

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 Thursday, November 24th, 2005

Volume 98

Inquiry Proceedings



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<i>Mr. Eamon O'Keefe, Esq.,</i>	for Mr. Larry Fisher
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RICHARD ALLAN PEARSON, CONTINUED

- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 9:04 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

RICHARD ALLAN PEARSON, continued:

BY MR. HODSON:

Q Good morning, Mr. Pearson.

A Good morning.

Q When we adjourned yesterday we were just at the end of 1991 as far as the chronology. Let me just try and recap a couple of things we talked about yesterday. At the end of November of 1991 the Federal Minister of Justice had asked the Supreme Court of Canada to hold a reference to answer certain questions and I think we went through that, you became aware of that. Secondly, the Saskatchewan Justice Department, the Attorney General's department became involved in the process and they were going to appear before the Supreme Court on behalf of the Saskatchewan government and we saw a note where you were at least made aware that Murray Brown and one other person would be involved in that matter, and we went through the (V14)-- (V14)- matter yesterday in some detail, your dealings there, and I think



1 towards the end of 1991 where it was left off is I
2 think that once the reference was called we saw a
3 note where Mr. Williams asked you to go ahead and
4 re-interview the Fisher victims, so I think that's
5 where we left off. Does that -- and again that's
6 just a general recap of where we were. Does that
7 sound right, sir?

8 A Yes, it does.

9 Q And again, your notes are quite extensive, this
10 chronology of tasks that you did, and I do not
11 wish and go through them all obviously, Mr.
12 Pearson, but I do want to just touch on generally
13 again the, towards the end of 1991, 1992 time
14 period, and it appears from the notes, and
15 certainly some of the things we've gone through so
16 far specifically, that you were investigating
17 matters -- let's start with Larry Fisher. You
18 were investigating matters that would tend to
19 incriminate him or connect him to the death of
20 Gail Miller; is that fair? You were following up
21 on various leads in that regard; is that right?

22 A That's fair, yes.

23 Q And as well in some cases you were looking at
24 evidence or information that might tend to
25 exculpate Mr. Fisher; is that fair? In other



1 words, both sides of the equation, what might tend
2 to connect him, what might not, but again,
3 investigating to try and find -- either eliminate
4 him or move him from a suspect to someone who
5 might be charged. Is that a fair, general summary
6 of what you were doing?

7 A That's fair, yes.

8 Q And as far as the sources of information or where
9 you were getting information from, we've gone
10 through some of the reports where certainly Mr.
11 Williams was giving you information or giving you
12 specific requests; is that fair?

13 A That's fair, yes.

14 Q And I think, and I want you to comment on this
15 from the materials, it looks as though that in the
16 course of talking to people, for example, you
17 might talk to Linda Fisher and Linda Fisher might
18 tell you, you know, talk to Anita Pambrun, she can
19 tell about this, and then on down the line, so
20 that one inquiry might lead to another inquiry and
21 might lead to another inquiry and you were
22 following those up; is that correct?

23 A Generally, yes.

24 Q And secondly, another source of information, again
25 from your notes, I just want your general comment



1 on this, it looks as though you had spent some
2 time looking at the Saskatoon City Police file
3 through the course of your work on both 690
4 applications; is that correct?

5 A Yes.

6 Q And we see in the notes in some spots where you,
7 and I'll touch on some of these a bit later, but,
8 for example, the bus stop and Larry Fisher at the
9 bus stop and John Husulak, the bus driver, and
10 Dennis Elliott viewing cars in the area, it looks
11 as though you went back and looked at some of that
12 information to see if you could develop that into
13 either a connection to Larry Fisher or to some way
14 eliminate him; is that a fair summary?

15 A That's a fair summary, yes.

16 Q And so again as a source, if we look at the notes,
17 we see a number of inquiries you make, some of
18 those would be, if I can call it, based on your
19 own initiative based on what you read or saw
20 somewhere and you thought was prudent to follow up
21 on; is that fair?

22 A That's fair, yes.

23 Q And then if we look at David Milgaard as a
24 suspect, if I can call it that, at the time you
25 know that it's going to the Supreme Court of



1 Canada on a reference, he's claiming he's
2 wrongfully convicted and there's an issue before
3 the Court relating to whether he -- I don't want
4 to get into the specific questions, but looking
5 into certain questions or issues relating to his
6 guilt or innocence, and we have seen in the
7 documents again some of the notes where you would
8 be pursuing matters that might tend to exculpate
9 David Milgaard, is that fair, that, you know,
10 looking at the scene of the crime, things like
11 that, that might tend to show that he didn't
12 commit the murder; is that fair?

13 A I believe that's fair, yes.

14 Q And there's also references, we saw some
15 yesterday, to Ben Dozenko, the prison guard
16 matter, where you were involved in pursuing
17 statements that might be on the other side of the
18 coin, that is, evidence that might tend to support
19 his conviction; is that fair?

20 A Yes, that's fair.

21 Q And again I think we touched on a bit, and maybe
22 just to confirm this, so as far as the scope of
23 your work, would you describe it as, again with
24 respect to Mr. Fisher and Mr. Milgaard, is it fair
25 to describe it that you were looking at



1 investigating all leads or evidence that came to
2 your attention that went both to guilt and
3 innocence of both of those individuals?

4 A I think as viewing them as suspects, that's fair
5 to say. I mean, there was a lot of history here,
6 a lot of work that was in play and a lot of work
7 that could be done. This was a massive historical
8 case, so -- but I can say it's fair that I was
9 looking at both sides.

10 Q Did you consider, and again -- and I'm talking
11 about the time frame around the end of 1991, but
12 right through from the second application through
13 to the time that it was in the Supreme Court, what
14 did you see your role as far as what you were
15 trying to establish or set aside or anything like
16 that, what did you understand your role to be?

17 A I understood my role to be assisting the Federal
18 Justice Department in this task they had and to
19 pursue whatever information came to light or was
20 tasked on me.

21 Q And were you --

22 A I wasn't looking at it as leading an investigation
23 or, you know, reopening this police investigation
24 as such, it was really an assistant's role is kind
25 of how I viewed it. I wasn't --



1 Q And who did you think you were assisting?

2 A Pardon me?

3 Q And who was it that you were assisting, and the
4 part --

5 A I think I was assisting, I believe I was assisting
6 under the 690 process which was initiated through
7 the Federal Justice Department.

8 Q And so in that respect, that if you -- if you
9 investigated and found some information, for
10 example, that might be helpful to Mr. Milgaard,
11 would that be something that you felt was part of
12 your mandate or duty in assisting Federal Justice?

13 A I believe so, sure.

14 Q And similarly, if you investigated and found
15 something that was not helpful, that might be
16 incriminating to David Milgaard, was that
17 something that you felt was part of your mandate
18 to Federal Justice?

19 A That was my understanding, yes.

20 Q And similarly, the same question with respect to
21 Larry Fisher, both incriminating and exculpatory
22 evidence or information, again, did you think that
23 was part of your duty or mandate in assisting
24 Federal Justice, to pursue those two areas and
25 bring it forward to Federal Justice's attention?



1 A I believe that's the appropriate thing to do, yes.

2 Q And I may have asked you this yesterday, and I
3 apologize if I did, but did you see yourself
4 taking sides on the issue of whether David
5 Milgaard or Larry Fisher was the person who killed
6 Gail Miller?

7 A I don't believe I took sides.

8 Q If we can just go back, if we can go back to
9 056743 which is the chronology and go to page
10 056836, and this is December 27th, '91 and it's a
11 call to Linda Fisher, you say, in an attempt to
12 determine if she can recall the kind of jacket
13 Larry wore during the early days of 1969, and it
14 says:

15 "It should be noted (V4)--- describes
16 her attacker as wearing a suede or suede
17 type dark half or three-quarter length
18 coat, with possible sheep type collar.
19 I believe in past conversations with
20 Mrs. Fisher, she described Larry as
21 having a jacket similar to this."

22 And then it goes on to talk about a phone call
23 with Mr. Levy who was (V4---'s lawyer. You say
24 you are interested in additional detail of the
25 assault and if she was reporting this as a



1 complaint, wanting charges laid, etcetera.

2 "Levy believes (V4)--- came forward only
3 because she thought she had information
4 which would assist in answering
5 questions on the Milgaard/Fisher case.
6 Levy will double check with his client
7 and let me know."

8 And that she's further available but does not
9 want publicity, and:

10 "He states Mrs. (V4)--- was upset
11 because when she came forward with the
12 statement provided to Asper's office, it
13 became known to the media."

14 Again, I think you told us yesterday your view on
15 the (V4)--- matter, that I think you told us that
16 you felt that if a charge was laid against Mr.
17 Fisher, that that would assist in your
18 investigation of Larry Fisher for the death of
19 Gail Miller; is that correct?

20 A If I thought about it at the time?

21 Q Yes.

22 A Yeah. Just reading from here, I would certainly
23 believe that that was something that would be
24 beneficial to this whole process.

25 Q I think what you told us yesterday or the day



1 before was that if Mr. Fisher was convicted of the
2 (V4)--- assault, that would corroborate Linda
3 Fisher's story --

4 A Yes.

5 Q -- that Larry wasn't at work that morning?

6 A Yes.

7 Q And secondly told us it would put him seven blocks
8 away from the murder scene?

9 A Yes.

10 Q And I think you said subject to the time issue,
11 that you felt it would be more helpful than not --

12 A Yes.

13 Q -- if he were convicted of that; is that correct?

14 A Yes.

15 Q And I think you also told us, and correct me if
16 I'm wrong, that it would also give an opportunity,
17 or might give an opportunity, to have Mr. Fisher
18 testify about that morning; is that correct?

19 A That's fair, yes.

20 Q And so again on this date, and this is a couple
21 weeks before the reference is starting, it appears
22 that you are following up on the (V4)--- complaint
23 and trying to see whether or not you can get
24 evidence to connect Fisher to the (V4)--- assault?

25 A It appears that way, yes.



1 Q And if you connected him to the (V4)--- assault I
2 think, from what you've told us, did you think
3 that would assist in connecting him to the Gail
4 Miller murder?

5 A Yes, yeah.

6 Q And then just at the top, just at the bottom
7 there, if you can scroll down, and if you can
8 just -- this is a discussion with Mr. Williams on
9 December 30th -- if you can go to the next page --
10 and it talks about:

11 "... as Mrs. (V4)--- does not want
12 police action so far as herself is
13 concerned, however, she does believe the
14 person responsible is in fact Fisher."

15 So at that point it would appear that Ms. (V4)---
16 said "I do not want to lay charges, I will
17 testify to help Mr. Milgaard or go to the
18 reference, I think it is Larry Fisher but I don't
19 want the police to take any action"; is that a
20 fair summary?

21 A That, that's my recollection through this, yes.

22 Q And then again I think you explain here to Mr.
23 Williams, you say:

24 "My comments to Mr. Williams was that if
25 Larry was responsible for the (V4)---



1 assault at 7:07 a.m. on 31 Jan 69, he
2 was in close proximity to the Miller
3 murder scene. Also it raises the
4 questions why Larry would tell Parker
5 and McCorriston he was at work on Friday
6 if he wasn't. It is possible Fisher
7 thought the police may have been
8 investigating the (V4)--- assault when
9 they approached Larry at the bus stop,
10 therefore causing him to lie about being
11 at work. (or) Fisher may have been at
12 the scene of both crimes, (V4)--- and
13 Miller, therefore he said he was at work
14 to avoid suspicion on himself. This
15 (V4---/Miller circumstance also gives
16 some significance to Linda's statement
17 that Larry was home that morning,
18 however we may never be able to
19 conclusively determine this."

20 Do I take it from this, Mr. Pearson -- let me
21 just try and summarize this and tell me if I've
22 captured your thinking correct -- on the one hand
23 you are saying it's possible that -- and just
24 again trying to connect the (V4)--- matter to the
25 Gail Miller matter -- one, on the assumption that



1 Ms. (V4)--- is right that it was Larry Fisher who
2 assaulted her, did -- one scenario would be that,
3 I think you've said here, is that Larry Fisher
4 assaulted (V4)--- but had nothing to do with Gail
5 Miller, and that he lied to the police that
6 morning and he lied to his wife because he -- or
7 maybe thought the police were questioning him
8 about the (V4)--- assault; is that sort of one
9 scenario you are laying out?

10 A Yes.

11 Q And the other one is that he was -- committed both
12 the (V4)--- assault and the Miller assault, and
13 that that's why he lied to the police and to his
14 wife; that's sort of the two scenarios?

15 A I -- that's fair, yes.

16 Q Yesterday we talked about the concerns you had
17 with Mrs. (V14)- identifying David Milgaard based
18 on a photograph in a newspaper 20 years later.
19 Did you have any concerns with (V4)---- (V4---'s
20 identifying Larry Fisher as the assailant based on
21 a newspaper photograph 20 years later?

22 A Yes, I think that would have been a problem.

23 Q And what concerns did you have?

24 A Well it -- I think, again, it's the concern of
25 seeing, seeing one sole picture many years later



1 and making a positive ID. Is that something that
2 would stand the scrutiny in a courtroom? It is,
3 you know, it's something that is questionable.

4 Q And if Ms. (V4)--- would have come to you and
5 said -- now putting aside the question of
6 jurisdiction, because presumably it would be a
7 Saskatoon City Police matter, is that fair?

8 A Yes.

9 Q Yeah. But putting that aside, if she came to you
10 and said "okay, I would now like to press
11 charges", when we talked about the (V14)- matter
12 yesterday I think you told Ms. (V14)-' lawyer that
13 "lookit, I have concerns with identity, I'm not
14 sure that a prosecution or charge would be
15 supported". Can you tell us what, if anything,
16 you might have done or said to Ms. (V4)--- with
17 respect to the identity issue?

18 A Well, I didn't say anything to Ms. (V4)---, --

19 Q No, but one issue --

20 A -- but one issue certainly would have been the
21 same issue.

22 Q No, but I'm saying what would you have said, and
23 I'm just trying to get your sense comparing --

24 A Again, I think this was -- would pose a similar
25 problem of having a positive identification some



1 20 years later through a sole picture in the
2 newspaper. And again, this would have to have
3 some more counsel than just me making this
4 decision, because it does pose -- pose a problem.
5 Q Okay then. Scroll down, please, to paragraph 438.
6 You say:

7 "Had a telephone conversation with Mr.
8 Williams, I requested of him that he
9 should contact Mr. Beresh to encourage
10 Fisher and his counsel to sit down and
11 try to recollect any details of the past
12 which may assist in furthering this
13 investigation. As Fisher is claiming
14 innocence, he should now be more
15 motivated than ever to recollect
16 additional detail of his movements and
17 activities during the time period of
18 Miller's murder. Williams will run this
19 by Beresh, however, I am not optimistic
20 Fisher will be any more cooperative now
21 than he has been in the past. His lack
22 of cooperation has a tinge of suspicion
23 to it."

24 I should point out, I think it was about December
25 the 20th or thereabouts that Mr. Fisher applied



1 to the Supreme Court of Canada and was granted
2 standing, limited standing to appear on the
3 reference that was going to start in January, and
4 I think Mr. Beresh was his counsel. Do you
5 recall becoming aware of that at some point; that
6 Mr. Fisher would be involved in the Court
7 proceedings?

8 A I don't recall, but I'm assuming I knew that.

9 Q And, again, this comment with Mr. Williams again
10 is maybe self-explanatory; is there anything you
11 can elaborate on with respect to that comment?

12 A I don't recall this at all.

13 Q If we can then go to 056639, please, and this is
14 the December 30th, 1991 report that you sent up to
15 your superiors. Again, we can go through parts of
16 this, if you go to the next page. And in this
17 report, if you can call that out please, it's at
18 the bottom:

19 "The Saskatchewan Police Commission
20 investigation did not locate file
21 material associated to Larry Fisher, nor
22 did they determine where the files in
23 question may have gone. There is no
24 evidence the Fisher files were purposely
25 tampered with by anyone."



1 So I take it you would have been made aware of at
2 least the, either the report, or the results of
3 the report of the Police Commission looking into
4 the missing files?

5 A I believe I must have, yes.

6 Q Go to the next page. Scroll down, please. So in
7 d) you talk about, again, to have the vetted-out
8 portion of the document -- and that's the
9 Centurion Ministries' report on (V5)-- (V5)---
10 that has the blacked-out name, you know which
11 document I'm talking about?

12 A Yes, yes, uh-huh.

13 Q And then you go on to say:

14 "It has since been determined the
15 Saskatchewan Police Commission
16 investigator did not approach Milgaard's
17 counsel for assistance on this point.
18 As the Section 690 ... Application is
19 based on the potential importance of
20 information contained in the missing
21 Fisher files, so far as Milgaard's cause
22 is concerned, it seems logical
23 Milgaard's counsel would share any
24 information they possess. As the Police
25 Commission investigator did not make



1 this request of Milgaard's counsel, it
2 will be made by myself via written
3 correspondence to Mr. Asper."

4 And again, at this time, did you feel that -- was
5 it your view that Mr. Asper or David Milgaard was
6 obliged or should have been providing this
7 information to you about the source?

8 A Well I just felt that there was some potential
9 information that maybe was available there that
10 wasn't being provided through this source that was
11 obviously providing information to Mr. Asper.

12 Q Okay. And I'll touch on some correspondence with
13 him in a moment. If we can go to the next page,
14 again I don't want to go through this in detail,
15 we -- this is the Tony Humen information and the
16 vehicle, suspicious vehicles noted from 1969, and
17 we see in your notes where I think you
18 investigated this angle a bit further in 1991 and
19 1992 and checked with the bus driver, John
20 Husulak, Tony Humen who was on the bus, Dennis
21 Elliott, some people who were in the area. And,
22 again, do you have a recollection of at least
23 generally looking into some of the matters that
24 may have jumped out from the police report?

25 A Yeah. There was, there was a -- lots of vehicle



1 stuff there that was in play. I don't remember
2 the details, but yes, you know, it's there, I
3 don't recall the details.

4 Q And here you are talking about a suspicious
5 vehicle in the area at the time which attracted
6 the attention of Tony Humen, and:

7 "From inquiries made to date, Fisher did
8 not own a vehicle during the time of the
9 Miller murder."

10 Do I take it, from that, that you were looking at
11 police files from 1969 and following up to see
12 whether you could use any of that information to
13 connect Mr. Fisher to the murder?

14 A That would seem to be the course of this
15 information, yes.

16 Q If we can go to the next page, again we've been
17 through this on a number of occasions with other
18 witnesses, you go through the notes of
19 Mr. McCorriston and the 'man with the hard hat who
20 usually catches the bus but failed to do so',
21 etcetera; do you have a recollection of going,
22 looking through some of that information?

23 A No, I really don't, you know. You know, I --

24 Q And I --

25 A -- I am really going by what's here.



1 Q And these notes would be accurate as to what you
2 did, what matters you followed up on?

3 A Well the, probably the notes are in the system
4 someplace if you want to determine the accuracy,
5 but I think they are, yes.

6 Q Yeah. Let's go to the next page and maybe I'll
7 just call out paragraph m). It says:

8 "What is potentially significant about
9 the above notebook entries is the fact
10 that a "hard hat" wearing male was being
11 pursued by the police, who was said to
12 have not taken the bus Friday (Miller's
13 murder). Larry Fisher is known to have
14 caught the bus at this location as his
15 means of transportation to his work
16 site, and that he wore a hard hat during
17 many of the times he travelled to work.
18 It seems the bus driver identified the
19 hard hat wearing person as being Tony
20 Humen, who it turns out, never wore a
21 hard hat. If it wasn't Humen, then who
22 was it?"

23 And I think this is something we've heard some
24 evidence about before this Inquiry; does this jog
25 your memory at all, Mr. Pearson, this line of



1 questioning?

2 A No. I remember talking to people about this, but
3 I'm really going with what's, what's on the
4 screen.

5 Q And, again, let me just -- I think what we've
6 heard is that there was some evidence that -- from
7 some people that said they saw a construction
8 worker with a hard hat --

9 A Yes.

10 Q -- who would catch the bus at Avenue O and 20th
11 Street with the young lady, and on many occasions,
12 that on the morning of the murder that he may not
13 have been on the bus, the hard hat, the person
14 with the hard hat may not have been on the bus?

15 A That's right, yes.

16 Q And, again, the fact that Mr. Fisher, on the
17 following Monday when he was interviewed, was at
18 the bus stop wearing a hard hat, I think that was
19 the connection. Again, that type of information,
20 Mr. Pearson, would that be something that -- would
21 that be in the suspicion category or would that be
22 something that might link Larry Fisher to the
23 murder, if in fact there was evidence that said
24 maybe he wasn't at the bus stop that morning?

25 A Well I don't believe this could be converted, in



1 my opinion, converted to actual evidence because
2 there is a lot of questions as to who this person
3 was and was he there on -- on -- on the date in
4 question. And, you know, there are -- again, 20
5 years later, people are not in a position to
6 confirm a lot of the suspicion or the data that's
7 in the notebooks so it's, you know, it causes one
8 to think and be suspicious, but to, to have a
9 challenge to prove that it's definitely something
10 that I guess you could call evidence would be a
11 challenge.

12 Q Maybe we can go to 056647. Again, this just
13 summarizes the information that you were gathering
14 on -- and we touched on this yesterday -- the
15 information about Mr. Dozenko that came out in the
16 Rosner and Karp book, and I think you told us that
17 you sort of oversaw or managed the getting of
18 statements from various people for Eugene
19 Williams; is that correct?

20 A Yes.

21 Q And where -- and, again, we'll go through some of
22 this -- but I think, in summary, Mr. Dozenko, who
23 was a guard in the institution and had extensive
24 dealings with Mr. Milgaard, said that Mr. Milgaard
25 admitted to him that he had killed Gail Miller on



1 a number of occasions. Mr. Dozenko said that he
2 would have made a note of that, I think in
3 checking the files there was nothing in any of the
4 notes, and we've heard sort of some conflicting
5 evidence from some other people and guards, some
6 saying that Dozenko said the opposite to them, and
7 I think in the case of one witness saying that
8 maybe, I think she said that maybe he had. But
9 just generally that type of information at the
10 time, where if anywhere did that fit in in your
11 thinking, Mr. Pearson, in the work that you were
12 doing investigating both Mr. Milgaard and Mr.
13 Fisher as suspects?

14 A Again I think, you know, it's information that has
15 surfaced, and it's pursued, and I think on this
16 bit of information, I don't think it was ever
17 concluded that this information was ever on file
18 that David Milgaard had admitted it as a -- the
19 end result of the inquiry. But, again, I -- it's
20 something that surfaced, and took a look at it and
21 passed it on to Mr. Williams, and I don't think
22 there was anything to this.

23 Q I'm sorry, you say you don't think?

24 A There was anything to this that was conclusive to
25 saying Dozenko was right in what he was saying.



1 Q And so is what you are saying is that it wasn't
2 clear that Dozenko's version of events was
3 credible and accurate?

4 A Well I -- that's my recollection, and I -- again I
5 don't -- I know there's other statements were
6 taken --

7 Q And we'll go through --

8 A -- regarding this, and I don't think, from that,
9 there was any conclusion that what Dozenko was
10 saying was accurate --

11 Q Okay. And --

12 A -- or backed up by documentation.

13 Q Right. And just again on your thinking -- and we
14 touched on this a bit yesterday with sort of the
15 reverse -- but if in fact -- and again at this
16 time I think you are following up with Dozenko and
17 some statements are taken later, and I think at
18 this time you were still checking the files to see
19 whether there was corroboration for Mr. Dozenko's
20 story -- but if that was credible, that
21 Mr. Dozenko's statement turned out to be credible,
22 again, what would that do sort of in your mind,
23 when you are looking at Mr. Fisher as a suspect at
24 this time and following up, how would that play
25 into that?



1 A Well, again, going back to that time, you know,
2 it's -- looking back it's quite clear as to what
3 the answer is to all these questions, but when you
4 are on the other side of the hill working your way
5 through it --

6 Q I want you to --

7 A -- it looks quite different, and --

8 Q I want you to answer --

9 A -- trying to weigh the two, the two sides between
10 Milgaard and Fisher, and I think it all becomes
11 part of --

12 Q Okay.

13 A - where you are swayed in your mind as to what
14 this all means.

15 Q And I want you to focus on the other side of the
16 hill, not what you now know or what you now
17 think, --

18 A Yes, yes.

19 Q -- I want to get you to tell us at the time, in
20 December 1991, at this time, and at this time you
21 didn't know about the DNA; correct?

22 A Correct.

23 Q And you didn't know that Mr. Fisher would be
24 convicted; correct?

25 A Correct.



1 Q And so, at that time, I want to -- I want you to
2 tell us how this fit into your thinking at the
3 time and --

4 A Gee, you know, it's -- that's difficult to go 15
5 years back and know how the Dozenko book material
6 fit into my mind. It was an inquiry that was
7 pursued to see if there was any validity to it,
8 and if it would have ended up being something that
9 was on file saying that this definitely was an
10 admission by Milgaard, it would certainly have
11 some significance I believe.

12 Q And what about on the flip side? We have seen,
13 and we'll see a bit more in your notes, follow-up
14 with inmates who claimed that Larry Fisher
15 admitted to them that he had killed a woman in a
16 couple of different stories?

17 A Yes.

18 Q Do you recall that information coming forward?

19 A Yes.

20 Q How did you at the time, Mr. Pearson, deal with,
21 if we can call it, putting aside the issue of
22 credibility of the information, but obviously
23 conflicting pieces of information coming forward;
24 is that fair?

25 A That's, that's fair, yes.



1 Q And as an investigator at this time, trying to do
2 your work for the Section 690 application, whether
3 you are able to elaborate for us, at the time,
4 what -- what and how you dealt with this type of
5 information that seemed to be tugging in both
6 directions?

7 A Well I think it was a matter of gathering it and
8 providing it to Mr. Williams, and during our
9 discussions I'm sure we talked about these things
10 on our telephone conversations and what it meant
11 to the overall big picture, you know. It's just
12 another piece of information. But, you know, if
13 you would come across something that was
14 suggesting that Larry Fisher was involved in this,
15 again it would be pursued and assessed. A lot of
16 it would depend on, you know, the reliability of
17 the information. And again, some of the
18 information was coming out of the institutional
19 system, a lot of the people maybe weren't very
20 credible and had a history, so all that had to be
21 weighed into this, I think, in coming to some kind
22 of a decision.

23 Q And again just, and in summary, can you tell us
24 whether, as far as sort of information coming
25 forward that was incriminating to either Mr.



1 Fisher or Mr. Milgaard, can you tell us generally
2 that, in the course of your investigation, were
3 you getting incriminating information that pointed
4 towards both Mr. Fisher and Mr. Milgaard?

5 A Yes, I believe that's, I believe that's fair. And
6 I think that's probably what the documentation
7 shows, that there was some information coming
8 through, or some inmate had said that Larry said
9 this, and other information here where Dozenko in
10 a book is saying something else about Milgaard,
11 and information on both sides was surfacing from
12 different sources.

13 Q Yeah. Let me go beyond just sort of the
14 information and people who said either Mr.
15 Milgaard or Mr. Fisher might have made an
16 admission, just talk generally about evidence that
17 might tend to incriminate one or the other from
18 any area. Again, generally, are you able to tell
19 us, in the course of your investigation, did you
20 have evidence or information that would tend to
21 incriminate both of them, I mean inde -- let me
22 rephrase that; where you had information,
23 obviously, that tended to incriminate Mr. Fisher,
24 correct, and you would follow up own that?

25 A I believe so, yes.



1 Q And did you also get information and evidence that
2 tended to incriminate Mr. Milgaard?

3 A Yes.

4 Q And again, if you are able to at that time, go
5 back at that time and tell us whether -- and how
6 you -- how you dealt with that, the fact that you
7 were getting, I guess sort of pursuing -- maybe
8 'pursuing' is the wrong word -- but having placed
9 in front of you sort of two sets of conflicting
10 theories, if I can call it that?

11 A I don't think I was making those kinds of
12 decisions, to be quite honest with you. I was
13 reporting this information to the 690 process, I
14 wasn't making the decisions as to "I won't
15 consider this" or "I won't believe that" and "I'll
16 believe something else", I don't believe that's
17 really where I was at with this as I recall.

18 Q Okay.

19 A It was a matter of getting the information and
20 having it forwarded on. Much of the information,
21 say in Dozenko, a lot of the inquiries may have
22 initiated through my office through information
23 that was passed on to me in some cases by Mr.
24 Williams, and then I would have other
25 investigators in other parts of the country go to



1 the institution and talk to the people and follow
2 up that information, may come back to me and be
3 forwarded to Mr. Williams, in some cases it went
4 directly to Mr. Williams, so I wasn't always in a
5 position to say what value it had to everything
6 that was going on.

7 Q Yeah. And just based on what you had and the
8 information that you had, and again around this
9 time frame, December '91/January '92 right through
10 until March of -- March and April of '92 when the
11 reference was completed, did you in your own mind
12 ever come to any conclusion that, based on what
13 you had, that the evidence was overwhelmingly
14 pointing to one or the other, to either Mr. Fisher
15 or Mr. Milgaard, as the culprit?

16 A I think I struggled with this like everyone, I --
17 if one was stronger than the other. All I can say
18 is that I was certainly influenced by the fact
19 that David Milgaard had gone through the justice
20 system, and I have to say that that carried a lot
21 of weight; and on the other side Larry Fisher was
22 a person that I couldn't eliminate as a suspect in
23 my mind, so I was carrying both of those. And I
24 think I was like everyone at the time, you
25 struggle with it, and there was no definite answer



1 to what -- all the information that was out there
2 on both of them.

3 Q And if there had not been a conviction of David
4 Milgaard and he was simply a suspect, are you able
5 to tell us whether, whether that would have
6 changed your views or tipped the scales one way or
7 the other?

8 A I think it probably, it probably would have. I
9 think the fact that an individual had gone through
10 the justice system, I guess I like a lot of people
11 have confidence in it, some may not, but I don't
12 think anyone is going to tell you that someone who
13 has been through our justice system and convicted
14 is going to not be swayed by that, and I think I'm
15 no different.

16 Q And apart from the conviction though, again in
17 wrestling with this or struggling with this as you
18 said, apart from the conviction, based on the
19 information that you had at the time, did you also
20 have some information, apart from the conviction,
21 that caused you to suspect David Milgaard for the
22 crime?

23 A Yes.

24 Q Again if we can go to page 056649, and I just want
25 to touch on -- this is your -- a summary about



1 what's going to happen with the 690 process, and
2 it says:

3 "As a result of the Order ...",
4 and this is the Supreme Court order:

5 "... numerous meetings have taken place
6 between all interested parties, with the
7 view of setting out procedure for
8 dealing with the upcoming review. It
9 seems the case will be presented to the
10 Supreme Court by Sask Justice, with
11 Federal Justice funding the majority of
12 the process. Federal Justice lawyer
13 Eugene Williams has advised that
14 exhibits currently held in the Queen's
15 Bench Court House in Saskatoon from the
16 original Milgaard trial will be turned
17 over to the RCMP as soon as a Queen's
18 Bench Court Order is received. Williams
19 has also advised that part of their
20 investigation is to again review the
21 possibility of having a DNA examination
22 of hair and blood that is believed to
23 exist on some of the exhibits. The DNA
24 examination is as a result of recent
25 technique development apparently taking



1 place in the USA and Britain."

2 So I take it that DNA came back on the scene at
3 this time?

4 A It appears that there was some developments there,
5 yes.

6 Q And would it be fair to say that the DNA tool --
7 and, again, I think we know what happened in 1997
8 -- again, as an investigator at the time, would
9 that be something that would assist you in, I
10 think your words were, the struggle between
11 information that pointed to Mr. Fisher and
12 information that pointed to Mr. Milgaard?

13 A Absolutely, yes.

14 Q If we can then go to page 056652. 056652, please,
15 and just paragraph a). And at this time it looks
16 like you say:

17 "It is unclear at this time the
18 procedure that will be utilized,
19 however, the possibility exists that
20 direct evidence will be called from
21 witnesses, in addition to the numerous
22 reports and transcripts that are already
23 available ...",

24 and would that be a fair summary of your
25 understanding at the time?



1 A Yes. I really wasn't very familiar with the
2 process that was -- this was going to take, and I
3 think it's --

4 Q Were you ever asked to be a witness at the Supreme
5 Court, did anybody ever raise that with you?

6 A No, not that I recall.

7 Q I now want to turn to the issue with this
8 confidential police source, and I think we've
9 covered some of that and I think you've told us
10 that you made a number of efforts to try and
11 identify the name of the confidential source from
12 the Centurion Ministries report; is that correct?

13 A Yes.

14 Q And I think you also contacted Mr. Asper and tried
15 to get this information from him?

16 A On the telephone, via telephone.

17 Q Yeah. And let's just go through some of that.
18 001900, the full page, and this is an October 1,
19 1991 forensic lab report request, and it looks as
20 though you sent the Centurion Ministries document
21 to see if you could decipher the printed
22 information in the black, obliterated areas on
23 lines 9 and 13 of Exhibit A. Is that correct?

24 A Yes, yes.

25 Q And I think the remarks, the conclusion, the



1 printed information has not been deciphered, and I
2 think there was -- go to 057815. That one was
3 October 1, 1991, and just leave it full page,
4 please, and this is October 20th, 1991, and again
5 I think you got a better copy, tried it again and
6 they still couldn't get the name deciphered; is
7 that correct?

8 A Yes.

9 Q If we can just go to the next page, we'll just
10 look at the document again, and this is the remark
11 here, maybe we'll just take another look at that.
12 Call out that paragraph, please, it says this --
13 and this is I think Mr. Henderson's report, he
14 says:

15 "This was the one case in which I was
16 given access to police reports ... and
17 source for us on internal police
18 problems, somehow managed to get into
19 the department computer and obtain the
20 file. I reviewed it at his home but was
21 not allowed to keep the reports or make
22 copies of them."

23 And I think you told us, Mr. Pearson, the other
24 day, that this caused you some concern, that a
25 police officer would be taking a file out of the



1 police station to his home; is that correct?

2 A Not necessarily to his home, but the fact that
3 he's taking it out to show people outside the
4 organization, a private investigator, that's the
5 issue.

6 Q And let's just pause here, and I think, and I'll
7 go through some of your further efforts, you were
8 trying to get the name of this person to find out
9 who it was. What would you have done if you would
10 have had that name?

11 A I think it would have been someone that you could
12 have developed to take a look and find out just
13 what they were up to and what they could provide
14 you for information and you would probably get
15 some background through the city police themselves
16 as to what this person was all about and if he had
17 been involved in this before and just some
18 background. It may have led to other suspicions,
19 it may have led to a prosecution, it may have led
20 to more information, more files, it may have led
21 nowhere.

22 Q When you say a prosecution, of whom and for what?

23 A It could have been a prosecution for an internal
24 policy -- not a prosecution, but a disciplinary
25 action for an internal policy, there probably



1 could be some breach of trust there. I mean, I
2 don't know all the lawful issues at play there.

3 Q Did you have a belief at this point that this
4 source person might be associated with the other
5 missing files that had not been located?

6 A Well, I think that's kind of a logical suspicion
7 that comes into play.

8 Q Did you have it at the time?

9 A Yes.

10 Q And is that something you would have pursued with
11 this individual?

12 A Yes.

13 Q If we can then go to 057806, and again leave it
14 full page, please, November 18th, 1991, and this
15 is from your document section, and they basically
16 tell you techniques -- if we can call out that
17 part, please:

18 "... techniques presently available are
19 not capable of effectively deciphering
20 this information."

21 So it looks as though in November your forensics
22 people said they can't get the name from the
23 document; is that right?

24 A Yes.

25 Q If we can then go to 159391, this is a December



1 30th, 1991 letter from you to Mr. Asper; is that
2 correct?

3 A Yes.

4 Q And if we could just call out the body of the
5 letter, please, it says:

6 "As you were aware, the RCMP have been
7 involved in the investigation of
8 information provided under the Section
9 690 Criminal Code application so far as
10 the suspicion that Larry Earl Fisher may
11 have been involved in the death of
12 Ms. Miller.

13 It has been suggested the
14 missing Fisher files may contain
15 information relevant to David Milgaard's
16 case. Attached please find a copy of
17 the Application material provided by
18 your office, with key information vetted
19 out. It has recently been determined
20 the Saskatchewan Police Commission
21 investigators tasked with locating the
22 "missing Fisher files" from the
23 Saskatoon Police Department, did not
24 approach your office seeking assistance
25 in this regard. With this in mind, and



1 in an effort to determine the facts and
2 truths surrounding the Milgaard/Fisher
3 matter, I am asking that you provide me
4 with the vetted out information you
5 possess which will hopefully assist in
6 advancing this investigation."

7 So I take it that would have been what you talked
8 about earlier, your formal request to Mr. Asper
9 after the Saskatchewan Police Commission -- let
10 me back up. The Saskatchewan Police Commission
11 issued their report concluding, (a), they
12 couldn't find them, and I should just identify, I
13 think the missing Fisher files were the (V1)-,
14 (V2)-----, (V3)----- and perhaps part of the
15 (V5)--- file; is that right? That's what we're
16 talking about?

17 A Yes, as I recall.

18 Q And the Police Commission said they couldn't find
19 them and they said they found no evidence of any
20 tampering and couldn't -- I think had some
21 administrative reasons as to where or how they
22 might have been destroyed, and I think in their
23 report or in your follow-up you told us that in
24 your discussions with them you learned that they
25 did not approach Mr. Asper or this confidential



1 source to get information; is that right?

2 A That's my recollection.

3 Q And when you say here it has been suggested the
4 missing Fisher files may contain information
5 relevant to David Milgaard's case, can you
6 elaborate on what you meant by that?

7 A I just believed that the files were missing and it
8 might have some relevance to what we're looking
9 into here.

10 Q And as far as relevance, did you know whether they
11 would be favourable to Mr. Milgaard or
12 unfavourable, or favourable to the police or
13 unfavourable to the police?

14 A I had no knowledge.

15 Q And then again just for the record, if we could go
16 to the next page, there is the attachment to your
17 letter, and we've seen this before, this is the
18 (V5)-- (V5)---/Centurion Ministries summary, and
19 the next page, so again this is the vetted out
20 information that you requested. If we can then go
21 to 057205, and this is Mr. Asper's reply to you of
22 January 8, 1992; is that correct? I'll go through
23 parts of it.

24 A It appears that way, yes.

25 Q And he says:



1 "Thank you for your letter dated
2 December 30, 1991. I am enclosing
3 herein photocopies of the entire police
4 report dealing with (V5)-- (V5)--- to
5 whom reference is made in the "vetted
6 out portions" of the report that you
7 provided to me. The material that I am
8 sending to you was provided to us by the
9 Saskatchewan Department of Justice.
10 Quite frankly, I am somewhat amazed that
11 you had not been provided with this
12 material, especially since it appears
13 that the (V5)--- file is only one of two
14 ((V3)-----) that remain in existence.
15 In any event, I am providing you with a
16 copy of the file that we have in our
17 possession."

18 Did you already have the file material that Mr.
19 Asper sent you?

20 A Yes, I believe I already had the (V5)--- file, and
21 I believe that (V5)--- file, if I'm correct in my
22 recollection, was the one that was provided to me
23 in more, a more complete file through the Police
24 Commission results of their microfiche search I
25 believe.



1 Q We went through a note yesterday that in November
2 of 1991 there was a reference that I went through
3 with you, and I can find it at the break if you
4 like --

5 A No.

6 Q -- and maybe I will, that just indicated that, and
7 I think you told us yesterday or the note said
8 that the file the Police Commission had looked
9 bigger than the one you had and you've got a copy
10 of it and I think your notes said it was a
11 microfiche file; is that correct?

12 A That's my recollection.

13 Q So here it says:

14 "Insofar as the information which is
15 vetted on the second page of the report
16 that you provided to us is concerned, I
17 can advise that this information was
18 provided by a confidential informant,
19 and I am not at liberty to disclose the
20 identity of this person. I can assure
21 you, however, that this informant did
22 not provide us with anything that we do
23 not now have in our possession from the
24 Department of Justice in Saskatchewan."

25 And again, did that comment satisfy your concern,



1 Mr. Pearson?

2 A I don't believe it did.

3 Q And why not?

4 A Because I think I was still looking at who the
5 source was in the city police.

6 Q And then Mr. Asper says:

7 "I am heartened by the fact that you are
8 actively investigating this matter, and
9 I can indicate that since full
10 disclosure has occurred, there are many
11 interesting points relating to Larry
12 Fisher that are found within the
13 Milgaard prosecution file and/or police
14 reports. For example, I note that there
15 are several references to the (V2) (V2)-
16 (V2)----- ((V2)--) and (V1)--- (V1)-
17 rapes throughout the Milgaard
18 investigation. In my view, clearly the
19 view of the investigating officers was
20 that the rapist was the likely suspect
21 in the murder. At the very least, the
22 possibility was not ignored. That some
23 of these files have now gone missing is
24 intriguing, to say the least.

25 If I can be of any further



1 assistance in this regard, I would be
2 most happy to help and you should feel
3 perfectly free to contact me at any
4 time."

5 Again, do you recall having any reaction or any
6 follow-up on this information about the police
7 file and having some -- with a view of the
8 investigating officers that the rapist was the
9 likely suspect in the murder?

10 A I don't recall. I do, from reviewing the
11 material, know that there was, I think, another
12 memo that went back to Mr. Asper.

13 Q Sure, and I'll go to that. Maybe we can just go
14 to your notes, to 056845, and we'll go to
15 paragraph 475. Go to the full page, please, just
16 call out the bottom. It says:

17 "I received mail from Mr. Asper who
18 provided me with a copy of (V5)--
19 (V5)---' file, which I already have. I
20 have no idea why it was included, other
21 than an expression of cooperation, as I
22 did not request it."

23 Is that correct?

24 A Yes, I believe.

25 Q Asper -- and then the next page, call out the top



1 part:

2 "Asper did say the vetted info is a
3 confidential informant and will not be
4 revealed to me. What concerns me about
5 this is that Mr. Asper makes reference
6 in his correspondence as to how
7 "intriguing" it is that files have gone
8 missing, possibly, in my opinion, by his
9 own source, yet he seems satisfied with
10 leaving this question as it is. I am
11 not sure if there is more that can be
12 done in this regard."

13 And again, would that have been your view at the
14 time, sir?

15 A Yes, I believe so.

16 Q And is there anything you can elaborate on that
17 point?

18 A No. I'm just going by what I'm reading here. I'm
19 sorry.

20 Q And call up 057204, and this is your letter of
21 January 14th, 1992 back to Mr. Asper, if we can
22 just call out the letter part, please, and again
23 you thank him for responding to your December 30,
24 1991 letter and you say:

25 "Your reluctance to identify the



1 individual who removed one of the Fisher
2 files ((V5)---) from the Saskatoon
3 Police Department, the contents of which
4 were shared with Centurion Ministries,
5 prevents me from further investigating
6 this obvious lead.

7 In the third paragraph of your
8 correspondence, you describe as
9 "intriguing" the fact some of the Fisher
10 files are missing. Is it possible your
11 informant has provided the Fisher files
12 to other individuals? What I find
13 intriguing with this is the fact your
14 confidential informant may actually be
15 the person responsible for the missing
16 files. Without your assistance, we may
17 never know.

18 You make mention that many
19 interesting points relating to Larry
20 Fisher are found within the Milgaard
21 prosecution file and/or police reports.
22 If you have identified any file material
23 which would assist in my efforts to
24 determine if Larry Fisher was involved
25 in the murder of Gail Miller, I am



1 asking that you share them with me."

2 So again just back to this comment here, sir,
3 this would reflect what you thought at the time;
4 is that right?

5 A Yes.

6 Q And you say to Mr. Asper -- and let me back up.
7 Are you saying that -- well, you say what I find
8 intriguing with this is the fact your confidential
9 informant may actually be the person responsible
10 for the missing files. Did you ever learn of the
11 confidential informant and follow up with him or
12 her?

13 A I never did find out a name. A name was mentioned
14 as a possibility, but it wasn't -- it wasn't
15 confirmed. I don't remember any follow-up.

16 Q If we can then go to 057203, and this is January
17 17th, 1992, this is Mr. Asper's letter back to
18 you:

19 "I have given your letter of January 14,
20 1992 a good deal of thought.

21 As you are no doubt aware, we
22 are currently set for hearing in the
23 Supreme Court during the week of January
24 20, 1992, and obviously my time will be
25 occupied before that week. As soon as I



1 have some time, I will speak to our
2 confidential informant to determine
3 whether that individual might be
4 prepared to meet with you, even on a
5 confidential basis."

6 And then it goes on to talk about the other
7 points. Did you read anything into the fact that
8 Mr. Asper would not give you the name of this
9 informant, did that play at all in your
10 assessment of the situation?

11 A Well, as a policeman confidential informants are
12 part of the business, so to speak, and people do
13 keep their sources very confident, you know, and
14 protected, so it didn't startle me that he wanted
15 to keep his to himself. I mean, I wanted the
16 information and he wanted to keep his source
17 confidential, so it didn't shock me being a
18 policeman and knowing what this is all about.

19 Q And did it cause you to think any differently
20 about whether or not this confidential source may
21 have information about the missing files or not?

22 A Well, that was the unknown, you know, that was
23 always a thought you could have, that how much
24 information was out there. There's reference to
25 one file, but was there more information than the



1 one file, was there other information out there
2 that was floating around?

3 Q Let me put it this way: You told us one of the
4 reasons you were trying to find out and speak to
5 this confidential source is that you had
6 suspicions or concerns that the source might be
7 either the person who has the missing files or
8 might know information about where the missing
9 files are; is that correct?

10 A That's right, yeah.

11 Q And the fact that the source, the name of the
12 source was not being provided to you, did that in
13 any way change your suspicions or concerns?

14 A Well, I don't think it changed it. I mean, I
15 still had the suspicions, still had the concerns.
16 They weren't resolved.

17 Q If we can go to 056876, and this is February 7th,
18 1992, if we can call out the bottom, please, just
19 to get the date, and Mr. Asper, this is a
20 discussion with Mr. Asper, and if we can go to the
21 next page, please, call out the top part, please,
22 and again in this discussion it says:

23 "At this time Mr. Asper also advised
24 that he will not reveal his source to me
25 regarding the vetted out portion of the



1 Application material submitted to the
2 Minister of Justice. We discussed this
3 in general terms. I explained to Mr.
4 Asper the vetted out portion prevents me
5 from pursuing this possible lead. I
6 explained that his source could very
7 well have been leaking file material,
8 and is actually responsible for the
9 disappearance of the Fisher files, and
10 if he wishes it to remain as is, he will
11 have to explain the consequences of his
12 decision. I explained to him that I
13 will not be pursuing this aspect of the
14 inquiry any further."

15 And again, would this note accurately reflect
16 what you discussed with Mr. Asper?

17 A I believe it does. I'm just going by what I read
18 here.

19 Q And do you recall what Mr. Asper's response was to
20 this discussion, and specifically to your
21 suggestion or concern that the source might be
22 responsible for the disappearance of the files?
23 Do you recall what Mr. Asper might have said to
24 you about that concern?

25 A I have no recollection of the conversation, I



1 really don't.

2 **Q** If we can go back to 056409, this is now dealing
3 with Ms. (V4)---, and it appears you had some
4 correspondence with her counsel Mr. Levy; is that
5 correct?

6 **A** Yes.

7 **Q** And you sent her copies of her original statement
8 and her August 29th statement and asked her to
9 reread both statements she has provided and
10 contact you with any further detail which may have
11 been overlooked, and again, was this in connection
12 with having her testify at the Supreme Court do
13 you know?

14 **A** I believe -- I believe this is to do with her,
15 with the time frame, or I believe this -- would
16 this be to do -- if it falls into a time frame
17 here, would that be to do with her identity of
18 Fisher in the newspaper?

19 **Q** Yeah. This would be, just to assist you, I think
20 it was August of '91 he identify him in the
21 newspaper and this is January of '92 and (V4)----
22 (V4)--- did testify at the Supreme Court --
23 actually, sorry, this is December 30th, but I
24 think this is a follow-up to having her testify.
25 Do you remember following up with her to get



1 details?

2 A I don't remember that.

3 Q If we could call up 056411, again this is
4 Mr. Levy's letter back to you confirming that her
5 latest statements, she's given her best
6 recollection, but attached to that, if we can go
7 to page 056413, this is the police report of
8 January 31, '69 that identified I think when
9 Ms. (V4)--- was in to see the police on the day of
10 the assault. Call out that part. She gave a
11 description and then pictures picked out by her as
12 somewhat resembling the person were as follows and
13 then had the four photographs, and I think, if I
14 can just call out the next page, I think we've
15 looked at this before, there was a set of
16 photographs that were I think either assembled by
17 the city police or by you. Do you recall having
18 this information sent down to Ottawa or for part
19 of the process?

20 A I do recall getting some photographs from the city
21 and I believe this is Mr. Williams' request if I'm
22 not mistaken. I'm not positive on that, but I do
23 remember these photographs being accessed and
24 forwarded somewhere, probably to Mr. Williams, or
25 alternatively, it may have been generated through



1 the file numbers, the photo numbers on the file,
2 I'm just not --

3 Q I think they do match the photo numbers on the
4 police report.

5 A Yes, okay.

6 Q And it may have been that these were sent to
7 Ms. (V4)--- to view as well. Do you recall that?

8 A I don't recall that.

9 Q If we can go to 056839 -- actually, just go to the
10 previous page. Again there's notes here about, I
11 think arrangements were to be made to have you
12 view the Milgaard prison file and then if we can
13 scroll down to 444, call out that last paragraph,
14 it says:

15 "I talked with Mr. Bob McGuire, who
16 advises my permission from Corrections
17 Services has been rescinded on advice
18 from their legal services and in
19 particular Mr. Pinetell. It seems the
20 decision has been made by senior
21 management of Corrections based on a
22 perceived problem that the police should
23 not be permitted to gain potential new
24 evidence from reviewing Milgaard's
25 institutional file, believing I suppose



1 that this may be a self-incriminating
2 exercise. I expressed my concern that
3 Federal legislation permitted the
4 exchange and access of information held
5 in files in computer banks at the
6 various federal agencies."

7 Next page.

8 "I raised the question, "If Federal
9 Justice is permitted access, what do
10 they do if new evidence is uncovered?
11 Also, in the past I have been given
12 permission to review the Fisher file and
13 in fact did. Why is Fisher's situation
14 different than Milgaard's?" I also
15 asked the question, "Why does Federal
16 Justice and our Provincial Justice
17 Department officials have right of
18 access to the file material, and others,
19 such as the police, do not?"

20 And again, do you recall this issue coming up at
21 all, Mr. Pearson, about access to files?

22 A Yeah, vaguely. Like I say, I don't know how I can
23 comment any more than what's written here, but
24 yes, that was obviously a discussion I had.

25 Q And I take it, sir, you did not then, you



1 personally didn't review Mr. Milgaard's
2 institutional file at this time?

3 A No, I did not.

4 Q Go to page 056841.

5 A Can I just go back to that again?

6 Q Yes, go back to 056839. Perhaps at the last part,
7 I think you say:

8 "My position is basically this: it
9 matters little who reviews the Milgaard
10 file as long as someone in authority can
11 advise the Supreme Court what has or has
12 not been done in this regard."

13 A Yes, that's what I was going to refer to.

14 Q And I believe, and I stand to be corrected on
15 this, we'll certainly hear from other witnesses, I
16 believe the file was made available and reviewed
17 for the Supreme Court reference. Are you aware of
18 that?

19 A I don't recall.

20 Q If we can go to 056841, this is January the 9th of
21 '92, so a week before the reference, and you've
22 got a note:

23 "Called Yorkton Psychiatric Centre ...
24 talked to Dr. Samuel. I asked him if
25 the psychiatrist by the name of Dr.



1 Andrea had ever worked there. I was
2 told there was a Dr. Andrews who was
3 employed there in the late 1960s, very
4 early 1970s, then moved to London,
5 Ontario and has since deceased. I asked
6 the doctor to confirm that they held a
7 file on David Milgaard from the time he
8 was examined at 13 or 14 years. He will
9 check and call me back.

10 Dr. Samuel called to confirm he
11 held a file on Milgaard from his
12 examination at 14 years of age. I did
13 not ask for the file material and
14 indicated to the doctor to hold the file
15 in view of the Supreme Court review. If
16 it is to be accessed, it will be done so
17 in a legal and proper manner."

18 Are you able to tell us how this, or what the
19 purpose of this inquiry was?

20 A You know, I don't recall. I don't know if this is
21 something that was going to be part of some
22 overall assessment through the Supreme Court. I
23 just don't know.

24 Q If you can scroll down to the next paragraph,
25 please, it says:



1 "I placed a call to Sask Justice lawyer
2 Eric Neufeld to determine if there were
3 any additional inquiries I could make on
4 his behalf."

5 And let me just pause there. What would have
6 prompted you to do that?

7 A Well, I was assisting the Department of Justice
8 and this appears to now also be involving the
9 province and I believe Eric Neufeld was one of the
10 people in position there and I guess I was just
11 extending my offer to see if there was anything
12 that he wanted pursued or done.

13 Q And then you say:

14 "I also discussed the (V4)--- case with
15 Mr. Neufeld and what they wish to do so
16 far as the identity question of her
17 assailant is concerned. The time of the
18 (V4)--- assault being 7:07 a.m. some
19 eight blocks from the Miller murder
20 scene is extremely important,
21 particularly in view of the fact (V4)---
22 states it was Fisher that assaulted her.
23 While I have not developed a time line
24 of activity, it seems Fisher may have
25 been eight blocks away, involved in a



1 crime during the time Miller was being
2 murdered. On the other hand, the fact
3 that Fisher was in the area and it is
4 now known that he was an active sexual
5 offender during this time frame in that
6 particular geographical area, certainly
7 leaves him open as a continual prime
8 suspect."

9 And again, we talked about this earlier, was
10 it -- were you saying that lookit, the (V4)---
11 assault could either be an alibi for Mr. Fisher
12 for the Gail Miller murder or it could be
13 something that puts him in the area at the time
14 of the murder; is that --

15 A That's fair.

16 Q And would it depend on the timeline; was that the
17 -- is that an important factor?

18 A Well, that is a factor, but I think there was some
19 time movement here, I'm not sure if the time was
20 locked down tight, but the fact that Fisher was in
21 the area would have been extremely important in my
22 view.

23 Q But again at this time, and I think you told us
24 yesterday -- and please correct me if I'm wrong --
25 that you felt that, if Mr. Fisher had committed



1 the (V4)--- assault, I think you said you felt
2 that that pointed -- heightened your suspicions
3 that he committed Gail Miller's murder; is that
4 correct?

5 A Oh, absolutely, absolutely.

6 Q And so as far as the question of was it an alibi
7 or was it incriminating, was it your view that it
8 was more on the incriminating side, the fact that
9 he may have committed the (V4)--- assault?

10 A Yes.

11 Q And then down at the bottom, 458, you say:

12 "I also explained to Mr. Neufeld the
13 point about the caretaker at St. Mary's
14 Church making an observation of a car
15 parked in the alley between 7:00 a.m.
16 and 7:10 a.m. This time, in my opinion,
17 is extremely significant as it may be an
18 indication a vehicle could have been
19 associated to the Miller murder. These
20 points have been discussed with both Mr.
21 Williams and Mr. Neufeld to date."

22 And I take it at this time, sir, you had a view
23 that a vehicle was involved in the murder?

24 A It was one possibility, yes.

25 Q If we could go to 056843, please. And here's the



1 note, paragraph 462, that just confirms -- I had
2 shown you the photographs of -- that Ms. (V4)---
3 had picked out on January 31, '69, and I think
4 this just confirms your efforts to get those
5 photographs?

6 A Yes, okay.

7 Q And down at the bottom, 465:

8 "Mr. Williams phoned from Philadelphia,
9 advising that hypnosis on Nicol John is
10 completed, with the status remaining
11 basically the same as before. Williams
12 indicates John described the assailant
13 on Miller as wearing a brown corduroy
14 jacket, possibly with a beige collar.

15 No further details were provided to me."
16 What was your, what was your understanding of the
17 status of Nichol John's evidence at this time?

18 A I really -- I don't know. You know, like I say,
19 this Nichol John witness was so problematic for
20 this case, I'm not sure I could go back and
21 recollect what I knew or thought at that time.

22 Q Go to the next page. Again, I don't think we need
23 to go through it, but you contacted (V3)--
24 (V3)-----, one of the Fisher victims, and
25 interviewed and took a statement from her; is that



1 correct?

2 A Yes.

3 Q And then if we can go, scroll down to paragraph
4 468, 468, it looks like you made a call to:

5 "... Linda to check old photos for any
6 clothing Larry may have worn ...",
7 and again the toque and jacket, would again this
8 be something to try and connect him to perhaps
9 what Nichol John said she saw?

10 A Yes, I believe, I believe that's what that's
11 about.

12 Q And I think there is a few --

13 A These conversations with Linda over these issues
14 are -- were repeated.

15 Q Do you have a recollection of that being something
16 that you either thought about or pursued whether
17 or not, based upon Nichol John's hypnosis, the
18 part that I pointed out, that -- whether or not
19 she might have seen Larry Fisher commit the
20 murder?

21 A I -- I don't recall. I don't recall any
22 association there to Nichol John.

23 Q And then again, down at the bottom in this
24 paragraph it's dealing with the Parker stocking
25 feet issue, and again you are checking whether



1 Larry had mukluks and thinking now they may have
2 been Milgaard in stocking feet:

3 "If such tracks did exist, is it
4 possible they were Mukluk tracks, as
5 there is a distinct relationship in the
6 type of footprint they would leave.

7 Florence related to Linda that she
8 recalls Larry owning a black pair of
9 Mukluks and he possibly had a second
10 pair ...",

11 so would you -- and again we touched on this
12 yesterday, the Parker evidence of either stocking
13 feet or moccasin tracks around the scene; were
14 you pursuing that both in connection with David
15 Milgaard in stocking feet and Larry Fisher with
16 mukluks?

17 A Well here I was pursuing it with Larry Fisher,
18 what kind of footwear he had, because there was
19 some suggestion that he always wore work boots and
20 is it possible that he did wear other footwear at
21 times, and were those tracks left at the,
22 so-called stocking feet tracks left, or were they
23 actually something else, moccasins.

24 Q If we can then go to 056846, and again this is the
25 Dozenko statement of January 13th:



1 "Received a fax copy of Dozenko's
2 statement, contacted Williams and
3 provided him with details."

4 And I just want to -- if we could call up 067143.
5 And this is your fax of January 14th, '92 to Mr.
6 Williams, with the Dozenko statement, and you
7 say:

8 "Note the portion of the statement when
9 Ben is answering the question about
10 there being no written reports on the
11 Milgaard file. Ben's response would
12 suggest the book writer may have viewed
13 file material, or at very least been
14 told something about the file material.
15 It may be appropriate for yourself or
16 Sask Justice to determine who has had
17 access to the Milgaard file."

18 And again, if we can go to the next page. Oh,
19 sorry, if you can go to 0082721, and this is the
20 typed statement of Dozenko, and I think it was
21 taken by an RCMP officer in Winnipeg; is that
22 right?

23 A I believe so.

24 Q Actually the name Mackenzie, Sergeant Mackenzie,
25 does that sound right, if we can go to the last



1 page, 008726?

2 A I believe that's right, yes.

3 Q And, again, it appears from your fax cover that
4 one of the issues is whether or not Mr. Dozenko
5 had put this in his notes or on the prison file;
6 is that right?

7 A I think that was the issue, yes.

8 Q And then if we can go to 008724, and this is in
9 the Q and A, and I think Mr. McKenzie had gone
10 through and had Mr. Dozenko tell how he would put
11 this information on the file. And then he is
12 asked.

13 "Q ... But there is reportedly nothing
14 there now on the file.

15 A So I understand from the writer.",
16 who I think was Karp and Rosner:

17 "Yeah, he said there was a bunch that
18 was whited out or deleted or something
19 or maybe even missing for all I know.

20 Q Yeah. I don't know. I'm not privy to
21 that, but this is what's in this
22 correspondence, this book.

23 A I mean I hate to point a finger but
24 maybe somebody in the institution
25 wants to cover their ass or something.



1 I don't know. Or the federal
2 government or some organization."

3 And, again, would that be the reference in the
4 statement that you are highlighting for Mr.
5 Williams that someone maybe ought to check on?

6 A I think it must be, yes.

7 Q If we can go back to 056846, and then here is a
8 discussion January 14th, '92:

9 "Talked to Mr. Williams. He is
10 interested in developing a character
11 reference on Dozenko and the
12 circumstances leaving the Correctional
13 system. The question is whether Dozenko
14 is credible and honest, as he seems to
15 be the only person who has ever been
16 told by Milgaard of having committed
17 this crime."

18 And do you recall having those types of
19 discussions with Mr. Williams?

20 A I don't have a recall, I'm just going by -- I'm
21 just going by what I am reading here, but it
22 makes, it makes sense.

23 Q Do you recall there being an issue in your mind,
24 or in discussions with people that you were
25 involved in, with the credibility of Mr. Dozenko,



1 or at least checking his credibility?

2 A Yes, there was. I'm sure there was some follow-up
3 here on some other people that were interviewed in
4 the system over this issue of how the records were
5 maintained, and some of the people that I think
6 had worked with Dozenko, to determine --

7 Q Okay.

8 A -- if there was some validity to this.

9 Q Do you recall whether Mr. Williams expressed any
10 views to you about his view on his credibility or
11 lack of credibility?

12 A No, I don't.

13 Q This is probably an appropriate spot to break, Mr.
14 Commissioner.

15 (Adjourned at 10:26 a.m.)

16 (Reconvened at 10:50 a.m.)

17 BY MR. HODSON:

18 Q Go to 056847 -- actually, I'm sorry, 056846. And,
19 again, this is January 14th. And I went through
20 your December 31 report a bit earlier, Mr.
21 Pearson, and that's when I touched on the, if you
22 will remember, the John Husulak bus driver, the
23 Tony Humen, and no -- a fairly detailed report
24 about it looked like you went through the
25 Saskatoon City Police reports and identified some



1 areas where there might be suspicious car
2 activities and matters related to the construction
3 worker with the hard hat, and you recall us just
4 looking at that briefly?

5 A Yes.

6 Q And here you say:

7 "Mr. Williams also indicated he had
8 received my last official report. I
9 asked him to read it carefully,
10 particularly notes from City Police
11 officers at the time. It was also noted
12 that a suspicious vehicle was noted
13 following a City bus on 20th Street the
14 evening prior to the murder and seen
15 again around 7:05 am on the morning of
16 the murder. The white/dark blue 63
17 Pontiac sedan driven by one young male
18 driver begs for an answer."

19 And we've looked at this before in this Inquiry,
20 this is a vehicle that Tony Humen and his sister
21 Natalie saw; do you recall this being an issue in
22 your mind, sir, at the time?

23 A You know, it must have been, but, you know, I
24 really can't comment on any more than what's on
25 the paper there because I just don't remember.



1 Q And then again, just down to 480, it says:

2 "I also advised Mr. Williams that I was
3 following up on some of the witnesses at
4 the time and have not come across anyone
5 driving a vehicle such as this who is
6 associated to Fisher at the time."

7 Do you have a recollection of going through the
8 police reports in a way to look at what you might
9 find that would connect to Larry Fisher?

10 A Yes, I -- I must have. Like I say, all this
11 vehicle information here is -- I know there was
12 inquiries made and a lot of vehicles were
13 mentioned and looking at the possibility of a
14 vehicle being somehow associated to this crime.
15 This would have been information that was
16 retrieved from notebooks and Saskatoon Police
17 material.

18 Q If we can go to the next page, please. And here
19 is a bit more information about the bus driver,
20 and again we heard from Mr. Husulak at this
21 Inquiry and some information about his information
22 to the police about a young man, a construction
23 worker, not being on the bus the morning of the
24 murder, but it looks as though Mr. Husulak did not
25 have much of a memory, and you took a statement



1 from him; do you recall that?

2 A Yes, I do, I believe I re -- I took a statement,
3 yes.

4 Q And, again, I think in the reference case, or
5 certainly in the materials put forward by or on
6 behalf of David Milgaard, that was one of the
7 things that they pointed to, saying that Larry
8 Fisher was the construction worker who didn't get
9 on the bus the morning of the murder; do you
10 remember that being a theory put forward and based
11 on what was in the police files?

12 A Yes, possibly.

13 Q And it appears from this note that you would have
14 followed that up to the extent you could with some
15 of the people who gave information to the police
16 in 1969?

17 A It appears, it appears that's what this is about.

18 Q If we can go to 056848, and you will recall I had
19 read you the note about Nichol John and the
20 hypnosis and the person with a brown suede jacket
21 with a, I think, a wool collar or a -- I can't
22 recall the term used -- but here it says you:

23 "Contacted Linda Fisher who confirms she
24 has found photos of Larry wearing a
25 black leather jacket with what appears



1 to be a sheep's wool type collar. Larry
2 had that particular jacket while
3 residing at 334 Avenue O South. We also
4 discussed the aspect of Larry owning
5 Mukluks."

6 Now the jacket with a, a brown jacket with a wool
7 collar was also similar to what was identified in
8 (V4)---- (V4---'s statement as well; do you
9 recall that?

10 A I believe so, yes.

11 Q Yeah. Are you able to tell us whether -- and
12 again, I apologize, I asked you this earlier, what
13 -- whether you had ever done any follow-up to see
14 whether or not Mr. Fisher had a jacket of the type
15 described by Nichol John in her hypnosis?

16 A I just don't recall.

17 Q If we can go to the next page, and this is January
18 15th, '92, a fellow by the name of Tony Humen.
19 And Mr. Humen, just to assist you, was the fellow
20 who caught the bus at the same bus stop as Gail
21 Miller, and on the Monday following the murder the
22 -- Mr. Husulak, the bus driver, had told the
23 police on the night of the murder that there was a
24 construction worker who wore a red hard hat,
25 wasn't on the bus that morning and he was normally



1 on the bus, so on the following Monday they went
2 on and Mr. Humen had a red cap on and he was
3 identified either by the bus driver or assumed by
4 the police to be the fellow that Mr. Husulak said
5 wasn't on the bus the morning of the murder. And
6 they, the police, did some follow-up with him, and
7 he's also the fellow who gave a report of a
8 suspicious vehicle the night before; does that
9 assist your memory at all as to who this fellow
10 was?

11 A I have no memory of this other than what I am
12 reading, I just don't recall.

13 Q And just one point here, if you could just scroll
14 down a couple more lines. In your discussions
15 with Humen, Humen says:

16 "... recalls Gail Miller from the time
17 she caught the bus, but he did not know
18 her personally. Tony could recall only
19 that it was a foggy and very cold
20 morning. He also indicated that Miller
21 "walked down the alley on occasion".

22 And at the time, Mr. Pearson, was -- do you
23 remember looking at the issue of where, or what
24 route Gail Miller might have taken to the bus
25 stop regularly?



1 A Yes, I believe that was something that was looked
2 into. If she went out her back door, that would
3 put her in the alley, and if she walked across the
4 street and down the alley as opposed to her
5 walking out the front door, she'd be on the street
6 side, but I -- I -- I just don't recall the
7 details.

8 Q Again, 056851, and I don't want to go through
9 this, it deals with -- and we see this in a number
10 of spots in your chronology, Mr. Pearson -- where
11 you are making inquiries about a car that Larry
12 Fisher may have had access to, and it appears that
13 you talked to many people to try and find some
14 evidence to indicate that Mr. Fisher would have
15 had access to a vehicle on the morning of the
16 murder; is that correct?

17 A Yes.

18 Q And do you recall whether you ever were able to
19 establish a car that he might have had access to
20 on the morning of the murder?

21 A I never, I never located a car. Like I say, there
22 was, there was a lot of work that could have, in
23 my opinion, still have been done pursuing all this
24 car information, but I didn't -- this was, this
25 was -- the car aspect was not something that had



1 been requested of me to do by Mr. Williams, it was
2 an additional issue.

3 Q And, again, and in the notes we'll see here -- and
4 as I say, I don't want to go through it -- but you
5 talked to a number of friends and acquaintances of
6 Fisher to see whether or not they had a car, what
7 the type of car, what colour it was, what make,
8 and whether Larry Fisher might have had access to
9 it on the morning of the murder; do you recall
10 making those inquiries of various people?

11 A Yes, there were inquiries being made by a number
12 of people, yes.

13 Q If we can go to 056856, and this is January 20th,
14 '92, and this is where the photos are being
15 prepared for mailing to Federal Justice on
16 (V4)---. And maybe we can just call up 067238.
17 And this is your letter, I think of January 20th,
18 sending the four photos that (V4)---- (V4)--- had
19 identified in the police report; is that correct?

20 A Yes.

21 Q If we could go to 056857, I want to deal now with
22 Sharon Williams; do you recall dealing with Sharon
23 Williams?

24 A Yes, I recall making the trip to Fort
25 Saskatchewan, I believe it was, and meeting her at



1 her kitchen table --

2 Q And she was --

3 A -- or at her residence.

4 Q Pardon me?

5 A At her residence, yeah.

6 Q Yeah, and she was an acquaintance or perhaps
7 girlfriend of David Milgaard back in 1969, and
8 that's who they were actually going to visit on
9 their way through Saskatoon on the morning that
10 Gail Miller was murdered; is that correct?

11 A Yes, that's right.

12 Q And so here:

13 "Mr. Williams called, wanting me to
14 interview Sharon Williams to determine
15 any recollection she may have, plus the
16 following:

- 17 a) Did Milgaard make confession that has
18 not yet been revealed?
- 19 b) Whether Milgaard was violent when she
20 told him she may be pregnant. Possibly
21 she was punched in the stomach when
22 told.
- 23 c) In Ottawa, she disagreed with Milgaard
24 that he is supposed to have "pounded"
25 her for no reason, then made up, etc.



1 Basically, Federal Justice are
2 interested in determining the violent
3 behaviour that Milgaard has the
4 potential to exhibit. I will contact
5 Sharon Williams and set up an
6 interview."

7 And, again, would you have -- I presume, and when
8 I go to her statement, I think you did have her
9 original statement that she gave to the police in
10 1969?

11 A Yes.

12 Q And how did you, again before you went out to see
13 her, how did -- what was your understanding of how
14 this fit into the 690 application?

15 A Well it was just information-gathering, again,
16 covering the points that had been passed on to me
17 by Mr. Williams as I've got documented there. I
18 don't have a recollection of the actual
19 conversation that Mr. Williams and I had on this,
20 but it was to go up and determine if there was any
21 aspect of admissions made, details surrounding any
22 incident that took place.

23 Q Now earlier in your notes -- and I did not bring
24 them up -- but there were notes of you had
25 interviews with a couple of women who had known



1 Larry Fisher in 1969 and had relationships with
2 him; do you recall interviewing those people to
3 get details about their relationship with Larry
4 and how he treated them?

5 A Umm, yes, I believe there were some. I don't
6 recall the details, but --

7 Q There --

8 A -- I recall that there were some people that
9 surfaced, yes.

10 Q And I believe you had interviewed them to get
11 their recollection of their dealings with Larry
12 Fisher?

13 A Yes.

14 Q And do you recall inquiring about their sexual
15 relationship with Larry Fisher and how he treated
16 them?

17 A As I recall, yes.

18 Q And how would that be important in looking at
19 Larry Fisher as a suspect?

20 A Well it gives you some background, maybe, on his
21 behaviour, it -- I'm not sure if it was anything
22 that would associate him to the murder, but it
23 would give you a background of maybe what he was
24 like and maybe whether he exhibited violence and
25 any, you know, personal problems.



1 Q And, again, would that be something to assist you
2 in your investigation to determine whether or not
3 he was a suspect, or a good suspect, or perhaps
4 the culprit in the murder of Gail Miller?

5 A Well, if these individuals had indicated something
6 that would incriminate him, but beyond that,
7 again, it's -- adds to the suspicion of Larry
8 Fisher's overall behaviour.

9 Q And again with respect to Sharon Williams, then,
10 would your task then be similar to what you were
11 doing with respect to Mr. Fisher's earlier
12 acquaintances?

13 A I -- I believe Mr. Fisher's earlier acquaintances
14 just came to me during my inquiries, whereas
15 Sharon Williams was known from the file material,
16 and it's something that Mr. Williams in Ottawa
17 wanted to follow up on.

18 Q If we can actually just go back to, again, 056842,
19 just to have this on the record.

20 And if I could get a publication
21 ban on these names, Mr. Commissioner, I don't
22 think there's any need to have the names made
23 public, but it looks as though you talked to a
24 (V17) (V17), nee (V17)-----, (V18)--
25 (V17)-----, and if we can go down to the next



1 paragraph -- and I won't, I don't propose to go
2 through it, but you had asked her about attempts
3 made on her by Larry during this time period, and
4 as well there was a (V19) (V19) or a (V19)
5 (V19)--, do you remember that name as being
6 someone who had a relationship with Larry Fisher
7 back in '68-'69, and you talked to her and got
8 information from her?

9 A Yes, I believe that's right.

10 Q Yeah. And so these would be instances where, that
11 you were talking about earlier about getting
12 information about his, the way in which Larry
13 Fisher treated women?

14 A I believe that's accurate, yes.

15 MR. HODSON: And I'm just wondering if that
16 publication ban can be granted then for those
17 names, Mr. Commissioner?

18 COMMISSIONER MacCALLUM: One is in
19 paragraph -- perhaps you can identify them by
20 paragraphs.

21 MR. HODSON: Paragraphs 459, 460, 461, the
22 names (V17) (V17)----- or (V17) (V17), and
23 (V19) (V19)-- or (V19) (V19) I think are the
24 names.

25 COMMISSIONER MacCALLUM: Okay.



1 MR. HODSON: And as well as (V18)--
2 (V18)--/(V18)-- (V17)-----.

3 COMMISSIONER MacCALLUM: There will be a
4 ban then.

5 BY MR. HODSON:

6 Q Go back to 056858. So as far as Sharon Williams
7 is concerned, again, was something different in
8 your approach to her as compared to your approach
9 to the women that had been associated with Larry
10 Fisher?

11 A I don't really recall a difference in the
12 approach. We already had some information on
13 Sharon Williams, so we didn't really have much
14 information on the other women, so we knew in
15 general terms what Sharon Williams had to say
16 based on previous reports, so I think the approach
17 to her was to find out what she knew and then let
18 her have an opportunity to know what she had said
19 back at that time in the '60s or early '70s and to
20 try and get whatever information she could recall.

21 Q Okay. Call out that part --

22 A And I just want to add on that, at that time, as I
23 recall, her husband, she wanted her husband
24 present or her husband wanted to be present or
25 something and I think I got the feeling that that



1 was maybe not leaving her at the point where she
2 would totally open up, she had her husband present
3 and that may have affected what she was going to
4 disclose.

5 Q Okay. I'll just read a note here of your summary,
6 it says:

7 "She indicated she does not recall
8 giving such a statement."

9 And that is I think the March 20th or March 21,
10 1969 statement, or March of '69, and:

11 "I then attended at her residence ..."

12 So it looks like on the phone she told you that.

13 "I then attended at her residence and
14 she provided me with a statement which
15 provided very little detail and either
16 she honestly cannot recall the events
17 due to the passage of time or she does
18 not want to get involved. It should be
19 mentioned that her husband was present
20 and insisted on being present during the
21 interview and this, I believe, had a
22 negative effect on the openness that may
23 have otherwise been displayed by Sharon.
24 While she was very cooperative, she gave
25 nothing to indicate that she recalls her



1 activities with Milgaard. My suspicion
2 is that she does not want to get
3 involved, as her life has certainly
4 changed around since the early 1960's.
5 Sharon did reveal she had been placed on
6 a polygraph during the original
7 interview, something I was not aware of
8 until this time."

9 And again, is that, I think the note about the
10 husband there, do you have a recollection, Mr.
11 Pearson, as to whether or not, other than what's
12 here, whether she was telling you everything she
13 knew?

14 A No, I have no idea. I have no recollection.

15 Q Based on this note, is it fair to say at the time
16 you had some suspicions that she may not have been
17 telling you everything she recalled?

18 A Well, the suspicion or just the feeling that maybe
19 the interview wasn't as open because her husband
20 was present.

21 Q And maybe I shouldn't have said that she wasn't
22 telling you everything. She wasn't being open
23 with you?

24 A That seems to be the view I had at the time.

25 Q And then if we can call up 008731 and go to -- so



1 this is the typewritten version; is that right?

2 A Yes.

3 Q And would it accurately record what she told you
4 on that date?

5 A I can only say I believe so. I mean, I haven't
6 compared the statements, but I --

7 Q And if you can go to the next page, and I think I
8 had gone through the three areas that Mr. Williams
9 asked you to touch on, did Milgaard make a
10 confession, two, was Milgaard violent when she
11 told him she may be pregnant, was she punched, and
12 just sort of violence, you were being asked to
13 probe whether Mr. Milgaard had been violent
14 towards her; is that right?

15 A Yeah, in general.

16 Q In general?

17 A You know, gathering information.

18 Q And so here we go to page 2, you asked:

19 "Q Did David ever confess to you, or
20 confide in you, that he had committed a
21 serious crime in Saskatoon?"

22 She says:

23 "A No.

24 Q Did anyone else in the group with David
25 mention anything about David possibly



1 being involved in an attack on a girl in
2 Saskatoon?

3 A No that I can recall."

4 Next page. It looks as though you asked the
5 questions here:

6 "Q Do you ever recall being physically
7 assaulted by David?

8 A No.

9 Q Did David ever punch you over stupid
10 things?

11 A I can't recall."

12 And again, would those be questions prompted by
13 Mr. Williams' request to you?

14 A You know, in part. I think it's, you know, just
15 trying to get a general interview, information
16 gathering.

17 Q And then down at the bottom, if we can scroll
18 down -- go back to the full page. And in her
19 original statement to the police in 1969 there was
20 reference to a gun and Russian Roulette or an
21 incident. Do you remember reading that in her
22 original statement?

23 A Yeah, I do remember something about Russian
24 Roulette and a gun, yes.

25 Q And it appears that you covered that with her



again:

"Q Do you recall David having a gun?

A I remember the incident but don't
remember the gun, but don't remember
what it looked like.

Q Tell me about the incident?

A I think he was playing games with me.

Q Did he point the gun at you?

A Yes.

Q Then what?

A I don't know.

Q Was the gun loaded?

A I don't know."

Would this have been prompted by what was in her
earlier statement to the police, Mr. Pearson?

A Yes, I think it was all probably information that
formed these questions.

Q And then again the next page, you ask at the
bottom:

"Q Were you ever threatened or sexually
assaulted by David Milgaard?

A Not that I can remember, no."

And then the next page at the top:

"Q While at the Milgaard home in
Langenburg, do you recall an incident



1 when David had a butcher knife and may
2 have said something like, "I'm going to
3 kill you."?

4 A I can't recall that."

5 And again, was that something you think you took
6 out of her original statement in '69?

7 A It had to come from somewhere and I guess that is
8 probably the source of it. I'm just only going
9 by --

10 Q And I can tell you that there are in her original
11 statement --

12 A Yes, okay.

13 Q I don't need to bring it up.

14 A That's where it would have originated.

15 Q And then if you can go to the next page, please,
16 it looks like then after asking that you say:

17 "Q Sharon, I wish to show you the statement
18 you gave the police in 1969 concerning
19 your activities and association with
20 David Milgaard. Please read it
21 carefully and tell me what portion of it
22 refreshes your memory."

23 Let me pause there. Would the questions and
24 answers that are listed in the statement prior to
25 this question, would you have asked her that



1 without showing her her earlier statement?

2 A Yes.

3 Q And explain why you would do it that way?

4 A I just wanted to get what memory she may have had
5 on the previous statement that she had provided.

6 Q And so you go through and ask for her recollection
7 and then it appears here you then gave her her
8 statement and asked her if it refreshes her
9 memory?

10 A Yes.

11 Q And then you say:

12 "Q Sharon you have now read your 1969
13 statement, do you have any comments?

14 A No, I guess not, I can't remember any
15 of it."

16 And then you go on, if you can scroll down a bit:

17 "Q Did it refresh your memory?

18 A I can't remember staying in a motel
19 overnight when they came to
20 St. Albert."

21 So again, do you have any recollection of what,
22 of your assessment of her credibility in this
23 interview?

24 A I don't recall really having any concerns about
25 her credibility, but again, I'm struggling with



1 trying to remember the details. I'm really going
2 by what's written here.

3 Q If we can go to the next page, and then you ask
4 her right near the end of the interview:

5 "Q Sharon, do you possess any information
6 or evidence that would assist in proving
7 that David Milgaard did not commit the
8 murder of Gail Miller?

9 A No.

10 Q Do you possess any information which
11 would assist in proving that David
12 Milgaard did commit the murder of Gail
13 Miller?

14 A No."

15 And would those two questions, would that be what
16 you were trying to find out from her?

17 A Well, just asking if she had any information at
18 all that would enlighten us either way. It was
19 just a -- just a question.

20 Q If we can go to 057850 and this is a note on the
21 file around this time, and I think Virginia Dowler
22 was your assistant at the time; is that right?

23 A She was a secretary.

24 Q And in your absence while you were seeing Sharon
25 Williams, it looks as though an issue came up from



1 Mr. Williams in Ottawa, she writes:

2 "I received a call from --"

3 Let me back up. If we can go back up to the top,
4 Mr. Williams had called her in your absence
5 requesting information about who licensed garages
6 in Saskatoon, opening and closing hours, if any
7 garages were licensed to stay open all night, and
8 I think this related to evidence that David
9 Milgaard had given at the Supreme Court about
10 stopping at an all-night gas station to get the
11 heater fixed. Do you remember this issue coming
12 up?

13 A Vaguely, yes.

14 Q And it looks as though --

15 A I don't think I was even here at that time, but I
16 guess I do remember it from reading it.

17 Q And then if we can scroll down, it looks as though
18 Ms. Dowler in your absence contacted the city and
19 the city solicitor to get information for Mr.
20 Williams about what service stations may have been
21 open on the morning of January 31, 1969. Do you
22 recall that happening?

23 A From reading this, yes.

24 Q And then if you can go to page 057865, and this is
25 actually the note that is sent, I think on your



1 behalf, to Mr. Williams based on information from
2 Theresa Dust that there were no restrictions on
3 hours of operation and as far as they know at that
4 time there were three 24 hour service stations
5 open. The two downtown had towing services. And:

6 "What time the other service stations
7 and garages opened, no one knows,
8 probably 7 am but could have opened
9 earlier ..."

10 And noted:

11 "There was no "24 hour garage" on the
12 East side of the river. If Milgaard was
13 coming from Regina and said he got his
14 heater fixed before he crossed the
15 bridge, it would have had to be on the
16 East side of the river."

17 Again, do you recall whether you had any
18 involvement in getting this information or
19 sending it off or was it Ms. Dowler?

20 A I had no involvement in this.

21 Q Again to 056861, and this is just a follow-up on
22 the Dozenko matter. Actually, if we can just
23 scroll up to the top of that paragraph, and here
24 is where Jack Hewitt, one of the people who worked
25 with Mr. Dozenko, told Mr. Williams that when Mr.



1 Milgaard escaped Hewitt expressing the concern or
2 the hope that Milgaard does not commit another
3 murder and that Dozenko is said to have replied
4 something to the effect, "I have no problem with
5 that score. David has not killed anybody." So
6 then Williams wants Dozenko interviewed about this
7 conversation and files. So I think you talked
8 about this a bit earlier where people on both
9 sides of the issue were commenting on what Mr.
10 Dozenko may have said or not said and what he
11 recorded, and if you can scroll down a bit, it
12 looks as though you, paragraph 538, contacted Bill
13 McKenzie in Winnipeg to make further contact, and
14 other than being the go-between and facilitating
15 this, did you have any direct involvement in
16 reviewing the statements related to Mr. Dozenko or
17 questioning them or assessing them in any way?

18 A No, not that I recall.

19 Q Go to page 056865, this is now January 27th, 1992
20 and a discussion with Linda Fisher about clothing
21 that Larry may have been wearing at the time, and
22 then she says to you:

23 "She also now relates to me that she
24 recalls someone telling her that a pair
25 of blood covered coveralls were found in



1 the attic at Cadrain's home at 334
2 Avenue O South."

3 Do you remember getting that information from
4 Linda Fisher?

5 A No, I don't remember, I don't remember the
6 information, but obviously, you know, obviously I
7 did, but I don't remember.

8 Q Go to page 056866, again the date of this is
9 January 27th, '92, that Mr. Williams in a
10 discussion with you, it looks like he called you:

11 "Also advised that a Winnipeg lawyer
12 David Miles contacted Federal Justice,
13 advising he had a client who was at the
14 original trial. This client apparently
15 heard someone believed to be a witness
16 at the trial say, "If he gets out he'll
17 kill me." Williams was now asking if we
18 could contact Miles to get more
19 information as to what this was all
20 about."

21 And if we can go to the next page, the bottom, it
22 says:

23 "I called lawyer Miles in Winnipeg, who
24 states his client is credible but
25 somewhat fearful of Milgaard and



1 reluctant to have his name brought
2 forward if the information he has is of
3 no value to this review. The client
4 felt responsible to bring forward what
5 he overheard, even though he does not
6 know if it has any relevance. Miles
7 states his client is almost 100% sure
8 the person making the statement is
9 Ronald Wilson. This is regard to the
10 comment, "If he ever gets out he'll kill
11 me." This comment was apparently made
12 during the preliminary hearing and
13 Miles's client was walking past a room
14 containing several of the witnesses,
15 when he overheard this comment.
16 Mr. Miles indicates that his client was
17 not a witness at the trial or
18 preliminary hearing, and does not know
19 Milgaard. Miles wishes to have one of
20 the Court lawyers call him if they
21 believe the comments are of value, and
22 his client will cooperate. I indicated
23 that if this is of any value, Mr.
24 Williams of Federal Justice would be in
25 touch with him."



1 Do you have a recollection of following up on
2 that, Mr. Pearson?

3 A I have no recollection, no, I don't.

4 Q And do you know if any follow-up was taken by Mr.
5 Williams?

6 A I don't, unless it's documented here someplace.

7 Q I don't believe so. Again, I don't propose to go
8 through these in detail, but I think from the
9 notes it looks as though you also had some
10 involvement in interviewing or arranging for
11 interviews of inmates who were claiming that Larry
12 Fisher had confessed to killing Gail Miller or to
13 killing someone. Do you recall being involved in
14 that?

15 A Yes.

16 Q And tell us generally, what was your role in that
17 process and facilitating that information?

18 A Well, just in very general terms it was
19 information that surfaced from various sources.
20 It's documented here I'm sure in the report, but
21 some may have come from Mr. Williams, some may
22 have come from other sources and they were
23 followed up by having them approached and
24 statements taken or assessments being made as to
25 whether they had information of value and how



1 credible they were and a lot of this was jailhouse
2 stuff that was coming out.

3 Q And as well did -- were there some on the other
4 side who disputed what was attributed to Mr.
5 Fisher? I think there was one where Mr. Beresh
6 may have asked you to assist in getting an
7 inmate --

8 A In Edmonton, yes, that's true.

9 Q And in fact I think it was an inmate who said that
10 Fisher admitted the killing and another inmate
11 said that inmate was lying or something like that?

12 A Yes, yes, there was quite a lot of that. I think
13 most of it is documented here.

14 Q Yes, it is.

15 A But it's all there.

16 Q If we can go to 056873, and this is January 30th:

17 "Mr. Williams called me to advise that
18 ex-Detectives Karst, Mackie and Short
19 would probably be called as witnesses on
20 the next sitting of the Supreme Court;
21 he wanted addresses so subpoenas could
22 be completed and forwarded for me to
23 service."

24 And I take it that's also a task that you
25 undertook, is that you served some subpoenas for



1 witnesses who had to appear at the Supreme Court?

2 A Yes, I served subpoenas. I also made arrangements
3 for Larry Fisher to be held I think at Carlton
4 Remand Centre in Ottawa and made some initial
5 inquiries there. Also, when Larry Fisher was to
6 be moved from the Mountain Institution in British
7 Columbia, I initiated some coordination to get the
8 RCMP aircraft to transfer him, and that was
9 eventually taken over by other people, but the
10 coordination kind of went through my office on a
11 lot of this local stuff.

12 Q And again I think we see in the notes that you did
13 in fact serve Mr. Karst and Mr. Short with a
14 subpoena, but Mr. Mackie was out of the country;
15 is that right?

16 A Yes.

17 Q And then we see:

18 "Williams also advises that saliva tests
19 were recently completed on Milgaard and
20 the results show that Milgaard is a
21 secretor."

22 And do you recall learning of this information
23 around that time?

24 A I have no recollection of it, other than what I'm
25 reading here.



1 Q And as far as the importance of that, do you
2 remember, we talked earlier about your efforts to
3 get Larry Fisher's blood type?

4 A Yes.

5 Q And just to assist you, Mr. Pearson, the evidence
6 at Mr. Milgaard's trial was that he was blood type
7 A and either not a secretor or in a test that they
8 did antigens were not contained.

9 A Yes.

10 Q So -- but I think most would say the view was that
11 he was a non-secretor at the time and in the
12 frozen semen that was evidence at the trial it
13 suggested that the blood type there was type A of
14 the perpetrator.

15 A Right.

16 Q And that there were antigens in the frozen lump
17 which suggested that the perpetrator was either an
18 A secretor or had blood in his semen.

19 A Yes.

20 Q And so now it appears at this point it's
21 determined that Mr. Milgaard is a secretor.

22 A Right.

23 Q And I'm wondering if that was something that you
24 had looked at or factored into any of your
25 thinking at the time as far as the reopening, or



1 as far as your investigation?

2 A Well, it, you know, it's kind of a confirmation of
3 suspicion that had been cast on Milgaard as to the
4 blood type and the secretor status, so I guess it
5 does give a little more confirmation.

6 Q And again I think back in the first, the first
7 Section 690 application when we went through this,
8 I think there was a couple of notes where you made
9 inquiries of Mr. Williams about the evidence of
10 Mr. Ferris I think, or Mr. Markesteyn, and about
11 the secretor issue and the blood issue. Were you
12 aware that that was one of the grounds of the
13 first application, that Mr. Milgaard could not
14 have committed the crime because he was a
15 non-secretor?

16 A Yes, I believe, you know, I was aware of it. I
17 wasn't very, you know, familiar with the science
18 and familiar with all the issues surrounding it,
19 but in general terms I would have been aware of
20 it, yes.

21 Q And again just back with this information, the
22 fact that it was learned that he was a secretor, I
23 think you told us that that was -- would that
24 cause you to have more suspicion about Mr.
25 Milgaard then?



1 A I would think so, you know, it wouldn't -- it
2 wouldn't eliminate him I wouldn't think.

3 Q Just down at the bottom of this page, and there's
4 a few references earlier that I don't need to go
5 to, but there was some, I think you received some
6 information from, it might have even been
7 Superintendent Goodman who was at an FSIN function
8 or some function where he was told that a fellow
9 by the name of Chickeness had committed the murder
10 of Gail Miller and then died in an automobile
11 accident and I think you did some follow-up work
12 and ended up determining that he died in 1963. Do
13 you remember that?

14 A In general terms, yes.

15 Q And so in addition to following up Mr. Fisher and
16 Mr. Milgaard, did you also spend some time
17 following up other information where people were
18 suggesting that someone other than Mr. Milgaard
19 and other than Mr. Fisher committed the crime?

20 A That's fair, yes.

21 Q Go to 056872, this is February 3rd, 1992, and you
22 are talking to a fellow named Mo Marion who worked
23 with Masonry Contractors, and:

24 "Marion states that Masonry Contractors
25 worked on the Rocanville Potash Mine in



1 the late 1960's early 1970's but does
2 not believe Fisher worked on that
3 particular job (re (V14)- complaint from
4 (V14) (V14))."

5 And again, is that the information you would have
6 had to see if Mr. Fisher was connected to the
7 (V14)- complaint?

8 A I think in general, in a general way, yes.

9 Q Go to page 056874, here's another follow-up call
10 to Sharon Williams, this was after your statement,
11 and:

12 "Placed a telephone call to Sharon
13 Williams, asking her if she had recalled
14 any more information, she advises she
15 cannot recall anything more. I also
16 asked her about the incident where David
17 Milgaard was supposed to have punched
18 her in the stomach when she mentioned
19 she was pregnant. She indicates she can
20 remember something like this taking
21 place but recalls nothing of any
22 significance that would be of
23 assistance. Sharon at this time was
24 even wondering if she had made her
25 original statement as she could not



1 recall providing the police any written
2 statement. I said I would send her
3 copies of her signature so she could
4 satisfy herself that it was in fact her
5 statement. Sharon states that David
6 would often be "fooling around" when on
7 drugs and he would do stupid things and
8 was a show-off. She had very little of
9 value to offer me."

10 And do you know what would have prompted this
11 follow-up call?

12 A Was this before or after my other interview?

13 Q I think this was after your statement.

14 A Maybe just a follow-up call to see if she had any
15 more to recall.

16 Q The statement you took from her was January 22nd,
17 '91.

18 A Okay. This may have been just a follow-up call to
19 see if she recalled anything more from our
20 previous contact.

21 Q And then just scroll down to the next two
22 paragraphs, and it looks like you called Linda
23 Fisher to determine if Larry ever wore a bandanna
24 around his head (re (V14)- complaint), and you
25 also called Sharon wills to see if she remembered



1 David wearing a bandanna around his head or neck.

2 I take it that related to the (V14)- complaint?

3 A Yes, it must have been.

4 Q And then again scroll down, it looks like you
5 talked to Mr. Williams about checking with
6 Lapchuk, Melnyk, Frank and Hall to see if David
7 Milgaard ever wore any type of chain or medallion
8 around his neck and if he ever wore anything like
9 a bandanna around his head. So I take it again
10 you were following up to see if anything might
11 link him to the (V14)- complaint?

12 A Yes.

13 Q Go to 056876, this is February 7th, so this would
14 be in the middle of the reference case, and it
15 looks like you would have had some discussions --
16 in fact, I think this is the same discussion I
17 referred to you earlier this morning when you
18 talked to Mr. Asper about not revealing his
19 source, and it looks like he called you and talked
20 about Professor Boyd and associates got a grant to
21 do a reenactment according to Wilson's version.
22 Do you remember discussing that with him, about a
23 video or a reenactment or anything of that nature?

24 A I remember having -- I remember reenactment, but I
25 don't remember the details.



1 Q And then do you remember a discussion, it says
2 here:

3 "Asper also states that Father Murphy,
4 Priest at St. Mary's Church, claimed at
5 the time that he was instrumental in
6 having Albert Cadrain come forward to
7 give evidence, as he had talked to
8 Albert on behalf of the City Police
9 detectives. Details were unclear as to
10 what was meant."

11 Do you remember that discussion, or following up
12 on any of that?

13 A I'm just going to finish reading that.

14 Q Sure.

15 A No, I just don't recall the, I just don't recall
16 the conversation.

17 Q And then down at the bottom it says:

18 "At this time I encouraged Asper to
19 ensure that Fisher is subjected to
20 intense examination at his Supreme Court
21 review, as this will probably be the
22 closest we will ever get to him, and we
23 should exhaust every possible titbit of
24 information in the event the Supreme
25 Court rules that there was in fact a



1 miscarriage, ..."

2 Next page:

3 "... as we can then maybe use the Fisher
4 transcripts to further the investigation
5 at that time. I am of the opinion that
6 Asper, as well as Sask Justice lawyers,
7 should be premotivated to go after
8 Fisher with as much detail as possible,
9 as he is the suspect who is presently
10 being pursued in this review."

11 And, again, I take it that's something you would
12 have advised Mr. Asper?

13 A Yes, and I -- I think I sent, I'm not sure if it
14 was to Mr. Asper or to Mr. Williams, a list of
15 some of the questions that they would consider.

16 Q Yes, it was actually sent to Mr. Williams, an
17 outline of areas you thought should be covered
18 when Mr. Fisher is on the stand. And, again, why
19 would you be telling this to Mr. Asper?

20 A Well, you know, he had as much interest in the
21 outcome of this, I think, as anyone. It was just
22 asking him that -- to go after Fisher, and it's
23 the closest we'll ever get to him, my view was, in
24 looking down the line from this. He's, Fisher is
25 going to be in a courtroom environment and he is



1 going to be having direct questions put to him, it
2 was certainly a process which would make Fisher
3 more vulnerable or available to questioning than I
4 as a policeman would probably ever get, you know,
5 having to go through his lawyer and being
6 restricted as to what I could or couldn't say, so
7 this was an opportunity to pursue it aggressively.

8 Q Would the fact that Larry Fisher was involved in
9 the Supreme Court reference and was gonna be a
10 witness before the Supreme Court; would that fact
11 alone assist you in your investigation of Larry
12 Fisher as a suspect?

13 A Oh, it certainly had the potential, depending on
14 what kind of questions and what kind of answers we
15 got from him.

16 Q But the opportunity to have him examined under
17 oath in a public setting; would that be of
18 assistance?

19 A Absolutely.

20 Q And --

21 A Because without it of course, you know, he gets
22 the advice of his lawyer and exercises his right
23 to remain silent and all of those things would
24 come into play.

25 Q So after this discussion with Mr. Asper then, if



1 we could go to 056879, this is four days later,
2 February 11th, it says:

3 "While talking to Mr. Neufeld, he
4 indicated he had been talking to David
5 Asper and that Asper claimed that I
6 believed that Fisher is responsible for
7 this crime. Eric asked if I believed
8 Fisher was responsible. I explained
9 emphatically to Mr. Neufeld that I have
10 no direct evidence implicating Fisher in
11 the Miller murder, however, "suspicious
12 activity" took place on the morning of
13 the murder; i.e., the (V4)--- assault,
14 Carriere observation regarding the car
15 parked near the Miller residence, and I
16 explained to Mr. Neufeld I have an open
17 mind on this investigation and do not
18 wish to pass on opinions. Any comment
19 that was made by Asper was done only to
20 unsettle Mr. Neufeld and certainly did
21 not come directly from me. I explained
22 to Mr. Neufeld the very unusual crime
23 scene in that the coat had obviously
24 been removed from the victim and then
25 placed back on after when she was



1 stabbed to death. I referred
2 Mr. Neufeld to the notes of McCorriston,
3 which gave some insight to what was
4 happening prior to and subsequent to the
5 murder; i.e., suspicious activities in
6 the scene that could possibly be
7 unrelated to David Milgaard."

8 Can you elaborate on this discussion, Mr.
9 Pearson?

10 A You know, I really can't.

11 Q Pardon me?

12 A I really can't, I'm just really no different than
13 you on reading this, and --

14 Q Would you have --

15 A -- I don't want to start speculating and tell you
16 that I can remember, sharply, the conversation and
17 all the details that we discussed, but, you know,
18 this capsulizes it as far as I can recall.

19 Q Would you have told Mr. Asper that you believed
20 Larry Fisher was responsible for the murder of
21 Gail Miller?

22 A No, I -- no, no, I wouldn't have said that to Mr.
23 Asper.

24 Q Did you believe that --

25 A Umm --



1 Q I'm sorry?

2 A But, you know, when we had our discussions he, I'm
3 sure, was aware that I suspected Larry Fisher, you
4 know. I don't think in my discussions with Mr.
5 Asper I ever said that "I don't believe Larry
6 Fisher was involved in this" so, you know, I would
7 think the conversations I had with Mr. Asper were
8 such that I did believe Fisher to be a good
9 suspect, and -- but to say that I had some direct
10 evidence, that would be incorrect, I never said
11 that.

12 Q And at the time, regardless of what you said, did
13 you believe at that time that Larry Fisher was
14 responsible for the murder of Gail Miller?

15 A I didn't believe that he was responsible, I had
16 suspicions that he was responsible.

17 Q 056885, and this now gets into the theory, the
18 police theory paper. Do you know what we're
19 talking about, Mr. Pearson? This is the --

20 A Yes, yes.

21 Q -- five-page document that came up at the Supreme
22 Court reference, and I'm not sure what I should
23 call it, it's been called many things, but here
24 it's called the 'police theory paper'. And you
25 write:



1 "We are also interested in determining
2 the origin of the "police theory" paper
3 recently filed in the Supreme Court by
4 Mr. Wolch. I indicated to Williams I
5 had never seen or heard of this
6 document, that does not mean it does not
7 exist in the Saskatoon City Police
8 file."

9 Again, would that be accurate?

10 A I believe so, yes.

11 Q And:

12 "Mr. Williams is of the view that the
13 paper came from the prosecution file and
14 he will be checking with Sask Justice if
15 they have details on the origin of the
16 theory sheet. This particular theory
17 sheet appears to be something that may
18 have been generated during the police
19 investigation, as it lays out the
20 evidence that has been established, as
21 well as a few things that have to be
22 done. As well, there is also apparently
23 95 statements that were provided to the
24 prosecutor by City Police. This is
25 probably where some of the statements



1 that I have been pursuing have ended up
2 i.e., Chuck Carriere, etc."

3 Do you recall being concerned at all about this
4 police theory sheet when you looked at it?

5 A Well I think, I think there was some discussion
6 about whether this theory sheet was put together
7 before the investigation was complete, and I think
8 the thought was that did the investigation adjust
9 to fit the theory so to speak, I think that was
10 kind of the gist of it.

11 Q Yes?

12 A And -- yeah.

13 Q I think you spent some time trying to identify who
14 might have been the author of the document, and in
15 fact doing some checking of typewriters and things
16 of that nature, to see who --

17 A Yes, you know, I had suspected that possibly it
18 was a city police document, and I also at one
19 point believed it was something generated by Mr.
20 Caldwell, but --

21 Q Did you think --

22 A -- the material, there was material -- and I think
23 you will show the documents eventually -- sent to
24 the lab to try and do some comparisons of
25 documents generated by Mr. Caldwell to the



1 document that we're -- this so-called theory sheet
2 to see if it was done by the same typewriter, --

3 Q Right.

4 A -- that kind of an examination.

5 Q And, again, I -- did you, apart from trying to
6 identify who might have created it, did you have
7 any concerns or did you see anything wrong with
8 the document?

9 A I really can't recall that I thought there was
10 something wrong. There was this question about
11 who authored it and, you know, did the
12 investigation change as a result of it, and that
13 was really the task of trying to find out where it
14 was -- where it originated.

15 Q We've heard evidence before the Commission, I
16 think, that Mr. Mackie, one of the officers in
17 charge of the investigation, thinks prepared the
18 document towards the tail end of the
19 investigation, and I think he, his evidence was
20 that he put together a page of some theories as to
21 how the crime may have happened with David
22 Milgaard as the perpetrator.

23 A Uh-huh.

24 Q And again just generally, without getting into the
25 specifics, as a police officer, is that something



1 that you would do on occasion on a file?

2 A Put together a theory?

3 Q Yes?

4 A Umm, yes, I think I put together a theory on this
5 file, so yeah.

6 Q And would that be the car theory?

7 A Yes.

8 Q And we'll get to that this afternoon. And again,
9 what would be, what would be your purpose as an
10 officer in putting together a theory sheet or a
11 theory document?

12 A Well I suppose, depending on the circumstances,
13 but maybe a possible way to look at an
14 investigation in a different light, maybe to get,
15 get an opinion of other investigators as to what
16 had meaning and what didn't.

17 Q And what --

18 A But, you know, to -- to, I think to put the theory
19 together, you know, I think the suggestion was the
20 theory was put into place and then the
21 investigation tailored to fit the theory, which
22 would, which would be probably inappropriate.

23 Q Okay. So as far as, let's just take as far as the
24 theory. And again, talking generally, you don't
25 have any concerns, as an officer, in putting



1 together a theory as to how the crime may have
2 been committed?

3 A Well, you know, you don't want to use a theory as
4 the focus of where this is going to take you, I
5 mean you have to lead the theory, the theory
6 shouldn't lead you.

7 Q Okay. So that the, once the theory is there, your
8 concern then would be that, that the theory not
9 lead the investigation; is that --

10 A That's right. That's right.

11 Q 056891, the date of this is March the 4th, '92:

12 "Mr. Williams called, advising that
13 Milgaard's original counsel, Cal Tallis,
14 took the stand this morning, confirming
15 that the compact case was in fact thrown
16 out of the window and that they did
17 encounter an old woman in the
18 neighbourhood, asking directions, and
19 that there was separation from the car
20 by Wilson and Milgaard, and that the
21 heater repair story had never been told
22 to Tallis during his original contact
23 with Milgaard."

24 And, again, is this -- do you recall, Mr.

25 Pearson, whether this information -- again, this



1 was Mr. Williams telling you what Mr. Tallis said
2 before the Supreme Court -- did this information
3 influence your thinking or cause you to do
4 anything different on your investigation?

5 A Well at this point, you know, the matter is before
6 the Supreme Court, I'm, I don't believe I'm out
7 initiating a lot of new information, I'm reacting
8 to what Mr. Williams is requesting and what he
9 wants done based on what's coming out of
10 information he is receiving. That's really -- you
11 know, I'm still in the role of trying to assist
12 Mr. Williams and Federal Justice and anybody else
13 who was surfacing information, but as far as
14 taking over this investigation and now calling it
15 a homicide investigation, that wasn't where this
16 was at.

17 Q So would this be for information purposes, then,
18 or --

19 A I think generally it was. There was no request
20 made, I don't believe, to follow up on anything.

21 Q If we can go ahead to 049548, and this is the
22 document you talked about a bit earlier, it's
23 March the 9th, '92 to Mr. Williams, and:

24 "The following is submitted to assist in
25 establishing a line of questioning on



1 activities associated to Larry Fisher:",
2 and there's about four pages. This is the
3 document you put together for -- to help in the
4 questioning of Mr. Fisher?

5 A Yes, I believe so.

6 Q And was this to go to -- now I know it's sent to
7 Mr. Williams, I don't think Mr. Williams was
8 questioning any witnesses; do you know if it was
9 sent to Saskatchewan Justice lawyers?

10 A I don't believe it was, I think it was to Mr.
11 Williams.

12 Q And was the intent of this, though, that someone
13 could use this to question Mr. Fisher while he was
14 on the stand?

15 A That was, that was the intent, to -- you know, I'm
16 sure there was going to be a lot of questions of
17 Larry Fisher while he was on the stand, and
18 probably all of these issues were covered without
19 my input, but I -- I just thought that these were
20 some of the thoughts that I had at the time that
21 they may want to develop.

22 Q Okay. If we can go to the next page, you say:
23 "In the (V4)--- complaint she describes
24 her attacker as wearing a suede or suede
25 type half or three-quarter length coat



1 with possibly sheep type collar. A
2 photo of Fisher taken in 1969/70 is
3 being sent via courier this date,
4 showing him wearing a similar jacket
5 with what appears to be a sheep-lined
6 collar. Linda Fisher has confirmed that
7 Larry had this jacket while living at
8 334 Ave. "O" South.

9 You will recall there were
10 several fibres recovered from Gail
11 Miller's name tag. I have had the
12 Corrections people check Fisher's
13 personal clothing to determine if he has
14 retained this leather jacket. I have
15 been advised he does not have it.

16 It may be appropriate to
17 question Larry on the whereabouts of
18 this jacket (a long shot). Forensic
19 analysis of "collar" material could be
20 made with fibres found on Miller's name
21 tag."

22 So, again, this would be questions to try and
23 establish a link between Larry Fisher and Gail
24 Miller?

25 A Yes.



1 Q Through her name tag?

2 A Yes.

3 Q And as well to (V4)---- (V4)---; is that fair?

4 A Yes.

5 Q Next page, at the top, question on whether he wore
6 a bandana and any type of medallion; I take it
7 that would be to see if you could connect him to
8 the (V14)- complaint, is that fair?

9 A Yes.

10 Q And then down at the bottom there is reference
11 about the car and:

12 "You may wish to pursue how often Larry
13 had access to Cliff's car and the
14 "borrowing" arrangements they had. Did
15 Larry get the vehicle in the absence of
16 Cliff? Enquiries ongoing into the
17 whereabouts of this vehicle."

18 And I take it that would be into see whether Mr.
19 Fisher had a car on the morning of Gail Miller's
20 murder?

21 A Yes.

22 Q And did you have a belief that a car was involved
23 in the murder?

24 A Well there was two opposing beliefs or suspicions
25 I had; one, you could rationalize that a car



1 definitely was not involved; and another, you
2 could try and develop a theory that a car was
3 involved and, through that theory, you could
4 potentially develop a new way of looking at the
5 crime, and from that you may be in a position to
6 develop evidence. But there were a lot of factors
7 that would suggest that a vehicle was not
8 involved, as well as there were factors that
9 suggested that a vehicle could be involved.

10 Q If we can go to the next page. You say:

11 "In summary, it would be appreciated if
12 the examination of Larry Fisher could be
13 exhaustive, as it will be the police who
14 are tasked with any follow-up
15 investigation of Fisher, should the
16 Supreme Court determine this requires
17 further investigation. Larry Fisher's
18 appearance as a witness in the Supreme
19 Court will probably be as close as we
20 will ever get to him."

21 So I take it, at this time, you contemplated that
22 one thing that may come out of the Supreme Court
23 reference would be a further investigation of
24 Larry Fisher as a suspect; is that fair?

25 A Yes.



1 Q And again, and you've expressed this before, this
2 might be your only chance to -- for anybody to get
3 Mr. Fisher to talk when he has to talk?

4 A Yes, and as close as we -- meaning the police,
5 well maybe everybody but I was thinking of my, the
6 police responsibility if we had to go at him again
7 -- that we wouldn't get the, we wouldn't get as
8 close to him as the Supreme Court did.

9 Q This is probably a good spot to break, Mr.
10 Commissioner.

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

12 (Reconvened at 1:34 p.m.)

13 BY MR. HODSON:

14 Q Good afternoon, Mr. Pearson. To sort of finish up
15 on some matters here this afternoon, if we can go
16 to 056896. You'll be happy to know that we're
17 almost at 700 of 800 paragraphs. I don't think
18 I've covered this, this is March 8th, this would
19 be in the evening during the Supreme Court
20 reference, and it looks as though you called David
21 Asper, he wants you to interview Heather Bergan of
22 Corrections Canada:

23 "... as she seems to know of other
24 sexual offences Fisher has admitted to.

25 Asper also suggested there are a number



1 of reports on Caldwell's prosecution
2 file which are for victims of sexual
3 attacks. Asper mentioned (V9) (V9)----
4 as one. We had a lengthy discussion of
5 the case in general. Wolch also got on
6 the line, suggesting that Fisher
7 attacked his victims while walking
8 between Cliff Pambrun's home and his own
9 at 334 Avenue O South. Very little
10 discussion with Wolch. I feel contact
11 Bergan as requested."

12 Again, anything other than that note that you
13 recall today, Mr. Pearson?

14 A No, there isn't.

15 Q And I think this reference here to the attack
16 walking from Cliff Pambrun's home would be the
17 (V4)---, the location of the (V4)--- assault. Do
18 you remember that?

19 A Yes, yes.

20 Q And so we see down here there's a column, and just
21 scroll down, March 10th, you in fact did call
22 Heather Bergan to get -- and I take it, I don't
23 think we need to go through it, but it was someone
24 at Corrections and information about whether Mr.
25 Fisher had committed other attacks on his prison



1 files; is that right?

2 A Yes, that seems to be what the request was about.

3 Q So again on March 8th, '92 Mr. Asper calls you,
4 asks you to contact her to get more information
5 and I take it you had no difficulty following up
6 and doing that for him?

7 A No, no.

8 Q And go back up to paragraph 697:

9 "Discussion with Mr. Williams on the
10 need to interview Bobs Caldwell, as the
11 possibility exists he may be called as a
12 witness."

13 Do you know who or how witnesses were decided at
14 the Supreme Court? What was your understanding
15 about who was deciding who would go?

16 A I have no information at all as to what was
17 happening at the Supreme Court level.

18 Q If we can go to 056897, we've now hit paragraph
19 700, here:

20 "I attended at the Crime Detection
21 Laboratory in Regina, Document Section.
22 I dropped Bobs Caldwell off at the
23 Provincial Court House for the purpose
24 of examining the prosecution file for
25 answers to questions being posed by the



1 Federal Justice Department. I called
2 Mr. Williams from the Crime Detection
3 Lab, (a) he wants me to determine the
4 manner, timing and extent of disclosure
5 to defence by Mr. Tallis, (b) determine
6 what knowledge Caldwell had of other
7 sexual assault victims who came forward
8 at that time, (c) did he author the
9 theory pages, (d) does he know who did,
10 or can he at least speculate?"

11 So I take it those would have been your marching
12 orders from Mr. Williams as far as interviewing
13 Mr. Caldwell; is that correct?

14 A I think that might have been in addition to some
15 others because I was already with Mr. Caldwell in
16 going down to the Provincial Court House to
17 review, he wanted to review the file, so there was
18 already something in place to have him answer some
19 questions, and I think these were some, maybe some
20 additional.

21 Q Right, and I think we'll see when we get to his
22 statement, and we've already seen there was a note
23 that Mr. Caldwell had on his prosecution file of
24 what was overheard by, what some witnesses
25 overheard Nichol John say in the witness room at



1 the preliminary hearing. Do you remember that
2 being a subject matter that you were checking out
3 with him?

4 A Yes.

5 Q And then if we can just scroll down to 702 --
6 actually, just go up to 701. It looks as though
7 here you had contact with examiners, document
8 section:

9 "It had been suggested by Caldwell that
10 the theory pages appear to have been
11 completed with a dot matrix printer."

12 And again I take it one of the things you were
13 looking at is who typed up the theory sheet; is
14 that right?

15 A Yes.

16 Q And down at the bottom, 702:

17 "I remained at the Court House in Regina
18 with Bobs Caldwell, who was reading over
19 the prosecution file, in preparation for
20 my interview with him. At one point,
21 Caldwell went to a legal sized filing
22 cabinet, going through sub/files, as
23 we're trying to compare red numbers on
24 the file material with those on the
25 "theory sheet". Some of the numbers did



1 match, others could not be located. At
2 this time Caldwell located a photocopy
3 of the "theory sheet" in the second
4 drawer under a file headed, "Milgaard
5 witness - Roberts - Art - Polygraph
6 operator".

7 Do you have any recollection of that incident?

8 A No, I don't.

9 Q And then would there be a reason you would record
10 that in your notes or --

11 A Well, I think that was one of the issues, was the
12 theory sheet, and it's just an item that must have
13 stood out at the time.

14 Q Go to the next page, it looks as though for, and I
15 think the time is it looks like you spent about
16 five hours, is that right, with Mr. Caldwell that
17 afternoon getting his statement?

18 A Yes.

19 Q And if we could just call up 067169, this is a
20 March 10, 1992 memo from Mr. Williams to you, and
21 I think it's the day before your interview, and
22 accompanying this memorandum is a copy of the note
23 authored by T.D.R. Caldwell. I think this is the
24 note about what was overheard in the witness room.

25 "I would be grateful if you would



1 present the note to Mr. Caldwell and
2 inquire into the circumstances which
3 prompted him to write it, and the
4 circumstances in which the words
5 attributed to Nichol were heard. Also,
6 please confirm that the three persons
7 identified at the top of the note are
8 the "all" referred to in the fourth line
9 of the note.

10 Later today, I expect to
11 transmit additional topics for
12 questioning as soon as these have been
13 confirmed by counsel."

14 So I take it maybe this note predated the other
15 notes as far as information that you were to get
16 from Mr. Caldwell?

17 A It would seem so, yes.

18 Q And did you understand that you were getting
19 information for Mr. Williams based on what other
20 counsel before the reference were inquiring of?

21 A I don't know if I knew that at the time or not.

22 Q And then just for the record, 008818, and this is
23 the statement of Mr. Caldwell, and we went through
24 this with him, and can you just tell us generally
25 whether you recall the manner in which this



1 statement was taken or whether it was taken in the
2 ordinary course?

3 A Yes, this was a statement taken. Whether it was a
4 typed version, I don't recall all the details, but
5 I just recall being at his house after he had,
6 after we had both gone to Regina and he was
7 required to review the file to try and get the
8 information that was required to answer the
9 questions, and then it was put into a statement
10 format the next day when we were back in
11 Saskatoon, went to his house and went through it
12 in a question and answer format. As I recall,
13 some of the answers were very long in his response
14 to the complex question.

15 Q Okay. If we can go back to 056898, and this is
16 March 12th, your discussions with Mr. Williams
17 again on the theory sheet, and you say:

18 "I think it was at City Police before
19 the file was sent to the prosecutor,
20 because of comments suggested in the
21 last few lines of the last page ..."

22 And here:

23 "On the other hand, Williams seems to
24 think this is a document that was made
25 by Caldwell."



1 So I take it there was some discussion at this
2 time trying to figure out not only who prepared
3 the theory sheet, but when the theory sheet was
4 prepared?

5 A Yeah, I believe that's reasonable.

6 Q And did you have any concerns again in your role
7 investigating this matter as to who prepared it or
8 when it was prepared? Did that matter in what you
9 were looking at?

10 A No, I just don't know what I thought at the time.
11 I know it was certainly an issue of, the fact that
12 maybe some theory had been laid out before the
13 case was completely investigated, I know that was
14 an issue, but what I thought at the time right
15 now, I can't really help you.

16 Q I think at the time an allegation had been made by
17 representatives of Mr. Milgaard that the theory
18 sheet was something that the police or Mr.
19 Caldwell or someone prepared before evidence was
20 obtained from Nichol John or Ron Wilson and that
21 it was used to script their evidence. Do you
22 recall that type of allegation being made?

23 A Yes.

24 Q And so it was your job to see if you could find
25 out who made it and when they made it or prepared



1 it?

2 A That's what we were attempting to do here by
3 gathering some information and having the lab do
4 some comparative work, because no one really
5 seemed -- Mr. Caldwell wasn't clear on who
6 authored it --

7 Q Go to --

8 A -- is my recollection.

9 Q -- 056902, and this is March 23rd, '92, and it
10 looks as though you accompanied Mr. Fainstein to
11 North Carolina as part of taking exhibits down for
12 the DNA analysis; is that right?

13 A Yes.

14 Q And I won't ask you to explain what happened on
15 the DNA matter, but as far as your role in that,
16 would it be fair to characterize it as being
17 primarily in charge of the exhibits and continuity
18 of the exhibits there and back?

19 A That was my role, yes.

20 Q I think we have seen that those results were not
21 conclusive or a reading couldn't be obtained from
22 Gail Miller's clothing; is that fair?

23 A That's right.

24 Q And then go ahead to 056907. Now, this is March
25 28th, '92, so we're right near the tail-end of the



1 Supreme Court reference, and it says:

2 "At this time we also discussed --"

3 This is with you and Mr. Williams,

4 "-- what further investigation could be
5 completed and it was agreed that we
6 would attempt to locate Dennis Elliott
7 and possibly Les Spence. It was agreed
8 that we would not interview these people
9 until we got further results of the DNA
10 testings. Williams will advise me in
11 this regard at a later date."

12 And I'm wondering, can you recall why you would
13 be talking to Mr. Elliott and Mr. Spence in
14 connection with --

15 A As I recall, he was with Gail Miller prior to the
16 murder, I think as a date if I'm not mistaken.

17 Q Yes.

18 A Okay.

19 Q Yeah, Mr. Elliott, Dennis Elliott dropped Gail
20 Miller off the night before her murder at about
21 two a.m. and Mr. Spence was her, I think boyfriend
22 or friend at the time.

23 A Yes.

24 Q And would you be making inquiries of them as
25 suspects or to identify the fact that the semen on



1 her clothing may have been from an incident prior
2 to the rape and murder?

3 A I don't believe at this time he was ever looked at
4 as a suspect, it was more of an elimination
5 process.

6 Q Right. And let me just maybe ask the question in
7 a better way because I think in fact Dennis
8 Elliott's blood was obtained and a DNA analysis
9 was conducted, I think in 1997, I stand to be
10 corrected, but I think even in 1997 he was one of
11 the samples that was used to match with Gail
12 Miller, and my question is this: One scenario
13 would be that he would be a suspect. The second
14 scenario would be that if Dennis Elliott had
15 intercourse with Gail Miller the evening before
16 her death, that might explain why his DNA or semen
17 might be found on her garments; is that fair?

18 A That's fair, yes.

19 Q And was it the latter scenario that you were
20 pursuing Mr. Elliott and Mr. Spence for?

21 A Yes.

22 Q As opposed to being suspects in the murder?

23 A Yes.

24 Q And again the next page, I think this is what, you
25 got a statement from Dennis Elliott:



1 "... who was one of the last people to
2 see Gail Miller alive. He was
3 interviewed to determine if he could
4 have been responsible for the seminal
5 stains on Miller's underpants and if he
6 would supply a blood sample for DNA if
7 it was needed. Elliott stated quite
8 emphatically that he was at no time in
9 sexual contact with the deceased, and
10 that the seminal stains certainly were
11 not his, and also that he would gladly
12 cooperate in any way he could by
13 providing a blood sample if required."

14 So again I think that confirms what you told us
15 about the purpose of getting his blood sample?

16 A Yes.

17 Q Scroll down. So this is April 1, if you can just
18 scroll over to see the dates, April 1. And this
19 is before, I think before argument, there might
20 even be still evidence to come at the Supreme
21 Court:

22 "Mr. Williams called, stating that an
23 re-enactment of the Miller murder
24 completed by Milgaard's counsel, was
25 included in the reference material



1 before the Supreme Court. The theory is
2 that the murder could not have happened
3 as presented in the original trial,
4 basically because there was insufficient
5 time to complete it as described."

6 Do you recall, Mr. Pearson, whether you ever
7 looked at the video or whether you ever looked at
8 the theory as to whether or not the murder could
9 have happened and whether it was possible it
10 could have happened as laid out at trial?

11 A That was something that I had never reviewed, or
12 had seen, or was tasked with, no.

13 Q And then if we can go to the next page, and again
14 this is still April, April the 1, 1992. It says:

15 "Mr. Williams ran the following theory
16 by me:

17 Williams states that Miller
18 went out the back door of 130 Avenue O
19 South and then down Avenue N and was
20 stopped by Milgaard in the vehicle.
21 They then turned around behind the
22 funeral home and faked that they are
23 stuck, Milgaard then attempts to take
24 the purse, a struggle ensues, Wilson
25 sees things are going badly and leaves



1 the area in the opposite direction.

2 John hears screams and runs down the
3 alley to investigate, sees certain
4 activities, then runs away. John also
5 sees a figure involved with throwing
6 something in the garbage. Williams also
7 states that possibly both people grabbed
8 the girl, Milgaard dragging her into the
9 alley and Wilson later deciding he wants
10 no part of this."

11 I take it that is a note of what you and Mr.
12 Williams discussed on that date?

13 A Yes, it appears to be.

14 Q And when it says:

15 "Mr. Williams ran the following theory
16 by me:",

17 are you able to tell us what, how this came about
18 or what the purpose of this discussion was?

19 A Umm, there must have been some discussion about
20 the potential of a vehicle being involved, and
21 this was a version that Mr. Williams had.

22 Q Okay. If we can just scroll down, the next
23 paragraph:

24 "Mr. Williams is also discussing the
25 fact that Miller's white gloves had no



1 blood on them, possibly because she
2 wasn't wearing them at the time. Miller
3 also had a black pair of gloves and I
4 believe one was found on her and another
5 was in the immediate area. I suggested
6 to Williams that he determine if the
7 gloves were ever checked for hair and
8 fibre, as possibly Miller may have
9 attempted to fight off her attacker.
10 This could assist in future DNA
11 analysis."

12 And then:

13 "During this discussion I also related
14 to Mr. Williams the theories which I
15 believe also have some validity:"

16 And if we can scroll down to the bottom of the
17 page, if you can actually get the whole thing in
18 there, please. You say:

19 "My first theory is that Nicol John and
20 Ronald Wilson know more and were
21 involved more deeply than is currently
22 believed. The fact that a car was seen
23 in the alley between 7:00 and 7:10 a.m.
24 by Mr. Diewold from St. Mary's Church,
25 and that he observed a shadow go north



1 past the headlights, would suggest that
2 there was activity in the vicinity at
3 the time. A theory which possibly holds
4 as much weight as any others is the fact
5 that Miller may have been picked up and
6 dragged into the car and under threats
7 of being harmed by having a knife placed
8 to her throat, she was viciously
9 attacked. Possibly it was a robbery
10 that escalated and got out of hand. If
11 the offence took place in the car, Nicol
12 John and Ronald Wilson may have been a
13 party to the offence ...",

14 next page:

15 "... to the offence, or at least
16 believed they were a party to the
17 offence by possibly not doing anything
18 to prevent the attack. The unusual
19 crime scene, i.e., stab wounds through
20 the coat but not through the dress,
21 suggests that the offence took place in
22 two stages. It would seem possible that
23 the coat was taken off of Miller and
24 that she was viciously attacked by
25 having her dress ripped off her



1 shoulders and then sexually assaulted.
2 After the assault, it seems logical that
3 she was then allowed to redress by
4 placing her coat back on. If this
5 assault took place inside the motor
6 vehicle she could have possibly escaped
7 and began running from where the car was
8 seen parked by Mr. Diewold, north up the
9 alley between Avenues O and N, and
10 possibly the shadow that Mr. Diewold saw
11 going north across the headlights was
12 someone from inside the vehicle giving
13 chase to catch up with Miller."

14 If you can scroll down:

15 "She was then caught and stabbed through
16 her coat and left to die where she was
17 found. The seminal stains on her
18 underpants and the semen found in the
19 snow during the initial investigation
20 may actually have been deposited on the
21 clothing during the sexual act inside
22 the car, and may have actually fallen
23 into the snow from her clothing during
24 the struggle at the death scene. To
25 further support this, the fact that



1 Nicol John, from the very beginning, was
2 a hostile witness, suggests that she
3 told only sufficient detail to protect
4 herself from being drawn into a murder
5 investigation. As well, Wilson provided
6 the 15 minute window of opportunity by
7 stating that Milgaard walked towards the
8 girl they had passed while he, Wilson,
9 went the other way to get help. It is
10 interesting to note that there was no
11 evidence that the Milgaard vehicle was
12 stuck near the scene of the Miller
13 murder. It is quite possible that the
14 vehicle never was stuck and that
15 Wilson's exiting from the scene may not
16 have actually happened, ...",

17 scroll to the bottom:

18 "... and that it was a story only to
19 eliminate him from being associated to
20 Milgaard's activities. The fact that
21 Wilson, during his Supreme Court
22 testimony, states that he lied during
23 the original trial, leaves one to
24 question why he would have lied at that
25 time. The only rational explanation is



1 the fact that he had to lie to prevent
2 himself from being drawn into his
3 involvement in the Miller murder. On
4 the other hand, David Milgaard has
5 expressed his innocence from day one and
6 is in the position where he cannot
7 implicate Wilson and John, if in fact he
8 has a recollection, as involving other
9 people in the murder will do nothing to
10 assist in his stance of innocence. The
11 bottom line is that, if the facts
12 support Milgaard's involvement in this
13 murder, I strongly suspect that Nicol
14 John and Ronald Wilson may in fact have
15 been a party to this crime."

16 So if I can pause there, this is April 1, would
17 this have been a theory, then, you had at the
18 time Mr. Pearson?

19 A That is something that, that evolved over time as,
20 you know, you struggle through this to try and
21 make some understanding of what was happening and
22 in an attempt to try and look at what was known in
23 a different way, to try and rationalize what was
24 known 20 years later and try and theorize -- I
25 guess that's what it is, it's a theory, it's just



1 an idea of -- that may support some future
2 investigation or some --

3 Q And I want you to focus on what you were thinking
4 at the time, Mr. Pearson, as opposed to what we
5 know today, --

6 A Yeah.

7 Q -- but at the time I think --

8 A Well at the time I certainly, again there was a
9 suspicion that David Milgaard could possibly have
10 been involved, and if he, if he was, with the
11 vehicle they were in that morning, it would seem
12 that Nichol John and Ronald Wilson would certainly
13 have had some knowledge of it. And when you look
14 at the activities of Ronald Wilson and the fact
15 that he was lying in the Supreme Court, and the
16 ongoing problems with Nichol John being a hostile
17 witness, it caused one to wonder was there more
18 behind this than we know about.

19 Q And so am I right, the theory that you talked to
20 Mr. Williams about on this date -- and we'll see
21 it in a later document -- was one that had Mr.
22 Milgaard involved in the crime, but not in the way
23 that the evidence went in at trial? In other
24 words, I think this theory says that Nichol John
25 and Ron Wilson were also involved at least in part



1 of the incident, and that their stories at the
2 original trial were wrong because they were
3 somehow involved and knew a bit more than they let
4 on; is that --

5 A It was another way of looking at it and another
6 potential avenue to investigate.

7 Q Now, again, did that -- did this theory arise out
8 of some suggestion by Mr. Wolch or others that,
9 the way the evidence went in at trial, that the
10 crime couldn't have happened that way?

11 A I think, you know, there was a lot of information
12 out there, I'm sure some of it was from, from the
13 Wolch's side as to how this may or may not have
14 happened, and just a file review and just general
15 understanding of what was going on and trying to
16 rationalize it. I think there were a lot of
17 sources of the information.

18 Q Yeah. For example, it was suggested I think at
19 the Supreme Court that it would not make sense for
20 the Milgaard vehicle or the Wilson vehicle, if the
21 car was stuck and they went out to look for help,
22 that it wouldn't make sense for someone to commit
23 a murder while their getaway vehicle was stuck; do
24 you recall that being a position or a criticism of
25 the theory of the Crown or the case at the



1 original trial?

2 A Yes.

3 Q And --

4 A But at the same time, I mean there's lots of
5 irrational behaviour that goes on that doesn't
6 make sense, and if this was something that was
7 spontaneous and unplanned it's quite possible that
8 it could have been done and the car being stuck,
9 it's just the spontaneity. And who knows, there
10 was mind-altering drugs, alcohol involved,
11 emotion, fear, a lot of factors you would consider
12 at the same time.

13 Q And so I think your starting of this theory is
14 that you said 'this theory has some validity'.
15 Now -- and I'm concerned about your thinking at
16 the time, Mr. Pearson, as opposed to what you now
17 know today -- but at the time, if this theory was
18 valid as you put forward here, I take it the
19 corollary of that would be that Mr. Fisher could
20 not have committed the murder; is that fair?

21 A Well --

22 Q Under this theory?

23 A -- you know, if this theory proved out that you
24 had some factual evidence that was -- that
25 surfaced that said David Milgaard did it, then I



1 would conclude that Larry Fisher did not.

2 Q And, again, are you able to help us out on the --
3 and again maybe when I -- there's some additional
4 car theories that I think you flush out in a bit
5 more detail a bit later. Are you able to tell us
6 at this time, this April 1 call with Mr. Williams,
7 the, sort of the relative strength of this theory?
8 Was it just thrown out there to think about, it
9 was something that you thought "lookit, this might
10 fit the facts"?

11 A I think it was just, it was just a theory, it was
12 just another, another set of circumstances that
13 maybe had some potential to consider.

14 Q And your finishing point here is:
15 "The bottom line is that, if the facts
16 support Milgaard's involvement in this
17 murder, I strongly suspect that Nicol
18 John and Ronald Wilson may in fact have
19 been a party to this crime."

20 And is that what you would have thought at the
21 time?

22 A Yes.

23 Q And so that --

24 A Now this was done at that time, so --

25 Q Right. And so, based on what you had learned at



1 that time, was it your view that if Mr. Milgaard
2 had committed the crime, that it was your view
3 that Wilson and John likely knew more than they
4 had let on at the trial, and certainly knew more
5 than they disclosed at the Supreme Court
6 reference?

7 A Yes, and that was based on their, their historical
8 behaviour.

9 Q And putting aside whether or not, the issue of Mr.
10 Milgaard's involvement in the crime, based just
11 solely on what you had learned about Mr. Wilson
12 and Ms. John and what their -- what they had said
13 at trial and what they were now saying in 1992 and
14 what you knew, did you think that they knew more
15 than they were disclosing?

16 A Well that, that was, if you are going to pursue
17 this theory then you would have to assume they
18 did.

19 Q But even if you are not -- forget the theory for a
20 moment. Did you have some concerns at the time --
21 and I can show you some notes, maybe, when -- that
22 --

23 A I probably did suspect that they had some
24 knowledge. I, I just, I don't know what I
25 referred to when I say that, but I do believe



1 that, in the theory that's being developed here,
2 there certainly is suspicion I have, and it's
3 based on their behaviour, their hostility of
4 Nichol John and the lying of Ronald Wilson.

5 Q The lying of Ronald Wilson --

6 A That, in itself, would create some suspicion about
7 their possible involvement.

8 Q So the Ron Wilson evidence at the Supreme Court, I
9 think, is what you are referring to about the
10 lying; is that right?

11 A Yes.

12 Q And are you telling us that that sent a flag up
13 with you saying "okay, does he maybe know
14 something more than what he is letting on, there
15 might be something there that we don't know yet"?

16 A Well it certainly raises some questions about, you
17 know, when is he telling the truth or when is he
18 lying, you know, is he telling the truth today or
19 did he lie back then or, you know, it's worthy of
20 a look.

21 Q But I guess the question -- sorry -- about whether
22 he had more information that he had not disclosed,
23 and here you have a theory that has him being
24 involved in the murder or at least in the
25 incident, and he had not said that in any of his



1 testimony previously at the trial or at the
2 Supreme Court -- I think it was implicating David
3 Milgaard, exculpating David Milgaard, those were
4 the two positions that he was taking -- but as far
5 as him being involved with Mr. Milgaard, I don't
6 think he ever said. And my question is, at the
7 time, whether you are able to tell us whether your
8 thinking was that, based on what you heard about
9 Ron Wilson's conduct and evidence at the Supreme
10 Court, did you have suspicions that maybe he had
11 more information about that morning that hadn't
12 come, come out yet?

13 A I believe that was kind of a logical conclusion
14 that I would have drawn.

15 Q And secondly with Nichol John, again a bit
16 different, I think her issues -- you pointed out,
17 I think you called it hostility or whatever, the
18 fact that she did not repeat her sworn statement
19 at the trial, and I think at the time of the
20 Supreme Court reference also did not repeat it,
21 but again, was there anything, with what you knew
22 about Nichol John, that caused you to think that
23 there might be something at that time -- I just
24 want your knowledge at that time -- that maybe she
25 knew more than she was disclosing; did you have



1 that suspicion?

2 A That was a gut feeling.

3 Q Now if we can scroll down, you say:

4 "Another theory I have -",

5 if I could scroll down, is:

6 "... "The Strange Car Theory" is as
7 follows: A vehicle driven by someone
8 unknown, such as Fisher, may have forced
9 Miller into the vehicle shortly after
10 she exited her residence. This is
11 supported by the fact that Chuck
12 Carriere and Dennis Elliott both report
13 seeing a vehicle parked at 130 Avenue O
14 South, with the headlights on and
15 someone actually walking in the area.
16 Elliott states that the individual had
17 his hair combed back, he had dark hair,
18 and had an angry look about him. The
19 possibility exists the person was
20 waiting for Miller and, when she left
21 her residence, forced her at knife point
22 inside the vehicle and then raped her as
23 described in theory above, and it was
24 this vehicle that was seen in the alley
25 by Mr. Diewold. Again, after the sexual



1 attack, Miller was given the opportunity
2 to at least get her coat back on and she
3 was either permitted to leave or escaped
4 from the vehicle, and then again was
5 chased down the alley and stabbed to
6 death where her body was located. Mr.
7 Elliott describes the vehicle he saw as
8 being a reddish coloured car with
9 extensive damage to the driver's side
10 rear quarter panel. Inquiries are
11 presently being made to determine if
12 Cliff Pambrun's reddish brown 1958 Chev
13 ever had damage to the quarter panel.
14 If it is determined this vehicle was
15 damaged, there would be some indication
16 that possibly Fisher was in the area
17 during that time. These inquiries are
18 continuing through Cliff Pambrun."

19 So here is a second theory that seems to involve,
20 I think you say a car driven by someone unknown,
21 such as Fisher, but let's just put Mr. Fisher
22 aside for the moment. We have heard evidence and
23 there is the report that Dennis Elliott did see
24 someone in a car across the street from Gail
25 Miller's house on the evening prior to her murder



1 when he dropped her off; you remember that being
2 a piece of evidence that was there in '69 and
3 again in 1991 or 1992?

4 A Yeah, yes.

5 Q And I don't think, and I stand to be corrected, I
6 don't think anywhere, in any of the evidence we've
7 had, anybody has identified who, who that was or
8 whose car it was -- I think some may suspect it
9 may have been Mr. Fisher's -- but this theory
10 would have an unknown person being involved and/or
11 Larry Fisher being in that car --

12 A Yes.

13 Q -- and attacking Gail Miller in the alley?

14 A Yes.

15 Q And so this theory would have no involvement by
16 David Milgaard in the murder of Gail Miller?

17 A That's right.

18 Q Is that correct?

19 A That's right.

20 Q And, again, this would be a theory you discussed
21 in con -- with Mr. Williams in conjunction with
22 your other theory about David Milgaard possibly
23 being involved?

24 A Yes.

25 Q Now both of these theories have the assault taking



1 place inside a motor vehicle?

2 A Yes.

3 Q And was that something, at the time, that you had
4 thought was a likely scenario?

5 A It was a, it was a possibility. It was just
6 another way to look at, at the crime to see if
7 that would lead you to some other avenue that you
8 could pursue. It -- again when you -- and, again,
9 earlier when I said there were two very opposing
10 views in my own mind with regard to whether this
11 happened in a car or happened like it's been known
12 to happen, and that she was attacked, stabbed, and
13 killed at the location where the body was found,
14 and there are some -- when you take a look at the
15 similar fact analysis that was done and you take a
16 look at the methods that Larry Fisher was involved
17 in, usually under cover of darkness, in an alley,
18 attacking his victims from behind, in cases
19 undressing them and going through all this
20 clothing removal movements, there is some pattern
21 of behaviour there. And while it seemed unusual
22 that the stabbing took place through the coat and
23 not through the dress, you could start to theorize
24 it may have been happened -- it happened at two
25 stages, one stage there and one stage away, but



1 that is little unlike Larry Fisher's MO in that he
2 did have his, some of his victims undress, and he
3 assaulted them at that location.

4 The other issue is the fact
5 that, you know, would he take someone to his car
6 and risk the potential of being identified through
7 the vehicle that a potential victim was going to
8 be dragged to, if in fact he -- the only
9 alternative would be that he intended to kill this
10 person, knowing that they couldn't identify him.

11 And then, if you even take it
12 one step further and you take a look at the 690
13 review that had the analysis of all of the
14 statistical comparisons that were made of Fisher's
15 crimes -- and it was those findings that concluded
16 that, or assisted in concluding that Larry Fisher
17 was probably involved -- but if you used those
18 same set of circumstances and the same facts that
19 were analysed, then you would have to conclude
20 that a vehicle was not involved because there was
21 no reference to him ever being involved, in his
22 previous assaults, through the use of a vehicle.
23 So that's kind of the rationale of believing that
24 the crime probably did happen where it happened,
25 through the statistical analysis of how he



1 behaved.

2 **Q** Okay. Let me just back up. The theory advanced
3 at the reference by counsel for Mr. Milgaard I
4 think was that Larry Fisher had Cliff Pambrun's
5 car and that the assault -- that the car was
6 there, and that was the car that Mr. Diewold saw,
7 and that he then drove the vehicle to
8 Mr. Pambrun's, dropped it off, and then walking
9 back assaulted (V4)---- (V4)---. And again in
10 that, based on those as being the, a theory of how
11 Mr. Fisher committed the crime, I'm not sure I --
12 as far as the other seven known con -- known
13 convictions of Mr. Fisher, are you saying that
14 that would be different?

15 **A** Well if you are going to use the statistical
16 analysis for the basis of similar fact evidence,
17 and use it as evidence that he was involved, umm,
18 there was no, to my recollection -- now I stand to
19 be corrected -- but from my recollection there was
20 no evidence that any of his previous victims were
21 ever assaulted in a vehicle or taken to his
22 vehicle and the offence taken place in a vehicle.

23 So I guess just using some logic
24 of, if you are going to believe all the
25 statistical analysis that it was Larry Fisher that



1 committed these crimes, and then in the absence of
2 a statistic that shows that there was never a
3 vehicle involved, then I suppose you have to come
4 to a conclusion that probably in this case a
5 vehicle was not involved either.

6 Q Okay. But if you do the converse and you assume
7 that a vehicle was used in the murder based on
8 Henry Diewolf's witnessing of the car --

9 A Yes.

10 Q -- and then go back and say "okay, a car was
11 involved in the murder of Gail Miller", and as
12 well based on the clothing, etcetera, assume that
13 a car was involved, what would be your view then
14 as to whether or not that that would mean that Mr.
15 Fisher was less likely to be the culprit, based
16 upon the similar fact analysis and his previous
17 seven crimes? Do you follow?

18 A No, I don't.

19 Q Okay. I think what you told us is that Mr.
20 Fisher's seven crimes, none of them involved a
21 vehicle, therefore if he is the person who killed
22 Gail Miller then it's likely a vehicle wasn't used
23 if you are going to rely on the statistics,
24 because he didn't use one before or something like
25 that; is that correct?



1 A Yes.

2 Q I want you to approach it from the other end
3 saying you are trying to solve the crime, the
4 murder of Gail Miller, and you are going to look
5 at the pattern of Mr. Fisher's offences to see
6 whether or not there are similarities or
7 differences. If you assume that Gail Miller was
8 murdered and a vehicle was involved -- and the
9 basis would be Mr. Diwold's eyewitness or
10 witnessing a car, etcetera, but assume that a
11 vehicle was involved for a number of reasons, as
12 well you talked about the state of her clothing
13 and some other factors, but assume a vehicle was
14 involved in the murder of Gail Miller -- and you
15 were then asking yourself the question, okay,
16 since a car was involved in the murder of Gail
17 Miller, based upon Larry Fisher's previous
18 assaults and offences, is it more or less likely
19 that he was involved in the Gail Miller murder?

20 A Well I think there was a lot of overwhelming
21 circumstances that would -- certainly, I don't
22 think you would be put off by the fact that,
23 because he never used a vehicle before, that he
24 couldn't be involved in this one. With all of the
25 circumstances going on in the neighbourhood at



1 that time, I don't think that would fly.

2 Q So the fact that a car was involved, or might have
3 been involved in the murder of Gail Miller, did
4 not in your mind sort of discount or --

5 A Detract from Larry Fisher?

6 Q -- detract --

7 A No.

8 Q Okay. And then just back on the converse, I think
9 you were saying that because he had never used a
10 car before you might lean more, if you were trying
11 to figure out how Larry Fisher committed the
12 crime, you might lean more towards saying a car
13 wasn't involved because he hadn't used one before;
14 is that what you are saying?

15 A Well if you are going to rely on the analysis of
16 everything that he has done, if you are going to
17 rely on the fact that he conducted his offences
18 the way he did and he never used a vehicle, then
19 you, you would say his pattern is that he doesn't
20 use vehicles. But that doesn't mean that he would
21 never use a vehicle, that you would discount him
22 because, you know, there is no vehicle involved,
23 or there may have been a vehicle involved in this
24 one, but it's just another factor that's thrown
25 into the mix.



1 Q I see. If we could go to the next page and you
2 say here:

3 "In my view, both theories ...",
4 and this is the one involving David Milgaard and
5 the one involving an unknown car such as -- or an
6 unknown car with a driver such as Fisher:

7 "In my view, both theories support the
8 fact that the attack on Gail Miller took
9 place in two stages, that she was
10 probably assaulted at a location other
11 than where she was found. This is
12 supported by the fact that she was
13 fatally stabbed through her coat, which
14 was placed back on after her dress had
15 been ripped from her shoulders. The
16 extreme cold temperatures would suggest
17 that the sexual activity would, in all
18 probability, have taken place inside a
19 vehicle or residence. The fact that
20 Mr. Diewold saw a car parked in the area
21 of Miller's death would suggest that
22 possibly she was inside the vehicle at
23 one point and actually stabbed to death
24 outside. Locating this vehicle, if it
25 can be determined which one, would



1 certainly be of value in this inquiry."

2 So, again, I think this is some of what you have
3 told us; that at this time you thought that the
4 assault took place in a car in all probability;
5 is that fair?

6 A According to the theory, yes. I mean this was a
7 theory we were developing --

8 Q Right.

9 A -- to try and look at this in some other rational
10 way to say, you know, "did it occur here or did it
11 occur in a vehicle, if it occurred in a vehicle
12 how could you turn the investigation upside down
13 and have a look at it in a different way", is
14 really I think what this is all about.

15 Q And if Mr. Fisher was the person who committed the
16 assault in a vehicle, then I think what you are
17 saying is that would be different than his
18 previous seven assaults, --

19 A Sure it would.

20 Q -- but not such that you would exclude him?

21 A Well no, it's, it's subject of a theory here, that
22 it could have happened inside the car, so if you
23 are believing that he could have done it in a car.

24 Q And then you go on to say:

25 "After my discussion with Mr. Williams,



1 it was suggested that he talk to Gary
2 Tidsbury, Sgt. at Kelowna GIS, to get a
3 feel for Nicol John, as there is a
4 strong possibility that she has been
5 holding out over the years because of
6 her involvement, and this may explain
7 the rather unusual behaviour she has
8 displayed over the years."

9 And again at that time, sir, would that have been
10 your thinking or your belief; that Nichol John
11 may have been holding out because of her
12 involvement?

13 A That, that must have been my thinking at the time,
14 yes.

15 Q And, again, is that along the lines of what you
16 talked about earlier, the fact that she was
17 hostile and did not, sort of did not repeat her
18 evidence again?

19 A Yeah, I think she'd been controversial from the
20 beginning.

21 Q Go to 056913, this is April the 3rd, it says:
22 "I also had a discussion with Mr.
23 Williams at this time, who briefly
24 discussed that the video re-enactment by
25 Mr. Wolch is also one where they are



1 advancing the "two knife" theory,
2 stating that there were two knives used
3 during the attack. I pointed out to Mr.
4 Williams that in one of Nicol John's
5 first statements she described two
6 knives as being in the Wilson car, one
7 was a bone handled hunting knife and the
8 other was a maroon handled knife similar
9 to the one actually found at the scene.
10 Mr. Williams suggested that I get hold
11 of Mr. Neufeld, Sask Justice, to assure
12 this point is brought to his attention,
13 as it may become an important point
14 during their verbal presentation to the
15 Supreme Court on Monday."

16 Again, do you have any recollection of this
17 issue, Mr. Pearson?

18 A I don't.

19 Q Again, just scroll down to the bottom. It looks
20 as though you phoned him:

21 "... to remind him that, in one of Nicol
22 John's original statements, she
23 indicated that there were two knives in
24 the Wilson car ...",

25 and it looks like you also related:



1 "... the theory of the crime scene being
2 in two parts and that it is quite
3 possible the sexual attack took place in
4 a vehicle ...",

5 next page:

6 "... with the death actually taking
7 place where the body was found. I
8 advanced the Milgaard theory and the
9 fact that I suspected strongly that
10 Nicol John and Ronald Wilson have more
11 of a story to tell, and their
12 involvement could explain the unusual
13 behaviour both have displayed during the
14 original trial and the recent Supreme
15 Court review. Mr. Neufeld seemed to
16 believe there is a strong possibility
17 that these two individuals could know
18 more than they are telling, however the
19 theory of course will require more
20 work."

21 And, again, would this have been your thinking at
22 the time?

23 A I believe so.

24 Q And reading that, a couple of questions, Mr.
25 Pearson; one, it looks as though at this time



1 that, based on what's written here, it says you
2 suspected strongly that Nichol John and Ron Wilson
3 have more of a story to tell, and I take it that
4 that would be a story that might point towards the
5 guilt of, or the involvement of David Milgaard;
6 would that be fair?

7 A I think that's fair, yes.

8 Q And would the behaviour, conduct and evidence of
9 Nichol John and Ron Wilson throughout the Section
10 690 proceedings, and in fact their evidence at the
11 Supreme Court, would it be your knowledge of that,
12 did that cause you to change your thinking either
13 about their involvement or Mr. Milgaard's -- Mr.
14 Milgaard being a suspect?

15 A It must have had some influence on my thinking, I
16 think it would have.

17 Q Let me back up and rephrase it this way. Before
18 Wilson, Mr. Wilson recanted and testified at the
19 Supreme Court and before Nichol John went through
20 the hypnosis and at the Supreme Court, before
21 that, at that time do you think you would have had
22 suspicions that they knew more and were holding
23 out or might have been involved?

24 A Well, I think that suspicion was probably there
25 for, by a lot of people for a lot of years



1 regarding Nichol John because of the difficulties,
2 and again, I have to say I didn't analyse
3 everything that Nichol John testified to over the
4 years, but it just, you know, as a gut feeling of
5 what she may know or not know. It just seemed to
6 be a question mark.

7 Q Yeah. And maybe put it another way, would what
8 you learned about Ron Wilson and what he said at
9 the Supreme Court and what you learned about
10 Nichol John and what she went through and what she
11 was saying in 1991, 1992, did that cause you to be
12 more suspicious of their story in that they may be
13 holding something back and in turn might have
14 increased your suspicion of Mr. Milgaard as a
15 suspect?

16 A I believe so, yes.

17 Q Go to 057836, this is a letter, this relates to an
18 issue with -- this is a letter of April 8th, 1992
19 from an inspector at Dorval Airport:

20 "... concerning the recovery of a piece
21 of luggage by Air Canada belonging to
22 one Albert Cadrain which had been
23 reported as missing in March.

24 Find enclosed originals of Air
25 Canada documentation as well as



1 photocopies of 25 pages of handwritten
2 very explicit notes found in the luggage
3 which obviously concern the David
4 Milgaard case."

5 Do you recall how this came about or how you
6 became involved in getting these notes?

7 A I don't know. I must have got a call from this
8 inspector. How he got my name I'm not sure, but
9 he must have known that I had some involvement in
10 this because he ended up sending this to me and
11 it's certainly something I didn't request Air
12 Canada do. The only involvement I had with
13 Cadrain at the time was I had located an address
14 for him on behalf of Federal Justice so they could
15 send a subpoena for the Supreme Court, so I really
16 wasn't familiar where he was moving at the time,
17 but this kind of came out of the blue and it
18 appears that he had lost his luggage and it was
19 located by Air Canada and it was eventually
20 associated to the Milgaard review and somehow it
21 ended up that they got my name and sent it to me.
22 I then forwarded it on to Mr. Williams.

23 Q If we could call up 067165, and this is your
24 letter of April 13th, 1992 to Mr. Williams saying
25 attached are the notes believed to be authored by



1 Albert Cadrain. I have no idea when these notes
2 were completed. And so I take it, Mr. Pearson, do
3 you have any knowledge as to how either Air Canada
4 or security in Montreal got the notes or why they
5 had the notes?

6 A I'm assuming that he lost his luggage and they
7 went through the luggage to find out who owned it
8 and that's what they found and then they took it
9 from there, but, you know, if the inference is
10 being made that maybe I somehow wanted to check
11 him as he travelled to see what he had in his
12 suitcase, that's not true.

13 Q Yeah, no, and I wasn't suggesting that. Other
14 than receiving them, I take it when you received
15 them, was that the first you heard that he had the
16 notes or that they were in his luggage or that he
17 lost his luggage?

18 A I must -- I would think possibly I had a phone
19 call from this inspector fellow, I don't know, I
20 don't recall his name, I may have had a phone call
21 from him and said, well, send them out to me, but
22 I don't recall that, but either that or he just
23 got my name cold from somebody and mailed them.

24 Q Other than receiving the notes and sending them on
25 to Mr. Williams, did you have any other



1 involvement in getting the notes or doing anything
2 with them?

3 A No.

4 Q Go to 056915, this is a note where Ron Fainstein
5 called you about the Supreme Court decision, and I
6 take it, and I think you said you had already been
7 aware via the news media, and so I take it at that
8 time you had become aware that the Supreme Court
9 in the reference case advised the Federal Minister
10 to set aside Mr. Milgaard's conviction and order a
11 new trial? Do you recall finding out about that?

12 A According to this I must have been aware of it by
13 this time, yeah.

14 Q Do you recall, and I'll go through some of your
15 notes here, but just generally, Mr. Pearson, at
16 this time was your, did you have a mandate left
17 from Mr. Williams as far as the work you were
18 doing for him on the Section 690?

19 A I'm not sure there was ever like a mandate. I was
20 involved in so many aspects of this that I was,
21 you know, following through on the tasks that he
22 thought I should do or whatever I could do to
23 provide assistance, but it wasn't like I was
24 focused on one particular aspect, I was just out
25 there.



1 Q Now, with the conviction set aside, as far as
2 investigating either the case against David
3 Milgaard or the case against someone else for the
4 death of Gail Miller, once the conviction was set
5 aside, would that be a matter of the Saskatoon
6 City Police jurisdiction or RCMP jurisdiction?

7 A The jurisdiction of the murder was within the
8 Saskatoon Police Service.

9 Q And so again, as far as your role in the matter,
10 and in fact I think we'll hear from members from
11 the Saskatchewan Attorney General and from
12 Saskatchewan Justice about -- let me ask you this.
13 Did anybody direct you to reopen an investigation
14 into the death of Gail Miller?

15 A No.

16 Q And again, just from your view at this time, if
17 anybody was to reopen the investigation into the
18 death of Gail Miller, would that be an RCMP
19 function or a Saskatoon City Police?

20 A Under normal circumstances it would go back to the
21 jurisdiction that had the responsibility in the
22 first place.

23 Q We know in 1997 after the DNA results came out,
24 that I think the Attorney General of Saskatchewan
25 asked the RCMP to investigate Larry Fisher for a



1 number of reasons, but that it would normally be
2 investigated by the city police; is that right?

3 A Yes.

4 Q And they asked for various reasons to have the
5 RCMP investigate it?

6 A Yes, as I understand it.

7 Q And I guess just back to your position in 1992,
8 once the conviction was set aside as far as the
9 question why didn't you go out and arrest Larry
10 Fisher or arrest David Milgaard or investigate the
11 matter, what's your answer to that?

12 A Well, I was providing assistance to Mr. Williams
13 and Federal Justice under the 690 review and I was
14 not considering this as a fresh homicide
15 investigation, and I know the jurisdiction was
16 with the city and the Attorney General department
17 had the responsibility, or certainly the authority
18 to re-assign the case. That's what they
19 eventually did.

20 Q And if the Attorney General for Saskatchewan had
21 come and asked you, or if the Saskatoon City
22 Police had come and asked you or the RCMP to
23 reopen the investigation, is that something that,
24 you know, again you would likely do?

25 A If I was asked to do it by my superiors,



1 certainly.

2 **Q** If you can go to 056917, and did you have, just
3 back on the decision, what was your reaction to
4 the Supreme Court decision if any, did it surprise
5 you or --

6 **A** I think when you -- of course being after the fact
7 I can maybe talk differently, but how I thought at
8 the very moment --

9 **Q** And that's what I'm looking for.

10 **A** I don't know. I think the final few sentences of
11 their decision made a lot of sense about the -- if
12 Larry Fisher would have been known at the time, it
13 would have caused some doubt, and I think that was
14 a very logical decision to make, but how I reacted
15 to it, I don't remember really, I just don't
16 recall how I reacted to the news.

17 **Q** As far as your thinking as to whether or not Larry
18 Fisher and/or David Milgaard were suspects or may
19 have committed the murder, did it assist you at
20 all in your thinking on that matter?

21 **A** I don't think so. I think everyone, probably the
22 Supreme Court as well struggled with this. It was
23 just one of those cases that there was no clear
24 answer to and, you know, with the wisdom of the
25 Supreme Court and the information they had, there



1 was no clarity really in their final decision
2 either. I think they were left with some doubts
3 on both sides and that's where it stayed until
4 there was some defining evidence that could put an
5 answer to this.

6 Q And in your mind, and again I'll go through your
7 report and your two theories that you prepared,
8 but in your mind did you continue to suspect both
9 Larry Fisher and David Milgaard for the murder of
10 Gail Miller?

11 A Yes, I had no evidence to eliminate or confirm
12 either one of them. I mean, a lot of
13 circumstances, I mean, there were a lot of
14 circumstances and everybody could rationalize and
15 everyone did in those days, everyone had an
16 opinion based on the knowledge that they knew, but
17 it was a difficult time to try and put a defining
18 answer. It was a tough decision to make by the
19 people who had to make this.

20 Q If we could go to 917, this is a discussion I
21 think of April 16th, 1992, and it says -- so this
22 is after the Supreme Court decision:

23 "During my conversation with Mr.

24 Neufeld, I also expressed to him my

25 theory that a car was possibly involved



1 in the sexual assault on Gail Miller and
2 I believe Wilson/John are more deeply
3 involved in this offence than is known
4 and that possibly further investigation
5 by police has some potential i.e.
6 authorization for communication
7 interception. I advised Mr. Neufeld I
8 would be sending forward two theories
9 regarding the involvement of automobiles
10 in this offence."

11 And I take it at this time -- Mr. Neufeld was
12 with Saskatchewan Justice. Is that who you
13 understood was making decisions as to whether
14 further investigations of either Mr. Milgaard or
15 Mr. Fisher would happen?

16 A Well, during the Supreme Court review,
17 Saskatchewan became involved, and yes, I would
18 have assumed that or would have known that at the
19 time.

20 Q And so again at this time you are saying that you
21 believe Wilson and John are more deeply involved
22 in this offence than is known and that possibly
23 further investigation by police has some
24 potential, and so that would be -- is that police
25 being either generic police, being city police,



1 RCMP or whoever is going to be investigating?

2 A I just -- I think it was just more generic of
3 whoever was going to be tasked with this if that's
4 what it came to.

5 Q And then you say you would send forward your two
6 theories regarding the involvement of automobiles,
7 and we'll get to that. If we can go to 056919,
8 this is April the 23rd, and this is where you say:

9 "I faxed two car theories involving
10 Larry Fisher, the other involving
11 Milgaard, Wilson and John, asking
12 Williams to provide feedback on any
13 factual errors or unreasonable
14 conclusions.

15 Williams called wanting
16 information tracking enquiries made re:
17 Fisher for their internal use and to
18 prepare answers to various questions
19 being posed. I will check policy and
20 determine just what can be released
21 directly to the Federal Justice
22 Department."

23 And so again you would be still dealing with
24 Mr. Williams then on these couple of matters?

25 A Yes.



1 Q And then if we can go to the next page, this is
2 the last entry, April 28th, 1992 in your
3 chronology, it says:

4 "I returned a call to Ron Fainstein ..."
5 And it goes on to talk about Mr. Milgaard and his
6 whereabouts. And that would be your last entry
7 then in your chronology on this matter? If we
8 can maybe just scroll down.

9 A Yes, and what happened at this, just to give
10 you -- there was a lot more that went on after
11 this, but at this point in time I was seconded off
12 of my unit and I went to lead the Milgaard (sic)
13 task force that was looking at this child abuse
14 case.

15 Q Sir, you said Milgaard. I think Martensville.

16 A Yeah, the Martensville case, after all the arrests
17 of everyone was made in very early June, so at
18 this time I left, I left my office and everything
19 that was going on there and I was seconded to a
20 separate office and we started up a task force
21 looking into the Martensville case, so I carried
22 that task force in addition to what I was moving
23 forward on with this and there was a lot of (V14)-
24 stuff going on as well.

25 Q So -- and I'll go through, there's a final report



1 of April 29th, 1992 that sets out the car
2 theories, and I'll go through that in a moment,
3 but would that have -- at this point would your
4 work for Federal Justice and Eugene Williams then
5 be more or less complete?

6 A Well, it wasn't, but I thought it was pretty well
7 complete, but there was still some things that I
8 was tasked with after that while I was now away
9 from this location and doing another task force
10 job.

11 Q And what would -- now, let me just, and I'll go
12 through this a bit later. You did -- we do know
13 that in late 1992 the RCMP were asked to
14 investigate allegations of obstruction of justice
15 and wrongdoing by provincial officials and police
16 and I think you had a meeting with the RCMP
17 officers who were going to be involved in that
18 project; is that right?

19 A That's right, yes.

20 Q And that's what's known as the Flicker project,
21 but -- and I take -- I understand, sir, you didn't
22 have any direct involvement in the Flicker
23 project?

24 A No, I didn't, no.

25 Q And I think, and again we'll go through these



1 notes in a minute, but you had some involvement in
2 interviewing some witnesses related to the Michael
3 Breckenridge complaint or allegation in --

4 A Yes.

5 Q In September, October, 1992; is that right?

6 A Yes, that's right.

7 Q And then had I think one meeting with the Alberta
8 justice officials and the RCMP officials on
9 Flicker to turn over some information that you
10 had; is that right?

11 A As a briefing, yes.

12 Q And then after that, other than testifying at the
13 Larry Fisher trial in 1999, would that have been
14 your involvement -- and, sorry, continuing on in
15 some dealings with Ms. (V14)-, would that have
16 been the extent of your involvement in the Gail
17 Miller, Larry Fisher, David Milgaard matter
18 generally?

19 A Generally, yes.

20 MR. HODSON: Okay. This might be an
21 appropriate spot to break, Mr. Commissioner.

22 (Adjourned at 2:38 p.m.)

23 (Reconvened at 2:56 p.m.)

24 BY MR. HODSON:

25 Q Call up 056634, and this is just to cover from



1 Superintendent Goodman who was your superior, this
2 is the cover to your last report on this matter of
3 April 29th, 1992, and it looks as though they
4 forwarded it on to criminal operation for your
5 information and attention, and then it says:

6 "The two theories provided by Sergeant
7 Pearson in this report, certainly raise
8 interesting questions which may never be
9 answered.

10 The Milgaard/Wilson/John car
11 theory, Appendix WWW, would seem more
12 plausible. I doubt Fisher would seek
13 out another victim having just completed
14 a sexual attack which culminated in
15 murder.

16 Our involvement in this matter
17 is concluding, however, we will continue
18 to assist, as necessary, in the (V14)-
19 matter.

20 A copy of our report is being
21 attacked for Mr. Neufeld, Sask Justice."

22 So again, and I'll go through this report and the
23 two car theories, but it looks at this time, Mr.
24 Pearson, that other than the (V14)- matter, that
25 it says our involvement, being the RCMP, is



1 concluding; is that right?

2 A That appears to be, yes.

3 Q And Superintendent Goodman is suggesting that the
4 two theories, and we'll go through them, raise
5 interesting questions. One theory is that a car
6 was involved and that Mr. Milgaard committed the
7 crime and the other one was a car was involved and
8 Mr. Fisher committed the crime; is that right?
9 Those were the two theories you put forward?

10 A Yes, uh-huh.

11 Q And I think what he's commenting on is that the
12 first one seems more plausible because the second
13 one he doesn't think that Mr. Fisher would
14 sexually assault (V4)---- (V4)--- right after the
15 murder, and those would appear to be his views at
16 the time?

17 A Yeah, just another individual with another view.

18 Q Then if we can go to the next page, and we'll see
19 again this is your, as I said, the April 29th
20 report and this is what's being sent off. If we
21 can skip ahead to 056622, and you just went
22 through the report a number of entries in police
23 notebooks and police reports and this related to
24 the vehicles, and I think primarily matters
25 relating to Larry Fisher, the bus stop evidence,



1 etcetera, and then you write:

2 "The foregoing entries from police
3 reports and notebooks suggest several
4 unusual activities taking place in the
5 area of the murder scene, which could or
6 could not be associated to the Miller
7 homicide. While the reading of such
8 material today can conjure suspicions,
9 it is unknown if follow-up inquiries
10 were ever made at the time."

11 So I take it you were just putting forward your
12 final thoughts on some possibilities and
13 suspicions based on the police reports; is that
14 fair?

15 A That appears to be it, yes.

16 Q And then if you could go to 056627, and again I
17 think you are commenting on some of the evidence
18 at the Supreme Court review, call out the last
19 paragraph, and you say -- and this is Bobby
20 Stadnyk who I think was a witness about
21 discussions with Ron Wilson and the motel room
22 reenactment:

23 "Stadnyk did confirm that in 1990 she
24 spoke with Ronald Wilson, who confirmed
25 that he had lied during his original



1 testimony at the Milgaard trial, and
2 that it had been bothering him for many
3 years. It should be noted that Wilson
4 was cited for contempt by the Supreme
5 Court of Canada during his testimony, as
6 he provided conflicting testimony as to
7 whether he was lying today or had lied
8 during the original Milgaard trial. It
9 is believed by this investigator that
10 Ronald Wilson knows much more of the
11 events of Gail Miller's death than has
12 been brought forward to date."

13 And again, this would be April 29th, 1992, and at
14 that time would that have been your belief?

15 A I believe so, yes.

16 Q And again, we talked earlier about his evidence
17 and his recantations, etcetera. Is that again the
18 same thing we're talking about here, is there
19 anything else that would cause you to have this
20 belief at the time?

21 A Not that I can recall.

22 Q So again it would be his evidence at the Supreme
23 Court and his recantation and his original
24 evidence as well?

25 A Yes.



1 Q Then to page 056629, paragraph 33, it says:

2 "During the Supreme Court review,
3 consideration was given to calling the
4 original prosecutor in the Milgaard
5 case, Mr. Caldwell. Questions of
6 disclosure at the time of the original
7 trial were being raised by Milgaard's
8 present counsel, suggesting that there
9 was evidence available which may have
10 shed a different light on the
11 prosecution. It was also suggested by
12 Milgaard's counsel the existence of
13 Larry Fisher may have been known to
14 police investigators and Crown
15 prosecutor during the murder
16 investigation. A statement was provided
17 by Mr. Caldwell, which answered specific
18 questions being asked of him by Federal
19 Justice. Mr. Caldwell's statement and
20 applicable attachments are attached as
21 Appendix QQQ."

22 And again we touched earlier when you went and
23 got that information from Mr. Caldwell about
24 disclosure, and were you aware in your
25 discussions with Mr. Asper that there were



1 concerns about what information he may have
2 disclosed to defence and whether or not he and/or
3 the police connected the Fisher assaults with the
4 Miller murder? Do you remember discussions along
5 that line?

6 A No, I don't. I don't remember.

7 Q Do you know -- now, Mr. Caldwell was not called as
8 a witness at the Supreme Court and we've heard
9 some evidence, and I suspect we'll hear some more
10 evidence about why -- why he was not called or
11 what went into that decision. Were you involved
12 or aware of any discussions, Mr. Pearson, about
13 either to have Mr. Caldwell testify or why he was
14 not called to testify?

15 A I don't have any recollection of ever being
16 involved in those decisions. Like --

17 Q And again -- I'm sorry, go ahead.

18 A Like I said, these decisions were being made by
19 people different than me as far as who was going
20 to be called. I did assist in serving subpoenas
21 and things like that, but the decisions on who was
22 to be called as witnesses, I don't believe ever
23 being counseled or discussed or called.

24 Q And 056631, paragraph 40:

25 "Attached as Appendix JJJ is a theory



1 synopsis and statement index which
2 formed part of the original prosecution
3 file and which was entered in evidence
4 to the Supreme Court by Counsel Hersh
5 Wolch and David Asper. The argument is
6 being made that the theory surrounding
7 the death of Gail Miller was put into
8 place prior to witnesses Nicol John and
9 Ronald Wilson giving their final account
10 to police of what took place at the
11 scene of the crime. Defence is
12 inferring the witnesses were pressured
13 to provide evidence that fit the theory.
14 It is speculated that either the police
15 investigator or the Crown Prosecutor at
16 the time authored this document."

17 Now, you told us about your involvement in trying
18 to figure out who prepared the document and when
19 they prepared it. Did you ever look at or
20 consider whether this defence theory or
21 suggestion had any merit as to whether or not
22 witnesses were pressured to provide evidence that
23 fit the theory?

24 A I was never tasked with that, no.

25 Q And is that anything you looked at or considered?



1 A I don't recall ever looking at that, no.

2 Q And the next page, please, and again under
3 summary, paragraph 4, you say:

4 "Evidence at David Milgaard's trial
5 suggested that Gail Miller was sexually
6 assaulted and fatally stabbed at the
7 location where her body was found. The
8 usual crime scene suggests the sexual
9 assault occurred at a location different
10 than where her body was recovered. From
11 reading Saskatoon City Police files and
12 autopsy reports, it is not unreasonable
13 to conclude that a vehicle may have been
14 utilized when Miller was sexually
15 assaulted. With the foregoing in mind,
16 two theories have been developed, one
17 involving Larry Fisher, the second
18 Milgaard/Wilson/John, both of which
19 include the use of a vehicle during the
20 commission of the crime. Theories
21 attached as Appendix WWW and XXX."

22 And then the next page:

23 "As Nicol John was declared a hostile
24 witness during the Milgaard trial, and
25 the fact that Ronald Wilson recently



1 recanted his original testimony at the
2 Supreme Court, one is left with the
3 impression the evidence that convicted
4 Milgaard may have been fabricated. The
5 hostility and recanting by the two
6 witnesses may have been their way to
7 protect themselves from becoming
8 suspects in the murder and to ensure the
9 police focus remained on Milgaard. A
10 potential exists for further police
11 investigation into this aspect of the
12 crime."

13 And again, would this be something then that you
14 thought at the time, Mr. Pearson?

15 A Yes, I must have believed that at the time.

16 Q And as well as further police investigation, would
17 that be in connection with if in fact the Crown
18 was going to proceed with another trial of Mr.
19 Milgaard?

20 A Yes, it was a potential avenue to pursue.

21 Q And at this time, again this is the end of April,
22 1992, are you able to tell us -- I take it at this
23 time did you still have some suspicions that Larry
24 Fisher was involved in the murder of Gail Miller?

25 A Oh, yes, sure. Like I say, there was suspicion on



1 both sides.

2 Q When you say both sides, are you saying David
3 Milgaard as well?

4 A Milgaard and Fisher just based on everything that
5 historically had been out there.

6 Q And this may be a difficult question to answer,
7 but if you compare your situation, let's say
8 April, 1992, the end of April, at the time you
9 wrote this letter and put forward the two
10 theories, and I think you are saying that both Mr.
11 Milgaard and Mr. Fisher were suspects for
12 different reasons; is that fair?

13 A That's fair.

14 Q Were you any closer in your own mind to sort of
15 figuring out which one was a better suspect or
16 which one might be the better suspect at the end
17 of April, 1992 than you were at the start when you
18 first got into this matter and started checking,
19 and you'll recall a few days ago when we talked
20 about when you first talked to Linda Fisher and I
21 think at that time you said you identified Larry
22 Fisher as a suspect and you always held the belief
23 that he was a suspect, or a good suspect, but you
24 also had suspicions that Mr. Milgaard was a
25 suspect, and I think you told us at some point



1 that the fact that he was convicted added some
2 weight to that side of the equation, if I can call
3 it that.

4 If you can now go ahead and here
5 we are at the end of April after having gone
6 through extensive investigations by you, a Supreme
7 Court of Canada hearing, did you feel you were any
8 closer in your own mind as to figuring out who
9 might have killed Gail Miller?

10 A Well, it would be easy to say that now.

11 Q No, and I want at the time.

12 A To go back at that time, you know, I struggled
13 with this, it wasn't something that just rang
14 clear, and I know some people went so far as to
15 say that they know who did it and the evidence was
16 there and all the other things that went along
17 with it, but when you look at it, you know, trying
18 to look at it real objectively, like I say, I
19 always said that Larry Fisher was one heck of a
20 good suspect just based on all those things that I
21 mentioned before, and on the other side of the
22 equation you've got Milgaard having gone through
23 this, the justice system, and you could say, well,
24 maybe I put too much emphasis on that, but at this
25 time, you know, who is a stronger suspect? I'm



1 not sure I could really answer that. I'm not sure
2 I had it categorized.

3 Q And not to ask who was the better suspect, I'm
4 trying to understand whether all of the work that
5 you did, the investigations that you did right
6 through to the end of April, 1992, the work on the
7 first application, the second application, what
8 you learned from others, what you learned from the
9 Court decision is with -- and I take it you would
10 agree that by the end of April, 1992 you would
11 have more information about Gail Miller and Larry
12 Fisher and David Milgaard as a suspect than you
13 would have had when you first started in 1990 on
14 this file; is that fair?

15 A That's fair, yes.

16 Q And I'm trying to get from you, if you are able to
17 tell us, that with all of the information that you
18 now had at the end of April 1992, whether you were
19 any further ahead in your own mind as -- in
20 assessing the two as suspects; was it an easier
21 task, a more difficult task?

22 A Well, when you take a look at the violent history
23 of Larry Fisher, it certainly fit more in line
24 with the violence that was inflicted on Gail
25 Miller. If you apply that logic it -- he



1 certainly seems to have the propensity to commit
2 that type of crime, whereas if you look at the
3 David Milgaard side, there was not that violent
4 nature on record.

5 Q Yeah, but you would have known that in 1990,
6 right?

7 A That's true.

8 Q And what I am trying to get at is whether, once
9 you have been through this whole process and you
10 are done your work on both Section 690
11 applications, and based with all the new
12 information that you had, I take it you still
13 weren't able to pick one over the other or to
14 eliminate one or the other; right?

15 A There was, in my view there was no defining piece
16 of evidence that said "this is who did it". Umm,
17 you could weigh, weigh all the probabilities of
18 all the circumstances, but in my mind it was -- I
19 was still scratching my head.

20 Q And I guess the -- and I appreciate that. What I
21 am trying to get at is whether you were scratching
22 your head more in 1992 than you were scratching it
23 in 1990, or about the same?

24 A Gee, that's tough, you know. I wish I could
25 really give some clarity to this, because it was



1 -- there were two people that, two people were out
2 there that I had suspicions of, and from what I
3 articulated in the report and the theory is based
4 on the activities of Nichol John and Wilson and
5 Fisher, based on all the history I knew on him.
6 How do you resolve that. I was certainly in no
7 position to stand up and say "I don't think he did
8 it and I think he did it", it was just one of
9 those issues out there that was, was hard to
10 conclude.

11 Q And as far -- here you talk here about:

12 "A potential exists for further police
13 investigation into this aspect of the
14 crime."

15 And I think, when we go through the two car
16 theories, you indicate that there is a basis for
17 further investigation; is that fair?

18 A That's fair, yes.

19 Q And so, once the Supreme Court decision is out,
20 was it your view, Mr. Pearson, that the Gail
21 Miller crime could be investigated further with
22 both Mr. Milgaard and Mr. Fisher as a suspect?

23 A I think there was some potential for work on both
24 of them, yes.

25 Q If we can go to 057629, and this is the Larry



1 Fisher car theory that you prepared, is that
2 right?

3 A Yes.

4 Q And it says:

5 "This theory is advanced for
6 discussion/investigative purposes and is
7 an attempt to rationalize the facts and
8 circumstances as they existed at the
9 time of Gail Miller's murder."

10 And so again, just by way of theory, can you tell
11 us, Mr. Pearson, again a bit more. What was the
12 purpose of putting forward this theory, and there
13 is also the Milgaard/John/Wilson car theory as
14 well, what were you trying to do here?

15 A Just trying to, I suppose, look at -- assuming
16 there was going to be -- other people would be
17 looking at this, it was another way to look at the
18 crime, some other things to consider that may be
19 of some investigative value to looking at it in
20 this way as a theory as opposed to going back to
21 what was presented at the time and to -- based on
22 the fact that both were still, in my mind had some
23 suspicious activities to them, so both were
24 advanced trying to apply a car theory and say
25 "would this advance the investigation in any way".



1 Q Okay. And if we can go back through parts of
2 this, then, umm, this theory -- if we can call out
3 that paragraph, please -- it says:

4 "This theory concludes that Miller was
5 sexually assaulted by Larry Fisher
6 inside a car. Shortly after the sexual
7 assault, Miller escaped from the
8 vehicle, was chased by Fisher, then
9 fatally stabbed at the location where
10 her body was found."

11 You say:

12 "The unusual crime scene supports a
13 theory that the death of Gail Miller
14 occurred in two distinct stages; the
15 first being the sexual assault and the
16 second being the fatal knife attack.
17 This theory supports the view that the
18 sexual assault occurred at a location
19 different than where Gail Miller was
20 fatally stabbed."

21 And if you can scroll down, you then talk about
22 the condition of her clothing, and then you say:

23 "The undressing and redressing by Miller
24 suggests she was first sexually
25 assaulted then allowed to put her



1 overcoat back on before being fatally
2 stabbed."

3 And I think your theory is that the undressing
4 and redressing and the sexual assault takes place
5 in the car, she then leaves and is stabbed in the
6 alleyway where her body is found, is that
7 correct?

8 A Yes.

9 Q And the theory for Fisher and the theory for
10 Milgaard are, in the respects of the car are the
11 same, just different car, different people; is
12 that right?

13 A Yes.

14 Q And, again, different circumstances as how -- as
15 to how she might be apprehended, but they both,
16 the premise of both of them is that Gail Miller
17 was in a car in the east-west alley behind the
18 funeral home, was raped there, had her clothes
19 removed, got dressed, ran down the alley, and in
20 one theory was stabbed by Larry Fisher, in the
21 other one was stabbed by David Milgaard; is that
22 right?

23 A Yes.

24 Q And there's more to it, --

25 A Yes.



1 Q -- but as far as that part of it?

2 A Yes, right.

3 Q And then again on the Fisher theory -- if you
4 scroll down -- again about catching the bus -- and
5 go to the next page. And I think you have in (b):

6 "... Gail Miller was approached by
7 Fisher and, under threats of bodily
8 harm, forced into a car ...",

9 and then you go on -- if you can actually go to
10 the full page, please, and maybe just enlarge the
11 whole page if you can, and then scroll down. I
12 think on this theory -- no, go back up to the
13 top, please -- here you go that the Dennis
14 Elliott sighting of the car, your theory here is
15 that maybe that was Fisher who was in the car in
16 front of Gail Miller's house that Dennis Elliott
17 saw, and in the morning he approached Fisher
18 (sic) and got her into the car; is that right?

19 A Yes.

20 Q And then scroll down to (c), and then you talk
21 that she goes down Avenue N and then turned right
22 into the alley behind the funeral home, and I take
23 it that the car going down Avenue N was necessary
24 so that, when it turns into the alley, it's facing
25 Henry Diewolf's church; is that right?



1 A Yes.

2 Q And so in this theory Fisher is out front, gets
3 Gail Miller into the car, goes down 21st Street,
4 then south on Avenue N, then turns right into the
5 alley, and this fits with the Diewolf evidence; is
6 that right?

7 A Yes.

8 Q Then the next page you go on to talk about having
9 her coat removed and her sweater pulled off, I
10 don't think we need to go through that, but this
11 is fitting in what are the known facts about how
12 her body was found and where her clothing was?

13 A Yes.

14 Q And then, again, had her nurse's uniform ripped
15 from her shoulders to her waist, and then had her
16 underclothing pulled to her knees -- again next
17 page -- and then you talk about:

18 "At this stage, under continuous
19 threats, Miller was sexually attacked."
20 You talk about numerous superficial cuts in the
21 upper torso suggesting that a knife blade had
22 been held against Miller's skin, and the presence
23 of semen confirming sexual activity, so this
24 would be in the car and the knife marks in the
25 throat area then would be as a result of threat



1 being used at the time to make sure that she
2 complied with Mr. Fisher raping her; is that
3 right?

4 A Yes.

5 Q And then you say here:

6 "After Fisher's aggressive sexual
7 attack, Miller had sufficient time to
8 get her coat back on."

9 And then you talk about Fisher began pulling
10 himself together, thus allowing a lull in the
11 aggression which permitted Miller sufficient time
12 to pull her coat back on, and -- but it did not
13 allow her to pull up her undergarments. I think
14 what you are then saying is she put her overcoat
15 back on over top of her -- and that her dress was
16 off when she put her coat back on; is that right?

17 A Yes.

18 Q And then, with her coat back on, Miller made her
19 escape from the passenger's side, began running
20 north of the alley, and I think this is where you
21 say Diwold saw Fisher then go in front of his
22 vehicle and chase her down the alley; is that
23 correct?

24 A Yes.

25 Q And then the next page. You talk about Miller



1 running with undergarments around her knees and
2 minus one boot, was caught and stabbed to death
3 with a knife at the location the body was found,
4 and again that would be -- your theory would be
5 that would fit with where the body was found?

6 A Yes.

7 Q Fisher then returned to the passenger's side of
8 the car and removed Miller's sweater and one boot
9 that she had left behind and covered them lightly
10 in snow nearby. And again. That would fit with
11 what was found, with the boot and the sweater
12 buried in the snow; is that right?

13 A Yes.

14 Q Next page. You then theorized that Fisher rifled
15 through Miller's purse, scattered in the immediate
16 area, in all likelihood money was taken and the
17 purse thrown in the garbage cans nearby, and that
18 Fisher retained Miller's wallet containing her
19 money and proceeded west through the alley, turned
20 left on Avenue O, and drove to his residence, and
21 then threw out the wallet I think at that point,
22 and that would explain why the wallet was near her
23 house; is that correct?

24 A I believe so, yes.

25 Q And then you go to paragraph (p), that -- and you



1 have two scenarios, one:

2 "Fisher returned home and cleaned up
3 while his wife was still in bed
4 sleeping. Fisher may then have again
5 left, returning the vehicle to the
6 Pambrun residence, and walked home where
7 he was eventually confronted by his wife
8 Linda."

9 Or:

10 "Fisher, upon driving away from the
11 scene of the murder, returned the car to
12 Pambrun residence and walked home,
13 encountering (V4)---- (V4)--- and
14 approached her as she walked to the bus
15 stop. Fisher may have retained Miller's
16 wallet, throwing it away just prior to
17 getting to his residence at 334 Avenue
18 "O" South."

19 So, again, both -- sort of two alternates here,
20 both involved having Cliff Pambrun's car, one
21 where he went home and then returned the car
22 later, the other is he returned it immediately
23 and then walked home and assaulted or encountered
24 (V4)---- (V4)---; is that right?

25 A Yes.



1 Q Did you ever look at whether or not the time
2 factor would allow the second alternative, in
3 other words the murder of Gail Miller 6:45 to
4 whatever time, and then to allow Mr. Fisher to
5 drive to Pambrun's, drop the vehicle off, then
6 walk back and encounter (V4)---- (V4)--- at 7:07
7 a.m.?

8 A Well that's why I think there was an alternate
9 possibility here that he did or didn't commit the
10 (V4)--- attack. But to answer your question, no,
11 I never did a fine timeline comparison that I
12 recall.

13 Q Yeah. And as far as the (V4)--- thing, if Larry
14 Fisher did not have anything to do with (V4)----
15 (V4)---, if you assume that for a moment your
16 theory here then as far as what happened, would it
17 change in any way, I mean other than the --

18 A No, no, I don't think so.

19 Q And can you tell us, in this theory, does the
20 (V4)--- assault -- if we assume for the moment
21 that Larry Fisher was the person who assaulted
22 (V4)---- (V4)--- -- does that help or hinder your
23 theory in any way or change its viability?

24 A Well I suspect that if he was in fact involved in
25 the (V4)--- assault, that chances are there was no



1 vehicle involved.

2 Q No vehicle involved?

3 A No vehicle involved.

4 Q And why do you say that?

5 A Because of the fairly compressed time frame
6 between the Gail Miller time frame and the (V4)---
7 time frame and, you know, this having a vehicle in
8 the area, it just, I don't think it fits quite as
9 well.

10 Q But --

11 A But who knows.

12 Q Yeah, no I appreciate that, and this is theories
13 and speculation. And then in that scenario, after
14 killing Gail Miller, then he would run over to
15 Avenue H and assault (V4)---- (V4)---; would that
16 be again --

17 A Well yeah, you know, I guess there could be all
18 sorts of scenarios, I guess, but that's one, yes.

19 Q If we can then scroll down to the bottom, I think
20 in (q) you say:

21 "Semen found near the deceased by police
22 several days later could have fallen
23 from the clothing of the deceased or
24 Fisher during the struggle at the death
25 scene and not necessarily deposited



1 there during a sexual attack."

2 And I think that was one of the theories at the
3 time of the trial, that there was frozen semen
4 found near the body, and I think some speculated
5 that the sexual assault may have taken place
6 right there in the snowbank, and here your theory
7 says that no, it may have come from her clothing
8 or from her person; is that right?

9 A That's the theory, yes.

10 Q Yeah. And so that, that would -- again, the fact
11 that there was semen found in the snow by the body
12 would not mean that, that the assault had to have
13 taken place there, under your theory it could have
14 taken place elsewhere and the semen dropped from
15 her body or from Mr. Fisher; is that right?

16 A That's right.

17 Q And if we go to 057636, I think you put a map
18 together for the Larry Fisher car theory, can't
19 see it very well but here's Avenue O, Avenue N,
20 and here's the T alley, here's the Miller
21 residence, and I think you are saying that Fisher
22 picked her up in front of her house, went down
23 20th Street, down south on Avenue N, and then down
24 behind the back alley; is that right?

25 A Yes.



1 Q If we can then go to 008894, and this is the
2 theory that would involve Milgaard, Wilson, and
3 John; is that correct?

4 A Yes.

5 Q And, again, you have the same note:

6 "... for discussion/investigative
7 purposes and is an attempt to
8 rationalize the facts and circumstances
9 as they existed at the time of Gail
10 Miller's murder.";

11 correct?

12 A Yes.

13 Q And in this theory -- and you would agree these
14 are completely, compared to the Fisher theory this
15 is a completely different theory involving a
16 different car and different people; is that right?

17 A Yes. And if --

18 Q But one of them --

19 A If one of them is right, the other is obviously
20 wrong.

21 Q Okay. That was my next question. And so -- and
22 as far as some of the components of the theory,
23 they are identical for both as far as assault
24 taking place in a car --

25 A Yes.



1 Q -- and being chased down the alley, etcetera. So,
2 here:

3 "This theory concludes that Miller was
4 sexually assaulted by David Milgaard and
5 Ronald Wilson inside Wilson's car.

6 Shortly after the sexual assault, Miller
7 escaped from the vehicle, was chased by
8 Milgaard/Wilson, then fatally stabbed at
9 the location where her body was found."

10 So this theory involves Ron Wilson and Nichol
11 John being involved, is that right, in at
12 least --

13 A Or having knowledge.

14 Q Or having knowledge?

15 A Yes.

16 Q And, again, that's something that was different
17 than what was put forward at trial; is that
18 correct?

19 A Yes, from my understanding, yes.

20 Q Yeah. And then if we can scroll down, and again
21 you talk about unusual crime scene, I think this
22 is the same as the Fisher --

23 A Uh-huh.

24 Q -- theory that there were -- it took place in two
25 stages. And then the next full paragraph, and I



1 think that's the same as well, the condition of
2 the body and the clothing. And then the next
3 paragraph you say:

4 "This theory will conclude that Ronald
5 Wilson and Nicol John were parties to
6 this offence, however, provided only
7 sufficient evidence to the police
8 investigators to ensure the focus
9 remained on Milgaard and away from
10 themselves."

11 And then scroll down to (a):

12 "Milgaard/Wilson/John were driving south
13 on Avenue "N" and observed Miller
14 walking south towards 20th Street."

15 And, again, the evidence at trial talks about
16 stopping the woman for directions. And:

17 "Evidence supports the view that
18 Milgaard/Wilson were considering robbing
19 this person for money."

20 So this takes part of the original trial evidence
21 about stopping a woman for directions on Avenue
22 N; is that right?

23 A Yes.

24 Q Next page. And then here:

25 "After stopping and asking the woman for



1 directions, the Milgaard/Wilson vehicle
2 continued south and turned right into
3 the alley behind the funeral home."

4 And, again, that's not the evidence of Wilson and
5 John at trial; is that right?

6 A I don't think --

7 Q At the original trial?

8 A -- so.

9 Q I think their evidence there was that they went
10 down, got stuck, and then left. So here your
11 theory is that they turned into the alley:

12 "The vehicle is now facing west in the
13 alley with its headlights turned towards
14 St. Mary's Church ... Stopping the
15 vehicle at this location would have put
16 Milgaard in close contact with Miller as
17 she walked south on Avenue "N".

18 Milgaard would have then exited from the
19 vehicle and come into contact with
20 Miller."

21 And, again, I think when we see on the map, this
22 theory has shortly after stopping her for
23 directions, under this theory they turn into the
24 alley and she would be right at the vehicle; is
25 that correct under this theory?



1 A Yes.

2 Q Scroll down. In (c):

3 "Because of the extreme cold and the
4 fact that Milgaard may have been in
5 stocking feet, Miller was forced inside
6 the car and was physically attacked,
7 probably in the back seat."

8 And again, this theory would be different than
9 what the evidence was at trial against Mr.
10 Milgaard, is that correct?

11 A I believe so, yes.

12 Q And here you say Wilson was the driver, Nichol
13 John was in the front seat, and that Mr. Milgaard
14 was in stocking feet:

15 "... probably Miller was taken into the
16 back seat of the car by Milgaard. The
17 motive may initially have been robbery,
18 however, this quickly changed to a
19 sexual assault."

20 And then again, if we can go down to (d),
21 Miller's overcoat was removed. Go to the next
22 page. And I think (e) and (f), as far as the
23 removal of the coat, this would follow the same
24 theory as Larry Fisher as to what happened inside
25 the car and how the clothing was taken off?



1 A Yes.

2 Q And then:

3 "Miller was then sexually attacked under
4 the threats of bodily harm (knife)."

5 You say:

6 "It is known there were ...",

7 call that out:

8 "... there were knives in the Wilson
9 vehicle, as Nicol John, in one of her
10 early statements, indicated there was a
11 maroon handled knife as well as a rusty
12 bone handled hunting knife in the car
13 during their trip between Regina and
14 Saskatoon."

15 And then it goes on to talk about the cuts and
16 scratches. So, again, similar to the Fisher
17 theory that, in the course of the attack in the
18 car, the superficial wounds to the neck area
19 would have been inflicted; is that right?

20 A Yes.

21 Q And then down to (h), again the same as in the
22 Fisher theory, call out (h). The -- in this
23 theory you would have, after the assault, Miller
24 would put her coat back on. And then the next
25 page:



1 "During the lull in the attack, Miller
2 was able to escape from the vehicle and
3 began running north up the alley toward
4 her home."

5 And here you now, in this theory:

6 "Milgaard chased Miller by exiting from
7 the same door that Miller had left by.
8 Wilson also exited the vehicle out of
9 the driver's side and began chasing
10 after Milgaard and Miller."

11 And that's where you say that's who Mr. Diewold
12 would have seen going in front of the car; is
13 that right?

14 A Yes.

15 Q And then scroll down, and you talk here:

16 "Miller was chased up the alley and
17 caught and stabbed to death at the
18 location where the body was found."

19 And, again, you talk about a large amount of
20 blood as well as a knife blade, and:

21 "The fact that Miller's underclothes
22 were down by her knees and ankles would
23 suggest her escape was hampered."

24 And I think that was the same as the Fisher
25 theory, that she was chased down the alley by



1 someone before she was stabbed?

2 A Yes.

3 Q And then again (k), if you can scroll down, the
4 boots and the sweater the same as the Fisher
5 theory. And then the next page, under (l), knife
6 handle being thrown away. Scroll down to (m) --
7 oh, the previous page, you say:

8 "As Milgaard/Wilson had intended on
9 committing a robbery, they then rifled
10 through the purse contents and, in all
11 likelihood, money was taken and the
12 personal items of Miller's were
13 scattered throughout the area and thrown
14 in garbage cans nearby."

15 And then you say a search revealed that and:

16 "... it is known that
17 Milgaard/Wilson/John were looking for a
18 potential robbery victim."

19 And, again, would that be something you got from
20 the original trial evidence?

21 A I believe so, yes.

22 Q Yeah. Scroll down to (n), and again you have the
23 same explanation in this theory as to how the
24 semen was found in the snow, again fallen from the
25 victim or the assailant; is that right?



1 A Yes.

2 Q And then down to (o), please. Under (o):

3 "The Milgaard/Wilson/John vehicle was
4 never stuck at the location, as
5 indicated in evidence.

6 There was no evidence at the
7 scene indicating a vehicle had been
8 stuck in the east-west alley, and the
9 two individuals that were said to have
10 pushed the Wilson vehicle out were never
11 located. Very little has been made of
12 these two people. Wilson states the
13 vehicle was stuck when he last saw
14 Milgaard walking toward the girl they
15 had just passed. This means the two
16 individuals that pushed the ...",

17 next page:

18 "... vehicle out must have been on the
19 scene ...",

20 if you can call that out:

21 "... two people that pushed the vehicle
22 out must have been on the scene
23 immediately after the murder. The
24 evidence by Wilson of the vehicle being
25 stuck and that he ... walked away from



1 the confrontation between
2 Milgaard/Miller, may be nothing more
3 than a convenient alibi to protect
4 himself."

5 Scroll town to (p):

6 "Wilson never did leave the scene as he
7 suggests, but provided the 15 minute
8 "window of opportunity" only to shift
9 responsibility to Milgaard and away from
10 himself. Wilson/John may have been
11 parties to the offence of murder by
12 assisting Milgaard by holding and/or
13 robbing Miller.

14 Wilson stated the vehicle
15 became stuck and that he (Wilson) walked
16 in the opposite direction from Milgaard,
17 who was last seen walking toward the
18 girl they had just passed. In one of
19 Wilson's statements he indicated that
20 efforts were made by the occupants of
21 the vehicle to get it unstuck, which
22 would certainly provide sufficient time
23 for Miller to walk past the scene on her
24 way to the bus stop. Was John driving
25 the vehicle while Milgaard/Wilson were



1 pushing? When Wilson was subsequently
2 interviewed by the police, he realized
3 that Milgaard was the main suspect
4 because of what Albert Cadrain had said;
5 i.e., blood on Milgaard's clothes.
6 Wilson then provided the "window of
7 opportunity" to keep the suspicion on
8 Milgaard and off of himself."

9 And then down:

10 "Nicol John became a hostile witness at
11 trial and "forgot" much of what
12 happened.

13 John may have provided
14 sufficient evidence to protect her
15 and/or Wilson's involvement in this
16 crime. In all likelihood, there was a
17 conspiracy between Nicol John and Ronald
18 Wilson to provide evidence which would
19 keep the suspicions off themselves and
20 on David Milgaard. John may have
21 believed her actions were indirectly
22 responsible for Miller's death."

23 Next page:

24 "During Wilson's recent appearance
25 before the Supreme Court, he suggested



1 he lied during the original trial. One
2 has to question today why he would have
3 lied during the original trial.

4 It can be speculated Wilson
5 lied during his original testimony to
6 distance himself from his activities
7 with Milgaard during the sexual
8 attack/murder of Miller, and to provide
9 an alibi which would protect himself
10 from being implicated in this crime."

11 Next paragraph:

12 "During Wilson's most recent Supreme
13 Court of Canada testimony, one would
14 have to ask why he would be lying today.

15 Again, this could be perceived
16 as a possible way to protect himself
17 from the events of the day; i.e.,
18 Milgaard will soon be out of prison.
19 Wilson may now believe that he has
20 others to fear and this is one way of
21 today vindicating himself in the eyes of
22 Milgaard, or possibly Wilson has a
23 conscience and is being truthful when
24 stating that he lied at the original
25 trial. Wilson may have originally lied



1 about his own activities at the scene
2 only to protect himself from being
3 charged with murder and to keep the
4 police focused on Milgaard."

5 And (t):

6 "David Milgaard knows what happened
7 during Miller's murder, however his
8 position of innocence cannot be assisted
9 by drawing Wilson and John into the
10 investigation, as it will do nothing to
11 advance his position, and in fact would
12 confirm his involvement if he attempted
13 to implicate anyone else."

14 Again, Mr. Pearson, so this theory at the time --
15 and I want you focus on what you thought at the
16 time, not with what you now know -- but, again,
17 what would be -- tell us, what was the purpose of
18 this and how did it come about that you put this
19 theory together?

20 A I guess it was again looking at the crime scene in
21 a different way, and not eliminating one suspect
22 over the other, and looking at it as a possible
23 potential for some future investigation.

24 Q Now in some spots here, as far as the vehicle and
25 the timing, it looks like in some parts of this



1 theory you have tried to address concerns that had
2 been raised previously by Mr. Milgaard's counsel
3 about the implausibility of the theory and the
4 evidence at the original trial. And for example
5 the fact that by the time -- let me throw a couple
6 out -- the fact that by the time, if the vehicle
7 got stuck and they went looking for help, that
8 Gail Miller would already be at 20th Street;
9 correct? That was one thing that --

10 A Yes.

11 Q -- I think Mr. Wolch had said "well that doesn't
12 fit"?

13 A Yes.

14 Q So, under this theory, would it be a case of
15 saying "okay, well if David Milgaard committed the
16 crime this might be one explanation or one theory
17 as to how it might have happened different than
18 what was said at trial"?

19 A It's a theory.

20 Q Right. But it's --

21 A It's not necessarily --

22 Q No, I appreciate that, but obviously at the time,
23 I mean, were you putting this forward as a
24 possible, possible way in which the crime was
25 committed?



1 A Yes.

2 Q And you felt that this was plausible and possible
3 at the time?

4 A Well assuming, applying all the facts, it was
5 worthy of, it was worthy of consideration, yes.

6 Q And I appreciate, Mr. Pearson, with what, with
7 what you now know it may be difficult to go back
8 and look at this, but I'm trying to understand, at
9 the time, what went into this theory and why you
10 were putting it forward and what you thought at
11 the time based upon what you knew at the time.
12 And so, at that time, were you -- again, was it a
13 case of saying, well lookit, here is a way to
14 explain away or answer the complaints or concerns
15 put forward by the Milgaard group about how the
16 original story put forward by Wilson and John
17 doesn't fit?

18 A No, I think it was, I think it was originating
19 through the unusual behaviour of Nichol John and
20 Ronald Wilson.

21 Q And so let me -- so this was prompted by saying --
22 let me back up -- that because of Ron Wilson and
23 Nichol John, what they were saying and what they
24 had said up until that point, you started to think
25 that maybe they weren't telling the whole story



1 and here's a scenario that might work with the
2 facts, but involves them being involved, number 1,
3 and number 2, lying at trial?

4 A Yes, that's fair.

5 Q And not lying at trial because David Milgaard
6 didn't do it, but lying at trial because David
7 Milgaard did do it in this theory?

8 A Yes.

9 Q Now, again, once you put this together, do you
10 recall whether you had any follow-up other than --
11 I'll talk about your meeting with the RCMP in,
12 later on in the fall of 1992, but apart from that,
13 were you involved in doing any further
14 investigation on any of this matter?

15 A On the theories?

16 Q Yes.

17 A No.

18 Q And when you put these forward, were you -- and I
19 think a copy went to Saskatchewan Justice -- were
20 you suggesting that these two theories ought to be
21 investigated?

22 A It was just information. I'm not sure I thought
23 that everybody was going to react to it and start
24 investigating. I don't think I believed that at
25 the time, but it was some information that may be



1 worthy of consideration. I really didn't know
2 where all this was going.

3 Q If -- let's just change the scenario. If in 1992
4 the Saskatchewan Attorney General came to you and
5 said lookit, we would now like to reopen the
6 investigation into the death of Gail Miller and we
7 would like you, Rick Pearson, to head it up, are
8 these two theories that you would have pursued if
9 you were in charge of the investigation into the
10 death of Gail Miller?

11 A In the absence of anything else that may be
12 available, yes.

13 Q Well, let's take the knowledge you had at the
14 time, and again probably more than any other --

15 A Yes, yes, I'll say yes to that. Yes.

16 Q And I think probably at the time you would
17 probably be the police officer with the most
18 knowledge of what had transpired at least in the
19 last couple of years, not -- I appreciate others,
20 maybe Mr. Williams and others had more knowledge
21 on other matters, but as far as a police officer,
22 and again in April of 1992 if you were asked to
23 reopen the investigation into the death of Gail
24 Miller, tell us what you would do just generally?

25 A Well, if there was a suspicion of Wilson lying,



1 again, you are going back to what tools do you
2 have available, and there may not be too many, but
3 again, using a police tactic of possibly putting
4 together a scenario of an undercover operation to
5 gain their confidence to try and work into this,
6 it would be a long-term process, but that's a
7 fairly common activity. Again, intercepting
8 private communications is another method, it had
9 potential if you were asked to reopen the
10 investigation and take a look at these people as
11 suspects, and the same goes for Larry Fisher.

12 Q So just back just for a moment on David Milgaard
13 as a suspect, if you were to reopen the
14 investigation, would you pursue these two theories
15 then and investigate these two theories and try
16 and either establish one of them or eliminate one
17 of them?

18 A I believe so, I believe it would be, you know,
19 worthy of an attempt.

20 Q And on the David Milgaard theory, I think you
21 said, would you start with Ron Wilson and Nichol
22 John and try and focus on trying to establish
23 whether or not this theory held true with respect
24 to their involvement and their knowledge?

25 A Well, whether you would pursue it in view of the



1 car, I think you would just pursue them as
2 individuals to try and determine what you could
3 covertly get from them.

4 Q And then as far as Larry Fisher as a suspect, tell
5 us what, if you were asked to reopen the
6 investigation at that time, what tools did you
7 have left and what would you have done to pursue
8 him as a suspect?

9 A Well, I would say the tools are limited, but again
10 we're talking about using the same approach. I
11 mean, I can't think of too many other options that
12 you have available here as to how you can gain
13 evidence, so to speak, when someone is not going
14 to talk to you directly or is not prepared to
15 confess or is going to use their lawyer to
16 intervene, you have to look at doing a covert,
17 undercover operation or private communication
18 interception, something along those lines has
19 potential. I'm not going to say it's guaranteed.

20 Q And DNA was done in 1997, and we'll hear from
21 others as to whether it could have been done in
22 1992 or not, but at that time if you were asked to
23 reopen the investigation, would you look at trying
24 to do a DNA analysis?

25 A Absolutely. I think that was just on the horizon,



1 there was a lot of development going on there and
2 that was probably, would have been a key activity
3 I'm sure if you were to reopen it.

4 MR. HODSON: Mr. Commissioner, this might
5 be an appropriate spot to break for the day. I
6 have just one small area to cover with Mr.
7 Pearson on Monday and some systemic issues that
8 might be maybe 15 to 30 minutes on Monday, but it
9 might be appropriate to leave that until then.

10 COMMISSIONER MacCALLUM: Okay.

11 *(Adjourned at 3:47 p.m.)*



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We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
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contain a true and correct transcription of our shorthand
notes taken herein to the best of my knowledge, skill, and
ability.

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Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

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