Commission of Inquiry

Into the Wrongful

Conviction of David Milgaard

before

THE HONOURABLE MR. JUSTICE

EDWARD P. MacCALLUM

****

<u>Transcript of Proceedings</u>

and

Testimony before the Commission

sitting at the

Radisson Hotel at

Saskatoon, Saskatchewan

****

On Tuesday, September 20th, 2005

Volume 73

<u>Inquiry Proceedings</u>

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Appearances:

Mr. Hersh Wolch, Q.C.,   **for** Mr. David Milgaard

Mr. James Lockyer, Esq.,   **for** Ms. Joyce Milgaard

Ms. Lana Krogan,   **for** Government of Saskatchewan

Mr. Si Halyk, Q.C.,   **for** Mr. T.D.R. (Bobs) Caldwell

Mr. Garrett Wilson, Q.C., **for** Mr. Serge Kujawa

Mr. Rick Elson, Esq.,   **for** the Saskatoon Police Service

Mr. Aaron Fox, Q.C.,   **for** Mr. Eddie Karst

Mr. Bruce Gibson and Ms. Rochelle Wempe, **for** the RCMP

Mr. Brian Beresh, Esq.,   **for** Mr. Larry Fisher

Mr. David Frayer, Q.C., and Ms. Jennifer Cox, **for** Minister
        of Justice (Canada), The Hon. Irwin Cotler

Mr. Alexander Pringle, Q.C., **for** Justice Calvin Tallis
                (Retired)

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1 ***Transcript of Proceedings***

2 *(Reconvened at 9:00 a.m.)*

3 COMMISSIONER MacCALLUM: Good morning.

4 ALL COUNSEL: Good morning.

09:02 5 **LARRY EARL FISHER, continued**:

6 **BY MR. HODSON**:

7 Q Morning, Mr. Fisher. I just wanted to touch on a

8 couple of matters that came up yesterday. The

9 first, I had asked you yesterday about a call,

09:02 10 whether you had ever talked to Albert "Shorty"

11 Cadrain, and you had told us about a call, I think

12 you said you thought it was in 1996, and I think

13 you told us you happened to be at Mr. Cadrain's

14 daughter's house and Mr. Cadrain called by

09:02 15 coincidence, or words to that effect; is that

16 right?

17 A Yes.

18 Q And I think I asked you about how it came to be

19 that you were at Shorty Cadrain's daughter's house

09:03 20 and you told us that you didn't want to get into

21 it. And I understand, sir, and I just want to

22 clarify this with you, it's my understanding that

23 your wife at the time had reason to be at Shorty

24 Cadrain's daughter's house for matters unrelated

09:03 25 to this case; is that fair?

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1   A   Yes.

2   Q   And that it was a coincidence that you were there

3   that day, at Shorty Cadrain's daughter, I mean you

4   didn't go there to see Shorty Cadrain's daughter;

09:03 5   is that fair?

6   A   No.

7   Q   And that while you were there Mr. Cadrain happened

8   to call her; is that right?

9   A   Yes.

09:03 10   Q   And is -- your reluctance to get into that is

11   because these people are not involved in this

12   matter; is that fair?

13   A   Yes.

14   Q   Secondly, Mr. Commissioner, yesterday I had

09:03 15   referred to a Mr. Ken McKay in a letter, I think

16   the March 17th letter, and I referred to him I

17   think as the Deputy Attorney General. He was not

18   the Deputy Attorney General, he was a Crown

19   solicitor with the Deputy Attorney General's

09:04 20   department, so just to clarify that.

21   COMMISSIONER MacCALLUM: Okay.

22   BY MR. HODSON:

23   Q   If we can go back, I think yesterday when we

24   finished we were talking about Fort Garry, and I

09:04 25   just want to go through parts of your evidence at

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1   the Supreme Court on that. And you will recall,

2   Mr. Fisher, that we went through your arrest in

3   Fort Garry, confessing to the Fort Garry crimes,

4   confessing to some of the Saskatoon offences, and

09:04 5   pleading guilty. And if I could call up 197598,

6   please, and this is March 11th in the Supreme

7   Court. If we could go to 197649, please. And I

8   want to just go through, Mr. Fisher, you were

9   questioned about this 13 years ago, in 1992, about

09:04 10   what happened in Fort Garry, and I just want to go

11   through this and ask you if this is still accurate

12   today. And this is your counsel, Mr. Beresh,

13   questioning you:

14   "Q   When you were arrested, did the police

15   raise another allegation to your

16   attention in or around Winnipeg or Fort

17   Garry?

18   A   They may have.

19   Q   Do you remember admitting to another

20   one?

21   A   Yes, sir.

22   Q   I take it you weren't forced to admit to

23   that.

24   A   No, I was not.

25   Q   The police didn't brainwash you.

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1 A No, they didn't.

2 Q They didn't coerce you in any way.

3 A No, they didn't.

4 Q Voluntarily admitted to it?

5 A Yes, sir.

6 Q Then when you were in police custody --

7   and this is not too clear from the

8   record -- it seems you were at Fort

9   Garry.

10 A Yes, sir.

11 Q You were spoken to by the Fort Garry

12   police.

13 A Yes, sir.

14 Q Then subsequently a detective from

15   Saskatoon came to see you.

16 A Yes, sir.

17 Q Tell us your recollection of how that

18   came about. How did any issue about

19   Saskatchewan come, first of all, to the

20   attention of the Fort Garry or the

21   Winnipeg city police?

22 A I brought it to their attention.

23 Q How did you do that?

24 A I wanted to clear my name and clear up

25   all the offences.

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1   Q   When Detective Karst came to see you, do

2   you remember what you talked about, how

3   many charges you talked about?

4   A   I told him all the charges.

5   Q   The reason I ask is that there is some

6   material which says you denied some

7   charges in Saskatoon, and you admitted

8   some others. What is your recollection

9   of that?

10   A   I admitted to the ones I committed.

11   Q   Would the police have known about any of

12   these other charges that would have

13   linked them to you had you not told

14   them?

15   A   They probably wouldn't have.

16   Q   What is your recollection about the

17   number of statements you gave

18   implicating yourself in the Saskatoon

19   charges?

20   A   For every one I admitted I gave a

21   statement to Mr. Karst."

22   And again, that part that I have read you, is

23   that accurate and truthful Mr. Fisher?

24   A   Yes.

25   Q   Then to page 197653. And then you are asked the

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1   question, again this is Mr. Beresh talking about

2   when you were in Prince Albert, and I think this

3   is after you were sentenced in Manitoba:

4   "... did anyone ever come to talk to you

5   or take a statement from you?

6   A   No way."

7   And just to clarify that, I think this refers to

8   yesterday you told us, after you were convicted

9   in Winnipeg, you then went to Stoney Mountain for

09:07 10   a short period and then to the Prince Albert

11   Penitentiary, is that right, where you served

12   your time?

13   A   Yeah.

14   Q   And at the Supreme Court, Mr. Fisher, your counsel

09:07 15   asked you:

16   "When you were in Prince Albert, did

17   anyone come to talk to you or take a

18   statement from you?"

19   And your answer then was:

09:07 20   "No way."

21   And is that truthful and accurate?

22   A   Yes.

23   Q   And:

24   "Q   So then all the statements were given in

25   Manitoba.

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1   A   Yes, sir.

2   Q   There is some issue raised about you

3   pleading guilty to the four charges in

4   Regina.

5   A   No way.

6   Q   You remember pleading guilty to them in

7   ---

8   A   I pled guilty when I went to

9   Regina.

10   Q   Did you have anything to do with the

11   arrangements of that?

12   A   No, I did not.

13   Q   You were in Prince Albert, your lawyer

14   was in Winnipeg, Mr. Keeawa was in

15   Regina ---

16   A   Yes, sir.

17   Q   -- as I understand the triangle.

18   A   That was it.

19   Q   Was it ever put to you that you had a

20   choice as to where you would go?

21   A   No.

22   Q   Were you ever told, "Gee, we don't want

23   you to go to Saskatoon because we don't

24   want any publicity there"?

25   A   No way.

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1   Q   By the way, sir, with regards to those

2   charges that you concluded in Manitoba

3   and in Saskatchewan, did you ever

4   suggest to the police someone else did

5   it?

6   A   No, I did not.

7   Q   Did you ever give them the name of

8   somebody that they might run after and

9   ---

10   A   No, I did not.

11   Q   Did you ever try to make any deals on

12   them; that is, deal somebody else off

13   for one or two of them?

14   A   No, I did not."

15   Next page:

16   "Q   Were you advised by your lawyer Mr.

17   Greenberg that you didn't have to plead

18   to the Saskatchewan charges, that is,

19   you got a professional opinion because

20   statements might not be admissible, that

21   sort of thing?

22   A   I can't really remember. I pled

23   guilty because I committed the

24   crimes."

25   And again, is the part that I read to you, is

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1		that accurate and truthful?
2	A	Yup.
3	Q	I wonder if we could go ahead, 197735, please.
4		And this is where you are examined by Mr. Wolch,
5		who was counsel for David Milgaard, and he asked
6		you some questions about Fort Garry. And he says:
7		"Q You have told us under oath that it was
8		your desire to clean the slate."
9		I think this was earlier when you talked about
10		that.
11		"Do you still maintain that
12		position?
13		A Yes, I do.
14		Q In spite of the fact that you clearly
15		denied the pre-Gail Miller
16		offences?
17		A I still admitted to them.
18		Q How did that come about later?
19		A I do not know. It is a long time ago.
20		I can't really put it all together."
21		And is that truthful?
22	A	Yes.
23	Q	And I think that's what you told us yesterday, Mr.
24		Fisher, that you are not able to explain (a)
25		whether you did initially deny two Saskatoon

09:09 (lines 5, 10, 25)

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1   offences, and secondly, how you came about to

2   admitting those later?

3   A   Yes.

4   Q   That's right, you can't explain that today? No?

09:09 5   A   *(Shakes head negative)* No.

6   Q   Okay. I just need 'no' for the record, sir.

7   A   No.

8   Q   And then to page 197732. And, again, this is

9   Mr. Wolch questioning you:

10   "Q   There is no statement at this point in

11   time regarding (V1)- and (V2)-----, the

12   two rapes that occurred pre-Gail Miller.

13   Did Detective Karst, to your memory, ask

14   you about those?"

15   Next page:

16   "A   I am not sure. That was a long time

17   ago.

18   Q   But clearly you didn't own up to them,

19   did you?

20   A   I admitted to them, yes.

21   Q   Later, but not to Karst?

22   A   I don't know who it was."

23   And, again, is that accurate and truthful

24   information?

09:10 25   A   Yes.

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1 **Q**   To page 197728. And just before I go through

2   these questions, Mr. Fisher, the -- of the four

3   Saskatoon offences, the two that you signed

4   confessions for on October 22nd, 1970 were the one

09:11 5   occurred after the Gail Miller murder, one

6   occurred before the Gail Miller murder, the two

7   that there are not confessions in the records for

8   are both before Gail Miller, and that's what the

9   record reflects. And here's the question from

09:11 10   Mr. Wolch:

11   "Q   I am suggesting to you that you

12   deliberately left out the ones that

13   preceded the death of Gail Miller."

14   And I think this is referring to the two, the

09:11 15   first two rapes, the (V1)- and (V2)----- rapes

16   where it appears confessions were not given on

17   October 22nd when you confessed to the other two.

18   And your answer is:

19   "A   I just cleaned these up the way they

20   came to my mind at the time.

21   Q   Is it your evidence, then, that you did

22   not remember the first three attacks?

23   Or is it your evidence that you

24   deliberately withheld them?

25   A   No, I didn't deliberately withhold

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1   them.

2   Q   So you couldn't remember them?

3   A   I can remember all my charges. I just

4   don't know which place they go, or

5   what time they go, or which date.

6   Q   So you get them mixed up.

7   A   I have never looked at the dates or

8   the times before."

9   And is that accurate and truthful?

09:12 10   A   Yes.

11   Q   Now if I could call up 020210. Mr. Fisher, this

12   is an affidavit from a fella named Lorne Huff.

13   Mr. Huff was one of the detectives who was

14   involved in your arrest in Fort Garry and he was

09:12 15   the individual that you gave your original

16   statement on September 19th, 1970, that was the

17   statement where you confessed to the (V8)--- and

18   then to the (V7)--- rape, okay, he was the fellow

19   who you gave that to. Then, on October 21st,

09:12 20   1970, you also gave Detective Huff a confession

21   for the two Saskatoon offences, the (V3)------ and

22   (V5)---, and as well as a third one in Winnipeg,

23   and that's what I showed you yesterday. So that's

24   Mr. Huff, and Mr. Huff filed this affidavit before

09:12 25   the Supreme Court in 1992 in the David Milgaard

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1   matter, and I just want to ask you about a

2   paragraph in this affidavit. If you could go to

3   the next page and you will see here, in paragraph

4   3, Mr. Huff says:

09:13   5   "In the course of my duties as a police

6   officer I interviewed Larry Fisher and

7   obtained a statement from him on the

8   21st day of October 1970 and which

9   statement I am informed has been filed

09:13   10   in this Reference ...",

11   and then the next -- and just so I can pause

12   there, Mr. Fisher, that was the -- when you first

13   confessed to the Saskatoon offences, that's the

14   statement. And if we can scroll down, it says:

09:13   15   "During the course of the interview

16   Larry Fisher advised my partner and I

17   that he had committed four of five

18   additional indecent assaults in the Fort

19   Rouge area which he had been frequenting

09:13   20   during that period of time. He

21   indicated that he had grabbed and felt

22   the women in the breast area and when

23   they screamed he ran off."

24   "These admissions were in addition to

09:14   25   the Winnipeg offences referred to in the

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1   written statement."

2   And Mr. Fisher, I'm asking you, did you tell

3   Detective Huff and Gilbert about some other

4   incidents as described in this affidavit?

09:14   5   A   No. I only told them about the three in Winnipeg.

6   Q   Okay, and the three being the (V8)--- and (V7)---,

7   and then the third one was I think you said you

8   grabbed a girl in Winnipeg and then she ran off,

9   is that right, the one in the October 21

09:14   10   statement?

11   A   Uhh, yeah.

12   Q   If you like I can bring -- do you want me to bring

13   that statement up?

14   A   No, there was only three there in Winnipeg, not

09:14   15   these.

16   Q   Okay. So he says here that you admitted to four

17   or five additional indecent assaults in the Fort

18   Rouge area; do you have any recollection of --

19   A   No.

09:14   20   Q   -- attempting to assault women or assaulting women

21   in that area as Mr. Huff describes?

22   A   No.

23   Q   Is it possible you did and you don't recall it

24   today?

09:14   25   A   No.

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1   **Q**   So your evidence, sir, is that you did not tell

2   Detective Huff that you grabbed and felt women in

3   the breast area on four or five occasions?

4   *A*   Yes.

09:14 5   **Q**   Okay. And are you telling us that, Mr. Fisher,

6   because you have a recollection of your interview

7   with Mr. Huff or are you telling us that because

8   you don't have a recollection of assaulting any

9   women in the Fort Rouge area?

09:15 10   *A*   No.

11   **Q**   Or both?

12   *A*   I don't have any recollection of doing it.

13   **Q**   Is it possible that you did and that you don't

14   recall today those incidents?

09:15 15   *A*   No.

16   **Q**   Next I want to call up a letter, 020185, and this

17   is a letter May 29th, 1971, and that's your

18   handwriting and your signature at the bottom is

19   it?

09:15 20   *A*   Yup.

21   **Q**   And this would be the day after you were convicted

22   in Winnipeg for the Fort Garry charges and

23   sentenced to 13 years and this is a letter to your

24   wife at the time, Linda, and there's just one

09:16 25   comment here I want to ask you about, if you can

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1   call out that section. And actually, if we can

2   just go to the top, the top starts off:

3   "I suppose by now you've heard about how

4   my case turned out, but in case you

09:16   5   didn't I'll let you know."

6   And you go on and talk about the charges, or the

7   sentence. If you can scroll down, please, and

8   then it says here:

9   "I don't know what is going to happen

09:16   10   about the two charges back home, but all

11   I know is they're going to be pretty

12   stiff."

13   And I'm wondering, Mr. Fisher, it only refers to

14   two charges here. Are you able to tell us why

09:16   15   you would have put two charges in this letter

16   rather than the four you were facing at the time?

17 A   No.

18 Q   No recollection?

19 A   No.

09:16   20 Q   If we can go to 039739, please, and this is a

21   letter dated May 14th, 1993 regarding -- it

22   appears that you were asked to give comments on

23   two issues here:

24   1. How did the Saskatchewan Police

09:17   25   Force treat me upon arrest or transfer.

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1   2.   How did the Manitoba Police Force

2   treat me upon arrest, transfer to and

3   from court, interviews, etc..."

4   Do you remember putting this information down,

09:17 5   Mr. Fisher, about your treatment? Maybe I'll go

6   through it first and read it and then ask you.

7   It goes as follows:

8   "SASKATCHEWAN POLICE FORCE no problems

9   whatsoever" ... except in 1980 when I

09:17 10   was put on display by an officer

11   (R.C.M.P.) in North Battleford when he

12   brought a tour through the holding

13   cells. As for the change in venue from

14   Saskatoon to Regina, I have no idea why

09:17 15   it was transferred there. You may have

16   to contact my lawyer, Mr. Lawrence

17   Greenburg, my attorney at that time."

18   And is that accurate, Mr. Fisher?

19   A   Yup.

09:18 20   Q   And then you say:

21   "WINNIPEG POLICE FORCE FORT GARRY AND

22   HEADINGLEY INSTITUTION"

23   During my incarceration at this facility

24   I was abuse and was placed in an

09:18 25   uncompromising situation. There were

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1   hair samples taken and subjected to

2   being kicked and beaten up. I was then

3   thrown into a vehicle with excessive

4   force and thrown into a holding cell. I

09:18   5   was chorused into giving a statement

6   without legal counsel present."

7   And if I can pause there. Is that accurate and

8   truthful?

9 A   Yes.

09:18 10 Q   And then:

11   "HEADINGLEY INSTITUTION: Mr. Alexander

12   and his partner (provincial officer)

13   laid a beating on me with their fists

14   and boots, while I was handcuffed the

09:18 15   first night I was there. This abuse was

16   carried by the same two officers, that

17   while shaving to go to Court, I was

18   kicked, beaten with a baton and punched.

19   Also they threw me into the remand cage

09:18 20   and left in the vicinity. I was left in

21   the cage in the hopes that I would be

22   beaten up by the other inmates. They

23   also threw me into cage 9, stripped me

24   and cuffed me to the floor."

09:19 25   Again, is that accurate and truthful?

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1 A Yes.

2 Q And then down at the bottom, is that your

3   signature to this letter?

4 A Yes.

09:19 5 Q If I can then go to 062 -- pardon me, 061960,

6   please, and this is the July 12th, 1990 interview.

7   I referred to it yesterday where Mr. Williams and

8   Sergeant Pearson interviewed you under oath, I

9   think at the Regional Psych Centre. You recall

09:19 10   that interview?

11 A Yup.

12 Q If we can go to page 062072, down at the bottom

13   Mr. Williams asked:

14   "Mr. Williams: You're memory for that is

09:19 15   much better than mine?

16   Mr. Fisher: It's pretty hard to forget the

17   a lickings I got then."

18   Actually, let me just scroll back up, I'll read

19   the previous question. Mr. Williams says:

09:20 20   "Mr. Williams: I understand that you were

21   arrested on or about October 18, 1970."

22   I think that's off by a month. And then you say:

23   "Mr. Fisher: It's pretty hard to forget a

24   the lickings I got then.

09:20 25   Mr. William: From whom?

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1   Mr. Fisher: I got a little whipping from a

2   Mountie and I also got a lickin' from

3   the officers at Headingly and then I

4   also got a lickin' from the guys on

09:20   5   remand from Headingly.

6   Mr. Williams: Why?

7   Mr. Fisher: Two of the officers there

8   attending me didn't like the charge I

9   was in on.

09:20   10   Mr. Williams: And why did the remand

11   prisoners take objection to you being

12   there?

13   Mr. Fisher: The officers didn't like us, or

14   me in particular so they threw me in the

09:20   15   cage alone and they took a walk.

16   Mr. Williams: And what beef did the other

17   prisoners in remand have against you?

18   Mr. Fisher: I do not know. I didn't stick

19   around long enough to think about it.

09:20   20   All I knew is one thing there when you

21   get that many guys coming on you you'd

22   better make sure you fight."

23   Again, is that accurate and truthful information

24   you provided at the time?

09:21   25   A   Yes.

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1   Q   I would now like to turn to (V10) (V10)-, and just

2   for the record, Mr. Fisher, you pled guilty to a

3   number of charges in connection with the attempted

4   murder and rape of (V10) (V10)- in North

09:21 5   Battleford; is that correct?

6   A   Yes.

7   Q   And if we could call up 156204, this information

8   is sworn April 3rd, and you were charged with the

9   attempted murder of (V10) (V10)- and then two

09:21 10   counts of rape and then a charge of committing an

11   act of gross indecency; is that correct?

12   A   Yes.

13   Q   And then I believe on June 11th, 1981 you were

14   convicted, pled guilty to and convicted of

09:22 15   attempted murder and one count of rape; is that

16   correct?

17   A   Yes.

18   Q   And you were sentenced to 10 years concurrent for

19   those two charges; is that correct?

09:22 20   A   Yes.

21   Q   It's my understanding, did those charges go

22   through a preliminary hearing before you pled

23   guilty; do you recall that?

24   A   Yes.

09:22 25   Q   And then after the preliminary hearing you entered

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1   a guilty plea; is that correct?

2 A   Yes.

3 Q   I just want to put to you one part of (V10)

4   (V10)-'s statement that she made and this has been

09:22 5   put to you before, I think at the Supreme Court.

6   If we could call up 071326, and this is the

7   statement that (V10) (V10)- provided to the police

8   shortly after the attack on April 2nd, and if you

9   could go to page 071329, and the statement reads:

09:23 10   "Q   How much conversation did you have with

11   him --"

12   And this is talking about you,

13   "-- and during this conversation was he

14   excited, vulgar, or was he very

09:23 15   passive?"

16   She answered:

17   "A   He wasn't, uh -- Oh, I guess at times he

18   was vulgar. He wasn't, I would say,

19   excited, but I begged and begged him to

09:23 20   let me go, why did he do these stupid

21   things and it just seemed to run off him

22   like water off a duck, he just didn't

23   listen to anything. He did say that he

24   spent ten years for doing the same

09:23 25   thing, only he said, "I split her

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	1		throat."
	2		And you are aware, sir, that (V10) (V10)- had
	3		made that allegation that you made those remarks
	4		to her?
09:23	5	A	Yes.
	6	Q	And did you make those remarks to her?
	7	A	No.
	8	Q	Did you make a remark to her similar to what she
	9		says in this statement?
09:23	10	A	No.
	11	Q	If we could go to 197673, please, and this is your
	12		evidence at the Supreme Court of Canada in 1992 on
	13		the reference case and you are being asked
	14		questions by your counsel, Mr. Beresh, and he
09:24	15		says:
	16		"Q Just so you know, Mr. Fisher, for the
	17		record, the circumstance and the event
	18		are admitted."
	19		Which is the (V10) (V10)- matter.
09:24	20		"There is just one matter which is in
	21		issue. I want to ask you about that.
	22		During the time of this event
	23		occurred in North Battleford, do you
	24		recall what you said to the complainant
09:24	25		about -- first of all, I want to deal

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1   with about what harm you might inflict

2   on her. Do you remember what words you

3   might have used?

4   A During what time?

09:24 5   Q During the time of the assault in North

6   Battleford.

7   A Words of violence to put fear into

8   her.

9   Q Do you remember the specific words you

09:24 10   might have used?

11 A "I've got a knife. Keep quiet or I'll

12   slit your throat."

13 Q Did you use that expression "I'll slit

14   your throat"?

09:25 15 A Yes, I did.

16 Q During the assault, do you remember if

17   you used it once, more than once?

18 A I can't really remember.

19 Q But you recall using those words.

09:25 20 A Yes, I did.

21 Q Did you ever at any time during the

22   assault say the following words: "I've

23   done this. I've spent 10 years for

24   doing this same thing, only I slit her

09:25 25   throat"?

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 1            A    No, I did not.

 2            Q    Had you ever before slit anyone's

 3                 throat?

 4            A    No, I have not."

 5       Again, are those truthful answers that you

 6       provided at the Supreme Court of Canada?

 7  A    Yes.

 8  Q    So you are saying, sir, that you did -- you did

 9       say words that you've got a knife, keep quiet or

10       I'll slit your throat, but you are denying

11       anything about having spent 10 years for doing it;

12       is that fair?

13  A    Yes.

14  Q    Now, yesterday you told us, I asked you a question

15       about when you first became aware that David

16       Milgaard had been convicted of the murder of Gail

17       Miller and I think you said when you found out

18       about Linda's statement to the police.  Do you

19       remember talking about that yesterday?

20  A    Yes.

21  Q    And Linda Fisher went to the Saskatoon City Police

22       on August 28th, 1990 and gave a statement

23       implicating you in the murder of Gail Miller I

24       think is probably a fair summary?

25                 JOYCE MILGAARD:  1980.
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1   MR. HODSON: What did I say?

2   JOYCE MILGAARD: 1990.

3   BY MR. HODSON:

4   Q   August 20th, 1980, implicating you in the murder

09:26   5   of Gail Miller, and I think yesterday you told us

6   you thought you became aware of that from Harold

7   Pick; is that right?

8   A   Yes.

9   Q   And I think you said you thought you became aware

09:26 10   in 1980; is that right?

11   A   Yes.

12   Q   And I'm wondering, sir, if -- let me just probe

13   that a little bit. Mr. Pick was a Legal Aid

14   lawyer; is that right?

09:26 15   A   Yes.

16   Q   And I will be going to some documents in a moment

17   that indicate he was involved in setting up your

18   polygraph in 1990, okay, in July.

19   A   Yes.

09:27 20   Q   Do you remember Mr. Pick being involved at that

21   time?

22   A   Yup.

23   Q   And I also believe there's some records that

24   suggest Mr. Pick may have been involved at least

09:27 25   for a short period in the (V10) (V10)- matter by

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1   way -- through Legal Aid; is that correct?

2   *A*   Yes.

3   **Q**   And I think in the (V10) (V10)- matter your

4   counsel at one point was Mr. Beresh while he was

09:27 5   in North Battleford, he then moved to Edmonton,

6   and I think Morris Bodnar may have acted for you;

7   is that correct? Does that sound right?

8   *A*   Yes.

9   **Q**   And did Mr. Pick act -- was he involved in there

09:27 10   as well?

11   *A*   Oh, I can't remember how long he was there.

12   **Q**   Okay. And my question, Mr. Fisher, is it possible

13   that you became aware of Linda Fisher's statement,

14   which is dated 1980, is it possible you first

09:27 15   became aware of that in 1990 through Mr. Pick or

16   are you certain it was in 1980 on the (V10) (V10)-

17   matter?

18   *A*   The date is --

19   **Q**   Pardon me?

09:28 20   *A*   I'm not sure of the date.

21   **Q**   Okay. I'll show you some later documents where

22   you say that you first became aware of you being a

23   suspect in the late '80s and early '90s. Do you

24   remember saying that? Maybe when we get to those

09:28 25   documents I'll ask you the question again, but do

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1   you remember saying things of that nature?

2   A   (*Shakes head*)

3   Q   Let me ask you this. When did you, Larry Fisher,

4   first learn that you were a suspect for the murder

09:28 5   of Gail Miller?

6   A   I can't give you a date.

7   Q   And do you remember who or how?

8   A   No.

9   Q   Were you in jail at the time?

09:28 10   A   Possibly, yeah.

11   Q   Okay. We'll go through some documents that might

12   assist. I now want to turn to the late '80s, 1990

13   period and I will go through some documents with

14   you, but it appears that in early 1990, or the

09:29 15   spring of 1990 you were contacted by Sergeant Rick

16   Pearson of the RCMP. Do you remember that?

17   A   Yes.

18   Q   And you were interviewed by Mr. Pearson on a

19   couple of occasions and by Eugene Williams from

09:29 20   the federal Department of Justice?

21   A   Yes.

22   Q   And at the time you had a couple of lawyers acting

23   for you, first a fellow by the name of Stephen

24   Carter with the Legal Aid office. Do you remember

09:29 25   Mr. Carter being involved for a short time?

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1	*A*	Yes.
2	**Q**	And then Harold Pick; is that right?
3	*A*	Yes.
4	**Q**	And I take it at some point during this time you
09:29 5		became aware that people wanted to talk to you
6		because some people were suggesting that you had
7		killed Gail Miller; is that correct?
8	*A*	Yes.
9	**Q**	And I take it you would have been, you would have
09:29 10		become aware that David Milgaard had been
11		convicted of that crime and that he was
12		proclaiming his innocence and saying he didn't do
13		it, someone else had. You became aware of that at
14		some point did you?
09:30 15	*A*	Yes.
16	**Q**	And did you become aware as well that the
17		suggestion was that you were the person who had
18		committed that crime? You became aware of that
19		from various sources?
09:30 20	*A*	Yes.
21	**Q**	And again, I may have asked you this a bit
22		earlier, but do you recall when you first became
23		aware of that and how?
24	*A*	(*Shakes head*)
09:30 25	**Q**	No?

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1   *A*   No.

2   **Q**   Let's go through some documents and I'll see if we

3   can assist a bit in the chronology. First if we

4   can call up 004906, please, and this is a report,

09:30 5   Mr. Fisher, and I'm going to be referring to some

6   reports both of Sergeant Rick Pearson and Eugene

7   Williams that chronicle their meetings with you

8   and what they did and we'll see if this can

9   refresh your memory a bit as to the sequencing of

09:31 10   events, and this is a report that he prepared

11   April 17th, 1990 and it's a chronology of events.

12   If we could go to the next page, please. Just to

13   put this in context, Mr. Fisher, this refers to

14   February 26th, 1990 when David Milgaard's lawyers

09:31 15   got a phone call from an individual indicating

16   that the true identity of Gail Miller's killer is

17   one Larry Fisher, and so February 26, 1990 is

18   when, at least according to the documents -- we

19   haven't heard from Mr. Pearson yet -- but I

09:31 20   believe he will tell us that this is the date that

21   the RCMP and Federal Justice officials first

22   became aware of you as a suspect, and then if we

23   can go to page 06310 -- or 063114, and then just

24   for the chronology, Mr. Fisher, after this came

09:32 25   about representatives of Joyce Milgaard and an

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1   investigator interviewed your wife, Linda Fisher,

2   obtained some information from her, and further

3   investigations were taking place at the time. I

4   think you were in the Prince Albert Penitentiary.

09:32 5   Does that sound right?

6   A   Yes.

7   Q   And then at some point, and I'll show you a

8   document, I think you got moved to Saskatoon to

9   the Regional Psych Centre, didn't you, in about

09:32 10   June I think or at some point there?

11 A   '87?

12 Q   No, in 1990. I think you went in for --

13 A   That was the second time?

14 Q   Yeah.

09:32 15 A   Yes.

16 Q   Yeah. So at this time you are in the Prince

17   Albert Penitentiary and this is March 20th of 1990

18   and this is Rick Pearson writing:

19   "I phoned Linda Fisher from my home, she

09:32 20   confirmed that she went to the Prince

21   Albert Pen on Sunday with Mrs. Fisher."

22   I believe that's your mother.

23   "Linda did not visit with Larry, she

24   indicated she visited Ernie Moosomin who

09:33 25   is a friend of hers. She did indicate

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1   that Mrs. Fisher and Larry had a visit

2   and that Mrs. Fisher feels much better

3   now that she had talked directly to her

4   son about the recent revelations of his

09:33   5   involvement in this Miller case."

6   And if you recall yesterday when I went through

7   Linda's statement where she talked about

8   confronting you on the morning of the murder, I

9   believe that statement was around March 14th or

09:33 10   March 10th -- let me just check, I'll give you an

11   exact date -- March 14th is when she gave the

12   statement to the RCMP and I think March 10th or

13   thereabouts was the statement she had given to

14   the Milgaards. So it appears on this date that

09:33 15   Linda and your mother went to visit you at the

16   penitentiary and your mother talked to you about

17   the recent revelations of your involvement in the

18   Miller case. Do you have a recollection of that?

19 A   No.

09:33 20 Q   Is it possible that that might have been the first

21   time you became aware that you were being, you had

22   been identified as a suspect?

23 A   If anything, I heard it through the media.

24 Q   Okay.

09:34 25 A   So --

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1	Q	Okay. I'll get to that in a bit and I can show
2		you where the media did. So you think the media
3		is where you would have heard it first?
4	A	Yes.
09:34 5	Q	I'm going to suggest to you, Mr. Fisher, that I
6		think at least for about a four month time period
7		the media reports that we've seen, it wasn't until
8		I think about May of 1990, so a couple of months
9		after this time frame, a couple of months after
09:34 10		March the media did report about a suspect in the
11		prison system who the RCMP were investigating. It
12		didn't name you --
13	A	Uh-huh.
14	Q	-- and I think it came up first in the House of
09:34 15		Commons in a debate about another suspect and then
16		there's couple of articles and then I believe it
17		wasn't until late June of 1990 in a CBC report
18		where your name was first mentioned, and I'll show
19		you a reference to that in a moment. So I think,
09:35 20		I think based on the documents we've seen, that
21		that's when the media first became aware of it.
22		Does that assist you at all?
23	A	No.
24	Q	So if we can go to the next page, please, and
09:35 25		again this is March 20th, '90, it says:

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1   "Linda also confirmed that she had

2   talked with Mr. Asper prior to going to

3   P.A. and that Asper had requested her

4   not to say anything to Larry, Linda also

09:35   5   indicated it wouldn't matter as Sylvia

6   Poitras, Larry's sister, had written a

7   letter to Larry, apparently telling him

8   about the investigation. It is obvious

9   at this point that Larry is aware that

09:35   10   the police are looking into it. Linda

11   also confirmed that Mr. Asper was

12   interested in getting cigarette butts,

13   and anything that would have body fluid

14   for analysis. Linda went on to say that

09:35   15   Larry no longer smokes so this was out

16   of the question."

17   And again it appears from this that your sister

18   may have sent you a letter giving some details

19   about allegations. Do you recall that at all?

09:36   20   A   No.

21   Q   Is it possible that happened and you just don't

22   remember these incidents?

23   A   Possible.

24   Q   And then if we can scroll down, paragraph 64, this

09:36   25   is a later report but it refers to this March time

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1   frame, Pearson writes:

2   "64. I talked to Toby Coleman, Prince

3   Albert Pen security, he indicated that

4   Sylvia Poitras sent a letter dated 15

09:36   5   Mar to Larry, expressing concern that

6   the police had talked to their mother,

7   who was very ill. I was not interested

8   in the contents of this letter."

9   It goes on to talk about it. So it appears that

09:36 10   around mid March, 1990 both your mother and your

11   sister had been communicating with you about a

12   number of matters related to the Gail Miller

13   murder; is that a fair -- I think that's what the

14   documents suggest. You are telling us you don't

09:36 15   remember, but it's possible; is that fair?

16   A   Umm, I can't remember.

17   Q   Okay. Next if we could go to 004906 is the doc

18   ID. This is again a report of Sergeant Pearson.

19   If we can go to page 004913, call out paragraph

09:37 20   (q), Sergeant Pearson writes:

21   "On 90 April 10, I travelled to the

22   Prince Albert Penitentiary and

23   interviewed Larry Fisher. After

24   explaining my purpose for meeting with

09:37 25   him, I made the following three

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1   requests:

2   - that he provide a blood sample to

3   possibly eliminate him as a suspect

4   - to volunteer to take a polygraph

09:37   5   examination

6   - to provide a written statement and

7   written deposition regarding his

8   activities at the time of Gail Miller's

9   murder.

09:38   10   Fisher, while being very open

11   and cooperative, requested that he

12   discuss this with a lawyer, who in turn

13   would contact myself. At time of

14   writing, we are awaiting a response to

09:38   15   our request."

16   Do you have a recollection of Sergeant Pearson

17   coming and meeting you in the Prince Albert

18   Penitentiary and asking you questions about the

19   Gail Miller murder?

09:38   20   A   Yes.

21   Q   And would that be the first time, Mr. Fisher, that

22   a police officer, apart from February 3rd, 1969,

23   your encounter at the bus stop, so was this, on

24   April 10, 1990, be the first occasion where a

09:38   25   police officer questioned you about the Gail

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1   Miller matter?

2   A   Possibly.

3   Q   Pardon me?

4   A   Possibly. I'm not really sure.

09:38 5   Q   Okay. Let's just go back in this time frame. Do

6   you think another police officer would have talked

7   to you about this around 1990?

8   A   No.

9   Q   Let's just go back for a moment to 1980, (V10)

09:39 10   (V10)-. Do you recall any police officer in the

11   (V10) (V10)- matter questioning you about the Gail

12   Miller murder?

13   A   No.

14   Q   So it appears, and I think you are saying you

09:39 15   can't confirm it, but do you dispute what Sergeant

16   Pearson has written here as far as the date? I

17   mean, do you have any reason to dispute that?

18   A   No.

19   Q   Do you remember Sergeant Pearson asking you for a

09:39 20   blood sample and to take a polygraph and to give a

21   written statement?

22   A   No, I can't remember.

23   Q   Okay. It would appear from this paragraph that it

24   was the RCMP and Sergeant Pearson who brought up

09:40 25   the issue of a polygraph?

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1   *A*   Uh-huh.

2   **Q**   Is that correct?

3   *A*   Yeah, I think so.

4   **Q**   And so we know you took one a couple of months

09:40   5   later.

6   *A*   Yeah.

7   **Q**   Was it their idea or your idea?

8   *A*   Mine.

9   **Q**   Pardon me?

09:40   10   *A*   Mine.

11   **Q**   Your idea to take it?

12   *A*   Yeah.

13   **Q**   But was that after they brought it up or did you

14   bring it up first; do you remember?

09:40   15   *A*   I can't remember.

16   **Q**   Okay. So it's possible that Sergeant Pearson had

17   asked you to take a polygraph and you said yes, I

18   will take it?

19   *A*   Uh-huh.

09:40   20   **Q**   Yes?

21   *A*   Yes.

22   **Q**   Is it possible that you would have brought it up

23   first with him saying lookit, I'll take a

24   polygraph exam, brought it up before he asked you

09:40   25   about it or are you able to tell us?

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1   *A*   I can't tell you.

2   **Q**   And that he would have asked you for a blood

3   sample; is that right?

4   *A*   I'm not sure whether he did or not.

09:40 5   **Q**   And I think there's a record, I'll show you a bit

6   later, where you did in fact give a blood sample;

7   is that right? Before the Supreme Court, before

8   Ottawa, I think when you were out at the Mountain

9   Institution, at some point I think in 1990 you

09:41 10   gave a blood sample to the authorities; is that

11   correct?

12   *A*   Umm, I think so.

13   **Q**   I'll show you some documents that may assist you.

14   *A*   Yeah.

09:41 15   **Q**   So after this, it talks about you getting a

16   lawyer. Did you then contact a lawyer to give you

17   some advice then?

18   *A*   I'm not sure.

19   **Q**   There's a record of a Stephen Carter of Legal Aid

09:41 20   becoming involved at that time. Is it fair to

21   assume from that that somehow you would have

22   connected with Legal Aid?

23   *A*   Possibly, yes.

24   **Q**   If we could go to 063102 and go to page 063121,

09:42 25   and again these are Sergeant Pearson's additional

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1   notes that he made, and here's where he writes

2   about his first interview with you on April 10th.

3   "98. Departed for Prince Albert. At

4   1450 I met and interviewed Larry Fisher,

09:42 5   he was wearing a dirty T-shirt, grey

6   prison clothes, a little nervous but

7   very cooperative. I explained that he

8   had become a suspect in the Miller death

9   because of certain activities he was

09:42 10   involved in and the fact that he was

11   living in the same residence that

12   Milgaard attended on the morning of the

13   murder. Fisher seemed to have a poor

14   memory and the only factual thing he

09:42 15   could relate was that he had been

16   questioned by police shortly after the

17   murder. He remembered this quite

18   clearly. He indicated that he was

19   questioned at the bus stop one morning

09:42 20   after the murder, while he was on his

21   way to his employment. Fisher did not

22   recall having an argument with Linda on

23   this specific occasion, but he stated

24   they fought so much he could not recall

09:43 25   one argument from another. I requested

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1   that he provide me with a blood sample,

2   take a polygraph examination and provide

3   a statement or legal deposition. Mr.

4   Fisher remained cooperative but wished

09:43 5   to discuss this request with his lawyer.

6   He will talk to his lawyer and have the

7   lawyer call me.

8   99. Nothing came from this interview

9   which would suggest Fisher was involved

09:43 10   in the murder; he said he confessed to

11   all his crimes when he was sentenced in

12   Winnipeg. I left my calling card and

13   list of the three requests that I made.

14   At this point I await a request from his

09:43 15   lawyer."

16   Again, do you have any reason to dispute what

17   Sergeant Pearson has written here about his

18   interview with you on April 10th, 1990?

19 A   No.

09:43 20 Q   So this is -- this is accurate as far as you are

21   concerned?

22 A   Yes.

23 Q   And it looks like at this time, Mr. Fisher, that

24   you didn't have a recollection, you remembered

09:43 25   arguing with Linda, but you didn't recall an

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1   argument, an argument of the nature where she

2   accused you of the murder; is that fair?

3   A   Yes.

4   Q   Go to page 063122 and if I can just -- you had

09:44 5   mentioned earlier about the media, I'll just --

6   paragraph 106, which is under the date April 20th,

7   Sergeant Pearson writes:

8   "106. Asper called me, wanting to know

9   what was happening. All I could tell

09:44 10   him was that I had contacted Fisher and

11   that ongoing inquiries were being made.

12   Asper wanted to know what Fisher had to

13   say, however I told him I had no more to

14   tell him at this time. Asper said he

09:44 15   was relieved that contact had been made

16   with Fisher because Mrs. Milgaard was

17   coming home early from England and it is

18   suspected that she's going to press

19   ahead about the inaction of the Federal

09:44 20   Justice Department on their Section 690

21   application and Asper stated he felt

22   better knowing that Fisher may cooperate

23   with us. I advised Mr. Asper that

24   unnecessary publicity would possibly

09:45 25   hamper the police investigation and that

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1   there is a certain danger in having

2   Fisher's name become subject of a press

3   release, and this will have no positive

4   effect on our inquiries. I explained to

09:45 5   Mr. Asper that my role at this point is

6   to find the truth and to gather

7   evidence, not become embroiled in a

8   press release, which in my opinion would

9   serve no one's interest at this time."

09:45 10   So it appears from this note, Mr. Fisher, that

11   your name had not been released to the press yet.

12   Any reason to dispute that?

13 A   No.

14 Q   On April 23rd, 1990, which is about two weeks

09:45 15   after Sergeant Pearson interviewed you, he says:

16   "I called Stephen Carter ... Legal Aid

17   lawyer from Prince Albert, he has been

18   in contact with Mr. Fisher. I explained

19   to him that we wished to obtain blood

09:46 20   samples and a statement. Carter has not

21   had the opportunity to discuss this

22   personally with Mr. Fisher, but now that

23   I have provided him background as to why

24   we want to talk with Larry, Mr. Carter

09:46 25   will be attempting to interview Fisher

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1		this Friday and will let me know what is
2		happening."
3		So, again, it appears at this date that
4		Mr. Carter had been retained from Legal Aid on
09:46 5		your behalf; is that fair, is that correct?
6	A	Yes.
7	Q	I wonder if we can go to 063129. Again, this is
8		Sergeant Pearson, this is now May the 8th, 1990
9		and he writes:
09:46 10		"Travelled to Prince Albert Penitentiary
11		and interviewed Larry Fisher. He was
12		complaining of stomach pains and wanted
13		to seek immediate medical attention
14		while I was with him. It should be
15		mentioned that he was not aware that I
16		was attending this morning to see him.
17		I talked with him in the conference room
18		for approximately 3 to 4 minutes. He
19		does not wish to do anything about my
09:47 20		original request until after the May 19
21		weekend, when he is having a trailer
22		visit with his wife. Fisher indicates
23		that his daughter will not be attending
24		this visit. I asked Larry to provide a
09:47 25		blood sample at this time, in view of

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1   the fact he is going to be going for

2   medical attention anyway, however he

3   said he didn't want anything on his mind

4   that would disrupt his upcoming trailer

09:47 5   visit. I indicated there was a need to

6   get a sample of blood and a statement of

7   his activities as quickly as possible,

8   as there may soon be a public release by

9   Milgaard and this would possibly point a

09:47 10   finger at Larry. Larry's response was,

11   they waited 20 years to see me, they can

12   wait a little while longer. I indicated

13   to Larry that I would be seeing him as

14   soon as possible after his upcoming long

09:47 15   weekend trailer visit. I then returned

16   to Saskatoon."

17   And, again, does that accurately record the

18   discussion you would have had with Sergeant

19   Pearson at that time?

09:48 20   A   Umm, yeah.

21   Q   No reason to dispute anything that's in there?

22   A   Nope.

23   Q   And was there -- and again, I think April 10th was

24   when he had asked you for the statement and the

09:48 25   blood sample, this is about a month later. Do you

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1   recall, Mr. Fisher, whether there was any reason

2   you weren't providing it or what -- any

3   explanation as to why, at least it appears here,

4   that there is a bit of a delay?

09:48 5   A   No.

6   Q   And this response, that:

7   "... they waited 20 years to see me,

8   they can wait a little while longer."

9   is that something you could have said to Sergeant

09:48 10   Pearson?

11   A   Possibly.

12   Q   If we can then go to the next page, please. And

13   again, just in that back paragraph, I think it

14   talks about the fact that Pearson is telling you

09:48 15   that "lookit, a public release might be coming

16   with your name", is that fair? So it looks like

17   at this time -- just go to the back page, one page

18   previous, it says here:

19   "... as there may soon be a public

20   release by Milgaard and this would

21   possibly point a finger at Larry."

22   So it appears from here that at May 8th there had

23   not been a public release of your name, is that

24   fair, a fair read of that?

09:49 25   A   Yes.

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1   Q   And you have no reason to dispute that?

2   A   No.

3   Q   And the next page, May 10th:

4   "I returned a telephone call to

09:49   5   Mr. Asper, he expressed concern that

6   Joyce Milgaard has released information

7   to the press that the RCMP are

8   investigating a suspect who is currently

9   doing time in a Saskatchewan

09:49   10   Penitentiary. Apparently Mrs. Milgaard

11   has been talking with John Harvard, a

12   member of Parliament, who raised certain

13   questions with the Standing Justice

14   Committee, who brought the Milgaard case

09:49   15   up in the House of Commons. There are

16   two parts to the concerns raised by M.P.

17   Harvard, (1) Why the Farris report has

18   not been acted upon, and (2) What

19   current inquiries are being made with

09:50   20   Larry Fisher. According to Mr. Asper,

21   Harvard was not to raise the issue of

22   Fisher because he is under police

23   investigation, however, it did seem that

24   Harvard was to pursue the hold-up with

09:50   25   the Justice Department so far as their

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1   action on the Farris report."

2   "Mr. Asper also indicated that Joyce

3   Milgaard had been in contact with

4   *StarPhoenix* reporter Cam Fuller and that

09:50   5   Fuller will soon be releasing a story on

6   the details provided him by

7   Mrs. Milgaard."

8   And, again, I just raise that to put it in

9   context, Mr. Fisher, but it appears at this time

09:50   10   information is starting to go to either

11   politicians or the press. If we can then go to

12   063134, and this is now June the 8th, Pearson

13   writes:

14   "Made a patrol to Prince Albert and met

09:50   15   with Fisher's lawyer Stephen Carter, at

16   the Prince Albert Penitentiary Admin

17   Building. We entered the Pen and made

18   contact with Larry Fisher. Mr. Carter

19   had a private conversation for

09:51   20   approximately 10 minutes with Mr.

21   Fisher, at which time I interviewed Mr.

22   Fisher, who stated he wanted to answer

23   questions only once and mentioned making

24   a legal deposition. As Fisher did not

25   wish to be interviewed twice, it was

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09:51

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09:52

09:52

1   agreed we would arrange for the taking

2   of a legal deposition. Fisher gave me

3   the impression he was stalling, however,

4   I am at a disadvantage as publicity is

5   building and access to Fisher is

6   difficult. I must continue to maintain

7   his cooperation in order to get certain

8   questions answered. His soft spot seems

9   to be his daughter Tammy and this will

10   be kept in mind. I conversed with and

11   questioned Fisher, however, it was

12   apparent he did not wish to talk to me.

13   I explained to Fisher that a legal

14   deposition may not be necessary if

15   nothing comes of the initial interview.

16   Carter seemed disappointed in Fisher's

17   lack of desire to talk. Fisher advised

18   he will not submit to a polygraph

19   examination or provide a blood sample.

20   I explained the suspicion that has been

21   cast upon him and if he is innocent to

22   cooperate so we could ensure his name

23   and name of Tammy is cleared prior to

24   his release from prison. Fisher states

25   he has already been identified as the

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 1   person being talked about, however I

 2   reminded him none of this has come yet

 3   via the press and that any suspicion on

 4   him has come from within his own

09:52 5   institution."

 6   And, again, would that be an accurate recording

 7   of the discussions you would have had with

 8   Sergeant Pearson on this date?

 9   A   I can't remember what we talked about.

09:52 10   Q   Yeah.

 11   A   Sorry.

 12   Q   I'm sorry, go ahead?

 13   A   I can't remember.

 14   Q   Yeah?

09:52 15   A   Yeah.

 16   Q   So do you have a recollection of meeting Sergeant

 17   Pearson and your lawyer?

 18   A   Yeah.

 19   Q   At the penitentiary?

09:52 20   A   Yes.

 21   Q   And do you remember telling him you would take a

 22   legal disposition, but that you wouldn't take a

 23   polygraph, and you wouldn't give them blood?

 24   A   I can't remember.

09:52 25   Q   Okay. Now it talks here about you stating that

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1   suspicion -- it says:

2   "Fisher states that he has already been

3   identified as the person being talked

4   about, however I reminded him none of

09:53 5   this has come yet via the press and that

6   any suspicion on him has come from

7   within his own institution."

8   Were you made aware, within the institution were

9   people accusing you of the Gail Miller murder

09:53 10   around this time, or do you know what this is

11   referring to?

12   A   No.

13   Q   Did there come a time, Mr. Fisher, that you became

14   concerned about what was being said within the

09:53 15   prison institution about your responsibility for

16   the Gail Miller murder?

17   A   Can't remember.

18   Q   But would that have mattered to you, you are in

19   jail in the Prince Albert Penitentiary, if it

09:53 20   became known that you were a suspect in another

21   rape and a murder?

22   A   Oh yeah, it would have bothered me, yeah.

23   Q   Okay. And would there have been any reaction from

24   the other inmates?

09:54 25   A   Umm, yes, there would have been.

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1   **Q**   And a negative impact on you?

2   *A*   Yes.

3   **Q**   And do you have a recollection of that happening?

4   *A*   No.

09:54   5   **Q**   If we can go to 002082. And this is a letter June

6   11th, 1990 from, it's from Stephen Carter to Rick

7   Pearson, and this talks about the brief interview

8   on June 8th. And it says:

9   "As far as the arrangement for the sworn

09:54   10   deposition are concerned, please be

11   advised that you should not make any

12   such arrangements at the present time.

13   Mr. Fisher, as of June 11,

14   1990, has been transferred to the

09:54   15   Regional Psychiatric Centre at

16   Saskatoon. This is part of his parole

17   requirements. I understand from him

18   that he will be in Saskatoon at the RPC

19   for approximately seven (7) months.

09:55   20   While in Saskatoon, Mr. Fisher

21   shall be represented by Mr. Harold Pick,

22   Q.C., of the Legal Aid Central Office at

23   Saskatoon ...

24   I discussed the situation with

09:55   25   Mr. Pick and also with Mr. Fisher at my

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1   interview with him on June 11, 1990. My

2   instructions from Mr. Fisher are to ask

3   you to provide Mr. Pick with a complete

4   written list of the each and every

5   question that you intend to put to Mr.

6   Fisher. That list will then be

7   considered by Mr. Fisher with the advice

8   and counsel of Mr. Pick and it will then

9   be determined which, if any, questions

09:55 10   will be answered by Mr. Fisher."

11   And, again, does that sound correct, Mr. Fisher,

12   at this time Mr. Carter handed the matter off to

13   Mr. Pick after you got transferred up to the

14   Regional Psychiatric Centre?

09:55 15   A   Yes.

16   Q   And is this correct, as well, that you wanted a

17   complete written list of each and every question

18   before this deposition; do you remember asking for

19   that?

09:56 20   A   Umm, I can't remember.

21   Q   Do you ever remember getting a list of questions

22   before the deposition?

23   A   No.

24   Q   Go to 063135, which is doc. ID 163102, and again

09:56 25   this is just a continuation of Sergeant Pearson's

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1   notes. We're now on June 15th, 1990:

2   "Returned a telephone call to Mr. Harold

3   Pick, Legal Aid, now handling Fisher's

4   case. We agreed to meet possibly the

09:56 5   first week in July because of court

6   cases Mr. Pick has pending. Mr. Pick

7   seems to be objecting to a legal

8   deposition being provided. I know

9   Mr. Pick well and I am sure we can

09:56 10   arrange some suitable solution to this

11   problem."

12   And then to page 063137, and this is now June

13   22nd, 1990, and starting at paragraph 179:

14   "Mr. Pick, Fisher's lawyer, called and

09:57 15   expressed concern about the recent CBC

16   news item about his client. Pick will

17   be meeting with his client in the next

18   few days and will call me after that

19   time. Pick is suggesting he may advise

09:57 20   his client to take a polygraph

21   examination through a private

22   investigator, possibly Mike Robinson,

23   ex-RCMP, currently of Saskatoon."

24   And then next paragraph:

09:57 25   "Amy Ehman of CBC called, wanting to

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1   confirm if I was going to interview

2   Larry Fisher. I did not deny or confirm

3   the fact Fisher was the person I was

4   pursuing. I explained to her I was not

09:57   5   attempting to stonewall her efforts but

6   was merely respecting the identities of

7   those people involved."

8   And it appears at this time, Mr. Fisher, June

9   22nd, 1990, that the CBC had publicized your name

09:58   10   as a suspect; does that sound right to you as far

11   as timing?

12   A   Yes.

13   Q   And do you recall how you became aware of that

14   news, news story implicating you or identifying

09:58   15   you?

16   A   No.

17   Q   No? And did you have concerns about that?

18   A   Not at the time.

19   Q   Concerns about the fact that the media was

09:58   20   identifying you by name as a suspect in the

21   murder?

22   A   Yes.

23   Q   Did you have concerns about that?

24   A   Not at the time.

09:58   25   Q   Okay. And why not?

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1   *A*   Just no answer to that one.

2   **Q**   Okay. Did you, at some point, have concerns?

3   *A*   Down the road, yes.

4   **Q**   Okay. When and why?

09:58   5   *A*   Umm, I can't tell you when or why, I just -- it

6   came later down the road.

7   **Q**   So it didn't bother you that your name was being

8   put out in the media as the person who had raped

9   and killed Gail Miller?

09:59   10   *A*   No.

11   **Q**   Go to 002369, please. And this is Sergeant

12   Pearson's June 26th report and he says here:

13   "(a) in PCR dated 90-06-26, attempts were

14   being made to gain the cooperation of

09:59   15   Mr. Larry Fisher, currently an inmate at

16   the Prince Albert Penitentiary, who has

17   become a suspect in this investigation.

18   (b) since our last report, Mr. Fisher has

19   been transferred to the Regional

09:59   20   Psychiatric Centre in Saskatoon for

21   therapy, believed to be related to his

22   sexual problems. We have been working

23   through Mr. Fisher's lawyer, Mr. Harold

24   Pick, Q.C., of the Legal Aid central

10:00   25   office, Saskatoon. An agreement has

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1   been worked out whereby Larry Fisher

2   will provide two of our original three

3   requests:

4   1) He will provide a statement relative

10:00   5   to questions concerning his

6   activities during the time of Gail

7   Miller's murder."

8   And:

9   "2) Mr. Fisher agreed to submit to a

10:00 10   polygraph examination, provided it

11   was administered by a non-police

12   operator. Mr. Pick advised that if

13   the results of Fisher's polygraph

14   test show him to be honest, all

10:00 15   charts and interview results would be

16   provided. If the test results were

17   not in favour of Fisher, nothing

18   would be released to the Crown.

19   (c) In our efforts to gain the cooperation

10:00 20   of Mr. Fisher we had no alternative but

21   to agree to the conditions laid out.

22   Mr. Pick then arranged for the services

23   of polygraph operator Mike Robinson

24   ...".

10:00 25   And, again, does that accurately record the

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1   arrangements that were made by your counsel and

2   the RCMP?

3 A   Yes.

4 Q   And those were the terms upon which you agreed to

10:01 5   submit to a polygraph; is that correct?

6 A   Yes.

7 Q   Did you consider being polygraphed by an RCMP

8   officer, one of the investigating officers?

9 A   I'm not sure.

10:01 10 Q   Did you care who did the polygraph?

11 A   No.

12 Q   And according to those conditions, if the test

13   results were not in favour, then they would not be

14   provided to the Crown; is that -- that was the

10:01 15   deal?

16 A   I'm not sure what was made.

17 Q   Okay. Well let's just go -- if I can bring up

18   002370, please.

19 A   Yeah.

10:02 20 Q   Let's just go through that, and I think you said

21   these were the arrangements, so that if we start

22   here, if the results of the polygraph test showed

23   you to be honest all charts and interview results

24   would be provided, and I think the questions would

10:02 25   have been related to whether you were involved in

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1		Gail Miller's murder, right, that's what you were
2		going to be polygraphed about; is that right?
3	A	Yes, yes.
4	Q	However, if the results were not in favour of
5		Fisher, nothing would be released to the Crown.
6		Do I take it, from that, that if the polygraph
7		had indicated that your denial of the murder of
8		Gail Miller was untruthful or deceptive, in other
9		words that you failed the polygraph on those
10		questions, that that test results would not be
11		provided to the Crown; is that fair?
12	A	Yes.
13	Q	On the other hand if it showed when you asked,
14		answered those questions and denied involvement in
15		the killing that you were being honest, you would
16		provide those results to the Crown; is that
17		correct?
18	A	Yes.
19	Q	If we can go to 063102, and -- 063102 and go to
20		page 063138, and again, these are Mr. Pearson,
21		Sergeant Pearson's notes. He says:
22		"Mr. Harold Pick called, saying he had
23		an interview with his client Fisher. It
24		was agreed that myself and Mr. Williams
25		could interview Fisher. It was also

10:02 (lines 5)
10:02 (line 10)
10:02 (line 15)
10:03 (line 20)
10:03 (line 25)

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1   arranged by Mr. Pick to have private

2   polygraph operator Mike Robinson take a

3   test of Mr. Fisher. If the charts are

4   clean and in favour of his client, they

10:03 5   will be released to us, however they are

6   not conclusive or if Fisher fails, then

7   we will get nothing but the interview."

8   And, again, that's what you just told us;

9   correct? That was the arrangement, I think

10:04 10   that's what you just told us?

11   A   Yes.

12   Q   "Mr. Pick does not "think" his client

13   involved. Fisher feels concerned about

14   returning to the P.A. Pen and wants to

10:04 15   transfer to Mountain Prison in B.C.

16   Mr. Pick wanted me to initiate contact

17   with the Prince Albert Correctional

18   system to determine if there could be a

19   move generated. I will be in touch with

10:04 20   P.A. Security, explaining the concerns

21   Fisher has; i.e., publicity, threats for

22   his safety, etc."

23   Again, can you tell us, or what can you tell us

24   about those comments about being moved from P.A.

10:04 25   Penitentiary to Mountain Institution because of

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1   concerns you purportedly have with publicity,

2   threats for your safety, etcetera?

3   A   Umm, as soon as it hit the media was when it

4   became notable within the Pen for me. I was in

10:05 5   RPC taking a program for sex offenders there so it

6   was pretty safe in the group there.

7   Q   Okay.

8   A   Upon release from there back to the Pen would be

9   the problem, when it would start again.

10:05 10   Q   Would be a problem, what, I'm sorry?

11   A   In the Pen.

12   Q   And why would there be a problem?

13   A   Because of the media coverage.

14   Q   Okay. And I thought you had said earlier you

10:05 15   didn't care or weren't concerned about the media

16   identifying you as a suspect?

17   A   I wasn't, because I was in Saskatoon twice, so --

18   and it's segregated there.

19   Q   So while you were at the Regional Psychiatric

10:05 20   Centre you were segregated?

21   A   Yeah.

22   Q   And you didn't care if the media identified you as

23   a suspect while you were there?

24   A   No.

10:05 25   Q   When you were back in Prince Albert Penitentiary

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1		the media attention concerned you because other
2		inmates knew that you were a suspect in the rape
3		and murder?
4	A	Yup.
5	Q	And without getting into details, I think you told
6		us that that fact, if other inmates knew you were
7		suspected for another rape and murder, that they
8		might treat you a bit more unkindly than they did
9		before; is that fair?
10	A	Fair.
11	Q	And so you didn't want to go back to Prince Albert
12		because of the fact that inmates there became more
13		aware of you being named as a suspect in the Gail
14		Miller rape and murder; is that fair?
15	A	Yes.
16	Q	And what difference would it make if you went to
17		the Mountain Institution?
18	A	Umm, it's a set-back institution.
19	Q	It's a what?
20	A	Back then it was a set-back institution.
21	Q	What does that mean?
22	A	Umm, they pick and choose who they take there.
23	Q	I'm sorry?
24	A	They used to pick and choose who goes there.
25	Q	Is it, you mean, a favourable institution from an

10:06 (lines 5, 10, 15, 20, 25)

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1   inmate's perspective?

2   A   Back then, yes, it was quiet, set back.

3   Q   Okay. And you believed you would have been safer

4   at Mountain Institution than you would have at the

10:07 5   Prince Albert Penitentiary; is that fair?

6   A   Yes.

7   Q   And so as part of this process then, and I'll show

8   you some documents a bit later, you made it known

9   at this time, at least to Sergeant Pearson and to

10:07 10   Eugene Williams, that you didn't want to go back

11   to the Prince Albert Pen; is that fair?

12   A   Yes.

13   Q   And in fact at a later time, I think in 1990 or

14   maybe '91, you were transferred to Mountain

10:07 15   Institution; is that correct?

16   A   Yes.

17   Q   And did you ask the authorities to assist -- when

18   I say 'authorities' the RCMP or Mr. Williams --

19   did you ask them to assist with getting you

10:07 20   transferred there?

21   A   That I can't remember.

22   Q   Okay. I'll show you some documents --

23   A   Yeah.

24   Q   -- in a moment that may assist you on that. If we

10:07 25   could then go to 010016, please, and this is a

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1   memorandum from Eugene Williams dated June 28th,

2   1990, and you remember Williams, he was one of the

3   fellows who interviewed you on July 12th with

4   Sergeant Pearson?

10:08   5   A   Yeah.

6   Q   And he talks about talking to Mr. Pick to arrange

7   the meeting, and if you can scroll down:

8   "Mr. Pick indicated that he had

9   conducted a one and a half hour

10:08   10   interview with his client, and has

11   scheduled a further interview for

12   Tuesday July 3, 1990. Mr. Pick also

13   noted that Mr. Fisher feels insecure

14   about his own safety and is afraid to

10:08   15   return to the Prince Albert

16   penitentiary. Fisher had received

17   threats from other inmates, while he was

18   in the Prince Albert penitentiary. It

19   appears that his guilt has already been

10:08   20   determined by his fellow prisoners,

21   perhaps due to the media accusations

22   levelled against him.

23   In addition to his fears for

24   his safety in the Prince Albert

10:08   25   penitentiary, Mr. Fisher is also

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1   concerned about the consequences that

2   could follow an interview with

3   representatives of the Justice

4   Department. Mr. Fisher would also want

10:09   5   assurances, before an interview is

6   conducted, that the information obtained

7   from him or evidence developed as a

8   result of information that he provided,

9   would not be used to prosecute him."

10:09   10   And, again, what Mr. Williams records about his

11   conversation with your counsel at the time,

12   Harold Pick; would that accurately reflect the

13   concerns that you had at the time?

14   *A*   Yes.

10:09   15   *Q*   And so, again, you had received threats from other

16   inmates?

17   *A*   Yes.

18   *Q*   And this is maybe Mr. Williams' comment, but that

19   your guilt had already been determined by fellow

10:09   20   prisoners?

21   *A*   Yes.

22   *Q*   Go on:

23   "In this regard, Mr. Pick indicated that

24   a trusting relationship was building

10:09   25   between himself and Mr. Fisher.

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1   Mr. Pick indicated that he would be

2   prepared, in the interest of his client,

3   should his client agree, to conduct a

4   polygraph test of Larry Fisher.

10:10 5   Mr. Pick is confident that Mike

6   Robinson, an experienced polygraph

7   technician, could conduct a satisfactory

8   session. Mr. Pick said that he would

9   also provide the test results to us if

10:10 10   the test results were inconclusive or

11   "clear".

12   However, Mr. Fisher's current

13   emotional and psychological state, is

14   such that Mr. Fisher is not yet prepared

10:10 15   to be interviewed or to undergo the

16   polygraph test."

17   And do you recall, at the time, what was going

18   on, Mr. Fisher, as far as your emotional and

19   psychological state and physical state?

10:10 20   *A*   Umm --

21   Q   And maybe to help you out, I think about a week

22   later you underwent the polygraph examination, and

23   I'll go to the report, and I think Mr. Robinson

24   said due to your condition he couldn't really

10:10 25   conduct a meaningful test. And I'm just wondering

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1   if, at the time, were there certain things, did

2   you have any physical ailments at the time?

3   *A*   Yeah, lower back problems.

4   *Q*   Sorry, gallbladder, gallstones?

10:11 5 *A*   Yeah, about all of that.

6   *Q*   Okay.

7   *A*   It was mostly a lower back problem.

8   *Q*   And what about your emotional and psychological

9   state that's talked about here at the end of June?

10:11 10 *A*   That came with going to the group.

11   *Q*   Going to the group at?

12   *A*   RPC.

13   *Q*   So at RPC, you were in a sex offender program

14   there, is that all right?

10:11 15 *A*   Yes.

16   *Q*   And was that affecting your emotional and

17   psychological state?

18   *A*   Yes.

19   *Q*   If we could go to 063139. And I take it then, as

10:11 20   part of that treatment, you were going through

21   some of the crimes you had previously committed

22   and attempting to deal with them; is that what was

23   happening?

24   *A*   Yes.

10:11 25 *Q*   And, again, generally you were having a difficult

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1   time with that, is that a fair comment, or was it

2   just the fact of going through it?

3   A   I had no problem doing it, it's just bringing back

4   a lot of memories.

10:12 5   Q   Okay. So if we then go to, and again this is

6   Sergeant Pearson's note:

7   "Met Larry Fisher and Harold Pick at the

8   Regional Psychiatric Centre and

9   commenced a taped interview with

10:12 10   Fisher."

11   Actually, I'll just leave that now, I think

12   that's the interview. Let's just go down to the

13   polygraph:

14   "Mr. Pick has indicated the polygraph

10:12 15   operator may conduct a second ..."

16   No, sorry, no, that isn't right. Back to 198:

17   "... commenced a taped interview with

18   Fisher. The interview did not reveal

19   anything significant which would

10:12 20   indicate Larry was involved in the

21   Miller murder. Fisher's recollection of

22   what he was doing at the time, meaning

23   January 1969, was not bad. He answered

24   questions in a direct way. He had very

10:12 25   little to offer regarding activities

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1   surrounding the murder, possibly because

2   he does not know anything about it, or

3   he is involved but not prepared to

4   reveal anything which would be checked

10:13 5   out. I left the interview with doubts

6   about Fisher, and am not totally

7   convinced in my mind exactly what to

8   believe as Fisher is such a good

9   suspect, but based on the evidence of

10:13 10   the trial, I am inclined to keep an open

11   mind and pursue this in an effort to

12   come up with the truth, if that is

13   possible after such a long time. Mr.

14   Fisher's cooperation can be best termed

10:13 15   as "reluctant" at this time and I am

16   somewhat perplexed by this position.

17   Mr. Pick has been extremely helpful in

18   providing the opportunity for an

19   interview with his client. The tapes

10:13 20   will be sent to Mr. Williams as I do not

21   have steno services at the present time.

22   Mr. Pick has indicated the

23   polygraph operator may conduct a second

24   test once Fisher has stabilized. During

10:13 25   the interview, Fisher held his stomach,

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1   apparently suffering from a gall stone

2   condition and an ulcer. Fisher was also

3   expressing concern about his safety if

4   he returned to any federal institution,

10:13 5   which was based on the adverse publicity

6   given to him by the news media of late.

7   I will pass his concerns on to the P.A.

8   Security people."

9   If we can just go back to the top of this page,

10:14 10   it looks as though this is started July 5th,

11   which I think is either the pre-interview or the

12   polygraph, talking about the polygraph session.

13   In fact, yeah, it is July 5th, the polygraph

14   session; do you recall who was present when you

10:14 15   underwent the polygraph?

16   A   Umm, possibly my lawyer, umm, Williams, and

17   possibly a V & C officer.

18   Q   A which officer?

19   A   A V & C officer.

10:14 20   Q   What's a 'V & C officer'?

21   A   Visits and correspondence.

22   Q   Okay.

23   A   And I'm not sure whether there was an officer

24   there with me or not.

10:15 25   Q   If we could just go to 142450, go to page 142452,

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1   and this is a report from Mike Robinson. And

2   maybe this will help us clear up some of these

3   dates, it says:

4   "On the 5th of July, 1990 you contacted

10:15   5   me and advised that you were

6   representing Mr. Larry Earl Fisher who

7   is presently serving time at the

8   Saskatoon Regional Psychiatric Centre.

9   A Mr. David Milgaard is presently

10:16 10   serving time for a murder committed on a

11   Saskatoon woman by the name of Gail

12   Miller some 21 years ago. Milgaard and

13   his family have maintained his innocence

14   throughout these years and have recently

10:16 15   attempted to link Mr. Fisher to Gail

16   Miller's murder. You have discussed

17   this matter with Mr. Fisher and he is

18   prepared to undergo a polygraph

19   examination on this matter."

10:16 20   And then it was set for Monday -- scroll down

21   please -- set for Monday, the 9th of July.

22   Scroll down, please. And:

23   "On the 6th of July, 1990 I met with

24   Sergeant Rick Pearson of the Royal ...",

25   RCMP.

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1   "We met for some considerable period of

2   time and fully discussed this matter so

3   that I could properly conduct this

4   polygraph examination."

10:16   5   And then on the 9th of July Mr. Robinson met with

6   Mr. Pick and reviewed the facts and then on the

7   same date a polygraph test was conducted.

8   So tell us again just about the

9   polygraph, when you were actually hooked up to

10:17 10   the polygraph machine, who was present and who

11   was asking you the questions?

12   A   Umm, I can't think of his name.

13   Q   Mike Robinson?

14   A   Yes.

10:17 15   Q   And was he the only fellow that asked you the

16   questions then when you were hooked up to the

17   polygraph machine?

18   A   Yes.

19   Q   And was there anybody else in the room at that

10:17 20   time while you were being -- while the test was

21   being conducted?

22   A   I can't remember.

23   Q   And as part of that, did you have, prior to being

24   connected to the polygraph machine, did you, were

10:17 25   you questioned about the Gail Miller matter, were

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1   you asked questions by Mr. Robinson about your

2   recollection and your involvement?

3 A I'm not sure.

4 Q Prior to this polygraph, had you ever taken a

10:17 5   polygraph test before?

6 A No.

7 Q Did you know what a polygraph test was and how it

8   worked?

9 A After he explained it, yes.

10:18 10 Q Okay. Prior to that did you know?

11 A No.

12 Q Did you talk to any other inmates prior to this

13   about their experience with polygraph?

14 A No.

10:18 15 Q Did you have any concerns about undergoing the

16   polygraph?

17 A No.

18 Q Now, we've heard from Mr. Robinson last week that

19   due to your physical and mental condition he was

10:18 20   unable to conduct the test. Is that -- do you

21   have any -- do you remember discussing that with

22   Mr. Robinson at the time, your physical condition

23   and emotional state?

24 A Yes.

10:18 25 Q And what do you remember about that?

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1   *A*   Lower back problems, couldn't stand straight,

2   couldn't sit still.

3   **Q**   If we could go to 284281 and this is a memorandum

4   July 5, 1990 from Mr. Williams to his file. It

10:19 5   says:

6   "Today I spoke with H.P. Pick, Q.C.,

7   counsel to Larry Fisher who suggested

8   that a suitable date to interview his

9   client would be July 12, 1990. His

10:19 10   conditions were as follows:

11   1. A relaxed atmosphere

12   2. Statement under oath; - tape

13   recorded without the benefit of a

14   certify short hand reporter

10:19 15   3. A letter setting out the areas that

16   we propose to question Mr. Fisher; he

17   anticipates that this will assist him in

18   confirming his instructions.

19   He also noted that his client

10:19 20   was apprehensive about returning to the

21   federal penitentiary in Prince Albert,

22   Saskatchewan, and wondered whether we

23   would support Mr. Fisher's application

24   to the Mountain institution in British

10:19 25   Columbia. Mr. Fisher's apprehension

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1   stems from threats he had received

2   inside that institution, following news

3   reports which identified him as Gail

4   Miller's assailant. I advised Mr. Pick

10:20   5   that I would consider our position, and

6   advise him of our response.

7   After consultations with senior

8   counsel at Correctional Services Canada,

9   who provided very helpful suggestions,

10:20   10   which I adopt, I propose to tell

11   Mr. Pick that we will neither support

12   nor oppose his client's present or

13   future request for a transfer. However,

14   we will alert the penitentiary

10:20   15   authorities to the threats he has

16   received and to his apprehensions

17   concerning his return to Prince Albert.

18   The service can then assess Mr. Fisher's

19   position and decide accordingly.

10:20   20   Mr. Pick also indicated that

21   his client wanted to publicly rebut

22   suggestions by the C.B.C. that he

23   murdered Gail Miller, after he finished

24   a proposed polygraph test, and our

10:20   25   interview. I took no position when

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1   asked our views on this matter."

2   Again, just dealing firstly with the move from

3   Prince Albert to Mountain Institution, any reason

4   to dispute what Mr. Williams says here about the

10:21 5   position taken by Federal Justice; namely, they

6   wouldn't support, but they wouldn't oppose your

7   request to be moved? Do you remember that?

8   A   Yes.

9   Q   And is that accurate? Is that correct?

10:21 10   A   Yes.

11   Q   And then it appears here that at this time, July

12   5, 1990, you stated that you wanted to go to the

13   CBC and publicly rebut what they were reporting

14   about you; is that fair?

10:21 15   A   Yes.

16   Q   And we've got that clip a bit later, you did in

17   fact go to the CBC and talk to a reporter on

18   television; is that right?

19   A   Yes.

10:21 20   Q   And why did you do that?

21   A   They must have said something I didn't like or

22   agree with.

23   Q   Okay. If we could go to 011841, this is a letter

24   of July 6, 1990 from Mr. Williams to Harold Pick

10:22 25   agreeing to meet on July 12th and then saying that

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1   Sergeant Pearson will accompany Mr. Williams and

2   may participate in questioning Mr. Fisher on the

3   following topics, and related areas:

4   "1.   The events which comprise the

10:22 5   convictions that are contained on the

6   criminal record of Larry Earl Fisher;

7   2.   The movements and activities of

8   Larry Earl Fisher between January 30,

9   1969 and February 1, 1970, in connection

10:22 10   to the death of Gail Miller, whose body

11   was discovered on January 31, 1969;

12   3.   Personal and Employment history of

13   Larry Earl Fisher; and --"

14   Unfortunately this page, Mr. Commissioner, every

10:22 15   copy we have of this document has the same

16   version and we're going to try and get the

17   original from Mr. Williams to see if we can

18   clarify what's on here, so I won't, I don't think

19   I can refer to half of it, so I won't.

10:22 20   But I take it then that on this

21   date you had agreed to be interviewed by

22   Mr. Williams and Sergeant Pearson; is that

23   correct?

24   A   Yes.

10:23 25   Q   If we could call up 011840 and this is

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1   Mr. Williams on July 10th talking about whether he

2   received a letter, reaction to the contents, and

3   then it says:

4   "At the outset he --"

10:23 5   Being Mr. Pick,

6   "-- indicated that Mr. Fisher, in his

7   current condition cannot be polygraphed.

8   Apparently the combination of his gall

9   bladder condition, and the effects of a

10:23 10   recent confrontation with fellow inmates

11   at the Saskatoon Regional Psychiatric

12   facility have created conditions which

13   prevent the taking of a polygraph test.

14   The C.B.C. broadcast a

10:23 15   documentary on the Milgaard case which

16   linked Mr. Fisher to the murder of Gail

17   Miller. Three fellow inmates visited

18   Mr. Fisher after they saw the

19   documentary, and menaced him.

10:23 20   Consequently, he is afraid for his life.

21   In prison, to let another inmate "do

22   time" for your crime is a serious

23   breach."

24   If I can pause there. Again, does that

10:24 25   accurately record what had happened at the time

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 1   or what you would have said at the time?

 2   A   Yes.

 3   Q   And so you had a confrontation at the Regional

 4   Psychiatric facility after the CBC documentary?

10:24 5   A   Yes.

 6   Q   And is this accurate here, that -- it appears this

 7   is attributed to you, and tell me if it's not,

 8   please, that in prison to let another inmate do

 9   time for your crime is a serious breach?

10:24 10   A   Yes.

11   Q   And that's something you believe you would have

12   said at the time or certainly thought at the time?

13   A   Yes.

14   Q   And then it goes on to talk about the ordering of

10:24 15   the subject matters and then they agreed to meet.

16   If we could then go to 061960, please, and go to

17   the next page, there is the July 12th, and so I

18   read this to you yesterday. This is where you

19   were sworn in by your counsel. If we can scroll

10:25 20   down to the bottom, please, your counsel, Mr.

21   Pick, counsel at the time says:

22   "Mr. Pick: I just have the one

23   preparatory statement if I may be

24   permitted, Mr. Williams, for the record.

10:25 25   It is a clear understanding that these

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1   discussions will be held in private,

2   and, are solely for the purpose of

3   assisting the Department of Justice and

4   the Government of Canada in its

10:25   5   assessment of Mr. David Milgaard's

6   application for mercy. Therefore, there

7   will be no publication of any kind

8   outside the Department of Justice or

9   outside this room of the contents of

10:25 10   these discussions except insofar as may

11   be necessary to assess the application

12   of David Milgaard for mercy, or, to

13   further the investigation to formulate a

14   recommendation to the Minister of

10:25 15   Justice of Canada for the disposition of

16   Mr. Milgaard's application. Do you

17   understand that Larry?

18   Mr. Fisher: Yup.

19   Mr. Pick: Are you satisfied with that?

10:26 20   Mr. Fisher: Yup."

21   So if I can pause there. Mr. Fisher, it's my

22   understanding that when you gave this interview

23   under oath to Federal Justice, that you and your,

24   through your counsel, put these conditions on the

10:26 25   use of this transcript; is that right?

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1	*A*	Yes.
2	**Q**	In other words, they could have it, but they could
3		only use it in connection with David Milgaard's
4		application for mercy; is that correct?
5	*A*	Yes.
6	**Q**	And without getting into it, if you can't answer
7		this without getting into discussions or advice
8		from your lawyer then please don't answer it, but
9		why did you put that condition on it?
10	*A*	I can't answer.
11	**Q**	Okay. Now -- and I think the record before the
12		Supreme Court reflects this. I think when you got
13		to the Supreme Court reference in the course of
14		that it came to be that this transcript was
15		released; is that fair?
16	*A*	Yes.
17	**Q**	And I think the record, Mr. Commissioner,
18		indicates what and how that happened, so I don't
19		propose to question Mr. Fisher on that.
20		If we could go to 062051 --
21		actually, this is probably an appropriate spot to
22		break.
23		*(Adjourned at 10:27 a.m.)*
24		*(Reconvened at 10:46 a.m.)*
25		BY MR. HODSON:

10:26 (line 5)
10:26 (line 10)
10:27 (line 15)
10:27 (line 20)

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1   Q   When we broke, Mr. Fisher, I was asking you about

2   your interview on July 12th. If we could call up

3   061960, please, and if we can go to 062051 --

4   actually, I'm sorry, 062042. I just want to go

10:47   5   through, this is where Mr. Williams questions you

6   about the Gail Miller murder and he starts here:

7   "Mr. Williams: Now you were living on

8   Avenue O, you heard about the murder of

9   a woman, not to far from where you

10:47 10   lived. Did you have any role to play in

11   the death of that woman who was found in

12   an alley behind 20th Street West in the

13   City of Saskatoon on January 31, 1969.

14   Mr. Fisher: No, I did not."

10:47 15   And then you are asked:

16   "Mr. Williams: There have been news reports

17   which link you to that."

18   And you say:

19   Mr. Fisher: I know, I've been listening to

10:48 20   'em.

21   Mr. Williams: All right. And they say

22   because they've been brought to my

23   attention, they say here's Larry Fisher,

24   here's a man whose been convicted of a

25   number of sexual assault cases, rape..

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1   Mr. Fisher: Right.

2   Mr. Williams: .. attempted murder.

3   Mr. Fisher: Right.

4   Mr. Williams: Here's a man who used a knife

5   during the commission of these

6   offences."

7   You answer:

8   Mr. Fisher: Not all of 'em.

9   Mr. Williams: You used a knife in Winnipeg.

10   Mr. Fisher: Right.

11   Mr. Williams: You used a knife in Winnipeg

12   on two occasions.

13   Mr. Fisher: No I didn't.

14   Mr. Williams: Just the second one?

15   Mr. Fisher: Just the one I got caught on."

16   That would be the (V8)--- one, the second one; is

17   that correct?

18 A   Yes.

19 Q   "Mr. Williams: And you used a knife in North

20   Battleford?

21   Mr. Fisher: What?

22   Mr. Williams: You were convicted in North

23   ..

24   Mr. Fisher: Oh yeah, in 1980 yeah. Yeah I

25   did.

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1   Mr. Williams: And there was serious injury

2   to the victim.

3   Mr. Fisher: Right.

4   Mr. Williams: What kind of knife did you

10:48   5   use.

6   Mr. Fisher: A pocket knife.

7   Mr. Williams: Switch blade type?

8   Mr. Fisher: No, it was about yay long

9   handle and the blade was about yay long.

10:48   10   Mr. Williams: There were four attacks in

11   Saskatoon.

12   Mr. Fisher: Right.

13   Mr. Williams: There was one indecent

14   assault.

10:48   15   Mr. Fisher: Right.

16   Mr. Williams: There were three rapes.

17   Mr. Fisher: Yes.

18   Mr. Williams: Possibly four?"

19   And you answer:

10:48   20   "Mr. Fisher: Six rapes, one indecent

21   assault, one attempted murder, one year

22   for carrying an offensive weapon, and a

23   ten year ban on weapons all totalled.

24   Mr. Williams: Okay. The one in

10:49   25   Saskatoon, they say you used a knife.

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1   Mr. Fisher: I can't remember, if I did or

2   not. A lot of this has been coming back

3   lately and I still can't place it

4   Mr. Williams: All right. When you were

10:49 5   caught in Winnipeg you gave a statement

6   to the police.

7   Mr. Fisher: Right.

8   Mr. Williams: Did you tell the truth in

9   that statement?

10:49 10   Mr. Fisher: Yes, I did.

11   Mr. Williams: Do you remember a guy by the

12   name of Duff?

13   Mr. Fisher: Who?

14   Mr. Williams: Huff, Lorne Huff."

10:49 15   And you say:

16   "Mr. Fisher: Yeah."

17   And you say:

18   "Mr. Fisher: I can't remember."

19   And then:

10:49 20   "Mr. Williams: People are going to say to

21   me look it, you got two people.

22   You've got a fresh faced 16 year old kid

23   no criminal record whose been sitting in

24   jail for 21-22 odd years and he says he

10:49 25   didn't do it. He says he didn't stab

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1   this woman. And we've got another guy

2   who's got six rapes, one indecent

3   assault and his M.O. is similar to that

4   which surrounds the death of Gail

10:49   5   Miller. Faced with that Williams don't

6   you think you've got the wrong guy in

7   jail because the real killer is Larry

8   Fisher?"

9   And you answer:

10:49   10   "Mr. Fisher: Pardon?

11   Mr. Williams: Because the real killer is

12   Larry Fisher."

13   You answer:

14   "Mr. Fisher: No way.

10:50   15   Mr. Williams: If you're sitting in my spot

16   what would you say to that?

17   Mr. Fisher: I'm not you and I can't say

18   anything.

19   Mr. Williams: But?

10:50   20   Mr. Fisher: I am leaving and I have already

21   said it."

22   I'm not sure if that's the right transcription.

23   "Mr. Williams: Doesn't it strike you as odd

24   that this _____, wouldn't be a

10:50   25   likely suspect?

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1   Mr. Fisher: Yes, it would be a likely

2   suspect."

3   I pause there. Would that be an accurate

4   information -- that would be accurate information

10:50   5   you provided to Mr. Williams?

6   A   Yes.

7   Q   And it appears here, and I appreciate that

8   transcription is maybe not complete, that you are

9   agreeing with him, that based on what he said to

10:50   10   you in your previous crimes and your M.O., that

11   you would be a likely suspect, is that -- you

12   would agree with him that you would be a likely

13   suspect; is that a correct read of this?

14   A   Yes.

10:50   15   Q   And you agree with that today?

16   A   Yes.

17   Q   And then to page 06 -- pardon me, to 062051, and

18   then Mr. Williams carries on talking about three

19   days before about the interview with the police.

10:51   20   "Mr. Williams: Three days before, on the

21   Friday before, go back to that. Think

22   back on that.

23   Mr. Fisher: I've been thinking.

24   Mr. Williams: All right. We haven't

10:51   25   finished yet.

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1   Mr. Fisher: I've been thinking ever since

2   this hit the news media.

3   Mr. Williams: Yeah. And you're telling me

4   under oath, you had nothing to do with

10:51   5   it.

6   Mr. Fisher: Absolutely nothing."

7   When you say here "I've been thinking ever since

8   this hit the news media," what were you thinking

9   about?

10:51   10   A   It could be numerous things.

11   Q   Okay. You were asked the question about whether

12   you committed the murder and you say yeah, I've

13   been thinking ever since this hit the news media.

14   So this would be at least for a month, and I just

10:51   15   went through the chronology, you would have been

16   aware we think in mid March of '90 that you were a

17   suspect, June of '90 I think it hit the media,

18   your name did. In May of '90 a suspect was in the

19   media and so when Mr. Williams asks you about it,

10:52   20   whether you committed the crime, you say I've been

21   thinking ever since this hit the news, and I'm

22   trying to, if you can elaborate, were you trying

23   to remember things or what were you thinking

24   about?

10:52   25   A   More or less my own safety.

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1   Q   Okay. And then down at the bottom:

2   "Mr. Williams: Telling me under oath that

3   you didn't rob that woman.

4   Mr. Fisher: That's the first I've heard of

10:52   5   that. But under oath yes, I didn't.

6   Mr. Williams: Well what did you hear about

7   it.

8   Mr. Fisher: Well it's been all over the

9   news.

10:52   10   Mr. Williams: Well what did you hear?

11   Mr. Fisher: Everything that's been on TV.

12   Mr. Williams: Well I haven't been out here

13   so that's why I'm asking you.

14   Mr. Fisher: About the whole works that has

15   been on there.

16   Mr. Williams: Well could you just give me a

17   summary.

18   Mr. Fisher: Oh, they showed everything

19   where the body was found and what was

10:53   20   hidden out there, and who was connected

21   and who's trying to accuse who of who,

22   and who's doing time in P.A. and the

23   reason why.

24   Mr. Williams: Okay. I hear all that it's a

10:53   25   nice summary.

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1   Mr. Fisher: Yeah."

2   And then the next page:

3   Mr. Williams: Can you tell me what words

4   were said that you recall recently, from

10:53 5   having heard these news reports.

6   Mr. Fisher: That I was guilty, that I am

7   the one that did it. I'm trying to

8   think of the last one that was on T.V.

9   there. That all my charges, my name ...

10:53 10   like hell you name it. From what I

11   hear, also, this statement was on this.

12   Mr. Williams: What statement?

13   Mr. Fisher: This one.

14   Mr. Williams: All right. But what facts

10:53 15   did they use to link you to Gail

16   Miller's death?"

17   And I think that statement was the statement of

18   your wife Linda Fisher; is that right, or do you

19   know?

10:53 20   A   I can't remember.

21   Q   If we can go ahead to 062071, just a couple more

22   passages here from Eugene Williams' interview, he

23   says:

24   "Mr. Williams: From your earlier answers am

10:53 25   I to understand that in all the time

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1   that you resided on Avenue "O" at 334

2   that you did not go into the alley,

3   north of 20th Street which is shown on

4   this diagram?

10:54 5   Mr. Fisher: That's right.

6   Mr. Williams: And that on your various

7   trips from your house to catch a bus,

8   that you did not you did not assault a

9   woman early in the morning while going

10:54 10   to catch a bus for work?

11   Mr. Fisher: No, I did not.

12   Mr. Williams: You did not knife or stab

13   that woman?

14   Mr. Fisher: No, I did not."

10:54 15   And then page 062075, Mr. Williams again:

16   "Mr. Williams: You didn't kill Gail Miller?

17   Mr. Fisher: No, I didn't."

18   And then:

19   "Mr. Williams: Are there offences that

10:54 20   you've committed that you haven't been

21   picked up on?

22   Mr. Fisher: No, I cleared them all up when

23   I got picked up ."

24   And again, that's what you would have told Mr.

10:54 25   Williams at the time?

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1   *A*   Yes.

2   **Q**   And today you are telling us that's the truth?

3   *A*   Yes.

4   **Q**   And then to page 062078, Sergeant Pearson down at

10:55 5   the bottom says:

6   "Sgt. Pearson: This murder took place about

7   a block and a half away and I would

8   assume it was an unusual event at the

9   time. Do you recall anything back then

10:55 10   as to how you first heard about this?

11   Mr. Fisher: If it was it was what the wife

12   said to me and after that I never heard

13   nothing about it again until about when

14   you started coming up when it hit the

10:55 15   news."

16   So I take it from that, is that an accurate and

17   truthful statement, Mr. Fisher?

18   *A*   To the police at the bus stop or with what the

19   wife said back then.

10:55 20   **Q**   Okay. So that you first heard about it either

21   from your wife who accused you of committing the

22   murder or from the police who saw you at the bus

23   stop three days after the murder, one of those two

24   times is the first time you heard it?

10:55 25   *A*   Yes.

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1   Q   And then you say:

2   "... I never heard nothing about it

3   again until about when you started

4   coming up when it hit the news."

10:55 5   And again you are saying this to Sergeant

6   Pearson, and we saw that you first interviewed

7   with him on April 10th, 1990; is that correct?

8   A   Yes.

9   Q   I guess my question is, it appears from this

10:56 10   answer, at least back on July 12th, 1990, you are

11   saying that after 1969 the next thing you heard

12   about the murder was in the spring of 1990 when

13   Sergeant Pearson brought it up and the media

14   people brought it up. Is that a fair read of your

10:56 15   answer?

16   A   Yeah, I would probably say so, yeah.

17   Q   Okay. Now, earlier you said you remembered

18   hearing about Linda Fisher going to the police and

19   you recall the 1980 statement where she went to

10:56 20   the police and gave incriminating information

21   about you as the killer of Gail Miller, and again,

22   in light of what you said to Sergeant Pearson,

23   does this assist you in placing in time when it

24   was you would have been made aware of Linda Fisher

10:57 25   going into the city police?

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1   A   No, no.

2   Q   So it's possible that it was before 1990, before

3   Sergeant Pearson started questioning you and

4   Mr. Williams and before it hit the media in the

10:57 5   spring of 1990, it's possible that before that you

6   became aware that Linda Fisher had gone into the

7   city police?

8   A   I'm not sure when I know it, or found out.

9   Q   Okay. If we could then go to 063141, down to

10:57 10 paragraph 216, and again these are Sergeant

11   Pearson's notes, it says:

12   "216. Mr. Pick called, advising that

13   Fisher had given an interview to Julian

14   Findlay of the program "Fifth Estate"

10:58 15   and that Fisher had answered questions

16   consistent with what was provided in his

17   statement to Williams and myself. At

18   this time I questioned Pick further if

19   he would still encourage his client to

10:58 20   provide a second polygraph examination

21   when conditions were more appropriate;

22   i.e., Fisher's medical problems."

23   And again, I think you told us earlier that

24   you -- did you contact CBC then to make the

10:58 25   statement or how did that come about?

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1	A	(*Shakes head*)
2	Q	I think I -- I'm sorry, I showed you earlier a
3		letter where your lawyer at the time Harold Pick
4		told Mr. Williams that you were going to get a
5 10:58		hold of CBC to rebut the story they ran on you.
6		Do you remember when I showed you that document?
7	A	Yeah.
8	Q	And is that what happened, did you call the CBC
9		and say lookit, I want to give my side of the
10 10:58		story, or were the CBC contacting you and you
11		agreed to an interview?
12	A	I'm not sure how it came about.
13	Q	Do you think you initiated it?
14	A	Probably not without talking to counsel.
15 10:59	Q	Okay. And I don't want to get into any
16		discussions with counsel. I'm trying to
17		understand, Mr. Fisher, whether this was a case
18		where Gillian Findlay had contacted you and said
19		lookit, I would like to do an interview, and you
20 10:59		said yes, or whether it was a case of you or
21		someone on your behalf contacting the CBC and
22		saying lookit, I don't like the story you ran
23		about me, I want to give my side of the story?
24		Which one of those is it or are you able to tell
25 10:59		us?

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	1	*A*	I can't tell you.
	2	**Q**	In any event, you recall being interviewed by the
	3		CBC, and I think it was at Mountain Institution;
	4		is that right?
10:59	5	*A*	P.A. I think.
	6	**Q**	Or was it in P.A.? I'm sorry, was it in Prince
	7		Albert Penitentiary? It may have been.
	8	*A*	I think it was.
	9	**Q**	And you allowed cameras to come in and film you
10:59	10		and you gave a - you conducted an interview with
	11		the reporter; is that right?
	12	*A*	Yeah.
	13	**Q**	And I think we have a clip from that, and again,
	14		before we show the clip, again, what was your
11:00	15		rationale or what was your reasoning for doing
	16		this interview?
	17	*A*	I can't remember. That's a long time back.
	18	**Q**	You had said before that there must have been
	19		something in their original story that you didn't
11:00	20		like?
	21	*A*	Yeah.
	22	**Q**	And again, without getting into too much detail, I
	23		think you had already stated in some earlier
	24		documents that what the media reports were saying
11:00	25		is that you were the killer, or suspected of being

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1		the killer of Gail Miller; is that fair?
2	A	You would have to refresh my memory some other way
3		because I can't remember.
4	Q	Sure. Let me try this again. You remember when I
5		went through the documents before the break in the
6		spring and summer of 1990 about how you were
7		expressing concern about your safety in Prince
8		Albert because the CBC news documentary had been
9		run and it identified you as a suspect. You
10		remember we went through that?
11	A	Yeah.
12	Q	And so in the media, the media were naming you and
13		either suggesting or implying that you either were
14		a suspect of the murder of Gail Miller or that you
15		in fact had killed Gail Miller. Is that a fair
16		summary of what was in the various media reports?
17	A	Yes.
18	Q	And when you went to the CBC or agreed to be
19		interviewed, was it that you wanted to rebut, that
20		you wanted to answer to?
21	A	Umm, I can't really say.
22	Q	Okay. We'll maybe show, it's just a short clip, I
23		don't believe there is a -- at least we don't have
24		it, a transcript of the entire interview. Maybe
25		just call up 230173, which is the doc ID, I don't

11:00 5
11:00 10
11:01 15
11:01 20
11:01 25

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1   know that we need to see it, it's a lengthy hour

2   and a half interview. We're not playing it.

3   There's about two minutes, two or three minutes in

4   there. That's the doc ID for counsel. And if we

11:01 5   can go to the video clip, and I think there's just

6   a short introduction and then part of an interview

7   with you.

8   "REPORTER: Today Linda Fisher has vivid

9   memories of the morning of the murder.

11:02 10   She and Larry were having yet another

11   fight, she said, when a news report came

12   on the radio. In the heat of the moment

13   she accused him of murdering Gail

14   Miller.

11:02 15   LINDA FISHER: Yes. I said, "Well,

16   Larry, you probably, it was probably you

17   that killed the nurse."

18   GILLIAN FINDLAY: And what was his

19   reaction?

11:02 20   LINDA FISHER: Well, he just looked at

21   me and his colour went grey and he just

22   stopped, quit arguing and he just looked

23   like he was caught.

24   GILLIAN FINDLAY: Did you kill Gail

11:02 25   Miller?

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1   LARRY FISHER: No, I did not. I had

2   nothing to do with that death.

3   REPORTER: This is Larry Fisher today.

4   He first went to jail in 1971. He's

11:02   5   still here because when he was let out

6   in 1980 he raped and almost killed

7   another woman. Unlike his ex-wife, he

8   says he doesn't remember the morning

9   Gail Miller was killed, not the murder,

11:02   10   nor the accusation.

11   GILLIAN FINDLAY: It seems strange that

12   a wife would say to her husband "I think

13   you killed a woman" and yet you don't

14   remember.

11:03   15   MR. FISHER: No.

16   GILLIAN FINDLAY: Those were things that

17   were said every day in your house?

18   MR. FISHER: Christ, everything happened

19   in our house.

11:03   20   REPORTER: In a statement she gave to a

21   private investigator, Linda Fisher says

22   the other thing that makes her suspect

23   her former husband is the fact that Gail

24   Miller was killed with a knife.

11:03   25   GILLIAN FINDLAY: Did you use knives

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1   when you committed those crimes?

2   MR. FISHER: Not all of them.

3   GILLIAN FINDLAY: How many of them?

4   MR. FISHER: Ah, I would rough it out

5   about two, maybe three.

6   GILLIAN FINDLAY: And what kind of knife

7   did you use?

8   MR. FISHER: Just about any type I could

9   use.

10   GILLIAN FINDLAY: Did you ever use a

11   paring knife in of those other assaults?

12   MR. FISHER: I used one in Winnipeg.

13   GILLIAN FINDLAY: In Winnipeg?

14   MR. FISHER: Yes.

15   GILLIAN FINDLAY: The facts add up to a

16   very damning picture. First of all, you

17   have a history of brutal rapes, in some

18   cases you did use a knife, and then the

19   rape was a block and a half away from

20   where Gail Miller's body was found.

21   Doesn't that make you more of a suspect?

22   MR. FISHER: I probably agree with you,

23   but the cops already had my name for 21

24   years. Now, if they had some concrete

25   evidence why didn't they charge me 21

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1   years ago.

2   REPORTER: Linda Fisher says it's

3   because they didn't do their homework."

4   Q   That's good. Thank you. Now, again, Mr. Fisher,

11:04   5   do you recall the interview with, I think it was

6   Gillian Findlay of the Fifth Estate?

7   A   Yeah.

8   Q   And you don't take issue with anything that was

9   reported or that you said in the interview? Do

11:04 10   you agree with what you said?

11   A   Yeah.

12   Q   And was the interview longer than that, were there

13   more questions asked or do you remember?

14   A   I can't remember. Sorry.

11:04 15   Q   And in that interview it appears that you said you

16   don't, you didn't recall the argument with your

17   wife Linda the morning of the murder; is that

18   correct?

19   A   Yes.

11:04 20   Q   And I think either yesterday, and please correct

21   me if I'm wrong, I think -- or on other occasions

22   you've had some memory of it?

23   A   Yes.

24   Q   And today do you have some memory of the argument

11:05 25   with Linda where she accused you?

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1   A   Yes.

2   Q   And can you tell us why back -- and I think the

3   date of this video, I don't know the date it was

4   run, but I think it was August of 1990, why back

11:05 5   then you would have told her you didn't remember

6   the argument whereas later you now say you do

7   remember parts of it?

8   A   Yeah, I remember it.

9   Q   Okay. And you remember it, but I'm wondering why

11:05 10   you told Gillian Findlay back when you were

11   interviewed that you didn't remember it?

12   A   I'm not sure.

13   Q   If we could go to 062314, and again this is

14   October '90, RCMP is writing to Mr. Williams

11:06 15   saying:

16   "The aspect of Mr. Fisher consenting to

17   a further polygraph examination is still

18   being actively pursued; and should he

19   submit to further testing, it should

11:06 20   greatly assist in the eventual decision

21   respecting this file."

22   And we had earlier looked at some documents, Mr.

23   Fisher, that said your first polygraph was

24   inconclusive because of your physical and

11:07 25   emotional state at the time; do you recall

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1   looking at those documents?

2   A   Yeah.

3   Q   In other words, and we heard evidence from Mike

4   Robinson that said the polygraph basically was

11:07   5   inconclusive because you were not in a physical

6   and mental state to properly undergo the test, did

7   you understand that at the time, that that's why

8   it didn't work?

9   A   Yes.

11:07   10   Q   And there was some discussion about doing another

11   test at a later date once your condition was

12   satisfactory; do you recall those discussions?

13   A   Yes.

14   Q   And were you willing to undergo another polygraph

11:07   15   examination?

16   A   At the time, yeah.

17   Q   Pardon me?

18   A   Yes.

19   Q   Yes? If we could go ahead to 011907. This is a

11:07   20   report of October 18th, 1990, again Sergeant

21   Pearson. At the bottom there:

22   "Since PCR dated 90-AUG-28, Larry Fisher

23   has been admitted to the University

24   Hospital and has completed surgery for a

11:08   25   gallstone condition. He is currently

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1   back at the Prince Albert Institution

2   recovering, and hopefully his condition

3   will stabilize to the point where a

4   reliable polygraph examination can be

11:08   5   completed. Fisher's counsel, Mr. Harold

6   Pick, has confirmed that if conditions

7   are right, he will permit his client to

8   be tested on the polygraph a second

9   time. It should also be noted that at

11:08   10   the time of writing, Fisher has

11   requested a transfer to Mountain Prison

12   in British Columbia because he feels the

13   environment for him within the Prince

14   Albert facility is unsafe."

11:08   15   So it appears at this time, at least through your

16   counsel, that you are stating you are willing to

17   undergo another test; is that fair?

18   A   Yes.

19   Q   If we can go to 063143, that's a doc -- yeah, doc.

11:09   20   ID 063102. We're now skipping ahead a year, this

21   is August 21, 1991, it says:

22   "Had a telephone discussion with

23   Williams and he again talked of how to

24   gain the support of Fisher to attempt a

11:09   25   proper polygraph examination. It was

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1   agreed that the only approach we could

2   pursue with any success would be to

3   include retired counsel Harold Pick, who

4   in the past has been very supportive.

11:09 5   Mr. Williams will be contacting Mr. Pick

6   direct in British Columbia."

7   Then to page 063146, this is Sergeant Pearson's

8   notes September 12, '91:

9   "Mr. Williams called to advise that

11:09 10   Mr. Pick had contacted his client

11   Fisher, who in turn has now provided a

12   blood sample to the Penitentiary

13   Service, which was analysed in

14   Chilliwack, B.C. and the results were

11:09 15   that Fisher has blood type "A"

16   Positive."

17   So it appears here that in September of '91 you

18   agreed and did, in fact, provide a blood sample

19   to the authorities?

11:10 20 A   Yeah, I guess so.

21 Q   You don't recall?

22 A   No.

23 Q   Do you have any reason to dispute what's stated

24   here?

11:10 25 A   No.

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1   **Q**   Now if we can go to 063149, please. And at the

2   top, September 20th, '91, Pearson writes:

3   "I returned a call to Mr. Williams, who

4   advised that a decision has been made

11:10   5   not to have Fisher take the polygraph

6   examination. His superiors have met and

7   decided, "the down side risks outweigh

8   the benefits". He went on to say, "the

9   testing procedure is highly subjective

11:10   10   and cannot be converted to evidence."

11   Williams did not indicate if

12   polygraphist Shalk had been consulted."

13   And then down here, same date:

14   "Mr. Williams called to advise he had

11:11   15   spoken to Harold Pick and that Fisher

16   will not take a polygraph test and will

17   not grant any more interviews to the

18   police. There is one window of

19   opportunity which exists, that being

11:11   20   that CBC reported Carl Karp is doing a

21   program on the Fisher angle on "The

22   Fifth Estate". If this does not go well

23   for Fisher, he may grant further

24   interviews with us. Indications are

11:11   25   that Fisher and his current wife are fed

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1   up with the publicity and the hounding

2   by the media."

3   Does that accurately record the discussions

4   between you and the authorities about a second

11:11 5   polygraph test?

6   A   Yes.

7   Q   And it appears from this document that the Federal

8   Justice officials or the RCMP, one or both of

9   them, decided that they would not conduct a second

11:11 10   polygraph exam; was that your understanding?

11 A   Yes.

12 Q   And it seems to suggest here that you wouldn't

13   grant any more interviews; is that -- did there

14   come a point where you said "lookit, I'm not going

11:11 15   to talk any more about this"?

16 A   Yes. (*Witness laughs*)

17 Q   If we could now go to 000901, please. And again,

18   this is August 14th, '91, just going back a couple

19   of -- about a month from where I was talking in

11:12 20   September. And would you have been aware at the

21   time, Mr. Fisher, that David Milgaard had applied

22   to the Federal Minister of Justice to have his

23   conviction for the murder of Gail Miller reviewed

24   by the Federal Minister of Justice?

11:12 25 A   Yes.

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1   Q   So you were aware that he was proclaiming his

2   innocence and asking federal officials to review

3   his conviction?

4   A   Yes.

11:12   5   Q   And would you have been aware, sir, that as part

6   of that process he was suggesting or people on his

7   behalf were suggesting that you were either a

8   suspect or in fact the person who killed Gail

9   Miller?

11:12   10   A   Yes.

11   Q   Did you become aware of that?

12   A   Yes.

13   Q   And you were aware that one of the bases that he

14   was seeking to have his conviction set aside is

11:13   15   that you were the killer of Gail Miller and not

16   David Milgaard; you knew that?

17   A   Yes.

18   Q   And just for the record here this is the second

19   application, or the letter, I think, that

11:13   20   comprises the second application to the minister,

21   and this is on behalf of David Milgaard. And

22   here:

23   "When we first made our application the

24   suggestion that Larry Fisher was the

11:13   25   perpetrator was not the main thrust and

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1   we were at that time advised by your

2   Department that there were no police

3   reports available on past offences of

4   Mr. Fisher."

11:13 5   And then it goes on, if we can go to the next

6   page:

7   "Another startling development has been

8   the fact that four women who were

9   brutalized by Larry Fisher did not know

11:13 10   that anyone had been charged, let alone

11   convicted, of the vicious attacks upon

12   them. It is our belief that had the

13   arrest of Larry Fisher been brought to

14   anyone's attention it would have cast

11:14 15   severe doubts on the Milgaard

16   conviction. To this date there does not

17   seem to be any reasonable explanation as

18   to why Fisher's Saskatoon charges were

19   concluded in Regina and why the victims

11:14 20   were never notified. They have lived in

21   fear and it is absolutely inexcusable.

22   In light of the above I would

23   ask you to treat this letter as a fresh

24   application to re-open the Milgaard

11:14 25   case. It is our view that had you been

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1   aware of these additional developments

2   your decision would not have been the

3   same. We are not asking you to declare

4   David Milgaard innocent, as obvious as

11:14   5   it may be. We are simply asking that

6   you have an impartial tribunal

7   adjudicate this matter with full

8   disclosure and with Mr. Milgaard being

9   properly represented."

11:14 10   So it appears from this letter that in August of

11   '91 a second application was made to the

12   minister, and that at a minimum your name was

13   mentioned in the application and implicitly that

14   you may have been the person responsible for the

11:14 15   death, and I take it you would have been aware of

16   that at the time?

17   A   Yes.

18   Q   I would like to call up 159105, please. And I'm

19   just going to be asking you a few questions, Mr.

11:15 20   Fisher, about your involvement in the Supreme

21   Court of Canada reference, and I want to caution

22   you just at the outset, I do not want you to

23   answer anything that involves communications with

24   your counsel at the time, Brian Beresh, and your

11:15 25   counsel today, any solicitor/client information.

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1   So I will be asking you some questions but I do

2   not want you to get into those communications,

3   unless of course you are waiving that privilege,

4   but I don't believe that privilege has been

11:15 5   waived, so please keep that in mind when I ask

6   that question.

7   This shows that on December

8   20th, 1991 you applied to the Supreme Court of

9   Canada to get standing in the reference case

11:15 10   before the Court. You became aware, I take it,

11   that the Supreme Court was going to hear evidence

12   and make some decisions with respect to Mr.

13   Milgaard's case?

14   A   Yes.

11:16 15   Q   And I take it, sir, that you chose to be a party

16   to that proceeding?

17   A   Yes.

18   Q   And you had counsel at the time, Brian Beresh, to

19   represent your interests?

11:16 20   A   Yes.

21   Q   And if we could go to 159107, please. And this is

22   an affidavit of Marvin Bloos who was, I think,

23   co-counsel or assistant counsel to Mr. Beresh at

24   the time, and was the supporting material filed

11:16 25   with the Supreme Court, the supporting materials

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1   as to why you wanted to be added. And I just had

2   a couple of questions. If we can go to the next

3   page, please, paragraph 3 Mr. Bloos swears in his

4   affidavit:

11:17   5   "I participated in a conference call

6   with Larry Fisher on December 12, 1991,

7   and as a result I was advised by Mr.

8   Fisher that he learned privately that

9   his name had become associated with the

11:17   10   David Milgaard case in 1988. He further

11   stated that in 1989 he became aware that

12   his name was being publicly related to

13   Mr. Milgaard's case through the media."

14   I'm wondering if you can tell us, Mr. Fisher,

11:17   15   what information did you provide or what is the

16   information referred to by Mr. Bloos in this

17   affidavit? Firstly, it says that you learned

18   privately that your name had become associated

19   with the David Milgaard case in 1988, what is

11:17   20   that referring to?

21 A   Umm, I can't remember.

22 Q   Okay. And, according to the affidavit that was

23   filed with the Supreme Court, Mr. Bloos stated

24   that you'd told him that; correct?

11:17   25 A   Yes.

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1   Q   And so in 1988, was there something in 1988 that

2   caused you to think that your name had become

3   associated with the case?

4   A   Umm, can't remember.

11:18 5   Q   And it says that you learned privately that your

6   name had been associated and I'm not sure what

7   that means; is that other than from authorities?

8   A   Can't say.

9   Q   You don't -- and then:

11:18 10   "He further stated that in 1989 he

11   became aware that his name was being

12   publicly related to Mr. Milgaard's case

13   through the media."

14   And, again, I think that the media records, at

11:18 15   least that we have, it appears that it wasn't

16   until June 1990 that your name was in the media,

17   and we may not have all the records, but do you

18   know what prompted you to state that it was 1989

19   that you became publicly related to the case?

11:19 20   A   No, I can't.

21   Q   And then it goes on to say that:

22   "Mr. Fisher further advised that he is

23   aware that David Milgaard, or

24   individuals on his behalf, have publicly

11:19 25   suggested that Mr. Fisher is responsible

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1   for the death of Gail Miller."

2   And is that accurate, did you in fact advise

3   Mr. Bloos of that, and is that your -- what you

4   were aware of at the time?

11:19 5   A   Yes.

6   Q   And then paragraph 5 talks about:

7   "... the media has displayed particular

8   interest in his position in this matter

9   and that he was contacted earlier this

11:19 10   year by the Canadian Broadcasting

11   Corporation and he was interviewed in

12   relation to the Milgaard allegation."

13   I take it that that was the Gillian Findlay

14   interview that we showed a clip from?

11:19 15   A   Yes.

16   Q   Paragraph 6:

17   "During my discussion with Mr. Fisher he

18   informed me that he believes that the

19   public perception, given recent news

11:20 20   stories, is that he was involved with

21   the death of Gail Miller. He stated

22   that he feels that he is being tried

23   publicly by the media, (and in some

24   cases found guilty), in what he

11:20 25   considers to be a very unfair process,

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1   and that all of this activity has

2   occurred as a direct result of Mr.

3   Milgaard's attempts to free himself."

4   Is that what you said and thought at the time?

11:20 5   A   Yes.

6   Q   And then again:

7   "During my discussions with Mr. Fisher

8   he informed me that he is most concerned

9   about the Milgaard Reference which has

11:20 10   been directed to the Supreme Court of

11   Canada and the potential consequences

12   which the proceedings may have for him."

13   And, again, is that something that you would have

14   told Mr. Bloos and thought at the time?

11:20 15 A   Yes.

16 Q   "Mr. Fisher further advised that none of

17   the press or media reports that he has

18   seen in relation to this case have been

19   favourable to him."

11:20 20   "He told me that he has seen statements

21   attributed to Mr. Milgaard in which it

22   is suggested that in Mr. Milgaard's

23   opinion Mr. Fisher was responsible for

24   the death of Gail Miller."

11:21 25   Again, did you state both of those matters to

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1   Mr. Bloos, and is that what you thought at the

2   time?

3   A   Yes.

4   Q   If we can go to 018760. Just for the record, I

11:21 5   think on September -- or pardon me -- December

6   29th, 1991 the Court ordered that you would be

7   entitled to be heard through counsel, and I take

8   it, based on that, you participated as a party

9   with standing in the Supreme Court Reference

11:21 10   related to David Milgaard; is that correct?

11   A   Yes.

12   Q   And you, in fact, were called as a witness before

13   the Court, testified before the Court?

14   A   Yes.

11:21 15   Q   If you could call up 197598, and this is March 11,

16   1992, and if we could go to 197605 please. And

17   this is Mr. Beresh, your counsel, questioning you

18   and he asks:

19   "Q   Let's turn, if we can, to the matter

20   which is before the Court. Let me ask

21   you a number of questions, if I can.

22   First of all, Mr. Fisher, did

23   you kill Gail Miller?

24   A   I most certainly did not.

25   Q   Did you play any role in her death?

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1   A   I certainly did not.

2   Q   Do you know who killed Gail Miller?

3   A   No, I do not."

4   So I take it, from that, that you were asked the

11:22   5   question at the Supreme Court and there, under

6   oath on March 11th, 1992, you denied your

7   involvement in the death of Gail Miller; is that

8   correct?

9   A   Yes.

11:22   10   Q   Now at the Supreme Court hearings there was

11   evidence of a number of, for lack of a better

12   word, prison informants, people that had been

13   serving time with you over the years, that went to

14   the authorities and gave statements and

11:23   15   information suggesting that you either admitted

16   the murder of Gail Miller or admitted killing

17   someone in a snowbank, and allegations of that

18   nature. You are familiar with the fact that

19   people made those allegations, Mr. Fisher?

11:23   20   A   Yes.

21   Q   And the four names are Brett Morgan -- I think

22   there may be others -- but Brett Morgan, John

23   Patterson, Rod McIvor, and Brian Dodge; do those

24   names all sound familiar?

11:23   25   A   Yup.

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1   Q   And if we can, first, I just want to go through

2   quickly what they -- parts of the allegations

3   against you and ask for your response. The first,

4   Brett Morgan, 012258 is the doc. ID, and did you

11:24 5   know a fellow by the name of Brett Morgan?

6   A   Yes.

7   Q   And you served time with him I think in the Prince

8   Albert Penitentiary; is that right?

9   A   Yes.

11:24 10   Q   And if we can go to page 012280, this is a

11   typewritten version of Mr. Morgan's statement of

12   January 14th, 1992, Mr. Morgan says -- he is

13   talking about a conversation with you and that:

14   "His statement, near as I can remember

11:24 15   was that he had sluffed off a serious

16   charge on somebody else that he was

17   guilty for by confessing to crimes in

18   another area. I didn't know any of the

19   particulars."

11:24 20   And then scroll down to this paragraph:

21   "He also made this statement to me "I

22   killed somebody in Saskatoon but I never

23   got any heat because I confessed to some

24   crimes in another city and it happened

11:25 25   at the same time or near the same time

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1   as the murder in Saskatoon. He said I

2   should try to either remember some

3   crimes I committed that I hadn't been

4   pinched for or solicit some from people

11:25 5   around me that I knew who did some and

6   never got pinched for that I could cop

7   out to in order to blow the steam off

8   this murder."

9   And then scroll down:

11:25 10   "Another time because our beds were so

11   close and because I was so messed up and

12   depressed, he said "shake it off, I've

13   already told you how to deal with it, I

14   killed before and someone else is

11:25 15   wearing it for me and you can do it

16   too.""

17   And that's a part of what Mr. Morgan had said,

18   and you had said, and let me just go to a Supreme

19   Court evidence before I ask you to respond. If

11:25 20   we can go to 206861, go to page 206886, and this

21   is Mr. Morgan being examined by Hersh Wolch,

22   asked the question:

23   "Q   As the conversations progressed, tell us

24   what Fisher may have said to you in the

25   context that may be helpful to the Court

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1   in this particular case."

2   If we go on:

3   "A   In the beginning, because there was a

4   lot of witnesses at my trial and a lot

5   of people who, if the situations were a

6   little different, they could have been

7   conceived as probably being the

8   perpetrator. He had mentioned a few

9   times to me that he had in the past --

10   and at that time I had no dates or

11   anything -- that he had in the past

12   beaten or sloughed off a murder beef by

13   having somebody else wear the beef for

14   him and that, if I could find somebody

15   in my situation that I could slough it

16   off on or possibly even admit to some

17   crimes that happened at a time around

18   when the murder that I was found guilty

19   for had happened, I could again blow the

20   steam off with that.

21   A number of times he had said

22   to me that he had done it and he was

23   successful."

24   And then if you could go -- so there, and there's

11:27 25   some further allegations but, Mr. Fisher, did you

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 1              have any discussions with Brett Morgan of the

 2              nature that he suggests, has suggested and

 3              testified before the Supreme Court of Canada?

 4        A     No, I haven't.

11:27  5  Q     Did you ever discuss, with Brett Morgan, anything

 6              to do with killing a nurse, raping a nurse, raping

 7              or killing somebody in a snowbank?

 8        A     No I didn't.

 9        Q     Did you have any discussion with Brett Morgan

11:27 10              about how to -- how you beat a murder charge by

11              pleading to charges in another area at the same

12              time, or words to that effect?

13        A     No I didn't.

14        Q     Any discussion with Brett Morgan about anything

11:27 15              related to any of your crimes?

16        A     No.

17        Q     Any discussion with Brett Morgan about anything

18              related to the January 31, 1969 rape and murder of

19              Gail Miller?

11:28 20  A     No.

21        Q     Next, if we could go to John Patterson, you are

22              familiar with a fella by the name of John

23              Patterson?

24        A     Yes.

11:28 25  Q     You served time with him?  You did serve time with
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1   him?

2   A   Yes.

3   Q   If we could call up 051038, please, and this was

4   Mr. Patterson testifying before the Supreme Court

11:28 5   in the reference case. Go to page 051043, please.

6   And, again, he is examined by Mr. Wolch about a

7   hockey game in the winter of 1977, and he goes on

8   to say that he got into a fight with you, and he

9   says you said:

10   ""I am going to shank you and stuff you

11   in a snowbank." He said, "The guards

12   will find you in the spring." I said to

13   him at that time, "You and whose fucking

14   army?" He said, "Listen, I've done it

15   before. I've got no problem doing it

16   again." I said, "Yeah, right, Fisher.

17   When did this happen?" He said,

18   "Wouldn't you like to know." I said,

19   "Well, you're not doing time for

20   manslaughter or murder, so when did this

21   happen, Fisher?" He said, "Wouldn't you

22   like to fucking know.""

23   Then he also gave some evidence regarding some

24   comments that you made amongst some other

11:29 25   prisoners after watching the *Last Tango in Paris*,

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1   and you are familiar with his accusations there,

2   are you, as to what he said?

3   A   Yeah.

4   Q   And how do you respond to Mr. Patterson's

11:29 5   suggestions first of all about the comments at the

6   hockey fight?

7   A   No comment at all.

8   Q   Did you say those things to him?

9   A   No I didn't.

11:29 10   Q   Did you have a fight with him at a hockey game?

11   A   I don't think so.

12   Q   Did you ever talk to John Patterson about any of

13   the crimes for which you had been convicted?

14   A   No I didn't.

11:29 15   Q   Did you ever talk to John Patterson or tell him

16   anything about the rape and murder of Gail Miller?

17   A   No I didn't.

18   Q   Next is Rod McIvor; did you serve time with Rod

19   McIvor?

11:30 20   A   Umm, the name sounds familiar.

21   Q   If we can go to page 321340, this is a statement

22   that he gave in January of 1992, Mr. McIvor says:

23   "I started going and he started choking

24   me, and I sort of nodded out and when I,

11:30 25   I was still standing up, and came to and

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1   he had this thing in his hand and he

2   says "I killed a woman before and I went

3   like this, and like this, and like

4   this.""

11:31 5   Did you ever tell McIvor that you killed a woman

6   before?

7   A   No.

8   Q   Next is Brian Dodge, are you familiar with a

9   fellow by the name of Brian Dodge, did you serve

11:31 10   time with Brian Dodge?

11 A   Yup.

12 Q   And if we could call up 315255, please. I think

13   this is Mr. Dodge's testimony at the preliminary

14   hearing of your trial for Gail Miller, I don't

11:31 15   believe he testified at the trial, I stand to be

16   corrected on that. If we can go to 315262,

17   please, and again he said -- he is asked by the

18   Crown prosecutor.

19   "Q   ... And was there any other detail

11:31 20   provided by Mr. Fisher in terms of what

21   he had done?

22   A   Just that he stalked this woman and,

23   and raped that woman.

24   Q   Okay. Anything else?

11:31 25   A   Apparently killed that woman."

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1   And, again, did you ever tell Mr. Dodge that you

2   had raped and/or killed a woman?

3   A   No I didn't.

4   Q   Do you have any explanation, Mr. Fisher, as to why

11:32 5   the four individuals that I've read from would

6   have made these statement to the authorities and

7   you say none of them ever happened?

8   A   No.

9   Q   Did any of them have any issues with you that they

11:32 10   would want to get you into further trouble?

11   A   Can't remember.

12   Q   I want to talk just a bit about the DNA process.

13   And in the process of the Supreme Court hearings,

14   so this would be March of 1992, do you recall

11:32 15   being asked to provide some bodily fluid samples

16   for a possible DNA test?

17   A   Yes.

18   Q   And at that time did you understand, and I'm not

19   asking for a scientific explanation, but did --

11:32 20   you appreciated what DNA was at the time; is that

21   fair?

22   A   Yeah.

23   Q   And you would have understood, and again in 1992,

24   that in certain circumstances scientists could

11:33 25   take bodily fluids on a victim's garment, for

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1   example, compare through a scientific process the

2   DNA profile of that substance, and try and match

3   it or eliminate other persons based on their

4   bodily fluids; is that a fair --

11:33 5   A   Yeah.

6   Q   Is that what you would have understood?

7   A   Yup.

8   Q   And maybe, even stated more simply, that through

9   DNA it was possible, if a suspect provided a

11:33 10   bodily fluid sample, it was possible to look at a

11   victim's clothing or some sample on a victim's

12   clothing that contained the perpetrator's bodily

13   fluid, be it blood or semen, saliva, and to run a

14   test and either eliminate someone by saying

11:34 15   "lookit, that person's, that person could not have

16   been the person who deposited this bodily fluid on

17   the victim", or could say that it matched or it

18   statistically matched; is that generally what you

19   would have understood at the time?

11:34 20   A   Yes.

21   Q   And did you know at the time that the authorities

22   had the clothing that Gail Miller was wearing the

23   morning of her murder, her coat, panties, dress,

24   things of that nature?

11:34 25   A   Yes.

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1 Q   And were you generally aware that efforts had been

2   made by the authorities to try and get a sample

3   from those clothing so that a DNA test could be

4   conducted?

11:34 5 A   Yes.

6 Q   And at the time that you provided your sample, I

7   think it was in March of 1992, were you aware, Mr.

8   Fisher, that at that time it may have been

9   difficult or not possible at that time to do a DNA

11:35 10   analysis because technology did not allow the

11   extraction of a sample from Gail Miller's

12   clothing? I'm just talking about what you would

13   have known at the time.

14 A   Umm, umm, can't say.

11:35 15 Q   Do you remember that ever being -- and again, I do

16   not want you to go into any discussions with your

17   legal counsel, but as far as matters before the

18   Court or in the media, were you aware that a DNA

19   test may not be possible in 1992, at the time you

11:35 20   gave the samples?

21 A   No.

22 Q   If we can maybe call up 00, or pardon me, 020171.

23   This is a letter from your counsel, Mr. Beresh,

24   January 20, 1992 to Federal Justice, and I take it

11:36 25   that Mr. Beresh would be setting out to Federal

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1   Justice your position with respect to matters

2   referred to in the letter? Do you want me to go

3   through it first and ask that question?

4   A   Yes, please.

11:35 5   Q   It says:

6   "Pursuant to your previous requests for

7   our client to consider whether or not we

8   will provide a sample of his blood

9   and/or saliva for the purposes of

11:35 10   testing, please be advised that I have

11   now had the opportunity to discuss this

12   matter with him.

13   Given the information that I

14   had provided to him he shares my concern

11:36 15   being that there may not be sufficient

16   samples available to perform analysis of

17   the "known samples" and further that

18   there is room for serious error where

19   there may have been contamination at the

11:36 20   site of the "known samples"."

21   If we pause there, I believe what the known

22   samples are would be the Gail Miller clothing

23   samples; in other words, that's what your bodily

24   fluids, the DNA would be compared to, being the

11:36 25   known samples from Gail Miller. Do you follow?

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1   A   Yeah.

2   Q   Okay. So he's saying that there may not be

3   sufficient samples available to perform analysis

4   of the known samples, and then the next paragraph:

11:36 5   "Accordingly our client wishes to await

6   the outcome of the testing which I

7   understand from you will be performed in

8   England.

9   So that his position is

11:36 10   perfectly clear he is not refusing to

11   provide a sample but simply wishes to

12   await the result of the above-noted

13   testing so that he can make an informed

14   decision."

11:37 15   Next page.

16   "I should further point out that he also

17   relies upon my advice in making this

18   decision."

19   Mr. Fisher, I take it that this letter written by

11:37 20   your counsel, that would have been your position

21   to the Federal Department of Justice at the time?

22   A   Yes.

23   Q   And so it appears from this that you wished to

24   wait for further testing that's being done before

11:37 25   you commit to giving a sample; is that a fair read

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1   of this?

2   A   Yes.

3   Q   And then if we could go to 322475, please, and

4   this is an affidavit filed at the Supreme Court of

11:37 5   Canada by Dr. Peter Davison of Ottawa, he says:

6   "On March 8, 1992, at approximately 7:00

7   p.m. I attended at the Regional

8   Detention Centre in Gloucester, Ontario

9   and met with registered nurse, Sandra

11:38 10   Kapinsky.

11   I entered the Centre and was

12   introduced to Larry Fisher by his

13   counsel, Brian

14   A   Beresh. The individual to whom I was

11:38 15   introduced is the individual in the

16   photograph attached hereto as Exhibit

17   "A" to this my affidavit."

18   So on March 8th in the detention centre, Regional

19   Detention Centre -- I think your evidence was

11:38 20   March 11th before the Supreme Court -- so it

21   appears that a couple of days before you gave

22   evidence before the Supreme Court of Canada you

23   gave a sample to Dr. Davidson; is that correct,

24   or Davison?

11:38 25   A   Yes.

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1   Q   And so paragraph 4 has your photo attached, go to

2   the next page, and then:

3   "At approximately 7:30 p.m. in the

4   presence of nurse Kapinsky, I drew

11:38 5   directly from Larry Fisher a sample of

6   his blood. In addition I obtained

7   samples of his hair directly from his

8   head. I further obtained a saliva swab

9   directly from Mr. Fisher's mouth. In

11:39 10   addition Mr. Fisher provided me with a

11   sample of his semen. Finally, I

12   obtained directly from Mr. Fisher a

13   sample of his urine. Mr. Fisher gave

14   his consent to my obtaining these

11:39 15   samples."

16   So I take it you have no issue with what's stated

17   there, Mr. Fisher?

18   A   No.

19   Q   And when you gave these samples, is it fair to say

11:39 20   that you knew that others, authorities or others

21   would be using these samples to compare with known

22   samples found on Gail Miller's clothing to see

23   whether there would be a comparison?

24   A   Yes.

11:39 25 Q   And would it be fair to say that you knew that you

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1   were providing these samples knowing that they

2   would be used by someone at some point to either

3   eliminate you as a suspect or perhaps to inculpate

4   you as a suspect; is that fair?

11:39 5   A   Yes.

6   Q   And just for the record, 322478, it's not a very

7   good photo, but I think that's the photo that Mr.

8   Davison took at the time. If we could then go

9   back to the transcript, 197598, and go to 197612,

11:40 10   and you are being examined by your counsel and it

11   says:

12   "Q   It is my information, sir, that you

13   arrived Sunday March 8, 1992?

14   A   Yes, sir.

11:40 15   Q   And your arrival at the location where

16   you were being held was about 6:00 p.m.?

17   A   Right.

18   Q   Is it correct that at approximately 7:30

19   on that day you supplied directly to

11:40 20   Dr. Peter Davison a sample of your

21   blood, saliva, hair and semen?

22   A   Yes, I did.

23   Q   It has been your instructions to submit

24   those to the crime lab for testing.

11:40 25   A   Yes, sir.

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1   Q   I take it that is with your consent that

2   they will remain there for testing.

3   A   Yes, sir.

4   Q   In addition to that, sir -- and just so

11:41 5   we understand -- I take it it has always

6   been your position that you wished to

7   supply the samples.

8   A   Always; whenever you want them."

9   And again, that's the evidence you would have

11:41 10   given at the time before the Supreme Court?

11   A   Yes.

12   Q   And that was your position?

13   A   Yes.

14   Q   And then if we can go to 197758, please, and you

11:41 15   were cross-examined by Mr. Wolch, and I think the

16   tenor of Mr. Wolch's cross-examination was that

17   you only gave the bodily fluid samples to Dr.

18   Davison when you learned that tests done in the

19   previous days, weeks or months concluded that a

11:41 20   known sample couldn't be obtained from Gail

21   Miller's clothing to do a comparison with your

22   DNA. Do you understand my question?

23   A   Yes.

24   Q   And you recall Mr. Wolch questioning you about

11:42 25   that or that allegation being made?

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1   *A*   No, I can't remember.

2   **Q**   And I think if I can just summarize it, I think

3   the suggestion was made, Mr. Fisher, that

4   certainly at the time that you provided your

11:42 5   sample, on March 8th, 1992, you had been aware and

6   others had been aware that a DNA test could not be

7   done at that time because technology at that time

8   would not allow the extraction of a sample from

9   Gail Miller's clothing. Do you remember that at

11:42 10   the time?

11   *A*   I can't remember it.

12   **Q**   And I think, and I'll go to a couple of answers

13   here, and I think at the time you said lookit,

14   I've always been prepared to give the samples?

11:42 15   *A*   Uh-huh.

16   **Q**   And if they were given after that date, so be it,

17   I was always willing to give them, is that a fair

18   summary of what your position was?

19   *A*   Yes.

11:43 20   **Q**   And so here, just go back, and I don't propose to

21   go through it, I think there's an issue before the

22   Court, I think Mr. Wolch and Mr. Beresh were

23   having a disagreement on certain matters and the

24   letter that I just read was put before the Court

11:43 25   by Mr. Beresh, and then the next page, I don't

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1   propose to go through it, but that's the January

2   20th letter where Mr. Beresh said lookit, there's

3   testing in England, let's just look to see what

4   happens before you give any samples because you

11:43   5   want to make an informed decision. And Mr. Wolch

6   asks you:

7   "Q   So if I understand your position,

8   because there might not be sufficient

9   samples, that somehow would concern you

11:43   10   in providing a sample?

11   A   Nothing concerns me about giving a

12   sample. If you want it, I am gladly

13   willing to give it to you."

14   Next page:

11:43   15   "Q   Why were you concerned then? I didn't

16   quite follow that.

17   A   I have never been concerned about

18   giving you samples.

19   Q   The letter says it was shared by you you

11:43   20   shared the concern that there wasn't

21   sufficient samples. If there weren't

22   sufficient samples, how could that

23   prejudice you?

24   A   I didn't know nothing about this

11:44   25   sufficient samples.

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1   Q   Why were you holding back?

2   A   I can't tell you anything about what

3   you are going to do with the blood

4   type, or anything. I am not into

11:44 5   forensics, but I am willing to give

6   you that sample, any type of sample

7   you want.

8   Q   Now?

9   A   Any time.

11:44 10   Q   Who did you give it to?

11   A   I can't remember the doctors name."

12   And I think -- so that's accurate information

13   then, Mr. Fisher, that was your position at the

14   time?

11:44 15   A   Yes.

16   Q   If I could just call up 077786 and this is a March

17   12th, 1992 report of the *StarPhoenix* by the Ottawa

18   Correspondent, so this is the day you testified, I

19   think you testified the 11th and the 12th, and

11:45 20   again I just want to point out this, and again,

21   Mr. Commissioner, there's other evidence other

22   than the news article about what was going on with

23   DNA testing at the time and we'll hear from other

24   witnesses on that, but it goes on to say:

11:45 25   "He also said --"

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1   Referring to you,

2   "-- he provided blood, semen and saliva

3   samples when he arrived Sunday in

4   Ottawa. Although DNA testing turned out

11:45   5   not to be possible at this time --

6   something that was known by the time

7   Fisher gave his samples -- Beresh said

8   that the specimens will be kept by the

9   RCMP for use if technology advances to

11:45   10   the point when such small samples from

11   the Miller murder site can be analysed."

12   And again that, it certainly appears from this

13   article, Mr. Fisher, that two things, number 1,

14   at the time you gave the sample, at least

11:46   15   according to this article, it was known that DNA

16   testing was not possible at the time, and that

17   second -- let me pause there. Is that -- and

18   that's what the article says. Are you able to

19   recall whether that was the case or not?

11:46   20   A   I can't remember.

21   Q   And secondly, that the specimens will be kept by

22   RCMP for use if technology advances, and again, do

23   you recall that being your position at the time?

24   A   Yes.

11:46   25   Q   Yes? And so you understood, sir, that at some

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1		point the samples that you gave to Dr. Davison on
2		March 8th, 1992 might be used in a test to compare
3		it with the bodily fluids and substances found on
4		Gail Miller's clothing?
11:46 5	A	Yes.
6	Q	Now, let's -- you became aware, I take it -- we're
7		done with that article -- that in April of 1992 or
8		at some point that the Supreme Court of Canada
9		rendered their decision and as a result the
11:47 10		conviction of David Milgaard for the murder of
11		Gail Miller was set aside, I think it was on or
12		about April 16th, 1992, and that Mr. Milgaard was
13		released from jail on that date. Would you have
14		become aware of that at that time or around that
11:47 15		time?
16	A	Yes.
17	Q	And then I think you were in jail until May of
18		1994; is that right, and then out of jail?
19	A	Yes.
11:47 20	Q	I want to ask you, from, let's say, April 16th --
21		you were done testifying at the Supreme Court in
22		May. Let's say April of 1992, from that time when
23		Mr. Milgaard was let out of jail -- let me back
24		up. Before I ask you the question, let me tell
11:48 25		you that you remember in July of 1997 that DNA

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1		testing was concluded and results were publicized
2		about testing that had been done, it was about a
3		week before you were arrested?
4	A	I can't remember that.
5	Q	Okay. I can show you some newspaper -- you
6		remember when you were arrested for the murder of
7		Gail Miller?
8	A	Yeah.
9	Q	And were you aware at that time that some DNA
10		testing had shown a couple of things; one, that
11		the semen found on Gail Miller's panties and dress
12		could not have come from David Milgaard, and
13		secondly, that they matched statistically your DNA
14		profile. Do you remember hearing about that in
15		either the media or from the police?
16	A	From the media.
17	Q	Yes, you did?
18	A	Yeah.
19	Q	So shortly before -- I think the results came out
20		on July 18th, 1997 and you were arrested on July
21		25, 1997, so at some point in that time frame you
22		would have become aware that DNA testing had been
23		done that said Mr. Milgaard's -- or that the semen
24		on the panties and dress worn by Gail Miller did
25		not match David Milgaard, but did match your DNA

11:48 (line 5)
11:48 (line 10)
11:48 (line 15)
11:48 (line 20)
11:49 (line 25)

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1		profile, you became aware of that?
2	A	Only through the media.
3	Q	Okay, that's fair. But you were aware of that?
4	A	Yeah.
11:49 5	Q	And I want to ask you from -- let's go back to
6		April of 1992, April 16th or 17th when
7		Mr. Milgaard is let out of jail. From that point
8		in time until the time that you were arrested on
9		July 25, 1997, or within a few days of that, did
11:49 10		any police force or police officer contact you
11		about any matters relating to Gail Miller's
12		murder?
13	A	No.
14	Q	And so after the -- you heard in the media about
11:50 15		the DNA results. I take it that you were, you had
16		some contact with police, and I'll refer to a
17		couple of articles in a moment, but within that
18		week after the DNA results, prior to the DNA
19		results being publicized, and you are telling us
11:50 20		that between the time you were in the Supreme
21		Court of Canada in 1992 and the time the DNA
22		results came out, no police officer questioned you
23		or talked to you about the Gail Miller murder; is
24		that correct?
11:50 25	A	No.

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1   **Q**   That is correct?

2   *A*   Yes.

3   **Q**   If we can call up 227343, please, and this is a

4   newspaper article of June, 1994, this one is in

11:51 5   the *Winnipeg Free Press*, and I'll show you a

6   couple of articles, but I take it after you got

7   out of jail in 1994 the media contacted you and

8   talked about you and wrote about you and your

9   connection to the Gail Miller case; is that fair?

11:51 10   *A*   Yes.

11   **Q**   And there's a couple of articles here and again

12   that's a picture of you at your Calgary home and

13   you said, "Publicity is like the death warrant."

14   I think this is June 26, '94. So this would be

11:51 15   about a month or so after you got out of jail; is

16   that right?

17   *A*   Yes.

18   **Q**   And if we can just call out -- and this says:

19   "In an interview Friday night with the

11:51 20   Herald --"

21   Actually, let me just back up. It just talks:

22   "Larry Fisher, released from prison

23   recently after serving 23 years for

24   seven rapes, is on the move again after

11:52 25   abandoning his rental suite in Calgary

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1   to avoid media public attention. In an

2   interview Friday night with the Herald,

3   Fisher railed against the media. "I am

4   a citizen of Canada and you guys are

11:52 5   convicting me all over again. Don't I

6   have rights? What do you want me to do?

7   You guys are crucifying me all over

8   again. Everywhere I go it's the same

9   thing."

11:52 10   And again, are those words that you would have

11   said to the media at that time?

12 A   Yes.

13 Q   Can you tell us, what was happening, what were the

14   media -- what was the purpose of the media

11:52 15   attention to you at the time?

16 A   I don't know. I didn't even know that guy that

17   took the picture.

18 Q   And was the media interest in you at that time to

19   your knowledge, was that in relation to the Gail

11:52 20   Miller murder?

21 A   Possibly, yeah.

22 Q   If we could call up 227381, please, and again this

23   is an article from -- I'm not sure, it looks like

24   a Winnipeg newspaper. There's a date at the top,

11:53 25   September 20th, '94, "Rapist Fisher unable to

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	1	escape from his past." It talks about in his
	2	third:
	3	"It is his third town since he got out
	4	of jail, his third try at slipping
11:53	5	quietly into a community where he might
	6	live unnoticed."
	7	And then:
	8	"Neighbours called media outlets. That
	9	prompted Fisher and his wife Lillian to
	10	agree to be interviewed in their home
	11	Saturday where they make yet another
	12	appeal for their family to be left
	13	alone."
	14	And then it goes on, quotes here:
11:53	15	"How many times do I have to pay? What
	16	more can I say or do?"
	17	Now, there's no mention in this article, nor was
	18	there in the last one, about the Gail Miller
	19	murder. I'm trying to understand from you, Mr.
11:54	20	Fisher, was the media attention because you were
	21	a convicted rapist and got out of jail or did it
	22	relate to the fact that the media were suggesting
	23	you were the person responsible for the Gail
	24	Miller murder?
11:54	25	A I can't really say. It's more or less just a

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1   harassment.

2   Q   And so after you got out of jail you say

3   harassment --

4   A   Uh-huh.

11:54 5   Q   -- by the media in the communities that you went

6   to?

7   A   Yes.

8   Q   And are you able to say whether it related to the

9   Gail Miller murder file or just the fact that you

11:54 10   were a convicted rapist?

11   A   Both.

12   Q   Both?

13   A   Both.

14   Q   At the time when you got out of jail in 1994, did

11:55 15   you think you were a suspect at that time in the

16   murder of Gail Miller?

17   A   I wasn't even thinking of it at the time.

18   Q   Okay. Back in 1990 when Sergeant Pearson started

19   to interview you, I think he told you you were a

11:55 20   suspect; is that fair?

21   A   Yes.

22   Q   So at that time you would have thought you were a

23   suspect?

24   A   Yes.

11:55 25   Q   And when you went to the Supreme Court of Canada,

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 1              did you think you were a suspect?

 2    A         Yes.

 3    Q         And at what point, if you did, at what point did

 4              you stop thinking you were a suspect in the murder

11:55  5        of Gail Miller?

 6    A         Probably about two days before my release date.

 7    Q         So two days -- your release date was in May of

 8              '94?

 9    A         The 22nd, and they released me on May 20th.

11:55 10   Q    And so what happened on those -- what -- what

11             happened on that date to cause you to think that

12             you weren't a suspect?

13   A         Oh, I was just being released, so my mind was

14             elsewhere.

11:56 15   Q    And so at that time when you got out of jail in

16             1994, then, in your mind you didn't think you were

17             a suspect?

18   A         No, I still thought I was a suspect, I just wasn't

19             thinking of it at the time.

11:56 20   Q    Okay.  So are you telling us that from the time

21             Sergeant Pearson approached you in April of 1990,

22             up until the time you were arrested on July 25,

23             1997, did you believe, sir, that you were a

24             suspect through that entire time?

11:56 25   A    Yes.
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1   MR. HODSON: Mr. Commissioner, this is

2   probably a good time to break for lunch. I have

3   about 15 minutes left.

4   COMMISSIONER MacCALLUM: Okay.

01:30 5   *(Adjourned at 11:56 a.m.)*

6   *(Reconvened at 1:31 p.m.)*

7   BY MR. HODSON:

8 Q   Good afternoon, Mr. Fisher. This morning I had

9   asked you about what the status was of whether or

01:31 10   not DNA testing was possible in March of 1992 at

11   the time that you gave your samples to the

12   authorities; do you recall those questions I asked

13   you?

14 A   Yes.

01:31 15 Q   And I think I showed you an article that suggested

16   at the time that technology, I think the words

17   were DNA testing turned out not to be possible at

18   this time, and I just want to go through some

19   documents here, Mr. Fisher, that I think probably

01:31 20   more accurately describe the situation as being

21   that, although possible, not likely.

22   I'll just call up 103026,

23   please. And again you will recall, I think March

24   8th, '92 is when you gave your sample, okay, and

01:32 25   this is a letter or report, forensic lab report, I

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1   think the date is February, February 20th I think

2   of 1992, and if you can go to -- and this is a

3   report from the Chief Scientist, Serology, in

4   Ottawa to Mr. Williams and it talks about samples

01:32   5   taken from David Milgaard and then sets out the

6   various exhibits from Gail Miller. And then if

7   you can go to the third page, please, and under

8   Remarks it says:

9   "Based on the size of the suspect semen

01:33   10   stain on exhibit 6 ... the bloodstains

11   on exhibit 35 ... and the unknown

12   residue on exhibit 13 ... the following

13   options are available should you wish to

14   pursue forensic DNA typing ...",

01:33   15   and then talks about amplified fragment length

16   polymorphism technology, and at present this can

17   only be done on an exclusionary basis, and then

18   the restriction fragment length polymorphism

19   analysis technology. I don't propose to go

01:33   20   through those, we'll hear from other witnesses on

21   that, but I think, based on this report, in

22   February there was testing that was possible at

23   the time. If I can then go ahead to -- actually,

24   just hang on one minute here and we'll --

01:33   25   actually, you can go to the next page, please,

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1   and again continuing on about some other tests

2   that might be available. And then paragraph 4:

3   "If DQ alpha technology is preferred,

4   then it is recommended that the known

01:34   5   standards be examined first to ensure

6   that they are of different types, prior

7   to examination ..."

8   So, again, it looks as though in February of 1992

9   Patricia Alain, who I think is the author of this

01:34   10   document -- yes -- is saying that some testing

11   can be done.

12   If we can then go ahead to

13   008996, and here is a letter from Mr. Fainstein

14   to a Mr. Wolch, Mr. Beresh, and the governor --

01:34   15   or the Government of Saskatchewan, and it says:

16   "Now that we have known samples of

17   genetic materials from both David

18   Milgaard and Larry Fisher, it would

19   appear that one of the new PCR-based DNA

01:34   20   testing techniques, which an eminent

21   laboratory in the United States is

22   willing to apply for us, may be of

23   assistance.

24   We will have the tests done

01:35   25   this week, and should have a report

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1   before April 8th. I will, of course,

2   let you know the results as soon as

3   possible."

4   And then the next one, 174222. And this is a

01:35   5   report of April 6th, 1992 from the laboratory in

6   North Carolina to Mr. Fainstein with Federal

7   Justice, and again we'll have other witnesses who

8   will be telling us exactly what this means, but

9   it says here, 'on March 26th, 1992 ...', then

01:35   10   prepared:

11   "... DNA from a portion of Exhibit 6,

12   panties. No DQ alpha type was obtained.

13   The sample was shown to be partially

14   inhibitory to the PCR reaction. Upon

01:35   15   further testing the sample was not found

16   to contain quantifiable amounts of DNA."

17   So I think, Mr. Fisher, that's the record that,

18   before you provided your samples, there was a

19   possibility of some tests, you provided your

01:35   20   sample, tests were done, however the scientists

21   were not able to obtain a DNA profile from Gail

22   Miller's garments; does that sound accurate to

23   you? Do you have any reason to dispute that?

24 A   No.

01:36   25 Q   Now I take it at some point in 1997 before your,

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1   before the DNA results were publicized, did you

2   become aware that a test was going to be done, a

3   DNA test?

4   A   No.

01:36   5   Q   Maybe if we can call up 230215, and this is a

6   letter May 16th, 1997 from your counsel,

7   Mr. Beresh, to Mr. Lockyer, who I think at that

8   time was representing David and/or Joyce Milgaard,

9   and Mr. Beresh was your lawyer at the time I take

01:37 10   it?

11   A   Yes.

12   Q   And he goes on to say that he represented the

13   interests of Mr. -- or Larry Fisher before the

14   Supreme Court of Canada, and continued to

01:37 15   represent him. It says, 'I have learned from the

16   Department of Justice in Ottawa that you may be

17   planning to hold a press conference next week in

18   relation to the potential DNA testing which is

19   scheduled to take place in England this summer. I

01:37 20   am uncertain as to the proposed extent or content

21   of the news conferences scheduled for next week.

22   As a result, I raise with you my concerns about

23   any potential reference to Mr. Fisher. The

24   concern is heightened by what appears to be a

01:37 25   previous belief by Mr. Milgaard that an attempt to

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1   exonerate himself necessarily involves the

2   implication of Mr. Fisher.

3   The Supreme Court of Canada,

4   after its lengthy review, including the evidence

01:37 5   of Mr. Fisher, did not implicate Mr. Fisher and

6   quite frankly, in my view, the facts do not

7   support any such implication. None of the

8   evidence led before the Supreme Court has caused

9   the authorities to investigate or even interview

01:38 10   Mr. Fisher.'

11   And I think on that point,

12   that's what you told us before the break today,

13   that the authorities did not investigate or

14   interview you after the Supreme Court of Canada

01:38 15   decision; is that correct?

16   A   Yes.

17   Q   And then it goes on to say, 'As you may or may not

18   be aware, Mr. Fisher, as a result of comments made

19   at and following the Reference, has been subjected

01:38 20   to attempts at vigilante justice, including the

21   stoning of a motel room where he and his family

22   resided for a short period of time. Any comments

23   about him undoubtedly will lead to further

24   inflaming of members of the public and potential

01:38 25   physical and psychological to harm to he and his

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1   family.'

2   And I take it, does that

3   accurately reflect what was happening in your life

4   at the time?

01:38 5   A   Yes.

6   Q   And then if we could call up -- actually, if we

7   can go to the next page, please, I think it talks

8   about the Guy Paul Morin Inquiry at the top of the

9   next page, 'In the quest for justice for Mr.

01:39 10   Milgaard, I only ask that we not create another

11   Morin-type situation based upon unproven

12   allegations against a citizen.

13   I ask that you resist the

14   temptation to join those who would override the

01:39 15   presumption of innocence by exploiting the

16   constitutional refusal of a citizen to co-operate

17   with State intrusion.'

18   And if I could call up 230217,

19   please, and this is Mr. Lockyer's reply, 'Thank

01:39 20   you for your fax of May 16, 1997. I understand

21   the concerns that you express on behalf of your

22   client. I was unaware of the vigilante justice to

23   which you refer, and very much regret that it has

24   happened.

01:39 25   The media, of course, knows of

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1   the allegation that Mr. Fisher is the real culprit

2   in Ms. Miller's death. They have raised and will

3   no doubt continue to raise his name. Let me

4   assure you, in response to your letter, that I

01:40 5   will not make any direct accusations of

6   culpability against Mr. Fisher but I will respond

7   to media questions about his part in the DNA

8   testing. I will be releasing a copy of the

9   agreement negotiated with the Department of

01:40 10   Justice but have obliterated the clause which

11   refers to your client.

12   Your letter hints that Mr.

13   Fisher has refused to cooperate with this latest

14   attempt at DNA typing. I would appreciate knowing

01:40 15   whether this is so. If he is prepared to

16   cooperate, I will do all I can to ensure that he

17   is able to participate fully in the testing. For

18   example, if he wishes a scientist of his own to

19   attend in England, I would support this. You

20   might remind Mr. Fisher that just as Mr. Milgaard

21   is seeking this further testing to prove his

22   innocence, so might Mr. Fisher seek to establish

23   his own innocence, which he continues to assert.

24   Having studied the case at length, I cannot agree

01:40 25   that the evidence does not implicate Mr. Fisher.

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1   I consider it remarkable that the authorities have

2   chosen not to investigate or interview Mr. Fisher.

3   Nevertheless, as you point out, he is entitled to

4   the presumption of innocence.'

01:40 5   And, again, at this time, Mr.

6   Fisher, would it be fair to say that Mr. Beresh

7   was handling this part of the DNA issues in 1997

8   on your behalf?

9   A   Yes.

01:41 10 Q   Were you at -- were you -- and I don't want you to

11   get into any discussions you had with Mr. Beresh

12   or any matters of a solicitor/client privilege,

13   but were you aware, generally, that testing was

14   going to be done in England of your DNA compared

01:41 15   to samples on Gail Miller's clothing?

16 A   Yes.

17 Q   Okay. If we could call up 230219. And, again,

18   this is a follow-up letter from Mr. Lockyer to

19   Mr. Beresh, 'As you know, attempts at DNA typing

01:41 20   will commence in England on July 14, 1997.

21   In my letter to you dated May

22   20, 1997, I asked you to advise me whether your

23   client was prepared to cooperate in this latest

24   attempt. I await your reply.

01:42 25   I have now given further

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1   consideration to the views that you express in

2   your May 20th letter. It is my opinion that, in

3   the extraordinary circumstances of this case, your

4   client is in an unenviable position if he refuses

01:42   5   to participate in the new testing. Mr. Milgaard

6   obviously has nothing to hide - this further

7   testing is taking place at his instigation. Mr.

8   Fisher would surely wish to cooperate if he also

9   has nothing to hide. Like Mr. Milgaard, he must

01:42   10   want to dispel any suggestion that he murdered Ms.

11   Miller if, indeed, he was not her killer. On the

12   other hand, if Mr. Fisher is her killer, I can

13   well understand his reluctance to involve himself

14   in a process that will likely reveal his guilt.'

01:42   15   And then 289523. This is a

16   letter from your counsel June 24th, 1997, to

17   Mr. Fainstein and it says,

18   "I wholeheartedly disagree with your

19   assessment of the present state of the

01:43   20   law and in my respectful submission the

21   law prohibits the unauthorized use of

22   any material subject to either consent

23   of judicial authorization. Consistent

24   with this philosophy and protection of

01:43   25   privacy is the Supreme Court of Canada's

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1   recent decision in *Feeney*.

2   Should you proceed in the

3   fashion suggested in your correspondence

4   you will not only imperil any subsequent

01:43   5   use of the results of the DNA but will

6   also subject the Department to potential

7   civil action."

8   Now I don't want to ask you about anything

9   related to your discussions with your counsel or

01:43   10   anything of a privileged nature, Mr. Fisher, but

11   you had earlier told us in 1992 that you had

12   willingly given your sample knowing that it would

13   be used to do some DNA testing; is that correct?

14   That's what you told us this morning.

01:43   15   A   Yes.

16   Q   Did something change in 1997 -- and, again, I do

17   not want to get into any legal advice that you

18   received -- but did something change in 1997 that

19   caused you to change your position?

01:44   20   MR. BERESH: Well, Mr. Commissioner, if I

21   could address that, please, sir.

22   COMMISSIONER MacCALLUM: Yes.

23   MR. BERESH: With the greatest of respect,

24   this question does touch on the matter of

01:44   25   solicitor/client privilege. As you can

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1   appreciate, in the five years that passed between

2   '92 and '97 there were many developments. I do

3   not believe that my client can properly be asked

4   this question, in fairness to him, without some

01:44   5   reference to legal advice received, so I object

6   to the question.

7   MR. HODSON: If that is indeed the case, I

8   prefaced my question that I do not want to hear

9   anything of a solicitor/client privileged nature,

01:44   10   and if he can't answer it, that's fine. I was

11   not intending to get into discussions with

12   counsel.

13   COMMISSIONER MacCALLUM: Is that your

14   position, Mr. Fisher?

01:44   15   A   Yes.

16   COMMISSIONER MacCALLUM: You can't answer

17   the question without getting into what passed

18   between you and Mr. Beresh?

19   A   Yes.

01:44   20   COMMISSIONER MacCALLUM: Okay.

21   BY MR. HODSON:

22   Q   Did you be -- and you may have touched on this a

23   bit earlier, Mr. Fisher, you were aware or became

24   aware, around July 18th, 1997, that DNA testing

01:45   25   was completed in England?

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1 *A* Yes.

2 **Q** And that it showed, after the DNA analysis, that

3   semen found on the panties and dress Gail Miller

4   was wearing on the morning she was murdered,

01:45 5   number 1, could not have originated from David

6   Milgaard; and 2, statistically matched your DNA

7   profile? Did you become aware of that at some

8   point after -- at some point around that time?

9 *A* I'm really not sure.

01:46 10 **Q** Okay.

11 *A* Whether --

12 **Q** I'm sorry, go ahead?

13 *A* I'm not really sure. All I heard on the media was

14   that there was a warrant out for me.

01:46 15 **Q** That there was what?

16 *A* A warrant.

17 **Q** Okay.

18 *A* So --

19 **Q** Let me call up 229773. This is an article of July

01:46 20   19th, 1997 which is the day after the results were

21   released, and the article says:

22   "The tests, carried out at a British

23   laboratory, point to a DNA match between

24   convicted serial rapist Larry Fisher and

01:47 25   specimens of semen on the clothing worn

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1   by Miller when she was stabbed and

2   dumped in a Saskatoon snowbank in 1969.

3   They concluded there was a 1 in

4   100 million chance that someone other

01:47   5   than Fisher was the source for the semen

6   on Miller's clothing.

7   Last night Fisher was being

8   interviewed by police in Saskatoon, but

9   no charges are immediately expected."

01:47   10   If we can just pause there. Would it be fair to

11   say that you would have become aware of

12   information like this on or about July 18th to

13   July 19th, '97?

14   A   I can't remember the date the media came out, but

01:47   15   all I heard was that there was a warrant out, so I

16   went up to the Mounties and talked to them.

17   Q   Okay. Maybe let's just go back to the main page

18   here, an article down here again at the bottom,

19   and again my question, Mr. Fisher, is whether you

01:46   20   became aware, let's maybe state it a little

21   simpler, did you become aware that some testing,

22   some DNA testing that was done pointed to you as a

23   suspect?

24   A   No.

01:47   25   Q   You weren't?

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	1	A	No.
	2	Q	Do you remember going and talking to the police, I
	3		think you said Mounties or to the police?
	4	A	Yeah.
01:47	5	Q	And tell us how that came about?
	6	A	I just heard it on the news that there was a
	7		warrant out for my arrest and I went up and talked
	8		to the Mounties up there.
	9	Q	And where was this?
01:47	10	A	Saskatoon.
	11	Q	And what did they tell you?
	12	A	I got a hold of someone from city police.
	13	Q	And then what happened?
	14	A	Oh, then we went and had a burger or something
01:47	15		across the street and waited for him to come.
	16	Q	Okay. So you went and contacted the RCMP; is that
	17		right, in Saskatoon?
	18	A	Yeah.
	19	Q	And said you heard in the media that there was a
01:47	20		warrant for your arrest?
	21	A	Yeah.
	22	Q	And what did the RCMP tell you about whether there
	23		was or wasn't?
	24	A	They said they never had one.
01:47	25	Q	Okay. And they contacted the city police; is that

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1   right?

2   A   Yeah.

3   Q   And then did you have a discussion with someone

4   from the city police?

01:48 5   A   Yes, I think so.

6   Q   And what was the nature of that discussion?

7   A   I just wanted to find out if they had a warrant

8   for my arrest.

9   Q   And did they?

01:48 10   A   No.

11   Q   And so did they advise you that you were free to

12   go?

13   A   Yeah.

14   Q   And just take a look at this, again I do not want

01:48 15   to get into matters of discussions with your

16   lawyer, it says here:

17   "On the advice of his lawyer, Fisher

18   voluntarily made his way into the

19   Saskatoon Police Station Friday to

01:48 20   inquire if there was a warrant out for

21   his arrest.

22   Police told him he is free to

23   go, although they announced Friday they

24   are reopening the case."

01:48 25   And I think that's what you told us, Mr. Fisher,

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1   you went and talked to the RCMP and the police

2   and they advised you there was no warrant?

3   A   Yes.

4   Q   If we can call up 077570, and again this is a copy

01:49   5   from the *StarPhoenix* of July 19th, 1997, it is

6   reported there:

7   "Fisher became agitated when confronted

8   by the media Friday as he returned to

9   his home after his meeting with police.

01:49   10   "The message I want in the paper? Leave

11   me alone," he said outside his downtown

12   Saskatoon apartment.

13   "There's no warrant. I was just at the

14   Mounties and the city police. I had

01:49   15   interviews with both. There's no

16   warrant."

17   Again, would you have told the media that at the

18   time?

19   A   Yes.

01:49   20   Q   And then I believe, sir, that you then travelled

21   to Calgary; is that right?

22   A   Yes.

23   Q   And then what happened in Calgary; how did you --

24   how were you arrested?

01:49   25   A   They came right to the house.

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1   Q   Okay.

2   A   Yeah.

3   Q   And what was your purpose in going to Calgary?

4   A   Just to get away.

01:50   5   MR. HODSON: Okay, Mr. Fisher, those are

6   all of my questions. I suspect that there are

7   questions from other counsel. I'm not sure who

8   has agreed to go first.

9   **BY MR. LOCKYER:**

01:50   10   Q   Me. I represent Mrs. Milgaard.

11   Just to fill in part of what Mr.

12   Hodson was asking you just after lunch, do you

13   remember he showed you before lunch a newspaper

14   story from March the 12th of 1992 in which your

01:51   15   counsel said that the DNA sample, or the blood

16   sample that you had given could be used sometime

17   thereafter if technology improved? Do you

18   remember that?

19   A   Yeah.

01:51   20   Q   That was shown to you this morning?

21   A   Yes.

22   Q   Yes. And just to give this a context, what I'm

23   about to show you, as I recall it was January the

24   19th of 1995 a man called Guy Paul Morin was

01:51   25   exonerated through DNA testing. Do you remember

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1   that?

2   A   Yeah.

3   Q   And a few days after that David Milgaard announced

4   to the media that he wanted the same thing done in

01:51 5   his case, and that's what brings us to the

6   document I want you to look at, 268705, because

7   our understanding, I haven't seen this document

8   from Mr. Beresh, it comes out of the blue. This

9   is a letter you'll see dated February the 14th of

01:52 10   1995 from your counsel Mr. Beresh to Ronald

11   Fainstein who was the lawyer representing the

12   Department of Justice both in the Supreme Court of

13   Canada and thereafter and this is what it says,

14   Mr. Beresh says:

01:52 15   "Pursuant to our telephone conversation

16   of January 26, 1995 --"

17   And I think it's reasonable to suppose that that

18   was as a result of David Milgaard's public

19   announcement that he wanted more DNA testing

01:52 20   done:

21   "-- please be advised that I have

22   decided to discuss this matter in person

23   with Mr. Fisher when I am next in

24   Saskatoon.

01:52 25   I simply do not feel

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1   comfortable discussing this with him by

2   phone.

3   It is my position that the

4   consent previously provided by Mr.

01:52   5   Fisher is no longer valid and anyone

6   acting upon it does so at his own peril.

7   As soon as I have discussed

8   this with Mr. Fisher I will be in

9   immediate contact with you.

01:53   10   This of course does not, in the

11   interim, delay your office from having

12   tested the known sample provided by Mr.

13   Milgaard. Please advise me of any

14   developments in this regard."

01:53   15   Now, the suggestion in that letter is that Mr.

16   Beresh first of all seems to have changed his

17   opinion fairly dramatically from what he has

18   reported as saying on March 12th, 1992; fair? He

19   told the papers that it could be used for

01:53   20   posterity if they subsequently -- technology

21   improved. Do you remember that?

22   A   It's a long time ago.

23   Q   It was shown to you this morning.

24   A   Yeah.

01:53   25   Q   I'm sorry?

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1   *A*   Yes.

2   **Q**   Okay. So Mr. Beresh seems to have changed his

3   tune, but the suggestion in this letter is that

4   this is before he's even talked about it with you.

01:53 5   Do you remember if you had talked to him before he

6   wrote this letter, was it pursuant to your

7   instructions or not?

8   MR. BERESH: Again, it was solicitor/client

9   privilege. My friend has no basis whatsoever for

01:54 10   requesting it and I object to it.

11   COMMISSIONER MacCALLUM: Well, Mr. Fisher

12   made it clear, it explicitly relates to a

13   conversation between counsel and his client. Why

14   is it not privileged?

01:54 15   MR. LOCKYER: I mean, I assume there hadn't

16   been discussion because Mr. Beresh says in the

17   letter in fact there hadn't be, so I'm just

18   making sure there hadn't been.

19   MR. BERESH: It doesn't say there hadn't

01:54 20   been, it says that there's some things I want to

21   discuss with him. It doesn't say that at all.

22   COMMISSIONER MacCALLUM: I don't think we

23   can go there, Mr. Lockyer.

24   MR. BERESH: Thank you.

01:54 25   MR. LOCKYER: All right. And then just to

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01:54 | 1 | complete the -- I'm presuming the same goes for

2 | anything that changed from 1992 till 1995 as far

3 | as you are concerned, is Mr. Beresh objecting to

4 | that? The last question was going up to 1997.

01:54 | 5 | MR. BERESH: Yes, it relates to

6 | solicitor/client privilege which is not waived

7 | and cannot be asked.

8 | MR. LOCKYER: Well, there's been a lot of

9 | questions about, from Mr. Hodson about whether

01:55 | 10 | certain letters were sent with the witness'

11 | authority and the like.

12 | COMMISSIONER MacCALLUM: The letters are

13 | one thing and if they appear as evidence in the

14 | Inquiry they speak for themselves, but you can't

01:55 | 15 | get to what's behind them. The letters of course

16 | involve communications between solicitor and

17 | client and therein lies the difficulty.

18 | MR. BERESH: Thank you, My Lord.

19 | BY MR. LOCKYER:

01:55 | 20 | Q   And just so we understand Mr. Beresh's letter of

21 | June 24th that My Friend Mr. Hodson showed you

22 | after lunch, can we look at 068620, because what

23 | we're going to see is Mr. Fainstein's reply,

24 | although be it very belated, two years and four

01:55 | 25 | months later, Mr. Fainstein's reply of June 23rd,

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1   1997, not a direct reply to the letter, but it's

2   clearly replying to, in effect, the contents of

3   the February 14th letter, and what Mr. Fainstein

4   says to Mr. Beresh is:

01:56 5   "I have reflected further on Fisher's

6   situation, and concluded that no fresh

7   consent from him is necessary before we

8   use the blood sample he gave in 1992 in

9   the further round of DNA testing which

01:56 10   will take place in England from July

11   14th.

12   Mr. Fisher consented to the

13   taking of a sample in the first place

14   for a DNA analysis to determine if he

01:56 15   was Gail Miller's assailant. That is

16   precisely what we mean to do with it.

17   In fact, case authority

18   suggests that we could even use the

19   sample in an entirely unrelated

01:56 20   investigation."

21   Moving to the next paragraph:

22   "If DNA is extracted from the crime

23   scene samples, and David Milgaard and

24   Gail Miller are excluded as its source,

25   we will, in my view, be at liberty to

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1   extract Mr. Fisher's profile from the

2   sample he gave in 1992, to determine if

3   the questioned material came from him.

4   Counsel for Saskatchewan

01:57   5   endorses this position."

6   I'm not sure there's anything on the next page.

7   "I will let you know the results of

8   testing as soon as they become available

9   to me."

01:57 10   Presumably you were aware of that letter -- not

11   necessarily of the letter, but of the fact that

12   the Department of Justice were taking the

13   position that the sample you had given in '92

14   could go to England and be tested with the other

01:57 15   samples in England; am I right?

16   A   Yeah.

17   Q   Yes. Mr. Fisher, may I ask you this, sir, do you

18   have -- could you tell me, what date is it, sir,

19   that you are eligible for parole?

01:57 20   A   It's already --

21   MR. BERESH: How does this become relevant?

22   I've listened to My Friend's questions of other

23   witnesses and I apologize if I rise what might

24   appear to be prematurely, but I just don't see

01:57 25   the relevance of this question. I'm concerned

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1   generally about the relevance of questions. This

2   man is here to give factual information so the

3   Commission can make a decision. He's not here to

4   convey -- he's not here to be exposed to any

01:58   5   political speeches and he's certainly not here to

6   answer anything about parole, with the greatest

7   respect.

8   COMMISSIONER MacCALLUM: How is it

9   relevant, Mr. Lockyer?

01:58   10   MR. BERESH: If that would have been

11   relevant, Commission Counsel would have covered

12   it.

13   MR. LOCKYER: I wasn't conscious of having

14   made a political speech I must confess, but --

01:58   15   COMMISSIONER MacCALLUM: What is the

16   relevance of the question?

17   MR. LOCKYER: The motivations behind the

18   witness' evidence and particularly his continual

19   denial, continued denial of murdering Gail

01:58   20   Miller. It relates to his prospects of release,

21   what he has in terms of his expectations and

22   future freedom.

23   MR. BERESH: How is that possibly relevant

24   unless My Friend intends to write a book about

01:58   25   the case. The same could have been asked --

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1   COMMISSIONER MacCALLUM: I have difficulty,

2   Mr. Lockyer, seeing the relevance to our Terms of

3   Reference.

4   MR. LOCKYER: Well, if we assume,

01:58 5   Mr. Commissioner, that the witness is continuing

6   not to tell the truth, then the -- about the

7   murder of Gail Miller, which I think we do kind

8   of assume -- then this may well explain his

9   motivation for continuing to maintain his

01:59 10   position, that he might think that it will

11   secure, it will help secure his release in the

12   future, so I'm trying to inquire into when his

13   release, he anticipates a possible release. I

14   might say it's the only other area I'm asking

01:59 15   about. I'll be another two minutes and I'm

16   finished.

17   COMMISSIONER MacCALLUM: But I am concerned

18   that it relates to a Term of Reference and do you

19   say that it's relevant to the reopening of the

01:59 20   case or to the investigation?

21   MR. LOCKYER: I'm sorry, I didn't hear you.

22   COMMISSIONER MacCALLUM: Do you say it's

23   relevant to the reopening of the Milgaard case or

24   the investigation of the prosecution or simply to

01:59 25   the witness' motivation for testifying as he has

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1   testified today?

2   MR. LOCKYER: Well, I suppose my argument

3   is that those two things are linked, that this

4   witness has given evidence that we can -- that in

02:00   5   some regards that you may or may not accept and

6   that if we can look at his motivations for why

7   he's saying what he is, that that will help you

8   better understand what reliability you can place

9   on his evidence.

02:00   10   COMMISSIONER MacCALLUM: No, I'm not

11   concerned about his reliability as regards the

12   conviction for the rape of --

13   MR. LOCKYER: I appreciate that.

14   COMMISSIONER MacCALLUM: -- Gail Miller.

02:00   15   MR. LOCKYER: I appreciate that. I mean

16   overall in all regards.

17   COMMISSIONER MacCALLUM: No, I don't

18   consider it to be relevant, Mr. Lockyer.

19   MR. BERESH: Thank you.

02:00   20   MR. LOCKYER: Uh-huh. Then I have no

21   further questions.

22   COMMISSIONER MacCALLUM: Thank you.

23   **BY MR. WOLCH:**

24   Q   Mr. Fisher, I'm Hersh Wolch, I'm David Milgaard's

02:01   25   lawyer and you and I have met before; correct?

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 1    A      Yeah.

 2    Q      You indicated that you have spent most of your

 3           adult life incarcerated; would that be correct?

 4    A      Yes.

02:01 5    Q      And have you taken programs and gone through

 6           programs that would help you understand yourself

 7           better?

 8    A      Yes.

 9    Q      And I don't intend to go through them, but do you

02:01 10          feel you now have a better insight into your

 11          behaviour?

 12   A      If it's possible, do we have to talk about it?

 13   Q      I'm sorry, I can't hear you.

 14   A      Do we have to talk about that?

02:01 15   Q      That question requires a yes or a no.

 16   A      I'm sorry, my files at RPC were all sealed up.

 17   Q      I'm sorry, I can't hear you.

 18   A      My files at RPC are all filed up.  I don't want to

 19          talk about that.

02:02 20   Q      I'm not asking you to go through your -- I'm

 21          simply asking, do you think you have a better

 22          insight?

 23   A      Yes, I do have a better insight on myself.

 24   Q      And you feel you have some better understanding of

02:02 25          what motivated you to commit your crimes?
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1   A   Yes.

2   **Q**   And in terms of what motivated you to commit your

3   crimes against the women, can you help us as to

4   what they were?

02:02 5   MR. BERESH: Well, with respect, Your

6   Lordship's ruling this last week, we can't go

7   into this.

8   MR. WOLCH: I didn't hear that.

9   MR. BERESH: He can't be re-examined on any

02:02 10   of this.

11   COMMISSIONER MacCALLUM: Well, crimes is

12   spreading it too broadly. What I ruled on was

13   the rapes in Saskatoon. Is that what you are

14   referring to?

02:02 15   MR. WOLCH: I'm talking about generally

16   attacking women, as to what your motivation is.

17   Well, I don't want to go through the individual

18   incidents, but surely it's a legitimate question

19   as to what motivates, and could be helpful to the

02:02 20   Commission to know what would motivate these kind

21   of crimes and to police forces to determine who

22   commitments them, what the leads are.

23   MR. BERESH: I object for two reasons,

24   number 1, I think you ruled on it last week. You

02:03 25   can't open the door a little bit, you sealed that

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1   door shut. Secondly, your Terms of Reference are

2   absolutely clear, to inquire into or report on

3   any and all aspects of the conduct of the

4   investigation and the conduct of subsequent

02:03 5   criminal proceedings in terms of reopening. This

6   doesn't raise that issue at all.

7   COMMISSIONER MacCALLUM: How does it?

8   MR. WOLCH: Sorry?

9   COMMISSIONER MacCALLUM: How does it, Mr.

02:03 10   Wolch?

11   MR. WOLCH: Because it would be my position

12   that had the police identified Mr. -- let's say

13   this happened today and the police went to the

14   bus stop and spoke to the individual and wanted

02:03 15   to inquire into him and if they were to learn

16   that he had difficulty with nurses, with people

17   in authority, with women, with women assaulting

18   him in the past, that would be a clue to pursue

19   him as a more logical suspect, and that could

02:04 20   have been done in his case, it could be done

21   today, and it's something the Commission might

22   want to recommend, that in the future profiling

23   be done as to what motivates people to commit

24   these kind of crimes and who better to tell us

02:04 25   than the man himself.

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1   COMMISSIONER MacCALLUM: You mean profiling

2   in the course of the routine check at the bus

3   stop.

4   MR. WOLCH: Absolutely, absolutely, when

02:04   5   you find out he wasn't there that morning and

6   lied, that's a darn good reason to look more

7   closely and that he lives at the Cadrain home, a

8   darn good reason to look at his background more

9   closely.

02:04   10   MR. BERESH: That's an issue for the

11   police, not to put to this witness. He's not an

12   expert.

13   MR. WOLCH: Oh, yes, he is.

14   COMMISSIONER MacCALLUM: Well, you've heard

02:04   15   your friend put this in the context of the Terms

16   of Reference. How has it anything to do with the

17   investigation or the prosecution or the

18   reopening?

19   MR. WOLCH: Well, what to investigate,

02:05   20   where do we look, what kind of people do we look

21   at.

22   COMMISSIONER MacCALLUM: But the fact of

23   the police not having asked these questions when

24   this witness was investigated is there for us all

02:05   25   to consider for what it's worth. I don't see

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1   what possible link Mr. Fisher can shed on that

2   particular aspect. It's a plain fact of the

3   matter. I can draw the conclusions from it that

4   are necessary, sure.

02:05 5   MR. BERESH: Thank you, Mr. Commissioner.

6   BY MR. WOLCH:

7 Q   Well, let's talk about the bus stop then. When

8   you were stopped and the police officer spoke to

9   you at the bus stop, okay --

02:05 10 A   Yes.

11 Q   -- you had already spoken to your wife who had

12   accused you of the murder; correct?

13 A   Yes.

14 Q   And we also knew that you were the guy committing

02:06 15   rapes in the area; correct?

16 A   Yes.

17   COMMISSIONER MacCALLUM: I'm sorry, I just

18   want to be clear about that because I can't

19   remember from his evidence if he was ever sure

02:06 20   whether that bus stop thing preceded his talk

21   with his wife or followed it. Could you just

22   clear that up for us, sir? Do you remember?

23 A   I'm not sure when.

24   COMMISSIONER MacCALLUM: Okay.

02:06 25   BY MR. WOLCH:

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1	Q	He did agree, but your wife says it happened the
2		day of the murder, the morning of the murder, and
3		you are not necessarily disagreeing with her are
4		you?
02:06 5	A	I don't know when she said it.
6	Q	She said it happened then.
7	A	That's her. I can't remember when, sorry.
8	Q	So you can't disagree with her particularly?
9	A	No, I can't.
02:06 10	Q	Okay. So presumably when you are at the bus stop
11		you've been accused of a murder by your wife and
12		you know the murder was a murder nearby and you
13		know you are the rapist in the area; correct? You
14		are the man committing rapes in that area, you
02:07 15		know that.
16	A	I'm not disputing that.
17	Q	At that moment you know that?
18	A	Yes.
19	Q	And surely as an intelligent person you would
02:07 20		think that the police might think the rapist in
21		the area committed this rape/murder. That would
22		cross your mind, wouldn't it, your wife even
23		thought that. Wouldn't that cross your mind?
24	A	Sure.
02:07 25	Q	Sorry?

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 1    A      Yes.

 2    Q      So you would have gotten very nervous; wouldn't

 3           you have?

 4    A      Yeah.

02:07  5    Q      And then when you are back home, surely you would

 6           have seen the police coming to talk to the

 7           Cadrains, they came many times?

 8    A      No.

 9    Q      And you knew Shorty pretty well?

02:07 10    A      I didn't know Shorty pretty well.

11    Q      Well, you got him a job and even years later you

12           chatted with him on the phone?

13    A      That was coincidental.

14    Q      I'm sorry, I can't hear you.

02:08 15    A      It was coincidental.

16    Q      I know that, but you knew him well enough that

17           many, many years later you chatted with him on the

18           phone?

19    A      I didn't know him that good.

02:08 20    Q      You lived in the same house?

21    A      I still didn't have time to talk to him.  I didn't

22           know him that good.

23    Q      But you were interested in what the police were

24           doing weren't you?

02:08 25    A      No, I wasn't.
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1	Q	You knew they might point the finger at the rapist
2		in the area?
3	A	I don't know what the police were doing. I never
4		seen them there, I never chatted with them.
02:08 5	Q	You chatted with them at the bus stop?
6	A	At the bus stop, yes.
7	Q	But you would have known that the rapist in the
8		area, i.e., you, would be a suspect?
9	A	That's a possibility, yeah.
02:08 10	Q	It was even in the paper?
11	A	I didn't read the paper back then, sorry.
12	Q	I appreciate that, but surely you, as you agreed,
13		would have been worried they would point the
14		finger at you if they caught you?
02:09 15	A	They had my name ever since then, so --
16	Q	Pardon me?
17	A	They've had my name ever since the bus stop
18		meeting.
19	Q	I appreciate that.
02:09 20	A	So --
21	Q	I'm trying to figure out how you felt about it.
22	A	Listen, I went to work. That was it.
23	Q	You went to work?
24	A	I came home, I didn't see no cops, nothing.
02:09 25		Simple.

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1   Q   And your wife accused you of murder?

2   A   My wife and I used to argue about everything.

3   Q   About murder?

4   A   I said she accused me of just about everything, so

02:09 5   that was that.

6   Q   Well, you cared for her a lot didn't you?

7   A   Did I?

8   Q   We've got letters, I can go through them all,

9   letters and letters begging her to stand by you?

02:09 10   A   I'm not going to get into discussions about how my

11   wife might have felt or how we felt.

12   Q   When you say here she was accusing you of a lot of

13   things, the fact is, and I can bring them up very

14   easy, there are many, many letters that you

02:09 15   profess your love to her, cared for her -- let me

16   finish -- and what a great person she was?

17   A   She was, even though we did argue.

18   Q   So there was good features about your wife?

19   A   Yeah.

02:10 20   Q   Correct?

21   A   Some, yeah.

22   Q   So are you saying you didn't notice the police

23   coming to talk to the Cadrains or anything like

24   that?

02:10 25   A   True.

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1   Q   And your evidence is you never once said, hey

2   Shorty, what's going on, what's all this about, or

3   Mrs. Cadrain, what's this about or anything like

4   that?

02:10 5   A   True.

6   Q   Even though you knew you might be a suspect?

7   A   I didn't see no police, nothing. I just went to

8   work, came back, that was it.

9   Q   Now, you say you went to work, but you are aware

02:11 10   of the fact that Mrs. Gallucci, who took the bus

11   with you regularly, says you weren't there that

12   morning?

13   A   That's her opinion.

14   Q   Okay.

02:11 15   MR. ELSON: Excuse me, Mr. Commissioner,

16   I'm sorry, I believe just for the purposes of the

17   record, if my friend is going to refer to the

18   comment made by Mrs. Gallucci, perhaps he should

19   refer to the investigation report because, with

02:11 20   the greatest of respect, and I stand to be

21   corrected on this, that was not my recollection

22   of what Mrs. Gallucci had said as recorded in the

23   investigation report.

24   COMMISSIONER MacCALLUM: Do you have the

02:11 25   number handy, Mr. Wolch?

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1   MR. WOLCH: I don't, sir. I wasn't

2   planning on necessarily going through this, but

3   --

4   MR. ELSON: I believe it's 106234 and that

02:11   5   was the investigation report by Detective Reid

6   dated February 6, 1969.

7   MR. WOLCH: There are several reports.

8   There's also his notes as well.

9   MR. ELSON: I believe it was the statement

02:12   10   that was put, and I believe it's at the foot of

11   that page.

12   MR. WOLCH: I'm not sure what your point

13   is.

14   COMMISSIONER MacCALLUM: And is that the

02:12   15   end of it?

16   MR. ELSON: I believe that's the end of it.

17   COMMISSIONER MacCALLUM: I don't think she

18   makes any reference there to him not being on the

19   bus that morning.

02:12   20   MR. WOLCH: Not being on the bus?

21   COMMISSIONER MacCALLUM: Right.

22   MR. ELSON: I think My Friend may be

23   mistaken with respect to the statement of John

24   Husulak who was the bus driver because it was

02:12   25   Mr. Husulak who had said that the gentleman who

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1   he had originally identified as having a red hard

2   hat was not on the bus that day and then

3   subsequently he corrected himself and indicated

4   that it was a red hat and we now understand that

02:12 5   person to have been Mr. Humen.

6   MR. WOLCH: When we get to the notes we'll

7   see it's different. There's no doubt in my mind

8   she says that that morning neither got on the

9   bus.

02:13 10   COMMISSIONER MacCALLUM: Well, Mr. Elson

11   doubts it, so I guess we'll have to find out

12   before you go further with it.

13   MR. WOLCH: I don't have the notes. Maybe

14   Commission Counsel could help.

02:13 15   COMMISSIONER MacCALLUM: I remember

16   reference being made to it, yesterday I think it

17   was.

18   MR. WOLCH: It's in the officer's notebook.

19   It's around 278802, I think it's in those notes,

02:14 20   but I'm not exactly sure where, although maybe

21   Mr. Fisher is being --

22   MR. HODSON: Is that in McCorriston's

23   notes?

24   MR. WOLCH: McCorriston's notes, yeah.

02:14 25   MR. HODSON: They are 041688, is the doc

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1   ID.   Page 8.

2   MR. WOLCH: I'm sorry, I'm looking for

3   Mrs. Gallucci, and it's not here. Mr.

4   Commissioner, I'm prepared to skip over this and

02:16 5   bring it tomorrow morning for you, if need be.

6   COMMISSIONER MacCALLUM: I guess you will

7   have to. I can't see it here.

8   MR. WOLCH: It's in the notes of

9   Mr. Gallucci that the pretty nurse and the fella

02:16 10   in the hard hat took the bus on Thursday but they

11   weren't there on Friday, I just -- I do recall

12   that quite vividly, it's just that I can't put my

13   finger on it at the moment. I think she even

14   described the clothing.

02:16 15   COMMISSIONER MacCALLUM: There is a

16   February the 2nd note by McCorriston regarding

17   the fella that didn't catch the bus, sometimes

18   has to run, is that what we just looked at? Yes,

19   688, 041688, try 0141688. Oh, that's it, we just

02:17 20   looked at that. Try 106234, Detective Bennett.

21   MR. HODSON: She testified at the Larry

22   Fisher trial.

23   MR. WOLCH: Yes. I thought it was common

24   ground, that's why I didn't pick out the

02:18 25   particular reference for it.

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1   COMMISSIONER MacCALLUM: Okay. At the

2   bottom there, the last paragraph.

3   MR. WOLCH: Yes.

4   COMMISSIONER MacCALLUM: Blow that up,

02:18 5   please. Just have a look at that, Mr. Wolch.

6   MR. WOLCH: Yeah. She recalls the girl got

7   on the bus at the above with her, etcetera,

8   describes the girl, there is a young man who gets

9   on the bus, construction worker, blue jeans, hard

02:18 10   hat, comes from O and 20th Street, getting on the

11   bus the same time since that day.

12   COMMISSIONER MacCALLUM: Well, we looked at

13   that, I'm sorry.

14   MR. WOLCH: I'm not sure what Mr. Elson's

02:18 15   point is.

16   MR. ELSON: My only difficulty is that, if

17   it's suggested that he was not on the bus that

18   day --

19   COMMISSIONER MacCALLUM: That was the

02:18 20   suggestion.

21   MR. ELSON: -- and that was the suggestion,

22   my only concern was I don't recall that

23   suggestion having been made by Mary Gallucci.

24   That was the only reason that I'm making it. I

02:18 25   think that premise was central to My Friend's

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1   question.

2   MR. FOX: I'm not sure what she eventually

3   said at the trial. At the prelim, she did

4   testify at the prelim, she's at 214847 is her

02:19 5   prelim transcript, I believe, and at 214852 she

6   does mention that there was a, what appears to

7   have been a nurse catching a bus and a fellow

8   with a yellow hard hat. She's asked if they got

9   on the bus on January 31st and at 314852 she says

02:19 10   she can't recall.

11   COMMISSIONER MacCALLUM: Okay.

12   MR. FOX: I'm not sure what she said at

13   trial --

14   MR. WOLCH: Okay.

02:19 15   MR. FOX: -- or subsequent.

16   MR. BERESH: Then, Mr. Commissioner, that

17   brings me to my feet, and I apologize for this,

18   my question is the relevance of it. And the

19   relevance is this, if Ms. Gallucci said this

02:19 20   person was or was not on the bus, it means either

21   the person wasn't on the bus when she got on, but

22   we know a number of busses took place, or it

23   means she didn't see the person get on. But in

24   any event, what's the ultimate aim of this

02:19 25   questioning, where are we going with it. It

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1   seems to me we're going nowhere, that because

2   again, we're not addressing the central issue

3   which is the conduct of the investigation, police

4   weren't involved at that point, or the

02:20 5   re-opening, we're simply not addressing that.

6   If My Friend is attempting to

7   attempt an end run like he did at the Supreme

8   Court, well his questions there may have been

9   relevant, but they are certainly not here because

02:20 10   your jurisdiction is fairly closely prescribed.

11   So let's look at the ultimate aim of the

12   questioning, unless My Friend can establish some

13   relevance, I say it's not.

14   COMMISSIONER MacCALLUM: Well Mr. Wolch can

02:20 15   certainly speak for himself, but I said last week

16   that we are in -- we have a right to expect from

17   this man an account of his actions on the 31st --

18   MR. BERESH: Yes.

19   COMMISSIONER MacCALLUM: -- and surely this

02:20 20   is part of it.

21   MR. BERESH: But surely the question is

22   this; the ultimate question is if Mrs. Gallucci

23   says 'you weren't on X bus, how do you explain

24   that', well how could the witness possibly

02:21 25   explain why Mrs. Gallucci may be mistaken, why

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1   she --

2   COMMISSIONER MacCALLUM: No, no, I don't

3   think he was asked that, he asked if he was

4   there.

02:21 5   MR. BERESH: Well, but in the statement we

6   see from the police she said he wasn't on the bus

7   on Wednesday.

8   COMMISSIONER MacCALLUM: Well we don't know

9   that. At the moment Mr. Wolch is at a

02:21 10   disadvantage because he can't come up with the --

11   her statement in written form --

12   MR. BERESH: Well --

13   COMMISSIONER MacCALLUM: -- so the closest

14   we've gotten to it so far is that at preliminary

02:21 15   she said she couldn't recall.

16   MR. BERESH: And the police report I think,

17   as I read it, said the person wasn't on the bus

18   on Wednesday.

19   COMMISSIONER MacCALLUM: Well I think it's

02:21 20   relevant, it's a question of weight of course,

21   and -- but before we get on, before we go into it

22   further, we'll have to get over this hurdle of

23   whether it was ever said.

24   MR. WOLCH: It was said.

02:21 25   COMMISSIONER MacCALLUM: So if you want to

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1   just take some time to look it up?

2   MR. WOLCH: I will look it up and bring it

3   to you but I must say, of the questions I was

4   going to ask, this is about the least important I

02:21 5   was going to ask in the whole afternoon. It

6   wasn't the focus, it was -- happened to arise

7   from the answer of the witnesses.

8   COMMISSIONER MacCALLUM: All right.

9   MR. WOLCH: Okay.

02:22 10   MR. FOX: I hate to interrupt Mr. Wolch

11   again but I think the trial transcript, if you

12   want it for the record, Mr. Commissioner?

13   COMMISSIONER MacCALLUM: Yes.

14   MR. FOX: Ms. Gallucci, I think the trial

02:22 15   transcript is 314199, and I think she is

16   questioned about that at 314205, and I think it

17   again indicates that she didn't recall what --

18   whether they were there that day.

19   COMMISSIONER MacCALLUM: Thanks very much,

02:22 20   Mr. Fox.

21   MR. WOLCH: Thank you.

22   BY MR. WOLCH:

23   Q   Let's move on to Fort Garry. Now you were

24   arrested in Fort Garry and I'm interested in how

02:22 25   you came to admit some offences and deny others.

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	1	You can't even account for when you admitted the
	2	last two offences; can you?
	3	A Probably --
	4	Q The last two Saskatoon offences?
02:23	5	A Probably not.
	6	Q Well, when you were picked up in Fort Garry, would
	7	you have known that the Milgaard matter -- or the
	8	Miller matter, rather, was supposedly solved?
	9	A No.
02:23	10	Q So you thought it was still an open investigation
	11	into the murder of a nurse in your neighbourhood?
	12	A I didn't know nothing about it then.
	13	Q Well, sure you did, you were questioned about it
	14	and your wife accused you of it?
02:23	15	A I didn't know whether it was still in effect or
	16	whether it was over or what.
	17	Q That's all I'm asking you.
	18	A That's what I told you.
	19	Q You didn't know --
02:23	20	A I didn't know.
	21	Q -- it had been supposedly solved?
	22	A I didn't know.
	23	Q So you would have thought that the finger might
	24	still point at you?
02:23	25	A No, I didn't think anything like that, at all,

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1   then.

2   **Q**   Well you knew you were the rapist in the area?

3   *A*   I knew it, yes, but I didn't --

4   **Q**   And, if the murder was still unsolved, the police

02:24 5   might question you about the murder?

6   *A*   If I was thinking of it at the time, yes I would

7   have probably thought that, but I wasn't. Sorry.

8   **Q**   It was put to you by Commission counsel but you

9   also told Detective Huff that you had done about

02:24 10   five, sort of, indecent assaults grabbing women;

11   did I hear you correctly this morning that you

12   deny telling Huff that completely?

13   *A*   You are going to have to refresh my memory on

14   this.

02:24 15   **Q**   Well Commission Counsel showed you Huff's

16   affidavit where he said that -- and Huff told us

17   this here as well -- that you had admitted to him

18   that there had been five occasions where you had

19   grabbed women in the Fort Garry area. That was

02:24 20   shown to you by counsel this morning. In fact,

21   let me be clearer, is it your evidence that you

22   didn't do it, you didn't tell Huff that you did

23   it, or both?

24   *A*   Are you saying these happened in the Fort Garry

02:25 25   area?

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	1	Q	That's what he said.
	2	A	Well are those the ones that I didn't admit to?
	3	Q	No. What Huff was saying is, besides the two that
	4		you were admitting, there were five others that he
02:25	5		couldn't link up with the Winnipeg Police that you
	6		had told him you had done?
	7	A	Link up with the Winnipeg Police?
	8	Q	Yes. Fort Garry is part of Winnipeg.
	9	A	Yeah.
02:25	10	Q	Okay. Do you understand me?
	11	A	So which ones are you going for, which charges are
	12		you talking about?
	13	Q	You were arrested in Fort Garry.
	14	A	I know that, but which charges are you referring
02:25	15		to?
	16	Q	Five that were never laid against you because they
	17		couldn't link them, but are you denying you told
	18		Huff that there were five others?
	19	A	Which five? Where from?
02:25	20	Q	In the Winnipeg/Fort Garry area.
	21	A	I'm not gonna admit to five charges there that
	22		never happened.
	23	Q	Did you tell Huff that?
	24	A	Yes.
02:26	25	Q	That's all I'm asking you.

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 1    A      Yes.

 2    Q      Did you tell Huff --

 3    A      Yes.

 4    Q      -- that there were five?

 5    A      No.

 6    Q      That's all I'm asking you.

 7    A      Well, that's the answer you are gettin'.

 8    Q      Okay.

 9    A      Sorry.

10    Q      Now as far as crimes you've committed, you haven't

11           been caught on every one, would that be fair?

12    A      The ones I admitted to, I did.  Sorry.

13    Q      I agree with you, but surely you weren't caught

14           every time?

15    A      I just said, every one I committed I admitted to,

16           so --

17    Q      But you haven't been caught every time?

18    A      I just said, every one I admitted to, I committed.

19    Q      Okay, but listen to my question.  Surely, every

20           time you've attacked a woman, you haven't been

21           caught?

22    A      Well, yeah.

23    Q      Okay.  So there are some out there you haven't

24           been prosecuted for?

25    A      No.  I've admitted to the ones that I've
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1   committed.

2   Q   So there is none out there?

3   A   That's right.

4   Q   Every offence you ever committed you've been

02:26 5   charged and convicted of?

6   A   Right.

7   Q   You said that, when you were in Fort Garry, you

8   had an inclination to go in and confess?

9   A   Right.

02:27 10   Q   So, when you were arrested in the act, why didn't

11   you confess?

12   A   Umm, just felt scared.

13   Q   I'm sorry, I keep missing your answers?

14   A   Felt scared.

02:27 15   Q   Scared of what?

16   A   Just about everyone and everything.

17   Q   Okay. So you almost walked into a police station,

18   you say to confess, and then when you are arrested

19   you don't confess to all your offences?

02:27 20   A   That's right.

21   Q   Because you're scared?

22   A   Yes.

23   Q   So it's clear you are prepared to lie to people

24   about whether you commit a crime?

02:28 25   A   No.

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	1	Q	You are not -- well, you denied two offences you
	2		did?
	3	A	I admitted to them all afterwards so don't say I'm
	4		going to sit and lie about 'em.
02:28	5	Q	But you lied at the beginning?
	6	A	No, I didn't, I just didn't admit to them.
	7	Q	Didn't you deny doing them?
	8	A	No. I admitted to 'em.
	9	Q	Okay. When the Saskatoon Police came, you
02:28	10		admitted to two, and we think you denied two
	11		others at the beginning?
	12	A	I'm not going to get technical about what I did
	13		and what I didn't do. I admitted to all the
	14		charges that I committed and I got sentenced to
02:28	15		them. Sorry.
	16	Q	Did Saskatoon Police question you about all your
	17		offences in Saskatoon?
	18	A	Yes.
	19	Q	Four of them?
02:28	20	A	Yes.
	21	Q	And you admitted two?
	22	A	I admitted to four of them there.
	23	Q	Well, two months later, so you denied them
	24		initially?
02:28	25	A	Did I not admit to them though? Yes.

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1	**Q**	Okay. So lying and changing your mind wipes out
2		the lie?
3	*A*	I'm not saying that, you are.
4	**Q**	Then you tell me?
5	*A*	No, I admitted to 'em all, I did the time for
6		'em, --
7	**Q**	You --
8	*A*	-- I'm sorry. I'm not going to sit and argue back
9		and forth with you, I admitted to them over the
10		time, and I did my time for 'em. Sorry.
11	**Q**	But, well, I'm sorry, I'm saying to you you denied
12		two of them initially?
13	*A*	And then I admitted to 'em.
14	**Q**	So when you denied them at the beginning that was
15		a lie?
16	*A*	Then I admitted to it. Sorry.
17	**Q**	Answer my question. When you denied two
18		initially, that was a lie, was it not?
19	*A*	Did I refuse to admit it then, no, I admitted to
20		it. I'm sorry.
21	**Q**	Mr. Fisher, that's not a difficult question.
22	*A*	It is not, and it's a good answer, too, you are
23		gettin'. So I'm not going to argue back and
24		forth.
25	**Q**	I'm not asking you to argue, I'm asking you to

Timestamps: 02:28 (line 5), 02:29 (line 10), 02:29 (line 15), 02:29 (line 20), 02:29 (line 25)

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1   answer a simple --

2   A   And I'm not going to get into this little

3   psychological deal going with you. I did it, I

4   did my time, sorry.

02:29 5   Q   Mr. Fisher, I'm going to ask you a simple, simple

6   question. When Saskatoon Police spoke to you

7   about four offences in Saskatoon did you not deny

8   two and, thereby, lie to them?

9   A   No, I didn't lie to 'em, I just didn't give 'em

02:30 10   the other two.

11   Q   I'm sorry, I couldn't hear?

12   A   Don't go putting words in my mouth, because I

13   didn't lie to 'em, I just didn't tell 'em the

14   other two. Sorry.

02:30 15   Q   Did they ask you whether you did them?

16   A   I can't remember back that far. That's 35 years

17   ago.

18   Q   Well I'm going to suggest to you that you admitted

19   to two because you thought they were the ones

02:30 20   after the Miller murder. You admitted to two;

21   correct?

22   A   Right.

23   Q   And those two you believed occurred after Miller,

24   not before, is that correct?

02:30 25   A   I don't know the times and the dates, no.

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1   **Q**   Well my suggestion is you didn't want to get

2   linked to anything that was around the time of the

3   Gail Miller murder?

4   *A*   I don't think so.

02:31   5   **Q**   Well, if we can see 002032, you say -- this is

6   your statement to Fort Garry Police -- you say you

7   want to clear up three more things.

8   COMMISSIONER MacCALLUM: It's dated the

9   21st of October, 1970.

02:31   10   MR. WOLCH: Yes, thank you, sir.

11   BY MR. WOLCH:

12   **Q**   "I want to clear up three more things. The

13   first one was in Saskatoon sometime around

14   this spring."

02:31   15   That would be after the Miller murder; correct?

16   *A*   Well I can't remember the date.

17   **Q**   Well, that was spring and this was 1970, so you

18   can rest assured that would be after the Miller

19   murder.

02:31   20   *A*   Okay, then it's after the Miller murder.

21   **Q**   Okay.

22   "The first one was in Saskatoon

23   sometimes around the spring ...",

24   and you describe an event. The second one near

02:32   25   the university, that's after the first one. If

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1   we can scroll down, the third one in Winnipeg, do

2   you see that?

3   A   Yup.

4   Q   So you are admitting two in Saskatoon, both after

02:32   5   the Miller murder, you were wrong about the dates

6   but that's a different matter.

7   A   I don't know what the dates were. Sorry.

8   Q   Well I'm suggesting to you it was very deliberate

9   that you didn't want to talk about anything around

02:32 10   the time of Miller, particularly the two that

11   happened before?

12   A   I'm not gonna get technical about what -- when

13   they happened and what time they happened, I'm

14   just admittin' I gave them the dates, and I did my

02:32 15   time for what I did. Sorry.

16   COMMISSIONER MacCALLUM: Answer the

17   question, Mr. Fisher, you understand it I'm sure?

18   A   Yeah, I understand it, and he seems to be working

19   around it. I admitted to it, yeah.

02:32 20   BY MR. WOLCH:

21   Q   But the ones you admit, that he -- well it's the

22   wrong time, you're admitting to two offences,

23   unless you've got one confused?

24   A   No, I'm not saying anything is confused, I can't

02:33 25   remember the dates and when these happened.

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1   **Q**   Can you remember being questioned by the Saskatoon

2   Police?

3   *A*   Yeah.

4   **Q**   Did they appear aggressive in questioning you?

02:33 5   *A*   No.

6   **Q**   Treated you nicely?

7   *A*   Just asked me questions.

8   **Q**   Did they ask you to give all the addresses that --

9   where you lived in Saskatoon in the last while?

02:33 10   *A*   No.

11   **Q**   You weren't ever asked what different places you

12   were living in Saskatoon?

13   *A*   I don't think I was.

14   **Q**   Did they ask you to give a blood sample?

02:33 15   *A*   No.

16   **Q**   A hair sample?

17   *A*   No.

18   **Q**   Now would it be fair to say that the Manitoba

19   prosecution treated this extremely seriously, your

02:34 20   Manitoba offences?

21   *A*   I can't say.

22   **Q**   They wanted really big time on you?

23   *A*   I can't say how they felt.

24   **Q**   Pardon me?

02:34 25   *A*   I can't say how they felt.

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1 Q Did you think, back then, that they were out to

2   really get you?

3 A Nope.

4 Q I wonder if we can get 020185. Do you recognize

02:34 5 this document?

6 A Yup.

7 Q And this would be a letter in May from you to your

8   wife?

9 A Yup.

02:35 10 Q If we can pick out that paragraph there:

11   "As you know yourself that there were

12   three charges, well heres how they ended

13   up, two six and a half year terms and a

14   one year term which ends up to fourteen

02:35 15   so think over that question about a

16   divorce and let me know if you want me

17   or not."

18   So that's right after your sentencing; correct?

19 A Possibly, yup.

02:35 20 Q If we could scroll down to the bottom and

21   highlight this portion:

22   "I don't know what is going to happen

23   about the two charges back home, but all

24   I know is they're going to be pretty

02:35 25   stiff. My lawyer figures I'll be out in

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1   about 5-7 years on parole but I doubt

2   that very much. The prosecutor,

3   "Morton" or Norton ...",

4   that's W.W. Morton:

02:36 5   "... one of the two was trying to set an

6   example and give me life with lashes but

7   the lawyer got me off with what I told

8   you in the top paragraph."

9   Now that seems to me, unless you are misleading

02:36 10   your wife, that the prosecution was really out to

11   make an example of you?

12 A Yeah, they were.

13 Q Okay. So they wanted maybe life and lashes?

14 A Yeah.

02:36 15 Q Now is that something that actually was said to

16   you or something you are trying to convey to your

17   wife that might not be true?

18 A It's something I heard.

19 Q Sorry?

02:36 20 A It was heard.

21 Q I keep missing you?

22 A It was heard.

23 Q Okay. So it was conveyed to you they wanted life

24   and the lash?

02:36 25 A Yeah.

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1 Q Okay. So they were taking it pretty seriously?

2 A Yeah.

3 Q And but here you've only got two charges back

4   home?

02:36 5 A That's all I know of there, yes.

6 Q Okay. So, I mean, now we're into late May and you

7   haven't admitted to the other two charges?

8 A I'm not going to go into that again. I haven't

9   admitted to them then, but I did admit to them, I

02:37 10 did do the time. I'm sorry.

11 Q My question is not complicated. So as of May 29th

12   you hadn't admitted to the other two Saskatoon

13   charges, unless you were misleading your wife?

14   COMMISSIONER MacCALLUM: No, I think he

02:37 15 said he -- he acknowledged that.

16   MR. WOLCH: Oh, I'm sorry, I didn't --

17   COMMISSIONER MacCALLUM: Yeah.

18 BY MR. WOLCH:

19 Q I didn't get that. That is correct?

02:37 20 A Right.

21 Q Okay. And I assume that you expected to go back

22   to Saskatoon --

23 A No.

24 Q -- to face your charges?

02:37 25 A No, I expected to go back to P.A. Pen.

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1   Q   But eventually to go to Saskatoon?

2   A   I wasn't sure where I was gonna go.

3   Q   Well, wouldn't you expect to face Saskatoon

4   charges in Saskatoon?

02:37   5   A   I wasn't sure where they were gonna send me, I

6   knew I was going back to P.A., and that's where I

7   knew I was going.

8   Q   And you were going to plead guilty?

9   A   Yes.

02:38   10   Q   As of this day you were going to plead guilty for

11   two charges?

12   A   It was already in the making prior to going back.

13   Q   Okay. In the end of May you were going back to

14   face two charges, I expect you thought you would

02:38   15   be taken to Saskatoon, where the charges arise?

16   A   No, I knew I was goin' to P.A. Pen, from there I'm

17   not sure where they were gonna send me.

18   Q   And what did you think you were gonna get?

19   A   I really couldn't tell you.

02:38   20   Q   Would you agree with me that the Saskatoon

21   offences were more serious than the Winnipeg ones?

22   A   I'm not gonna judge which ones were real serious

23   because they're all serious. Sorry.

24   Q   You had four in Saskatoon, two in Winnipeg, --

02:38   25   A   Right.

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1   Q   -- so you expect to get more time in Saskatoon?

2   A   I didn't expect to get more time anywhere.

3   Q   Why not?

4   A   Because, no matter where I go, any form of

02:39   5   violence against a woman is serious. I could have

6   expected a life bit for every one of them.

7   Q   And, well I agree with you, but you didn't get a

8   life bit?

9   A   No, I didn't.

02:39 10   Q   You got four years concurrent?

11   A   Right.

12   Q   For four serious sexual assaults?

13   A   That's thanks to them sending me to Regina. They

14   could have asked for more time, they could have

02:39 15   got it, any time they wanted.

16   Q   Well why, did you have any reason why they would

17   have asked for less time?

18   A   I do not know.

19   Q   You have no idea?

02:39 20   A   I don't make the Court's decisions for 'em.

21   Q   But the prosecutor asked for four years

22   concurrent?

23   A   That's the prosecutor.

24   Q   That's not a day more for four crimes which you

02:39 25   say you can get life for every one of them?

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1   *A*   You can, yes.

2   **Q**   Well surely, as an intelligent person, you ask

3   somebody "what is going on"?

4   *A*   I don't go asking the courts what they are gonna

02:39   5   tell me or what they're gonna give me. Sorry.

6   **Q**   You could have asked your lawyer "eh, why am I

7   getting nothing for Saskatoon, how did you pull

8   this one off?"

9   *A*   I do not know.

10   **Q**   So you --

11   *A*   I didn't pull nothing off, that's the way it came

12   down. Sorry.

13   **Q**   So you have Manitoba for two offences you think

14   wants life and the lash, and Saskatoon for four

02:40   15   wants four years concurrent, and that doesn't

16   strike you as unusual?

17   *A*   No, it doesn't.

18   COMMISSIONER MacCALLUM: Mr. Wolch, if you

19   will be a little while longer, this would be a

02:40   20   good time to break. 15 minutes, please.

21   *(Adjourned at 2:40 p.m.)*

22   *(Reconvened at 3:01 p.m.)*

23   MR. ELSON: Mr. Commissioner, I'm sorry,

24   it's a small point -- it may be a small point.

03:01   25   But I believe that My Friend, when he was putting

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1   questions to the witness with respect to the

2   sentence that was sought in Saskatchewan in 1971,

3   I believe that he had suggested that Mr. Kujawa

4   was asking for a sentence of 4 1/2 years, and it

03:01 5   was not my understanding of the document. And

6   specifically the document that was put to the

7   witness yesterday is 042960, which is Mr.

8   Kujawa's memo to the file after the matter came

9   before then-Justice Johnson, and I believe that

03:01 10   it's in the second paragraph of that letter, or

11   of that memorandum, where he indicates:

12   "I asked for nothing more than a

13   concurrent and Judge Johnson readily

14   complied assessing a total of four and a

03:02 15   half years on these offences."

16   I read that, and maybe I'm reading it differently

17   than My Friend and maybe I'm reading it wrongly,

18   but I read that as saying that when the Crown was

19   appearing they were simply asking for a

03:02 20   concurrent sentence, which could be anywhere up

21   to the 13 years that had already been imposed in

22   Manitoba, and not necessarily that the Crown was

23   asking for a specific number. So if the

24   suggestion is that this was an inappropriate

03:02 25   sentence, then the lack of propriety is reflected

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1   on Mr. Justice Johnson, not on the Crown

2   prosecutor that was appearing at that time.

3   I only rise to make that point

4   because I thought that the premise to My Friend's

03:02 5   question was that the Crown was asking for a

6   4 1/2-year sentence.

7   COMMISSIONER MacCALLUM: I'm not sure, were

8   you --

9   MR. WOLCH: I --

03:03 10   COMMISSIONER MacCALLUM: -- making the

11   point that in fact is what happened, or that was

12   what was requested.

13   MR. WOLCH: I'm not sure myself. I'll

14   change it again if I can.

03:03 15   COMMISSIONER MacCALLUM: Thanks, Mr. Elson.

16   BY MR. WOLCH:

17   Q   Given your knowledge of the courts you would agree

18   with me that whether you get 1 day concurrent to a

19   13-year sentence, or 12 years concurrent a 13-year

03:03 20   sentence, it doesn't add one day to your sentence?

21   A   Back then I knew nothing of the law. Sorry.

22   Q   But do you know that now to be the case?

23   A   Yes, I do now.

24   Q   Okay. And so the Crown was asking for nothing for

03:03 25   you?

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	1	*A*	I don't know what the Crown was asking for. I'm
	2		sorry.
	3	**Q**	The Crown didn't appeal?
	4	*A*	I couldn't tell you.
03:03	5	**Q**	Well how can you not tell me, it was your
	6		sentence?
	7	*A*	I just said I didn't know much about law then.
	8		Sorry.
	9	**Q**	It doesn't take great knowledge about law to know
03:03	10		if your sentence was appealed?
	11	*A*	I'm not sure whether it was.
	12	**Q**	Pardon me?
	13	*A*	I'm not sure whether it was.
	14	**Q**	Okay. Now Commission Counsel referred you to the
03:04	15		attempted murder attack on (V10) (V10)-; do you
	16		recall that?
	17	*A*	Yes.
	18	**Q**	And I want to be sure I understand what you are
	19		saying, and so that I don't misquote it, we can go
03:04	20		to document 071326 at 29. Now she, back then,
	21		quoted you as saying:
	22		"... that he had spent ten years for
	23		doing the same thing, only he said, "I
	24		slit her throat.""
03:04	25		Now are you saying that you said nothing like

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1		that?
2	*A*	That's right.
3	**Q**	She's making this up?
4	*A*	I don't know whether she's making that up. I'm
03:05 5		just saying I did not make that statement.
6	**Q**	Now you -- you -- we know that you are the one who
7		assaulted her and tried to kill her, but you had
8		spent about ten years in jail at that time?
9	*A*	Umm, yes, about that.
03:05 10	**Q**	Right?
11	*A*	Yes.
12	**Q**	So you are saying it's just a lucky guess?
13	*A*	I'm not gonna say nothing is lucky, I'm just gonna
14		state that I did not make that statement.
03:05 15	**Q**	Well, okay. Is there any way she would have known
16		that you, the guy who attacked her, had spent ten
17		years in jail?
18	*A*	I can't say what she would say. I'm sorry.
19	**Q**	She's just not telling the truth?
03:05 20	*A*	I'm not sayin' that, I'm just saying I don't care
21		what she said, I'm sayin' I did not make that
22		statement.
23	**Q**	Okay. But you do agree that you had spent ten
24		years in jail?
03:05 25	*A*	Yes.

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1 Q   And, to the best of your knowledge, she had no way

2   of knowing that unless you told her?

3 A   I'm not sayin' that.

4 Q   Do you know of any other way she would have known

03:06 5   that?

6 A   I couldn't tell ya.

7 Q   I'm going to suggest that the throat that you

8   talked about slitting was that of Gail Miller?

9 A   You can talk all you want. I did not make that

03:05 10   statement in there.

11 Q   I would like to turn, probably in conclusion, to

12   the murder of Gail Miller for a bit specifically,

13   and you and Cliff Pambrum were pretty good friends

14   were you?

03:06 15 A   We hung around, yes.

16 Q   And -- now, I understand that he says he lent you

17   his car quite a few times. Are you taking issue

18   with that?

19 A   Yes, I would.

03:06 20 Q   You are saying that's not true?

21 A   That's right.

22 Q   Were you and he getting into a bit of trouble now

23   and then?

24 A   Not that I know of.

03:07 25 Q   Like, committing crimes or doing things that you

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1   shouldn't be doing?

2   A   No.

3   Q   I wonder if we could have document 020179. This

4   is part of a letter I think to your wife dated

03:07 5   March the 5th. I want to go through a little bit

6   of it. It starts off:

7   "At the same time a girl got off --"

8   That portion there,

9   "-- and that when it all happened. I

03:07 10   grabbed her just like you told me in the

11   visiting room."

12   I'm just wondering what you meant by that.

13   A   Can't remember. That's a long time ago. Sorry.

14   Q   Is there any way your wife could be telling you

03:08 15   what you did?

16   A   If I wrote it, then I wrote that, but I can't tell

17   you what it was back then.

18   Q   There's no doubt you wrote it, but I'm a bit

19   puzzled by why you are telling her, your wife,

03:08 20   that you grabbed somebody just like you told me in

21   the visiting room.

22   A   I couldn't tell you.

23   Q   You have no explanation for that at all?

24   A   No.

03:08 25   Q   And then this portion here:

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1   "After this happened I wanted to tell

2   you but with the trouble Cliff and I

3   were getting into I didn't think you'd

4   be able to take it so I didn't bother

03:08   5   telling you."

6   What is that all about?

7   A   Couldn't tell you.

8   Q   It does sound like you and Cliff were getting into

9   trouble.

03:08   10   A   No.

11   Q   No?

12   A   No.

13   Q   But with the trouble that Cliff and I were getting

14   into?

03:09   15   A   I can't explain it, sorry.

16   Q   But it still sounds like you were getting into

17   trouble doesn't it?

18   A   We weren't getting in any trouble.

19   Q   Sorry?

03:09   20   A   Sorry, we weren't getting in any trouble.

21   Q   What did you mean there?

22   A   I couldn't tell you.

23   Q   That's plain English, we were getting in trouble.

24   A   I know how plain it is, I read it. I can't tell

03:09   25   you, sorry.

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	1	Q	But if you can't tell me, how can you specifically
	2		deny you were getting in trouble?
	3	A	We never got into any trouble. I've just seen
	4		what was read there, seen what is written, but I
03:09	5		can't tell you why.
	6	Q	You can't say why you said it, but you can say
	7		it's not true?
	8	A	That's right.
	9	Q	So you were misleading your wife?
03:09	10	A	Yes.
	11	Q	You were lying to your wife?
	12	A	Yes.
	13	Q	Okay. I would like to go over a bit the offence
	14		itself then and if I can have the map 091245.
03:10	15		You've seen this before?
	16	A	Yup.
	17	Q	Do you want to look at it for a second just to
	18		acclimatize yourself to it.
	19	A	Yup.
03:10	20	Q	Okay. That X is where you were living?
	21	A	Yes.
	22	Q	And the second X, or the arrow now -- I'm sorry,
	23		I'm not too good at this -- is the bus stop where
	24		you took the bus?
03:10	25	A	Yeah.

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	1	Q	Right?
	2	A	Yup.
	3	Q	And we know that the Miller residence is up here,
	4		okay. Now, we know that Gail Miller would leave
03:10	5		her residence, walk down Avenue O and take the bus
	6		at the spot where I've drawn the line, okay. You
	7		accept that?
	8	A	Yeah.
	9	Q	Okay. We know she would leave approximately a
03:11	10		quarter to seven and we know she never got to the
	11		bus stop which would have been just before seven,
	12		so something happened to her between a quarter to
	13		seven and seven roughly, okay. You accept that?
	14	A	If you say so, yes.
03:11	15	Q	Now, you've had a lot of experience in this and
	16		I'm drawing on your knowledge. Would you agree
	17		with me that if somebody was going to drag her off
	18		the street, where I'm marking the X right now is
	19		the place to do it?
03:11	20	A	I wouldn't know.
	21	Q	Pardon me?
	22	A	I wouldn't know.
	23	Q	Well, you've committed a lot of offences; right?
	24	A	But do you always go under the same person, one
03:11	25		person's knowledge?

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1   Q   But you committed a lot of offences; right?

2   A   Yes.

3   Q   You are very good at what you do?

4   A   I wouldn't say that.

03:11 5   Q   You planned them well?

6   A   I wouldn't say that.

7   Q   You stocked the women, you followed them, you drag

8   them into alleys, that's what you do?

9   MR. BERESH: Mr. Commissioner, the ruling

03:12 10   again last week clearly covered this, that you

11   can't directly or indirectly go into these

12   matters.

13   COMMISSIONER MacCALLUM: Well, it didn't

14   speak to the murder itself, that was in relation

03:12 15   to the rapes.

16   MR. BERESH: And that's exactly what the

17   question was, this is what you've done in the

18   past. It calls upon him to comment without my

19   ability to reopen any of that in re-examination.

03:12 20   COMMISSIONER MacCALLUM: My comment, Mr.

21   Beresh -- my ruling, Mr. Beresh, had reference to

22   the specific rapes to which he plead guilty.

23   MR. BERESH: Yes.

24   COMMISSIONER MacCALLUM: And the reason

03:12 25   that it is unnecessary to go into that, the

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1   circumstances of those offences is that they were

2   subject to guilty pleas. We know what the facts

3   are and so I deemed it unnecessary to be

4   canvassing that area any more, but this clearly

03:12   5   is a question of a more general scope, but I'm

6   not so sure that it is irrelevant to our present

7   inquiry.

8   MR. BERESH: Well, the specific questions

9   asked were you stocked them, took them into

03:13   10   alleys, that's the exact thing you ruled on, the

11   circumstances of. Clearly it's covered by your

12   ruling, otherwise we don't need the ruling and

13   the question can be submitted.

14   MR. WOLCH: I thought the ruling had a

03:13   15   purpose which I appreciate and accept. I'm not

16   going through every offence to prove a pattern

17   and all that, but surely I can pose to him

18   questions that challenge his credibility and his

19   knowledge. I'm talking about a germane issue. I

03:13   20   mean, he's here for a purpose.

21   MR. BERESH: But these relate directly to

22   the Court's ruling. I didn't make the ruling, I

23   didn't ask for the ruling, the ruling was made,

24   so --

03:13   25   COMMISSIONER MacCALLUM: No, as I've told

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1   you, Mr. Beresh, what it was about, it was about

2   the specific rapes in Saskatoon --

3   MR. BERESH: Right, and the circumstances.

4   COMMISSIONER MacCALLUM: -- to which he

03:13   5   plead guilty, and the circumstances of those

6   rapes, and so Mr. Beresh -- Mr. Wolch is asking

7   him a general question now about his modus

8   operandi, if I can put it that way. See, the

9   question of the murder of Gail Miller was not

03:14   10   covered by that ruling.

11   MR. BERESH: I appreciate that, except that

12   the --

13   COMMISSIONER MacCALLUM: And this man

14   denies that he did it, so --

03:14   15   MR. BERESH: Well, the Commission is bound,

16   it seems to me, by a certain presumption,

17   certainly Mr. Hodson provided that eloquently to

18   us, which is that there's a presumption of guilt

19   for it, which removes it from relevance in this

03:14   20   Inquiry with this witness, but it doesn't address

21   the issues which are in your Terms of Reference.

22   COMMISSIONER MacCALLUM: It doesn't remove

23   it from relevance, what it does is make it

24   conclusive --

03:14   25   MR. BERESH: That's right.

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1   COMMISSIONER MacCALLUM: -- for all

2   purposes.

3   MR. BERESH: So if it's conclusive, then

4   how is it relevant.

03:14 5   COMMISSIONER MacCALLUM: Then why go into

6   it?

7   MR. BERESH: That's right, given the Terms

8   of Reference.

9   COMMISSIONER MacCALLUM: All right.

03:14 10   MR. BERESH: You're not here to decide

11   whether Mr. Fisher's denial is accurate, correct

12   or anything else, and it's not subject to

13   challenge.

14   COMMISSIONER MacCALLUM: No.

03:14 15   MR. BERESH: Unless My Friend says we'll

16   live with no presumption.

17   COMMISSIONER MacCALLUM: And what is the

18   object of your question then, simply credibility?

19   MR. WOLCH: Not credibility, I want to find

03:14 20   out what happened on certain issues and I want to

21   get there, and later we will be submitting that

22   it should have been obvious this is the way it

23   was done, but, I mean, to not -- My Friend wants

24   standing for this man, he wants him here, he

03:15 25   wants to put him on the stand and not even

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1   challenge him on anything. He wants privilege

2   when he wants it, he doesn't want privilege when

3   he doesn't want it, no privilege for Greenberg,

4   privilege for him. It's ridiculous.

03:15   5   MR. BERESH: With respect --

6   MR. WOLCH: No one can question his client.

7   We don't protect any witness but the killer.

8   MR. BERESH: Oh, the rationale is this,

9   this man was compelled to come here, this man had

03:15   10   a reason to be granted standing and this Court

11   granted it, but this Court is not here to reopen

12   that issue. The Terms of Reference make it clear

13   that there are two pillars upon which this

14   Inquiry proceeds; one, there was a wrongful

03:15   15   conviction, secondly, there was a proper -- there

16   was a wrongful conviction, secondly, there was a

17   proper conviction of the two respective

18   individuals.

19   COMMISSIONER MacCALLUM: Uh-huh.

03:15   20   MR. BERESH: As I understand, the intent of

21   the Saskatchewan government was not to reopen

22   that issue, not to re-allow what the Supreme

23   Court of Canada had before it, but simply to test

24   this, based upon those pillars, why did the event

03:16   25   of the wrongful conviction occur. Not why did

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1   the rightful conviction occur as My Friend

2   suggests, why did the wrongful conviction occur,

3   and the specific questions were to investigation

4   and failure to reopen in what was suggested in a

03:16   5   timely fashion. This addresses neither of those.

6   COMMISSIONER MacCALLUM: It seems to me,

7   Mr. Wolch, that your questioning is directly

8   related to you must have done the murder because

9   you are a man that committed crimes which are

03:16   10   just like it. Wasn't that where you were

11   heading?

12   MR. WOLCH: No. The fact that he did the

13   murder is indisputable.

14   COMMISSIONER MacCALLUM: All right.

03:16   15   MR. WOLCH: The fact is how did he do it.

16   COMMISSIONER MacCALLUM: Yes. We know

17   that.

18   MR. WOLCH: I don't know how he did it. I

19   don't know if he parked in front of the Miller

03:16   20   house, watched Gail Miller leave, pulled into the

21   lane and waited for her or he parked in the lane.

22   Those are the kind of things --

23   COMMISSIONER MacCALLUM: That's one thing,

24   but then why link an inquiry of that type to his

03:17   25   habits of committing crimes in the fashion that

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1   you were trying to get at?

2   MR. WOLCH: This is knowledge of how it

3   would be done. I'll do it the way you are

4   suggesting.

03:17   5   COMMISSIONER MacCALLUM: No, I'll let you

6   go into the circumstances of his movements that

7   morning, I've said as much in my ruling. Whether

8   or not that leads us into the commission of the

9   murder, that's --

03:17   10   MR. BERESH: And I have no problem, that's

11   your ruling.

12   COMMISSIONER MacCALLUM: -- fine. Not by

13   reference to the rapes.

14   MR. BERESH: His movements, we're not

03:17   15   dealing with his movements this morning, of that

16   morning.

17   COMMISSIONER MacCALLUM: Yes, we are.

18   MR. BERESH: Sorry. The questions are not

19   aimed at that with the greatest respect.

03:17   20   COMMISSIONER MacCALLUM: Oh, well, Mr.

21   Wolch has agreed that he won't put it that way.

22   What you found objectionable, as I understand

23   you, is linking his movements to his habits of

24   crime in the past, in other offences.

03:18   25   MR. BERESH: Yes, and I only rose on the

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1		third question which was we now know. Well, I'm
2		not sure what that means, there's no collective
3		knowledge in this room, so I guess we come down
4		to this in a matter of fairness. If he wants to
03:18 5		ask him what his activities were of that day,
6		that's not a problem. That's not what he's
7		doing.
8		COMMISSIONER MacCALLUM: Okay.
9		BY MR. WOLCH:
03:18 10	Q	Mr. Fisher, if Gail Miller was to leave her house
11		and come down this way, this -- where the X is,
12		that would be the point where she would be
13		grabbed; correct?
14	A	I couldn't say.
03:18 15	Q	I'm going to suggest to you that it was 41 degrees
16		below zero, that rather than you waiting here
17		with, where I marked an X now with a car for her
18		to pass, you waited in front of her house for her
19		to come out; correct?
03:19 20	A	What car?
21	Q	Cliff Pambrum's car.
22	A	I don't think so.
23	Q	Okay, you don't think so.
24	A	No.
03:19 25	Q	Okay. Then I'm going to suggest when she did come

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	1		out you drove, parked your vehicle in the alley
	2		and waited at the corner and pulled her into the
	3		lane.
	4	A	I don't think so.
03:19	5	Q	You don't think so. You took her to the car,
	6		knife pointed behind her neck the way -- well,
	7		behind her neck, took her into the car, took off
	8		her coat, pulled down her dress, put a sweater
	9		over her face and raped her in the car; correct?
03:19	10	A	Wrong.
	11	Q	I'm suggesting you didn't cover your face, you
	12		don't cover your face in crimes do you?
	13	A	No.
	14	Q	Perhaps your counsel may object, but I'll try the
03:20	15		question anyway. Why don't you cover your face?
	16		MR. BERESH: I object.
	17		MR. WOLCH: I thought so.
	18		MR. BERESH: Predictable.
	19		MR. WOLCH: May I ask that kind of simple
03:20	20		question?
	21		COMMISSIONER MacCALLUM: If you can
	22		establish any relevance to it.
	23		MR. WOLCH: That's why he killed her.
	24		COMMISSIONER MacCALLUM: Pardon?
03:20	25		MR. WOLCH: She saw his face and recognized

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1   him.

2   COMMISSIONER MacCALLUM: But there it gets

3   into the motive for the crime and I'm not sure

4   that that's a legitimate line of inquiry.

03:20 5   MR. BERESH: Surely this is final argument

6   put to us subtly by way of questioning.

7   MR. WOLCH: It's not subtle, My Lord.

8   MR. BERESH: Well, it is. It's My Friend's

9   theory and he can put it in final argument.

03:20 10   COMMISSIONER MacCALLUM: I want you, Mr.

11   Wolch, you see, we're opening doors to a method

12   of questioning which potentially never stops

13   because if you want to put argument under the

14   form of cross-examination, then obviously it's

03:20 15   duplicating something that will be done later on.

16   MR. WOLCH: This is not argument.

17   COMMISSIONER MacCALLUM: No, but, I mean,

18   if the client, you make a suggestion to the

19   client and he says no, that's fine, you moved on.

03:21 20   Now you are going into do you cover your face in

21   crime. You are going into generalities.

22   MR. WOLCH: When I'm suggesting then is

23   that after you raped her she saw your face --

24   COMMISSIONER MacCALLUM: Okay.

03:21 25   MR. WOLCH: -- and recognized you as the

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 1              guy from the bus stop.

 2                   MR. BERESH:  I object to the questions, My

 3              Lord.  My client has --

 4                   COMMISSIONER MacCALLUM:  Let him answer,

03:21   5            let him answer, that's part of the movements of

 6              the morning.

 7                   MR. BERESH:  Thank you.

 8    A     Can I have the question again?

 9       BY MR. WOLCH:

03:21  10    Q     She was on her coat, her dress was pulled down,

11              her sweater was over her face.  However, when she

12              was getting out of the vehicle, sweater came off,

13              she saw you and you were the guy from the bus

14              stop.  She ran, you chased, you stabbed, exactly

03:22  15              what happened; is it not?

16    A     No.

17    Q     Are you saying for sure it didn't happen or you

18              don't think?

19    A     I'm just saying I didn't do it.

03:22  20    Q     Okay.  If we can go to map 164351 --

21                   COMMISSIONER MacCALLUM:  What's that number

22              again, Mr. Wolch?

23                   MR. WOLCH:  It's right here.

24                   COMMISSIONER MacCALLUM:  164351.

03:22  25       BY MR. WOLCH:
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1   Q   And if we could highlight this area, you see where

2   the murder took place, you see that?

3   A   Yes.

4   Q   Would you agree with me that it might be only a

03:23 5   matter of minutes to drive from there to

6   Pambrums'?

7   A   Oh, about five, eight minutes at the most.

8   Q   Pardon me?

9   A   About eight minutes at the most.

03:23 10   Q   You could run it in that couldn't you?

11   A   No.

12   Q   It's a short drive?

13   A   Short drive, yes.

14   Q   How long did it take you to walk from Pambrums'

03:23 15   home?

16   A   I couldn't tell you.

17   Q   Pardon me?

18   A   I couldn't tell you.

19   Q   Not very long though?

03:23 20   A   Couldn't tell you how long.

21   Q   Okay. But had you taken the car home to

22   Pambrums', you would walk down this railway track

23   home; correct?

24   A   Probably, yeah.

03:23 25   Q   And you would go right past where we know this

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1		young woman was attacked somewhere around 7:07
2		a.m. You are aware of that?
3	A	Yes.
4	Q	Right?
03:24 5	A	Yes.
6	Q	So if Gail Miller was attacked and killed, quarter
7		to seven, 10 to seven, whatever, and you drove, or
8		somebody with your DNA drove the car back to
9		Pambrums', left the car there and walked to your
03:24 10		house, they would go right back past her about
11		7:07 a.m.; correct?
12	A	Why would a person go back if I was --
13	Q	I can't hear you. Let me interrupt you, I can't
14		hear you.
03:24 15	A	I was just going to say if I did it, if --
16	Q	If?
17	A	Yeah -- and then I took the car home and then I
18		came back all the way up the track, why would I
19		take his car home, why didn't I take it to work.
03:25 20	Q	Why wouldn't you take it to work?
21	A	Yeah, if I got it and I so-called had it overnight
22		or whatever, why didn't I take it to work.
23	Q	I'm going to suggest to you because he needed it.
24	A	He needed it?
03:25 25	Q	It's his car.

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1   A   Well, sure. If I had it all night, why would I

2   take it back first thing in the morning. That's

3   kind of --

4   Q   Why wouldn't you take it back?

03:25 5   A   I don't know. Why did I have it in the first

6   place then? As far as I'm concerned, I never had

7   his car.

8   Q   As far as you are concerned. In any event, if you

9   did have the car and dropped it off, you would

03:25 10   walk by exactly where this lady says you attacked

11   her?

12   MR. BERESH: Well, with respect, we can ask

13   every witness every possible speculation and

14   we'll be here until 2010. The witness has

03:25 15   answered the question.

16   COMMISSIONER MacCALLUM: That's the only

17   thing, Mr. Wolch. I thought the question was all

18   right the first time it was put, but it's

19   becoming repetitious. He acknowledged that he

03:25 20   would have walked by there.

21   MR. BERESH: Thank you, Mr. Commissioner.

22   BY MR. WOLCH:

23   Q   Okay. And I'm going to suggest to you that you

24   get home and that's when your wife accuses you of

03:26 25   the crime; correct? She says it happened then and

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1   you are not sure?

2   A   I'm not sure, no.

3   Q   She says it happened then, okay. And if we can go

4   back to the other map, please, 091245, and I'm

03:26 5   going to suggest to you that after your wife

6   accused you, that's when you went to work. After

7   you are accused, you had to get out of the house

8   and you figured you better get to work and that's

9   what happened; correct?

03:27 10   A   Yeah, I usually went to work every morning.

11   Q   Highlight that area. And I'm going to suggest to

12   you that you left the house, headed for the bus

13   stop to get to work because Cliff had his car

14   back; correct?

03:27 15   A   Let's just say I went to the bus stop. I don't

16   know nothing about Cliff's car.

17   Q   Okay. But you did know that the police were all

18   milling about?

19   A   I didn't know until I got to the bus stop.

03:28 20   Q   That's two days later.

21   A   It don't matter. I haven't seen them around until

22   that day.

23   Q   What I'm saying to you is after your wife accused

24   you of the murder and you left the house, you

03:28 25   started walking to the bus stop, you saw police

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1   were around, up around the corner, it was a very

2   major occurrence and you realized you had the

3   victim's wallet and you hid it in the snow bank on

4   your way back to the bus stop, that's what

03:28   5   happened.

6   A   It's a good story. You should stick to it.

7   Q   I am.

8   A   That's good, because I'm not going to believe

9   anything you say like that because I didn't have

03:28   10   her wallet, sorry.

11 Q   So I take it, Mr. Fisher -- I'm pretty well done

12   with you -- I take it that in terms of Gail

13   Miller, you have no feelings of remorse

14   whatsoever?

03:29   15 A   Why should I have remorse for something I didn't

16   do.

17 Q   This is the question, you have no feelings of

18   remorse?

19 A   I'm just stating, why should I have those feelings

03:29   20   of remorse when I did not do it.

21   COMMISSIONER MacCALLUM: That's a fair

22   answer, "No, I don't have any because I didn't do

23   it."

24   BY MR. WOLCH:

03:29   25 Q   And you have no feelings of remorse for the

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1   anguish you caused to David Milgaard?

2   MR. BERESH: I object. This is not the

3   truth or reconciliation commission, with respect,

4   this is highly improper, and secondarily, My

03:29 5   Friend knows that those comments go outside this

6   room and there's no need to inflame any members

7   of the public. Mr. Fisher has his own personal

8   feelings and he can express them in any way he

9   wants, but he ought not to be compelled to do so

03:29 10   in this public forum. That is not part of --

11   COMMISSIONER MacCALLUM: I think we've gone

12   over this a long time ago really, the question of

13   remorse for the victims of the rapes. It was

14   ruled to be irrelevant at the time. Of course,

03:30 15   obviously it wasn't remorse as regards this

16   witness, it was as regards the police, and I

17   ruled at the time that it was irrelevant.

18   MR. WOLCH: I think it's a fair difference.

19   COMMISSIONER MacCALLUM: It's certainly a

03:30 20   difference, but I'm not sure that it's a

21   difference in principle.

22   MR. WOLCH: I appreciate that, and if Mr.

23   Fisher has no remorse or no regrets, that's fine.

24   COMMISSIONER MacCALLUM: Well, he didn't

03:30 25   say that, it's just -- he didn't say anything,

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1   let's put it that way.

2   MR. BERESH: Then let's have a ruling on

3   the question, My Lord.

4   COMMISSIONER MacCALLUM: I have, I ruled

03:30   5   it's irrelevant.

6   MR. BERESH: Thank you.

7   MR. WOLCH: In that case, Mr. Fisher, I

8   have no further use for you.

9   A   That's a pretty blatant statement.

03:31 10   MR. WOLCH: Pardon me?

11   A   Sorry.

12   MR. HODSON: Mr. Fox will go next.

13   A   Mr. Hodson, can we take a break?

14   MR. HODSON: Mr. Commissioner, Mr. Fisher

03:31 15   has requested a break.

16   COMMISSIONER MacCALLUM: I heard that. 10

17   minutes. Well, we'll take 15.

18   *(Adjourned at 3:31 p.m.)*

19   *(Reconvened at 3:47 p.m.)*

20   **BY MR. FOX:**

21   Q   Mr. Fisher, my name is Aaron Fox, I'm the lawyer

22   for Eddie Karst. He was a detective with the

23   Saskatoon Police Service in 1969, 1970. I just

24   want to ask you a few questions.

03:47 25   Going back to February 3rd,

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1   1969, that's when the police records indicate that

2   Officer McCorriston spoke to you and asked you

3   about your whereabouts on the day of Gail Miller's

4   murder. You recall the event that I'm talking

03:47   5   about?

6   A   At the bus stop?

7   Q   At the bus stop, yes.

8   A   Yes.

9   Q   And I think you said you are not sure what day

03:47   10   that was or -- but it could have been sometime

11   within a couple of days after Gail Miller's murder

12   that they spoke to you about your whereabouts on

13   the morning of January 31st, 1969?

14   A   Yes.

03:47   15   Q   And the indication is at the time they spoke to

16   you, you were wearing a yellow hard hat?

17   A   Yes.

18   Q   And that would have been the usual thing that you

19   would wear when you went to work?

03:48   20   A   Uh-huh.

21   Q   Correct?

22   A   Yes.

23   Q   Okay. Now, I'm not going to get into the hard

24   hats, we've already referred to the record, to

03:48   25   Ms. Gallucci's evidence, and I think she

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1   identified somebody as riding the bus with a

2   yellow hard hat and that certainly could have been

3   you?

4   A Yes.

03:48 5   Q And she indicated she couldn't recall one way or

6   another whether you were there. Mr. Husulak was

7   the bus driver and that's already been covered, he

8   identified a person who wore what he thought was a

9   red hard hat on the bus who wasn't there January

03:48 10   31st, 1969 and I think just for the record, these

11   don't have to be brought up, Mr. Commissioner, but

12   that was I think, his document reference is at

13   106108 and then the notes of Mr. McCorriston,

14   041688 at 97 and then 009330. Mr. Husulak

03:49 15   subsequently identified actually the person he was

16   talking about and that turned out to be Tony

17   Humen, not you at all, so that eliminates that

18   part. That left then the only reference to a hard

19   hat that I'm aware of after that would have been a

03:49 20   reference by Ms. (V2)----- in her statement to a

21   white hard hat and, as I understand it -- and that

22   would be in her statement, Mr. Commissioner, just

23   for the record, doc ID 087735, and as I understand

24   it, you were wearing a yellow hard hat?

03:49 25   A Yes.

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1   Q   So if we assume for the moment then that the

2   police kind of didn't have anywhere to go with you

3   and the yellow hard hat, had you had any other

4   dealings with the police prior to February 3rd,

03:49 5   1969; in other words, did you have any criminal

6   record?

7   A   No.

8   Q   So if somebody said, okay, let's check and see

9   what Larry Fisher has been doing for the last

03:49 10   couple of years, they wouldn't see that you had

11   any record or committed any offences, that sort of

12   thing?

13   A   No.

14   Q   Now, when we turn to 1970 in Winnipeg and the

03:50 15   arrest of you that took place there for the rape

16   and the offences that occurred there, it sort of

17   looks like you were caught red handed, at least on

18   the first offence -- or the second offence you

19   committed there. Would I be correct in describing

03:50 20   it that way?

21   A   Yes.

22   Q   And you were then remanded in custody and you

23   indicated that while on remand at Headingley

24   received a couple of beatings which were promoted,

03:50 25   if I can describe it that way, by, and sometimes

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 1          participated in by a couple of the guards there?

 2    A     True.

 3    Q     Were those guards subject to discipline as a

 4          result of their conduct?  Do you have any

 5          knowledge of that?

 6    A     No knowledge.

 7    Q     But I think you indicated, and I'll ask you this,

 8          do you remember Detective Huff as being one of the

 9          officers that you spoke to in Winnipeg, or Fort

10          Garry, and I'm afraid I use that interchangeably

11          all the time, it's actually Fort Garry.

12    A     I'm not sure who it was that came to see me.

13          Sorry.

14    Q     Okay.  I wasn't trying to cut you off there.  Were

15          you finished?

16    A     That's okay, yeah.

17    Q     In any event, you would have told the detectives

18          that you spoke to from Fort Garry that you had got

19          a hard time out at Headingley?

20    A     No.

21    Q     You didn't mention anything to them about it?

22    A     No.

23    Q     They make some reference to thinking that you had

24          got a bit of a hard time out at Headingley.  Is it

25          possible you may have said something to them about
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 1              it?

 2     A        No.

 3     Q        Okay.  You did say to them though that you

 4              basically wanted to get all of the matters that

03:51   5       you were involved in cleared up?

 6     A        Yes.

 7     Q        That included the Winnipeg matters and then also

 8              you disclosed to them you would have been involved

 9              in some criminal activity in Saskatoon as well?

03:52  10     A        Yes.

11     Q        And prior to ever speaking to the, to any

12              Saskatoon police people in Winnipeg or Fort Garry,

13              you had already told the Winnipeg police or Fort

14              Garry police about the Saskatoon matters, at least

03:52  15              two of them in any event?

16     A        Yes.

17     Q        And made it clear that 'I would like to get

18              everything cleared up, I want to, if I want to be

19              sentenced I want to get everything cleared up, I

03:53  20              want to be finished with this.'

21     A        Yes.

22     Q        And I take it, from that, that by the time the --

23              by the time you spoke to the two Saskatoon

24              officers in Winnipeg, or Fort Garry, it was a

03:53  25              little -- sort of a done deal, if I can describe
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1   it that way, in other words you had already made

2   the decision that 'I'm going to plead out to all

3   the offences I've committed and get on with

4   serving my time?'

03:53 5   A   Yes.

6   Q   Would that be correct?

7   A   Yes.

8   Q   Umm, I think you told Mr. Hodson that you don't

9   have a recollection of where it was that you spoke

03:53 10   with the Saskatoon Police officers?

11 A   No, I don't.

12 Q   And I think you told him you sort of weren't able

13   to describe them?

14 A   No.

03:53 15 Q   And I think you told him you don't really have a

16   very specific recollection of what, exactly, you

17   talked to them about?

18 A   No.

19 Q   I take it whatever meeting took place with the

03:54 20   Saskatoon Police officers kind of didn't make a

21   very big impression on you at that time?

22 A   Umm, I can't really say.

23 Q   Okay.

24 A   It --

03:54 25 Q   And I'm suggesting that was probably the case

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1   because you had already confessed, if I can put it

2   that way, to the Winnipeg police about the

3   Saskatoon offences?

4   A   Yeah.

03:54 5   Q   Really, what you were telling the Saskatoon

6   officers was just a repeat of what you had already

7   told the Winnipeg Police?

8   A   Yes.

9   Q   Umm, the two statements that you gave -- and we've

03:54 10   just got typewritten copies of them, the

11   handwritten copies if they existed we don't have,

12   but I'm going to ask if we can bring them up.

13   They are doc. ID 010721, maybe just bring that one

14   up first, if I could.

03:55 15   Mr. Fisher, this is a

16   typewritten copy of a statement in relation to the

17   assault of (V3)-- (V3) (V3)------, and it

18   indicates that you signed this statement on, if we

19   can go to the third page of it, it would be 723,

03:55 20   that area there, it indicates you signed it and

21   Mr. Karst was there. Have you seen, like did --

22   have you seen the copy, this statement before?

23   A   Umm, not that I can say.

24   Q   Okay. Do you -- is it possible somebody,

03:55 25   somewhere along the way, may have shown you this

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1		statement?
2	A	It's a possibility.
3	Q	Just not able to say at this point?
4	A	Just not able to say where or when.
03:55 5	Q	Okay. Do you recall giving a written statement or
6		signing a statement?
7	A	I can't remember.
8	Q	Okay.
9	A	Sorry.
03:56 10	Q	So the details of that meeting are just pretty,
11		pretty vague, --
12	A	Yeah.
13	Q	-- would that be fair to say?
14	A	Yeah.
03:56 15	Q	Okay. The second statement is 012111, and I'm,
16		again I just ask you if you have any -- this is
17		the statement that's given in relation to (V5)--
18		(V5)---; do you have any recollection of seeing
19		this document before?
03:56 20	A	Nope, not seeing this one.
21	Q	So it's possible you may have seen it but just
22		doesn't --
23	A	Yeah, I can't remember.
24	Q	Can't remember?
03:56 25	A	Yeah.

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1   Q   And again, same thing, no particular recollection

2   of giving a written statement at that time?

3   A   Can't remember.

4   Q   Okay. Would I be -- sorry, if we could -- sorry

03:56   5   about that, if we could bring that back up. In

6   terms of this document, do you know if what is

7   contained in this statement is accurate in terms

8   of information that you conveyed in it?

9   A   I couldn't say.

03:57   10   Q   Would you be able to take a minute and just read

11   through it, if you could, and when you get to the

12   end of the page I'll have the ladies running the

13   documents flip to the next page. So if you would

14   just read through it and --

03:57   15   A   (*Witness reading*) Sounds familiar, the first

16   page.

17   Q   Okay. Go to the next page, please, and I'll just

18   have you read that, the next page.

19   A   (*Witness reading*) Yeah.

03:58   20   Q   Okay. If we could go to the last page, there's

21   just a bit on the last page, if you could read

22   that?

23   A   (*Witness reading*) Yup.

24   Q   Okay. To the best of your knowledge, is that

03:58   25   information that you have in there, is that

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1   accurate?

2   A   Yes.

3   Q   Okay. I'm gonna have you turn, then, if we can

4   just go back to the first statement I referred to,

03:58 5   010721. Okay? And I'm just going to have you --

6   this is the first statement I referred to, if you

7   could just read it as well, and I'll ask you the

8   same question.

9   A   (*Witness reading*) Okay.

04:00 10   Q   Okay. If we could go to the next page, please.

11   A   (*Witness reading*) Yup.

12   Q   Okay. And if we could go to the last page.

13   A   (*Witness reading*) Yup.

14   Q   And, like, and to the best of your recollection is

04:00 15   the information contained in that statement

16   accurate?

17   A   Yeah. (*Laughs*)

18   Q   Okay, you -- is there anything? I --

19   A   Umm, the statement's okay, but there is some parts

04:00 20   in there that --

21   Q   Sorry?

22   A   -- aren't there or shouldn't have been there.

23   Q   So there's some other information that you could

24   have given to him that isn't there?

04:00 25   A   No, no, the information is there --

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1	Q	Okay.
2	A	-- but it's not true.
3	Q	Not true?
4	A	No.
04:00 5	Q	What parts of it are not true?
6	A	This one part where I didn't use a knife.
7	Q	Okay. So the reference to the knife, you say, is
8		not accurate in this statement?
9	A	Okay, sure, yup.
04:01 10	Q	So in this statement you've indicated that you
11		used a knife, and you say that that's not correct,
12		you didn't use a --
13	A	That's not correct.
14	Q	Okay. Anything else in there that's incorrect?
04:01 15	A	Umm, ah, that's about it.
16	Q	Okay. Now in -- having read the two statements,
17		you've identified where you were living at various
18		times in Saskatoon, and it doesn't look like you
19		ever referred to the Avenue O address which is
04:01 20		where you were living at in January 1969. We see
21		that, from statements, there is no reference to
22		you living at Avenue O, there's a couple time
23		periods that are identified in here when the
24		assaults are alleged to have taken place, one was
04:01 25		February 21st, '70, the other November 29th, '68.

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1   At least as far as these statements go there is no

2   reference to you living at Avenue O; would that be

3   correct?

4   A   There's nothing on there, no.

04:02 5   Q   There's nothing on there?

6   A   No.

7   Q   And I take it you have no recollection of advising

8   anybody that you had lived at Avenue O --

9   A   No.

04:02 10   Q   -- in relation to your questioning in Winnipeg,

11   either by the Fort Garry Police or the Saskatoon

12   Police?

13   A   No.

14   Q   Umm, these two statements, you subsequently went

04:02 15   to trial for the murder of Gail Miller; were these

16   two statements tendered in evidence at your trial?

17   Do you have any recollection of that?

18   A   Umm, I couldn't really say.

19   Q   Couldn't say? Okay.

04:02 20   A   No.

21   Q   Now you've advised Mr. Hodson, and again you sort

22   of confirmed with Mr. Wolch, that when the

23   Saskatoon Police spoke to you you admitted to two

24   of the four offences that you eventually pled

04:02 25   guilty to in Saskatoon, in Saskatchewan, but that

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1   you made admissions concerning the second two

2   offences subsequently or at a later point in time;

3   have I got that right?

4 A   Yes.

04:03 5 Q   Okay. And I think you indicated that you didn't

6   have any recollection of who you spoke to when you

7   made the admissions for the second two offences?

8 A   Uh-huh.

9 Q   Would that be correct?

04:03 10 A   Yes.

11 Q   And I take it, from that, no recollection of

12   dealing with Eddie Karst concerning the admissions

13   for the later two offences?

14 A   No.

04:03 15 Q   You mentioned, umm, that, and I suppose when we go

16   back to 1970-'71, this would have been your first

17   involvement with the courts?

18 A   Yes.

19 Q   Umm, and the first involvement that -- where you

04:03 20   would be facing being sentenced for something?

21 A   Yes.

22 Q   I take it you relied on your lawyer a fair little

23   bit?

24 A   Yes.

04:04 25 Q   And assumed and hoped that he was going to do the

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1   best job he could for you?

2   A   Yes.

3   Q   Do you know if, in 1970-'71, if you knew the

4   difference between a consecutive sentence and a

04:04 5   concurrent sentence? Do you know, at that time,

6   if you even understood what the difference was

7   between the two?

8   A   At the time, no, I didn't.

9   Q   It would be fair to say that your biggest concern

04:04 10   would be, when all of this is done, I just want to

11   know how much time I have to do?

12   A   Pretty well, yes.

13   Q   I mean whether they call them consecutive, whether

14   they call them concurrent, whether it's six

04:04 15   offences, two offence, or one offence, the big

16   question for you was how many years you were gonna

17   get sentenced, how many years you'd have to spend

18   in jail?

19   A   Pretty well, yes.

04:04 20   Q   Umm, could we bring up document 010690. I

21   think -- I'm sorry, I gave you the wrong, it's

22   010690. This is a memo that's been referred to a

23   few times, and I'm sure you didn't receive it at

24   the time, but it's a memo by Serge Kujawa who was

04:05 25   a prosecutor involved in your case in

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1   Saskatchewan. And it reads:

2   "The above was convicted of rape in

3   Manitoba and sentenced to thirteen years

4   imprisonment. Now, through his counsel

04:05 5   in Manitoba, he has requested that we

6   dispose of the four outstanding charges

7   against him in Saskatchewan so as to

8   clean up his record and some day be in a

9   position to start anew."

04:05 10   Would that be an accurate description of what you

11   were looking for, just wanted to get everything

12   cleared up and know that you could start fresh?

13 A   Yes.

14 Q   And I would be correct, from that, you weren't

04:06 15   really interested in having any other charges

16   hanging around --

17 A   No.

18 Q   -- or possible charges hanging around?

19 A   No.

04:06 20 Q   Okay. In 1970 and '71, and I think you've

21   answered this already, but do I -- did I

22   understand you correctly to say that you didn't

23   know the name David Milgaard at that time?

24 A   No I didn't.

04:06 25 Q   And were not aware that he had been convicted of

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1   the murder of Gail Miller?

2   A   No.

3   Q   And have no recollection of discussing the death

4   of Gail Miller with the Saskatoon Police or the

04:06   5   Fort Garry Police, or any other police, in

6   1970-'71?

7   A   No.

8   Q   You mentioned, when My Learned Friend Mr. Hodson

9   asked you about the Saskatoon Police officers that

04:06 10   had come to see you, and you've mentioned that

11   you've seen all sorts of media reports that

12   referred to the name Eddie Karst or Detective

13   Karst; do you remember telling Mr. Hodson about

14   that?

04:06 15   A   Yeah.

16   Q   And you started seeing those media reports

17   probably in 1990 and carried on through until

18   probably the present time; that would be correct?

19   A   Yes.

04:07 20   Q   Umm, are you able at this time, Mr. Fisher, to say

21   whether or not you remember the name from 1970 or

22   whether or not it's something that you are

23   recalling as a result of having seen that

24   repeatedly in the media reports; are you able to

04:07 25   say for sure one way or the other?

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1	A	I just read an article on Huff the other day, so
2		that's pretty well where I get it from.
3	Q	Okay. So when you talk about 'I have a
4		recollection of Huff' or 'I have a recollection of
04:07 5		Karst' --
6	A	That's all.
7	Q	-- that's pretty much coming from what you've
8		read?
9	A	All through the media.
04:07 10	Q	Through the media?
11	A	Yeah.
12	Q	Okay. Just a couple final questions. In January
13		1969, if you went to work and you were working in
14		the masonry business, do you remember what your
04:07 15		work clothes were, what you typically wore to
16		work, jacket and pants; are you able to describe
17		that?
18	A	Umm, usually work boots.
19	Q	Okay. What I was getting at, type of pants, do
04:08 20		you remember if you wore jeans or khakis or
21		coveralls or what?
22	A	Usually I would wear jeans.
23	Q	Jeans?
24	A	Yup.
04:08 25	Q	That would be typically what you wore to work?

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1   A   Yeah.

2   Q   Okay. And, finally, I wanted to ask you -- this

3   just relates to the problem that you had had with

4   your landlady, and there is a receipt for legal

04:08 5   services that we don't need to bring up, but it's

6   document 058026; do you remember what lawyer you

7   dealt with at that time?

8   A   No I don't.

9   Q   Does the name Mr. Disbury, Ian Disbury, ring a

04:08 10   bell?

11   A   Yup.

12   Q   It may have been him?

13   A   May have been.

14   Q   Okay. And I wasn't clear when you were finished

04:08 15   answering questions about that, but was your

16   landlady alleging that the assault of her somehow

17   involved a sexual element, do you know if that was

18   the case?

19   A   I don't know. I never went to Court over it --

04:09 20 Q   Okay.

21   A   -- so --

22   Q   So you are not exactly sure, at this point in

23   time, what she was alleging?

24   A   No.

04:09 25 Q   Okay. Were you -- okay. So this was sometime, we

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1   know the first attendance looks like it was April

2   22nd, 1970, do you know when this alleged assault

3   was supposed to have occurred?

4   A   No.

04:09 5   Q   Thank you, Mr. Fisher, those are all the questions

6   I have.

7   A   Uh-huh.

8   MR. HODSON: The only counsel who has

9   questions left is Mr. Beresh, and I think he will

04:09 10   be more than the time we have allotted, and I

11   believe it's his preference to start tomorrow,

12   and that's fine with me as far as scheduling is

13   concerned; is that --

14   MR. BERESH: That is. I have one matter to

04:09 15   raise with the Commissioner if I might.

16   COMMISSIONER MacCALLUM: Okay.

17   MR. BERESH: And this arises, Mr.

18   Commissioner, from comments that I see in the

19   media today about Mr. Fisher's attendance at this

04:09 20   Inquiry.

21   I recall that in January you

22   issued an order that counsel ought not to discuss

23   evidence of a witness whilst the witness is on

24   the stand.

04:10 25   COMMISSIONER MacCALLUM: I believe it went,

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1   it extended to parties with standing as well, is

2   that --

3   MR. BERESH: Yes, as I understand it, and

4   the rationale I think is a sound one; being that

04:10 5   if a witness, during his or her testimony, reads

6   media reports, it might affect their testimony,

7   the content of it, the way it's given, and I

8   think it's an absolutely sound ruling. And I

9   apologize, I haven't been here consistently

04:10 10   throughout, I just want to confirm that, having

11   stayed abreast of the transcripts issued, I saw

12   no reversal of that ruling or no challenge of it,

13   but wanted to confirm with Your Lordship whether

14   or not there had been a reversal of that?

04:10 15   Because you can appreciate it can affect the way

16   a witness gives evidence if people are -- feel

17   free to comment about it during the midst of it,

18   either the content of it or the manner in which

19   it's given. I just want to clarify that for the

04:11 20   record, Mr. Commissioner?

21   COMMISSIONER MacCALLUM: I think Commission

22   Counsel brought that up day before yesterday, as

23   a matter of fact, and so he reminded everyone of

24   the reasons for that and I hope they haven't

04:11 25   forgotten.

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1   MR. BERESH: Thank you, Mr. Commissioner.

2   *(Adjourned at 4:11 p.m.)*

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5   contain a true and correct transcription of our shorthand

6   notes taken herein to the best of our knowledge, skill,

7   and ability.

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