

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

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Transcript of Proceedings  
and  
Testimony before the Commission  
sitting at the  
Sheraton Cavalier Hotel at  
Saskatoon, Saskatchewan

\*\*\*\*\*

On Wednesday, September 14th, 2005

Volume 70

Inquiry Proceedings



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<i>Ms. Lana Krogan,</i>	<b>for</b> Government of Saskatchewan
<i>Ms. Catherine Knox,</i>	<b>for</b> Mr. T.D.R. (Bobs) Caldwell
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<i>Mr. Rick Elson, Esq.,</i>	<b>for</b> the Saskatoon Police Service
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<i>Mr. Eamon O'Keefe, Esq.,</i>	<b>for</b> Mr. Larry Fisher
<i>Ms. Jennifer Cox,</i>	<b>for</b> Minister of Justice (Canada), The Hon. Irwin Cotler
<i>Mr. Dan Chivers, Esq.,</i>	<b>for</b> Justice Calvin Tallis (Retired)



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**Transcript of Proceedings**

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MR. HODSON: Good morning,

Mr. Commissioner. The next witness is

Mr. Lawrence Greenberg who is ready to be sworn.

COMMISSIONER MacCALLUM: Good morning,

Mr. Greenberg.

**LAWRENCE CHARLES GREENBERG, sworn:**

**BY MR. HODSON:**

Q Good morning Mr. Greenberg. Thank you for  
agreeing to testify before this Commission. I  
understand you currently reside in Toronto,  
Ontario; is that correct?

A That is correct.

Q And your current age?

A I will be 68 years old on January 21st of this  
coming year.

Q Okay. And I understand that you are a retired  
lawyer?

A I am.

Q And that you practiced from 1963 to 1997?

A That is correct.

Q And that in 1970 and '71, and in fact in other



1 years around that time, you practiced law in  
2 Winnipeg with the firm Gallagher, Chapman,  
3 McGregor & Sheps; is that correct?

4 A I don't want to sound like a nomad, but that was  
09:04 5 one of the firms that I did practice with.

6 Q Okay. And I think that's the firm, the Gallagher  
7 firm, certainly in '70 and '71 that's who you  
8 practiced with?

9 A Yes, that's correct.

09:04 10 Q And again I understand, sir, that you practiced in  
11 the area of criminal law, perhaps not exclusively,  
12 but a significant amount of your practice; would  
13 that be fair?

14 A Significantly. From time to time it changed by  
09:04 15 virtue of who was in the firm and their criminal  
16 experience, but yes, primarily criminal.

17 Q And I understand that you had occasion to be  
18 retained by Larry Fisher relating to some rape  
19 charges in Manitoba in 1970 and '71; is that  
09:05 20 correct?

21 A Yes, that's correct.

22 Q And at that time, sir, would it be fair to say  
23 that you had practiced criminal law extensively  
24 prior to that time?

09:05 25 A Yes, that's correct.



1 Q And that you would have considered yourself an  
2 experienced criminal defence lawyer; is that fair?

3 A I hope that's fair, yes.

4 Q And I understand that your engagement or retainer  
09:05 5 by Mr. Fisher was through the Legal Aid plan at  
6 the time; is that correct?

7 A That is correct.

8 Q Can you tell us just generally how Legal Aid  
9 worked in Manitoba at the time?

09:05 10 A To the best of my recollection, at that time a  
11 person would appear in one of the provincial  
12 courts normally on first blush and at that time  
13 they would have been interviewed by what were  
14 called duty counsel or a representative of the  
09:05 15 Legal Aid system either in the lock-up or in the  
16 facility and would have filled out an application  
17 for Legal Aid, and then that application would  
18 result in Legal Aid calling or appointing counsel  
19 to act for the person. There were, however,  
09:06 20 instances, and I can't say that the Fisher  
21 instance was not one of them, where you may have  
22 in fact been contacted directly from the lock-up  
23 facility or from one of the police stations where  
24 the person was being held temporarily after their  
09:06 25 arrest and would have seen them there even before



1 the Legal Aid process that I've described was set  
2 in motion.

3 Q So there are cases where an accused could contact  
4 counsel directly indicating, "lookit, I plan to  
09:06 5 apply for Legal Aid, but I would like you to be my  
6 lawyer," is that what you are telling us?

7 A Yes, either they might have done that or their  
8 family might have done that, saying so and so has  
9 been arrested and he's at the Fort Garry police  
09:07 10 station or the Transcona police station, he needs  
11 to see somebody right away.

12 Q And would Legal Aid issue you a certificate of  
13 some sort?

14 A They would.

09:07 15 Q And that would authorize you to get paid by them  
16 for your work; is that fair?

17 A It would.

18 Q And then at what stage, just generally, and we'll  
19 talk about Mr. Fisher in a moment, but at what  
09:07 20 stage generally would an accused retain or contact  
21 Legal Aid counsel?

22 A Well, if they didn't have somebody, if they didn't  
23 have a past history of having a relationship with  
24 some lawyer in the Winnipeg jurisdiction, okay --

09:07 25 Q Yes.





1           A           -- then they would appear after they were in  
2                       custody and every day the first thing in the  
3                       morning a Legal Aid representative would interview  
4                       all of the people who were in custody at the time  
09:07 5                       and determine whether they wanted Legal Aid  
6                       counsel or whether they didn't. I mean, sometimes  
7                       people did not want counsel, sometimes they just  
8                       wanted to dispose of it right away without having  
9                       anybody, but that interview system was in place so  
09:08 10                      that hopefully people would not languish for any  
11                      length of time without having a lawyer to assist  
12                      them.

13          Q           So at that time, and again talking in 1970, is  
14                       your evidence, sir, that generally speaking  
09:08 15                      accused persons in custody would get Legal Aid  
16                      counsel fairly quickly if they desired it?

17          A           The vehicle was at least there for that to happen.

18          Q           And that again, just speaking generally, we'll  
19                       talk about Mr. Fisher in a moment, once an accused  
09:08 20                      said yes, I would like Legal Aid counsel, as far  
21                      as the bureaucracy or process, did that happen  
22                      pretty quickly, to get a lawyer appointed?

23          A           Normally it did, yes. Normally before the person  
24                       appeared on the second remand or first remand, a  
09:08 25                      counsel would have been contacted and in place.



1 Q So the idea would be, sir, that accused persons  
2 would have legal counsel at the earliest  
3 opportunity?

4 A At the earliest opportunity.

09:09 5 Q Now, do you have any recollection of how Mr.  
6 Fisher came to contact you and retain your  
7 services?

8 A Unfortunately I don't have the original file and I  
9 would say under the circumstances that I have been  
09:09 10 able to reconstruct regarding this matter, that it  
11 may have been that one or more of the police  
12 officers involved in the matter, including Mr. L.  
13 Huff who I believe testified yesterday, may have  
14 given my name to Fisher. I mean, it was not  
09:09 15 unknown that members of the profession had friends  
16 or whatever within the police force who would say  
17 here, phone these six lawyers or phone one of  
18 these lawyers or phone somebody who is on this  
19 list or even in the yellow pages for a lawyer, so  
09:09 20 sometimes before the person was even moved from  
21 the jurisdiction of the police station, you might  
22 have gone to see them in that lock-up or at the  
23 police station, and I can't say that I didn't see  
24 Fisher, you know, in the middle of the night at  
09:10 25 that location or it may have been the next day.



1 Q And at that time, 1970, did you have a --  
2 relationship is maybe the wrong word, but  
3 Mr. Lorne Huff was an officer that you knew well  
4 at the time?

09:10 5 A I had known him since the beginning of my  
6 practice. I can say that the Gallagher firm had a  
7 connection over the years with the police  
8 department, we believed that we had a good rapport  
9 with the police department, Gallagher had been the  
09:10 10 chief counsel for the police department for a  
11 number of years, so it was not unusual or untoward  
12 for your name to be given to someone who might  
13 need a lawyer.

14 Q But back -- Mr. Huff, had he referred accused to  
09:10 15 you in the past, other cases, did that happen?

16 A I can't remember a specific instance, but it would  
17 not be unusual.

18 Q Okay. So you are telling us it's possible that  
19 Lorne Huff may have given Mr. Fisher your name as  
09:11 20 a contact?

21 A That is possible.

22 Q Do you have any memory of your first meeting with  
23 Larry Fisher?

24 A No, not specifically, sir.

09:11 25 Q Okay. And I take it, sir, that you have a memory



1 of some of your dealings with Mr. Fisher back in  
2 1970 and '71 and your dealings with the Attorney  
3 Generals in both Manitoba and Saskatchewan?

4 A Well, it's virtually 25 years to the day since my  
09:11 5 first involvement with Mr. Fisher, but yes, I have  
6 a recollection. I have to honestly and candidly  
7 say that that recollection is somewhat enforced by  
8 having reread material now, okay, so it's  
9 refreshed memory, if that's what you want to call  
09:11 10 it, but yes, I do have a memory of it.

11 Q I hesitate to point this out, but I think it's 35  
12 years. You said 25.

13 A I'm sorry, 35 years. The Alzheimer's has set in  
14 more than I was aware.

09:12 15 Q And you mentioned your file, and I think we should  
16 just point out for the record, Mr. Commissioner,  
17 and efforts were made, oh, probably 15 years ago  
18 and subsequent in other proceedings to try and  
19 obtain a copy of Mr. Greenberg's file and, not  
09:12 20 surprisingly, it was -- it has not been located,  
21 and I take it, Mr. Greenberg, that in the normal  
22 course of events files in your office were  
23 destroyed; is that fair?

24 A They were. I mean, even if I was in active  
09:12 25 practice today, I wouldn't have files over 35



1 years old sitting around.

2 Q Yeah.

3 A So with changes in location of firm, with movement  
4 of offices from one building to another, you just  
09:12 5 couldn't keep all the paper, so normally 10 years  
6 would be a maximum that the files would remain  
7 unless there was a title in it or a will that you  
8 were keeping for a client or some other very  
9 important document which, you know, caused you to  
09:13 10 keep that particular file longer.

11 Q And so I think what we have, Mr. Greenberg, we  
12 have a reconstructed set of documents based  
13 primarily on records obtained from prison  
14 authorities that contain parts of the Fort Garry  
09:13 15 police file and certainly from the Government of  
16 Saskatchewan, some of the correspondence, so I  
17 think that's the documents that we'll be working  
18 on, and you've had a chance to review those in  
19 preparation for your testimony; is that correct?

09:13 20 A I have.

21 Q So maybe we'll just quickly go through a couple of  
22 the Fort Garry police reports. First if we could  
23 call up 321248, please, and, Mr. Greenberg, this  
24 is a document we saw yesterday with Mr. Huff and  
09:13 25 it's the initial crime report for the August 2nd



1 incident involving (V7) (V7)--- (V7)--- and so  
2 this is the first rape incident on August 2nd, the  
3 complainant was (V7) (V7)---, and I simply show  
4 that for reference, and you'll recall,  
09:14 5 Mr. Greenberg, that there were two rapes in  
6 Winnipeg that Mr. Fisher was charged and convicted  
7 of; is that correct?

8 A That's correct, on or about the 2nd of August and  
9 on or about the 19th of September.

09:14 10 Q Right. And then if we can go to 002043, and this  
11 is the supplementary report again for the first  
12 rape, the (V7)--- rape, and if we can just go to  
13 the second page, and I went through this yesterday  
14 with Mr. Huff, I don't propose to go through it  
09:14 15 again, but, Mr. Greenberg, just to highlight part  
16 of the rape, I think in the first rape, Mr.  
17 Fisher, it says here, tied her hands behind her  
18 back with her nylons very tight and then he tied  
19 her ankles to her hands and then as well talked  
09:15 20 about stealing some money and I think this  
21 resulted in a charge of rape and of robbery with  
22 violence; is that correct?

23 A That's correct.

24 Q And if we can go to the next page, please, there's  
09:15 25 a description here, when we went through the



1 report there's no mention of a knife in either the  
2 report or the statement of the first complainant,  
3 Ms. (V7)---. Do you have any recollection as to  
4 whether or not a knife was alleged to have been  
09:15 5 involved in the first rape?

6 A I have no recollection of any weapon, knife or  
7 otherwise, being used in the first rape.

8 Q Okay. And I think, in the second rape, we'll see  
9 that he actually was charged with an offence  
09:15 10 related to a weapon; is that correct?

11 A That is correct.

12 Q And is it fair to conclude from that that, if  
13 there had been a weapon used in the first offence,  
14 that the police would have charged him with that  
09:15 15 like they did in the second offence; are you able  
16 to say?

17 A I have no reason to believe otherwise.

18 Q Okay. If we could then go to 261217, please. And  
19 this is the second crime report, and again this is  
09:16 20 for the September 19th rape involving (V8)--  
21 (V8)---, and if we can go to the next page,  
22 please. And again, we went through this yesterday  
23 Mr. Greenberg, but I'll just highlight a couple of  
24 parts. In this report it indicates that the  
09:16 25 police were called and that a male person was seen



1 running away from the shrubs pulling up his  
2 trousers while running and they apprehended Mr.  
3 Fisher, and he said "okay, you've got me", and I  
4 think that's when he was taken into custody. Is  
09:16 5 that correct, that he was caught, so to speak, on  
6 the second rape; is that your recollection?

7 A To the best of my recollection from perusing the  
8 material, yes.

9 Q Okay. And then the next page, please. And again,  
09:16 10 here, we'll see mention of a paring knife; do you  
11 recall that being one of the particulars of the  
12 second rape, that a knife was involved?

13 A I recall that there was a knife involved. The  
14 type of knife I did not recall.

09:17 15 Q And then next page, please. And this talks about  
16 Mr. Fisher being arrested and then taken to the  
17 Vaughan Street jail. Can you tell us, again based  
18 on your experience back at that time, where were  
19 prisoners or accused or suspects normally taken  
09:17 20 when they were picked up by the police, as far as  
21 holding cells? We've heard about Vaughan Street,  
22 and we'll hear more about the Headingley jail,  
23 what was your -- what normally happened?

24 A Well, when I started my career -- and I'm sure you  
09:17 25 don't want me to go back too far -- but when I





1 started my career and first graduated the original  
2 lockup was located in what was called the Rupert  
3 Street police station. And in addition to that  
4 there were lockups in virtually every other  
09:18 5 division police station which existed, it was  
6 Magnus Avenue, there was West Kildonan, there was  
7 Transcona, there was Fort Garry, whatever, they  
8 all had holding cells for short-term custody.

9 Okay. The city police -- and at that time you  
09:18 10 have to remember, prior to metro, these were all  
11 individual police forces that were brought in  
12 together. After metro, then they built the new  
13 police station, which -- and got away with Rupert  
14 Street, and the main holding facility was at the  
09:18 15 new police station, okay, and they disbanded or  
16 got away from the divisional holding cells.

17 Q And when was that, sir, as far as 1974 was when  
18 Fort Garry amalgamated with Winnipeg, would it --

19 A It would be in the area of, probably, '74-'75.

09:18 20 Q Okay.

21 A Certainly, after this particular matter.

22 Q Okay.

23 A Okay.

24 Q Yes.

09:19 25 A That they did that.



1 Q Okay.

2 A And so the Vaughan Street facility was really a  
3 facility used by the RCMP rather than the city  
4 police, and they brought their people to Vaughan  
09:19 5 Street as did basically these individual police  
6 forces, i.e. Fort Garry or Brooklyn's or  
7 Transcona, because they didn't have or use the  
8 main facility, which was City of Winnipeg prior to  
9 amalgamation, so Vaughan Street was the holding  
09:19 10 facility. Normally, people were only to be there  
11 for a short time, overnight, 48 hours, and then  
12 they would be moved to Headingley jail for any  
13 longer-term custodial care.

14 Q And did Fort Garry police at the time, in 1970,  
09:19 15 did they have holding cells as well in their  
16 facility?

17 A They would have had facilities for one or two  
18 people probably.

19 Q Okay. So --

09:19 20 A But only for short-term.

21 Q I'm sorry, okay. If we can go to 261231, please.  
22 And again are you able to say whether, sort of in  
23 the usual case, if you had an accused person  
24 arrested by the Fort Garry police would you  
09:20 25 normally be seeing them at the Fort Garry police



1 station, Headingley, Vaughn, or did it vary on  
2 every case?

3 A It varied. It varied in every case. Again, I can  
4 say to you that I can recall when each of the  
09:20 5 various City of Winnipeg divisions had their own  
6 police force, it was not uncommon for prisoners to  
7 sometimes be moved from one facility to another in  
8 a 24-hour period. Okay. But normally they were,  
9 the city police were kept at Rupert Street, the  
09:20 10 others were kept either short-term at the division  
11 facility or Vaughan Street or, ultimately, at  
12 Headingley.

13 Q And the next document here, Mr. Greenberg, is a  
14 court officer's report, I think this is the day  
09:21 15 that Mr. Fisher was arrested, and it simply  
16 states, the part here on the screen:

17 "The accused declined to give a  
18 statement or answer any questions at the  
19 time. Fisher was then incarcerated."

09:21 20 And then if we can go to 093359. And this isn't  
21 a very good copy, Mr. Huff told us yesterday that  
22 this was an adult statement form signed by  
23 Sylvestre that confirmed that Fisher was  
24 cautioned and declined to give a statement, and I  
09:21 25 think that was when he was arrested.



1                   If we can go to 093348. And  
2                   this is a document, Mr. Greenberg, a report  
3                   prepared by Detective Huff, and we'll just call  
4                   out the top part. And so this is at 6:00 p.m. on  
09:22 5                  Saturday, September 19th. The (V8)--- rape, the  
6                   second rape, occurred about 1:30 in the morning  
7                   on the Saturday, or on the Friday night but the  
8                   Saturday morning, and it talks here about Mr.  
9                   Huff and Detective Rentz going to Headingley jail  
09:22 10                 and bringing Mr. Fisher back to the Fort Garry  
11                  police for further interrogation. And are you  
12                  able to tell us, Mr. Greenberg, whether you would  
13                  have been retained by Mr. Fisher at this time or  
14                  not?

09:22 15            A           Well, to the best of my recollection, I had been.  
16                  I have looked through whatever documents have been  
17                  --

18            Q            Yes.

19            A            -- able to be kept, and the only way I -- without  
09:22 20                 -- I -- without my own file, the only way I would  
21                 know as to when the first time I appeared on Mr.  
22                 Fisher's behalf would be if the backer for the  
23                 information was available. Unfortunately, it  
24                 appears that the backers for the informations are  
09:22 25                 not available, because it was on the backer that



1 the court clerk recorded the appearances,  
2 etcetera, --

3 Q Yeah.

4 A -- and that went from one courtroom to another.

09:23 5 Now that would have told me, in effect, whether I  
6 was retained right after the August 2nd rape or  
7 not, and my recollection was that the first  
8 contact I had with Fisher would have been after  
9 the August 2nd rape and before -- okay, or after  
09:23 10 the September 19th, because he hadn't been  
11 arrested until after that.

12 Q Yes.

13 A But I would have been retained in connection with  
14 both matters, but I can't say how soon after  
09:23 15 September 19th that would have happened.

16 Q Okay. Yes. Now, and I'll go through this in a  
17 bit of detail, in this document and what follows  
18 is Mr. Fisher confesses to the (V8)--- rape and  
19 then to the (V7)--- rape in this statement that he  
09:23 20 gave on the evening of September 19th. Are you  
21 able to tell us that, when you first talked to Mr.  
22 Fisher about this matter -- and I should have  
23 pointed out, Mr. Commissioner, Larry Fisher has  
24 waived solicitor/client privilege --

09:24 25 COMMISSIONER MacCALLUM: Thank you.



1 MR. HODSON: -- with respect to his  
2 communications with Mr. Greenberg and Mr. Beresh  
3 has provided me a letter to that effect.

4 COMMISSIONER MacCALLUM: Right.

09:24 5 BY MR. HODSON:

6 Q So, again, when you first talked to Mr. Fisher are  
7 you able to tell us whether, at that time, he  
8 would have said "lookit, I have already confessed  
9 to two of them, I gave them a statement, you know,  
09:24 10 plead me out", or "I haven't confessed yet but I  
11 did them", or "I haven't confessed and I didn't do  
12 them"; can you help us? Are you able to tell us,  
13 when you first met with him, the status of any  
14 confessions?

09:24 15 A I can't tell you that firsthand. My best  
16 recollection, as I can reconstruct it, is that  
17 when I first met with Larry Fisher within days of  
18 September the 19th, 1970, that he indicated to me  
19 his involvement in those two Winnipeg rape  
09:24 20 allegations.

21 Q Right.

22 A Okay.

23 Q And --

24 A As to the statements, etcetera, I can't tell you  
09:24 25 when I first became aware of those statements and



1           whether it was initially from Mr. Fisher or not.

2           Q       And what would your initial instructions, then,  
3                   have been from Mr. Fisher about dealing with the  
4                   two Winnipeg rapes?

09:25 5           A       My instructions from Mr. Fisher were, from the  
6                   outset, to try to dispose of the matters as  
7                   quickly as possible and without a trial or without  
8                   any delay in prosecuting the matters.

9           Q       And do I take it from that that he was telling you  
09:25 10           he was going to plead guilty to the charges?

11          A       That is correct.

12          Q       So again if we look at this statement -- let me  
13                   ask this, Mr. Greenberg. At the time, if you had  
14                   been retained by Mr. Fisher as his counsel through  
09:25 15           Legal Aid, would you have expected to have been  
16                   present when the police interviewed Mr. Fisher on  
17                   September 19th?

18          A       Well, no, because I wouldn't have been retained --  
19                   I wouldn't have been retained in connection with  
09:26 20           the matter until after the arrest of September the  
21                   19th. Okay?

22          Q       Okay.

23          A       Now they very well may have gotten a statement  
24                   from him before they ever allowed him to contact a  
09:26 25           lawyer, etcetera.



1 Q Okay.

2 A So it may very well be that they had the  
3 statements before any attempt was made to contact  
4 me if it was done immediately thereafter.

09:26 5 Q Okay. But again, and I appreciate that answer,  
6 but if you had been retained, if Mr. --

7 A If I had been retained I would have expected that  
8 they would not be taking statements from my client  
9 without my knowledge.

09:26 10 Q Having said that did it, notwithstanding your  
11 expectation, did it happen -- and not on this  
12 case, I'll ask you about that later -- but did it  
13 happen from time to time that Legal Aid clients of  
14 yours would be interviewed by the police without  
09:26 15 your knowledge?

16 A Unfortunately, yes.

17 Q Okay. So again, before we leave this statement,  
18 you are not able to tell us whether or not you  
19 were retained by him before Mr. Huff took the  
09:27 20 first statement?

21 A No, I can't tell you that.

22 Q Okay. And do you have a recollection of meeting  
23 with Mr. Fisher at the Fort Garry police station?

24 A Not specifically, but something tells me that in  
09:27 25 fact I did see Mr. Fisher before he was moved from





1 Fort Garry police station, and I can't even tell  
2 you why, it's just that something in my mind says  
3 that I did see Fisher that early in these  
4 proceedings.

09:27 5 Q Okay. So one possibility might be right after he  
6 is arrested that Friday night/Saturday morning?

7 A Basically right after he was arrested and right  
8 after they had gotten the statement from him,  
9 etcetera, and --

09:27 10 Q So --

11 A -- at that particular point, before they were  
12 going to move him to either Vaughan Street or  
13 Headingley or whatever, that they would have  
14 allowed him to contact me.

09:28 15 Q So, again, one possibility -- and again I  
16 appreciate you can't tell us precisely -- but one  
17 possibility is that Mr. Fisher is arrested, and at  
18 2:00 or 3:00 in the morning he calls you in, you  
19 go in. Another possibility you said is that on  
09:28 20 Saturday I think evening, after Mr. Huff takes the  
21 statements, I think the statements were taken at  
22 Fort Garry, you are saying it's possible, then,  
23 then he would have called you and you would have  
24 saw him then; is that possible?

09:28 25 A That's possible.



1 Q Or sometime after that?

2 A Or sometime after that.

3 Q Okay. If we could go to 093325. And again just,  
4 we went through this yesterday, this is the police  
09:28 5 report on the Saturday night detailing Mr.  
6 Fisher's confession to the earlier rape, the  
7 (V7)--- rape, and I don't need to go through that.

8 Next we go to 255034. And this  
9 is the statement that Mr. Fisher provided, it's a  
09:29 10 typewritten version, I'm assuming there is a  
11 signed one or was a signed one at some point. And  
12 again, at the top it has the standard caution:

13 "Do you wish to give a statement?",  
14 and then he carries on. And again, and I may  
09:29 15 have touched on this when I talked about the  
16 earlier report, if Mr. Fisher had retained you at  
17 the time he gave this statement I think your  
18 evidence is that you would have expected to have  
19 been contacted and been present; is that fair?

09:29 20 A That would be fair.

21 Q Do you recall, in your dealings with Mr. Fisher,  
22 at some point finding out that he had signed a  
23 statement confessing to the two Winnipeg rapes?

24 A I can't -- I can't be positive that that  
09:30 25 revelation was made to me firstly by Fisher



1           himself or firstly, if I did in fact attend at the  
2           Fort Garry police station, that I wasn't told by  
3           the officers involved that they had arrested  
4           Fisher on these two rapes and that he had  
09:30 5           confessed to them.

6           Q       Okay. But you believe you would have learned  
7                   about the confessions shortly after, shortly after  
8                   your engagement; is that fair?

9           A       Yes, yes.

09:30 10          Q       If we could call up 047052, please. And this is a  
11                   copy of one of the informations, Mr. Greenberg.  
12                   We don't have the back page of these, but this is  
13                   the charge for (V8)-- (V8)---, it's sworn on  
14                   September 19th, which is the Saturday when they  
09:31 15                  picked up Mr. Fisher, and if we could just call  
16                   out this part here. And it says:

17                               "Oct 21/70",

18                   and I think remand:

19                               "... Oct 25/70 for dates to be fixed."

09:31 20                  And then remand:

21                               "... Feb. 12 at 10:30",

22                   and I think that's the day that the prelim was  
23                   scheduled for. Can you help us understand what  
24                   these notes would refer to on the informations?

09:31 25          A       Well there would have been -- and that's why the



1 backer would have been important -- there would  
2 have been a date prior to October 21st, '70 that  
3 Fisher made his first appearance in Court.

4 Q I'll maybe call -- oh, I'm sorry, go ahead?

09:32 5 A Okay. And normally it would have been remanded  
6 one, maybe a maximum of two weeks, if it was being  
7 remanded for counsel to be appointed or for  
8 whatever reason. So normally there would be a  
9 gap, between the first appearance and the second  
09:32 10 appearance, of one to two weeks.

11 Q Okay. If we could --

12 A Now October 21st is a whole month post his arrest  
13 on September the 19th, so I suspect that there was  
14 a date, at least one date in between.

09:32 15 Q Okay. So --

16 A And then he would have appeared October 21st and  
17 it would have been remanded over to October the  
18 25th.

19 Q If we could call up 047053, please. And this may  
09:32 20 assist here, this is another information, and this  
21 one has at the top:

22 "Custody: to appear: 10:00 AM -

23 Monday, Sept. 28/70";

24 do you see that?

25 A Yes.



1 Q Do you think that may have been his first  
2 appearance date?

3 A Yes, that could be.

4 Q And so if he was charged on the 19th, on the  
09:33 5 Saturday the 19th he was charged with (V8)---, on  
6 Monday the 21st he was charged with the (V7)---  
7 rapes. And so, again, does September 28th as a  
8 first appearance date sound about right?

9 A Well as -- he was arrested on the 19th, which was  
09:33 10 Saturday.

11 Q Yes.

12 A He wouldn't have been taken to Court for an  
13 appearance on Sunday the 20th.

14 Q Yes.

09:33 15 A So he would have been taken to Court for the first  
16 time on Monday, which would have been September  
17 21st.

18 Q Okay.

19 A He then would have been remanded one week, which  
09:33 20 would have got you to Monday, September 28th.

21 Q Okay. So are you able to tell us, again looking  
22 at this document, whether you would have been  
23 retained by Mr. Fisher by this time?

24 A That would be a guess, but my recollection would  
09:33 25 be yes.



1 Q Okay. And the basis that you are saying you think  
2 you would have been is what, your general  
3 practice?

4 A Not just my general practice but the general  
09:34 5 practice in Winnipeg. Considering the nature of  
6 the charges, I would have believed that somebody  
7 would have been appointed or retained or  
8 recommended for Fisher within that time span.

9 Q Okay.

09:34 10 A Not necessarily the first of September 21st,  
11 although I think that that was the case, but  
12 certainly by the time that the 28th came along.

13 Q Okay. And what would be your -- so let's go back,  
14 and I think you've told us when you were retained  
09:34 15 by Mr. Fisher his instructions were to plead  
16 guilty and negotiate disposition; is that fair?

17 A That's correct.

18 Q So what would have been your practice or what do  
19 you recall doing in this case, like, tell us what  
09:34 20 you would first do in order to carry out those  
21 instructions?

22 A Well I would have initially gotten as much  
23 information as I possibly could regarding  
24 background, regarding any prior criminal  
09:35 25 involvement or history, regarding any psychiatric



1 or medical problems or whatever, whatever  
2 background I could get regarding Fisher, who  
3 wanted to plead guilty, so I was not preparing to  
4 defend him on the charges, I was preparing to  
09:35 5 either negotiate a better disposition and sentence  
6 for him in the courts, okay, and it was more plea  
7 bargaining at that particular stage than it was  
8 defending.

9 Q So would you, where would you have obtained a  
09:35 10 criminal record then, would you get that from the  
11 Crown or what source?

12 A Under normal circumstances that's where you got  
13 the criminal record from. When you got the batch  
14 of documents from the police, certainly some were  
09:35 15 far more forthcoming with what they gave you or  
16 sent to you, but when you got the information,  
17 when you made the demand for particulars, when you  
18 got that information it contained a copy of his  
19 CPIC or criminal record that was known to the  
09:36 20 authorities at that particular time, which in most  
21 cases, not necessarily all but in most cases, was  
22 accurate and complete.

23 Q And, in this case, do you recall whether or not  
24 Mr. Fisher had a prior criminal record?

09:36 25 A My recollection to this day is that he did not



1 have a prior criminal record.

2 Q And I don't believe, Mr. Greenberg, we have seen  
3 any documents that suggest he did. Would you have  
4 talked to Mr. Fisher, then, about whether he was  
09:36 5 involved in any prior criminal activity?

6 A That would have been perhaps a question that came  
7 out in the interviews. Okay.

8 Q Yes.

9 A But I don't recall, at that particular juncture in  
09:36 10 my contact with Mr. Fisher, that I was dealing  
11 with any other prior offences --

12 Q Yeah?

13 A -- or that he told me of any other offences.

14 Q Yeah. And, again, we will be dealing a bit later  
09:36 15 with the Saskatoon charges once they come on the  
16 radar screen, but again you had told us that you  
17 would have got background information. And I'm  
18 wondering if you would have asked him, you know  
19 "have you committed any other crimes in the past,  
09:37 20 is there anything I should know about that?";  
21 would that be a question you think you would have  
22 asked him as far as your preparation?

23 A I must admit I would have been far more interested  
24 in past history that amounted, in effect, to a  
09:37 25 record of one kind with the authorities. I wasn't





1 doing an omnibus search, necessarily, of any other  
2 criminal offences or involvements that he might  
3 have had which had nothing to do at that  
4 particular stage with the authorities, or had  
09:37 5 nothing to do with the charges for which I was  
6 acting on his behalf.

7 Q And at that time, or at any time, did you have any  
8 discussion with Larry Fisher about Gail Miller's  
9 murder?

09:37 10 A Absolutely not.

11 Q Okay. And at the time, again in '70-'71, Mr.  
12 Greenberg, would you have been aware of a murder  
13 in Saskatoon of a nurse by the name of Gail  
14 Miller?

09:38 15 A I must honestly admit to you that no, I wasn't  
16 aware of it, I wasn't aware of --

17 Q Yeah.

18 A -- any of the circumstances, and I can't even tell  
19 you when I first became aware of it.

09:38 20 Q Okay. And, again, would you have been aware, back  
21 in 1970 or '71, that a fellow by the name of David  
22 Milgaard would have been convicted for the murder  
23 of Gail Miller; would you --

24 A I was not.

09:38 25 Q Yeah. So if we could then call up 093342. And



1           this is a letter that I don't think you would have  
2           seen, Mr. Greenberg, until we provided it to you,  
3           but it's a letter September 25, 1970, we believe  
4           it's from Inspector Perry of Fort Garry, and it's  
09:39 5           a letter to Saskatoon Police and talks about Mr.  
6           Fisher's previous address being in Saskatoon, but  
7           when you were doing your background checks or your  
8           discussions with him did you become aware that Mr.  
9           Fisher had just moved to the Winnipeg area from  
09:39 10          Saskatoon?

11        A       I don't have my notes which cover what he told me,  
12        but yes, I was aware that he was -- or had only  
13        been in Manitoba for a matter of months, and that  
14        was also contained -- and I can't tell you which  
09:39 15        document it is now -- but in the Fort Garry  
16        documents there's an indication that he had only  
17        been in the Province of Manitoba for maybe a  
18        couple of months, or a month and a half, and that  
19        he was working with the same masonry company in  
09:39 20        Manitoba that he had worked for in Saskatoon.

21        Q       Okay.

22        A       So yes, I was aware that he had a Saskatoon  
23        connection, that he had I believe a wife in  
24        Saskatoon that he was separated from, and so yes,  
09:39 25        I knew that he had a Saskatoon connection.



1 Q Uh-huh. And in this case, if we can just scroll  
2 down a bit -- and I'm showing you this because  
3 I'll have some questions related to this in a  
4 moment -- and this is where the Fort Garry police  
09:40 5 are outlining the offences in Winnipeg, or Fort  
6 Garry, and in the hope that it may help to clear  
7 up any similar offences that have occurred in  
8 Saskatoon.

9 If we could then call up 002019.

09:40 10 And this is a letter dated October 20th, 1970 from  
11 Mr. Perry back to the Saskatoon Police, and it  
12 refers to a letter dated October 15th, 1970 that  
13 it appears that the Saskatoon Police sent to Fort  
14 Garry with details of some unsolved Saskatoon  
09:40 15 rapes, but in any event I'll just read this letter  
16 for you, Mr. Greenberg. This part, it says:

17 "As requested in your letter dated  
18 October 15th, 1970, members of our  
19 Department attended at the Headingly  
09:41 20 Gaol and interviewed the above named  
21 accused. He denied any knowledge of the  
22 offences committed in your area. This  
23 could be due to the fact that the  
24 inmates of the Gaol have been giving him  
09:41 25 a hard time. Also that he has had



1                   sufficient time in Gaol now to know what  
2                   may be in store for him if he admits to  
3                   any further offences."

4                   Now by this date, October 20th, 1970, I think  
09:41 5                   you've told us, Mr. Greenberg, you think you  
6                   would have been retained by Mr. Fisher by this  
7                   time?

8           A           Under all normal circumstances I have no doubt  
9                   that that would have been the case.

09:41 10          Q           And then were you -- do you have any recollection  
11                   of were you aware that members of the Fort Garry  
12                   police were questioning Mr. Fisher between October  
13                   15th and October 20th, 1970, about offences in  
14                   Saskatoon?

09:41 15          A           I was not.

16          Q           And again, if you had in fact been retained, which  
17                   I think you said you were, would you have expected  
18                   the Fort Garry police to inform you of the fact  
19                   that they would be interviewing your client, Mr.  
09:42 20                   Fisher, with respect to Saskatoon charges?

21          A           I would have expected in the normal course that,  
22                   once Fort Garry knew that Fisher had counsel  
23                   acting for him, that they would not be speaking to  
24                   him directly without giving notice to counsel.

09:42 25          Q           Okay. And again I think you are telling us, sir,



1           that you don't believe you were present when this  
2           happened and you don't believe you were notified;  
3           is that fair?

4           A       That's correct. And to augment that, let me say  
09:42 5           that it had been my past history and experience  
6           that when the police wanted to speak to a client  
7           and you didn't have an objection to that  
8           happening, okay, and you attended, normally even  
9           if he gave a statement it would be endorsed on  
09:42 10          that statement that the statement was given on  
11          such and such a date and in the presence of  
12          counsel, and your name would be listed on it.  
13          Okay --

14          Q       Yeah.

09:42 15          A       -- as a further. I see no indication here, okay,  
16          of any involvement or presence by me in connection  
17          with those statements.

18          Q       Yeah. And again, and this may be a difficult  
19          question and may depend on the circumstances, but  
09:43 20          had you been asked to allow authorities or the  
21          police to question Mr. Fisher, I mean would you  
22          have allowed it or did it depend on the  
23          circumstances?

24          A       Well it would have depended entirely upon Mr.  
09:43 25          Fisher.



1 Q Okay.

2 A I would have spoken to Mr. Fisher and said "the  
3 Fort Garry police department wants to speak to you  
4 further about offences in Winnipeg or offences in  
09:43 5 Regina", or wherever it is, and if Fisher said  
6 "I'm prepared to speak to them or talk to them",  
7 then those arrangements would have been made.

8 Q Okay. If we could call up 010697, please. And  
9 this is a letter dated October 20th, 1970, and  
09:43 10 when we see the last page we'll see it's from a  
11 Dr. Johnston, Director of Forensic Services at the  
12 Psychiatric Institute, and it's a letter to  
13 Mr. Morton, the Crown attorney. Do you recall  
14 Mr. Morton, was he the Crown attorney on this  
09:44 15 matter?

16 A Yes, I'm --

17 Q And --

18 A I recall Mr. Morton very well.

19 Q And what about Dr. Johnson, were you familiar with  
09:44 20 him?

21 A Dr. Johnson was, so to speak, the provincial  
22 psychiatrist and I think it was generally  
23 recognized or accepted within the profession that  
24 you were going to get a pretty Crown-slanted  
09:44 25 psychiatric report from Dr. Johnson.



1 Q Okay. So my next question is why would Mr. Morton  
2 be asking Dr. Johnson to be involved, but I take  
3 it that he would have been asking --

4 A If he wanted a report that slanted it his way, I  
09:44 5 think that would be the best person to ask.

6 Q Okay. So it appears from this, Mr. Greenberg,  
7 that the Crown sought a psychiatric assessment of  
8 Mr. Fisher; is that correct?

9 A That is correct.

09:45 10 Q And would that have been a usual step or would  
11 there be some reason that would prompt them --  
12 were there concerns about Mr. Fisher's mental  
13 condition that would prompt this report or can you  
14 tell us?

09:45 15 A I think there were concerns about Mr. Fisher's  
16 mental status. I can't say because of the lack of  
17 some of the documents, I can't say that it might  
18 not have been a recommendation that came from the  
19 bench considering the nature of the charges, that  
09:45 20 there be a psychiatric report. That may be  
21 possible, there may have been a psychiatric remand  
22 in the matter, and it may be that in preparation  
23 for what I believe would have been negotiations  
24 already started towards disposition of the  
09:46 25 charges, okay --



1 Q Yes.

2 A -- Morton wanted or needed whatever augmentation  
3 he could get by way of psychiatric evidence to  
4 back up and enforce any position that he might  
09:46 5 take. I mean, he's protecting his client I think  
6 to some degree.

7 Q And so again was there a concern about Mr. Fisher  
8 being able to stand trial?

9 A No, I don't think it was from the point of view of  
09:46 10 an insanity plea, that was never to my knowledge  
11 considered in any possible way. I think it was  
12 just a matter of just considering or putting aside  
13 any thought that they would perhaps be releasing  
14 now or in the future someone with a psychiatric  
09:46 15 problem.

16 Q Then if we can just -- do you recall Dr. Johnson  
17 being involved in this matter, Mr. Greenberg?

18 A I certainly recall there being a report from  
19 Dr. Johnson because you will see from the material  
09:47 20 that I also had Mr. Fisher examined.

21 Q And it says here, it talks about having Mr. Fisher  
22 examined at the Psychiatric Institute and it says:  
23 "During my examination Mr. Fisher  
24 appeared to be anxious to cooperate to  
09:47 25 the best of his ability."





1 And again, do you have a recollection of that  
2 being the case or having those discussions with  
3 Mr. Fisher or the Crown?

4 A Well, I can say, sir, that from my first contact  
09:47 5 with Mr. Fisher, whatever date that was, however  
6 close that might have been to September the  
7 19th --

8 Q Yes.

9 A -- I do not recall at any time Mr. Fisher directly  
09:47 10 to me or through me or in my presence doing  
11 anything, okay, which was inconsistent with his  
12 wanting to cooperate in getting these charges  
13 disposed of and out of the way.

14 Q Okay. And then we see at the bottom here, this  
09:48 15 report says:

16 "Mr. Fisher told me that he had never  
17 raped a girl --"

18 I can't really see that,

19 "-- continued 'that is why I asked for a  
09:48 20 doctor's help'."

21 And do you have any recollection of Mr. Fisher  
22 asking for a doctor's help around this time or as  
23 part of these dealings?

24 A Well, consistent with the discussions that I had  
09:48 25 with him and the overwhelming problem that he



1 confessed to also of alcohol, his use of alcohol  
2 and his involvement in the various offences either  
3 while drinking or after drinking or whatever, it  
4 was part of that that certainly he was not opposed  
09:48 5 to a doctor's help.

6 Q Go to page, the third page, 010699, and just look  
7 at the concluding paragraph, and this is what  
8 Johnson says, he says:

9 "On the basis of my examination I formed  
09:48 10 the opinion that at the time the alleged  
11 offences occurred he was not suffering  
12 from any psychotic mental disorder and  
13 my examination did not reveal any  
14 specific form of personality disorder  
09:49 15 but I gained the impression that his  
16 intelligence level was in the dull  
17 normal or borderline range. I have  
18 arranged for a psychometric examination  
19 which will be carried out on October 27.  
09:49 20 When I receive the results from this  
21 psychometric test I will complete my  
22 report."

23 And can we take it from this, Mr. Greenberg, that  
24 one of the issues that Dr. Johnson was looking at  
09:49 25 for the Crown was whether or not in his opinion



1 Mr. Fisher was suffering from any psychotic  
2 mental disorder when the offences were committed?

3 A That's fair.

4 Q And would that be an issue on sentencing; is that  
09:49 5 fair to say?

6 A Yes.

7 Q And it appears from here that some further  
8 psychometric testing is going to happen; right?

9 A That's right.

09:49 10 Q So that's October 20th. If we can go to 002032,  
11 and this is a statement, it's a typed version of a  
12 statement, if I can just call out the top part,  
13 please, and it's Wednesday, October 21st, 1970,  
14 and you recall when I showed you that information  
09:50 15 earlier, Mr. Greenberg, it had the remand date of  
16 October 21, and this is at the Vaughn Street  
17 Detention Home and statement of Larry Fisher,  
18 presently an inmate at Vaughn Street Detention  
19 Home. Let me just pause there. Was he an inmate  
09:50 20 there or would he just be held there pending  
21 transfer?

22 A The true intention of the system was that he would  
23 only be held there on a very temporary basis.

24 Q Was there solitary confinement or anything there  
09:50 25 at Vaughn that wasn't at Headingley?



1 A Vaughn Street became somewhat famous in Manitoba a  
2 number of years ago because it had been the  
3 holding facility and the hangman's gallows had  
4 been in the Vaughn Street detention facility, and  
09:51 5 I'm trying to remember because my Alzheimer's  
6 really has set in, there was a somewhat famous  
7 Manitoba criminal who was housed at Vaughn Street  
8 for a protracted period of time and brought, there  
9 was a great kerfuffle about an inmate being held  
09:51 10 at Vaughn Street for the length of time that this  
11 guy had been held in solitary confinement, and it  
12 was in fact at one stage where the hangman's  
13 gallows was. It was certainly a facility never  
14 intended physically, structurally for long-term  
09:51 15 housing of inmates.

16 Q Okay. We heard from Mr. Huff yesterday that based  
17 on his recollection the practice was, and he  
18 believes the practice with Mr. Fisher, is that he  
19 would have been housed at the Headingley jail,  
09:52 20 that when he had a court appearance, that they  
21 would bus him from Headingley to Vaughn Street and  
22 then the police would pick him up from Vaughn  
23 Street and take him to the court house which was  
24 adjacent to Vaughn Street; does that sound right?

09:52 25 A That is correct, and that was the procedure for a



1 long time before they built the brand new  
2 custodial facility right across from the court  
3 house or Vaughn Street, or not on Vaughn Street,  
4 on Kennedy.

09:52 5 Q So if Mr. Fisher was in court on October 21st,  
6 1970, and I think Mr. Huff said this, that he  
7 would be in the Vaughn Street Detention Home both  
8 before and after his court appearance before he  
9 could get bussed to and from Headingley jail; does  
09:52 10 that sound right?

11 A That would be correct.

12 Q And in this statement, and we'll go through it in  
13 a bit more detail, but in this statement, again  
14 just the date, it's 11:19 a.m. on the 21st, what  
09:52 15 was court normally, nine o'clock, 9:30?

16 A 10 o'clock.

17 Q 10 o'clock. And then if we could scroll down,  
18 this is a statement that Mr. Fisher gave to Lorne  
19 Huff saying I want to clear up three more things.  
09:53 20 The first one was in Saskatoon, he describes a  
21 rape, the second one was in Saskatoon, he  
22 describes an attempted rape, and the third one in  
23 Winnipeg about two months ago and she screamed and  
24 Mr. Fisher took off he says, and this was taken by  
09:53 25 D. Gilbert and L. Huff, and it appears that this



1 is the first point where Mr. Fisher has confessed  
2 to a Saskatoon rape and a Saskatoon indecent  
3 assault, and on this date, October 21, 1970, are  
4 you able to tell us, Mr. Greenberg, whether you  
09:53 5 would have been counsel for Mr. Fisher by this  
6 time?

7 A Again, I have every reason to believe that I was.

8 Q And again, do you have any recollection of being  
9 present when this statement was given by Mr.  
09:53 10 Fisher to Mr. Huff or Mr. Gilbert?

11 A No, I don't.

12 Q And had you been retained by Mr. Fisher, as you  
13 believe you were, would it be your expectation  
14 that the officers Huff and Gilbert would have  
09:54 15 advised you that they were talking to Mr. Fisher  
16 about matters?

17 A I believe it would have been my reasonable  
18 expectation that that would have happened.

19 Q Okay. And again do you have any -- at some point  
09:54 20 did you become aware that Mr. Fisher had confessed  
21 to some Saskatoon -- a rape and an indecent  
22 assault?

23 A I certainly became aware that he had. I can't,  
24 however, tell you what the date was.

09:54 25 Q Yeah. We'll go through the documents and see if



1           that will assist, but at this time -- let me back  
2           up. So again, on the 21st of October, I think  
3           what Mr. Huff indicated is that Mr. Fisher had had  
4           some trouble in jail with some of the inmates, had  
09:55 5           been beat up. Do you have any recollection of  
6           that, of Mr. Fisher having concerns about other  
7           inmates?

8           A       I have no specific, but that would be consistent  
9           with his situation and where he was and the nature  
09:55 10          of the offences. That would not be unusual.

11          Q       And so again, someone charged with rape might  
12          expect to get a rough time at Headingley jail; is  
13          that what you are saying?

14          A       If you are a multi-million dollar fraud artist you  
09:55 15          might be at the top of the hierarchy within the  
16          institutions of Canada. A skinner or someone  
17          involved in these type of sex offences is right at  
18          the bottom, especially if they involve children.  
19          This didn't involve children, but it did involve  
09:55 20          rapes.

21          Q       And again, you don't have any recollection though  
22          of --

23          A       No.

24          Q       -- those concerns. If we can then go -- so the  
09:55 25          date of that statement was October 21, 1970. If



1 we can go -- the next day, Mr. Greenberg, October  
2 22nd, 1970, Larry Fisher was interviewed in,  
3 either in the Fort Garry holding cells or at  
4 Headingley by two Saskatoon police officers, and  
09:56 5 if I could call up 010721, please, and this is a  
6 typewritten version of the statement October 22nd  
7 and it's signed by Larry Fisher, witnessed by E.  
8 Karst who was a Saskatoon detective at the time,  
9 and were you aware at the time, at this time, Mr.  
09:56 10 Greenberg, that two Saskatoon police officers were  
11 interviewing Larry Fisher with respect to the  
12 information that he had given the day previously  
13 to officers Huff and Gilbert?

14 A Not to my recollection.

09:56 15 Q And again, if you had been retained by Mr. Fisher  
16 at this time, which I believe you said you think  
17 you were, would you have expected to have been  
18 informed of the fact that Saskatoon police  
19 officers were interviewing your client, Mr.  
09:57 20 Fisher, about matters occurring in Saskatchewan?

21 A Yes.

22 Q Now, can you give us some idea of when in the time  
23 frame -- so this is October 22nd, 1970 that he's  
24 giving the two statements. I think our next  
09:57 25 correspondence on this matter is December 11th, if





1 we could call it up, 010694, and this is a report,  
2 go to the next page, by a Dr. Adamson?

3 A Correct.

4 Q Did you retain Dr. Adamson to provide this report?

09:58 5 A Yes, I did.

6 Q And go back to the first page. And he was a  
7 psychiatrist, is that right, at the time?

8 A Right.

9 Q And what was the purpose of this report?

09:58 10 A Well, I wished to have a, what I believe was  
11 hopefully an independent psychiatric report in  
12 addition to the one that I got from the provincial  
13 psychiatrist, Dr. Penner.

14 Q So this is December 11th, 1970, so from the end of  
09:58 15 October to early December, 1970, and again we  
16 haven't been able to locate any other paper  
17 between that time period, would it be fair to say,  
18 Mr. Greenberg, that you were gathering information  
19 to assist you in negotiating a plea for Mr.  
09:58 20 Fisher; is that fair?

21 A I believe that during that time there would have  
22 been information gathered, there would have been  
23 discussions with Mr. Morton or some other Crown  
24 attorney possibly in connection with disposition  
09:59 25 of the matters.



1 Q And again, I take it that this would be a report  
2 that you would have requested at the time?

3 A That's correct.

4 Q Now, I think you told us that as far as the two  
09:59 5 Winnipeg rapes, and I guess there was a weapon  
6 charge and a robbery charge, you were gathering  
7 information to negotiate a plea. At some point  
8 did you become aware that Mr. Fisher had either  
9 confessed to a rape and an assault in Saskatoon or  
09:59 10 had been -- or had confessed to that, that there  
11 was other matters that needed to be dealt with?

12 A Well, there's no question that I became aware that  
13 there were other matters that were outstanding  
14 relating back to Saskatoon. I can't, however, pin  
09:59 15 down a date at which I became aware of that or the  
16 source from which I became aware of it.

17 Q So one possibility might have been Mr. Fisher  
18 telling you; is that correct?

19 A Certainly.

10:00 20 Q And --

21 A Or Mr. Huff or the Crown attorney. I can't tell  
22 you which was the original source.

23 Q And what effect would that have, Mr. Greenberg, on  
24 your strategy to deal with the Winnipeg charges?

10:00 25 A Well, it had a strategy regarding all of the



1 matters. The hope was that all matters could be  
2 disposed of, as you see in some of the later  
3 correspondence that I assume we'll get to, that  
4 all of the matters could hopefully be disposed of  
10:00 5 at the same time, or that at least it would not  
6 result in a double penalty for Mr. Fisher in  
7 trying to dispose of the matters in trying to  
8 minimize the period of incarceration that he  
9 received, so certainly if there were outstanding  
10:00 10 charges in any other jurisdiction, it would have  
11 been important both as to the disposal of the  
12 charges in Manitoba and a disposal of all of the  
13 charges in general.

14 Q And is it fair to say from your answer, then, that  
10:01 15 the manner in which you would otherwise deal with  
16 the Winnipeg charges changed because there were  
17 other charges coming?

18 A That's correct.

19 Q And if we could go --

10:01 20 A Because you have to remember that on the basis of  
21 the information I had, Mr. Fisher, before he  
22 disposed of the Manitoba charges, was a first  
23 offender with no criminal record.

24 Q If we could call up 047051, and this is an  
10:01 25 information sworn on December the 30th, 1970 in



1           Saskatoon and it charges Mr. Fisher with the  
2           assault of (V3)-- (V3)----- on November 29th,  
3           1968, and this, Mr. Greenberg, is one of the  
4           individuals that Mr. Fisher had confessed to both  
10:02 5           Mr. Huff and again to Detective Karst on October  
6           22nd and there are similar charges, there's three  
7           other charges for rapes, so there's four charges  
8           in total that were sworn on December 30th, 1970,  
9           and I take it, sir, that at some point you would  
10:02 10          have become aware that charges had been laid  
11          against Mr. Fisher in Saskatoon; is that fair?

12        A        Yes.

13        Q        And are you able to tell us when and how and from  
14          whom you became aware?

10:02 15       A        Unfortunately my memory does not allow me to  
16          recollect specifically how I learned of the  
17          charges or the details of them, but I did become  
18          fully aware of the Saskatchewan charges.

19        Q        Okay. And we'll go through some documents that I  
10:02 20          think may assist. Once you became aware of those,  
21          what were Mr. Fisher's instructions with respect  
22          to those charges?

23        A        That he wished to arrange to have a disposal of  
24          the charges at the earliest possible date and if  
10:03 25          possible coincidental with the disposal of the



1 Manitoba charges.

2 Q Okay. I would like to just talk for a minute  
3 about the criminal procedure at the time and,  
4 Mr. Commissioner, we will be filing the relevant  
10:03 5 provisions of the *Criminal Code*, but I think I can  
6 go through this with Mr. Greenberg. It's my  
7 understanding at the time, Mr. Greenberg, of these  
8 offences, 1970 and 1971, that the offence of rape  
9 was an indictable offence and that the Superior  
10:03 10 Court had exclusive jurisdiction to deal with that  
11 charge; is that correct?

12 A That's my recollection.

13 Q And the Superior Court at the time would be, in  
14 Manitoba, the Manitoba --

10:03 15 A -- Queen's Bench.

16 Q Queen's Bench, and in Saskatchewan, Court of  
17 Queen's Bench; is that right?

18 A That's right.

19 Q And that as well, once a charge was laid for rape,  
10:03 20 that there was a requirement that there be a  
21 preliminary hearing before a magistrate; is that  
22 correct?

23 A In the normal course, unless you waived that  
24 procedure, unless it was a direct indictment.

10:04 25 Q It's my understanding, and again I just want to



1 know if this is your understanding as well, the  
2 statutory provisions will speak for themselves,  
3 but that at the time that an accused who wished to  
4 avoid having a preliminary hearing could not do  
10:04 5 so, they could consent to a committal, but they  
6 had to appear before a magistrate, consent to a  
7 committal; is that correct?

8 A That's correct.

9 Q And so that at the time an accused couldn't waive  
10:04 10 the preliminary hearing; is that correct?

11 A That's correct.

12 Q And if an accused wished to avoid the necessity of  
13 appearing before a magistrate, the only way to  
14 avoid that would be to have a direct indictment;  
10:04 15 is that correct?

16 A Yes. The direct indictment was a tool used by the  
17 Crown fairly often, and often to the chagrin of  
18 defence counsel because it disposed of your  
19 ability to have a preliminary hearing and a  
10:05 20 search, etcetera, through that facility of the  
21 case, but often the Crown would proceed by a  
22 direct indictment and therefore you could have no  
23 preliminary hearing, so it was far more prevalent,  
24 often the choice of the Crown rather than a  
10:05 25 defence counsel suggesting that there be a direct



1 indictment, but that may have also been the case.

2 Q And in what circumstances might defence counsel  
3 request a direct indictment?

4 A It may be because of the nature of the charges, it  
10:05 5 may be because of the cost, etcetera, of the  
6 preparation and the time to get it to actual trial  
7 and it may be because of the nature of the  
8 singular or specific issue that was going to be  
9 argued in connection with the defence or the  
10:06 10 preparation for the trial of the matter.

11 Q If an accused wished to plead guilty to an  
12 indictable offence, based on your experience what  
13 purpose would there be for a preliminary hearing  
14 as defence counsel?

10:06 15 A None.

16 Q None?

17 A None. None unless you believed that somehow or  
18 other it may provide for you something relevant to  
19 mitigating the sentence and that would be only, I  
10:06 20 can think of, in the rarest circumstances.

21 Q Now, it's also my understanding of the law at the  
22 time, and I would like to get your understanding  
23 as well, and again that in 1970 and '71 that the  
24 offence of rape committed in Saskatchewan, that  
10:06 25 the Saskatchewan Court of Queen's Bench had



1 exclusive jurisdiction over that charge and that  
2 the Manitoba court could not deal with it; was  
3 that your understanding?

4 A That is correct. I guess I at one stage at least  
10:07 5 mistakenly believed that in concurrence and with  
6 agreement of both jurisdictions, that the matters  
7 could be heard together, but as of the date that I  
8 was putting that forth, the provisions of the code  
9 did not allow for that. It's my understanding now  
10:07 10 that in fact the code has been amended and that  
11 procedure is available.

12 Q I think that's correct. So again at the time, are  
13 you telling us that you thought you might be able  
14 to get one court to hear both Manitoba and  
10:07 15 Saskatchewan charges?

16 A That's correct.

17 Q And then when you learned that that could not  
18 happen, what was your strategy then or what was  
19 your plan to deal with the charges in the two  
10:07 20 jurisdictions?

21 A The strategy was to dispose of the charges that  
22 were in Manitoba, which is where Mr. Fisher was in  
23 custody, etcetera, by way of an agreed  
24 disposition --

10:07 25 Q Yes.





1 A -- and at least a negotiated range for sentencing,  
2 etcetera, dispose of those charges, then  
3 immediately effect a transfer from the federal  
4 institution in Manitoba to the federal institution  
10:08 5 in Saskatchewan for the matters outstanding in  
6 Saskatchewan to be disposed of there and for a  
7 sentence concurrent to the Manitoba sentence to be  
8 imposed in Saskatchewan on the Saskatchewan  
9 charges.

10:08 10 Q And did you in fact do that?

11 A Yes.

12 Q And so when Mr. Fisher was convicted in Manitoba  
13 and sentenced, I think May 28th of 1971, did you  
14 have an arrangement already in place with the  
10:08 15 Saskatchewan Attorney General for the disposition  
16 of the Saskatchewan charges?

17 A That is my recollection, but I must admit to you  
18 that I can't find a paper trail or document which  
19 specifically confirms that in that precise detail.

10:09 20 Q And what causes you to say that you think that  
21 would have been the case?

22 A Because I wouldn't have been prepared to do what  
23 was done without each piece of the link being in  
24 place.

10:09 25 Q So was there a risk that if you didn't have an



1 arrangement with the Saskatchewan Attorney General  
2 before Mr. Fisher was dealt with in Manitoba, was  
3 your concern that he would get a consecutive  
4 sentence?

10:09 5 A That's possible.

6 Q Okay. So you are telling us that you believe  
7 that --

8 A Not only that he would get a consecutive sentence,  
9 but that he might have gotten a greater sentence,  
10:09 10 okay.

11 Q Yes.

12 A Even if it was concurrent in part.

13 Q I see, okay.

14 A Let's assume that he got, as he did, six and a  
10:09 15 half years on each of the two charges, like, he  
16 got six and a half years in total on count 1 and  
17 2.

18 Q Yes.

19 A Then he got six and a half years on counts 3 and  
10:10 20 4.

21 Q Yes.

22 A And one and two and three and four were concurrent  
23 with each other but consecutive, so it was six and  
24 a half years and six and a half years. Now, if he  
10:10 25 had gotten 10 years or 15 years, okay --



1 Q Yes.

2 A -- on each of the charges before, or even the  
3 total of the four charges in Saskatoon, he might  
4 have ended up with more than 13 years.

10:10 5 Q Okay. So again back when you disposed of the  
6 Manitoba charges then, Mr. Greenberg, you believed  
7 that you had an arrangement in place to get  
8 concurrent time in Saskatchewan; is that --

9 A That's correct.

10:10 10 Q If we could call up 331515, please -- sorry,  
11 331515 -- and this is a letter dated February 8th,  
12 1971 and it's from you to John Turner who was then  
13 the federal Minister of Justice, and if we just go  
14 through parts of this, call out the first part,  
10:11 15 Mr. Greenberg, it says you've been appointed to  
16 act on behalf of Mr. Fisher with respect to  
17 charges in Manitoba, and then if we could scroll  
18 down just a bit, it says:

19 "Mr. Fisher presently stands charged  
10:11 20 both in Manitoba and Saskatchewan with a  
21 total of five charges of rape - one  
22 charge of Attempted Rape in Saskatchewan  
23 and a charge of Robbery with Violence  
24 and a charge of Possession of an  
10:12 25 Offensive Weapon in Manitoba."



1 And it would appear on this date, Mr. Greenberg,  
2 and the charges being five charges of rape, being  
3 two in Manitoba and three in Saskatchewan, one  
4 charge of attempted rape in Saskatchewan, that is  
10:12 5 consistent with the informations that we looked  
6 at being sworn on December 30th, 1970. Can we  
7 conclude from that that at least at the date of  
8 this letter you would have been aware of charges  
9 having been laid in Saskatchewan against Mr.  
10:12 10 Fisher?

11 A I don't believe there's any other rational  
12 conclusion that you could come to because of the  
13 specifics of what's said in the letter and because  
14 of the specifics of those informations that we saw  
10:12 15 from December 30th.

16 Q Okay. And again -- so I think we can confirm, or  
17 you are telling us that at least by February 8th,  
18 '71 you were aware of the four Saskatoon charges;  
19 is that correct?

10:12 20 A Correct.

21 Q And are you able -- does this letter assist in  
22 helping you tell us when, prior to February 8th,  
23 or how you became aware?

24 A Unfortunately it doesn't, it only confirms that I  
10:13 25 was aware.



1 Q And it talks here, it says:

2 "Needless to say, because of the number  
3 of charges and the very serious nature  
4 of these charges, Mr. Fisher will  
10:13 5 undoubtedly receive a very lengthy term  
6 of incarceration in the penitentiary on  
7 conviction for these offences or on a  
8 plea of guilty."

9 And then if you could just scroll down, it says:

10:13 10 "These charges are not transferable from  
11 one province to the other so a problem  
12 has arisen in arranging to have the  
13 charges heard and disposed of in one  
14 court. It will be necessary under the  
10:13 15 circumstances to have the charges heard  
16 in Manitoba first, as Mr. Fisher is in  
17 custody in this province and then to  
18 have the charges in Saskatchewan heard  
19 and disposed of."

10:13 20 And scroll down:

21 "It is the writer's respectful  
22 submission in this matter that all of  
23 these charges should be proceeded with  
24 at one time, that this, however, is  
10:13 25 impossible because of the nature of same



1 and that therefore every effort must be  
2 made to have the charges heard and  
3 disposed of as simultaneously as  
4 possible ..."

10:14 5 Next page,

6 "... in the courts of Manitoba and  
7 Saskatchewan, and then any sentence  
8 received on these served in one  
9 institution preferably the federal  
10:14 10 penitentiary in Saskatchewan, which is  
11 the province from which Mr. Fisher comes  
12 and the domicile and residence of his  
13 family and relatives."

14 And it says:

10:14 15 "The writer has indicated to Mr. Fisher,  
16 and we indicate at this time to the  
17 other parties concerned herein, that he  
18 is prepared to represent Mr. Fisher both  
19 in the Manitoba Court and in the  
10:14 20 Saskatchewan Court if arrangements can  
21 be made for this purpose. The writer is  
22 presently not a member of the  
23 Saskatchewan and special leave would  
24 have to be obtained if this were  
10:14 25 possible."



1 And then it goes on to say -- I think you then  
2 send copies of pre-sentence, or psychiatric  
3 reports and then you conclude by saying:

4 "The writer is led to believe that if  
10:15 5 the various departments are prepared to  
6 cooperate that the charges could be  
7 disposed of by way of special assize  
8 hearings both in Manitoba and  
9 Saskatchewan and Mr. Fisher could have  
10:15 10 all the charges heard and disposed of  
11 almost immediately and commence serving  
12 his term of incarceration without  
13 further delay."

14 And do you know what that was referring to,  
10:15 15 Mr. Greenberg? Did you believe there was a way  
16 that you could get something from the federal  
17 Minister of Justice that would allow a special  
18 hearing of both Manitoba and Saskatchewan at the  
19 same time?

10:15 20 A I believed that, I think erroneously, that that  
21 could be the case, but I believed at least that  
22 with the cooperation of the federal Department of  
23 Justice, that I could, in effect, facilitate or  
24 ease the process or quicken the process to get it  
10:15 25 disposed of because I was concerned that even if



1 the charges were disposed of in Manitoba --

2 Q Yes.

3 A -- and that Mr. Fisher then got into the  
4 penitentiary system, that he could be there and  
10:16 5 languish there for God knows how long until he was  
6 disposed of in Saskatchewan, because once he was a  
7 sentenced prisoner for 13 years, no one was in any  
8 damn hurry to get the matter dealt with, okay, so  
9 that I was concerned that the feds may very well  
10:16 10 play a part, okay, in facilitating the total  
11 disposal of all the charges.

12 Q I see. So your concern was that he be sentenced  
13 in Manitoba, and that one possibility was that the  
14 Attorney General in Saskatchewan would delay  
10:16 15 proceeding with the charges --

16 A Might.

17 Q -- and then, at a later date, be dealt with and  
18 add further time to the sentence; is that --

19 A That's correct.

10:16 20 Q Okay. So at this time we talk about four charges  
21 in Saskatchewan, and certainly the tone of the  
22 letter -- and please correct me if I'm wrong --  
23 suggests that Mr. Fisher intends to plead guilty  
24 to all these charges, is that fair, that you are  
10:17 25 communicating that you are trying to dispose of





1           them all?

2           A       I can say that if there's anything that's  
3                   consistent throughout this, that is consistent,  
4                   it's a consistent thread from my first involvement  
10:17 5                   with Fisher through to the end, was this desire to  
6                   get all of this disposed of and behind him.

7           Q       Now I had showed you the December 30th, 1970, the  
8                   four charges in Saskatoon, you recall those?

9           A       Right.

10:17 10          Q       The three rapes?

11          A       Right.

12          Q       And I had earlier showed you the confession, or  
13                   the statements of Mr. Fisher admitting to the two,  
14                   and there's some other reports that suggest at the  
10:17 15                   time he denied the other two for which he was  
16                   charged.

17          A       Correct.

18          Q       Do you have any recollection, Mr. Greenberg, of  
19                   discussing that with Mr. Fisher, or how it came to  
10:17 20                   be that he ended up pleading guilty to four rather  
21                   than the two that he had admitted to?

22          A       I can't give you a specific scenario. I can only  
23                   tell you that, when I followed Mr. Fisher's  
24                   instructions, those instructions were to dispose  
10:18 25                   of the charges in Manitoba as they were disposed



1 of.

2 Q Yes.

3 A And never, to this day, have I heard one iota of  
4 complaint from Mr. Fisher as to how that was done  
10:18 5 and disposed of.

6 Similarly, his instructions were  
7 followed to the letter, as best they could be  
8 followed, regarding the Saskatoon charges.

9 Now I can only tell you that  
10:18 10 those four charges were put to Mr. Fisher. Only  
11 in Mr. Fisher's heart, or whatever, is the  
12 knowledge as to whether he agreed to plead  
13 ultimately to four charges and was only actually  
14 guilty of two, or four. I don't know that. I  
10:19 15 only know that I never received instructions to  
16 plead to any charges from Mr. Fisher for which he  
17 didn't tell me that he was prepared to plead  
18 guilty to. I mean if he pled guilty to four  
19 charges, those were the four charges that were  
10:19 20 read to him and he said "go ahead, plead guilty to  
21 them and dispose of it", he entered that plea in  
22 Court and I have never heard an iota of complaint  
23 from him that I pled him to charges for which he  
24 was not guilty.

10:19 25 Q And I'm not suggesting that, Mr. Greenberg, I'm



1           trying to understand -- and I'll show you --

2       A       No --

3       Q       Yeah, there's -- maybe I can call up this letter

4           now, and 261053, please. And this is a letter

10:19 5           March 17th, '71, and I will be referring to it

6           later, but if you could go to the last page,

7           please, 261055. And this is a letter from the

8           deputy chief of Saskatoon to the Assistant Crown

9           Solicitor in Regina, and this talks about the

10:20 10          October 22nd, '70, when members of the Saskatoon

11          force interviewed Fisher and Fisher admitted being

12          responsible for the rape of (V5)--- and

13          (V3)-----, Fisher was questioned about the

14          offences committed on October 21 and November 13th

10:20 15          of 1968, and denied any knowledge of same, and

16          this talks about he was charged with that anyway.

17          And so are you telling us, Mr. Greenberg, that it

18          appears from this letter that, at least on October

19          22nd, 1970, Mr. Fisher denied any knowledge of the

10:20 20          first two rapes, and they are the (V1)-, (V2)-----

21          rapes. He was then charged on December 30th and

22          you are telling us that at some subsequent date

23          that he instructed you to enter guilty pleas to

24          the (V1)- -- to all fours charges; is that right?

10:21 25       A       Mr. Hodson, if you take a look at all the



1 documentation we've gone through --

2 Q Yes.

3 A -- including the Huff reports and everything else,  
4 you will see that when the police spoke to him on  
10:21 5 one occasion he said "I didn't commit any other  
6 offences".

7 Q Yes.

8 A Two days later he acknowledged and admitted that  
9 he had committed an offence. I don't know what  
10:21 10 caused Mr. Fisher's mind to change at any time.  
11 All I'm saying to you is, when I disposed of those  
12 charges in the Saskatchewan jurisdiction, I did so  
13 with the full authority, okay, and approval of Mr.  
14 Fisher.

10:21 15 Q And I appreciate that, Mr. Greenberg.

16 Unfortunately, we have a lack of paper that talks  
17 about how the other two charges -- and it may well  
18 be just as you said, that Mr. Fisher looked at the  
19 charges and said "I'll plead guilty to those". If  
10:21 20 it had been a case, Mr. Greenberg, where Mr.  
21 Fisher had said "lookit, I didn't commit those  
22 first two rapes" -- and I'm not saying this  
23 happened but in that scenario -- "but I'm going to  
24 plead guilty anyway"; is that something that could  
10:22 25 have happened in discussions with you?



1           A           I would -- I would say to you, sir, that I do not  
2                       believe that there were any charges to which Mr.  
3                       Fisher pled guilty to, when I was acting for him,  
4                       that he indicated to me that he was not guilty of.  
10:22 5                       In other words, at no time did I ever coerce,  
6                       convince, force, or do whatever to get Mr. Fisher  
7                       to plead or admit to any offence that he wasn't  
8                       prepared to 'fess up to.

9           Q           Yeah, thank you, and that's the point I wanted you  
10:22 10                      to address.

11                               If we could go to 331519,  
12                      please. And, again, this is a copy of the  
13                      information for one of the charges, and if we  
14                      could just call out that area there please. And  
10:23 15                      it looks like 'elect trial by jury February 12/71.  
16                      Accused consents to committal for trial (Mr.  
17                      Greenberg acting). Crown consents to committal  
18                      for trial.' So it appears, at least on the  
19                      Manitoba charges in February that Mr. Fisher  
20                      appeared before a magistrate and consented to  
21                      committal as opposed to going through with the  
22                      preliminary hearing?

23           A           Correct.

24           Q           And again, you may have covered this already, but  
10:23 25                      what would be -- what would be your rationale for



1           consenting to committal rather than conducting a  
2           preliminary hearing?

3           A       There appeared then, and to my -- there appears to  
4           be no reason now where it would have been  
10:23 5           necessary to have a preliminary hearing under the  
6           circumstances.

7           Q       Yeah.

8           A       This was a man who was prepared, from August of  
9           '70, to plead guilty to the offences.

10:24 10          Q       Yes.

11          A       Why, now, a preliminary hearing, what would it  
12          accomplish.

13          Q       And I take it that there was nothing unusual about  
14          this step; for a person, an accused who wished to  
10:24 15          plead guilty, to consent to committal? That had  
16          happened in other cases where you had it?

17          A       It happened on other occasions. On the other  
18          hand, I can't tell you that it happens every day,  
19          but certainly there is circumstances where, in my  
10:24 20          experience, it happened.

21          Q       Okay. And then at the bottom it says 'recommend  
22          detention under medical care at psycho or  
23          elsewhere suitable', and can you tell us what that  
24          was referring to?

10:24 25          A       Well, because of the nature of the offences,



1           because of the time -- now remember, his arrest  
2           was September 19th of 1970, we're now at February  
3           12th of 1971. Significant, if not most of that  
4           period of time, Mr. Fisher had spent in solitary  
10:24 5           confinement, a horrible way to spend your time,  
6           and so his condition mentally was going downhill.  
7           And there had been the beatings that you alluded  
8           to earlier that he complained to Huff of, or  
9           whatever, there had been other incidents within  
10:25 10          the institution, and his condition was something  
11          which was, I think, as much a fear of the  
12          institutions themselves as it was for me as  
13          counsel for him --

14       Q       Okay.

10:25 15       A       -- that he might do something which was irrational  
16               or wrong.

17       Q       If we could call up 333 --

18               COMMISSIONER MacCALLUM: What's that doc.  
19               ID, please?

10:25 20              MR. HODSON: I'm sorry, that information is  
21              331519.

22              COMMISSIONER MacCALLUM: Thank you.  
23       BY MR. HODSON:

24       Q       And then if we can go to 331527, please. And this  
10:25 25               is shortly after February 16th, and this is Dr.



1 Adamson, who's the fellow you obtained; is that  
2 right?

3 A That's correct.

4 Q And he says here, '... and I would strongly  
10:26 5 recommend hospital care for him under the  
6 supervision of a competent psychiatrist.'; is that  
7 correct?

8 A That is correct.

9 Q And do you know if that happened, was Mr. Fisher  
10:26 10 -- did he get that treatment or was he under the  
11 care of a psychiatrist, then, for the remainder of  
12 his time in Headingley?

13 A I think he got somewhat more closely watched  
14 perhaps, but if you will allow me a minute just to  
10:26 15 indicate, the psychiatric system within the  
16 institutions of Canada, unless they have changed  
17 drastically since I retired, leave significant  
18 wanting. So much so that I can recall vividly  
19 that on another matter that I argued before  
10:27 20 Mr. Justice Matas, who happened to be the  
21 sentencing judge on Fisher, that he himself  
22 attended out at Stoney Mountain Penitentiary  
23 because he couldn't believe the circumstances I  
24 indicated to him for psychiatric facilities.

10:27 25 Okay. It's not a number one on the priority list,





1 so that to get somebody to get psychiatric care  
2 within those institutions is very difficult, so  
3 I'm sure that he got some more attention. Whether  
4 he got what he actually needed, or he got what  
10:27 5 might have been the best that could have been  
6 available, I would have to say no.

7 Q Okay. So the -- your intent was, though, that he  
8 be under psychiatric care; is that fair?

9 A My intent was that he be at least protected, as  
10:27 10 best he could, while in custody. I have had more  
11 than one of my clients hang themselves within an  
12 institution. It's not a pleasant experience, if  
13 that's what Fisher was going to do, I didn't want  
14 to be part of it.

10:27 15 Q Yeah. If we could call up 331528. And again,  
16 this is two days later, and this is a letter from  
17 Dr. Johnson, being the Crown's psychiatrist, to  
18 the Crown attorney, and again he re-examined  
19 Fisher at the Psychiatric Institute. And so I  
10:28 20 take it, certainly on February 15th or in February  
21 of 1971, Mr. Fisher was being examined by  
22 psychiatrists; is that fair?

23 A Yeah. Again, I think that, in fairness, once Bill  
24 Morton or the Crown was made aware of Adamson's  
10:28 25 second report and the suggestions therein they



1           took some steps, because they didn't want, in  
2           effect, to be blamed if something wrong happened.

3           Q       Yes. This is probably an appropriate spot to  
4           break, Mr. Commissioner.

10:28 5                        (*Adjourned at 10:28 a.m.*)

6                        (*Reconvened at 10:46 a.m.*)

7           BY MR. HODSON:

8           Q       If we could call up 033361, please. And so I  
9           think when we left off on the break, Mr.  
10:47 10       Greenberg, we just had touched on the two February  
11       letters from the psychiatrist that you had  
12       retained and the psychiatrist that the Crown had  
13       retained regarding examination of Mr. Fisher. We  
14       now move ahead to March 12th, and this appears to  
10:47 15       be your letter to the Attorney General, Province  
16       of Saskatchewan. There is no name there, I think  
17       the 'Mr. MacKay' may have been written on by the  
18       recipients, and it talks in the first paragraph,  
19       it says:

10:47 20                        "Further to our several letters in  
21                        connection with the above, we have to  
22                        this date still not received any answer  
23                        whatsoever from your Department  
24                        regarding the disposal of the  
10:48 25                        outstanding charges and the arrangements



1 for the incarceration of Mr. Fisher."

2 Now the February 8th letter, remember the letter  
3 you wrote to John Turner, when I showed you that?

4 A Yes.

10:48 5 Q And, I believe, would that letter have been sent  
6 to the Saskatchewan Attorney General; do you  
7 believe?

8 A I believe a copy had been sent but I was looking  
9 through whether it showed on the letter or not.

10:48 10 Q If we could call up 331517 -- or 331515 and go to  
11 -- this is the letter that's received by the  
12 Federal Minister of Justice, and if we could go to  
13 page 331517, please. This looks to be a copy, and  
14 it's got Mr. MacKay's name up there, and if we  
10:48 15 could just call out that area. I'm not sure, I  
16 think that's -- it doesn't help us much. This  
17 appears to be a copy that was sent or received by  
18 the Attorney General. Does that sound right, Mr.  
19 Greenberg, that you would --

10:49 20 A Yes. My only question was, page 2 or page 3,  
21 whether it showed a copy being sent --

22 Q It doesn't.

23 A -- to Saskatchewan as well.

24 Q No.

10:49 25 A Otherwise, I don't know how it would have gotten



1           there.

2           **Q**       It doesn't, there is no c.c. on the letter, but  
3                    you'll see this is February 8th and it appears to  
4                    be received February 9th, and the handwriting  
10:49 5                   'Mr. MacKay' at the top, which is consistent with  
6                    what is written on most other letters that the  
7                    Attorney General received from you.

8           **A**       Right.

9           **Q**       Let me ask you this; do you think you would have  
10:49 10                   sent, the letter to John Turner, would you have  
11                    sent a copy to the Attorney General of  
12                    Saskatchewan and Manitoba?

13          **A**       I -- I don't know.

14          **Q**       I think we see a letter that acknowledges that.  
10:50 15                    Maybe I'll deal with it then.

16                               If we go back to 033361. And  
17                    again if you could call out the second paragraph,  
18                    and this would be about a month after your  
19                    February 8th letter to the federal minister; is  
10:50 20                    that correct?

21          **A**       Uh-huh.

22          **Q**       And I don't see any reply from the federal  
23                    minister prior to this date. It says:

24                               "The writer finds it somewhat  
10:50 25                    incredulous that a matter of this nature



1 does not warrant even an acknowledgment  
2 of the correspondence to date, let alone  
3 some positive steps towards early and  
4 satisfactory disposal of the charges.

10:50 5 The writer would submit that it is both  
6 unjust and inhumane that a man who has  
7 been in custody as in this case since  
8 September 19th, 1970 with the number of  
9 very serious charges that are  
10:51 10 outstanding against him is left to  
11 languish in the institution without  
12 having his term of incarceration settled  
13 and his position confirmed for this very  
14 lengthy period of time."

10:51 15 And I take it, from that, that at this time, Mr.  
16 Greenberg, you appeared to be somewhat upset with  
17 the lack of response; is that fair?

18 A Well I, reading the letter and reading from it and  
19 knowing, I guess, my own temperament, I guess I  
10:51 20 found it frustrating that I had been trying for  
21 almost a year to dispose of some pretty serious  
22 charges, and I was not making a great deal of  
23 progress in getting it done and finalized, and so  
24 --

10:51 25 Q Yeah. I think you said a year, this would be



1 March, so this would be six --

2 A Seven months.

3 Q -- six, seven months. Umm, do you recall having,  
4 and again I'll get into the subsequent letters  
10:51 5 with the Attorney General, but do you recall  
6 dealings with Mr. Kujawa, Serge Kujawa, do you  
7 know who Mr. Kujawa is?

8 A I know who Mr. Kujawa is, yes. I do not recall  
9 when I first had dealings with him in connection  
10:52 10 with this matter but I did ultimately have  
11 dealings with him in connection with the matter.

12 Q And prior to this file, this matter, had you had  
13 prior dealings with him, Mr. Kujawa?

14 A My best recollection is that I met Mr. Kujawa  
10:52 15 either through a Canadian Bar session or some sort  
16 of semi-social gathering, etcetera, or that I met  
17 him through a classmate and confrere of mine by  
18 the name of Danny Abbott. Somebody had introduced  
19 me to Mr. Kujawa somewhere along the line, and I  
10:52 20 don't remember under what circumstances, I had  
21 never had any cases with Mr. Kujawa to my  
22 recollection.

23 Q But is it fair to say that you would have known  
24 him or had met him then, is that --

10:53 25 A Yeah. He was not a person who was a stranger to



1 me when his name came up and when I first had  
2 dealings with him.

3 Q Okay. If we could first go to the top of this  
4 letter, again just to the Attorney General,  
10:53 5 Legislative Building, would you have directed this  
6 to anybody or just to the Attorney General?

7 A No, I didn't -- I didn't have anybody, to the best  
8 of my knowledge, or I would have put somebody's  
9 name on it, either Mr. MacKay or Mr. Kujawa or --

10:53 10 Q And I think you've told us at this time you were  
11 aware of four charges in Saskatoon; correct?

12 A Yes.

13 Q Did you have any contact with anybody with the  
14 Saskatoon City Police about those charges?

10:53 15 A To the best of my recollection I never had any  
16 contact with the Saskatchewan -- or with the  
17 Saskatoon Police force, either before or after  
18 these matters.

19 Q And did you have, do you recall any dealings or  
10:53 20 discussions with any prosecutor in Saskatoon,  
21 namely either Ben Wolff or Bobs Caldwell; do you  
22 recall any dealings?

23 A Certainly Mr. Wolff's name is not familiar to me,  
24 Mr. Caldwell is familiar to me, but I can't tell  
10:54 25 you in what -- I can't remember in what context.



1 It may only be from reading these documents --

2 Q Okay.

3 A -- that his name is familiar to me.

4 Q But, again, is it fair to say from this letter on  
10:54 5 March 12th, and you refer to earlier letters,  
6 you're writing to the Attorney General saying "I  
7 want to deal with these charges in Saskatchewan,  
8 or in Saskatoon"; is that fair?

9 A That's fair.

10:54 10 Q If we can then go to 261053. And again, this is a  
11 letter which I had referred to earlier, this is  
12 five days after your March 12th letter to the  
13 Attorney General, and it's a letter from the  
14 Saskatoon deputy chief to Ken MacKay. Do you  
10:55 15 remember dealing with Ken MacKay, I think he  
16 worked with Mr. Kujawa at the time, do you  
17 remember that name?

18 A Umm, I don't remember, but there is a letter,  
19 which is 039580, --

10:55 20 Q Yes.

21 A -- dated the 21st of April, '71 --

22 Q Yes.

23 A -- where I write to Mr. MacKay, so obviously  
24 sometime between that earlier letter, I think  
10:55 25 March the 12th --





1 Q Yeah?

2 A -- and March the 20 -- or April 21st, I did deal  
3 with Mr. MacKay.

4 Q And I'll go through those letters with you.

10:55 5 A Yeah.

6 Q Okay. So again that, from the letters it's  
7 familiar, but apart from that it's not; is that  
8 what you are telling me?

9 A That's correct.

10:55 10 Q Okay. So here, on this day, it says:

11 "During March 16, 1971, I was contacted  
12 ...",

13 and the 'I' is the deputy chief:

14 "... by Mr. T.D.R. Caldwell, Agent of  
10:56 15 the Attorney General, who requested that  
16 I forward to you a summary of the facts  
17 relating to offences of rape allegedly  
18 committed by the above-named."

19 And then it goes on to set out the four charges,  
10:56 20 and it would appear from this letter that on  
21 March the 17th, the city police in Saskatoon were  
22 corresponding with the Deputy Attorney General  
23 providing information about the Fisher charges,  
24 and again I take it you -- would you have been  
10:56 25 aware of that at the time, Mr. Greenberg?



1 A I don't believe that I ever saw that letter before  
2 seeing it in the booklet --

3 Q Okay.

4 A -- you showed me.

10:56 5 Q If we could go to 039593. And this is a letter  
6 back to you March 18th, 1971, and when we get to  
7 the next page we'll see it's from Kenneth MacKay,  
8 and in the top he says:

9 "We acknowledge receipt of your letter  
10:56 10 of March 12, 1971, and of the copy of  
11 your letter to the Minister of Justice  
12 of February 8, 1971."

13 So it looks as though, from this letter, that the  
14 Attorney General did get the February 8th, '71  
10:57 15 letter at some point; is that a fair inference?

16 A Yes.

17 Q Now there is no other letters mentioned here, and  
18 your March 12th letter to the Attorney General  
19 indicated your concern about not having a response  
10:57 20 to several letters, are you able to tell us  
21 whether there were previous letters other than the  
22 March 12th -- or there were other letters -- let  
23 me rephrase that -- whether you would have written  
24 other letters to the Attorney General of  
10:57 25 Saskatchewan prior to this date of March 18th,



1 other than the March 12th, '71 letter, and a copy  
2 of the February 8th, '71 letter to the Minister of  
3 Justice?

4 A I can only say that since my letter refers to  
10:57 5 previous letters, when I'm complaining about not  
6 getting a response or an acknowledgment, --

7 Q Yes?

8 A -- that the file, which I can't locate now, did  
9 have other letters written in that period of time.  
10:58 10 But I'm totally at the mercy of what material I  
11 have, I have no other letters that I am aware of.

12 Q I believe these letters came from the Government  
13 of Saskatchewan's files or from Mr. MacKay and Mr.  
14 Kujawa's, and they don't appear to have any prior  
10:58 15 letters, again that's not to say that they weren't  
16 sent. So, apart from relying on the record or the  
17 lack of records, there's nothing you can tell us  
18 other than the fact that your letter referred to  
19 previous letters and therefore you think you sent  
10:58 20 previous letters?

21 A That's right.

22 Q And then if we can scroll down to the next  
23 paragraph, it says:

24 "Inquiries are presently being made by  
10:58 25 our Agent in Saskatoon with regard to



1 the charges against your client. On  
2 receipt of advice from said Agent, we  
3 shall be able to advise you further as  
4 to our position with regard to the said  
10:58 5 charges."

6 And would this it be fair to conclude from this,  
7 Mr. Greenberg, that this would have been the  
8 first communication back from the government --  
9 or first two-way communication, if I can call it  
10:59 10 that, about the Fisher charges with the Attorney  
11 General?

12 A It certainly appears to be, yes.

13 Q Right. And this letter says that 'we're checking  
14 into it and we'll get back to you'; is that fair?

10:59 15 A That's right.

16 Q And then, if you can scroll down, it says:

17 "However, as you pointed out in your  
18 letter to the Minister of Justice, there  
19 is no provision under Section 421 of the  
10:59 20 Criminal Code for transfer of the  
21 charges in this case. Since the accused  
22 is now in the hands of the Manitoba  
23 authorities, the charges against him in  
24 Manitoba will have to be dealt with  
10:59 25 before we shall be in a position to deal



1 with the Saskatchewan charges."

2 And I think you agree that you take no issue with  
3 that being a correct statement; is that fair?

4 A No, that's correct.

10:59 5 Q And then scroll down, it says:

6 "You have not advised why there has been  
7 a delay in the disposition of the  
8 Manitoba charges. Should the said  
9 Manitoba charges be further delayed for  
10 a long period, ..."

11 next page:

12 "... kindly advise us and we shall  
13 consider whether or not steps can be  
14 taken to dispose of the Saskatchewan  
11:00 15 charges first."

16 And it appears here that the government, or  
17 Mr. MacKay is saying back to you 'lookit, why the  
18 long delay in Manitoba'; is that fair?

19 A That's fair.

11:00 20 Q And had there been a delay in Manitoba, or --

21 A Well --

22 Q -- the disposition of the Manitoba charges?

23 A -- there was a delay, there was a period of time  
24 which elapsed, I didn't at the time consider it to  
11:00 25 be an undue delay or an actionable delay or



1           whatever, and I think that it was the delay that  
2           occurred under all of the circumstances, between  
3           the psychiatric exams and negotiations and  
4           everything else, and charges that came out in  
11:00 5           December regarding Saskatoon, and it just took  
6           time.

7           Q       Okay. Next is 331530, please. And this is a  
8           letter back I think from Mr. Scollin, criminal law  
9           section, and it's March 25, 1971 and it talks  
11:01 10          about Mr. Fisher's potential movement in the  
11          correctional system. And it says 'I think he is  
12          anxious to ensure that, if the accused is sent to  
13          the Manitoba Penitentiary on conviction of the  
14          offences in Manitoba, the authorities will  
11:01 15          transfer him as quickly as possible to the  
16          penitentiary at Prince Albert. I think you can  
17          probably expect a letter from Mr. Greenberg in the  
18          near future.'

19                   And again, if we could go to  
11:01 20          010714, here is your letter March 26th, '71 to the  
21          Commissioner, Canadian Penitentiary Services, and  
22          it says:

23                   "The writer has been in touch with the  
24                   Attorney General's Dept. for the  
11:01 25          Province of Saskatchewan and for the



1 Province of Manitoba in connection with  
2 the above in efforts to arrange for  
3 pleas to be entered to the outstanding  
4 charges as simultaneously as possible  
5 and for incarceration in the appropriate  
6 institution."

7 And then scroll down:

8 "It is in this regard that we seek your  
9 assistance ...",

10 and it goes on to talk about having Mr. Fisher  
11 transferred to Saskatchewan. And so I take it  
12 you would have been dealing with Penitentiary  
13 Services at the time?

14 A Yes.

15 Q If we just go back to the full page, here, you can  
16 see faintly the 'copy' sign there; is that  
17 correct?

18 A Yes.

19 Q And it looks as though this was received by the  
20 Attorney General's department; is that fair?

21 A Yes.

22 Q And then again we see 'Mr. MacKay' up there, there  
23 is no c.c. on this letter, do you know if that was  
24 your practice at the time to indicate that a copy  
25 had been sent elsewhere?



1 A No, I -- I can't --

2 Q It's --

3 A I can't say that unless this -- well, I don't

4 know. I mean it doesn't appear on, the word

11:03 5 'copy' does not appear on the copy that I have in  
6 the book, etcetera.

7 Q Yeah.

8 A So my assumption is that that was from another  
9 page, and I don't know in whose possession that

11:03 10 page was that was marked 'copy', and whose file  
11 that might have been in.

12 Q We'll maybe go to 010727. And this is a March  
13 29th letter back to Mr. MacKay, and remember I  
14 showed you the March 18th letter?

11:03 15 A Yes.

16 Q And we'll call out this paragraph. It says:

17 "Further to your letter of March 18th,  
18 1971 we wish to confirm that the delay  
19 at this stage is only as regards to the  
11:03 20 confirmation of the place of  
21 incarceration of Mr. Fisher, that the  
22 Manitoba Attorney-general's Department  
23 is ready to proceed and dispose of the  
24 charges as soon as the matter can be  
11:04 25 confirmed with the Commissioner of





1 Penitentiaries."

2 And do I take it from that, Mr. Greenberg, that  
3 as of March 29th, 1971, you are waiting to sort  
4 out with the Penitentiary Services people, the  
11:04 5 Commissioner of Penitentiaries, where Mr. Fisher  
6 is going to be housed after he is convicted in  
7 Manitoba; is that fair?

8 A That's fair.

9 Q Is it fair to say you are trying to get that in  
11:04 10 place before you dispose of the Manitoba charges?

11 A Well, when I read this, it causes me to reflect  
12 back on it and I believe that there was also an  
13 indication from Fisher that he would like to serve  
14 his time in Saskatchewan.

11:04 15 Q Okay.

16 A And I think that's what that refers to, that even  
17 though he was going to be sentenced in Manitoba,  
18 okay --

19 Q Yes.

11:05 20 A -- he wanted to know, with or without the  
21 Saskatoon charges, whether there was a chance that  
22 he could be transferred to a Saskatchewan  
23 penitentiary to do his time because it was closer  
24 to his family.

11:05 25 Q Would it be fair to say, Mr. Greenberg, then that



1           one of the issues that you as his counsel needed  
2           to resolve before you would dispose of the  
3           Manitoba charges is the relocation of Mr. Fisher  
4           to a Saskatchewan penitentiary; is that fair?

11:05 5           A           Right.

6           Q           And can I take it from that that if arrangements  
7           had not been made, that you would wait on the  
8           Manitoba charges until arrangements had been made?

9           A           Depending on the time parameters. If it was an  
11:05 10          unreasonable period of time, no, because he was  
11          doing dead time.

12          Q           Okay. And then go back to that document, please,  
13          and then it says:

14                        "We would sincerely hope that the  
11:06 15                        matters can be disposed of in your  
16                        courts within the shortest possible time  
17                        after they have been dealt with in  
18                        Winnipeg. Kindly advise what further  
19                        information you have been able to obtain  
11:06 20                        in this matter as set out in paragraph  
21                        two of your last letter."

22           And that last letter, paragraph 2, simply said,  
23           that was the part that I read to you where Mr.  
24           MacKay said we're waiting for information on  
11:06 25           arrangements.



1 A Yes.

2 Q And then it says:

3 "Would you advise further whether the  
4 charges will be disposed of in Saskatoon  
11:06 5 or Regina and what means could be  
6 arranged for the disposal of the said  
7 charges. The writer will then attempt  
8 to make arrangements to attend for the  
9 purpose of disposing these charges."

11:06 10 And again, at this time you would have known that  
11 the four charges had been laid in Saskatoon; is  
12 that fair?

13 A Correct.

14 Q And what would prompt you to ask Mr. MacKay about  
11:06 15 whether the charges would be in Saskatoon or  
16 Regina for disposition?

17 A I had no particular reason other than wanting to  
18 know where they wanted to do it because my  
19 correspondence originally with the Attorney  
11:07 20 General, then my correspondence and receipt of  
21 correspondence from Mr. MacKay was all from  
22 Regina, so I didn't know whether they were going  
23 to deal with it in Regina --

24 Q Yes.

11:07 25 A -- or they were going to deal with it in



1           Saskatoon. It made no never mind to me or to Mr.  
2           Fisher, as far as I was aware, where it was.

3           Q       And so as between Saskatoon and Regina, you didn't  
4           have a preference; is that what you are telling  
11:07 5           me?

6           A       I didn't have a preference.

7           Q       And did Mr. Fisher have a preference?

8           A       Not to my knowledge.

9           Q       If we could then go to 010710, and again this is  
11:07 10           an April 21st letter of yours to Mr. MacKay and a  
11           copy I see there to the Deputy Attorney General  
12           Mr. Morton, and you talk about here further to  
13           your letter of March 18th and our reply of March  
14           29th:

11:08 15                   "... we have now completed certain  
16                   arrangements regarding the above named  
17                   as dealing in the enclosed letter to the  
18                   Deputy Attorney General, Province of  
19                   Manitoba."

11:08 20           Scroll down:

21                   "We would appreciate your advising by  
22                   return mail when the Saskatchewan  
23                   charges can be disposed of, where the  
24                   charges would be disposed of, and if  
11:08 25                   possible, a specific date. Under the



1 circumstances as outlined in the  
2 enclosed letter, the writer would  
3 suggest that some date as soon after the  
4 1st of June, 1971 would be satisfactory  
11:08 5 as this would allow the matter to be  
6 disposed of in Manitoba, cleared through  
7 the penitentiary services and Mr. Fisher  
8 transferred to the Saskatchewan  
9 Penitentiary."

11:08 10 Now, I don't think we have the enclosure letter  
11 to the Deputy Attorney General at least in our  
12 records, I stand to be corrected, but I don't  
13 think we have that, but it would appear at this  
14 time that you are telling Mr. MacKay that you've  
11:09 15 made arrangements in Manitoba; is that fair?

16 A Can I ask you a question?

17 Q Yes.

18 A In my booklet I have a letter dated -- dated the  
19 same date, received the same date, but has a  
11:09 20 different number at the bottom. Does that number  
21 mean anything?

22 Q You would have had --

23 A I have 039580 and this refers to 010710.

24 Q It's just a different version, but 03 --

11:09 25 A 039580.



1 Q Yeah, there are various copies of the documents,  
2 Mr. Greenberg. Maybe we'll just call up that  
3 document and we can show that it's -- it should be  
4 the same. Maybe just call up 039580, so that's  
11:09 5 just a different version of the letter.

6 A Okay, and the contents is identical, I just didn't  
7 understand the two numbers.

8 Q We've unfortunately received many different --  
9 what happens when this letter was circulated  
11:09 10 amongst the parties, it was copied and the  
11 Commission then received numerous copies and we  
12 select one copy to use in the hearing room and  
13 your binder has a different version of it, but  
14 again getting back to this document, maybe go back  
11:10 15 to 010710, please. It looks at this time that you  
16 have made arrangements to deal with the Manitoba  
17 charges; is that a fair reading of this letter?

18 A That's correct.

19 Q And do you recall the arrangements that you made?  
11:10 20 Would it be guilty pleas and an agreed-upon range  
21 of sentence that you would have submitted to the  
22 court or do you have a specific memory of it?

23 A I don't have a specific memory of it. My best  
24 recollection is that certainly we had arranged for  
11:10 25 the pleas to be entered, we had arranged for



1 concurrent sentences on two charges, concurrent  
2 sentences on the other two charges, and a range of  
3 10 to 15 years as best I can recall, but I have no  
4 absolute specific recollection.

11:11 5 Q Okay. And then at this time it looks as though  
6 you are asking Mr. MacKay, tell me when the  
7 Saskatchewan charges can be disposed of, where and  
8 a specific date. Do you know if at this time  
9 whether you would have had an agreement with the  
11:11 10 Saskatchewan Attorney General regarding concurrent  
11 time for the Saskatchewan charges?

12 A I can't absolutely say. I believe so, but I can't  
13 absolutely say.

14 Q The letter talks about the mechanics, sort of  
11:11 15 where and when, but doesn't talk about what, as  
16 far as what the disposition. That's fine, I think  
17 you told us earlier that before you disposed of  
18 the Manitoba charges you believed you would have  
19 had an arrangement with the Attorney General of  
11:12 20 Saskatchewan?

21 A That's correct.

22 Q If we can go to 331531, please.

23 A And --

24 Q I'm sorry?

11:12 25 A And that appears again to be supported by Morton's



1 letter to The Honourable D.V. Heald on June the  
2 7th.

3 Q Yeah. 331540, we can just call that up. If you  
4 keep calling out these numbers, Mr. Greenberg, I'm  
11:12 5 not going to be needed up here.

6 A Don't worry, you're needed.

7 Q This is the letter of June 7th, '71. Is that what  
8 you are referring to?

9 A Yeah.

11:12 10 Q And let me just find --

11 A The second paragraph.

12 Q Yeah.

13 "I am further informed that counsel for  
14 the accused, Mr. Greenberg, has  
11:13 15 indicated that in all likelihood Mr.  
16 Fisher will be pleading guilty to the  
17 Saskatchewan charges."

18 Etcetera.

19 "I have been given to understand that  
11:13 20 arrangements have already been made with  
21 your department by Mr. Greenberg."

22 That's what you are referring to?

23 A Yes.

24 Q We'll come back to that letter in a bit. If we  
11:13 25 can go to 331531, please, and this is a





1 pre-sentence report dated May 20th, 1971 and it's  
2 indicated for The Honourable Mr. Justice Matas.

3 Did I pronounce that right?

4 A Yes, Matas.

11:13 5 Q And he was the judge that dealt with Mr. Fisher's  
6 conviction and sentence; is that right?

7 A He was.

8 Q And would this be a report that would go to the  
9 judge?

11:13 10 A Yes, it's standard procedure that a pre-sentence  
11 report would be prepared. I have to say that in  
12 1970 and '71 the statement, impact statements were  
13 virtually unknown of, but this was part of the  
14 documentation that was put before the judge for  
11:14 15 his consideration on sentencing.

16 Q And I think we don't need to call up these  
17 documents, we might see them in a moment, but I  
18 think May 3rd of 1971 is when Mr. Fisher was  
19 arraigned, entered a guilty plea and the  
11:14 20 sentencing was adjourned I believe to May 28th,  
21 '69 (sic). Does that sound right?

22 A Sounds correct.

23 Q And then if we look at this pre-sentence report,  
24 if I can go to page 331538, please, and this is  
11:14 25 the last page, I think, of the probation officer,



1 and just at the end says:

2 "However, this was not an isolated rape.

3 Apparently he has two or three similar

4 charges pending in Saskatchewan."

11:14 5 Would that have been information then that was  
6 provided to the judge in Manitoba?

7 A He had that report.

8 Q Okay.

9 A And that statement is inconsistent with, I  
11:15 10 believe, a statement made by Morton, whatever,  
11 that the judge in Manitoba on disposing of the  
12 matter was not aware of the Saskatchewan charges.

13 Q Okay. And if we could call up 331539 and go to  
14 the next page, please, and this is a letter of  
11:15 15 Mr. Morton to the Attorney General, Mr. Heald at  
16 the time, June 7th, maybe we'll just go through  
17 this, it says the above named appeared in Court of  
18 Queen's Bench, etcetera, it goes on, a total of 13  
19 years. It says:

11:15 20 "I have been given to understand that he  
21 faces similar charges that arose prior  
22 to the Manitoba offences, in your  
23 province."

24 And again I read this paragraph just a moment  
11:16 25 again where Morton says I understand there's an



1 agreement, and then he says:

2 "You might wish to advise your Crown  
3 Attorney handling the prosecution of  
4 Fisher that at no time was Fisher's  
11:16 5 Saskatchewan involvement made known to  
6 the Sentencing Judge and therefore this  
7 involvement was not taken into account  
8 in his 13 year sentence."

9 And again, I don't want you to speculate what  
11:16 10 might have been in the judge's mind,  
11 Mr. Greenberg, but can you recall in the  
12 sentencing what information you heard being  
13 presented, was there any reference made in open  
14 court to the Saskatchewan charges that Mr. Fisher  
11:16 15 was being -- was facing?

16 A I can't give you specifics of what was said, but  
17 there's no question that Judge Matas would have  
18 read that report and would have been aware of that  
19 reference to Saskatchewan charges. The matter  
11:17 20 would have been argued from the point of view that  
21 Saskatchewan at that stage were just charges,  
22 there was no conviction, there was no sentence,  
23 there was no disposition and therefore he should  
24 be considered for sentencing based only on what  
11:17 25 was before the Manitoba court, but that he had



1 knowledge that there were other matters  
2 outstanding in another jurisdiction, he had to  
3 know that as far as I'm concerned.

4 Q Okay. But as far as speaking to sentence then, it  
11:17 5 would be your practice then, or your believe, that  
6 no reference would be made to outstanding charges  
7 that had not been disposed of?

8 A That's correct.

9 Q Then if we could go to 326499, and this is just a  
11:17 10 certificate of no appeal confirming there was no  
11 appeal of the sentence. The 13 years that was  
12 given, or the sentence, was that, at the time,  
13 Mr. Greenberg, was that within the range that you  
14 had expected, was it unusually high, unusually  
11:18 15 low? Are you able to comment on that?

16 A I believe that it was in the range. It was  
17 certainly not a low sentence in Manitoba at the  
18 time, but it was certainly within range.

19 Q If we could then go to 159726, please, and I take  
11:18 20 it after Mr. Fisher was convicted, would he then  
21 go to Stoney Mountain Penitentiary initially?

22 A My understanding of the procedure was that he  
23 would be initially transferred back to  
24 Headingley --

11:19 25 Q Yes.



1 A -- and then procedure would be to transfer him  
2 from Headingley to Stoney Mountain and from Stoney  
3 Mountain to Prince Albert. I don't believe he  
4 would go directly from Headingley to Prince  
11:19 5 Albert, but that's something within the ambit of  
6 the penitentiary system. I couldn't tell you that  
7 for sure.

8 Q At the time that you -- at the time that you made  
9 the arrangements or that Mr. Fisher was sentenced  
11:19 10 in Manitoba, had you then, by that time, made  
11 arrangements to ensure that he would serve his  
12 time in the Prince Albert Penitentiary?

13 A I was satisfied that those arrangements were in  
14 place.

11:19 15 Q Now, this document is an article in the Winnipeg  
16 Free Press, May 29th, 1971, "Sentenced 13 years  
17 for rape," and it goes on and talks about the  
18 sentencing. Do you have any recollection,  
19 Mr. Greenberg, as to whether media were present  
11:20 20 when Mr. Fisher was sentenced?

21 A I have no specific recollection of them being  
22 there, but I'm sure that they were.

23 Q In your experience, then, as far as representing  
24 accused in public cases, then, did media scour the  
11:20 25 docket for cases or did they show up in court?



1 What was your experience at that time?

2 A Well, this would have been disposed of in Court of  
3 Queen's Bench.

4 Q Yes.

11:20 5 A There was always historically, going back to the  
6 days of the *Winnipeg Free Press* and the *Winnipeg*  
7 *Tribune*, they each had a representative or bird  
8 dog who lived virtually in the court house and  
9 they would check the dockets, the provincial  
11:20 10 dockets, the Queen's Bench dockets, etcetera, and  
11 select what cases they believed were noteworthy  
12 and I'm satisfied that somebody from that would  
13 have attended --

14 Q Was there a way --

11:20 15 A -- in the Court of Queen's Bench.

16 Q Was there a way to get the information from the  
17 court file, for a reporter to get it from the  
18 court file as opposed to sitting in court and  
19 hearing what's happening?

11:21 20 A Certainly, yeah.

21 Q So the information about the conviction could be  
22 obtained by a reporter from looking at the court  
23 file?

24 A Yeah, the court -- if the newspaper reporter  
11:21 25 wasn't there at the particular time, all he had to



1 do was go into the prothonotary's office or the  
2 Court of Queen's Bench and ask for the docket on  
3 that particular matter. They would give it to him  
4 and he could take whatever details from it that he  
11:21 5 needed or wanted.

6 Q Okay. If we can just scroll down, it talks about  
7 some of the details, go back to the -- scroll  
8 down, please:

9 "The *Winnipeg Free Press* reports on that  
11:21 10 date, that Fisher will face similar  
11 charges in Saskatoon."

12 And I'm wondering, Mr. Greenberg, if you are able  
13 to tell us where that information might have been  
14 obtained from?

11:21 15 A It could have been obtained from that being said  
16 in open court, either by the Crown or by myself,  
17 it could have been obtained by reading the  
18 pre-sentence report which would have been in the  
19 docket.

11:22 20 Q And again, did you have, as far as clients that  
21 you defended in criminal matters, was there any --  
22 I mean, this case seemed to get media attention.  
23 Was there any experience that you had that  
24 dictated what cases would or would not get media  
11:22 25 attention?



1 A Well, certainly somebody who was charged with  
2 multiple serious rapes with violent overtones  
3 would have received public attention and that, you  
4 know, the saying about it being a slow news day,  
11:22 5 etcetera, okay, it depended at the time. You  
6 could run through a period of time where there  
7 seemed to be a lot of break and enters, where  
8 there seemed to be a lot of sexual assaults.  
9 Well, everything would be sort of hyper to the  
11:22 10 situation and it would get more attention and if  
11 you have to dispose of somebody during that time,  
12 you have to warn them that because there had been  
13 two or three rapes or something over the weekend,  
14 you know, that the judges were going to be taking  
11:23 15 a much heavier position regarding disposition and  
16 so, you know, this was certainly something that by  
17 nature would have attracted the attention of the  
18 press. 13 years was a long sentence.

19 Q If I could call up 220 -- let me just pause there.  
11:23 20 Do you have any recollection of whether you would  
21 have given this information to a reporter?

22 A I don't have any recollection of doing it, but  
23 certainly on occasion I would have spoken to the  
24 press after coming out of court.

11:23 25 Q If we can go to 220200, please, and this is a May





1           29th *StarPhoenix* article, same date, if we can  
2           just call out that portion, please, it looks as  
3           though at least a portion of that story may have  
4           been picked up on the wire and again talks about  
11:24 5           Mr. Fisher being sentenced for 13 years and refers  
6           to him being of Saskatoon and again had a smaller  
7           detail. So again, anything you can add to that,  
8           Mr. Greenberg, as to when cases would or would not  
9           get media play both in the city and beyond?

11:24 10          A           I think that your suggestion that it was something  
11           that was picked up off the wire service is  
12           probably 100 percent correct.

13          Q           Again, if we could go to 039581, and this is a  
14           letter, again June 2nd, 1971, so we're within  
11:25 15           about three or four days after Mr. Fisher has been  
16           convicted, and it's your letter to Mr. MacKay and  
17           it says:

18                   "Further to our letter of April 21 ...  
19                   we have still not had a reply ...  
11:25 20                   regarding dates for the hearing of the  
21                   charges ..."

22          And then:

23                   "We may advise you at this time that the  
24                   Manitoba Charges have now been disposed  
11:25 25                   of and Mr. Fisher received a total of 13



1                   years ..."

2                   And the next paragraph, it talks about the  
3                   pre-sentence report being tendered and asking if  
4                   they want a copy of it, and then the next  
11:25 5                   paragraph:

6                   "We have notified the Federal  
7                   Authorities and they are making every  
8                   effort to have Mr. Fisher transferred to  
9                   the Penitentiary in Saskatchewan at the  
11:26 10                  earliest possible date once he has been  
11                  processed through the Stoney Mountain  
12                  Penitentiary in Manitoba."

13                  So do I take it from that that after Mr. Fisher  
14                  was convicted in Winnipeg, that I think you said  
11:26 15                  he would go through Stoney Mountain and then to  
16                  Prince Albert; is that right?

17           A           Or some other institution in Saskatchewan, but  
18           Prince Albert was, as far as I knew, where he was  
19           going.

11:26 20           Q           Right. And would it be fair to say that the  
21           Saskatchewan charges then would be dealt with as  
22           soon as possible after Mr. Fisher got to Prince  
23           Albert; is that a fair conclusion?

24           A           That was my hope and belief.

11:26 25           Q           Right. And so that you wouldn't, if you had been



1 in Stoney Mountain for a month, I mean, would you  
2 have contemplated taking him from Stoney Mountain  
3 into Saskatchewan or were you prepared to wait  
4 until he got into a Saskatchewan penitentiary?

11:26 5 A Under the circumstances, I was at that stage I  
6 think bound by the process and once he was in the  
7 system, once he was in the penitentiary system, as  
8 I previously indicated, I was going to have to  
9 wait until he got processed before I could go  
11:27 10 further.

11 Q Okay. If we could just call up a letter, 020185,  
12 and again this is a letter dated May 29th,  
13 Saturday, which I think is the day after Mr.  
14 Fisher was sentenced, and it's a letter from Larry  
11:27 15 Fisher to Linda Fisher, and there's a part here,  
16 you may have already answered this, Mr. Greenberg,  
17 but in this letter, and it's certainly something  
18 that we will ask Mr. Fisher about, but he says:

19 "I don't know what is going to happen  
11:27 20 about the two charges back home ..."

21 And I'm just wondering whether you have any  
22 explanation as to why he might at this time be  
23 talking about two instead of four charges?

24 A Again, it's the same --

11:28 25 Q You have already answered that.



1 A It's basically the same, that there were four,  
2 there were four referred to in my letters.

3 Q Yes.

4 A There were two that he acknowledged to immediately  
11:28 5 as being responsible for and gave details of.  
6 There were two that he told the Saskatchewan  
7 detectives that he wasn't responsible for. The  
8 two and four seemed to change from time to time  
9 and ultimately when it was disposed of there were  
11:28 10 four.

11 Q Fair enough. If we could call up 045229, please,  
12 and this is your letter, it looks as though a  
13 letter to Larry Fisher's mother, Mrs. M. Fisher.  
14 Do you recall having --

11:28 15 A Yes.

16 Q -- dealings with her?

17 A Yes.

18 Q And would that just be, she was following what was  
19 happening and you were keeping her informed?

11:29 20 A She was very interested in the welfare of her son  
21 and I wrote her to advise her what had occurred.

22 Q And then I think here you talk about:

23 "Efforts are now being made to have the  
24 hearing of the charges outstanding  
11:29 25 against him in Saskatchewan, held at the



1                   very earliest possible date and his  
2                   final transfer to the Saskatchewan  
3                   Federal Penitentiary at the earliest  
4                   possible date."

11:29 5           The writing here, that isn't your handwriting?

6       A       No, none of it is my handwriting. I assume that  
7           my letter was passed back and forth between Linda  
8           and Fisher's mother and --

9       Q       I believe that to be the case, I think this is a  
11:29 10       copy that has its source as Linda Fisher. It  
11       looks as though that Larry Fisher's mother wrote a  
12       note to Linda on your letter. I guess she says,  
13       "When you finish this letter burn it," but --

14       A       Obviously she didn't follow instructions.

11:29 15       Q       No, okay. And again you have no, the writing was  
16       after you sent the letter out and you had no  
17       involvement on that; is that right?

18       A       It was the closest piece of scrap paper available.

19       Q       Okay. And again just quickly if I can call up  
11:30 20       053206, and I don't -- I've referred to this  
21       twice, just so that we have the sequence here,  
22       June 2nd, I think you wrote to Ken MacKay and  
23       here's June 7th, the Crown attorney in Manitoba  
24       writing, not to Mr. MacKay, but to the actual  
11:30 25       Attorney General, and then if we could go to



1 039579, please, and again a letter to MacKay, a  
2 follow-up to the June 2nd letter, and you say:

3 "Our client is, of course,  
4 understandably and extremely anxious  
11:30 5 about these matters and we are  
6 constantly being pressed for a date  
7 regarding the disposal of the balance of  
8 the charges against him."

9 And so at this time, Mr. Greenberg, would there  
11:31 10 be -- I take it Mr. Fisher would know what he had  
11 done or know what his sentence was in Winnipeg,  
12 correct, he had his 13 years; is that right?

13 A That's correct.

14 Q Two, I think you said arrangements had been made  
11:31 15 to get him to the Saskatchewan Penitentiary;  
16 right?

17 A Correct.

18 Q And three, I think you told us that you felt you  
19 had an arrangement with the Saskatchewan Attorney  
11:31 20 General to get concurrent time; is that fair?

21 A That's correct.

22 Q And as far as the urgency or the anxiousness  
23 referred to in the letter, what -- can you tell us  
24 what would be the concerns you would have had at  
11:31 25 that time or that Mr. Fisher would have as far as



1 dealing with the matter, would they be any  
2 different than the concerns you had before?

3 A Well, they became exacerbated. Mr. Hodson, a deal  
4 is a deal is a deal, okay, but until that deal is  
11:32 5 completed, until His Lordship on the bench  
6 confirms the disposition and the sentence, you can  
7 have all the deals in the world that you want, and  
8 it's clear in Fisher's letter to his mother, or  
9 his wife I should say, okay, that he, in his own  
11:32 10 mind, says, okay, Greenberg told me I'm going to  
11 be out in five to seven years on parole and that  
12 I'm going to get this range of sentence, etcetera,  
13 but I'm not sure about that.

14 Q Okay.

11:32 15 A Okay. So I'm concerned. Greenberg can tell me  
16 all he wants, he can paint as rosy a picture as he  
17 creates or wants to create, but until the judge  
18 signs his name at the bottom of the page after  
19 pronouncing the sentence, I don't have a deal.

11:32 20 Q Okay. And if we could then go to 010690, and I  
21 take it, then, throughout your dealings, until  
22 they were finally concluded, Mr. Greenberg, it was  
23 your desire to get it done, to get the  
24 Saskatchewan charges disposed of as quickly as  
11:33 25 possible?



1 A There is nothing shorter than a client's memory,  
2 so you can tell him, you can tell him that you are  
3 going to do this or this is going to happen or  
4 something else, but if something happens in  
11:33 5 between, and in this particular case what a  
6 classic example, we had a change of government as  
7 I understand it somewhere in between, so if you  
8 made a deal with one government and then the  
9 government changed and now you've got a new  
11:33 10 Attorney General and he says that's the worst deal  
11 I've ever heard of, I'm not going to go ahead with  
12 that deal, I mean, the longer you wait, the longer  
13 it's in limbo, the more chance there is that  
14 possibly something could happen.

11:33 15 Q Okay. And here's a letter, this is a June 25,  
16 1971 memorandum, and I don't know that you would  
17 have seen a copy of this other than perhaps in  
18 these proceedings, but if we could call it up, and  
19 it's a memo from Mr. Kujawa to the Honourable  
11:34 20 Heald, who was the Attorney General at the time.  
21 And so June 25, that would follow within a couple  
22 of weeks, I guess, after your June 11th letter; is  
23 that fair?

24 A Yes.

11:34 25 Q It says:





1 "The above was convicted of rape in  
2 Manitoba and sentenced to thirteen years  
3 imprisonment. Now, through his counsel  
4 in Manitoba, he has requested that we  
11:34 5 dispose of the four outstanding charges  
6 against him in Saskatchewan so as to  
7 clean up his record and some day be in a  
8 position to start anew.

9 Without his confession in  
11:34 10 Manitoba, we have no evidence at all on  
11 which to charge Fisher but the offences  
12 he refers to were committed and reported  
13 to the police at the time.

14 Since this is at the request of  
11:34 15 the accused and his counsel, I do not  
16 think a ...",

17 clear:

18 "... case for a Direct Indictment can be  
19 made out and I would respectfully  
11:34 20 request that you sign the attached  
21 Indictment so we can process this case  
22 as soon as Fisher is transferred to the  
23 Penitentiary at Prince Albert, which may  
24 be within the next day or two."

11:35 25 And --



1 A Can I only point one thing out?

2 Q Yes.

3 A You said "clear", it's "clearer".

4 Q I'm sorry:

5 "... I do not think a clearer case ...",  
6 did I say "... a clear ..."?

7 A Yes.

8 Q My apologies. And there is a similar document in  
9 later months with a different Attorney General  
10 that I will go to, Mr. Greenberg, but just dealing  
11 with this, in June of 1971 do you recall this  
12 issue of a direct indictment being discussed with  
13 Mr. Kujawa, Mr. MacKay, or with anybody with the  
14 Attorney General?

11:35 15 A I only remember to the extent that what was  
16 discussed would be that it would be proceeded with  
17 in the most expeditious and expedient manner by  
18 whatever documentation or procedure was  
19 satisfactory to the Saskatchewan Attorney  
11:35 20 General's department. And whether I suggested  
21 direct indictment, whether I suggested consent  
22 committal, I don't know at this particular stage,  
23 after 35 years I can't remember. But I only know,  
24 and it's consistent here, and also it refers to  
11:36 25 'now' that the counsel for Mr. Fisher has come



1           forth, well the 'now' is before, in effect, June  
2           25th, and it was -- the 'now' was before, in  
3           effect, Fisher had disposed of the charges in  
4           Manitoba, you know. So that this all formed a  
11:36 5           chain, a link, of what was being done to dispose  
6           of the matter.

7           Q       And let's just talk again about the Saskatchewan  
8           charges, and we may have covered some of this, but  
9           if Mr. Fisher was to proceed, if I can call it in  
11:36 10           the normal course, he would appear on a charge in  
11           a Magistrate's Court and have a preliminary  
12           hearing, unless -- is that correct?

13           A       He would have in the normal course, as I  
14           understand it -- and Saskatchewan has its own  
11:36 15           wrinkles and methods of procedure -- he would have  
16           gone through the same procedure that I had to go  
17           through in Manitoba, so he would have appeared on  
18           a docket and the charge would be there for the  
19           first time and it would be remanded for whatever  
11:37 20           the reasons were, ultimately a trial date would be  
21           set or a consent committal would be entered into.

22           Q       Yes.

23           A       Okay. So the procedure would be the same unless  
24           you found a way of short-circuiting it.

11:37 25           Q       And so I think what ended up happening, it was a



1 direct indictment where it went directly to the  
2 Court of Queen's Bench; is that correct?

3 A That's right.

4 Q Now as far as the direct indictment process, and  
11:37 5 let's talk right here June 25, 1971, did you have  
6 any concern with appearing in the normal course,  
7 i.e. in front of a Magistrate's Court for remand  
8 and a prelim and a consent committal the same way  
9 you did in Manitoba, did you or Mr. Fisher have  
11:38 10 any concerns about doing it that way?

11 A The only concern was that that was going to take  
12 much longer likely, so I wanted to avoid that if  
13 necessary, and I wanted to get it to the hearing  
14 as quickly as possible.

11:38 15 Q Okay.

16 A I had no control over direct indictment, because  
17 that had to come from the Attorney General, so all  
18 I wanted to do was to see what I could do to  
19 prompt them to proceed in that way rather than  
11:38 20 going through the normal chain --

21 Q Okay.

22 A -- of events.

23 Q And, at that time, I take it you -- your  
24 instructions were to plead guilty to the four  
11:38 25 charges?



1 A Provided the other terms and conditions were met,  
2 yes.

3 Q Sentence. And at this time did you have any need  
4 or did you see any need for Mr. Fisher to have a  
11:38 5 preliminary hearing?

6 A Nope.

7 Q Did Mr. -- are you aware of Mr. Fisher having any  
8 desire to avoid appearing in Court in Saskatoon,  
9 for example, or appearing at a preliminary  
11:38 10 hearing, or anything of that nature?

11 A None was obvious to me at the time.

12 Q Now if we can go to -- and I think, Mr.  
13 Commissioner, there may be other documents of  
14 this, but I believe the government, there was an  
11:39 15 election and the government did change, I think it  
16 was around July 23rd, and I think the Legislature  
17 finished on July 28th, 1971. We'll get exact  
18 dates for that, but do you have a recollection of  
19 that being -- of that happening at the time you  
11:39 20 were dealing with the Attorney General?

21 A No, I wasn't aware of it until you pointed it out  
22 to me, that there had been a change in government.

23 Q Okay.

24 A I don't think it registered with me at the time.

11:39 25 Q And, again, the next piece of paper that we have



1 is 042968. And this is November 29th, 1971, and  
2 it's from the Saskatchewan Penitentiary in Prince  
3 Albert to the director of prosecutions, and it  
4 refers to a letter of July 6th, 1971 that  
11:40 5 Penitentiary Services directed to your firm. I  
6 don't believe we have a copy of that. And it  
7 says:

8 "... may we please be advised if any  
9 action is being taken concerning  
11:40 10 inmate's outstanding charges in the city  
11 of Regina, Saskatchewan."

12 And, again, do you have any idea why they would  
13 be referring to Regina in that letter?

14 A I have no idea.

11:40 15 Q And then if we can go to 301073. And this is a  
16 memorandum from Mr. Kujawa dated December 8th,  
17 1971, and the last memo we had looked at was to  
18 Mr. Heald, this one is to Mr. Blakeney, who was  
19 the Premier at the time but the Acting Attorney  
11:40 20 General, and again I think it is, at least the  
21 first two paragraphs are verbatim to the previous,  
22 the June 25 memo. And then it goes on to say  
23 again:

24 "Since the above suggested procedure is  
11:41 25 at the request of the accused and his



1                   counsel, I do not think a clearer case  
2                   for a direct Indictment can be made out  
3                   and I would respectfully request that  
4                   you sign the attached Indictment so we  
11:41 5                   can process this case as planned on  
6                   December 21, 1971. The accused is  
7                   anxious to dispose of these charges as  
8                   soon as possible and we have arranged  
9                   the above date but require the  
11:41 10                  Indictment before Mr. Romanow gets back  
11                  so that the necessary process to enable  
12                  Fisher's appearance, can be issued in  
13                  time."

14                  And I think this prompted the indictment to be  
11:41 15                  signed, Mr. Greenberg. Are you able to tell us  
16                  whether or not you requested the direct  
17                  indictment procedure, or whether it was by  
18                  consensus, or whether Mr. Kujawa did; are you  
19                  able to help us out?

11:41 20           A           I can't. I mean my recollection is that this  
21                       document to Blakeney and the one to Heald are  
22                       virtually the same document --

23           Q           Yeah.

24           A           -- except they are addressed to two different  
11:42 25                       people.



1 Q Yes, they are very similar.

2 A Yes.

3 Q The last part here is different about the date and  
4 Mr. Romanow being away.

11:42 5 A Yes.

6 Q But the balance, I think, is verbatim the same.

7 A Okay. And I don't know, you know, upon what basis  
8 or how the conclusion was arrived at that it be  
9 direct indictment, but it made no difference to me  
11:42 10 as long as it got to the same conclusion.

11 Q Is it possible that you would have requested the  
12 direct indictment procedure?

13 A Yes, it might be.

14 Q And, if Mr. Kujawa had suggested it, is it likely  
11:42 15 or possible that you would have agreed to that?

16 A Absolutely.

17 Q Would it be fair to say that that was your  
18 preferred method of proceeding as opposed to the  
19 normal course, if I can call it that, with a  
11:42 20 preliminary hearing and a consent committal?

21 A I think it was my choice because it avoided  
22 several steps that could result in something else  
23 possibly changing or going wrong.

24 Q Okay. Now this talks about a date of December 21,  
11:43 25 1971, and this is a December 8th memo, so it looks





1 as though on December 8th the date was picked; do  
2 you have any recollection of how that date was  
3 picked?

4 A No.

11:43 5 Q Would it be fair to say that Mr. Kujawa, or  
6 someone, would have checked with you to see that  
7 you were available?

8 A I'm satisfied that somebody would have checked  
9 with me to make sure I was available. I am also  
11:43 10 saying to you, after all the foot-stomping and  
11 complaining I had done about it not getting done  
12 very quickly, I would have been in a helluva  
13 position to say "no, can we delay it until  
14 sometime later". So, I mean, I think I would have  
11:43 15 concurred with any date that he had told me.

16 Q And I believe, sir, that did you have to get  
17 admitted to the Law Society of Saskatchewan to  
18 enable you to appear?

19 A I don't believe so.

11:43 20 Q Now, as far as where the charges were going to be  
21 dealt with, it appears that the direct indictment  
22 was brought before a Queen's Bench judge in  
23 Regina. Do you recall how it was that Regina was  
24 selected as the venue to hear the charge?

11:44 25 A No. That was something that was entirely within



1 the Attorney General's department of Saskatchewan  
2 as to how they proceeded, where they proceeded,  
3 and when they proceeded. I could take a plane  
4 from Winnipeg to Saskatoon, or to Regina, or to  
11:44 5 wherever it was that they wanted to dispose of it.

6 Q And so, from your perspective, Regina wasn't  
7 preferable over Saskatoon; is that fair?

8 A No. Some suggestion has been made that I wanted  
9 to visit relatives in Regina, but I have no  
11:44 10 recollection of that.

11 Q Yeah. There's an RCMP document that I'll refer  
12 you to a bit later. And then what about Mr.  
13 Fisher; do you recall whether he had a desire to  
14 appear in Regina rather than Saskatoon?

11:45 15 A I have no recollection of his particularly wanting  
16 to appear or not appear in either one of those two  
17 locations.

18 Q At the time, Mr. Greenberg, when you appeared in  
19 Regina, did you find it unusual that the charges  
11:45 20 would be disposed of there when the offences  
21 occurred in Saskatoon?

22 A Best of my recollection, I don't think I ever gave  
23 it a second thought.

24 Q In the course of your dealings with Mr. Kujawa  
11:45 25 and/or Mr. MacKay through to the conclusion of Mr.



1 Fisher's charge, was there ever -- was there any  
2 discussion about the Gail Miller murder?

3 A To my recollection, never.

4 Q Was there any mention of the fact that David  
11:45 5 Milgaard had been convicted of that murder?

6 A To my recollection, no.

7 Q In your dealings, again through until -- and  
8 December 21 Mr. Fisher was convicted of the four  
9 charges and got a concurrent sentence; is that  
11:46 10 correct?

11 A That's correct.

12 Q In your dealings with Mr. --

13 A He actually got a lesser sentence than what he had  
14 got in Manitoba, but because of -- because he got  
11:46 15 four years.

16 Q Yes.

17 A Okay. So that it was less, but because there had  
18 been a time difference between disposition,  
19 etcetera, I assumed that there was some credit  
11:46 20 given or some consideration of it so that it  
21 wouldn't result in a greater or longer sentence.

22 Q Okay. In your dealings with Mr. MacKay or Mr.  
23 Kujawa -- and I think those are the only two  
24 people that you dealt with on the Saskatchewan --

11:46 25 A To my, to the best of my recollection, I may have



1 spoken to Mr. Caldwell but I don't recall that.

2 Q Yeah. In your dealings then with either  
3 Mr. MacKay or Mr. Kujawa and/or Mr. Caldwell did  
4 you have any sense or reach any conclusion that  
11:46 5 they were taking any steps that you viewed as  
6 being unusual in dealing with Mr. Fisher's  
7 charges?

8 A No.

9 Q Did you believe, throughout those dealings, that  
11:47 10 they were deliberately delaying dealing with Larry  
11 Fisher for any reason extraneous to Mr. Fisher's  
12 wishes?

13 A No, I had no reason to question.

14 Q And, again, did you -- the fact that Mr. Kujawa or  
11:47 15 the Saskatchewan Crown agreed to dispose of Mr.  
16 Fisher's charges on the basis of at least  
17 recommending to the Court a concurrent sentence,  
18 did you find anything unusual about that, or out  
19 of the ordinary?

11:47 20 A No, I would -- I was getting what I wanted for my  
21 client, I believed I was getting the best  
22 disposition for him that I could get, I was  
23 getting a disposition for him that he agreed to  
24 and was acceptable to him, I wasn't looking behind  
11:48 25 that for anything else, I was happy with what I



1 got.

2 Q Now there have been allegations made, not against  
3 you Mr. Greenberg, but allegations -- at least I  
4 don't believe so -- allegation has been made by  
11:48 5 various people at various times of a conspiracy  
6 and a cover-up by government and police, and in  
7 particular Mr. Kujawa and others of a cover-up  
8 with respect to the handling of the charges  
9 against Larry Fisher in 1971. And based on your  
11:48 10 involvement in the matter at that time, Mr.  
11 Greenberg, did you see, observe, or think of  
12 anything that would in some way be connected with  
13 a cover-up with respect to the manner in which the  
14 Attorney General of Saskatchewan and/or police  
11:48 15 were dealing with the Larry Fisher charges?

16 A No.

17 Q If we could call up 010662, please. And this is  
18 just a document, a Court document, where Her  
19 Majesty or the Attorney General applied to get a  
11:49 20 court order to have Mr. Fisher attend from Prince  
21 Albert to Regina. Were you aware of that or are  
22 you familiar with that process?

23 A No. I'm somewhat, I guess, familiar with the  
24 process but I'm not familiar with that document or  
11:49 25 what they did.



1 Q Okay.

2 A They were just responsible for getting him there  
3 for the disposition.

4 Q Okay. If we could go to 010682, please. This is  
11:49 5 a letter of December 10th, '71 from Mr. MacKay to  
6 the Penitentiary Service simply saying that Mr.  
7 Fisher's matters will be heard on December 21 and  
8 they have obtained an order for the release to the  
9 RCMP, and I take it would that be the standard  
11:50 10 procedure, Mr. Greenberg, to get a prisoner to  
11 attend in Court? Are you familiar with that?

12 A I really don't feel competent to tell you what the  
13 procedure was in Saskatchewan.

14 Q Okay.

11:50 15 A I, again as I say, my responsibility was to get  
16 there for the disposition, it was up to the Crown  
17 and the AG's department to make arrangements to  
18 get Mr. Fisher.

19 Q Okay.

11:50 20 A So what their procedure was, I don't know.

21 Q And then 010680, please. This is the letter from  
22 Mr. MacKay to your office indicating that a direct  
23 indictment has been filed and it's been set for  
24 December 21, so I presume this was when you were  
11:50 25 at least formally advised of the date, is that



1 fair?

2 A Correct.

3 Q Do you remember, Mr. Greenberg, whether -- did  
4 Manitoba Legal Aid cover this or how -- was there  
11:51 5 any issues about that that were -- at the time?

6 A I don't remember. I've been asked this question,  
7 somewhere or other the RCMP seemed to allude to  
8 the fact that maybe some of the delays were that I  
9 wasn't getting paid to come to Saskatchewan, I'm  
11:51 10 not sure what that was all about either. But no,  
11 I don't know who paid it, and I don't say to you  
12 100 percent sure that anybody paid it. I may have  
13 paid for my own trip --

14 Q Okay.

11:51 15 A -- to Regina. But if procedure was followed in  
16 the normal course, it may be that Manitoba paid me  
17 something for it and then got indemnified by  
18 Saskatchewan, --

19 Q Okay.

11:51 20 A -- but I don't know how it worked.

21 Q Do you recall it being an issue at all --

22 A No.

23 Q -- in your dealing with the charges?

24 A No.

11:51 25 Q And then 010669. This is the filed copy of the



1 direct indictment, it was before I think Chief  
2 Justice Johnson, and do you have a recollection of  
3 the Court appearance today?

4 A Not really, no.

11:52 5 Q If we could then go to 042960. And this is a  
6 memorandum that Mr. Kujawa wrote to his file  
7 shortly after the proceedings, talks about:

8 "On December 21, 1971, Larry Earl  
9 Fisher, represented by Lawrence  
11:52 10 Greenberg from Winnipeg, (also a member  
11 of the Saskatchewan Bar) appeared before  
12 Johnson, J. in the Court of Queen's  
13 Bench and pleaded guilty to three  
14 charges of rape and one charge of  
11:52 15 indecent assault committed in Saskatoon.  
16 He had earlier this year received a  
17 thirteen-year sentence in Winnipeg for  
18 rape and wanted to clear all outstanding  
19 charges against him."

11:52 20 Then this part:

21 "Without his confession in Winnipeg we  
22 had no case at all against him and the  
23 confession would not likely be held to  
24 be voluntary."

11:53 25 And I'm wondering, Mr. Greenberg, whether you can





1 help us out with whether you are aware of any  
2 basis that the confessions were being challenged  
3 as being voluntary?

4 A That was never an issue with me and with my  
11:53 5 conduct of Mr. Fisher's matters. Okay. So I  
6 wouldn't have been pleading guilty, I wouldn't  
7 have been going ahead, I wouldn't have been doing  
8 these things if that was in fact an issue and  
9 there were statements that weren't voluntary. It  
11:53 10 was not an issue as between Fisher and myself, and  
11 myself and the Crown, and whatever.

12 So it, I mean that may have been  
13 Mr. Kujawa's opinion, to which he is 100 percent  
14 entitled to have, but it was not an issue with me.

11:53 15 Q Okay. Let's just back up. So again, as far as  
16 your discussions with Mr. Kujawa, you are telling  
17 us you don't think you would have raised that as a  
18 bargaining chip with him or anything like that?  
19 Do you recall -- do you know what I am asking?

11:54 20 A No.

21 Q Let me rephrase it. Would you have gone to Mr.  
22 Kujawa and said "lookit, give me a concurrent  
23 sentence because you can't prove the cases, the  
24 confessions weren't voluntary", do you recall  
11:54 25 anything like that being discussed?



1 A No, I don't.

2 Q And so again I think you've told us you don't  
3 think the voluntariness of the confession was a  
4 matter that was discussed between you and Mr.  
11:54 5 Kujawa; is that --

6 A I don't believe so.

7 Q Okay. Now put -- apart from your discussion with  
8 Mr. Kujawa, just based upon your dealings with  
9 your client at the time, can you provide us with  
11:54 10 any information that might explain why the  
11 confession may not have been voluntary? And I'm  
12 not talking about your discussions with Mr.

13 Kujawa, and I'm not asking you to speculate what  
14 he was thinking, but just based on the fact that  
11:54 15 you dealt with -- Mr. Fisher was your client,  
16 certainly, and I think you said likely at the time  
17 he gave at least some of the confessions, --

18 A Yes.

19 Q -- and I'm wondering if there's anything, as his  
11:55 20 counsel at the time, that you can tell us that  
21 might have caused either a prosecutor or a Court  
22 to believe that his confessions were not  
23 voluntary?

24 A Well if you take the situation in which he was, in  
11:55 25 solitary, and the alleged beatings that he



1           suffered while in the institution, and all the  
2           rest of it, it may have been that under other  
3           circumstances, and with a client who wanted other  
4           disposition, that you could have tried to mount  
11:55 5           some attack on the confessions to strike them out.  
6           Okay. But that wasn't, those weren't my  
7           instructions, --

8           Q       I appreciate that.

9           A       -- and that wasn't the position. So I wasn't, in  
11:55 10           one breath, trying to strike out the confessions,  
11           and in the other breath trying to get a guilty  
12           plea entered so the thing could get disposed of.

13          Q       No, --

14          A       They were inconsistent with each other.

11:56 15          Q       -- and I appreciate that, and my question was not  
16                   whether you used that or whether it was part of  
17                   the discussions. I'm just asking, based on your  
18                   observations and your dealings with him, as to  
19                   whether you can assist the Commission in  
11:56 20                   understanding what may have been the basis upon  
21                   which someone might say the confessions weren't  
22                   voluntary.

23          A       Well I guess in hindsight, if you look behind what  
24                   Mr. Kujawa has said repeatedly now about not  
11:56 25                   having any evidence, etcetera, and not being able



1 to convict Mr. Fisher and all the rest of it,  
2 somebody might say 'what sort of buffoon were you  
3 to plead him to these charges when there was no  
4 case against him'. Well the case against him was  
11:56 5 that he had made these confessions and he wanted  
6 to dispose of the matter. Okay.

7 Q No, and I appreciate that Mr. Greenberg, and my  
8 question was not to suggest that something else  
9 should have been done.

11:57 10 A Yeah.

11 Q I'm looking for your knowledge of your client, at  
12 the time, dealing with authorities; that's all.

13 A I only know that from day one Larry Fisher  
14 impressed upon me that he wanted to get the  
11:57 15 Manitoba charges away --

16 Q Yeah.

17 A -- and disposed of and he wanted to get the  
18 Saskatchewan charges away and disposed of. After  
19 35 years, after all the hindsight and everything  
11:57 20 that has happened regarding Milgaard, etcetera,  
21 you can surmise what you want as to why Larry  
22 Fisher wanted to do what Larry Fisher wanted to  
23 do. I have no idea.

24 Q Okay.

11:57 25 A I only know that Larry Fisher gave me instructions



1 to dispose of the matters the way they were  
2 disposed of, and that's what was done.

3 Q Okay. This might be an appropriate time to break  
4 for lunch, Mr. Commissioner.

11:57 5 COMMISSIONER MacCALLUM: Okay.

6 (Adjourned at 11:57 a.m.)

7 (Reconvened at 1:30 p.m.)

8 BY MR. HODSON:

9 Q Just call up 010682, and this is a letter, I may  
01:31 10 have shown this to you, December 10th, '71, from  
11 Mr. MacKay to the penitentiary service advising  
12 that the Fisher matters will be heard in Regina on  
13 December 21. Then if you can scroll down a bit,  
14 it looks as though this is a handwritten note of  
01:31 15 December 10th, '71 from K, which I think may be  
16 Kenneth MacKay, but I'm guessing:

17 "On: L.C. Greenberg, Wpg.

18 Re: Larry Earl Fisher.

19 - advised L.C.G. that the matter had  
01:32 20 been set for 21 Dec 71 @ 2:00 p.m.

21 Regina Court House Q.B. & that I would  
22 be writing to Fisher to advise him."

23 I'm wondering if, Mr. Greenberg, do you think you  
24 would have got a phone call from Mr. MacKay about  
01:32 25 the date?



1 A I believe so.

2 Q Do you have any recollection of that?

3 A Yes.

4 Q I want to now turn to the 1990 and subsequent

01:32 5 period, Mr. Greenberg. You would have had

6 occasion to talk to the media in and around, and

7 I'll show you some articles here in a moment,

8 about your involvement in the matter; is that

9 correct?

01:32 10 A Yes.

11 Q First if we can call up 219270, and this is an

12 article in *The Globe and Mail*, May 2nd, 1992, by

13 Timothy Appleby and David Roberts, and I'm going

14 to go through parts of this with you, Mr.

01:33 15 Greenberg, and just ask you some questions, and

16 maybe we can start off and call out that top part,

17 and so again this is May of '92. It says:

18 "On a brisk December day in 1971, Serge

19 Kujawa dictated an unusual memo to his

01:33 20 secretary in his government office in

21 Regina. It was addressed to

22 Saskatchewan Premier Allan Blakeney and

23 it concerned one Larry Fisher, a

24 19-year-old rapist who had been

01:33 25 convicted in May of that year of



1 attacking two women in Winnipeg.

2 It seemed Mr. Fisher was now  
3 anxious to plead guilty to four more  
4 widely publicized sexual assaults  
01:33 5 committed in Saskatoon prior to the  
6 Manitoba rapes."

7 If we can just pause there, and I believe the  
8 memorandum to Allan Blakeney was the memorandum  
9 that I showed you earlier of -- let me just get  
01:33 10 the date -- of December 8th, 1971, that's the  
11 memorandum. Remember I went through that where  
12 --

13 A Yes.

14 Q In fact, maybe we'll just call it up, 301073,  
01:34 15 please, and when we went through this I think, and  
16 please correct me if I'm wrong, did you find  
17 anything unusual about what was happening here,  
18 Mr. Greenberg?

19 A No.

01:34 20 Q And so this is the memorandum where Mr. Kujawa is  
21 asking Mr. Blakeney to have a direct indictment.  
22 If we can go back to the newspaper article,  
23 219270, again if we can just call out the top  
24 part. So again he calls it an unusual memo, and I  
01:35 25 take it what you've told us, you didn't see



1 anything unusual about that memo or process? I  
2 appreciate you didn't see it at the time, but did  
3 you find anything unusual about Mr. Kujawa  
4 requesting Mr. Blakeney to sign a direct  
01:35 5 indictment at that time?

6 A I didn't find anything unusual about it to my  
7 recollection, but remember, I was looking at it in  
8 the time capsule of when it occurred in 1971, I  
9 wasn't looking at it in retrospect after what  
01:35 10 occurred in 1990.

11 Q Yeah. And are you saying in retrospect you look  
12 at it differently than you did then?

13 A I think anybody looks at what happened after that  
14 time differently than what might have occurred  
01:35 15 before.

16 Q Okay. And what do you mean by that?

17 A Well, I mean, once you knew what had occurred in  
18 connection with the Milgaard appeal and the rest  
19 of it, you have to look at everything that had  
01:35 20 gone before in a new light.

21 Q And do you look at it differently? Perhaps you  
22 can just explain. Is there something today, sir,  
23 that you say is unusual about the memo?

24 A No, not about the memo, but the whole scenario.

01:36 25 Q Okay.





1 A The whole atmosphere, that knowing what happened  
2 30 years later, okay --

3 Q Yes.

4 A -- you would have to say if I knew 30 years ago  
01:36 5 what I know today, okay, would I have done exactly  
6 the same thing that I did 30 years ago.

7 Q And --

8 A And I'm saying to you that probably I wouldn't.

9 Q What would you have done differently?

01:36 10 A Well, I'm saying to you in general, I'm not saying  
11 specifically, as far as what I did in 1970 I have  
12 no questions about having done it then and I would  
13 have done the same thing in the context, okay, but  
14 I'm saying to you when events transpired or become  
01:36 15 public in 1970, it's entirely different, the  
16 events of 1970, you have to look at them in the  
17 context of what you now know in 1990.

18 Q And then in 1990 or subsequent, then, with the  
19 information and knowledge you had then, did you  
01:37 20 look at the memorandum --

21 A No. From my point of view --

22 COMMISSIONER MacCALLUM: Please let him  
23 finish the question.

24 BY MR. HODSON:

01:37 25 Q And, I'm sorry, we went down this path I think by,



1 my first question was about your comment on the  
2 memo and what was described in there about the  
3 direct indictment and I think, I thought you said  
4 that at the time, no, but later with hindsight you  
01:37 5 looked at things differently, and I'm just trying  
6 to find out, Mr. Greenberg, now, with everything  
7 you know with when you look back at that  
8 memorandum, is there anything unusual about it?

9 A No.

01:37 10 Q And again, I'll be coming back to, once we go  
11 through this, I think generally I'll have some  
12 questions for you, so I'll come back to your  
13 point. It also talks here about, and again the  
14 memorandum is December the 8th, 1971, I think when  
01:38 15 we called it up, it says:

16 "It seemed Mr. Fisher was now anxious to  
17 plead guilty to four more assaults  
18 committed in Saskatoon."

19 And I think you told us this morning that he had  
01:38 20 always been anxious to plead guilty; is that  
21 fair?

22 A That's fair.

23 Q And so certainly, based on your involvement in the  
24 matters, it wasn't upon December 8th, 1971 or at  
01:38 25 that time frame that Mr. Fisher said I now want to



1 plead guilty; is that correct?

2 A Correct.

3 Q And then it goes on:

4 "Mr. Kujawa, who was in charge of  
01:38 5 Saskatchewan's criminal-prosecutions  
6 branch, was writing to ask Mr. Blakeney  
7 (acting Attorney General in the absence  
8 of Roy Romanow, who was out of town) to  
9 approve a rare legal procedure - a  
01:38 10 "direct indictment" against Mr. Fisher."

11 Again, the authors here talk about it being a  
12 rare legal procedure. Would you agree with that?

13 A My experience in Manitoba was that a direct  
14 indictment was not a rare legal procedure.

01:39 15 Q Okay.

16 A Whether they used it the same way in Saskatchewan  
17 or not I can't say.

18 Q Then they go on to say:

19 "The effect of the direct indictment was  
01:39 20 to have Mr. Fisher quietly plead guilty  
21 to the Saskatoon attacks, not in  
22 Saskatoon where the rapes occurred, but  
23 in Regina."

24 And again, your response to that suggestion?

01:39 25 A It made no difference to me and I never had any



1           indication from Mr. Fisher to my recollection that  
2           it made any difference to him whether they were  
3           disposed of in Saskatoon or in Regina.

4           Q       So if it was a direct indictment in Saskatoon, it  
01:39 5           didn't matter to you or Mr. Fisher?

6           A       That's correct.

7           Q       And again, maybe this isn't fair, these aren't  
8           your words, but the "quietly plead guilty", was  
9           that any part in any of your discussions back at  
01:40 10          the time, Mr. Greenberg?

11          A       Absolutely not.

12          Q       Then if we could just scroll down, then it says:

13                   "Despite repeated urgings from Mr.  
14                   Fisher's Winnipeg-based lawyer, it  
01:40 15                  wasn't until three weeks after David  
16                   Milgaard had exhausted all avenues of  
17                   appeal in November 1971 that any action  
18                   was taken to deal with Mr. Fisher's  
19                   Saskatoon charges."

01:40 20          And I think I asked you earlier at the time,  
21          November, December, 1971, I think you told us you  
22          weren't aware of anything related to David  
23          Milgaard; is that fair?

24          A       I honestly don't believe I ever heard his name.

01:40 25          Q       Okay. Then it says:



1 "Today, Mr. Milgaard's lawyers and  
2 supporters maintain that the direct  
3 indictment and his court appearance in  
4 Regina resulted in Mr. Fisher's guilty  
01:40 5 pleas not being publicized. In timing,  
6 location and method, Mr. Fisher's  
7 attacks bore a remarkable similarity to  
8 the one in which Ms. Miller was  
9 murdered. They say that if the Fisher  
01:41 10 pleas had been known, serious doubt  
11 would have been cast on the integrity of  
12 Mr. Milgaard's conviction. Mr. Fisher  
13 has maintained he is innocent in the  
14 killing."

01:41 15 And again, just as far as the publicizing the  
16 guilty pleas in Regina versus Saskatoon, do you  
17 recall, Mr. Greenberg, was that any part of any  
18 discussion, were you aware of that being one of  
19 the reasons for Regina over Saskatoon?

01:41 20 A It was never a consideration in my mind.

21 Q Okay. If we can scroll down, it says:

22 "Recent inquiries by *The Globe and Mail*  
23 reveal a mire of inconsistencies and  
24 errors involving the handling of the  
01:41 25 tangled web surrounding the Fisher and



1 Milgaard cases.

2 For Milgaard supporters it is  
3 not a question of whether there was a  
4 cover-up in the Fisher investigation,  
01:41 5 but how far-reaching it was. "The  
6 frightening question about this is, how  
7 many people were involved in it?" Mr.  
8 Milgaard's lawyer David Asper asks.  
9 They find it implausible that the Crown  
01:42 10 could simultaneously handle the Fisher  
11 and Milgaard cases without at least  
12 considering the similarities. "Who was  
13 calling the shots? And why?"

14 And then:

01:42 15 "I can't understand why (the Saskatoon  
16 police) wouldn't want the glory of Larry  
17 Fisher's arrest," says Mr. Milgaard's  
18 senior counsel Hersh Wolch. "Saskatoon  
19 was worried about these attacks on women  
01:42 20 by the man who turned out to be the  
21 city's most notorious rapist at the  
22 time. My own theory was the authorities  
23 believed Milgaard was guilty. But if  
24 Fisher appeared in public in court in  
01:42 25 Saskatoon it might stir up people into



1 asking questions."

2 And again, Mr. Greenberg, any of that, were you  
3 aware of any of that being discussed or being on  
4 your mind at the time?

01:42 5 A No, I wasn't.

6 Q Scroll down, it says:

7 "Larry Fisher first came to the  
8 attention of Saskatchewan authorities  
9 eight months after --"

01:42 10 Actually, just let me pause there, back on this  
11 earlier comment. I think you told us you had no  
12 direct contact with the Saskatoon City Police; is  
13 that correct?

14 A None that I can ever recall.

01:43 15 Q And then:

16 "Larry Fisher first came to the  
17 attention of Saskatchewan authorities  
18 eight months after Mr. Milgaard was  
19 sentenced to life imprisonment in  
01:43 20 January 1970.

21 Mr. Kujawa's memo to Mr.  
22 Blakeney, dealing with Mr. Fisher's  
23 Saskatoon charges, contained at least  
24 two, and possibly three, controversial  
01:43 25 aspects.



1 First, Mr. Kujawa told Mr.  
2 Blakeney that it was Mr. Fisher and his  
3 lawyer who had asked for the rarely used  
4 direct-indictment procedure."

01:43 5 And I think if one reads that memo, I'm not sure  
6 that that's what it says, but putting that aside  
7 for the moment, I think you answered this  
8 earlier, do you know if you did ask for the  
9 direct indictment?

01:43 10 A I know that I asked for the matter to proceed in  
11 the quickest and most expeditious fashion.  
12 Whether I ever used the word direct indictment or  
13 consent committal, I can't tell you which one.

14 Q It goes on to say:

01:44 15 "But Mr. Fisher's former lawyer,  
16 Lawrence Greenberg, says he didn't ask  
17 for a direct indictment. "All we wanted  
18 was to get the damn thing over with," he  
19 says. "Take a look at the  
01:44 20 correspondence. I wrote to Saskatchewan  
21 for months trying to get that case dealt  
22 with." Indeed, a half-dozen letters  
23 written by Mr. Greenberg to Mr. Kujawa's  
24 office make no mention of a direct  
01:44 25 indictment. "The best way would have





1                   been a consent committal," Mr. Greenberg  
2                   says."

3                   Now, do you recall making those comments to these  
4                   reporters at around that time?

01:44 5           A           I don't, but they weren't inconsistent with what  
6                   my position was.

7           Q           Okay. And then as far as the consent committal,  
8                   would that be an appearance in Magistrates' Court  
9                   and consenting to a committal much like you did in  
01:44 10           Manitoba?

11          A           That's correct.

12          Q           And so it says here, you say the best way would  
13                   have been a consent committal, and I thought  
14                   earlier you had indicated that the direct  
01:44 15           indictment would avoid the committal?

16          A           It would have, but if you would have proceeded  
17                   earlier or immediately rather than waiting all  
18                   this time until June, etcetera, you could have  
19                   proceeded by consent committal and it would have  
01:45 20           saved basically the same amount of time.

21          Q           I thought you had told us this morning that, and  
22                   maybe I used the term "normal way" which I  
23                   shouldn't have, but in the usual fashion you would  
24                   appear before a magistrate, and I think you said  
01:45 25           you would be remanded over and you would go have



1 the preliminary hearing where you would consent to  
2 committal?

3 A Uh-huh.

4 Q Then you would have an arraignment in court, and I  
01:45 5 thought you had said that there would be more  
6 appearances and time and money?

7 A That's right.

8 Q And so I'm wondering here when you are saying the  
9 best way would have been a consent committal, were  
01:45 10 you comparing that to a direct indictment --

11 A Yes.

12 Q -- or what did you mean?

13 A Well, yes, one would be comparable to the other.  
14 You could consent commit without going through a  
01:45 15 preliminary hearing and all the rest.

16 Q But it would require you to attend in Magistrates'  
17 Court?

18 A Right, it would have, or somebody to appear.

19 Q Or somebody to appear. So again, just in  
01:46 20 explanation of what you say here, are you telling  
21 us today, Mr. Greenberg, as far as the direct  
22 indictment procedure being compared to the usual  
23 course, which would be a preliminary hearing with  
24 a consent committal and then appearance in Queen's  
01:46 25 Bench Court, are you saying that from your



1 perspective and your client's perspective at the  
2 time, that one was better than the other to serve  
3 your client's purposes?

4 A Again, I don't -- if you had gone the route of the  
01:46 5 charges and the setting of a date, etcetera, and  
6 the election and everything else and you had  
7 started that way back in, when this first became  
8 known, not waiting until June or after June, you  
9 could have done it in about the same time.

01:46 10 There's no question that the quickest way at that  
11 particular moment was a direct indictment.

12 Q But I think you told us earlier that it wasn't  
13 until June that you were prepared to deal with the  
14 Saskatchewan charges?

01:47 15 A Because everything wasn't completed until  
16 basically that time.

17 Q Right. So let's say from June, 1971 onward --

18 A Then direct indictment was the quickest way of  
19 doing it.

01:47 20 Q And why is that?

21 A Because the Crown could proceed with laying the  
22 direct indictment immediately without any other  
23 further steps in between.

24 Q Okay. The second point, it says, and again  
01:47 25 referring to the Kujawa memo, it says:



1 "Without his confession ... we have no  
2 evidence at all on which to charge  
3 Fisher."

4 And I think I've already touched on that with you  
01:47 5 this morning; is that correct, I've already asked  
6 you?

7 A Right.

8 Q And if we can go to the top of the page and then  
9 just down at the bottom, and then it talks about:

01:48 10 "The third aspect concerns the Crown's  
11 rationale for using a direct indictment:  
12 expediency. Mr. Kujawa, now the New  
13 Democratic MLA representing Regina  
14 Albert-South, could not be reached this  
01:48 15 week. But in previous interviews he has  
16 suggested that direct indictment was the  
17 easiest way for the Crown to have Mr.  
18 Fisher enter his guilty pleas."

19 Let me pause there. Would you agree with that  
01:48 20 statement?

21 A Yes.

22 Q "Regina was, he says, the headquarters  
23 for the prosecutions branch and it was  
24 routine for the Crown to fly prisoners  
01:48 25 to Regina from the federal prison in



1 Prince Albert where, after his Winnipeg  
2 convictions in May 1971 Mr. Fisher was a  
3 federal prisoner."

4 And again, were you aware of that being a reason  
01:48 5 at the time for having the charges in Regina?

6 A I don't think I directed my mind to it at all.  
7 Mr. Kujawa's office to my knowledge was in Regina,  
8 the head office for the Attorney General of  
9 Saskatchewan was in Regina, but it made no  
01:49 10 difference to me.

11 Q No, I appreciate that, Mr. Greenberg, and my  
12 question is whether at the time, back in 1971,  
13 would you have been aware of that from Mr. Kujawa  
14 or Mr. MacKay as being a reason to have it in  
01:49 15 Regina?

16 A No, I don't think they ever explained it to me and  
17 they had no reason to have to explain it to me.

18 Q And then it says:

19 "Mr. Kujawa also said that in 1971 the  
01:49 20 law required Mr. Fisher to enter his  
21 guilty pleas in Saskatchewan's superior  
22 court, the Court of Queen's Bench ..."

23 And I think you've told us that that's correct;  
24 is that right?

01:49 25 A That's right.



1 Q And:

2 "... which sat in Regina (but also sat  
3 in Saskatoon and Prince Albert).

4 Even lawyers not connected with  
01:49 5 the case dispute this explanation of why  
6 the plea needed to be heard in Regina.  
7 They say it would have been extremely  
8 unusual for the Saskatchewan Crown to  
9 have used a direct indictment at all,  
01:49 10 especially since Mr. Fisher had  
11 indicated his desire to plead guilty."

12 And again, you may have already commented on  
13 this, but would you agree with that, that it  
14 would be extremely unusual for the Crown to have  
01:50 15 used direct indictment?

16 A I can't speak for the Crown of Saskatchewan.

17 Q Let me try this again. In this article, what the  
18 authors are saying is that lawyers not connected  
19 with the case dispute Mr. Kujawa's explanation of  
01:50 20 why the plea needed to be heard in Regina and then  
21 it says, and presumably lawyers not connected with  
22 the case say it would have been extremely unusual  
23 for the Crown to have used a direct indictment at  
24 all, especially since Mr. Fisher had indicated his  
01:50 25 desire to plead guilty, and it's that part again,



1 do you think it was extremely unusual for the  
2 Crown to use a direct indictment where Mr. Fisher  
3 had indicated his desire to plead guilty?

4 A I personally found nothing unusual or wrong with  
01:50 5 that way of proceeding in order to expedite the  
6 matter.

7 Q And I think in fact this morning you told us  
8 because he wished to plead guilty, you saw no  
9 reason to have a preliminary hearing; is that  
01:51 10 correct?

11 A Absolutely, that's correct.

12 Q So is it fair to say that you may disagree with  
13 what's stated there?

14 A Yes.

01:51 15 Q Then it says:

16 "Moreover, Mr. Fisher had already been  
17 charged in Saskatoon on Dec. 30, 1970,  
18 on the four sex-related charges. (These  
19 Saskatoon charges were dropped after the  
01:51 20 direct indictment was signed by Mr.  
21 Blakeney, since an accused can't be  
22 charged in two jurisdictions at the same  
23 time on the same charges.)"

24 I'll pause there. Do you have any knowledge of  
01:51 25 what happened to the four charges that were sworn



1 in Saskatoon on December 30th, 1970?

2 A None whatsoever, but the direct indictment I would  
3 assume, and maybe I shouldn't assume anything,  
4 could have been laid in Saskatoon as easily as it  
01:51 5 could have been laid in Regina. I mean, I don't  
6 know what the Saskatchewan procedure was.

7 Q Okay. And then:

8 "Lawyers say that the more usual way to  
9 have dealt with Mr. Fisher would have  
01:52 10 been by consent committal. This is what  
11 happened in May 1971 when Mr. Fisher  
12 waived his right for a preliminary  
13 hearing in Winnipeg, pleaded guilty to  
14 the two Manitoba attacks and received a  
01:52 15 13-year jail term."

16 And I think you've already told us about your  
17 views of the comparison between the two. Just  
18 give me a moment. Then go to the next page --  
19 actually, I think we're done with that.

01:52 20 If we can go to 057444, please,  
21 and this is an article, I think the date is cut  
22 off, I think it's August of '92, or '91, and  
23 again it's Mr. Appleby and Mr. Roberts, it says:

24 "Lawyer Lawrence Greenberg, who defended  
01:53 25 Mr. Fisher both in Winnipeg and Regina,





1 says his former client "wasn't a nice  
2 guy. If you asked me was he capable [of  
3 murder] in view of the other crimes to  
4 which he admitted guilt, I would have to  
01:53 5 say yes."

6 Do you recall making comments of that nature to  
7 the media?

8 A I believe I made that statement or something very  
9 similar to it. I believe there was more to the  
01:53 10 statement than what's contained in that quote,  
11 but --

12 Q And what do you believe is missing, if anything?

13 A Well, in the RCMP interview, etcetera --

14 Q Yes.

01:53 15 A -- there is an additional portion credited to me  
16 which indicates that although he may have been  
17 capable of doing it, so were any number of other  
18 people capable of doing it.

19 Q Okay. And so just help me understand this. When  
01:54 20 you talked to the media, are you saying that you  
21 would have said words to this effect, but you  
22 would have had other words?

23 A In the RCMP report --

24 Q We'll get to that. If you would like to leave it  
01:54 25 until we get to that I can --



1 A It's just that I believe that I said more in  
2 answer to that quote than what is there and the  
3 exact words I can't remember.

4 Q And the general effect or the general tenor?

01:54 5 A The general tenor I can agree with.

6 Q But the additional words that you would have said,  
7 generally what else do you think you would have  
8 said in this context?

9 A That the context of it was that although he may  
01:54 10 have been capable, but so would I don't know how  
11 many other hundreds or thousands of people capable  
12 of committing murders.

13 Q Okay. And then if we could call up 324910,  
14 please, and this is September 14th, '91, and you  
01:55 15 are quoted:

16 "Fisher's lawyer at the time was  
17 Lawrence Greenberg of Winnipeg.

18 "I don't know if there's any  
19 other reason, 20 years ago, for doing it  
01:55 20 (in Regina). But at that stage, it was  
21 a matter of convenience. The Crown who  
22 were handling it were in Regina," said  
23 Greenberg who no longer practices law."

24 And I take it, is that something you would have  
01:55 25 said to the media at the time?



1 A Yes.

2 Q "He doesn't know if Miller's murder  
3 became an issue with police in  
4 connection to Fisher.

01:55 5 'There were no other offences,  
6 to my knowledge'."

7 And again, I think that's what you've told this  
8 Commission; is that right?

9 A Right.

01:55 10 Q "As an individual, not a lawyer,  
11 Greenberg says when he now considers all  
12 the facts he does have a reasonable  
13 doubt about Milgaard's guilt.

14 'You only have to take a look  
01:55 15 at the history of Fisher -- the offences  
16 which he pleaded guilty to, and any  
17 reasonable person would have say it's  
18 possible'."

19 And again, is that something that you would have  
01:56 20 said?

21 A Yes.

22 Q And is that what you were referring to a bit  
23 earlier about --

24 A That is. With the information you had 20 years  
01:56 25 later, you had to look at all the facts in a



1 different light.

2 Q Okay. If we could call up 060923, please. This  
3 is an article from *The Globe and Mail*, November  
4 17th of '92, and again among the questions Mr.  
01:56 5 Wolch says remains unresolved are:

6 "What happened to a number of missing  
7 Saskatoon police files on Mr. Fisher?  
8 Why was Mr. Fisher's sentencing delayed  
9 until all Mr. Milgaard's avenues of  
01:56 10 appeal were exhausted?"

11 And if I can just pause there, Mr. Greenberg, and  
12 maybe we've covered all this, but as far as  
13 delays of Mr. Fisher's sentencing, did you form  
14 the impression at the time that his sentencing  
01:57 15 was being delayed for purposes unrelated to Mr.  
16 Fisher?

17 A I didn't, but I had no reason to.

18 Q Then it says:

19 "Why were Mr. Fisher's charges quietly  
01:57 20 disposed of in Regina by direct  
21 indictment -- a highly unusual  
22 procedure -- and not in Saskatoon?  
23 Former chief prosecutor Serge Kujawa  
24 told Allan Blakeney, who was acting  
01:57 25 attorney-general at the time, that the



1 direct indictment was at the request of  
2 Mr. Fisher's lawyer, Lawrence Greenberg,  
3 but Mr. Greenberg says this was not so."

4 And again that's not a quote attributed to you,  
01:57 5 but do you think you would have told the media  
6 that it was not your request?

7 A Again, I think there was some degree of confusion  
8 between direct indictment and consent committal  
9 and I think I at various times referred to both of  
01:58 10 them.

11 Q But as far as -- let's just -- before we leave  
12 this, on the direct indictment, if it was Mr.  
13 Kujawa who suggested it, you agreed with it; is  
14 that fair?

01:58 15 A Yeah, sure.

16 Q Go to 042963, this is a letter, I think January of  
17 '93 from Larry Fisher to you, and I think he says:

18 "I would like to remind you of the  
19 statements you made to the press which I  
01:58 20 do not believe were appropriate.

21 To make this short, you are  
22 still bound by the solicitor-client  
23 privilege and I oppose of you talking to  
24 the media, police, etc., without my  
01:58 25 consent. Obviously, you can talk about



1 matters which are of public record, but  
2 watch carefully on the public record,  
3 etc., because you would be walking on a  
4 very thin line.

01:59 5 I sure oppose of you discussing  
6 anything pertaining with me to anyone."

7 And I take it this was a letter you would have  
8 got from Mr. Fisher?

9 A It was.

01:59 10 Q And then 043035, and acknowledges the letter, and  
11 I think you want to say that he, I guess this is  
12 written on your behalf:

13 "... that he has never breached those  
14 rules either in relation to matters  
01:59 15 handled on your behalf or on behalf of  
16 anyone else. Although he has had  
17 numerous requests for information  
18 relating to your file, in view of all  
19 the recent publicity he has not  
01:59 20 disclosed to anyone anything other than  
21 what was available on the public record  
22 in connection with the charges against  
23 you."

24 So this would have been your reply to Mr. Fisher  
01:59 25 I take it?



1 A That's right.

2 Q If we could then go ahead to 043033. And this is  
3 the RCMP interview notes and I think, Mr.  
4 Greenberg, you had referred to this earlier. Do  
02:00 5 you recall being interviewed by a couple of RCMP  
6 officers in connection with an investigation they  
7 were doing?

8 A Yes.

9 Q And I think we have two sets of notes of the same  
02:00 10 interview, different authors, I'll go through this  
11 first set and then I'll touch on the second set.  
12 And the date, I think, is April 6th, '93; any  
13 reason to dispute that?

14 A No.

02:00 15 Q And if we could then go to page, this next page  
16 043032, and it's recorded, 'To the best of  
17 Greenberg's recollection Fisher appeared on these  
18 two Fort Garry charges and prior to any other  
19 Court proceedings was subjected to at least a 30  
02:01 20 day or possibly 60 day psychiatric examination or  
21 assessment as was the norm for that period of time  
22 considering the charges.'

23 And, again, do you recall  
24 telling the RCMP officers that information?

02:01 25 A Yes I do.



1 Q And is that, today can you tell us, does that  
2 assist your recollection; is that --

3 A As far as I can recollect.

4 Q Yeah. If we go to 043029, and the RCMP records  
02:01 5 here, 'Greenberg feels there was some delay but  
6 understandably the Sask. Justice position was to  
7 clear the Manitoba charges first.'

8 And is that something you would  
9 have told the RCMP?

02:02 10 A It might very well have been, I can't remember  
11 specifically, but --

12 Q Okay. And, again, I think what -- or at least  
13 according to this note, the Sask. Justice position  
14 was "lookit, get rid of, deal with the Manitoba  
02:02 15 charges first"; is that --

16 A Once it was determined that we couldn't dispose of  
17 them all at the same time.

18 Q Right. And so are you telling us today that that  
19 was Sask. Justice's position, as far as you  
02:02 20 recall?

21 A Yes.

22 Q Next page, please. And then it says, 'Once Fisher  
23 was transferred to the Saskatchewan Penitentiary  
24 at Prince Albert, Sask. in June of 1971, Sask.  
02:02 25 Justice took it upon themselves to process Fisher





1 at their convenience based on the fact that he had  
2 received a 13 year sentence'.

3 And scroll down, 'Although the  
4 delay appears to be a number of months between the  
02:03 5 time Fisher went to Prince Albert and his Regina  
6 Court appearance in December, Greenberg was in  
7 agreement there was no hurry.'

8 If I can pause there, would that  
9 have been an accurate record of what you told the  
02:03 10 RCMP?

11 A Yes.

12 Q And you agree with that?

13 A Yes.

14 Q And scroll down, 'Greenberg's biggest concern and  
02:03 15 his attempt to gather all of Fisher's charges into  
16 the Manitoba Court system, including  
17 Saskatchewan's, was the monetary factor. His  
18 biggest concern expressed to us is who is going to  
19 pay his legal bill arising out of the Saskatchewan  
02:03 20 charges and would Manitoba Legal Aid foot the bill  
21 for his travel to Regina. This accounts for the  
22 majority of his correspondence in the early stages  
23 to gather all of the outstanding charges that his  
24 client faced in order that Fisher could dispose of  
02:03 25 same under one roof in Manitoba and justifiably



1 Legal Aid would incur all related expenses.'

2 And, again, is that an accurate  
3 recording of what you would have told them?

4 A I don't remember using those terms, but certainly  
02:04 5 the expense of the proceedings outside and who  
6 would handle what was a consideration.

7 Q Okay. And I think you said this morning your, one  
8 of your objectives was to minimize the cost  
9 factor, is that -- or words to that effect?

02:04 10 A It's always a consideration in guilty pleas and  
11 those type of dispositions.

12 Q Okay. If we could scroll down, 'Greenberg stated  
13 as time progressed he was in communication with  
14 Serge Kujawa and/or Ken MacKay of Sask. Justice.  
02:04 15 Although Mr. Greenberg is not in possession of all  
16 documentation he feels he would have consented to  
17 the arrangements of having Fisher appear in  
18 Regina, Saskatchewan.'

19 I take it that's -- is that an  
02:04 20 accurate recording of what you would have told  
21 them?

22 A That's accurate.

23 Q 'Greenberg also stated that he was supportive and  
24 in agreement with the direct indictment  
02:04 25 proceedings and may have initiated the direct



1 indictment by requesting same from Mr. Kujawa.'

2 And is that accurate and

3 truthful?

4 A Yes.

02:05 5 Q 'The process of the direct indictment was not new  
6 to him and he was in full agreement with it.'

7 Again, is that truthful and  
8 accurate?

9 A Yes.

02:05 10 Q 'Lawrence Greenberg stated that he advised Sask.  
11 Justice, namely Serge Kujawa, that they would  
12 plead guilty to the charges originating in  
13 Saskatoon if they would guarantee that his client  
14 would not receive any additional sentence and that  
02:05 15 the sentence imposed in Saskatchewan would run  
16 concurrent to the Manitoba sentence he was  
17 serving.'

18 Again, is that truthful and  
19 accurate?

02:05 20 A Yes.

21 Q 'Kujawa agreed to the proposal put forward by  
22 Greenberg. Greenberg was quick to point this out,  
23 that if Sask. Justice was opposed, guilty pleas  
24 would not have been entered by his client.'

25 Again, is that truthful and



1 accurate?

2 A Yes.

3 Q Next page, 'When queried about the additional two  
4 charges surfaced at the Regina Court appearance  
02:05 5 against Fisher, Greenberg stated Larry Fisher  
6 would not have pled guilty to any charge he was  
7 not guilty of. Greenberg could not recall but was  
8 pretty certain he and his client would have been  
9 fully aware of all charges surfacing in Regina  
02:06 10 prior to any Court appearance.'

11 And, again, is that accurate and  
12 truthful?

13 A To the best of my recollection.

14 Q Scroll down, 'Greenberg related that there were no  
02:06 15 surprise charges which confirms that he and Fisher  
16 were fully aware of exactly what charges he was  
17 facing.'

18 And, again, is that truthful and  
19 accurate?

20 A Yes.

21 Q 'Greenberg made no objections to the Regina venue  
22 nor the date just prior to Christmas. Greenberg  
23 stated he thought he flew to Regina and in  
24 addition to appearing on Fisher's behalf visited  
02:06 25 some personal friends.'



1 Is that truthful and accurate?

2 A It's all truthful and accurate, but I don't  
3 remember the part about visiting any friends.

4 Q Okay.

02:06 5 A I may have, but I don't remember that.

6 Q And do you think that's something you would have  
7 told the RCMP in '93?

8 A I might have.

9 Q Next page. 'He Greenberg could not recall the  
02:06 10 courtroom atmosphere, i.e. the audience or who was  
11 present, but indicated the Q.B. Court was like any  
12 other and was certainly open to the public. There  
13 was no attempt to whisk Fisher in and out of Court  
14 in some low-key manner.'

15 Is that truthful and accurate?

16 A To the best of my recollection, yes.

17 Q 'Greenberg is quite certain that he and Kujawa, in  
18 their submissions to the sentencing judge, would  
19 have made reference to the Winnipeg crimes and the  
02:07 20 sentence he had received and was now serving.'

21 Is that truthful and accurate?

22 A Yes.

23 Q 'Greenberg was asked about his dealings with Sask.  
24 Justice and in particular Serge Kujawa. Greenberg  
25 stated that he had no problems whatsoever with



1 Kujawa having dealt with him on that occasion and  
2 other unrelated matters.'

3 Is that truthful and accurate?

4 A Yes.

02:07 5 Q Next page, 'Asked whether he suspected that Sask.  
6 Justice was attempting to cover up the Milgaard  
7 aspect by delaying Fisher's appearance, Greenberg  
8 stated as far as he was concerned he had  
9 absolutely no knowledge of or any indication  
02:07 10 whatsoever that this was the case.'

11 Is that truthful and accurate?

12 A Yes.

13 Q And scroll down, 'In fairness, Greenberg indicated  
14 that hindsight appears to support this theory if  
02:08 15 this is the case, although he could not comment  
16 from his actual involvement.'

17 And, again, is that truthful and  
18 accurate?

19 A Yes.

02:08 20 Q And what did you mean by that?

21 A Well, as I indicated before, if you viewed it 20  
22 years later with a whole set of different  
23 information you could, I guess, think up some sort  
24 of, you know, conspiracy theory, but there was no  
02:08 25 reason for any conspiracy theory in 1971 when the



1 charges were disposed of.

2 Q Okay. And so you are saying, looking at it with  
3 hindsight with more information, you are saying  
4 you could see how one might think that?

02:08 5 A Absolutely.

6 Q And when you looked at it with hindsight did you  
7 think that?

8 A No, and I don't think I ever directed my mind to  
9 that, I -- other than saying that somebody could  
02:08 10 think that way.

11 Q Okay. And then, if you carry on, it says, 'it is  
12 interesting to note that Larry Fisher wrote a  
13 letter to Greenberg reminding him of  
14 solicitor/client privilege', and I think we've  
02:09 15 dealt with that.

16 Next page, 'Greenberg stated he  
17 was not even familiar with the Miller murder or  
18 David Milgaard at the time. One would assume from  
19 this Fisher made no mention of his concerns in  
02:09 20 this area.'

21 And again, I think that's what  
22 you have told us today, is that truthful and  
23 accurate?

24 A Yes it is.

02:09 25 Q If we could then go to 034910, and these appear to



1 be notes of another officer of the same meeting,  
2 Mr. Greenberg, and there's just a couple of  
3 comments here. Go to 034913, please.

4 A Yes.

02:10 5 Q And at the top -- and, again, I think this is just  
6 another officer's notes of the same interview. It  
7 says:

8 "It is a fact that Fisher pleaded guilty  
9 to four S'toon charges. Initially  
02:10 10 Fisher was looking at two S'toon  
11 charges. Mr. Greenberg recalls being  
12 advised that other charges may be  
13 pending as a result of further  
14 investigation."

02:10 15 Again, is that something you would have told the  
16 RCMP or --

17 A It may be.

18 Q Do you have any recollection of that?

19 A No I don't.

02:10 20 Q And then scroll down. It says:

21 "According to Mr. Greenberg it was more  
22 convenient to proceed by way of a Direct  
23 Indictment given the process that would  
24 have to have been followed otherwise.

02:10 25 Mr. Greenberg had asked for concurrent





1 time on the S'toon charges, which was  
2 agreed to. The whole basis of disposing  
3 of the S'toon charges was on the  
4 understanding that Fisher would receive  
02:11 5 concurrent time to his Wpg sentence.  
6 Mr. Greenberg speculated that if Fisher  
7 felt that he was going to get  
8 consecutive time he would have pleaded  
9 N/G to the S'toon charges. Mr.  
02:11 10 Greenberg believes that Fisher would not  
11 have pleaded guilty to anything that he  
12 was not prepared to so plead too."

13 And is that truthful and accurate?

14 A Yes.

02:11 15 Q And then it says:

16 "Cannot recall when the concurrent  
17 sentences issue was agreed on."

18 And I think that's what you told us?

19 A Yup.

02:11 20 Q And then at the bottom of the page:

21 "A Direct Indictment not unusual in  
22 Manitoba according to Mr. Greenberg. In  
23 fact, Mr. Greenberg stated that the  
24 process of proceeding by a Direct  
02:11 25 Indictment may have been a request of



1 his."

2 And again, similar to the other comment,  
3 that's -- is that accurate and truthful?

4 A Yes.

02:11 5 Q And it says:

6 "The actual time it took in getting the  
7 Saskatoon charges cleared up was not a  
8 major concern at the time. Fisher  
9 wanted to get his Sask. charges cleared  
02:12 10 up. Mr. Greenberg's area of  
11 concern/frustration appears to have been  
12 over his desire to get the charges  
13 disposed of all at the same time in  
14 Wpg."

02:12 15 And is that a truthful and accurate recording?

16 A Yes.

17 Q Thank you, Mr. Greenberg, those are all my  
18 questions. I think there are a few counsel who  
19 will be asking you questions, I'll just check.

02:13 20 *(Discussion off the record)*

21 **BY MR. WOLCH:**

22 Q Mr. Greenberg, I say this for the record, that I  
23 am Hersh Wolch and I am counsel for David  
24 Milgaard.

02:13 25 A Yes.



1 Q Your firm, with Roy Gallagher and Alvin McGregor  
2 and people like that, did an awful lot of work for  
3 the police force as I recall?

4 A Well, Mr. Gallagher was Counsel to the City of  
02:13 5 Winnipeg police force for a number of years, --

6 Q And --

7 A -- until his death.

8 Q And so that you had, yourself and through your  
9 firm, an awful lot of experience with police  
02:14 10 officers as friends, as acquaintances, as clients,  
11 every which way?

12 A Yup.

13 Q And would it be fair to say that police generally  
14 take pride in their accomplishments?

02:14 15 A Generally. Generally.

16 Q That is, if they capture somebody who is a real  
17 bad guy, they are kind of proud of it?

18 A That's been my experience.

19 Q And you look in the paper, for example in the  
02:14 20 newspapers, and you see, you know, 'police raid  
21 house and get a million dollars of dope', and it's  
22 all over the pages and all the accolades are  
23 there; right?

24 A Right.

02:14 25 Q And you capture a rapist or something you like to



1           publicize it and let it be well-known, that's  
2           pretty obvious, isn't it?

3           A       Yes.

4           Q       And going back into the late '60s/early '70s, I'm

02:15 5           going to suggest to you that in those days it  
6           would be some -- it was sometimes difficult to  
7           waive charges from one jurisdiction to another.  
8           Now I pause there to say we know that's not the  
9           case here, because we're not waiving charges,  
02:15 10          we're sending somebody back. But I mean in  
11          general terms, for example if somebody was charged  
12          with a serious offence in Brandon, Manitoba and  
13          wanted to plead guilty in Winnipeg, it may very  
14          well be that the Brandon authorities would say  
02:15 15          "no, this happened in Brandon, we want our people  
16          to see it, we want it known here, we don't want it  
17          in another jurisdiction"; do you recall that  
18          happening in those days?

19          A       There is no question that locally, as you've put  
02:16 20          it, from Brandon to Winnipeg, or from Dauphin to  
21          Winnipeg, or Saskatoon to Winnipeg, or whatever it  
22          was, that there were certain 'collars', as they  
23          are colloquially referred to, which the police  
24          force wanted to be dealt with within the  
02:16 25          jurisdiction.



1                   There is no question that  
2                   judiciary, in certain instances, would be unhappy  
3                   if a matter was moved from one jurisdiction to  
4                   another because it would escape, in fact, maybe  
02:16 5                   some attention, and wouldn't allow them to make a  
6                   point in that particular case in that area.

7           Q       One of the basic principles of criminal law is to  
8                   deter others from committing crime, it's one of  
9                   the foundations, correct?

02:16 10          A       Yes.

11          Q       And so that the authorities, if there was a crime  
12                   in Saskatoon, for example, the judiciary, the  
13                   police, prosecutors, would want the public to know  
14                   what happens in Court to people who commit serious  
02:17 15                  crimes in Saskatoon; correct?

16          A       Yes.

17          Q       So, accordingly, I -- if, for example, somebody  
18                   was picked up in another jurisdiction, and the law  
19                   then allowed it, and they wanted to plead guilty  
02:17 20                  in British Columbia, the authorities would likely  
21                  say "no, it's an offence here, and the people have  
22                  to know about it"?

23          A       It would not be unusual for them to oppose it.

24          Q       Yeah. Now I would like to turn to a bit of a  
02:17 25                  different area, and I'm going to suggest to you



1           that after 35 years or so perhaps your memory  
2           isn't as good as it might be on one particular  
3           issue, and that is the use of direct indictments.  
4           Now I think it may be agreed that their use may  
02:18 5           vary from province to province.

6                       Now Mr. Commissioner might know  
7           that in Alberta they are hardly ever used, or  
8           hardly ever have been, but it does vary from  
9           province to province.

02:18 10                      And I'm going to suggest to you  
11           that in Manitoba they were almost unheard of. And  
12           I'm going to explain to you why, and hope, if you  
13           will agree with me, that they aren't convenient  
14           because you have to go to the Attorney General to  
02:18 15           get his signature?

16       A           Correct.

17       Q           Right? And the Attorney General may not be  
18           available on short notice, and you may have to  
19           explain it thoroughly to the Attorney General,  
02:18 20           through his aides, get to the Attorney General,  
21           who is reluctant to enter into the forum, so for  
22           that reason they are hardly ever used.

23                      And what I am saying to you is  
24           this, that where they were used would be if a  
02:19 25           prosecutor could convince the Attorney General



1           that witnesses were in jeopardy, the case was in  
2           jeopardy, there was some urgent need to take away  
3           from the accused's right to a preliminary hearing.  
4           However, I would suggest that for a plea of guilty  
02:19 5           you wouldn't need it, because you could consent  
6           commit?

7           A       Correct.

8           Q       Which is a fairly expedient process.

9           A       Right.

02:19 10          Q       So what I am saying to you is that in Manitoba it  
11               was not for many years, until many years later,  
12               that direct indictments were even used at all?  
13               Can you recall that? And I may refresh your  
14               memory if you wish.

02:19 15          A       Well, you may be right. I can think of a number  
16               of direct indictments, before I ceased practicing  
17               law, that occurred, and basically under the  
18               circumstances that you have outlined. You had the  
19               ones with the Posse, etcetera, where there were a  
02:20 20              large number of accused, where there was a  
21              question of protecting the witnesses, etcetera,  
22              and you are right that under a guilty plea that  
23              would be an unusual circumstance.

24          Q       But the case you are talking about was in the  
02:20 25              1990s?



1 A Yes.

2 Q Right?

3 A Right.

4 Q I'm going to suggest to you, in Manitoba, the

02:20 5 first was the Bingo case, the Kinsmen Bingo --

6 A Right.

7 Q Right? And where a lawyer was charged in that  
8 case?

9 A Right.

02:20 10 Q And the defence challenged the direct indictment  
11 and took it to Court, that they were depriving him  
12 of the right, and that was after 1970?

13 A Quite likely.

14 Q And then some years later there was Nielson and  
02:20 15 Stoler, which went to the Supreme Court?

16 A That is correct.

17 Q Right? It's a reported case in the Supreme Court  
18 where they challenged the Manitoba Attorney  
19 General taking away these accuseds', who happened  
02:21 20 to be police officers, right to a preliminary  
21 hearing?

22 A Correct.

23 Q And so I'm suggesting that when you are talking  
24 about direct indictments you are thinking of the  
02:21 25 '90s, perhaps, and not the '70s when they were





1           virtually non-existent?

2           A       Well there is no question that my recollection is  
3                   clouded by the '90s. The only significant  
4                   difference was that, in the instances that you  
02:21 5                   have referred to, the defendant or the accused was  
6                   opposed to the direct indictment. Okay.

7           Q       Right.

8           A       This was a situation where under the  
9                   circumstances, and rightly or wrongly, you had an  
02:21 10                  accused who was not opposed to losing those  
11                  rights.

12          Q       I agree with you, but in those cases you didn't  
13                  need a direct indictment because you could simply  
14                  consent to a committal, which would be faster?

02:21 15          A       That is correct.

16          Q       That is you could walk into an ordinary docket day  
17                  and say to the Court "we are consenting to  
18                  committal, the Crown is consenting, let's go"?

19          A       Yes.

02:22 20          Q       As opposed to waiting for an Attorney General, who  
21                  has political considerations, to make a decision;  
22                  correct?

23          A       Correct.

24          Q       So what I am suggesting to you is that, back in  
02:22 25                  those days, direct indictments in Manitoba -- and



1 we may hear different evidence in Saskatchewan --  
2 that they were virtually non-existent?

3 A I stand corrected.

4 Q And as far as going to Saskatchewan, it would have  
02:22 5 been possible, I suggest, to fix a date in  
6 Saskatoon, arrive in the morning, consent commit,  
7 have the prosecutor sign an ordinary indictment,  
8 and plead guilty in the afternoon; that could be  
9 done very quickly?

02:23 10 A I am taking what you are saying, that that could  
11 be done, and if that could be done that would have  
12 satisfied my desires fully.

13 Q But the bottom line is you didn't really care as  
14 long as it got done?

02:23 15 A That's right.

16 Q I'm a little confused, and perhaps you can help me  
17 on this, there seems to be some conflicting issues  
18 here. Fisher wanted to plead guilty to Sask. --  
19 Saskatchewan charges; correct?

02:23 20 A Yes.

21 Q But do I take it he only wanted to plead guilty if  
22 it was concurrent time?

23 A He wanted to be able to try to assure himself that  
24 he was not going to get any additional time to the  
02:24 25 time he had received in Manitoba. So, yes, his



1 main desire was to work out an arrangement which  
2 would get him no more time than what he was  
3 sentenced to --

4 Q So --

02:24 5 A -- in Saskatchewan, which would mean concurrent  
6 time.

7 Q Okay. But we see, in various documents, this sort  
8 of word "remorse" enter into it, he felt  
9 remorseful?

02:24 10 A Yes.

11 Q I mean he's remorseful as long as he doesn't get  
12 an extra day in jail; is that the idea?

13 A I don't know that his remorse was restricted to  
14 how many days in jail he got, I mean his remorse  
02:24 15 was part of the entire disposition and plea  
16 bargain, etcetera, and before the Court. But the  
17 end result was, as with 99.9 percent of your  
18 accused clients, they want to know, with whatever  
19 degree of certainty they can, what they are  
02:24 20 looking at.

21 Q Okay. But in Saskatchewan you had almost no  
22 bargaining chips, did you, I mean the man had  
23 confessed to Fort Garry and to Detective Karst?

24 A Right.

02:25 25 Q So not much of a bargain.



1 A Nope.

2 Q I mean it's --

3 A I never suggested I had great bargaining power.

4 Q No. And as far as the confessions by serial

02:25 5 rapists to a rape, it's a real uphill battle to

6 prove that the statement was not voluntary in

7 those days, and even perhaps now?

8 A Yes.

9 Q That is Detective Huff you know to be a very

02:25 10 presentable witness?

11 A Yes.

12 Q And Detective Karst -- well, I guess you don't

13 know him. But, in any event, these are witnesses

14 who could come before a Court, they would likely,

02:25 15 I'm sure, say "this man confessed voluntarily";

16 correct?

17 A Correct.

18 Q Well in fact it's not that surprising, in the

19 sense he was caught in the act on one rape, that

02:26 20 he would be amenable to pleading -- to admitting

21 his transgressions.

22 So what I am saying is that

23 really, from your perspective, you had nothing to

24 bargain with in terms of Saskatchewan; would that

02:26 25 be fair?



1 A It would be fair.

2 Q I want to deal with your appearance before Mr.  
3 Justice Matas. Justice Matas was an extremely  
4 highly-respected judge who went on to the Court of  
02:26 5 Appeal; was that --

6 A That's correct.

7 Q And there was some mention in the presentence  
8 report, and I don't have it in front of me, that  
9 Fisher was facing two to three charges in  
02:26 10 Saskatchewan?

11 A Yes.

12 Q Correct? And knowing Justice Matas as you do, or  
13 did rather, that would have no bearing on the  
14 sentence; would it? I mean he's not a  
02:27 15 convicted --

16 A No.

17 Q There is no facts given, if anything at all, it  
18 might reduce the sentence because --

19 A I can't get into the mind of Justice, Mr. Justice  
02:27 20 Matas.

21 Q But what I am saying is, from a judge's  
22 perspective, the fact that this man was facing  
23 more charges and would likely get more time would  
24 go more to reducing than increasing, knowing that  
02:27 25 there's going to be more charges in Saskatchewan?



1 A I just can't say that.

2 Q Okay.

3 A I mean I don't know what -- what --

4 Q Okay.

02:27 5 A -- how it would affect him, as to whether he would  
6 increase his disposition or decrease his sentence.  
7 I don't know what he would do with it.

8 Q But knowing him as the jurist he was you would  
9 appreciate that he was not going to let that kind  
02:27 10 of remark influence him one way or the other  
11 particularly?

12 A I knew him to be a very fair-minded judge,  
13 etcetera, and my belief would be that he would not  
14 prejudice his decision, but I don't know what  
02:28 15 effect it would have on him.

16 Q But you are aware that Mr. Morton did advise  
17 the -- Mr. Kujawa, I believe, that Saskatchewan  
18 played no part in the Manitoba sentence? I think  
19 that was shown to you.

02:28 20 A No, I believe that when he wrote to Heald he  
21 indicated that the Saskatchewan charges had not  
22 been given, information regarding them had not  
23 been given to Matas, which was not the --

24 Q Okay. But from the Saskatchewan point of view the  
02:28 25 information they got was that Saskatchewan was



1 fair game to go for whatever you want?

2 A I assume so, yes.

3 Q That was the instruction from Morton to Kujawa  
4 that we have seen? I can pull up the document if  
02:29 5 you like, --

6 A Yeah.

7 Q -- but that was the instruction there was, you  
8 know, "go for whatever you want, he never got any,  
9 none of this penalty reflects the crimes in  
02:29 10 Saskatchewan"; that's what he conveyed?

11 A You could take that --

12 Q Yeah.

13 A -- position.

14 Q And Morton clearly was out to suitably punish Mr.  
02:29 15 Fisher, he wasn't holding back?

16 A I know of no reason why he would.

17 Q Well he wanted 15 years, I think you said,  
18 correct?

19 A Right.

02:29 20 MR. FOX: Actually, wasn't it 10 to 15?

21 A 10 to 15.

22 MR. WOLCH: But that was the range, he  
23 wanted 15, you wanted 10. I don't think he  
24 wanted 10 or 10 to 15.

02:29 25 COMMISSIONER MacCALLUM: I think I would



1           like to have that document ID, please?

2           MR. WOLCH:   Sorry?

3           COMMISSIONER MacCALLUM:   I'd like to have  
4           the document ID, please?

02:29 5           MR. WOLCH:   Well the document is, I think  
6           was 032190, I believe.

7           COMMISSIONER MacCALLUM:   Morton to Heald.

8           MR. WOLCH:   Yeah, Morton to Heald is  
9           053206.

02:30 10          MR. HODSON:   There might be a different  
11          version.

12          MR. WOLCH:   Might be a different version,  
13          yes.

14          COMMISSIONER MacCALLUM:   053 --

02:30 15          MR. HODSON:   206.

16          COMMISSIONER MacCALLUM:   -- 206.   Do you  
17          want him to read it now?

18          BY MR. WOLCH:   Sorry, Mr. Commissioner, but this is  
19          the portion I'm referring to.   If you can:

02:30 20                 "You might wish to advise your crown  
21                 attorney handling the prosecution of  
22                 Fisher that at no time was Fisher's  
23                 Saskatchewan involvement made known to  
24                 the sentencing Judge and therefore this  
02:30 25                 involvement was not taken into account





1 in his 13 year sentence."

2 And I'm suggesting to you, Mr. Greenberg, that  
3 that is an invitation to the Saskatchewan Crown  
4 to go after him fully for the Saskatchewan  
02:30 5 offences?

6 A That's -- you are certainly entitled to take that  
7 position.

8 Q Do you disagree with that from the --

9 A No, I don't.

02:30 10 Q Right.

11 A I don't. He put that information to Heald, I  
12 pointed out that in my recollection of it that is  
13 not totally accurate, because it was information,  
14 it may not have been stressed, but it was  
02:31 15 information that was in the presentence report  
16 that would have been in front of Judge Matas.

17 Q Yes.

18 A What he did with that information in his mind I  
19 don't know.

02:30 20 Q Right.

21 A But certainly it was open to Saskatchewan to do as  
22 they were. They weren't bound by the Manitoba  
23 decision.

24 Q Well, the fact that they weren't bound, but going  
02:31 25 further than that, as his counsel you would have



1 appreciated that in total the Saskatchewan charges  
2 would call for a more serious sentence than the  
3 Manitoba charges? Manitoba were two offences, one  
4 which you say may not have involved a weapon and  
02:31 5 in Saskatchewan we have four.

6 A That's right.

7 Q So Saskatchewan would call for considerably more.  
8 If 13 years was appropriate here, 20 could have  
9 been appropriate there?

02:31 10 A Correct.

11 Q And yet he got nothing really, four years  
12 concurrent?

13 A That's correct.

14 Q So looking back at it, can you see any reason why  
02:32 15 he would not get a day extra for all those  
16 Saskatchewan offences, other than perhaps good  
17 lawyering on your part, but can you see any reason  
18 why Saskatchewan would give him, what I think we  
19 used to call in those days, a kiss?

02:32 20 A Mr. Wolch, my job on the first retainer on behalf  
21 of Mr. Fisher to the end of the disposition of the  
22 charges in Saskatchewan was to do the best  
23 possible job I could do as defence counsel, to  
24 dispose of the charges which he faced for the  
02:32 25 minimum period of time. I tried to do that, okay.



1           Whether you say I did a good job or I did a bad  
2           job or I succeeded or I failed, I can't tell you  
3           that, I can only tell you that I did whatever I  
4           could for Larry Fisher, and if you say he should  
02:33 5           have gotten 20 years but he only ended up getting  
6           13, then I think I did a good job, but somebody  
7           else may not.

8           Q       No, I'm sorry, my question is this. When you were  
9           dealing with Saskatchewan and you had no  
02:33 10           bargaining chips, you had confessions, you had  
11           Manitoba Crown able to say that our judge played  
12           no, had no reference to Saskatchewan, can you  
13           think of any reason from your perspective why  
14           Saskatchewan would be so kind to your client? If  
02:33 15           you can't, you can't.

16          A       I can't and I won't speculate.

17          Q       I'm not asking you to.

18          A       It's something I don't know anything about.

19          Q       I'm not asking you to speculate, I'm asking if you  
02:33 20           can give a reason.

21          A       I have no reason.

22          Q       And can you think of any reason why, with the  
23           charges laid in Saskatoon, why Fisher would not be  
24           brought back to Saskatoon where the police and the  
02:34 25           prosecution could take pride in his arrest?



1 A I can offer you no explanation for that.

2 Q You say that you now see things in a different  
3 light looking at -- with the benefit of more  
4 information. You said that a couple of times  
02:34 5 today?

6 A I think I did.

7 Q Yeah. But the information you have now I suggest  
8 to you was the information that was in the hands  
9 of other people back then?

02:35 10 A Some of it was obviously in the hands of some  
11 people, but whether they connected the dots or  
12 didn't connect the dots, whether they should have  
13 connected the dots, shouldn't have, I would be  
14 speculating, I would be guessing.

02:35 15 Q I appreciate that. And finally, Mr. Greenberg,  
16 you indicated that you have no evidence of a  
17 cover-up, I think you used those words.

18 A Yeah.

19 Q You were asked that question.

02:35 20 A I don't. I mean, it just wasn't -- it wasn't  
21 something I even thought about before I read it in  
22 the papers.

23 Q Okay. But my point to you is this, you acted for  
24 Mr. Fisher?

02:35 25 A Right.



1 Q You are aware now that he is the killer of Gail  
2 Miller?

3 A The courts have so said.

4 Q You didn't know anything about it?

02:36 5 A No.

6 Q You didn't know anything about that case at all  
7 from any source at that time?

8 A Mr. Wolch, I'll tell you how naive and innocent,  
9 and I guess you can probably add stupid to that  
02:36 10 list, I happened to occupy an office in the same  
11 building that you did, okay, if you will recall,  
12 and it wasn't until the Milgaard Inquiry was in  
13 its heyday, okay, that the name Fisher and  
14 Milgaard ever came together, okay, that I ever  
02:36 15 heard the two in conjunction with each other,  
16 okay, so I'm saying to you that I never thought of  
17 Fisher in conjunction with Milgaard or Milgaard in  
18 conjunction with Fisher until 20 years after I had  
19 anything to do with the case, so I'm saying to you  
02:36 20 no, at the time I dealt with Mr. Fisher I knew  
21 nothing that made me connect one with the other.

22 Q So perhaps you were the victim of the cover-up.  
23 Thank you.

24 A If there was one. I don't know.

02:37 25 COMMISSIONER MacCALLUM: Are you going to



1 be more than 15, Mr. Fox? If so, we'll probably  
2 take a break.

3 MR. HODSON: I think there's Mr. O'Keefe as  
4 well.

02:37 5 MR. FOX: Maybe if there's a couple.

6 COMMISSIONER MacCALLUM: I think so, yes.

7 (*Adjourned at 2:40 p.m.*)

8 (*Reconvened at 2:52 p.m.*)

9 BY MR. FOX:

02:52 10 Q Mr. Greenberg, I'm Aaron Fox, I'm the lawyer for  
11 Eddie Karst, he was one of the detectives from the  
12 Saskatoon City Police that was involved in the  
13 David Milgaard investigation. I just wanted to  
14 ask you a couple of questions. You mentioned in  
02:52 15 going back to 1970 when you were dealing with,  
16 representing Mr. Fisher, that if the police wanted  
17 to speak to your client, they now know you are  
18 representing Mr. Fisher, your recollection is that  
19 generally they would contact you first about  
02:53 20 talking to him?

21 A It was common courtesy in most -- of many cases,  
22 but there were all sorts of exceptions to the  
23 rule.

24 Q They might take it upon themselves to talk to him  
02:53 25 or he might invite -- for example, if they are



1 transporting him or something like that and say I  
2 would like to talk to you about something and  
3 occasionally you have a client who sort of ignores  
4 your advice and goes ahead and does what he wants  
02:53 5 to do, that can happen?

6 A That can happen. A classic case is a person who  
7 was an inmate in a psychiatric hospital who the  
8 police saw fit to speak to and take a statement  
9 from when they knew I was acting. There's all  
02:53 10 sorts of variations.

11 Q And the law in terms of admissibility of  
12 statements has changed dramatically since 1969,  
13 '70, certainly the implementation of the Charter  
14 of Rights that came in after that changed the law  
02:54 15 dramatically, but going back to 1970, do you have  
16 a recollection, for example, that if the police  
17 knew that you were representing a particular  
18 accused and didn't tell you they were going to  
19 speak to him, might that affect the admissibility  
02:54 20 of the statement that they took? Are you able to  
21 comment on that?

22 A No. It would depend entirely on circumstance.

23 Q It would depend on the circumstances?

24 A Yeah.

02:54 25 Q It would just be another issue that would go into



1 the mix in deciding whether that statement might  
2 ultimately be admissible?

3 A That's right.

4 Q Okay. And I thought when you answered Mr. Hodson,  
02:54 5 I may have got this wrong, but did you have any  
6 recollection of the police contacting you about  
7 speaking to Larry Fisher about the Saskatchewan or  
8 Saskatoon offences?

9 A I have no recollection of them speaking to me  
02:55 10 prior to speaking to him about those charges.

11 Q And that would be both the Fort Garry police or  
12 the Saskatoon detectives that came out there?

13 A Both.

14 Q Okay. Now, I want to just talk about sort of  
02:55 15 acting as defence counsel, and you were an  
16 experienced defence counsel in 1970 and you've  
17 been more experienced since that time. Would it  
18 be fair to say that if I'm representing an  
19 individual faced with a rape charge or a sexual  
02:55 20 assault charge and it looks like I'm contemplating  
21 entering a guilty plea or they may have a strong  
22 case against me, one of the last things I want to  
23 do is force a complainant to testify and arouse  
24 more sympathy, so to speak, for the case against  
02:55 25 my client. Would you agree with that?





1 A Yes, absolutely.

2 Q You've indicated there might be times when a  
3 preliminary hearing might bring out some evidence  
4 that would be of assistance to an accused, but  
02:56 5 certainly looking at, for example, the two charges  
6 that Larry Fisher was facing in Manitoba in 1970,  
7 forcing the Crown to call evidence at a  
8 preliminary hearing probably wouldn't have been  
9 very helpful?

02:56 10 A I can't think of anything relevant to the charges  
11 that I dealt with on behalf of Mr. Fisher which  
12 would have made me want to make anything more  
13 public than what it was.

14 Q Okay.

02:56 15 A There was nothing good that was going to come out  
16 of that as far as I could see.

17 Q Right. Now I want to talk about the direct  
18 indictment procedure. Is it fair to say that as  
19 defence counsel there are times when a direct  
02:56 20 indictment is very objectionable?

21 A Absolutely.

22 Q And that would be where the Crown for some reason  
23 has made the decision that they are going to  
24 direct indict your client and effectively force  
02:56 25 you to go straight to trial, if that is the



1 course, without the benefit of a prelim?

2 A Absolutely.

3 Q And so that procedure, fair to say, doesn't happen  
4 all that often fortunately, where the Crown would  
02:57 5 make the decision to force you to go directly to  
6 trial without the benefit of a prelim?

7 A Even less often than, I guess before Mr. Hersh  
8 Wolch corrected me, I thought it occurred.

9 Q Sure.

02:57 10 A It does occur, but it is not an everyday  
11 occurrence by any means.

12 Q And in a situation like that, political  
13 considerations, is the Attorney General going to  
14 consent to it, what's the public going to think  
02:57 15 about it, you are trampling, to some extent, on  
16 the interests of the accused, although we see now  
17 the federal government is very much promoting  
18 eliminating preliminary hearings, but certainly  
19 all those factors come into play in that  
02:57 20 circumstance; would that be correct?

21 A Correct.

22 Q Quite a different situation where the accused  
23 says, yeah, I'm prepared to go along with a direct  
24 indictment because I want to get this thing over  
02:57 25 with as quick as I can?



1 A That is a difference that I would argue.

2 Q Sure. And the suggestion was made to you that,  
3 well, you know, you could just have a consent  
4 committal, do it -- take him to Magistrates' Court  
02:58 5 in the morning, move him -- get a consent  
6 committal, get the indictment, get him into  
7 Queen's Bench Court in the afternoon and deal with  
8 it all in one day, that was the suggestion that  
9 Mr. Wolch put to you, and I suppose in a perfect  
02:58 10 world that would be a pretty good deal; correct?

11 A Certainly under absolutely perfect conditions you  
12 might be able to make that happen.

13 Q Sure. In 1970, prior to Mr. Fisher pleading  
14 guilty in Manitoba, do you remember where he was  
02:58 15 remanded, where he was being held?

16 A In Winnipeg?

17 Q Yes.

18 A At various times between Vaughn Street and  
19 Headingley jail.

02:58 20 Q Okay. Would I be correct that he basically would  
21 be a few minutes away from the court where he  
22 would have to appear?

23 A If he was at Headingley, he would be -- maybe in  
24 high traffic conditions or something, maybe an  
02:59 25 hour, but more or less half an hour at the most



1           when he was at Headingley.

2       Q       Close by?

3       A       Relatively, yeah.

4       Q       And in Manitoba, for the Manitoba charges, the  
02:59 5       procedure that was employed there was a consent  
6       committal and then eventually a guilty plea and  
7       Court of Queen's Bench?

8       A       That's correct.

9       Q       And that procedure, I'm just looking at the  
02:59 10      documentation, it looks like the consent committal  
11      took place February 12th, 1971, and I think that's  
12      document 002035, I think that's already been  
13      reviewed.

14      A       I believe so.

02:59 15      Q       I'm not sure, Mr. Commissioner, we need to bring  
16      that up, but that's just a copy of the  
17      information, and I believe if you go through  
18      that -- there it is, that portion right there.

19                   COMMISSIONER MacCALLUM:   What's the date?

20      BY MR. FOX:

21      Q       February 12th, 1971, accused appeared before -- if  
22      we could highlight that.   Thanks.

23                   "Accused appeared before Mag.

24                   Consent committal - Trial by Judge and  
03:00 25      Jury.   L. Greenberg, Counsel for



1 Defence."

2 That looks like the date that he consented to the  
3 committal?

4 A That's correct.

03:00 5 Q So basically at that point in time basically he's  
6 in a position, you could go straight to Queen's  
7 Bench now if you want to enter a guilty plea?

8 A That's correct.

9 Q But having said that, it looks like it still  
03:00 10 didn't happen until May 28th, 1971, and that's  
11 document 326232.

12 A That's correct, because the next, since it was  
13 February 21st, if my calculations are correct, the  
14 next assizes or jury trials would have been the  
03:00 15 spring assizes which would have been April, May.

16 Q So it wasn't just as easy as sort of appearing in  
17 Magistrates' Court in the morning and then just  
18 popping over to Queen's Bench in the afternoon, it  
19 was a little more complicated than that?

03:00 20 A If you want to take a perfect world, I guess you  
21 could have, by arrangement, had a special assize,  
22 you could have brought him in front of a Q.B.  
23 judge sometime before the May date, but that  
24 was --

03:01 25 COMMISSIONER MacCALLUM: What was that,



1 please?

2 MR. FOX: Sorry, Mr. Commissioner?

3 COMMISSIONER MacCALLUM: May what?

4 BY MR. FOX:

03:01 5 Q May 28th, '71 is when he was finally sentenced.

6 But that isn't what happened in this particular  
7 case?

8 A No.

9 Q Now, after May of '71 in terms of the direct  
03:01 10 indictment, I think you answered this, and you  
11 said repeatedly it looked like one of the quickest  
12 ways of getting this thing resolved; correct?

13 A To me it did, yes.

14 Q And otherwise, unless you could deal with it all  
03:01 15 in a day, you would have had to have made an  
16 arrangement to get him from a federal penitentiary  
17 to court to consent to the committal and assuming  
18 he was taken back, then make arrangements to get  
19 him back again to deal with the sentencing in  
03:01 20 Court of Queen's Bench?

21 A I can only say from going back to the charges that  
22 are here, whatever, under the normal circumstances  
23 the charges that were laid in Saskatoon would have  
24 in fact had to have been brought before the court  
03:02 25 and placed on a docket I would assume somewhere in



1           Saskatoon. Mr. Fisher would have been  
2           transported, once he was transported to Prince  
3           Albert, would have then had to have been  
4           transferred or transported to Saskatoon to appear  
03:02 5           on the docket to enter a not guilty plea and  
6           either at that time indicate that he wished to  
7           plead not guilty and have a judge and jury trial,  
8           etcetera, and whatever, and the procedure. Now,  
9           whether that could have all been done in one day,  
03:02 10          I have my doubts, but in a perfect world maybe it  
11          could have been.

12        Q           It didn't happen all in one day in Manitoba?

13        A           No.

14        Q           No.

03:03 15       A           But that, other than that, what would have  
16           happened, it would have been remanded, then it  
17           would have gone to another date, to another date  
18           and ultimately -- ultimately a trial date for the  
19           trial before a judge and jury which he then could  
03:03 20          have consented to the committal on would have been  
21          set, but that would have been, I would assume  
22          under normal circumstances, would have been months  
23          down the line.

24        Q           And would have entailed again having to make  
03:03 25          arrangements from the penitentiary to bring him



1 in?

2 A Yeah, and it certainly would have, at that stage,  
3 I would think probably taken me out of the  
4 picture. Now, not that that might have been the  
03:03 5 best thing in the world for Mr. Fisher, but it  
6 would have taken me out of the picture because  
7 there was no way that I was going to be running to  
8 Saskatoon every two weeks or a month, whatever it  
9 is, to keep the steps going to get it to the point  
03:03 10 where you could have a consent committal.

11 Q Right.

12 A And you had to follow those steps. I mean, it  
13 wasn't just a matter, as I understood it, in  
14 either Saskatchewan or Manitoba, it wasn't just a  
03:04 15 matter of bringing him on the docket on the first  
16 date that he was on there for remand and agreeing  
17 to a consent committal.

18 Q So if I can sum up then, and Mr. Kujawa and Mr.  
19 MacKay or anybody else will have to answer for  
03:04 20 what they thought or were thinking at the time,  
21 but from your perspective simply as an experienced  
22 defence counsel at the time, the procedure that  
23 was finally employed, which was a direct  
24 indictment, get him in, get the plea done, that  
03:04 25 didn't strike you as being unusual?





1 A I guess it didn't strike me as being unusual and I  
2 don't believe it was unusual because it was the  
3 means to an end.

4 Q Right.

03:04 5 A I mean, that was the biggest problem. I didn't  
6 care what they called it, I didn't care how they  
7 dressed it or whatever it was, I just wanted to  
8 get him before a judge who was competent to hear  
9 the matter and could impose the sentence, so if  
03:05 10 you wanted to call that consent committal, that  
11 was fine with me. If you wanted to call it direct  
12 indictment, that was fine with me. Just get him  
13 before a judge and let's get this thing disposed  
14 of.

03:05 15 Q Okay. Now, I want to just talk about the sentence  
16 a bit. The sentence he received ultimately, the  
17 total sentence on all of these offences was 13  
18 years; in other words, what he got was a six and a  
19 half and a six and a half running consecutive out  
03:05 20 of Manitoba, that's a 13 year stint that he had to  
21 do, and also then concurrent time out of the  
22 Saskatchewan charges, so the totality of the  
23 sentence was a 13 year stint. Would that be  
24 correct?

03:05 25 A That's correct.



1 Q Would it be fair to say that for someone with no  
2 previous criminal record, that still was a fairly  
3 significant sentence, you would agree with that,  
4 and, Mr. Greenberg, I'm not commenting on whether  
03:06 5 you cut him a good deal or a bad deal or whatever,  
6 but stepping back looking at it, did you think at  
7 the time, boy, this guy got off awful easy?

8 A I have to say in all fairness and all modesty,  
9 that I think I got him a good deal.

03:06 10 Q Okay.

11 A I think I may have gotten him an exceptional deal,  
12 okay. Whether it should have been 18 or 20 as Mr.  
13 Wolch has suggested, I was certainly not going to  
14 stand up in front of His Lordship Mr. Justice  
03:06 15 Johnson and protest to the winds you should have  
16 given him more time, Mr. Johnson.

17 Q Right.

18 A My Lord, he should have gotten 20 under the  
19 circumstances. I did that once at the Court of  
03:06 20 Appeal in Manitoba, I was arguing a case and the  
21 Justices looked down and said, "Mr. Greenberg, we  
22 won't have to hear from you on behalf of the  
23 Respondent, we're satisfied on hearing the  
24 Appellant that your case is not appealable and you  
03:07 25 are successful," and I said, "But, My Lords, I've



1           been paid by my clients to appear here today and  
2           to prepare for the trial," so they said, "What  
3           would you like to say?" and I said, "It's a lovely  
4           day outside," and they said sit down, please.

03:07 5           **Q**       That's good. I'm going to ask you, Mr. Greenberg,  
6           do you have a recollection of dealing with  
7           sentence for a first time offender, no previous  
8           record charged with something less than murder,  
9           where there's a mandatory sentence --

03:07 10          **A**       Yes.

11          **Q**       -- of a sentence of 13 years, how often that  
12          happened in your career? Do you agree with me  
13          that that would be a very rare instance?

14          **A**       I have to say to you that anything he got between  
03:07 15          10 and 15 I was not appealing and I was prepared  
16          to accept as being fair.

17          **Q**       That wasn't my question, sir. My question was  
18          that I'm suggesting to you that over the course of  
19          your career, a first time offender with no  
03:08 20          previous record receiving a 13 year sentence would  
21          be an exceptionally heavy sentence?

22          **A**       It would be a heavy sentence.

23          **Q**       Mr. Wolch asked you about bargaining chips and the  
24          bargaining chips that you had in dealing with the  
03:08 25          Saskatchewan, or the Crown had in dealing with the



1 Saskatchewan offences. Are you -- and I take it  
2 you are not aware of what issues Mr. Kujawa  
3 thought might have existed in terms of the  
4 admissibility of the statements that he had from  
03:08 5 Mr. Fisher? Do you follow that?

6 A Yeah.

7 Q You are not aware of what he saw there, what  
8 issues he was aware of?

9 A Well, I'm aware now in retrospect and reading  
03:08 10 those documents that he wrote to --

11 Q Sure, sure, but at the time.

12 A But at the time, no.

13 Q And an issue could be, and we don't know, but an  
14 issue could be that if the police have said, if  
03:09 15 Mr. Fisher had said to the police, "Hey, I'll tell  
16 you about some Saskatchewan charges provided I can  
17 get them all cleared up at the same time and I  
18 don't have to do any extra time," and if he gave  
19 statements under those circumstances, that might  
03:09 20 raise an issue as to admissibility of those  
21 statements?

22 A Yeah.

23 Q And I'm looking in the material because we see  
24 there are two statements dealing with the  
03:09 25 Saskatchewan charges, that's (V3)----- and (V5)--



1 (V5)---, those are the two complainants, I think  
2 they are doc ID -- I don't think we need to bring  
3 them up, Mr. Commissioner, but the document IDs  
4 I've got on them are 012639, 012642. I'm not  
03:09 5 aware of any record or any confessions or  
6 statements by Mr. Fisher for the other two  
7 offences that he pled guilty to in Saskatchewan.  
8 Are you, sir?

9 A I'm not. I can't tell you that there weren't more  
03:09 10 confessions in either my file or the Crown's file  
11 or whatever, but those are the only two  
12 confessions that are here.

13 Q And I take it you have no specific recollection of  
14 any other confessions?

03:10 15 A No.

16 Q So again, it may be that the agreement was I'll  
17 plead guilty to all four of these even though  
18 there was no formal confession in place?

19 A It's possible.

03:10 20 Q And in your experience as a defence lawyer, it  
21 happens from time to time that an accused is now  
22 facing a charge or a series of charges where he's  
23 going to go down, so to speak, where he's going to  
24 be found guilty and so he's looking at pleading  
03:10 25 out and is interested as a result of that in



1 cleaning up some other matters so that he can get  
2 one sentence and serve one stint of time, that  
3 happens from time to time?

4 A Yeah, sure it does, yeah.

03:10 5 Q And it might be as simple as a fellow being  
6 charged with a break and enter and is prepared to  
7 admit to some other break and enters because he  
8 doesn't want to get released and have to come out  
9 and maybe face those other charges?

03:11 10 A Correct.

11 Q It might be an armed robbery, they finally got him  
12 cold on an armed robbery, he's got a couple of  
13 other ones he would like to clean up so that he's  
14 done with it?

03:11 15 A Yeah.

16 Q And it wasn't unusual here that if they had Mr.  
17 Fisher cold, so to speak, on the charges in  
18 Manitoba, he was going to look at a pretty  
19 significant sentence, that he might want to get  
03:11 20 everything else cleared up, but of concern that I  
21 might serve my sentence on Manitoba charges, get  
22 out and all of a sudden they pick me up on the  
23 Saskatchewan charges and I have to start all over  
24 again, nothing unusual about that?

03:11 25 A Nothing. It would only make sense if you were



1 facing 13 years in custody, that you didn't want  
2 to do seven of it and be just about ready for  
3 parole and they came back with four more new  
4 charges.

03:11 5 Q Sure, it only makes sense. Those are your words?

6 A Yeah, that makes sense.

7 MR. FOX: Thanks. Those are all the  
8 questions I have.

9 BY MS. KROGAN:

03:12 10 Q Mr. Greenberg, my name is Lana Krogan and I'm  
11 representing the provincial government. I had a  
12 few more questions to ask, but my friend Mr. Fox  
13 has covered many of the questions that I had to  
14 ask, but I still have a few more to put to you,  
03:12 15 and although you've danced the dance of direct  
16 indictments a few times today, I still have just a  
17 couple more questions to follow up on what Mr. Fox  
18 has asked if that's all right.

19 It was suggested to you by Mr.  
03:12 20 Wolch that the consent committal approach might be  
21 more expedient than proceeding by way of direct  
22 indictment and if I could just follow up on that  
23 point. One of the points that he put to you was  
24 that perhaps a direct indictment process would be  
03:13 25 a little more lengthy because, for instance, the



1 Attorney General might not be available to sign  
2 the direct indictment. Are you aware, sir, that  
3 when the Attorney General is not available, that  
4 there is always someone else who would stand in  
03:13 5 his stead, his or her stead to look after the  
6 affairs of that office?

7 A I can only assume --

8 Q It would make sense that that would be the case?

9 A -- it would make sense that there would be  
03:13 10 somebody. The President of the United States  
11 dies, there is somebody there to take his place  
12 immediately, so I can only assume there would be  
13 somebody.

14 Q Thank you, Mr. Greenberg. Now if it was the case,  
03:14 15 sir, that you requested, if it was the case -- and  
16 I appreciate that you don't, today, recall whether  
17 this is, whether you've made the request for the  
18 direct indictment -- but if that is the case, sir,  
19 would it make sense to you, then, that, because  
03:14 20 you had made that request, that you would have had  
21 previous experience in Manitoba with direct  
22 indictments?

23 A That is or was my recollection. Okay.

24 Q That you had experience with --

03:14 25 A That I had experience with a direct indictment.





1 And if, at any time, Mr. Kujawa  
2 or Mr. MacKay had come back to me and said "no  
3 direct indictment, the Attorney General is not  
4 prepared to proceed by way of direct indictment",  
03:14 5 then another way would have had to have been found  
6 to proceed with the matter.

7 Q Indeed.

8 A But that wasn't the case.

9 Q Exactly. And presumably the most expedient way,  
03:14 10 method, was chosen.

11 Sir, the suggestion was also put  
12 to you, and again it was canvassed by Mr. Fox,  
13 that perhaps -- the suggestion was that the  
14 consent committal could have taken place on one  
03:15 15 day, the indictment done up, and the matter dealt  
16 with presumably that day or shortly thereafter.  
17 In all the times, sir, that you, in your criminal  
18 practice, had you ever had that experience?

19 A Where it was all done in one day?

03:15 20 Q Exactly?

21 A No. But if I may, for clarity, I want to  
22 apologize, because I think I've led to this dance  
23 of the direct indictment and consent committal.

24 You have to remember that that  
03:15 25 is the way it proceeded in Manitoba, but that took



1 a lengthy period of time, it went all the way from  
2 September of 1970 until it was finally disposed of  
3 in May of 1971.

4 Q That's after the consent committal, sir?

03:15 5 A That's after the consent committal.

6 Q Correct.

7 A So the consent committal didn't happen  
8 instantaneously or overnight.

9 If you had started that same  
03:16 10 procedure coincidentally in Saskatchewan, you  
11 would have, or should have, or hopefully could  
12 have been at exactly the same position at  
13 virtually the same time. It would have been  
14 delayed somewhat because it wasn't until later  
03:16 15 than the arrest in Winnipeg that the Saskatchewan  
16 or Saskatoon charges became known, so there would  
17 have been some delay, but it would have meant  
18 proceeding as you did in Manitoba, or some similar  
19 way, unless a miracle occurred and you did it all  
03:16 20 in one day.

21 Q And further delay though, sir, wouldn't you agree  
22 with me that given Saskatchewan's position that  
23 they wanted the Manitoba charges dealt with first,  
24 that is they were awaiting the disposition of  
03:16 25 those charges before the Saskatchewan charges were



1           dealt with, understandably, that's a further  
2           delay?

3           A       Yeah. But Mr. Fisher was in Manitoba, he was in  
4           custody in Manitoba, he wanted to plead guilty to  
03:16 5           the charges in Manitoba, it didn't really make a  
6           lot of sense to take him out of custody as a  
7           charged person, not convicted, transfer him to  
8           Saskatchewan, dispose of charges in Saskatchewan,  
9           and then transfer him back to Manitoba to dispose  
03:17 10          of charges in Manitoba, so that to dispose of the  
11          Manitoba charges first is the only rational  
12          disposition as far as I was concerned.

13          Q       Right. That makes sense. And as well, as you've  
14          told us, sir, Mr. Fisher wished to serve his time  
03:17 15          in Saskatchewan; correct?

16          A       That was my understanding that that was his  
17          desire.

18          Q       So it would make, if I could put it to you this  
19          way, good sense times two that the Manitoba  
03:17 20          charges were dealt with first, then the  
21          Saskatchewan charges, because he ultimately wanted  
22          to end up in Saskatchewan; is that fair?

23          A       That's fair.

24          Q       All right. Mr. Greenberg, the issue of the  
03:18 25          conspiracy theory, and if I understand what your



1 evidence is you stated to the Commission that you  
2 didn't subscribe to that theory but you could  
3 understand how others might; is that correct?

4 A But only --

03:18 5 Q In hindsight.

6 A -- in hindsight --

7 Q Absolutely.

8 A -- after 20 years' events. Okay. The events that  
9 occurred 20 years after I acted for Fisher would  
03:18 10 now give me cause to look at Fisher differently  
11 than I did in 1971.

12 Q To look at Mr. Fisher differently?

13 A Yes.

14 Q Not --

03:18 15 A And the entire situation.

16 Q If I could just walk you through, Mr. Greenberg,  
17 the -- as we've discussed already, Saskatchewan  
18 was waiting for the Manitoba charges to be dealt  
19 with, those -- that eventually occurred in May of  
03:18 20 1971; is that correct?

21 A Right.

22 Q And there was a waiting period, as well, that Mr.  
23 Fisher be processed and brought to Saskatchewan?

24 A Right.

03:19 25 Q And that's through the PENITENTIARY SERVICES;



1 correct?

2 A Right.

3 Q And we have a letter, and this is document 010690,  
4 a letter dated June 25th, 1971 requesting a direct  
03:19 5 indictment by Mr. Kujawa, this was, the letter was  
6 addressed to Mr. Heald, who was the Attorney  
7 General?

8 A Yes.

9 Q And as I understand it, perhaps I hopefully will  
03:19 10 get evidence on this point, there was an election  
11 that occurred in Saskatchewan in July of 1971?

12 UNIDENTIFIED SPEAKER: June.

13 BY MS. KROGAN:

14 Q In June of 1971? Thank you. And the direct  
03:19 15 indictment that was requested by Mr. Kujawa wasn't  
16 signed. There is no further correspondence that  
17 we have, as I understand it, from yourself seeking  
18 that the matters be dealt with during that time,  
19 that is after June of 1971. November 29th we have  
03:20 20 a letter from, a copy of a letter from  
21 Saskatchewan Penitentiary Services wanting to know  
22 if the matters would be dealt with -- and, Mr.  
23 Commissioner, that document is, the number is  
24 042968 -- that seemed to be a reminder to the  
03:20 25 government that these matters were outstanding,



1           what's happening with them, and they need to be  
2           dealt with. And as I say, sir -- and I know my  
3           question is getting, I'm prefacing it quite  
4           liberally -- the next documentation we have then  
03:20 5           is the further request of December 8th, 1971, this  
6           is another request for a direct indictment from  
7           Mr. Blakeney.

8                               So as I see it there is a few  
9           months in there, sir, where, based on the  
03:21 10          documentation we have, you don't appear to be  
11          anxious to get the matters dealt with, then the  
12          further request is made in December for the direct  
13          indictment, which occurs shortly thereafter.

14                           Based on that chronology then,  
03:21 15          Mr. Greenberg, can you point to me where you might  
16          see that a conspiracy theory could fit?

17          A       No. Again, the only thing I can say in relation  
18          to that, ma'am, is that it would appear,  
19          unfortunately, from what I have heard or read,  
03:21 20          etcetera, that Mr. Kujawa was not necessarily the  
21          one who loved to put pen to paper, and I know that  
22          significant of my negotiations or conversations  
23          with Mr. Kujawa were on the phone and aren't  
24          necessarily augmented by a paper trail. Okay.

03:21 25          Q       On his behalf or yours?



1 A Or -- that's right.

2 Q Sure.

3 A Okay. And we don't now have files, so even if it  
4 was augmented by a paper trail we can't say with  
03:22 5 any degree of certainty, okay, that there weren't  
6 letters between, in effect, the end of June and  
7 November, which is the date that you indicate that  
8 things started to percolate again. So during  
9 July, August, September and October there may have  
03:22 10 been something occur, okay, there may have been  
11 some letters, but I don't know that there were.

12 And you are right, there wasn't  
13 the urgency, because it was my belief and  
14 understanding that there was an agreement, okay,  
03:22 15 and Mr. Fisher was already a sentenced inmate.  
16 Okay.

17 Q Serving a 13-year sentence?

18 A Serving 13 years, so he wasn't going anywhere in  
19 any short period of time.

03:22 20 Q Just a further point, sir. The request was made  
21 on December 8th, we've got from documentation  
22 December 8th, 1971, a Court appearance was set  
23 December 21st, so the indictment presumably had to  
24 be signed within that time period and arrangements  
03:23 25 made for a Court appearance. Proceeding by way of



1 direct indictment using those dates didn't seem to  
2 take very long, did it, sir?

3 A No.

4 Q No.

03:23 5 A And since I was Jewish the Christmas holidays  
6 didn't have the same significance to me, and as  
7 long as it didn't conflict with Hanukkah, I was  
8 happy on the 21st of December.

9 Q We're pleased we could have accommodated you that  
03:23 10 way, sir.

11 A Thank you.

12 Q One final point. On the issue of the matters  
13 being dealt with in Regina, and perhaps I'm going  
14 over material that is patently obvious to all, but  
03:23 15 your first contact in efforts to deal with these  
16 matters from Saskatchewan, your first contact was  
17 to the Attorney General who was in Regina at that  
18 time; is that correct?

19 A That is correct.

03:24 20 Q And subsequent to that contact with the Attorney  
21 General all correspondence originated from Regina;  
22 is that right?

23 A Yeah. There's an old Jewish phrase that says that  
24 when you want to get something done, don't deal  
03:24 25 with the feet, deal with the head. That initial





1 letter went to the Attorney General, which was as  
2 far as I could go to the top to try to get things  
3 to percolate downwards, okay. It was not  
4 addressed to the Premier, and maybe I didn't even  
03:24 5 know the Premier's name at that particular time,  
6 but I knew that if I wrote to the Premier I was  
7 likely to get some sort of reaction and I did get  
8 a reaction.

9 Q And you did, sir?

03:24 10 A Yeah.

11 Q And indeed, as I stated, the letter went to Regina  
12 and all subsequent dealings, then, were with  
13 prosecutors in Regina; is that correct?

14 A That's correct. That -- initially I think yes,  
03:24 15 although Mr. Caldwell's name did come into the  
16 picture, as you can see I think it's even written  
17 on one or two of the documents.

18 Q Though you have no recollection of dealing  
19 directly with him?

03:25 20 A I have no recollection, right.

21 Q But it wouldn't be surprising to you, Mr.  
22 Greenberg, that ultimately you ended up in Regina,  
23 where the persons you had dealt with worked from,  
24 in order to deal with the matters regarding Mr.  
03:25 25 Fisher?



1 A Yes.

2 Q Thank you, sir.

3 MR. HODSON: Anybody other than

4 Mr. O'Keefe? I think, Garrett, are you Bruce? I

03:25 5 think it's you, Mr. O'Keefe.

6 BY MR. O'KEEFE:

7 Q Good afternoon, Mr. Greenberg. My name is Eamon  
8 O'Keefe and I represent Larry Fisher.

9 I just wanted to ask you about  
03:26 10 the time period from September of 1970 to May 28th  
11 of 1971. Having reviewed the documents that have  
12 been presented to you over the course of today's  
13 evidence it appears that you were conducting  
14 negotiations with a variety of people during that  
03:26 15 time period?

16 A Correct.

17 Q The Attorney General in Saskatchewan?

18 A To some minor degree, at least, up until the, you  
19 know, 'til the end.

03:26 20 Q Right. You were also conducting negotiations with  
21 the Crown in Winnipeg regarding sentence for Mr.  
22 Fisher on his Manitoba charges?

23 A Correct.

24 Q You were also involved in negotiations or  
03:26 25 discussions with Corrections officials regarding



1 the placement of Mr. Fisher and the transport of  
2 Mr. Fisher following his sentence?

3 A Correct.

4 Q If we could bring up, please, document 010691.

03:26 5 And I'll just call out the middle paragraph,  
6 please. And this is the letter from Mr. Morton,  
7 who was the Crown attorney in Winnipeg, to -- and  
8 I apologize if I'm pronouncing this incorrectly --  
9 to Mr. Held (ph), is it, in Saskatchewan -- Heald?

10 UNIDENTIFIED SPEAKER: Heald.

11 BY MR. O'KEEFE:

12 Q Heald? Thank you. You will see at, in the second  
13 paragraph Mr. Morton says:

14 "I am further informed that counsel for  
03:27 15 the accused, Mr. Lawrence Greenberg,  
16 here in Manitoba, has indicated that in  
17 all likelihood Mr. Fisher will be  
18 pleading guilty to the Saskatchewan  
19 charges."

03:27 20 And I take it, from that, that there had been  
21 some discussion between you and Mr. Morton, prior  
22 to the sentencing of Mr. Fisher in Manitoba,  
23 about your conversations that you had had with  
24 the Attorney General in Saskatchewan?

03:27 25 A It was no secret that the intention was to dispose



1 of the Saskatchewan charges by way of a plea of  
2 guilty once the Manitoba charges had been disposed  
3 of, so what discussions I had with Bill Morton,  
4 under what circumstances, I can't specifically  
03:28 5 remember, but Mr. Morton would have been aware  
6 that that was my intention.

7 Q Mr. Morton would have been aware, certainly, that  
8 there were outstanding Saskatchewan charges?

9 A Oh yes.

03:28 10 Q He would have been aware through your discussions  
11 with him, in all likelihood, that it was Mr.  
12 Fisher's intention to plead guilty to those  
13 charges?

14 A Yes.

03:28 15 Q Might he also have been aware of your discussions  
16 with Saskatchewan regarding the possibility of a  
17 concurrent sentence for Mr. Fisher on the  
18 Saskatchewan charges?

19 A Yes.

03:28 20 Q If we can then move down to the final paragraph of  
21 that letter, please, you will see in the final  
22 paragraph -- and this was pointed out to you  
23 previously, I think it was Mr. Wolch who  
24 characterized it as an invitation to the  
03:28 25 Saskatchewan Attorney General to seek additional



1 time on the Saskatchewan charges, and I won't go  
2 through the paragraph but you are aware of what I  
3 am referring to?

4 A Yes. And if you accept Mr. Wolch's position --

03:29 5 Q Yes?

6 A -- my good friend, Mr. Bill Morton, was trying to  
7 scuttle the deal I was making.

8 Q That's what I was going to ask. In your  
9 negotiations or discussions with Mr. Morton  
03:29 10 eventually you settled on, as I understand it, a  
11 joint submission of somewhere from 10 to 15  
12 years --

13 A Yes.

14 Q -- for the Winnipeg -- or for the Manitoba  
03:29 15 charges?

16 A Yes.

17 Q After the sentence of 13 years was imposed on Mr.  
18 Fisher might one reasonably conclude that  
19 Mr. Morton was not satisfied with the sentence  
03:29 20 that was received in Manitoba by Mr. Fisher?

21 A Well I don't know whether Mr. Wolch will concur  
22 with this opinion, but if you knew Mr. Morton,  
23 Mr. Morton was pretty lay back, and I don't think  
24 that Bill Morton really gave a damn once the thing  
03:30 25 was out of his hands and over. I mean he may have



1 felt that the sentence was less than what it  
2 should have been but Bill was not, at least with  
3 my experience with him, he was a pretty lay-back  
4 hound dog, he wasn't going to be biting and  
03:30 5 clawing because of the disposition.

6 Q Okay. I appreciate that. Mr. Morton would likely  
7 have been aware, or possibly have been aware at  
8 the time that the 13-year sentence was imposed in  
9 Manitoba, that that might be the totality of the  
03:30 10 sentence Mr. Fisher was going to receive for all  
11 offences in Manitoba and Saskatchewan?

12 A I have no idea. I mean I don't know, I don't  
13 believe it was the case, but I don't know that  
14 Mr. Morton didn't have his own discussions with  
03:30 15 Mr. MacKay or with Mr. Kujawa or with whatever.

16 Q Fair enough.

17 A I don't think he did, but he might have, I don't  
18 know.

19 Q Fair enough. After the sentencing of Mr. Fisher  
03:31 20 concluded in Manitoba you continued your  
21 discussions, then, with the Attorney General in  
22 Saskatchewan --

23 A Yes.

24 Q -- regarding the Saskatchewan charges?

03:31 25 A Yes.



1 Q At the time that you reached an agreement with the  
2 Saskatchewan Attorney General regarding concurrent  
3 time -- and I think you said that you believed  
4 that was prior to the sentencing of Mr. Fisher in  
03:31 5 Manitoba --

6 A Yes.

7 Q -- did you ever have the idea that you were  
8 proposing what was, in effect, a preposterous  
9 position to the Saskatchewan Attorney General that  
03:31 10 no additional time would be sought for Mr. Fisher  
11 on the Saskatchewan charges?

12 A 'Preposterous' would not be the word that I used,  
13 but I certainly thought that if I could work that  
14 arrangement, that that would be the best  
03:31 15 arrangement that Mr. Fisher could get from any  
16 jurisdiction under any circumstances.

17 Q It would be a favourable sentence for Mr. Fisher?

18 A It was a favourable disposition for Mr. Fisher  
19 under all circumstances.

03:32 20 Q But something within the realm of possibility?

21 A Yes.

22 Q In approaching the Attorney General for  
23 Saskatchewan you would have been aware that Mr.  
24 Fisher, prior to being sentenced on May 28th of  
03:32 25 1971, had spent approximately eight months in



1 custody, from September of '70 to --

2 A Yes.

3 Q -- May of '71, and that that amount of time  
4 generally one would get credit for if one is being  
03:32 5 sentenced?

6 A Yes.

7 Q Was the rule of thumb back then similar to what it  
8 is now, that generally there is a two-for-one  
9 credit for time in custody?

03:32 10 A I can't say that absolutely, and that in itself  
11 varies with jurisdictions.

12 Q Right.

13 A In Toronto, where I come from, time in Don jail is  
14 worth about five times what it might be in other  
03:33 15 jurisdictions.

16 But the other thing you have to  
17 remember, that in negotiating that arrangement, if  
18 Fisher disposed of the -- his Saskatoon charges  
19 first, okay, then he was not, and you could not  
03:33 20 argue in connection with the Manitoba charges,  
21 that, in effect, he was a first offender --

22 Q Yes.

23 A -- because he had already offended. Those charges  
24 all predated the Manitoba charges.

03:33 25 Q And would Justice Matas in Winnipeg have taken





1           into account the time served in reaching his  
2           13-year sentence?

3           A       I won't try to speculate what Judge Matas thought  
4           for you any more than I would for Mr. Wolch.

03:33 5           Q       Very good. Would that have been likely something  
6           that you would have drawn to Justice Matas's  
7           attention, the time in custody?

8           A       Mr. Justice Matas was a very fair but a very  
9           thorough, very considerate, very conscientious  
03:33 10          judge in every way. I don't believe that he  
11          missed a trick, and I believe that whatever  
12          consideration he thought was appropriate to that  
13          information in the presentence report, he imposed  
14          or considered in his sentence.

03:34 15               COMMISSIONER MacCALLUM: I thought the  
16          question was, sir, would you have urged that upon  
17          him to take account of the dead time?

18          A       I don't think so, My Lord, because I was quite  
19          content with the arrangement and I didn't want to  
03:34 20          disturb the range that we had agreed upon by  
21          putting some extraneous consideration into it.

22               BY MR. O'KEEFE:

23          Q       In your mind in dealing with the Saskatchewan  
24          Crown, urging upon the Saskatchewan Crown that a  
03:34 25          sentence of 13 years for all offences was



1           sufficient, did you consider that 13 years was  
2           within the range of appropriate sentences for  
3           someone with no record who had spent that much  
4           time in custody and who was entering guilty pleas?

03:34 5           A       I can't say that dead time was a major  
6           consideration once I knew that I believed and that  
7           I could rely upon it being concurrent time. It  
8           didn't mean much once it was concurrent. Okay.  
9           And so -- and I must say to you, you have to look  
03:35 10          at it. He only got four years, in effect, in  
11          Saskatoon, so he got less, okay, than what he got  
12          in Manitoba, so it was a -- it was a good deal.

13          Q       I promise I'm going to be very brief in dealing  
14          with the issue of direct indictment versus consent  
03:35 15          committal and I'm sorry to have to go over it  
16          again. I would just like to know, at the time  
17          that you were dealing with Mr. Fisher in 1970, if  
18          Mr. Fisher was at the Prince Albert Penitentiary  
19          are you aware of whether he would have had a  
03:35 20          different status at the penitentiary if he had  
21          been a serving prisoner on the Manitoba charges  
22          awaiting his Court appearance in Regina on a  
23          direct indictment as opposed to whether or not --  
24          or as opposed to the status he would have had if  
03:36 25          he had gone through the process of a consent



1 committal, first of all, in Provincial Court in  
2 Saskatoon?

3 A I can't tell you, --

4 Q Are you --

03:36 5 A -- I have no way of knowing.

6 Q I'm sorry, I cut you off?

7 A I am sorry, I have no way of knowing, I don't  
8 know.

9 Q Are you aware of whether there was a  
03:36 10 differentiation made between serving prisoners and  
11 prisoners, for example, on remand at the Prince  
12 Albert Penitentiary?

13 A I don't know, but I can only surmise from other  
14 institutions and how they proceed with inmates who  
03:36 15 are just coming in or are in transition or  
16 whatever it is, so there may have been other  
17 considerations but I don't know. I don't know the  
18 system.

19 I mean that was another thing  
03:36 20 that you have to keep in mind when you are  
21 considering dealing with Saskatchewan authorities.  
22 Winnipeg was my bailiwick. Okay.

23 Q Right.

24 A I knew who I was dealing with in Winnipeg when I  
03:37 25 was dealing, and I knew what the parameters were,



1 basically. It's like being a fish out of water  
2 when you are a hotshot lawyer from Winnipeg, and  
3 you think you are going to go into Saskatoon and  
4 you are going to do whatever, and it's six guys  
03:37 5 named John who you have never dealt with before.  
6 You don't know what you can say, what you can do,  
7 where you can push, where you have to pull,  
8 whatever it is, to get the disposition. Okay. So  
9 I had to tread very carefully, okay, with  
03:37 10 Saskatoon and with Saskatchewan. Okay. Because I  
11 didn't know, and I couldn't read exactly, and I  
12 didn't have the reference material by experience  
13 to know where I was dealing and with whom I was  
14 dealing, so it was different, different dealing  
03:37 15 with Manitoba first and then Saskatchewan second.

16 Q Okay. What I understand you to be saying is you  
17 aren't able to say whether you gave any  
18 consideration at that time, one way or the other,  
19 to Mr. Fisher's status whether he would have been  
03:38 20 a serving prisoner or a remand prisoner?

21 A I did not.

22 Q All right. One final area I just want to ask a  
23 couple of questions on, Mr. Greenberg. You've  
24 testified already that Mr. Fisher had no input  
03:38 25 into the location where his Saskatchewan charges



1                   were ultimately dealt with?

2       A           Not to my knowledge.

3       Q           To your knowledge. He didn't ask to be taken to  
4                   Regina, or anything like that, to the best of your  
03:38 5                   recollection?

6       A           Not to my knowledge.

7       Q           Okay. Did Mr. Fisher give you any instructions,  
8                   to the best of your recollection, regarding  
9                   keeping his plea quiet or preventing people from  
03:38 10                  finding out about it?

11      A           No.

12      Q           I'm sorry, I didn't --

13      A           No, he didn't. And, again, that might be  
14                  something that you might have some knowledge of in  
03:38 15                  -- if you practiced in a particular jurisdiction,  
16                  but I was again -- didn't even have that knowledge  
17                  of how the press would be there, if the press  
18                  wouldn't be there, what their records were of  
19                  attending in Court, etcetera, I had none of that  
03:39 20                  knowledge. And I don't have any knowledge of Mr.  
21                  Fisher knowing that, or asking for it, or anything  
22                  else.

23      Q           All right. Thank you.

24                   MR. HODSON: I have no further questions.

03:39 25                  We are done with Mr. Greenberg. Thank you very



1 much for attending.

2 COMMISSIONER MacCALLUM: Mr. Greenberg, you  
3 are excused, thanks for coming.

4 A Thank you very much, My Lord.

03:39 5 MR. HODSON: Those are all the witnesses  
6 for today.

7 I just had one point here, and  
8 I will probably file some evidence on this, some  
9 document. The election in 1971 was held on June  
03:39 10 the 23rd, 1971. And you will recall the document  
11 010690, the memorandum from Mr. Kujawa to Heald,  
12 the Attorney General, was June 25, '71, so that  
13 was two days after the election.

14 My information is that the  
03:40 15 Legislature was prorogued on July 28th, 1971. So  
16 again -- and the change in government, it was the  
17 Liberal government prior, and Heald was the  
18 Attorney General, after the change in government  
19 Mr. Romanow became the Attorney General and Allan  
03:40 20 Blakeney was the Premier.

21 But again, I will file some  
22 documentary evidence to support that, but those  
23 dates might be helpful.

24 COMMISSIONER MacCALLUM: Yes, I think they  
03:40 25 will. If you will file the documents, that would



1 be helpful as well.

2 MR. HODSON: Yes. And our next witness --  
3 that will be all for the witnesses today, Mr.  
4 Commissioner.

03:40 5 COMMISSIONER MacCALLUM: Thanks. And just  
6 before you get up, Mr. Wilson, I'm not going to  
7 continue the course on criminal procedure, if you  
8 were afraid of that.

9 I do have a few words to say  
03:40 10 about or on the subject of guidelines.

11 You can stay there or take your  
12 seat, sir, you are excused.

13 A I didn't want to do anything to interrupt the --

14 COMMISSIONER MacCALLUM: No, that's fine.

03:41 15 I thought it prudent, at this  
16 time, to say a few things about Mr. Fisher as a  
17 witness. So I'm going to offer you some  
18 guidelines on questioning, by counsel, of Larry  
19 Fisher.

03:41 20 Larry Fisher will soon be  
21 called as a witness, and in order to give counsel  
22 some idea of the scope of examination and  
23 cross-examination which will be permitted, I felt  
24 it prudent to set guidelines.

03:41 25 What I am about to announce is



1 not debatable, but I recognize that the evidence  
2 might give rise to unpredictable problems not  
3 addressed by the guidelines. If that happens,  
4 submissions of counsel will be permitted.

03:41 5 The killing of Gail Miller is  
6 the principal underlying fact of this Inquiry.  
7 Two people have been convicted of it and both  
8 will be called as witnesses. Milgaard's  
9 conviction has been set aside, Fisher's  
03:42 10 conviction is conclusive.

11 Both convictions resulted from  
12 findings of guilt by juries, so we do not have  
13 their reasons or all the facts they found in  
14 reaching their verdicts.

03:42 15 Fisher has sought, and has been  
16 granted, standing in this Inquiry on the basis  
17 that his interests are directly and substantially  
18 affected.

19 Questions put to him, of  
03:42 20 course, must be relevant to the Terms of  
21 Reference. But the Inquiry has a right to  
22 expect, from him, an account of his movements and  
23 statements on the morning of January the 31st,  
24 1969.

03:42 25 These movements and statements





1 are said to have been overlooked or ignored by  
2 police, and thus constitute an aspect of the  
3 investigation into the death of Gail Miller, the  
4 prosecution and wrongful conviction of Milgaard,  
03:43 5 and the re-opening. Fisher may be questioned  
6 about them as well as about his movements until  
7 Milgaard's conviction for Gail Miller's murder on  
8 the 31st of January, 1970.

9 As for his activities and  
03:43 10 statements following Milgaard's conviction, he  
11 may be questioned about these if they constituted  
12 information received by the police and the  
13 Department of Justice which was relevant to the  
14 re-opening of the investigation.

03:43 15 The rapes and attempted rape  
16 Fisher committed in Saskatoon are relevant as an  
17 aspect of all three phases of the Inquiry, the  
18 investigation, the criminal proceedings, and the  
19 re-opening, because of the allegations that the  
03:44 20 Milgaard investigation should not have been  
21 concluded nor his prosecution proceeded with  
22 until the common perpetrator theory had been  
23 eliminated. But unlike the murder, the  
24 circumstances of the rapes are known through  
03:44 25 guilty pleas as described in the letter of Deputy



1 Chief Corey to Deputy Attorney General MacKay,  
2 document ID 043001.

3 Accordingly, the resulting  
4 convictions and the facts which supported them  
03:44 5 are conclusive and sufficient for our purposes.  
6 Fisher will not be asked about them in either  
7 direct or cross-examination. This restriction  
8 does not apply to matters of procedure or  
9 sentence.

03:45 10 What I have just said will  
11 appear on CaseVault tomorrow morning. There will  
12 be no other written copies circulated. Tomorrow  
13 until 9:00. Thank you.

14 (Adjourned at 3:45 p.m.)  
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**OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:**

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,  
Official Queen's Bench Court Reporters for the Province of  
Saskatchewan, hereby certify that the foregoing pages  
contain a true and correct transcription of our shorthand  
notes taken herein to the best of our knowledge, skill,  
and ability.

\_\_\_\_\_, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

\_\_\_\_\_, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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