

IN THE MATTER OF:

Commission of Inquiry into the Circumstances  
Surrounding the Death of Phoenix Sinclair

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CROSS-EXAMINATION OF: EVELYN MARGARET WOTHERSPOON

CROSS-EXAMINATION BY: MR. J. KROFT and  
MR. J. GINDIN

CROSS-EXAMINATION DATE: TUESDAY, MAY 22, 2012

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ORIGINAL

The Cross-examination on Affidavit of **EVELYN MARGARET WOTHERSPOON**, viva voce, on oath, had and taken by Jill Proctor, an Official Examiner in this Honourable Court, at the offices of Myers Weinberg LLP, in the City of Winnipeg, Province of Manitoba, on Tuesday the 22nd day of May 2012 at 10:08 a.m.

**APPEARANCES:**

<b>On behalf of the Witness:</b>	Mr. G. Smorang
<b>On behalf of the Media Group:</b>	Mr. J. Kroft, Ms. B. Chisick
<b>On behalf of Kim Edwards And Steve Sinclair:</b>	Mr. J. Gindin, Mr. D. Ireland
<b>On behalf of the Department Of Family Services and Consumer Affairs:</b>	Mr. S. Paul
<b>On behalf of CFS General, North, South, ANCR:</b>	Mr. L. Bernas
<b>On behalf of Intertribal Child and Family Services:</b>	Mr. H. Kahn

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TUESDAY, MAY 22, 2012 10:08 A.M.

**EVELYN MARGARET WOTHERSPOON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

**CROSS-EXAMINATION**

**BY MR. KROFT:**

Q Just a couple of things to start that your Counsel may want to help you with, and I don't mind if he interrupts for those parts anyway.

I guess the first is, we should mark a copy of your affidavit as an exhibit.

**MR. SMORANG:** She has a clean copy in front of her.

**MR. KROFT:** Why don't we mark your copy. This is your affidavit that was sworn in the Matter of the Commission of Inquiry Relating to the Death of Phoenix Sinclair and other things?

**THE WITNESS:** Correct.

**MR. KROFT:** Exhibit 1, please.

**EXHIBIT # 1 - AFFIDAVIT.**

**MR. KROFT:** Mr. Smorang, this is for you.

Are you putting Ms Wotherspoon forward as an expert witness?

**MR. SMORANG:** Yes.

**MR. KROFT:** What fields are you seeking to qualify her in?

**MR. SMORANG:** I haven't given any thought to a particular field. I am seeking to have her report tendered as an expert report by virtue of the experience, education that is set out on her resume.

**MR. KROFT:** You are not putting her forward, for example, as a legal expert?

**MR. SMORANG:** No.

**MR. KROFT:** And are you putting her forward as an expert in adult psychology?

**MR. SMORANG:** No. Unless you disagree with me, I don't think you are an expert in adult psychology.

**THE WITNESS:** No.

**MR. KROFT:** Your expertise has to do with social work, in particular, in the fields of younger children?

**THE WITNESS:** In child maltreatment with a specialization in infant and toddler maltreatment.

**BY MR. KROFT:**

Q Your professional practice has been

largely in Alberta?

A It has.

Q And just to deal with what we spoke about a moment ago, you don't hold any degrees in adult psychology?

A I do not. My degree is in a Master of Social Work.

Q You are not an expert in neuropsychology?

A I have a lot of training in psychology by virtue of the work I do with the Norlien Foundation in Alberta. Around, I attend every year a symposium in early brain and biological development, which is, a lot of that is neuropsychology.

Q For children?

A But it is not my area of expertise.

Q You have never written a paper on that, conducted any experiments, anything like that?

A No.

Q You are not published in the literature?

A No, not in that area of neurodevelopment, no.

Q Or neuropsychology for adults?

A No.

Q You haven't conducted any of your own

research in decision making theory?

A Pardon me?

Q You haven't conducted your own original research in decision making theory?

A No. My research would be characterized as a literature review.

Q In other -- you haven't done original research you have read what other people have done?

A Exactly.

Q And you have cited the instances where you are relying on other people in your affidavit, correct?

A I believe so.

Q Yes.

A I hope so.

Q Certainly your intention was to properly cite everything where you were relying on somebody else, correct?

A Correct.

Q So, one of the authors that you have relied upon in coming to your conclusions is a fellow named Joseph Hallinan?

A Correct. That is one of the books that I did look at. Yes.

5

1 16 Q And, in fact, relied on, when you gave  
 2 your report, and came to your conclusions,  
 3 correct?  
 4 A Correct. Mh-hmm.  
 5 17 Q And in particular, you cited him in  
 6 respect of adult decision making theory?  
 7 A Correct. Mh-hmm.  
 8 18 Q Can you tell me what is Joseph Hallinan's  
 9 qualification?  
 10 A Joseph Hallinan, I am not sure what his  
 11 background, or biography is, I mostly, my  
 12 interest in him was in the book that he wrote.  
 13 And so that is my familiarity with him, is  
 14 specifically to that book. But his book,  
 15 actually is fairly consistent with a lot of  
 16 decision theory.  
 17 19 Q Just I want --  
 18 A I don't know his specific biography.  
 19 20 Q Right. You cited Hallinan?  
 20 A Correct.  
 21 21 Q Correct. And you don't know what his  
 22 background is?  
 23 A No. I couldn't tell his specific  
 24 biography.  
 25 22 Q If I suggested to you he was a journalist

6

1 and had no training in psychology would you  
 2 know that one way or the other?  
 3 A No, but it wouldn't surprise me. People  
 4 looking at decision theory come from a lot of  
 5 different fields.  
 6 23 Q As far as you know, has he any training in  
 7 that area?  
 8 A Pardon me?  
 9 24 Q You don't know if he has any training in  
 10 that area at all?  
 11 A No.  
 12 25 Q And his book is a popular psychology book,  
 13 isn't it?  
 14 A It is. Yes.  
 15 26 Q And you also cite a book by Kathryn  
 16 Schulz, correct?  
 17 A Yes.  
 18 27 Q What is her background?  
 19 A I can't remember, I would have to look it  
 20 up. I know I read about her because her book  
 21 is partly autobiographical. I can't recall at  
 22 the moment.  
 23 28 Q Did you know what her background was when  
 24 you chose to cite her as one of the authorities  
 25 you were relying on?

7

1 A Possibly. My memory isn't that good as I  
 2 get older.  
 3 29 Q If I told you she was a journalist as  
 4 well, you wouldn't disagree with that?  
 5 A I wouldn't disagree.  
 6 30 Q Her background and training is as an  
 7 editor and reporter, correct?  
 8 A Now that you mention it, that is probably  
 9 true.  
 10 31 Q And you have relied on the Munro Report?  
 11 A Correct.  
 12 32 Q And, just so I am clear, because I am new  
 13 to this field myself, this was, as I understand  
 14 it, an independent review conducted into child  
 15 welfare practices, and operations across  
 16 Britain?  
 17 A Correct.  
 18 33 Q It was commissioned, I think, by the  
 19 British government, maybe?  
 20 A Yes, I believe so.  
 21 34 Q And Munro is the name of the person who  
 22 who authored the report, who was appointed by  
 23 the government?  
 24 A Correct.  
 25 35 Q And, do you know her background is?

8

1 A Social worker. She is, I believe, with  
 2 the London School of Economics, but her  
 3 background is social work.  
 4 36 Q Have you, when you were preparing the  
 5 report, did you do any analysis about whether  
 6 the system in Britain is organized the same way  
 7 as it is in Manitoba?  
 8 A No. Not specific analysis of that.  
 9 Although in reviewing her report, I certainly  
 10 saw many common features.  
 11 37 Q And many significant differences?  
 12 A Definitely. Mh-hmm.  
 13 38 Q And Munro, of course, writes about the  
 14 public image of social work, and about media,  
 15 and public relations in her report?  
 16 A She references it. I am not sure it is  
 17 the focus of her report, but she does refer to  
 18 that in a number of her papers, actually.  
 19 39 Q I am talking about the one you cited, and  
 20 I am suggesting to you that she did write many  
 21 pages on that issue, and made recommendations,  
 22 and suggestions, right?  
 23 A Correct.  
 24 40 Q And you are familiar with those, I take  
 25 it?

1 A I would have to review it again, but, yes,  
 2 I did review the report.  
 3 41 Q Did you review it at the time you wrote  
 4 the letter?  
 5 A Yes, oh, yes.  
 6 42 Q When I say the letter, I mean the letter  
 7 attached to the affidavit?  
 8 A Yes.  
 9 43 Q So at the time that you prepared your  
 10 report, in any event, you would have been  
 11 familiar with her recommendations?  
 12 A Correct.  
 13 44 Q And so you would agree with me then, that  
 14 her argument is that social workers and  
 15 agencies need to work more proactively with the  
 16 media to enhance the quality of media coverage  
 17 on child welfare matters?  
 18 A It is one of many things that she talks,  
 19 about in terms of the relationship between  
 20 child welfare, and the media, yes.  
 21 45 Q Okay. Are you aware of the other thing  
 22 she talks about?  
 23 A She has so many papers, and I have read  
 24 literally, probably 20 of her papers, so after  
 25 a while it is hard to pick out which one came

1 from that specific report, and others.  
 2 46 Q Well, I have read the Munro Report.  
 3 A Mh-hmm.  
 4 47 Q After discussing all of the issues, she  
 5 does not recommend that, that there be  
 6 publication bans or restrictions on publishing  
 7 about social work, does she?  
 8 A Not that I am aware. I am not sure she  
 9 would have addressed that in her report.  
 10 48 Q She made a lot of suggestions as you point  
 11 out, about the, what she saw as a problem in  
 12 terms of the coverage, and public information?  
 13 A Mh-hmm.  
 14 49 Q You have to say yes or no, because --  
 15 A I am sorry, yes.  
 16 50 Q And none of her recommendations suggested  
 17 restricting the media, and their right to --  
 18 A Off the top of my head, I would say you  
 19 are probably correct.  
 20 51 Q And, in fact, her view is that when  
 21 information is not readily shared, it can  
 22 actually promote inaccurate reported, do you  
 23 remember reading that in the report?  
 24 A Most definitely. I don't think sharing  
 25 of information is, I would say that sharing of

1 information is generally perceived to be an  
 2 important factor in all of these cases, and  
 3 certainly in her, many of her papers, she talks  
 4 about openness as a means of -- an important  
 5 aspect of any of these inquiries.  
 6 52 Q Okay. Have you ever been personally  
 7 involved in an inquiry, or an inquest into a  
 8 child death?  
 9 A Never.  
 10 53 Q Never. Did you ever manage a child  
 11 welfare division, or agency that was faced with  
 12 an inquiry or inquest?  
 13 A I was, I was supervisor of a unit that  
 14 lost a child to a suicide.  
 15 54 Q Were you managing the people who were  
 16 called to testify?  
 17 A No. Not at the time. So, my  
 18 involvement occurred at the time of the actual  
 19 suicide. There was -- I am, the -- there  
 20 was not a public -- I am sorry there was not a  
 21 public inquiry, it was a Ministerial review.  
 22 55 Q There was no public inquiry into the  
 23 death?  
 24 A Pardon me, yes, that is correct, no.  
 25 56 Q No inquest?

1 A No.  
 2 57 Q You have no personal experience with any  
 3 of this?  
 4 A No.  
 5 58 Q We talked about expertise and whatnot a  
 6 few minutes ago, you have no, and you are not  
 7 claiming to have any particular expertise in  
 8 journalism?  
 9 A Gosh no.  
 10 59 Q Or in media, running a media outlet or  
 11 anything like that?  
 12 A No, no.  
 13 60 Q Now, I understand that you wrote an  
 14 article last fall in opposition to a position,  
 15 that the Government of Alberta took with  
 16 respect to accountability systems in child  
 17 welfare?  
 18 A I wouldn't characterize it as in  
 19 opposition to. I would characterize it as  
 20 questioning a position, but I wouldn't say it  
 21 was necessarily in opposition.  
 22 61 Q Do you have a copy with you?  
 23 A I think there was a copy --  
 24 **MR. SMORANG:** You don't?  
 25 **MR. KROFT:** I don't right now, I should

1 have, but I didn't bring it.  
 2 **THE WITNESS:** I think I saw it earlier.  
 3 **MR. SMORANG:** I have one that is attached  
 4 to an e-mail, that I probably wouldn't want you to  
 5 see the top part of it.

6 **MR. KROFT:** If we can agree that is the  
 7 wording, that is fine. Why don't we take a moment,  
 8 and you can do that.

9 **MR. SMORANG:** Okay.  
 10 **(CROSS-EXAMINATION RECESSED BRIEFLY)**  
 11 **BY MR. KROFT:**

12 62 Q All right, we have a copy of the article  
 13 in front of us.

14 A Mh-hmm.

15 63 Q Now I understand that the government  
 16 appointed a, a panel in the late 2000s, to look  
 17 into various aspects of child welfare in  
 18 Alberta?

19 A The, there was discussion of it. It  
 20 hadn't actually occurred. There was an  
 21 announcement by the government this was the  
 22 plan.

23 64 Q Yes. Sorry, I guess, I am going back  
 24 further.

25 A Pardon me. Sorry.

1 65 Q There was this recommendation, that is the  
 2 subject of your article?

3 A Mh-hmm.

4 66 Q Began with a panel, as I understand it, of  
 5 experts the government appointed.

6 A That's correct, yes.

7 67 Q And, this was one of their recommendations  
 8 to the government?

9 A Correct.

10 68 Q And the government announced that it  
 11 accepts this recommendation?

12 A Correct.

13 69 Q And the recommendation was for an  
 14 accountability system involving --

15 A Quality assurance council.

16 70 Q A quality assurance council.

17 A Mh-hmm.

18 71 Q They announced in the fall they were going  
 19 to proceed with this recommendation, they  
 20 adopted it?

21 A I am not sure where they are in the  
 22 process. There was an announcement where this  
 23 was the planned course of action, we have had  
 24 an election and a lot of other things, I am not  
 25 sure where they are in that process. I

1 couldn't say with certainty they have adopted,  
 2 that that quality assurance council is now in  
 3 effect. I do know that is, or was to the best  
 4 of my knowledge, the plan.

5 72 Q It currently is the plan, you haven't  
 6 heard anything to the contrary?

7 A No, I have not.

8 73 Q In terms of the quality assurance council,  
 9 in your article you oppose it?

10 A I challenge whether it will actually serve  
 11 the outcomes it intends to. I had some  
 12 questions about it. I wouldn't say I opposed  
 13 it, I didn't have enough information with the  
 14 details to say that I specifically oppose it.  
 15 But I certainly had some questions, and  
 16 challenges for whether it would achieve the  
 17 benefit it intended. So my question was, would  
 18 it actually make children safer.

19 And I think it is reasonable to say that I  
 20 do have some concerns, about whether it will  
 21 have the intended effect. I fear none of  
 22 these things will be accomplished with a  
 23 quality assurance council. That is expressing  
 24 a concern, as opposed to stating a definitive  
 25 position on it. I don't know if it matters.

1 74 Q The reality is you didn't think it was a  
 2 very good idea, and you published an article  
 3 about it.

4 A Correct. I had many concerns of whether  
 5 that would achieve the effect of keeping  
 6 children safer.

7 75 Q And this, the proposal, was to have a  
 8 council that would have a mandate to  
 9 systematically assess service quality, and  
 10 report its findings to the government from time  
 11 to time.

12 A I believe that my understanding of what  
 13 the quality assurance council mandate would be,  
 14 would be to investigate specifically deaths and  
 15 injuries that occur in child welfare practices.  
 16 Yes.

17 76 Q And the panel that made this  
 18 recommendation, did it you read its  
 19 recommendations?

20 A I did not. I was responding to what the  
 21 media reports on, so I didn't have detailed  
 22 information at the time. It was not made  
 23 available to the public, or at least not to me.

24 77 Q I read it on the Internet, so.

25 A It may have been subsequently put forward.

1 I don't know. I didn't have it at the time.  
 2 No.  
 3 78 Q So, you are not, is it fair to say,  
 4 familiar with the reasoning that underlay this  
 5 recommendation?  
 6 A No, no.  
 7 79 Q And in particular, you, if you don't know,  
 8 you don't know, I am putting to you that the  
 9 panel found that the reason why this  
 10 recommendation was necessary is because there  
 11 was lack of external oversight over the process  
 12 in Alberta?  
 13 A That is entirely possible that they would  
 14 come to that conclusion.  
 15 80 Q Now, I understand that you have testified  
 16 in Alberta court cases involving young  
 17 children, and abuse of young children?  
 18 A Correct.  
 19 81 Q And your name has been reported in the  
 20 judgments?  
 21 A I am sorry, I am not sure I am following.  
 22 Name has been reported in the judgments?  
 23 82 Q Yes, the cases were decided, and judges  
 24 issued reasons?  
 25 A Correct. I believe so.

1 83 Q And other social workers testified in  
 2 those cases?  
 3 A I would assume so. Yes. Most of them.  
 4 84 Q Yes. And there was no publication ban on  
 5 the use of their names in the media?  
 6 A Generally speaking, my work has been in  
 7 the family court, and I don't believe names are  
 8 typically published. I have never seen media  
 9 publication of a case that I have testified on  
 10 in family court. I actually don't really  
 11 know. I am not sure what the rules are around  
 12 publication of family court matters.  
 13 85 Q Have you ever read any of the judgments  
 14 that came out as a result of the cases that you  
 15 testified in?  
 16 A No, I have not. No.  
 17 86 Q All right. And so -- do you have -- I  
 18 will show you. We can talk about it.  
 19 A Thank you. Pardon me, I did read one, it  
 20 would have been a Queen's Bench decision that  
 21 took place in Lethbridge, that was the  
 22 Sanderman decision, that would be one.  
 23 87 Q A number of social workers testified in  
 24 the Sanderman case?  
 25 A Let me think. Well, they must have,

1 they must have.  
 2 88 Q And they were all named in the public  
 3 judgment, I put to you?  
 4 A I honestly I can't remember, because, that  
 5 particular case, I am not sure -- I am not  
 6 sure if social workers actually testified.  
 7 Because I know that there were, it was an  
 8 appeal related to an administrative review  
 9 panel decision. So, I am actually not -- I  
 10 can't be certain. I really don't remember if  
 11 there were specific social workers mentioned in  
 12 that decision. That was the only one that I  
 13 read. So I do recall that in citing his  
 14 reasons Sanderman discussed the testimony of  
 15 the experts, but I don't recall him mentioning  
 16 specific social workers, case workers.  
 17 MR. KROFT: I am going to need those cases,  
 18 could you go get them?  
 19 MS CHISICK: Sure.  
 20 THE WITNESS: He may have mentioned a social  
 21 worker, I can't be sure.  
 22 MR. SMORANG: Are there a number of them?  
 23 MR. KROFT: I have three. I have them on  
 24 my computer, maybe I will try to refresh your memory,  
 25 so you don't have to wait.

1 MR. SMORANG: If we could even print them  
 2 out. If they are not lengthy, I can get them on  
 3 CanLII, and print them.  
 4 MR. KROFT: That's what I have.  
 5 MR. SMORANG: Are they lengthy?  
 6 MR. KROFT: 20 pages.  
 7 THE WITNESS: I think they are.  
 8 MR. KROFT: We can go off the record.  
 9  
 10 (DISCUSSIONS HELD OFF THE RECORD)  
 11  
 12 MR. KROFT: We can deal with some of those  
 13 issues you and I talked about this morning.  
 14 Now, I guess the first issue had to do with  
 15 my request that either Ms Kehler go first, or she not  
 16 be present. And you have objected to both of that,  
 17 and Ms Kehler is present?  
 18 MR. SMORANG: Yes.  
 19 MR. KROFT: I have told you that I will be  
 20 arguing that affects the credibility, and weight of  
 21 her evidence.  
 22 MR. SMORANG: You have told me that.  
 23 MR. KROFT: Yes.  
 24 MR. GINDIN: I would want to put on the  
 25 record my view of that. I agree with Mr. Kroft,



1 that a witness who is going to be crossed right after  
2 probably shouldn't be present, and it does have some  
3 effect on her credibility, having heard the previous  
4 crosses.

5 **MR. SMORANG:** I take your position.

6 **MR. KROFT:** I want to put on the record  
7 what I have already put on the record before the  
8 inquiry, which is I will be moving to strike portions  
9 of the affidavit. I sent you a letter in that  
10 regard. And I have agreed to cross-examine before I  
11 do that because of the time issues. But, I want to  
12 make it clear that I am not waiving the right to make  
13 those motions, I don't think that is in issue.

14 **MR. SMORANG:** It is not, I have your  
15 letter.

16 **MR. KROFT:** I will be filing a Notice of  
17 Motion in that regard. So that everybody is happy  
18 that we followed the correct procedures for the  
19 inquiry.

20 **MR. SMORANG:** Except for the everybody  
21 being happy part, I take your point. I don't think  
22 everybody has been made happy in this file yet.

23 **MR. KROFT:** I am going to make them happy.  
24 The other thing that I wanted to deal with on the  
25 record is probably more related to Ms Kehler, but I

1 am going to do it now, because we have the time.  
2 On -- I have taken the position that we are going to  
3 need some certainty as to which clients, you're  
4 representing.

5 **MR. SMORANG:** Correct.

6 **MR. KROFT:** You are not prepared, obviously  
7 from your motion, to tell me the names of those  
8 people, I take it?

9 **MR. SMORANG:** I don't know that I have gone  
10 that far. Certainly it would defeat the motion to  
11 have them publicly named, that doesn't necessarily  
12 mean that you and I couldn't come to some  
13 accommodation, so you could be satisfied there are  
14 real people behind the numbers. I don't see that  
15 being problematic.

16 **MR. KROFT:** We can deal with that, but that  
17 is my point, that some way we need to get a list of  
18 the people somewhere, that ultimately we know who you  
19 are representing?

20 **MR. SMORANG:** As Ms Kehler's supplementary  
21 affidavit indicates, there has been a witness  
22 schedule, tentative as it is, distributed by  
23 Commission counsel, which has names on it, and those  
24 names comprise all, and more of the 28, 27, whatever  
25 it is right now, that we represent. Indicated as

1 well in Ms Kehler's affidavit is that there are  
2 individuals represented by other firms who also wish  
3 to be covered by the ban.

4 **MR. KROFT:** And they will have to make  
5 their own application, and submit their own list, is  
6 what my position is.

7 **MR. SMORANG:** Make their own motions?

8 **MR. KROFT:** Yes, if, if they are  
9 representing somebody who is not being represented by  
10 you, yes. I think they have done that.

11 **MR. SMORANG:** Maybe they have. I am not  
12 sure the department has. I am not sure McKinnon  
13 has.

14 **MR. KROFT:** We can go back off the record.

15  
16 **(DISCUSSIONS HELD OFF THE RECORD)**

17  
18 **MR. KROFT:** We will mark your article, as  
19 Exhibit 2.

20  
21 **EXHIBIT # 2 - ARTICLE.**

22  
23 **BY MR. KROFT:**

24 89 Q We were talking about, about publicity of  
25 the names of social workers, and other experts

1 in related fields in connection with child  
2 abuse situations in Alberta.

3 A Correct.

4 90 Q You had mentioned that you had testified,  
5 in Alberta.

6 A Correct.

7 91 Q And, I think you said mostly it was  
8 testimony in respect of family law proceedings?

9 A Correct.

10 92 Q Yes. And, I guess in these difficult  
11 ones that you get involved in there are issues  
12 of child abuse that come up?

13 A Correct.

14 93 Q And social workers have been and get  
15 involved?

16 A Correct.

17 94 Q And in those cases, I am suggesting to you  
18 that there are normally not publication bans on  
19 the names of the social workers who testify?

20 A I would accept that. Mh-hmm.

21 **MR. KROFT:** Give me with a minute with Mr.  
22 Gindin, and I think I am done.

23  
24 **(CROSS-EXAMINATION RECESSED BRIEFLY).**

1 MR. KROFT: We are done, with Ms  
2 Wotherspoon, thank you very much.

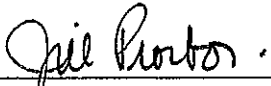
3 MR. GINDIN: I have no questions, either.

4 MR. SMORANG: No questions.  
5  
6

7 (CROSS-EXAMINATION CLOSED).  
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5 REPORTER'S CERTIFICATE  
6  
7

8 I, Jill Proctor, Official Court Reporter, hereby  
9 certify that the foregoing pages are a true and  
10 accurate transcript of the proceedings taken  
11 down by me in shorthand and transcribed to the  
12 best of my skill and ability.  
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17 \_\_\_\_\_  
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19 Official Examiner Q.B.  
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