

APPENDIX C

INFORMATION TO OBTAIN

(Ontario Court of Justice)

CANADA
PROVINCE OF ONTARIO
TORONTO REGION



An application for Production Orders pursuant to section 487.015 of the *Criminal Code*;

An application for an Order Denying Access to Information pursuant to section 487.3 of the *Criminal Code*;

And

An Application for Non-Disclosure Orders pursuant to section 487.0191 of the *Criminal Code*.

1. TABLE OF CONTENTS

1. TABLE OF CONTENTS..... 2

2. OVERVIEW AND ORDERS BEING SOUGHT 6

(a) Documents sought under section 487.015 of the Criminal Code 7

i. From Bell Canada Incorporated, Telus Communications Incorporated, Rogers Communications Canada Incorporated and Freedom Mobile Incorporated, data relating to Honey SHERMAN..... 8

ii. From Bell Canada Incorporated, Telus Communications Incorporated, Rogers Communications Canada Incorporated and Freedom Mobile Incorporated, data relating to Bernard SHERMAN 8

iii. From Bell Canada Incorporated and Telus Communications Incorporated, data relating to the unidentified person walking in the area of 50 Old Colony Road and the scene of the murder 9

iv. From Rogers Communications Canada Incorporated and Freedom Mobile Incorporated, data relating to the unidentified person walking in the area of 50 Old Colony Road and the scene of the murder 9

3. PREVIOUSLY CONSIDERED JUDICIAL AUTHORIZATIONS..... 10

4. INTRODUCTION TO THE AFFIANT 18

5. POLICE OFFICERS INVOLVED 18

6. PRODUCTION ORDER RESULTS 19

(a) [REDACTED] From Rogers Communications Canada Incorporated 19

(b) [REDACTED] From Bell Canada Incorporated 20

(c) Phone Number Associated to [REDACTED] From Telus Communications Incorporated 21

(d) Phone Numbers Associated to [REDACTED] From Rogers Communications Canada Incorporated 21

7. INVESTIGATIVE CANVASS OF AREA AROUND 50 OLD COLONY ROAD 22

(a) Canvass Instructions 22

(b)	Canvass Results	22
i.	Video Surveillance.....	22
ii.	Canvass Summary	23
8.	CONSTRUCTION OF TIMELINE FOR HONEY SHERMAN’S MOVEMENTS AND ACTIONS ON DECEMBER 13 TH , 2017	25
(a)	Sheila STANLEY’s statement	25
(b)	[REDACTED]	26
(c)	Video Surveillance at Apotex Inc.	26
(d)	[REDACTED]	28
(e)	[REDACTED]	30
(f)	[REDACTED]	32
(g)	[REDACTED]	35
9.	CONSTRUCTION OF TIMELINE FOR BERNARD SHERMAN’S MOVEMENTS AND ACTIONS ON DECEMBER 13 TH , 2017	37
(a)	[REDACTED]	38
(b)	Video Surveillance at Apotex Inc.	39
(c)	[REDACTED]	41
10.	CONSTRUCTION OF TIMELINE FOR UNKNOWN PERSON WALKING IN THE AREA OF 50 OLD COLONY ROAD	42
11.	CONSOLIDATED TIMELINE FOR THE EVENTS OF DECEMBER 13 TH , 2017	50
12.	[REDACTED]	
	[REDACTED]	51
(a)	[REDACTED]	51
(b)	[REDACTED]	
	[REDACTED]	52
(c)	[REDACTED]	
	[REDACTED]	56
(d)	[REDACTED]	56
(e)	[REDACTED]	61
(f)	[REDACTED]	61
(g)	[REDACTED]	62

i.	Reasonable suspicion that a relevant communication took place at one or more of the areas of interest at the relevant time	96
ii.	Reasonable suspicion that the identity of the telecommunications service provider in the possession or control of transmission data pertaining to a relevant a communication is unknown	101
19.	CONSIDERATIONS OF <i>R. V. ROGERS AND TELUS</i>	103
(a)	Guideline #1: Awareness of principles of incrementalism and minimal impairment	104
(b)	Guideline #2: Relevancy.....	105
(c)	Guideline #3: Relevancy of types of records requested.....	106
(d)	Guideline #4: Minimization.....	106
(e)	Guideline #5 and Guideline #6: Requesting a report	107
(f)	Guideline #7: Manageability.....	108
20.	CONCLUSION.....	109
21.	ORDER DENYING ACCESS TO INFORMATION	110
i.	Previous Judicial Authorizations	112
ii.	Toronto Star’s Applications To Unseal.....	113
iii.	Toronto Star Newspapers Ltd. v. Sherman Estate, 2018 ONSC 4706.....	114
22.	ORDERS PROHIBITING DISCLOSURE.....	115

I, Dennis YIM #9543, of the Toronto Police Service, City of Toronto, affirm and say as follows:

I understand that this is an ex parte application and that I am obligated to provide full, frank and fair disclosure of the material and information available to me. In drafting this Affidavit, I did not include every single detail of the investigation, which I believe does not impact on the sufficiency of the material and information I am presenting. I did not report on peripheral details to matters being investigated. Many reports I have read have contained more information than I have included in this Affidavit. In an effort to prepare a document that is clear and concise, I have included information that, I believe, is relevant to this particular investigation and which is necessary to establish the grounds for granting the requested Authorizations. I am aware of my duty to present information that would detract from my grounds.

I have reasonable grounds to believe that the following offence under the *Criminal Code* has been committed:

Unknown person(s), between December 13th, 2017 and December 15th, 2017, inclusive, at the City of Toronto, did Murder Bernard SHERMAN and Honey SHERMAN, contrary section 235(1) of the *Criminal Code*.

2. OVERVIEW AND ORDERS BEING SOUGHT

On Friday, December 15th, 2017, the Toronto Police Service received a 911 call to attend at 50 Old Colony Road, in the City of Toronto. Responding officers discovered the bodies of Bernard and Honey SHERMAN in the basement of their home, next to their swimming pool. They were facing the wall in a semi-seated position. Their arms were behind them, and their bodies were being held up by black belts wrapped around their necks and tied to a railing approximately [REDACTED] As detailed in Appendix D of this application and in the information provided below, I have reasonable grounds to believe that Honey SHERMAN and Bernard SHERMAN were murdered. At this point in the investigation, investigators are trying to determine who is responsible for their deaths.

As detailed below, this investigation is complex and lengthy. It has been underway for over a year and has resulted in the issuance of many judicial authorizations. In an attempt to clarify and simplify this application, I have included a copy of one of my previous

Informations to Obtain and associated appendices (submitted on December 14th, 2018) as **Appendix D**. **Appendix D** contains a comprehensive review of the investigation, so I have included it for reference. It remains accurate and I still continue to rely on it to form my grounds in this current application. **Appendix C** of this application details all the new information that has not been provided in prior applications. Some information from prior applications has also been included in this Appendix C because I believe it relates to the new information and provides context for the new information.

In this application I am seeking what is commonly referred to as “tower dumps”. In particular, I am seeking production orders for transmission data from telecommunication service providers identifying devices involved in communications transmitted through cell towers in the vicinity of:

- a) Honey and Bernard SHERMAN in the hours leading up to the murders;
- b) the unidentified suspected killer walking in the area of 50 Old Colony Road, and
- c) 50 Old Colony Road (the location of the murders).

As detailed below, I am seeking these production orders pursuant to section 487.015 of the *Code* (production orders to trace communications). I am aware of the potential impact that “tower dumps” may have on the privacy interests of innocent third parties. I have given considerable thought to these impacts and I have made my best efforts to minimize them through restrictive terms or conditions of the orders. These terms or conditions are discussed in detail, below. I have also made efforts to minimize the impact on third parties by not seeking any subscriber information for the devices that will be identified if these production orders are issued. Finally, I have done my best to comply with the “guidelines” developed by Sproat J. for “tower dumps” in the *R. v. Rogers and Telus* [2016 ONSC 70] case, also discussed in detail, below.

(a) Documents sought under section 487.015 of the Criminal Code

To be more precise, I am seeking production orders that I intend to serve on Bell Canada Incorporated, Rogers Communications Canada Incorporated, Telus Communications Incorporated and Freedom Mobile Incorporated, compelling them to prepare and produce documents containing the following transmission data:

Data identifying incoming/outgoing communications (calls, text messages and/or data), date, time, involved phone numbers, terminating number, call duration and forwarding

numbers relating to cellular devices that connected to cellular towers proximate to the following addresses at the following dates and times (inclusive):

i. From Bell Canada Incorporated, Telus Communications Incorporated, Rogers Communications Canada Incorporated and Freedom Mobile Incorporated:

- I. 50 Old Colony Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- II. 150 Signet Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- III. 150 Signet Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- IV. [REDACTED] in Toronto on December 13th, 2017 between
[REDACTED]
- V. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- VI. 50 Old Colony Road in Toronto on December 13th, 2017, between [REDACTED]
[REDACTED]

These addresses and times relate to Honey SHERMAN's movements.

Note that the time frame for 50 Old Colony Road [REDACTED] is entirely subsumed by the data I am seeking under headings iii and iv, below. Accordingly, this time frame for 50 Old Colony Road does not appear as a separate entry in Appendix A of the draft orders I have prepared, or Appendix A of this Information to Obtain.

ii. From Bell Canada Incorporated, Telus Communications Incorporated, Rogers Communications Canada Incorporated and Freedom Mobile Incorporated:

- I. 150 Signet Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- II. 50 Old Colony Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]

These addresses and times relate to Bernard SHERMAN's movements.

Note that the time frame for 50 Old Colony Road [REDACTED] is also entirely subsumed by the data I am seeking under headings iii and iv, below. Accordingly, this

time frame for 50 Old Colony Road does not appear as a separate entry in Appendix A of the draft orders I have prepared, or Appendix A of this Information to Obtain.

iii. From Bell Canada Incorporated and Telus Communications Incorporated:

- I. 50 Old Colony Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- II. [REDACTED] in Toronto on December 13th, 2017 between
[REDACTED]
- III. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- IV. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]

These addresses and times relate to the movements of the unidentified person walking in the area of 50 Old Colony Road, and to the suspected time frame of the murders at 50 Old Colony Road.

Note that I am seeking this data from Bell and Telus, but not from Rogers and Freedom Mobile. This is because, unlike Bell and Telus, Rogers and Freedom Mobile require that test calls be conducted at each location for which “tower dump” data is sought. I did not conduct test calls for [REDACTED] so I cannot seek data from Rogers or Freedom Mobile relating to this location. I am, however, seeking this data from Bell and Telus, because they do not require test calls, and the unidentified person walking in the area of 50 Old Colony Road was seen in the vicinity of [REDACTED] within the identified time frame.

iv. From Rogers Communications Canada Incorporated and Freedom Mobile Incorporated:

- I. 50 Old Colony Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- II. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- III. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]

These addresses and times also relate to the movements of the unidentified person walking in the area of 50 Old Colony Road, and to the suspected time frame of the murders at 50 Old Colony Road. For the reasons described above, I have removed [REDACTED] from the list of locations for which I am seeking data from Roger and Freedom Mobile because I did not conduct test calls at that location.

3. PREVIOUSLY CONSIDERED JUDICIAL AUTHORIZATIONS

(a) On Wednesday December 20th, 2017 investigators sought a search warrant authorizing the re-seizure and examination of the following electronic devices, which had been seized from the SHERMAN residence:

- i. White Apple iPhone
- ii. Black Blackberry phone
- iii. Two iPads
- iv. Toshiba laptop
- v. HP desktop computer

Her Honour L. PRINGLE authorized the warrant in relation to the white Apple iPhone but denied the warrant applications in relation to the other devices.

(b) On Wednesday December 20th, 2017, Production Orders were applied for and granted by her Honour L. PRINGLE to obtain the following:

- i. Phone records for phone number [REDACTED] associated to Bernard SHERMAN for the time period of 12:00 AM on November 15th, 2017 to 12:45 PM on December 15th, 2017.
- ii. Phone records for phone number [REDACTED] associated to Honey SHERMAN for the time period of 12:00 AM on November 15th, 2017 to 12:45 PM on December 15th, 2017.
- iii. Email records for email address, [REDACTED] belonging to Honey SHERMAN for the time period of December 1st, 2017 to December 15th, 2017 inclusive.

(c) On Tuesday January 9th, 2018, a search warrant was applied for and granted on January 10th, 2018 by her Honour L. PRINGLE authorizing the re-seizure and examination of the following electronic devices, which had been seized from the SHERMAN residence:

- i. Black Blackberry phone
- ii. Two iPads
- iii. Toshiba laptop
- iv. HP desktop computer

(d) On Sunday January 14th, 2018, search warrant and production order applications were submitted to her Honour L. PRINGLE. On January 15th, 2018 the search warrants and production orders were granted by Judge L. PRINGLE authorizing:

- i. The search of the office and adjoining lab of Bernard SHERMAN at Apotex Inc., located at 150 Signet Road in the City of Toronto.
- ii. The re-seizure and examination of a computer which had been seized from the office of Bernard SHERMAN at Apotex Inc., located at 150 Signet Road in the City of Toronto.

And the production of the following:

- i. Apotex Inc. video surveillance and security card logs at Apotex Inc. located at 150 Signet Road, from December 11th, 2017 at 12:01 AM to December 15th, 2017 at 6:00 PM.
- ii. OHIP records of Bernard SHERMAN and Honey SHERMAN, from December 2010 to December 16th, 2017.
- iii. BMO Financial Group credit card records of Bernard SHERMAN and personal account records of Bernard SHERMAN and Honey SHERMAN, from November 15th, 2017 to January 13th, 2018, inclusive.
- iv. TD Bank Group credit card, personal and commercial account records of Bernard SHERMAN, from November 15th, 2017 to January 13th, 2018, inclusive.
- v. CIBC Visa account records of Bernard SHERMAN and Honey SHERMAN, from November 15th, 2017 to January 13th, 2018, inclusive.

(e) On Thursday February 8th, 2018 production order applications were submitted to her Honour L. PRINGLE. On Thursday February 15th, 2018 production orders were granted for the production of the following:

- i. All medical records for Bernard SHERMAN and Anna Debra Honey SHERMAN, obtained by Dr. Michael PICKUP under the authority of the Coroner's Act during the Coroner's investigation into the deaths of Bernard SHERMAN and Honey SHERMAN.
 - ii. Records for Aeroplan account number [REDACTED], in the name of Dr. Bernard SHERMAN for the time period of November 15th, 2017 to December 15th, 2017 inclusive.
 - iii. Records for Air Miles card number [REDACTED] in the name of [REDACTED] [REDACTED] for the time period of November 15th, 2017 to December 15th, 2017 inclusive.
 - iv. All BMO Financial Group commercial accounts held in the name of Bernard SHERMAN with a date of birth of February 25th, 1942 for the time period of November 15th, 2017 to February 4th, 2018 inclusive.
- (f) On Thursday April 12th, 2018 production order applications were submitted to her Honour L. PRINGLE. On April 16th, 2018 production orders were granted for the production of the following:
- i. Records for BMO Financial Group, Master Card account number [REDACTED] [REDACTED] in the name of Honey SHERMAN and Apotex Fleet from November 15th, 2017 to the date the order is authorized inclusive.
 - ii. Records for Capital One, Master Card account number [REDACTED] in the name of Honey SHERMAN from November 15th, 2017 to the date the order is authorized inclusive.
 - iii. Phone records for Bell Canada Incorporated phone number [REDACTED] associated to 50 Old Colony Road from November 15th, 2017 to December 15th, 2017.
 - iv. Phone records for Rogers Communications Incorporated cellular phone numbers [REDACTED] [REDACTED] from July 6th, 2017 to February 8th, 2018 inclusive.
 - v. Phone records for Rogers Communications Incorporated cellular phone numbers [REDACTED] [REDACTED] from November 15th, 2017 to December 15th, 2017 inclusive.
 - vi. Phone records for Rogers Communications Incorporated cellular phone number [REDACTED] from November 15th, 2017 to December 19th, 2017 inclusive.

(g) On June 21st, 2018 production order applications were submitted to her Honour L. PRINGLE. On June 27th, 2018 production orders were granted for the production of the following:

- i. All surveillance video from the Canadian Imperial Bank of Commerce at the [REDACTED]
- ii. Phone records for Rogers Communications Incorporated cellular phone number [REDACTED] However, this phone number was listed as a cellular phone number, in error, when in actual fact this number is associated to a landline and therefore the production order was not executed.
- iii. Phone records for Bell Canada Incorporated cellular phone number [REDACTED]

The following production orders were denied:

- i. Phone records for Rogers Communications Incorporated cellular phone numbers:
 - I. [REDACTED]
 - II. [REDACTED]
 - III. [REDACTED]
 - IV. [REDACTED]
 - V. [REDACTED]
 - VI. [REDACTED]
 - VII. [REDACTED]
- ii. Phone records for Bell Canada Incorporated cellular phone numbers:
 - I. [REDACTED]
 - II. [REDACTED]
- iii. Phone records for Telus Communications Incorporated cellular phone numbers:
 - I. [REDACTED]
 - II. [REDACTED]

(h) On September 19th, 2018 production order applications were submitted to her Honour L. PRINGLE. On September 23rd, 2018 production orders were granted for the production of the following:

i. Transmission and tracking data from Rogers communication Canada Incorporated for the following:

- I. Phone numbers [REDACTED] from November 1st, 2017 to December 29th, 2017, inclusive.
- II. Phone numbers [REDACTED] from December 10th, 2017 to December 16th, 2017, inclusive.
- III. Phone number [REDACTED] from December 10th, 2017 to December 16th, 2017, inclusive.
- IV. Phone number [REDACTED] from December 10th, 2017 to December 16th, 2017, inclusive.

ii. Transmission and tracking data from Bell Canada Incorporated for the following:

- I. Phone number [REDACTED] from December 10th, 2017 to December 16th, 2017, inclusive.
- II. Phone number [REDACTED] from December 10th, 2017 to December 16th, 2017, inclusive.

iii. Transmission and tracking data from Freedom Mobile Incorporated for the following:

- I. Phone number [REDACTED] from December 10th, 2017 to December 16th, 2017, inclusive.

(e) On November 8th, 2018 production order applications were submitted to her Honour L. PRINGLE. On November 16th, 2018 production orders were **granted** for the production of the following:

- i. Transmission and tracking data from Rogers Communications Canada Incorporated from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive for the following phone numbers, associated to [REDACTED]

[REDACTED]

- ii. Transmission and tracking data from Bell Canada Incorporated from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive for the following phone numbers associated to [REDACTED]

[REDACTED]

- iii. Transmission and tracking data from Rogers Communications Canada Incorporated from July 6th, 2017 to February 4th, 2018 inclusive for the following phone numbers:

[REDACTED]

- iv. Transmission and tracking data from Rogers Communications Canada Incorporated from September 12th, 2017 to September 29th, 2017 inclusive for the following phone number:

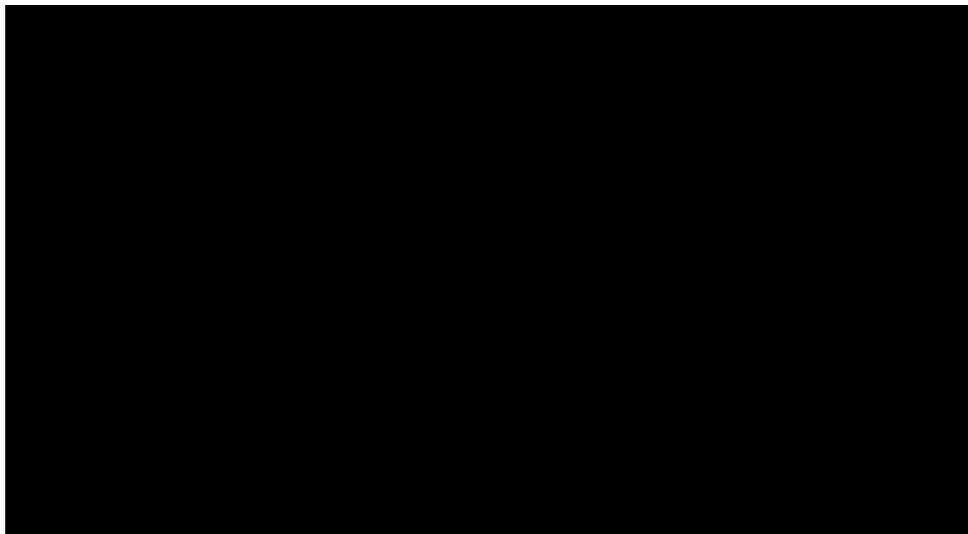
[REDACTED]

- v. Transmission and tracking data from Rogers Communications Canada Incorporated from January 24th, 2018 to February 4th, 2018 inclusive for the following phone numbers:

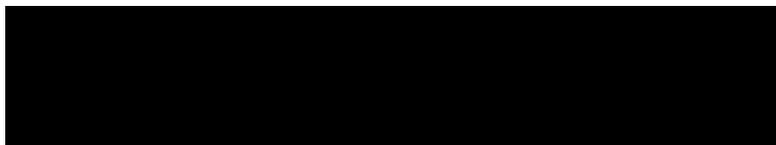


The following production orders were **denied**:

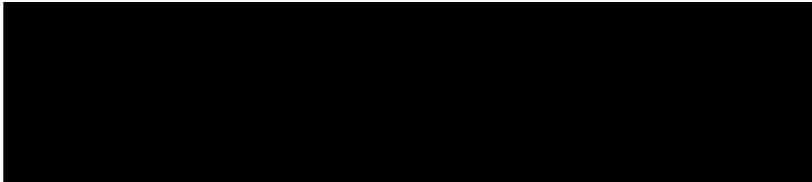
- i. Transmission and tracking data from Rogers Communications Canada Incorporated from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive for the following phone numbers:



- ii. Transmission and tracking data from Bell Canada Incorporated from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive for the following phone numbers:



- iii. Transmission and tracking data from Telus Communications Incorporated from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive for the following phone numbers:

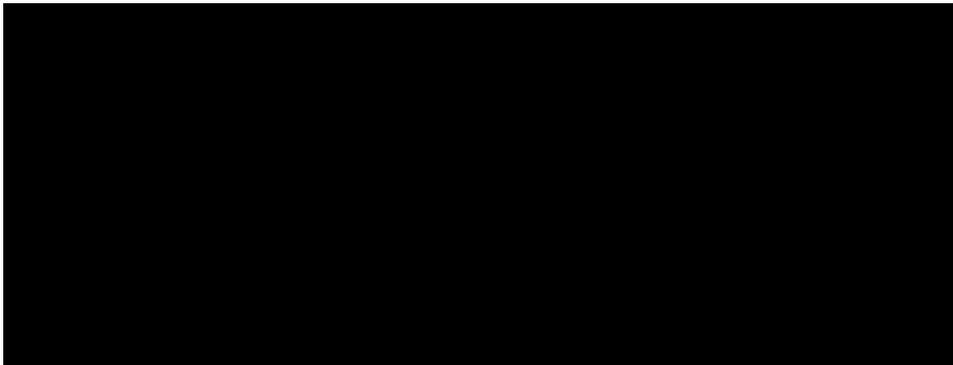


iv. Reasons for refusal

I.  Her Honour L. PRINGLE stated the reason for refusal was, “I am not satisfied there are reasonable grounds to suspect that the transmission and tracking data requested will assist in the investigation of the offence at this time. I am willing to reconsider this decision if further information comes to light.”

(i) On December 14th, 2018 production order applications were submitted to her Honour L. PRINGLE. On December 20th, 2018 production orders were granted for the production of the following:

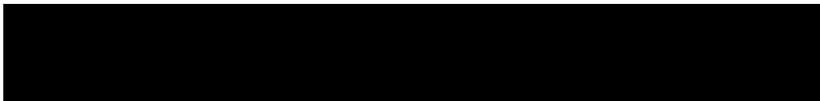
i. Transmission and tracking data from Rogers Communications Canada Incorporated for the following phone numbers:



ii. Transmission and tracking data from Bell Canada Incorporated for the following phone numbers:



iii. Transmission and tracking data from Telus Communications Incorporated for the following phone numbers:



4. INTRODUCTION TO THE AFFIANT

- (a) I, Dennis YIM #9543, am a police officer, employed by the Toronto Police Service since August 2006. I am currently assigned to 32 Division, Major Crime Unit and have been assigned to assist with this case as a criminal investigator with the Specialized Criminal Investigations, Homicide Unit. My duties include preparing judicial applications or other investigative duties as assigned by the Major Case Manager.
- (b) I have been involved in this investigation since Thursday December 21st, 2017 as a member of the homicide team investigating this matter. I have performed my duties in relation to this investigation under the direction of the Officer in Charge, Detective Sergeant Sue GOMES #1004.
- (c) The information contained within this application is known to me from the following sources:
- i. Direct knowledge;
 - ii. Interviews conducted with witnesses;
 - iii. Information relayed to me by other officers based on the interviews they have conducted and their observations;
 - iv. Written reports and police officer's memorandum books that I have read;
 - v. Photographs taken of the scene and at post-mortem examinations;
 - vi. Results from the execution of prior search warrants and production orders.

Wherever possible the information set forth in this application will be laid out in chronological order, however, due to the complexity of the investigation and for clarity and ease of use it has been broken down into separate headings.

- (d) I have personal knowledge of this investigation and I believe the following information to be accurate and true.

5. POLICE OFFICERS INVOLVED

The following is a list of officers that have not been referred to in any previous application:

- (a) Detective Chris SLOAN #7844, hereinafter referred to as Det. SLOAN is a police officer employed by the Toronto Police Service – Intelligence Unit, Technical Crime Unit. Det. SLOAN or his designate will be responsible for sealing all third party transmission data subject to this application that is not subject to further investigation.

As detailed below, one of the terms I suggest be imposed in order to address the potential impact of these “tower dumps” on third party privacy interests is that the seized data only be analysed under strict court-imposed conditions, detailed below, following which the data will be sealed pending further court order.

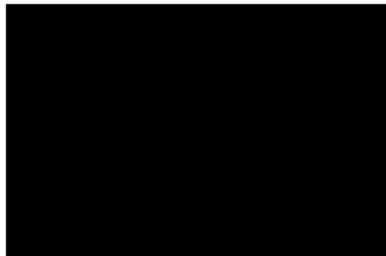
6. PRODUCTION ORDER RESULTS

The following is a list of updated Production Order results that have not been presented in any prior application.

- (a)  From Rogers Communications Canada Incorporated

On December 13th, 2018 I received the production order results for the following:

- i. Transmission and tracking data from Rogers Communications Canada Incorporated from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive for the following phone numbers, associated to 



- ii. Transmission and tracking data from Rogers Communications Canada Incorporated from July 6th, 2017 to February 4th, 2018 inclusive for the following phone numbers:



iii. Transmission and tracking data from Rogers Communications Canada Incorporated from September 12th, 2017 to September 29th, 2017 inclusive for the following phone number:

[REDACTED]

iv. Transmission and tracking data from Rogers Communications Canada Incorporated from January 24th, 2018 to February 4th, 2018 inclusive for the following phone numbers:

[REDACTED]

The results are currently in the process of being reviewed.

(b) [REDACTED] From Bell Canada Incorporated

On January 4th, 2019 I received production order results for the following records:

i. Transmission and tracking data from Bell Canada Incorporated from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive for the following phone numbers associated to [REDACTED]

[REDACTED]

The results are in the process of being reviewed.

(c) Phone Number Associated to [REDACTED] From Telus Communications Incorporated

On January 2nd, 2019 I received production order results for the following:

- i. Transmission and tracking data from Telus Communications Incorporated for the following phone numbers from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive:

[REDACTED]

The results are in the process of being reviewed.

(d) Phone Numbers Associated to [REDACTED] From Rogers Communications Canada Incorporated

On January 22nd, 2019 I received production order results for the following phone numbers:

- i. Transmission and tracking data from Telus Communications Incorporated for the following phone numbers from November 15th, 2017 to December 19th, 2017 inclusive and from January 24th, 2018 to February 4th, 2018 inclusive:

[REDACTED]

The following results are still pending:

[REDACTED]

- ii. The transmission and tracking data from Bell Canada Incorporated for the following phone numbers are still pending:

[REDACTED]



7. INVESTIGATIVE CANVASS OF AREA AROUND 50 OLD COLONY ROAD

(a) Canvass Instructions

On July 16th, 2018 I reviewed instructions provided by D/S GOMES for an investigative canvass that was conducted on January 20th, 2018. The investigative canvass covered the following areas:



The residents in the area were asked about Monday December 11th, 2017 to Friday December 15th, 2017. Residents were questioned as to whether they had any social events, activities or visitors that week. They were also asked if they were working from home that week, if they had any servicing done on their home that week and if there were any persons in their home while the resident was away.

Officers also canvassed and asked about cars that were associated to residences, video surveillance and Wifi access.

A series of video stills, taken from surveillance video, of people walking in the area were shown to residents to determine if anyone could identify the unidentified individuals pictured in the video stills.

(b) Canvass Results

i. Video Surveillance

On August 16th, 2018 I reviewed a Supplementary Report by DC THAYALAN dated February 8th, 2018, in regards to obtaining video surveillance around 50 Old Colony. From the report I learned that surveillance video was obtained by DC THAYALAN from  locations around 50 Old Colony Road.

Amongst the videos obtained was video surveillance relevant to this application, from [REDACTED]
[REDACTED]

ii. Canvass Summary

On August 20th, 2018 I reviewed a Supplementary Report by DC THAYALAN, dated August 20th, 2018 regarding the canvass results. I reviewed the report and learned the following:

- I. An extensive canvass of the neighbourhood has failed to reveal any persons who could provide compelling information in relation to the deaths of the SHERMANS.
- II. A video canvass commencing on December 16th, 2017 had resulted in investigators obtaining video surveillance which identified several individuals in the area. There was one individual whose actions and behaviour as seen on video surveillance have caused this person to be elevated to a Person of Interest.

III. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

a. [REDACTED]

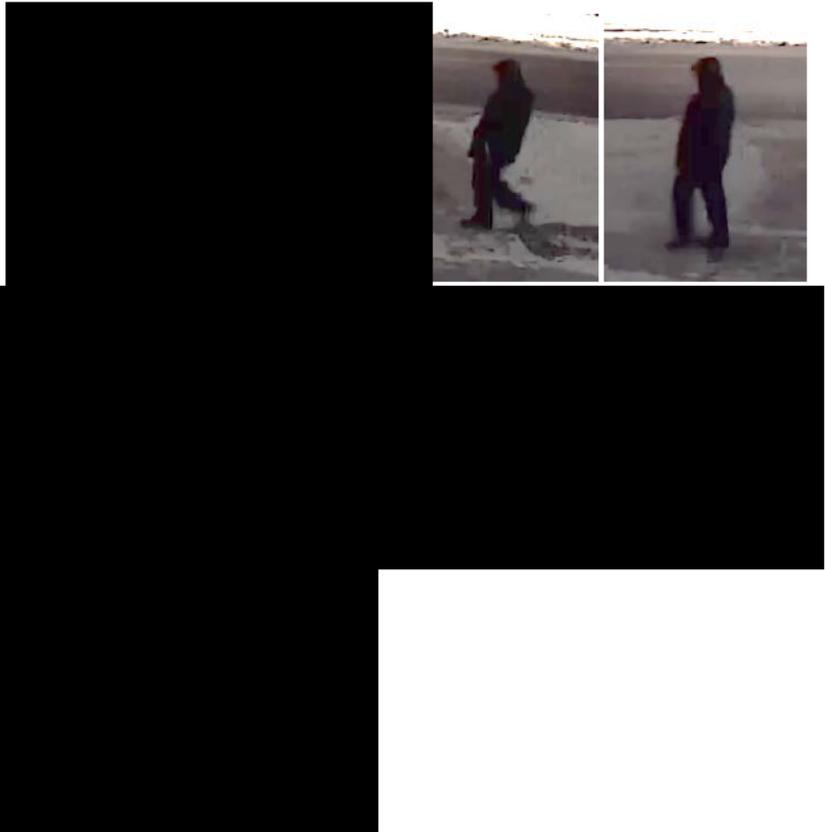
b.



c.



d.



(last three rows are all "d.")

All the persons depicted in the "foil" images were recognized by one or more persons as either themselves or someone they knew from the neighbourhood. The unknown individual depicted in "d." was not recognized by anyone.



- IV. An overall review of the video surveillance, by DC THAYALAN revealed that the unknown individual spent over [REDACTED] from [REDACTED] [REDACTED] on December 13th, 2017 in the area between [REDACTED] [REDACTED]
- V. An investigative canvass of residents from [REDACTED] [REDACTED] Officers were able to speak with all the residents of the addresses except for one address. None of the residents that were spoken to could recognize the unknown person or can account for the unknown person's presence during the time frame in question.
- Officers were unable to speak to the occupants of [REDACTED] Multiple attempts were made to contact the person(s) occupying the address without any success. Investigators believe the address was unoccupied.
- VI. Other persons that were seen walking in the area on surveillance video have been identified and accounted for.

8. CONSTRUCTION OF TIMELINE FOR HONEY SHERMAN'S MOVEMENTS AND ACTIONS ON DECEMBER 13TH, 2017

In the construction of the timeline for Honey SHERMAN's movements and actions I have reviewed several video logs created by other officers for their review of surveillance video that was seized from businesses and residences. Many video stills were taken from the videos and incorporated in the video logs created by officers and I have only incorporated those stills that I believe are relevant to this application. Any video that may detract from my grounds has also been incorporated. In most cases I have circled the subject of the video in colour for ease of locating and identifying the subjects.

(a) Sheila STANLEY's statement

In her statement to police (summarized in Appendix D), Sheila states that she last saw Honey SHERMAN when she left 50 Old Colony Road at **2:40 PM on December 13th, 2017.**

(b) Video from [REDACTED]

On July 3rd, 2018 I reviewed a Video Log for surveillance video from [REDACTED]. The video log was created by DC ZLOBICKI. From the video log I learned the following:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]
- v. DC ZLOBICKI viewed the video from December 13th, 2017 [REDACTED] to December 14th, 2017 at [REDACTED]

The following video stills with the associated descriptions are from the video log of [REDACTED]

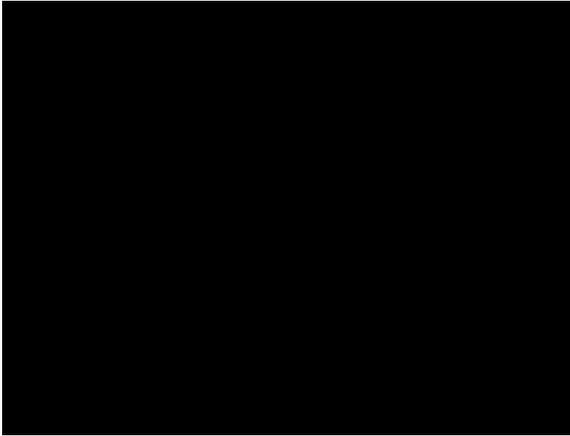
- i. [REDACTED]
- [REDACTED]

(c) Video Surveillance at Apotex Inc.

i.



ii.

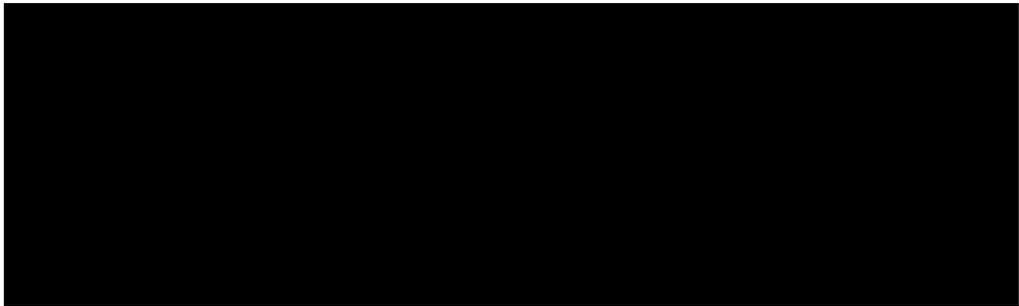


iii.





- I.
- II.
- III.



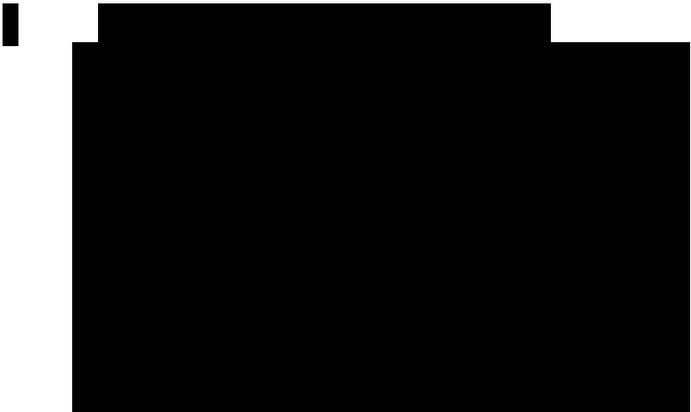
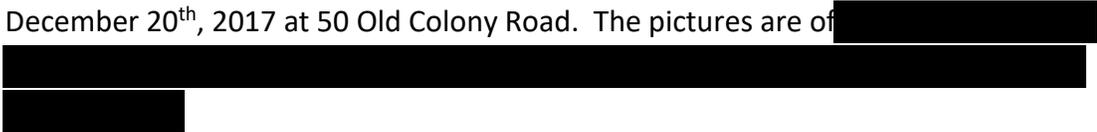
iv.



(d)



On January 10th, 2018 I reviewed the following Cumulus pictures taken by DC SOUCY on December 20th, 2017 at 50 Old Colony Road. The pictures are of



[REDACTED]

On January 10th, 2018 I reviewed a video log created by DC DE OLIVEIRA for video obtained from [REDACTED]

[REDACTED] From the video log, I obtained the following information and video stills:

i. The time on the video is accurate.

ii. [REDACTED]

iii. [REDACTED]

iv. [REDACTED]

v. [REDACTED]



(e) [Redacted]

On March 28th, 2018 I reviewed a Supplementary Report dated January 3rd, 2018 for Task #213 completed by Det. TAVARES in regards to [Redacted]

[Redacted]
[Redacted] I reviewed the report and learned the following:

i. [Redacted]

ii. [Redacted]
iii. [Redacted]
iv. [Redacted]
v. [Redacted]

On April 10th, 2018 I reviewed Cumulus photo number 20173201016_2240 taken on December 21st, 2017 by DC LANGILLE. The photo is [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

On April 4th, 2018 I reviewed a Video Chronology of the [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

i.

[REDACTED]
[REDACTED]
[REDACTED]

ii.

[REDACTED]
[REDACTED]

iii.

[REDACTED]

[REDACTED]

iv.

[REDACTED]

v.

[REDACTED]

(f)

[REDACTED]

On April 3rd, 2018 I reviewed a Supplementary Report completed by DC DEVINE on March 28th, 2018. The report was for DC DEVINE's review of [REDACTED]

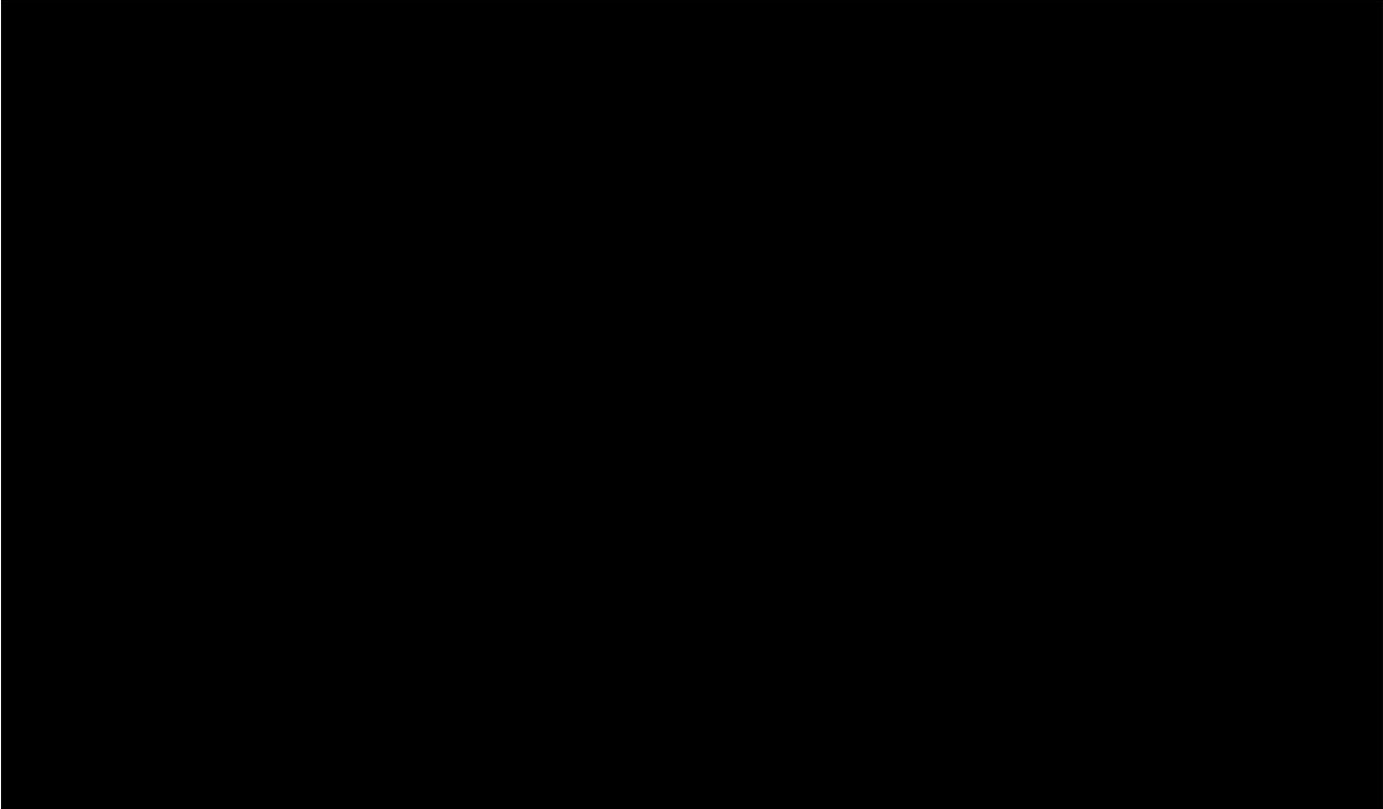
[REDACTED]

[REDACTED]

I have reviewed the

Supplementary Report and have summarized it below. Any images included in my summary are from DC DEVINE's Supplementary Report.

i.



ii.



iii.

iv.

[REDACTED]

v.

[REDACTED]

vi.

[REDACTED]

vii.

[REDACTED]

[REDACTED]

viii.

[REDACTED]

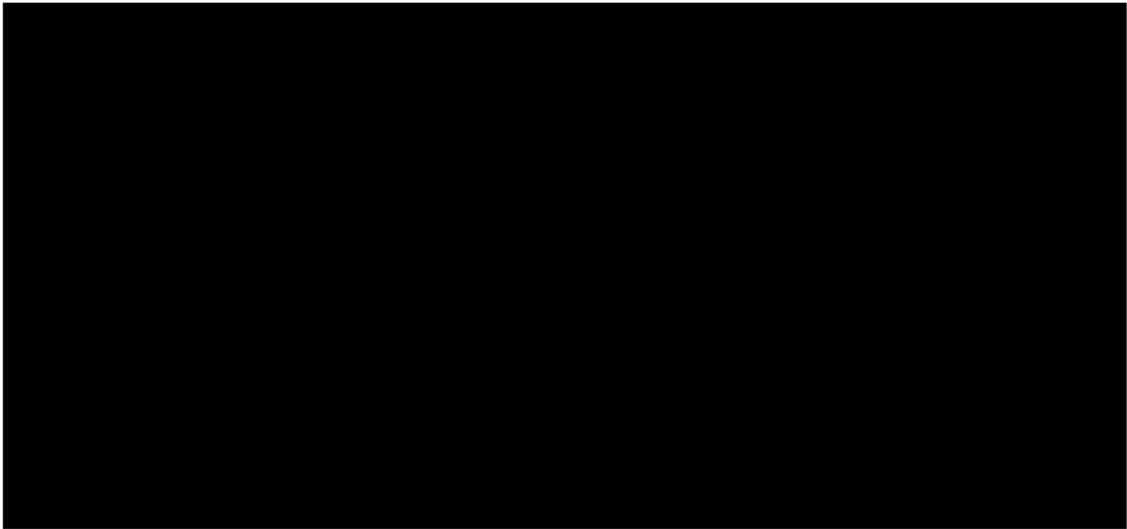
[REDACTED]

[REDACTED]

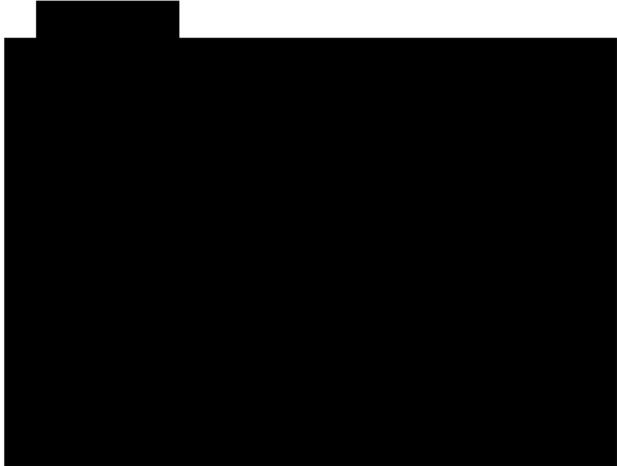
(g) Video from [REDACTED]

On July 4th, 2018 I reviewed the video log, created by DC PICKETT for the review of [REDACTED]
[REDACTED] and learned the following:

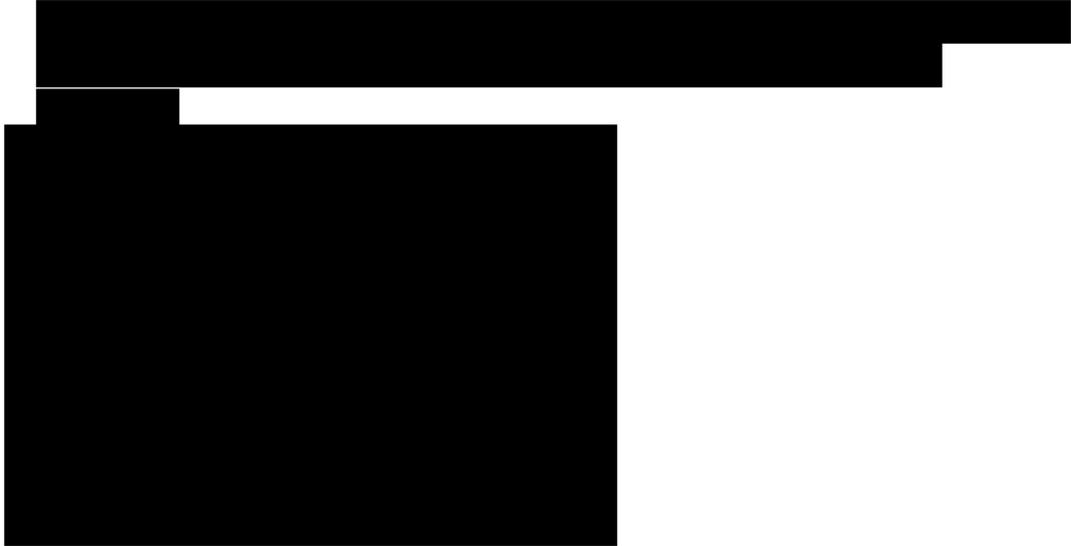
- i.
- ii.
- iii.
- iv.
- v.



- i.



ii.



iii.



9. CONSTRUCTION OF TIMELINE FOR BERNARD SHERMAN'S MOVEMENTS AND ACTIONS ON DECEMBER 13TH, 2017

In the construction of the timeline for Bernard SHERMAN's movements and actions I have reviewed several video logs created by other officers for their review of surveillance video that was seized from businesses and residences. Many video stills were taken from the videos and incorporated in the video logs created by officers and I have only incorporated those stills that I believe are relevant to this application. Any video that may detract from my grounds has also been incorporated. In most cases I have circled the subject of video in colour for ease of locating and identifying the subjects of the respective videos.

(a) [REDACTED]

On July 3rd, 2018 I reviewed a Video Chronology created by DC THAYALAN for the movements [REDACTED] and have learned the following:

- i. [REDACTED]
- ii. The Video Chronology was created by DC THAYALAN and relies upon other Video Chronologies and work product created by DC THOMAS, DC PICKETT and DC ZLOBICKI.
- iii. [REDACTED]
- iv. All the times noted are actual times, as many of the time stamps as seen in the video stills are known to be inaccurate and have been compensated for.
- v. [REDACTED]

The following video stills with the associated descriptions are from the video log created by DC THAYALAN that tracks the movements of [REDACTED]

- i. [REDACTED]

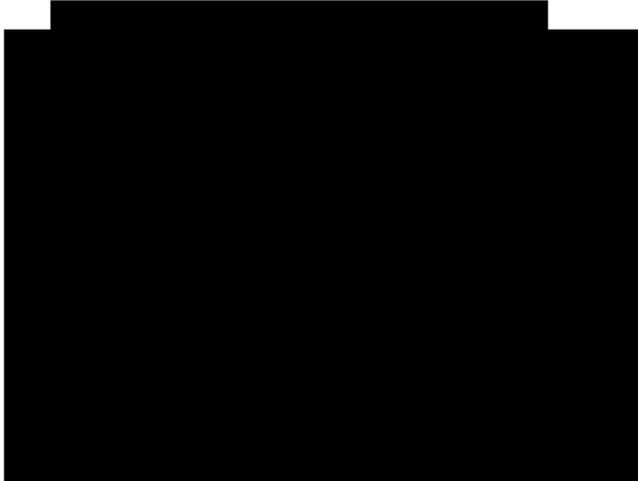


(b) Video Surveillance at Apotex Inc.

i.



ii.



iii.

[REDACTED]

[REDACTED]

[REDACTED]

iv.

[REDACTED]



v.



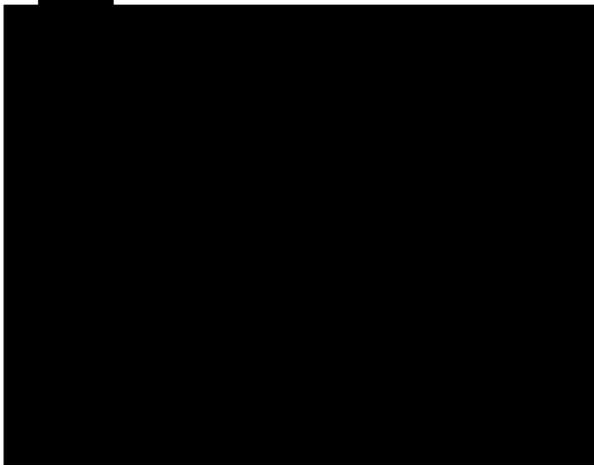
(c) Video from

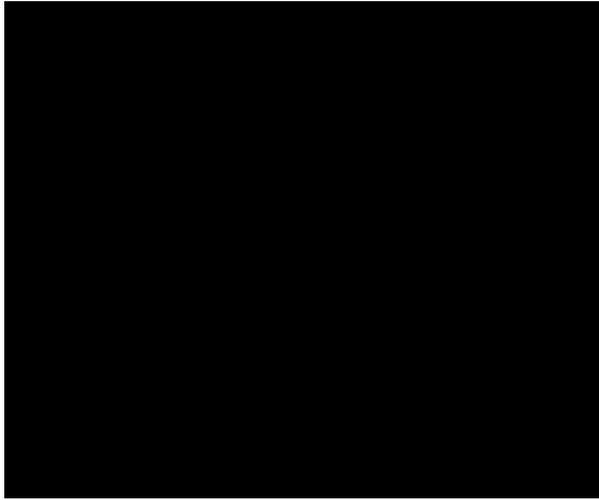


The following video stills with the associated descriptions are from the



i.

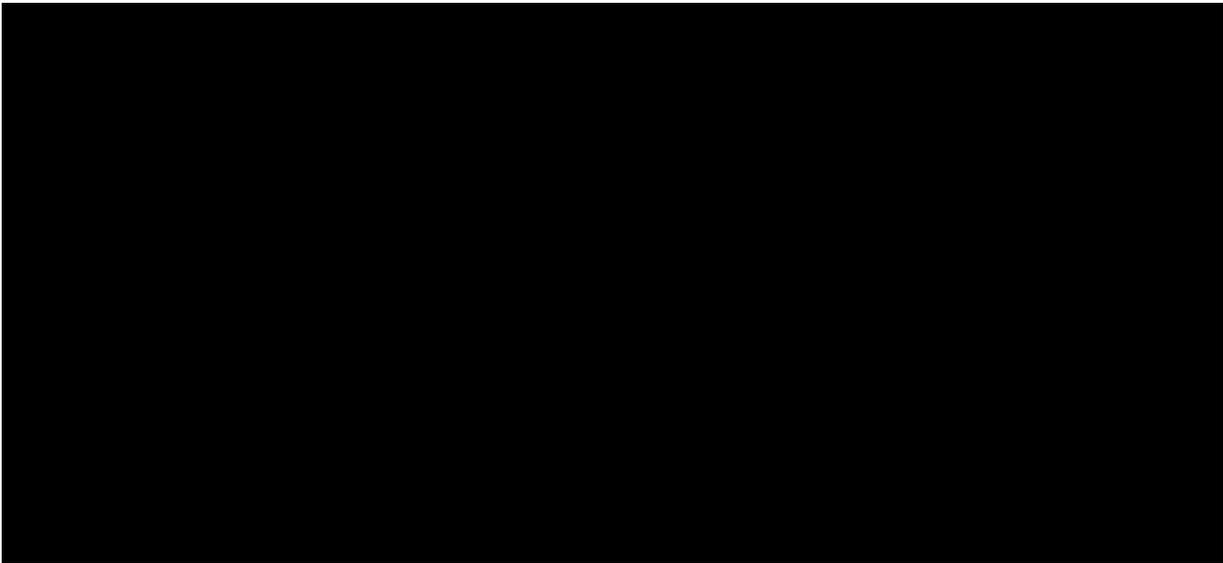
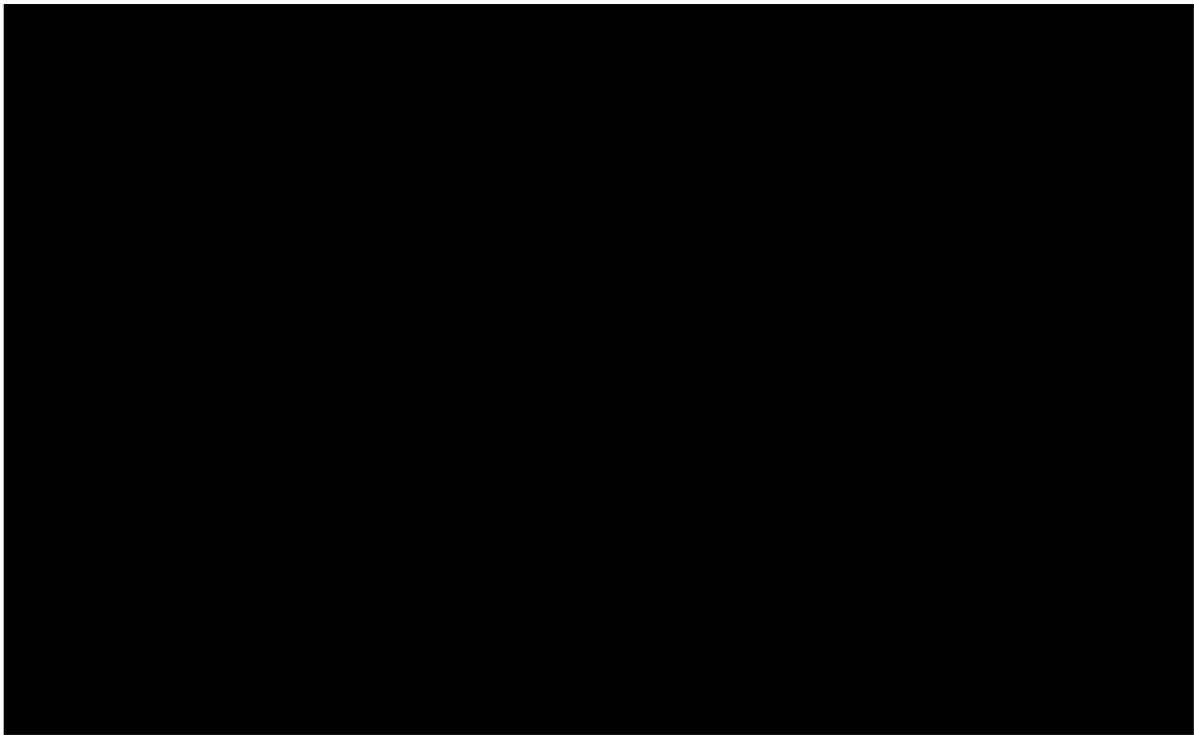




10. CONSTRUCTION OF TIMELINE FOR UNKNOWN PERSON WALKING IN THE AREA OF 50 OLD COLONY ROAD

On July 4th, 2018 I reviewed a video chronology, completed by DC PICKETT and DC THAYALAN for the unknown person referred to earlier, who was walking on Old Colony Road. I learned the following from the video chronology:

- i. The video chronology was created by DC PICKETT and updated by DC THAYALAN.
- ii. The time frame encompassed by the video chronology is [REDACTED]
[REDACTED]
- iii. The video chronology utilized video from the following locations: [REDACTED]
[REDACTED]
[REDACTED]
- iv. All the video surveillance were seized by DC THAYALAN and all the videos had time discrepancies in relation to actual time. The times that are stated in the video chronology have been adjusted to reflect the actual time.
- v. The maps and "Streetview" images have been taken from the video chronology and were originally taken from Google Maps. The maps with labels have been provided below for ease of reference.



The following stills have been taken from DC PICKETT's and DC THAYALAN's video chronology:

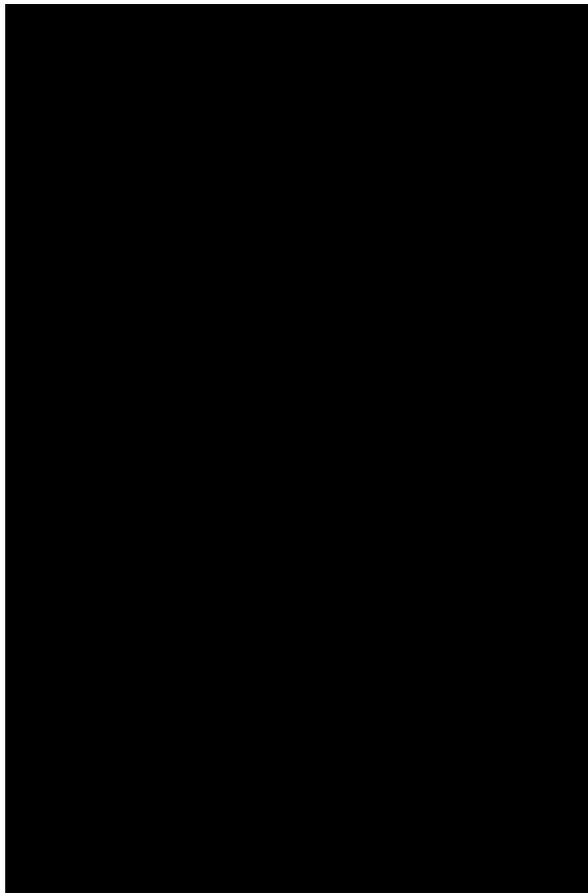
- i. 


[Redacted]

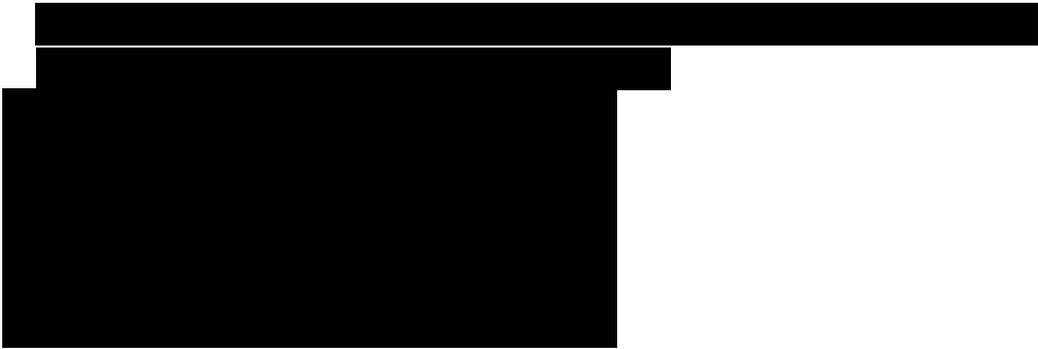
ii. [Redacted]

iii. [Redacted]

iv. [Redacted]



v.



vi.



vii.

[Redacted text block]

viii.

[Redacted text block]

ix.

[Redacted text block]

x.

[Redacted text block]

[Redacted]

xi.

[Redacted]

[Redacted]

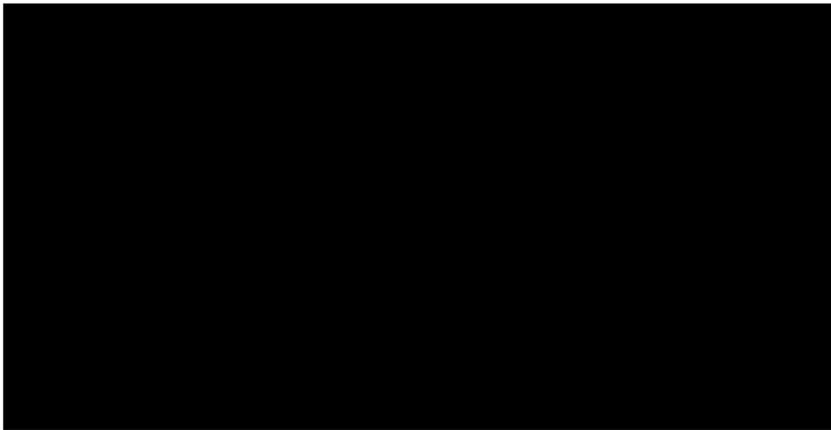
xii.

[Redacted]

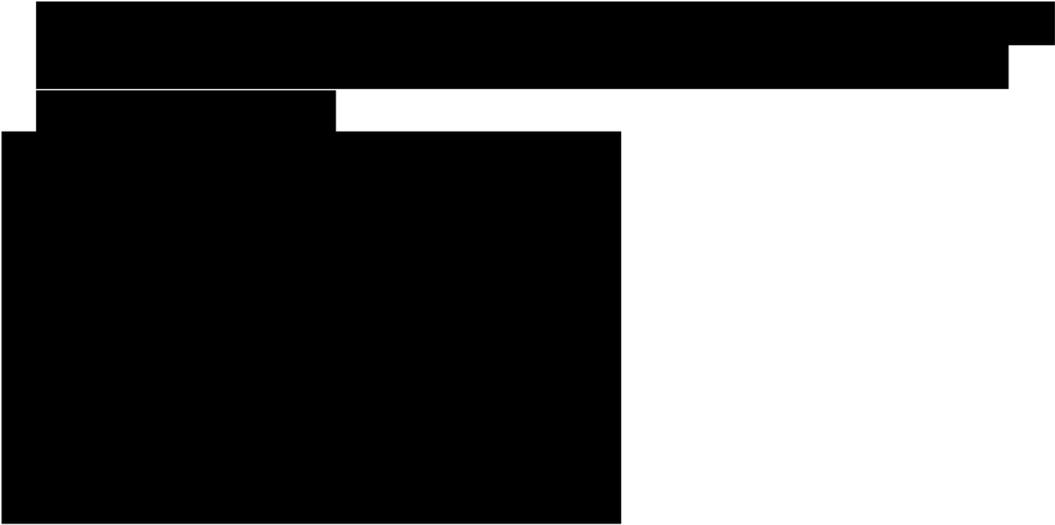
[Redacted]

xiii.

[Redacted]



xiv.



xv.

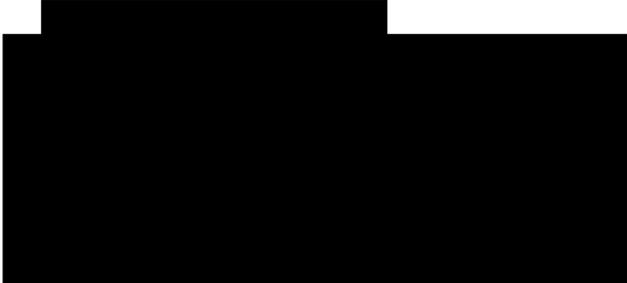


xvi.

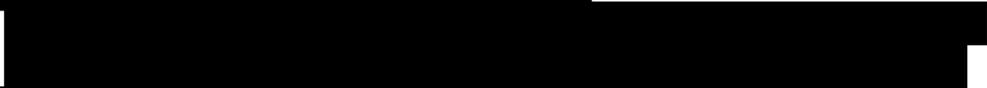




xvii.



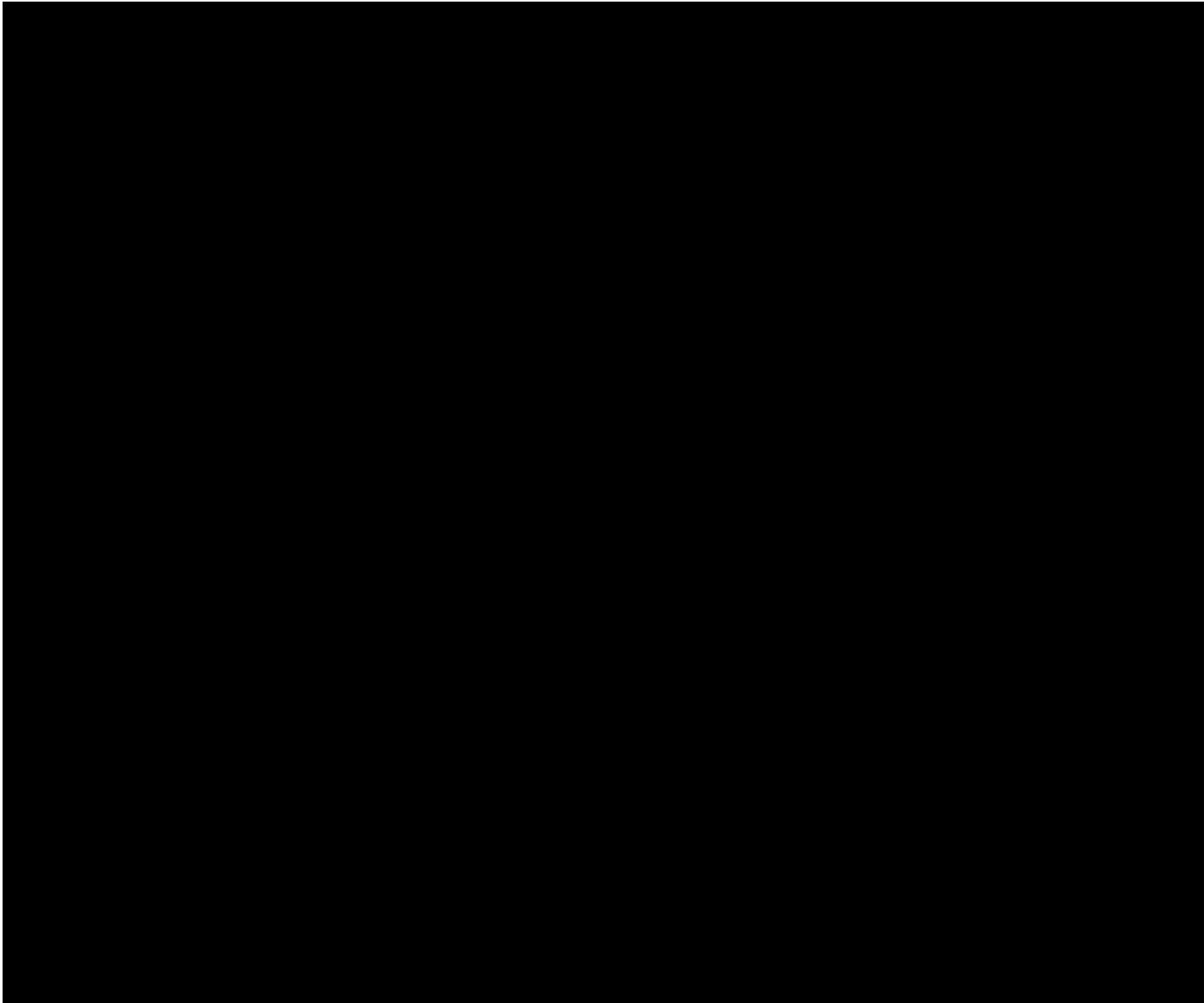
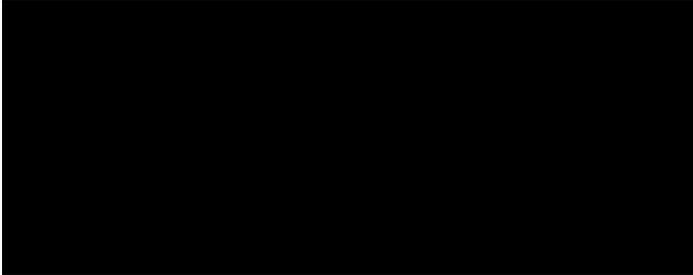
xviii.

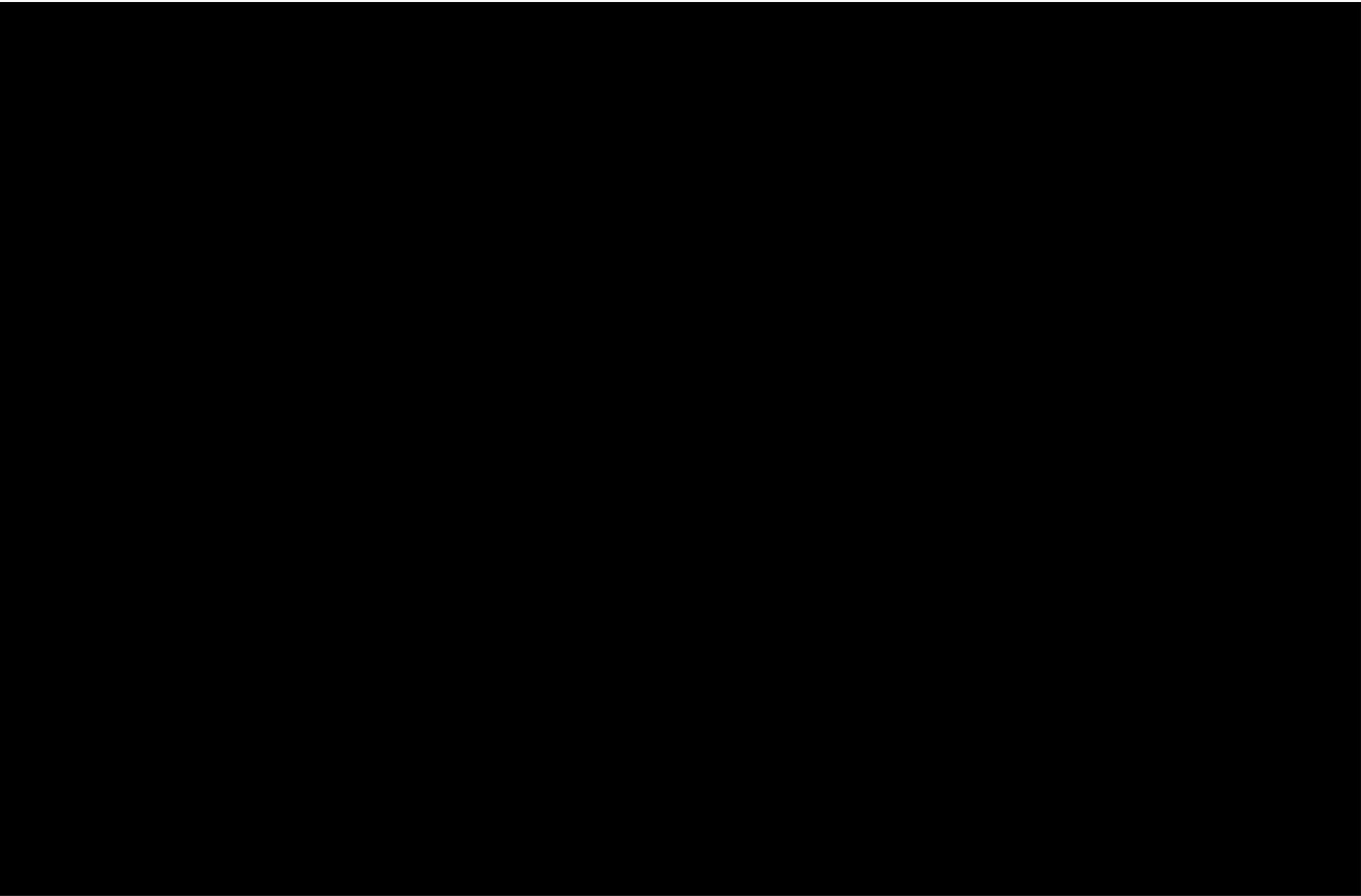


On July 5th, 2018 I spoke with DC THAYALAN and was advised that after this image the unknown male was not seen on video anywhere else as there was no other known video available and other locations with video had already been overwritten.

11. CONSOLIDATED TIMELINE FOR THE EVENTS OF DECEMBER 13TH, 2017

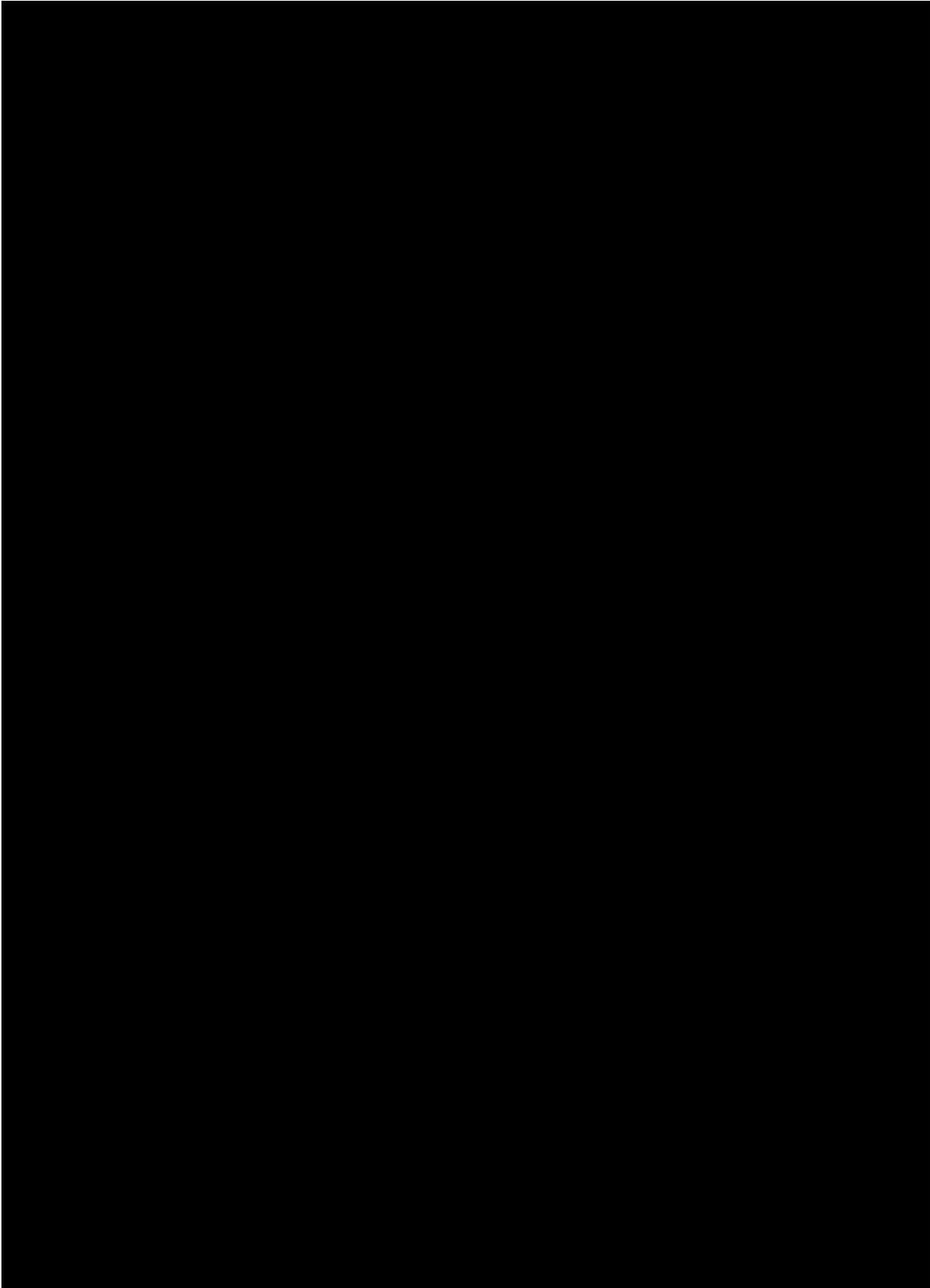
The following is a consolidated timeline for the known movements of Honey SHERMAN, Bernard SHERMAN and the unknown person walking on Old Colony Road for December 13th, 2017.

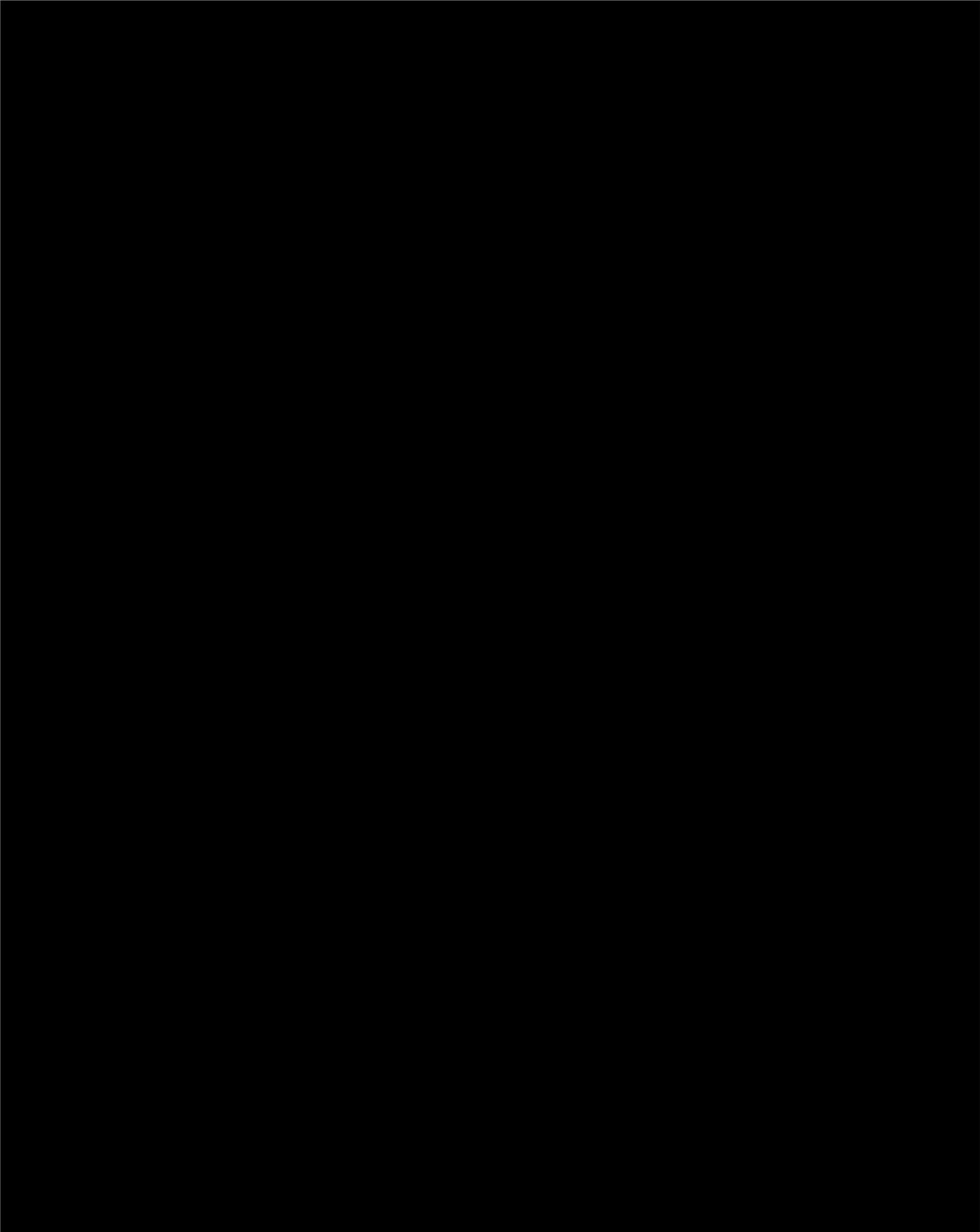


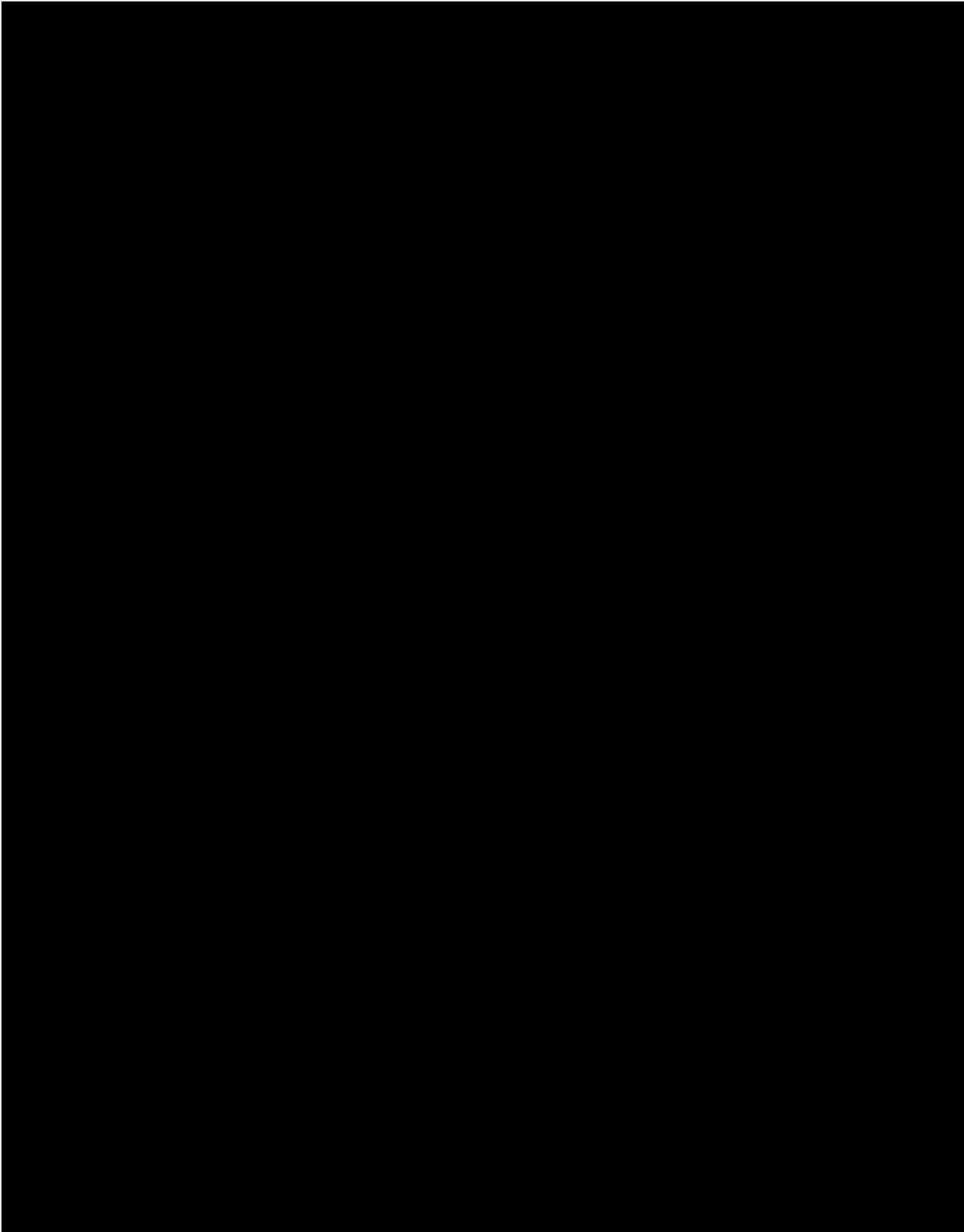


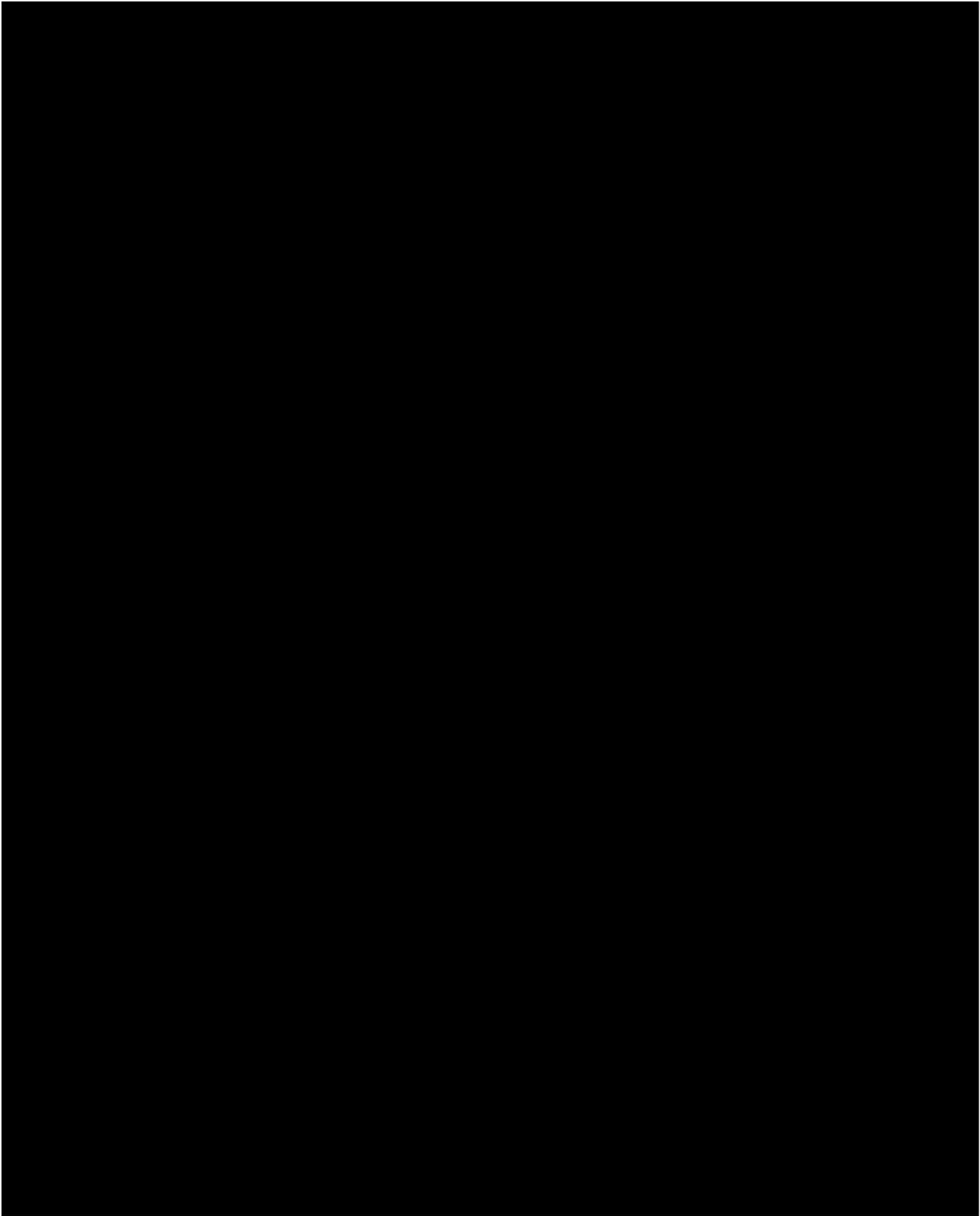
12.

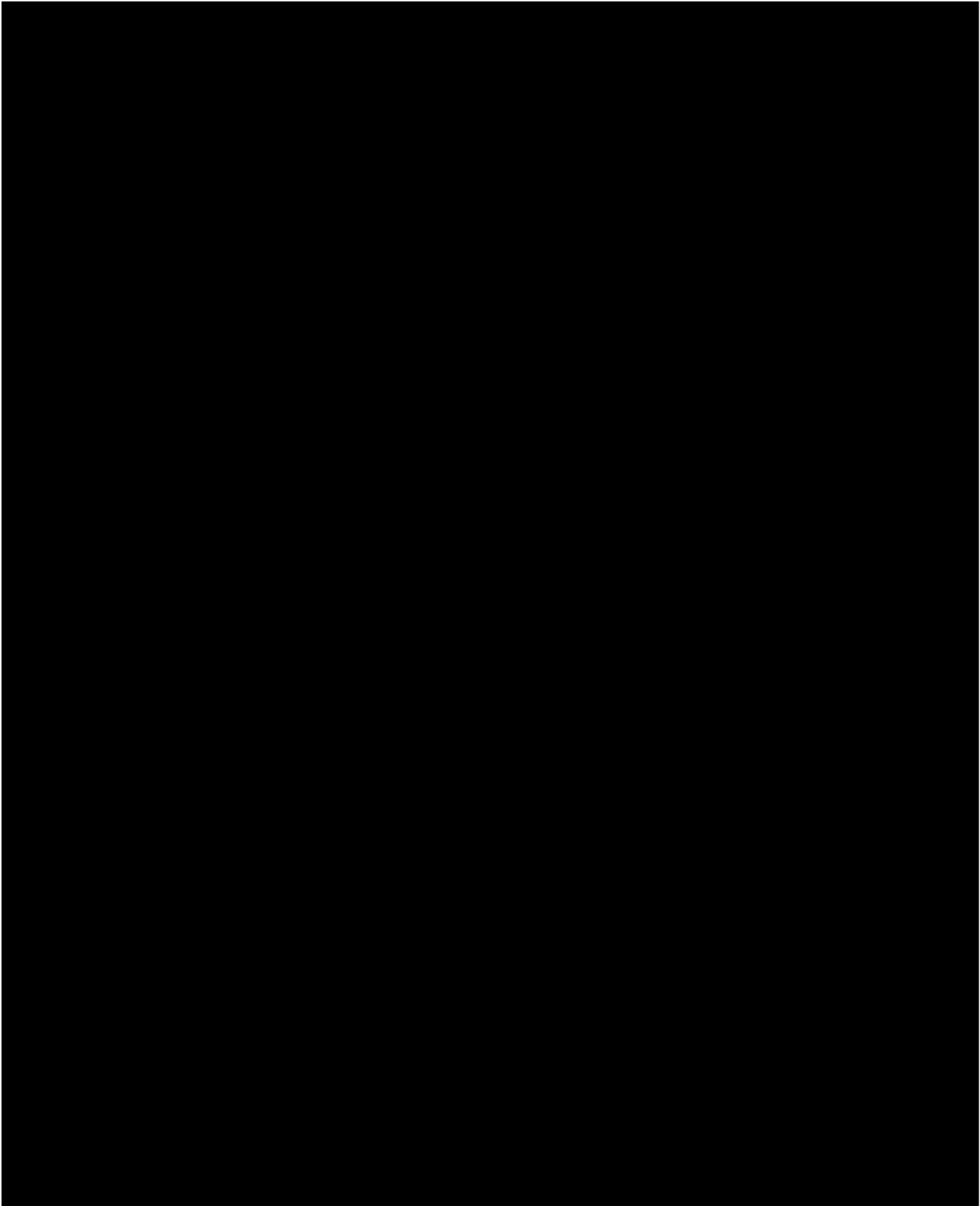


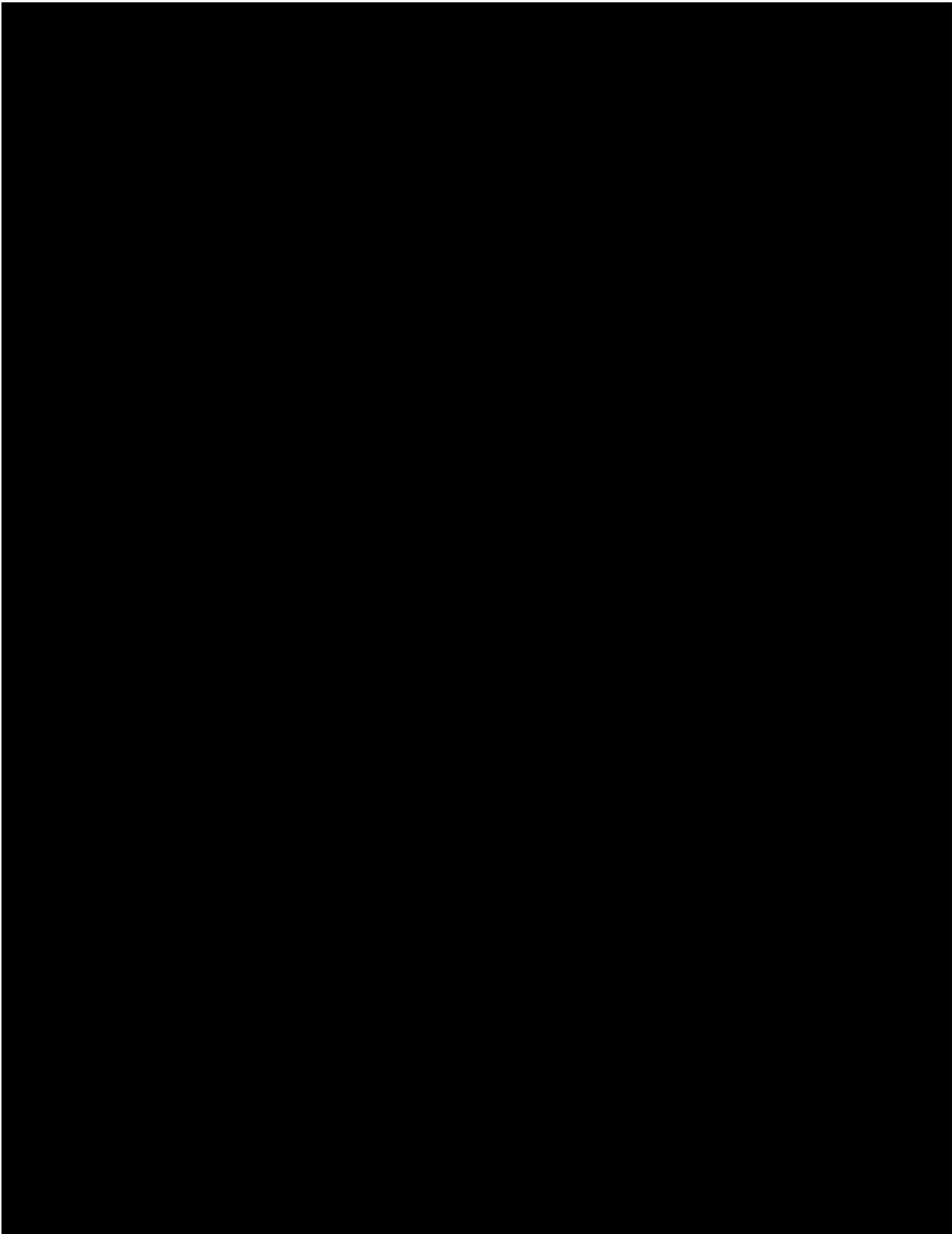


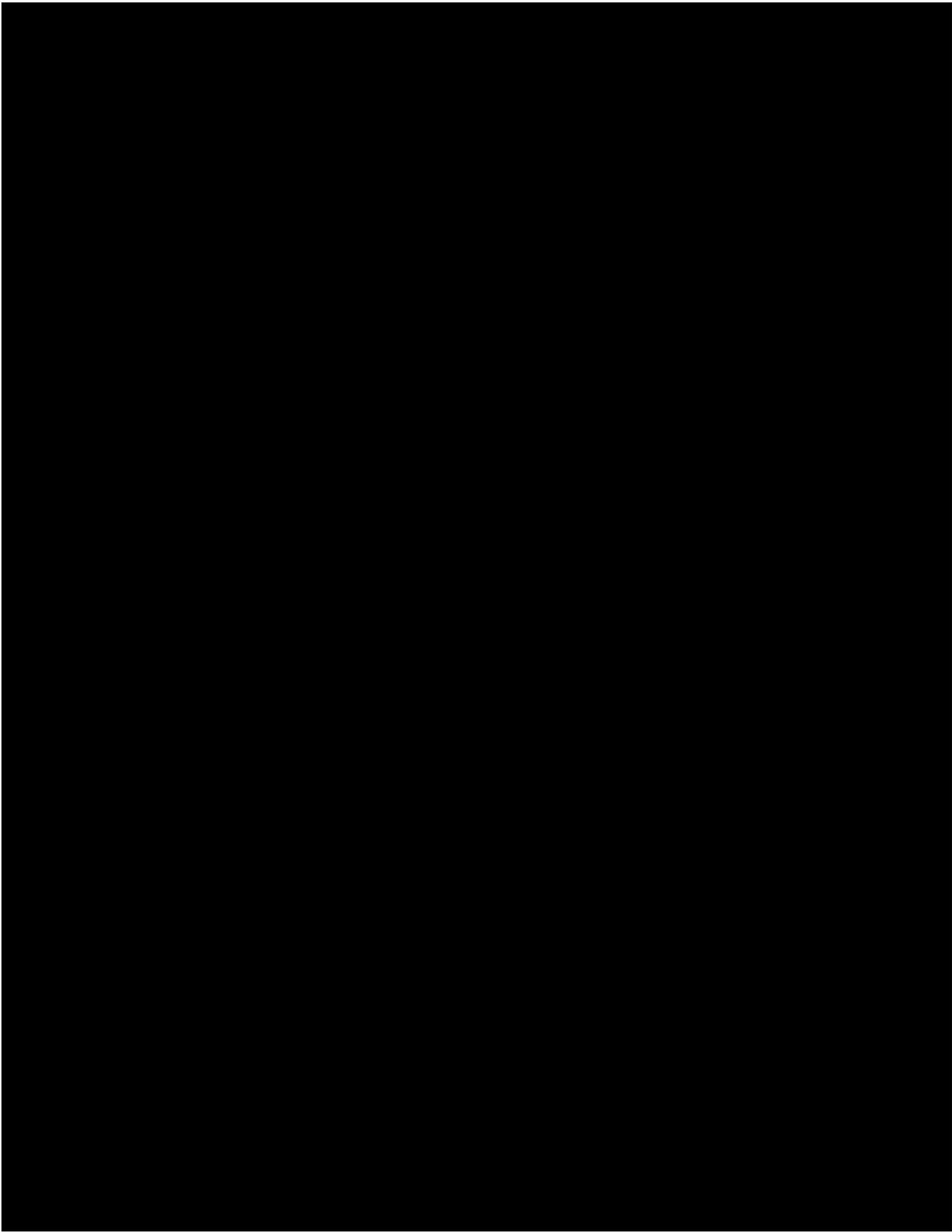


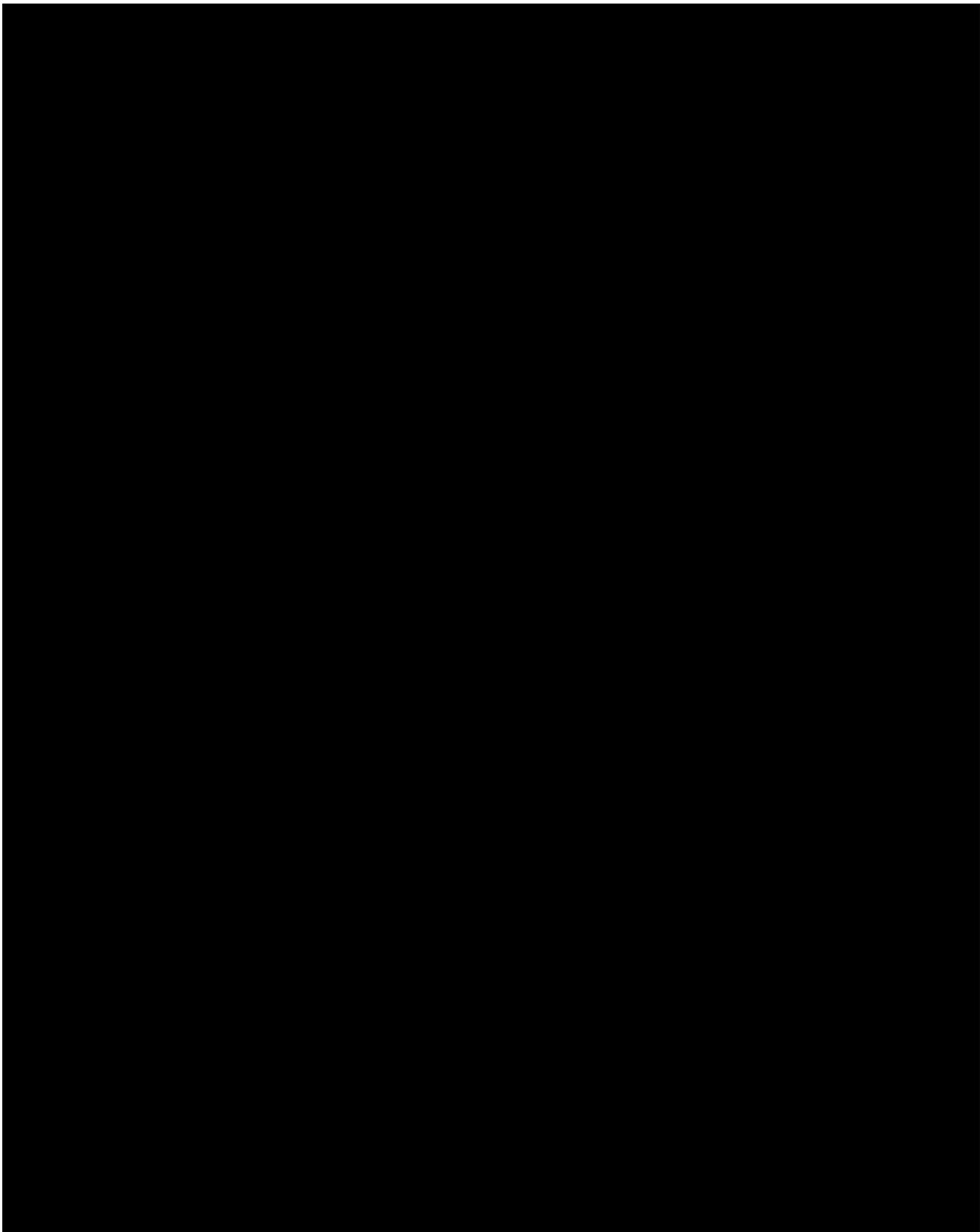


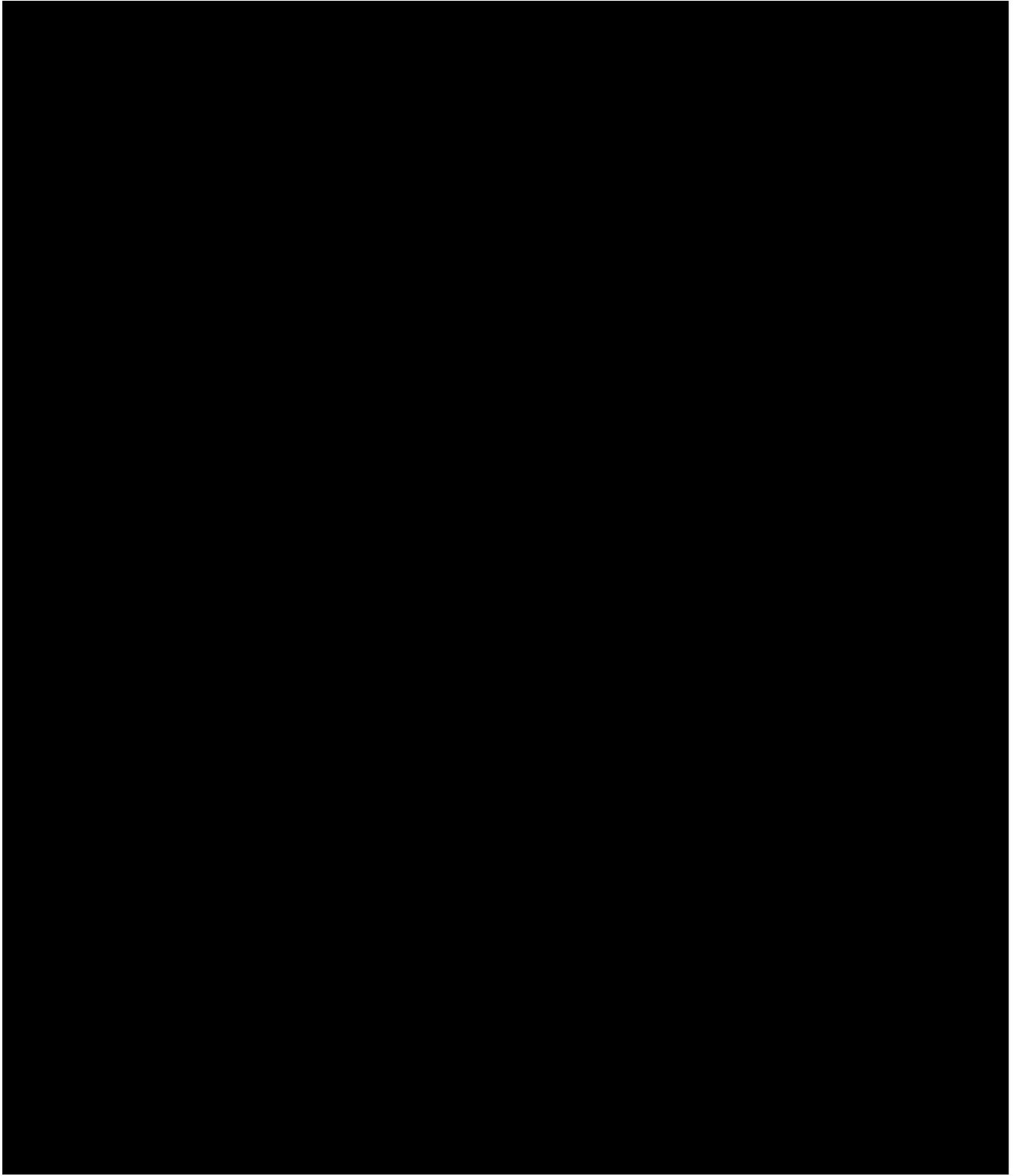


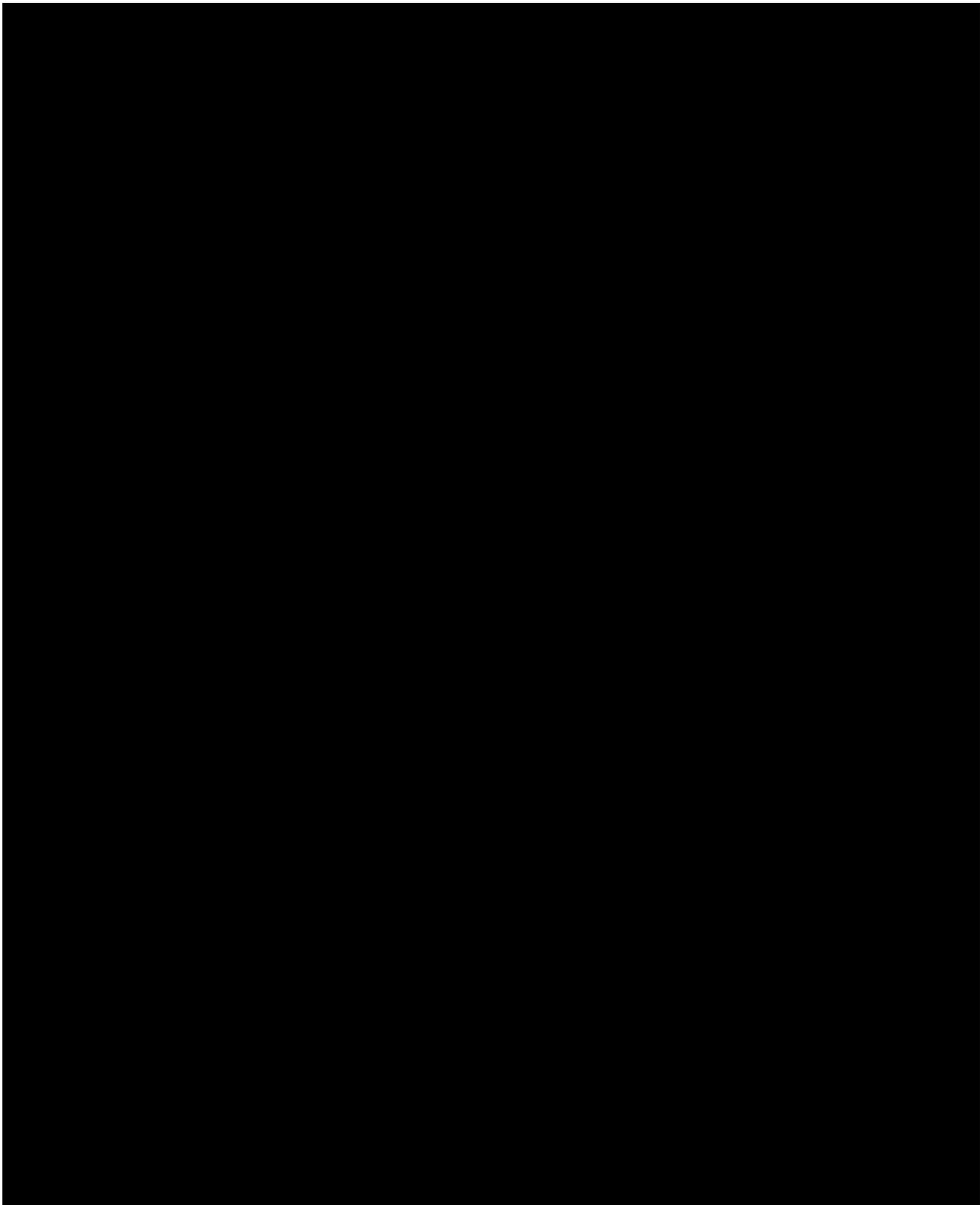


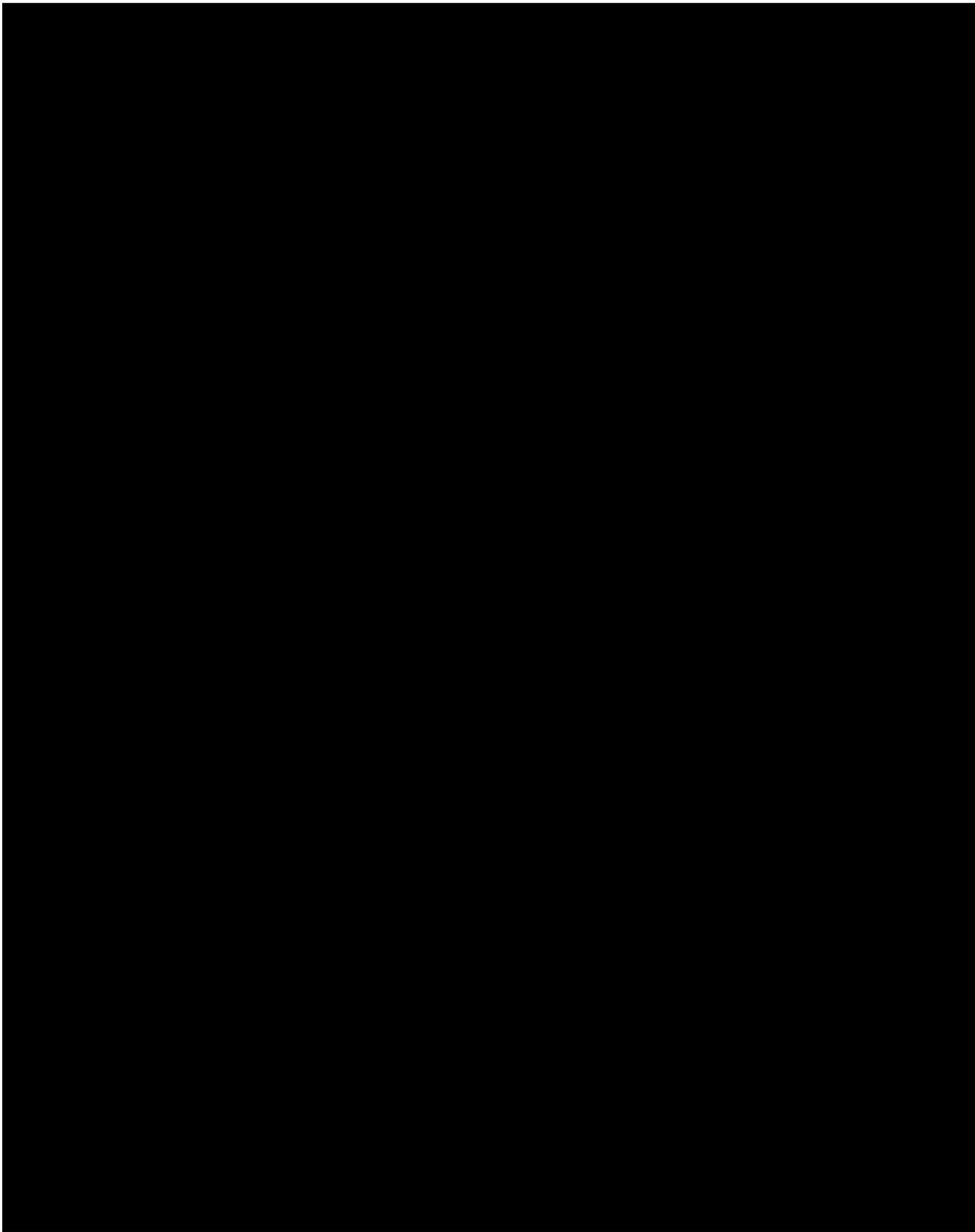


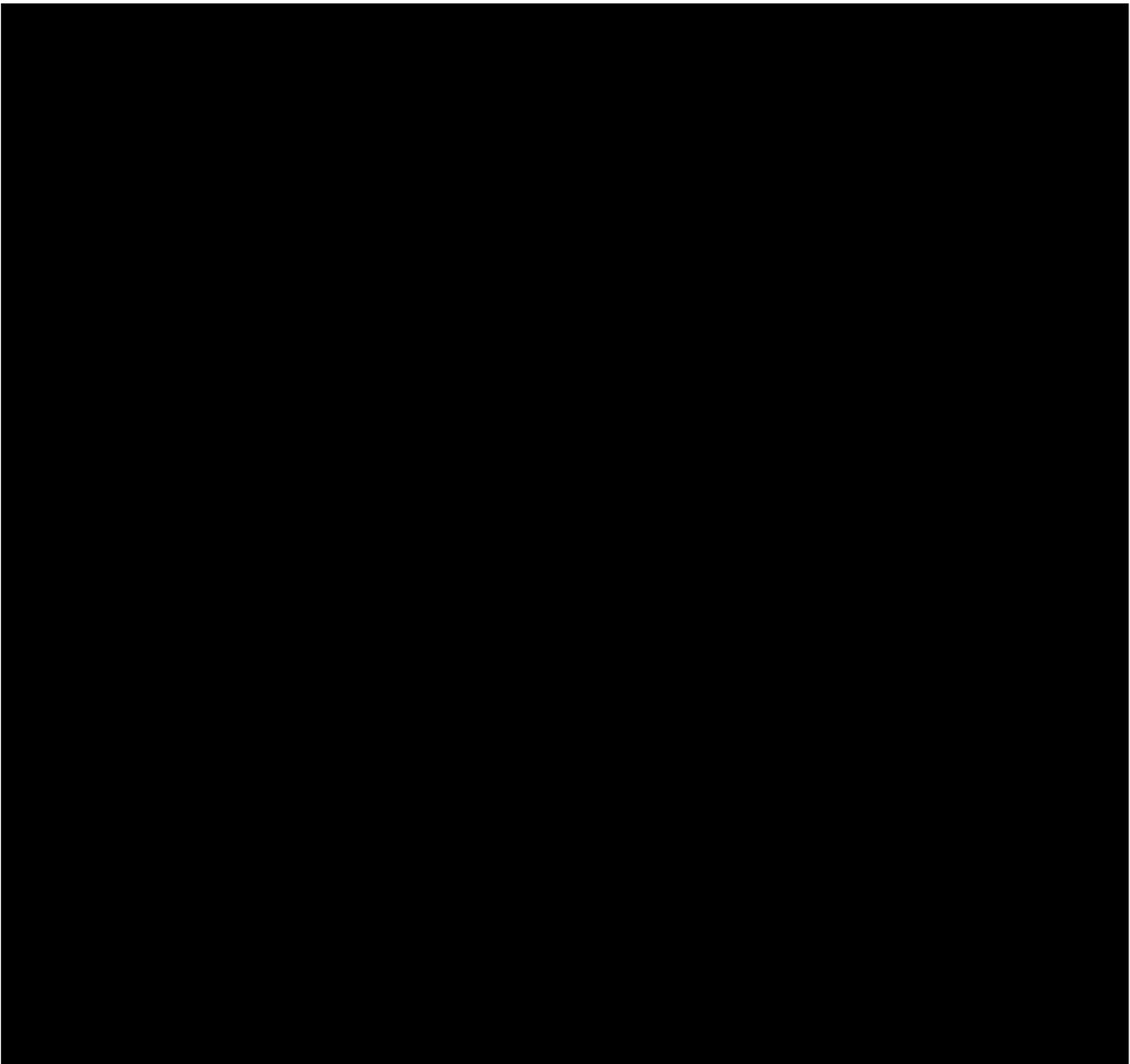


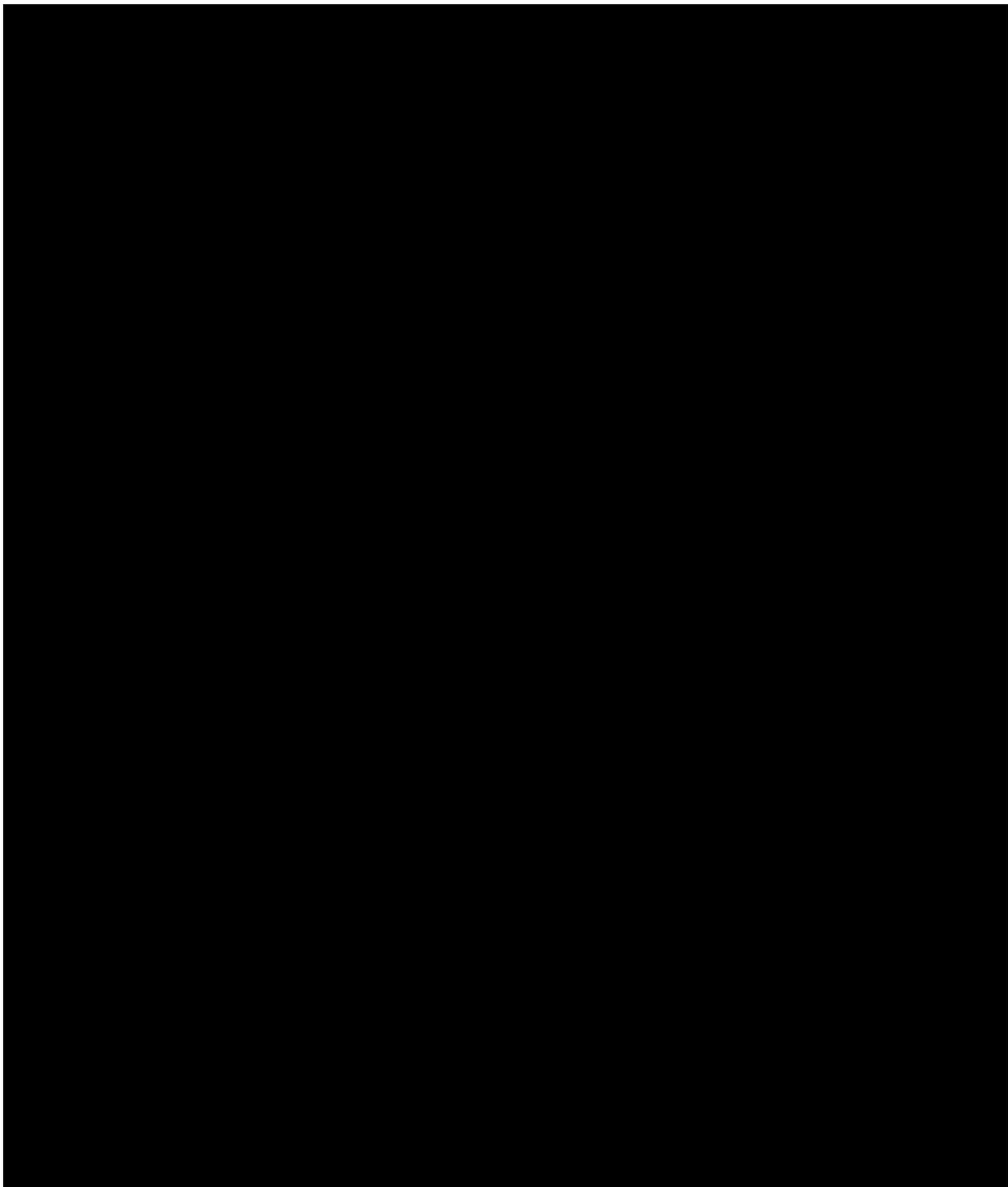


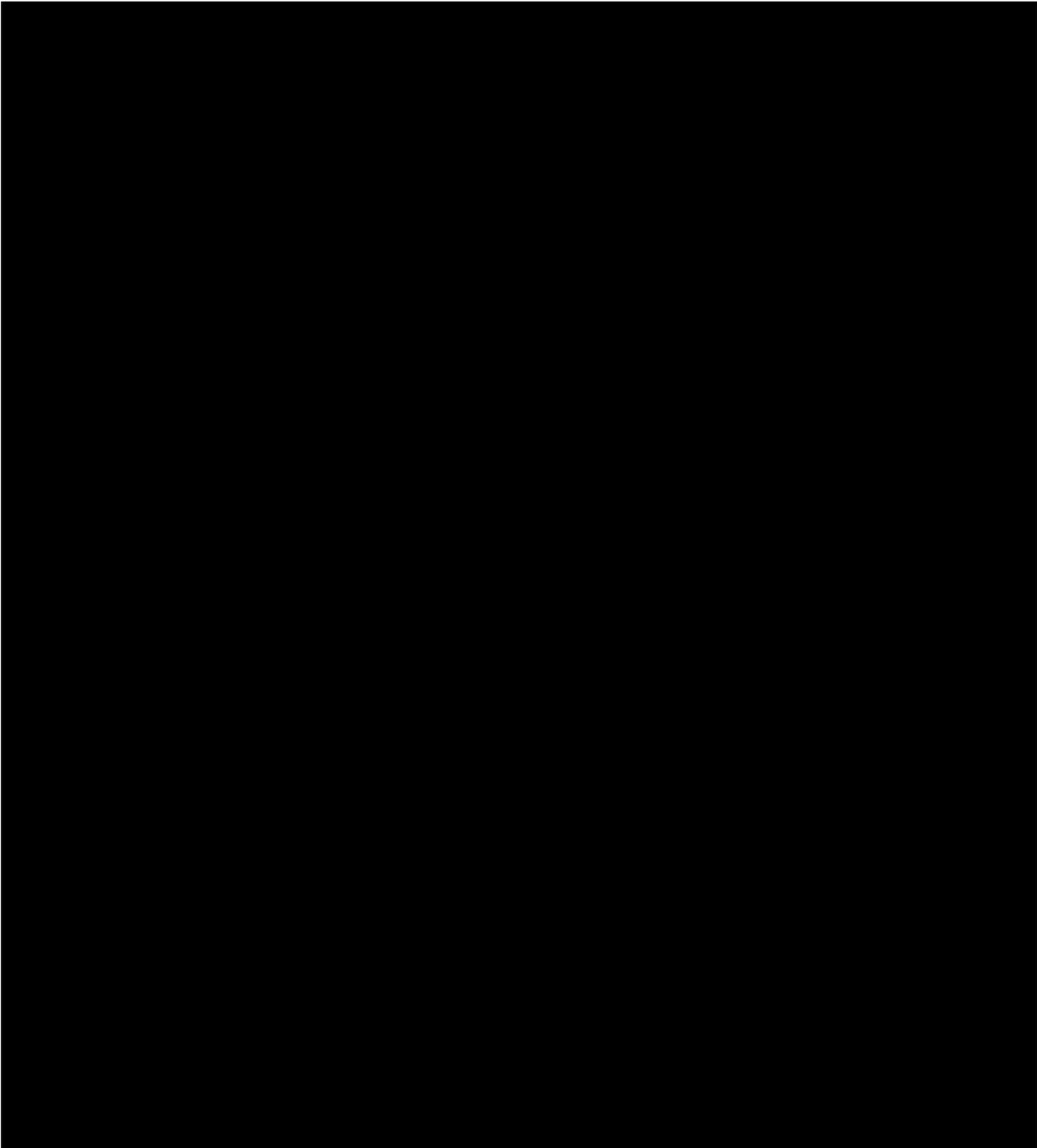












13. THE PRIVATE INVESTIGATION

On January 4th, 11th and 18th, 2019 investigators received a series of tips from the private investigative group hired by Brian GREENSPAN. Investigators are currently reviewing the tips that have been provided.

14. OVERVIEW OF REQUESTED TRANSMISSION DATA AND MINIMIZATION TERMS AND CONDITIONS

As indicated earlier, in this application I am seeking what is commonly referred to as “tower dumps”. In particular, I am seeking production orders for transmission data from telecommunication service providers identifying devices involved in communications transmitted through cell towers in the vicinity of:

- (a) Honey and Bernard SHERMAN in the hours leading up to the murders;
- (b) the unidentified suspected killer walking in the area of 50 Old Colony Road, and
- (c) 50 Old Colony Road (the location of the murders).

The “devices involved in communications”, referred to above, will include both the device in the vicinity of one of the areas described above, and the device communicating with that device. In other words, I am seeking transmission data relating to both sides of the communications. Investigators require the transmission data relating to both sides of the communications in order to give effect to the investigative strategy described below.

If these “tower dump” production orders issue, the investigative strategy will be to compare the phone numbers produced through the orders against the large database of potentially relevant phone numbers already gathered by investigators through various other investigative steps (these investigative steps are described below, and the phone numbers are listed in attached appendices). The purpose will be to identify a device that was in one

of the locations targeted by the “tower dump”, or was communicating with a device in one of these locations, and which also appears in this database of phone numbers. If such a device is identified, this will assist in the investigation because it will place a device that is already connected to the investigation in the vicinity of the victims and/or the murders at the relevant time, or in communication with a device in the vicinity. This will potentially assist in identifying the person or persons responsible for the murders.

I recognize that this proposed “tower dump” will likely generate a very large quantity of transmission data, given the duration of time for which I am seeking data and the dense population of the areas of interest. However, I am proposing that the privacy interests impacted by this “tower dump” be minimized through post-seizure terms or conditions limiting the manner in which investigators may access and use this data.

In *R. v. Rogers and Telus*, described in detail below, Justice Sproat rejected the proposal that post-seizure terms or conditions limiting the manner of examination of data had to be imposed on “tower dump” production orders. Nevertheless, in the exceptional circumstances of this case, in order to ensure that the seized data is manageable and can be analysed, and to minimize the intrusion on any third party privacy interests, I am suggesting that the following exceptional terms or conditions be imposed:

Terms and Conditions:

- 1) [Telecommunication Service Provider] is ordered to produce the document containing the required transmission data (the “data”) in a sealed or password-protected format.
- 2) The data may only be accessed by members of the Toronto Police Service – Intelligence Unit, Technical Crime Unit, with no involvement in this investigation (the “members”).
- 3) Upon accessing the data, the members may only analyse the data by comparing it, using electronic means, against the phone numbers in the attached Appendices G through to K and generating a sub-set of data consisting of data pertaining to communications involving one or more of the phone numbers in the attached Appendices G through to K
- 4) Members conducting the analysis described above must take reasonable steps to only view the sub-set of data generated by this analysis.

- 5) The sub-set of data generated by this analysis may be provided to investigators who may use it for investigative purposes.
- 6) Once this analysis is complete, the members must seal and keep stored in a sealed manner the data produced pursuant to this order, ensuring that it is inaccessible to the investigators and any other persons, and not further accessed or analysed, without a court order.
- 7) Appendices G through to K are not to be produced to the persons upon whom this order is served.

Note: Appendices G through K in the Information to Obtain are identical to Appendices C through G respectively in the production orders.

I am seeking production orders to trace communications, pursuant to section 487.015 of the Criminal Code because my purpose is to identify a device involved in the transmission of a communication, and the transmission data that will enable this investigation is in the possession of an entity whose identity is currently unknown. The identity of the entity is currently unknown because I do not know what service provider is in possession of the relevant transmission data, and I cannot know this until I receive the data from all the service providers and compare it against the database of known phone numbers already gathered by investigators.

15. THE REQUIREMENTS OF SECTION 487.015

Pursuant to sections 487.015 of the *Criminal Code*, production orders to trace communications may be issued if:

- There are **reasonable grounds to suspect** an offence has been committed;
- There are **reasonable grounds to suspect** that the identification of a device or person involved in the transmission of a communication will assist in the investigation of the offence; and,

- There are **reasonable grounds to suspect** transmission data that is in the possession or control of one or more persons whose identity is unknown when the application is made will enable that identification.

I will develop my grounds relating to each of these elements below. For now, I wish to highlight that the legal standard for issuance of the order I am seeking is **reasonable grounds to suspect**. **Reasonable grounds to believe** are not required. I believe that the lower threshold of “reasonable suspicion” applies to production orders for transmission data because the privacy interest in transmission data is lower than the privacy interest in other kinds of data that may be obtained through a general production order, which requires “reasonable grounds to believe”.

In particular, the limited “transmission data” that I am hoping to receive through these “tower dumps” will not reveal any customer identifying information or user-generated content relating to the communications of interest. For the cellular towers for which I am seeking records, the transmission data will reveal the dates and times of the communications and the phone numbers involved in the communications (the senders and receivers). The transmission data will NOT reveal:

- (a) any subscriber information for the phone numbers for which I am seeking records;
- (b) any subscriber information for the phones communicating with the phone numbers for which I am seeking records;
- (c) any tracking data for any resulting phone numbers (although I will know the location of the devices associated to the phone numbers relative to the cell towers of interest);
- (d) any billing information for the resulting phone numbers or the phone numbers communicating with them;
- (e) any subscriber address information for the resulting phone numbers or the phone numbers communicating with them;
- (f) any contents of the communications.

To be clear, the transmission data will not exhaustively detail every person who travelled through the identified areas with mobile devices. The requested transmission data will only pertain to those devices that were involved in communications within the requested time frame. For example, a cell phone in the area that was powered on but did not send or receive any communications would not be captured by the order I am seeking.

I have also sought to minimize the privacy impact of obtaining “tower dump” data by doing my best to narrow the time period for the “tower dump” data that I am seeking. Moreover,

where possible I have further limited the data by only requesting the relevant sectors for the cell towers of interest. I have outlined, below, the data I am seeking, how the data will be utilized, and the subsequent treatment of unrelated third party data.

The transmission data I am seeking consists of data identifying incoming/outgoing communications, date, time, involved phone numbers, terminating number, call duration and forwarding number.

I am seeking this data for cellular devices that connected to cellular towers proximate to the following addresses at the following dates and times, and that communicated with such devices. In other words, I am seeking data for both sides of communications, where at least one of the devices was proximate to the following locations:

i. From Bell Canada Incorporated, Telus Communications Incorporated, Rogers Communications Canada Incorporated and Freedom Mobile Incorporated:

- VII. 50 Old Colony Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- VIII. 150 Signet Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- IX. 150 Signet Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- X. [REDACTED] in Toronto on December 13th, 2017 between
[REDACTED]
- XI. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- XII. 50 Old Colony Road in Toronto on December 13th, 2017, between [REDACTED]
[REDACTED]

These addresses and times relate to Honey SHERMAN's movements.

Note that the time frame for 50 Old Colony Road [REDACTED] is entirely subsumed by the data I am seeking under headings iii and iv, below. Accordingly, this time frame for 50 Old Colony Road does not appear as a separate entry in Appendix A of the draft orders I have prepared, or Appendix A of this Information to Obtain.

ii. From Bell Canada Incorporated, Telus Communications Incorporated, Rogers Communications Canada Incorporated and Freedom Mobile Incorporated:

- III. 150 Signet Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- IV. 50 Old Colony Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]

These addresses and times relate to Bernard SHERMAN's movements.

Note that the time frame for 50 Old Colony Road [REDACTED] is also entirely subsumed by the data I am seeking under headings iii and iv, below. Accordingly, this time frame for 50 Old Colony Road does not appear as a separate entry in Appendix A of the draft orders I have prepared, or Appendix A of this Information to Obtain.

iii. From Bell Canada Incorporated and Telus Communications Incorporated:

- V. 50 Old Colony Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- VI. [REDACTED] in Toronto on December 13th, 2017 between
[REDACTED]
- VII. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- VIII. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]

These addresses and times relate to the movements of the unidentified person walking in the area of 50 Old Colony Road, and to the suspected time frame of the murders at 50 Old Colony Road.

Note that I am seeking this data from Bell and Telus, but not from Rogers and Freedom Mobile. This is because, unlike Bell and Telus, Rogers and Freedom Mobile require that test calls be conducted at each location for which "tower dump" data is sought. I did not conduct test calls for [REDACTED] so I cannot seek data from Rogers or Freedom Mobile relating to this location. I am, however, seeking this data from Bell and Telus, because they do not require test calls, and the unidentified person walking in the area of 50 Old Colony Road was seen in the vicinity of [REDACTED] within the identified time frame.

iv. From Rogers Communications Canada Incorporated and Freedom Mobile Incorporated:

- IV. 50 Old Colony Road in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- V. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]
- VI. [REDACTED] in Toronto on December 13th, 2017 between [REDACTED]
[REDACTED]

These addresses and times also relate to the movements of the unidentified person walking in the area of 50 Old Colony Road, and to the suspected time frame of the murders at 50 Old Colony Road. For the reasons described above, I have removed [REDACTED] from the list of locations for which I am seeking data from Roger and Freedom Mobile because I did not conduct test calls at that location.

I intend to obtain this transmission data by serving the production orders to trace communications (if issued) on Bell Canada Incorporated, Rogers Communications Canada Incorporated, Telus Communications Incorporated and Freedom Mobile Incorporated.

16. INVESTIGATION OF CELLULAR TOWERS IN THE RELEVANT AREA

(a) Cellular Tower Information

On July 18th, 2018 I contacted Lorne ELLISON, who is a Senior Investigator with Rogers Communications Incorporated. My purpose of contacting Lorne was to obtain more information as to how cellular communications operate in the City of Toronto. Through Lorne I learned the following:

- i. The City of Toronto is mainly serviced by four different cellular telephone companies: Bell Mobility (a subsidiary of Bell Canada Incorporated), Telus Communications Incorporated, Rogers Communications Canada Incorporated and Freedom Mobile Incorporated. Cellular telephone companies are supported by a grid of terrestrial transmission sites commonly known as cellular tower locations.

- ii. These locations receive and transmit radio frequency signals to and from portable cellular telephones within a prescribed coverage area in the shape of an “amoeba” commonly known as the “footprint”. The only true wireless portion of a cellular telephone call is the interaction over radio frequency channels between the cellular tower and the cellular telephone with the footprint covered by that tower site.
- iii. When a cellular telephone initiates a call, the call will be routed over radio frequency channels to the tower site that is responsible for the coverage in that footprint. When a cellular telephone is to receive a call, as long as the phone is on, the network will continuously attempt to “handshake” with the phone within the coverage area of the particular sector of the tower site, route the call to that tower site and further handshake the radio frequency channels to complete the communication.
- iv. Cell site coverage areas are designed to overlap. If for any particular reason the closest tower site cannot handle the call, the signal going from the cell phone to the tower will be redirected to the next closest cell site that is available to accommodate the communication. The cell sites will overlap in order to complete the communication. The network will always route to the closest or strongest tower according to radio frequency signal strength including a clear “line of sight” between the cell phone and the cell tower. During a call, if a tower site becomes available for better reception and transmission, the network will hand off the call to this tower.
- v. Cellular sites are usually divided into segments known as sectors. The most common division is a division of three sectors, but there can be as many as nine sectors to a tower site. The sector identification of the cell in which the cellular phone is active will give a good indication as to the direction of the radio frequency signal from the cell phone to the cell tower. All of this information is retained in network activity cell site records. Scrutinizing these records will give the investigator the ability to know what cellular phones were actively communicating in the area at any specified date and time.

(b) Rogers Communications Canada Incorporated Test Calls

Rogers Communications Canada Incorporated and Freedom Mobile Incorporated require test calls in order to facilitate a “tower dump”. The test calls are used to

determine which cellular towers provide coverage for a specific area at specific times. I have conducted test calls in this investigation. In conducting the test calls I have tried to mirror the locations, time of day and the day of the week as closely as possible to the locations attended by Honey SHERMAN, Bernard SHERMAN and the unknown person in the area of 50 Old Colony Road on December 13th, 2017.

On July 25th, 2018 and July 26th, 2018 I conducted a series of test calls at different times at different locations using a cellular phone on the Rogers Communications Canada network.

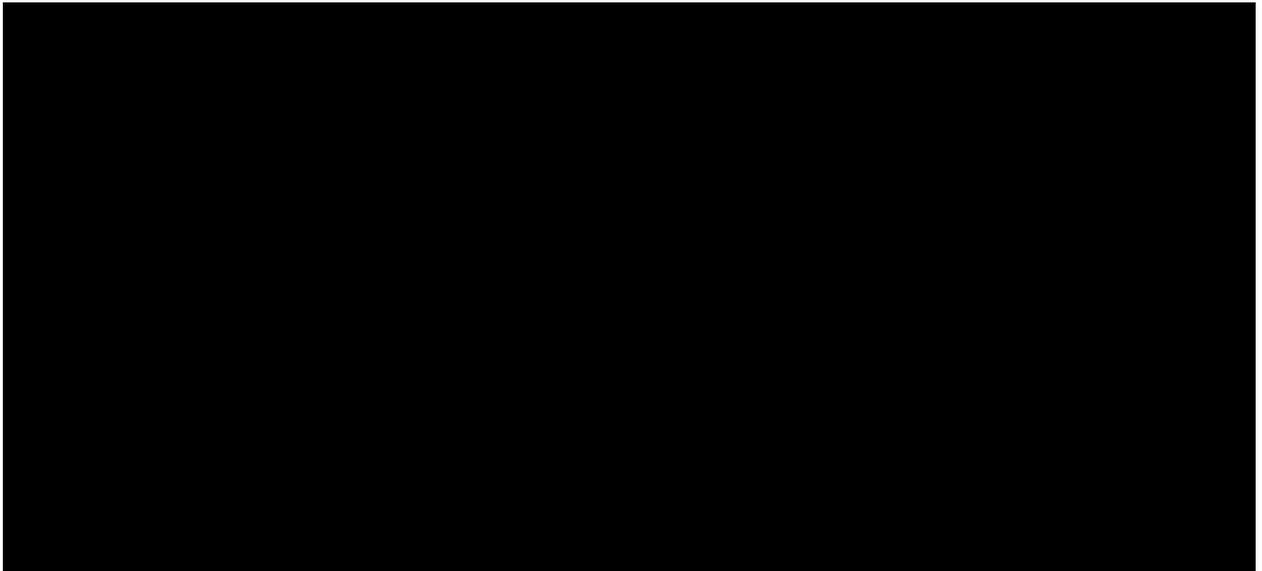
On July 27th, 2018 I received the results of the test calls from Rogers Communications Canada Incorporated. Details and the results of test calls that I have conducted are outlined below.

i. Location and times relating to Honey SHERMAN

On July 25th, 2018 I completed a series of test calls in relation to Honey SHERMAN's movements, her locations and their associated times. The following test calls were conducted with the following results:

- I. From [REDACTED] 15 test calls were conducted and from [REDACTED] 15 test calls were conducted in the area of 50 Old Colony Road.

Resulting towers:





II. From [REDACTED] 15 test calls were conducted in the area of 150 Signet Drive (Apotex).

Resulting tower:



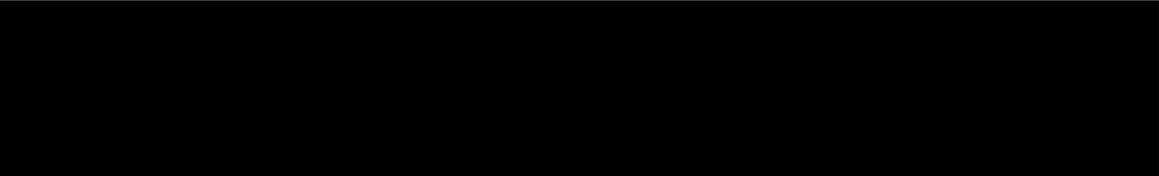
III. From [REDACTED] 15 test calls were conducted in the area of [REDACTED]

Resulting tower:



IV. From [REDACTED] 15 test calls were conducted in the area of [REDACTED]

Resulting tower:



ii. Location and times relating to Bernard SHERMAN

On July 25th, 2018 I completed a series of test calls in relation to Bernard SHERMAN's movements, his locations and their associated times. The following test calls were conducted:

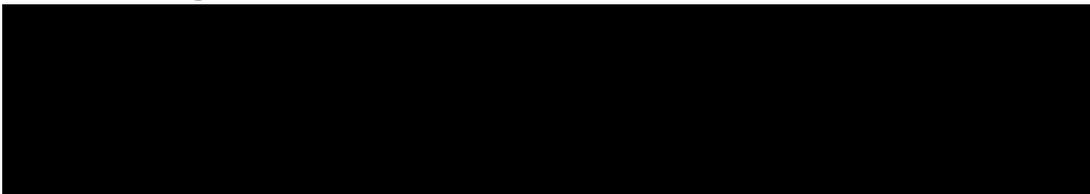
- I. From [REDACTED] 15 test calls were conducted in the area of 50 Old Colony Road.

Resulting towers:



- II. From [REDACTED] 15 test calls were conducted in the area of 150 Signet Drive (Apotex).

Resulting tower:



- iii. **Location and times relating to the unknown person in the area of 50 Old Colony Road on December 13th, 2017.**

On July 25th, 2018 and July 26th, 2018 I completed a series of test calls in relation to the unknown person's movements, their location and the associated times. The following test calls were conducted:

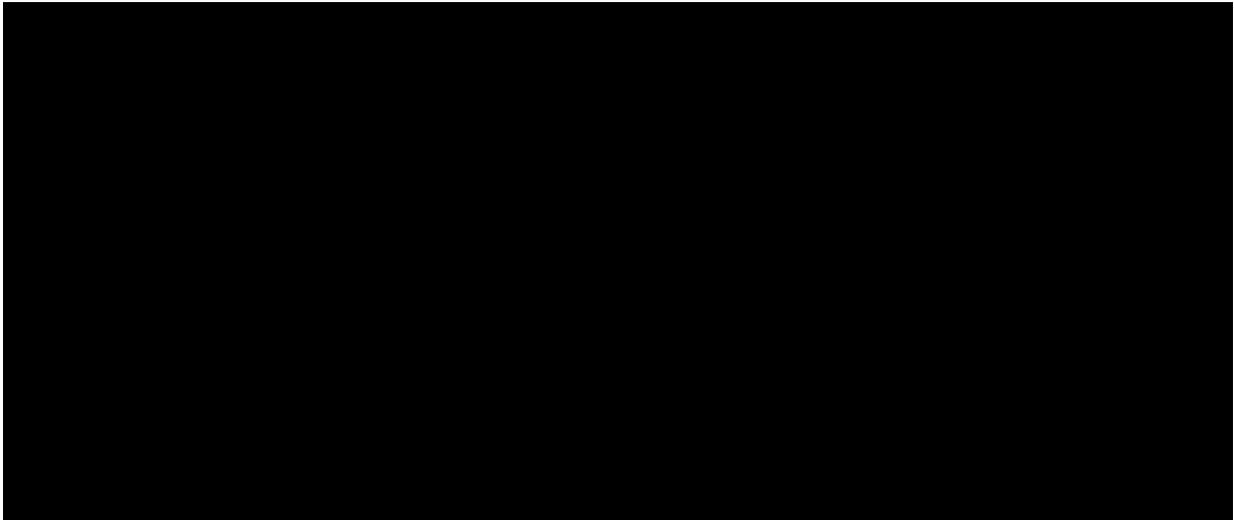
- I. On July 26th, 2018 from [REDACTED] 15 test calls were conducted in the area of [REDACTED]
[REDACTED]

Resulting towers:



- II. On July 26th, 2018 from [REDACTED] 15 test calls and from [REDACTED] 15 test calls were conducted in the area of 47 Old Colony Road³.

Resulting towers:



³ 47 Old Colony Road is directly across the street from 50 Old Colony Road. It is my belief that the cellular tower(s) which service 47 Old Colony Road would also service 50 Old Colony Road. Therefore I believe the test call data that pertains to 47 Old Colony Road also pertains to 50 Old Colony Road and vice versa.

III. From [REDACTED] 15 test calls were conducted in the area of [REDACTED]

Resulting towers:

[REDACTED]

(a) Freedom Mobile Incorporated Test Calls

On August 15th, 2018 and August 16th, 2018 I conducted a series of test calls at different times at different locations using a cellular phone on the Freedom Mobile network.

On August 17th, 2018 I received the results of the test calls from Freedom Mobile Incorporated. Details and the results of test calls that I have conducted are outlined below.

i. Location and times relating to Honey SHERMAN

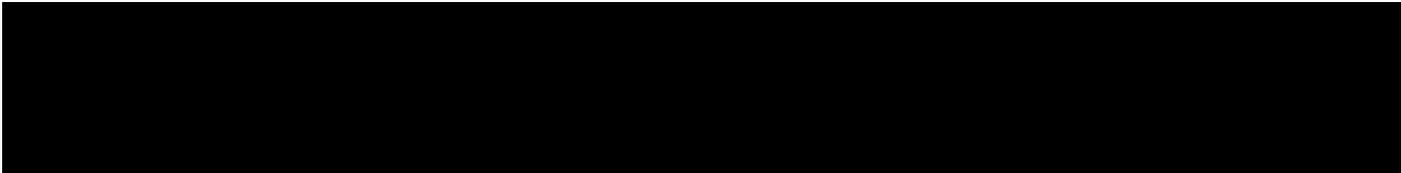
On August 15th, 2018 I completed a series of test calls in relation to Honey SHERMAN's movements, her locations and their associated times. The following test calls were conducted with the following results:

I. From [REDACTED] and from [REDACTED] 10 test calls were conducted in the area of 50 Old Colony Road.

Resulting towers for [REDACTED]

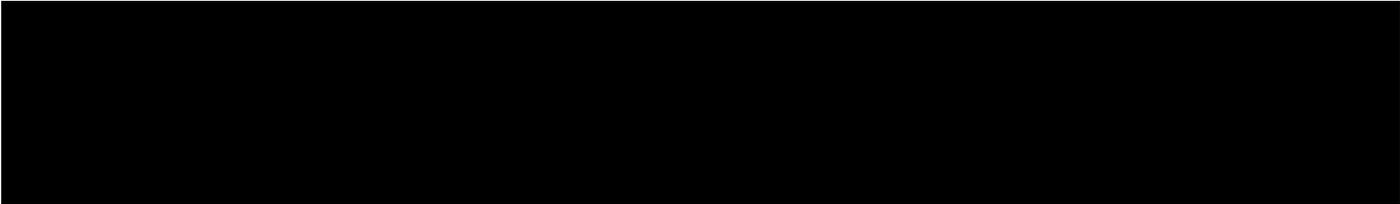
[REDACTED]

Resulting towers for [REDACTED]



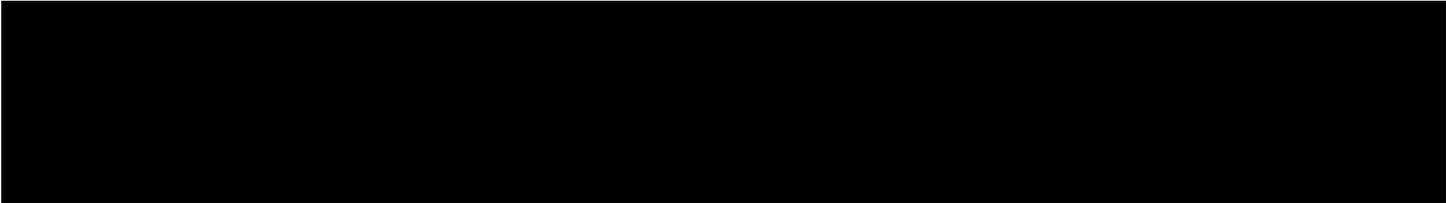
II. From [REDACTED] and from [REDACTED] 10 test calls were conducted in the area of 150 Signet Drive (Apotex).

Resulting towers:



III. From [REDACTED] 10 test calls were conducted in the area of [REDACTED]

Resulting towers:



IV. From [REDACTED] 10 test calls were conducted in the area of [REDACTED]

Resulting towers:



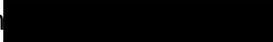
IV. From [REDACTED] 10 test calls were conducted in the area of 50 Old Colony Road.

Resulting towers:



ii. **Location and times relating to Bernard SHERMAN's movements and locations on December 13th, 2017.**

On August 15th, 2018 I completed a series of test calls in relation to Bernard SHERMAN's movements, his locations and their associated times. The following test calls were conducted:

- I. From  10 test calls were conducted in the area of 50 Old Colony Road.

Resulting towers:



- II. From  10 test calls were conducted in the area of 150 Signet Drive (Apotex).

Resulting towers:



iii. **Location and times relating to the unknown person in the area of 50 Old Colony Road on December 13th, 2017.**

On August 15th, 2018 and August 16th, 2018 I completed a series of test calls in relation to the unknown person's movements, their location and the associated times. The following test calls were conducted:

I. On August 16th, 2018 from [REDACTED] 10 test calls were conducted in the area of [REDACTED]
[REDACTED]

Resulting towers:

[REDACTED]

II. On August 16th, 2018 from [REDACTED] 10 test calls were conducted in the area of 47 Old Colony Road.

Resulting towers:

[REDACTED]

III. On August 15th, 2018 from [REDACTED] 10 test calls were conducted in the area of 47 Old Colony Road.

Resulting towers:

[REDACTED]

IV. On August 15th, 2018 from [REDACTED] 10 test calls were conducted in the area of [REDACTED]
[REDACTED]

Resulting towers:

[REDACTED]

[REDACTED]

17. DEFINITION OF DATA SETS IN THE INVESTIGATION

As indicated earlier, if these “tower dump” production orders issue, the investigative strategy will be to compare the phone numbers produced through the order against a large database of potentially relevant phone numbers already gathered by investigators. The potentially relevant phone numbers comprising this database consist of the following:

(a) Phone numbers [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] The phone numbers of this data set are listed in Appendix G.

(b) Phone numbers [REDACTED]

[REDACTED]
[REDACTED] The phone numbers of this data set are listed in Appendix H.

(c) Phone numbers [REDACTED]

[REDACTED]
[REDACTED] The phone numbers of this data set are listed in Appendix I.

(d) Phone numbers [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The phone numbers of this data set are listed in Appendix J.

(e) Phone numbers [REDACTED]

[REDACTED]
[REDACTED] The phone numbers of this data set are listed in Appendix K.

18. THE REQUIREMENTS OF S.487.015 OF THE CRIMINAL CODE ARE SATISFIED

Section 487.015 of the Code requires that the issuing justice be satisfied that the following criteria are met:

- (a) There are reasonable grounds to suspect an offence has been committed;
- (b) There are reasonable grounds to suspect that the identification of a device or person involved in the transmission of a communication will assist in the investigation of the offence; and,
- (c) There are reasonable grounds to suspect transmission data that is in the possession or control of one or more persons whose identity is unknown when the application is made will enable that identification.

It is my belief that the grounds provided in this information to obtain satisfy the requirements for issuance of a s. 487.015 production order.

(a) Reasonable grounds to believe an offence has been committed.

Under Section 487.015 of the Criminal Code, I must have **reasonable grounds to suspect** that an offence has been committed. I believe that the evidence meets and exceeds this test. I have **reasonable grounds to believe** that:

Unknown person(s), between December 13th, 2017 and December 15th, 2017, inclusive, at the City of Toronto, did Murder Bernard SHERMAN and Honey SHERMAN, contrary section 235(1) of the *Criminal Code*.

The reasons for my belief are as follows:

- i. On December 15th, 2017 at approximately 11:45 AM police were called to 50 Old Colony Road in the City of Toronto for an “Echo Tiered Response”.
- ii. The bodies of Bernard SHERMAN and Honey SHERMAN were first located and identified by the witness Elise STERN.
- iii. On December 16th, 2017 at 2:55 PM the coroner, Dr. GIDDENS pronounced Bernard SHERMAN and Honey SHERMAN deceased.
- iv. Both Bernard and Honey SHERMAN were [REDACTED]
[REDACTED]
[REDACTED]
- v. [REDACTED]
- vi. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] leads me to believe that Honey SHERMAN’s death is a murder.
- vii. Post mortem examinations conducted by forensic pathologist, Dr. PICKUP, determined that the cause of death for both Bernard SHERMAN and Honey SHERMAN was ligature neck compression. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- viii. Dr. PICKUP advised investigators that there are three possible outcomes in regards to this investigation. They were:

- I. A double suicide
- II. A homicide suicide
- III. A double homicide.

ix. If investigators can form reason to believe that double suicide and homicide suicide are not likely scenarios then, by deduction, investigators can have reason to believe that the double homicide scenario is likely. Evidence that suggests double homicide would further strengthen this belief.

x. I do not believe that the deaths of both Honey and Bernard SHERMAN can be attributed to a double suicide as it appeared that they were both living a happy life with no financial difficulties and no known mental illnesses. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

xi. So far in the investigation, there has been no indication that either Bernard SHERMAN or Honey SHERMAN harboured any hostility towards each other and there is no documented history, with police, of any domestic violence. They were making plans for the future together as they had a trip to Florida scheduled and were in the process of having a new home built. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

xii. [REDACTED]

xiii.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] makes their deaths suspicious and leads me to believe that the deaths of Bernard SHERMAN and Honey SHERMAN were murders.

xiv. In a previous application I had stated that I believed that Honey SHERMAN was murdered and Bernard SHERMAN was either murdered or committed suicide. In this application I state that I have reasonable grounds to believe that Bernard SHERMAN was murdered as well and my grounds to believe are as follows:

I.

[REDACTED]

II.

[REDACTED]

III.

[REDACTED]

IV.

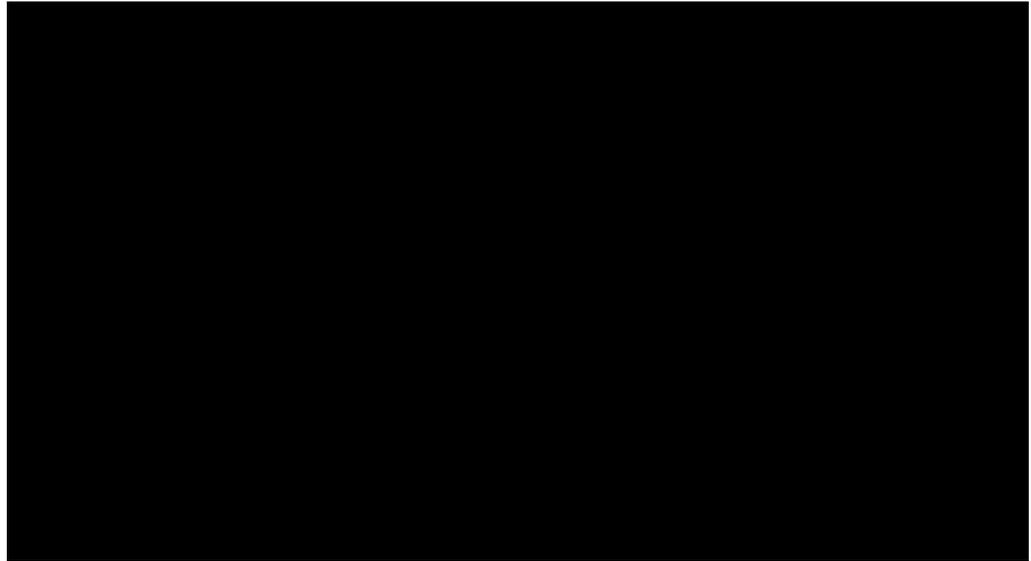
[REDACTED]

V.

[REDACTED]

VI. On January 22nd, 2018 forensic pathologist Dr. PICKUP spoke with D/S GOMES and advised that he believed that the manner of death for both Bernard SHERMAN and Honey SHERMAN was that of homicide. Also on January 24th, 2018, forensic pathologist Dr. CHIASSON, who was hired by Bernard SHERMAN's and Honey SHERMAN's family, spoke with D/S GOMES and advised that he believes that the manner of death for both Bernard SHERMAN and Honey SHERMAN is that of homicide. Both Dr. PICKUP and Dr. CHIASSON conducted separate post mortem examinations on Bernard SHERMAN and Honey SHERMAN.

VII.



VIII. On August 30th, 2018, D/S GOMES provided me with the final reports of the post-mortem examinations of Bernard SHERMAN and Honey SHERMAN. Both reports were signed by Dr. PICKUP and dated June 21st, 2018.

For the death of Bernard SHERMAN, Dr. PICKUP concluded, based on the scene, circumstances and autopsy findings, the most reasonable conclusion was that Bernard [REDACTED] and had died from ligature strangulation. [REDACTED]



The cause of death for Bernard SHERMAN was listed as “Ligature strangulation in an elderly man with [REDACTED]

For the death of Honey SHERMAN, Dr. PICKUP concluded, based on the scene, circumstances and autopsy findings, the most reasonable conclusion is that Honey SHERMAN [REDACTED] and had died from ligature strangulation. [REDACTED]

The cause of death for Honey SHERMAN was listed as, “Ligature strangulation in an elderly woman with [REDACTED]

When addressing the manner of death for both, Bernard SHERMAN and Honey SHERMAN, Dr. PICKUP found that [REDACTED]

Plainly speaking Dr. PICKUP concludes that Bernard SHERMAN and Honey SHERMAN [REDACTED]

[REDACTED] Therefore this strongly indicates that neither Bernard SHERMAN and/or Honey SHERMAN were responsible for their own deaths.

Therefore, for all the aforementioned reasons, I believe that Bernard SHERMAN and Honey SHERMAN were murdered.

(b) Reasonable grounds to suspect that the identification of a device or person involved in the transmission of a communication will assist in the investigation of the offence.

If these “tower dump” production orders issue, the investigative strategy will be to compare the phone numbers produced through the orders against the database of potentially relevant phone numbers already gathered by investigators, described above, in order to identify a device associated to one of these phone numbers that also appears in the data produced through the “tower dump”. I have reasonable grounds to suspect that the identification of such a device involved in such a communication will assist in the investigation of the offence. If such a device is identified, this will assist in the

investigation because it will place a device that is already connected to the investigation in the vicinity of the victims and/or the murders at the relevant time, or in communication with such a device. This will potentially assist in identifying witnesses and/or the person or persons responsible for the murders.

I will now try to describe this investigative strategy in more detail and attempt to further explain why the “reasonable suspicion” standard is met. In doing so, I will also try to explain why the strategy I am proposing minimizes the intrusion into third party privacy interests.

i. Avenues of Investigation, Filtering of Data and Protection of Third Party Data

Thus far, investigators are still unable to determine who is responsible for the deaths of Honey SHERMAN and Bernard SHERMAN and how many perpetrators were involved.

Transmission data from the “tower dump” will consist of the phone numbers associated to devices that were in communication with a relevant cellular tower and devices communicating with those devices.

I am aware that a Production Order for “tower dump” data requires entities to produce large amounts of third party data. The reality is that almost all of the data gathered through the proposed “tower dump” will be of no use or interest to investigators, as it will relate to third parties who had nothing to do with these murders. The manner in which this data will be used and subsequently protected, as outlined below, will ensure that the information of uninvolved third parties will remain protected.

The data from the “tower dumps” will be utilized in two steps.

First, the “tower dump” phone numbers will be compared or “filtered” against the pre-existing phone numbers relating to this investigation that have already been compiled (**Appendices G to K**). This comparison or filtering will identify all the common numbers between the “tower dump” phone numbers and the other pre-existing investigative phone numbers. These common numbers will be available to investigators for follow-up investigation.

The second step will be the sealing of all the “tower dump” phone numbers that “pass through the filters” – that is, those that do not match any of the pre-existing investigative phone numbers. These numbers are likely uninvolved third party data which investigators have no reason to view or investigate, at present. The numbers that pass through the filters will be sealed and will not be examined or analysed further without judicial authorization.

These two processes will allow investigators to obtain the information required to advance the investigation, while protecting the data of uninvolved third parties. These processes will also preserve the data for future investigation should there be the need to access it in the future with further judicial authorization, or also for purposes of disclosure, if charges are ultimately laid.

The filtering will be done electronically with spreadsheet programs such as Microsoft Excel⁴ in which members of the Toronto Police Service – Intelligence Unit, Technical Crime Unit will instruct the program to sift through the data to identify common numbers from the various data sets and the “tower dump” data sets. This digital filtering will be done because it allows investigators to identify the common numbers without having to do this process manually which would be time consuming. Digital filtering will also limit members from viewing individual phone numbers of uninvolved third parties. During this filtering process, members will take reasonable steps to **only** view data pertaining to the identified phone numbers, and investigators will, thereafter, **only** be provided those identified phone numbers for further investigation.

The relevance of the identified phone numbers varies somewhat depending on what data set the identified phone number appears in:

**I. The phone numbers of [REDACTED]
[REDACTED] (Appendix G).**

⁴ Microsoft Excel - is a software program produced by Microsoft that allows users to organize, format and calculate data with formulas using a spreadsheet system. This software is part of the Microsoft Office suite and is compatible with other applications in the Office suite.

Source: <https://www.techopedia.com/definition/5430/microsoft-excel>

[REDACTED]

[REDACTED]

II. The phone numbers [REDACTED] (Appendix H).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III. The phone numbers [REDACTED]
[REDACTED] (Appendix I).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. The phone numbers [REDACTED] (Appendix J).

[REDACTED]

[REDACTED]

V. The phone numbers [REDACTED] (Appendix K)

[REDACTED]

[REDACTED]

VI. Revelation that there are no common numbers

Upon receipt of the “tower dump” data and the filtering for common numbers using the data sets, identified above, it is conceivable that that there may be no results. The determination of negative results would also be useful information to investigators. Negative results could be indicative of one or more of the following scenarios:

- a. [REDACTED]

b. [REDACTED]
[REDACTED]

c. [REDACTED]
[REDACTED]
[REDACTED]

d. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

VII. Anticipated Phone Number Data Sets to Be Used As Filter In the Future

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

More generally, it is anticipated that as the investigation continues to develop and new phone numbers are discovered by investigators, further judicial authorization will be sought to compare these numbers against the “tower dump” results.

ii. Subsequent sealing of “tower dump” data

I. Reasons for Sealing

Any phone numbers that are not identified by the filtering described above will be sealed and held in an electronic data base at the Toronto Police Service, Intelligence Unit indefinitely and will not be used, viewed or investigated by anyone for any reason unless further, future, judicial authorizations are applied for and granted allowing access to the data.

The purpose of sealing the data is to ensure that the data of uninvolved third parties is protected and that the data will not be used for any other purposes other than the purposes outlined in this judicial authorization.

Another reason for the sealing is to protect any potential, unidentified, evidence within the “tower dump” data that investigators are currently unaware of. If, in the future, investigators were to receive information that a perpetrator was using a phone number on December 13th, 2017, investigators could apply for a judicial authorization to unseal the “tower dump” data to determine if the perpetrator’s phone number is contained in the “tower dump” data sets, which would indicate that the perpetrator was in one of the areas of interest at a relevant time.

I believe that the sealing of the data allows investigators to investigate various theories and search for evidence to support the theories while at the same time protecting the data of uninvolved parties.

II. Acknowledgement that filtering and securing of data can be facilitated by the Toronto Police Service, Intelligence Unit

On January 17th, 2019 I spoke with Jonathan RETCHFORD who is a Senior Intelligence Analyst with the Toronto Police Service, Intelligence Unit, who advised that they would be able to facilitate the analysis, comparisons, filtering and the subsequent sealing of the data at the Intelligence Unit. Jonathan also advised that the analysis, comparisons and filtering would be done by a member with no involvement in this investigation.

On January 22nd, 2019 I received an email from DC DEVINE outlining her communications with Det. SLOAN of the Toronto Police Service, Intelligence Unit, Technical Crime Unit in regards to the subsequent sealing of the transmission data that has no commonality with any of the phone numbers in the data sets identified in **Appendices G to K** . DC DEVINE was advised of the following:

- A. The digital report containing transmission data will be securely stored at the Technical Crime Unit (TCU) on a forensic network that is maintained on a closed computer system. This system is only available to the Technical Crime Unit members and is not connected to either the public internet or the Toronto Police Service intranet. The data itself will remain encrypted on the system and no one outside the TCU has access to this system. The password to access this data will be stored with Detective SLOAN (or a designate who is not involved in the investigation into the deaths of Bernard SHERMAN and/or Honey SHERMAN. The secured data will not be accessed without further judicial authorization.

(c) Reasonable grounds to suspect transmission data that is in the possession or control of one or more persons whose identity is unknown when the application is made will enable that identification.

In this section of my Information to Obtain, I will address two distinct points. First, I will address why I reasonably suspect that a relevant communication took place at one or more of the areas of interest at the relevant time. Second, I will address why I reasonably suspect that the identity of the telecommunications service provider in the possession or control of the transmission data pertaining to this communication is unknown.

- i. Reasonable suspicion that a relevant communication took place at one or more of the areas of interest at the relevant time**

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III. Consideration of *R. v. MAHMOOD*

In assessing my reasonable suspicion I have reviewed the case *R. v. MAHMOOD* ([2008] O.J. No. 3922 (Sup. Ct.); affirmed 2011 ONCA 693). I have attached a copy of *R. v. MAHMOUD* as **Appendix E**, for reference and review.

R. v. MAHMOOD involved a robbery of a jewellery store by a group of people. Investigators obtained a “tower dump” for the cell towers in the vicinity of the robbery in order to identify the robbers. The evidence of phone use relied upon to support the issuance of the “tower dump” was explained by Justice Watt in the decision of the Court of Appeal as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

R. v. MAHMOOD is also distinguishable based on the kinds of records that am I seeking in this application. In *R. v. MAHMOOD*, the records obtained through the “tower dump” were described by the trial judge as “extensive”:

The information sought was extensive. The records produced included the names and home or business addresses of all cellular telephone customers who made calls within the vicinity of those towers in the requested time frame, the date and time of calls, all telephone numbers dialed or received by the account holders, and the duration of their calls.

The records I am seeking are more limited. I am only seeking “transmission data,” which does not include basic subscriber information, or home or business addresses. In addition, in *R. v. MAHMOOD* the “tower dump” contained no limits on the ways that investigators could access or use the data they received. By contrast, in this investigation I am suggesting that terms or conditions be imposed limiting police access to the data to the comparisons of data sets described above. Any further access to the data would require further judicial authorization.

I understand that the fact that the “tower dump” in *R. v. MAHMOOD* was more invasive than the “tower dump” I am proposing in the present case does not address whether there is a reasonable suspicion of phone use that could justify the “tower dump”. However, I believe that the ways that I have sought to minimize the intrusion of privacy in this investigation is relevant to the overall reasonableness of the “tower dump” that I am asking this court to issue.

ii. Reasonable suspicion that the identity of the telecommunications service provider in the possession or control of transmission data pertaining to a relevant a communication is unknown

As indicated by Lorne ELLISON the City of Toronto is serviced by four telecommunications carriers, Rogers Communications Canada Incorporated, Bell Canada Incorporated, Telus Communications Incorporated and Freedom Mobile Incorporated. I suspect that one or more of these entities are in possession of the relevant data that I am seeking. However, I do not know what service provider is in possession of the relevant transmission data, and I cannot know this until I receive the data from all the service providers and compare it against the database of known phone numbers already gathered by investigators. This is why the identity of the particular telecommunications service provider in the possession or control of transmission data pertaining to a relevant a communication is currently unknown.

Regardless of which telecommunications service provider has the relevant data, I reasonably suspect that the data exists. I contacted the corporate security departments of Rogers Communications Canada Incorporated, Bell Canada Incorporated, Telus Communications Incorporated and Freedom Mobile Incorporated. I advised them of the data I am seeking and requested that they confirm the availability of the data as well as the timeframe necessary to comply. I was advised of the following:

- I. On July 24th, 2018 I was advised by Rogers Communications Canada Incorporated that they keep transmission data for 13 months and that test calls are required to identify the towers servicing a particular location. The time frame required to comply with a production order is 30 days.

On January 9th, 2019, I sent a Preservation Demand to Rogers Communications Canada Incorporated to have the data that is subject to this judicial authorization, that Rogers is in the possession of, preserved for 21 days as per section 487.012 of the Criminal Code. The Preservation Demand is set to expire on January 30th, 2019. Rogers Communications Canada Incorporated acknowledged receipt of the Preservation Demand.

It is important to note that if this production order is not issued prior to January 30th, 2019, it is likely that Rogers' data will be lost forever, because the preservation demand expires on January 30th, 2019, and the law does not allow me to seek a further preservation demand. Because I am seeking this production order, I have not sought a preservation order relating to this data.

Through previous judicial applications I am aware that production orders to Rogers Communication Canada Incorporated can be emailed to:

[REDACTED]

- II. On August 10th, 2018 Bell Canada Incorporated advised that they keep transmission data for 36 months and they only require the address of a location to determine the cellular tower servicing that location. The time frame required to comply with a production order is 60 days.

On January 17th, 2019 I called Bell Canada Incorporated again and was advised that Bell only keeps transmission data for phone calls only. They do not retain transmission data for text messages or data usage.

Through previous judicial applications, I am aware that production orders to Bell Canada Incorporated can be emailed to:

[REDACTED]

- III. On August 16th, 2018 I was advised by Telus Communications Incorporated that they keep transmission data for phone calls going back 14 months however they only keep transmission data for text messages and data usage for 150 days. The time frame required to comply with a production order is 30 days.

Through previous judicial applications, I am aware that production orders to Telus Communications Incorporated can be emailed to:

[REDACTED]

- IV. On August 16th, 2018 I was advised by Freedom Mobile Incorporated that they keep transmission data for phone calls and data usage for 24 months. They do not keep transmission data for text messages. The time frame required to comply with a production order is 30 days.

On January 17th, 2019 I called Freedom Mobile Incorporated again and was advised that due to the potential for large amounts of data to be produced they are requesting 60 days to comply with the production order.

Through communications with Freedom Mobile Incorporated, I am aware that Production orders to Freedom Mobile Incorporated can be emailed to:

[REDACTED]

19. CONSIDERATIONS OF R. V. ROGERS AND TELUS

On January 14th, 2016, Justice SPROAT of the Superior Court of Justice released his decision in the *R. v. ROGERS and TELUS* [2016 ONSC 70] case. I have attached a complete copy of his decision as **Appendix F** to this Information to Obtain.

In his decision, Justice SPROAT set out seven suggested guidelines for police to follow in seeking “tower dump” production orders. Justice SPROAT stressed that the suggestions he put forward in the decision were guidelines, not “constitutional imperatives”.

I have considered each of the guidelines and related explanations provided by Justice SPROAT and I believe that the orders requested in this application accord with those guidelines. The guidelines are as follows:

- i. Guideline #1: Awareness of principles of incrementalism and minimal impairment
- ii. Guideline #2: Relevancy
- iii. Guideline #3: Relevancy of types of records requested
- iv. Guideline #4: Minimization
- v. Guideline #5 and #6: Requesting a report
- vi. Guideline #7: Manageability of the data requested

(a) Guideline #1: Awareness of principles of incrementalism and minimal impairment

The first guideline states:

A statement or explanation that demonstrates that the officer seeking the production order is aware of the principles of incrementalism and minimal intrusion and has tailored the request order with that in mind. An awareness of the Charter requirements is obviously essential to ensure that production orders are focused and Charter compliant.

I am aware of the principles of incrementalism and minimal intrusion. In this application I have only requested the phone numbers involved in transmissions with the specific cellular towers in locations of investigative interest.

I have not asked for any subscriber information for either side of the communications. Nor have I asked for location information for devices not in the areas of interest (but communicating with devices in those areas). Nor have I asked for any billing information.

I have also tried to narrow the time periods of the “tower dump” by only asking for a 15 minute time period before and after when Bernard SHERMAN, Honey SHERMAN, or the unknown person seen walking in the vicinity of 50 Old Colony are seen on video arriving

or leaving a specific location. However, I recognize that the time frame is broad by virtue of the fact that the unknown suspected murderer appears to have remained at the scene of the murder for a lengthy period of time. For investigative purposes, I cannot further narrow the requested time frame because it is necessary to capture the entire time frame that the suspected murderer was at or near the scene.

I have also limited the data to only the cellular towers that serviced the areas where

[REDACTED]

Where possible specific sectors covering a specific location of service by the cellular tower have been identified and data not specific to that sector will not be requested thereby limiting the amount of data produced even further.

(b) Guideline #2: Relevancy

The second guideline states:

An explanation as to why all of the named locations or cell towers, and all of the requested dates and time parameters, are relevant to the investigation. - This obviously flows from what is now the s. 487.014(2)(b) Criminal Code requirement that there be reasonable grounds to believe that the documents or data requested will afford evidence respecting the commission of the offence.

The orders at issue in *R. v. Rogers and Telus* were s. 487.014 production orders (as the order existed before the March 2015 amendments to the production order regime). I note that it is not a precondition for issuance of the s. 487.015 Orders requested in this Application that the issuing justice be satisfied that there are “reasonable grounds to believe that the documents or data requested will afford evidence respecting the commission of the offence.” Section 487.015 requires that the issuing Justice be satisfied that the “identification of a device or person involved in the transmission of a communication will assist in the investigation of the offence”. For all the reasons described above, I reasonably suspect that the murderer and possible accomplices were using cell phones and that the identification of these devices will assist in the investigation of the offence.

(c) Guideline #3: Relevancy of types of records requested

The third guideline states:

An explanation as to why all of the types of records sought are relevant. - For example, the Production Orders sought bank and credit card information, and information as to name and location of the party to the telephone call or text communication who was not proximate to the robbery location. This information was clearly irrelevant to the police investigation.

In this application I am only requesting the phone numbers involved in the transmissions of the communications involving the relevant towers. The date and times and durations of the transmissions from the "tower dump" data will also be requested. The phone numbers are a relevant type of data as I seek to identify a device involved in the communication and the phone numbers will assist in identifying any device. The times and duration of the communication will assist in corroborating any alibis and identifying specific transmissions.

(d) Guideline #4: Minimization

The fourth guideline states:

Any other details or parameters which might permit the target of the production order to conduct a narrower search and produce fewer records. - For example, if the evidence indicates that a robber made a series of calls lasting less than one minute this detail might permit the target of the order to narrow the search and reduce the number of records to be produced. If the evidence indicates that the robber only made telephone calls then there may be no grounds to request records of text messages. (Although the use of voice recognition software may make it difficult to distinguish between a person making a telephone call and a person dictating a text message.)

The Order requested are tailored to the specific facts of this investigation.

I have sought to limit the types of transmission data I am seeking. However, the production orders seek to investigate the manner in which the murders were committed [REDACTED] Therefore I am unable to limit the data by type of transmission without fear of losing data that may be

critical to this investigation. I am, however, seeking to minimize the invasion of privacy inherent in this “tower dump” with terms or conditions limiting the manner in which the “tower dump” will be utilized by investigators.

(e) Guideline #5 and Guideline #6: Requesting a report

The fifth and sixth guidelines are similar. They both relate to whether police require the targets of the orders to produce data, or if a report based on data would be sufficient.

The fifth guideline states the following:

A request for a report based on specified data instead of a request for the underlying data itself. - For example, in this case a report on which telephone numbers utilized towers proximate to multiple robbery locations would contain identifying information concerning only a small number of robbery suspects and not the personal information of more than 40,000 subscribers which the Production Orders sought. This would avoid the concern expressed by Mr. Hutchison that 99.9% of vast amounts of tower dump personal information relates to individuals who are not actually suspects.

The sixth guideline states:

If there is a request for the underlying data there should be a justification for that request. In other words, there should be an explanation why the underlying data is required and why a report based on that data will not suffice.

I am requesting that the telecommunications service providers prepare and produce documents based on data in their possession or control. The resulting documents will consist of only the data that I am requesting and not the complete raw data from the cellular towers.

Upon my review of *R. v. Rogers and Telus* it appears to me that the report that is referred to in Guideline #5 and Guideline #6, is an analytic type of report that contemplates that the service providers, rather than the police, would conduct the required “filtering” of the “tower dump” data to identify relevant communications. On this approach, only data relating to the relevant, filtered communications would be produced to the police. I have considered whether it is possible to use this process in this investigation, and I have concluded that it is not. This process would require police

to give all the service providers the list of phone numbers that investigators are in possession of (**Appendix G to Appendix K**), and ask the service providers to do the filtering of their “tower dump” data and provide the common numbers to police in a report form. We cannot do this because:

- i. All of the service providers, that service the City of Toronto, have indicated that they only produce the data and are unable to do analysis of any data,
- ii. All of the service providers, that service the City of Toronto, have indicated that even if they were able to do the analysis, they cannot ensure the reliability of the results from the filtering.

On January 25th, 2019 I contacted the corporate security departments of Rogers Communications Canada Incorporated, Bell Canada Incorporated, Telus Communications Incorporated and Freedom Mobile Incorporated to inquire if any of them would assist with the analysis and comparisons of data that is in the possession of police with their “tower dump” data that is in their possession. All of the representatives from the respective telecommunications entities advised that they would not be able to assist with the analysis and even if they did assist they would not be able to ensure the accuracy of their comparisons.

- iii. Production of the list of known phone numbers would reveal sensitive information about the fruits of the investigation to date,
- iv. Even if this solution were workable, investigators would still require production of the raw data in case it is required for future analysis (with further judicial authorization) or for purposes of disclosure to the defence.

For all these reasons, I am asking that the filtering be conducted by a member of the Toronto Police Intelligence Unit with no involvement in this investigation, and that after the filtering is conducted, the data that is not identified for further investigation will remain sealed pending further court order.

(f) Guideline #7: Manageability

The seventh guideline states the following:

Confirmation that the types and amounts of data that are requested can be meaningfully reviewed. - If the previous guidelines have been followed the production order should be focused which will minimize the possibility of an order to produce unmanageable amounts of data. This confirmation does, however, provide an additional assurance of Charter compliance.

I do not know how much transmission data will be produced in response to the Orders requested in this application. Given the number of relevant towers, the urban locations, and the duration requested, I suspect that the volume will be very high. Despite this, the volume will not be unmanageable. The data requested can be meaningfully reviewed by utilizing the strategy described above for filtering the data electronically with spreadsheet programs such as Microsoft Excel to identify common numbers from the various investigative data sets and the "tower dump" data sets. Digital filtering will also limit investigators from viewing individual phone numbers of uninvolved third parties, which will minimize the invasion of privacy resulting from the "tower dump".

20. CONCLUSION

At this point in the investigation, investigators are trying to determine who is responsible for the deaths of Bernard SHERMAN and Honey SHERMAN. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] To date, there is no evidence to elevate any of the aforementioned parties to the status of a suspect. [REDACTED]

[REDACTED]
[REDACTED]

In addition to the persons of interest there is an unidentified party that is seen on several surveillance videos in and around the area of 50 Old Colony Road. Investigators are trying to determine if this person is potential witness or suspect to the murders. I reasonable suspect that the unidentified individual is the murderer. By obtaining "tower dump" transmission data and the subsequent filtering of the data with pre-existing and identified data sets investigators hope to identify this individual.

The identification of a device or person involved in the transmission of a communication will assist in the investigation of the murders of Bernard and Honey SHERMAN by:

(a) [REDACTED]

- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

21. ORDER DENYING ACCESS TO INFORMATION

I am requesting that an order be made, pursuant to section 487.3 of the Criminal Code, denying access to and disclosure of this Information to Obtain and its attached appendices, as well as the requested Production Orders.

I am requesting that this order be made for an indefinite period and until an application is brought to a court with competent jurisdiction to have the order terminated or conditions of the order varied pursuant to section 487.3(4) of the Criminal Code.

I am also requesting that a term/condition of the sealing order be added allowing the Crown to access the sealing materials for the purpose of making disclosure. This term/condition will allow the Crown to fulfil its disclosure obligation, if charges are laid, without first obtaining an order varying this sealing order.

I am requesting that this order be made on the following grounds:

(a) Pursuant to section 487.3(2) (a) (ii), Compromise the nature and extent of an ongoing investigation

The Information to Obtain of the proposed judicial authorization applications details the facts of an ongoing investigation and if this information were to be made public it would jeopardize the investigation. Currently the investigation is still ongoing, with substantial and continued media coverage of the investigation. Information about the investigation has been already inadvertently or purposely disclosed to the public and further disclosure about the details of this case will render any potentially new hold back information to be of no value to police.

Currently there are no suspects identified in this investigation. Disclosure of this Information to Obtain would allow the perpetrator(s) to know how far the investigation

has advanced, the identity of witnesses police have spoken to and what evidence police have seized. Knowing the aforementioned information, the perpetrators can then take steps to thwart and hinder the investigation by locating witnesses that police have spoken to as well as witnesses police have not spoken to with the intent to influence them to not participate in the investigation. Also, the perpetrators, by knowing what evidence police have already seized and obtained can also take steps to destroy or conceal evidence that they know exist and police have not already seized.

Also, by disclosing this affidavit the perpetrator(s) would know if police have identified any suspects or persons of interest, which could precipitate the perpetrator(s)' flight. Disclosure of this affidavit would also allow the perpetrator(s) to determine which witnesses that investigators have or have not spoken to. The perpetrator(s) can then attempt to locate or contact witnesses to influence their participation in this investigation.

Currently the investigation is still underway with witnesses still to be identified and spoken to. If the details contained in the Information to Obtain were to be made public it could contaminate any subsequent witness statements thereby hindering investigators' ability to assess the credibility of the information provided by any future witnesses that may wish to come forward.

(b) Pursuant to section 487.3(2) (a) (iv), Prejudice the interest of an innocent person

The disclosure of the information relating to the Production Orders would prejudice the interest of an innocent person, due to the fact that many witnesses have already been interviewed by police and the contents of this affidavit would reveal the identity of witnesses who have provided information and statements to police.

I believe that, if the names and information provided were to be made public, that it would be detrimental to the progress of the investigation, the safety of witnesses and the safety of any potential witnesses. At this point in time investigators believe that this incident is a double murder and that the SHERMAN's were targeted, the perpetrator(s) are still unidentified and unaccounted for and could seek out the witnesses in this incident to cause them harm. Currently, it is unknown if other family members of the SHERMAN's are in danger. Disclosure of this affidavit would reveal the names and information of the family members and associates of the SHERMAN's thereby assisting any perpetrators in locating them.

The family and associates of the deceased along with witnesses have already been subjected to heavy media coverage. If their identities were to be revealed through this application the media coverage would only get worse prejudicing their right as innocent persons to be left alone.

Portions of the sealed materials contain information over which claims of privilege attach; portions contain references to financial and legal information that would otherwise be confidential and un-accessible to members of the public or the media; large portions of the material describe the personal and private information of many different people and entities, any of whom could reasonably assert an interest in not having this information publicly disclosed.

In addition, many of the witnesses who have been interviewed have expressed opinions about whether other persons have the motive and/or character to commit these murders. If these opinions were to be released to the public, both those expressing them and those, who are the subject of them, would be prejudiced. Disclosure of this information would have a chilling effect on other witnesses who are asked to provide information and opinions about this investigation or other investigations. In addition, given that some of these opinions may be unfounded, those who are the subject of them would be prejudiced if the opinions were published or otherwise made available to the public.

Any and all of the aforementioned considerations could “prejudice the interest of an innocent person”, as contemplated by s. 487.3(2)(a)(iv) of the *Criminal Code*.

(c) Pursuant to section 487.3(b), For any other sufficient reason

i. Previous Judicial Authorizations

On the following dates judicial authorizations were granted by her Honour L. PRINGLE, in relation to this case:

- I. December 20th, 2017;
- II. January 10th, 2018;
- III. January 15th, 2018;
- IV. February 15th, 2018;
- V. April 16th, 2018 ;
- VI. June 28th, 2018;

- VII. September 23rd, 2018;
- VIII. November 16th, 2018;
- IX. December 20th, 2018;

In these instances these orders were sealed and I am requesting that this order be sealed as well because if this application were to be left sealed, it would circumvent the sealing of the previous applications.

ii. Toronto Star's Applications To Unseal

On March 16th, 2018 I attended the Toronto North Courts located at 1000 Finch Avenue West in the City of Toronto where Toronto Star investigative reporter, Kevin DONOVAN had made an application to unseal several judicial authorization applications relating to this case, before her Honour L. PRINGLE. The application to unseal the judicial authorizations was challenged by the Crown Attorney. I had filed an affidavit outlining the reasons why, I believed, that the judicial authorization applications should all remain sealed. Ultimately, all the face pages, Appendix Bs and 2 Appendix As relating to medical records, from the judicial authorizations, were disclosed to the Toronto Star. Her Honour L. PRINGLE was to provide judgement on the unsealing of the remaining appendices at a later date.

On March 19th, 2018, her Honour L. PRINGLE ruled that the application to unseal was dismissed, without prejudice to renew should charges be laid, should the investigation conclude or should some other material change in circumstance arise.

On September 24th, 2018, I attended the Toronto North Courts in the City of Toronto where Toronto Star investigative reporter, Kevin DONOVAN, for the second time, made an application to unseal judicial authorization applications relating to this case. The application was again, challenged by the Crown Attorney and I filed an affidavit outlining the reasons why I believed that all the judicial authorization applications relating to this case should continue to remain sealed. The application to unseal was heard before her Honour L. PRINGLE. I was cross examined by Kevin DONOVAN in regards to my filed affidavit. Her honour L. PRINGLE reserved her judgement for a later date.

On September 25th, 2018 her Honour released the judgement ruling that the application to unseal was dismissed without prejudice to renew it, should charges be

laid or should the investigation conclude or should some other material change in circumstances arise.

Since September 25th, 2018 there have been no charges laid in this investigation, the investigation is currently ongoing, has not concluded and there has been no other material change in circumstance that would warrant unsealing. The investigation is ongoing with additional witnesses to be spoken to, additional evidence to be obtained and analysed and additional tips to be investigated. Therefore I believe that this judicial authorization application like the others before it should be sealed.

iii. Toronto Star Newspapers Ltd. v. Sherman Estate, 2018 ONSC 4706

On January 4th, 2019 I reviewed the case, Toronto Star Newspapers Ltd. v. Sherman Estate, 2018.⁵ Upon reviewing the case I learned the following:

- I. The court decision is dated August 2nd, 2018 and the file number is CV-18-00012564-00ES. The case was heard on July 31st, 2018.
- II. The applicant is Toronto Star Newspapers Ltd. and Kevin DONOVAN and the respondents are the Estate of Bernard SHERMAN and the trustees of the estate and the Estate of Honey SHERMAN and the trustees of the estate.
- III. Kevin DONOVAN was seeking access to the estate files for the estates of Bernard SHERMAN and Honey SHERMAN. While the estates and trustees of the estates of Bernard SHERMAN and Honey SHERMAN were arguing for the estate files to be sealed.
- IV. Justice S.F. DUNPHY stated in his decisions that, "...this case requires me to balance the very strong public policy in favour of open courts against the interest of protecting the dignity and privacy of the victims of crime and ensuring the safety of their survivors." Justice DUNPHY went on to concluded that the , "...deleterious effects of applying confidentiality protection to these two estates files is substantially outweighed by the salutary effects on the rights and interests of the victim, their beneficiaries and the trustees of their estates."

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<https://www.canlii.org/en/on/onsc/doc/2018/2018onsc4706/2018onsc4706.html?searchUrlHash=AAAAAQANSG9uZXkgU2hlcm1hbgAAAAAB&resultIndex=3>

- V. Justice S.F. DUNPHY ordered that the two files to remain sealed for a period of two years subject to further court orders.

If this application were not to be sealed the information from this application would circumvent the order for sealing imposed by Justice S.F. DUNPHY because, like previous judicial applications, this current application provides details of the SHERMAN wills and trust.

If this Sealing Order is granted, I request that the Information to Obtain, as well as a copy of the requested Production Orders be sealed in a packet, delivered to and kept in the custody of the Local Registrar of the Ontario Court of Justice in the Toronto Region, or their Agent, at Old City Hall, at 60 Queen Street West, city of Toronto, Ontario, or until otherwise ordered.

22. ORDERS PROHIBITING DISCLOSURE

I am requesting that Orders Prohibiting Disclosure be made, pursuant to section 487.0191 of the Criminal Code, preventing the disclosure of the contents of the production orders sought in this application. I believe that Orders Prohibiting Disclosure are required because there are reasonable grounds to believe that disclosure would jeopardize the conduct of this investigation. The records obtained from the production orders may contain information that could identify persons of interest in this investigation. The fact that investigators are seeking the transmission data from specific cellular towers reveals what information police have not already uncovered and what information they are currently seeking. If any of the target entities were to notify their customers or any other person or entities of the existence of the proposed production orders it could compromise the investigation by providing notice to the perpetrator(s) of the nature and extent of police inquiries which may precipitate their flight and cause the destruction of other evidence.

