.  
 25 THE PRESIDENT: Can you please give us the page again?

Page 165

15:39 1 could turn to that: it's the third page from the last in  
 2 the packet he handed out. It would be page 231 of  
 3 Questioned Documents. In the last paragraph it says:  
 4 "A forger who seeks to abandon his own writing  
 5 personality, which is exceedingly difficult if not  
 6 impossible, and at the same time assumes that of  
 7 another, -- which is still more difficult, -- will  
 8 almost certainly fall short of perfection by errors in  
 9 both these particulars."  
 10 As the trier in fact in this particular matter,  
 11 I hope it doesn't get lost in my colleague's testimony  
 12 that it's the fine and subtle features -- it's the  
 13 hooks, it's the feathers, it's the pen pressure  
 14 variation, it's the pen drags, it's the flying starts,  
 15 it's the flying finishes -- that separate a forgery by  
 16 a master forger from a genuinely signed document or  
 17 signature.  
 18 In fact, lastly, on page 364 of Albert Osborn's  
 19 Questioned Documents, he states:  
 20 "Flying starts and flying finishes where the motion  
 21 of the pen precedes the beginning of the stroke and  
 22 continues beyond the end to a vanishing point, are found  
 23 in free natural writing and, as a rule, are important  
 24 indications of genuineness. Intermediate strokes also  
 25 where the pen comes off the paper but is not stopped and

Page 167

15:38 1 MR WELCH: Page 367 of Questioned Documents, 2nd edition.  
 2 THE PRESIDENT: Thank you.  
 3 MR WELCH: You're welcome.  
 4 To the second point, regarding the master forger  
 5 proposition, again my dear friend and colleague got up  
 6 this morning to draw the Avraham Lev Ran signature,  
 7 Radley 1. And if there was video watching him, or if  
 8 there was video capturing him writing or drawing that  
 9 particular signature, which he was expressing as a very  
 10 simplistic signature, and not complex, you'll notice in  
 11 the first or second upstroke there was a slight  
 12 hesitation in his movement towards the top of the  
 13 stroke. And then he went on to illustrate at the  
 14 bottom, tried to draw a hook down at the bottom, and  
 15 made a comment: I think he stated "Oops", and had to  
 16 retouch it again.  
 17 Those fine and subtle drag strokes, and those  
 18 details, and those flying starts and finishes are very  
 19 difficult, once again, for a forger to duplicate.  
 20 They're that fine and subtle detail that, as a forensic  
 21 document examiner, we must spend time looking at with  
 22 a microscope, with the right magnification, to determine  
 23 the significance of those details for either genuineness  
 24 or forgery.  
 25 Mr Radley provided a statement by Mr Osborn. If we

Page 166

15:41 1 shows continuity of motion are, as a rule, indications  
 2 of unconsciousness of the details of the operation and  
 3 point towards genuineness. This analysis requires ..."  
 4 And this is the most important thing:  
 5 "... close observation and accurate reasoning. One  
 6 who ... cannot reason should not attempt to give  
 7 an opinion on the subject."  
 8 Further, he states (page 367):  
 9 "If it is assumed that an imitation may produce  
 10 every quality of a writing then, of course, no one could  
 11 tell whether or not it is genuine. A perfect forgery  
 12 cannot be detected by anyone. If those who attack  
 13 a document argue that the manner of writing was  
 14 perfectly simulated and all its various characteristics  
 15 observed and incorporated, this is an admission that  
 16 there is no evidence of forgery present and a conclusion  
 17 of forgery from the writing alone is therefore illogical  
 18 and unjustified. There are those who will persist in  
 19 saying that a writing is a forgery even when no evidence  
 20 of forgery can be pointed out."  
 21 Lastly, I'm going to leave the master forger  
 22 proposition and move on to one final point, and that  
 23 comes down to the mathematical --  
 24 THE PRESIDENT: Excuse me for interrupting you. The  
 25 30 minutes have just passed. But of course ...

Page 168

15:42 1 MR WELCH: I'm on my last point.  
 2 THE PRESIDENT: Present your last point, but you're aware  
 3 that you're off-limits.  
 4 MR WELCH: I'm sorry.  
 5 Last point. I want to talk about briefly the  
 6 mathematical calculations and the numerical values in  
 7 forensic document examination, especially as it relates  
 8 to handwriting.  
 9 Handwriting is a very, very dynamic process, and  
 10 statisticians within our particular field and profession  
 11 for years have been trying to place statistical and  
 12 numerical values on handwriting, and they haven't been  
 13 able to successfully do so. The problem is: how do you  
 14 determine how many people write an "S" form in a certain  
 15 way?  
 16 I gave the Tribunal an illustration within the  
 17 Marc Struik signature of an "S"-shaped form, how much  
 18 variation was in just that one character, and there were  
 19 four different ways in which he wrote it.  
 20 Then you throw in, on top of that, the accidentals  
 21 that we all have, and how statistically do we account  
 22 for what that looks like? It's not possible. How does  
 23 every person in the world sign a particular "S"?  
 24 There's no way to account for that, especially when you  
 25 throw accidentals into the mix.

Page 169

15:44 1 So when Mr Radley said that he measures every line,  
 2 I had to kind of chuckle to myself. If we did that,  
 3 I would still be in my office today just on this case,  
 4 measuring every line as it relates to variation, to  
 5 calculate the variation. These particular measurements  
 6 and numbers can be very misleading to somebody who wants  
 7 to see and place mathematical figures and assign it to  
 8 the science of handwriting.  
 9 Stating this, I will go to the point and illustrate  
 10 this last point here. If you take the undisputed  
 11 signature, Professor, that you placed up on the screen,  
 12 which is undisputed, it's a known signature, that  
 13 particular signature fell outside the numerical value.  
 14 Is it a forgery? No.  
 15 THE PRESIDENT: For the record, it was R-182, so we have the  
 16 reference.  
 17 MR WELCH: Thank you. Yes, R-182.  
 18 We have to be very careful when we put statistical  
 19 or numerical values on handwriting, and especially as it  
 20 applies to variation. You can't put it in that box;  
 21 it's very dangerous. You have to have the ability to  
 22 properly reason all the individual identifiable unique  
 23 handwriting characteristics throughout that signature.  
 24 So with that, I thank you for the time, my apologies  
 25 for going over, and it was a pleasure serving you.

Page 170

15:46 1 MR LAPORTE: Madam President, just 30 seconds and then  
 2 that's it. I apologise.  
 3 There was one thing that I forgot to include. One  
 4 thing that we haven't articulated thus far is that  
 5 actually Mr Welch and I conducted many of our  
 6 examinations independently. We had no idea what the  
 7 results were. So while I worked on all of the ink and  
 8 paper testing, he was working on the handwriting  
 9 examinations; and I was working on the stamps and then  
 10 he was doing the transfers. We had no idea what our  
 11 results were. So we worked completely independently.  
 12 So when I was doing my ink-dating stuff, he had no  
 13 idea what kind of results I was getting; when he was  
 14 doing handwriting, I had no idea. I actually didn't see  
 15 his handwriting results until actually pretty late in  
 16 the report, and then he started inserting the statements  
 17 into the report.  
 18 So with that -- and just one last sentence here. As  
 19 the Tribunal-appointed experts, we had no expectations  
 20 of results and conclusions, we weren't privy to any  
 21 extraneous outside information about the disputed  
 22 documents, and we just wanted to emphasise that again.  
 23 So, once again, thank you for putting your trust in  
 24 us.  
 25 THE PRESIDENT: Do we have any additional questions for the

Page 171

15:47 1 Tribunal-appointed experts?  
 2 (3.47 pm)  
 3 Questions from THE TRIBUNAL  
 4 PROFESSOR VAN DEN BERG: You were there this morning when  
 5 Mr Picciochi testified?  
 6 MR WELCH: Yes, we were.  
 7 PROFESSOR VAN DEN BERG: And you saw him going through these  
 8 various documents with the contested signature, and  
 9 comparing with the known signatures of the various  
 10 individuals involved?  
 11 MR WELCH: Yes.  
 12 PROFESSOR VAN DEN BERG: Do you have any observation  
 13 regarding that demonstration?  
 14 MR WELCH: No. I think we both came to the same conclusion.  
 15 PROFESSOR VAN DEN BERG: Thank you.  
 16 THE PRESIDENT: I have no question left, after two days.  
 17 I would like to thank both of you, on behalf of the  
 18 Tribunal, for your valuable assistance. Now you're  
 19 entitled to speak again and you're released, but of  
 20 course you can stay with us.  
 21 MR LAPORTE: Yes. No, we have nothing further. Thank you  
 22 so much.  
 23 MR WELCH: Thank you.  
 24 THE PRESIDENT: Thank you.  
 25 So now we should go ahead immediately with the

Page 172

15:48 1 Claimants' closing argument.  
 2 MR LIBSON: Madam President --  
 3 THE PRESIDENT: I should mention that you are already  
 4 over -- I mean, you don't have the 45 minutes left if we  
 5 apply the maximum time allocation, which was 4 hours 30.  
 6 We will give you the 45 minutes. The reason why I'm  
 7 saying this is just that you know that the 45 minutes is  
 8 already an extension.  
 9 MR LIBSON: Thank you. We are grateful for the indulgence.  
 10 Thank you very much.  
 11 (3.49 pm)  
 12 Closing statement on behalf of Claimants  
 13 MR LIBSON: We are going to divide these comments into two.  
 14 I'm going to speak very briefly about the expert  
 15 evidence that we've heard over the last couple of days,  
 16 and then Mr Daele is going to address the Tribunal on  
 17 our application.  
 18 I want to just start by taking great exception to  
 19 Mr LaPorte and Mr Welch's closing statements. They were  
 20 replete with misrepresentations both of what Mr Radley  
 21 has had to say and with actually their own evidence.  
 22 If we take just one single example, they quoted as  
 23 part of the more modern authorities Kelly and Lindblom  
 24 in relation to the "no evidence" rule, saying that they  
 25 recommend being able to say that there's "no evidence to

Page 173

15:50 1 support that this document was fraudulent". That's just  
 2 a misquote from the textbook. Throughout the  
 3 highlighted quotes that they draw our attention to, it  
 4 says, "no evidence that this document was altered".  
 5 This is a mistake that Mr LaPorte has fallen into  
 6 time and time again. In a discipline where we expect  
 7 precision from our expertise, the constant falling into  
 8 mistakes and the constant misrepresenting of the  
 9 position is simply not acceptable.  
 10 In relation to Mr Radley, there were five or six  
 11 scurrilous misrepresentations of the position he has  
 12 adopted, and we reserve our position to come back and  
 13 analyse the misrepresentation, because it's simply not  
 14 fair to allow those to be the final word on the record;  
 15 it's not fair to Mr Radley, and it's certainly not fair  
 16 to my clients' case.  
 17 So what have we learnt over the last couple of days?  
 18 First of all, it seems that we've learnt that  
 19 analysis -- and this seems to be agreed -- falls into  
 20 two parts: there's document examination and then there's  
 21 the signatures.  
 22 In relation to the first, the document examination,  
 23 Mr LaPorte, Mr Radley and Dr Aginsky all agree, I think,  
 24 that the evidence is entirely indeterminate. And  
 25 notwithstanding the repetitive use of the "no evidence"

Page 174

15:51 1 formulation, we've also learnt that it effectively has  
 2 no meaning. And it shouldn't have been "no evidence of  
 3 fraudulent production", it should have been "no evidence  
 4 of alteration". But despite the difference, it has  
 5 effectively no meaning. I'm glad we've established  
 6 this, because its repetition was very misleading, to the  
 7 extent that Guinea's experts adopted it, as we saw, and  
 8 supercharged it into an even more meaningless phrase of  
 9 "every indication suggests".  
 10 So we've established that the Tribunal-appointed  
 11 experts are adamant that their conclusions are based on  
 12 the totality of evidence, but at the same time they  
 13 entirely disregard any irregularities that raise cause  
 14 for concern. And we're criticised every which way.  
 15 Even when we put very specific questions in our  
 16 questions to the Tribunal-appointed experts, those were  
 17 dismissed in the same way as the general ones were.  
 18 We asked the question about five irregularities  
 19 observed by the experts, the impression of R-29 on R-26,  
 20 the ink toner transfer, disregarding the "A.L."  
 21 initials, but none of these found their way into the  
 22 repeated conclusions of "no evidence of fraudulent  
 23 production".  
 24 We learnt too that the assumptions set out as to the  
 25 dating of R-28 and R-29 are fundamentally unreliable.

Page 175

15:52 1 We learnt that the evidence relating to the  
 2 application of stamps is all irrelevant, because  
 3 Mr LaPorte now states that he meant to refer to the date  
 4 of manufacture of the stamps, rather than the date of  
 5 application. This is very surprising, given how many  
 6 questions were asked about the stamps and how important,  
 7 absent availability of ink dating, the stamps are to  
 8 assessing the creation of documents.  
 9 We learnt that Messrs Aginsky and Picciochi failed  
 10 properly to engage with the assessment of that evidence  
 11 as articulated by Guinea, they didn't read it properly;  
 12 that Mr Picciochi wrongly assumed that Mr Avidan's  
 13 signature was Hebrew; and we learnt today for the first  
 14 time Mr Picciochi's views on handwriting and his  
 15 approach, which appears to have been entirely driven by  
 16 an analysis of similarities in self-serving samples.  
 17 As for the handwriting, it's our submission that  
 18 there is significant doubt to be cast on the conclusive  
 19 findings of Mr Welch. We heard Mr Radley give clear  
 20 evidence, unopposed by Guinea's counsel, on differences.  
 21 It seems that it boils down to whether the Tribunal  
 22 prefers Mr Welch and Mr Picciochi's views that  
 23 similarities are what counts, and that any variations  
 24 could not possibly be "fundamental differences", as they  
 25 characterise them, or whether the Tribunal prefers

Page 176



15:54 1 Mr Radley's view that the accumulation of differences in  
 2 one document is what matters. Both Mr Welch and  
 3 Mr Picciochi rely on the accumulation in relation to  
 4 significances, but in relation to differences, prefer to  
 5 discount each, with no basis, and certainly without  
 6 reference to any articulated criteria.  
 7 Despite this, Mr Welch states that he has reached  
 8 the highest level of certainty in relation to Mr Struik,  
 9 Mr Avidan and Mr Lev Ran. I, like Madam President, have  
 10 never heard an expert reach such a level of certainty  
 11 before, and it concerns me. It's our position that  
 12 Mr Welch simply could not have properly reached this  
 13 conclusion. He has not considered issues relevant to  
 14 the small number of comparator documents for Mr Avidan,  
 15 has not considered properly whether the signatures are  
 16 complex or simple, and has explained away clear  
 17 differences as variations without explaining the  
 18 significance of each. So I will invite the Tribunal to  
 19 favour the conclusions of Mr Radley.  
 20 In our post-hearing briefs BSGR will explain how  
 21 that starting point is supplemented by the factual  
 22 evidence. But by way of overview, just so that we can  
 23 highlight that now, Struik and Avidan both deny signing  
 24 any of the documents in question. Guinea criticises  
 25 them for not dreaming up alternative solutions as to why

Page 177

15:55 1 the documents seem to have been signed by them. But to  
 2 use the words of the experts, it's simply not their  
 3 place to speculate on how a forger was successful in  
 4 this instance.  
 5 Mr Avidan was not in the country at the time he is  
 6 purported to have signed R-28 and R-29, and those are  
 7 the assumed dates by Mr LaPorte. Mr Struik's  
 8 understanding of French was very basic at the time.  
 9 There's countless witness testimony on the record  
 10 undermining Mamadie Touré's account of when and how  
 11 these documents were signed. Mr Tinkiano gave evidence  
 12 that he did not check the ID of the woman or the white  
 13 man who presented the documents to legalise them, and  
 14 has no recollection of R-27, which he also alleged to  
 15 have legalised. There's no evidence of BSGR making  
 16 payments to Mamadie Touré, and even Guinea avoided  
 17 asking BSGR's witnesses questions about cash payments.  
 18 There's an extremely strange coincidence that on the  
 19 disputed documents, Mr Avidan's name appears as  
 20 "Avidan Asher". Nowhere else does it appear in that  
 21 wrong order; presumably because when Mr Avidan signs his  
 22 documents, he ensures his name is presented properly  
 23 before doing so.  
 24 Other apparently signed versions of R-28 and R-29,  
 25 the ones we've now looked at, marked "Forged" by BSGR,

Page 178

15:56 1 display yet different signatures, raising further  
 2 questions relating to the documents' provenance. We  
 3 will obviously develop these arguments later. But in  
 4 our view, the only sensible conclusion is that the  
 5 documents, based on the expert evidence and applying all  
 6 of the factual evidence, particularly those which  
 7 pertain to BSGR, are not authentic.  
 8 I think Mr Daele is now going to deal with our  
 9 application.  
 10 MR DAELE: Thank you.  
 11 Dear members of the Tribunal, the integrity of this  
 12 arbitration has been compromised, through no fault of  
 13 BSGR, by the conduct of the Tribunal-appointed experts;  
 14 in particular, the determinations they made in their  
 15 final report of 12th February 2018 in relation to BSGR's  
 16 alleged conduct in the expert proceedings. These  
 17 determinations by the experts raise justifiable doubts  
 18 as to their impartiality to serve as Tribunal-appointed  
 19 experts in this matter. Therefore, in accordance with  
 20 Article 44 of the ICSID Convention and ICSID Arbitration  
 21 Rule 34, BSGR submits that the experts must be  
 22 disqualified, and that the final report be declared  
 23 inadmissible.  
 24 In what follows, I will make submissions on our  
 25 proposal as it stands today. However, we do reserve our

Page 179

15:58 1 right to amend our proposal, in light of the events that  
 2 occurred in the last 48 hours; in particular, the  
 3 experts' attempts to file a substantial amount of new  
 4 and, in our view, unauthorised material on the eve of  
 5 the hearing. The Tribunal will appreciate that because  
 6 of the recentness of these events and the fact that we  
 7 are in the very middle of this hearing, we have not been  
 8 able yet to seek instructions and make a final decision  
 9 on this. However, we intend to do so in the next couple  
 10 of days.  
 11 Now, our proposal as it stands today. First of all,  
 12 the factual background. I think it is fair to say that  
 13 the factual background of the challenge is not really  
 14 disputed, and therefore we refer to paragraphs 3 to 21  
 15 of our proposal.  
 16 THE PRESIDENT: When you say "proposal", you mean your  
 17 application?  
 18 MR DAELE: Yes, our disqualification proposal. So in terms  
 19 of the facts, we just refer to our proposal,  
 20 paragraphs 3 to 21.  
 21 We just want to make a small amendment to  
 22 paragraph 14, where we said we received the preliminary  
 23 report on 31st December. It was 3rd January. That's  
 24 also confirmed in footnote 11 of Guinea's response.  
 25 In terms of the power of the Tribunal to disqualify

Page 180

16:00 1 experts or to declare evidence inadmissible, also there  
 2 I think there is no dispute, and the parties agree, that  
 3 the Tribunal has both of these powers. In this respect,  
 4 I refer to paragraph 39 of Guinea's reply.  
 5 Moving on to the qualities that are required from  
 6 a Tribunal-appointed expert, the ICSID Convention and  
 7 the Rules themselves are silent on this. However,  
 8 Article 14 of the ICSID Convention sets out the  
 9 qualities that arbitrators should meet. And it is our  
 10 position that it's the same kind of qualities that we  
 11 look for in arbitrators in ICSID cases that we should  
 12 look for in Tribunal-appointed experts in ICSID cases;  
 13 more precisely, the requirement of independence and  
 14 impartiality.  
 15 "Independence" refers to the absence of  
 16 relationships between the arbitrator or the expert and  
 17 the parties and their counsel. "Impartiality" refers to  
 18 the absence of bias. There's no issue here about  
 19 independence; obviously it's all about bias and  
 20 impartiality.  
 21 You will hear on the other side that impartiality  
 22 does not come into play in these proceedings, that it  
 23 would only be independence. We think that's wrong. We  
 24 have referred in our proposal to other arbitration rules  
 25 all over the world that require both independence and

Page 181

16:02 1 impartiality. We refer to the ICC Expert Rules, we  
 2 refer to the UNCITRAL Arbitration Rules, we refer to the  
 3 LCIA Arbitration Rules, we refer to the International  
 4 Arbitration Practice Guidelines of the Chartered  
 5 Institute of Arbitrators, and we even refer to the Swiss  
 6 Rules of International Arbitration.  
 7 Guinea contests that, and refers to Article 6.2 of  
 8 the IBA Rules on the Taking of Evidence. That only  
 9 mentions independence. However, we disagree. It is our  
 10 submission that even under the IBA Rules, this concept  
 11 of independence also includes impartiality. It can't be  
 12 right that an expert must only be independent, but would  
 13 be allowed to be partial.  
 14 In addition, I think under paragraph 25 of  
 15 Procedural Order No. 1 in this case it says that the  
 16 IBA Rules are only there to guide the Tribunal, and are  
 17 not binding.  
 18 So the experts have to be independent and impartial.  
 19 In terms of the standard for disqualifying experts,  
 20 again the ICSID Convention and the Rules are silent on  
 21 this. That's why again we apply, mutatis mutandis, the  
 22 test that has been developed for arbitrators in ICSID  
 23 cases; and that is basically and definitely, after the  
 24 decision in the Blue Bank case, some sort of  
 25 a "reasonable doubts" test.

Page 182

16:04 1 We refer to a couple of cases in our proposal. One  
 2 in particular, for example, is the EDF v Argentina case,  
 3 the decision on annulment of 5th February 2016. It was  
 4 determined that the standard is whether a reasonable  
 5 third party, with knowledge of all the facts, would  
 6 consider that there were reasonable grounds for doubting  
 7 that an arbitrator possessed the requisite qualities of  
 8 independence and impartiality.  
 9 In other words, it is sufficient on the basis of  
 10 objective evidence to establish reasonable doubts as to  
 11 an arbitrator's impartiality, or an appearance of bias  
 12 on the part of the arbitrator. I am obviously talking  
 13 about this in terms of the arbitrator, but obviously  
 14 we're talking here about the Tribunal-appointed experts.  
 15 Guinea disagrees with the standard that we have put  
 16 forward. However, they fail to offer an alternative  
 17 standard. Their main point is that the rules of  
 18 arbitrators and experts are different, so it wouldn't be  
 19 right to apply, let's say, the same test.  
 20 Again, we disagree. In this particular case we are  
 21 dealing with a highly technical issue; maybe too  
 22 technical, we've heard in the course of this hearing,  
 23 for laypersons such as the arbitrators. That's why you  
 24 have requested the help of experts to assist you, and  
 25 you have mandated them to ascertain the authenticity of

Page 183

16:05 1 the disputed documents.  
 2 To ascertain, in our view, is in some way to judge,  
 3 to determine, to decide. Although the experts' decision  
 4 or views on this issue, on the authenticity of the  
 5 disputed documents, will not be binding and final, in  
 6 the sense that it obviously is ultimately for the  
 7 Tribunal to rule on the issue of the authenticity, it is  
 8 in our view nevertheless some form of judgment. That is  
 9 why all the rules in the world require from experts both  
 10 independence and impartiality.  
 11 You may also hear from Guinea that they put  
 12 an emphasis on this concept of "manifest" in Article 57  
 13 of the ICSID Convention. We don't think that applies  
 14 here. But in any event, if you analyse the ICSID case  
 15 law on this concept of "manifest", it does not relate to  
 16 the degree of seriousness of the lack, but it relates to  
 17 the ease with which, let's say, the lack can be  
 18 identified. And we believe, purely on the basis of the  
 19 comments that the experts have made in their final  
 20 report, that we also meet -- if the Tribunal would be of  
 21 the opinion that it applies -- the thresholds of  
 22 manifestness.  
 23 So what is now the basis for this challenge?  
 24 I think the main point is the accusation of expert  
 25 shopping. Without, in our view, any shred of evidence,

Page 184

16:08 1 the experts have accused BSGR of having engaged in  
 2 shopping for experts.  
 3 In the context of this case, the concept of expert  
 4 shopping has basically two components. The first  
 5 component is that BSGR's original experts would have  
 6 agreed with the findings of the experts. I refer to  
 7 paragraph 9 of the final report:  
 8 "In some cases, when an expert provides conclusions  
 9 to a party that do not significantly deviate from  
 10 an opposing expert and do not support the position of  
 11 their client ..."  
 12 In [paragraph 11] they write:  
 13 "It seems obvious that BSGR made their request for  
 14 an extension because the 'original experts' did not  
 15 dispute the testing we performed or our final  
 16 conclusions ..."  
 17 During the hearing yesterday, we heard:  
 18 "... it appears that the Claimants were seeking  
 19 another expert, because the original expert did not have  
 20 findings that supported your position."  
 21 That is transcript page [94], lines [2 to 4].  
 22 There is another quote from yesterday's hearing:  
 23 "You assume first of all that the original  
 24 experts ..."  
 25 So that is a question that I raised:

Page 185

16:09 1 "You assume first of all that the original experts  
 2 were basically agreeing with your analysis, and that is  
 3 why we changed the experts. Is that the concept of  
 4 'expert shopping'?"  
 5 Mr LaPorte replied:  
 6 "That's part of the concept, yes."  
 7 That's on the transcript at page 100, lines 5 to 9.  
 8 The second component of this "expert shopping"  
 9 concept is that the new expert is then selected because  
 10 he will advocate for his appointing party. Also there,  
 11 you can read in the final report, paragraph 9:  
 12 "... 'shopping for an expert'. That is, parties are  
 13 known to seek out an expert to advocate on their  
 14 behalf."  
 15 A bit further on, in [paragraph 11]:  
 16 "... it appears they were seeking a 'new expert' to  
 17 advocate for them."  
 18 Yesterday during the hearing, Mr LaPorte said:  
 19 "So when we say 'advocate', that would mean that  
 20 they have the position -- or they will render an opinion  
 21 or have a position that supports your proposition or the  
 22 parties' proposition.  
 23 "Question: Yes, and that is why they are selected?"  
 24 Mr LaPorte confirmed:  
 25 "Yes."

Page 186

16:11 1 I refer to the transcript, page [98], lines 21 to  
 2 25, and to page 99, lines 1 to 2.  
 3 So these are the two components. However, the  
 4 record shows that neither of these components is present  
 5 in this case.  
 6 First of all, BSGR's original experts did not agree  
 7 with the experts' findings. We refer to Exhibit C-376,  
 8 the declaration of Mr Dennis Ryan, who was one of the  
 9 two original experts, who said:  
 10 "We had a number of significant concerns in relation  
 11 to the conclusions reached by the Tribunal-Appointed  
 12 Experts."  
 13 In the same letter, he says:  
 14 "We therefore find the allegation of expert shopping  
 15 entirely unjustified."  
 16 So the first component is not present in this case.  
 17 The second component, the fact that BSGR would have  
 18 selected its new expert because he's known as  
 19 an advocate for the parties who appoint him, is also  
 20 wrong. We appointed him because of his expertise and  
 21 his independence.  
 22 We refer in this respect to all the diplomas and  
 23 certificates that Mr Radley has collected over the  
 24 years. We've set those out in paragraph 46 of our  
 25 proposal. We refer to all the cases in which Mr Radley

Page 187

16:12 1 has been involved, and in which he received praise from  
 2 numerous judges and arbitrators. We refer to  
 3 paragraphs 47 and 48 of our proposal, where you will  
 4 find a list of these cases.  
 5 We also refer to the experts' repeated praise of  
 6 Mr Radley here in the hearing. They described Mr Radley  
 7 as:  
 8 "... he is well respected. I have tremendous  
 9 respect for Dr Radley."  
 10 That's on the transcript page [97], lines 4 to 6.  
 11 "Dr Radley is a professional colleague and he's well  
 12 trained and he's well versed in this area."  
 13 Transcript page 107, lines 8 to 10.  
 14 Mr LaPorte said:  
 15 "Of course he's competent, yes."  
 16 "He" is again Mr Radley. That's on the transcript,  
 17 page 107, line 12.  
 18 "Like I said, Mr Radley is a well-respected forensic  
 19 document examiner ..."  
 20 The transcript at page 166, lines [24 to 25].  
 21 Then we would also like to refer to Mr Radley's  
 22 report, where he himself makes a declaration that he  
 23 adhered to the standard in the English CPR Rule 35.3,  
 24 although it doesn't apply in this case, but that he has  
 25 applied the same standard here.

Page 188

16:14 1 So the allegation of expert shopping is not made out  
 2 by the facts. So on what basis did the experts then  
 3 make this assumption? Well, yesterday they said during  
 4 the hearing that it was based on the "circumstances that  
 5 surrounded" the changing of the experts. I refer to the  
 6 transcript, page 172, line 23, up to page 173, line 6.  
 7 So this allegation is based on the "circumstances  
 8 that surrounded" the changing of the experts. So what  
 9 were then those circumstances?  
 10 The first one was the fact that our new expert did  
 11 not attend the sessions in New York. That is correct.  
 12 But it is our position that the usefulness of attending  
 13 those sessions was very limited. Mr Garel was there as  
 14 well, he will have his own views on how useful it was,  
 15 but obviously we think it wasn't very useful. The  
 16 questions, for example, that the experts were allowed to  
 17 ask were very limited. You know, it was even so that  
 18 the experts obstructed the views of the parties and our  
 19 experts, so we couldn't actually see what was going on.  
 20 The second circumstance is that the experts were of  
 21 the opinion that this request for an extension -- and  
 22 they repeated it twice -- so this "last minute" request  
 23 for an extension, "just prior to the deadline". That's  
 24 on the transcript at page 95, lines 4 to 7, and there's  
 25 another reference to this on the transcript at page 96,

Page 189

16:16 1 lines 18 to 21.  
 2 That is factually wrong. The request for  
 3 an extension was not made at the last minute, it was not  
 4 made just prior to the deadline. It was made on  
 5 10th January, eight days prior to the expiry of the  
 6 deadline.  
 7 The next circumstance is the nature of the questions  
 8 that were asked. But here the experts, I think,  
 9 yesterday during the hearing really contradicted  
 10 themselves, because at the transcript at page 97,  
 11 lines 13 to 14, they explicitly admitted that:  
 12 "... the questions that we received from  
 13 Mr Radley -- which are fair and appropriate ..."  
 14 So there wasn't anything wrong with the questions.  
 15 I think the fact that they felt the need to, on the eve  
 16 of the hearing, file 137 pages of answers to the Radley  
 17 report, that to some extent, you know, follows up on  
 18 these questions, shows that there was nothing wrong with  
 19 the questions themselves.  
 20 So we don't believe that the "circumstances that  
 21 surrounded" the changing of the experts warranted the  
 22 comments that the experts were making in their final  
 23 report.  
 24 So during the hearing yesterday, I think the experts  
 25 were trying to back down from their earlier statements.

Page 190

16:18 1 They started to hide behind words in their report as,  
 2 "Oh, it appears that", "it seems". They tried to  
 3 convince us that, "We didn't make an affirmative  
 4 allegation", and so forth. They even said that expert  
 5 shopping as such is:  
 6 "... not something that is not permitted; you're  
 7 allowed to do that sort of thing."  
 8 That's on the transcript, page 94, lines 12 to 13.  
 9 However, for each moderate word or term that the  
 10 experts used in their report or used here yesterday at  
 11 the hearing, they have used two or three strong words,  
 12 and that is what the Tribunal needs to look at.  
 13 I refer to wording such as "It [is] obvious that",  
 14 in paragraph [11] of the final report. They refer to  
 15 their "combined 50 years of experience" in paragraph 9.  
 16 In paragraph 11 they say in affirmative terms:  
 17 "In our opinion, BSGR did not, in good faith,  
 18 disclose their reasoning ..."  
 19 In the same paragraph 11 they say:  
 20 "We are also concerned that BSGR has not been  
 21 forthright and did not act in good faith ..."  
 22 In paragraph 10 they say:  
 23 "This is highly inappropriate as BSGR has now  
 24 tainted the 'new expert' ..."  
 25 Yesterday at the hearing they said:

Page 191

16:20 1 "... based on our duties to the Tribunal, it's to  
 2 notify that we have a genuine concern that there was  
 3 something ... going on."  
 4 That is at the transcript at page 95, lines 17  
 5 to 19.  
 6 So there are plenty of strong words, plenty of  
 7 affirmative statements, and it is not enough to just,  
 8 two or three times in the report, try to disguise that  
 9 you've not made up your mind by saying, "Oh, I've just  
 10 pointed to", "it appears that", "it seems that".  
 11 Throughout the paragraphs, I think what comes out of  
 12 this is that they had made up their mind, they had  
 13 serious problems with the conduct of BSGR, and we think  
 14 that that was highly inappropriate.  
 15 In any event, if the experts were in doubt over  
 16 BSGR's conduct, they had every opportunity to ask  
 17 information from BSGR. They did not, but preferred to  
 18 jump to conclusions.  
 19 That is in relation to the expert shopping.  
 20 The second issue of concern is that BSGR was accused  
 21 of appointing an expert who is neither properly trained  
 22 nor competent. We refer in this respect to basically  
 23 Annex L, in which the experts reply to the comments that  
 24 BSGR made on the preliminary report, and on twelve  
 25 occasions the experts simply stated that any properly

Page 192

16:22 1 trained, competent forensic document expert would come  
 2 to the same conclusions as they did. We refer to  
 3 footnote 30 of our proposal, where you will see the  
 4 references to these twelve occasions.  
 5 So as we know that both BSGR's original expert and  
 6 Mr Radley did not come to the same conclusion, the  
 7 experts' reply suggests that they are simply not  
 8 properly trained, nor competent.  
 9 This is corroborated by the experts' statement that  
 10 the majority of BSGR's comments on the preliminary  
 11 report were unnecessary if the preliminary report and  
 12 the supporting data had been reviewed thoroughly. So  
 13 again here they imply that BSGR -- and, more  
 14 importantly, its experts -- did not thoroughly review  
 15 the preliminary report. Again, that is absolutely  
 16 wrong.  
 17 The third item we take issue with is the fact that  
 18 BSGR is accused of having failed to act in good faith.  
 19 BSGR would have failed to be forthright and act in good  
 20 faith by not disclosing the true reason for seeking  
 21 an extension to file the comments on the preliminary  
 22 report.  
 23 However, when yesterday at the hearing they were  
 24 questioned on this, they had to admit that they had not  
 25 even been aware of the reasons that BSGR had given to

Page 193

16:24 1 justify the extension. I refer to the transcript at  
 2 page 103, lines [15] to 18, and to page 160, line [6].  
 3 It's a mystery to us how you can accuse a party of  
 4 not being forthright about the reasons when you actually  
 5 don't have an idea what reasons have been given. The  
 6 experts acknowledge that this accusation is actually  
 7 quite extraordinary. I read from the transcript:  
 8 "Is it common practice to accuse parties of bad  
 9 faith?"  
 10 "Well", Mr LaPorte answers. I interrupted him.  
 11 I said:  
 12 "Or failing to act in good faith."  
 13 Mr LaPorte confirmed:  
 14 "So normally we wouldn't do that ..."  
 15 That's on the transcript, page 103, [lines 19  
 16 to 22].  
 17 Furthermore, at the hearing, when they were given  
 18 the reasons for the extension that BSGR had mentioned,  
 19 in my view the experts' response was quite amazing. In  
 20 relation to the snowstorm, they basically said, "Well,  
 21 all you need is an internet connection". To which  
 22 I thought: well, Mr Garel on Sunday had to go to their  
 23 hotel to pick up three documents of 137 pages because  
 24 they had issues to upload these documents.  
 25 Here we are talking about 1,100 electronic files of

Page 194

16:25 1 10 gigabytes. There is not a dispute that there was  
 2 a snowstorm; there is not a dispute that the original  
 3 experts had difficulty to get into their offices, and so  
 4 lost four days before they actually -- not could start  
 5 working, but could really start engaging with the jobs  
 6 that they had to do.  
 7 The second reason was the volume of work. And  
 8 I think I will summarise: there the answer of the  
 9 experts was basically, "Well, if we could do it,  
 10 basically anyone could do it". So when I questioned  
 11 them about how long it would take in their view to  
 12 analyse 10 gigabytes of information, they had no idea.  
 13 I refer to the transcript at page 164, lines [11 to 13].  
 14 In any event, during the hearing they had to  
 15 acknowledge that the report was actually very lengthy,  
 16 and there was indeed a lot of data to analyse. That is  
 17 at page 106, line 8, and page 164, line [20].  
 18 The next accusation is that BSGR raised unnecessary  
 19 questions, or questions to confuse the Tribunal.  
 20 However, when this was tested during the hearing, they  
 21 failed to identify any question that they had qualified  
 22 as unnecessary. I refer to page 104 of the transcript,  
 23 lines 10 to 11, and page 106, lines 15 to 18.  
 24 What did become clear also during the hearing is  
 25 that they did not appreciate the comments they had

Page 195

16:27 1 received. At page 166 of the transcript, lines [17  
 2 to 18], they qualified BSGR's comments as:  
 3 "At least I didn't see them as being like  
 4 a constructive comment ..."  
 5 In the report they described the manner in which the  
 6 questions were posed as "even more concerning". These  
 7 in our view are very strong words, and it is probably  
 8 the reason why the experts refused to engage with the  
 9 comments properly when they were supposed to do so. And  
 10 in this respect I refer to their responses in Annex L of  
 11 their report.  
 12 The last issue is this accusation of BSGR biasing  
 13 its expert. During the hearing, I have to admit, the  
 14 experts softened their stance on this. They stated now  
 15 that there was just a possibility that an expert would  
 16 be biased. I refer to page 111, lines 14 to 17. They  
 17 also admitted that it didn't mean that Mr Radley was in  
 18 fact tainted. Again, the same page, 111, lines 2 to 3.  
 19 Despite the softening of this tone at the hearing  
 20 yesterday, the fact remains that in their final report  
 21 they stated that they had a "major concern" about this  
 22 issue of tainting Mr Radley. They qualified BSGR's  
 23 conduct as "hugely inappropriate", and they were  
 24 affirmative that BSGR has now tainted the new expert.  
 25 It is our proposition that all of these issues

Page 196

16:30 1 individually would justify their disqualification; even  
 2 more so when they are considered cumulatively, and  
 3 I believe Guinea does not really contest that it is  
 4 appropriate to look at these issues cumulatively.  
 5 So in our view the disqualification is warranted.  
 6 It is obviously up to the Tribunal to determine whether  
 7 a reasonable third-party observer would, on the basis of  
 8 all the statements of the experts, have reasonable  
 9 doubts as to the experts' impartiality. We are of the  
 10 view that a third party would have such doubts, and in  
 11 that case there is only one appropriate remedy: the  
 12 experts must be disqualified. That is the case for  
 13 arbitrators when there is an appearance of bias; that  
 14 should also be the case for experts.  
 15 Guinea will argue that it would not make sense to  
 16 disqualify the experts now because their mission is  
 17 coming to an end. We believe that's wrong, for four  
 18 reasons.  
 19 First of all, the experts' mandate is to assist the  
 20 Tribunal not only today, but also tomorrow. The  
 21 Tribunal may have follow-up questions upon review of the  
 22 transcript, or of this entire process.  
 23 Secondly, the challenge is about what the experts  
 24 have done in the past, not about what is going to happen  
 25 in the future.

Page 197

16:31 1 Three, it will be very difficult for BSGR to  
 2 convince other jurisdictions not to give weight to the  
 3 final report because of a lack of impartiality of the  
 4 experts if the disqualification proposal itself has been  
 5 dismissed and the experts are not disqualified.  
 6 Four, even if it would be possible for BSGR to  
 7 convince other jurisdictions of this, BSGR should not be  
 8 put at the cost and risk of doing so when there is  
 9 a quick and safe fix, i.e. the disqualification of the  
 10 experts in these proceedings.  
 11 We have referred in our proposal to a number of  
 12 cases in which arbitrators have been disqualified for  
 13 criticising parties' conduct and that of their counsel.  
 14 We refer to paragraphs 85 to 89. Although these  
 15 decisions are not binding, obviously, on your Tribunal,  
 16 we do believe that these cases provide guidance, and  
 17 that having seen and considered these cases, your  
 18 Tribunal should come to the same conclusions.  
 19 The last point I want to make is on the  
 20 admissibility of the final report.  
 21 During the hearing we heard that determining the  
 22 authenticity of documents is actually a matter of  
 23 degree, and I refer to the transcript at page 56,  
 24 lines 19 to 21. We also heard, I believe, the President  
 25 of the Tribunal saying that she had never before in her

Page 198

1 career heard experts that pretended to be so sure of  
 2 their findings. I refer to page 223, lines [19 to 21].  
 3 We have heard Mr Radley, who raised serious issues with  
 4 the experts' findings and conclusions.  
 5 We also know that BSGR's original experts had  
 6 serious concerns about the preliminary report. And we  
 7 know that the experts did not meaningfully engage with  
 8 BSGR's questions, and refused to amend meaningfully  
 9 their final report.  
 10 There is at least a possibility that the final  
 11 report is tainted by the experts' appearance of bias,  
 12 and therefore it should be declared inadmissible.  
 13 In our proposal we have listed several cases in  
 14 which reports filed by experts that did not meet the  
 15 required standards of independence and impartiality were  
 16 rejected. I refer to paragraphs 93 to 99 of our  
 17 proposal. We request that the Tribunal carefully  
 18 considers them and comes to the same conclusion.  
 19 Guinea will argue that these cases do not apply  
 20 because they predominantly go to the issue of  
 21 independence and not impartiality, and because they are  
 22 decisions issued by the English courts. We believe,  
 23 however, that the difference between independence and  
 24 impartiality is irrelevant in this matter, or at least  
 25 for this purpose. And yes, these decisions may have

Page 199

16:35 1 been issued by the English courts, but the same basic  
 2 principles apply in every international dispute, and  
 3 also in the present arbitration.  
 4 Therefore, for all these reasons, we request you to  
 5 disqualify the experts and declare the report  
 6 inadmissible. I thank you.  
 7 (4.35 pm)  
 8 Questions from THE TRIBUNAL  
 9 THE PRESIDENT: Thank you. Can I just ask: what, in your  
 10 submission, would the consequence be of disqualifying  
 11 the experts?  
 12 MR DAELE: Just disqualifying the experts.  
 13 THE PRESIDENT: Because your application is two-pronged,  
 14 right?  
 15 MR DAELE: Yes.  
 16 THE PRESIDENT: So is there a difference? Does it go  
 17 together? What is the consequence of one, what is the  
 18 consequence of the other?  
 19 MR DAELE: The consequence of the disqualification of the  
 20 experts is also the declaration of the inadmissibility  
 21 of the report, because otherwise you have a report  
 22 that's been issued by experts that are considered -- or  
 23 at least where there is an appearance --  
 24 THE PRESIDENT: I can see that. And then procedurally, what  
 25 is the consequence for us? Do we rule on the case

Page 200

16:36 1 without this expert evidence, or how do you see --  
 2 MR DAELE: Yes, if it's declared inadmissible, then it is  
 3 off the record --  
 4 THE PRESIDENT: Yes, that I understand!  
 5 MR DAELE: -- and then I think you should rule without  
 6 taking it into consideration, yes.  
 7 THE PRESIDENT: After a number of years, I understand that,  
 8 yes.  
 9 So we rule without forensic evidence on authenticity  
 10 and handwriting?  
 11 MR DAELE: Well, there are still obviously the two reports  
 12 that have been filed by the two party-appointed experts;  
 13 they don't disappear. When we talk about the  
 14 inadmissibility of the final report, we are not filing  
 15 an application that therefore Mr Radley's report should  
 16 be declared inadmissible, or the evidence that has been  
 17 given by the experts of Guinea. We are talking about  
 18 the final report.  
 19 THE PRESIDENT: So Mr Radley's "report" has been considered  
 20 like a party's submission on the Tribunal's expert  
 21 report. So would you say it would nevertheless stand?  
 22 What is your submission?  
 23 MR DAELE: Well, I believe there are a lot of cases where  
 24 there is no Tribunal-appointed expert, so where both  
 25 parties present evidence.

Page 201

16:38 1 THE PRESIDENT: Yes. That is not the situation we have  
 2 here.  
 3 MR DAELE: But de facto that would be the position or the  
 4 situation when the report of the Tribunal-appointed  
 5 expert is not on the record. What you are left with,  
 6 de facto, is expert evidence by a party-appointed expert  
 7 and by another appointed expert.  
 8 THE PRESIDENT: And what you call the party-appointed  
 9 evidence here is the written comments and the oral  
 10 evidence, or is it one or the other?  
 11 MR DAELE: It would be both.  
 12 THE PRESIDENT: It would be both.  
 13 I would expect the Respondent also to give us their  
 14 submission, not now but when you present your closing  
 15 statements, so we have both parties' positions on these  
 16 issues that are before us.  
 17 MR DAELE: If I just may add one clarification in relation  
 18 to the consequences.  
 19 THE PRESIDENT: Yes.  
 20 MR DAELE: If the Tribunal would not disqualify the experts  
 21 and would not declare the evidence inadmissible -- we  
 22 will obviously elaborate on this in our post-hearing  
 23 submissions -- then we will make the case that little  
 24 weight should be given to the final report. So even if  
 25 you decide to keep it on the record, for the reasons and

Page 202

16:40 1 the comments that we've made in the last two days, we  
 2 will still request the Tribunal to take all of this into  
 3 account when it is considering the value of the final  
 4 report.  
 5 THE PRESIDENT: As a matter of assessment of the evidence,  
 6 yes.  
 7 MR DAELE: Yes.  
 8 THE PRESIDENT: Thank you.  
 9 Do my colleagues have any questions for the  
 10 Claimants?  
 11 Then I think we have provided for a break at this  
 12 stage, absolutely. We should resume at 5.00, and then  
 13 we will hear the Respondent's closing, and then we will  
 14 need a little time for a procedural discussion. I'm  
 15 especially saying this for the court reporters and the  
 16 interpreters, who yesterday were eager to finish today  
 17 at a reasonable time. So around 6.00, a little bit  
 18 thereafter, we should be done.  
 19 So let's take the break now, and resume at -- well,  
 20 maybe we'll say 4.55, in 15 minutes from now.  
 21 (4.41 pm)  
 22 (A short break)  
 23 (5.02 pm)  
 24 THE PRESIDENT: So the Tribunal is a little late, but now it  
 25 is ready to listen to the Respondent's closing argument.

Page 203

17:02 1 (Interpreted) Sorry, I should have given the floor  
 2 in French.  
 3 Closing statement on behalf of Respondent  
 4 MR JAEGER: (Interpreted) Thank you, Madam President,  
 5 arbitrators. I would like to approach this closing  
 6 argument in dealing with the impartiality of  
 7 Tribunal-appointed experts, and then Michael Ostrove  
 8 will briefly deal with issues on the merits of the case.  
 9 You will remember that in May last year, during the  
 10 hearing, Mr Beny Steinmetz explained to your Tribunal  
 11 that BSGR was the victim of a plot organised by Mr Soros  
 12 and the President of the Republic of Guinea. In any  
 13 such theory, there are a number of assumptions that  
 14 cannot be verified.  
 15 In that particular case, this is this mysterious  
 16 character nobody else has met. We do not know where he  
 17 lives, we do not know his name, and he has been called  
 18 the "master forger". This master forger, as far as BSGR  
 19 is concerned, everything relies on the assumed existence  
 20 of this individual, who would have exceptional  
 21 capabilities, and who would be capable of imitating any  
 22 signature, and fooling all experts and every kind of  
 23 analysis conducted by experts.  
 24 Well, precisely the Tribunal-appointed experts have  
 25 said this assumption is not valid, and they have

Page 204

17:05 1 demonstrated that such an individual doesn't exist and  
 2 could not exist. No forger -- that's what they are  
 3 telling us -- can imitate signatures with such accuracy  
 4 and in such a perfect way that an exhaustive analysis  
 5 would not see it.  
 6 So a second assumption was needed, which was that  
 7 the Tribunal-appointed experts are partial, are biased,  
 8 and this is what I would like to deal with now. I'm not  
 9 going to take all the elements that we gave the Tribunal  
 10 on 22nd March 2018; you've read it. I would like to  
 11 focus on what has emerged during this hearing.  
 12 First of all, I would like to make a preliminary  
 13 comment on the notion of impartiality, which has been  
 14 the subject of abundant literature in the field of  
 15 international arbitration. You're familiar with this  
 16 notion and you know that it is a subjective notion,  
 17 contrary to the notion of independence that can be  
 18 appreciated on the basis of objective criteria. And  
 19 because it is subjective, it is difficult to establish,  
 20 since you have to try and guess what is the state of  
 21 mind of the person who is told to be partial.  
 22 It is difficult to establish, it is difficult to  
 23 prove, but it is not a problem for BSGR. As a matter of  
 24 fact, the Tribunal is familiar with the special idea  
 25 that BSGR has of impartiality. If I may summarise it,

Page 205

17:07 1 for BSGR this notion of impartiality or partiality is  
 2 a way to accuse somebody who makes a decision contrary  
 3 to their interest. The Tribunal is familiar with this  
 4 attitude, since this means has already been used once  
 5 again its members; and once again, a second time, it is  
 6 used against the Tribunal-appointed experts.  
 7 BSGR is challenging the partiality of the  
 8 Tribunal-appointed experts because they do not like  
 9 their conclusions, and this is in accordance with their  
 10 usual practice. But not quite so because, since we're  
 11 dealing with experts, BSGR went out of its comfort zone.  
 12 They are not so familiar with the criteria and with the  
 13 consequences of impartiality of experts. It's not  
 14 exactly the same as for arbitrators.  
 15 BSGR is making a confusion between impartiality of  
 16 experts and arbitrators, and, as you've seen, they are  
 17 referring to texts or cases having to do with  
 18 arbitrators. This is misleading for a simple reason:  
 19 arbitrators have a power of decision, and therefore  
 20 their partiality -- if it is proven -- disqualifies  
 21 them. They are challenged, and their disqualification  
 22 is a special procedure provided for by the ICSID Rules.  
 23 Experts appointed by the Tribunal, on the other  
 24 hand, have no power of decision: they only issue  
 25 opinions that are submitted for the Tribunal's

Page 206

17:09 1 appreciation. And disqualification of an expert  
 2 appointed by the Tribunal is meaningless, or loses its  
 3 meaning, in [that] there is no procedure for  
 4 disqualification of an expert. There's nothing in  
 5 arbitration rules or regulations because the sanction,  
 6 if partiality is proven, is that the opinion of that  
 7 particular expert is disregarded by the Tribunal.  
 8 The consequence is that the sanction can be divided.  
 9 In other words, what will be disregarded by the Tribunal  
 10 as being partial will be the opinion affected by that  
 11 partiality; but the other opinions, the opinions of  
 12 experts that are not considered as partial, remain valid  
 13 and can be used by the Tribunal as evidence in the  
 14 procedure.  
 15 In other words, we are not talking about  
 16 disqualification of an expert; we are talking about the  
 17 evidentiary value of the opinions of the experts. And  
 18 this is interesting in this case because most of the  
 19 work conducted by the Tribunal-appointed experts is not  
 20 affected by allegations of partiality, as indicated by  
 21 BSGR.  
 22 I would like to express myself in three stages:  
 23 first, until the establishment of the preliminary  
 24 report; then a second stage between the preliminary  
 25 report and the final report, where the accusations of

Page 207

17:11 1 partiality are involved; and the third stage is what we  
 2 heard from the experts. And for each stage I shall  
 3 study this partiality issue.  
 4 The first stage: until the preliminary report. The  
 5 experts are appointed on 1st August 2017, and they  
 6 submit their preliminary report more or less five months  
 7 later. During this stage, the experts conduct  
 8 scientific analysis on the disputed documents and  
 9 establish a preliminary report. This first stage is not  
 10 considered in the accusation of partiality by BSGR.  
 11 Mr Ryan and Ms Mancebo, who attended the examination  
 12 of documents between 31st October and 3rd November 2017,  
 13 as well as BSGR counsel who also attended the  
 14 examination, did not object and never expressed doubts  
 15 as to the experts' partiality. Later on, there was no  
 16 objection as to the way in which the work was conducted.  
 17 In Mr Radley's report, on the other hand, he recognises,  
 18 he acknowledges the considerable work that has been  
 19 conducted by the experts.  
 20 So all that period of time is not concerned by those  
 21 allegations of partiality, which means that all that is  
 22 stated in the preliminary report, the scientific  
 23 findings of the experts are not concerned. BSGR is not  
 24 disputing the fact that this is the result of  
 25 an objective work with a due process, and that the work

Page 208



17:13 1 has been carried out in a professional way.  
 2 Therefore I would say that whatever your conclusions  
 3 as to the partiality or lack of partiality of the  
 4 Tribunal-appointed experts, we may already conclude that  
 5 the preliminary report by the experts appointed by the  
 6 Tribunal, which contains most of the scientific  
 7 findings, cannot be disregarded.  
 8 I would like to come to the second stage, which has  
 9 to do with the establishment of the final report, where  
 10 the accusation of partiality is focusing. Actually it  
 11 has to do with a few paragraphs, five paragraphs in the  
 12 final report, paragraphs 8 to 12, where Mr Welch and  
 13 Mr LaPorte are telling the Tribunal about some anomalies  
 14 in the behaviour of BSGR. They were concerned by BSGR's  
 15 behaviour, and they thought they had to communicate to  
 16 the Tribunal.  
 17 Well, this is more or less useless. The Tribunal is  
 18 familiar with BSGR's practice, and it may be  
 19 unnecessary. But this is novel for the  
 20 Tribunal-appointed experts. They are surprised at what  
 21 is going on, and they think it is their duty to warn the  
 22 Tribunal.  
 23 Is this abnormal? The fact of telling a tribunal  
 24 about the anomalous behaviour of a party is something  
 25 quite normal. It is the duty of experts to tell the

Page 209

17:15 1 Tribunal about what they find to be contrary to good  
 2 practice in a party's behaviour. So in this approach  
 3 they are within their terms of reference.  
 4 The other thing is: was this warning to the Tribunal  
 5 justified? Well, this is obvious. First of all, the  
 6 preliminary report is not favourable, is not supporting  
 7 BSGR's statement. They consider that there is no  
 8 evidence of forgery, alteration, et cetera.  
 9 As the conclusion, BSGR adopted a new strategy, in  
 10 changing the expert, which is something they did not say  
 11 immediately. But in a letter dated 23rd January 2018,  
 12 in which they make their comments on the preliminary  
 13 report, BSGR counsel indicate that their comments have  
 14 been established with the assistance of Mr Radley, who  
 15 is a new expert, and BSGR's counsel are saying that this  
 16 is a new expert who has been retained after the experts  
 17 who attended the analysis. So we realise that Mr Ryan  
 18 and Ms Mancebo have been set aside.  
 19 BSGR did not give any explanation for this fact.  
 20 They do not state that those experts were unavailable,  
 21 sick, could not accomplish their mission. They do not  
 22 mention anything.  
 23 So what can be the possible explanation for the  
 24 disappearance of those experts? Well, either they are  
 25 unavailable or they have been set aside. And there's

Page 210

17:18 1 only one possible reason in that case: it is that they  
 2 are not prepared to follow the thesis of BSGR. There is  
 3 no other alternative. And a reasonable and objective  
 4 observer, faced with this situation, can reach only one  
 5 conclusion: those experts were replaced by another  
 6 expert because they did not accept to follow BSGR's  
 7 directions.  
 8 When the Tribunal-appointed experts warned the  
 9 Tribunal about the abnormal nature of those practices,  
 10 they showed that they are very much attached to the  
 11 impartiality of experts. It is rather strange that they  
 12 should be attacked for defending the principle of  
 13 impartiality in such a case. And they show that they  
 14 are quite aware of the fact that the new expert retained  
 15 by BSGR is not impartial, and that he has been selected  
 16 to follow a thesis that the previous experts did not  
 17 accept to follow; in other words, they drew the  
 18 consequences of what they had observed. BSGR is  
 19 attacking the impartiality of the Tribunal experts, but  
 20 actually what they did was to observe facts and draw  
 21 logical conclusions from that.  
 22 There's something which is missing in BSGR's thesis,  
 23 and which is fundamental: what would be their motive?  
 24 What would be the motive of the Tribunal-appointed  
 25 experts to support Guinea and to go against BSGR? Well,

Page 211

17:20 1 they have no reason to support one party rather than the  
 2 other, they have no personal motive, and BSGR does not  
 3 have any [theory as to that]. It is extremely unlikely.  
 4 The question was put to the experts yesterday;  
 5 yesterday's transcript, page 172, line 18. If the  
 6 Respondent had behaved in such a way, the experts would  
 7 have reacted in the very same way, which proves that it  
 8 is not an issue of partiality but an issue of the  
 9 experts appreciating what is good practice and what is  
 10 bad practice in such a case. You may have different  
 11 notions of what is a good practice or a bad practice.  
 12 But nevertheless, it is an objective assessment of the  
 13 situation by the experts, and this is why they refer to  
 14 "expert shopping". There's no French word for that.  
 15 "Expert shopping" means looking for an expert who is  
 16 going to support your thesis. This is not forbidden, as  
 17 the experts mentioned. But it has to be said, because  
 18 the Tribunal has to be informed about the situation to  
 19 have an idea of the value of the findings given by the  
 20 expert who has been retained in such a way.  
 21 BSGR gives another reason as evidence of  
 22 impartiality of the experts: when they say that  
 23 something was not done in good faith, they say that BSGR  
 24 did not act in good faith, they did not disclose in good  
 25 faith their reasoning. That's what BSGR states. Well,

Page 212

1 this lack of good faith has to do with the behaviour of  
 2 BSGR asking for an extension of the deadline.  
 3 We are quite aware of the facts. Mr Radley told us  
 4 this morning that BSGR had the comments of his previous  
 5 experts. Mr Radley confirmed that BSGR sent him  
 6 a document of one page and a half, and he told us it was  
 7 not very useful. So that when BSGR retained Mr Radley,  
 8 Mr Radley had the findings of Mr Ryan and Ms Mancebo,  
 9 and we may conclude that BSGR was not satisfied with its  
 10 experts' position and they started looking for another  
 11 expert.  
 12 We know that Mr Radley was contacted in the evening  
 13 of 8th January; in other words, five days after the  
 14 preliminary report was submitted. So during those five  
 15 days the first experts, Mr Ryan and Ms Mancebo, gave  
 16 their opinion; and BSGR was not satisfied with that  
 17 opinion and started looking for another expert. And  
 18 they contacted Mr Radley on 8th January. Mr Radley  
 19 started working a few days later; that's what he told us  
 20 this morning.  
 21 And on 10th January, when BSGR asked for  
 22 an extension of the deadline to make their comments,  
 23 they had no expert. They were looking for an expert and  
 24 they were discussing with Mr Radley, who had not started  
 25 working. So we know that the true motive for the

Page 213

17:24 1 request for extension was the fact that they were  
 2 looking for an expert.  
 3 BSGR, in their letter dated 10th January to the  
 4 Tribunal, mentioned the importance of annexes, the  
 5 length of the preliminary report, and a snowstorm which  
 6 could not affect Mr Radley, who at the time was in  
 7 London. So the experts had good reason to say that BSGR  
 8 was not in good faith when it stated the reasons for  
 9 which it was asking for an extension of the deadline.  
 10 BSGR are trying to put forward a number of elements.  
 11 They say that the Tribunal-appointed experts would not  
 12 have answered the questions that were put in the letter  
 13 of 23rd January, or that they would have answered in  
 14 a vague way.  
 15 We know that there were 65 queries in that letter,  
 16 and we know that in Annex L to the final report the  
 17 Tribunal-appointed experts answered each of the queries.  
 18 Well, BSGR may consider that some answers are not  
 19 exhaustive, that they refer back to the report, and  
 20 sometimes the experts say that the answer is in the  
 21 report, or that any professional expert, any competent  
 22 expert could answer a given query.  
 23 This is related, as explained yesterday by the  
 24 Tribunal-appointed experts, to the fact that it is  
 25 difficult for them: they have to answer 65 queries that

Page 214

17:26 1 are fairly vague, confused, and they have a feeling that  
 2 those queries could have been answered if the new expert  
 3 had attended the analysis. They answer in a short way;  
 4 this is no evidence of any impartiality on their part,  
 5 but it has to do with the fact that it was difficult to  
 6 answer in an exhaustive way to each of those queries.  
 7 Mr Radley this morning -- page [49] of the  
 8 transcript, [lines 11 to 12] -- said he did not expect  
 9 Mr Welch or Mr LaPorte to change their conclusions  
 10 following the questions, and he explained that it has  
 11 nothing to do with the fact that they might be biased;  
 12 he said that it was because the preliminary report was  
 13 the fruit of their conviction. So according to  
 14 Mr Radley, the fact that the preliminary report was not  
 15 altered practically, and the fact that the final report  
 16 has not been changed, has to do with the fact that the  
 17 expert findings and conclusions are the reflection of  
 18 their honest belief. In other words, Mr Radley does not  
 19 support this partiality.  
 20 BSGR is also trying to state that the  
 21 Tribunal-appointed experts would have some animosity  
 22 against Mr Radley. Well, in the final report they never  
 23 showed any such animosity. He quotes the sentence that  
 24 says any competent expert could have known that.  
 25 Mr Radley mentioned this morning that he did not

Page 215

17:29 1 consider that there was any animosity of the  
 2 Tribunal-appointed experts against him, or any  
 3 prejudice. Page [49] of the transcript, [lines 2 to 4]:  
 4 "Do you have any reason to believe that [Mr Welch  
 5 might feel any] animus or bias against you ...?"  
 6 He said:  
 7 "I would hope not. We are good professional  
 8 colleagues."  
 9 This thesis doesn't go any further, just like the  
 10 previous one.  
 11 Let's now turn to the third phase of this expertise,  
 12 i.e. the hearing; the hearing during which, under your  
 13 control, the Tribunal-appointed experts answered BSGR's  
 14 criticisms and [those of] their expert, Mr Radley.  
 15 BSGR pays a lot of heed to the 65 questions that it  
 16 had listed in its writings, but we see that these  
 17 65 questions were in fact a sort of "wait and see"  
 18 attitude, before Mr Radley truly had enough time to  
 19 undertake his work and prepare the report that was  
 20 submitted to the Tribunal at some stage. But it's in  
 21 this report, not in the questions, it's in the report  
 22 that we find the criticisms that Mr Radley expresses  
 23 against the experts, their findings, and his own  
 24 conclusions as to the pseudo-forgery or challenged  
 25 documents.

Page 216

17:30 1 The Tribunal-appointed experts only normally  
 2 answered the questions of the Tribunal and met the  
 3 criticism formulated by Mr Radley, and it's only normal  
 4 that the Tribunal-appointed experts should answer these  
 5 criticisms fully, and they did this in a very  
 6 demonstrative way.  
 7 In other words, they didn't just present arguments  
 8 of authority. They didn't say, "We are more experienced  
 9 than Mr Radley, and Mr Radley knows nothing about this";  
 10 no. They took heed to show the Tribunal, on the basis  
 11 of examples, why the alleged differences noted by  
 12 Mr Radley were not in fact differences, but variations  
 13 in nature.  
 14 It's quite bizarre actually that although they  
 15 should complain that the Tribunal-appointed experts  
 16 failed to answer Mr Radley's questions, BSGR did  
 17 everything they could to prevent them yesterday from  
 18 answering Mr Radley's criticisms. They opposed, for  
 19 instance, the demonstrative exhibits that had been  
 20 prepared from being submitted, while they would have  
 21 been very useful for their demonstration. So there is  
 22 a contradiction in kind in BSGR's approach.  
 23 But what one can say and what one can infer from  
 24 this in terms of impartiality is that no element of  
 25 partiality could be pinpointed during this hearing by

Page 217

17:32 1 the experts. Everything they said was demonstrated by  
 2 the demonstrative exhibits. This is what one expects  
 3 from an impartial expert.  
 4 We also note that Mr Radley himself stated that the  
 5 Tribunal-appointed experts are, as he sees them,  
 6 sincere. That's on page [28] of the transcript from  
 7 this morning, [lines 10 to 12]:  
 8 "... I don't think Mr Welch is incompetent or  
 9 insincere; I think we just have different  
 10 interpretations."  
 11 It's not a question of honesty of the findings of  
 12 the experts that's at stake, but a divergence of view  
 13 between the experts; nothing that could lead to  
 14 interpreting that there is a lack of impartiality.  
 15 This is why, with the benefit of these observations,  
 16 I am respectfully asking the Tribunal to take note of  
 17 the fact that there is no element of partiality in the  
 18 work that was carried out by the Tribunal-appointed  
 19 experts, and that consequently I am asking the Tribunal  
 20 to take into account all of the conclusions,  
 21 explanations, observations and opinions that were  
 22 submitted to you in their report and throughout the  
 23 hearing.  
 24 Now, if you'll allow me, Madam President, I'm going  
 25 to give the floor to Michael Ostrove, who is going to

Page 218

17:33 1 deal with some of the elements on the substance.  
 2 MR OSTROVE: (Interpreted) Thank you.  
 3 If my colleague allows me to continue with a few  
 4 points of clarification, the question was raised: if,  
 5 extraordinarily, you were to set aside the final report  
 6 and the preliminary report, what would remain? The idea  
 7 that we would keep BSGR's comments in the form of  
 8 a report by Mr Radley, in fact comments on the expert  
 9 report, while the Republic of Guinea -- who didn't have  
 10 many comments on these expert reports because we agreed  
 11 with their findings -- did not submit a report: it would  
 12 leave the parties in a situation of blatant inequality,  
 13 which is unacceptable. So either we say that the  
 14 expertise itself never took place, there was no need to  
 15 launch into this expertise, it was something that had  
 16 been offered by the Tribunal; [but] I hope that this  
 17 will remain totally hypothetical.  
 18 I saw that our colleagues across the table were  
 19 jumping at the idea that Mr Radley's conclusions -- in  
 20 fact, let me correct that: he said that he had not seen  
 21 the findings, but notes by the other experts. But  
 22 anyway, there is no putting into question what Mr Ryan  
 23 and Ms Mancebo communicated as a preliminary reaction on  
 24 7th January to BSGR.  
 25 We learnt today that on 8th January BSGR got in

Page 219

17:36 1 touch with Mr Radley, and on 9th January they signed  
 2 a contract with Mr Radley, gave him the preliminary  
 3 report; and the following day, on the 10th, they asked  
 4 for an extension. So doubting the good faith that their  
 5 experts, in the plural, with whom they were working were  
 6 impeached because of a snowstorm, I will leave that to  
 7 the qualified appreciation of the Tribunal.  
 8 PROFESSOR VAN DEN BERG: (Interpreted) I apologise. I have  
 9 a question in this regard. You said that what would  
 10 remain, if extraordinarily the report of the experts  
 11 were ignored, would be the comments in the form of  
 12 Mr Radley's report. That has no evidentiary value, if  
 13 I understand you rightly?  
 14 MR OSTROVE: (Interpreted) Yes, I would say that it's not  
 15 an expert report; it's a mere reaction to the existing  
 16 report. If you withdraw the existing report, it makes  
 17 no sense to keep Mr Radley's comments. On the other  
 18 hand it would also create a situation of inequality,  
 19 because there would be a written report on one side and  
 20 none on the other.  
 21 PROFESSOR VAN DEN BERG: (Interpreted) How do you qualify  
 22 the statement of the experts on both sides during the  
 23 hearing? What about those? Is that evidence in one way  
 24 or another?  
 25 MR OSTROVE: (Interpreted) Well, again, the experts were

Page 220

17:38 1 first invited to consult with the parties in order to  
 2 comment on the report, and to come here to express their  
 3 points of view on this report. It's true that the  
 4 experts presented their personal analysis, but this  
 5 already exists in the existing report. So I don't think  
 6 that we can materially distinguish between those  
 7 elements that are independent from the expert report,  
 8 and that could be kept.  
 9 If I may pick up some of the items on the substance,  
 10 on the basis of what we learnt on the authenticity of  
 11 the documents today, we waited for nine months since the  
 12 closure of the eleven days of testimony and pleadings in  
 13 June last to reach this stage. It was a very lengthy  
 14 timeline, but necessary to bring about the expertise.  
 15 But given the expertise and its scientific and  
 16 technical nature, the fact that there were Tribunal  
 17 experts and experts on either side, we spent more time  
 18 on the scientific analysis of the documents than  
 19 practically any other factual element in the case.  
 20 Naturally, we are extremely satisfied with the results  
 21 of this expertise, which only supports the Republic of  
 22 Guinea's position. But again, in all good faith, I'd  
 23 like to in fact weight the importance of these elements:  
 24 it's only one amongst many others.  
 25 As an example, we spent a lot of time on Mr Avraham

Page 221

17:42 1 itself. The evidence that you had here for the Republic  
 2 of Guinea is but one extra element that supports our  
 3 thesis; you don't have to go beyond reasonable doubt.  
 4 But we are going very far on this.  
 5 [On all these points, we would note that on the  
 6 question of] the authenticity of the documents, the  
 7 challenge comes from BSGR, [so -- as already mentioned  
 8 in our previous briefs] -- the burden of proof of such  
 9 an allegation of counterfeit in fact [rests] with BSGR.  
 10 We are not in a situation where the Republic of Guinea  
 11 would be under the obligation to [prove] the  
 12 authenticity of the [document].  
 13 Now, all of these philosophical questions being  
 14 interesting, what can we prove as to the analysis of the  
 15 documents? Let's forget the signatures for a moment.  
 16 [All] the tests that are carried out try to reveal the  
 17 alteration or modification [or] forgery of a document;  
 18 there is no such test to prove authenticity. But  
 19 Mr Radley said, "Equally likely genuine, equally likely  
 20 false", because there are only two possibilities: either  
 21 it's forged or it's genuine.  
 22 But these are not mathematical equivalences. This  
 23 is the problem with his Bayesian approach, which  
 24 consists in saying that statistically you have to check  
 25 things. If the allegation is a falsification, and all

Page 223

17:40 1 Lev Ran's signature on three documents, with questions  
 2 as to: is it a complex signature? Simple? Easy?  
 3 Difficult? What is the scope of variation, et cetera?  
 4 But what is all this worth for the Arbitral Tribunal if  
 5 it leads to the conclusion either that Mr Welch, the  
 6 Tribunal-appointed expert, is certain that it be the  
 7 signature, or it is likely, [or] there might be a doubt,  
 8 we don't know? Where do we stand?  
 9 I'd just like to recall that this is meant for the  
 10 Tribunal; the expert exercise is just one element of  
 11 evidence amongst many others; and all the more so when  
 12 we know that Mr Lev Ran's partner has already admitted  
 13 the genuineness of the [Pentler] contracts.  
 14 So it's somewhat surprising, when you take a step  
 15 back, to see how much time is being spent to question  
 16 the scientific genuineness. It's of course of great  
 17 interest. We all know that it's an authentic  
 18 [signature], because the partner himself said these are  
 19 real documents. And it's interesting to see to what  
 20 length it can be discussed between the experts.  
 21 There are many other pieces of evidence of the  
 22 execution of these disputed contracts. We should wait  
 23 for the post-hearing briefs to tackle this more in  
 24 detail. But the mere fact that there were payments on  
 25 the basis of several of these contracts suffices in

Page 222

17:44 1 of the potential tests [reject] this falsification,  
 2 there is no [proof] of falsification, it is  
 3 [nonetheless] difficult to accept this premise when you  
 4 know no more at this stage than you knew when  
 5 proceedings started, [if] you have no elements [of  
 6 falsification].  
 7 As to this question of genuineness of the  
 8 signatures, here indeed, Madam President, as my  
 9 colleague Mr Daele noted on two occasions, you noted  
 10 that you have never heard such an assertive expert.  
 11 THE INTERPRETER: There was a mixture between "tranchant"  
 12 and "tranché", one meaning "cutting" and the other one  
 13 "assertive".  
 14 MR OSTROVE: As Laurent Jaeger was saying, this expert --  
 15 who has just retired, I believe, as a policeman in  
 16 Michigan, is an expert in this field, and has been  
 17 an expert for a long time -- has no reason to go one way  
 18 or the other. He's just doing his job. Nobody has  
 19 challenged the sincerity of his opinion. And if he  
 20 finds things that way, an alternate thesis to that of  
 21 BSGR, it's precisely that he's right to be so assertive  
 22 in his opinion, because scientific elements, the detail  
 23 of the work that's been accomplished, all leads to the  
 24 conclusion that these signatures are genuine.  
 25 Mr Radley -- we can go into more detail in our

Page 224

17:46 1 post-hearing brief -- tries to find flaws, to raise  
 2 exceptions; the Tribunal-appointed experts have answered  
 3 in detail. Obviously they had to be made to express  
 4 their response. They had no possibility of reacting  
 5 after receiving the questions, after the preliminary  
 6 report.  
 7 Maître Daele said, "Well, obviously the questions  
 8 that were raised were perfectly legitimate after the  
 9 preliminary report because 137 pages of extra analysis  
 10 were submitted to answer them". Well, this was not at  
 11 all what happened. The questions that were raised after  
 12 the preliminary report didn't show any evidence of  
 13 differences; this has only been pointed to after the  
 14 final report was submitted.  
 15 In his presentation, quite frankly, I was surprised  
 16 that Mr Radley should not go back on any of the items  
 17 raised by the Tribunal-appointed experts. I'm being  
 18 criticised for not raising any questions on this. Why  
 19 was I going to question him, when in his presentation he  
 20 prefers to spend 20 minutes talking about a master  
 21 forger, and documents that were submitted in the '70s to  
 22 various symposia?  
 23 When he answered the Tribunal's questions, there  
 24 were a great many contradictions in his answers. Some  
 25 pointed at some documents to show that it went one way;

Page 225

17:48 1 and then in an answer in a few minutes later, he  
 2 contradicted himself. Again, this is something that we  
 3 shall put in our brief.  
 4 But the attempt at refusing to accept any flaw was  
 5 quite extraordinary: with R-182, for instance, when he  
 6 refused to accept that the first loop should be quite  
 7 narrow. The explanation that it was a very bad copy of  
 8 the signature, et cetera: you can see something, it's  
 9 not difficult to admit.  
 10 This leads me to the question: what does he point  
 11 at? In his report he says that in Mr Struik's signature  
 12 there are nine differences and rarities, but he accepted  
 13 that it was Osborn -- God on earth in terms of  
 14 analysis -- who says on page 245 of the 2nd edition,  
 15 which you can find under Annex F of his report, on  
 16 page 245 Mr Osborn says:  
 17 (In English) "In identifying a person, for example,  
 18 scars, deformities, finger-prints ... must be depended  
 19 upon and finally, if the conclusion of identity is  
 20 reached, either in a person or a handwriting, there must  
 21 not remain significant differences that cannot  
 22 reasonably be explained. This ignoring of the  
 23 differences ..."  
 24 [And then]:  
 25 "... [one must not] 'explain away' differences that

Page 226

17:50 1 are as plain as the nose on a man's face."  
 2 (Interpreted) And in the next paragraph he talks  
 3 about rarity, but that appears nowhere. Therefore  
 4 Mr Radley looks at differences and rarity, but never  
 5 claimed that there were "significant differences", as  
 6 quoted.  
 7 The Tribunal-appointed experts had an opportunity to  
 8 look at and analyse the alleged differences raised by  
 9 Mr Radley. They were not at all convinced. Mr Radley  
 10 doesn't attack them for being impartial; he just says  
 11 that he accepts that this is their sincere position.  
 12 Mr Picciochi explained his analysis: same thing. Why  
 13 does he reach the same conclusion? This analysis is not  
 14 criticised.  
 15 We are submitting that the evidence that you heard  
 16 throughout these last two days goes totally in the  
 17 acceptance of genuineness of the documents.  
 18 We would like to thank you for listening to us with  
 19 such attention, and having to listen to so much  
 20 scientific evidence and expertise, and we are waiting  
 21 for your instruction as to the post-hearing briefs, so  
 22 that we may reach the end of this marathon.  
 23 THE PRESIDENT: (Interpreted) Thank you. Well, we are  
 24 practically at the end of the marathon, indeed.  
 25 Would you like to give five/ten minutes to the

Page 227

17:52 1 Tribunal for a last deliberation, after listening to  
 2 everything you had to say?  
 3 MR DAELE: Madam President, we would like to leave around  
 4 6.30.  
 5 THE PRESIDENT: (In English) Yes, we would like to too,  
 6 actually!  
 7 MR DAELE: No, I'm not saying we are the only ones who would  
 8 like to, but ...  
 9 THE PRESIDENT: No, we note this, and I'm sure many will  
 10 join you in wishing to leave.  
 11 (5.52 pm)  
 12 (A short break)  
 13 (6.02 pm)  
 14 THE PRESIDENT: So now we need to discuss the further  
 15 procedure.  
 16 As you know, we had provided after the last hearing  
 17 that we would have post-hearing briefs that would cover  
 18 the liability hearing and this authenticity hearing, and  
 19 that we would decide now exactly what we would do.  
 20 It is also true that we have the  
 21 disqualification/admissibility application: we asked  
 22 ourselves whether that would change something in the  
 23 sequence.  
 24 Our preference, subject to hearing your views, would  
 25 be to have the post-hearing briefs now. We appreciate

Page 228

18:03 1 that it may complicate your task somewhat by having to  
 2 make assumptions, one assumption being that the report  
 3 is in, and another one that it is out. Another way that  
 4 could be envisaged is that we make a decision first on  
 5 disqualification/admissibility. We might want to have  
 6 the broader picture for that. But it is one question  
 7 that we put to you, certainly, with our preference for  
 8 not slicing up.  
 9 If we then go to post-hearing briefs, we would have  
 10 to decide on time limits. We would think that two  
 11 rounds would be preferable, with a shorter second round,  
 12 but if the parties prefer one, we are fine. Experience  
 13 just shows that when you receive only one round of  
 14 post-hearing briefs, often there are issues that need to  
 15 be rebutted, and you end up with a second one.  
 16 We would not look for post-hearing briefs that  
 17 repeat what was said before the first hearing. We just  
 18 want comments on the evidence gathered in the two  
 19 hearings, and that then being placed in the overall  
 20 perspective of your case: to what extent does it help  
 21 your case, and to what extent does it not help your  
 22 opponent's case, essentially.  
 23 We can have page limitations or a length limitation  
 24 if you wish. It may be a good idea.  
 25 Then there's another issue that is still pending

Page 229

18:05 1 that we should not forget: the question of the effect of  
 2 the receivership of BSG Resources on the counterclaims,  
 3 that we have not entirely covered. We understand now  
 4 from the administrator that there is a suspension of the  
 5 counterclaims' continuation, and the Respondent has had  
 6 no opportunity to respond to this. We can have a short  
 7 time limit to cover this in the coming weeks.  
 8 Then there is also the correction of the transcripts  
 9 that we could agree, and eventually cost submissions as  
 10 well.  
 11 I think I've now set out all the different points  
 12 that we need to cover. I would suggest that we now  
 13 gather your reactions to the different points. Maybe we  
 14 will not get to a final order or agreement tonight, and  
 15 maybe the Tribunal will have to think about it a little  
 16 further, but we certainly need to get to a determination  
 17 on the further procedure in the coming days.  
 18 So, unless my colleagues want to add something to my  
 19 list, maybe I turn to Mr Daele.  
 20 MR DAELE: Thank you, Madam President. I think there is one  
 21 other point that we have discussed to some limited  
 22 degree, and that was dealing with the transcripts of  
 23 Mamadie Touré that have now been accepted. We were  
 24 asked a few weeks ago whether we would like to make  
 25 comments on those --

Page 230

18:07 1 THE PRESIDENT: Yes, you're right.  
 2 MR DAELE: -- and we did indicate in our letter. So I think  
 3 that's another outstanding point.  
 4 THE PRESIDENT: Absolutely. Would you want to do this in  
 5 the context of your post-hearing brief?  
 6 MR DAELE: Well, that's --  
 7 THE PRESIDENT: It would probably be more logical, no?  
 8 MR DAELE: Yes, I think so.  
 9 THE PRESIDENT: Because you can place it in the whole  
 10 context. Yes.  
 11 MR DAELE: Yes. That's the only point I wanted to add.  
 12 THE PRESIDENT: Yes, thank you.  
 13 MR DAELE: But in terms of the number of rounds, we had also  
 14 suggested in our letter in the end of February to have  
 15 two rounds. I do think it makes sense to make the  
 16 second round shorter than the first one.  
 17 On your idea or proposal not to repeat what was said  
 18 in the, let's say, written submissions, in principle,  
 19 yes, we also agree. Of course, to put everything into  
 20 context, we may have to repeat some of the issues.  
 21 The page limitation, I'm a bit struggling. I would  
 22 say it depends on the number of pages. If you limit it  
 23 to 1,000, I agree! The initial proposal was 75: I think  
 24 that is way too short. As we set out in our letter, if  
 25 I may say, just the transcript of the June hearing of

Page 231

18:08 1 last year was, I think, 1,800 pages; I think with this  
 2 hearing we will probably have another, I don't know,  
 3 300 pages.  
 4 So, yes, I am not opposed to the principle, but the  
 5 number has to be reasonable. I mean, the post-hearing  
 6 brief must serve its purpose, and if we can't say what  
 7 we would like to say, then what's the point?  
 8 I do agree on the effect of the receivership.  
 9 I agree, it is probably not the right time right now to  
 10 deal with that, but in the next couple of weeks, because  
 11 we also need input from the receivers and from the  
 12 lawyers in Guernsey.  
 13 Then also on the submission of costs, I would say we  
 14 deal with that in the post-hearing briefs as well.  
 15 THE PRESIDENT: Yes, or afterwards. Maybe a little deadline  
 16 after the post-hearing briefs, because you have to  
 17 integrate these costs.  
 18 MR DAELE: In terms of timing, you know, we would need  
 19 considerable time. I know we've been accused over and  
 20 over again of trying to delay, and even trying to get to  
 21 the next election and maybe the election after that.  
 22 I mean, I can just honestly say that that's not our  
 23 objective. But I mean, this is a complicated case with  
 24 a lot of evidence and witness statements, and we will  
 25 need the time that we need.

Page 232

18:10 1 We said in our letter that we would like to have  
2 three months; you know, I maintain that. I think for  
3 the second round, depending where we end up in the year,  
4 but maybe for the second round, one month or something.  
5 But this is kind of the timeframe that we have in mind.  
6 THE PRESIDENT: Fine. I think you've covered all the  
7 points.  
8 MR DAELE: Maybe just ... no, it's fine, thank you. Sorry.  
9 THE PRESIDENT: You wanted to add something?  
10 MR DAELE: Yes, but I changed my mind.  
11 THE PRESIDENT: Okay, fine. You're entitled to change your  
12 mind.  
13 Can I turn to the Respondent.  
14 MR OSTROVE: (In English) The hesitation is I never know if  
15 I'm speaking French or English; it's just to keep the  
16 interpreters on their toes! For facility purposes,  
17 let's do this in English.  
18 Probably the most difficult question,  
19 Madam President, I think you asked is whether we're  
20 comfortable waiting for a decision on admissibility of  
21 the experts' report before filing the post-hearing  
22 brief.  
23 My concern is, on the one hand, doubling the work of  
24 having to have two hypotheses, and the danger that  
25 again -- well, I don't want to prejudge your view. So

Page 233

18:12 1 hypothetically, were you to decide that the report were  
2 inadmissible, and had we filed post-hearing briefs that  
3 include commentaries about this evidence, interspersed  
4 with the testimony and all that, I would be worried that  
5 you'd be left with something that in order to -- if you  
6 then decided that it's inadmissible, we would have to be  
7 in a situation where the Tribunal would have to extract  
8 all that information, set it aside, and I fear  
9 procedural concerns being raised afterwards in  
10 connection with certain post-award activities.  
11 So I think that it would be safer and cleaner if we  
12 were to have a decision on that in advance. That said,  
13 if the Tribunal were minded to really consider how  
14 important these things are in the overall weight of the  
15 evidence, we would be entirely in your hands.  
16 You had our remarks in February regarding  
17 post-hearing briefs. We would have preferred one round  
18 of post-hearing briefs. We understand your view that it  
19 certainly happens often, when there's one round, that  
20 people then make an application for a reply on certain  
21 points. Were a second round truly limited only to  
22 replying to things that a party felt were misleading or  
23 otherwise in the first round, and were kept very short,  
24 we would not oppose a second round; but again, with the  
25 qualification that this has been going on for a very

Page 234

18:14 1 long time and we just had a nine-month delay since the  
2 merits hearing.  
3 So we had suggested, even with respect to there  
4 being only one round, we had suggested six weeks from  
5 today for the post-hearing brief. Obviously the parties  
6 have had a long time to consider the evidence, and we  
7 don't think that it's necessary to wait significantly  
8 long.  
9 Three months would take us into late June. The  
10 second round would then clearly be after the summer, or  
11 in all likelihood be after the summer. It would get  
12 very complicated. And we're then falling into 2019 for  
13 an award, and that is of some significant concern.  
14 So we would really suggest six weeks for the first  
15 round, ideally with some page limitations. You've had  
16 1,000 pages of written submissions, not counting the  
17 expert proceeding. So with then responses, giving the  
18 necessary time for translation, the few days that we  
19 know is necessary, two or three weeks for short reply  
20 briefs thereafter would seem more than enough, given  
21 everyone's familiarity with the case.  
22 On your next point, regarding what has to happen  
23 with the counterclaims, as mentioned in our email in  
24 response to your request for our comments, we're in the  
25 process of retaining Guernsey counsel. We're rather

Page 235

18:15 1 surprised by the position taken by the administrators  
2 with respect to an ongoing proceeding. So I'd rather  
3 reserve comment on that, and we really would require --  
4 we had requested 30 days. It's going to take us a week  
5 or so to have counsel retained, and then we need to get  
6 them up to speed. So that would be helpful.  
7 I don't think that affects the timing of the  
8 post-hearing briefs too much, because on the factual  
9 record there's really no, or very, very little evidence:  
10 I think it's only one expert witness whose evidence  
11 really needs to be addressed on the merits of the  
12 counterclaim, whereas otherwise it's the flipside of the  
13 coin in many ways.  
14 Transcript correction: I think that perhaps the  
15 parties can reach an agreement when we receive the  
16 drafts of the transcript, which I'm sure will be  
17 impeccable in French and English. So if that's alright  
18 with counsel for Claimants, we can try and reach  
19 an agreement on how long that would take once we see  
20 them.  
21 Then cost submissions. We would certainly agree  
22 that something like a month after the last post-hearing  
23 brief is submitted would give us time to get all of our  
24 accounting in place in order to submit that.  
25 I would have a question whether you would want cost

Page 236

18:17 1 submissions -- it's a personal preference. Usually just  
2 a pure cost submission: here are the costs, without  
3 detailed invoices and everything, especially in a case  
4 of this magnitude, as opposed to cost submissions where  
5 one argues the merits of the cost allocation. My own  
6 view is the Tribunal has enough information about the  
7 case, how it's been argued, the strengths of the points,  
8 that you wouldn't require further argument back and  
9 forth between the parties on that. But that's just  
10 a proposition.  
11 THE PRESIDENT: Thank you.  
12 There is one part on which I have not heard the  
13 Claimants, the sequence of the disqualification  
14 decision, on which your opponents have expressed a view.  
15 MR DAELE: I think we share the same opinion, and that it  
16 would probably be better to first deal with the  
17 disqualification issue. Personally I would not mind,  
18 for example, or I would not object to the Tribunal  
19 informing the parties first of its, let's say, principle  
20 decision, or the outcome, and then maybe later on  
21 following up with the reasoning, if that can assist or  
22 speed up the process. Again, we are not here to  
23 unnecessarily delay the proceedings. But yes, we would  
24 suggest that, let's say, the clock starts ticking from  
25 the moment we have the principle decision of the

Page 237

18:21 1 account is just also the size of our team. I mean, this  
2 is basically it. Also, if you look at the attendance  
3 list, we have two law firms on the other side. You  
4 know, for us, we are restricted in the resources that we  
5 can dedicate to this case. It's just one of the  
6 elements that should be taken into account in our view.  
7 THE PRESIDENT: If we were to say two months from today --  
8 and the Tribunal would give its decision on the  
9 disqualification/admissibility promptly, but it is true  
10 that you can start working without having it, because  
11 there are many other issues -- that would give us --  
12 MR OSTROVE: 27th May would be a Sunday. If it were  
13 31st May ...  
14 THE PRESIDENT: End of May? Mr Daele, is that ... it's not  
15 the three months that you wished, but it's not far.  
16 MR DAELE: It's like the glass is half-empty or half-full!  
17 (Pause) 31st May is the Thursday.  
18 THE PRESIDENT: Yes.  
19 MR DAELE: If we could get the weekend of 1st June, and file  
20 on 4th June?  
21 MR OSTROVE: Is it really necessary, Mr Daele, to ruin our  
22 first weekend in June, knowing that work expands to fill  
23 the time limit?  
24 THE PRESIDENT: It's either your weekend or theirs, so ...  
25 MR DAELE: We would appreciate 4th June, on the Monday.

Page 239

18:19 1 Tribunal.  
2 THE PRESIDENT: Fine. Would this be agreeable to the  
3 Respondent as well? You would receive a decision on  
4 disqualification/admissibility without reasons, and that  
5 would trigger the beginning of the deadlines for the  
6 post-hearing briefs, and the reasons would be filed  
7 later on.  
8 MR OSTROVE: Well, I'm certainly fine with the idea of just  
9 a pure decision first, with reasons to follow. Causing  
10 a further delay before the time starts running on the  
11 post-hearing briefs submission doesn't really seem  
12 necessary, given the quantity of information already  
13 available from last May and June's hearing. To think  
14 that the parties have to wait to start digging in, with  
15 a deadline in mind, in order to understand whether or  
16 not we are including the authenticity evidence seems  
17 a tad exaggerated.  
18 THE PRESIDENT: Fine. So I think what we essentially need  
19 to do now -- and I look at the clock -- is to agree on  
20 the time limits for the post-hearing brief.  
21 MR DAELE: Maybe if I may just add one thing in relation to  
22 that. It was actually the thing I was thinking about  
23 telling you, and then I changed my mind. But now I hear  
24 Mr Ostrove, I will say it any event.  
25 One of the things that we would like to take into

Page 238

18:24 1 MR OSTROVE: That's fine.  
2 THE PRESIDENT: Then we would have the second round.  
3 I think the second round should indeed be limited to  
4 matters that you consider absolutely need a rebuttal,  
5 either because they have not been brought before or the  
6 like; not a systematic rebuttal of everything, because  
7 otherwise we duplicate the briefs.  
8 So you had different wishes. Three weeks would be  
9 the end of June.  
10 MR DAELE: We could do the Monday, 2nd July?  
11 THE PRESIDENT: Is that fine with the Respondent?  
12 MR DAELE: That's four weeks after the first round.  
13 THE PRESIDENT: Yes.  
14 MR OSTROVE: That is fine with us.  
15 THE PRESIDENT: That's fine. Good.  
16 MR OSTROVE: We would really request some kind of actual  
17 even page limit on that.  
18 THE PRESIDENT: No, I come to this now.  
19 Page limits. One way of doing it is not to limit  
20 the first, but strictly limit the second brief. But we  
21 can also limit both. I just don't really know where to  
22 place the limit. Is it 100 pages? To me a post-hearing  
23 brief of 100 pages is already quite long, and concise  
24 briefs are often more effective than longer ones. Is  
25 100 pages something? Because you said 75 was not

Page 240



18:26 1 enough.  
2 MR DAELE: For the second round or the first round?  
3 THE PRESIDENT: No, I'm speaking of the first round.  
4 MR DAELE: 100 pages? No. Well, definitely if it includes,  
5 for example, the material on the Mamadie Touré  
6 transcripts, I don't think that is enough. Personally,  
7 I would go for the first suggestion, and say that there  
8 is no limit on the first round; and then once you've  
9 seen what was actually filed, once we file the first  
10 briefs, then impose a limit for the second round,  
11 because then at least we've seen what we are talking  
12 about, instead of imposing a deadline or a limit.  
13 I do not oppose the idea, so ...  
14 THE PRESIDENT: You do not oppose the idea of limitation?  
15 MR DAELE: Of the second round.  
16 THE PRESIDENT: Of the second round.  
17 MR DAELE: But I would suggest that we impose that limit  
18 once we've seen the length of the first submission.  
19 MR OSTROVE: One would like to be able to rely on -- and  
20 I don't direct this comment to opposing counsel;  
21 I direct it as much to ourselves -- one would like to  
22 rely on the good sense of counsel, who have heard the  
23 President of the Tribunal say, "Keep it short, it's  
24 better". But getting some direction that will actually  
25 constrain us to be focused and useful to you, if

Page 241

18:29 1 not sure whether I'm not complicating things by saying  
2 that.  
3 MR LIBSON: We did have a representative from the receiver  
4 here, but he's had to go home. We don't know, but  
5 I think it can't wait until the post-hearing -- I think  
6 for all parties it needs to be clarified.  
7 THE PRESIDENT: Would it be better to have a time limit in  
8 three weeks or so for the Respondent to take a position?  
9 MR OSTROVE: Yes, we agree that it would be better to  
10 clarify this situation, to the extent we can, sooner  
11 rather than later.  
12 THE PRESIDENT: It does leave us more time, in case there  
13 are things to be done as a result of whatever the  
14 position is.  
15 MR OSTROVE: On our side as well, because even assuming that  
16 the legal determination were that there was a suspension  
17 of the ongoing counterclaims, there is a provision that  
18 an application can be made to the court to lift that.  
19 So it would be better that if we knew we had to go in to  
20 court in Guernsey, we would have time to do that.  
21 THE PRESIDENT: I think you mentioned in your letter  
22 30 days; is that right?  
23 MR OSTROVE: That is what we had requested.  
24 THE PRESIDENT: If we would say three weeks from now,  
25 17th April, is that a good ...

Page 243

18:27 1 100 pages seems too short, 125 pages, followed by  
2 something like a 40-page maximum second round, would  
3 seem to be more than sufficient to summarise where key  
4 elements fit into different arguments.  
5 THE PRESIDENT: I had in mind something like 40 for the  
6 second. Maybe we could go a little bit higher for the  
7 first one, like 150 pages or so.  
8 I must say that having to keep it short also forces  
9 one to select what you bring forward. It's a healthy  
10 discipline. It's a difficult one, but it's a healthy  
11 discipline. And you are very experienced on both sides,  
12 so I have no doubt that you can do this extremely well.  
13 MR OSTROVE: I have no doubt that I will regret my words  
14 today at a later time.  
15 THE PRESIDENT: No, I increased your limitation to 150.  
16 I turn to Mr Daele, who doesn't look very happy.  
17 No, now he laughs!  
18 MR DAELE: I think it's fine. We will try to convince the  
19 Tribunal, and so it's not about writing as many pages as  
20 possible. So we'll go for the 150.  
21 THE PRESIDENT: Appreciated.  
22 The question of the receivership and the effects,  
23 can this be dealt with in the post-hearing briefs or  
24 does it have to be dealt with before, by a separate  
25 exchange? That is what I suggested first, but then I'm

Page 242

18:31 1 MR OSTROVE: 17th April seems fine.  
2 THE PRESIDENT: Good. And then I'm not clear what is the  
3 next step, whether we need to submit this to the  
4 administrator or whether you want to comment.  
5 MR LIBSON: I'm not sure what we are actually scheduling  
6 for, because I think it may require an application to  
7 the Guernsey court --  
8 THE PRESIDENT: Yes.  
9 MR LIBSON: -- in relation to the issues that Mr Ostrove  
10 wants to raise, which would be then governed by the  
11 timetable in the Guernsey court. And it will be for the  
12 administrator to reply to the issues in the Guernsey  
13 court rather than in this jurisdiction, I think.  
14 THE PRESIDENT: Absolutely, yes.  
15 MR LIBSON: The knock-on effect then may have to be  
16 addressed within this jurisdiction, but the  
17 determination may have to first come in the Guernsey  
18 court.  
19 MR OSTROVE: It may be premature. I think if we submit our  
20 position on the 17th, so for example it was our initial  
21 understanding that there is no extraterritorial effect  
22 of that and we don't think that the Guernsey courts have  
23 any jurisdiction over this Tribunal, so it may be our  
24 submission to this Tribunal that it should simply ignore  
25 the administration proceedings and proceed; in which

Page 244

18:32 1 case it may be that BSGR or the administrators want to  
2 make submissions to this Tribunal about whether or not  
3 it has the authority to do that. Or it may be that we  
4 ourselves decide, after looking at it, that we have to  
5 make an application to the Guernsey courts, in which  
6 case we'll do that, as necessary. So I'd hate to  
7 prejudge that before we've taken counsel.  
8 THE PRESIDENT: I think the best way of doing this is you  
9 make your submission on 17th April, and the Tribunal  
10 then decides whether it needs to hear you, or whatever  
11 the appropriate action is.  
12 MR LIBSON: That's agreed, thank you.  
13 THE PRESIDENT: There was a question about the type of cost  
14 submissions. I think the Tribunal could be satisfied  
15 with a statement of the costs incurred by category,  
16 without detailing every invoice, which is very tedious  
17 and not necessarily helpful. We don't need the  
18 supporting documentation.  
19 But then the other side could have a brief time to  
20 comment. In case one party thinks that the other's  
21 costs on this item are unreasonable or so, they could  
22 then raise this and we would take it into consideration.  
23 And that would be a deadline that would follow the  
24 2nd July second round.  
25 How much time would you like then? End of July

Page 245

18:34 1 or ...? (Pause)  
2 MR OSTROVE: Unless the Tribunal thought that it might be  
3 able to issue an award within a month or two of the  
4 final post-hearing brief, then even if we wanted to  
5 submit the cost submission in September, that would  
6 be --  
7 THE PRESIDENT: You could do so, absolutely.  
8 MR OSTROVE: Of course, if you thought you would get your  
9 award out in August, that would be fine with us as well,  
10 in which case we would accelerate our cost submission.  
11 We're entirely in your hands, Madam President.  
12 THE PRESIDENT: I know that this case has been pending for  
13 a long time, and the Tribunal will endeavour to be  
14 diligent and render an award as soon as possible. It is  
15 true that the matters are complex, and there are many  
16 issues and there's a lot of materials, and we also need  
17 to do a serious job and not just give rough justice.  
18 So you have to take all this together, and it means  
19 that we can allow you to file your cost submissions in  
20 September if that is preferable.  
21 MR DAELE: Yes, I think so. I think we will be able, maybe  
22 just the parties among themselves, to maybe agree on  
23 maybe a deadline somewhere in September. I think we  
24 will manage to sort something out.  
25 THE PRESIDENT: You will do this, I'm sure.

Page 246

18:36 1 MR OSTROVE: There is a narrow scope of issues on which we  
2 are able to agree!  
3 THE PRESIDENT: Can I suggest 14th September? Then it's  
4 done, and I incorporate it in the order. It's a Friday.  
5 The 21st? The 14th?  
6 MR DAELE: Yes, the 14th is fine.  
7 THE PRESIDENT: The 14th is fine.  
8 The transcript corrections: you will agree as soon  
9 as you get them. You get the transcripts and the audio;  
10 there is audio as well, right? And then should we set  
11 a time, in case there is disagreement on anything, for  
12 you to raise it? Or do you want to agree among counsel?  
13 MR DAELE: I would say maybe somewhere in the end of next  
14 week or something. We need to review, and it's Easter  
15 and some of us will be away.  
16 THE PRESIDENT: Yes.  
17 MR DAELE: So maybe by next week, Friday or something.  
18 THE PRESIDENT: That is fine. That is 6th April.  
19 MR OSTROVE: That's fine with us again, assuming that we do  
20 like we did last time, which is: in this hearing, most  
21 of the testimony and pleadings and discussions were in  
22 English, so we won't correct the French translations;  
23 but the parts that were done in French, we won't correct  
24 the English translations. Which is what we did last  
25 time, where only the actual language spoken fait foi.

Page 247

18:38 1 THE PRESIDENT: Yes. It should be easier, and it's much  
2 shorter as well.  
3 Fine. That is all on my list. Is there anything  
4 that I forgot? No.  
5 Please make sure that all the different  
6 presentations and materials that you have used during  
7 the hearing are transmitted by electronic mail or  
8 uploaded on Box, because I'm not sure everything was  
9 done electronically.  
10 Nothing further? No. Anything on the Claimants'  
11 side?  
12 MR DAELE: No, except that I would like to thank the  
13 Tribunal and all the experts and the people for the  
14 translation, and obviously counsel on the other side;  
15 and also Mr Garel for installing the green light that  
16 I've been looking at, but that we haven't used. So  
17 thanks, everyone.  
18 MR GAREL: On that topic, I'm going to talk off the record  
19 about that portion. There were two instances.  
20 THE PRESIDENT: Anything further on Respondent's side?  
21 MR OSTROVE: Nothing from our side, other than likewise to  
22 thank all the members of the Tribunal, the experts,  
23 opposing counsel, interpreters and court reporters.  
24 Thank you very much.  
25 THE PRESIDENT: So it remains for me to reciprocate the

Page 248

18:39 1 thanks. It was an intense hearing, and I thank you very  
2 much all for your cooperation. I would also like to  
3 thank the court reporters and the interpreters, who had  
4 quite a strenuous job, and who stayed with us all  
5 through the hearing.

6 So that allows me to close this hearing and wish  
7 everyone a good rest now and a good trip home.

8 (6.40 pm)

9 (The hearing concluded)

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25

Page 249



<p><b>ANDREA</b> 2:9  <b>and/or</b> 129:6  <b>angle</b> 111:19,19                  112:23 128:14  <b>angles</b> 31:9  <b>angular</b> 79:18 103:19                  128:7  <b>angularity</b> 79:20                  103:23 117:1                  133:17  <b>animosity</b> 215:21,23                  216:1  <b>animus</b> 50:1,6 216:5  <b>Annex</b> 43:5,7 192:23                  196:10 214:16                  226:15  <b>annexes</b> 214:4  <b>annual</b> 54:13  <b>annulment</b> 183:3  <b>anomalies</b> 209:13  <b>anomalous</b> 209:24  <b>another</b> 16:7 19:15                  24:10,10 29:6 33:3                  34:1 41:23 49:17                  54:8 59:25 75:13                  77:16 102:10                  132:11 138:25                  163:23 167:7                  185:19,22 189:25                  202:7 211:5 212:21                  213:10,17 220:24                  229:3,3,25 231:3                  232:2  <b>answer</b> 7:11 20:25                  36:13 62:22 63:3                  139:13 195:8                  214:20,22,25 215:3                  215:6 217:4,16                  225:10 226:1  <b>answered</b> 142:8                  214:12,13,17 215:2                  216:13 217:2 225:2                  225:23  <b>answering</b> 72:22                  217:18  <b>answers</b> 45:9 149:6                  190:16 194:10                  214:18 225:24  <b>anticipated</b> 60:10  <b>ants</b> 12:7,9  <b>anybody</b> 8:21 91:11  <b>anyone</b> 60:20 100:3                  168:12 195:10  <b>anyplace</b> 54:17  <b>anything</b> 1:7 14:4,5                  37:6 45:22 47:24                  55:5 56:13 86:21                  100:10 102:17                  107:20 113:18                  122:10 126:1                  133:12 149:3                  190:14 210:22                  247:11 248:3,10,20  <b>anyway</b> 83:7 219:22  <b>anywhere</b> 159:23  <b>apart</b> 34:22 70:16  <b>apologies</b> 170:24</p>	<p><b>apologise</b> 143:9                  146:17 158:4 171:2                  220:8  <b>appalling</b> 71:8  <b>apparently</b> 71:21                  178:24  <b>appear</b> 26:21 27:6                  39:17 88:13 120:9                  127:9 135:1 143:19                  155:19,21 178:20  <b>appearance</b> 165:16,17                  183:11 197:13                  199:11 200:23  <b>appeared</b> 1:17,19  <b>appearing</b> 2:1 39:18                  81:15 138:12 141:2                  144:12  <b>appears</b> 53:12 65:19                  80:25 123:18 126:5                  134:5 143:10                  176:15 178:19                  185:18 186:16                  191:2 19:10 227:3  <b>appendix</b> 28:19 65:15                  65:17,20,21,24  <b>applicable</b> 36:22 64:2                  139:1  <b>application</b> 6:23                  173:17 176:2,5                  179:9 180:17                  200:13 201:15                  228:21 234:20                  243:18 244:6 245:5  <b>applied</b> 124:7 188:25  <b>applies</b> 126:16 170:20                  184:13,21  <b>apply</b> 63:25 98:16                  138:23 139:5 151:6                  173:5 182:21                  183:19 188:24                  199:19 200:2  <b>applying</b> 179:5  <b>applicant</b> 187:19  <b>appointed</b> 187:20                  202:7 206:23 207:2                  208:5 209:5  <b>appointing</b> 186:10                  192:21  <b>appraisal</b> 85:3  <b>appreciate</b> 20:9 62:5                  72:12 132:6 160:10                  180:5 195:25                  228:25 239:25  <b>appreciated</b> 205:18                  242:21  <b>appreciating</b> 212:9  <b>appreciation</b> 207:1                  220:7  <b>approach</b> 80:18 123:7                  176:15 204:5 210:2                  217:22 223:23  <b>approaches</b> 31:15                  34:17 35:7 68:25                  76:24 139:5  <b>appropriate</b> 12:8 46:9                  190:13 197:4,11                  245:11</p>	<p><b>approval</b> 143:16,17  <b>approve</b> 119:22 143:7  <b>approved</b> 120:17                  143:14 145:4  <b>approximate</b> 98:15  <b>approximately</b> 30:15                  38:24 41:15 98:9,13                  102:17 112:5  <b>approximates</b> 134:15  <b>approximating</b> 101:8  <b>approximation</b> 135:6  <b>April</b> 243:25 244:1                  245:9 247:18  <b>Arbitral</b> 222:4  <b>arbitrary</b> 134:8  <b>arbitration</b> 1:1,1                  179:12,20 181:24                  182:2,3,4,6 200:3                  205:15 207:5  <b>arbitrator</b> 181:16                  183:7,12,13  <b>arbitrators</b> 181:9,11                  182:5,22 183:18,23                  188:2 197:13                  198:12 204:5                  206:14,16,18,19  <b>arbitrator's</b> 183:11  <b>ARB/14/22</b> 1:3  <b>arcade</b> 98:3  <b>arches</b> 98:4  <b>area</b> 70:5 138:1                  156:11 163:18                  188:12  <b>areas</b> 109:5  <b>Argentina</b> 183:2  <b>argue</b> 168:13 197:15                  199:19  <b>argued</b> 5:7 237:7  <b>argues</b> 237:5  <b>argument</b> 12:5 17:16                  28:4 173:1 203:25                  204:6 237:8  <b>arguments</b> 17:3 91:22                  179:3 217:7 242:4  <b>arises</b> 151:5  <b>arising</b> 61:24  <b>arms</b> 6:14 8:4,5  <b>Army</b> 121:21  <b>around</b> 42:10 69:3                  78:23 97:21 135:10                  161:21,22,23 163:2                  163:8 203:17 228:3  <b>arrive</b> 118:13  <b>arrived</b> 95:23  <b>arrow</b> 53:12,14,15                  66:6,8 67:5 73:7                  75:12 76:13 96:22                  96:25 100:20                  104:17,23 127:21                  127:24  <b>arrowed</b> 68:2  <b>arrows</b> 5:22 127:19,20  <b>art</b> 90:20  <b>article</b> 24:2 36:24                  61:20 179:20 181:8                  182:7 184:12  <b>articulated</b> 171:4</p>	<p>176:11 177:6  <b>artist</b> 162:24 163:2  <b>ascend</b> 101:24,25  <b>ascertain</b> 43:16                  183:25 184:2  <b>Asher</b> 72:23 109:8,12                  113:10 178:20  <b>Asian</b> 157:22  <b>aside</b> 210:18,25 219:5                  234:8  <b>asked</b> 35:25 39:5,13                  49:6 61:6,7 62:20                  62:24 63:9,10                  118:15 136:24                  139:16 140:13                  142:6 156:15                  164:10 175:18                  176:6 190:8 213:21                  220:3 228:21                  230:24 233:19  <b>asking</b> 45:15 68:12                  90:18 153:15                  164:17 178:17                  213:2 214:9 218:16                  218:19  <b>aspect</b> 58:3 83:2 129:4                  149:2  <b>aspects</b> 82:13 122:13  <b>ASQDE</b> 54:19 55:2                  164:7  <b>asserted</b> 17:4  <b>assertion</b> 154:18  <b>assertive</b> 224:10,13,21  <b>assess</b> 15:15,17 70:11                  155:17  <b>assesses</b> 14:9 78:9  <b>assessing</b> 14:13 63:17                  81:4 128:21 129:3                  176:8  <b>assessment</b> 108:7,12                  124:8 129:4 176:10                  203:5 212:12  <b>assign</b> 170:7  <b>assigned</b> 92:4,5  <b>assignment</b> 139:16  <b>assist</b> 43:10 183:24                  197:19 237:21  <b>assistance</b> 91:15                  172:18 210:14  <b>Assistant</b> 1:21  <b>assisted</b> 93:22  <b>assisting</b> 2:24 37:19  <b>Associates</b> 147:1  <b>association</b> 147:24  <b>assume</b> 57:14 124:17                  185:23 186:1  <b>assumed</b> 124:16 168:9                  176:12 178:7                  204:19  <b>assumes</b> 167:6  <b>assuming</b> 57:15                  243:15 247:19  <b>assumption</b> 144:4                  148:20 189:3                  204:25 205:6 229:2  <b>assumptions</b> 123:8                  175:24 204:13</p>	<p>229:2  <b>assurances</b> 92:1  <b>ASTM/SWGDOC</b>                  121:15,22  <b>astounding</b> 149:19  <b>attach</b> 100:2 128:18  <b>attached</b> 65:16 211:10  <b>attack</b> 168:12 227:10  <b>attacked</b> 211:12  <b>attacking</b> 211:19  <b>attempt</b> 19:21 23:4                  168:6 226:4  <b>attempted</b> 6:2 62:6  <b>attempts</b> 180:3  <b>attend</b> 189:11  <b>attendance</b> 239:2  <b>attended</b> 38:13 39:19                  137:8 208:11,13                  210:17 215:3  <b>attendeess</b> 21:4 22:22  <b>attending</b> 189:12  <b>attention</b> 19:13 25:16                  30:7 45:25 68:11                  174:3 227:19  <b>attitude</b> 206:4 216:18  <b>attorneys</b> 125:23  <b>attribute</b> 136:14  <b>attributed</b> 113:19  <b>attributes</b> 108:17  <b>attuned</b> 107:1  <b>audio</b> 247:9,10  <b>Audrey</b> 41:17  <b>August</b> 54:14 208:5                  246:9  <b>Australian</b> 157:24  <b>authentic</b> 50:22 52:18                  137:24 138:3,19                  140:3 179:7 222:17  <b>authentication</b> 157:9                  158:10  <b>authenticity</b> 10:1,19                  11:15,24 12:2                  138:14 183:25                  184:4,7 198:22                  201:9 221:10 223:6                  223:12,18 228:18                  238:16  <b>author</b> 117:17  <b>authoritative</b> 158:20  <b>authorities</b> 173:23  <b>authority</b> 90:23 217:8                  245:3  <b>availability</b> 176:7  <b>available</b> 12:3 27:22                  56:5 58:1 96:13                  141:1,3,4 238:13  <b>avenue</b> 1:4  <b>average</b> 14:23 107:3  <b>Avidan</b> 72:23 109:12                  113:10 130:23                  177:9,14,23 178:5                  178:20,21  <b>Avidan's</b> 109:8 123:11                  134:18 176:12                  178:19  <b>avoidance</b> 65:18  <b>avoided</b> 178:16</p>	<p><b>Avraham</b> 113:21                  117:15 166:6                  221:25  <b>award</b> 235:13 246:3,9                  246:14  <b>aware</b> 3:4,5 16:4                  23:13 61:20 74:16                  125:18,24,25 161:5                  169:2 193:25                  211:14 213:3  <b>away</b> 84:23 85:7                  121:23 135:15                  177:16 226:25                  247:15  <b>awful</b> 56:17  <b>axis</b> 103:18  <b>A.L</b> 175:20</p> <hr/> <p><b>B</b></p> <p><b>B</b> 96:8 97:5 110:12                  111:15 114:6  <b>back</b> 3:16 9:8 12:5                  15:21 16:23 21:1,7                  21:14,15 28:2 48:10                  56:3 62:16 66:23                  68:4,16 69:2 75:21                  77:9 78:22 79:11,12                  80:3 87:14 90:21                  99:12,13 101:13,13                  101:20 106:3                  108:23 110:17,17                  114:10,11,12,12                  115:11,12 116:3                  117:24 125:9,13                  126:21,22 129:24                  132:5 144:16 156:6                  158:12 162:5                  174:12 190:25                  214:19 222:15                  225:16 237:8  <b>backdated</b> 138:21                  139:3 140:5  <b>background</b> 37:16                  57:16 126:5 152:18                  154:20 180:12,13  <b>backward</b> 111:13  <b>backwards</b> 106:13  <b>bad</b> 56:18 71:17,18                  194:8 212:10,11                  226:7  <b>balance</b> 64:21 160:25  <b>balanced</b> 11:3 67:6                  79:20  <b>balancing</b> 160:21  <b>ballpoint</b> 72:3 91:5                  111:8  <b>band</b> 65:1  <b>Bank</b> 182:24  <b>bar</b> 80:14  <b>BARDOT</b> 2:15  <b>barely</b> 20:12  <b>Barnea</b> 1:17  <b>BARNETT</b> 1:17  <b>base</b> 58:13  <b>based</b> 6:11 14:2 43:13                  57:9 119:24 139:6                  141:16 143:17</p>
--	--	---	--	--	--

<p>144:11 153:21                  154:7,10 159:5                  165:22 175:11                  179:5 189:4,7 192:1  <b>baseline</b> 68:4 80:11                  102:11  <b>basic</b> 43:15 91:3,12                  158:25 178:8 200:1  <b>basically</b> 19:9 28:14                  33:14 101:20                  103:21 115:9 121:3                  121:5 122:13                  123:14 130:10                  132:17 137:21                  138:16 145:10                  182:23 185:4 186:2                  192:22 194:20                  195:9,10 239:2  <b>basis</b> 9:24 10:15 11:2                  13:15 15:18 17:9                  18:11 28:15 47:20                  47:22 48:1,10 49:22                  78:8 91:21 123:10                  141:25 142:1 177:5                  183:9 184:18,23                  189:2 197:7 205:18                  217:10 221:10                  222:25  <b>Bayesian</b> 223:23  <b>BDO</b> 2:4  <b>bear</b> 19:18 62:23  <b>bearing</b> 41:19 152:7  <b>beautiful</b> 25:12  <b>become</b> 118:17 195:24  <b>becomes</b> 65:3 105:10                  105:18 134:14  <b>becoming</b> 88:19  <b>before</b> 1:8 5:5 6:1                  20:25 37:16 39:2                  40:17 43:17,21 44:1                  44:14 45:3,5 65:4                  98:14 105:10                  107:23 115:3,6                  118:6,22 119:3,5,15                  119:17 133:17                  136:21 137:4                  144:16 153:10                  160:10 162:14                  177:11 178:23                  195:4 198:25                  202:16 216:18                  229:17 233:21                  238:10 240:5                  242:24 245:7  <b>beg</b> 10:6 65:21 81:21  <b>beginning</b> 25:25                  134:12,13 137:9                  167:21 238:5  <b>behalf</b> 1:17,19 4:3,7                  18:24 92:22 158:4                  172:17 173:12                  186:14 204:3  <b>behaved</b> 212:6  <b>behaviour</b> 209:14,15                  209:24 210:2 213:1  <b>behind</b> 91:3 191:1  <b>being</b> 3:14 9:1 10:11</p>	<p>40:6,17 76:18 81:22                  91:18 108:17                  116:21 124:7 130:5                  130:6 134:6,7 136:3                  137:23 146:17                  148:14 150:13,16                  151:7 152:5 164:5                  173:25 194:4 196:3                  207:10 217:20                  222:15 223:13                  225:17 227:10                  229:2,19 234:9                  235:4  <b>belabouring</b> 161:1  <b>belief</b> 2:16,20 27:1                  49:23,24 94:5                  215:18  <b>beliefs</b> 94:9,13 147:15                  153:4  <b>believe</b> 8:14 38:17                  42:3 43:4 50:5,7,10                  62:5 65:8,18 66:10                  74:4,11 97:24 99:4                  100:3 101:8 107:3                  108:18 110:18                  111:9 121:8 123:14                  123:16 127:13                  129:25 131:13                  137:10 154:18                  156:16 164:7                  184:18 190:20                  197:3,17 198:16,24                  199:22 201:23                  216:4 224:15  <b>bend</b> 77:6 128:7  <b>bending</b> 73:6  <b>bends</b> 128:9  <b>benefit</b> 218:15  <b>BENJAMIN</b> 1:21  <b>Beny</b> 204:10  <b>BERG</b> 1:9 3:16 20:15                  20:21 21:22 22:1,8                  22:10,25 66:17,21                  66:25 67:8 69:7,20                  69:22 70:2,15,19,21                  70:25 71:12,16,19                  71:24 72:14,17,20                  84:2 87:10,12 106:2                  106:8,21 107:15,22                  172:4,7,12,15 220:8                  220:21  <b>best</b> 24:15,18 98:6,21                  135:6 245:8  <b>better</b> 16:1 47:5 56:21                  60:6 70:10,14 72:8                  92:16 237:16                  241:24 243:7,9,19  <b>betting</b> 152:2  <b>between</b> 1:7 7:7 12:23                  14:7 15:23 31:9                  46:4,6,14 47:14                  50:11,18 78:20                  83:17 95:14 102:19                  107:11 112:11,25                  113:17 115:22                  122:25 132:8                  181:16 199:23</p>	<p>206:15 207:24                  208:12 218:13                  221:6 222:20                  224:11 237:9  <b>beyond</b> 37:3 39:23                  62:7 63:21 79:9                  94:19 167:22 223:3  <b>bias</b> 11:7,8,9,9,10,13                  50:2,6 51:2,3,4,4,5                  51:21,23 103:4                  181:18,19 183:11                  197:13 199:11                  216:5  <b>biased</b> 51:9,11 196:16                  205:7 215:11  <b>biasing</b> 148:18 196:12  <b>big</b> 28:25 56:21 73:13                  88:14  <b>bigger</b> 33:20  <b>billion</b> 152:3  <b>billions</b> 152:2  <b>binding</b> 182:17 184:5                  198:15  <b>Birmingham</b> 25:1  <b>bit</b> 3:4 6:3,24 33:14,21                  35:9 37:1 75:16                  84:3 103:11,19,20                  116:3,19 117:3,10                  144:25 163:19,21                  186:15 203:17                  231:21 242:6  <b>bite</b> 24:20  <b>bits</b> 33:7  <b>BIZARD</b> 1:19  <b>bizarre</b> 217:14  <b>black</b> 16:12 70:12  <b>blank</b> 19:20,20  <b>blatant</b> 219:12  <b>block</b> 86:24  <b>blow</b> 105:5  <b>blow-up</b> 112:21  <b>blue</b> 43:6 77:18                  182:24  <b>boat-tail</b> 101:19  <b>bodies</b> 102:19  <b>body</b> 15:5 102:22                  103:5  <b>boils</b> 27:22 176:21  <b>book</b> 89:12 90:3 136:9                  136:11 159:3,10                  165:9,11  <b>books</b> 125:3 158:20  <b>born</b> 19:10 107:16,18  <b>borne</b> 14:10 64:23  <b>both</b> 12:17 16:4,11,14                  25:7 33:19 94:2                  96:24 103:18 112:1                  119:20 122:20                  128:21 137:10                  139:8 147:3,24                  151:11 153:10,13                  167:9 172:14,17                  173:20 177:2,23                  181:3,25 184:9                  193:5 201:24                  202:11,12,15                  220:22 240:21</p>	<p>242:11  <b>bother</b> 24:25  <b>bottom</b> 29:3,13,17                  31:6 34:12 75:12                  79:14,16 96:6,17                  98:7 99:21 101:10                  109:2,3 112:7,12                  113:23 117:8 134:9                  134:13,13 166:14                  166:14  <b>bottom-right</b> 96:3                  131:25  <b>box</b> 78:1,22,24 133:1                  170:20 248:8  <b>boxes</b> 79:1 99:5                  132:17,23  <b>brains</b> 163:4  <b>break</b> 48:18 58:25                  59:2 60:3,15,16,22                  91:19 92:15 93:2                  96:9 203:11,19,22                  228:12  <b>breaking</b> 122:12  <b>breaks</b> 60:20  <b>BRET</b> 2:21  <b>Brian</b> 163:24  <b>brief</b> 47:24 162:15                  225:1 226:3 231:5                  232:6 233:22 235:5                  236:23 238:20                  240:20,23 245:19                  246:4  <b>briefest</b> 39:20  <b>briefly</b> 61:15 68:24                  169:5 173:14 204:8  <b>briefs</b> 177:20 222:23                  223:8 227:21                  228:17,25 229:9,14                  229:16 232:14,16                  234:2,17,18 235:20                  236:8 238:6,11                  240:7,24 241:10                  242:23  <b>brilliant</b> 20:8  <b>bring</b> 36:2 148:3                  221:14 242:9  <b>broad</b> 13:24 15:1                  66:13  <b>broader</b> 133:1,2 229:6  <b>brought</b> 40:10 158:23                  240:5  <b>brown</b> 16:12  <b>BSG</b> 1:11,12,12 230:2  <b>BSGR</b> 5:5 46:3 177:20                  178:15,25 179:7,13                  179:21 185:1,13                  187:17 191:17,20                  191:23 192:13,17                  192:20,24 193:13                  193:18,19,25                  194:18 195:18                  196:12,24 198:1,6,7                  204:11,18 205:23                  205:25 206:1,7,11                  206:15 207:21                  208:10,13,23                  209:14 210:9,13,19</p>	<p>211:2,15,18,25                  212:2,21,23,25                  213:2,4,5,7,9,16,21                  214:3,7,10,18                  215:20 216:15                  217:16 219:24,25                  223:7,9 224:21                  245:1  <b>BSGR's</b> 178:17                  179:15 185:5 187:6                  192:16 193:5,10                  196:2,22 199:5,8                  209:14,18 210:7,15                  211:6,22 216:13                  217:22 219:7  <b>Buglio</b> 19:16 21:5                  54:10 163:23  <b>bullet</b> 125:17,17,19  <b>bundle</b> 15:20 43:4,6                  46:11 68:6 119:7                  142:23  <b>bundles</b> 40:10  <b>burden</b> 223:8  <b>business</b> 136:10  <b>busy</b> 42:19 43:2,3  <b>buzzword</b> 11:8</p>	<p>76:1 87:22 97:9                  103:10 108:19                  122:14 125:2                  138:16,23,24                  139:25 151:6,13,15                  151:22 161:15                  165:22 170:3                  174:16 182:15,24                  183:2,20 184:14                  185:3 187:5,16                  188:24 197:11,12                  197:14 200:25                  202:23 204:8,15                  207:18 211:1,13                  212:10 221:9                  229:20,21,22                  232:23 235:21                  237:3,7 239:5                  243:12 245:1,6,20                  246:10,12 247:11  <b>cases</b> 18:22 41:15                  56:19,21 150:11                  181:11,12 182:23                  183:1 185:8 187:25                  188:4 198:12,16,17                  199:13,19 201:23                  206:17  <b>casework</b> 18:16 41:5                  55:19  <b>cash</b> 178:17  <b>cast</b> 176:18  <b>catch</b> 129:1,21  <b>categories</b> 84:7  <b>categorise</b> 86:21  <b>category</b> 245:15  <b>cause</b> 18:4 50:2                  175:13  <b>caused</b> 154:14  <b>causes</b> 64:17  <b>Causing</b> 238:9  <b>caution</b> 15:8 16:18  <b>cautious</b> 15:11 18:6                  87:7  <b>centre</b> 1:2,4 70:22  <b>century</b> 89:10 90:22                  158:24  <b>certain</b> 9:15 10:14                  17:12 25:19 37:2                  50:15 52:6,6 54:5                  58:21 63:24 75:5                  116:11 132:18                  133:19 136:3                  148:20 155:17                  156:17 165:14                  169:14 222:6                  234:10,20  <b>certainly</b> 12:1 33:21                  38:9 46:23 92:18                  105:18 107:3 110:6                  116:19 117:10                  120:18,25 130:13                  148:25 160:1 167:8                  174:15 177:5 229:7                  230:16 234:19                  236:21 238:8  <b>certainty</b> 162:9 177:8                  177:10</p>
--	--	--	---	--	---

<p><b>certificates</b> 187:23  <b>cetera</b> 55:20 126:21              150:25 210:8 222:3              226:8  <b>chair</b> 157:19  <b>challenge</b> 180:13              184:23 197:23              223:7  <b>challenged</b> 81:24 82:5              83:2,9,10 206:21              216:24 224:19  <b>challenging</b> 206:7  <b>chance</b> 40:17 43:25              62:12,22  <b>change</b> 56:13 127:23              128:2 153:23 154:1              154:6 159:7 161:20              161:23 215:9              228:22 233:11  <b>changed</b> 49:21 152:22              153:11 186:3              215:16 233:10              238:23  <b>changes</b> 127:22              153:16,20,21              154:10  <b>changing</b> 189:5,8              190:21 210:10  <b>CHANTAL</b> 2:21  <b>character</b> 165:19              169:18 204:16  <b>characterise</b> 86:12              176:25  <b>characteristic</b> 96:10              99:23,23 100:5,22              101:1 136:14  <b>characteristics</b> 17:18              100:24,25 102:25              103:8 129:9 136:5,6              136:7,8,12 165:1              168:14 170:23  <b>characters</b> 135:14,24  <b>chart</b> 34:4 65:11 68:7              80:6 95:25 96:1,2,7              96:8 97:5,6,20,20              99:8 100:18 101:23              103:24 104:2,21              106:2,22 109:12              113:21 114:1,6              115:24 116:5,6              117:1 131:22  <b>Chartered</b> 182:4  <b>charts</b> 26:22 108:25              118:24 127:16  <b>cheap</b> 58:11  <b>check</b> 4:5 36:12 69:19              133:18 178:12              223:24  <b>cheek</b> 16:14  <b>chemist</b> 93:19  <b>chemistry</b> 149:25  <b>CHEREAU</b> 2:10  <b>cherry</b> 24:20  <b>chest</b> 16:13  <b>chief</b> 19:17  <b>Chinese</b> 135:16  <b>choice</b> 9:24 30:16</p>	<p><b>choose</b> 24:18 30:17  <b>chose</b> 96:11  <b>CHRISTINE</b> 2:20  <b>chuckle</b> 170:2  <b>circle</b> 96:20  <b>circled</b> 101:17 104:23  <b>circling</b> 96:17  <b>circulated</b> 1:13  <b>circumstance</b> 57:17              189:20 190:7  <b>circumstances</b> 12:22              51:14 52:23 57:10              58:2,8,18 63:20              150:24 189:4,7,9              190:20  <b>circumvented</b> 106:17  <b>citations</b> 11:21  <b>Claimants</b> 1:13,17 2:2              4:3 1:9 4:5 5:1,2,25              6:12,17 7:3,4,18              8:12 13:5 31:21              37:2 88:24 91:24              94:18 117:24              147:23 173:1,12              185:18 203:10              236:18 237:13              248:10  <b>claimed</b> 227:5  <b>clarification</b> 39:24              202:17 219:4  <b>clarified</b> 243:6  <b>clarify</b> 243:10  <b>class</b> 17:19 83:18              136:5,8,14  <b>cleaner</b> 234:11  <b>clear</b> 6:23 69:6 71:25              87:23 143:21              176:19 177:16              195:24 244:2  <b>clearance</b> 4:21  <b>clearly</b> 72:1,2 76:22              235:10  <b>client</b> 4:20,21 149:11              185:11  <b>clients</b> 174:16  <b>clock</b> 237:24 238:19  <b>clockwise</b> 103:25              110:18 111:7  <b>close</b> 31:3 35:25 60:1              77:12 168:5 249:6  <b>closest</b> 67:5 78:17  <b>closing</b> 4:3,7 91:22              173:1,12,19 202:14              203:13,25 204:3,5  <b>closure</b> 221:12  <b>CLÉMENTINE</b> 2:9  <b>Co</b> 1:17  <b>code</b> 44:25  <b>codes</b> 44:24 155:15,23              156:5,9,10,14  <b>cognitive</b> 11:9  <b>coin</b> 10:8 65:3 96:24              122:21 164:1              236:13  <b>coincidence</b> 27:4,8,18              34:24 88:2,14              178:18</p>	<p><b>coincidentally</b> 34:22              34:23 81:15 87:18              88:13  <b>colleague</b> 164:19              166:5 188:11 219:3              224:9  <b>colleagues</b> 50:4 203:9              216:8 219:18              230:18  <b>colleague's</b> 167:11  <b>collect</b> 139:23,24,24  <b>collected</b> 187:23  <b>collecting</b> 21:4  <b>coloured</b> 109:5,13              114:1  <b>colour-copy</b> 55:15  <b>Colton</b> 1:16 29:24              37:22,23 38:3  <b>column</b> 21:24 22:3              29:17  <b>combination</b> 27:17              28:5 67:24 73:4              81:13,14 87:20              106:13  <b>combinations</b> 100:23  <b>combined</b> 67:19 77:16              121:5 133:9 159:7              191:15  <b>combining</b> 120:20  <b>come</b> 4:14 6:6,15              28:18 31:16 35:16              38:10 49:16 60:12              62:16 64:10 77:1,2              91:9 98:12 100:7              108:23 109:11              117:24 119:1 120:6              126:22 139:7 142:9              153:13 158:6              174:12 181:22              193:1,6 198:18              209:8 221:2 240:18              244:17  <b>comes</b> 11:6 18:12              32:20 68:2 69:2,4,4              76:25 115:4 165:1              167:25 168:23              192:11 199:18              223:7  <b>comfort</b> 206:11  <b>comfortable</b> 233:20  <b>coming</b> 3:23 27:19              59:24 60:1,5,7              68:16 77:4 82:9,18              105:9 115:15 162:7              197:17 230:7,17  <b>comment</b> 8:20 44:11              49:4 70:13 111:17              132:4,12,25 149:22              155:11 163:20              166:15 196:4              205:13 221:2 236:3              241:20 244:4              245:20  <b>commentaries</b> 234:3  <b>commented</b> 127:13              132:7  <b>commenting</b> 146:12</p>	<p><b>comments</b> 2:10 5:17              25:23 38:11 39:2,6              39:22 42:10 43:17              43:24 44:1 47:17              62:2 93:23 108:11              119:5,8,9 132:9              133:23 134:2              136:19 137:1              141:11 142:19              152:10,16 153:11              173:13 184:19              190:22 192:23              193:10,21 195:25              196:2,9 202:9 203:1              210:12,13 213:4,22              219:7,8,10 220:11              220:17 229:18              230:25 235:24  <b>commercially</b> 141:1  <b>common</b> 194:8  <b>commonly</b> 161:6  <b>communicate</b> 6:22              209:15  <b>communicated</b> 158:17              219:23  <b>community</b> 158:5              162:7  <b>comparable</b> 83:11  <b>comparative</b> 75:1  <b>comparator</b> 47:16              177:14  <b>compare</b> 22:10 33:25              84:9 85:18 98:18              112:6 132:24              139:25  <b>compared</b> 34:9,13              82:4 105:24 146:1  <b>comparing</b> 172:9  <b>comparison</b> 13:16,17              14:8,19 15:6 17:2              17:10,18 26:12,15              26:20 33:9,25 48:7              73:24 77:21 102:23              103:3,6,21 118:18              132:3 161:13  <b>competent</b> 188:15              192:22 193:1,8              214:21 215:24  <b>competing</b> 138:17,18              139:1,8 140:4  <b>complain</b> 217:15  <b>complete</b> 91:17  <b>completely</b> 62:22              171:11  <b>completes</b> 91:14  <b>complex</b> 32:7 63:21              110:22 166:10              177:16 222:2              246:15  <b>complicate</b> 71:13              229:1  <b>complicated</b> 232:23              235:12  <b>complicating</b> 243:1  <b>compliment</b> 62:19  <b>component</b> 185:5              186:8 187:16,17</p>	<p><b>components</b> 185:4              187:3,4  <b>compound</b> 102:4              110:6  <b>comprehensive</b>              119:22 147:11  <b>compromised</b> 179:12  <b>computers</b> 115:17,20  <b>concentrate</b> 95:8  <b>concentration</b> 26:9  <b>concept</b> 182:10 184:12              184:15 185:3 186:3              186:6,9  <b>conceptually</b> 140:7  <b>concern</b> 4:17 10:17              13:8 148:11 149:8              175:14 192:2,20              196:21 233:23              235:13  <b>concerned</b> 13:16              24:12 77:3 82:25              191:20 204:19              208:20,23 209:14  <b>concerning</b> 8:19 196:6  <b>concerns</b> 177:11              187:10 199:6 234:9  <b>concise</b> 240:23  <b>conclude</b> 209:4 213:9  <b>concluded</b> 72:24              165:22 249:9  <b>concludes</b> 105:20              113:9  <b>concluding</b> 3:22 91:20              146:4,14,23 157:12  <b>conclusion</b> 17:25              30:13 62:13 64:10              72:23 87:4 89:18              96:14 119:24              138:13 139:9 144:2              144:17 151:6 154:7              158:7,15 165:21              168:16 172:14              177:13 179:4 193:6              199:18 210:9 211:5              222:5 224:24              226:19 227:13  <b>conclusions</b> 46:8              49:21 50:3,19              125:18 137:2,12,14              147:14 157:18              171:20 175:11,22              177:19 185:8,16              187:11 192:18              193:2 198:18 199:4              206:9 209:2 211:21              215:9,17 216:24              218:20 219:19  <b>conclusive</b> 165:15              176:18  <b>conduct</b> 147:10 164:4              179:13,16 192:13              192:16 196:23              198:13 208:7  <b>conducted</b> 149:2              157:1 171:5 204:23              207:19 208:16,19  <b>confer</b> 8:7</p>	<p><b>conference</b> 30:16              54:22 55:3  <b>confirm</b> 46:20 93:6,13  <b>confirmed</b> 180:24              186:24 194:13              213:5  <b>conformance</b> 5:19  <b>conformity</b> 3:25 5:24              6:8  <b>confuse</b> 195:19  <b>confused</b> 1:17 84:3              142:20 143:18              157:7 215:1  <b>confusion</b> 4:25 48:7              65:18 154:14              206:15  <b>congruency</b> 161:14  <b>congruent</b> 111:1  <b>congruent-type</b>              161:13  <b>connected</b> 116:4  <b>connecting</b> 115:7              134:9  <b>connection</b> 194:21              234:10  <b>connects</b> 116:5  <b>conscience</b> 2:18 94:8              94:12  <b>consequence</b> 200:10              200:17,18,19,25              207:8  <b>consequences</b> 202:18              206:13 211:18  <b>consequently</b> 16:4              120:14 122:7              218:19  <b>conservative</b> 81:17  <b>consider</b> 14:11 26:5              29:1 45:11 46:7              48:23 51:25 53:23              62:6 66:2 81:4              83:21 119:21              130:14 138:17              183:6 210:7 214:18              216:1 234:13 235:6              240:4  <b>considerable</b> 27:7              29:10 48:7 79:19              151:13,19 152:6              208:18 232:19  <b>consideration</b> 9:21              15:7 26:18 49:12,13              56:9 57:19 130:25              152:14 156:19              201:6 245:22  <b>considerations</b> 14:14  <b>considered</b> 47:18 48:1              152:21 154:17              177:13,15 197:2              198:17 200:22              201:19 207:12              208:10  <b>considering</b> 11:22              57:18 58:6,15 203:3  <b>considers</b> 199:18  <b>consistent</b> 73:11 86:3              86:4 97:4,17 99:25</p>
---	---	--	--	---	--

<p>101:21 102:12                  105:24 108:20                  113:12 115:22                  158:19  <b>consistently</b> 102:2  <b>consists</b> 223:24  <b>constant</b> 174:7,8  <b>constrain</b> 241:25  <b>constructed</b> 96:2 97:6  <b>constructing</b> 57:22  <b>construction</b> 101:19  <b>constructive</b> 196:4  <b>construed</b> 138:14  <b>consult</b> 221:1  <b>consulting</b> 118:16  <b>contacted</b> 37:18,21                  38:3 213:12,18  <b>contain</b> 17:2  <b>contained</b> 7:10 122:7  <b>contains</b> 209:6  <b>contemporaneous</b>                  58:20 59:8 63:12  <b>contended</b> 17:12  <b>content</b> 7:9  <b>contentious</b> 147:5,14                  158:16  <b>contents</b> 36:19  <b>contest</b> 197:3  <b>contested</b> 172:8  <b>contests</b> 182:7  <b>context</b> 62:9 154:20                  155:6 185:3 231:5                  231:10,20  <b>contextual</b> 11:9,9                  149:15  <b>continuation</b> 230:5  <b>continue</b> 13:13 60:16                  92:13 162:6 219:3  <b>continued</b> 149:7  <b>continues</b> 167:22  <b>continuity</b> 168:1  <b>contract</b> 220:2  <b>contracts</b> 222:13,22                  222:25  <b>contradict</b> 141:20  <b>contradicted</b> 190:9                  226:2  <b>contradiction</b> 217:22  <b>contradictions</b> 225:24  <b>contrary</b> 205:17 206:2                  210:1  <b>contributory</b> 79:21  <b>control</b> 216:13  <b>controversy</b> 157:17  <b>convenient</b> 91:19  <b>Convention</b> 179:20                  181:6,8 182:20                  184:13  <b>conversation</b> 164:9  <b>conversations</b> 162:6  <b>convey</b> 160:19 161:3  <b>conveying</b> 120:19  <b>conviction</b> 215:13  <b>convince</b> 191:3 198:2                  198:7 242:18  <b>convinced</b> 227:9  <b>cooperation</b> 249:2</p>	<p><b>copied</b> 14:17 20:22                  71:21  <b>copies</b> 4:2,3,6,9 9:2,6                  20:5,6,6,8,8 23:20                  53:5 55:10,12 56:2                  56:3,6 131:14,18  <b>copy</b> 3:14 8:21 14:16                  14:17 18:19 19:3,8                  21:6 22:23 32:7                  40:8,11,22 42:9                  54:20 69:24,24                  70:10,14 71:16,17                  71:18,25 72:8,8,19                  136:9,11 226:7  <b>copying</b> 14:21,23 20:3                  21:16 23:6,17  <b>corner</b> 29:4,21 31:6                  53:13 78:12,24 96:3                  111:9 131:25  <b>correct</b> 1:19,20 2:9                  3:10 10:20 11:19                  22:24 48:24 49:2,4                  49:7 50:10,16,22                  52:1 55:18 56:6,11                  59:23 74:7 86:10                  89:11 90:2,6,7,12                  93:12,24 94:25                  126:15 132:1,2                  135:3 138:8 141:19                  141:21,22 165:17                  189:11 219:20                  247:22,23  <b>correction</b> 42:25                  230:8 236:14  <b>corrections</b> 247:8  <b>correctly</b> 22:21 42:22                  133:4 141:18  <b>correspond</b> 84:11  <b>corresponds</b> 141:2  <b>corroborated</b> 193:9  <b>corruption</b> 5:3  <b>cost</b> 6:3 198:8 230:9                  236:21,25 237:2,4,5                  245:13 246:5,10,19  <b>costs</b> 151:21 232:13                  232:17 237:2                  245:15,21  <b>COULON</b> 2:11  <b>counsel</b> 37:14 50:8                  91:22 117:24                  118:17 176:20                  181:17 198:13                  208:13 210:13,15                  235:25 236:5,18                  241:20,22 245:7                  247:12 248:14,23  <b>counsel's</b> 129:14  <b>counterclaim</b> 236:12  <b>counterclaims</b> 230:2,5                  235:23 243:17  <b>counterfeit</b> 223:9  <b>counter-clockwise</b>                  104:4 110:15,20                  111:4  <b>counting</b> 235:16  <b>countless</b> 178:9  <b>country</b> 178:5</p>	<p><b>counts</b> 106:15 176:23  <b>couple</b> 16:24 19:14                  27:16 37:16 61:1                  76:9 80:25 81:1                  130:4 140:23 147:7                  148:2 154:13                  173:15 174:17                  180:9 183:1 232:10  <b>course</b> 17:16 18:16                  24:13 30:10 101:3                  110:2 128:21                  131:16 135:5                  145:14 168:10,25                  172:20 183:22                  188:15 222:16                  231:19 246:8  <b>court</b> 2:14,15 42:1                  92:17 203:15                  243:18,20 244:7,11                  244:13,18 248:23                  249:3  <b>courts</b> 199:22 200:1                  244:22 245:5  <b>cover</b> 228:17 230:7,12  <b>covered</b> 117:25 230:3                  233:6  <b>co-arbitrators</b> 64:5  <b>CPR</b> 188:23  <b>CPS</b> 44:24 155:14,23                  156:5,9,10,14  <b>create</b> 51:1,23 52:4                  144:10 161:14                  220:18  <b>created</b> 12:4 51:20                  52:12,15 58:16                  59:12 150:21  <b>creation</b> 47:17 63:17                  176:8  <b>credit</b> 61:19  <b>crime</b> 56:16 121:20  <b>criss-cross</b> 134:6  <b>criteria</b> 177:6 205:18                  206:12  <b>criticised</b> 159:11                  175:14 225:18                  227:14  <b>criticises</b> 177:24  <b>criticising</b> 198:13  <b>criticism</b> 217:3  <b>criticisms</b> 216:14,22                  217:5,18  <b>cross</b> 32:1 92:9  <b>crosses</b> 82:6  <b>cross-examination</b> 3:8                  3:12,18,21 36:6,8                  36:19 37:11 61:24                  61:25 89:8 91:25                  92:3 118:11 131:12                  142:5 152:8  <b>cross-examine</b> 36:18  <b>cross-purposes</b> 74:20                  75:6  <b>crude</b> 33:23  <b>crudely</b> 54:2 78:12  <b>CSW10.5</b> 113:5  <b>cumulation</b> 97:19  <b>cumulative</b> 128:22,23</p>	<p>128:24 129:4,7  <b>cumulatively</b> 197:2,4  <b>Cunningham</b> 25:8                  164:8  <b>curbed</b> 157:5  <b>curiosity</b> 20:15  <b>curious</b> 17:2  <b>curse</b> 13:23,24 77:13  <b>curvature</b> 13:23 79:13                  79:14,19  <b>curve</b> 13:23,24 77:13                  102:4 110:7 115:7                  116:18 128:5  <b>curved</b> 32:9 128:1  <b>curves</b> 114:3  <b>cut</b> 30:10 88:20 153:6  <b>cutting</b> 224:12  <b>C-0084.7</b> 116:16  <b>C-0112</b> 46:2,6,10  <b>C-0113</b> 156:17  <b>C-0122</b> 156:17  <b>C-0271-287.19</b> 117:9  <b>C-0271-287.43</b> 117:6  <b>C-0536</b> 156:17  <b>C-271-287.1</b> 29:1,3  <b>C-376</b> 187:7</p>	<p>178:7  <b>dating</b> 10:20 45:1                  93:16,20 115:19                  175:25 176:7  <b>daughter</b> 25:4  <b>DAVID</b> 1:17  <b>day</b> 1:6 1:5 30:23                  52:22 131:17                  136:23 220:3  <b>days</b> 43:2 95:4 137:10                  139:19,20 147:7                  148:3 172:16                  173:15 174:17                  180:10 190:5 195:4                  203:1 213:13,15,19                  221:12 227:16                  230:17 235:18                  236:4 243:22  <b>de</b> 1:17 37:23 41:12                  42:14 43:10 44:7                  47:21 202:3,6  <b>deadline</b> 189:23 190:4                  190:6 213:2,22                  214:9 232:15                  238:15 241:12                  245:23 246:23  <b>deadlines</b> 238:5  <b>deal</b> 4:24 7:24 179:8                  204:8 205:8 219:1                  232:10,14 237:16  <b>dealing</b> 7:25 16:20                  18:21 56:23 63:22                  183:21 204:6                  206:11 230:22  <b>dealt</b> 19:13 31:11                  56:18 242:23,24  <b>dear</b> 21:18 24:22                  43:19 166:5 179:11  <b>decades</b> 139:21  <b>December</b> 180:23  <b>decide</b> 184:3 202:25                  228:19 229:10                  234:1 245:4  <b>decided</b> 30:14 76:15                  97:20 234:6  <b>decidedly</b> 68:23  <b>decides</b> 245:10  <b>decipher</b> 156:11  <b>decision</b> 15:18 30:19                  180:8 182:24 183:3                  184:3 206:2,19,24                  229:4 233:20                  234:12 237:14,20                  237:25 238:3,9                  239:8  <b>decisions</b> 198:15                  199:22,25  <b>declaration</b> 2:16                  25:11 94:6 187:8                  188:22 200:20  <b>declare</b> 2:18 94:7,11                  181:1 200:5 202:21  <b>declared</b> 179:22                  199:12 201:2,16  <b>dedicate</b> 239:5  <b>deduce</b> 57:12  <b>deduction</b> 57:9</p>	<p><b>defence</b> 140:2,6  <b>defending</b> 211:12  <b>defenses</b> 28:3  <b>define</b> 85:4  <b>defined</b> 118:6  <b>defines</b> 34:10  <b>definitely</b> 114:4                  123:18 164:3                  182:23 241:4  <b>definition</b> 14:6 15:25  <b>definitions</b> 121:12  <b>deformities</b> 17:23                  226:18  <b>degree</b> 13:22 27:21                  128:12 153:12                  184:16 198:23                  230:22  <b>degrees</b> 100:14  <b>delay</b> 232:20 235:1                  237:23 238:10  <b>deliberation</b> 228:1  <b>delicate</b> 55:17 165:18                  165:20  <b>demonstrable</b> 14:10                  27:9,21  <b>demonstrably</b> 34:25  <b>demonstrate</b> 35:6                  54:1 65:9 96:23  <b>demonstrated</b> 205:1                  218:1  <b>demonstrating</b> 12:1  <b>demonstration</b> 172:13                  217:21  <b>demonstrative</b> 5:21                  53:23 95:22 217:6                  217:19 218:2  <b>DEN</b> 1:9 3:16 20:15                  20:21 21:22 22:1,8                  22:10,25 66:17,21                  66:25 67:8 69:7,20                  69:22 70:2,15,19,21                  70:25 71:12,16,19                  71:24 72:14,17,20                  84:2 87:10,12 106:2                  106:8,21 107:15,22                  172:4,7,12,15 220:8                  220:21  <b>Dennis</b> 187:8  <b>deny</b> 177:23  <b>depend</b> 92:8  <b>depended</b> 17:24                  226:18  <b>depending</b> 95:14                  138:22 233:3  <b>depends</b> 60:4 70:18                  85:25 134:7 231:22  <b>depositing</b> 44:18  <b>derail</b> 6:2  <b>described</b> 17:3 33:5                  188:6 196:5  <b>describing</b> 106:25  <b>descriptions</b> 16:10  <b>design</b> 111:14  <b>designed</b> 50:15  <b>despite</b> 175:4 177:7                  196:19  <b>detail</b> 25:16,17,20</p>
--	---	--	--	---	--



<p>47:13 49:19 55:25                      132:8 164:11                      166:20 222:24                      224:22,25 225:3  <b>detailed</b> 11:20 13:15                      31:10 152:9 237:3  <b>detailing</b> 48:22 245:16  <b>details</b> 13:11 57:16                      165:7,10 166:18,23                      168:2  <b>detect</b> 12:12 50:15                      139:20  <b>detected</b> 168:12  <b>determination</b> 230:16                      243:16 244:17  <b>determinations</b>                      179:14,17  <b>determine</b> 32:23 58:8                      59:5 111:8 128:19                      138:3 140:25 141:5                      166:22 169:14                      184:3 197:6  <b>determined</b> 51:18                      63:2,7 183:4  <b>determining</b> 198:21  <b>develop</b> 179:3  <b>developed</b> 140:23                      182:22  <b>deviate</b> 136:9 185:9  <b>diagonal</b> 34:15 111:21                      111:24  <b>diagonally</b> 110:19                      114:10 115:11,12  <b>diagrams</b> 47:23  <b>Dick</b> 25:1  <b>difference</b> 7:7 14:6,11                      15:3,9,15 18:2                      22:14 34:19,20                      35:13 43:3 50:18                      66:8 67:1,15 68:10                      75:8 81:8 82:4 83:8                      83:17 84:12,20                      85:16,17 86:13,20                      86:22 88:12 90:12                      90:14 112:17,25                      123:24 130:14                      135:13,17 175:4                      199:23 200:16  <b>differences</b> 14:7 15:22                      16:5,5,6,21 17:6,8                      17:14 18:3 22:16                      23:20 26:4,10,19,20                      27:2,5,16,19 46:4,6                      46:7,14,15 47:13,19                      47:22 48:2,11,13,17                      48:22,24 49:11                      61:10,15,17 62:4,12                      65:8 67:9 70:5 81:5                      81:12 84:3 87:24                      89:20 90:2,5,6,11                      103:7 106:1 107:25                      108:18,21 113:17                      117:19 122:20                      123:1,3,4 128:22                      129:3,6,6,16,17                      130:3,17,21,24                      152:10,20 163:11</p>	<p>176:20,24 177:1,4                      177:17 217:11,12                      225:13 226:12,21                      226:23,25 227:4,5,8  <b>different</b> 3:21 13:2                      16:17 23:6 24:13,14                      28:13 29:15 31:7,8                      31:9 34:16,21,21                      35:17,18 46:2 64:10                      64:17 68:15,23                      72:22 73:8 79:22                      82:14 83:1 96:9                      100:14,15 106:18                      107:18 115:2                      118:25 120:23                      121:16,18 122:13                      122:13 124:24                      133:13 135:14,24                      143:20 145:6 150:5                      150:6,7,8,13,23,23                      157:20 158:11                      159:23 162:18                      163:11,15 169:19                      179:1 183:18                      212:10 218:9                      230:11,13 240:8                      242:4 248:5  <b>differently</b> 27:12                      77:24  <b>difficult</b> 6:24 14:16                      23:3 25:21 32:7                      45:6 104:1 105:15                      106:24 107:13                      155:2 160:4 166:19                      167:5,7 198:1                      205:19,22,22                      214:25 215:5 222:3                      224:3 226:9 233:18                      242:10  <b>difficulty</b> 25:17 27:11                      195:3  <b>digging</b> 238:14  <b>digital</b> 154:25 155:4,5                      156:7  <b>diligent</b> 246:14  <b>diplomats</b> 187:22  <b>direct</b> 36:9,20 241:20                      241:21  <b>directed</b> 10:9 51:5  <b>direction</b> 11:11 51:7                      68:22 82:8 83:5,19                      127:22,23 128:3                      163:15 241:24  <b>directions</b> 31:22 211:7  <b>directly</b> 5:10  <b>disagree</b> 78:6 80:14                      83:3 88:4 182:9                      183:20  <b>disagreeing</b> 27:24                      84:17  <b>disagreement</b> 247:11  <b>disagrees</b> 183:15  <b>disappear</b> 105:17                      201:13  <b>disappearance</b> 210:24  <b>discipline</b> 174:6                      242:10,11</p>	<p><b>disclose</b> 191:18 212:24  <b>disclosing</b> 193:20  <b>discount</b> 149:7 177:5  <b>discounts</b> 150:18  <b>discrete</b> 44:18  <b>discuss</b> 62:12 228:14  <b>discussed</b> 36:15                      148:16 222:20                      230:21  <b>discussing</b> 109:8                      213:24  <b>discussion</b> 4:11 9:23                      17:7 60:19 203:14  <b>discussions</b> 17:1 153:7                      247:21  <b>disguise</b> 192:8  <b>dismiss</b> 16:21 18:7  <b>dismissed</b> 175:17                      198:5  <b>dismissing</b> 15:9  <b>dispelled</b> 16:6  <b>display</b> 179:1  <b>disprove</b> 161:23  <b>dispute</b> 148:14 181:2                      185:15 195:1,2                      200:2  <b>disputed</b> 28:5,9 44:10                      69:11,17,20 71:13                      120:4,16 147:11                      150:3 155:10                      157:14 161:16,17                      161:24,25 171:21                      178:19 180:14                      184:1,5 208:8                      222:22  <b>Disputes</b> 1:2  <b>disputing</b> 208:24  <b>disqualification</b>                      180:18 197:1,5                      198:4,9 200:19                      206:21 207:1,4,16                      237:13,17  <b>disqualification/ad...</b>                      228:21 229:5 238:4                      239:9  <b>disqualified</b> 179:22                      197:12 198:5,12  <b>disqualifies</b> 206:20  <b>disqualify</b> 180:25                      197:16 200:5                      202:20  <b>disqualifying</b> 182:19                      200:10,12  <b>disregard</b> 175:13  <b>disregarded</b> 207:7,9                      209:7  <b>disregarding</b> 175:20  <b>dissimilar</b> 113:18  <b>dissimilarities</b> 16:2                      103:7  <b>dissimilitude</b> 17:4  <b>distance</b> 71:1 98:9,10                      99:20,21 134:11  <b>distinct</b> 35:5 109:5                      128:5  <b>distinctive</b> 16:15  <b>distinctly</b> 17:21</p>	<p><b>distinguish</b> 221:6  <b>distort</b> 72:9  <b>distorted</b> 72:21  <b>distorting</b> 71:9  <b>divergence</b> 218:12  <b>divergences</b> 28:4  <b>divide</b> 98:12 173:13  <b>divided</b> 207:8  <b>division</b> 98:23  <b>DLA</b> 1:19 2:9,9,10                      37:14  <b>documentation</b> 14:3                      245:18  <b>dogmatically</b> 17:4  <b>doing</b> 3:1 5:16 35:18                      98:8 107:13 108:13                      163:15 171:10,12                      171:14 178:23                      198:8 224:18                      240:19 245:8  <b>dollars</b> 152:2,2  <b>Dolle</b> 20:13  <b>dome</b> 76:12 81:25  <b>done</b> 1:21,23 6:25 9:1                      23:4 26:23 32:4                      39:20 40:19 41:18                      48:4 78:12 102:16                      134:14 137:3 139:4                      155:4 156:12                      197:24 203:18                      212:23 243:13                      247:4,23 248:9  <b>dot</b> 70:22 72:11 82:10                      82:18,23 83:5,12,13                      83:19 104:22,25                      105:3,4,6,12,16                      123:10  <b>dots</b> 44:18,25 70:12                      70:16,18 71:6 72:11                      82:15,20 83:14                      104:23 109:17,22                      109:23 124:7,13                      125:7 134:25                      154:23 155:1,22  <b>dotted</b> 80:17 97:21  <b>double</b> 4:24  <b>double-check</b> 89:14  <b>doubling</b> 233:23  <b>doubt</b> 18:15 24:19                      32:10,11 176:18                      192:15 222:7 223:3                      242:12,13  <b>doubting</b> 183:6 220:4  <b>doubts</b> 179:17 182:25                      183:10 197:9,10                      208:14  <b>down</b> 14:1 27:22                      48:19 53:13 58:25                      59:2 68:3,16 69:2,4                      69:16 75:19,25 76:2                      76:13 77:4 79:4,24                      91:13 96:9 98:10,25                      99:8 101:12,14,15                      110:19,20 114:10                      114:11,12 115:4,11                      115:12 116:16,18                      122:12 153:6</p>	<p>166:14 168:23                      176:21 190:25  <b>downstroke</b> 32:19,19                      34:9,13,14,23,24                      35:3,5,14,15 116:11  <b>downward</b> 103:24                      111:4,21 112:22,24                      113:3 116:3  <b>downwards</b> 165:4  <b>dozen</b> 24:16  <b>Dr</b> 3:14 93:4,15,18,21                      94:1,10,11 95:2,16                      118:2 119:20,22                      120:14 122:15                      136:17,22 137:5,7,9                      137:13,18 138:8                      139:15 140:12                      141:15,19,22 142:6                      142:11,14,25 143:3                      143:9,12,16,24                      144:3,6 145:2,6                      158:7 174:23 188:9                      188:11  <b>draft</b> 142:9  <b>drafting</b> 43:23  <b>drafts</b> 236:16  <b>drag</b> 114:18,22 166:17  <b>drags</b> 116:5 167:14  <b>draw</b> 19:13 31:14                      97:21 98:6,21                      104:21 112:11,14                      127:24 133:2                      158:14 162:25                      166:6,14 174:3                      211:20  <b>drawing</b> 163:9,11                      166:8  <b>drawn</b> 53:12 75:7                      80:15 99:9 110:10                      144:5  <b>draws</b> 30:6 132:3                      165:4  <b>dreaming</b> 177:25  <b>drew</b> 77:23 163:9                      211:17  <b>driven</b> 176:15  <b>dropping</b> 105:16  <b>due</b> 208:25  <b>duplicate</b> 164:10,11                      164:16 165:9                      166:19 240:7  <b>duplicating</b> 19:22  <b>during</b> 37:1 60:19                      92:2 140:20 185:17                      186:18 189:3 190:9                      190:24 195:14,20                      195:24 196:13                      198:21 204:9                      205:11 208:7                      213:14 216:12                      217:25 220:22                      248:6  <b>duties</b> 192:1  <b>duty</b> 2:14 94:3 147:18                      154:6 209:21,25  <b>dynamic</b> 169:9</p>	<p style="text-align: center;"><b>E</b></p> <p><b>E</b> 100:18 117:1  <b>each</b> 13:19 28:6 47:16                      70:16 96:2,9 102:7                      102:22 104:13                      106:15 110:1 112:5                      126:19 127:19                      134:11 150:14                      177:5,18 191:9                      208:2 214:17 215:6  <b>eager</b> 203:16  <b>earlier</b> 10:8 56:15                      64:14 82:6 103:22                      108:8 137:19 164:5                      190:25  <b>earlier-dated</b> 150:16  <b>early</b> 89:10 118:18  <b>earth</b> 226:13  <b>ease</b> 184:17  <b>easier</b> 131:19 248:1  <b>easily</b> 16:6 103:14  <b>Easter</b> 247:14  <b>easy</b> 14:17 17:8 111:7                      222:2  <b>EDF</b> 183:2  <b>edge</b> 78:1 104:25  <b>edited</b> 158:21  <b>edition</b> 89:16 166:1                      226:14  <b>education</b> 126:12                      127:20  <b>Edward</b> 20:4,9  <b>effect</b> 9:20 79:21                      128:23,24,25 129:5                      129:7 230:1 232:8                      244:15,21  <b>effective</b> 240:24  <b>effectively</b> 12:22 21:4                      29:5 77:5 175:1,5  <b>effects</b> 242:22  <b>efficiency</b> 7:1  <b>effort</b> 143:17  <b>eight</b> 87:23 88:12                      190:5  <b>either</b> 4:2,23 17:25                      33:19 44:17,19                      45:20 49:24 52:9                      89:19 111:13 122:2                      141:21 150:3 156:1                      166:23 210:24                      219:13 221:17                      222:5 223:20                      226:20 239:24                      240:5  <b>elaborate</b> 202:22  <b>election</b> 232:21,21  <b>electronic</b> 194:25                      248:7  <b>electronically</b> 125:10                      248:9  <b>element</b> 14:25,25 29:5                      29:5 34:1,20 68:1                      78:23 80:2,8 97:25                      114:7 133:11                      217:24 218:17                      221:19 222:10                      223:2</p>
---	--	--	--	---	---

<p><b>elements</b> 36:10 77:19 77:19 79:22 205:9 214:10 219:1 221:7 221:23 224:5,22 239:6 242:4</p> <p><b>Eleonore</b> 20:10</p> <p><b>elephant</b> 12:6</p> <p><b>eleven</b> 19:19 221:12</p> <p><b>eliminate</b> 52:6</p> <p><b>ellipsis</b> 69:25</p> <p><b>elliptical</b> 103:18,21 128:1</p> <p><b>elongated</b> 78:25</p> <p><b>email</b> 235:23</p> <p><b>emerged</b> 205:11</p> <p><b>EMERY</b> 2:9</p> <p><b>emphasis</b> 184:12</p> <p><b>emphasise</b> 171:22</p> <p><b>emphasised</b> 11:5</p> <p><b>emphasises</b> 16:18</p> <p><b>emphasising</b> 75:5</p> <p><b>emphatic</b> 35:11,14 77:8</p> <p><b>encountered</b> 91:11</p> <p><b>end</b> 24:1 60:5,6,7,9,12 74:8 82:20 104:4 113:3,3 117:24 127:19 128:3 154:9 164:21 167:22 197:17 227:22,24 229:15 231:14 233:3 239:14 240:9 245:25 247:13</p> <p><b>endeavour</b> 246:13</p> <p><b>ending</b> 77:11 83:12 102:5 103:11 111:21</p> <p><b>ends</b> 76:19 103:24 111:4 112:22,24,24</p> <p><b>energy</b> 1:4</p> <p><b>engage</b> 176:10 196:8 199:7</p> <p><b>engaged</b> 38:4,11 40:14 40:17 41:19,23 42:3 185:1</p> <p><b>engaging</b> 195:5</p> <p><b>English</b> 1:20 4:18,22 31:2,20 35:23 36:8 36:17,25 61:25 89:12 144:6 188:23 199:22 200:1 226:17 228:5 233:14,15,17 236:17 247:22,24</p> <p><b>enlarge</b> 69:16 110:12</p> <p><b>enlarged</b> 44:17,19 79:17 104:18 110:21</p> <p><b>enlightening</b> 164:22</p> <p><b>enormity</b> 40:19</p> <p><b>enough</b> 26:14 132:10 192:7 216:18 235:20 237:6 241:1 241:6</p> <p><b>enquire</b> 46:25 72:15</p> <p><b>enquiry</b> 40:16</p> <p><b>ensures</b> 178:22</p>	<p><b>enter</b> 67:8</p> <p><b>enters</b> 70:5</p> <p><b>enthusiast</b> 91:8</p> <p><b>entire</b> 6:20 197:22</p> <p><b>entirely</b> 134:17 174:24 175:13 176:15 187:15 230:3 234:15 246:11</p> <p><b>entitled</b> 36:9 172:19 233:11</p> <p><b>envisaged</b> 229:4</p> <p><b>equal</b> 160:25 162:4</p> <p><b>equality</b> 6:13</p> <p><b>equally</b> 12:15,16 50:21 139:1,8 223:19,19</p> <p><b>equals</b> 78:13 98:15</p> <p><b>equivalences</b> 223:22</p> <p><b>error</b> 15:1 23:6,8 84:24 156:3</p> <p><b>errors</b> 14:21 15:5 18:4 26:12 32:14 167:8</p> <p><b>especially</b> 16:20 27:13 97:18 98:20 103:23 165:1,19 169:7,24 170:19 203:15 237:3</p> <p><b>essence</b> 133:4</p> <p><b>essentially</b> 5:15 6:6 95:9 139:10 229:22 238:18</p> <p><b>establish</b> 13:18 80:19 86:25 183:10 205:19,22 208:9</p> <p><b>established</b> 123:6 175:5,10 210:14</p> <p><b>establishment</b> 207:23 209:9</p> <p><b>estimate</b> 91:24</p> <p><b>et</b> 55:20 126:21 150:25 210:8 222:3 226:8</p> <p><b>Europe</b> 103:17</p> <p><b>European</b> 157:21,24</p> <p><b>evaluate</b> 162:4</p> <p><b>evaluated</b> 161:3</p> <p><b>evaluation</b> 13:10,14</p> <p><b>eve</b> 180:4 190:15</p> <p><b>even</b> 19:25 20:7 28:9 38:19 49:20 56:2,3 60:6 65:5 80:17 86:17 91:4 97:23 99:24 104:7 107:4 110:21,23 112:16 112:22 113:8 116:1 118:1 121:1,15 123:25 124:2 132:15 135:18,22 135:23 150:20 165:6,8 168:19 175:8,15 178:16 182:5,10 189:17 191:4 193:25 196:6 197:1 198:6 202:24 232:20 235:3 240:17 243:15 246:4</p>	<p><b>evening</b> 6:1 8:5 213:12</p> <p><b>event</b> 88:6 184:14 192:15 195:14 238:24</p> <p><b>events</b> 180:1,6</p> <p><b>eventually</b> 230:9</p> <p><b>ever</b> 46:25 52:25 54:16 91:11 148:13</p> <p><b>every</b> 97:18 99:19 100:21 102:6,7 104:23 110:25 120:15,19 121:12 128:17 144:25 145:14,15 149:2 159:14 168:10 169:23 170:1,4 175:9,14 192:16 200:2 204:22 245:16</p> <p><b>everybody</b> 87:15 150:4 158:2</p> <p><b>everybody's</b> 26:7</p> <p><b>everyone</b> 1:3 74:20 131:20 132:15 146:7 147:6,16 154:17 248:17 249:7</p> <p><b>everyone's</b> 92:22 235:21</p> <p><b>everything</b> 8:16 10:8 11:2 19:12 36:10 41:4 47:2 137:22 139:23 204:19 217:17 218:1 228:2 231:19 237:3 240:6 248:8</p> <p><b>evidentiary</b> 207:17 220:12</p> <p><b>evolutions</b> 91:1</p> <p><b>exact</b> 97:7 118:21</p> <p><b>exactly</b> 17:17 82:11 102:7 117:3 132:18 132:19 136:11 141:19 143:4,6 151:1 161:19 163:14 206:14 228:19</p> <p><b>exaggerated</b> 79:24 238:17</p> <p><b>exaggeration</b> 69:5,5</p> <p><b>examination</b> 3:10,19 2:2 19:16 36:21 38:13,14 39:20 48:6 48:8 50:13 55:10 60:25 61:4 91:15 102:22 120:21,22 120:25 121:2 125:22 127:2 129:13,23 135:23 136:1 137:3,20,22 145:12 147:11 156:3 157:1,10,20 160:24 169:7 174:20,22 208:11 208:14</p> <p><b>examinations</b> 11:19</p>	<p>47:7 50:14,14 55:8 55:12 95:6,8 121:6 121:7 135:14 145:17 149:2 171:6 171:9</p> <p><b>examination-in-chief</b> 108:3</p> <p><b>examine</b> 20:17,18 49:15</p> <p><b>examined</b> 56:2,3 156:16</p> <p><b>examiner</b> 19:25 21:5 25:9 51:18 63:2,7 65:1 93:11 127:1 148:18 158:5 162:7 166:21 188:19</p> <p><b>examiners</b> 19:7 54:14 55:4 81:18 154:5 163:9</p> <p><b>example</b> 12:23 17:15 17:22 22:25 23:21 24:10 51:16 67:4 68:5 77:22 80:13 86:17 98:4 140:14 140:16 154:22 173:22 183:2 189:16 221:25 226:17 237:18 241:5 244:20</p> <p><b>examples</b> 9:20 19:11 20:23 21:1 25:2 50:24 54:7 55:6 76:9,10 154:13 164:21 217:11</p> <p><b>exams</b> 159:19</p> <p><b>exceeded</b> 35:23</p> <p><b>exceedingly</b> 167:5</p> <p><b>Excellence</b> 21:18 23:25</p> <p><b>excellent</b> 151:24 162:20</p> <p><b>except</b> 4:16 106:22 109:22 111:11 248:12</p> <p><b>exception</b> 76:20 173:18</p> <p><b>exceptional</b> 204:20</p> <p><b>exceptions</b> 225:2</p> <p><b>exchange</b> 242:25</p> <p><b>exclude</b> 12:11</p> <p><b>excluded</b> 5:10</p> <p><b>excluding</b> 52:14</p> <p><b>exclusively</b> 56:19</p> <p><b>excuse</b> 41:25 61:18 62:3 74:15 168:24</p> <p><b>executed</b> 22:17 66:2</p> <p><b>executing</b> 86:5</p> <p><b>execution</b> 68:10 116:6 116:14 222:22</p> <p><b>exercise</b> 16:19 123:7 222:10</p> <p><b>exercised</b> 15:8</p> <p><b>exhaustive</b> 205:4 214:19 215:6</p> <p><b>exhibit</b> 53:23 187:7</p> <p><b>exhibits</b> 5:21 9:8 95:22,22 114:18</p>	<p>217:19 218:2</p> <p><b>exist</b> 46:6 107:1 140:18 205:1,2</p> <p><b>existed</b> 47:22 58:21 59:9,13</p> <p><b>existence</b> 46:25 63:12 204:19</p> <p><b>existing</b> 53:25 220:15 220:16 221:5</p> <p><b>exists</b> 53:4 221:5</p> <p><b>expands</b> 239:22</p> <p><b>expect</b> 25:14 41:9 49:13 111:20 117:4 132:19 147:8 152:13 165:13 174:6 202:13 215:8</p> <p><b>expectations</b> 171:19</p> <p><b>expected</b> 12:25 39:22 150:22</p> <p><b>expects</b> 218:2</p> <p><b>experience</b> 18:21 41:16 53:20 191:15 229:12</p> <p><b>experienced</b> 217:8 242:11</p> <p><b>expertise</b> 95:15 150:1 174:7 187:20 216:11 219:14,15 221:14,15,21 227:20</p> <p><b>expiry</b> 190:5</p> <p><b>explain</b> 3:1 32:2 44:9 46:8 47:12 48:3 84:23 95:23 132:3 138:13 155:9,24 177:20 226:25</p> <p><b>explained</b> 18:2 73:9 89:21 127:7 177:16 204:10 214:23 215:10 226:22 227:12</p> <p><b>explaining</b> 48:1 177:17</p> <p><b>explanation</b> 72:24 135:5 210:19,23 226:7</p> <p><b>explanations</b> 218:21</p> <p><b>explicitly</b> 190:11</p> <p><b>explore</b> 127:18</p> <p><b>express</b> 121:18 157:18 157:21 207:22 221:2 225:3</p> <p><b>expressed</b> 12:21 125:15,19 208:14 237:14</p> <p><b>expresses</b> 216:22</p> <p><b>expressing</b> 166:9</p> <p><b>expression</b> 120:7</p> <p><b>extension</b> 42:14,17 43:1 173:8 185:14 189:21,23 190:3 193:21 194:1,18 213:2,22 214:1,9 220:4</p> <p><b>extensively</b> 157:10</p> <p><b>extent</b> 19:9 62:9 76:21 81:2 128:10 129:18</p>	<p>175:7 190:17 229:20,21 243:10</p> <p><b>extra</b> 153:11 223:2 225:9</p> <p><b>extract</b> 234:7</p> <p><b>extraneous</b> 171:21</p> <p><b>extraordinarily</b> 219:5 220:10</p> <p><b>extraordinary</b> 194:7 226:5</p> <p><b>extraterritorial</b> 244:21</p> <p><b>extreme</b> 13:21 82:1 84:14 104:25 112:6 112:12</p> <p><b>extremely</b> 67:24 152:25 162:16 178:18 212:3 221:20 242:12</p> <p><b>extremes</b> 99:2 103:18 134:5</p> <p><b>extremities</b> 77:18</p> <p><b>extremity</b> 98:7,7,8,8</p> <p><b>eye</b> 68:21 69:6</p> <p><b>eyes</b> 12:7 16:12</p> <p><b>eyewitness</b> 160:22</p> <p><b>eye-opening</b> 148:5,12</p> <p><b>e.g</b> 155:19</p>
<b>F</b>					<p><b>F</b> 23:14 24:5 101:7 111:13 226:15</p> <p><b>fabricated</b> 13:9 148:11,16 149:21 150:19 151:7</p> <p><b>fabricating</b> 57:22</p> <p><b>face</b> 63:16 227:1</p> <p><b>faced</b> 211:4</p> <p><b>facility</b> 233:16</p> <p><b>fact</b> 5:9 8:14 9:8,9 11:15 16:23,24 20:6 21:3 30:7 32:17,18 32:21,22 33:17 46:17 56:8,9 59:12 65:8 66:24 67:10 77:3,11 78:9,14,24 81:21,21 83:7,12 92:4 124:7,10 128:19 150:20 153:17 154:7 156:10 165:11 167:10,18 180:6 187:17 189:10 190:15 193:17 196:18,20 205:24 208:24 209:23 210:19 211:14 214:1,24 215:5,11 215:14,15,16 216:17 217:12 218:17 219:8,20 221:16,23 222:24 223:9</p> <p><b>facto</b> 202:3,6</p> <p><b>factor</b> 63:17,19 77:21 79:21</p> <p><b>factors</b> 71:10</p>

<p><b>facts</b> 126:3 180:19 183:5 189:2 211:20 213:3 <b>factual</b> 177:21 179:6 180:12,13 221:19 236:8 <b>factually</b> 190:2 <b>fail</b> 183:16 <b>failed</b> 176:9 193:18,19 195:21 217:16 <b>failing</b> 194:12 <b>failure</b> 18:3 <b>fair</b> 33:21 49:20 57:25 58:9,17 65:2 72:18 161:6,7 163:25 174:14,15,15 180:12 190:13 <b>fairly</b> 27:3 32:12 66:12,23 70:9 71:2 76:22 102:12 103:21 215:1 <b>fait</b> 247:25 <b>faith</b> 191:17,21 193:18 193:20 194:9,12 212:23,24,25 213:1 214:8 220:4 221:22 <b>fall</b> 14:22 32:12 34:3,7 167:8 <b>fallen</b> 174:5 <b>falling</b> 26:4 174:7 235:12 <b>falls</b> 97:2 108:20 174:19 <b>false</b> 52:20 55:8 71:11 223:20 <b>falsification</b> 223:25 224:1,2,6 <b>falsified</b> 55:6 <b>familiar</b> 121:11 135:17 136:3 161:21 205:15,24 206:3,12 209:18 <b>familiarity</b> 235:21 <b>far</b> 13:16 35:3 56:20 58:10 62:7 67:16 70:16 74:16 82:24 100:24 118:24 136:25 144:7 171:4 204:18 223:4 239:15 <b>farthest</b> 71:1 <b>fashion</b> 57:23 <b>fast</b> 129:2 <b>fat</b> 75:19,20,20 <b>father</b> 55:2 165:8 <b>fault</b> 179:12 <b>favour</b> 137:23 177:19 <b>favourable</b> 210:6 <b>favoured</b> 147:22 <b>favourite</b> 28:3 <b>FBI</b> 121:21 <b>fear</b> 234:8 <b>feathering</b> 105:8 114:14,15 115:15 <b>feathers</b> 167:13 <b>feature</b> 13:19,20 73:12 75:5,10 82:21</p>	<p>82:24 84:11 86:7,23 96:9,10,15 97:3,4 97:18 99:14,17 100:3 101:21 102:10 107:8 110:4 110:9 112:16 116:22 117:5 124:22,25 125:1 <b>features</b> 12:25 16:16 26:4 27:3,4,13,20 66:3 71:9 81:15,19 88:13 102:23 103:3 104:16 106:14 109:19 111:25 113:7 112 124:3 155:17 165:23 167:12 <b>February</b> 69:13 179:15 183:3 231:14 234:16 <b>feel</b> 5:2 64:13 97:22 157:4 216:5 <b>feeling</b> 18:7 104:7 158:8 215:1 <b>feet</b> 73:14 <b>fell</b> 149:14 170:13 <b>felt</b> 59:11 190:15 234:22 <b>few</b> 17:14 19:11 41:22 54:7 75:8 95:4 209:11 213:19 219:3 226:1 230:24 235:18 <b>fewer</b> 16:2 <b>field</b> 169:10 205:14 224:16 <b>fifth</b> 102:3 <b>fight</b> 107:11 <b>figure</b> 20:4,9,18 21:14 21:15,22,23 22:11 22:21,23 78:13 84:19 164:20 <b>figures</b> 21:9 88:9 170:7 <b>figuring</b> 30:5 <b>file</b> 180:3 190:16 193:21 239:19 241:9 246:19 <b>filed</b> 136:20,21 199:14 201:12 234:2 238:6 241:9 <b>files</b> 194:25 <b>filing</b> 201:14 233:21 <b>fill</b> 239:22 <b>final</b> 43:5 44:11 48:18 49:7,12 61:11 105:4 119:10,21 142:11 142:13,13,14,17,20 142:23 143:10,19 153:8 154:15 155:11 158:15 168:22 174:14 179:15,22 180:8 184:5,19 185:7,15 186:11 190:22 191:14 196:20 198:3,20 199:9,10</p>	<p>201:14,18 202:24 203:3 207:25 209:9 209:12 214:16 215:15,22 219:5 225:14 230:14 246:4 <b>finally</b> 17:24 226:19 <b>find</b> 5:25 32:10,11 45:6 52:16,20,21 57:1 71:1 74:7 90:5 90:10 100:12 103:6 103:6,7 111:20 113:6 116:22 121:20 136:16 150:15 151:23 156:8,10 187:14 188:4 210:1 216:22 225:1 226:15 <b>finding</b> 45:17 90:1,2 <b>findings</b> 12:2,16 44:11 118:23 122:19 149:7 151:9 155:11 176:19 185:6,20 187:7 199:2,4 208:23 209:7 212:19 213:8 215:17 216:23 218:11 219:11,21 <b>finds</b> 224:20 <b>fine</b> 6:8 13:13 37:9 74:14 91:14 92:21 94:20 95:10 108:15 108:22 125:23 131:21 133:12,16 143:24 147:8 164:11,25 165:6,10 165:23 166:17,20 167:12 229:12 233:6,8,11 238:2,8 238:18 240:1,11,14 240:15 242:18 244:1 246:9 247:6,7 247:18,19 248:3 <b>finer</b> 55:25 56:5 <b>finesse</b> 62:6,18 <b>fingers</b> 35:17 77:7,14 <b>finger-prints</b> 17:23 226:18 <b>finish</b> 30:23 105:2 203:16 <b>finished</b> 129:11 <b>finishes</b> 163:13 166:18 167:15,20 <b>finishing</b> 110:20 <b>finite</b> 52:3 <b>firm</b> 15:12 105:10 145:3 146:25 <b>firms</b> 239:3 <b>first</b> 5:14 7:6 19:15 23:1 24:6,7 33:24 37:18,25 66:5,13 67:18,21 69:9 73:1 77:18 80:2 94:15 95:25 96:15 97:21 97:22,24 99:10,15 101:5 108:1 114:1 114:24 115:17</p>	<p>127:24 129:25 130:5,5,12,12 132:12 133:10 137:20 140:18 146:16,24 148:13 161:7,10 166:11 174:18,22 176:13 180:11 185:4,23 186:1 187:6,16 189:10 197:19 205:12 207:23 208:4,9 210:5 213:15 221:1 226:6 229:4,17 231:16 234:23 235:14 237:16,19 238:9 239:22 240:12,20 241:2,3,7,8,9,18 242:7,25 244:17 <b>first-generation</b> 55:10 55:12 <b>fit</b> 242:4 <b>fits</b> 117:14 <b>five</b> 27:15 32:6 77:19 97:8,14,14,15,15,15 97:16 121:24 126:20 133:9 140:18,19 141:8 174:10 175:18 208:6 209:11 213:13,14 <b>five/ten</b> 227:25 <b>fix</b> 198:9 <b>fixed</b> 14:2 <b>flag</b> 69:15 124:23 <b>flaw</b> 226:4 <b>flaws</b> 225:1 <b>flick</b> 35:10 <b>flick-off</b> 35:12 <b>flies</b> 82:20 104:4 <b>flip</b> 3:22 65:3 162:3 163:4 <b>flipped</b> 163:1 <b>flips</b> 163:8 <b>flipside</b> 164:1 236:12 <b>floor</b> 7:4 60:24 94:16 95:18 117:23 204:1 218:25 <b>flow</b> 76:21 <b>fluency</b> 18:13 21:17 164:13 <b>fluent</b> 19:24 20:5 23:16,17 24:24 <b>fluently</b> 19:3,3 25:19 66:1 <b>fluidly</b> 56:4 <b>fly</b> 77:2 <b>flying</b> 76:22 77:5,8 114:3,15 127:8 163:13 166:18 167:14,15,20,20 <b>focus</b> 59:16 139:10 148:19 205:11 <b>focused</b> 122:24 149:16 241:25 <b>focusing</b> 151:17 209:10</p>	<p><b>foi</b> 247:25 <b>follow</b> 6:11 9:1 10:4 59:1 68:1 98:1 101:6 110:13 121:15 145:21 160:14 163:1 211:2 211:6,16,17 238:9 245:23 <b>followed</b> 55:1 242:1 <b>following</b> 28:11 63:15 90:8 148:7 215:10 220:3 237:21 <b>follows</b> 23:24 101:24 179:24 190:17 <b>follow-up</b> 88:18,22 141:24 142:1 197:21 <b>fool</b> 163:16 <b>fooling</b> 204:22 <b>foot</b> 16:11,15 73:13 <b>football</b> 103:15,16 <b>footnote</b> 180:24 193:3 <b>forbidden</b> 212:16 <b>force</b> 17:5 <b>forces</b> 242:8 <b>foreign</b> 123:13 135:18 <b>forensic</b> 1:7 2:4 2:7 11:8 47:7 50:12 93:9,11,16,19 147:1 154:4,5 157:19 158:5 162:6 166:20 169:7 188:18 193:1 201:9 <b>forensically</b> 58:23 <b>forge</b> 107:12 140:9 162:17,18 <b>forged</b> 46:3,22 47:1 51:10,18 52:4,13 62:23 63:2,7 140:10 156:16 178:25 223:21 <b>forgery</b> 16:2 19:10 22:23 24:15 25:5,14 31:12 35:2 99:18 102:11 106:4,21,25 107:4,16,16,21 151:18,22,24 152:4 162:20 163:8,21 164:2 165:6,9 166:4 166:19 167:4,16 168:21 178:3 204:18,18 205:2 225:21 <b>forges</b> 18:14 20:1,2 23:25 52:6 <b>forgers</b> 54:5 57:2 163:16 <b>forgery</b> 15:5 18:18 21:18 24:15 26:13 27:9 28:3 32:14 56:16 84:23 86:5 106:1 107:10 140:9 166:24 167:15 168:11,16,17,19,20 170:14 210:8 223:17 <b>forgery's</b> 84:24</p>	<p><b>forget</b> 22:16 223:15 230:1 <b>forging</b> 107:6 162:16 <b>forgot</b> 159:21 171:3 248:4 <b>form</b> 11:6 55:15 74:9 119:3 136:11 143:4 143:23 169:14,17 184:8 219:7 220:11 <b>formation</b> 101:15,22 114:2 126:23 <b>formed</b> 104:13 114:24 115:9 <b>forming</b> 101:13 <b>forms</b> 87:1 <b>formulated</b> 217:3 <b>formulating</b> 49:14 61:19 <b>formation</b> 140:21 175:1 <b>forth</b> 152:20 162:19 191:4 237:9 <b>forthright</b> 156:18 191:21 193:19 194:4 <b>forward</b> 10:11 20:10 31:16 36:2 153:16 183:16 214:10 242:9 <b>forward-sloping</b> 20:4 <b>found</b> 12:16 28:7,10 74:7 80:23 99:17 100:25 112:1,9,9,17 116:24 124:19,20 138:9 148:12 151:2 151:2 167:22 175:21 <b>founding</b> 165:8 <b>four</b> 32:6 41:18,21 74:8 81:10 99:2 133:9 143:7,13 169:19 195:4 197:17 198:6 240:12 <b>fourth</b> 99:10,15,16 100:12,16,19 101:6 101:10,22 126:22 <b>France</b> 1:5 <b>Francisco</b> 54:14 <b>frankly</b> 10:4 18:18 26:3 75:23 85:22 151:15 225:15 <b>fraud</b> 50:15,20 52:19 58:11 59:6 138:6,21 139:3 140:5 158:18 160:20 <b>frauds</b> 52:6 56:21 <b>fraudulent</b> 9:19,25 10:9,16 11:3,13 20:16 50:20 52:8 58:24 59:3 159:9 160:11 161:16 162:1 174:1 175:3 175:22 <b>fraudulently</b> 12:17 13:1 52:12,15 58:16 120:5 121:9 157:15</p>
---	--	---	---	---	--

<p><b>free</b> 167:23</p> <p><b>freely</b> 66:1 165:19</p> <p><b>French</b> 2:15 61:21 178:8 204:2 212:14 233:15 236:17 247:22,23</p> <p><b>French-English</b> 2:20 2:20,21</p> <p><b>Friday</b> 247:4,17</p> <p><b>friend</b> 25:7 164:18 166:5</p> <p><b>front</b> 44:25 57:20 58:14 119:11 142:7 142:24</p> <p><b>Frothingham</b> 20:5,10</p> <p><b>fruit</b> 215:13</p> <p><b>full</b> 26:16 48:9 119:21</p> <p><b>fully</b> 12:20 15:13 217:5</p> <p><b>fundamental</b> 7:6 17:14 35:13 105:25 108:17,21 112:17 112:25 113:17 117:18 122:20 123:1,2,3 130:14 159:1 176:24 211:23</p> <p><b>fundamentally</b> 35:17 175:25</p> <p><b>further</b> 3:12,21 2:1 24:25 47:13 60:13 71:14 83:4,6 87:18 88:16,20 89:8 90:15 102:21 117:21 126:9,10 131:2 141:24 142:5 152:15 161:1 168:8 172:21 179:1 186:15 216:9 228:14 230:16,17 237:8 238:10 248:10,20</p> <p><b>Furthermore</b> 105:25 152:8 194:17</p> <p><b>future</b> 197:25</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>G</b> 101:23</p> <p><b>GABRIELLE</b> 1:9</p> <p><b>GANEM</b> 2:10</p> <p><b>garden</b> 12:7,9</p> <p><b>Garel</b> 1:21 1:23 189:13 194:22 248:15,18</p> <p><b>garland-type</b> 97:25 98:4</p> <p><b>gather</b> 230:13</p> <p><b>gathered</b> 229:18</p> <p><b>gave</b> 21:2 43:13 47:23 47:24 80:13 86:18 159:18 169:16 178:11 205:9 213:15 220:2</p> <p><b>Gelison</b> 24:23</p> <p><b>gelled</b> 158:6</p> <p><b>general</b> 15:2 17:18,19 17:21 52:24 62:8</p>	<p>101:15 108:16 110:22 135:25 154:4 165:16,16 175:17</p> <p><b>generally</b> 15:22 57:22 76:25 82:16 86:2 88:21 135:15,17</p> <p><b>genotype</b> 107:20</p> <p><b>gentle</b> 35:9</p> <p><b>gentleman</b> 2:22 164:3</p> <p><b>gently</b> 35:16</p> <p><b>genuine</b> 11:25 12:17 13:1 25:18 28:6,8,9 34:7 51:12 52:22,25 66:4 81:22 88:15 105:24 107:12 120:16 121:8 122:23 151:3 160:3 160:15,18 161:17 161:25 162:2 165:15,21 168:11 192:2 223:19,21 224:24</p> <p><b>genuinely</b> 150:21 153:9 167:16</p> <p><b>genuineness</b> 17:5,6 28:10 106:11 121:1 160:4 166:23 167:24 168:3 222:13,16 224:7 227:17</p> <p><b>genuine/forged</b> 12:15</p> <p><b>Georgina</b> 1:23</p> <p><b>Gerry</b> 162:25</p> <p><b>gets</b> 116:13</p> <p><b>getting</b> 77:4 94:21 95:2 111:15 171:13 241:24</p> <p><b>Gidion</b> 19:16 20:11 54:10 163:23</p> <p><b>gigabytes</b> 195:1,12</p> <p><b>Giles</b> 41:17</p> <p><b>give</b> 7:4 20:25 45:1 60:8 61:19 64:15,17 64:18 106:16 108:16 117:23 118:21 126:4 147:25 165:25 168:6 173:6 176:19 198:2 202:13 210:19 218:25 227:25 236:23 239:8,11 246:17</p> <p><b>given</b> 12:2 17:15 31:21 37:6 38:18,21 38:24 41:7 51:14,15 51:16 62:9,25 63:5 67:4 92:1 135:19 148:25 156:24 176:5 193:25 194:5 194:17 201:17 202:24 204:1 212:19 214:22 221:15 235:20 238:12</p> <p><b>gives</b> 25:2 80:11 145:11,12,13</p>	<p>212:21</p> <p><b>giving</b> 15:12 43:15 95:13 123:7 135:11 135:21 150:24 235:17</p> <p><b>glad</b> 148:25 156:10 175:5</p> <p><b>glass</b> 239:16</p> <p><b>global</b> 58:8</p> <p><b>go</b> 14:24 21:23 22:1,11 22:18,18 23:18 24:21 28:11 29:15 29:16 31:4 33:22,24 36:1 41:10 45:15 49:18 54:22 62:7,15 63:24 65:6 66:23 67:14,22 69:16 71:17 73:16,20 75:21 76:11 77:9 78:22,25 79:11,18 81:18 82:7,7 94:18 97:20 101:7 111:6 114:20 118:9 123:9 124:11 125:2,13 129:20 146:20 153:13 158:12 161:7,18 162:2,19 164:3,18,20 170:9 172:25 194:22 199:20 200:16 211:25 216:9 223:3 224:17,25 225:16 229:9 241:7 242:6 242:20 243:4,19</p> <p><b>God</b> 226:13</p> <p><b>goes</b> 12:5,13 28:13 30:24 31:12 56:1 75:13 83:4 87:14 101:11 102:4 111:4 113:5 114:24 115:10 151:11 155:15 160:12 227:16</p> <p><b>going</b> 3:9,18 7:14 15:24,25 16:2 20:13 20:17 21:20 22:19 24:25 26:3,25 27:6 28:14 32:12 35:5,21 35:22 43:4 51:16 52:25 60:2 63:9 75:18,19 79:11 87:25 96:9,20 98:25 99:7 101:10 102:2 109:20 112:23 116:12 118:3,4 124:24 128:13 147:21 154:1 157:2 157:15 162:5,13 168:21 170:25 172:7 173:13,14,16 179:8 189:19 192:3 197:24 205:9 209:21 212:16 218:24,25 223:4 225:19 234:25 236:4 248:18</p> <p><b>gone</b> 32:9 47:3</p>	<p><b>good</b> 1:3,25 19:10 20:20 23:15 25:3,4 25:15,15 30:11 36:3 37:12,13 42:5 50:4 53:20 58:13 60:3 64:1 72:18 85:2,22 106:10 145:23 146:6,6 164:16 191:17,21 193:18 193:19 194:12 210:1 212:9,11,23 212:24,24 213:1 214:7,8 216:7 220:4 221:22 229:24 240:15 241:22 243:25 244:2 249:7 249:7</p> <p><b>governed</b> 244:10</p> <p><b>granted</b> 30:25</p> <p><b>granting</b> 30:18</p> <p><b>graphic</b> 162:24</p> <p><b>grateful</b> 173:9</p> <p><b>great</b> 4:24 27:18 28:7 48:5 59:19 88:2 147:19 148:22 173:18 222:16 225:24</p> <p><b>green</b> 66:6 67:5 76:7 109:17 248:15</p> <p><b>green-arrowed</b> 66:7 69:5,5</p> <p><b>ground</b> 8:5</p> <p><b>grounds</b> 183:6</p> <p><b>group</b> 93:9 157:19 158:1</p> <p><b>Guernsey</b> 232:12 235:25 243:20 244:7,11,12,17,22 245:5</p> <p><b>guess</b> 102:2 205:20</p> <p><b>guessing</b> 151:22</p> <p><b>guidance</b> 198:16</p> <p><b>guide</b> 182:16</p> <p><b>guidelines</b> 121:17 182:4</p> <p><b>guiding</b> 89:11</p> <p><b>Guinea</b> 1:12,12,14 95:7 119:6,10 125:16,20 176:11 177:24 178:16 182:7 183:15 184:11 197:3,15 199:19 201:17 204:12 211:25 219:9 223:2,10</p> <p><b>Guinea's</b> 143:14 175:7 176:20 180:24 181:4 221:22</p> <p><b>Gulland</b> 1:23</p> <p><b>Gump</b> 24:23</p> <p><b>gun</b> 65:25</p> <p><b>gut</b> 18:7</p> <p><b>guy</b> 19:17 21:3</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>H</b> 102:10 103:10</p> <p><b>habit</b> 102:13,18 105:1</p>	<p><b>habits</b> 102:15,19 163:7</p> <p><b>habitual</b> 107:9</p> <p><b>hair</b> 16:12</p> <p><b>half</b> 38:19,21 39:25 99:6 213:6</p> <p><b>half-empty</b> 239:16</p> <p><b>half-full</b> 239:16</p> <p><b>half-hour</b> 92:4 118:2</p> <p><b>Hamby</b> 20:11</p> <p><b>Hancock</b> 25:11</p> <p><b>hand</b> 3:3 22:3 50:3 83:5 86:3 206:24 208:17 220:18 233:23</p> <p><b>handed</b> 4:14 5:21 9:4 167:2</p> <p><b>handle</b> 92:18</p> <p><b>handout</b> 28:2</p> <p><b>hands</b> 73:12 234:15 246:11</p> <p><b>handwriting</b> 15:14 16:19 17:16 18:1,5 22:12 50:13 53:1 89:19 91:9,12 98:17 111:20 118:9 120:8 120:21,24 121:7 122:11,14 125:22 131:24 135:13,25 137:14,15,16,22,22 139:9,12 144:18 145:11,16,17 169:8 169:9,12 170:8,19 170:23 171:8,14,15 176:14,17 201:10 226:20</p> <p><b>handwritings</b> 17:2</p> <p><b>hang</b> 72:19</p> <p><b>Hans</b> 19:16 54:10</p> <p><b>happen</b> 26:7 51:13 87:25 107:10 136:21 197:24 235:22</p> <p><b>happened</b> 8:6 71:8 225:11</p> <p><b>happening</b> 87:19 88:7</p> <p><b>happens</b> 88:1 234:19</p> <p><b>happy</b> 242:16</p> <p><b>hard</b> 4:9 105:7 112:20 114:17</p> <p><b>hardly</b> 83:5</p> <p><b>Hardy</b> 23:18</p> <p><b>hat</b> 72:19</p> <p><b>hate</b> 245:6</p> <p><b>having</b> 11:2 22:12,17 22:18 24:19 45:20 73:11 146:13 185:1 193:18 198:17 206:17 227:19 229:1 233:24 239:10 242:8</p> <p><b>healthy</b> 242:9,10</p> <p><b>hear</b> 1:5 108:6 158:7 181:21 184:11 203:13 238:23 245:10</p> <p><b>heard</b> 2:13 9:17 10:2</p>	<p>91:10 94:2 108:8,12 118:5,12 127:15 132:2 146:12 148:2 153:21 157:10 158:9,10 173:15 176:19 177:10 183:22 185:17 198:21,24 199:1,3 208:2 224:10 227:15 237:12 241:22</p> <p><b>hearing</b> 1:4,7 37:1 88:22 130:17 158:8 180:5,7 183:22 185:17,22 186:18 188:6 189:4 190:9 190:16,24 191:11 191:25 193:23 194:17 195:14,20 195:24 196:13,19 198:21 204:10 205:11 216:12,12 217:25 218:23 220:23 228:16,18 228:18,24 229:17 231:25 232:2 235:2 238:13 247:20 248:7 249:1,5,6,9</p> <p><b>hearings</b> 229:19</p> <p><b>heavier</b> 81:18 116:13 116:19</p> <p><b>heavy</b> 30:22 116:11,20 116:21</p> <p><b>Hebrew</b> 109:23 123:11,17,17,21,22 124:1,8,12,16,22 125:7 134:19,23,23 134:24,25 135:4,7 176:13</p> <p><b>heed</b> 216:15 217:10</p> <p><b>height</b> 78:10,15 80:1,3 80:7 100:9 103:19 133:7</p> <p><b>height-to-width</b> 77:20</p> <p><b>help</b> 30:6 31:12 52:11 70:7 95:22 138:2 147:16 183:24 229:20,21</p> <p><b>helpful</b> 4:6 30:1,2 55:22 147:16 153:1 153:3 156:14 157:3 236:6 245:17</p> <p><b>hence</b> 150:24</p> <p><b>her</b> 198:25</p> <p><b>hesitating</b> 110:10</p> <p><b>hesitation</b> 11:18 18:12 110:7 166:12 233:14</p> <p><b>hide</b> 191:1</p> <p><b>high</b> 20:16 42:1 48:12 55:13 104:18 133:2</p> <p><b>higher</b> 64:25 242:6</p> <p><b>highest</b> 79:5 177:8</p> <p><b>highlight</b> 177:23</p> <p><b>highlighted</b> 174:3</p> <p><b>highly</b> 28:5 155:23 183:21 191:23</p>
--	--	--	--	--	---

<p>192:14  <b>high-resolution</b> 104:2  <b>Hilton</b> 158:21  <b>him</b> 6:16 30:18 50:2          133:5 148:24          162:17 164:9,10          166:7,8 172:7          187:19,20 194:10          213:5 216:2 220:2          225:19  <b>himself</b> 2:22 188:22          218:4 222:18 226:2  <b>HINDLEY</b> 1:16  <b>hit</b> 52:10,11  <b>hold</b> 46:20 68:18,20          69:6  <b>Holdings</b> 69:12  <b>holes</b> 150:9  <b>home</b> 243:4 249:7  <b>honest</b> 49:23,24          215:18  <b>honestly</b> 20:24 44:3          232:22  <b>honesty</b> 218:11  <b>honour</b> 2:18 94:7,11  <b>hook</b> 25:24 26:1 35:5          96:16,19,24 126:19          134:10,14 166:14  <b>hooks</b> 25:22 97:1          114:21 167:13  <b>hope</b> 1:3 4:17 50:4          92:22 133:4 147:15          167:11 216:7          219:16  <b>hopefully</b> 3:3 146:21  <b>horizontal</b> 109:6,14          111:18  <b>horizontally</b> 73:3          76:15 111:3 133:1  <b>horrified</b> 40:25  <b>HORTON</b> 1:18  <b>hotel</b> 194:23  <b>hour</b> 30:23 122:5  <b>hours</b> 60:2 126:12          173:5 180:2  <b>housekeeping</b> 3:8  <b>huge</b> 11:17 32:8  <b>hugely</b> 34:16 196:23  <b>hung</b> 128:14  <b>hungry</b> 145:24  <b>husband</b> 57:24  <b>husbands</b> 18:19  <b>hypotheses</b> 58:7          138:17,18 139:8          233:24  <b>hypothesis</b> 139:1          140:2,2,4,6 144:13          161:4,5,10,11,14,15          161:20,21,23 162:2  <b>hypothetical</b> 63:11          219:17  <b>hypothetically</b> 234:1</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>IBA</b> 182:8,10,16  <b>ICC</b> 1:4 182:1  <b>ICSID</b> 179:20,20</p>	<p>181:6,8,11,12          182:20,22 184:13          184:14 206:22  <b>ID</b> 178:12  <b>idea</b> 46:10 50:9 57:6          91:18 150:18 152:5          157:1 158:23          163:16 171:6,10,13          171:14 194:5          195:12 205:24          212:19 219:6,19          229:24 231:17          238:8 241:13,14  <b>ideally</b> 235:15  <b>identical</b> 102:6 110:2          111:11 143:23  <b>identifiable</b> 170:22  <b>identification</b> 17:20          18:5  <b>identified</b> 15:3 17:17          17:17 44:9 46:15          47:14,18 48:17          61:10,16 107:25          126:18 129:5 130:2          130:6,18,24 155:9          156:5 184:18  <b>identify</b> 2:22 14:7          21:13 23:22 32:15          42:6,7 46:4 65:12          65:13 73:22 195:21  <b>identifying</b> 17:22          99:14 226:17  <b>identity</b> 17:25 89:18          226:19  <b>ideograms</b> 135:15          136:2  <b>idiosyncratic</b> 99:24  <b>ignore</b> 244:24  <b>ignored</b> 220:11  <b>ignoring</b> 18:3 226:22  <b>illiterate</b> 18:19  <b>illogical</b> 168:17  <b>illustrate</b> 68:24 76:23          166:13 170:9  <b>illustrated</b> 33:2 76:9          165:24  <b>illustration</b> 23:13          169:16  <b>illustrations</b> 8:17          29:20 65:10,16          79:14  <b>image</b> 53:25 65:13,19          104:7  <b>images</b> 5:23 73:22          154:25 155:4,5          156:7  <b>imaginary</b> 68:4  <b>Imagine</b> 59:2  <b>imitate</b> 205:3  <b>imitated</b> 165:14  <b>imitating</b> 204:21  <b>imitation</b> 165:13          168:9  <b>immediately</b> 172:25          210:11  <b>impartial</b> 182:18          211:15 218:3</p>	<p>227:10  <b>impartiality</b> 179:18          181:14,17,20,21          182:1,11 183:8,11          184:10 197:9 198:3          199:15,21,24 204:6          205:13,25 206:1,13          206:15 211:11,13          211:19 212:22          215:4 217:24          218:14  <b>impatient</b> 88:20  <b>impeached</b> 220:6  <b>impeccable</b> 236:17  <b>imply</b> 193:13  <b>importance</b> 15:17          214:4 221:23  <b>important</b> 14:20 15:6          15:23 25:16 77:20          81:14 100:15          104:16 123:8          136:13 149:12          150:10 167:23          168:4 176:6 234:14  <b>importantly</b> 104:14          150:14 153:2          193:14  <b>impose</b> 241:10,17  <b>imposing</b> 241:12  <b>impossibility</b> 42:11  <b>impossible</b> 139:20          167:6  <b>impressed</b> 150:14,16  <b>impression</b> 175:19  <b>impressions</b> 12:23  <b>improper</b> 7:3  <b>improves</b> 19:7  <b>inability</b> 8:20  <b>inadmissibility</b> 200:20          201:14  <b>inadmissible</b> 179:23          181:1 199:12 200:6          201:2,16 202:21          234:2,6  <b>inappropriate</b> 45:18          45:23 191:23          192:14 196:23  <b>incidentally</b> 69:14  <b>inclination</b> 100:7          102:11  <b>inclines</b> 103:11  <b>include</b> 17:20 74:18          138:9 145:14 171:3          234:3  <b>included</b> 5:9  <b>includes</b> 1:16 182:11          241:4  <b>including</b> 71:10 82:4          238:16  <b>incompetent</b> 28:12          218:8  <b>inconclusive</b> 10:25          11:16 52:17,20          64:24,25 137:21          151:9  <b>inconsistent</b> 97:4  <b>incorporate</b> 107:9</p>	<p>247:4  <b>incorporated</b> 165:18          168:15  <b>increased</b> 99:16          242:15  <b>increasingly</b> 25:12          29:18,19  <b>incurred</b> 245:15  <b>indeed</b> 11:24 15:10          56:4 195:16 224:8          227:24 240:3  <b>indentation</b> 149:23  <b>independence</b> 25:11          181:13,15,19,23,25          182:9,11 183:8          184:10 187:21          199:15,21,23          205:17  <b>independent</b> 27:20          118:22 182:12,18          221:7  <b>independently</b> 49:15          102:22 171:6,11  <b>indeterminate</b> 10:24          11:16 174:24  <b>Indian</b> 19:17  <b>indicate</b> 2:17 31:22          49:10 80:6 106:1          120:4 138:10          157:14 158:18          210:13 231:2  <b>indicated</b> 11:25 40:22          41:7 47:21 51:1          57:7 92:6 138:11          137:17 150:22          207:20  <b>indicates</b> 165:8  <b>indicating</b> 4:13 5:16          11:23 21:11 22:6          32:6,20 34:14 48:12          66:19 73:6,17  <b>indication</b> 45:1 75:15          104:10 120:15          121:7,12 122:6          144:25 145:15,15          175:9  <b>indications</b> 5:22 59:6          120:20 123:22          167:24 168:1  <b>indicative</b> 114:5  <b>indicator</b> 106:11  <b>indictment</b> 148:23  <b>Indies</b> 16:17  <b>individual</b> 14:17          17:12,21 24:12          58:12 99:22 100:4          136:6,7,12 147:17          161:8 164:12          165:18 170:22          204:20 205:1  <b>individually</b> 197:1  <b>individuals</b> 16:9,10          160:23 172:10  <b>individual's</b> 19:8  <b>indulgence</b> 173:9  <b>inequality</b> 8:4,4          219:12 220:18</p>	<p><b>infer</b> 217:23  <b>inflate</b> 144:24  <b>information</b> 8:18 9:16          43:12 45:4 51:14,16          55:4 58:1 59:20          62:25 63:5 120:19          125:15,24 126:5          132:10 147:20,22          148:17,24 149:1,15          150:17 152:19          153:4 154:2,7,11,21          156:2 160:21          171:21 192:17          195:12 234:8 237:6          238:12  <b>informed</b> 38:3 212:18  <b>informing</b> 237:19  <b>infrared</b> 105:15  <b>initial</b> 31:23,25 38:16          40:16 48:8 74:16          130:5 231:23          244:20  <b>initials</b> 175:21  <b>ink</b> 93:19 140:20,25          141:3 149:23,25          171:7 175:20 176:7  <b>inkjet</b> 44:17,19 150:7          154:24  <b>inks</b> 150:6  <b>ink-ageing</b> 140:23  <b>ink-dating</b> 171:12  <b>input</b> 18:22 46:12          62:9 232:11  <b>insert</b> 53:13  <b>inserting</b> 171:16  <b>inside</b> 14:4,22 23:11          32:13 34:7 70:22          111:6  <b>insincere</b> 28:12 218:9  <b>insisted</b> 139:12  <b>inspect</b> 121:20  <b>inspected</b> 121:21  <b>inspection</b> 40:1 137:8  <b>installing</b> 248:15  <b>instance</b> 16:9 20:9          25:24 63:24 67:2          72:3 150:15 178:4          217:19 226:5  <b>instances</b> 11:4,5 12:14          18:15 63:22 151:8          248:19  <b>instead</b> 73:11 81:25          101:17 135:10          155:8 156:18          241:12  <b>Institute</b> 182:5  <b>instruct</b> 41:17  <b>instructed</b> 13:6 46:10          46:24 148:8  <b>instructing</b> 50:8  <b>instruction</b> 13:2          156:20 227:21  <b>instructions</b> 180:8  <b>integrate</b> 232:17  <b>integrity</b> 179:11  <b>intelligent</b> 17:9  <b>intend</b> 180:9</p>	<p><b>intends</b> 129:19  <b>intense</b> 249:1  <b>intent</b> 160:1 162:10  <b>intention</b> 12:4  <b>intentionally</b> 51:5  <b>interest</b> 7:1 33:1 47:6          47:9 80:22 206:3          222:17  <b>interested</b> 125:5          146:13  <b>interesting</b> 20:19          32:18 76:17 125:8          207:18 222:19          223:14  <b>interestingly</b> 25:9  <b>interests</b> 89:5  <b>intermediate</b> 83:16          167:24  <b>internal</b> 80:4  <b>international</b> 1:2          125:4 182:3,6 200:2          205:15  <b>initially</b> 57:11  <b>internet</b> 194:21  <b>interpret</b> 155:2  <b>interpretation</b> 27:22  <b>interpretations</b> 28:13          218:10  <b>Interpreted</b> 30:14,21          35:20,21 36:5,9,12          61:22 204:1,4 219:2          220:8,14,21,25          227:2,23  <b>interpreter</b> 2:20,20,21          224:11  <b>interpreters</b> 2:18          92:18 203:16          233:16 248:23          249:3  <b>interpreting</b> 218:14  <b>interrupt</b> 42:21 109:7  <b>interrupted</b> 194:10  <b>interrupting</b> 168:24  <b>interruption</b> 26:9  <b>intersection</b> 80:10          134:12  <b>interspersed</b> 234:3  <b>intro</b> 115:25 126:19  <b>introduce</b> 7:19  <b>introduced</b> 7:21,23,24  <b>introductory</b> 96:16,19          105:8 114:9 115:2  <b>investment</b> 1:2 151:25  <b>invite</b> 177:18  <b>invited</b> 221:1  <b>invoice</b> 245:16  <b>invoices</b> 237:3  <b>involved</b> 24:19 49:18          57:4,6 116:8 151:13          151:15,20 172:10          188:1 208:1  <b>involving</b> 56:21  <b>irregularities</b> 120:3          157:14 175:13,18  <b>irrelevant</b> 12:22 59:14          151:16 176:2          199:24</p>
---	---	---	--	---	--

<p><b>irrespective</b> 139:11 140:21 <b>Israel</b> 135:8 <b>issue</b> 13:6 26:14 61:25 63:20 91:10 105:18 148:9 149:12 158:2 181:18 183:21 184:4,7 192:20 193:17 196:12,22 199:20 206:24 208:3 212:8,8 229:25 237:17 246:3 <b>issued</b> 155:16 199:22 200:1,22 <b>issues</b> 147:5,17 153:23 177:13 194:24 196:25 197:4 199:3 202:16 204:8 229:14 231:20 239:11 244:9,12 246:16 247:1 <b>item</b> 193:17 245:21 <b>items</b> 7:2 18:7 66:4 221:9 225:16 <b>i.e.</b> 198:9 216:12</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>J</b> 103:24 127:16 <b>Jack</b> 21:19 23:14 54:24 <b>Jaeger</b> 1:19 4:8 204:4 224:14 <b>James</b> 1:16 54:10 <b>JAN</b> 1:9 <b>January</b> 37:20 40:15 40:23 42:10,11,17 43:9 142:15 180:23 190:5 210:11 213:13,18,21 214:3 214:13 219:24,25 220:1 <b>Japan</b> 16:16 <b>JENNY</b> 1:16 <b>JESKO</b> 1:21 <b>Jewish</b> 135:7 <b>Jim</b> 19:16 21:5 <b>job</b> 224:18 246:17 249:4 <b>jobs</b> 195:5 <b>John</b> 21:19 23:25 25:11 <b>join</b> 228:10 <b>joining</b> 73:16 <b>joint</b> 144:22 <b>judge</b> 161:6,11 184:2 <b>judges</b> 188:2 <b>judgment</b> 184:8 <b>July</b> 240:10 245:24,25 <b>jump</b> 192:18 <b>jumping</b> 65:24 219:19 <b>June</b> 221:13 231:25 235:9 239:19,20,22 239:25 240:9 <b>June's</b> 238:13 <b>Junior</b> 23:19 <b>jurisdiction</b> 244:13,16</p>	<p>244:23 <b>jurisdictions</b> 198:2,7 <b>justice</b> 246:17 <b>justifiable</b> 179:17 <b>justified</b> 210:5 <b>justify</b> 194:1 197:1</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>K</b> 102:1 <b>KAREL</b> 1:16 <b>Katy</b> 1:16 37:22,23 <b>KAUFMANN-KO...</b> 1:9 <b>keep</b> 5:3 89:5 92:4 107:6 117:22 160:23 202:25 219:7 220:17 233:15 241:23 242:8 <b>keeping</b> 66:3 156:1 <b>Kelly</b> 158:21 159:3 173:23 <b>kept</b> 115:20 126:7 221:8 234:23 <b>key</b> 115:18 242:3 <b>kids</b> 161:8 <b>kind</b> 50:15 51:1,20 52:19 96:17,24 106:12,17 115:24 148:4 149:9,14 158:10 160:25 170:2 171:13 181:10 204:22 217:22 233:5 240:16 <b>kinds</b> 162:18 163:12 <b>kitchen</b> 18:25 <b>Kléber</b> 1:4 <b>knew</b> 21:5 224:4 243:19 <b>knock-on</b> 244:15 <b>know</b> 4:17 22:2,5 30:2 32:23 44:15 47:6 52:12,13,14 53:3 57:1 60:18 69:15 70:2 71:21 72:1 78:20 91:12,23 92:1 102:1 104:23 106:17 110:2 111:5 120:10 124:2,22 125:12 128:11 134:20 135:22 145:15 148:17 149:1,4,25 151:21 154:8,9 156:11,22 156:24 157:10 158:4 159:6,11 160:3,7,23 161:2,11 162:9 173:7 189:17 190:17 193:5 199:5 199:7 204:16,17 205:16 213:12,25 214:15,16 222:8,12 222:17 224:4 228:16 232:2,18,19 233:2,14 235:19 239:4 240:21 243:4</p>	<p>246:12 <b>knowing</b> 239:22 <b>knowledge</b> 39:23 54:16 144:6 183:5 <b>known</b> 15:10,23 16:7 16:22 32:24 35:10 73:9,25 75:23 76:25 78:18 79:5 85:8,11 86:8,24 87:4 96:5,6 96:12,18,25 97:1,7 97:13 98:22 99:11 99:19 100:1,13,22 101:1,18 102:6,20 102:24 105:12,21 105:24 108:20 109:3,16,20 110:3 110:25 111:12,22 112:2,10,10,14,18 113:2,8,12,18,23 115:8 116:22,23 117:7,14,17 124:4 124:21 129:8 130:13 132:24 133:14 140:18 170:12 172:9 186:13 187:18 215:24 <b>knowns</b> 69:2 100:21 109:2 115:23 <b>knows</b> 135:7 217:9 <b>K10.3</b> 68:15 <b>K11.10</b> 66:14 <b>K11.8</b> 75:18 <b>K12</b> 68:16 <b>K12.1</b> 67:23 82:17 97:14 98:24 <b>K12.17</b> 67:23 <b>K13</b> 110:5 <b>K13.2</b> 112:15 113:4 <b>K13.3</b> 113:4 <b>K13.4</b> 110:14 113:4 <b>K14.2</b> 78:15 <b>K15.1</b> 75:19 <b>K17.13</b> 66:17 75:20 <b>K19.1</b> 97:16 99:1 105:4 128:4,6 <b>K19.18</b> 76:20 77:12 81:24 82:2,21 113:3 <b>K22.1</b> 111:12 112:15 113:4 <b>K3</b> 133:25 <b>K3.1</b> 67:2,4,13 97:14 98:25 <b>K30.2</b> 113:5 <b>K6.3</b> 96:22 97:15 98:25 <b>K8.5</b> 97:15 99:1 <b>K9.1</b> 97:15 98:25</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>L</b> 43:5,7 109:17 111:25 192:23 196:10 214:16 <b>label</b> 122:1,4 <b>labelled</b> 96:3 <b>laboratories</b> 121:20 121:22 147:1</p>	<p>153:14 <b>laboratory</b> 2:4 2:7 25:2 87:9 93:17 121:21 <b>labouring</b> 24:21 29:20 <b>lack</b> 17:6 18:12 184:16 184:17 198:3 209:3 213:1 218:14 <b>laid</b> 91:13 <b>LANGER</b> 1:21 <b>language</b> 135:19 247:25 <b>languages</b> 123:13,16 136:4 <b>LaPorte</b> 3:24 4:1 1:23 10:2,13 11:4,17,24 12:21 15:11 25:7 146:11,16,20,24,25 171:1 172:21 173:19 174:5,23 176:3 178:7 186:5 186:18,24 188:14 194:10,13 209:13 215:9 <b>LaPorte's</b> 1:22 <b>LAPUNZINA</b> 2:9 <b>large</b> 11:4,5,20 15:5 27:4 31:11 56:19 57:12 103:11,21 <b>largely</b> 141:16 <b>larger</b> 18:22 57:21 85:15 <b>laser</b> 44:20,24 <b>last</b> 5:6 8:16 16:24 22:2,4 23:1 36:15 41:20,22 56:18 63:9 78:2 88:21 104:20 112:20 117:15 126:12 129:1 159:20 167:1,3 169:1,2,5 170:10 171:18 173:15 174:17 180:2 189:22 190:3 196:12 198:19 203:1 204:9 221:13 227:16 228:1,16 232:1 236:22 238:13 247:20,24 <b>lastly</b> 167:18 168:21 <b>late</b> 92:14 145:25 146:17 171:15 203:24 235:9 <b>later</b> 38:17 60:3 62:14 95:11 103:1 139:19 139:19,21,22 144:14 179:3 208:7 208:15 213:19 226:1 237:20 238:7 242:14 243:11 <b>later-dated</b> 150:17 <b>Latin</b> 97:23 <b>Latin/Roman</b> 135:18 <b>laughs</b> 242:17 <b>launch</b> 219:15 <b>Laurent</b> 1:19 224:14 <b>law</b> 145:3 184:15</p>	<p>239:3 <b>lawyer</b> 145:8 <b>lawyers</b> 232:12 <b>layman</b> 50:25 <b>laypeople</b> 157:6 <b>layperson</b> 70:6 <b>laypersons</b> 183:23 <b>LCIA</b> 182:3 <b>lead</b> 52:19 129:16 218:13 <b>leading</b> 8:2 <b>leads</b> 11:11 81:19 222:5 224:23 226:10 <b>leaning</b> 20:10 <b>learned</b> 38:6 115:17 <b>learning</b> 46:25 <b>learns</b> 136:9 <b>learnt</b> 127:1 174:17 174:18 175:1,24 176:1,9,13 219:25 221:10 <b>least</b> 1:4 48:12 69:23 82:3 144:22 148:5 150:5 157:5 158:16 160:18 196:3 199:10,24 200:23 241:11 <b>leave</b> 62:17 108:5 168:21 219:12 220:6 228:3,10 243:12 <b>led</b> 65:7 163:5 <b>left</b> 33:14 53:13 96:17 97:11 98:7 99:17 100:17 101:11,13 101:20 102:13 110:16 112:7,23 113:3 114:10,11 115:4,10,13 116:4 117:8,9 123:15 127:2 129:21 134:11 172:16 173:4 202:5 234:5 <b>left-hand</b> 29:21,22 31:6 34:12 53:18 78:1,24 103:23 111:9 <b>legal</b> 243:16 <b>legalisation</b> 150:9 <b>legalise</b> 178:13 <b>legalised</b> 178:15 <b>legible</b> 20:12 <b>legitimate</b> 45:11 128:24 225:8 <b>length</b> 10:2 33:1,5 34:1,8,12,13,15,18 54:4 82:22 83:11,19 85:6,17 98:10,12,19 98:23 99:6 100:9 214:5 222:20 229:23 241:18 <b>lengths</b> 31:8 <b>lengthy</b> 195:15 221:13 <b>less</b> 34:14 60:10 98:18 99:6,20 102:16 106:20 109:1 118:1</p>	<p>121:23 146:21 208:6 209:17 <b>let</b> 6:15,18 7:4 29:16 36:12 45:16 58:19 58:25 59:2 77:9 89:13 91:23 108:22 133:17 219:20 <b>letter</b> 43:9,11,14 44:7 45:17 61:12 62:10 69:11 96:4 97:23 101:5,9,16 104:12 133:11 145:19 187:13 210:11 214:3,12,15 231:2 231:14,24 233:1 243:21 <b>letters</b> 96:3 104:12,13 106:8 110:24 124:3 134:19 <b>let's</b> 65:12,13 72:19 92:24 101:7 102:10 105:5 110:12 112:3 140:2,15,17 141:3 146:6 183:19 184:17 203:19 216:11 223:15 231:18 233:17 237:19,24 <b>Lev</b> 26:24 28:18,20,23 72:23 85:17 113:21 117:15 130:24 166:6 177:9 222:1 222:12 <b>level</b> 20:16 21:17 48:12 177:8,10 <b>liability</b> 228:18 <b>library</b> 55:1 <b>Libson</b> 1:16 3:4,10,18 3:21 4:4 1:12 4:8,11 7:5 37:8 42:21 60:24 61:1,4,19 62:17 64:3 69:18,19 69:21 74:20 88:25 92:1,7,20 108:2 118:1,8,11 119:9 126:7 129:10 142:1 142:5,22 143:21,23 144:2 145:20 173:2 173:9,13 243:3 244:5,9,15 245:12 <b>lie</b> 23:8,11 <b>lies</b> 27:10 <b>lift</b> 243:18 <b>lifted</b> 76:18 83:5 <b>lifting</b> 77:1 <b>lifts</b> 163:13 <b>light</b> 59:22 114:21 115:15 116:12,17 135:8 180:1 248:15 <b>lightly</b> 105:10 <b>liked</b> 19:5 <b>likelihood</b> 88:7 235:11 <b>likely</b> 12:15,16 14:16 26:10,12,19 27:8 28:14 58:9 114:23 122:22 160:6 222:7 223:19,19</p>
--	--	---	---	---	---

<p><b>likes</b> 132:15  <b>likewise</b> 248:21  <b>limit</b> 79:9 94:20 118:4                  118:8 230:7 231:22                  239:23 240:17,19                  240:20,21,22 241:8                  241:10,12,17 243:7  <b>limitation</b> 36:14                  229:23 231:21                  241:14 242:15  <b>limitations</b> 103:8                  129:8 229:23                  235:15  <b>limited</b> 1:11,12 2:8                  36:7,8,19 87:3,3,5                  189:13,17 230:21                  234:21 240:3  <b>limits</b> 229:10 238:20                  240:19  <b>limp</b> 16:15  <b>Lindblom</b> 158:22                  159:3 173:23  <b>line</b> 13:25 18:13 19:20                  19:20 23:1 32:9,10                  53:15 68:19 70:22                  70:23,23 71:10 72:9                  74:18,19,21 78:15                  80:17 82:6,9,19,24                  83:6,13 85:5,17                  89:4 98:14 99:24                  100:11 104:15,21                  105:1 112:5,11,15                  114:21 170:1,4                  188:17 189:6,6                  194:2 195:17,17                  212:5  <b>lines</b> 16:24 31:9 32:12                  61:5 62:21 63:10                  72:4 73:19 74:10,17                  75:4,8 97:21 98:6                  99:9 116:1,7,9,17                  124:11 134:9 148:6                  152:12 185:21                  186:7 187:1,2                  188:10,13,20                  189:24 190:1,11                  191:8 192:4 194:2                  194:15 195:13,23                  195:23 196:1,16,18                  198:24 199:2 215:8                  216:3 218:7  <b>Lisa</b> 1:23  <b>list</b> 188:4 230:19                  239:3 248:3  <b>listed</b> 199:13 216:16  <b>listen</b> 203:25 227:19  <b>listening</b> 227:18 228:1  <b>literature</b> 205:14  <b>litigation</b> 147:6  <b>little</b> 6:24 8:14 25:24                  26:1 32:10 35:11                  37:1 60:3 64:21                  80:2 82:10 83:13                  92:23 94:18 99:6                  103:11,19,20 105:7                  105:8 116:3,19                  117:3,10 124:22</p>	<p>129:2 143:18 144:7                  145:25 148:12                  158:11,15 163:19                  163:21 202:23                  203:14,17,24                  230:15 232:15                  236:9 242:6  <b>lives</b> 204:17  <b>Lloyd</b> 25:8 164:8  <b>LLP</b> 1:17  <b>locate</b> 131:9  <b>logic</b> 10:10  <b>logical</b> 211:21 231:7  <b>London</b> 40:11 214:7  <b>long</b> 13:25 29:19                  32:11 34:22,23 35:2                  37:4 41:1 73:17                  91:7 92:10 103:18                  195:11 224:17                  235:1,6,8 236:19                  240:23 246:13  <b>longer</b> 30:18 92:3,5,15                  163:3 240:24  <b>longevity</b> 90:19  <b>looked</b> 46:18 51:11                  78:3 117:1 118:22                  124:24 155:4,24                  156:5,7 178:25  <b>looking</b> 12:6 19:7 23:7                  29:13 30:3 34:4                  36:13 44:16,21 51:8                  65:22 68:12 69:1                  73:1,2 74:21,23,24                  74:25 76:21 78:22                  78:20 79:24 86:21                  88:19 95:4,25                  100:23 102:15                  103:4 104:10,16                  105:21 116:6                  122:11 124:1,3,6                  126:13 127:3 135:9                  135:20 138:22                  146:2,17 161:10                  166:21 212:15                  213:10,17,23 214:2                  245:4 248:16  <b>looks</b> 13:17 14:14                  23:14,18 24:23                  55:24 71:17 110:7                  128:4 134:22                  169:22 227:4  <b>loop</b> 66:9 67:18,19                  68:1,2,2 69:9 70:17                  72:7 73:1,2 75:15                  75:17,18,18,19,19                  75:20,20,20 76:1                  80:2,8 81:25 98:2                  99:10,10,15,15,16                  100:12,19,19 101:6                  101:10,13,22 104:4                  111:11 112:7,8,12                  112:20 126:22,23                  130:5,6,12 133:8                  134:10 226:6  <b>looping</b> 68:16  <b>loops</b> 66:13 68:1,19,20                  79:15,16 97:9,14,14</p>	<p>97:15,15,16,16,21                  97:22 98:2,2,20                  99:25 100:16 101:5                  103:22 104:9                  109:14 112:4,4                  126:20 127:19                  130:9,11 133:9,10                  134:6  <b>loosened</b> 37:1  <b>loses</b> 207:2  <b>loss</b> 6:13 26:8  <b>lost</b> 78:3 167:11 195:4  <b>lot</b> 8:17 9:17 16:1 19:1                  19:2,24 27:18 28:20                  31:5 43:3,12 51:14                  56:10,17 57:7 81:18                  83:14 88:3 91:5                  95:3 104:18 112:10                  127:1 149:15                  157:17 159:24                  195:16 201:23                  216:15 221:25                  232:24 246:16  <b>lots</b> 87:24  <b>lovely</b> 21:17  <b>lower</b> 80:15 109:15                  111:9  <b>lowest</b> 79:6  <b>low-level</b> 56:16 58:12  <b>LUCILLE</b> 2:11  <b>lunch</b> 92:14,22 145:24                  146:7</p> <hr/> <p><b>M</b></p> <p><b>M</b> 23:18 24:23 97:23                  97:25 98:5 101:6                  104:9 126:20  <b>machines</b> 102:7 110:3  <b>macro</b> 106:12  <b>madam</b> 1:12 4:16 8:13                  35:20 89:4 93:15                  95:1 108:2 129:14                  133:21 142:6                  145:22 146:16                  158:23 171:1 173:2                  177:9 204:4 218:24                  224:8 228:3 230:20                  233:19 246:11  <b>made</b> 4:3 5:5,23 19:10                  23:6 25:23 32:9                  38:14,17 70:12                  97:25 101:19                  103:15,24 106:4                  111:10 117:17                  118:24 119:25                  142:19 143:21                  149:5 154:18 156:2                  166:15 179:14                  184:19 185:13                  189:1 190:3,4,4                  192:9,12,24 203:1                  225:3 243:18  <b>magnification</b> 55:14                  166:22  <b>magnitude</b> 237:4  <b>MAGNUS</b> 1:21  <b>mail</b> 248:7</p>	<p><b>main</b> 127:25 147:10                  183:17 184:24  <b>maintain</b> 233:2  <b>major</b> 62:18 112:4                  196:21  <b>majority</b> 56:16 193:10  <b>make</b> 2:14 4:6,19 6:22                  7:8 12:14 21:13                  30:12 37:5 43:3                  51:2 72:14 91:1                  94:3 98:3 101:16                  105:2 106:9 108:5                  123:8,24 135:13,16                  146:3 148:19                  153:16,19,20                  154:10 161:8,9,12                  164:16 179:24                  180:8,21 189:3                  191:3 197:15                  198:19 202:23                  205:12 210:12                  213:22 229:2,4                  230:24 231:15                  234:20 245:2,5,9                  248:5  <b>makes</b> 33:6 76:14                  155:25 188:22                  206:2 220:16                  231:15  <b>making</b> 5:3 6:5,23                  77:24 95:9 105:17                  178:15 190:22                  206:15  <b>Mamadie</b> 126:1                  178:10,16 230:23                  241:5  <b>man</b> 178:13  <b>manage</b> 246:24  <b>Mancebo</b> 38:22                  208:11 210:18                  213:8,15 219:23  <b>mandate</b> 197:19  <b>mandated</b> 183:25  <b>mandatory</b> 121:17  <b>manifest</b> 184:12,15  <b>manifestness</b> 184:22  <b>manipulation</b> 77:7,14  <b>manner</b> 109:21 115:9                  157:16 165:2                  168:13 196:5  <b>manufacture</b> 176:4  <b>many</b> 10:23 13:3                  26:20 27:1 35:3                  41:15,16 58:16                  85:24 92:2 114:2                  121:16 130:10                  138:8 156:13                  159:13,14,16,17,25                  162:17 165:23                  169:14 171:5 176:5                  219:10 221:24                  222:11,21 225:24                  228:9 236:13                  239:11 242:19                  246:15  <b>man's</b> 227:1  <b>marathon</b> 227:22,24</p>	<p><b>Marc</b> 47:15 96:1                  105:20,23 126:14                  132:25 169:17  <b>March</b> 1:6 1:1 2:11                  93:23 119:3,8                  136:20 205:10  <b>marginally</b> 67:12  <b>MARIE</b> 2:10  <b>mark</b> 109:17 111:18                  111:18,21,23 112:1  <b>marked</b> 46:3,22 47:1                  51:10 74:3,4,5                  114:6,7 131:8                  156:16 178:25  <b>marked-up</b> 53:21  <b>marking</b> 78:4  <b>marks</b> 115:5  <b>markups</b> 131:14  <b>masking</b> 32:14  <b>masks</b> 15:4  <b>master</b> 25:8 54:5 57:1                  106:21,25 107:4,16                  107:16,21 151:18                  151:22,23 152:3                  163:21 164:2 165:6                  166:4 167:16                  168:21 204:18,18                  225:20  <b>material</b> 7:9,10,11,12                  7:22 8:1 9:4 26:12                  26:20 33:9 45:5                  48:7 66:10 164:18                  180:4 241:5  <b>materially</b> 221:6  <b>materials</b> 6:18 8:25                  9:3,6 14:8,19 26:15                  130:16 246:16                  248:6  <b>math</b> 134:15  <b>mathematical</b> 78:13                  79:7 88:9 168:23                  169:6 170:7 223:22  <b>matter</b> 1:1 3:8 27:10                  37:19 38:1 59:8                  87:8 118:16 147:2                  167:10 179:19                  198:22 199:24                  203:5 205:23  <b>mattered</b> 63:11  <b>matters</b> 4:11 49:9                  61:24 177:2 240:4                  246:15  <b>maximum</b> 173:5 242:2  <b>may</b> 12:6 13:21,24,25                  15:1 16:11,12,12,12                  16:13,14 18:22                  21:22 23:11 25:19                  30:14 36:15,17 37:1                  58:12 61:23 65:9                  69:7 71:9,10,11,12                  72:7,12 76:23 82:15                  95:1 113:18 117:22                  118:1 126:22,25                  128:16 130:12                  133:22,23 147:8,9                  147:14 149:13,16                  151:17 153:6</p>	<p>154:14 155:18                  157:7 160:11 168:9                  184:11 197:21                  199:25 202:17                  204:9 205:25 209:4                  209:18 212:10                  213:9 214:18 221:9                  227:22 229:1,24                  231:20,25 238:13                  238:21 239:12,13                  239:14,17 244:6,15                  244:17,19,23 245:1                  245:3  <b>maybe</b> 4:5 30:6 32:2                  35:25 62:15 95:11                  97:17 102:10 108:5                  110:21 117:22                  132:11 135:7                  141:12 151:23                  183:21 203:20                  230:13,15,19                  232:15,21 233:4,8                  237:20 238:21                  242:6 246:21,22,23                  247:13,17  <b>MAYER</b> 1:10 81:24                  82:3,11,13 83:1,4,7                  83:16,20 86:17  <b>ma'am</b> 108:10  <b>Maitre</b> 225:7  <b>McCarthy</b> 21:19,19                  23:25 54:24  <b>McCarthy's</b> 23:14  <b>McGowan</b> 1:23  <b>mean</b> 48:20 49:23                  52:9 57:19 59:19                  65:12 85:21 87:2,8                  87:23 88:3 90:24                  100:10,13 121:4                  124:3,15 126:2                  128:11 135:11                  148:23 150:17                  152:23 153:9                  160:17 162:12                  173:4 180:16                  186:19 196:17                  232:5,22,23 239:1  <b>meaning</b> 114:15 175:2                  175:5 207:3 224:12  <b>meaningful</b> 90:14                  98:18  <b>meaningfully</b> 199:7,8  <b>meaningless</b> 50:23                  175:8 207:2  <b>means</b> 65:2 98:15                  104:5 105:9 121:5                  140:19 141:4                  145:15 149:14                  206:4 208:21                  212:15 246:18  <b>meant</b> 41:4 176:3                  222:9  <b>measurable</b> 67:1                  75:24 79:3 84:18                  85:5 87:24 140:22  <b>measurably</b> 67:10  <b>measure</b> 67:12 76:5</p>
---	--	---	--	---	--

<p>78:10 80:9 85:6,8 98:9 <b>measured</b> 134:6,7,9 <b>measurement</b> 13:24 84:15 98:18 100:6,8 100:14 <b>measurements</b> 17:24 85:10,11 98:11,16 128:14 132:14,14 133:24 170:5 <b>measures</b> 170:1 <b>measuring</b> 170:4 <b>meet</b> 181:9 184:20 199:14 <b>meeting</b> 21:3 22:17 54:13,19 145:8 164:7 <b>meetings</b> 164:7 <b>members</b> 8:7 179:11 206:5 248:22 <b>memory</b> 36:25 89:13 103:2 <b>mention</b> 9:24 23:1 27:13 94:21 173:3 210:22 <b>mentioned</b> 5:11 35:24 40:14 48:14 56:8 100:3 109:18 155:18 164:8 194:18 212:17 214:4 215:25 223:7 235:23 243:21 <b>mentions</b> 182:9 <b>mere</b> 15:9 220:15 222:24 <b>merely</b> 16:21 18:23 44:23 <b>merit</b> 130:25 <b>merits</b> 204:8 235:2 236:11 237:5 <b>Messrs</b> 163:23 176:9 <b>met</b> 204:16 217:2 <b>methodological</b> 53:1 <b>methodologies</b> 119:23 <b>methods</b> 138:23 139:7 <b>Michael</b> 1:18 37:14 204:7 218:25 <b>Michigan</b> 224:16 <b>microscope</b> 166:22 <b>microscopic</b> 55:11,13 <b>middle</b> 22:1,4 68:1 75:16 77:20 80:10 80:14 180:7 <b>midpoint</b> 134:12 <b>might</b> 14:24 23:2 25:20 29:25 32:10 44:4 48:13 51:11 56:7 57:24 58:11 73:14 81:10 104:24 105:7,14 107:4 110:8 111:15 120:23 126:21 215:11 216:5 222:7 229:5 246:2 <b>miles</b> 75:10 <b>millimetres</b> 14:1 75:25 76:2,3 78:11 79:4</p>	<p>80:10,11 85:7 <b>millions</b> 152:2 <b>mimic</b> 24:11 <b>mind</b> 10:22 14:10 16:18 32:5 35:13 41:19 45:18 56:20 64:23 68:14 77:12 84:5 85:2 91:17 107:7 108:13 109:10 135:21 149:11 160:23 192:9,12 205:21 233:5,10,12 237:17 238:15,23 242:5 <b>minded</b> 234:13 <b>mine</b> 13:3 <b>ministers</b> 37:3 <b>minute</b> 13:19 189:22 190:3 <b>minutes</b> 3:6 30:8,15 30:17 31:3 35:24,24 92:6,12,13,24 94:17 95:3 146:15,21 168:25 173:4,6,7 203:20 225:20 226:1 227:25 <b>misconception</b> 35:1 <b>Mishcon</b> 1:17 2:23 37:23 40:15 41:12 42:14 43:9,12 44:6 46:12 47:21 62:10 <b>mislead</b> 11:21 160:1 162:10 <b>misleading</b> 50:25 145:1 154:19 155:23 170:6 175:6 206:18 234:22 <b>misquote</b> 174:2 <b>misrepresentation</b> 174:13 <b>misrepresentations</b> 173:20 174:11 <b>misrepresenting</b> 174:8 <b>miss</b> 26:3 <b>missed</b> 79:25 <b>missing</b> 29:5,6,7 211:22 <b>mission</b> 197:16 210:21 <b>mistake</b> 5:3 174:5 <b>mistaken</b> 74:25 <b>mistakes</b> 174:8 <b>mix</b> 169:25 <b>mixture</b> 224:11 <b>moderate</b> 64:20 81:17 81:20 122:1 191:9 <b>modern</b> 173:23 <b>modification</b> 223:17 <b>modifications</b> 50:20 <b>modify</b> 48:20 <b>Mohammed</b> 1:17 2:23 <b>moment</b> 11:9 70:7 89:2 99:11 126:4 223:15 237:25 <b>momentary</b> 26:8 <b>Monday</b> 239:25 240:10</p>	<p><b>money</b> 56:10 57:4,6 57:13 151:13,15,20 151:21 152:6 <b>month</b> 233:4 236:22 246:3 <b>months</b> 34:22 208:6 221:11 233:2 235:9 239:7,15 <b>more</b> 15:22 17:5 18:22 25:20,20 29:17 30:23 41:18 48:15 55:4 56:20,23 57:21 58:10,19 61:8 62:8 69:6 78:24 79:1 83:1 85:15,23 86:1 86:1 87:6 91:5 100:6,17 102:16 104:18 108:23,25 112:7,8 114:23 116:17 121:23 122:22 126:17 133:14 136:3 140:1 140:4 143:16 149:19 150:14 152:9 153:2,18,20 159:4 161:2 163:19 165:15 167:7 173:23 175:8 181:13 193:13 196:6 197:2 208:6 209:17 217:8 221:17 222:11,23 224:4,25 231:7 235:20 240:24 242:3 243:12 <b>morning</b> 1:3 3:12 4:8 4:10 5:22 37:12,13 53:7 54:4,23 55:7 61:5 91:18 108:8,12 131:9 132:2 145:8 148:3,4 152:8 154:22 156:15,23 158:23 163:22 164:9,19 166:6 172:4 213:4,20 215:7,25 218:7 <b>mortgage</b> 58:11 <b>most</b> 10:12 18:4,15,18 23:3 82:14 87:24 89:12 96:19 104:13 163:16 164:20 168:4 207:18 209:6 233:18 247:20 <b>mostly</b> 109:21 112:15 136:6 <b>motion</b> 101:24 103:25 105:1 110:15,18,22 111:4,7,10,16 128:8 130:10 133:9 167:20 168:1 <b>motive</b> 211:23,24 212:2 213:25 <b>mouse</b> 30:1 <b>move</b> 13:14 23:13 68:3 72:9,9 97:5 101:23 102:10 107:23 110:12 112:3</p>	<p>113:20 114:6 115:8 115:24 117:9 168:22 <b>movement</b> 13:22 35:17 67:15,19 68:8 68:15,24 73:7 77:5 79:22,23 101:7,9 102:8 104:14 105:3 105:11 106:15 110:8,23 116:23 127:2,4,6 166:12 <b>movements</b> 25:18 128:5 <b>moves</b> 76:13 102:12 104:14 110:15,16 114:9 123:14 <b>moving</b> 11:13 97:11 121:23 181:5 <b>much</b> 1:25 5:2 12:14 21:20 30:18 33:20 55:5 57:6 66:24 70:13 73:24,24 77:13 85:25 88:17 99:3 100:2 113:6 128:2,14 133:1,7 134:14,16 139:12 147:20 151:21 161:1 169:17 172:22 173:10 211:10 222:15 227:19 236:8 241:21 245:25 248:1,24 249:2 <b>multiple</b> 150:13 151:7 156:6 157:23,24 <b>multiple-page</b> 159:21 <b>must</b> 17:20,24 18:1 64:23 89:12,19 161:17,25 165:15 165:21 166:21 179:21 182:12 197:12 226:18,20 226:25 232:6 242:8 <b>mutandis</b> 182:21 <b>mutatis</b> 182:21 <b>myself</b> 25:7 103:4 110:21 111:15 115:19 118:8 170:2 207:22 <b>mysterious</b> 204:15 <b>mystery</b> 194:3 <b>M's</b> 98:3</p>	<p>127:14 221:20 <b>naturalness</b> 104:10 114:5 116:14 164:13 <b>nature</b> 7:7,8 8:21 10:21 14:14 17:7 26:10 56:17 81:5 85:25 92:1 138:22 190:7 211:9 217:13 221:16 <b>NAUD</b> 1:18 3:19 95:1 107:23 129:14,23 131:2 <b>Nazeer</b> 1:17 2:23,23 3:2 30:6 <b>near</b> 41:11 116:20 <b>nearest</b> 76:3 <b>necessarily</b> 49:25 86:12 150:1 160:14 160:17 245:17 <b>necessary</b> 124:25 135:1 221:14 235:7 235:18,19 238:12 239:21 245:6 <b>need</b> 51:25 69:19 85:23,24 86:2,4 90:5,10 118:7 121:10 133:14 143:5 190:15 194:21 203:14 219:14 228:14 229:14 230:12,16 232:11,18,25,25 236:5 238:18 240:4 244:3 245:17 246:16 247:14 <b>needed</b> 164:2 205:6 <b>needs</b> 191:12 236:11 243:6 245:10 <b>negative</b> 151:9 <b>neither</b> 187:4 192:21 <b>nerves</b> 24:19 <b>neutral</b> 121:3 141:5 <b>never</b> 13:6 39:21 52:21,23 91:11 102:22 124:17 148:8,25 149:3 156:4,23 162:1,10 177:10 198:25 208:14 215:22 219:14 224:10 227:4 233:14 <b>nevertheless</b> 184:8 201:21 212:12 <b>new</b> 1:15 7:11,22 31:24 154:7,11 180:3 186:9,16 187:18 189:10,11 191:24 196:24 210:9,15,16 211:14 215:2 <b>Newcomb</b> 88:5 <b>news</b> 145:23 <b>next</b> 2:22 3:20 21:18 24:17,17 28:20,21 28:21 33:10 35:6 62:15 67:25 73:20</p>	<p>76:7 86:23 89:23 97:5,20 99:8 100:18 101:7 107:24 108:25 113:20 120:6 136:23 145:8 146:3 180:9 190:7 195:18 227:2 232:10,21 235:22 244:3 247:13,17 <b>nice</b> 25:24 26:1 79:17 82:24 104:5 <b>night</b> 5:5 8:16 159:21 <b>nine</b> 221:11 226:12 <b>nine-month</b> 235:1 <b>nine-point</b> 121:22 <b>nobody</b> 148:13 204:16 224:18 <b>nodding</b> 92:23 133:5 <b>none</b> 7:10 175:21 220:20 <b>nonetheless</b> 224:3 <b>non-contested</b> 70:8 <b>non-handwriting</b> 50:13 <b>non-published</b> 55:3 <b>norm</b> 133:13 <b>normal</b> 18:16 20:3 209:25 217:3 <b>normally</b> 40:21 41:6,8 82:7 85:23 87:6,6 129:16 194:14 217:1 <b>nose</b> 227:1 <b>notably</b> 156:4 <b>note</b> 7:2 35:20 48:23 53:2,9 140:15 218:4 218:16 223:5 228:9 <b>noted</b> 8:11,12 9:13 62:11 217:11 224:9 224:9 <b>notes</b> 4:7 8:8 38:14,18 38:19,21,25 39:20 39:25 40:1,2,8 41:3 125:16 219:21 <b>nothing</b> 2:1 34:17 67:21,21 75:23 126:5 172:21 190:18 207:4 215:11 217:9 218:13 248:10,21 <b>notice</b> 96:18,22 97:13 98:13,22 99:16,20 100:12,19 104:3,8 112:4 114:20 115:1 115:3,5,6 166:10 <b>notify</b> 192:2 <b>notion</b> 83:16 205:13 205:16,16,17 206:1 <b>notions</b> 212:11 <b>notwithstanding</b> 174:25 <b>novel</b> 209:19 <b>November</b> 208:12 <b>nowhere</b> 41:11 178:20 227:3 <b>nuances</b> 135:16 136:3 <b>number</b> 1:8 9:9 11:4,5</p>
---	--	--	--	---	---



<p>11:20 12:13 27:2,3                  27:4 28:8 30:11                  41:9 52:3 65:8 66:3                  66:6 71:9 74:4                  76:14 81:19 85:15                  85:22 87:3,23 94:22                  100:8 101:12 114:8                  114:10,10,11,11,12                  114:13,14,15,24                  115:11,12,13,13,14                  130:2 159:18                  177:14 187:10                  198:11 201:7                  204:13 214:10                  231:13,22 232:5  <b>numbered</b> 97:9  <b>numbering</b> 101:17  <b>numbers</b> 1:16,17,18                  1:24 31:8 98:16                  99:4,7 110:13                  132:14,15,21                  134:16 159:18                  170:6  <b>numerical</b> 78:19                  80:19 132:7,12                  169:6,12 170:13,19  <b>numerous</b> 17:13 28:4                  188:2</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p><b>object</b> 145:18 208:14                  237:18  <b>objection</b> 3:2 5:18 6:2                  6:12 7:2 8:11                  208:16  <b>objections</b> 5:5 6:17                  8:9,9 31:21  <b>objective</b> 147:10                  183:10 205:18                  208:25 211:3                  212:12 232:23  <b>obligation</b> 223:11  <b>observation</b> 25:15                  106:4 168:5 172:12  <b>observations</b> 12:21                  119:24 218:15,21  <b>observe</b> 86:7 155:14                  211:20  <b>observed</b> 95:24                  154:23 168:15                  175:19 211:18  <b>observer</b> 197:7 211:4  <b>obsolete</b> 91:2  <b>obstructed</b> 189:18  <b>obtain</b> 139:25 164:13                  164:25  <b>obtained</b> 42:17 55:2  <b>obvious</b> 10:13 16:5                  26:1 56:20 99:12                  102:10 116:17                  126:17,24,25                  185:13 191:13                  210:5  <b>obviously</b> 3:25 25:15                  26:5 30:18 31:5                  45:10 54:2 55:24                  57:8 58:3 65:5</p>	<p>70:12 71:5 77:14                  78:24 81:4 85:15,21                  91:4 108:6 113:5                  127:18 137:13                  140:7 154:15 179:3                  181:19 183:12,13                  184:6 189:15 197:6                  198:15 201:11                  202:22 225:3,7                  235:5 248:14  <b>occasion</b> 26:7,8 84:25  <b>occasional</b> 165:20  <b>occasionally</b> 35:11  <b>occasions</b> 10:23 24:14                  26:22 64:1 150:23                  192:25 193:4 224:9  <b>occurred</b> 180:2  <b>occurrences</b> 130:3  <b>October</b> 208:12  <b>off</b> 30:10 35:16 67:16                  76:22 77:2,2,5                  82:18,20 88:21                  104:5 110:19                  112:23 115:15                  116:2 167:25 201:3                  248:18  <b>offer</b> 27:15 64:12 65:5                  183:16  <b>offered</b> 219:16  <b>offhand</b> 27:15  <b>office</b> 125:9 170:3  <b>offices</b> 195:3  <b>off-limits</b> 169:3  <b>often</b> 41:17 56:23                  229:14 234:19                  240:24  <b>oh</b> 16:6 22:9,16 23:2                  24:22 30:4 39:4                  40:9 43:19 51:7                  55:19 60:6 65:21                  74:23 75:6 77:16                  191:2 192:9  <b>okay</b> 3:25 4:20 22:10                  30:4 53:17 55:3                  57:17 59:16,21                  70:15 83:13,20                  90:10 103:16                  108:15 115:21                  123:5 124:17 126:7                  127:16 128:16                  132:10 143:12                  164:24 233:11  <b>old</b> 1:16 17:1 90:11                  144:11 158:25  <b>older</b> 159:5  <b>omelette</b> 6:19  <b>once</b> 60:10 148:22                  150:19 151:8,17                  153:23,25 157:6                  162:5 166:19                  171:23 206:4,5                  236:19 241:8,9,18  <b>ones</b> 28:21,21 29:16                  67:24 79:18 106:11                  146:3 175:17                  178:25 228:7                  240:24</p>	<p><b>one-hundredths</b> 99:3  <b>one-off</b> 23:21  <b>one-page</b> 140:14  <b>ongoing</b> 236:2 243:17  <b>only</b> 2:14 7:5 15:13                  19:21 23:4 27:14                  42:9 44:16 47:2                  48:5 53:4 55:14                  56:15 59:16 64:15                  66:11 72:14 77:12                  91:9 94:3 95:12                  98:17 99:25 114:6,7                  122:5 129:15                  131:13 132:14                  154:24 155:24                  179:4 181:23 182:8                  182:12,16 197:11                  197:20 206:24                  211:1,4 217:1,3                  221:21,24 223:20                  225:13 228:7                  229:13 231:11                  234:21 235:4                  236:10 247:25  <b>ooh</b> 91:13  <b>Oops</b> 166:15  <b>open</b> 125:12 162:11  <b>open-ended</b> 152:17  <b>operating</b> 4:23 149:20  <b>operation</b> 168:2  <b>opined</b> 147:9 152:10  <b>opinion</b> 11:15 15:12                  27:15 48:21 49:14                  49:16 58:13 64:12                  64:15,16,18,20 65:5                  65:7 71:22 81:20                  87:1 95:23 105:22                  106:16 107:15                  108:16 113:11,13                  119:3 120:8,15,20                  120:23 122:6,22                  125:19 134:21                  135:21 138:1 145:5                  145:12 152:22                  153:23,25 154:6                  168:7 184:21                  186:20 189:21                  191:17 207:6,10                  213:16,17 224:19                  224:22 237:15  <b>opinions</b> 36:2 51:8                  118:13,14 121:16                  121:16,19 128:18                  157:21 206:25                  207:11,11,17                  218:21  <b>opponents</b> 237:14  <b>opponent's</b> 229:22  <b>opportunities</b> 36:2  <b>opportunity</b> 49:4                  55:11 161:2 164:6                  192:16 227:7 230:6  <b>oppose</b> 234:24 241:13                  241:14  <b>opposed</b> 10:18 18:23                  57:23 78:17 79:2                  90:11 136:5 217:18</p>	<p>232:4 237:4  <b>opposing</b> 185:10                  241:20 248:23  <b>opposite</b> 10:18 140:4  <b>opted</b> 108:4  <b>optional</b> 124:22 125:1  <b>oral</b> 202:9  <b>orange</b> 109:13  <b>order</b> 4:1 36:13 39:6                  61:21 63:13 115:22                  178:21 182:15                  221:1 230:14 234:5                  236:24 238:15                  247:4  <b>orders</b> 6:9  <b>ordinarily</b> 5:18 55:16  <b>Ordway</b> 158:21  <b>organised</b> 204:11  <b>original</b> 42:12,23,24                  55:8 56:5 71:6 72:7                  185:5,14,19,23                  186:1 187:6,9 193:5                  195:2 199:6  <b>originally</b> 38:11 39:16                  156:8  <b>originals</b> 55:18,22,24  <b>Orrick</b> 1:19 2:10,11  <b>Osborn</b> 27:25 28:13                  87:14 88:4 89:9                  90:1,18 91:10 165:8                  165:11 166:25                  226:13,16  <b>Osborn's</b> 89:16                  167:18  <b>Ostrove</b> 1:18 3:3,8,12                  4:9 1:20 3:8,12,17                  3:22,25 4:4,9,12,16                  5:2 7:18 8:13 30:14                  31:20 32:1 35:20                  36:5,15,25 37:11,14                  40:8 42:24 59:24                  60:1,5,8 61:18                  62:20 63:10 65:18                  73:21 74:8,15,24                  75:4 89:2,4,8 90:15                  92:11,17 131:13                  145:22 204:7                  218:25 219:2                  220:14,25 224:14                  233:14 238:8,24                  239:12,21 240:1,14                  240:16 241:19                  242:13 243:9,15,23                  244:1,9,19 246:2,8                  247:1,19 248:21  <b>Ostrove's</b> 62:18,22  <b>others</b> 29:9 34:16 57:2                  67:13 82:4,14 83:2                  83:12 106:19,22                  150:10 221:24                  222:11  <b>otherwise</b> 31:18 65:3                  131:18 135:12                  136:2 200:21                  234:23 236:12                  240:7  <b>other's</b> 245:20</p>	<p><b>Otkritie</b> 42:1,3  <b>oughtn't</b> 7:23  <b>ourselves</b> 68:12                  228:22 241:21                  245:4  <b>out</b> 5:21 11:19 18:9                  19:1,2 20:1,18                  22:25 23:5 25:4,13                  26:22 27:25 28:7,24                  29:24 30:5 33:7,14                  33:21 34:25 40:5                  43:21 45:6 46:11                  47:12 48:5 50:2                  61:24 66:7,10 67:7                  68:8,14 72:10 78:16                  79:11,13 80:25 88:5                  90:5 96:15,21 97:8                  99:9 100:1 104:1,20                  105:17 109:11                  110:4 113:24                  116:12 119:19                  123:3 126:3 127:2                  129:18 133:13                  135:12 136:6,10                  141:7 154:19                  159:23 165:17                  167:2 168:20                  175:24 181:8                  186:13 187:24                  189:1 192:11                  206:11 209:1                  218:18 223:16                  229:3 230:11                  231:24 246:9,24  <b>outcome</b> 237:20  <b>outline</b> 44:19  <b>outset</b> 2:1  <b>outside</b> 14:5 15:16                  22:17 26:4 67:11,12                  70:4,23 72:5,6                  73:18 75:10 80:21                  84:6,12,19,22 85:20                  86:19 111:7 130:7                  140:19 170:13                  171:21  <b>outside-inside</b> 78:2  <b>outstanding</b> 231:3  <b>outwith</b> 7:12  <b>out-of-focus</b> 44:20  <b>oval</b> 68:17  <b>over</b> 4:8 8:5 9:20                  18:17 20:6 22:1,4                  23:18 29:16 35:9                  38:2 41:19 44:25                  48:7 64:21 73:17                  92:9 95:4 98:12,23                  114:20 117:9                  120:12 126:12                  147:7 148:2 156:6                  157:7,17,25 159:1                  162:13,17 163:4,18                  170:25 173:4,15                  174:17 181:25                  187:23 192:15                  232:19,20 244:23  <b>overall</b> 34:13 50:11                  80:3,7 87:5 229:19</p>	<p>234:14  <b>overstepping</b> 37:6  <b>overview</b> 177:22  <b>overwritten</b> 73:16  <b>own</b> 49:16 118:21                  137:3 163:6 167:4                  173:21 189:14                  216:23 237:5  <b>o'clock</b> 146:1,5</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p><b>P</b> 22:25 23:1,1  <b>packet</b> 167:2  <b>page</b> 13:8 15:19,21                  16:23 21:10,10                  22:11,22 23:18,23                  24:4,10,11 28:1,2                  29:4,16 38:19,21                  44:7 61:5 62:21                  63:10 65:19 67:13                  67:14,21,22 115:16                  120:2,12 124:11                  131:20 141:13                  142:24,25 143:1                  148:6,10,15 149:9                  150:25 152:12                  157:12 165:4,12,25                  166:1 167:1,2,18                  168:8 185:21 186:7                  187:1,2 188:10,13                  188:17,20 189:6,6                  189:24,25 190:10                  191:8 192:4 194:2,2                  194:15 195:13,17                  195:17,22,23 196:1                  196:16,18 198:23                  199:2 212:5 213:6                  215:7 216:3 218:6                  226:14,16 229:23                  231:21 235:15                  240:17,19  <b>pages</b> 3:22 12:24                  19:23 21:7 24:1                  39:25 41:10 91:7                  151:14 159:22                  164:24 190:16                  194:23 225:9                  231:22 232:1,3                  235:16 240:22,23                  240:25 241:4 242:1                  242:1,7,19  <b>paper</b> 4:6 9:8 19:6,19                  21:2,18 23:14,23                  24:16 25:1 28:2                  53:4 54:8,16,22                  55:3,5 58:5 68:6,22                  69:1 76:18,23 77:6                  82:18,20,20 104:5                  105:9 131:13,18                  149:23,25 150:6,11                  163:22 164:18                  167:25 171:8  <b>papers</b> 8:19 19:5,14                  30:16 55:9  <b>paragraph</b> 4:1 5:20                  5:24 16:25 28:24                  47:12,24 89:13,15</p>
---	--	---	---	---	---

<p>89:23 90:8,8 119:19                  120:6,7,12 125:15                  141:11,13 142:22                  142:24 143:1,2,5,6                  143:10 144:5,8,17                  151:1,14 154:8                  155:16 160:9 167:3                  180:22 181:4                  182:14 185:7,12                  186:11,15 187:24                  191:14,15,16,19,22                  227:2  <b>paragraphs</b> 144:3,8                  180:14,20 188:3                  192:11 198:14                  199:16 209:11,11                  209:12  <b>parallel</b> 97:9 126:20  <b>parameter</b> 75:24 79:3  <b>pardon</b> 10:6 65:21                  81:21  <b>Paris</b> 1:5 57:11  <b>part</b> 88:16 89:10 90:4                  120:25 123:12                  125:6,21 129:1                  137:17,20 145:12                  147:6 149:13                  156:20 158:10                  160:12,16 173:23                  183:12 186:6 215:4                  237:12  <b>partial</b> 182:13 205:7                  205:21 207:10,12  <b>partiality</b> 206:1,7,20                  207:6,11,20 208:1,3                  208:10,15,21 209:3                  209:3,10 212:8                  215:19 217:25                  218:17  <b>partially</b> 101:12  <b>particular</b> 11:11                  13:19,20,22 14:25                  14:25 97:3 100:3                  103:10 105:14                  106:19 108:19                  109:19 110:25                  111:23 112:1 113:7                  116:10 117:11                  127:25 130:11                  133:11 138:9                  139:24 166:9                  167:10 169:10,23                  170:5,13 179:14                  180:2 183:2,20                  204:15 207:7  <b>particularly</b> 18:8 45:9                  71:8 82:22 179:6  <b>particulars</b> 167:9  <b>parties</b> 56:24 57:1                  91:18 147:3,12,24                  152:25 181:2,17                  186:12,22 187:19                  189:18 194:8                  198:13 201:25                  202:15 219:12                  221:1 229:12 235:5                  236:15 237:9,19</p>	<p>238:14 243:6                  246:22  <b>partner</b> 222:12,18  <b>parts</b> 48:19 137:18                  174:20 247:23  <b>party</b> 36:17 51:6                  61:22 91:21 146:12                  150:3 183:5 185:9                  186:10 194:3                  197:10 209:24                  212:1 234:22                  245:20  <b>party's</b> 201:20 210:2  <b>party-appointed</b>                  201:12 202:6,8  <b>passed</b> 168:25  <b>past</b> 41:12 95:4 147:7                  148:2 159:2 197:24  <b>patching</b> 127:11  <b>pattern</b> 124:6,9  <b>patterns</b> 100:23                  102:24 124:2,2                  135:20,20,21  <b>Paul</b> 3:7 4:14,20                  13:9,12 28:22 29:2                  30:4 54:3 60:9                  68:10 69:15 88:17                  89:3,14 92:9 93:10                  115:16 119:6 126:4                  126:7,8 131:9                  239:17 246:1  <b>pay</b> 152:3  <b>paying</b> 68:11  <b>payments</b> 178:16,17                  222:24  <b>pays</b> 216:15  <b>peers</b> 153:14  <b>pen</b> 13:22 25:17 35:15                  35:17 67:15,19 68:3                  68:8,15,16,23 69:2                  72:3 73:7 76:12,17                  76:22 77:5,7 79:22                  79:23 82:18,20                  104:14 105:9                  110:15,16 111:8                  116:4 127:8,10                  163:12 164:14,14                  165:1,2 167:13,14                  167:21,25  <b>pending</b> 229:25                  246:12  <b>penman</b> 18:10 19:15                  25:8 54:8 56:22                  58:13 163:23  <b>penmanship</b> 8:19  <b>penmen</b> 18:9 19:1,2                  25:4  <b>pens</b> 91:5 150:25  <b>Pentler</b> 69:12 222:13  <b>people</b> 18:22 25:13                  35:3 51:23,24 57:21                  82:19 88:4 91:10                  98:3 106:25 107:11                  113:23 134:8 147:8                  153:10 157:25                  161:18 162:8,19                  169:14 234:20</p>	<p>248:13  <b>per</b> 19:19 25:10 76:13  <b>perceived</b> 160:25  <b>perfect</b> 111:19 168:11                  205:4  <b>perfection</b> 167:8  <b>perfectly</b> 5:19 104:24                  168:14 225:8  <b>perform</b> 55:11  <b>performed</b> 47:7 50:14                  185:15  <b>perhaps</b> 13:2 44:4                  79:17 108:1 126:17                  236:14  <b>period</b> 40:20 140:20                  208:20  <b>periods</b> 150:13  <b>permitted</b> 191:6  <b>perpendicular</b> 100:7  <b>persist</b> 168:18  <b>person</b> 17:13,17,19,22                  17:25 19:21 89:19                  95:13 99:13,25                  100:5,15 101:2                  102:14 105:2 107:3                  107:13 110:24                  113:14,15 117:20                  128:17 132:20                  136:8 169:23                  205:21 226:17,20  <b>personal</b> 17:21 212:2                  221:4 237:1  <b>personality</b> 167:5  <b>personally</b> 50:6 81:19                  133:10 237:17                  241:6  <b>person's</b> 99:18 107:8                  110:11  <b>perspective</b> 229:20  <b>pertain</b> 125:22 179:7  <b>peruse</b> 40:17  <b>PETERS</b> 2:4  <b>phase</b> 216:11  <b>Philip</b> 22:2,3,4,12,15                  23:7  <b>philosophical</b> 223:13  <b>photocopy</b> 15:20 71:7  <b>photograph</b> 44:17                  105:16 154:24                  155:1 164:21  <b>photographs</b> 44:16,22                  65:21 155:25  <b>phrase</b> 9:18 10:23                  12:8 50:23 121:12                  122:2 175:8  <b>phrases</b> 11:22  <b>physical</b> 13:24  <b>physically</b> 76:5  <b>Picciochi's</b> 141:17                  145:5 176:14,22  <b>pick</b> 99:18 102:11                  106:5 107:4 194:23                  221:9  <b>picking</b> 20:1  <b>pictorial</b> 8:2  <b>pictorially</b> 109:25                  163:16,17</p>	<p><b>picture</b> 31:18 33:3                  163:3 229:6  <b>pictures</b> 118:20  <b>piece</b> 25:12  <b>pieces</b> 222:21  <b>PIERRE</b> 1:10  <b>pinpointed</b> 217:25  <b>Piper</b> 1:19 2:9,10                  37:14  <b>place</b> 46:5 169:11                  170:7 178:3 219:14                  231:9 236:24                  240:22  <b>placed</b> 63:19 170:11                  229:19  <b>places</b> 116:13  <b>plain</b> 227:1  <b>planned</b> 92:11  <b>play</b> 181:22  <b>playing</b> 8:5  <b>pleadings</b> 221:12                  247:21  <b>please</b> 2:16 21:23 37:9                  37:21 44:9,11 46:8                  47:12 50:10 60:20                  70:7 89:2 93:6,13                  94:5,10 100:18                  107:6 126:4 134:4                  142:3 155:9,11                  165:25 248:5  <b>pleasure</b> 170:25  <b>plenty</b> 192:6,6  <b>plot</b> 204:11  <b>plural</b> 220:5  <b>plus</b> 145:13,16  <b>pm</b> 89:7 90:16 93:1,3                  95:19 118:10                  129:22 131:5 142:4                  146:8,9,10,22 172:2                  173:11 200:7                  203:21,23 228:11                  228:13 249:8  <b>pointed</b> 21:23 26:22                  79:13 80:25 100:1                  113:24 117:8                  129:18 165:17                  168:20 192:10                  225:13,25  <b>pointing</b> 76:13 90:5                  136:6  <b>points</b> 6:22 7:5,14                  8:22 10:2,11 12:19                  13:3 14:13 25:19                  29:11,20 56:5 62:3                  73:5 80:22 87:21,23                  88:5,12 104:17                  117:2 125:17,17,19                  219:4 221:3 223:5                  230:11,13 233:7                  234:21 237:7  <b>policeman</b> 224:15  <b>polite</b> 157:16  <b>politely</b> 40:6  <b>poor</b> 18:13  <b>poorly</b> 71:4  <b>portion</b> 122:15 248:19  <b>portions</b> 109:13</p>	<p><b>posed</b> 6:16 45:12                  152:18 153:19                  154:16 155:7 156:8                  196:6  <b>position</b> 5:13 8:12                  130:12 174:9,11,12                  177:11 181:10                  185:10,20 186:20                  186:21 189:12                  202:3 213:10                  221:22 227:11                  236:1 243:8,14                  244:20  <b>positions</b> 7:3 202:15  <b>positive</b> 45:21 52:20                  52:21 81:20 151:6  <b>possess</b> 40:11  <b>possessed</b> 183:7  <b>possibilities</b> 52:7                  223:20  <b>possibility</b> 12:11                  52:14 141:7 196:15                  199:10 225:4  <b>possible</b> 9:18,22 30:3                  57:18 94:19 139:24                  147:21 169:22                  198:6 210:23 211:1                  242:20 246:14  <b>possibly</b> 11:12 58:10                  76:20 79:20 85:15                  176:24  <b>post-award</b> 234:10  <b>post-hearing</b> 177:20                  202:22 222:23                  225:1 227:21                  228:17,25 229:9,14                  229:16 231:5 232:5                  232:14,16 233:21                  234:2,17,18 235:5                  236:8,22 238:6,11                  238:20 240:22                  242:23 243:5 246:4  <b>post-2000</b> 159:4  <b>potential</b> 224:1  <b>potentially</b> 16:20 23:9                  37:18 57:3 154:6  <b>power</b> 180:25 206:19                  206:24  <b>PowerPoint</b> 1:14 3:1  <b>powers</b> 181:3  <b>PO1</b> 36:22  <b>PO17</b> 4:25 5:20,24  <b>PR</b> 152:10  <b>practical</b> 8:23 31:2  <b>practically</b> 215:15                  221:19 227:24  <b>practice</b> 19:4,7,10                  49:17 153:22 182:4                  194:8 206:10                  209:18 210:2 212:9                  212:10,11,11  <b>practices</b> 211:9  <b>practising</b> 22:18  <b>praise</b> 188:1,5  <b>precautions</b> 59:19  <b>precedes</b> 167:21  <b>precise</b> 86:6</p>	<p><b>precisely</b> 5:15 181:13                  204:24 224:21  <b>precision</b> 174:7  <b>predominantly</b> 112:9                  112:23 113:25                  114:16 122:14                  199:20  <b>prefer</b> 70:10 177:4                  229:12  <b>preferable</b> 229:11                  246:20  <b>preference</b> 228:24                  229:7 237:1  <b>preferred</b> 9:23 192:17                  234:17  <b>prefers</b> 176:22,25                  225:20  <b>prejudice</b> 233:25                  245:7  <b>prejudice</b> 6:21 7:16                  7:17,17,21,22 216:3  <b>preliminary</b> 37:25                  38:12 39:2,6,22                  40:2,18,23 42:9                  47:20,21 48:1,6,10                  49:1 62:11 118:19                  118:22 137:6                  142:10,16 143:11                  180:22 192:24                  193:10,11,15,21                  199:6 205:12                  207:23,24 208:4,6,9                  208:22 209:5 210:6                  210:12 213:14                  214:5 215:12,14                  219:6,23 220:2                  225:5,9,12  <b>premature</b> 244:19  <b>premise</b> 224:3  <b>preparation</b> 43:11                  50:21 130:16 138:4                  138:16,20  <b>prepare</b> 38:11 39:6,22                  42:4 49:6 120:11                  121:14 216:19  <b>prepared</b> 6:5 27:15                  38:22 41:3,3 64:12                  64:15 95:21 105:15                  118:2 121:9 137:11                  138:11 141:6 142:8                  211:2 217:20  <b>preparing</b> 42:10 47:4                  48:18 61:11 93:23                  136:23 145:7  <b>presence</b> 17:14 25:22  <b>present</b> 15:24 26:4                  29:8,9 67:6 100:2                  103:13 104:22                  105:16,18 109:24                  114:4 124:13                  125:23 155:19                  168:16 169:2 187:4                  187:16 200:3                  201:25 202:14                  217:7  <b>presentation</b> 3:2,6,16                  1:10 2:24 3:6,9,14</p>
---	--	--	---	--	--

<p>3:17,19,23 5:6,8                  6:21 7:7,11 8:2,15                  9:2,7,12 29:25 36:7                  62:4 74:1 92:10,11                  94:15,16,24 95:6,9                  95:20 105:20 108:3                  108:6,23 113:9                  118:4 225:15,19  <b>presentations</b> 6:5 7:10                  8:3 108:4 248:6  <b>presented</b> 9:10 14:3                  15:10 54:12 55:14                  61:22 95:7 163:22                  164:19 178:13,22                  221:4  <b>presenting</b> 2:24 62:1  <b>pressure</b> 104:8 114:3                  116:7,8,15,19 127:8                  164:14,14 165:2,2                  167:13  <b>presumably</b> 38:14                  178:21  <b>presumptuous</b> 92:23  <b>pretended</b> 199:1  <b>pretty</b> 29:9 56:17                  66:22 70:8 81:1,10                  82:18 91:4 110:3                  150:2 161:5 171:15  <b>prevent</b> 6:4 217:17  <b>previous</b> 16:25 23:24                  39:25 51:17 63:1,6                  69:8 75:21 113:24                  211:16 213:4                  216:10 223:8  <b>previously</b> 38:4 41:24  <b>pride</b> 147:19  <b>primary</b> 50:18  <b>principle</b> 17:9,11                  211:12 231:18                  232:4 237:19,25  <b>principles</b> 89:11 91:3                  91:12 135:25 200:2  <b>printed</b> 1:23 140:15                  144:9 145:2,2 150:7  <b>printer</b> 44:18,20,20,24  <b>printers</b> 150:25  <b>printing</b> 44:10 155:10                  155:19  <b>prior</b> 47:17 189:23                  190:4,5  <b>privilege</b> 25:6  <b>privy</b> 160:21 171:20  <b>probability</b> 64:21 88:6  <b>probably</b> 18:17 22:8                  23:10 29:14 38:2,18                  39:1 41:18 47:23,24                  59:24 81:16,18 92:9                  136:10 144:6 196:7                  231:7 232:2,9                  233:18 237:16  <b>problem</b> 13:12 20:3                  44:21 83:11 131:13                  133:14 144:15                  169:13 205:23                  223:23  <b>problematic</b> 82:22  <b>problems</b> 20:1 192:13</p>	<p><b>procedural</b> 4:11 4:1                  7:3 36:12 61:21                  182:15 203:14                  234:9  <b>procedurally</b> 200:24  <b>procedure</b> 6:3,7,8,11                  36:5 49:1 62:1                  206:22 207:3,14                  228:15 230:17  <b>proceed</b> 2:21 7:1 8:11                  9:7 11:1 37:9 92:19                  92:24 94:15 244:25  <b>proceeded</b> 149:1  <b>proceeding</b> 88:20                  235:17 236:2  <b>proceedings</b> 92:2                  179:16 181:22                  198:10 224:5                  237:23 244:25  <b>proceeds</b> 14:6  <b>process</b> 14:21,21 23:7                  86:15 169:9 197:22                  208:25 235:25                  237:22  <b>produce</b> 19:5 125:5                  168:9  <b>produced</b> 1:23 12:17                  13:1 33:22 52:22                  68:7 75:2 77:22                  120:5 131:11                  138:25 139:14,17                  140:8,12 141:8                  144:14 150:23                  157:15  <b>producing</b> 18:23 20:6                  48:4  <b>production</b> 9:19,25                  10:9,16 11:3,14                  151:3 160:11 175:3                  175:23  <b>profession</b> 169:10  <b>professional</b> 50:4                  147:6 164:6 188:11                  209:1 214:21 216:7  <b>Professor</b> 1:9,9,10                  3:16 20:15,21 21:22                  22:1,8,10,25 66:17                  66:21,25 67:8 69:7                  69:20,22 70:2,15,19                  70:21,25 71:12,16                  71:19,24 72:14,17                  72:20 81:24 82:3,11                  82:13 83:1,4,7,16                  83:20 84:2 86:17                  87:10,12 88:5 106:2                  106:8,21 107:15,22                  170:11 172:4,7,12                  172:15 220:8,21  <b>program</b> 127:25  <b>promissory</b> 140:15  <b>prompted</b> 126:10  <b>promptly</b> 239:9  <b>pronunciation</b> 41:25  <b>proof</b> 28:10 138:14                  223:8 224:2  <b>proper</b> 23:23 154:20  <b>properly</b> 12:20 18:3</p>	<p>45:12 72:2 125:16                  170:22 176:10,11                  177:12,15 178:22                  192:21,25 193:8                  196:9  <b>proportion</b> 34:6,18,19                  34:25 132:18  <b>proportional</b> 78:8  <b>proportioning</b> 78:10                  80:4  <b>proportions</b> 80:3                  134:15  <b>proposal</b> 179:25 180:1                  180:11,15,16,18,19                  181:24 183:1                  187:25 188:3 193:3                  198:4,11 199:13,17                  231:17,23  <b>proposition</b> 12:15                  81:22 113:15,16                  117:16 121:25                  144:23,24 149:17                  149:20 163:21                  166:5 168:22                  186:21,22 196:25                  237:10  <b>prosecution</b> 140:6,6  <b>protected</b> 69:14  <b>prove</b> 52:21,25 160:4                  161:15,22 162:1                  205:23 223:11,14                  223:18  <b>proved</b> 17:12  <b>proven</b> 161:24 206:20                  207:6  <b>provenance</b> 179:2  <b>proves</b> 28:8 212:7  <b>provide</b> 53:21 147:12                  147:19,21 152:9                  198:16  <b>provided</b> 1:15 2:10                  4:9 8:24 43:7,12                  53:7 54:7,12 148:24                  152:19 153:4,11,18                  154:11 166:25                  203:11 206:22                  228:16  <b>provides</b> 185:8  <b>proving</b> 17:5,6  <b>provision</b> 36:23                  243:17  <b>pseudo-forgery</b>                  216:24  <b>published</b> 54:16  <b>pull</b> 46:11  <b>punch</b> 115:19  <b>pure</b> 164:12,13 237:2                  238:9  <b>purely</b> 46:12 184:18  <b>purported</b> 49:10                  139:15,18 178:6  <b>purports</b> 144:11  <b>purpose</b> 154:15                  199:25 232:6  <b>purposes</b> 6:4 233:16  <b>pursuance</b> 12:19  <b>pursued</b> 13:3</p>	<p><b>push</b> 69:15  <b>put</b> 3:14 10:11,21                  32:21 40:5 42:21                  46:12 53:3 54:1                  78:23 79:4 80:14                  84:19 88:9 104:24                  122:16 123:25                  126:10 134:16                  145:6 155:6 158:14                  170:18,20 175:15                  183:15 184:11                  198:8 212:4 214:10                  214:12 226:3 229:7                  231:19  <b>putting</b> 12:10 124:5                  171:23 219:22</p> <p style="text-align:center"><b>Q</b></p> <p><b>qualification</b> 234:25  <b>qualified</b> 195:21 196:2                  196:22 220:7  <b>quality</b> 12:10 220:21  <b>qualities</b> 104:14                  107:19 116:23                  127:3,4,5,6 165:18                  165:20 181:5,9,10                  183:7  <b>quality</b> 17:7 18:13                  23:15 56:22 70:10                  70:14 72:8,18                  104:15 168:10  <b>quantity</b> 238:12  <b>queries</b> 214:15,17,25                  215:2,6  <b>query</b> 10:17 155:8                  214:22  <b>question</b> 6:16 22:20                  23:4 25:25 32:20                  36:5,14 39:10,24                  41:7 44:6,13,15,23                  45:2,2,16,25 46:9                  47:11 53:1 58:19                  61:7,20 62:8,15,20                  62:22 63:3 69:7                  70:24 71:7 83:7                  106:17 118:25                  126:9,10 132:11                  133:18,22,24                  136:17 142:1,6                  149:6 151:5 155:13                  156:8 172:16                  175:18 177:24                  185:25 186:23                  195:21 212:4                  218:11 219:4,22                  220:9 222:15 223:6                  224:7 225:19                  226:10 229:6 230:1                  233:18 236:25                  242:22 245:13  <b>questioned</b> 13:7,17                  14:8 15:24 19:6                  26:21 32:22 33:15                  34:2 35:8,18 54:13                  66:1,10,15,23 67:3                  67:10,20 68:21                  75:22 76:2 77:4</p>	<p>79:8,15,16 80:18,20                  81:7 84:9,12 88:1                  89:16 96:1,4,16                  97:2,11 100:20                  101:2 102:20 103:1                  105:19,23 108:19                  109:1,3,25 110:14                  111:1,25 113:7,10                  113:13,17,22 114:5                  115:23 116:24                  117:12,13,17 124:4                  124:20,20 127:22                  129:8 148:9 165:11                  166:1 167:3,19                  193:24 195:10  <b>questioning</b> 147:7  <b>quick</b> 198:9  <b>quickly</b> 4:18 9:18                  21:20 23:12 31:14                  33:8 35:6,14 96:20                  122:10  <b>quiet</b> 136:18  <b>quite</b> 9:17 12:13 16:14                  16:15 23:5 25:19                  29:9 30:22 31:5                  41:17 53:5 56:10                  57:8 59:1 63:3 65:1                  66:13 67:14,15                  68:14 73:13 79:1                  82:24 101:18                  118:15 194:7,19                  206:10 209:25                  211:14 213:3                  217:14 225:15                  226:5,6 240:23                  249:4  <b>quote</b> 61:7 87:14                  90:21 120:1 152:11                  185:22  <b>quoted</b> 89:12 90:5                  173:22 227:6  <b>quotes</b> 5:16 88:4                  174:3 215:23</p> <p style="text-align:center"><b>R</b></p> <p><b>race</b> 17:19  <b>RACHEL</b> 2:10  <b>Radley's</b> 3:2 2:2 9:7                  65:19 74:16 108:7                  108:12 131:14                  133:5 150:1 151:1                  154:13 156:7 177:1                  188:21 201:15,19                  208:17 217:16,18                  219:19 220:12,17  <b>raise</b> 1:7 4:22 6:1                  20:15 175:13                  179:17 225:1                  244:10 245:22                  247:12  <b>raised</b> 2:1 8:10 12:19                  32:18 44:15,23                  46:19 61:25 185:25                  195:18 199:3 219:4                  225:8,11,17 227:8                  234:9  <b>raising</b> 8:22 179:1</p>	<p>225:18  <b>Ran</b> 26:24 28:20,23                  72:23 113:21                  117:15 130:24                  166:6 177:9  <b>random</b> 19:20 38:20  <b>range</b> 13:18,20,21,25                  14:2,4,5,18,22 15:1                  15:2,4,16 23:8,9,10                  23:11 26:5,16,25                  31:12 32:8,13,13                  34:2,3,7 67:8,11                  70:4 73:10,18 75:9                  75:11 76:4 78:19                  79:5,7,9 80:20,21                  83:22 84:8,9,13,19                  84:22 85:4,21 86:9                  86:11,19,25 96:11                  97:2 102:25 130:7  <b>ranges</b> 28:25  <b>Ran's</b> 28:18 85:17                  222:1,12  <b>rapidly</b> 31:4 33:7 56:4                  98:20 117:4 130:9  <b>rare</b> 27:3,4 81:1 88:13                  130:3 165:20  <b>rarities</b> 26:23 27:5,16                  81:13 87:25 90:1,7                  90:9 226:12  <b>rarity</b> 227:3,4  <b>rate</b> 140:22  <b>rather</b> 6:3 29:15 83:8                  95:3 108:3 122:25                  125:16 133:22                  141:17 144:21,22                  152:17 176:4                  211:11 212:1                  235:25 236:2                  243:11 244:13  <b>ratio</b> 77:20 80:12,16                  98:11,21 126:20  <b>rationalisation</b> 157:11  <b>raw</b> 118:20  <b>RDE-<u>RP-1</u></b> 96:6  <b>RDE-<u>RP-2</u></b> 109:11  <b>RDE-<u>RP-3</u></b> 113:20  <b>re</b> 4:11  <b>reach</b> 96:13 160:6                  177:10 211:4                  221:13 227:13,22                  236:15,18  <b>reached</b> 17:25 62:13                  89:18 165:21 177:7                  177:12 187:11                  226:20  <b>reacted</b> 212:7  <b>reacting</b> 225:4  <b>reaction</b> 130:8 219:23                  220:15  <b>reactions</b> 230:13  <b>read</b> 2:16 16:24 22:5                  24:22 40:4 94:5                  119:19,19 120:12                  120:17,18 126:4                  132:5 141:11,13,15                  142:7,9,13,16 143:1                  143:2,3,5,6,13</p>
---	--	---	---	---	--

<p>144:2 145:9 154:19                  176:11 186:11                  194:7 205:10  <b>reader</b> 11:14,21  <b>reading</b> 40:12,13                  122:9 149:10,10                  157:6  <b>ready</b> 4:15 92:18                  94:21 95:2 142:12                  146:19,20 203:25  <b>real</b> 19:25 222:19  <b>realise</b> 107:9 210:17  <b>realised</b> 79:25  <b>really</b> 10:10 24:22                  41:24 45:6 46:18                  51:12 55:17 67:16                  70:10,13 100:10                  110:4 120:22 134:7                  148:18 152:5                  154:14 180:13                  190:9 195:5 197:3                  234:13 235:14                  236:3,9,11 238:11                  239:21 240:16,21  <b>reason</b> 29:7 50:5,7                  96:22 121:8 164:24                  168:6 170:22 173:6                  193:20 195:7 196:8                  206:18 211:1 212:1                  212:21 214:7 216:4                  224:17  <b>reasonable</b> 14:10                  23:20 30:23 57:23                  165:13 182:25                  183:4,6,10 197:7,8                  203:17 211:3 223:3                  232:5  <b>reasonably</b> 18:2 89:20                  226:22  <b>reasoning</b> 168:5                  191:18 212:25                  237:21  <b>reasons</b> 193:25 194:4                  194:5,18 197:18                  200:4 202:25 214:8                  238:4,6,9  <b>reassured</b> 133:6  <b>rebuttal</b> 240:4,6  <b>rebutted</b> 229:15  <b>recall</b> 5:12 12:6 20:24                  38:8,24 40:4 41:15                  41:25 43:20,21 44:3                  44:13 45:7,17,19,20                  45:20 73:10 78:20                  94:16 222:9  <b>receive</b> 4:2 9:6 154:3                  156:25 229:13                  236:15 238:3  <b>received</b> 1:8 3:12,13                  4:4,12,13 40:22                  42:9 46:3 94:22                  118:19 145:9                  149:15 180:22                  188:1 190:12 196:1  <b>receiver</b> 243:3  <b>receivers</b> 232:11  <b>receivership</b> 230:2</p>	<p>232:8 242:22  <b>receiving</b> 59:19 225:5  <b>recent</b> 159:4  <b>recently</b> 47:2  <b>recentness</b> 180:6  <b>reciprocate</b> 248:25  <b>recognisable</b> 103:14                  123:25  <b>recognise</b> 42:7,8 65:12                  107:7  <b>recognises</b> 208:17  <b>recollection</b> 44:5                  178:14  <b>recommend</b> 173:25  <b>record</b> 2:5 5:9,23 6:19                  7:12,13 8:1,3 37:4                  53:6,25 65:13 74:15                  93:6,13 94:5 122:17                  152:12 170:15                  174:14 178:9 187:4                  201:3 202:5,25                  236:9 248:18  <b>recorded</b> 31:19  <b>rectangle</b> 77:18 79:2  <b>rectangular</b> 132:17  <b>red</b> 66:8 69:15 73:16                  73:19 74:10,17,18                  74:19,21 75:4,8                  76:13 99:9 100:11                  104:23 124:23                  134:9  <b>redo</b> 6:20  <b>redrawn</b> 77:25 78:14                  78:15  <b>redrew</b> 77:23  <b>reduces</b> 52:7,9  <b>red-lining</b> 74:25  <b>refer</b> 1:17 6:15 15:19                  26:23 33:17 43:5                  51:25 68:5 80:5                  90:1 91:6 110:8                  120:8 176:3 180:14                  180:19 181:4 182:1                  182:2,2,3,5 183:1                  185:6 187:1,7,22,25                  188:2,5,21 189:5                  191:13,14 192:22                  193:2 194:1 195:13                  195:22 196:10,16                  198:14,23 199:2,16                  212:13 214:19  <b>reference</b> 7:25 12:14                  53:16 89:23 144:18                  170:16 177:6                  189:25 210:3  <b>references</b> 3:2 193:4  <b>referred</b> 10:3 19:11                  89:9,15 143:22                  181:24 198:11  <b>referring</b> 24:1,4 51:4                  74:19 82:9 90:3,4                  206:17  <b>refers</b> 46:14 90:1                  181:15,17 182:7  <b>reflection</b> 215:17  <b>reflexively</b> 127:12  <b>refrained</b> 90:18</p>	<p><b>refresh</b> 44:5  <b>refused</b> 196:8 199:8                  226:6  <b>refusing</b> 226:4  <b>regard</b> 17:13 25:23                  32:19 35:4 40:6                  91:9 220:9  <b>regarded</b> 14:4 90:23                  90:25  <b>regarding</b> 17:3 47:10                  53:1 54:5 152:10                  166:4 172:13                  234:16 235:22  <b>regardless</b> 124:4                  147:22 151:9 154:2  <b>region</b> 123:13  <b>register</b> 21:16  <b>regret</b> 242:13  <b>regularly</b> 90:21 91:6  <b>regulations</b> 207:5  <b>reject</b> 6:14 50:2 224:1  <b>rejected</b> 199:16  <b>relate</b> 46:21 104:13                  184:15  <b>related</b> 61:12 123:11                  126:13 214:23  <b>relates</b> 67:25 69:7                  137:21 169:7 170:4                  184:16  <b>relating</b> 176:1 179:2  <b>relation</b> 61:13 62:23                  118:4 122:16                  126:19 127:19,20                  143:4 173:24                  174:10,22 177:3,4,8                  179:15 187:10                  192:19 194:20                  202:17 238:21                  244:9  <b>relationship</b> 106:14                  133:24  <b>relationships</b> 181:16  <b>relative</b> 33:5 34:1,11                  35:19 80:2 98:17                  99:15 100:16 106:3                  126:21 132:14                  151:21 152:1  <b>relatively</b> 33:10,11,12                  50:23 79:18 114:2  <b>released</b> 172:19  <b>relevance</b> 47:16                  124:18,19  <b>relevant</b> 13:5 23:2                  46:8 124:8 139:23                  177:13  <b>relies</b> 204:19  <b>relish</b> 40:21  <b>rely</b> 177:3 241:19,22  <b>remain</b> 18:1 89:20                  207:12 219:6,17                  220:10 226:21  <b>remains</b> 196:20                  248:25  <b>remark</b> 106:9  <b>remarks</b> 3:22 91:20                  146:4,14,23 234:16  <b>remedy</b> 197:11</p>	<p><b>remember</b> 36:16                  45:22 62:8 106:6                  116:2 136:25                  142:11 146:14                  204:9  <b>remotely</b> 67:22  <b>render</b> 186:20 246:14  <b>Rennaker</b> 23:15 24:5  <b>reopening</b> 62:2  <b>repeat</b> 102:16 229:17                  231:17,20  <b>repeated</b> 9:18 10:23                  51:4 102:5 159:25                  175:22 188:5                  189:22  <b>repeatedly</b> 11:10                  50:19  <b>repeats</b> 110:24  <b>repetition</b> 175:6  <b>repetitive</b> 96:10                  100:21,24,25                  102:24 174:25  <b>rephrase</b> 45:16  <b>replace</b> 39:5,14  <b>replaced</b> 39:17 211:5  <b>replacing</b> 39:8,11  <b>replete</b> 173:20  <b>replicate</b> 106:5,23  <b>replied</b> 186:5  <b>reply</b> 32:22 181:4                  192:23 193:7                  234:20 235:19                  244:12  <b>replying</b> 234:22  <b>reported</b> 48:10  <b>reporter</b> 2:14,15  <b>reporters</b> 92:17                  203:15 248:23                  249:3  <b>reporting</b> 121:15  <b>reports</b> 5:17 47:3                  137:5,10 138:8                  149:24 153:12                  199:14 201:11                  219:10  <b>represent</b> 13:21 70:18                  71:6 96:11,24 97:23                  101:5 103:13  <b>representation</b> 144:21                  144:22  <b>representative</b> 26:15                  66:12 101:8 243:3  <b>represented</b> 26:11                  122:21 145:4  <b>representing</b> 72:12  <b>represents</b> 11:23 78:1                  120:7  <b>reproduce</b> 18:10                  25:19,21 26:2  <b>reproduced</b> 25:22                  55:25 71:4 72:2  <b>reproducing</b> 25:17  <b>reproduction</b> 20:7                  28:19 53:9 71:5  <b>Republic</b> 1:14 95:7                  119:6,9 125:16,20                  143:14 204:12</p>	<p>219:9 221:21 223:1                  223:10  <b>request</b> 4:2 185:13                  189:21,22 190:2                  199:17 200:4 203:2                  214:1 235:24                  240:16  <b>requested</b> 183:24                  236:4 243:23  <b>require</b> 60:11 181:25                  184:9 236:3 237:8                  244:6  <b>required</b> 181:5 199:15  <b>requirement</b> 181:13  <b>requires</b> 168:3  <b>requisite</b> 183:7  <b>resemble</b> 165:14  <b>reserve</b> 174:12 179:25                  236:3  <b>resides</b> 120:24  <b>resolution</b> 104:19                  147:13  <b>resolve</b> 13:12 147:16                  158:1  <b>resources</b> 1:11,12,12                  230:2 239:4  <b>respect</b> 1:20,22 31:25                  52:15 61:18,23                  62:13 64:9,11 72:1                  108:1,24 130:18,23                  134:18 138:3,15,19                  143:19 148:22                  157:9 181:3 187:22                  188:9 192:22                  196:10 235:3 236:2  <b>respected</b> 188:8  <b>respectfully</b> 218:16  <b>respective</b> 147:4  <b>respond</b> 95:12 230:6  <b>responded</b> 155:14  <b>Respondent</b> 1:15,19                  2:7 3:2 4:7 1:15                  8:10 31:1 36:3                  37:15 93:22 136:19                  141:12 147:23                  202:13 204:3 212:6                  230:5 233:13 238:3                  240:11 243:8  <b>Respondents</b> 4:23  <b>Respondent's</b> 89:1                  92:10,25 145:21                  156:4 203:13,25                  248:20  <b>response</b> 5:11 8:20                  95:13 180:24                  194:19 225:4                  235:24  <b>responses</b> 196:10                  235:17  <b>rest</b> 1:4 18:13 34:25                  71:20,24 249:7  <b>restate</b> 64:16 133:4  <b>restricted</b> 48:9 239:4  <b>rests</b> 223:9  <b>resubmitted</b> 54:18,18  <b>result</b> 13:7 20:25 26:8                  27:6,8,18 137:21</p>	<p>139:6 141:5 145:11                  145:13,13 148:10                  159:15,17 208:24                  243:13  <b>resulted</b> 137:20                  147:14  <b>results</b> 52:20 138:24                  139:8,25 140:3                  141:17,20 147:13                  147:15 149:22,24                  150:1,4 159:7 171:7                  171:11,13,15,20                  221:20  <b>resume</b> 92:24 145:25                  203:12,19  <b>retained</b> 1:14 210:16                  211:14 212:20                  213:7 236:5  <b>retaining</b> 118:16                  235:25  <b>retired</b> 224:15  <b>retouch</b> 166:16  <b>retouching</b> 127:11  <b>retrace</b> 67:16 76:6                  80:24 116:4  <b>retraced</b> 75:14,22                  78:2 101:12 116:2                  117:8  <b>retraces</b> 115:11  <b>retrospect</b> 120:18  <b>return</b> 151:25  <b>revamp</b> 8:16  <b>reveal</b> 159:7 223:16  <b>review</b> 43:17,25 53:2                  136:24 142:12                  153:14 193:14                  197:21 247:14  <b>reviewed</b> 37:17 44:13                  45:2,5,8,16 48:17                  61:10 122:15                  130:17 136:20                  137:5,10 193:12  <b>reviewing</b> 130:16  <b>reviews</b> 51:17 63:1,6                  153:13  <b>Reya</b> 1:17 37:23 41:12                  42:14 43:10 44:7                  47:21  <b>re-direct</b> 3:10,19                  60:17,24 61:4 92:8                  129:13,16,23 131:2  <b>re-examine</b> 61:23  <b>Richard</b> 3:15 93:5,7  <b>right</b> 1:11,12 3:6,24                  13:14 16:15 22:3                  30:4,9 53:19 72:13                  80:8 82:1,7 83:4,6                  83:23 96:18 97:11                  98:8 101:12,14,20                  101:21 102:13                  106:14 109:15,18                  110:16,17 111:19                  111:19 112:6,8,12                  112:25 113:5 114:9                  114:21 115:3,7,11                  115:12 116:3                  123:14 128:17</p>
---	---	---	--	--	--

<p>134:10 143:8 144:1                  145:6 152:1 154:9                  155:3 166:22 180:1                  182:12 183:19                  200:14 224:21                  231:1 232:9,9                  243:22 247:10  <b>rightly</b> 23:5 36:16                  220:13  <b>right-hand</b> 21:24 29:3                  34:11 78:12  <b>right-hand-side</b> 29:22  <b>rigid</b> 30:19  <b>Riley</b> 10:3,5 146:25  <b>rise</b> 21:2 150:24  <b>risk</b> 198:8  <b>Robert</b> 2:4 3:1 2:4,5  <b>Roland</b> 20:13  <b>Roman</b> 110:24 136:4                  136:13  <b>room</b> 115:18  <b>ROSSI</b> 2:20  <b>rough</b> 246:17  <b>round</b> 69:2 105:7                  162:3 229:11,13                  231:16 233:3,4                  234:17,19,21,23,24                  235:4,10,15 240:2,3                  240:12 241:2,2,3,8                  241:10,15,16 242:2                  245:24  <b>rounder</b> 117:10  <b>rounds</b> 229:11 231:13                  231:15  <b>routine</b> 87:8  <b>row</b> 29:18  <b>rubber-stamping</b>                  105:17  <b>rubbish</b> 18:18  <b>rubric</b> 103:12  <b>ruin</b> 239:21  <b>rule</b> 60:19 141:7                  167:23 168:1                  173:24 179:21                  184:7 188:23                  200:25 201:5,9  <b>ruled</b> 19:19  <b>rules</b> 1:1 181:7,24                  182:1,2,3,6,8,10,16                  182:20 183:17                  184:9 206:22 207:5  <b>Ruling</b> 3:5  <b>run</b> 145:25  <b>rundown</b> 43:15  <b>running</b> 96:21 238:10  <b>rush</b> 48:5  <b>rusty</b> 150:9  <b>rut</b> 151:19  <b>Ryan</b> 38:22 187:8                  208:11 210:17                  213:8,15 219:22  <b>R-182</b> 69:10,20                  170:15,17 226:5  <b>R-24</b> 32:5 33:18,20                  34:14,22 114:6                  115:2 117:2  <b>R-24/R-25</b> 32:25</p>	<p><b>R-25</b> 12:24 33:16,18                  33:20 34:9,14,23                  115:5 116:10 117:2  <b>R-26</b> 35:4 76:10                  114:20 115:6 117:2                  175:19  <b>R-27</b> 47:11,15 74:21                  96:1 98:13 105:15                  108:19 128:5                  133:25 178:14  <b>R-28</b> 46:2,6 109:4                  111:9,14,18 112:1,4                  112:16,22 143:25                  175:25 178:6,24  <b>R-29</b> 109:4 111:2,21                  112:1,6,24 113:6                  143:4,8 144:1                  175:19,25 178:6,24</p> <p style="text-align: center;"><b>S</b></p> <p><b>SARL</b> 1:12  <b>S</b> 75:17 89:16 101:9                  101:16,22,24 110:7                  165:8 169:14,17,23  <b>safe</b> 198:9  <b>safer</b> 234:11  <b>same</b> 1:17 6:7 12:24                  12:25 14:9 16:11,19                  25:17,18 30:25 34:2                  34:20 46:20 54:22                  76:21 78:25 81:2                  85:13 96:2,8 97:6,7                  102:16,17 109:1,2                  109:21 111:11                  112:14 113:14,15                  115:9 116:7 117:3                  117:20 119:7 124:3                  126:16 128:7,8,10                  128:12 131:20                  132:18,19,20                  135:23 139:5 143:4                  143:6 158:2,8                  164:13,25 167:6                  172:14 175:12,17                  181:10 183:19                  187:13 188:25                  191:19 193:2,6                  196:18 198:18                  199:18 200:1                  206:14 212:7                  227:12,13 237:15  <b>sample</b> 48:9,9 86:4                  87:7  <b>samples</b> 86:20 100:22                  103:13 176:16  <b>San</b> 54:14  <b>sanction</b> 207:5,8  <b>SARAH</b> 2:20  <b>satisfied</b> 213:9,16                  221:20 245:14  <b>save</b> 32:1  <b>saw</b> 45:7 49:10 76:3                  172:7 175:7 219:18  <b>saying</b> 9:13 11:18                  30:22,24 34:8 50:21                  57:20 70:25 71:3                  81:17 86:2 88:10</p>	<p>91:11 137:6 144:22                  152:22 155:14                  158:2 161:19                  168:19 173:7,24                  192:9 198:25                  203:15 210:15                  223:24 224:14                  228:7 243:1  <b>says</b> 46:1 68:7 87:14                  120:13 131:24                  135:22 140:8 151:2                  153:24 154:1                  159:12 164:15,15                  167:3 174:4 182:15                  187:13 215:24                  226:11,14,16                  227:10  <b>scale</b> 65:6 121:1,23,24                  122:2  <b>scanned</b> 20:6 53:4                  131:15,21  <b>scans</b> 104:3,19  <b>scar</b> 16:13  <b>scars</b> 17:22 226:18  <b>scenarios</b> 51:25  <b>schedule</b> 30:22  <b>scheduling</b> 244:5  <b>SCHNELLER</b> 1:19  <b>science</b> 59:16 90:20                  161:6,6,7 170:8  <b>scientific</b> 59:11 83:8                  85:3 147:20 151:16                  152:7 208:8,22                  209:6 221:15,18                  222:16 224:22                  227:20  <b>scientifically</b> 56:13                  84:3  <b>scientists</b> 154:4  <b>scope</b> 36:6,7,8,18 95:6                  118:6 222:3 247:1  <b>SCOTT</b> 1:18  <b>screen</b> 3:9,21 74:22,23                  79:19 80:7 130:2                  131:10 170:11  <b>scribbled</b> 18:20  <b>script</b> 7:19  <b>scurrilous</b> 174:11  <b>searching</b> 52:19  <b>second</b> 29:17 33:13                  67:14,17,18,22 73:2                  100:11 166:4,11                  186:8 187:17                  189:20 192:20                  195:7 205:6 206:5                  207:24 209:8                  229:11,15 231:16                  233:3,4 234:21,24                  235:10 240:2,3,20                  241:2,10,15,16                  242:2,6 245:24  <b>Secondly</b> 197:23  <b>seconds</b> 60:8,11,11                  171:1  <b>Secret</b> 156:13  <b>Secretary</b> 1:21 1:13                  2:17 30:6 31:17</p>	<p><b>sections</b> 75:1  <b>security</b> 44:10 155:10                  155:19  <b>seeing</b> 12:7 43:21                  70:13 71:5  <b>seek</b> 42:14 180:8                  186:13  <b>seeking</b> 152:4 185:18                  186:16 193:20  <b>seeks</b> 167:4  <b>seem</b> 4:23 20:3 46:9                  127:12,13 141:10                  178:1 235:20                  238:11 242:3  <b>seems</b> 11:6 22:13                  82:13 125:1 134:24                  174:18,19 176:21                  185:13 191:2                  192:10 238:16                  242:1 244:1  <b>seen</b> 15:9 16:7,22                  26:20 46:23 48:21                  51:10 70:1,2 76:6                  80:9 100:24 119:15                  122:18 198:17                  206:16 219:20                  241:9,11,18  <b>sees</b> 129:15 130:3                  218:5  <b>segregated</b> 109:21  <b>select</b> 242:9  <b>selected</b> 96:7 186:9,23                  187:18 211:15  <b>selecting</b> 29:15 146:25  <b>self-serving</b> 176:16  <b>send</b> 4:8 20:24  <b>sense</b> 128:23 184:6                  197:15 220:17                  231:15 241:22  <b>sensible</b> 179:4  <b>sent</b> 43:21 61:12 213:5  <b>sentence</b> 121:4 122:8                  138:9 171:18                  215:23  <b>sentences</b> 38:20  <b>separate</b> 58:20 120:22                  167:15 242:24  <b>separately</b> 28:7                  120:23  <b>September</b> 246:5,20                  246:23 247:3  <b>sequence</b> 32:21 60:4                  115:21 228:23                  237:13  <b>series</b> 17:23 96:5                  108:25 109:14,16                  109:22,23 123:15                  124:13  <b>serious</b> 4:17 192:13                  199:3,6 246:17  <b>seriousness</b> 184:16  <b>serve</b> 147:1 179:18                  232:6  <b>served</b> 119:5,17  <b>serves</b> 36:25  <b>Service</b> 156:13  <b>servicing</b> 170:25</p>	<p><b>sessions</b> 189:11,13  <b>set</b> 19:18 47:12 107:24                  108:25 109:2 126:3                  139:6 175:24                  187:24 210:18,25                  219:5 230:11                  231:24 234:8                  247:10  <b>sets</b> 95:21 126:16                  181:8  <b>Settlement</b> 1:2  <b>seven</b> 40:10  <b>several</b> 14:13 100:25                  116:13 125:3                  139:21,21 199:13                  222:25  <b>shape</b> 33:6,9,20 68:17                  73:8,25 74:4 75:17                  76:16 132:23  <b>shaped</b> 109:17 111:25                  169:17  <b>shapes</b> 33:11,13                  104:12  <b>share</b> 237:15  <b>shared</b> 18:17  <b>sharing</b> 49:23  <b>Shark</b> 22:7  <b>Sharon</b> 23:14 24:5  <b>shed</b> 135:8  <b>sheet</b> 19:19 28:1  <b>sheets</b> 19:19 21:2                  24:16  <b>shopping</b> 184:25                  185:2,4 186:4,8,12                  187:14 189:1 191:5                  192:19 212:14,15  <b>short</b> 3:4 8:2 29:18                  33:10,11,12 40:20                  60:22 89:6 93:2                  95:3 116:21 167:8                  203:22 215:3                  228:12 230:6                  231:24 234:23                  235:19 241:23                  242:1,8  <b>shorter</b> 48:19 126:22                  229:11 231:16                  248:2  <b>shortest</b> 85:7 100:19  <b>shortly</b> 38:6 40:23                  118:20  <b>short-term</b> 103:2  <b>show</b> 10:19,19 12:4                  13:20 22:5 27:9                  29:8 34:2 42:5 56:1                  75:8 76:11 85:19                  105:16 109:15,20                  131:10,17,22                  138:10,24 139:2                  141:12 160:18                  211:13 217:10                  225:12,25  <b>showed</b> 59:11 82:6                  106:8 211:10                  215:23  <b>showing</b> 68:7 73:11                  111:16 116:17</p>	<p><b>shown</b> 17:13 37:25                  69:10 84:25  <b>shows</b> 58:5 105:1                  116:14 137:23                  168:1 187:4 190:18                  229:13  <b>shred</b> 184:25  <b>sic</b> 4:23 10:3  <b>sick</b> 210:21  <b>side</b> 10:8 12:10 15:13                  29:22 41:18 53:18                  72:6 88:24 89:1                  103:23 115:3                  145:21 164:1 165:4                  181:21 220:19                  221:17 239:3                  243:15 245:19                  248:11,14,20,21  <b>sides</b> 96:24 122:21                  147:24 220:22                  242:11  <b>side-by-side</b> 103:3,5  <b>sign</b> 98:15 125:21                  140:25 169:23  <b>signatures</b> 8:21 15:6                  15:24 18:10 19:19                  21:4 23:4,7 26:24                  28:8,20,23 33:8                  34:21,21 55:6,8                  56:1 64:11,19 66:11                  67:20 73:15 75:2,10                  80:23 82:15 84:10                  85:1,8,11,19,20                  86:1,8,23,24 87:4                  95:5 96:5,6,11,13                  97:7,13 98:22 99:11                  99:20 100:1 101:18                  102:6 105:13,25                  107:24 109:3,4                  110:1 112:10,10                  113:1,22,23 115:8                  122:23,25 125:7                  127:11 130:23                  132:20,25 133:3                  150:8 152:11                  156:19 162:16,17                  162:21 172:9                  174:21 177:15                  179:1 205:3 223:15                  224:8,24  <b>signed</b> 22:22 34:21                  69:12 167:16 178:1                  178:6,11,24 220:1  <b>significance</b> 13:3                  52:16 63:23 81:5,6                  128:2,18 132:16,21                  136:15 155:18,22                  166:23 177:18  <b>significances</b> 177:4  <b>significant</b> 9:14 10:22                  14:12,15 16:14 18:1                  19:9 28:6 34:19,20                  64:13 68:9 76:14                  85:16 87:22 89:20                  90:11 97:18 99:4                  100:4 108:17                  128:15,16,19</p>
---	--	--	---	--	---

<p>130:21 132:21                  153:6 176:18                  187:10 226:21                  227:5 235:13  <b>significantly</b> 79:1                  150:12 185:9 235:7  <b>signing</b> 18:23,24                  19:21 25:10 177:23  <b>signs</b> 50:1 55:20                  178:21  <b>silent</b> 181:7 182:20  <b>silly</b> 18:19  <b>similar</b> 32:5 66:8 67:3                  68:8,9 86:17 99:5                  106:9 110:1,4                  111:10,13,14,21                  116:24 128:6                  135:22  <b>similarities</b> 12:23 14:7                  15:23,23 16:1 17:5                  17:8,13 84:4,5,6,8                  103:6 122:18,19,25                  126:18,24 128:22                  129:3,5,15 176:16                  176:23  <b>similarity</b> 14:5,15                  83:15,16,18,21                  84:11 99:4  <b>similitude</b> 17:3  <b>SIMONE</b> 2:15  <b>simple</b> 10:21 110:23                  114:2 133:8,8                  177:16 206:18                  222:2  <b>simpler</b> 144:7  <b>simplified</b> 49:9  <b>simplify</b> 131:11  <b>simplistic</b> 166:10  <b>simply</b> 6:17 21:24                  70:3 102:18 141:13                  174:9,13 177:12                  178:2 192:25 193:7                  244:24  <b>simulated</b> 168:14  <b>simulation</b> 14:21                  15:25  <b>simulations</b> 117:19                  165:5  <b>simulator</b> 163:25  <b>since</b> 41:23 51:2 95:2                  96:20 122:12                  123:14 126:25                  135:19 205:20                  206:4,10 221:11                  235:1  <b>sincere</b> 2:15,19 94:4,9                  94:13 218:6 227:11  <b>sincerely</b> 146:24  <b>sincerity</b> 224:19  <b>single</b> 24:10 150:15                  173:22  <b>sir</b> 2:5 93:14 125:14                  127:17  <b>situation</b> 6:10 24:15                  24:18 55:19 144:10                  164:2 202:1,4 211:4                  212:13,18 219:12</p>	<p>220:18 223:10                  234:7 243:10  <b>situations</b> 10:14                  139:22 153:10  <b>six</b> 32:6 40:9 77:19,19                  81:12 87:23 96:6,11                  100:1 109:3 113:23                  150:6 174:10 235:4                  235:14  <b>size</b> 40:25 41:8 72:11                  115:18 239:1  <b>sketch</b> 31:14,17,18                  32:4,16 33:4 77:10  <b>sketched</b> 32:3  <b>skilled</b> 16:20 18:8 19:1                  19:2 25:4,14 163:24  <b>skills</b> 54:5 107:17  <b>skip</b> 9:17 28:17 99:8                  100:18 116:16  <b>skipping</b> 98:24  <b>slant</b> 99:12,12,13,15                  100:16 106:3,3,12                  126:21,21  <b>slanted</b> 112:13  <b>slants</b> 106:3  <b>sleep</b> 6:3  <b>slicing</b> 229:8  <b>slide</b> 33:15,22 53:2,7                  53:10 73:10,20 74:7                  74:17,24 75:2,3,21                  76:3 77:23 78:4,5                  79:12,16 80:5,9                  101:7 117:15                  129:25 131:8                  133:18,20  <b>slides</b> 1:14,21,22 3:13                  3:17,20 5:6,7,8,10                  5:14 9:9 30:12 74:8                  126:13,16 131:14  <b>slight</b> 128:2,9 135:16                  166:11  <b>slightly</b> 13:2 44:20                  98:24 101:11 117:8  <b>slope</b> 99:16 100:11,17                  102:12 103:10  <b>slow</b> 110:9  <b>slows</b> 116:18  <b>small</b> 66:22,23 71:2                  80:8 87:7 111:12                  112:20 126:23                  177:14 180:21  <b>smaller</b> 86:4 134:14  <b>Smith</b> 163:24 164:22                  164:25  <b>smoother</b> 77:13  <b>Snow</b> 23:19  <b>snowstorm</b> 194:20                  195:2 214:5 220:6  <b>Society</b> 19:6 54:13  <b>softened</b> 196:14  <b>softening</b> 196:19  <b>solemnly</b> 2:18 94:7,11  <b>solutions</b> 177:25  <b>somebody</b> 14:23 23:17                  51:11 85:20 86:4                  148:20 163:17                  170:6 206:2</p>	<p><b>someone</b> 90:21 99:13                  128:16 131:10,22                  132:5 135:7 140:12                  162:15  <b>something</b> 3:21 11:10                  15:16 18:24 19:4                  22:2,7 23:19 24:23                  26:9 35:18 40:3,21                  46:12 52:16 54:1                  69:24 70:1 71:4,12                  73:17 76:4 79:8                  84:18 85:5 90:13                  103:4,14 107:3,6                  110:8 111:18 117:4                  117:25 136:15                  158:10 164:4 191:6                  192:3 209:24                  210:10 211:22                  212:23 219:15                  226:2,8 228:22                  230:18 233:4,9                  234:5 236:22                  240:25 242:2,5                  246:24 247:14,17  <b>sometimes</b> 116:13                  135:1,2 156:12                  163:6 15 214:20  <b>somewhat</b> 40:25 77:24                  87:3 222:14 229:1  <b>somewhere</b> 86:22                  246:23 247:13  <b>soon</b> 118:19 162:23                  246:14 247:8  <b>sooner</b> 243:10  <b>sophisticated</b> 56:24                  57:1  <b>Soros</b> 204:11  <b>sorry</b> 4:9 5:2,4 6:23                  8:23 21:14 29:12,24                  31:20 33:24 38:15                  39:10 40:13 41:7                  42:2,21 44:3 48:22                  59:1 61:6,18 63:8                  65:24 66:17 68:11                  70:20 71:18 73:21                  74:19,23 75:6,6                  77:1 89:14 103:16                  107:23 109:7,11                  125:12 126:9,9                  128:23 129:1,3                  142:10,13,25                  143:18 144:19                  169:4 204:1 233:8  <b>sort</b> 18:20 26:2 41:5                  51:13 57:23 58:10                  75:17 85:22 135:12                  148:3,19 149:6,13                  149:19 151:18                  152:1 156:2 157:16                  157:20 158:1,2,4                  161:2,12,14 162:14                  164:4 182:24 191:7                  216:17 246:24  <b>sound</b> 156:1  <b>spat</b> 57:24  <b>speak</b> 83:21 92:22                  97:10 137:16</p>	<p>172:19 173:14  <b>speaking</b> 21:13 23:23                  82:17 86:2 152:1                  233:15 241:3  <b>speaks</b> 90:4  <b>special</b> 205:24 206:22  <b>specialist</b> 93:20  <b>specialty</b> 25:10  <b>specific</b> 44:4 58:19                  86:7 97:10 108:23                  149:3 175:15  <b>specifically</b> 39:8 95:5                  134:19 154:10                  157:11 159:6  <b>speculate</b> 178:3  <b>speculating</b> 86:22  <b>speculation</b> 157:6  <b>speed</b> 4:19 104:6,8,10                  107:2 114:3 115:15                  116:8,15,18 127:9                  236:6 237:22  <b>spend</b> 30:14 166:21                  225:20  <b>spent</b> 95:4 221:17,25                  222:15  <b>spikes</b> 29:12,13,18,21  <b>spirit</b> 62:7 102:8  <b>spoke</b> 165:7  <b>spoken</b> 77:16 247:25  <b>square</b> 79:2  <b>squashed-in</b> 79:21  <b>squiggly</b> 98:14  <b>stage</b> 8:8,11 38:17                  39:12 43:15 44:16                  48:5 203:12 207:24                  208:1,2,4,7,9 209:8                  216:20 221:13                  224:4  <b>stages</b> 207:22  <b>stake</b> 56:10,20 57:13                  218:12  <b>stamp</b> 12:23 63:19  <b>stamped</b> 51:12  <b>stamps</b> 62:24 63:21,24                  64:1 150:9 171:9                  176:2,4,6,7  <b>stance</b> 196:14  <b>stand</b> 130:20 146:3                  201:21 222:8  <b>standard</b> 4:24 89:24                  182:19 183:4,15,17                  188:23,25  <b>standards</b> 24:13,14                  199:15  <b>Standing</b> 19:18  <b>stands</b> 110:4 179:25                  180:11  <b>staple</b> 150:9  <b>star</b> 33:6,7,9,11,13,20  <b>start</b> 2:1 4:15 28:24                  36:5 71:11 78:23                  102:23 110:14                  134:8,10 146:1,5,6                  148:19 153:15                  173:18 195:4,5                  238:14 239:10  <b>started</b> 116:2 171:16</p>	<p>191:1 213:10,17,19                  213:24 224:5  <b>starting</b> 1:5 177:21  <b>starts</b> 9:13 28:2 32:24                  68:3 111:3 114:4,16                  127:8 163:13                  166:18 167:14,20                  237:24 238:10  <b>star-like</b> 113:25 114:7                  114:25  <b>state</b> 102:21 134:21,23                  153:22 154:10                  155:15 156:22                  159:6 160:8 205:20                  210:20 215:20  <b>stated</b> 9:22 11:1 17:11                  50:19 103:22                  150:20 159:8                  166:15 192:25                  196:14,21 208:22                  214:8 218:4  <b>statement</b> 4:3,7 2:19                  10:12 36:20 94:8,12                  130:8 133:5 141:16                  148:12 149:5                  155:23 158:17                  160:17 166:25                  173:12 193:9 204:3                  210:7 220:22                  245:15  <b>statements</b> 2:15 37:3                  51:5 91:2,21 94:4                  171:16 173:19                  190:25 192:7 197:8                  202:15 232:24  <b>states</b> 61:21 153:25                  165:12 167:19                  168:8 176:3 177:7                  212:25  <b>static</b> 104:7  <b>stating</b> 89:10 170:9  <b>statistical</b> 88:5 169:11                  170:18  <b>statistically</b> 169:21                  223:24  <b>statisticians</b> 169:10  <b>stay</b> 79:12 135:15,17                  172:20  <b>stayed</b> 249:4  <b>Steinmetz</b> 204:10  <b>step</b> 222:14 244:3  <b>STEPHEN</b> 2:4  <b>stick</b> 94:19  <b>stickers</b> 62:23  <b>sticking</b> 33:7,14  <b>sticks</b> 33:21  <b>still</b> 1:4 14:22 15:1                  23:8 30:11 40:8,11                  71:2 74:21 79:22                  80:17 90:23 91:8                  125:12 140:10                  141:4 147:15                  158:24 159:2 167:7                  170:3 201:11 203:2                  229:25  <b>stop</b> 35:11 140:21  <b>stopped</b> 41:4 167:25</p>	<p><b>stops</b> 35:15,16 114:4                  114:16 127:8,11  <b>story</b> 162:15  <b>straight</b> 99:24 104:24  <b>straightforward</b>                  150:2  <b>straight-edge</b> 112:11  <b>strange</b> 178:18 211:11  <b>strategic</b> 30:19  <b>strategy</b> 210:9  <b>strengths</b> 237:7  <b>strenuous</b> 249:4  <b>striation</b> 72:8  <b>striations</b> 72:4 111:5,6                  111:8  <b>strictly</b> 240:20  <b>stroke</b> 29:6,8 33:2,5                  34:9 35:6 66:6                  70:12 73:16 75:22                  76:6,6 77:8 78:2                  82:23 83:11 96:16                  96:20 98:3 101:24                  101:25 102:5                  103:12 104:3,17,22                  104:25 105:2,8                  110:20 112:19                  113:6 114:9,13,17                  114:22,23 115:14                  116:20,21,21                  126:19 134:11,12                  134:13 166:13                  167:21  <b>strokes</b> 31:8,23 34:25                  75:25 98:1 114:18                  115:2,11,22,25                  116:11 166:17                  167:24  <b>strong</b> 105:22 106:19                  121:25 135:20                  191:11 192:6 196:7  <b>stronger</b> 65:6  <b>strongly</b> 84:17 149:16  <b>structural</b> 127:3,4  <b>structure</b> 29:1 98:5                  109:15 111:2                  113:25 114:1,25  <b>struggling</b> 231:21  <b>Struik</b> 25:24 27:14                  28:16 47:15 62:4,13                  69:12 72:23 96:1                  105:20,23 129:25                  132:25 169:17                  177:8,23  <b>Struik's</b> 47:10 61:14                  64:9 69:8 73:13                  75:10 108:7 126:14                  178:7 226:11  <b>stuck</b> 6:9 151:18  <b>studied</b> 119:20  <b>study</b> 21:3 208:3  <b>studying</b> 26:2  <b>stuff</b> 163:14 171:12  <b>style</b> 19:22 23:17 86:5  <b>stylised</b> 97:24  <b>subconscious</b> 99:23                  100:4 102:15  <b>subject</b> 17:1 136:2</p>
--	--	--	---	---	--

<p>168:7 205:14                  228:24  <b>subjective</b> 205:16,19  <b>submission</b> 5:6 176:17                  182:10 200:10                  201:20,22 202:14                  232:13 237:2                  238:11 241:18                  244:24 245:9 246:5                  246:10  <b>submissions</b> 3:3,4                  143:15 179:24                  202:23 230:9                  231:18 235:16                  236:21 237:1,4                  245:2,14 246:19  <b>submit</b> 208:6 219:11                  236:24 244:3,19                  246:5  <b>submits</b> 179:21  <b>submitted</b> 43:18,24                  44:1,14 45:3 54:23                  206:25 213:14                  216:20 217:20                  218:22 225:10,14                  225:21 236:23  <b>submitting</b> 39:2                  227:15  <b>subsequent</b> 96:2  <b>subsequently</b> 45:8,17                  46:3 48:17 61:10,16  <b>subset</b> 84:5  <b>substance</b> 219:1 221:9  <b>substantial</b> 28:25 65:4                  67:15 180:3  <b>substantially</b> 6:2                  64:24 139:19                  144:14  <b>substantive</b> 152:16                  153:18  <b>substitution</b> 13:8                  120:2 148:10,15                  157:13  <b>substitutions</b> 149:9  <b>subtle</b> 14:16 16:5,5                  25:20 99:17 106:10                  107:4,7 164:11,25                  165:6,10,23 166:17                  166:20 167:12  <b>successful</b> 178:3  <b>successfully</b> 169:13  <b>suffered</b> 7:16  <b>suffices</b> 222:25  <b>sufficient</b> 42:15 146:4                  152:18 183:9 242:3  <b>suggest</b> 6:25 11:11,15                  29:24 230:12                  235:14 237:24                  241:17 247:3  <b>suggested</b> 231:14                  235:3,4 242:25  <b>suggesting</b> 48:11  <b>suggestion</b> 241:7  <b>suggestions</b> 153:17  <b>suggests</b> 51:10 127:21                  175:9 193:7  <b>summarise</b> 195:8</p>	<p>205:25 242:3  <b>summary</b> 7:13  <b>summer</b> 235:10,11  <b>Sunday</b> 194:22 239:12  <b>supercharged</b> 175:8  <b>superimposable</b> 22:19  <b>supplemented</b> 177:21  <b>supplied</b> 45:4  <b>support</b> 105:23                  113:11,16 117:16                  117:18 121:24,25                  122:1 125:18 139:8                  140:1,4 141:21                  158:13 159:8 174:1                  185:10 211:25                  212:1,16 215:19  <b>supported</b> 151:3                  185:20  <b>supporting</b> 81:20,22                  193:12 210:6                  245:18  <b>supports</b> 186:21                  221:21 223:2  <b>suppose</b> 34:11 42:11                  52:5 106:25  <b>supposed</b> 31:22 36:6                  103:12 196:9  <b>supposing</b> 83:9  <b>sure</b> 4:19 21:13 22:20                  23:22 30:12 36:11                  37:6 51:2 58:6 89:3                  101:25 103:12                  119:2 121:11 123:9                  131:20 134:17,20                  145:24 161:8,9                  199:1 228:9 236:16                  243:1 244:5 246:25                  248:5,8  <b>surprise</b> 41:8 97:16  <b>surprised</b> 49:20 90:19                  209:20 225:15                  236:1  <b>surprising</b> 176:5                  222:14  <b>surrounded</b> 189:5,8                  190:21  <b>survive</b> 92:21  <b>suspension</b> 230:4                  243:16  <b>swayed</b> 49:25  <b>sweeping</b> 79:23  <b>sweeps</b> 69:3  <b>SWGDOC</b> 89:23                  121:12  <b>Swiss</b> 182:5  <b>switch</b> 161:22  <b>symbol</b> 98:14  <b>symposia</b> 225:22  <b>systematic</b> 240:6</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>T</b> 101:25  <b>tab</b> 43:6 119:6,9                  125:13 141:12                  142:23 144:16  <b>table</b> 18:25 94:6 150:2                  219:18</p>	<p><b>tackle</b> 222:23  <b>tad</b> 238:17  <b>tainted</b> 191:24 196:18                  196:24 199:11  <b>tainting</b> 196:22  <b>take</b> 20:24 29:20                  31:17 41:6 49:11,13                  51:8 56:9 57:17,19                  57:22,25 58:7,17,22                  59:19,21 60:15                  62:17 66:12 70:25                  80:17 92:3,13,24                  98:11,16 99:11                  100:20 128:4 146:3                  146:21 147:19                  152:13 161:2                  170:10 173:22                  193:17 195:11                  203:2,19 205:9                  218:16,20 222:14                  235:9 236:4,19                  238:25 243:8                  245:2,21 246:18  <b>taken</b> 7:3 30:20 53:25                  75:3 236:1 239:6                  245:7  <b>taking</b> 26:18 40:21                  53:6 132:13 145:10                  145:16 173:18                  182:8 201:6  <b>talented</b> 19:17 162:16  <b>talk</b> 7:14 115:18                  163:19 169:5                  201:13 248:18  <b>talked</b> 159:20 160:3  <b>talking</b> 7:14 66:18                  75:6 86:20 151:7                  152:1 154:5 159:24                  183:12,14 194:25                  201:17 207:15,16                  225:20 241:11  <b>talks</b> 90:6,9,10 227:2  <b>tall</b> 16:11 79:2  <b>taller</b> 29:22  <b>tangible</b> 132:16  <b>taper</b> 104:5,19  <b>tapers</b> 116:1  <b>task</b> 19:18 23:3 72:17                  229:1  <b>taught</b> 101:16  <b>team</b> 137:25 143:17                  239:1  <b>technical</b> 13:12                  153:13 183:21,22                  221:16  <b>techniques</b> 12:3                  140:24  <b>tedious</b> 245:16  <b>telephone</b> 145:9  <b>tell</b> 35:22 40:4 56:3                  60:8,12 64:16 70:10                  72:3 114:17 121:10                  123:10 156:12                  159:10,16 162:8,14                  162:24 163:10                  168:11 209:25  <b>telling</b> 205:3 209:13</p>	<p>209:23 238:23  <b>tells</b> 114:22 148:20  <b>tend</b> 140:17 141:3,6                  41:16  <b>tends</b> 11:14 15:4  <b>tent</b> 111:24  <b>term</b> 98:17 124:10                  191:9  <b>terminal</b> 29:5,8 76:16                  76:21 104:3,17,21                  104:25 112:19                  113:6 114:13                  115:14,25 116:20  <b>terminology</b> 89:24                  121:18 160:7  <b>terms</b> 4:25 11:8 52:24                  58:6 157:5 180:18                  180:25 182:19                  183:13 191:16                  210:3 217:24                  226:13 231:13                  232:18  <b>terribly</b> 61:18  <b>test</b> 19:18 20:24 21:22                  159:15,16 182:22                  182:25 183:19                  223:18  <b>tested</b> 56:6 195:20  <b>testified</b> 54:4 136:24                  154:22 156:23                  172:5  <b>testify</b> 136:23 145:7  <b>testifying</b> 118:17  <b>testimony</b> 53:21                  122:21,24 145:8                  148:2,4 151:12                  154:23 160:22,22                  165:7 167:11 178:9                  221:12 234:4                  247:21  <b>testing</b> 52:7 55:16                  149:23 159:7 161:4                  161:5,11,14,22                  162:3 171:8 185:15  <b>tests</b> 159:20,24,24                  223:16 224:1  <b>text</b> 5:8 89:9 120:2,3                  140:14,16 157:13                  157:13  <b>textbook</b> 125:6 159:3                  159:5 174:2  <b>textbooks</b> 124:24                  125:2 158:24 159:5  <b>texts</b> 158:20 206:17  <b>textual</b> 47:24  <b>thank</b> 1:25 2:21,25                  4:21,22 8:13 24:8                  32:15 34:5 42:24                  45:24 60:13,20 61:1                  61:2 64:3,4 65:17                  65:23 72:20 74:14                  77:10 81:23 88:17                  89:4 90:15 91:15,16                  94:10,14 95:10,21                  107:22 118:1,9,12                  123:5 125:11 126:7                  129:10,11,12</p>	<p>130:15 131:3                  141:23 145:20                  146:16,24 147:3                  163:20 166:2                  170:17,24 171:23                  172:15,17,21,23,24                  173:9,10 179:10                  200:6,9 203:8 204:4                  219:2 227:18,23                  230:20 231:12                  233:8 237:11                  245:12 248:12,22                  248:24 249:1,3  <b>thanks</b> 83:20 248:17                  249:1  <b>their</b> 5:8 6:5,17,20,21                  10:15 13:2,8 16:13                  37:3 46:8,25 48:18                  48:21 49:12 61:11                  68:10 91:20 92:11                  108:5 119:24                  128:17 137:12,13                  138:4 147:4 148:10                  173:21 175:11,21                  178:2 179:14,18                  181:17 183:17                  184:19 185:11,13                  186:13 190:22,25                  191:1,10,15,18                  192:12 194:22                  195:3,11 196:10,11                  196:14,20 197:1,16                  198:13 199:2,9                  202:13 206:3,9,9,20                  206:21 208:6                  209:21 210:3,12,13                  210:21 211:23                  212:25 213:16,22                  214:3 215:4,9,13,18                  216:14,23 217:21                  218:22 219:11                  220:4 221:2,4 225:4                  227:11 233:16  <b>theirs</b> 239:24  <b>themselves</b> 102:16                  132:15 181:7                  190:10,19 246:22  <b>theories</b> 91:3  <b>theory</b> 149:17 151:18                  204:13 212:3  <b>thereabouts</b> 40:24  <b>thesis</b> 211:2,16,22                  212:16 216:9 223:3                  224:20  <b>They'd</b> 39:20  <b>thick</b> 116:9  <b>thickness</b> 104:9  <b>thin</b> 13:23 66:9,14,15                  67:18,19,23,24 71:3                  116:9 130:6  <b>thing</b> 14:9 18:20 25:16                  26:3 41:5 51:13                  65:22 88:3 96:8                  100:6 104:20                  107:14 149:14                  150:11 151:25                  158:3,8 161:7,10</p>	<p>168:4 171:3,4 191:7                  210:4 227:12                  238:21,22  <b>things</b> 4:19 6:14 15:14                  25:22 27:12 37:17                  47:5 49:15 51:8                  55:17 78:9 82:16                  84:22 91:5 102:15                  107:1 154:12 157:4                  157:8,18 159:1                  163:12 164:15,17                  165:5 223:25                  224:20 234:14,22                  238:25 243:1,13  <b>thinking</b> 45:19,22                  149:11 238:22  <b>thinks</b> 245:20  <b>thinner</b> 66:24 75:19                  75:20  <b>third</b> 28:1 101:10                  127:21 167:1 183:5                  193:17 197:10                  208:1 216:11  <b>third-party</b> 197:7  <b>thirteen</b> 150:5  <b>thorough</b> 119:21                  147:10  <b>thoroughly</b> 136:22                  193:12,14  <b>though</b> 97:23 99:24                  110:23 112:22                  113:8 121:1 123:25                  132:15 135:22                  147:10,18  <b>thought</b> 8:23 9:14                  18:9 40:5 47:22                  102:18 108:2                  123:10 146:18                  152:19 194:22                  209:15 246:2,8  <b>three</b> 8:18 32:5 34:15                  41:18,21 61:2 81:9                  95:21 97:21,22 98:2                  101:5 109:13                  113:22 117:13                  125:17 133:10                  139:20 150:6 158:9                  191:11 192:8                  194:23 198:1                  207:22 222:1 233:2                  235:9,19 239:15                  240:8 243:8,24  <b>thresholds</b> 184:21  <b>through</b> 3:22 9:17                  19:10,23,25 20:13                  21:20 24:9,25 29:15                  31:4 32:20 33:8                  45:15 52:7 72:5                  78:25 79:18 99:9                  143:2 153:13 159:1                  172:7 179:12 249:5  <b>throughout</b> 9:16                  103:13 111:22                  112:14 116:22                  165:9 170:23 174:2                  192:11 218:22                  227:16</p>
--	--	--	---	--	---

<p><b>throw</b> 169:20,25  <b>thumb</b> 19:23 24:9  <b>Thursday</b> 239:17  <b>THÉOBALD</b> 1:18  <b>tick</b> 111:17 115:3,4,5 115:7  <b>ticking</b> 237:24  <b>ticks</b> 116:1  <b>time</b> 3:4 21:16,21 23:13 30:25 35:21 40:20 42:15 46:11 47:4 48:15 49:10 54:2 58:22 60:3,10 61:8 89:5 91:19,25 92:9,15 94:20 95:2 95:3 96:21 102:6,8 102:9 104:23 118:15 140:20 141:1 142:7,12 143:7,14 146:4 150:13 152:17 153:5,7,12 156:12 159:14 166:21 167:6 170:24 173:5 174:6,6 175:12 176:14 178:5,8 203:14,17 206:5 208:20 214:6 216:18 221:17,25 222:15 224:17 229:10 230:7 232:9 232:19,25 235:1.6 235:18 236:23 238:10,20 239:23 242:14 243:7,12,20 245:19,25 246:13 247:11,20,25  <b>timeframe</b> 233:5  <b>timeline</b> 221:14  <b>times</b> 34:15 52:1 80:25 81:1 88:8,8,10,10 88:10 92:2 143:7,13 156:6,13 159:13,14 159:16,17,25 162:17 192:8  <b>timetable</b> 244:11  <b>timing</b> 62:1 142:21 232:18 236:7  <b>Tinkiano</b> 178:11  <b>tiny</b> 35:11  <b>tipped</b> 121:1  <b>today</b> 6:6 7:8 39:13 46:17,18 49:20 53:5 118:13 122:5,18,22 122:24 140:9,10 170:3 176:13 179:25 180:11 197:20 203:16 219:25 221:11 235:5 239:7 242:14  <b>toes</b> 233:16  <b>together</b> 27:19 28:15 93:22 145:10,16 158:6 162:7 200:17 246:18  <b>told</b> 38:13,15,17 39:8 148:13 149:3,8,11</p>	<p>155:21 205:21 213:3,6,19  <b>tomorrow</b> 197:20  <b>tone</b> 196:19  <b>toner</b> 150:7 175:20  <b>tonight</b> 230:14  <b>top</b> 24:11 29:11,21,21 34:11 66:5,14 75:1 76:12 77:25 78:11 78:23 80:2,8,9 82:17 96:5 98:4,7 99:20 101:15 109:1 109:6,13 112:7,12 113:22 115:14 166:12 169:20  <b>topic</b> 59:25 95:11,14 248:18  <b>top-right</b> 53:13  <b>total</b> 66:8  <b>totality</b> 122:11,16 129:7 175:12  <b>totally</b> 11:12 35:18 73:6 79:20 155:2 219:17 227:16  <b>Totty</b> 25:1  <b>touch</b> 220:1  <b>touches</b> 105:10  <b>Touré</b> 4:22 126:1 178:16 230:23 241:5  <b>Touré's</b> 178:10  <b>towards</b> 50:2 121:1 164:21 166:12 168:3  <b>trace</b> 101:11  <b>traces</b> 55:17  <b>trained</b> 19:25 188:12 192:21 193:1,8  <b>training</b> 123:12,16  <b>tranchant</b> 224:11  <b>tranché</b> 224:12  <b>transcript</b> 1:23 1:18 21:12 148:6 185:21 186:7 187:1 188:10 188:13,16,20 189:6 189:24,25 190:10 191:8 192:4 194:1,7 194:15 195:13,22 196:1 197:22 198:23 212:5 215:8 216:3 218:6 231:25 236:14,16 247:8  <b>transcripts</b> 230:8,22 241:6 247:9  <b>transfer</b> 175:20  <b>transfers</b> 171:10  <b>translation</b> 235:18 248:14  <b>translations</b> 247:22,24  <b>transmitted</b> 248:7  <b>transparent</b> 162:11  <b>tremendous</b> 188:8  <b>tremor</b> 127:10  <b>Trevor</b> 1:23  <b>Tribunal's</b> 5:7 6:9,10 60:17 88:18 138:5 141:25 201:20</p>	<p>206:25 225:23  <b>Tribunal-appointed</b> 3:23 7:20 9:5 47:14 50:12 61:13 146:23 152:24 171:19 172:1 175:10,16 179:13,18 181:6,12 183:14 187:11 201:24 202:4 204:7 204:24 205:7 206:6 206:8 207:19 209:4 209:20 211:8,24 214:11,17,24 215:21 216:2,13 217:1,4,15 218:5,18 222:6 225:2,17 227:7  <b>tribuned</b> 57:11  <b>tried</b> 98:6 166:14 191:2  <b>trier</b> 128:19 167:10  <b>tries</b> 225:1  <b>trigger</b> 238:5  <b>trip</b> 249:7  <b>troubling</b> 5:25  <b>trough</b> 102:1,3  <b>troughs</b> 98:1,3  <b>trough-like</b> 101:23 126:23  <b>true</b> 18:8 46:20 71:5 94:17 158:25 193:20 213:25 221:3 228:20 239:9 246:15  <b>truly</b> 153:9 160:2 216:18 234:21  <b>trust</b> 171:23  <b>truth</b> 27:10 40:4 70:11 247:25 152:15  <b>truthful</b> 158:17  <b>try</b> 69:16 70:11 91:23 95:12 106:24 147:16,19 161:13 192:8 205:20 223:16 236:18 242:18  <b>trying</b> 6:4 18:19 21:12 24:11 40:5 58:8 59:5 73:22 74:6 76:11 80:6 106:14 107:12 158:1 160:19 169:11 190:25 214:10 215:20 232:20,20  <b>Tuesday</b> 1:6 1:1  <b>turn</b> 13:10 16:23 22:10 28:22 36:3 45:25 76:14,15 120:12 121:10 127:16 128:12 129:24 144:16 162:13,22 163:18 167:1 216:11 230:19 233:13 242:16  <b>turned</b> 162:23  <b>turning</b> 16:23 62:20</p>	<p>128:15,15  <b>turns</b> 128:13 165:3  <b>twelve</b> 20:16,21 192:24 193:4  <b>twice</b> 128:13 143:10 143:11,19 189:22  <b>two</b> 7:5 8:18 16:9,9,10 21:2,7 29:13,21 32:5 34:20,21,24 41:3 46:4,14 47:25 60:2 63:14 64:11,13 67:24 68:19 69:2 76:10 81:9,9,12 84:6 87:24 95:14 98:2,11 99:25 100:13 102:19 107:11 109:3,5,25 112:3,25 122:12 127:20 128:4,8 132:19,24 134:5 137:9 138:17,18 139:19 144:3,8 172:16 173:13 174:20 185:4 187:3 187:9 191:11 192:8 201:11,12 203:1 223:20 224:9 227:16 229:10,18 231:15 233:24 235:19 239:3,7 246:3 248:19  <b>two-part</b> 137:20  <b>two-piece</b> 77:11  <b>two-pronged</b> 200:13  <b>two-year</b> 140:20  <b>type</b> 41:1 68:17,23 77:6 111:14 112:15 148:17 164:13 245:13  <b>typed</b> 63:16  <b>types</b> 150:6,7 157:7,18 160:4  <b>typical</b> 18:14 53:20 82:19 139:15 144:10  <b>typically</b> 138:13</p>	<p><b>under</b> 1:1 2:14 4:23 94:3 140:16 150:23 152:8 161:9 182:10 182:14 216:12 223:11 226:15  <b>undercover</b> 162:19  <b>undermining</b> 178:10  <b>understand</b> 1:9,15 10:10 17:8 22:21 30:21 38:10 43:23 69:11,17 70:21 74:6 78:7 94:22 129:19 136:14,19 141:9,18 147:4,5,18 155:2 158:15 162:8 201:4 201:7 220:13 230:3 234:18 238:15  <b>understanding</b> 39:5 39:10,13,16,19,21 84:6 109:22 124:12 178:8 244:21  <b>understands</b> 8:10  <b>understatement</b> 42:20  <b>understood</b> 58:7 124:15 134:17 144:8,20 145:4  <b>undertake</b> 55:7 216:19  <b>undertaken</b> 12:20  <b>undertook</b> 11:17 55:10  <b>undisputed</b> 170:10,12  <b>undo</b> 6:24  <b>undoubtedly</b> 19:1  <b>uneven</b> 112:13  <b>unfortunate</b> 149:13  <b>Unfortunately</b> 122:9  <b>unique</b> 99:14 170:22  <b>unjustified</b> 168:18 187:15  <b>unless</b> 6:15 12:9 52:20 52:21 74:24 230:18 246:2  <b>unlikely</b> 99:18 106:4 212:3  <b>unnecessarily</b> 237:23  <b>unnecessary</b> 193:11 195:18,22 209:19  <b>unopposed</b> 176:20  <b>unreasonable</b> 245:21  <b>unreliable</b> 175:25  <b>unscramble</b> 6:19  <b>unsure</b> 31:21  <b>until</b> 46:17 92:21 122:5,5 146:9 171:15 207:23 208:4 243:5  <b>unusual</b> 31:7 34:24 76:8 77:15 81:10 127:10  <b>unusually</b> 41:1  <b>un-inked</b> 72:4  <b>upload</b> 194:24  <b>uploaded</b> 248:8  <b>upper</b> 79:9 109:18  <b>upper-right</b> 111:17 117:7</p>	<p><b>upright</b> 20:11 78:2  <b>upside-down</b> 162:23 162:23  <b>upstroke</b> 116:12 166:11  <b>upward</b> 102:13 114:9 115:10 116:3  <b>up-and-down</b> 29:6 130:10  <b>Urumov</b> 42:1,3,4  <b>use</b> 1:10 10:7 29:25 30:1,17 94:23 99:7 120:19 121:22 140:22,24 159:14 160:7,20 174:25 178:2  <b>used</b> 1:18 30:7 50:23 50:24 55:6,8 92:16 96:13 119:23 121:13 124:10 139:7 140:25 150:8 150:11,25 154:24 158:12 159:12 161:6 162:15,17,21 191:10,10,11 206:4 206:6 207:13 248:6 248:16  <b>useful</b> 48:16 61:9 189:14,15 213:7 217:21 241:25  <b>usefulness</b> 189:12  <b>useless</b> 209:17  <b>uses</b> 121:18  <b>using</b> 73:12 158:24 159:11  <b>usual</b> 206:10  <b>usually</b> 49:18 66:13 87:7 131:19 140:13 161:9 237:1</p>
<b>V</b>					
<p><b>v</b> 1:13 42:1,3 183:2  <b>vague</b> 214:14 215:1  <b>Valery</b> 3:14 93:4,14  <b>valid</b> 204:25 207:12  <b>validity</b> 87:5  <b>valuable</b> 172:18  <b>value</b> 78:19 85:13 87:5 170:13 203:3 207:17 212:19 220:12  <b>values</b> 80:19 132:7,12 169:6,12 170:19  <b>VAN</b> 1:9 3:16 20:15 20:21 21:22 22:1,8 22:10,25 66:17,21 66:25 67:8 69:7,20 69:22 70:2,15,19,21 70:25 71:12,16,19 71:24 72:14,17,20 84:2 87:10,12 106:2 106:8,21 107:15,22 172:4,7,12,15 220:8 220:21  <b>vanishing</b> 167:22  <b>variable</b> 32:12 86:1  <b>variant</b> 15:9</p>					



<p><b>variants</b> 16:21 26:11 70:4 <b>variation</b> 13:18 14:1,2 14:18,22 15:2,4,17 16:7 22:14 23:9,9 23:10 26:5,16,17,25 27:7 29:1,10 31:6 31:12 32:8,13,13 34:3,8 67:11 73:10 73:12,18 75:9,11 76:5 78:19 79:5,7 79:10 80:20,21 83:9 83:17 84:8,10,13,16 84:20,21,23 85:2,21 86:19,25 96:12 97:3 98:19 101:19 102:25 104:8 108:20 110:6,10 111:23 112:2 113:8 113:19 114:3 117:11,13,14 133:7 164:14 165:2 167:14 169:18 170:4,5,20 222:3 <b>variations</b> 16:22 67:9 73:11 83:22 84:4,5 84:14,22 85:4 86:9 86:12 101:3 130:7 176:23 177:17 217:12 <b>varies</b> 75:25 76:1 98:24 100:12 103:11 <b>various</b> 10:13 21:1 31:9 75:1 150:24 165:18 168:14 172:8,9 225:22 <b>vary</b> 103:20 104:9 106:11 116:8 117:3 <b>varying</b> 116:15 127:8 <b>vast</b> 11:22 56:16 <b>Vaughn</b> 1:23 <b>verbally</b> 127:7 <b>verbiage</b> 158:12,19 159:25 <b>verified</b> 204:14 <b>verify</b> 137:12,13 <b>VERONELLI</b> 2:9 <b>versed</b> 22:12 188:12 <b>version</b> 1:16,24 46:2 53:3,4,6 54:12 79:17 <b>versions</b> 3:12 131:15 178:24 <b>versus</b> 140:6 <b>vertical</b> 75:13,14 78:15,25 102:3 109:16 112:16 114:17,21,23 116:1 116:20 <b>vertically</b> 112:5,22 115:4 <b>vertical-like</b> 113:25 <b>victim</b> 204:11 <b>VICTORIN</b> 2:20 <b>video</b> 166:7,8 <b>view</b> 10:18,24,25 11:3</p>	<p>11:14 13:5 14:14 15:8,14,22 16:8 28:16 29:25 32:6 33:10,23 52:17 55:13 56:15 58:4 67:6 82:22 86:3 88:12 137:3 177:1 179:4 180:4 184:2,8 184:25 194:19 195:11 196:7 197:5 197:10 218:12 221:3 233:25 234:18 237:6,14 239:6 <b>views</b> 144:21 146:12 157:11,21 176:14 176:22 184:4 189:14,18 228:24 <b>volume</b> 8:18 50:24 65:4 195:7</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p><b>wait</b> 70:7 216:17 222:22 235:7 238:14 243:5 <b>waited</b> 221:11 <b>waiting</b> 227:20 233:20 <b>walk</b> 16:14 <b>want</b> 16:10 33:18 37:5 41:6 51:2,9 55:18 61:6 70:3 71:13 91:23 99:8 102:23 105:6 108:9 125:23 143:1,2 148:3 169:5 173:18 180:21 198:19 229:5,18 230:18 231:4 233:25 236:25 244:4 245:1 247:12 <b>wanted</b> 4:21 6:22 7:20 37:2 62:14 96:23 147:25 162:10,14 171:22 231:11 233:9 246:4 <b>wants</b> 7:8 30:17 108:6 133:12 143:24 170:6 244:10 <b>warn</b> 209:21 <b>warned</b> 211:8 <b>warning</b> 55:5 210:4 <b>warranted</b> 190:21 197:5 <b>wary</b> 58:10 <b>wasn't</b> 38:18 39:8 42:22 46:23 64:12 156:18 189:15 190:14 <b>waste</b> 21:20 <b>watch</b> 88:19 101:11 <b>watched</b> 162:17 <b>watches</b> 146:18 <b>watching</b> 166:7 <b>way</b> 7:25 15:12 25:18 29:14 45:20 56:2 61:19 67:25 73:6,18 82:9 84:21 96:2 97:6 101:16 102:17</p>	<p>102:17 103:15 109:1,3 111:11 138:2 144:4 149:5 157:22,22,22 158:6 158:14 160:2 162:3 162:4 163:12 169:15,24 175:14 175:17,21 177:22 184:2 205:4 206:2 208:16 209:1 212:6 212:7,20 214:14 215:3,6 217:6 220:23 224:17,20 225:25 229:3 231:24 240:19 245:8 <b>ways</b> 52:3 157:23,24 157:25 165:14 169:19 236:13 <b>weak</b> 64:20 65:5 81:17 81:20 120:20 121:25 <b>weathered</b> 150:12 <b>week</b> 38:9 39:1 42:19 236:4 247:14,17 <b>weekend</b> 239:19,22,24 <b>weeks</b> 41:3 230:7,24 232:10 235:4,14,19 240:8,12 243:8,24 <b>week's</b> 42:17 <b>weigh</b> 59:22 <b>weight</b> 46:5 97:17,18 100:2 106:19,20 116:7 134:16 136:15 198:2 202:24 221:23 234:14 <b>weights</b> 106:18 <b>Welch</b> 3:25 9:4,9 10:5 11:17 12:20 18:9 25:7 27:11,23 28:12 32:22 33:22 34:4 49:13,21 68:7 73:9 76:9 77:22 78:6,9 80:13 84:17,20 86:2 131:8 133:22 146:11,25 152:13 153:9 156:1 159:20 162:13 163:18,20 164:24 166:1,3 169:1,4 170:17 171:5 172:6,11,14 172:23 176:19,22 177:2,7,12 209:12 215:9 216:4 218:8 222:5 <b>Welch's</b> 1:21 8:20 53:2,7,9 68:5 77:23 78:3,4 80:5,17 131:14 173:19 <b>welcome</b> 157:16 166:3 <b>welcomed</b> 152:16,23 <b>well</b> 1:24 8:12 18:11 21:6 23:11 24:13,19 29:9,15 32:12 33:19 39:15 41:4 45:4 49:23 51:22 52:5</p>	<p>56:17 57:8,19 58:3 63:21,24 66:14 67:10 79:11,25 82:18 84:25 85:5,21 90:13 91:4,10 106:10 108:11 118:3 120:7,17 122:19 130:9 135:6 136:20 143:25 147:3 149:11 152:21 161:5 188:8 188:11,12 189:3,14 194:10,20,22 195:9 201:11,23 203:19 204:24 208:13 209:17 210:5,24 211:25 212:25 214:18 215:22 220:25 225:7,10 227:23 230:10 231:6 232:14 233:25 238:3,8 241:4 242:12 243:15 246:9 247:10 248:2 <b>well-respected</b> 188:18 <b>went</b> 37:3 45:6 46:17 116:2 124:23 153:22 156:6 166:13 206:11 225:25 <b>weren't</b> 171:20 <b>West</b> 16:17 <b>we'll</b> 4:18 79:12 84:14 89:5 108:5 117:22 203:20 242:20 245:6 <b>we're</b> 34:4 57:11 63:21 68:11,11 74:8 74:24,25 75:6 76:21 78:22 79:23,24 83:24 86:20,20 95:11 96:21 101:16 103:17 107:18 110:2 116:6 120:20 136:6 146:20,20 151:7 152:1 158:1 159:2,24 160:18 161:18 175:14 183:14 206:10 233:19 235:12,24 235:25 246:11 <b>we've</b> 9:16 20:10,11 29:16 31:11 32:19 35:9 43:6 67:19 76:12 78:11 84:10 85:16 88:10 92:3 118:5 122:18 126:12 147:9 148:2 153:11 158:16 159:12 160:3 173:15 174:18 175:1,5,10 178:25 183:22 187:24 203:1 232:19 241:11,18 245:7 <b>whatsoever</b> 7:22</p>	<p>57:16 <b>while</b> 30:5 35:24 82:6 94:21 95:11 160:6 171:7 217:20 219:9 <b>whilst</b> 12:19 160:10 <b>whim</b> 18:7,24 <b>white</b> 72:4 178:12 <b>whiteboard</b> 31:15 35:7 68:25 76:24 <b>whole</b> 10:15 13:9 51:7 55:25 63:20 65:22 90:3 148:11,16 149:14,18,21 150:18 151:4,25 152:5 231:9 <b>wholly</b> 52:17 <b>wide</b> 14:18 15:4 23:8 23:9,11 26:25 65:1 73:10,13 75:9,18,18 <b>wider</b> 73:25 <b>width</b> 34:10 66:5 70:11 75:24 78:10 78:16 98:9,12,19,23 99:5 100:9 103:20 133:8 <b>widths</b> 71:10 <b>width/height</b> 126:20 <b>wife</b> 18:20,25 57:24 <b>willing</b> 153:20 <b>wish</b> 30:19,23 229:24 249:6 <b>wished</b> 239:15 <b>wishes</b> 240:8 <b>wishing</b> 228:10 <b>withdraw</b> 6:17 220:16 <b>witness</b> 2:13,14 36:18 36:20 37:3 61:23,23 178:9 232:24 236:10 <b>witnesses</b> 94:2,3 178:17 <b>witness's</b> 36:20 <b>woman</b> 178:12 <b>wondering</b> 43:24 <b>word</b> 122:7 126:7 174:14 191:9 212:14 <b>wording</b> 9:24 162:8 191:13 <b>words</b> 9:20 12:16 14:23 15:16 18:6 34:10 35:9 76:16 139:4 145:7,14 178:2 183:9 191:1 191:11 192:6 196:7 207:9,15 211:17 213:13 215:18 217:7 242:13 <b>work</b> 11:18 25:12 40:5 43:22 85:22 91:20 91:22 131:18,19 135:5 153:15 162:15,18 195:7 207:19 208:16,18 208:25,25 216:19 218:18 224:23 233:23 239:22</p>	<p><b>worked</b> 41:12 171:7 171:11 <b>working</b> 25:6 148:20 157:19 158:1 171:8 171:9 195:5 213:19 213:25 220:5 239:10 <b>works</b> 25:5 78:16 <b>world</b> 18:18 52:7 157:17,25 169:23 181:25 184:9 <b>worried</b> 81:11 234:4 <b>worth</b> 151:23 222:4 <b>worthwhile</b> 40:7 <b>wouldn't</b> 51:22 55:23 70:13 72:13,19 82:3 88:3 120:19 156:22 156:24 163:14 183:18 194:14 237:8 <b>write</b> 19:3 102:7 136:9 136:11 164:12 169:14 185:12 <b>writer</b> 25:18 76:22 86:1 <b>writers</b> 16:20 43:13 <b>writer's</b> 26:16 <b>writes</b> 165:3 <b>writing</b> 20:4,11 24:11 25:15 26:7 28:25 55:20 97:2 99:18 100:5 101:1,3 102:19,20,24,25 103:1 107:8 108:20 109:23 110:11 111:1,6,25 112:2 113:12,13 114:5 116:24 123:11,17 123:17,21,22 124:8 124:12,16,23 133:15 134:23,24 134:24 135:7,16 150:6,15 163:3,4,5 163:10 165:14,21 166:8 167:4,23 168:10,13,17,19 242:19 <b>writings</b> 15:10 16:7,22 32:24 35:10 73:9,25 75:24 76:25 78:18 79:5 90:20,21 96:12 96:19,25 97:1 101:1 102:19,20 105:21 109:16,21,24 110:3 111:1,12,22 112:14 112:18 113:2,7,8,18 116:23,25 117:12 117:13,14,18 124:14,21,24 125:4 130:13 216:16 <b>written</b> 56:4 91:8 98:20 104:6 113:14 113:15 117:4,19 127:10,12,14 130:9 145:18 165:19 202:9 220:19 231:18 235:16</p>
---	--	---	---	---	--

<p>wrong 14:24 31:12                  32:9 50:10 73:6                  77:1 91:11 127:14                  178:21 181:23                  187:20 190:2,14,18                  193:16 197:17                  wrongly 176:12                  wrote 21:16 169:19                  www.thecourtrepor...                  1:24</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <p>YANN 1:19                  year 37:20 204:9                  232:1 233:3                  years 41:20,22 56:18                  139:21 140:17,18                  140:19 141:3,6,8                  158:24 159:2                  169:11 187:24                  191:15 201:7                  yellow 44:18,24                  109:14 154:23                  155:1,22                  yesterday 1:14,16,18                  5:5 6:1,19,25 7:16                  7:18,23 8:6 9:10                  20:7 22:13 30:24                  33:23 46:19 60:18                  119:7 123:6 148:17                  159:18 185:17                  186:18 189:3 190:9                  190:24 191:10,25                  193:23 196:20                  203:16 212:4                  214:23 217:17                  yesterday's 31:21                  185:22 212:5                  York 189:11</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <p>zero 98:14 145:13                  zone 206:11                  Zug 19:17</p> <hr/> <p style="text-align: center;"><b>\$</b></p> <p>\$1 152:3                  \$25,000 151:24                  \$250,000 151:23</p> <hr/> <p style="text-align: center;"><b>0</b></p> <p>0 76:2                  0.42 98:25 99:2                  0.43 98:13 99:1                  0.45 98:24                  0.46 98:25 99:1,1,2                  0.8 78:21 79:6                  0.88 80:12 133:25                  09:27:18 148:6</p> <hr/> <p style="text-align: center;"><b>1</b></p> <p>1 1:11 12:24 21:14,23                  22:21 32:16 36:13                  43:6 61:21 66:6                  77:15 87:16 88:6,6                  88:6 97:10 101:12</p>	<p>110:14 114:8,15,22                  114:24 115:10                  140:2 142:23 150:2                  166:7 182:15 187:2                  1st 208:5 239:19                  1,000 231:23 235:16                  1,100 41:2 194:25                  1,800 232:1                  1.30 118:10                  1.48 129:22                  1.51 131:5                  1.56 80:16 133:25                  1.7 78:17,18,20 79:6                  132:8                  1.86 78:13,17 132:8                  10 14:1 16:11 31:3                  33:24 35:24,24 53:2                  53:7,10 84:15 85:11                  85:11,20,21 88:6,6                  88:6,7,8,8 110:19                  159:19 188:13                  191:22 195:1,12,23                  218:7                  10th 38:2 40:15 190:5                  213:21 214:3 220:3                  10.22 37:10                  10.41 61:5                  10.46 62:20                  10.59 63:10                  10:42:27 152:12                  100 85:10,10 86:23                  159:2 186:7 240:22                  240:23,25 241:4                  242:1                  100% 162:9                  103 194:2,15                  104 195:22                  105 3:17                  106 195:17,23                  107 188:13,17                  109 124:11                  11 110:19 152:12                  180:24 185:12                  186:15 191:14,16                  191:19 195:13,23                  215:8                  11.02 60:21                  11.21 60:23                  11.22 61:3                  11.27 64:7                  110 142:24 143:1                  111 196:16,18                  112 1:4                  118 3:18                  12 45:25 110:21                  152:12 159:19                  188:17 191:8                  209:12 215:8 218:7                  12th 2:11 40:24 42:10                  93:23 119:3,8                  136:20,25 179:15                  12.22 89:7                  12.24 90:16                  12.29 93:1                  12.30 91:17                  12.45 93:3                  12.49 95:19</p>	<p>120 159:20                  125 242:1                  129 3:19                  13 43:2 46:21 148:6                  159:19 190:11                  191:8 195:13                  13th 136:24                  13,000 41:19                  131 3:20                  137 190:16 194:23                  225:9                  14 46:21 124:11                  180:22 181:8                  190:11 196:16                  14th 69:13 247:3,5,6,7                  142 3:21                  146 3:22,24                  15 4:3 60:11 61:5 87:9                  159:23 194:2                  195:23 203:20                  15th 42:11,22                  15-minute 60:16                  150 242:7,15,20                  16 33:22 62:21 80:16                  124:11 161:9                  160 142:24 143:1,22                  194:2                  163 3:25                  164 195:13,17                  166 188:20 196:1                  17 4:1 192:4 196:1,16                  17th 243:25 244:1,20                  245:9                  171 4:1                  172 4:2 189:6 212:5                  173 4:3,4 189:6                  177 143:5,23                  179 4:5                  18 33:15 61:5 62:21                  151:14 190:1 194:2                  195:23 196:2 212:5                  18th 42:23 43:1                  18.15.3 36:22                  18.15.4 61:20                  19 5:24 36:24 47:12                  151:14 192:5                  194:15 198:24                  199:2                  19.1 128:7                  1929 91:7                  1970 30:16 54:22,24                  1977 30:16 54:14                  1987 54:19                  199 151:1</p> <hr/> <p style="text-align: center;"><b>2</b></p> <p>2 1:6,12 3:1 1:5 12:24                  21:15 22:11,23                  29:11 33:4 73:14                  76:3 80:1,23 87:16                  97:10 101:13                  110:15 114:10                  115:10 141:13                  151:14 185:21                  187:2 196:18 216:3                  2nd 89:16 166:1                  226:14 240:10</p>	<p>245:24                  2.11 142:4                  2.19 146:8                  20 3:7 4:1 5:20 56:18                  85:7 87:9 157:19                  159:23 195:17                  225:20                  20th 89:10                  200 4:6 41:10                  200-page 41:2                  2006 59:3,9,14 63:13                  69:13                  2010 59:12                  2014 42:1                  2016 183:3                  2017 208:5,12                  2018 1:6 1:1 2:11 43:9                  93:23 119:3 179:15                  205:10 210:11                  2019 235:12                  202 160:9                  204 4:7,8                  21 180:14,20 187:1                  190:1 198:24 199:2                  21st 247:5                  21.9 82:23                  219 4:9                  22 159:22 194:16                  22nd 42:17 205:10                  220 4:10                  223 199:2                  225 89:13                  228 4:11 89:15                  23 20:23 21:9 30:15                  80:10 84:15 189:6                  23rd 43:9 210:11                  214:13                  230 28:2                  230/231 28:1                  231 167:2                  237 28:24                  24 21:9 188:20                  244 16:24                  245 15:19 16:23                  226:14,16                  25 14:1 80:15 164:20                  164:24 182:14                  187:2 188:20                  25th 43:1                  26 67:7 80:11 81:1                  85:1 88:10,10,10,10                  164:24                  26/27 66:11 80:23                  27th 1:6 1:1 239:12                  28 218:6                  28.5 78:11                  281.43 29:2                  287.2 29:7                  29 119:6,9,12 125:13                  141:12 144:16</p> <hr/> <p style="text-align: center;"><b>3</b></p> <p>3 1:12 44:7 76:3 80:23                  82:8 87:17 97:10                  110:16 114:10                  115:11 146:1,5                  180:14,20 196:18</p>	<p>3rd 180:23 208:12                  3.00 146:6,9                  3.08 146:10                  3.09 146:22                  3.15 145:25 146:18                  3.47 172:2                  3.49 173:11                  30 23:7 60:8,11 78:16                  80:5,9 92:6 133:18                  133:20 146:15,21                  168:25 171:1 173:5                  193:3 236:4 243:22                  300 232:3                  31 68:6                  31st 180:23 208:12                  239:13,17                  34 179:21                  35 47:10,11                  35.3 188:23                  364 167:18                  367 165:12 166:1                  168:8                  37 3:8 47:10 77:23                  79:16 131:8,25                  38 155:16                  39 3:9 181:4</p> <hr/> <p style="text-align: center;"><b>4</b></p> <p>4 3:2,3 29:11 68:2                  87:18 97:11 110:16                  114:11 115:12                  148:6 173:5 185:21                  188:10 189:24                  216:3                  4th 239:20,25                  4.35 200:7                  4.41 203:21                  4.55 203:20                  4/5 80:24                  40 242:5                  40-inch 16:13                  40-page 242:2                  42 41:20                  43 150:25                  44 23:4 179:20                  45 3:6 30:8,17 92:12                  94:17 95:3 173:4,6                  173:7                  46 85:18,19 187:24                  47 26:24 188:3                  48 61:5 126:12 180:2                  188:3                  49 152:12 215:7 216:3</p> <hr/> <p style="text-align: center;"><b>5</b></p> <p>5 16:11 20:4,9 31:3                  35:24 68:4 73:7                  74:4,5 77:10 87:19                  92:13,24 97:11                  110:17 114:11                  115:13 119:19                  186:7                  5th 183:3                  5.00 203:12                  5.02 203:23                  5.52 228:11                  50 191:15</p>	<p>50% 64:24                  51 62:21 78:16                  53 78:11                  56 198:23                  57 184:12                  59 63:10 65:19</p> <hr/> <p style="text-align: center;"><b>6</b></p> <p>6 75:12 80:24 87:19                  110:17 114:12                  115:13 120:12                  141:11,13 144:17                  188:10 189:6 194:2                  6th 247:18                  6.00 203:17                  6.02 228:13                  6.2 182:7                  6.30 228:4                  6.40 249:8                  60 9:20                  61 3:10                  635 91:7                  64 3:11                  65 43:17 45:8,15 50:24                  152:17 153:19                  154:19 214:15,25                  216:15,17</p> <hr/> <p style="text-align: center;"><b>7</b></p> <p>7 3:4 75:25 76:2,8                  80:25 87:19 110:18                  111:14 114:13,14                  115:14 125:15                  189:24                  7th 219:24                  70s 115:19 225:21                  75 231:23 240:25                  75016 1:5</p> <hr/> <p style="text-align: center;"><b>8</b></p> <p>8 3:5 63:10 76:11,14                  81:2 87:20 110:18                  148:6 188:13                  195:17 209:12                  8th 37:20 40:16,23                  213:13,18 219:25                  85 198:14                  89 3:12 198:14</p> <hr/> <p style="text-align: center;"><b>9</b></p> <p>9 3:6 44:6 45:2 63:10                  109:15 110:19                  111:2 155:13 185:7                  186:7,11 191:15                  9th 38:2 40:14 220:1                  9.03 1:2                  9.05 2:3                  9.19 9:11                  90 3:13                  90-degree 111:19                  93 3:14,15 199:16                  94 185:21 191:8                  95 3:16 189:24 192:4                  96 189:25                  97 188:10 190:10                  98 187:1</p>
---	---	--	---	---	---

99 187:2 199:16					
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