Commission of Inquiry

Into the Wrongful

Conviction of David Milgaard

before

THE HONOURABLE MR. JUSTICE

EDWARD P. MacCALLUM

****

Transcript of Proceedings

and

Testimony before the Commission

sitting at the

Sheraton Cavalier Hotel at

Saskatoon, Saskatchewan

****

On Tuesday, November 22nd, 2005

Volume 96

Inquiry Proceedings

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

Ms. Joanne McLean,   **for** Ms. Joyce Milgaard

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Mr. Robert Kennedy, Esq., **for** Mr. T.D.R. (Bobs) Caldwell

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

Mr. Pat Loran, Esq.,   **for** the Saskatoon Police Service

Mr. Chris Boychuk, Esq.,   **for** Mr. Eddie Karst

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

Mr. Eamon O'Keefe, Esq.,   **for** Mr. Larry Fisher

Mr. David Frayer, Q.C.,   **for** Minister of Justice

                              (Canada), The Hon. Irwin Cotler

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1   ***Transcript of Proceedings***

2   *(Reconvened at 9:46 a.m.)*

3   COMMISSIONER MacCALLUM: Good afternoon

4   (sic).

5   **RICHARD ALLAN PEARSON, continued**:

6   **BY MR. HODSON**:

7   Q   Mr. Pearson, when we finished yesterday we had

8   just concluded the interview of Larry Fisher and I

9   had gone through that transcript. I now want to

10   go back and just go through some of your follow-up

11   on that. If we can go to document 056787 which is

12   part of your chronology, and again if we just --

13   maybe just go back to the previous page so that we

14   have a date for this. And so we'll see this is

15   July the 12th, 1990 which was the date of the

16   interview, and then if we can go to the next page

17   to paragraph 199, it looks as though Mr. Pick

18   indicated that the polygraph operator may conduct

19   a second test once Fisher has stabilized and talks

20   about his concerns of safety and stomach problems,

21   etcetera. Did you ever talk to Mike Robinson

22   after the polygraph to find out whether he thought

23   Mr. Fisher could do another polygraph?

24   A   I do recall having a conversation with him, I

25   think on two occasions after the test, and he was

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1   expressing to me the fact that there was a

2   physical condition and a safety issue that was

3   getting in the way of a successful test when he

4   had attempted it on Mr. Fisher.

5   Q   Are you able to tell us, Mr. Pearson, whether at

6   the time, whether you were able to determine

7   either on your own or discussions with Mr.

8   Robinson whether the concerns that appeared to

9   pre-empt the polygraph test were genuine or bona

10   fide problems or an attempt to try and thwart the

11   test?

12 A   I really don't know if I could confirm that, you

13   know. He expressed some physical and some safety

14   issues. Whether they were real or perceived, it

15   would be hard to really know.

16 Q   And then again we touched on this yesterday, I

17   think you said your preference was to have the

18   polygraph and then follow up with an

19   interrogation; is that correct?

20 A   That was my initial feeling as to how we could

21   approach this, yes.

22 Q   And again I think we heard a bit about this from

23   Mike Robinson, but that you would set the

24   questions in the test in such a way that if you

25   found that he was being deceptive, you could use

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1   those answers to further probe with Mr. Fisher and

2   try and get some further information?

3   A   That would be the expectation that would come from

4   the polygraph operator who would follow up on the

5   deception portions of his contact with Mr. Fisher.

6   Q   Then if we can carry on, and I just want to point

7   out, I believe this is a typographical error, this

8   should be July the 13th, 1990, and I've checked

9   that with your notes, Mr. Pearson.

10   A   Okay.

11   Q   And this follows, this 199 is July the 12th and so

12   following here it says:

13   "Mr. Williams and myself attended the

14   Saskatoon City Police and met with

15   S/Sgt. Ron Bertrand and obtained a copy

16   of the 1968 offence file involving

17   Fisher. We were trying to determine if

18   his M.O. (weapon) is consistent with any

19   other crimes. No weapon was used in the

20   very limited material that we received.

21   Also met with Insp. Simpson for a few

22   minutes and updated him in a very

23   general way as to what was happening."

24   And then they talk about trying to get a locate

25   on Melnyk and Lapchuk. And just to refresh what

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1   we covered yesterday in the time frame, it was

2   July the 4th, 1990 that I think you and

3   Mr. Williams became aware of the names of the

4   four Saskatoon assault victims and you recall we

5   went through that yesterday?

6 A   Yes.

7 Q   And I think you have told us that at that time you

8   had not, I think you said you were sure that you

9   had asked the city police for records of Fisher

10   and you didn't get any, you had asked the Regina

11   police for records, they didn't have any, and so

12   now it appears on July 13th you obtained one file

13   from the Saskatoon police; is that right?

14 A   I believe it was a partial file, yes.

15 Q   A partial file. And I think -- it doesn't have

16   the name here, but I think this is the (V1)- file;

17   is that right?

18 A   I believe that's correct, yes.

19 Q   And we've already seen in evidence, there's I

20   think 11 pages of (V1)--- (V1)- and we have her

21   original statement, the occurrence report and the

22   report I think of Vern Passett who was the dog

23   officer and I think that there may have been a lab

24   report on that as well and we've gone through

25   that, so that's what you would have -- that would

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1   have been the first file you received from the

2   city police relating to the Fisher assaults?

3   *A*   As I recall, yes.

4   *Q*   And at that time were you made aware that, I mean,

5   as to where the other files were? Let me rephrase

6   that. Did you ask the police for copies of all

7   four files?

8   *A*   I have no specific recollection of it, I can only

9   make an assumption here that we certainly would

10   have, that would have been the logical thing to

11   do, but if you are asking me if I remember

12   specifically, I can't.

13   *Q*   And fair enough. I think when we saw Mr.

14   Williams' memorandum after talking to Mr. Wolch,

15   one of the things that I think he put in his memo,

16   or maybe even asked you, was to get a copy of the

17   occurrence report and the police files?

18   *A*   Yes.

19   *Q*   So it's your evidence that although you don't

20   recall, you are sure that that's something you

21   followed up on?

22   *A*   I think it's just the logical next step, yes.

23   *Q*   And do you have a recollection, Mr. Pearson, of

24   being advised by Saskatoon City Police officers

25   that the files, not all the files or some of the

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1   files couldn't be located, becoming aware of that?

2 A   Yes, at some point. It might have been during

3   this meeting that they hadn't located the other

4   files and this was all they really had available

5   at that time.

6 Q   And again we've heard some evidence and we'll hear

7   some more about searches and efforts that were

8   made, and in fact a review by the Police

9   Commission to try and locate the assault files.

10   You would have been generally aware of that as and

11   when it happened; is that fair?

12 A   Yes, yes.

13 Q   Just generally on that point, again in trying to

14   locate the files in 1990 and the fact that they

15   were not, at least initially not readily available

16   and then later on found not to exist, did that

17   cause you any concern or raise any suspicion in

18   your mind?

19 A   No, it really didn't. Based on the fact that this

20   was 20 years later and knowing how the systems

21   function, the fact that there were no files

22   available didn't cause me to be suspicious that

23   they were being purposely hidden or destroyed,

24   it's just the normal course of business after 20

25   years and the files not being there didn't seem to

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1   be that unusual to me at the time.

2   Q   I wonder if we can go down to paragraph 201 and:

3   "Attempts are also being made to

4   recontact Linda Fisher to determine if

5   Larry ever wore a toque as there is a

6   blue toque held by Q.B. Court which, to

7   my knowledge, had never been identified

8   as belonging to anyone we know of. The

9   question is, was it Fisher's?"

10   And again, that's a toque that was put in as an

11   exhibit at the original trial and I don't think

12   it was ever, as you point out, identified as

13   belonging to anybody. Do you recall

14   investigating this toque issue and trying to link

15   it to Larry Fisher?

16   A   In general terms, yes. I just can't remember

17   specifics, but I know I asked Linda Fisher about

18   this and it was an issue that we had asked Larry

19   about and I just don't have too much recall of all

20   the details.

21   Q   So again just back to the initial review with

22   Bertrand and the sexual assault files, and I think

23   you talk about trying to determine if his M.O.

24   (weapon) is consistent with any other crimes. Can

25   you just tell us generally, Mr. Pearson, what --

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1   again, at this time you told us, or by this time

2   Mr. Fisher is a good suspect and you are trying to

3   find a way to link him to the Gail Miller murder.

4   What would you -- what would you be looking for in

5   the police files of the -- let's talk about the

6   four Saskatoon assault files, the ones that

7   occurred in Saskatoon, three of them in and

8   around, or right prior to Gail Miller's murder,

9   the fourth one would be a year later. Can you

10   tell us what types of things would be important to

11   you and what you would be looking for?

12 A   Well, as I mentioned here, one of the things that

13   I know Mr. Williams was interested in, and I guess

14   myself as well, was the fact that there was a

15   weapon used and was that consistent with a lot of

16   other crimes that may have been committed in the

17   city at that time with a weapon or was it unique

18   to the ones that Fisher was involved in, but

19   again, going through the file material at that

20   time, I suppose we were just looking at the kinds

21   of activities that involved Fisher in these other

22   crimes to determine how they may relate to the

23   Miller one.

24 Q   And so use of a weapon, would that be an important

25   thing to look at then?

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1   *A*   It certainly is a factor, yes.

2   **Q**   And secondly, what about the manner in which the

3   assault occurs, would that be something you might

4   look at as well?

5   *A*   Sure, yes.

6   **Q**   And how would that be important?

7   *A*   Well, again, when we start talking about

8   eventually what the similar fact analysis was able

9   to do, solidify suspicion I suppose, all of the

10   activities that have some similarity can be

11   assessed and determined just what value they have

12   to the overall picture of what you are trying to

13   look at here.

14   **Q**   And what about the location of the assault, would

15   that be a factor that might be significant?

16   *A*   It would certainly have some influence, but as I

17   mentioned before, you know, a lot of these

18   offences were, that involved Fisher were from

19   wherever he may be at the time, so -- but I

20   suppose they all have a factor in your overall

21   assessment of things.

22   **Q**   And what about the use of violence then, is that

23   something that you would be looking for?

24   *A*   Yeah, I believe so, sure.

25   **Q**   Go to the next page, please, and then 203, this is

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1   July 17th:

2   "A call was received from Ken Cadrain

3   and we arranged to have an interview

4   tomorrow at 8 pm at his residence."

5   And then attended on the 18th, it says Dan

6   Cadrain, I believe that should be Ken, and

7   obtained a written statement from him, and then:

8   "Briefed Cpl. Conlon on the status of

9   the investigation so that he can provide

10   assistance to Mr. Williams and Federal

11   Justice in the event there are

12   developments in my absence."

13   So I take it that you would have then interviewed

14   Ken Cadrain and then passed matters on to

15   Corporal Conlon to deal with in your absence?

16   A That's fair, yes.

17   Q If we could then go to 016122, and again this date

18   is -- just pause here for a moment, I think the

19   call is July 17th with Cadrain and the interview

20   is on the 18th, so if we can just go to 016122,

21   and this is a July 16th, 1990 memo from you to

22   Eugene Williams; is that correct?

23   A It appears that, yes. It's my writing.

24   Q And the first couple of paragraphs deal with the

25   tapes of the meeting, if we can just scroll down

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1   to the, I guess fourth paragraph, you say:

2   "I've also arranged to interview Ken

3   Cadrain, who was 6 yrs old at time & who

4   apparently recalls seeing blood on

5   Milgaard's clothes etc. I don't know

6   exactly what he has to say, however,

7   will let you know later.

8   To date I have not made contact

9   with Linda Fisher. She is probably on

10   vacation."

11   And so I take it at this time, before you went to

12   interview Ken Cadrain, and I think we touched on

13   this yesterday, you had information I think from

14   a city police officer that Ken Cadrain had seen

15   blood on David Milgaard's clothes on the morning

16   of the murder; is that correct?

17 *A*   Yes.

18 **Q**   And then if we can go to 001477, and this is the

19   statement of Ken Cadrain that you took on July

20   18th, 1990; is that correct?

21 *A*   Yes, uh-huh.

22 **Q**   And I wish to go through parts of this. We've

23   already gone through this with Ken Cadrain, but

24   down at the bottom of the first page he says:

25   "I cannot recall if I saw blood on

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1   Milgaard's clothes or if his clothes

2   were ripped. After Milgaard had

3   changed, he almost immediately went out

4   the back door."

5   And if I can just go back, do you have a

6   recollection of the interview with Ken Cadrain?

7   A   I remember sitting at his kitchen table in his

8   house, but I don't think I would know Ken Cadrain

9   if I saw him.

10   Q   When Ken Cadrain testified before this Commission

11   he was asked -- let me back up. After he gave

12   this statement he later gave statements and I

13   believe evidence in relation to the Fisher

14   proceedings, or it may have just been a statement,

15   where he said that he recalled seeing blood on

16   David Milgaard's clothing the morning of the

17   murder and indeed before this Commission of

18   Inquiry he testified that he recalled seeing blood

19   on David's clothing, and this statement was put to

20   him, the statement that he gave you, and I believe

21   his evidence was to the effect that he told you he

22   saw blood and that either the statement was

23   misrecorded or that you misunderstood what he had

24   to say, and if I can just go back to, just call up

25   056783, and this is the original contact that you

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1 had on June 26th from -- if you can call that out,

2 please -- from Inspector Simpson, and what it

3 talks about here is you have information that Ken

4 Cadrain recalls seeing blood on Milgaard's pants,

5 and I take it before you went to interview Ken

6 Cadrain, would it be important to find out whether

7 or not Ken Cadrain recalled seeing blood on David

8 Milgaard's pants?

9 A If I went out to --

10 Q When you went out to interview Ken Cadrain, would

11 one -- would that be an important fact that you

12 wanted to determine from him?

13 A Oh, absolutely, yes.

14 Q So if we can go back to the statement, 001477, and

15 again I want your response, Mr. Pearson, to Mr.

16 Cadrain's, Ken Cadrain's suggestion that I believe

17 he would have told you he saw blood on the pants

18 but that it somehow got misrecorded or

19 misunderstood. If Ken Cadrain would have told you

20 that he saw blood on David Milgaard's pants on the

21 morning of January 31, 1969, would you have

22 included that in his statement?

23 A Well I think it's a pretty important point, and

24 that was one of the reasons why I actually went to

25 see him, and I knew he had things to say, and it

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1   was recorded as it is shown here, and he indicates

2   that he cannot recall if he saw blood on

3   Milgaard's clothes. It's a pretty important

4   point, and if he would have said that he did see

5   blood, that certainly would have been something

6   that would have been developed and pursued.

7   But -- and the only other observation I can make

8   about this, I guess in hindsight when you go back,

9   I do realize that he had given statements after

10   this saying that he did see blood and this is in

11   conflict with that, however in hindsight, when we

12   look back at the reality of what did happen now

13   that David Milgaard is known not to have committed

14   this offence, one would have to assume that there

15   was no blood and this may well be the accurate

16   recollection he had.

17 Q Okay. And, again, if we could just -- a couple of

18   parts of this I just want to touch on. This

19   information here in the paragraph:

20   "When Milgaard first came into the house

21   and he was talking to Albert, Albert

22   said something like "what happened to

23   your pants" and Milgaard replied

24   something like "I screwed a virgin" or

25   "I was with a virgin." At the time, I

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1   didn't know what virgin meant, and asked

2   Albert what it meant, I don't know if he

3   told me."

4   Again, this was not part of Albert's evidence at

5   trial, I think it came in later years, many years

6   after the conviction Albert Cadrain had

7   information consistent with what Ken Cadrain

8   says; do you recall putting any significance on

9   this information at the time, Mr. Pearson?

10 A Umm, yes I did, I think I developed this based on

11   what he is alleged to have been said at that time

12   and the fact that I believed David Milgaard had

13   mentioned something on a trip that he had someone

14   in Saskatoon or had a girl in Saskatoon, and I

15   recall reading through the police file on the, I

16   think on the autopsy report that there was

17   indication that the victim was in a pre-menstrual

18   state, and I was maybe stretching the circumstance

19   but I thought, you know, is there a possibility

20   that there is some kind of a circumstance here

21   that would have some value, I developed that

22   somewhat, and I forwarded it up on up the chain

23   for whatever value that it may have.

24 Q And so that when Ken Cadrain talks about the

25   comment, "I was with a virgin", are you telling us

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1   that you had pursued the possibility that that may

2   have been a reference to Gail Miller?

3   A   Yes.

4   Q   Did you -- do you recall ever considering whether

5   that was a reference to Nichol John, whether --

6   A   No, I didn't.

7   Q   And, again, the -- I take it, did you have any

8   dealings with Albert Cadrain at all in your

9   investigation, any direct dealings?

10   A   I don't believe I did. I don't believe I did.

11   Q   And what -- how did you deal with the fact that

12   Kenny Cadrain would have been five or six years

13   old, close to six years old at the time that Mr.

14   Milgaard was at the house that morning, did

15   that -- in your experience as a police officer,

16   what, what effect or what weight did you put to

17   this recollection?

18   A   Well if I would have been interviewing Kenny

19   Cadrain when he was six years old there were

20   certainly some issues that you would have to

21   consider as to whether or not he had been led on

22   with information or that he had been provided

23   information, at that time, which would make him

24   feel that there was an acknowledgement of what he

25   was saying. I think with children there certainly

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1   can be leading, but we're talking now an adult who

2   has a recollection of what went on when he was six

3   years old, I think it certainly does have more

4   credibility.

5   Q   And if we could go to 001480, and Cadrain, Kenny

6   Cadrain says:

7   "The statement above has just been read

8   to me by Sgt. Pearson and I wish to make

9   a point clear. When Milgaard went out

10   the back door of our house on the

11   morning he was there, I saw him carrying

12   something out and when he returned a

13   minute or so later he was not carrying

14   anything. I remember Milgaard asking

15   Albert something about placing something

16   in the garbage, that's when he went out

17   the back door. At that time I presumed

18   he threw his pants away, as he had

19   changed in the hallway, asked about

20   garbage, then went out and came in the

21   back door."

22   And I think parts of this might be new evidence

23   in the sense that I'm not sure that this was

24   exactly the evidence of Albert Cadrain back in

25   1969-1970; do you recall putting any emphasis on

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1   this information or making inquiries about this?

2   A No, I don't have any recollection of it.

3   Q If, at the time Kenny Cadrain, Kenneth Cadrain

4   testified before the Commission we only had the

5   typed statement, and I think there was also some

6   suggestion or -- by Mr. Cadrain that perhaps the

7   reference to blood may have been in the

8   handwritten statement. We now have the

9   handwritten statement, I'm sorry, I don't have the

10   doc. ID, but if we could maybe have that put up?

11   And is this your handwriting, sir?

12 A Yes.

13 Q It's 332560, and that's your signature at the

14   bottom?

15 A Yes it is.

16 Q And that appears to be Ken Cadrain's signature?

17 A That's right.

18 Q What would be your practice, sir, in writing out

19   this statement? Either tell us by your memory of

20   the dealing with Ken Cadrain or, if you don't have

21   a memory, what your practice was in filling out

22   these statements?

23 A Well there was a, there was a discussion about the

24   issues, and it's written down in narrative form to

25   stay on the topic, it's written down in my

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1   handwriting, and the -- in this case Ken Cadrain

2   is given the opportunity, first of all I would

3   read it back to him and I would give him the

4   opportunity to review it and read it, and then I

5   would ask him to acknowledge that this is what he

6   has told me, and then he would affix his

7   signature.

8   Q   If you can just go down to the --

9   A   And I would assume the signature is on each page,

10   I --

11   Q   Yes, and we'll go to the next page. And again the

12   signature at the bottom and here at the top, and I

13   haven't checked word for word, but I believe the

14   handwritten and the typed statement are identical,

15   and here is the relevant part, it says:

16   "I cannot recall if I saw blood on

17   Milgaard's clothes or if his clothes

18   were ripped."

19   And, again, that's what's in the typed statement;

20   correct?

21   A   Yes.

22   Q   Yeah. And then if we could just go to the last

23   page of the document, go down, full page please.

24   And down at the bottom, that would be the

25   date, time, --

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1   *A*   Yes.

2   **Q**   -- and his signature?

3   *A*   Yes.

4   **Q**   If we could then go to 016125, and this is a July

5   20th, 1990 note and I think this is to Mr.

6   Williams, and it says:

7   "Sergeant Pearson of Saskatoon

8   telephoned you this afternoon to say he

9   would be leaving on vacation until

10   August 13th but he wanted you to be

11   aware of the following:",

12   and then it says:

13   "A witness has been located who provided

14   him with a statement about the morning

15   Milgaard came to the Cadrain house.

16   What this witness has to say has given

17   them a new theory on the case (what it

18   is I don't know). Sgt. Pearson does not

19   want you to be totally influenced by

20   what you have so far.

21   The witness is one of the

22   Cadrain boys the morning is January 31,

23   1969.",

24   and then gave you his, Mr. Williams' number at

25   the hotels, etcetera. Can you tell us, do you

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1   have a recollection of this call to Mr. Williams,

2   or can you shed some light on what you are

3   getting at here?

4   A   Yeah, I don't think I would get quite as excited

5   as what that secretary may have suggested there,

6   but I was about to leave on holidays and I think I

7   just wanted Mr. Williams to have this information

8   in his hands. And as far as new theory, that's

9   really something that I have no recollection of,

10   but I would have phoned down to probably advise

11   him of this circumstance that I had thought maybe

12   would be relevant to anything that he was

13   assessing.

14 Q   And, again, can you shed some light on what -- and

15   I appreciate this isn't your note -- but what the

16   new theory, and maybe 'theory' is the wrong word,

17   but would that relate to the information about

18   screwing a virgin that you just talked about?

19 A   I think that's probably what it had to refer to,

20   because that was something that was new, a comment

21   that was associated to David Milgaard.

22 Q   Now I note, and we'll see this in some of the

23   following notes, that you did actually follow up

24   on the autopsy and pursue whether or not Gail

25   Miller, and I think as you said, was in -- was

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1   menstruating, and whether that might have been,

2   might have been an explanation for the comment

3   that Kenny Cadrain attributed to David Milgaard;

4   is that --

5   A   Yeah, I think, yes.

6   Q   Is that fair?

7   A   That's fair.

8   Q   And so was there anything else in your interview

9   with Kenny Cadrain that you thought would be new,

10   or a new theory on the case?

11   A   I don't believe so.

12   Q   Then if we can go to 067323, and this is August

13   16th, 1990, you will be happy to know I'm not

14   gonna ask about your vacation.

15   A   Oh.

16   Q   But I presume you were gone and this would be your

17   return, then, in mid-August?

18   A   It would appear so, yes.

19   Q   And I just want to identify, it looks as though

20   you received some information from Stony Mountain

21   institution that you sent off to Mr. Williams?

22   A   Yes.

23   Q   And if I could call up 000488. And I just want to

24   identify, and there are I think 12 pages here, and

25   this is a letter from Stony Mountain institution

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1   to you July 17th, 1990, the following reports on

2   David Milgaard, and various dates. And I don't

3   propose to go through them other than to identify

4   them for the record, but I take it you would have

5   received this information from Stony Mountain and

6   sent it off to Mr. Williams?

7   *A*   Yes.

8   Q   And, again, what would be the use that you would

9   have for this information; do you recall what --

10 *A*   If I recall correctly there was some consideration

11   of doing a polygraph, --

12 Q   Yes?

13 *A*   -- and I believe this was some background

14   information that was going to be used to maybe

15   make a determination of his suitability.

16 Q   Yeah. Next, if we could go to 016130. And this

17   is an August 15th, 1990 memo of Mr. Williams to

18   his file, and it looks as though there was a

19   discussion on August 13th about a timetable and a

20   report, and then:

21   "In the ensuing days he will speak with

22   Mrs. Cadrain, who had earlier indicated

23   her desire to speak with him. Further,

24   he agreed to contact Mike Robinson, a

25   former polygraph instructor with the

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1   R.C.M.P. to make inquiries concerning

2   John Weller, the polygraphist suggested

3   by Kenneth Watson to conduct a polygraph

4   test of Dale Wilson.

5   In that regard, I asked Sgt.

6   Pearson to prepare a list of suitable

7   polygraph operators, and to canvass with

8   Robinson the latter's comments upon the

9   individuals identified on that list."

10   And would that be -- was Mr. Williams getting

11   some information from you on a polygraph

12   specialist to conduct a polygraph on Ron Wilson?

13   A   Umm, yes, yeah, he was asking for some

14   recommendations.

15   Q   Yeah. And what about this desire of Mrs. Cadrain;

16   do you have any recollection of that,

17   Mrs. Cadrain?

18   A   It was information received that I think she

19   wanted to talk to me, or she had some, something

20   to pass on, I just don't recall but --

21   Q   And I think; do you have a recollection of talking

22   to her then?

23   A   Yes, I recall going to their home and having a

24   conversation, and actually taking a statement.

25   Q   And we'll get to that in a bit. Then, on the last

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1   point, it says:

2   "Further, I briefed Sgt. Pearson on the

3   latest developments in the *Milgaard*

4   case. In closing we agreed to speak on

5   or before August 16, 1990."

6   And, again, are you able to tell us what -- when

7   Mr. Williams says here that he briefed you on

8   latest developments, can you tell us what level

9   of detail you were getting about what else was

10   going on?

11   A   I really don't have any recollection of that at

12   all.

13   Q   Well, just generally, was he, for example with

14   Nichol John, Ron Wilson, Melnyk and Lapchuk, was

15   he -- was Mr. Williams telling you what he was

16   learning from those people, or what conclusions he

17   might have reached, or anything of that nature?

18   A   I don't have a recollection of being told of

19   conclusions. I was aware, as this went on, that

20   he had been, you know, talking to people. I know

21   he had passed on information that just talked

22   about Wilson and what he had recanted when he was

23   starting to change some of what he had said

24   previously. But whether, whether that was all the

25   detail that he had I don't know, but there was

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1   certainly information coming back to me, yes.

2 Q   And where did that fit in as far as the work that

3   you were doing then?

4 A   I think it was more for information purposes for

5   me as opposed to me pursuing anything in that

6   regard, because -- because I didn't.

7 Q   Yeah. If you could go to 056789, please. And

8   then again, we're back to August 13th, 1990, and

9   we see a mention here about the call from Mr.

10   Williams:

11   "... that an inmate had suggested that

12   he was told by Fisher in the involvement

13   in the murder which he believed may have

14   been the nurse in Saskatoon. Williams

15   advised this turned out to be nothing

16   that was directly related."

17   And:

18   "No names were provided to me."

19   And we'll see later on, Mr. Pearson, and

20   certainly before the Supreme Court of Canada at

21   the reference, a number of jailhouse informants

22   came forward, I think mostly suggesting that Mr.

23   Fisher had made admissions to them about the

24   murder; do you recall dealing with some of those

25   people at the time, just generally?

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1   *A*   Yes, there was quite a lot of activity, actually,

2   at that time, during the reference.

3   *Q*   And did you have any direct dealings in any --

4   with any of the jailhouse informants?

5   *A*   I coordinated quite a lot of the locating, or the

6   interviewing of them and getting statements and

7   getting them sent, either through me or directly

8   from the people that took the statements from

9   these various people in institutions around the

10   country, and getting them to Mr. Williams.

11   *Q*   Had you had previous experience in other

12   investigations in dealing with jailhouse

13   informants?

14   *A*   Oh yes.

15   *Q*   And at the time, let's go back to 1990, what --

16   tell us what your thoughts were about the

17   reliability of this type of information?

18   *A*   Well I think, you know, there was a lot of risk,

19   and again you have to assess each one

20   individually, but I do think there is a certain

21   amount of risk when you are taking solely the word

22   of an inmate. It's very, very difficult to

23   verify, I just think you have to be very cautious.

24   *Q*   Then we go on to August 15th, 1990, it says:

25   "I attended Saskatoon City Police and

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1   reviewed file material. I was

2   attempting to recover medical reports on

3   the aspect on the deceased's possibly

4   menstruating. Did not locate reports on

5   this occasion. Also ran across Chief

6   Penkala and, in a very general way,

7   updated him on what I was doing and

8   asked him if he could recall any

9   specific details or evidence which would

10   suggest that Miller may have been

11   menstruating at the time she was

12   murdered. Chief Penkala could not make

13   this recollection. This point is being

14   pursued in view of what is included in

15   Ken Cadrain's statement."

16   And I think that's, in part, what you told us a

17   bit earlier; is that correct?

18 A Yes, yes.

19 Q If we can scroll down to 208, and I won't go

20   through that, I think you then called the crime

21   lab about a blood examination for menstrual blood,

22   whether that could be performed in 1969, and I

23   take it would that be to follow up the same line

24   of thinking --

25 A Sure.

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1   Q   -- that -- arising from Ken Cadrain's statement?

2   A   Yes.

3   Q   Scroll down to 209:

4   "Placed a telephone call to Mike

5   Robinson, the polygraph operator who

6   tested Fisher. We discussed the test

7   performed; Robinson advised that Fisher

8   was nervous as he feared for his safety

9   because of the publicity over him being

10   a suspect. Robinson suggested also that

11   Fisher has a nervous condition, as

12   Fisher continually scratches the palm of

13   his hand. Fisher is also physically ill

14   and has been in the hospital seven times

15   since Christmas, reasons are unknown by

16   me at this time. Robinson stated that

17   during the interview with Fisher, Fisher

18   continually held his stomach, burped and

19   complained of pain. Robinson stated the

20   test was taken, however, because of the

21   physical condition, the test was

22   inconclusive."

23   And, again, this is Mr. Robinson saying that

24   the -- Mr. Fisher was nervous as he feared for

25   his safety because of the publicity over him

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1   being a suspect; did you understand that to be

2   one of the factors, then, that may have precluded

3   a reliable polygraph?

4   A   I believe so, just based on the information I was

5   receiving, plus of course Mike Robinson is the

6   qualified technician here so I'm just relying on

7   what he is saying.

8   Q   And down at the bottom it says:

9   "This morning I also called Insp. Quinn

10   at the City Police and asked him if

11   there was any possibility that tapes

12   existed on statements taken on 23 and 24

13   May 1969 from Ronald Wilson by the City

14   Police detectives. Quinn advised there

15   were no records or tapes available."

16   Do you know what prompted that inquiry?

17   A   That was Mr. Williams, I believe, making that

18   request.

19   Q   And I think we saw one police report at the time

20   that suggested, at least in the interview in

21   Regina on May the 22nd, 1969, there was a

22   reference to I think Mr. Mackie having a tape of

23   an interview of Mr. Wilson while in Regina; do you

24   have a recollection of that or coming across that?

25   A   I don't.

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1   Q   And so would it be a case of Mr. Williams asking

2   you to follow up and try and get that?

3   A   I believe that's what this is about.

4   Q   Next page. And this talks about information about

5   some polygraph operators, I think that should be

6   Ray Renaud; is that correct?

7   A   I don't recall.

8   Q   I think that's --

9   A   It could be.

10   Q   Or Ray Renaud, pardon me, I think there's an 'N'

11   missing, Mike Robinson and John Weller. And if we

12   could just call up 016131, please, and this is Mr.

13   Williams' August 22nd, 1990 memo to file, and it

14   refers to a conversation with you about potential

15   polygraph operators for Ron Wilson, and I take it

16   that's what you were doing for Mr. Williams,

17   trying to assist him on some polygraph operators?

18   A   Yes, that's what it appears.

19   Q   And then down at the bottom he says:

20   "He also noted that a further search of

21   the Saskatoon police files failed to

22   turn up any tapes or transcripts or

23   records of the polygraph sessions

24   conducted on Ronald Dale Wilson or

25   Nichol John in May 23, 1969."

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1   And:

2   "He noted that in 1969 tests did not

3   exist to identify menstrual blood."

4   And then:

5   "Further, in relation to Larry Fisher's

6   polygraph test attempt he had learned

7   that Larry Fisher's physical condition,

8   gall stones, and the pain and discomfort

9   caused by that ailment, coupled with Mr.

10   Fisher's nervousness, made Fisher an

11   unsuitable candidate for a polygraph

12   ...",

13   and then again indicating that you:

14   "... would contact Mrs. Cadrain, review

15   the transcript of the Fisher interview

16   and advise me of developments when they

17   occurred."

18   I take it, any reason to dispute what Mr.

19   Williams has reported went on between the two of

20   you?

21   A   No.

22   Q   Go back to 056790.

23   A   Just --

24   Q   Yes?

25   A   -- stop there. Mr. Morrisson, what, who was

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1   Morrisson?

2   Q   I don't know. That maybe should have been

3   Robinson?

4   A   Yeah, I think that is correct.

5   Q   Yeah, that's -- so here:

6   "Mr. Morrisson told Sgt. Pearson that he

7   was prepared to try again when

8   possible.",

9   presumably that would be Mike Robinson?

10   A   Yes, I think that's correct.

11   Q   Okay. If you could go back to 056790. And again,

12   this is a reference to an interview with Peggy

13   Miller, and if we can go -- do you recall having

14   dealings with Peggy Miller, that would be Gail

15   Miller's sister, regarding a statement?

16   A   I -- I -- I don't recall the details, but I do

17   know I had some contact with her.

18   Q   Yeah. Peggy Miller had given a statement to the

19   city police in March of 1969, I think mid-March,

20   where she made reference to the fact that Gail had

21   dated or known a fellow in Swift Current named

22   David Milgaard, and I don't know that, apart from

23   that statement, at the trial of David Milgaard she

24   was not called and none of that became a part of

25   the trial record; do you recall following up with

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1   her in 1990 trying to get an explanation for that

2   comment? And I can take you to the notes later.

3   A   Yeah, I just, I just -- I recall Peggy Miller, and

4   I'm sure I had some contact, I just don't recall

5   the details of what that may have been about.

6   Q   Sure. And would that have been something Mr.

7   Williams asked you to do then?

8   A   I don't, I don't recall Mr. Williams asking me

9   that, that may have been something that I saw on

10   the file when I was reviewing it, that may have

11   been where that came from.

12   Q   Okay.

13   A   But I don't think Mr. Williams asked me that.

14   Q   That may have been something you initiated on your

15   own?

16   A   Yes.

17   Q   And again just on that generally, and we've seen

18   that on a couple of occasions I take it you went

19   through the police file, is that the Gail Miller

20   murder investigation file, --

21   A   Yeah.

22   Q   -- on a couple of occasions?

23   A   Yes.

24   Q   And would it have been a fairly thorough review,

25   reading the police reports and statements, or can

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1   you give us some idea of the extent of your

2   review?

3 A I think it was a review to familiarize myself with

4   what the investigation was about. You know, there

5   was quite a lot of paper and an awful lot of names

6   in there that is a blur at this point, but --

7 Q Right. But just generally, and I don't want to

8   get into details, I'll take you to the details in

9   your notes as we go through them, but what would

10   you be looking for then when you -- and what was

11   the purpose of reviewing the file, apart from

12   familiarizing yourself with it?

13 A Well one was the looking for anything that might

14   associate to Larry Fisher, that was the main

15   thrust.

16 Q And what about matters that might either tend to

17   incriminate or exculpate David Milgaard; did you

18   look at those things as well?

19 A I -- I -- I believe so, I mean, information that

20   may say he did not do it?

21 Q Yes.

22 A Yeah. I certainly, if it was something that I

23   saw, I think I certainly would have --

24 Q Let --

25 A -- dealt with it, I --

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1   Q   Yeah. Let me rephrase it a bit, but something on

2   the file that maybe looked unusual or something

3   that jumped out at you that maybe didn't fit with

4   Mr. Milgaard's conviction, would that be something

5   that might --

6   A   Oh, absolutely, yes.

7   Q   If we can go to 002369, please, and this is your

8   August 28th, 1990 report to your superiors, and

9   again I don't propose to go through it in detail

10   because I think it, as you've told us, it does

11   cover much of what's in your chronology; is that

12   correct?

13   A   Yes, uh-huh, a summary.

14   Q   Yes. If we can just go to the next page just in

15   paragraph (c):

16   "In our efforts to gain the cooperation

17   of Mr. Fisher, we had no alternative but

18   to agree to the conditions laid out."

19   And that refers to the polygraph, and was that in

20   fact the case?

21   A   Yes.

22   Q   And then the next page, please, paragraph (f), you

23   say:

24   "In summary, Mr. Fisher denied --"

25   And this is talking about his interview or

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1   deposition,

2   "... Mr. Fisher denied having any

3   knowledge of the circumstances

4   surrounding the death of Gail Miller.

5   The investigators are at a disadvantage

6   when interviewing Fisher, as we are not

7   in possession of information regarding

8   his whereabouts during the time of Miss

9   Miller's death. We must rely on his

10   answers as being the truth, and there is

11   no information available to dispute what

12   he recalls."

13   I'm wondering if you can just elaborate on that a

14   bit, and in particular that we must rely on his

15   answers as being the truth.

16   A   Well, I guess the thought process at the time is

17   that, you know, we're looking at what he's telling

18   us and we're saying, I guess what I'm saying there

19   is that he's relying on it as being the truth.

20   Whether or not we believe it, if you can say

21   that's a conflict, but the statement indicates

22   that at the time I'm thinking that we have to rely

23   on him as being truthful because we have no way to

24   challenge his answers.

25   Q   And --

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1 A Even though we certainly suspect him.

2 Q And so when you say you suspect him, then

3   obviously if he had committed the murder, then

4   what he was telling you would not be the truth?

5 A Yes.

6 Q At least on the relevant parts relating to his

7   whereabouts that morning?

8 A Right, right.

9 Q And so I'm just trying to understand here, when

10   you say we must rely on his answers as being the

11   truth, is that from an evidentiary point of view?

12 A I think it's just, you know, you have to rely on

13   it being the truth because you can't dispute them,

14   we have no way to challenge what he is saying, so,

15   you know, it's maybe an odd statement to be in

16   there, but --

17 Q But what about Linda Fisher's statement, would

18   that be a way to counter and say, well, he's not

19   telling the truth?

20 A Yes, yes, I think so, but again, I just can't

21   recall the thought process here --

22 Q Sure.

23 A -- on this particular sentence.

24 Q If we can go to the next page, please, just a

25   comment here, we touched on this yesterday about

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1   David Milgaard and a polygraph, you write:

2   "Several months ago during the initial

3   stages of our involvement in this

4   investigation, Mr. David Asper of

5   Winnipeg, Manitoba, David Milgaard's

6   lawyer, indicated that Mr. Milgaard

7   would take a polygraph examination if

8   requested. It is highly unlikely that

9   Milgaard would be a potential candidate

10   for such a test, however, it is a

11   possibility which should not be

12   overlooked."

13   And then you go on about getting the records from

14   the penitentiary, you attach them to your report,

15   and I think those are the same records that we

16   looked at a bit earlier which you had sent off to

17   Mr. Williams; is that correct?

18   A   I believe that's correct.

19   Q   And again I think you've told us in (k):

20   "The main reason for accessing

21   Milgaard's Penitentiary file, is to

22   determine if he can be considered a

23   suitable candidate for a polygraph

24   examination."

25   A   Yes.

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1   Q   If we can scroll down to the bottom paragraph,

2   (l), you say the most significant development in

3   this investigation since last reporting regards

4   our locating one Kenneth Cadrain and then you go

5   on to recount what he gave in his statement, and

6   at the bottom, the last four lines you say:

7   "Ken Cadrain cannot recall if Milgaard

8   had blood on his clothes or if

9   Milgaard's clothes had been ripped. He

10   does recall seeing Milgaard change pants

11   in the hallway of the Cadrain home."

12   And so again I think that's consistent, sir, with

13   what you recorded in his statement; is that

14   right?

15   A   Yes, I believe so.

16   Q   And if Ken Cadrain had told you that he had seen

17   blood on David Milgaard's clothes when he met with

18   you on July 18th, 1990, is that something you

19   would have included in this report?

20   A   Oh, certainly.

21   Q   Go to the next page -- or sorry, just scroll down

22   a bit, and then I think you -- no, sorry, go back

23   to the top, and then you have this comment:

24   "To give credit to Ken Cadrain's

25   observation of Milgaard going out the

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1   back door, the following question/answer

2   excerpt from Milgaard's statement given

3   to investigators in 1969 is quoted:

4   Q   What did you do with the clothes you got

5   out of?

6   A   I am not sure I think I left them at

7   Shorty's house."

8   And again, can you elaborate on what or how that

9   fit into Mr. Cadrain's statement?

10 A   You know, I just -- I just don't recall there on

11   what the thought process was.

12 Q   Were you trying to compare Ken Cadrain's

13   recollection of the morning versus David

14   Milgaard's statement?

15 A   Yeah, yeah, it would appear that that's what's

16   taking place here.

17 Q   If we can scroll down, you make the comment here:

18   "Ken Cadrain provides detail regarding

19   Albert's past and paints a picture of an

20   individual who was stable until recent

21   years, when he (Albert Cadrain) began to

22   have marital, financial and psychiatric

23   problems. According to Ken Cadrain,

24   Albert is currently undergoing severe

25   stress and is not thinking rationally.

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1   Ken Cadrain's statement attached as

2   Appendix FF."

3   So again would that be something you learned from

4   Ken Cadrain then --

5   A   Yes.

6   Q   -- in your interview?

7   A   That would have been something that I had during

8   our discussion at his home.

9   Q   And then you say in paragraph (o):

10   "A very significant aspect of the

11   Milgaard re-investigation is contained

12   in the statement of Ken Cadrain, who

13   recalls quite vividly the morning in

14   question, and in particular Milgaard's

15   verbal statement that he "screwed a

16   virgin" or "was with a virgin".

17   Milgaard's comments become rather

18   important when you associate them to

19   other facts of the case, and which had

20   not been available as circumstantial

21   evidence during the original trial."

22   And again, can you elaborate on that?

23 A   Well, I think just the, this comment that Ken had

24   made and the stretch that I put to it as far as

25   associating it to Gail Miller and the premenstrual

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1   state that she may have been in, I just thought

2   that that was something that maybe had some merit

3   and it may have, at this point, heightened some

4   suspicion I may have had that David Milgaard could

5   have been involved.

6 Q   And would it be fair to say, Mr. Pearson, that

7   putting aside at this time Ken Cadrain does not

8   recall seeing blood on Milgaard, but the comment

9   about hearing Mr. Milgaard say that he was with a

10   virgin or screwed a virgin, would that corroborate

11   Albert Cadrain's story about seeing blood on David

12   Milgaard?

13 A   I believe it all associated around the issue of

14   blood being seen, not necessarily by Ken because

15   he told me that he didn't recall seeing blood.

16 Q   But I guess the fact that according to Ken there

17   was a discussion between Albert and David about

18   screwing a virgin, etcetera, was that something

19   that in your mind supported Albert Cadrain's

20   version of events?

21 A   I think at the time that must have been the

22   rationale that I applied and -- yeah.

23 Q   And then the next page, down to paragraph (r), it

24   just looks like you are reporting on an interview

25   with the pathologist Dr. Emson and as far as

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1   whether or not the reddish fluid could very well

2   have been blood and about the deceased not being

3   virginal prior to the sexual assault, and I take

4   it that would have related to this theory you were

5   pursuing arising out of Ken Cadrain's statement;

6   is that fair?

7   A   I think so.

8   Q   And again, I think if we look at the next

9   paragraph:

10   "The deceased, at time of death, was in

11   the very early stages of menstruation.

12   This fact, when associated with the

13   statement made by Milgaard shortly after

14   the death of Gail Miller, suggesting

15   that he had "screwed a virgin", could

16   become an important piece of

17   circumstantial evidence. There is a

18   possibility that Milgaard, after having

19   sex with Miller, may have observed blood

20   on his penis, thus believing that he had

21   sex with a virgin, when in fact he had

22   sex with one who was menstruating."

23   Again, would that capture the theory or the

24   thought that you were pursuing arising out of Ken

25   Cadrain's statement?

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1   *A*   I believe so, yes.

2   **Q**   The next page, and here's where we talk about

3   Peggy Miller, it says:

4   "The second area of development in the

5   investigation, which has not yet been

6   checked out, is the suggestion that

7   David Milgaard may have known the

8   deceased prior to her death. Attached

9   please find a statement (Appendix EE),

10   from Peggy Miller, sister of the

11   deceased, which was taken on 15 APR 69,

12   in which she states that David Milgaard

13   was mentioned as being a boyfriend of

14   Gail Miller. During the initial

15   investigation in 1969, Peggy Miller was

16   to obtain letters for the police

17   investigator, which had been received

18   from her sister Gail, in which David

19   Milgaard was mentioned. There was no

20   reference in the Saskatoon City Police

21   file which indicates that this aspect of

22   the investigation was ever followed up.

23   During the Milgaard trial there was no

24   suggestion that the deceased and

25   Milgaard were acquainted. If it is

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1   determined that Milgaard knew the

2   deceased prior to her death, a possible

3   motive, other than robbery, may be

4   developed."

5   And again, does that assist your recollection

6   about where Peggy Miller fit in on the work you

7   were doing at the time?

8 A   Uh-huh, yes. Yes, it does.

9 Q   And again down to paragraph (u):

10   "A second reference suggesting that

11   Milgaard may have known the deceased

12   prior to her death is contained in a

13   statement taken from a girlfriend of

14   Milgaard's at the time, Sharon Ann

15   Williams."

16   And again, we've seen this before, and it talks

17   about a picture that Sharon Williams saw in a

18   dresser at David's home in Langenburg with

19   someone named Gail, and then you say:

20   "At this time it is unknown if the Gail

21   mentioned above is in fact Gail Miller.

22   This aspect of the investigation will

23   continue."

24   So do I take it from this, Mr. Pearson, that you

25   were following up on other issues that came to

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1   your attention that --

2   A   This would have been -- this would have been

3   something that came from the review of the

4   Saskatoon police file.

5   Q   And so you would have read both the Peggy Miller

6   statement and the Sharon Williams' statement you

7   think that prompted this?

8   A   Yes, I believe so.

9   Q   And then again just as far as the work that you

10   were doing for Mr. Williams then, is it fair to

11   say that in addition to investigating Larry Fisher

12   and in addition to following up on matters that

13   Eugene Williams wanted you to pursue, that as well

14   you were, with your police officer's hat, looking

15   at things that in your mind required a further

16   check or an investigation; is that correct?

17   A   I think things that came to me and I thought they

18   were worthy of a further consideration was

19   pursued, sure. I felt free to do that.

20   Q   Yeah. And did it matter to you whether they were

21   items that pointed to the guilt or innocence of

22   David Milgaard?

23   A   No.

24   Q   Did it matter to you if they pointed to the guilt

25   or innocence of Larry Fisher?

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1   *A*   No.

2   **Q**   And so, and I think we've seen in your notes so

3   far that you were investigating Larry Fisher in

4   trying to either eliminate him as a suspect or

5   find evidence that would support the contention

6   that he may have committed the crime?

7   *A*   Yes.

8   **Q**   And similarly, in the matters that you look at

9   with respect to David Milgaard, were you again

10   looking at both possibilities; in other words,

11   evidence that might confirm the conviction and

12   evidence that might exculpate him?

13   *A*   That's true. David Milgaard was, you know, still

14   a suspect in my mind, and so was Larry Fisher.

15   **Q**   As far as further investigation, you indicate, and

16   again the date of this report is August 28th,

17   1990:

18   "Ongoing efforts will be made to pursue

19   suspect Larry Fisher. In the event his

20   physical condition stabilizes, attempts

21   will be made for a second polygraph

22   examination."

23   So I take it at this time you were still keen on

24   getting a polygraph done?

25   *A*   We had very few tools to work with and that was

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1   one of them that was still hopefully available to

2   us.

3   Q   Okay. Then the next page, (b), you say:

4   "Contact will be made with Mrs. Estelle

5   Cadrain, 114 Confederation Drive,

6   Saskatoon, mother of key Crown witness

7   Albert Cadrain, in an effort to

8   establish Albert's mental stability at

9   the time of the original trial, and to

10   obtain a history on Albert. This would

11   either confirm or refute Milgaard's

12   present allegation that Albert Cadrain

13   was an unreliable Crown witness at the

14   original trial."

15   And would this be something that Mr. Williams

16   asked you to pursue or do you know where that

17   originated from?

18 A   I think maybe this is information again that

19   Mrs. Cadrain wanted to talk to me and I, in all

20   likelihood, did have some conversation with

21   Mr. Williams and, you know, we agreed to

22   follow-up, although I don't have a recollection of

23   the call or anything, but I think Mrs. Cadrain

24   came into this sort of on her own.

25 Q   Would it have been prompted by your interview of

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1   Ken Cadrain do you think?

2   A   Very possible.

3   Q   And is it your recollection that she either

4   contacted you or let it be known to you that she

5   wished to talk to you?

6   A   I think it was let -- it came to me some way. I'm

7   not just too sure how I got the information that

8   she wanted to talk, but somebody passed it on. It

9   may have been Ken, Ken Cadrain.

10   Q   And then (c):

11   "Efforts will be made to locate Peggy

12   Miller and determine if she is able to

13   provide information which would confirm

14   the deceased knew Milgaard prior to her

15   death. This could possibly lead to the

16   development of a motive behind the

17   crime."

18   And again I think we touched on that a bit

19   earlier, that you were pursuing that based on

20   your review of the police file; is that correct?

21   A   Yes, yes.

22   Q   Then down to summary, and again this is August

23   28th of 1990, and you say:

24   "To date we have been successful in

25   gaining the cooperation of the suspect

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1   Larry Fisher. There is nothing

2   determined which would suggest that he

3   was involved in the death of Gail

4   Miller. Mr. Fisher has not been

5   eliminated as a suspect, and as

6   mentioned previously, efforts will

7   continue to have a polygraph re-test."

8   I just want to go back to this comment that

9   there's nothing determined which would suggest

10   that he was involved in the death of Gail Miller

11   and then yet you go on to say that he's not

12   eliminated as a suspect. Can you elaborate on

13   what you meant when you said that there's nothing

14   which would suggest that he was involved in the

15   death of Gail Miller?

16   A   Well, we were unable to develop an association

17   between Larry Fisher and the death of Gail Miller,

18   so there was nothing that at that time I viewed as

19   being a link between the two; however, the

20   suspicion of his involvement was certainly

21   obviously still there.

22   Q   What about the previous sexual assaults committed

23   by him and the *modus operandi* that we talked about

24   to the extent you knew it at the time, I think

25   you've told us that you thought he was a good

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1   suspect because of the types of crimes he had

2   committed, and would that -- let's just focus on

3   Larry Fisher's criminal past and the types of

4   crimes he committed. Would that suggest that he

5   was involved in the death of Gail Miller?

6   A   Well, it certainly addressed suspicion in my mind,

7   it was certainly one of the factors that caused

8   suspicion, but to convert that to evidence at that

9   point, I don't think that was there.

10   Q   And secondly, I think you had Linda Fisher's

11   statement at the time that talked about him being

12   not at work on the morning of the murder, the

13   missing knife and his reaction to her accusation,

14   again, would that be something that would suggest

15   that he was involved in the death of Gail Miller?

16   A   It was all part of the suspicion. As I mentioned

17   before, when you talked of the evidence that Linda

18   Fisher, or the information Linda Fisher had and

19   the fact that David Milgaard and Larry Fisher were

20   in the same location on the morning of the murder,

21   and when you take a look at the past criminal

22   activity of Larry Fisher, it certainly addressed

23   the issue of suspicion.

24   Q   And then paragraph (b) in your summary, you talk

25   about:

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Richard Allan Pearson
by Mr. Hodson
Vol 96 - Tuesday, November 22nd, 2005

Page 19444

1   "The fact that Milgaard made a statement

2   that he had "screwed a virgin" or was

3   "with a virgin", within a matter of

4   hours after the death of Gail Miller,

5   and the fact that she was commencing

6   menstruation, is a new circumstance

7   which was not available at the time of

8   the murder trial."

9   And I think we've talked about that and your

10   thoughts, that's just capturing it again; is that

11   right?

12 A   I believe, yes.

13 Q   And:

14   "The fact that Milgaard may have known

15   Miller prior to her death could lead to

16   a theory on the motive for this crime."

17   And then scroll down under investigator's

18   comments, you say:

19   "At the time of this report Larry Fisher

20   has not been eliminated as a suspect,

21   even though he has agreed to answer all

22   questions that we have for him. The

23   investigators are at a disadvantage when

24   dealing with Mr. Fisher, as we have no

25   information on his movements at the time

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1   of Gail Miller's murder. Being unable

2   to challenge Fisher's honesty, a valid

3   polygraph is absolutely essential if he

4   is to be cleared as a suspect."

5   And that would have been your thoughts at the

6   time?

7   A   Yes.

8   Q   And we touched on this a bit earlier, but if he

9   had a valid polygraph conducted and he passed, in

10   the sense that his denial of the murder of Gail

11   Miller was determined by the polygraph operator to

12   be not deceptive, would that be something that

13   might cause you to eliminate him as a suspect?

14 A   It would go -- it would have gone a long ways I

15   believe, having something that could have put some

16   truth to what he was saying, even though we all

17   know that the polygraph is not a fine science, but

18   it certainly is something that would give us

19   something else to weigh.

20 Q   And conversely, if there was a valid test in the

21   sense that the polygraph operator said that Mr.

22   Fisher was a suitable candidate and he failed the

23   test and so that when he denied killing Gail

24   Miller the polygraph operator concluded that that

25   was deceptive, now -- and I appreciate under

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1   Mr. Harold Pick's conditions you would never get

2   that test, but putting that aside, would that

3   test -- tell us how that type of information,

4   where that would lead you in your investigation of

5   Larry Fisher as a suspect?

6   A   Well, it would certainly I think help confirm the

7   suspicion that was in play and even though it's,

8   you know, the polygraph is not admissible in

9   Court, I think it certainly strengthens the

10   suspicion and that may weigh against what was

11   happening on the David Milgaard side.

12   Q   And then the next page you say, and again this is

13   August 28th, 1990:

14   "The Milgaard case continues to have

15   extensive media coverage, the latest a

16   taping in Saskatoon by the American TV

17   program "Current Affair" which has wide

18   USA and Canada coverage. Media interest

19   by radio, television and newspaper, has

20   been constant, and without exception,

21   has had the encouragement of the

22   Milgaard family and their counsel

23   Mr. David Asper."

24   And I'm wondering if you could elaborate on that

25   statement?

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1   A   I think just the general feeling at the time was

2   that the news media, and the experience that I've

3   had during the investigation was that the media

4   use was an important part of getting the public

5   aware of all the issues as they saw them and the

6   publicity was being encouraged and pursued I would

7   suspect, that's my thoughts at the time, by the

8   Milgaard family and Mr. Asper.

9   Q   And did you -- this comment at this time then,

10   were you of the view that the media was, that the

11   media coverage was initiated by the Milgaard

12   family or David Asper?

13   A   Well, I'm saying it certainly had the

14   encouragement of them. Whether it was initiated

15   by them, I don't know where the seed was started

16   and, you know, this was a story that had a lot of

17   history to it and there was a lot of media out

18   there over the years, so I'm not sure I can really

19   go much beyond that.

20   Q   And then I see at the bottom you would have sent

21   this off to, or asked that a copy be sent off to

22   Mr. Williams; is that right?

23   A   Yes.

24   MR. HODSON: Mr. Commissioner, I'm not sure

25   what plans are for, whether we take a 10 minute

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1   break maybe this morning or --

2   COMMISSIONER MacCALLUM: Sure.

3   MR. HODSON: Now might be an appropriate

4   spot for that.

5   COMMISSIONER MacCALLUM: All right.

6   *(Adjourned at 10:53 a.m.)*

7   *(Reconvened at 11:07 a.m.)*

8   BY MR. HODSON:

9   Q   Just go back and call up 002369 which was your

10   August 28th report, and we just finished going

11   through this, this is August 28th, and I just want

12   to go to page 002376 and we just covered that

13   where your comments in two locations in this

14   report you say:

15   "At the time of this report Larry Fisher

16   has not been eliminated as a

17   suspect ..."

18   And I want to go back to 056790 and we're now to

19   September the 6th, 1990 and I just want to read

20   this note and ask you some questions, and so this

21   would be a week after your August 30th report:

22   "While at a psychological profiling

23   seminar being hosted by the Prince

24   Albert City Police, I received a

25   telephone call from Mr. Williams at my

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1   hotel room in P.A. at the Marlborough

2   Inn. Mr. Williams stated he had

3   received my last report and seemed

4   somewhat concerned that I still

5   considered Fisher to be a suspect and

6   was asking why, in view of the denials

7   Fisher made during his interview with

8   us. I explained to Mr. Williams that,

9   in my mind, Fisher remains a suspect as

10   he has not yet provided answers to

11   questions which would properly explain

12   his activities as stated by his ex-wife

13   Linda Fisher. I still believe a

14   properly conducted polygraph examination

15   is essential, as we know very little of

16   Fisher's activities on the date of Miss

17   Miller's murder and a polygraph is only

18   one method to determine the truthfulness

19   of his answers. I explained to Mr.

20   Williams that I am not prepared to take

21   at face value the answers provided by

22   Fisher to date. It was also explained

23   that Fisher's reluctance to cooperate

24   causes me some concern."

25   And I'm wondering if you can elaborate further on

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1   this discussion, Mr. Pearson, and tell us what

2   you remember and what further might have been

3   discussed?

4   A   You know, I really don't have much more

5   recollection than what is documented here. I do

6   remember the incident of being at the Marlborough

7   Hotel and getting a call to return a call to

8   Mr. Williams and the telephone call that we had,

9   but as far as what more I can elaborate from

10   memory based on what I remember, I really don't

11   believe I can. I wouldn't want to start

12   speculating. It was what I've written here, and

13   even when, you know, I put in there that he seemed

14   somewhat concerned and, you know, if you were to

15   ask me, you know, in what terms is that concern

16   expressed, I honestly couldn't relay that on, but

17   it would seem that at the time when I wrote this

18   that that was the view that I had then. He

19   possibly didn't believe that Larry Fisher was a

20   suspect is one possibility I suppose at this point

21   with the information that he had.

22   Q   Let me just pause there and focus on this comment

23   where you say that Mr. Williams seems somewhat

24   concerned that I still considered Fisher to be a

25   suspect. Did you take it from your conversation

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1   with Mr. Williams that he did not believe that Mr.

2   Fisher was a suspect at that time?

3 A   I couldn't -- I don't think I could say that in

4   all honesty, I just don't recall. I'm really

5   relying on what I have here as opposed to what I

6   specifically recall in 1990.

7 Q   And again it appears here that you explained to

8   Mr. Williams why you still thought he was a

9   suspect and why you had not eliminated him?

10 A   Yes.

11 Q   And I take it that the fact that Fisher answered

12   your questions and denied involvement was not

13   enough in your mind to eliminate him as a suspect?

14 A   Yes.

15 Q   Did Mr. Williams tell you to stop pursuing your

16   investigation of Mr. Fisher as a suspect during

17   this call or at this time?

18 A   No, he did not.

19 Q   And again are you able to tell us whether he

20   accepted your explanation or disputed your

21   explanation or position that Larry Fisher ought to

22   remain a suspect?

23 A   My relationship with Mr. Williams was always

24   cordial, that conversations were always up front,

25   you know. I don't think there was anything in

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1   here that we didn't leave the conversation in a

2   negative way, you know, I think he had called me

3   to ask me about I guess the last report that he

4   had seen and I expressed that he seemed somewhat

5   concerned that I still considered Fisher to be a

6   suspect and he was asking me why, and I explained

7   to him why I still suspected Larry Fisher.

8   Q   And do you recall whether he expressed any views

9   to you as to why, or whether Larry Fisher should

10   be eliminated as a suspect?

11   A   No, I don't think he ever did express views to the

12   contrary.

13   Q   If we can go to the next page, please, 056791. So

14   after this call with Mr. Williams, did you

15   continue as you had before in investigating Larry

16   Fisher as a suspect?

17   A   I, I believe so, you know. I -- he was still a

18   suspect, but I think that under the 690, you know,

19   there was a switch that, you know, eventually went

20   back into the Federal Justice side. The 690

21   process was a process that was separate from me.

22   Q   Just go on, we're now at September 10th, 1990, and

23   you are making efforts to find Peggy Miller, and

24   in paragraph 215 it says:

25   "Later this same date I contacted Peggy

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1   Miller at her home and explained to her

2   and read to her the statement and she

3   denies telling police that Gail knew

4   Milgaard prior to her death. Peggy does

5   not recall giving this particular

6   statement to police, and seems quite

7   sincere and certain she did not tell

8   police about the name David Milgaard.

9   Peggy was asked to provide me samples of

10   her signature to be compared to her

11   statement signatures. If they are the

12   same, it is possible Peggy's memory,

13   after some twenty years, has failed her.

14   Peggy also wished to know the name of

15   the police officer at the bottom of the

16   statement, however I could not make it

17   out for her. Peggy did recall two City

18   Police detectives coming to Delisle to

19   interview her but she denies ever giving

20   a statement to police in Saskatoon."

21   So at this time, I think we had earlier looked at

22   a report where you indicated you were going to

23   pursue Peggy Miller in the event that -- to

24   determine whether Gail Miller knew David Milgaard

25   and this might be a motive; do you recall that?

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1   *A*   Yes.

2   **Q**   And so, in light of what Peggy Miller now told

3   you, what if anything did that do to your theory

4   or thought process that David may have known Gail

5   Miller prior to the murder?

6   *A*   You know, I -- I think as this unfolded I didn't

7   pursue that based on the fact that, you know, I

8   was in a position to start pressing one of the

9   family members over a tragedy in their own family

10   over something that may very well -- she had,

11   maybe had legitimately forgotten about, and I

12   think at the time I was assessing, like, what

13   value would this be at this point to try and

14   challenge the sister of the deceased to say that,

15   you know, "you said something here and it may not

16   have been accurate". I just felt sensitivity to

17   Peggy Miller and I didn't, as I recall, press her

18   on this. But later on in the investigation, when

19   there was talk of coverup in the city police and

20   all this was out there, I -- it did cross my mind

21   and say "well could this have been part of

22   something that maybe was a coverup activity", and

23   that was just maybe curiosity on my part as

24   opposed to a serious consideration, but that's as

25   close as I got. And I don't think I ever

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1   exhausted this part of Peggy Miller's story, based

2   on the fact that she was part of the family, and I

3   just thought what is there going to be

4   accomplished -- is going to be accomplished by

5   trying to put her on the spot by saying "you said

6   something and it's not right" or "you don't

7   remember" and "what's happening here".

8   Q   Can you explain, Mr. Pearson, how this might have

9   fit into the coverup theory or --

10   A   Well, I really don't know, it's just that the

11   thought crossed my mind, when the coverup was

12   coming in, saying that, you know, she may have

13   known Milgaard, and it's just something that maybe

14   would have had some value to something and, you

15   know, was there a statement created, you know, was

16   there a -- I don't know. It was just a thought

17   that came through my mind, but I haven't given it

18   much thought since that time, so --

19   Q   And --

20   A   -- that I'm at a bit of a loss, here, to give you

21   a --

22   Q   Sure. And just so that I'm clear, you had raised

23   this fact that "later on when talk of a coverup by

24   the police"; would you be referring to allegations

25   by David Milgaard that the police, Saskatoon City

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1   Police, were involved in some coverup activity or

2   something improper?

3   A   Yes, yes, yes.

4   Q   And the thought crossed your mind, are you telling

5   us, that this statement may be -- that there might

6   be something nefarious about this statement?

7   A   Well only the fact that she was pretty adamant

8   that she hadn't said this, and I had to make a

9   judgement call, is it because she didn't say it

10   and it was a document that really she had nothing

11   to do with, or was it the fact that her memory had

12   failed her over the years, and I just felt, you

13   know, I had to weigh the pros and cons of pressing

14   her on the issue, to gain what.

15   Q   And so I take it at this time I think what you are

16   telling us -- please correct me if I'm wrong --

17   that, after your discussion with her, that you did

18   not pursue this line of investigation any further?

19   A   I don't believe I did.

20   Q   And if we can go down, again the same dates:

21   "Mr. Pick called, advising that Fisher

22   had given an interview to Julian Findlay

23   of the program "*Fifth Estate*" and that

24   Fisher had answered questions consistent

25   with what was provided in his statement

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1   to Williams and myself. At this time I

2   questioned Pick further if he would

3   still encourage his client to provide a

4   second polygraph examination when

5   conditions were more appropriate; i.e.,

6   Fisher's medical problems."

7   So I take it, at this time, that you were still

8   pursuing Mr. Fisher in your investigation?

9   A   I was looking at the possibility of going at him

10   again through the polygraph, yes.

11 Q   And if we can go down to 219, this is September

12   12th, 1990:

13   "Attended at ...",

14   the home of:

15   "... Len and Estelle Cadrain, parents of

16   Albert Cadrain. These are very nice

17   people, whose honesty and sincerity in

18   my view are above question. The only

19   information obtained which is of

20   interest is the fact that apparently

21   Albert Cadrain, shortly after the

22   arrival of Milgaard at the Cadrain

23   house, went with Nicole John to pick up

24   money from the St. Mary's Credit Union,

25   and when Cadrain and Nicole got in the

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1   vicinity of the murder scene, Nicole,

2   for some unknown reason, began to

3   scream. The reasons remain unknown, if

4   in fact this did occur.

5   220. Mrs. Cadrain also indicated that she

6   found a brown pair of corduroy pants in

7   the hallway of her house on 31 Jan 69.

8   She washed them and upon removing them

9   from the drier, noticed a hole in the

10   pocket and leg. She asked her husband

11   what it was from and he told her it was

12   an acid burn. Later at the preliminary

13   hearing, Estelle indicated she heard

14   testimony from Ronald Wilson stating he

15   changed pants. Mrs. Cadrain then

16   delivered the pants to the Court House

17   and gave them to a person she believes

18   to be Detective Mackie."

19   And so, again, does that fairly summarize your

20   dealings with Leonard and Estelle Cadrain on

21   September 12th, 1990?

22   A   Yeah, I believe it does, yes.

23   Q   And if we can just go back, your initial comment,

24   you said that:

25   "These are very nice people, whose

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1   honesty and sincerity in my view are

2   above question."

3   What caused you to reach that conclusion?

4 A   Oh, it's just an assessment you make, maybe it's

5   a, just a feeling you get from people when you sit

6   down and have a conversation and a cup of coffee

7   with them at their kitchen table and talk to them,

8   and you kind of size them up and get a feeling of

9   what kind of people they are and you make a

10   judgement call.

11 Q   And then I believe you took a statement from

12   Estelle Cadrain. If I could call up 002619, and I

13   think this is a typed copy of the statement you

14   took from Mrs. Cadrain on September 12th, 1990?

15 A   Yes.

16 Q   And I won't go through, that paragraph talks about

17   the pants, but the second-last paragraph she

18   states:

19   "After lunch on Jan/31, I went to work

20   and did not see Albert for approx. one

21   month. That night I heard the news

22   about a girl being murdered near our

23   place. I was concerned about the safety

24   of my children and kept them close to

25   home. At the time I wondered if the

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1   three people who came to my house were

2   involved, but had nothing to prove

3   anything, so didn't tell anyone."

4   And, again, did that piece of information, Mr.

5   Pearson, cause you -- or what, what value did you

6   place on that statement, if any?

7   A   I don't think I really placed anything on that.

8   Q   And then she goes on to describe Albert coming

9   back from Regina, and about hearing about the

10   murder nearby, that he was shocked and couldn't

11   believe it, and then she goes on to recount --

12   maybe go to the next page -- Albert's trip to the

13   police station. And do you recall her going

14   through that where -- the discussions that

15   Mrs. Cadrain had with Albert and Dennis the

16   morning before they went in to the police station?

17 A   Yeah, okay.

18 Q   And, again, what would be the purpose of getting

19   this information?

20 A   Well it was just information that she possessed,

21   so I was gathering, gathering information that she

22   was wanting to talk about.

23 Q   And I think you told us a bit earlier that -- did

24   she initiate this contact with you?

25 A   I believe she did.

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1 **Q**   And then --

2 *A*   I'm not positive on that.

3 **Q**   -- she says:

4   "Albert later told me the police did not

5   believe him at first and was only trying

6   to get the reward. Albert told the

7   police what he knew. In my opinion, the

8   Saskatoon City Police treated Albert

9   well."

10   And at this time, by the time of this statement,

11   Mr. Pearson, we had earlier referred to I think

12   some newscasts where Albert Cadrain had been

13   complaining about mistreatment by the police; do

14   you recall -- I think there was a discussion that

15   you and Mr. Williams had about that television

16   show, do you remember that?

17 *A*   Okay.

18 **Q**   And I'm just wondering; were you talking to

19   Mrs. Cadrain to check out Albert's version of

20   events?

21 *A*   I just believe this is part of our overall

22   discussion about everything that went on and, you

23   know, obviously it would have come up that, you

24   know, that -- the relationship with the city

25   police and how the treatment was, and so that was

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1   elaborated on a bit.

2   Q   And if we can go to the next page, I take it you

3   would have questioned her about Larry Fisher, it

4   looks here? If we can just --

5   A   Okay.

6   Q   It says:

7   "I don't know anything about Larry

8   Fisher, but he and Linda didn't get

9   along well as they had some fights.

10   Linda stayed in the suite alot and Larry

11   worked construction. Larry wore a hard

12   hat and work boots alot.

13   There is no doubt in my mind

14   Albert was a sane person during the

15   trial and I am upset with the news media

16   trying to make him now say what they

17   wanted to hear. At the present time

18   Albert may be having personal problems

19   that were not present twenty years ago."

20   And I'm just wondering, again, would this be

21   information, then, that you would pass on to Mr.

22   Williams?

23   A   Yes, I believe this statement went to Mr.

24   Williams, yes.

25   Q   If we can go back to 056792. And it's talking

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1   about, paragraph 221:

2   "It is my intention to contact ... the

3   Parole Board ... and attempt to access

4   Fisher's parole files to determine if

5   there are reports of previous crimes he

6   was involved in, to determine

7   similarities of the M.O., in particular

8   if a knife was used."

9   And, again, would this be because you couldn't

10   get the files from the city police?

11   A   Yes, I -- in part I believe that's probably what

12   -- and it's another source of information.

13   Q   And then September 19th, 1990:

14   "Mr. Williams phoned, asking if I had

15   any further information for him as was

16   having a meeting with his Deputy. At

17   this time I discussed the possibility of

18   using hypnosis on Nicole John who

19   apparently was having problems recalling

20   events, or does not wish to recall the

21   events. This suggestion will be

22   considered by Mr. Williams in the event

23   the Justice Department wish to have the

24   subject hypnotized to further the

25   investigation."

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1   And, again, do you recall how this subject matter

2   came up, Mr. Pearson, the hypnosis of Nichol

3   John?

4   A   I, I really don't know how this came up. It's

5   just that, you know, Nichol John was, was such a

6   problem witness from day one on this whole

7   Milgaard matter, and I just think it was just

8   another way of trying to make some sense of all

9   the things that had been said. It was just

10   another tool, I suppose, what you could really get

11   from it of value was really maybe not up to me to

12   decide, but it was a discussion we had to try and

13   sense what you do with Nichol John.

14 Q   And at this time, sir, what would your knowledge

15   have been or what information would you have had

16   about Nichol John's recollections of events in

17   September of 1990?

18 A   Well I, I believe at that time I knew that she

19   was, you know, had been a hostile witness and that

20   she hadn't -- she had said things and didn't say

21   things, and that she was just an overall problem,

22   problem witness. I don't believe I ever went down

23   and did an analysis of all the information and

24   statements that she did provide, but it was just a

25   general information that she was, she was a

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1   problem.

2   Q   Would you have been aware, at this time, that she

3   had given a statement to the police under oath

4   stating that she had witnessed the murder and saw

5   David Milgaard stab a girl?

6   A   I have no recollection of that, but I could have,

7   I could have been in possession of --

8   Q   Now that would have been on the police file?

9   A   Yes. I'm assuming I would have known that.

10   Q   And would you have also known at the time that, at

11   trial, she did not repeat certain parts of the

12   sworn statement and, in particular, the --

13   A   Yes.

14   Q   -- parts where she witnessed the murder?

15   A   Yes, I believe that I would have known that.

16   Q   And, just going back to the question of linking

17   someone to a murder, something to link a suspect

18   to a murder, and putting aside the fact that she

19   did not repeat the evidence at trial, the fact

20   that someone witnessed someone grabbing a girl,

21   would that be a link between a suspect and the

22   murder?

23   A   If, if you say that you saw something?

24   Q   Yes?

25   A   Oh, absolutely.

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1   Q   And so, in looking at Fisher as a suspect then, if

2   Nichol John saw David Milgaard kill Gail Miller,

3   grab and stab her, then obviously that would have

4   an effect on what you are investigating with Larry

5   Fisher, correct, and vice versa?

6   A   Yes.

7   Q   And so if Larry Fisher committed the murder, then

8   Nichol John didn't see David grab Gail Miller and

9   stab her, is that fair?

10   A   That's fair.

11   Q   And so I'm trying to understand, Mr. Pearson, how

12   you -- to what extent, in your investigation of

13   Larry Fisher, were you trying to look at the other

14   side and saying "okay, well let's look at what,

15   what there is against David Milgaard"?

16   A   Okay. Well there were certainly discussions I had

17   with Mr. Williams on both sides, it wasn't just to

18   do with Mr. Fisher, you know. There were,

19   obviously, even in this case we're talking about

20   Nichol John on the phone and, you know, he was

21   pursuing this, and I made a suggestion that, you

22   know, "is hypnosis something that could possibly

23   assist you".

24   Q   If we can go to the next page, please. September

25   26th, another call:

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1   "... with Mr. Williams, who indicated

2   that he would like to have Linda Fisher

3   contacted to ensure that she provides

4   permission to reveal the contents of her

5   statement to the various interested

6   parties. We also discussed the fact

7   that Fisher was to be moved to Mountain

8   Prison. This causes me some concern as

9   it will mean access to him will be more

10   difficult. It is obvious others in the

11   system must believe there is a safety

12   concern for this inmate, however, my

13   contact with him will now be extremely

14   difficult unfortunately, as this man is

15   still to be considered a suspect. There

16   is little doubt at this time that any

17   access to Fisher will be through his

18   lawyer."

19   And that would be an accurate statement of the

20   situation at the time?

21   A   I believe it is, yes.

22   Q   And then the next paragraph, October 4th, 1990:

23   "I drove police car D-8 from the

24   Travaleer Motel east on 22nd, turned

25   south on Avenue N to 20th St. The

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1   distance is 2.7 kms, time taken in

2   average traffic at normal driving

3   speeds, was four minutes. This was

4   completed at the request of Mr.

5   Williams, and the results passed to him

6   this date."

7   So I take it Mr. Williams asked you to do the

8   road test; is that correct?

9 A   Yes.

10 Q   And that would be, I take it, to test the evidence

11   that was at Mr. Milgaard's trial as far as the

12   timing of various events; is that fair?

13 A   I'm assuming he was doing some timeline analysis,

14   yes.

15 Q   And then 227:

16   "Had a telephone conversation with

17   Mr. Pick and asked him if he still

18   agrees to have a second polygraph

19   examination conducted on his client.

20   Mr. Pick advises this option is still

21   open to us."

22   And then the next paragraph, I think the next

23   day:

24   "Had a telephone call with Mr. Williams,

25   we discussed a follow-up polygraph for

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1   Fisher and the fact he was having

2   trouble inside the institution and is to

3   be moved, meaning we will have limited

4   access once he leaves Prince Albert."

5   So is it fair to say at this time you are still

6   pursuing the polygraph but it is not, Mr. Fisher

7   is not agreeing to do it, but his lawyer is

8   saying it's still a possibility?

9   A   It was, it was still, still an option that was

10   available to us according to Mr. Pick.

11   Q   Did Mr. Williams, at this time or at any other

12   time, say "don't go ahead with that" or "stop your

13   efforts to get a polygraph"?

14   A   Umm, there was discussion about pursuing the

15   polygraph, and I was advised by Mr. Williams that

16   there was no purpose in pursuing it.

17   Q   And when did that happen?

18   A   I just don't recall. There was a -- if I could

19   refer to some notes of --

20   Q   Yeah. We'll actually, maybe I'll make a note

21   here, --

22   A   Okay.

23   Q   -- and I think we'll see it when we go through the

24   notes, --

25   A   Okay.

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1 Q   -- but if not I'll come back to that. But do you

2   have a recollection, at some point, of Mr.

3   Williams saying not to proceed with the polygraph?

4 A   We had, yes, we had some discussions on the merits

5   of moving forward with the polygraph.

6 Q   And there are some notes that I'll get to in the

7   chronology that I think will assist you.

8 A   Okay.

9 Q   At this time, though, I take it you were still,

10   still pursuing that angle?

11 A   It was, it was an angle, yes.

12 Q   If we can then go to 011907, and this is your

13   October 18th report, scroll down to the bottom,

14   please. And, again, just confirming that:

15   "... Mr. ... Pick, has confirmed that if

16   conditions are right, he will permit his

17   client to be tested on the polygraph a

18   second time."

19   I think that's consistent with what you have told

20   us?

21 A   Yes, I believe so.

22 Q   And then the next page, scroll down, and you talk

23   about the information you received from

24   Mrs. Cadrain about Albert, telling her of Nichol

25   John's reaction the morning of the murder walking

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1   down 20th Street, and the fact that Nichol began

2   to scream for no reason. And you write:

3   "This reaction is significant as it

4   could mean John, at the time, recalled

5   witnessing the murder as she recalled in

6   her statement to police, however, most

7   of which she later forgot because of

8   trauma. I will leave it with the

9   Justice Department Officials to

10   determine the importance of this point

11   when coming to a decision on the 690

12   *Criminal Code* application."

13   And you attach Mrs. Cadrain's statement. And so

14   is that a possibility or a thought that you had

15   at the time that you were passing on to your

16   superiors and through to Mr. Williams?

17   A Yes, it appears to be.

18   Q Next page, and your comments here about Peggy

19   Miller, you say in her statement:

20   "Peggy is quite adamant that she never

21   provided the information that I have

22   referred to. This seems rather odd,

23   however, time may have faded the memory

24   of Peggy or she may in fact be afraid to

25   confirm this knowledge for fear of

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1   becoming involved in a highly publicized

2   criminal case."

3   And I'm wondering; at the time, Mr. Pearson, did

4   you ever consider whether perhaps Peggy Miller

5   had been mistaken when -- if she gave that

6   information in her statement to the police, I

7   mean it's written in the statement, did you ever

8   consider that she may have been mistaken in

9   putting the name in there?

10   A   Of David Milgaard?

11   Q   Yes?

12   A   Yes, I'm sure I considered that, but at the end of

13   the day I was being very sensitive to how I was

14   going to deal with the Miller family over these

15   issues if it didn't really accomplish anything in

16   the big picture --

17   Q   Yeah.

18   A   -- and I just think I, I struggled with -- or not

19   struggled -- but I made a decision that I didn't

20   pursue this.

21   Q   And again on the flip side, and I think you talked

22   about this a bit earlier, I guess if she didn't

23   give the name to the police and it ended up in her

24   statement one other possibility would be that the

25   police put it in her statement?

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1   *A*   Yes.

2   **Q**   And, again, did you consider that as a

3   possibility?

4   *A*   Well the only time that flashed by me was when

5   they were talking of coverup, and I was saying

6   "well what is at odds here with what I have seen",

7   and then the fact that Peggy Miller says she never

8   ever said that and yet it was in a -- in her

9   statement --

10   **Q**   Yeah?

11   *A*   -- and -- but, again, I was giving more weight to

12   the fact that, over time, she probably forgot some

13   of the things. This was 20 years later.

14   **Q**   And if we can just scroll down to the bottom:

15   "Summary",

16   "There is no new information that has

17   come to light in my enquiries which

18   would shed any more light into this

19   murder than what has already been

20   reported."

21   And, again, this report is dated October 18th,

22   1990. Did you become aware, at some point, that

23   Mr. Williams was concluding his review of matters

24   with a view to preparing a formal response to the

25   Milgaard application?

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1   A   I have no recollection -- I have no recollection

2   of that at all.

3   Q   If we can call up 067315, please, and this is

4   December 17th, 1990. This says "Further" -- just

5   referring to a fax message and enclosing some

6   *StarPhoenix* articles shortly after the death of

7   Gail Miller, and we've looked at those on a number

8   of occasions, and an article from the *StarPhoenix*,

9   and then you say:

10   "If I can be of further assistance,

11   please call me ...".

12   And if we can go to 056794. Actually, just go

13   back to the previous page. So here we have

14   October 10th, 1990, then your report of October 8

15   -- if we can go back to the full page, please --

16   your report of October 18th, and then the next

17   entry November 29th, 1990. And this simply

18   relates to Chief Penkala who got a call from Jack

19   Miller, Peggy's sister, wondering why police were

20   calling her. And then to the next page, we have

21   a note of December 13th, 1990 about body

22   temperature with Coroner Emson. And then I think

23   item number 231, Mr. Pearson, and you and I went

24   through this previously in going through your

25   notebooks, and it appears that this entry is

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1   incorrectly dated in your chronology. It talks

2   about -- it's post-decision by the Justice

3   Minister where it talks about "recently ruled

4   against them", and I think from your notebooks

5   you identify that May the 2nd, 1991 is this

6   entry; is that --

7   A   Yes, that could be.

8   Q   And, again, I can perhaps, when we reconvene this

9   afternoon, give the doc. ID for that page number.

10   But in going through your notebooks it looks as

11   though some entries were, were not recorded on

12   this chronology, or this one was taken out of

13   sequence; is that correct?

14   A   Yes, there was, there was several -- or a couple

15   entries at this point that didn't fit, and it was

16   pointed out to me, and I have been trying to

17   determine just how this may have occurred. And

18   one, I had thought possibly the dates had been

19   wrong, there was a lot of paper being moved around

20   and I had a couple sets of notebooks that were in

21   play. The other possibility, if you go down to

22   even the next paragraph, and this is just before

23   Mr. Williams called about the second application,

24   he --

25   Q   Yeah, and I'll go through this entry with you, --

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1   *A*   Yeah.

2   **Q**   -- but I think for this point -- and maybe I'll

3   come back, but I think this comment with Carl Karp

4   in your notebooks, or it's noted as May the 2nd,

5   1991, and perhaps I'll just call that up. If we

6   can call up 058343, and here's the entry on the

7   right-hand side "91/5/2", which would be May the

8   2nd, '91, "Karp", and I don't think we need to go

9   through it, it's consistent with the note that we

10   had on that last page.

11   *A*   Yes.

12   **Q**   And so does that assist you in telling us when you

13   had the discussion with Carl Karp?

14   *A*   Well, the date there is 91 May 02, would appear

15   that's when that took place.

16   **Q**   If we could maybe go back to 056794. And if we

17   can go back, this is listed as December 14th,

18   1990, and we know that the Minister of Justice

19   replied at the end of February, 1991, and your

20   chronology states:

21   "To date there has been continuous

22   activity beyond my level so far as the

23   Application to Federal Justice is

24   concerned. Much of what is transpiring

25   I have not been privy to, however news

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1   media is actively pursuing this story on

2   several fronts. At this point there is

3   nothing that is new which would assist

4   in my efforts to gather evidence

5   regarding Fisher. I am still interested

6   in Fisher and his activities at the time

7   of Gail Miller's death. We are at a

8   distinct disadvantage when dealing with

9   this man as we have no information on

10   his movements at the time of the murder.

11   While it may be coincidence that

12   Milgaard and Fisher were both in close

13   proximity of the murder scene, I am not

14   prepared to eliminate Fisher as a

15   suspect based solely on what he is

16   telling us today. Attempts will

17   continue in my efforts to secure police

18   interrogation and a polygraph

19   examination. Ongoing efforts are also

20   attempting to find some way to determine

21   if in fact Fisher was at work during the

22   morning of the murder, which may give

23   credibility to the two sides of this

24   issue."

25   Next page.

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1   COMMISSIONER MacCALLUM: Mr. Hodson, when

2   did you say the Minister had replied?

3   MR. HODSON: February 27th, '91.

4   COMMISSIONER MacCALLUM: Okay.

5   BY MR. HODSON:

6   Q   And then paragraph 233:

7   "The upside of the public pressure on

8   Fisher is that he may wish to fully

9   cooperate in order to eliminate himself

10   as a suspect. I will be monitoring the

11   various opportunities to interview

12   Fisher and hopefully get him at a time

13   when he is most motivated or vulnerable,

14   however, to date this has been difficult

15   as he is using the protection of his

16   lawyer to shield himself from direct

17   contact with authorities."

18   Let me pause there. I take it, from that, that

19   you saw that there was an upside to the media

20   attention on Larry Fisher?

21   A   It would appear that way, yes.

22   Q   And that that might cause him to want to cooperate

23   so that he could eliminate himself as a suspect?

24   A   Well, if he at all believed himself to be

25   innocent, you would think he would be motivated at

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1   some point.

2   Q   If he were guilty would he have the same

3   motivation?

4   A   I wouldn't think so.

5   Q   Yeah. And then paragraph 234:

6   "I discussed this case further with Mr.

7   Williams. We discussed what points we

8   can further pursue to clear the various

9   questions raised. The instability of

10   Nicole John throughout this entire

11   police investigation and subsequent

12   Court appearance creates the question of

13   credibility. We discussed the potential

14   of hypnosis, however, after 20 years, it

15   is highly unlikely such a move will

16   bring her subconscious to the fore

17   concerning her activities at the time.

18   This aspect will require the opinion of

19   more knowledgeable people than I."

20   And then scroll down:

21   "Based on Peggy Miller's statement, I

22   ran the scenario past Williams of the

23   fact Milgaard may have known the

24   deceased and picked her up prior to her

25   murder, and that John and Wilson may

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1   have been a party to this offence and

2   thus conspired to set up Milgaard in

3   some way. While this is for discussion

4   purposes only, Williams responded by

5   stating he did not believe the evidence

6   presented supports such a theory and it

7   has never been established that Milgaard

8   knew the victim, which at this time, is

9   true."

10   So can you tell us what -- were these notes of a

11   discussion, or were they summary notes, or can

12   you tell us how these came about?

13 A   Well, you know, the date doesn't jibe and, like I

14   say, either the date is wrong or this was material

15   that was put into a file and resurrected and put

16   into my notes. It might have been archived during

17   the time this -- this file was in a time of

18   inactivity during this period, there wasn't a

19   whole lot of activity. This may have been

20   something that was put onto a file, like, a note

21   to file, which is not uncommon, but -- and the

22   Milgaard file was made up of about 20 subfiles, 15

23   to 20 subfiles, and that's about the only

24   explanation I can provide you because I just have

25   no recollection of how this got there.

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1   Q   If we can just go back to the previous page, this

2   chronology suggests these notes that I just read

3   you are December 14th, 1990?

4   A   Uh-huh.

5   Q   And do you think that that's the wrong date then

6   of these notes?

7   A   Well, I don't know, that's one explanation. The

8   other explanation is that it's the right date and

9   that this material was put into a file and that it

10   was actually recovered and entered into my notes

11   at the time that I had a discussion with Mr.

12   Williams. That's about the only -- and this is

13   not from memory, this is only trying to explain

14   how that got there because --

15   Q   Sorry, what is in the notes and what I've read to

16   you, is it fair to say that they would have

17   represented your thoughts at the time you recorded

18   them, whenever that might be?

19   A   I believe so, yes.

20   Q   And so that it might have been the end of 1990 or

21   it might have been at some earlier time or perhaps

22   even a later time?

23   A   I really can't say. I'm just trying to go by what

24   is written and what the date says. I think it

25   accurately reflects my views there and I don't

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1   know what I can add to that. It doesn't fit

2   obviously.

3   Q   And then if we can go to 008400, and I think this

4   is a note November 29th, 1990, and nothing new to

5   report, please extend DD, which I assume is diary

6   date, to January 15, '91?

7   A   Yes.

8   Q   And from that can we conclude that there would

9   have been little activity during this time then?

10   A   Yes, there was -- it would appear there was no

11   activity.

12   Q   And then again 008401, and is this a similar

13   extension of the diary date? I'm not sure if

14   there's a date on there.

15   A   Yes, it --

16   Q   It actually extends --

17   A   It appears to be the 15th of March diary date

18   extension, yes.

19   Q   And then 008402, I think we have another extension

20   to April 12th; is that right?

21   A   Yes. This is the officer commanding upstairs

22   asking me for a diary date, or an update on the

23   file, that there was inactivity in the file during

24   this period of time.

25   Q   Then if we can go to 008403, please, and this is

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1   your April 22nd, 1991 report. Now, we know on

2   February 27th, 1991 Minister Kim Campbell had

3   replied to David Milgaard's application under

4   Section 690, and I'll be going to that letter in a

5   moment, and in effect dismissed the application,

6   or indicated that no steps would be taken by the

7   Justice Minister, so this would be your report a

8   couple of months later and it talks about on

9   January 17th, 1990 Larry Fisher was transferred

10   and then you say:

11   "The only outstanding matter so far as

12   Fisher and this investigation is

13   concerned, is his taking a second

14   polygraph examination. This aspect of

15   the investigation has not been pursued

16   in recent months because of Fisher's

17   medical condition and subsequent

18   transfer out of this area. To date

19   Fisher has denied any involvement in the

20   Miller homicide. We are not hopeful

21   Fisher will ever provide a polygraph

22   examination to a police polygraphist,

23   however, he may consider providing such

24   a test to a private polygraph operator.

25   The worth and value of this exercise is

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1   questionable under the present

2   circumstances."

3   Then again if you can scroll down, you talk about

4   attempts to contact Peggy Miller. Next page.

5   And it appears that at this time a follow-up with

6   Peggy Miller, she has not seen fit to meet with

7   you, claiming the new publicity surrounding this

8   crime is bothering her severely. And then under

9   investigator's comments you say:

10   "During Feb 91 Justice Minister Kim

11   Campbell announced her Ministry was not

12   prepared to intervene in the murder

13   conviction of David Milgaard.

14   Milgaard's lawyer Mr. David Asper, is

15   now suggesting he will be pursuing this

16   case further to the Federal Court of

17   Canada, as well as the Saskatchewan

18   Court of Appeal. At the time of writing

19   it remains unclear the exact nature of

20   his appeal challenge. In summary, the

21   investigation being conducted by Mr.

22   Williams of the Federal Justice

23   Department under Section 690 of the

24   Criminal Code, is in its final stages,

25   barring further evidence that may come

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1   forward."

2   And if we could go to 008405, this is an April

3   26th letter from Mr. Egan who received your

4   earlier report and it looks like he sent this,

5   your April 22nd report on to Mr. Williams; is

6   that fair? Is that correct?

7 A Yes.

8 Q And then 008406, this is Mr. Williams' letter to

9   Mr. Egan acknowledging your report, and then if we

10   can go to 008407, and this is Mr. Williams' letter

11   to you of May 3rd, 1991, it says:

12   "Further to our most recent

13   conversations, please find enclosed the

14   report from Centurion Ministries and the

15   Minister's letter to Mr. Hersh Wolch."

16   And with that is the February 27th, 1991 report,

17   or the February 27th, 1991 letter from the

18   Justice Minister, and are you able to tell us,

19   Mr. Pearson, from December, 1990 up until the

20   time the Minister of Justice sent out the formal

21   letter, do you recall whether you were consulted

22   by Mr. Williams or had discussions with him?

23 A I may have. I just don't recall.

24 Q There doesn't appear to be anything in your

25   chronology or your notes detailing discussions

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1   with him and I read to you your April, 1991 report

2   that we just went through and there doesn't appear

3   to be anything in there that suggests contact.

4   A   Yeah. I just don't recall. I --

5   Q   If --

6   A   I could have, but I just don't recall.

7   Q   If you would have had discussions with Mr.

8   Williams, do you think you would have recorded it

9   in either your notebooks or your office chronology

10   file?

11   A   I would think so, but keep in mind, you know,

12   there was a lot of contacts that went on during

13   these investigations that don't end up in your

14   notes, the notes aren't a transcript of your life

15   on these investigations, but I would try and

16   document, you know, certainly what I thought was

17   appropriate and what I could, but I'm sure there

18   were conversations that I had with Mr. Williams

19   that are not in the notebooks, but for the most

20   part they are.

21   Q   Do you remember how you found out that the

22   Minister of Justice had rejected the application

23   of Mr. Milgaard under Section 690?

24   A   I don't recall how I heard that.

25   Q   Do you recall when you heard that?

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1   A   No, I don't. I would think, you know, it would be

2   all around the same time that it became a public

3   issue, but I just don't remember.

4   Q   And are you able to tell us whether you learned

5   through publicity, media, as to what happened, or

6   whether Mr. Williams or someone else informed you?

7   A   I just don't recall.

8   Q   Go back to the full page of this letter, this is

9   May 3rd, 1991 where Mr. Williams is sending you a

10   copy of the minister's letter to Hersh Wolch which

11   is the February 27th letter. Are you able to tell

12   us whether this would be the first occasion when

13   you received the letter?

14   A   I don't know. I would think so, but I'm just

15   going by what's on the screen here.

16   MR. HODSON: Mr. Commissioner, my next -- I

17   want to get into the minister's letter, but I

18   won't finish it before the lunch break. Maybe we

19   can adjourn now and we'll start at 1:30 with

20   that.

21   COMMISSIONER MacCALLUM: Yes, thank you.

22   *(Adjourned at 11:55 a.m.)*

23   *(Reconvened at 1:32 p.m.)*

24   BY MR. HODSON:

25   Q   Mr. Pearson, before the break we were talking

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1   about the time frame December, 1990 through until

2   May, 1991 and in particular what contact you may

3   have had with Mr. Williams around the time before

4   and after Kim Campbell's letter of February 27th,

5   1991 and I just want to go through your notebooks,

6   and I appreciate your evidence, sir, I think it

7   was that you may have had discussions with

8   Mr. Williams and that not everything went into

9   your notebook or your chronology; is that correct?

10 A I think so, yes.

11 Q And if we could go to 058342, which is part of the

12   notebooks, part of 058291, and this is an entry --

13   no, 058342 -- and this is an entry, the previous

14   entry here relates to your discussion in

15   December -- if we can go back to the full page,

16   please. This entry here relates to your

17   discussion in December of '90 with Dr. Emson that

18   I touched on this morning and then it looks like

19   your next entry is March 11th, 1991, if we can

20   call that out, please, it says:

21   "Called Williams - he wishes to know the

22   time frame of news article --"

23   I think that says,

24   "-- indicating conflict of interest

25   exists when Justice contacted Bobs

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1   Caldwell. I checked file and found --"

2   Tell me what that is?

3   A   Article.

4   Q   "-- article from StarPhoenix dated

5   90/Aug/30."

6   So I take it on March 11th you would have had a

7   discussion with Mr. Williams?

8   A   Yes.

9   Q   And to follow up and find out a newspaper article

10   about a conflict of interest?

11 A   It appears that, yes.

12 Q   And it appears again from your notes, and I

13   appreciate your evidence that not everything may

14   have gotten into your notes, but it looks like

15   this is the first entry in 1991 in your notebook;

16   is that fair?

17 A   I think that's fair, yes.

18 Q   And then if we go ahead to the next entry I think

19   is 058343, we then go to this discussion of May

20   the 2nd, 1991 with Mr. Karp, and this is the one

21   that talks about, that I referred to in your notes

22   earlier this morning, remember we just found that

23   one entry that was a bit out of place?

24 A   Yes.

25 Q   And I'll touch on this a bit later. And then if

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1   we can go to -- maybe just carry on in your

2   notebook and go to the next page, please, so this

3   is the Karp entry then. Actually, if we could go

4   ahead to 058345, the next page, this talks about a

5   call on May the 3rd, '91 with Mr. Williams, and

6   then to the next page, please, and again I think

7   this is the continuation of that discussion, and

8   then to the next page, and here's where we see the

9   entry that starts here December 14th and I think

10   this is what we had identified earlier, Mr.

11   Pearson, you and I, when we were trying to compare

12   your notebook with your chronology, and so this is

13   the entry that I read this morning, December 14th,

14   1990, and it's similar:

15   "To date there has been continuous

16   activity beyond my level so far as the

17   application to Federal Justice is

18   concerned."

19   And I think this tracks what was in the office

20   chronology. And so again this morning when you

21   were telling us about how, or why this note

22   appeared where it did in your chronology, does

23   this -- can you maybe just give us what you

24   thought may have happened as to how the December,

25   1990 entry came after the May, 1991 entry?

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1   A   You know what, I thought about this, I'm really at

2   a loss to try and enlighten you. It's there and

3   that's what it says and I just don't have a

4   recollection of it to be honest with you.

5   Q   And I appreciate that apart from a recollection

6   just from your note taking in your files, is

7   there -- can you give us what might be an

8   explanation as to why a December, '90 note would

9   be after a May, 1991 note, not by memory, but just

10   by possible explanations?

11   A   Well, the only explanation I can possibly give is

12   the fact that there may have been entries like a

13   note to a file that would have went into a file

14   that was part of the Milgaard file that I was

15   carrying and possibly when the file was accessed

16   this was pulled out and entered into my notebooks.

17   That's the only explanation I can give you.

18   Q   And the fact that there's a date here of December

19   14th, 1990, is it possible that that's an error

20   or --

21   A   It is possible, and like I say, I just don't

22   recall this.

23   Q   If we can then go back --

24   A   That is a possibility, but I'm stuck.

25   Q   It certainly looks -- the note that I read this

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1   morning of December, 1990, at least the subject

2   matter appears to predate the decision by the

3   Justice Minister?

4   A   Yes.

5   Q   And does that -- again, I appreciate your saying

6   you don't have an explanation as to how or why it

7   ended up where it did in your notebook?

8   A   No, other than what I indicated, that it could

9   have been pulled off the file and put into my

10   notes.

11   Q   If we go back to 008407 then, please, and again

12   I've identified this this morning as being the May

13   3rd letter from Mr. Williams to you, and if we can

14   actually go back, go back to 058345 for just a

15   moment, and this is again May the 3rd, 1991, your

16   notes, which is the same date as Mr. Williams'

17   letter to you, and it says, does that say calls --

18   oh:

19   "10:00, calls Williams Ottawa, who

20   confirmed he had a discussion with Carp

21   and provided certain general bits of

22   info. Williams did not elaborate on

23   what has been provided.

24   Williams explained to me that

25   Rossner/Carp produced the item

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1   identifying a --

2   *A*   Convict I think.

3   Q   "-- convict who claimed he had been told

4   by Fisher --"

5   *A*   That he, Fisher.

6   Q   "-- that he (Fisher) committed the

7   Miller offence. As a result, Williams

8   interviewed the convict and found the

9   facts to be much different than those

10   provided by the CBC production. In a

11   nutshell, the credibility of

12   Rossner/Carp has become suspicious."

13   And again, would that be a note of your

14   discussion with Mr. Williams on that date?

15   *A*   I believe so, yes.

16   Q   And then it says:

17   "It was also suggested that the book

18   being written is actually financed by

19   the book company Milgaard worked for at

20   the time of the Miller murder. Williams

21   will also be sending me a copy of

22   the --"

23   Is that report?

24   *A*   Report.

25   Q   "-- on the 690 Application which was

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1   issued by Kim Campbell - which is a

2   public document. He will also send me a

3   copy of the report submitted by the

4   private investigating firm hired by

5   Milgaard, which is also a widely

6   circulated report."

7   And again then we get into the December, 1990

8   entry. So from this note, Mr. Pearson, does it

9   appear that at this time, May 3rd, 1991, that you

10   had not yet received a copy of the Minister of

11   Justice's letter?

12   A   It would seem that.

13   Q   And are you able to -- does the note assist you in

14   telling us whether you did or didn't?

15   A   No. Like I say, I have no recollection of this.

16   I'm just going by what's written there and I know

17   it's out of whack here, but I can't really explain

18   it to you.

19   Q   Put aside this subsequent note, I'm just simply

20   talking about the May 3rd, 1991 entry where Eugene

21   Williams tells you that the minister's decision is

22   a public document widely circulated and that he's

23   going to send it to you, and my question is to try

24   and determine whether you had seen the letter

25   prior to that date, the minister's decision.

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1   A   Gee, you know what, I'm not sure. I just have no

2   recollection of this. I'm going by what I'm

3   reading here.

4   Q   I appreciate that, and does the note, your note

5   assist you in telling us whether or not you would

6   have had Kim Campbell's letter prior to May 3rd?

7   A   It would seem that I'm waiting for something in

8   regard to that by reading this upper portion of

9   this, what's on the screen here, and the previous

10   page.

11 Q   Do you have any recollection of being consulted by

12   Eugene Williams or anybody else from Federal

13   Justice in connection with the reply that the

14   Minister of Justice would be preparing and sending

15   to Mr. Milgaard's counsel in response to his

16   application?

17 A   I have no recollection of that, and I don't think

18   there's anything on the file that indicates that I

19   ever received anything like that.

20 Q   No, and I went through your notes with you from

21   this time period, December, 1990 to May, 1991 and

22   there's no note either in your notebooks or in

23   your chronology or in your report to your

24   superiors that suggests that you were either

25   consulted by or gave advice to Mr. Williams in

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1   connection with the writing of the response, and I

2   want to draw a distinction between the

3   investigation work and the information you gave to

4   Mr. Williams on the one hand and, secondly,

5   whether or not you had any input to your knowledge

6   in the response that the minister drafted?

7   A Oh, I had no input into what he was writing up in

8   Ottawa. I had no idea what he was considering and

9   what the reports were and I never received reports

10   from them or I was never part of any meeting or

11   strategy session or any kind of conference call or

12   anything like that as far as what was going to go

13   into the final report, and I have no recollection

14   of even knowing when this report was going to be

15   submitted. That's from my recollection.

16   Q And, for example, before the minister's letter was

17   finalized and sent out, did you have any idea what

18   she was going to do with the application?

19   A Not to my knowledge.

20   Q If we can then go to 008407, please, and again

21   this is the letter that Mr. Williams wrote to you,

22   and then the next page is the February 27th letter

23   from Kim Campbell, the Minister of Justice, to Mr.

24   Wolch, and you are familiar, sir, generally with

25   this document? This is -- I'll go through parts

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1   of it, but this is an 11 page -- I stand to be

2   corrected -- 12 page letter from the Minister of

3   Justice to Mr. Wolch formally responding to Mr.

4   Milgaard's application under Section 690?

5   A   Yes.

6   Q   You understand that?

7   A   Yeah, uh-huh.

8   Q   And I just want to go through -- and this was sent

9   to you by Mr. Williams and I presume, sir, that

10   you would have read it at some point or reviewed

11   it?

12   A   I believe so, sure.

13   Q   I want to ask you some questions that arise from

14   this letter that relate to the work that you did

15   on behalf of the Federal Minister of Justice and

16   Mr. Williams, and again the letter states that:

17   "The purpose of this procedure --"

18   And she's talking about Section 690,

19   "-- is to permit a review of cases where

20   new evidence or information raising

21   doubts concerning the correctness of a

22   conviction has arisen after the full

23   judicial process, including appeals, has

24   been exhausted. I wish to emphasize

25   that it is not the function of the

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1   Minister of Justice to retry the case."

2   And again just down a bit further:

3   "Ministers of Justice traditionally have

4   declined to act where the basis upon

5   which the application has been brought

6   relates to matters or issues which were

7   considered by the jury at trial. For

8   instance, relief is commonly declined

9   where the applicant points to the

10   unsavoury character of a witness when

11   that issue was placed squarely before

12   the jury."

13   And I'm just wondering, we talked I think on your

14   first day in testimony, Mr. Pearson, about what

15   your understanding was of the process, and I

16   appreciate, sir, that, and you've also testified

17   that you, I think your words were only part the

18   of the, one piece of the pie as far as the work

19   you were doing, but what is set out in this

20   letter, is this consistent with what you

21   understood was being reviewed?

22   A   At the time?

23   Q   Yes?

24   A   I believe, I believe in general terms, I didn't

25   know the specifics, but I believed that I was of

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1   the view that this new information was going to be

2   reported in some way to the Minister of Justice as

3   part of a recommendation.

4 Q   Did you understand that an important part of the

5   Section 690 process was that information to be

6   considered by the Minister had to be new

7   information that wasn't before the jury; was that

8   something that was on your mind at the time?

9 A   I really can't say, I couldn't be that specific.

10 Q   Again in the next page, if we could call out this

11   paragraph please, and the Minister goes on to talk

12   about Section 690 and talks about:

13   "When conducting an investigation into

14   the matter, and later advising the

15   Minister of Justice, the Department of

16   Justice has as its duty an objective

17   discovery of the facts, including an

18   impartial examination of any new

19   evidence that may become available. The

20   approach taken during the investigation

21   is not adversarial in nature; rather, it

22   takes the form of an impartial inquiry

23   into the full circumstances of the case.

24   Upon conclusion of the investigation,

25   the Department of Justice equally has a

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1   duty to consider fairly the arguments

2   put forward by counsel for the

3   applicant, and to measure the facts of

4   the case and counsel's submissions

5   against the provisions of Section 690 of

6   the *Criminal Code*."

7   And, again, I just want to talk about your

8   involvement, Mr. Pearson, and I think you've told

9   us that you -- you reported to Eugene Williams;

10   is that correct?

11 A   Yes, and also through my chain of command.

12 Q   And through your chain of command, and that Mr.

13   Williams was a lawyer with the Department of

14   Justice, and he was doing sort of other work in

15   addition to what you and he were dealing with; is

16   that fair?

17 A   In regards to this investigation?

18 Q   Yes?

19 A   Yes.

20 Q   And as far as your involvement in the

21   investigation -- and I guess I'm asking for your,

22   for your own assessment of how you conducted your

23   investigation -- did you consider that you had

24   done an impartial examination of any new evidence?

25 A   I believed I was open-minded and impartial and

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1   proceeded where I thought it could, could go on my

2   own if there were some issues that came to me

3   through file review, and I was following the tasks

4   that Mr. Williams had for me as far as in

5   particular Larry Fisher, but there were some other

6   duties that he had me performing as well. But I

7   believe I was open-minded, I didn't discount Larry

8   Fisher and I didn't discount David Milgaard, under

9   the circumstances.

10   Q   And again, as far as the adversarial statement,

11   the statement says:

12   "The approach taken during the

13   investigation is not adversarial in

14   nature ...",

15   and maybe it's not fair to ask you to do a

16   self-assessment, others may do that, but just

17   from your perspective, Mr. Pearson, were you

18   approaching this in an adversarial way, the work

19   that you were doing?

20   A   I don't believe I did. I felt that I was

21   approaching it, again, with an open mind, I don't

22   believe I went one way or another.

23   Q   Do you recall any witness or anybody saying to you

24   that you were not impartial or that you were

25   acting in an adversarial way?

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1   A   Of all the people that I dealt with in this

2   investigation?

3   Q   Yes?

4   A   No, never.

5   Q   If we can then go to the next page, and the

6   Minister sets out the five bases, and this is the

7   first application, and I just want to go through

8   these quickly and get an understanding of the

9   extent that you may have been involved. The first

10   issue dealt with by the Minister was:

11   "The submission that new evidence from

12   Deborah Hall and Ute Frank, who were not

13   called at trial, contradicts the trial

14   evidence of Crown witnesses Melnyk and

15   Lapchuk;",

16   again did you have any involvement sir, in your

17   investigation, in dealing with this submission?

18   A   I -- the only involvement I had was trying to

19   track these people down on behalf of Mr. Williams,

20   but I had no contact or no interviews or no

21   statements with -- from these people.

22   Q   Secondly:

23   "The submission that "advances in

24   scientific technology have allowed the

25   applicant to discredit the forensic

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1   evidence called at his trial and to

2   provide evidence that exculpates him as

3   the perpetrator of the crime";",

4   and this was a submission put forth on behalf of

5   David Milgaard; did you have any involvement in

6   investigating that part of the application?

7   A   No, I did not.

8   Q   Number 3:

9   "The submission that there is new

10   evidence in the form of the statement

11   provided by Ronald Dale Wilson on June

12   4, 1990; and the request to re-examine

13   the evidence of Albert Cadrain and

14   Nichol John in light of the contents of

15   Mr. Wilson's June 1990 statement;",

16   again, did you have any involvement in the

17   investigation of any of that part of the

18   application?

19   A   No, I did not, no.

20   Q   Number 4:

21   "The allegation that one Larry Fisher

22   may have committed the crime and the

23   impact that unsolved rapes in Saskatoon

24   could have had on the jury's

25   deliberations; ...",

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1   and did you have some involvement in

2   investigating that aspect of the application?

3   A   Yes.

4   Q   Again, that's what we have touched on in your

5   evidence to date, I take it?

6   A   Yes, yes.

7   Q   And then number 5:

8   "The submissions that David Milgaard

9   could not have killed Gail Miller

10   because she was killed at another

11   location and her body deposited in the

12   alley; or, if the offence had been

13   committed in the alley, David Milgaard

14   had insufficient time to commit it, or

15   was not near the scene of the crime at

16   the time it was committed.",

17   and again, did you have any involvement in

18   investigating this aspect of the application?

19   A   Insofar as the timeline?

20   Q   Yes, well yeah, and --

21   A   In general terms, but specifically -- in general

22   terms I think I did, yes, that's fair.

23   Q   And in what ways?

24   A   Well, you know, we had talked about, you know, a

25   car theory as a potential involvement here. That

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1   was kind of a long shot but that was something we

2   had, that I had initiated on my own actually, it

3   wasn't a request by Mr. Williams. Umm, and as far

4   as the insufficient time to commit this crime, I

5   did not do a timeline or any examination into that

6   aspect of it.

7   Q   And did you, as an investigator, look at the

8   question and ask yourself exactly as has been put

9   here, "could David Milgaard have killed Gail

10   Miller given the known facts at the time", is that

11   something that you addressed your mind to on the

12   first application?

13   A   That David Milgaard could have killed Gail Miller?

14   Q   That could not have killed Gail Miller?

15   A   Oh, could not have killed Gail Miller? I -- I

16   think he was always a suspect in my mind, whether

17   I had information that he did not --

18   Q   I didn't phrase that very well. Let me try again.

19   What the Minister of Justice in this letter is

20   setting out, the grounds that were put forward to

21   her by counsel for David Milgaard as the basis

22   upon which they asked her to exercise her

23   discretion under Section 690, --

24   A   Yes.

25   Q   -- and the issues raised in the application, she's

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1   restating them, and one of them is a submission by

2   David Milgaard, or on his behalf, that he:

3   "... could not have killed Gail Miller

4   because she was killed at another

5   location and her body deposited in the

6   alley; or, if ..."

7   it:

8   "... had been committed in the alley,

9   David Milgaard had insufficient time to

10   commit it, or was not near the scene of

11   the crime ...",

12   and I'm just wondering whether you, in the course

13   of your investigation, ever addressed your mind

14   specifically to this submission and tried to

15   reach a conclusion as to whether or not it had

16   merit?

17 A   You know, I don't recall, I -- I just don't think

18   I did but --

19 Q   No, you did --

20 A   -- it's all kind of tied up in the Larry Fisher

21   side here --

22 Q   Yeah?

23 A   -- but, umm, specifically to say that I did an

24   analysis of whether or not he could not have

25   killed Gail Miller at that location, I didn't do

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1   any specific investigation in that regard.

2   Q   I think this morning we saw a note where you drove

3   from the scene of the murder to the Trav-a-leer

4   Motel and took the time and distance for Mr.

5   Williams?

6   A   Yeah, that was a request of Mr. Williams, yeah.

7   Q   And so presumably that may have been a piece of

8   evidence that was used by others to look at this

9   point; is that fair?

10   A   I think that's fair, yes.

11   Q   And I think you also have told us, or maybe this

12   is more on the second application, about the

13   prospects of a car being involved --

14   A   Uh-huh, yes.

15   Q   -- in the murder?

16   A   Yes.

17   Q   If we can then go to page 008417, and call out

18   that part of the letter, please. This is on page

19   10 of the Justice Minister's letter, and again

20   this is dealing with the fourth point, and I think

21   you told us this would be where you spent most of

22   your time in the investigation, looking at this

23   issue; is that fair?

24   A   That's fair, yes.

25   Q   And what the Minister says, number:

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1   "4. The impact that Larry Fisher's criminal

2   behaviour could have had on the jury's

3   deliberations."

4   She states:

5   "Inquiries were also made concerning the

6   submission that one Larry Earl Fisher

7   was Gail Miller's assailant. The

8   observation of Linda Fisher, his former

9   wife, that her paring knife was missing

10   at the time of the murder was fully

11   investigated, in addition to other

12   assertions. Neither Ms. Fisher's

13   suspicions, which were conveyed to the

14   police in 1980, nor other well

15   publicized assertions by her, provide

16   any evidence to link Larry Fisher to

17   Gail Miller's death. Ms. Fisher noted

18   that the photo of a knife similar to the

19   murder weapon indicated a different

20   handle type, colour and blade from her

21   missing knife. However serious Mr.

22   Fisher's criminal record may be, the

23   entire record at trial and in this

24   application reveals no evidence to

25   connect him with the killing of Gail

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1   Miller. Although it was, as you have

2   conceded, quite coincidental that Mr.

3   Fisher resided at the Cadrain residence

4   during Mr. Milgaard's visit, no guilt or

5   suspicion of guilt can be attributed to

6   Fisher in the absence of some form of

7   evidence linking him to the crime."

8   Now these are the words used by the Minister and

9   I just want to go through parts of this.

10   Generally, Mr. Pearson, do you

11   agree with what's put forward here based on the

12   work you had done at the time?

13   A   Well I suppose when you get to the bottom, talking

14   about:

15   "... no guilt or suspicion of guilt can

16   be attributed to Fisher in the absence

17   of some form of evidence linking him to

18   the crime.",

19   I don't entirely think that that's where I was at

20   at the time, but -- because I always did have

21   suspicion of guilt.

22   Q   But --

23   A   But they are attributing it to the absence of some

24   form of evidence linking him to the crime, and

25   maybe that's the difference.

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1   Q   Maybe we'll just go through parts of this, and

2   I'll get you to comment, and then we'll come back

3   to this last point. And I think you are referring

4   to this comment in the second-last line?

5   A   Yes, yup.

6   Q   And I'll come to that in a moment. The comment

7   here that:

8   "The observation of Linda Fisher, his

9   former wife, that her paring knife was

10   missing at the time of the murder was

11   fully investigated, in addition to other

12   assertions.",

13   and again, I think from what we have seen, Mr.

14   Pearson, you likely would have been, as far as

15   the police were concerned, the main officer who

16   investigated Linda Fisher's assertions; is that

17   fair?

18   A   That's fair, yes.

19   Q   And I think you've told us Mr. Williams was also

20   involved in taking a statement or having a

21   deposition from her; is that correct?

22   A   Yes.

23   Q   And at the time, February 1991, were you satisfied

24   that you had investigated what you could with

25   Linda Fisher to gather relevant information

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1   towards the question of Larry Fisher's guilt or

2   suspicion for the crime?

3 A   I -- I believe so. I mean there is probably

4   always something more you could do, but I think in

5   general terms that's where we were at with Linda,

6   yes.

7 Q   And were you satisfied as a police officer, then,

8   in your dealings with Linda Fisher, that you had

9   investigated her to the fullest extent you could

10   at the time?

11 A   Well the suspicions she had of Larry Fisher were

12   suspicions I had of Larry Fisher as well, as a

13   result of dealing with Linda in part, and I never

14   did eliminate Larry Fisher as a suspect, so I'm

15   not sure I resolved that in here. It was --

16 Q   Let me add to the question and not limit it to

17   Linda Fisher. As far as your investigation up

18   until this point, February 1991, your

19   investigation as to whether or not Larry Fisher

20   could have been the person who killed Gail

21   Miller, --

22 A   Yes.

23 Q   -- up until that point were you satisfied that you

24   had investigated it to the fullest extent you

25   could under the circumstances?

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1   A   I -- I believe so.

2   Q   Was there anything more that you thought you could

3   have or should have done at the time to finish the

4   investigation?

5   A   As far as the assertions that Linda Fisher made?

6   Q   Yes, that -- yes.

7   A   Not that I can recall offhand, no.

8   Q   Now you told us about the polygraph, and I think

9   where we ended off you were still trying to get a

10   polygraph, was that something that --

11   A   That's not Linda, that's not Linda Fisher's

12   assertions, that was something in addition to it.

13   Q   Okay. Now let's move to Larry Fisher, let's just

14   globally -- your investigation of Larry Fisher as

15   a suspect. In February of 1991 you had been, I

16   think March of 1990 you started your investigation

17   of him, you had a couple of meetings with him, a

18   polygraph, a sworn deposition by Mr. Williams and

19   you had taken a number of other steps to

20   investigate your suspicion that he might be the

21   person that killed Gail Miller, and I want to get

22   an understanding, as at February 1991, whether you

23   felt that you had fully investigated Larry Fisher

24   as a suspect at that time or whether there was

25   still matters that you could or should have

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 1            pursued?

 2    A       Oh, I think, I think there was still more that we

 3            could have pursued if it was a, you know, an open

 4            police investigation.  You know, as we talk, if he

 5            is a suspect you take a look at the other

 6            potential things you could do, and I had mentioned

 7            previously that, you know, if -- under normal

 8            circumstances you may have set up an undercover,

 9            covert operation on him, possibly intercepted

10            private communications under part 6, so there

11            was -- there was other things that, if you had the

12            time and over the long haul, that could possibly

13            have been done from a police perspective, yes.

14    Q       And going back to the mandate that Mr. Williams

15            gave you in March of 1990, to go out and

16            investigate whether Larry Fisher might have been

17            the person who killed Gail Miller, by February of

18            1991 were you satisfied that you had completed

19            that investigation?

20    A       Well I was, I was pursuing and feeding the

21            information to Mr. Williams on --

22    Q       Yes?

23    A       -- what we had done with Larry Fisher, and the

24            fact that I still had him as a suspect, I believed

25            we could have probably continued having him a
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1   suspect and found ways to deal with him, as a pure

2   police investigation.

3   Q   And so, so that I understand it, at this time,

4   then, you are saying that he was still a suspect.

5   What more could you have done, then, to

6   investigate him? And I'm talking in the context

7   of the 690 application; what more was there to do

8   or that could have been done?

9   A   Well I just mentioned, you know, the fact --

10   there's not very many options you have here, but I

11   mean if you are going out to the extreme you have

12   to take a look at, you know, could we have done

13   some kind of undercover operation that might have

14   gained some evidence from him if he was a suspect

15   of this investigation, and that's -- and of course

16   he was institutionalised at this time, which did

17   create some difficulty, but that really wasn't an

18   area that was pursued under 690.

19   Q   And then the comment here that:

20   "Neither Ms. ...",

21   Linda:

22   "... Fisher's suspicions ... provide any

23   evidence to link Larry Fisher to Gail

24   Miller's death.";

25   would you agree with that statement, or did you

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1   at the time?

2   A   Do I agree that they don't provide evidence?

3   Q   Yeah. What the Minister says in this letter is

4   that Linda:

5   "... Fisher's suspicions ... nor ...",

6   her:

7   "... other well publicized assertions by

8   her ...",

9   and I think, assume all the information that

10   Linda Fisher gave to you at the time the Minister

11   said, but it did not:

12   "... provide any evidence to link Larry

13   Fisher to Gail Miller's death.";

14   I'm just wondering if you would agree with that?

15   A   Yeah, I, I have to agree with that, that there was

16   nothing to link Larry Fisher and Gail Miller, in

17   the death of.

18   Q   And then it talks about Linda:

19   "... Fisher noted that the photo of a

20   knife similar to the murder weapon

21   indicated a different handle type,

22   colour and blade from her missing

23   knife."

24   And again, does that accord with your

25   understanding of her statement and the comparison

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1   with the murder weapon?

2   A   Yes.

3   Q   And then the Minister states:

4   "However serious Mr. Fisher's criminal

5   record may be, the entire record at

6   trial and in this application reveals no

7   evidence to connect him with the killing

8   of Gail Miller."

9   And, again, do you agree with that statement?

10   A   Yes, I do, as far as talking of evidence that

11   would say that he was involved in the death of

12   Gail Miller.

13   Q   And can you give us some examples, Mr. Pearson,

14   either in this case or generally, of what, what

15   types of evidence would you need to, and the words

16   here are "connect" or "link" a suspect to a crime,

17   can you give us an idea of what types of things

18   would do that?

19   A   Well some physical evidence that would show

20   ownership from one to the other, such as DNA that

21   came into play, that's --

22   Q   So let's just pause there for a moment. I think

23   in 1997 we learned that a test done on Gail

24   Miller's coat indicated that semen found on her

25   dress, coat and/or panties matched Larry Fisher's

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1   DNA; correct?

2   A   That would be evidence.

3   Q   Yeah. And so that would show that Larry Fisher

4   had some connection to Gail Miller, likely on the

5   morning of the murder, is that --

6   A   That's fair, yes.

7   Q   And that would be a link between Larry Fisher and

8   Gail Miller?

9   A   Yes.

10   Q   What would be some other types of links or

11   connections between a suspect and a murder that

12   you, as an investigating officer, would need?

13   A   Well I suppose if you had some direct evidence,

14   like an eyewitness or possibly a fingerprint, or

15   something like that.

16   Q   So if someone had said "I saw Larry Fisher in the

17   alley that morning" that would be a link to the

18   Gail Miller murder; is that correct?

19   A   That would be a strong circumstance I would

20   suggest, yes, but it would -- it would certainly

21   be something that I think would be converted to

22   evidence.

23   Q   Or if a witness said they saw Larry Fisher

24   stabbing Gail Miller; --

25   A   That's right.

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1   Q   -- would that be a link between Larry Fisher and

2   the crime?

3   A   That would, absolutely, yes.

4   Q   And what about an admission by Larry Fisher that

5   he committed the crime; would that be --

6   A   That would be evidence, yes.

7   Q   Would that be something that would link him to the

8   crime?

9   A   Yes.

10 Q   And can you think of anything else that might be

11   evidence that would link Mr. Fisher to the crime,

12   any types of evidence? I'm not saying that they

13   did or didn't exist, but just some examples of

14   what you as a police officer might try and get to

15   link a suspect to the crime?

16 A   Well I suppose the very things that was eventually

17   used, is the similarities of all the activities,

18   is something that could be, you know, be called

19   similar fact evidence, there is a potential for

20   that, and I -- that existed here.

21 Q   And would that be something that would link, as an

22   investigating officer, would that be something

23   that would link Larry Fisher to the killing of

24   Gail Miller?

25 A   Possibly. You know, I think there has to be some

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1   interpretation of it, how much of a link there is

2   and how much weight you put on it, but it

3   certainly had potential.

4   Q And then the Minister carries on to say that:

5   "... no guilt or suspicion of guilt can

6   be attributed to Fisher in the absence

7   of some form of evidence linking him to

8   the crime."

9   And I think you've told us that you agreed with

10   the statement that there was no evidence linking

11   him to the crime but are you telling us that,

12   notwithstanding that, you still had suspicions of

13   guilt?

14   A When we talk about evidence versus suspicion, yes,

15   I had suspicion.

16   Q And so the fact that there was no evidence linking

17   him to the crime at that time, or linking him to

18   the killing of Gail Miller, you still had -- you

19   still felt that he was a suspect or you had

20   suspicions that he may have committed the crime;

21   is that correct?

22   A Yes.

23   Q And then the next page, 008418 -- and, again, I

24   think this is the reference in the letter about

25   the distance between the scene of the body and the

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1   Trav-a-leer Motel, and I think that was what you

2   had driven and told to Mr. Williams; is that

3   correct?

4   A I -- I don't know if I talked 40 to 50 kilometres,

5   I don't know if I went in the specifics, but in

6   general terms yes.

7   Q And if we can go to the next page, and in the

8   concluding remarks the Minister states:

9   "Further, there is no reliable basis to

10   believe that Larry Fisher was connected

11   in any manner with Gail Miller's

12   death.";

13   do you agree with that statement at the time?

14   A Well, I really don't agree, you know. I had

15   suspicion, other people didn't I suppose, that

16   were assessing everything that they had, but I've

17   always had this gut feeling that there was

18   something wrong with Larry Fisher's involvement

19   here, and converting that to hard evidence was the

20   challenge. And saying that he was connected in

21   any manner, again, if you are talking about

22   "connected", I don't know if that means evidence

23   or what that means. But there was certainly

24   suspicion out there that he had potentially been

25   involved, at least in my mind, maybe not in the

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1   mind of others. I mean everyone had very diverse

2   views, at this time, of what was really going on

3   here, but --

4   Q   And again, apart from getting Mr. Fisher's

5   co-operation in a further polygraph -- and I think

6   you've talked about that, that you were still

7   pursuing at this time -- and you talked about the

8   covert undercover operations, was there anything

9   else, sir, that you think you could have done at

10   or around this time to further your investigation

11   to try and make -- move Larry Fisher from a

12   suspect to linking him to the death of Gail

13   Miller?

14   A   Not that I can recall.

15   Q   If we can then go to 008421, which --

16   *(Discussion off the record)*

17   BY MR. HODSON:

18   Q   This next document, this is referred to in Mr.

19   Williams' letter to you of May 3rd, and he

20   encloses the report from Centurion Ministries.

21   And this document, I'm advised by counsel for

22   Joyce and David Milgaard that this document would

23   have been sent to Members of Parliament in

24   December of 1990, and so I don't see any record on

25   the file, Mr. Pearson, other than this letter of

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1   May 3rd, 1991 where you got a copy of it. Do you

2   remember getting it prior to Mr. Williams sending

3   it to you?

4   A   This?

5   Q   Yes?

6   A   I don't remember this, but --

7   Q   Yeah.

8   A   I have a hard time reading it, but --

9   Q   Yeah, we'll go to a couple of pages here, and

10   again I think we know that May of 1991 you got a

11   copy of it; right?

12   A   I believe so, yeah.

13   Q   Yeah. If we could go to page 008425, please,

14   and -- and, again, this is a report by the

15   Centurion Ministries, and I believe it's Paul

16   Henderson and James McCloskey, and you were aware

17   that Centurion Ministries were involved in

18   assisting Joyce Milgaard and David Milgaard during

19   this time frame; is that correct?

20   A   I was aware that they were out there doing some

21   investigation, yes.

22   Q   And it says:

23   "On top of all of this evidence ...",

24   and which I don't propose to go through:

25   "... investigators on behalf of the

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1   Milgaard's have, with the help of the

2   CBC in Winnipeg, identified the person

3   who is most likely the true killer in

4   this case.",

5   and then it goes on to talk about Larry Fisher.

6   And, again, did you ever have any contact or

7   discussion with either the CBC Winnipeg or the

8   Centurion Ministries during 1990?

9   A   No.

10 Q   If we can go to the next page, it goes on to talk

11   about:

12   "In summary then, not only has the

13   Milgaard application eliminated all of

14   the incriminating evidence tendered by

15   the Crown at the trial, it has also

16   offered a very viable explanation as to

17   who actually committed this crime."

18   I want to ask you just about this latter part, I

19   don't want to ask you to comment on the first

20   part about the incriminating evidence against

21   David Milgaard, but as far as -- and let me put

22   it this way; if it wasn't, at this time if it

23   wasn't David Milgaard who killed Gail Miller,

24   would Larry Fisher at the time, February 1991

25   based on what you had investigated, was he a

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1   viable explanation as to who might have actually

2   committed the crime?

3 A In 199 --

4 Q '91.

5 A Yes.

6 Q I now want to move into the time frame regarding

7   the second application, and if we could go to

8   056796, and this goes back to your chronology, and

9   I think the previous, just to give you an idea of

10   where we're at, if we can go to the previous page,

11   this is August, '91, this is the December, 1990

12   note that I read to you earlier.

13 A Okay.

14 Q And then if we can just go back one previous

15   page -- no, back to 056794 -- here is the

16   reference to the May 2nd, 1991 discussion with

17   Carl Karp and Cecil Rosner, both of CBC, and I

18   understand that CBC Winnipeg contacted you in, it

19   looks like May of 1991; is that correct?

20 A It would appear so, yes.

21 Q And we earlier looked at your notebook that had

22   the date May 2nd. Would that have been the first

23   time that these gentlemen would have talked to you

24   about the case?

25 A I'm just going by what I read. Yeah, I believe

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1   so, yes.

2   Q   And you state here, if we can just call out

3   paragraph 231, please, and it says:

4   "Carl Karp, co-author of a book on the

5   Milgaard case, apparently working with

6   Cecil Rosner, both of CBC, contacted me,

7   wishing the answers to certain answers

8   on the case. Karp stated Mr. Williams

9   had talked to him. I indicated to

10   Mr. Karp that in fairness to Milgaard it

11   would be inappropriate for me to comment

12   on this investigation as long as David

13   Milgaard and his counsel believe there

14   are legal channels still open to pursue

15   their case. Karp suggested to me that

16   as the Justice Minister had recently

17   ruled against the Milgaard application,

18   there should be no problem with me

19   commenting. I indicated to Karp that

20   shortly after the decision was made not

21   to reopen this case, Mr. Asper suggested

22   he would be further pursuing the matter

23   through the Sask Court of Appeal and

24   possibly the Federal Court of Canada. I

25   suggested to Karp that until I am

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1   convinced that the Milgaard appeal

2   process is completely exhausted, I would

3   have no comment."

4   And would you have had a discussion with Mr.

5   Asper or did you read that in the media somewhere

6   about his intentions?

7 A   It was probably a media thing I would assume.

8 Q   So I take it --

9 A   I'm just guessing here now.

10 Q   And Karp and Rosner were looking to get you to

11   comment on the case; is that right?

12 A   It appears to be that, yes.

13 Q   If we could then skip ahead to the next page,

14   please, we then go to August -- the next page,

15   please -- we go to August 16th, 1991 and:

16   "Call received from Mr. Williams,

17   advising that a second Application under

18   Section 690 has been filed. This is

19   pursuing "similar fact" evidence

20   concerning Fisher's activities. In

21   addition to the victims we know of, the

22   similar fact package also includes an

23   offence which took place at Round Lake

24   on 08 May 68, the victim being (V14)--

25   (V14)-."

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1   And I want to pause here. Again,

2   Mr. Commissioner, last sittings I asked for a

3   publication ban on the name (V14)-- (V14)- and I

4   wish to reiterate that. We'll be dealing in a

5   second application with circumstances relating to

6   her and the publication ban I would like to be on

7   her name, her family member names and anything

8   that might tend to identify her or her family

9   members or her residence, anything of that

10   nature, and again we will ensure that in the

11   transcript and on the Commission web site that

12   her name and family member names and anything

13   that might identify her will be removed, but if I

14   could also ask for a media ban on publication,

15   and let me also add that as I've done in previous

16   publication bans, if any media outlet believes

17   that, or wishes to be heard on the ban or the

18   scope of the ban, they can simply advise me and I

19   will arrange for them to have an opportunity to

20   be heard on it.

21   COMMISSIONER MacCALLUM: Thanks. The ban

22   is continued on those terms.

23 BY MR. HODSON:

24 Q   Thank you. And it goes on to -- and I take it up

25   until this point, this incident involving

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1   Ms. (V14)- had not been part of anything you had

2   investigated; is that right?

3   A   That's right.

4   Q   And it says:

5   "The suspect in this case was a knife

6   wielding part Native individual wearing

7   work boots, work clothes and with long

8   hair. The inference is being made that

9   the suspect is Fisher, who may have been

10   employed on the construction job near

11   (V14)---- at the time. Based on the

12   information provided by Williams, I

13   placed telephone calls to S/Sgt. (V14)--

14   and Sgt. (V14), both of whom were RCMP

15   officers in (V14)---- in the 1960's,

16   1970's. They could not assist but

17   ex-S/Sgt. (V14), now of Meadow Lake,

18   Sask., was there at the time. I will

19   contact him to see what he can recall

20   about this particular investigation."

21   And a little bit later, Mr. Pearson, I'll be

22   taking you through some of the work you did on

23   that. So at this time it looks as though you

24   became aware, August 16th, that a second

25   application had been filed and dealing with

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1   similar fact evidence; is that right?

2   A   It seems to be, yes.

3   Q   And can you tell us again, and I appreciate you

4   are not the one receiving the application and

5   dealing with it from the Federal Justice level,

6   but what -- did you understand that this was

7   something different than what you had looked at on

8   the first application?

9   A   I think it was an extension of it, you know. The

10   similar fact development was not something that

11   had been done in the first application, it was not

12   something that was ever requested of me, it's not

13   something that I initiated, I think believing,

14   rightfully or wrongfully, that there was no link

15   between Larry Fisher and the Miller homicide,

16   but -- so the similar fact was I guess more of an

17   in-depth analysis of all of the crimes that Larry

18   Fisher had committed that would tend to point

19   towards his involvement in the Miller one.

20   Q   Okay. And let me understand this, because I think

21   in the first application and what you did there,

22   you looked at the previous offences; is that

23   correct, committed by Larry Fisher?

24   A   Through his criminal records, yes.

25   Q   And putting aside the (V14)- incident for a

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1   moment, this one is new, but the previous seven

2   assaults, or crimes, being the two in Winnipeg,

3   the four in Saskatoon and (V10) (V10)-, had you

4   not looked at all of those and the circumstances

5   in assessing whether Larry Fisher was a suspect in

6   the murder of Gail Miller?

7   A   File material wasn't available on some of them.

8   File material from the Winnipeg offences was, you

9   know, it was destroyed with the exception of what

10   was on the penitentiary file, so there was some

11   information there, and the (V10) (V10)- file was

12   completely intact and there was a review of those

13   files.

14   Q   And this morning, Mr. Pearson, I think we went

15   through a note where you and Mr. Williams had a

16   call where you were discussing the modus operandi

17   of these offences and the weapon and trying to

18   compare them to the Gail Miller murder; is that

19   correct?

20   A   Yes, that's right, yes.

21   Q   And so what would be different now in the second

22   application, what would you be doing on this in

23   pursuing similar fact evidence that you didn't

24   pursue on the first application?

25   A   Well, I think it was doing probably an in-depth

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1   analysis of all the details on the file by someone

2   who is trained in the business of doing this and

3   putting together a similar fact line between all

4   the crimes that were committed, so it was just

5   moving it to another level.

6   Q   And the objective would be what?

7   A   To determine if this could be converted to

8   evidence which would associate Larry Fisher to

9   Gail Miller's murder.

10 Q   And why wouldn't you have done this then on the

11   first application?

12 A   I guess possibly because I was under the

13   impression that we had to make a link and I just

14   didn't jump from using it as suspicion to

15   converting it to evidence.

16 Q   And so did you, and again let me back up, in

17   general investigations as a police officer did you

18   rely in some cases on similar fact evidence to

19   build a case against a suspect?

20 A   Well, I can't say I had a whole lot of experience

21   in it, but I knew circumstantial evidence and

22   similarities did exist as potential evidence, yes.

23 Q   And I take it in some cases then where you could

24   establish that a suspect or an accused had

25   committed previous criminal acts, that in some

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1   cases the Court might allow the circumstances of a

2   previous crime to be admitted to the Court or the

3   jury to try and establish that the accused had

4   committed another crime; is that -- was that your

5   understanding? Is that --

6 A   I believe in general terms, but I was also, maybe

7   my mind was in the place of looking at trying to

8   make a link, maybe more of a direct link is maybe

9   where I was at at the time.

10 Q   And when you say direct link, something in the

11   commission of the other offences or the manner or

12   the modus operandi that would cause you to do

13   what? I'm --

14 A   No, I think I was thinking more of looking at

15   something that would put Larry Fisher in some way

16   in contact or being involved in the death of Gail

17   Miller and the similar fact analysis was something

18   that I didn't pursue.

19 Q   And on the first application, and I think we went

20   through, would it be fair to say that you did look

21   at his other offences, though, and some of the --

22 A   Oh, yes.

23 Q   -- modus operandi?

24 A   Yes, and I think again his criminal record, it was

25   the basis of the suspicion that wouldn't go away.

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1   Q   And scroll down to 238 which is August 19th:

2   "Mr. Williams called and discussed

3   whether the stats from the annual

4   statistical report of the City Police

5   concerning sex offences should be

6   gathered to determine if there were

7   other weapon offences during rapes and

8   sexual assaults of women during 1968,

9   1969 and 1970. Or was Fisher's M.O.

10   somewhat unique during those years in

11   Saskatoon?"

12   And can you explain the relevance of getting that

13   information?

14   A   That was something Mr. Williams initiated and I

15   think he was doing a statistical review or

16   analysis to look at how unique this was compared

17   to others. As I recall, if I'm correct here, he

18   made a request through me, but I also think he

19   went directly to Chief Penkala of the city police

20   and initiated this on his own, but I think it kind

21   of went through both sides, mine as well as the

22   city police. That's my recollection.

23   Q   And then again a couple of days later, August 21:

24   "Had a telephone discussion with

25   Williams and we again talked of how to

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1   gain the support of Fisher to attempt a

2   proper polygraph examination. It was

3   agreed that the only approach we could

4   pursue with any success would be to

5   include retired counsel Harold Pick who

6   in the past has been very supportive.

7   Mr. Williams will be contacting Mr. Pick

8   direct in British Columbia."

9   And so I take it then that you were back on

10   trying to get Mr. Fisher to undergo another

11   polygraph; is that fair?

12   A   Yes.

13   Q   And then at paragraph 240:

14   "At this time Mr. Williams also revealed

15   that the report from Centurion

16   Ministries suggested that a source in

17   the Saskatoon Police Department provided

18   certain material which is not officially

19   released. This portion of the report

20   was vetted out and the identity is

21   unknown. Mr. Williams is also

22   interested in securing any old police

23   reports on the Saskatoon victims of

24   Larry Fisher. It should be noted this

25   had been pursued previously and I have

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1   been told by the City Police officials

2   that these reports no longer exist."

3   So just back up, and again I'll be getting to the

4   application in a moment, would this have been

5   your first information about either the Centurion

6   Ministries or the Milgaards having a source in

7   the Saskatoon Police Department?

8 A Yes, I believe so.

9 Q And is that something, and again I'll take you

10   through the documents later, but that's something

11   you spent some time pursuing in the course of your

12   investigation?

13 A Yes, I did, yeah.

14 Q And then you talk here about Mr. Williams asking

15   you to secure any old police reports on the

16   Saskatoon victims of Larry Fisher.

17   "It should be noted this had been

18   pursued previously and I've been told by

19   the City Police officials that these

20   reports no longer exist."

21   So again, that was something that you had pursued

22   in your first, in the first application; is that

23   correct?

24 A Yes, yes.

25 Q Go to the next page, 797, please, and then August

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1   21:

2   "Courier service delivered the

3   Application under Section 690."

4   So if we could then go to 008427 -- I think the

5   doc ID is 008400, but go to page 427 -- and I

6   believe this is what was forwarded to you by Mr.

7   Williams, this is the second application, and

8   would you have reviewed this at some point, Mr.

9   Pearson?

10 A   I believe I would have, yes.

11 Q   And it talks about the February 27th letter and

12   then the letter states:

13   "In the interim we have not held back in

14   our efforts to firmly establish David

15   Milgaard's innocence and there have been

16   some startling revelations. When we

17   first made our application the

18   suggestion that Larry Fisher was the

19   perpetrator was not the main thrust and

20   we were at that time advised by your

21   Department that there were no police

22   reports available on past offences of

23   Mr. Fisher. Whereas we suggested there

24   was a distinct pattern and although the

25   similarities were never placed before

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1   you, we accepted that we were at that

2   time at a dead end."

3   Let me just pause there. As far as police

4   reports on past offences of Mr. Fisher, I think

5   we went through, Mr. Pearson, that you would have

6   had the Fort Garry police reports from Mr.

7   Fisher's penitentiary files; is that correct?

8   A Yes.

9   Q I think they were incomplete?

10 A Yes.

11 Q And as well you had testified that you had the

12   (V1)--- (V1)-, I think there was 11 pages from

13   (V1)--- (V1)-; is that correct, on the first

14   application?

15 A As I recall, yes.

16 Q But that was all, there was no records of the

17   other three?

18 A That's how I recall it.

19 Q And the (V10) (V10)- file, I think you told us

20   that you had the entire file?

21 A I had possession of that file, yes, for a while.

22   I returned it.

23 Q And what about the statement here that although

24   the similarities were never placed before you, is

25   that -- do you have any recollection during the

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1   course of the first application this issue coming

2   up about putting forward the similarities between

3   these offences and doing an analysis of that?

4   A   I was never asked to do an analysis. The

5   statistical information that was requested, again,

6   I don't know if the statistical information was on

7   the first or the second application, I'm not just

8   too clear, but as far as doing a similarity review

9   or putting together a similarity package as was

10   shown up on the second application, I don't

11   remember ever having a discussion with Mr.

12   Williams over that.

13   Q   Okay. Maybe just scroll down. What about with

14   Mr. Asper, was that ever something you discussed

15   with him?

16   A   I don't think I ever discussed it with Mr. Asper.

17   Q   And did you have any discussions with Mr. Wolch on

18   the first application?

19   A   No.

20   Q   This paragraph, and the letter goes on to say:

21   "Once your decision was brought to our

22   attention we were determined to proceed

23   further in ascertaining Larry Fisher's

24   possible guilt and we were somewhat

25   surprised to learn that there was ample

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1   material available, including at least

2   one police report concerning previous

3   victims of Fisher. Centurion

4   Ministries, Inc. is a non-profit

5   organization from Princeton, New Jersey,

6   whose purpose is to work on behalf of

7   those who it believes may have been

8   wrongly convicted. It has freed 8

9   wrongly convicted people in the United

10   States. The founder of Centurion, Jim

11   McCloskey, advised that we should

12   interview each of Fisher's victims. We

13   agreed and Centurion investigators

14   developed a startling profile showing

15   the similarity of all of Fisher's

16   attacks and of that committed against

17   Gail Miller. I am enclosing statements

18   of the victims and a summary of the

19   findings which contain the striking

20   similar acts that would be admissible in

21   a trial against Larry Fisher and would

22   have been admissible in David Milgaard's

23   trial if the information had been

24   known."

25   And so again, is this what you understood then at

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1   the time, Mr. Pearson, as being the similar fact

2   evidence that the Federal Minister was being

3   asked to consider in the second application?

4   A Yes, I believe that's correct.

5   Q And again I don't want to dwell on this, but is

6   this something that you had not done at least in

7   detail in the first application?

8   A It was not done in detail to present in this form,

9   no, it wasn't.

10 Q And then the next page, the letter states, or the

11   application states:

12   "Another startling development has been

13   the fact that four women who were

14   brutalized by Larry Fisher did not know

15   that anyone had been charged, let alone

16   convicted, of the vicious attacks upon

17   them. It is our belief that had the

18   arrest of Larry Fisher been brought to

19   anyone's attention it would have cast

20   severe doubts on the Milgaard

21   conviction. To this date there does not

22   seem to be any reasonable explanation as

23   to why Fisher's Saskatoon charges were

24   concluded in Regina and why the victims

25   were never notified. They have lived in

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1   fear and it is absolutely inexcusable."

2   In the first application, Mr. Pearson, I don't

3   believe you talked to any of the victims of Larry

4   Fisher's sexual assaults; is that correct?

5   A   That's correct, yes.

6   Q   And why didn't you?

7   A   Because we weren't looking at it as a similar fact

8   investigation and I think again we're talking

9   about looking at making a link between Larry

10   Fisher and Gail Miller and I believe the mind-set

11   was that none of these offences were related to

12   the death of Gail Miller.

13 Q   Related in what sense?

14 A   They weren't related in that they didn't link

15   Larry to the crime.

16 Q   Okay. So to make sure I understand this, you have

17   told us on a couple of occasions the fact that

18   Larry Fisher committed rapes and the nature of the

19   rapes caused you to view him as a suspect?

20 A   That's right.

21 Q   And are you now saying that the details of the

22   rapes and the victims and that type of information

23   was never relevant to what you were looking at on

24   the first application?

25 A   It wasn't pursued as making a similarity between

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1   all of the offences based on the fact that I

2   suppose some of the information wasn't there and

3   the witnesses, or the victims were not pursued,

4   but that wasn't something that I recall ever being

5   a focus of a task that I was given or thought of

6   doing.

7   Q   So on the first application do you recall whether

8   that was something you may have suggested to

9   Mr. Williams or considered doing, was talking to

10   the victims?

11   A   I don't recall suggesting it to Mr. Williams and I

12   don't recall him ever tasking me with something

13   like that.

14   Q   And again, in the first application when you are

15   looking at Larry Fisher as a suspect and trying to

16   find a link to the Gail Miller murder, did you at

17   that time consider that the victims of his

18   assaults may have had information that might have

19   assisted you?

20   A   At this time?

21   Q   In the first application.

22   A   I don't believe -- I don't believe we went there,

23   not on purpose, it's just that I don't think it

24   was ever something that we considered as having

25   evidence of value.

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1   **Q**   So again back to the second application, the

2   letter states:

3   "In light of the above I would ask you

4   to treat this letter as a fresh

5   application to reopen the Milgaard case.

6   It is our view that had you been aware

7   of these additional developments your

8   decision would not have been the same.

9   We are not asking you to declare David

10   Milgaard innocent, as obvious as it may

11   be. We are simply asking that you have

12   an impartial tribunal adjudicate this

13   matter with full disclosure and with Mr.

14   Milgaard being properly represented."

15   So let me ask this, after -- this is the second

16   application. Did you think then, Mr. Pearson,

17   and I'll go through this, but you had some

18   further involvement in the second application

19   doing some further investigations; is that

20   correct?

21   *A*   Yes.

22   **Q**   And in your mind, sir, were you doing something

23   different on the second application than you were

24   doing on the first application?

25   *A*   Well, it was now focusing on the similarities of

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1   the crimes that were committed by Larry Fisher in

2   view of developing it into new evidence as opposed

3   to suspicion.

4 Q   Go to the next page, please, and again this is

5   accompanying the letter, and this is the actual

6   formal application submitted by Mr. Wolch and Mr.

7   Asper. Go to the next page. And I'll go through

8   parts of this, the summary of the Centurion

9   Ministries investigation, and then the victim

10   reports, and so we will see, if we can just call

11   out the victim reports, the (V14)- one of May,

12   1968 is new, the next four are the Saskatoon

13   offences for which Mr. Fisher was convicted in

14   Regina in 1971, the two Fort Garry/Winnipeg

15   offences and the (V10) (V10)- 1980 matter. So

16   other than the (V14)- matter, the rest of these

17   assaults were known to you on the first

18   application; is that correct?

19 A   They were known and some of the file material was

20   missing and some was complete and some were

21   partial, yes.

22 Q   Next, go to the next page, and this is part of the

23   application, this is an August 6, 1991 memo from

24   the family of Gail Miller to David Asper where the

25   family says:

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1   "We feel there is reasonable doubt as to

2   the guilt of David Milgaard."

3   Do you recall being involved at all in following

4   up with the Miller family or pursuing this issue

5   at all?

6   A   This issue or --

7   Q   Yes. Not the Peggy Miller, but just the fact that

8   the Miller family was saying that they felt that

9   there was doubt, reasonable doubt as to the guilt

10   of David Milgaard, did that factor at all in

11   anything you did?

12   A   I never approached the Miller family. The one

13   time I thought we should have, when inquiries were

14   being made by one of the brothers, but I think Mr.

15   Williams thought it was something we shouldn't do,

16   I think that's documented, but as far as the

17   Miller family doubting the guilt, that's not

18   something I pursued, about what doubts they had.

19   Q   Go to the next page, please.

20   COMMISSIONER MacCALLUM: What was the doc

21   ID, please?

22   BY MR. HODSON:

23   Q   Sorry, the doc ID is page 008431 and the doc ID is

24   008400, and again this is all part of the second

25   application, Mr. Pearson, that I think Mr.

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1   Williams forwarded to you in August of 1991, and

2   as part of that there was a newspaper article of

3   Monday, February 3, 1969, this is four days after

4   the murder, and in this article it says:

5   "One of the possibilities being

6   investigated by the police is that the

7   attacker was a rapist who was active in

8   this city last fall."

9   And if we can go to 008, the next page -- let me

10   just show you a couple of others and then I'll

11   ask you a question. Again, this is a Saskatoon

12   wire story about Gail Miller's murder, February

13   4th, 1969, and it also refers to last fall police

14   said they -- if we can call out this part here,

15   please, it says:

16   "Last fall police said they believed one

17   man was responsible for two rapes and

18   one attempted rape of women on city

19   streets."

20   And then if we can go up to the top column of

21   that, and it says:

22   "Police are investigating the

23   possibility that the person who slashed

24   a 20-year-old nurses' aide to death

25   Friday may be the same person who

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1   attacked three women here last fall."

2   And again just in looking at this similar fact

3   analysis, did the fact that, at least according

4   to these media reports, that the city police back

5   in 1969, at least according to the reports, and

6   indeed in some police reports, felt that there

7   might be a link, in other words, the person who

8   committed the three previous rapes may have been

9   the person who killed Gail Miller, where did that

10   factor into your analysis of matters?

11 A I can't -- I can't say I recall seeing these

12   documents, but I'm sure I had information like

13   this at the time, but again, you know, this all

14   created the suspicion, and at what point should

15   this have been pulled together and pursued as

16   similar fact, well, I guess that's open to

17   question.

18 Q Let me state it a bit differently, and I'm not

19   asking you to comment, at the present time I'm not

20   asking you to comment on what the city police did

21   or didn't do in 1969, but given the fact that it's

22   the (V1)-, (V2)-----, (V3)------ rapes that are

23   being referred to and certainly in the police

24   files -- and we've heard from some city police

25   officers that back in 1969, at least for a time in

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1   the investigation one of the theories being

2   pursued by the police was that the person who

3   committed the three previous rapes, who at that

4   time was unknown, may be the same person who

5   killed Gail Miller, --

6   A   Uh-huh.

7   Q   -- in other words that the police were pursuing

8   that as a theory, okay, if you take that as the

9   evidence that we've heard; in your job in 1991,

10   when you are investigating this similar fact

11   evidence, in other words looking at whether or not

12   the offences committed by Larry Fisher are

13   strikingly similar, etcetera, to provide a link to

14   Gail Miller, to the murder, would the fact that

15   the police who originally investigated Gail

16   Miller's murder, that at least some of them

17   appeared to reach that conclusion or had that

18   theory at the time, would that be a factor that

19   would be relevant to your thinking?

20   A   I think so, yes.

21   Q   And it may be obvious, but if you can just explain

22   how and why?

23   A   Well, because they are crimes that have some

24   similarity.

25   Q   And again -- but the fact that the police, when

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1   they investigated Gail Miller's death, may have

2   had that as a theory; would that be important in

3   --

4   A   I think so, yes.

5   Q   And do you recall, Mr. Pearson, whether you would

6   have looked into that in any great detail, what

7   the -- and I'm not suggesting you should have, I'm

8   just trying to find out whether you did --

9   A   Well --

10   Q   -- inquire of --

11   A   Well, with the file material we had available, we

12   did review the material. We never put it into a

13   package as such but we definitely looked into the

14   various offences that Larry Fisher was involved

15   in, the file material that we had, but we did not

16   take it the next step by going to pursue the

17   victims. And --

18   Q   No, let's talk, I'm sorry, about the second

19   application then. Again, you've now got the

20   second application that says "look at the striking

21   similarities between these offences"; do you have

22   a recollection whether the police reports from

23   1969 on the Gail Miller file, and the fact that

24   the city police at that time may have connected

25   them, whether that was part of your analysis?

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1   A   You know, I -- I just don't recall that.

2   Q   Okay. The next page, if we go to 008436. The

3   next page, to 008436, so this is *A Summary* -- this

4   is the, for the record, *The Centurion Ministries*

5   *Investigation Into the Crimes of Larry Fisher,* and

6   in Mr. Wolch's letter that I read I think the

7   language he used is that he says -- and I'm

8   reading from, you don't have to call it up, it's

9   008427, he says:

10   "We agreed and Centurion Investigators

11   developed a startling profile showing

12   the similarity of all of Fisher's

13   attacks and of that committed against

14   Gail Miller. I'm enclosing statements

15   of the victims and a summary of the

16   findings ..."

17   And so, again, this is the package put together

18   by the Centurion Ministries and, again, I think

19   I've asked you this on previous occasions at

20   various times and you indicated you had not

21   contacted or talked to Mr. Henderson or

22   Mr. McCloskey up until certain dates; did you

23   ever talk to Mr. Henderson or Mr. McCloskey at

24   any time about anything they were doing and

25   anything you were doing?

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 1    A      No, I didn't.

 2    Q      And was there any reason you didn't initiate

 3           contact with them to find out what it was that

 4           they had come up with?

 5    A      Well they were -- no, there is no real reason that

 6           I know of why we didn't, it's just that they were

 7           -- I didn't really know who they were, I knew they

 8           were investigating out there on behalf of Mr.

 9           Milgaard and Mr. Asper and Wolch, and that they

10           were dealing with the Federal Justice Department

11           on their interest under 690.

12    Q      And if we can go to the next page, and I'll just

13           try and identify these.  The first one would be --

14           they have victim numbers, the first one is (V14)-,

15           if we can call that out; victim, age, place, date,

16           disposition, May 7, '68, 17-23 year old, the

17           police told victim Milgaard did it, 2 years later

18           unsolved.  And then it goes on to talk about

19           weapon and its use, MO, and then other here, wore

20           work boots, about 5'5", long dirty hair, part

21           native, and again this would be a summary.  Just

22           scroll down, I don't propose to go through all of

23           them.  The dates -- the next one, October '68,

24           would be the (V1)- incident.  And, again, this

25           would be a summary, I take it Mr. Pearson, of the
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1   various dates and particulars that the Centurion

2   Ministries put together?

3   A   Yes, it looks like they were putting together an

4   easy-to-follow grouping, similarity.

5   Q   If we can go to -- we'll come back to this

6   document a bit later -- if we can go to 001002 --

7   actually, before I go to that, this might be an

8   appropriate spot to break, there is a document I

9   need to just check with Mr. Frayer on, this might

10   be --

11   (Adjourned at 2:53 p.m.)

12   (Reconvened at 3:12 p.m.)

13   BY MR. HODSON:

14   Q   Mr. Pearson, the application was filed August

15   14th, 1991, that was the date of the second

16   application, and I'm going to show you a couple of

17   newspaper articles at around that time, won't go

18   through them all. But 226932, and this is a *Globe*

19   *and Mail* article August 17th, 1991, which would be

20   three days after, and it talks about *U.S. man*

21   *begins new bid to reopen murder case*, and I just

22   want to read you from this article and one other

23   article and then ask you a question. Call out

24   that part, please, it says:

25   "An American who works to free prisoners

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1   he considers wrongly convicted has

2   petitioned Canada's Minister of Justice

3   to reopen the case of David Milgaard

4   ...",

5   and then talks about James McCloskey and

6   attributes a quote to him about which there was

7   evidence, quote:

8   "... "that so clearly demonstrates the

9   innocence of the convicted, and on the

10   other side of the same coin, that so

11   compellingly and clearly identifies and

12   proves who the real killer is."

13 And then next if I could call up 325149, if we

14 could just turn that sideways or get everybody to

15 turn their head, one or the other -- oh, there we

16 go. This is an article, again the same date in

17 the *StarPhoenix* by James Parker, and again it

18 attributes the quote:

19   ""It is overwhelmingly apparent that

20   Larry Fisher is the killer of Gail

21   Miller."",

22 and that is attributed to Mr. McCloskey. And,

23 again, there are other articles that come at this

24 time. And again we spent, when I went through

25 the first application, Mr. Pearson, about media

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1   reports, do you have a recollection -- again on

2   the second, when you were dealing with the second

3   application -- again, there being media interest

4   in what was happening?

5   A   Yes.

6   Q   And, again, I want your reaction to

7   Mr. McCloskey's statement that is attributed to

8   him in the paper that the evidence -- and I

9   believe that's the similar fact analysis:

10   "... that ... compellingly and clearly

11   identifies and proves who the real

12   killer is.",

13   were the words he used. And, again, can -- what

14   was your view on that assertion?

15   A   I don't remember. I don't remember this article

16   in particular, but just in general, in general

17   terms I certainly never felt that there was

18   anything that proved anything at that point. And,

19   you know, to make statements that there is proof

20   out there that Larry Fisher was responsible, I

21   just think that -- I don't think he really

22   possessed the evidence to say that, but maybe in

23   his heart and his mind he believed that.

24   Q   And again I draw a distinction between what

25   someone thinks, but to state that the -- that this

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1   proves that Mr. Fisher committed the murder, did

2   you ever reach that conclusion --

3   *A*   No.

4   **Q**   -- in the work that you did?

5   *A*   No, I don't think I proved anything as far as

6   guilt or innocence of anyone.

7   **Q**   And as far as your work then on the second

8   application in pursuing this similar fact

9   analysis -- and again we'll see reference to

10   trying to get Mr. Fisher to conduct a second

11   polygraph -- but, again, are you able to tell us

12   the extent to which media coverage of this nature

13   either helped or hindered your work as an

14   investigator on the second application?

15   *A*   You know, I just -- I just can't recall, you know,

16   I can't recall the various stories to kind of get

17   a sense of what was going on at the time, just --

18   you know, I think putting, putting the name Larry

19   Fisher out in the public without having him

20   charged didn't do anything for the investigation

21   into him as far as I was concerned. It may have

22   certainly brought it to the public's attention for

23   the influence that it obviously had but, you know,

24   I don't know what more I can say.

25   **Q**   Did you feel some pressure that you had to charge

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1   Mr. Fisher or arrest Mr. Fisher in light of what

2   was being stated publicly, that he was the killer?

3   A Well I was operating under 690. This, this was

4   information that was really passed to Justice, but

5   I never ever felt pressured to go and arrest him,

6   I never felt there was any grounds to go and

7   arrest him, I never felt that there was any

8   grounds to charge him, and that's not something

9   that I ever seriously considered.

10 Q Okay. If we could go back to 056797, again this

11   just carries on on the chronology, August 22nd,

12   1991 you:

13   "Called Insp. Quinn ... asking if he

14   could give the cases where weapons were

15   used in sex offences or if he could give

16   details of sex offences for the years

17   1968, 1969, and 1970.",

18   and Quinn said that he would search their system.

19   And we touched on this a bit earlier, was this

20   part of, or information that you would throw into

21   the mix in looking at the similar fact analysis?

22 A Umm, yes. This is more of, I think, a statistical

23   analysis but this was, I believe, the one

24   requested by Mr. Williams, and I think this may be

25   the one that he had contacted Chief Penkala on, I

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1   believe.

2   Q   Well we'll see the document later --

3   A   Okay.

4   Q   -- where the information comes back. I'm trying

5   to understand how this would fit into looking at

6   Larry Fisher's previous assaults and the Gail

7   Miller murder; where would it fit in on her

8   attack?

9   A   This was statistical, this was something that I

10   believe was of interest to Mr. Williams, and I,

11   you know, I just don't have much recall of what

12   value this had to me. I really can't tell you

13   more.

14 Q   And then it says, this is again your call with

15   Inspector Quinn:

16   "I also provided him with the names of

17   victims (V5)---, (V2)-----, (V1)-, and

18   (V3)-------, with supporting data,

19   asking him to again search for any

20   possible file material on these

21   investigations."

22   And I believe you have told us, sir, that that

23   was something you had asked for on the first

24   application; is that correct?

25 A   Yes, I was back and forth with the city police on

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1   a weekly basis, and I was in contact via phone

2   very often on a lot of different things so, you

3   know, there was just lots of discussion had taken

4   place.

5   Q   If we go down to -- and now the date here I'm not

6   -- and just scroll up for a moment. I'm not sure

7   if anything turns on this, whether it's the 22nd

8   or the 19th or the 23rd, I don't think it matters,

9   but there was a call here:

10   "Mr. Williams and I had a discussion on

11   the phone. We had previously discussed

12   comments made in the Application that

13   Fisher had appeared in Court in Regina."

14   And let me just pause there, Mr. Pearson. I have

15   read you Mr. Wolch's letter, the application to

16   the Minister, where he talked about the fact that

17   Mr. Fisher was convicted in Regina for the

18   Saskatoon offences, and I think he said that was

19   unusual, and that the victims weren't notified;

20   do you remember seeing that in the letter?

21   A   Yes.

22   Q   And it says:

23   "The suggestion is that City Police

24   quietly had Fisher taken to Court,

25   knowing he may have been involved in the

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1   Miller offence. Mr. Williams will be

2   pursuing this further and apparently has

3   since talked with Sask. AAG Murray Brown

4   and the record suggests this was a

5   preferred indictment brought in by the

6   Provincial A.G., as Fisher was

7   represented by lawyer Lawrence Greenberg

8   of Winnipeg and the Regina appearance

9   was apparently a convenience. I have no

10   explanation why the victims were never

11   advised of the fact Fisher had been

12   convicted for these attacks. This

13   remains a mystery at this time."

14 Just pause there. Can you tell us, Mr. Pearson,

15 what was your reaction when you heard about or

16 found out about how Mr. Fisher was dealt with for

17 the four Saskatoon offences, and in particular

18 his appearance in Regina by direct indictment;

19 did that cause you any concern?

20 A   You know, it really didn't. I know there's been a

21   lot made of this, and why he would have gone to

22   Regina, but, you know, I do believe back in those

23   days there was a, you know, a movement between

24   provinces that probably went to a central location

25   to dispose of charges from outside the province,

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1   and that, that part didn't really cause me any

2   alarm. And I know it did for a lot of people but,

3   you know, the suggestion being made here that

4   created some -- some, I suppose, suspicion. But

5   did I think it was really unusual that he had --

6   you know, he was a federal penitentiary -- in a

7   federal penitentiary, and he was going to dispose

8   of some charges, and he was taken to Regina I'm

9   assuming by plane from the institution, that

10   really didn't alarm me.

11   Q   And in your dealings in the course of your

12   investigation on both the first and the second

13   application did you ever come across anything

14   relating to this matter that you felt was

15   suspicious or unusual in the way in which the

16   police or any other authorities dealt with Larry

17   Fisher in the 1971 Regina convictions?

18   A   Well I suppose the only, the only issue is again

19   going back to why the victims were never advised,

20   and they seem -- it seemed to have all stopped and

21   dropped and in some cases there were no files. No

22   files in itself didn't really alarm me, based on

23   the fact that it was 20 years later, but later on

24   as this evolved I suppose you had to start asking

25   yourself, you know, was -- was there more that,

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1   you know, that these people were never advised,

2   the victims were never advised.

3 Q   And just focusing on that for a moment, did you

4   find that to be unusual?

5 A   Well again, I don't know what the policy was of

6   the Saskatoon Police Service at that time, but I

7   know in my own history and in my organization,

8   that was one of the requirements before the file

9   was concluded, was that the complainant be

10   advised. And I believe it was actually a policy

11   way, way back in the '60s, and that was as a

12   supervisor one of the things that you always

13   ensured or you tried to monitor, was that the

14   complainant of any kind of complaint was advised

15   as to what the results were.

16 Q   And are you able to --

17 A   But, again, I was in a different organization so I

18   don't know what their policy was, if there was

19   one, but it was something that, in the RCMP, we

20   monitored.

21 Q   And did you ever consider, I mean I appreciate

22   your comment about that's not how you had worked

23   on files, but apart from that did you have any

24   suspicions or concerns that the failure to notify

25   the victims may have been in some way connected

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1   with some wrongdoing on the part of the police or

2   authorities related to David Milgaard?

3   A   No. No.

4   Q   Now were you ever asked, as part of your work on

5   the second application, were you -- were you asked

6   to investigate this issue of where Larry Fisher

7   was charged and where he appeared and the transfer

8   just to Regina, etcetera; was that part of what

9   you were looking at?

10 A   No, not that I recall.

11 Q   So, again, your comments and observations would be

12   based upon what you knew at the time?

13 A   Repeat, I'm sorry?

14 Q   So I'm just -- as far as your observations about

15   what, what transpired, would these just be what --

16   based on what you --

17 A   Just my reaction to it, yes.

18 Q   And what you learned at the time in discussions

19   with Mr. Williams and others?

20 A   Yes, yes.

21 Q   Scroll down to 245:

22   "Mr. Williams and I discussed the stats

23   re: rapes and other sex offences for the

24   years 1967, 68, 69 and 70, and that

25   attempts should be made to try and

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1   determine what weapons were used. We

2   also discussed whether the Miller family

3   should be approached to determine if

4   there were any questions they had of the

5   Justice Department, in view of the

6   publicity surrounding this process.

7   Williams wishes to think about the

8   appropriateness of this."

9   And are you able to tell us what -- was that

10   something you raised with him, that the Miller

11   family should be contacted, or can you elaborate?

12 A It might be more detailed in my actual notes, but

13   I think this may have come through -- one of the

14   brothers, I think, had made some inquiries about

15   why I was inquiring about Peggy Miller.

16 Q Yes.

17 A And I'm just not sure about the time frame here.

18   And I just felt that, you know, it was appropriate

19   at some point that somebody should be talking to

20   this family or giving them some information as to

21   what was happening here.

22 Q And I think I can help you out, I think it was

23   Jack Miller who contacted Chief Penkala back in

24   late I think December of 1990, or perhaps a bit

25   later --

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1   *A*   Okay.

2   **Q**   -- after you had contacted Peggy Miller. And so

3   was it a concern, just as a courtesy, or to let

4   them know what it was that you were doing?

5   *A*   I -- I think for me it would have been more of a

6   courtesy, I mean they were the victim family and

7   there was a lot going on, and I just thought it

8   was something that --

9   **Q**   And do you know if that was followed up on?

10   *A*   Umm, no, I don't believe -- I never followed up on

11   it, and I don't know what the result was of Mr.

12   Williams' appropriateness of this, whether it's in

13   my notes, but I have no recollection of what

14   transpired after that.

15   **Q**   If we could actually go down to the August 23rd:

16   "Mr. Williams called, stating some

17   development at his end preclude contact

18   with the Millers at this time, advising

19   to put a hold on this move for now."

20   *A*   All right.

21   **Q**   So would it be back into Mr. Williams' court for

22   further dealing; is that fair?

23   *A*   Yes, it would, it would appear that he has

24   suggested that some developments preclude this

25   from happening. I guess that's the answer to the

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1   previous question.

2   Q   And then you state:

3   "I also suggested to Mr. Williams the

4   possibility of conducting a

5   psychological profile of both the

6   Milgaard/Miller crime, as well as Fisher

7   and his victims. While I am not sure or

8   firm at this point what value that may

9   have, it is again a possible approach to

10   investigation. I related my rather

11   limited experience in what profiling is

12   all about, however, referred Mr.

13   Williams to our Force expert, Insp.

14   McKay, HQ Ottawa, who recently completed

15   a psychological profile understudy with

16   the FBI. Mr. Williams indicates he will

17   be making that contact."

18   And let me pause there. Again, would that be

19   your thoughts about what tools might be used in

20   the --

21   A   Yes, that was just another, another potential

22   approach. And, again, I really didn't know very

23   much about this profiling, and I did know that we

24   had an Inspector in Ottawa who had training in

25   that area, and I thought he could maybe enlighten

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1   Mr. Williams more as to what value that may have

2   to the task.

3   Q   And then 247, it says:

4   "Yesterday I called our document expert

5   at the Regina Forensic Lab to determine

6   if it is possible to identify the

7   blacked out portion of the material

8   submitted."

9   And if I could call up 008457, and that's part of

10   doc. ID 008400, and this is the application --

11   and this is the statement -- maybe just go back

12   to the previous page -- this is part of the

13   application that was filed by Mr. Wolch on behalf

14   of David Milgaard, and this is part of the

15   Centurion Ministries' summary. And this is the

16   document regarding (V5)-- (V5)---. And if we can

17   go to the second page, and I believe this is Mr.

18   Henderson's summary, if we could call out that

19   paragraph it says:

20   "(This was the one case in which I was

21   given access to police reports."

22   And then a blacked out portion, and then another

23   blacked out portion, and then says:

24   "... and source for us on internal

25   police problems, somehow managed to get

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1   into the department computer and obtain

2   the file. I reviewed it at his home but

3   was not allowed to keep the reports or

4   make copies of them."

5   And blacked out:

6   "... claimed that people in the

7   department are aware that he pulled up

8   the reports and said he'd be fired if

9   the brass found out he'd given them to

10   anyone. The file is quite thick and

11   documents an extensive investigative

12   effort by police ...",

13   etcetera. And so, again, would this be the

14   document, Mr. Pearson, that -- and I think we see

15   on August 23rd you start the process, and for

16   some time after, trying to find out who the

17   person is identified in Mr. Henderson's summary?

18   A   Yes. Yes.

19   Q   And, at that time, did you understand that that

20   was an individual who was a Saskatoon City Police

21   officer?

22   A   I assumed that.

23   Q   And what was your understanding of what this

24   person had access to or was doing?

25   A   Well it would appear that they were, in this case,

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1 a file that had gone out the back door, so to

2 speak, and was done without the knowledge of

3 anyone, and it's quite obvious here that the

4 person knew it was not the proper thing to do.

5 Q And what concerns would you have, again just in

6 your role as the person investigating this

7 application, with the issue that a Saskatoon City

8 Police officer is providing information to Mr.

9 Milgaard's investigator?

10 A Well there was a, you know, a couple of issues;

11 number one, of course the problem that the city

12 police were having with this leak, and I think

13 that should have been, you know, something they

14 were to be made aware of; and as well it started

15 to develop that, you know, there were files that

16 were missing, and I guess I started to think that,

17 you know, were these files missing part of what

18 this source was participating in, taking the files

19 from their system out into the public, I guess --

20 not the public, but to the interested party.

21 Q And we'll go back and deal with this a bit

22 further. If we can go back to 056798, and again

23 August 29th, '91. Now, Superintendent Goodman,

24 that was who you reported to in the RCMP?

25 A Yes. He was my boss in the office I was in.

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1   Q   So it says:

2   "Discussed with Supt. Goodman the pros

3   and cons of our advising City Police of

4   the reference in the Centurion

5   Ministries report of the potential leak

6   within their Department. I do not wish

7   to compromise the independent position

8   of my role in this inquiry and am

9   seeking further direction in this

10   regard. We agree that the applicable

11   portion of the report material should be

12   provided to the City Police for the

13   purpose of their internal examination of

14   potential leaks of file material by

15   their personnel."

16   And can you elaborate on what your concerns were

17   that you were discussing with Superintendent

18   Goodman?

19   A   Well, I didn't want anything to interfere with the

20   relationship that I had with the police as far as

21   my examination of the Fisher/Miller/Milgaard

22   inquiries and I just felt that they should also be

23   aware that there was obviously a leak in their

24   department and that file material was being

25   provided to private investigators, so I just

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1   thought that, you know, this should be dealt with

2   one way or another and I was just seeking the

3   advice of my superior to bounce it off him and

4   discuss it with him and decide how it should be

5   handled.

6   Q   And in your view was there something wrong with a

7   Saskatoon city police officer providing this

8   information to non-police personnel?

9   A   Well, yes, obviously.

10   Q   And why was that?

11   A   Well, it's private, secure, confidential

12   information that's not readily available to

13   private investigators and the general public and

14   there is a privacy issue.

15   Q   And when you say, "I do not wish to compromise the

16   independent position of my role in this inquiry,"

17   what did you mean there?

18   A   I just basically didn't want to get embroiled in

19   an internal investigation over this particular

20   issue when I already had the task of pursuing

21   other aspects on behalf of 690.

22   Q   And then at paragraph 249 it looks as though you

23   then met with Inspector Quinn and Inspector Doell,

24   who is their internal investigator:

25   "I advised them of the material that I

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1   had come into possession of. I did not

2   provide a report copy, however did

3   provide a word for word portion of what

4   was provided by Centurion investigators

5   so far as a source within the Department

6   leaking information. Insp. Doell

7   advised he would be opening a file and

8   pursuing this matter further."

9   And again, apart from -- it appears here that you

10   informed the city police about the leak. Let's

11   go back to the work that you were doing on the

12   second 690 application. Was it important to you

13   to find out who this person was and find out what

14   this person had, this source person?

15   A   Yes, I think there was probably more than one

16   reason to determine who the source was, you know,

17   for the obvious internal leak, and also was there,

18   you know, other files that maybe had gone out the

19   door, you know, was this the only person doing it,

20   were some files associated to the victims that

21   were not available when we requested them, so

22   yeah, there were some issues I think.

23   Q   Can we go down to paragraph 250, and it looks as

24   though there was a discussion about -- well, it

25   says:

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1   "Williams and I discussed what may have

2   taken place between Fisher, Sask AG's

3   Department and the City Police. It

4   seems there was a statement obtained

5   from Fisher by Detective Karst dated 22

6   Oct 70 for the (V3)------ and (V5)---

7   offences. Later an Information was

8   laid, charging Fisher with four sex

9   related offences, the Information being

10   laid by Elmer Goa on 30 Dec 70, however

11   there is no record of Informations being

12   processed through Court. Between the

13   time Fisher was convicted for the

14   Winnipeg offences and having the

15   Saskatoon charges dealt with, there were

16   several pieces of correspondence between

17   what I believe Williams said was the

18   Sask AG's Department and Fisher's

19   lawyer, Mr. Greenberg of Winnipeg.

20   Williams and I discussed whether

21   Greenberg's firm would have any records

22   of value, however, it was agreed that

23   client/counsel privilege would not

24   permit access without permission, and

25   Williams advises Greenberg is apparently

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1   disbarred. Williams further advises to

2   do nothing re: Greenberg, as it seems

3   there is direction coming to him from

4   his superiors which may prevent this

5   from being pursued; i.e., a more senior

6   person becoming involved at the Federal

7   Justice level. Williams is suggesting

8   there is some internal discussion in his

9   Department concerning who should be

10   initiating the investigation under the

11   second Application, Williams stating

12   that he may be relieved or assisting

13   another individual. I wait for

14   developments in this regard. My

15   position remains the same."

16   What did you mean by, "My position remains the

17   same"?

18 A Well, I just, it was -- nothing had changed for

19   me.

20 Q So regardless of who was working for Federal

21   Justice, you were going to continue to do the same

22   thing?

23 A I was prepared to work with anybody. It really

24   didn't change my position.

25 Q And I had asked you earlier about your

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1   observations regarding how Mr. Fisher was dealt

2   with in Regina and it appears from the note I read

3   that this is where you had a discussion with Mr.

4   Williams and that he told you not to pursue it, or

5   at least not to pursue Mr. Greenberg further; is

6   that fair? Is that correct?

7   *A*   Repeat the question, please?

8   **Q**   Yes. I had asked you earlier about your knowledge

9   of and your observations as to whether you saw

10   anything unusual about the way in which Larry

11   Fisher pled guilty to the Saskatoon offences in

12   Regina and you provided us with your observations.

13   I then asked you what information you had and you

14   said, I think, words to the effect that it would

15   have been based on what you discussed with Mr.

16   Williams or observed, and thirdly you said that

17   you were not specifically tasked with the

18   responsibility of investigating that. Is that

19   correct?

20 *A*   That's correct, yes.

21 **Q**   And when I read this note from Williams just to

22   confirm that this isn't anything different than

23   what you've already told us; in fact, that's

24   consistent with what you told us?

25 *A*   Yes.

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1   Q   Then if we can go back just, 001773, go to the

2   full page, this is a fax of August 30th, 1991 from

3   Mr. Williams to you, and if we can just go through

4   the next couple of pages, please, and these are

5   the informations from Mr. Goa, and then actually

6   go ahead to 001780 and this is the March 17th,

7   1971 letter, and I think the next page is the last

8   page, if I'm not mistaken, so it appears that

9   after your discussion with Mr. Williams about Mr.

10   Fisher's appearance in Regina, that Mr. Williams

11   sent you copies of some of the documents relating

12   to the informations and some of the correspondence

13   between Mr. Greenberg and the AG; is that correct?

14   A   That's what it appears, yes.

15   Q   Go to 056799, again this is the same discussion I

16   think with Mr. Williams, you say:

17   "I suggested to Mr. Williams our efforts

18   should focus mainly on Fisher. In view

19   of the publicity being directed at him

20   he may be motivated to prove his

21   innocence and be more aggressive in his

22   cooperation with us. If Fisher should

23   refuse to cooperate, then he should be

24   subjected to a no-nonsense interrogation

25   which may be our last opportunity to

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1   discuss with him the criminal activity

2   he was involved in during the time of

3   the Miller murder. Contact will be made

4   with Mr. Pick to see if we can solicit

5   cooperation from him to hopefully gain

6   access to Fisher for another interview.

7   We have had difficulty in accessing

8   Fisher because of his incarceration."

9   So the first part of this, are you saying that

10   the publicity being directed at him, I take it

11   that would be in the media where people are

12   suggesting that Larry Fisher is the real killer

13   of Gail Miller; is that what you are referring

14   to?

15 A Yes.

16 Q And are you saying here that that may motivate him

17   to become more cooperative?

18 A Well, if he's maintaining his innocence with all

19   the pressure building on him, if he really is

20   innocent you would certainly think that he would

21   at some point want to start cooperating and

22   proving that.

23 Q Yeah. And if he's really guilty, what then was

24   your assessment of what impact the publicity would

25   have?

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1   A   Well, I really don't know, other than the fact

2   that, you know, he wasn't going to make some

3   confession to us I don't believe.

4   Q   And then you talk about a no-nonsense

5   interrogation. What were you referring to there?

6   A   Oh, I think I was overly optimistic that we were

7   somehow going to be able to really get him in a

8   position where we could give him an interrogation,

9   but really he was institutionalised and he had his

10   lawyer and I think maybe that was wishful

11   thinking.

12 Q   Now, at this time had Mr. Pick retired do you

13   know?

14 A   I believe so.

15 Q   And so you were still contacting him because you

16   had a relationship with him?

17 A   Yes.

18 Q   And was he still willing to try and assist?

19 A   As I recall, yes.

20 Q   And then it looks like there were further efforts

21   to try and get a meeting with Mr. Fisher and as

22   well employment records, so picking up on some of

23   the things you were pursuing on the first

24   application?

25 A   Well, it was just -- a lot of this stuff was,

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1   like, going over it, you know, a number of times,

2   but that's really what seems to be happening here.

3   Q   Then if we can scroll down, 253:

4   "Talked with Insp. Quinn of City Police,

5   who advised the (V4)---- (V4)--- file

6   has been found, as well the (V1)- file

7   has been found. Investigative reports

8   and original statements are available

9   for me to pick up."

10   So would this be when you first got the (V1)-

11   file or do you think --

12   A   I don't know if that was a complete file or if

13   they had some more information on it, I really

14   don't know, and I'm not sure at this time frame

15   was the Police Commission looking into these

16   missing files at that time?

17   Q   Yes, they were.

18   A   Yeah, and maybe that was something that had

19   surfaced through their search over there that had

20   brought this into play. I'm speculating here.

21   Q   Then again you talk about getting the Division

22   Criminal Analyst's office to discuss what

23   assistance they could provide in our efforts to

24   complete a "similar fact" analysis. Is that

25   correct?

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1 *A* Yes.

2 **Q** If we could then go to 011903, please, and this is

3   your September 12th, '91 fax to officer in charge,

4   federal policing "F" division; is that right?

5 *A* Yes.

6 **Q** And you talk about, if we could just scroll down,

7   about a second application outlining similar fact

8   evidence, it suggests Larry Earl Fisher is the

9   person responsible for the murder of Gail Miller,

10   and then outlines:

11   "Larry Fisher was actively involved in a

12   series of "rape" offences in Saskatoon,

13   prior to and subsequent to the Miller

14   murder. There is a total of seven sex

15   related offences which Fisher is known

16   to have been involved in ..."

17   And then outlines them. And then on the next

18   page it talks about Fisher being interviewed:

19   "As the focus is now on Fisher and his

20   "similar M.O.", it is considered

21   necessary to analyze the records

22   available for similarities and

23   differences in his M.O. A comparison

24   will then be made of the similarities

25   and differences when Fisher's activities

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1   are compared to the details of the Gail

2   Miller murder. It should be noted that

3   very few records exist for some of the

4   past offences, while others are pretty

5   well complete. The Milgaard file is

6   completely intact."

7   And then you conclude:

8   "The request is being made to have

9   Division Criminal Information Analytical

10   Services provide their expertise in this

11   analysis. This request is being made

12   after full consultation with the Federal

13   Justice Department investigating

14   counsel."

15   I take it that would be Eugene Williams?

16   A   Yes.

17   Q   And then down at the bottom, scroll down,

18   "Forwarded with my support," by your superior, and

19   then what does CIAS stand for, is that Criminal

20   Information Analytical Services?

21   A   Yes, I believe so. I don't recall the exact --

22   Q   So this would be your document within the RCMP

23   asking for one of the units to get involved in

24   doing this similar fact analysis?

25   A   Yes.

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1   **Q**   And Mr. Williams had agreed with that request?

2   *A*   Yes.

3   **Q**   If we can go to 056800, here we are at the top,

4   September 12th, '91, and it looks as though

5   Mr. Pick had arranged to have Larry Fisher get his

6   blood type and the results were that he was blood

7   type A, and this appears, at least from the

8   records, Mr. Pearson, to be the first reference,

9   at least in the documents, to Mr. Fisher's blood

10   type. Does that accord with your recollection?

11 *A*   Yes.

12 **Q**   And again at that time you would have known that

13   blood type A was the blood type found in the

14   frozen semen that was collected near the murder

15   scene?

16 *A*   Yes, yes.

17 **Q**   Now, would that -- would that information, his

18   blood type, would that link Larry Fisher to the

19   Gail Miller murder?

20 *A*   No, but it certainly didn't eliminate him from

21   being a suspect.

22 **Q**   And 257:

23   "Williams and I discussed the (V4)---

24   case and in particular the news article

25   in the Globe and Mail dated August 11th

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1   in which (V4)--- thought the photo of

2   Fisher looked like the person who

3   assaulted her. (V4)--- reported she had

4   been felt under her dress and the

5   assailant then departed. This incident

6   took place on the day of Miller's murder

7   at 7:07 a.m. on Avenue "H". (V4)---,

8   upon reading the newspaper article,

9   called her lawyer who in turn was able

10   to contact Mr. Asper and has since

11   provided a statement to them. We

12   discussed what further efforts could be

13   made to pursue Fisher. We talked of a

14   further polygraph examination and also

15   further interviews with (V4)--- and

16   (V14)-."

17   And again just on the -- you are familiar, sir,

18   with the (V4)---- (V4)--- incident?

19   A   In --

20   Q   In a general way?

21   A   In a general way, yes.

22   Q   And can you tell us what, at the time when you

23   were looking at Larry Fisher as a suspect, where

24   did the (V4)--- assault fit in, and in particular

25   (V4)---- (V4---'s statements in 1991 that she

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1 believed it was Larry Fisher who assaulted her at

2 7:07 a.m. on Avenue H on the morning of January

3 31?

4 A Well, when this surfaced, as I recall we had,

5 through her lawyer in Toronto, had sent statements

6 down to have them reviewed and to get some

7 information from her and to determine if she

8 wanted to reopen the investigation as I recall

9 based on her identity of Fisher, thinking he was

10 the person, keeping in mind I suppose that if

11 (V4)--- would have been in favour of pursuing

12 this, the possibility existed that we could have

13 developed the investigation into some kind of a

14 charge and the possibility existed that if there

15 was a Court case and (V4)--- did actually, or the

16 Court did conclude that Fisher was involved, then

17 it would put Larry Fisher in the neighbourhood and

18 not at work and would also further support what

19 Linda Fisher had to say. That's one scenario that

20 you could possibly develop out of this. The other

21 issue is the (V4)--- complaint I believe took

22 place at, it says here 7:07 and, you know, I think

23 a lot of people have scratched their head over

24 this issue of it happening at 7:07 and the time

25 frame of Gail Miller's murder and, you know, was

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1   it committed by the same person and could he have

2   been at the, in the vicinity at two places during

3   the same time frame and so there was a lot of

4   different discussion about this particular (V4)---

5   file.

6 Q And did you ever, based on the information you

7   have, conclude that it assisted or detracted from

8   pointing the finger at Larry Fisher as the killer

9   of Gail Miller?

10 A You know, I don't know. I think you could

11   speculate there was nothing that ever, you know,

12   as I recall, that gave it a real definition as to

13   how this may have occurred. It was, you know, an

14   incident that took place in the general area in

15   the general time and, according to (V4)---, she

16   believed that, from the photo she saw, that it

17   looked like Fisher and, you know, could that have

18   been developed further if she would have been in

19   favour of doing that? Possibly.

20 Q And as far as why a charge was not pursued against

21   Mr. Fisher on this charge, do you recall

22   Ms. (V4)--- --

23 A She was -- Ms. (V4)--- was interested in assisting

24   on the review, assisting in the process of what

25   David Milgaard was going through, but she wasn't

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1   interested in having a charge laid.

2   Q   And were you aware, did you become aware that Mr.

3   Fisher had denied the (V4)--- assault?

4   A   I don't recall.

5   Q   And again, just on the -- I think you went through

6   when I asked you about the significance of this

7   information and your investigation of Larry Fisher

8   as a suspect. Am I right that on the one hand it

9   supported it as him being a suspect in that it put

10   him in the neighbourhood of the murder the morning

11   of the murder and not at work as he claimed; is

12   that right?

13 A   Yes, if Mrs. (V4)--- is right.

14 Q   Yeah. And secondly, if Mrs. (V4)--- is right, or

15   Ms. (V4)--- is right, you also mentioned that

16   there were some who said that that maybe meant

17   that he could not have committed -- or I think you

18   said the time frame -- maybe you can just expand

19   on that. Was there a theory or a thought by you

20   or by others that if Mr. Fisher had committed the

21   (V4)--- assault, that he maybe couldn't have

22   committed the Gail Miller murder?

23 A   Well, I'm sure some people thought that and -- but

24   my view was, you know, it was, I suppose it could

25   go either way, he was certainly a person with a

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1   violent history that was in the neighbourhood and

2   if he was assaulting (V4)--- at 7:07, you know,

3   could he have been involved in the Gail Miller

4   murder. You know, I put my money on Fisher being

5   capable of being in two places because there is a

6   time separation here and I'm not sure how definite

7   we can be on time on both sides of the issue,

8   Miller and -- because there is some time variances

9   there as I understand, and on this one, so, you

10   know, there's a lot of speculation and theorizing.

11 Q   If Ms. (V4)--- was correct in that it was Larry

12   Fisher who assaulted her on the morning of January

13   31, '69, was it your view that this strengthened

14   the case against Larry Fisher as the killer of

15   Gail Miller?

16 A   Yes.

17 Q   And would it have assisted in your investigation

18   of Larry Fisher as a suspect in the death of Gail

19   Miller if Mr. Fisher had been charged with the

20   assault and convicted of the assault on

21   Ms. (V4)---?

22 A   Yes.

23 Q   And in what way?

24 A   Well, it would have confirmed that he was not at

25   work, that he was in the neighbourhood of the

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1   homicide and it would have certainly, if there was

2   any doubters about Linda Fisher, it would have, I

3   think, convinced them otherwise.

4   Q   And we'll carry on, there's some further

5   discussions I think you have with her and her

6   counsel that may shed some light on the decision

7   to charge. If we can go back to -- scroll down,

8   please, again September 16th, it appears you had a

9   meeting with this -- now, this is Sergeant

10   Williams, this is someone other than -- this is

11   not Eugene Williams?

12   A   This is an RCMP polygraph operator at the time

13   stationed in Prince Albert, yes.

14   Q   And so you talked about whether Fisher was a

15   testable subject and called Joe Shalk, Vancouver,

16   who is an experienced police polygraphist.

17   "We discussed the matter in general

18   terms, my position being that Fisher

19   should be pursued, using all

20   investigative aids at our disposal in an

21   effort to gather the facts and the

22   truth, and to fully investigate this

23   Section 690 Application. In conclusion,

24   Shalk states the issue is certainly

25   testable and a further assessment would

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1   be necessary to determine if the subject

2   Fisher was testable. Shalk questioned

3   me to determine if the results of such a

4   test would be used for anything of value

5   in this investigation. My response was

6   that it may assist the Minister of

7   Justice Kim Campbell in making a

8   decision on what to do with this

9   Application. Shalk asked questions of

10   me such as, what if the tests were

11   inconclusive? What if he passed? What

12   if he failed? etc. My position is that

13   every investigative process should be

14   exhausted and decisions on what the

15   final results are can be made at that

16   time. I suggested to Shalk that he may

17   receive a call from Mr. Williams to

18   further discuss this aspect of the

19   investigation, however I believe

20   strongly in pursuing the polygraph test

21   as we would normally do in any other

22   police investigation."

23   Is that an accurate summary of what you felt at

24   the time, sir?

25   A   I believe it is, yeah.

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1 **Q** And when you talk about him getting a call from

2   Mr. Williams, was that Eugene Williams I presume?

3 *A* Yes.

4 **Q** Were there discussions or issues being discussed

5   between you and Eugene Williams about whether or

6   not Mr. Fisher could or should undergo another

7   polygraph?

8 *A* Yes, there was, yes.

9 **Q** And tell us about those?

10 *A* Well, as we got into the pursuing the polygraph

11   the second time, there was some view by

12   Mr. Williams that this may not be appropriate to

13   pursue.

14 **Q** And what were the reasons that he gave?

15 *A* Well, I think if you go down to the next

16   paragraph --

17 **Q** Sure, if we can -- I'm sorry, 260, it says:

18   "I contacted Mr. Williams and discussed

19   the polygraph testing. I indicated this

20   should still be pursued. Mr. Williams

21   expressed concern, stating, "Is there

22   basis to doubt the conviction? Would

23   jury convict if known about Fisher at

24   the time?" Williams seems to have

25   concerns that the polygraph results are

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1   not admissible and could be persuasive

2   in terms of disposition of the case. My

3   position is this - we asked Fisher once

4   to take the polygraph test, which came

5   back inconclusive. Why would we not

6   continue in our attempts again?

7   Williams's advice is that he wishes to

8   talk to his superiors on this point."

9   And again, does that outline the positions that

10   you and he had at the time?

11 A I believe they do, yes.

12 Q And what -- can you tell us a bit more, what was

13   your understanding then again of why -- was Mr.

14   Williams saying he did not want further polygraph

15   of Larry Fisher?

16 A Well, that seemed to be what was happening, that

17   there was some hesitation to go ahead based on the

18   fact of, and I think these are actually his quotes

19   that were put in there, you know, is there a basis

20   to doubt the conviction, would a jury convict if

21   known about Fisher at the time, and I was

22   interested in pursuing this.

23 Q If we just pause there, when he was saying is

24   there a basis to doubt the conviction, was he

25   talking about David Milgaard's conviction?

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1   *A*   That's what I take it to be, yes.

2   **Q**   At this time, September, 1991, based upon the

3   information you had about Larry Fisher and your

4   suspicions, did you doubt the conviction of David

5   Milgaard?

6   *A*   That's a tough question, as to what I thought at

7   the time. I -- all I can really say is that I had

8   this gut feeling and based on the information that

9   had been developed, both by myself and through the

10   application process, that he was an excellent

11   suspect.

12   COMMISSIONER MacCALLUM: Fisher was?

13   *A*   Fisher was. Who did I say?

14   COMMISSIONER MacCALLUM: You didn't say.

15   *A*   Fisher was, I'm sorry.

16   BY MR. HODSON:

17   **Q**   And again, if Fisher had committed the crime, then

18   you would doubt David Milgaard's conviction; is

19   that fair?

20   *A*   Yes.

21   **Q**   Now, the next question posed by Mr. Williams, and

22   I'm not sure if it's fair to pose this question to

23   you, but it looks as though he asked you of it,

24   would a jury convict if known about Fisher at the

25   time. Is that something that you and he would

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1   have discussed, as far as the use of Larry Fisher,

2   of the Larry Fisher investigative information?

3 A   I'm sure we must have had more discussion than is

4   just written here, but I have no recollection of

5   it.

6 Q   Okay. If we can scroll down, the 18th, the next

7   day:

8   "Mr. Williams called to advise that a

9   decision has not yet been made regarding

10   the polygraph testing of Fisher."

11   Do I take it from that that it was his decision

12   or his department's decision as opposed to your

13   decision about whether Mr. Fisher should be

14   pursued for another polygraph?

15 A   That's -- you know, he was leading the

16   investigation, the 690 was his investigation, so

17   that's who I was dealing with.

18 Q   And if Mr. Williams said no polygraph, I take it

19   would that preclude you from pursuing it?

20 A   Well, you know, I don't think I would start to

21   challenge Mr. Williams on where he was at, you

22   know. I approached him and laid out what I

23   thought we should do and he was leading the

24   investigation and making decisions based on all

25   the things that were going on.

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1   **Q**   And then just scroll down to the bottom of the

2   page, I won't read all this, but it looks on this

3   date there's a discussion with Mr. Williams about

4   getting a hold of Larry Fisher's prison records to

5   see if, the purpose being to determine if there

6   was anything that could be construed as evidence

7   on that file, and in fact I think you and

8   Mr. Williams then went out to Mountain Institution

9   and looked at his prison file; is that correct?

10   *A*   Yes.

11   **Q**   And it talks about his 21-year file history, and

12   what types of things would you be looking for on

13   that file?

14   *A*   Oh, primarily if there was any kinds of admissions

15   at all about an association to the Miller homicide

16   or any other unknown or unsolved crime that he may

17   have made comments on during his history in the

18   institution.

19   **Q**   If we could call up 011905, and this is a

20   September 19th, '91 fax from you to F Division to

21   authorize your travel to go to Vancouver to go

22   look at the files, and if we can go to the next

23   page. Paragraph 5, as support for your trip

24   authorization you say:

25   "In consultation with Federal Justice

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1   Department lawyer, Mr. E. Williams, it

2   is agreed this avenue should be pursued

3   for two reasons: (1) Did Fisher, during

4   therapy or contact with the prison

5   system, ever suggest he knew Gail Miller

6   or had anything to do with her death, or

7   the death of a female which he may not

8   have identified; and (2) In view of the

9   publicity the *Milgaard* case has

10   generated so far as Fisher being a

11   suspect, it would be a prudent

12   investigative step to review Fisher's 21

13   year penitentiary file."

14   So, again, does that capture what you were

15   looking for when you went out there?

16 A I think -- I think so.

17 Q And if we could go back to 056802, and again

18   September 19th, we bring up 266. It says:

19   "This a.m. I had a conversation with

20   Supt. Goodman, who indicated he had been

21   at a social with several City Police

22   members, one being retired Insp. Parker,

23   who was talking about having seen what

24   he believed to be moccasin tracks at the

25   scene of the Miller murder. Apparently

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1   it was initially thought that a Native

2   Indian may have been responsible. I

3   discussed this matter with Williams and

4   the fact that evidence at trial

5   suggested that Milgaard was in his

6   stocking feet at certain times during

7   the morning of the murder. Could what

8   was believed to be moccasin tracks

9   actually be sock impressions in the

10   snow? I will attempt to interview

11   Parker and determine if he has notes

12   left on this point, and what he has to

13   say."

14   So would this be the first time you became aware

15   that Mr. Parker may have had some relevant

16   information?

17   A   Yes.

18   Q   And we'll see some notes a bit later about the

19   follow-up. Now the next day, September 20th:

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

21   advised that a decision has been made

22   not to have Fisher take the polygraph

23   examination. His superiors have met and

24   decided, "the down side risks outweigh

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

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1   testing procedure is highly subjective

2   and cannot be converted to evidence."

3   Williams did not indicate if

4   polygraphist Shalk had been consulted."

5   And so I take it that that happened, did it Mr.

6   Pearson, on September 20th Mr. Williams advised

7   you that Federal Justice --

8 A   Yes.

9 Q   -- decided there would be no polygraph?

10 A   Yes.

11 Q   Now I think there's some further references where

12   you continue to bring up the polygraph. Now Mr.

13   Fisher never did undergo another polygraph; is

14   that correct?

15 A   Umm, there was -- no, he never. There was some

16   ongoing discussion we had about the polygraph, but

17   it never did, never did come about.

18 Q   What -- did you agree with this decision?

19 A   Well I -- I just felt that it was a potential

20   tool. Mr. Pick, we still had him on side and he

21   had indicated to us quite some time previous to

22   this that we'd certainly have that option

23   available to us, I thought it was a chance for us

24   to again work at having a face-to-face contact at

25   some point. I know I had made the statement about

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1   making a no-nonsense interrogation, I think that

2   was being overly optimistic, but at the same time

3   I did think that there was some benefit to working

4   towards having contact with Larry Fisher again.

5   Q   And, again, were -- what -- were you aware of any

6   downside risks in conducting another polygraph of

7   Larry Fisher?

8   A   Well not from where I sat, I didn't believe there

9   was any downside risks, but that was the position

10   that was taken --

11 Q   And --

12 A   -- and I can't explain it.

13 Q   If we can scroll down to the bottom it looks as

14   though you again expressed your concerns about

15   this, and if we can go over to the next page, it

16   looks like you pled your case to Mr. Williams and

17   then:

18   "It was agreed that Mr. Williams would

19   recontact Mr. Pick and determine if in

20   fact his client would agree to submit

21   himself to a polygraph test. I believe

22   this is being done after some prodding

23   on my part, however, this is an opinion

24   only."

25   And is that an accurate note of what happened in

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1   that call?

2   A   As I recall, yes.

3   Q   And then it looks like the next day:

4   "Mr. Williams called to advise he had

5   spoken to Harold Pick and that Fisher

6   will not take a polygraph test and will

7   not grant any more interviews to the

8   police. There is one window of

9   opportunity which exists, that being

10   that CBC reported Carl Karp is doing a

11   program on the Fisher angle on "The

12   *Fifth Estate*". If this does not go well

13   for Fisher, he may grant further

14   interviews with us. Indications are

15   that Fisher and his current wife are fed

16   up with the publicity and the hounding

17   by the media."

18   And, again, is that an accurate note of what

19   would have happened at the time?

20 A   Of my call with Mr. Williams?

21 Q   Yes?

22 A   Yes, I believe so.

23 Q   And so at this point, September of 1991, did Mr.

24   Fisher essentially tell you "no more interviews,

25   no more polygraph, I'm done"?

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1   A   He didn't tell me that. Mr. Williams passed that

2   on and he got it, obviously I think, from

3   Mr. Pick.

4   Q   And did that cause you a concern?

5   A   Well, again, it was an opportunity that was no

6   longer available I guess.

7   Q   And then if we can scroll down, 272:

8   "During my previous conversation with

9   Mr. Williams, I asked him to ensure that

10   the questions concerning the (V14)-

11   complaint be covered with Mr. Pick, who

12   in turn was to ask the questions of Mr.

13   Fisher."

14   And so, again, the (V14)- complaint -- and we'll

15   deal with that tomorrow -- but that was included

16   in Mr. Milgaard's second 690 application, and the

17   suggestion that Mr. Fisher had committed that

18   rape in 1968, and it looks like you asked Mr.

19   Williams to ask Mr. Pick to ask Mr. Fisher

20   whether he had any knowledge or was involved in

21   that crime; is that correct?

22   A   Yes.

23   Q   And that it's reported back:

24   "I have been advised Fisher indicates he

25   does not know where Round Lake is

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1   located and does not know what we're

2   referring to when we talk of this

3   incident..."

4   And:

5   "Mr. Pick advised that Fisher indicated

6   he knows where Avenue "H" in Saskatoon

7   is located, however denies being there

8   on 31 Jan 1969, re the (V4)---

9   complaint."

10   So I take it that, through Mr. Williams to Mr.

11   Pick to Mr. Fisher, the question of the (V4)---

12   and (V14)- incidents were put to him and he

13   denied involvement; is that correct?

14 A Yeah, that was a pretty long, roundabout way of

15   doing it, but yes, that's, as I recall, the way it

16   happened.

17 Q And I take it you would have, as an investigator,

18   preferred to have asked Mr. Fisher these questions

19   yourself?

20 A That would have been to our advantage, if we could

21   have had a face-to-face, --

22 Q And then --

23 A -- but, you know, allowed this to happen.

24 Q Then go to 056656. And this is your September

25   23rd, 1991 report, your earlier report is April

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1   '91, and this is your first report on the second

2   application. And again, if we can scroll down, it

3   talks about the second application, which I don't

4   think we need to go through. If we can go to the

5   next page, scroll down to the bottom, you talk

6   about:

7   "Attempts to locate the various files

8   associated to Fisher's sexual assaults,

9   for which he is currently serving time,

10   have not been successful."

11   And you go on and talk about the files:

12   "The police files for the two victims

13   ((V8)--- and (V7)---) have been

14   destroyed. Portions of the original

15   police files were located on Fisher's

16   penitentiary records."

17   And I think we touched on that before, that parts

18   of the Fort Garry police file were on Fisher's

19   penitentiary files. Then:

20   "The files associated to Fisher's known

21   sexual assaults in Saskatoon ... are

22   also unavailable from the Saskatoon City

23   Police Department. Portions of the file

24   material have been located so far as the

25   (V5)--- investigation is concerned,

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1   however the majority of the file

2   material on these cases is believed to

3   be destroyed."

4   And, again, would that be what you had at the

5   time as far as police files on the --

6   A   I don't -- I can't -- I have to go with just

7   what's here, and I believe that's accurate.

8   Q   If we can go to the next page you say:

9   "Much has been made of the missing files

10   by both Milgaard's counsel and the news

11   media. The Acting Chief of the

12   Saskatoon Police Department recently

13   requested that the matter of the missing

14   files be examined by the Saskatchewan

15   Police Commission, in an attempt to

16   clear the air. Most of the files from

17   the 1960's and 1970's have been reduced

18   to micro-fiche, however, the files

19   involving Larry Fisher have not been

20   located at all. At the time of writing,

21   personnel from Saskatoon Police

22   Department are searching all micro-fiche

23   files from the late 60's to early 70's,

24   in an effort to locate material which

25   may have been misfiled or contained

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1   under separate file cover. The police

2   file associated to Fisher's sexual and

3   attempted murder of one (V10) (V10)- in

4   North Battleford in 1980, while Fisher

5   was on parole, is completely intact and

6   in our possession."

7   And again this comment about:

8   ""Much has been made of the missing

9   files by both Milgaard's counsel and the

10   news media.";

11   what was that referring to?

12   A   I just think that, again I'm just reflecting here

13   on -- in -- generally at that time I believe there

14   was suspicion of a coverup, and the news media

15   about the missing files and the publicity over

16   what may have gone on in the police department

17   regarding Larry Fisher and the other crime

18   victims.

19   Q   Do you recall if there were allegations being

20   leveled against the police about misconduct or

21   impropriety with respect to these files?

22   A   I don't know the time frame but, you know, there

23   was allegations of a coverup. I'm not sure that

24   was in this particular time frame, I just can't

25   place it, but that was certainly out there, yes.

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1   Q   And then scroll down to f), and again at this

2   time -- this is September 23, 1991, and I don't

3   think, I think it was a month later, in October

4   that you interviewed (V14)-- (V14)-, but you talk

5   about:

6   "It will also be noted in Milgaard's

7   most recent Application, the reference

8   to an unsolved RCMP case which took

9   place in 1968 May 08 or 09 at (V14)

10   (V14) on (V14)-----. This offence was

11   investigated by (V14)---- Detachment and

12   the victim was (V14)-- (V14)-. It seems

13   Centurion Ministries included this

14   particular offence because the Peace

15   Officer at the time of returning the

16   victim's clothing approximately 1 1/2

17   years later, commented that David

18   Milgaard had committed the crime, and

19   was being charged for a separate murder.

20   According to the new Application, it is

21   believed that it was Fisher and not

22   Milgaard who was responsible. This

23   conclusion seems based on several

24   points, such as physical description,

25   and the fact Fisher may have been

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 1   employed on a construction project at

 2   the potash mine near (V14)----,

 3   Saskatchewan, thus having reason to be

 4   in the area. Attempts are currently

 5   being made to locate the member who

 6   investigated this particular offence.

 7   To date the police file associated to

 8   this crime has not been located,

 9   however, inquiries are continuing."

10   And:

11   "The (V14)- assault will form part of

12   the fact comparison being completed by

13   the Division Analyst."

14   So I take it, at this time, you didn't have the

15   file from 1968 and you had not talked to

16   Ms. (V14)-; is that correct?

17   A   I believe that's right, yes.

18   Q   And then just scroll down. You talk about:

19   "Attempts have been made to have Fisher

20   re-interviewed at Mountain Prison,

21   however, our request has been denied.

22   Fisher claims he and his current wife

23   have been harassed by the press and he

24   has nothing further to offer on the

25   subject of Ms. Miller's murder.

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1                        Inquiries into the (V14)- offence are

2                        continuing."

3          Again, I think that's consistent with what was in

4          your earlier report.  Go to the next page:

5                        "Further Investigation",

6                        "Efforts are ongoing in an attempt to

7                        locate police records from the late

8                        1960's and early 1970's associated to

9                        Fisher's sex crimes in Saskatoon."

10         Was that the work being done by the Police

11         Commission to try and find files?

12    A    Yes, that's right.

13    Q    And down in the bottom, if you scroll down to (c),

14         you talk about, and we covered this already, about

15         getting the Analytical Unit to look at similar

16         fact evidence, and you say:

17                        "This task is complicated by the fact

18                        the original police files, with the

19                        exception of the (V10)- case, have not

20                        been located and our analysts must rely

21                        on the Application material submitted by

22                        Centurion Ministries, as well as

23                        remnants of file material located within

24                        the judicial systems."

25         Then you say:
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1   "While the value of a

2   "similarities/differences" analysis

3   remains questionable, it is believed

4   necessary to pursue this avenue to the

5   limit in order to fully examine the

6   Application material."

7   I'm wondering what you mean when you say "the

8   value of this analysis remains questionable"?

9 A Yes. Again, I guess at that time I still had some

10   belief that maybe this was not evidence, you know,

11   my knowledge at the time or my belief at the time,

12   maybe there was a view that this really, you know,

13   wouldn't be considered evidence, but that's all I

14   can really put on it.

15 Q And the next page:

16   "Summary",

17   "The first Application under Section 690

18   ... has been turned down. The second

19   Application will be responded to in the

20   very near future."

21   Then you say:

22   "To date there is no evidence linking

23   Larry Fisher to the Gail Miller murder."

24   And was that your belief at the time, sir?

25 A Yes.

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1   **Q**   This is probably an appropriate spot to break for

2   the day, Mr. Commissioner, I'm moving into a

3   different area but I won't get done by 4:30.

4   COMMISSIONER MacCALLUM: Okay.

5   *(Adjourned at 4:18 p.m.)*

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1 ***OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES***:

2 We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,

3 Official Queen's Bench Court Reporters for the Province of

4 Saskatchewan, hereby certify that the foregoing pages

5 contain a true and correct transcription of our shorthand

6 notes taken herein to the best of our knowledge, skill,

7 and ability.

8

9

10

11

12 _____, CSR

13 Karen Hinz, CSR

14 Official Queen's Bench Court Reporter

15

16

17

18 _____, RPR, CSR

19 Donald G. Meyer, RPR, CSR

20 Official Queen's Bench Court Reporter

21

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