Commission of Inquiry

Into the Wrongful

Conviction of David Milgaard

before

THE HONOURABLE MR. JUSTICE

EDWARD P. MacCALLUM

****

<u>Transcript of Proceedings</u>

and

Testimony before the Commission

sitting at the

Sheraton Cavalier Hotel at

Saskatoon, Saskatchewan

****

On Tuesday, November 29th, 2005

Volume 100

<u>Inquiry Proceedings</u>

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Appearances:

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

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

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

Ms. Catherine Knox,   **for** Mr. T.D.R. (Bobs) Caldwell

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

Mr. Rick Elson, Esq., and Pat Loran, Esq., **for** the

                             Saskatoon Police Service

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

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

                             RCMP

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

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

                             (Canada), The Hon. Irwin Cotler

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

                             (Retired)

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1   ***Transcript of Proceedings***

2   *(Reconvened at 9:04 a.m.)*

3   COMMISSIONER MacCALLUM: Good morning.

4   ALL COUNSEL: Good morning.

5   ***RICHARD ALLAN PEARSON, continued***:

6   **BY MR. WOLCH**:

7   Q   Mr. Pearson, I wonder if I can start by drawing on

8   your many years as a police officer and I want to

9   talk to you briefly about the taking of

10   statements, and I noted during your direct

11   examination a number of times there was a feeling

12   conveyed that there was concern perhaps that Paul

13   Henderson or Mrs. Milgaard were taking statements

14   and possibly slanting or affecting the person who

15   was being interviewed. Do you recall that at all?

16   *A*   Specifically?

17   Q   In a general sense. I'm not going to dwell on it.

18   *A*   In a general sense I suppose, yes.

19   Q   And there might be, I take it, a reverse

20   perception that perhaps police or investigators

21   are slanting what witnesses are saying, that could

22   be?

23   *A*   That could be, yeah.

24   Q   And from your experience, do you find that the

25   questioner can very much influence the tone and

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1   the content of what the witness is saying in the

2   statement?

3   A   I believe that's fair, yes.

4   Q   That is, if you come in as an investigator with a

5   preconceived notion of what you want, you can

6   certainly head the witness that way? You may not

7   be able to get them all the way, but you can head

8   the witness in that direction?

9   A   I think some people are really more vulnerable to

10   that than others, but some people you don't put

11   words in their mouth or thoughts in their minds,

12   they are very specific as to what they know or

13   don't know, but if -- others may be more

14   vulnerable to that if you lead them on, so to

15   speak.

16   Q   Is it normally your practice, and I don't think it

17   was in this case, is it normally your practice to

18   record the questions that are being asked of the

19   witness?

20   A   Well, there are different types of statements

21   taken, some are questions, some are more of a

22   narrative version, some of my statements were

23   narrative, and that is really a summation of a

24   general conversation that you do have specifically

25   to the overall topic, but I do believe probably

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1   the most effective, cleanest statement is one that

2   is, you know, taped and audioed so you have a

3   complete picture of what's going on and a

4   word-for-word transcript of what's transpired, but

5   in the real world that's not always possible.

6   Q   That's because questions can be very leading and

7   really it's a matter of the witness adopting the

8   idea put in their head?

9   A   That does exist, yes, that's a possibility.

10   Q   Perhaps a greater degree of reliability if the

11   witness volunteered the information without being

12   prompted or led?

13   A   Well, you have to introduce some topic or some

14   thought to stimulate a conversation for people to

15   be able to answer some of the thoughts or

16   questions that you do have.

17   Q   For example, you indicated that after your role in

18   this investigation was curtailed or over, you got

19   involved in the Martensville case?

20   A   That's correct, yes.

21   Q   And by coincidence I have some involvement, or had

22   some involvement in that having appeared before

23   Justice Tallis in that case some time ago, so I

24   have some knowledge of that case. Were you

25   involved in the taking of statements in that case?

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1   *A*   No, I wasn't.

2   **Q**   Or investigating that part of it?

3   *A*   Yes.

4   **Q**   Now, those were children who were questioned and

5   came up with rather wild accusations against a

6   number of people?

7   *A*   That was before my time. When we became involved

8   the charges had already been laid and the

9   statements had been taken that --

10   **Q**   I'm not blaming you at all for what happened

11   there.

12   *A*   No, no.

13   **Q**   I'm just trying to get a concept, in that case it

14   was children being questioned and ideas planted in

15   their minds which they later began to believe were

16   true.

17   *A*   That in --

18   **Q**   In a very big nutshell.

19   *A*   That generally was one of the main problems, yes.

20   **Q**   In your experience, and looking at your experience

21   in Martensville, did you find -- we'll start with

22   young children -- that if you ask them the same

23   thing over and over again they may be eventually

24   adopting what they think you want them to say?

25   *A*   Well, I think child psychology, and of course I'm

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1   not an expert in this field, but we did access

2   experts during that investigation because children

3   do disclose differently than adults just because

4   they aren't able to sometime challenge maybe what

5   is being presented to them, they have a tendency

6   to want to follow what is acknowledged and being

7   accepted, so if there's some affirmation by the

8   person asking the questions and it sounds like

9   that's what you want to hear, they may build on

10   that through an acceptance, whereas you get an

11   adult, they can discern between what they think

12   they know or don't know, so they're much more

13   difficult I think to lead if you are suggesting

14   that maybe the interviewer had a bias and wants to

15   take an adult down that same path that they might

16   try and take a child down, so the two are very

17   different, but I think there's some vulnerability

18   on both sides.

19   Q   Well, most people, if they are confined and are

20   being questioned, want to get out of there. Has

21   that been your experience, they want it over, they

22   want to leave, they don't want to be questioned

23   and confined?

24   A   That's not really my experience, you know, people

25   don't behave that way entirely. There are some

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1   people I suppose if you are a suspect, you

2   certainly want to get out of there, you don't want

3   to reveal anything more than you have to, and if

4   you are being pressed and interrogated there

5   probably is that perception, but I think if you

6   are a witness and you have something to say and

7   you feel it's going to be beneficial to your

8   cause, I don't really think you want to exit there

9   too quickly.

10   Q   What if you are being pressed and you have nothing

11   to say?

12   A   Well, that probably does become a bit of a

13   dilemma, if you have nothing to say and you are

14   being pressed to have answers.

15   Q   So you might perhaps want to give the investigator

16   a little bit that will satisfy the investigator

17   and get you out of your circumstance?

18   A   That is one scenario, yes.

19   Q   Right. But as you get older, you become a little

20   more discerning as to your position and what you

21   should or should not be saying?

22   A   I mean, you are talking about the difference

23   between a child and an adult?

24   Q   Yeah, the maturing aspect.

25   A   I think the maturing aspect has everything to do

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1   with it, you are able to know what you are

2   prepared to say and what you believe and you are

3   not as easily led. I think you can -- it all

4   depends on the individual. Some people are very

5   strong and others aren't. There's a lot of

6   variables.

7   Q   Right. But you might expect, and now I appreciate

8   that a 16 year old is not a child, but you might

9   expect a mature adult to be stronger in resisting

10   suggestion than perhaps a 16 year old?

11   A   And again I think there's a lot of variables here

12   between somebody who is 16 and 26. I mean, the

13   personalities, people are so diverse, I'm not sure

14   we can categorize it that specifically.

15   Q   But you do agree that one would have to look at

16   the power of suggestion and consider the power of

17   suggestion quite seriously in assessing an

18   interview? Let me give you an example. Let's

19   look at Linda Fisher for a moment. Now, you found

20   her to be, in general sense, credible, and I think

21   history is bearing that out, but you found her to

22   be generally credible; correct?

23   A   Yes.

24   Q   Now, as an interviewer you could look at her, talk

25   to her, get her statement and leave it at that

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1   time or you can focus on the description of a

2   knife to discredit her, you could do whatever --

3   it's really "you" who is controlling how the

4   statement gets conveyed to the reader?

5   A   I think there's also what you do with the

6   information. I mean, if the information is on

7   paper that you have taken from an individual, it

8   all depends on what you do with it. You may in

9   your mind feel that this is worthy of pursuing

10   because I don't believe her because she had liquor

11   on her breath or because she had a rough life or

12   whatever, you can put everything together in a

13   package and say, well, I don't believe this, I'm

14   not going to take it seriously, but -- or you can

15   analyse it out and say I don't believe it because

16   a knife description is different, there's so many

17   factors that come into play, and it, you know,

18   it's the individual that is assessing this.

19   Q   What would you consider -- or might you consider

20   the following scenario: Let us say you have the

21   initial Linda Fisher statement and then you

22   develop your Fisher car theory, okay, you've got

23   the Fisher car theory?

24   A   Okay.

25   Q   Okay. Now, if you went back to Linda Fisher and

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1   questioned her for a while and then produced a

2   statement that says "and now I remember that Larry

3   borrowed the car from Cliff that morning and now I

4   remember he told me he killed a nurse," and

5   provided that statement, would you expect that

6   statement to have a great deal of credibility?

7   *A*   Oh, I'm not -- I don't think so really. Something

8   that is that significant and that important to be

9   introduced at such a late time, you would have to

10   start to question why that would come up now.

11   **Q**   And the fact that she would be matching your

12   theory?

13   *A*   Yes.

14   **Q**   That would cause great concern?

15   *A*   Yes.

16   **Q**   Now I'd like to draw your attention to a report,

17   250597, I hope I have it correct. We have seen it

18   many times, if you can go to 250603. Now this is

19   the RCMP report that was prepared way back at the

20   time of the offence, and if you look at paragraph

21   19 -- and I hope I don't have to go through the

22   whole thing with you, I'll try not to -- paragraph

23   19 at the bottom. Now are you currently familiar

24   with this report?

25   *A*   Umm, well, I'm, I'm not sure which report this is

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1   but I --

2   Q   We --

3   A   Which one is it?

4   Q   The RCMP report done back right at the beginning?

5   A   Yeah, I've probably seen it, yes. Just, if you

6   went to page 1, I could probably confirm if I have

7   seen it, --

8   Q   Can we go to the first page of that report?

9   A   -- but I probably have seen this.

10   Q   Yeah, just go to the next page, it's dated May --

11   A   Is this the one by Rasmussen?

12   Q   Yes?

13   A   Yes, I believe I have seen it.

14   Q   If we can go back to the page we were at, 250603.

15   Now what I am primarily concerned about, and I'm

16   going to go through it a little bit, is when you

17   became aware of this, was it at what point in

18   time, and was it when you got here for this

19   Inquiry or was it back when you were looking into

20   it, or --

21   A   You know, I have no recollection of having this

22   report at any time during the time that I was

23   involved in looking into the Larry Fisher aspect,

24   I really don't.

25   Q   Well that is the concern that I am going to be

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1   raising, is that it wasn't available in the

2   Supreme Court, even, as to this report. Now I

3   want to show it to you a little bit, looking at

4   page -- paragraph 19, and I will speed read, sort

5   of, if you don't mind.

6   A   Sure.

7   Q   You've got fall of '68, local police, two rapes,

8   one attempted, negative results -- if you can just

9   turn the page -- and it talks about the three

10   victims of Larry Fisher and:

11   "In these three instances the M.O. was

12   similar in that the male approached his

13   victim from the rear, covered their

14   mouth with his hand and pointed a knife

15   into their back, forcing them down the

16   lane."

17   Now I pause right there. That could very well be

18   very consistent with Gail Miller; could it not?

19   A   Yes.

20   Q   Especially in view of the fact that her mouth had

21   injury to it as if there was some force applied to

22   her mouth?

23   A   Yes.

24   Q   Okay. The description of the assailant very

25   similar, same person:

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1   "... forced his victim to undress at

2   knife point and always managed to stay

3   in the shadows ... He would ... have the

4   victim lie on her coat ...",

5   and I pause there. That might very well be

6   consistent with Gail Miller's coat?

7   A   Yes.

8   Q   I mean there is a lot in this report that leads to

9   the conclusion that the same person who had

10   attacked these three women attacked Gail Miller?

11   A   Yes.

12   Q   And this was available way back in '69?

13   A   I don't know where it was, I don't have --

14   Q   Well it was written in '69 anyway?

15   A   Yes, yes, oh yes.

16   Q   Yeah. Now I'm kind of at a loss as to understand

17   why something this important wasn't available to

18   you during your investigation, and how it could,

19   it could not be when it is so crucial. Can you

20   help us on that? And believe me, I'm not

21   assessing you or assigning any ill motive to you,

22   I'm just trying to understand why something so

23   basic would not be in your hands?

24   A   Well I'm sure it wasn't on the City Police file

25   that I had reviewed, and it didn't come through

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1   our headquarters queries and it wasn't in our RCMP

2   archives -- and I'm not sure exactly what's in our

3   archives -- but I don't know, I really don't know.

4   It was something that I hadn't seen, and where it

5   was at, I'm sure it's -- I'm sure we know where it

6   surfaced from, but I didn't, I didn't access it or

7   I didn't see it.

8   Q   So what I am getting at is that we talk about

9   whether the police should have been alerted to

10   Larry Fisher, and that's not the point that I

11   think is to be made, the point is that there was a

12   person out there, who happened to be Larry Fisher,

13   who was operating with the same M.O. as the person

14   who killed Gail Miller?

15 A   Yes.

16 Q   Would you agree with me that, had you seen this

17   report when you were assisting Mr. Williams, that

18   it would have had a profound effect on you?

19 A   I believe it would have, yes.

20 Q   And it would have made you much more enthusiastic

21   for the position of David Milgaard when you

22   realized that, unknown to him, that very same

23   proposition was given a great deal of credibility

24   by the RCMP back in the days when it happened?

25 A   Yes, yes, I think that's fair.

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1   Q   And if I understand it correctly you, until you

2   got to this Inquiry, didn't know of its existence?

3   A   I don't, I don't recall seeing this report. I

4   did -- you know, I have seen this leading up to

5   the Inquiry, but as far as going back to the time

6   of this investigation, I have no recollection of

7   having this report.

8   Q   All right. So any comment about the adequacy of

9   disclosure at any point in time would apparently

10   have been made without knowledge that this report

11   even existed?

12   A   Repeat the disclosure point? I'm just --

13   Q   What I am getting at is if anybody was to look at

14   it at the Supreme Court time, or at any time, and

15   said "disclosure is fine", there would have been

16   no knowledge that this report even existed?

17   A   I'm assuming so, yes.

18   Q   Yeah. Now just very briefly, I know I touched on

19   it yesterday, if we can go back to 010033. This

20   is the letter to Eugene Williams, and I just want

21   to continue on the same topic that I started with

22   yesterday. Sorry, just go down to that part, just

23   that little portion there that:

24   "... we are interested in looking at

25   patterns and similar acts, etcetera."

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1   So I -- was it not clear to you back then,

2   through Mr. Williams, that the interest was in

3   similar act evidence?

4   A   I have no recollection of ever being requested to

5   do a similar fact analysis or things like that,

6   but as a -- we did have discussions about

7   similarities but, as I mentioned to you, it wasn't

8   put into an analytical package, so to speak, for

9   comparison purposes. But we had, we had looked at

10   statistically and also the analysis of the file,

11   some of the file material that we had available,

12   that -- others we never had.

13   Q   I don't want to get sidetracked on Mrs. (V14)-

14   again, but had she been able to identify Milgaard

15   or Fisher, what would have been the significance

16   of that?

17   A   Well I -- if she would have been -- had a proper

18   identification?

19   Q   Yeah, leaving aside all the frailties that she

20   never even saw the assailant, but assuming she did

21   pick out one or the other, what would have been

22   the significance to your investigation?

23   A   Well it would have been, you know, an unsolved

24   crime that had the potential to now be solved.

25   Q   But would it have been any, of any advantage into

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 1                  the Milgaard application under 690?

 2       A          Well, I don't know.  It came through, through the

 3                  690 application, and the relevance that was put on

 4                  it, that was put on it by the people applying, --

 5       Q          I --

 6       A          -- I don't know what impact it would have had.

 7       Q          No.  You gave a lot of time to Mrs. (V14)-, you

 8                  gave a lot of time to Mrs. (V14)-, --

 9       A          Yes.

10       Q          -- and I got the impression a lot of it was given

11                  because you were kind-hearted and a caring police

12                  officer, and I commend you for that, but I'm

13                  interested in whether you felt that it would

14                  assist you in furthering anything regarding the

15                  690 application from your perspective?

16       A          It may.  It may confirm suspicion that, you know,

17                  if Larry Fisher was involved in this offence or if

18                  David Milgaard was involved in this offence, would

19                  that give some credibility that they are capable

20                  of committing an offence like the Gail Miller one.

21                  Again, it's just a circumstance that had no direct

22                  link to the homicide but it, again, is part of the

23                  circumstance that exists out there, possibly in

24                  the similarity of the activity.

25       Q          It just strikes me that when you have a number of
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1   offences right in the same neighbourhood, that if

2   (V14)- could have some effect, those other ones

3   would have a major effect?

4   A   Well, as I indicated, the file material was

5   limited, and my suspicion certainly was based in

6   part on his previous criminal records that are

7   associated to this particular report. Going back

8   to 1969, the investigator believed that the person

9   responsible for these offences could have been

10   responsible for Gail Miller's murder. The

11   difference between 1969 and now is that we know

12   who that person is, it's Larry Fisher, and that

13   was in part some of the bases for my suspicion.

14   And where the loop wasn't complete was taking the

15   details of those previous convictions and

16   converting those, that suspicion, into evidence

17   for the purpose of 690. I mean that's where the

18   failure was in my opinion. So the difference, I

19   think, between today and '69 when the police

20   didn't know who that person was, today we know who

21   that person was, but analysing that material to

22   say "that is the link to Gail Miller", that's the

23   part that wasn't developed.

24   Q   You were aware that in October of 1970 we knew who

25   that person was, Fisher was arrested for those

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1   crimes?

2   A   Yes.

3   Q   Can you, can you tell me in a general sense -- and

4   I don't want to dwell a long time on this -- but

5   between the letter I've just shown you of July 5th

6   and February the 27th of '91, when Kim Campbell

7   turned down the application, what were you doing

8   in the general sense; where were you focusing?

9   A   Between?

10   Q   July 5th and a turn-down in February the following

11   year do you recall; where were you focusing your

12   attention, --

13   A   Geez, I, I really don't know.

14   Q   -- do you know?

15   A   There was -- I had lots of stuff on the go, I

16   really -- it's a difficult one to tell you.

17   Q   Well then if I could just briefly look at 044769.

18   Now, sir, this is a report from Centurion

19   Ministries, and you will note on the cover -- and

20   it's seven pages and I won't go through it -- but

21   it deals with a general synopsis of the Milgaard

22   position and the attention of Larry Fisher. But

23   this appears, and I believe this to be correct,

24   that it was distributed to every Member of

25   Parliament in December of 1990. And I would

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1   expect that Kim Campbell was a Member of

2   Parliament, but if she wasn't I would be shocked

3   if it didn't get to her attention somehow, but in

4   any event did you have any knowledge of this

5   report?

6   A   I never saw this report, it was never distributed

7   to me, I -- as far as I know.

8   Q   Okay. But Mr. Williams didn't call you up and say

9   "Officer Pearson, here's a report, maybe you want

10   to look at it and see what they are saying"?

11   A   No, I never received a report from Centurion

12   Ministries like this.

13   Q   When Kim Campbell made her decision of February

14   27th of '91 were you aware it was coming?

15   A   You know, I don't recall if I was aware or not, I

16   just don't recall.

17   Q   So that is, in terms of whatever you were doing,

18   there was no time limit or "I need your material

19   by X day because the Minister is making a

20   decision" or anything like that at all?

21   A   Not that I recall, no.

22   Q   Or Mr. Williams didn't phone you up and say "the

23   Minister is going to be making a decision, is

24   there anything you want to add, can I get, you

25   know, your gut feelings on this thing, how do you

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1   feel, what are you thinking, are you finished"?

2   A   No, I don't recall being solicited for my opinion.

3   I had little input into the decision-making

4   process that was going on in Ottawa regarding this

5   whole matter. There is a reference in my notes

6   somewhere, and I don't recall an exact date, where

7   Mr. Williams did indicate he was having a meeting

8   I believe with the Deputy Minister, or his people

9   were meeting with the Deputy Minister, and he

10   asked me if I had anything more for him. That

11   reference is in my notes, I recall, but the time

12   frame of that I'm not positive.

13 Q   And obviously Kim Campbell didn't phone you up and

14   ask you for your input into her decision?

15 A   No, she didn't.

16 Q   Perhaps we might turn to 001784, and while we're

17   turning to that I take it it's fair to say that

18   when this decision was made, your job was far from

19   done as far as you understood it, in terms of

20   assessing the similar acts, the M.O., and things

21   like that, you just hadn't gotten into it?

22 A   Yes, I think there was a lot of, a lot of

23   questions that were out there yet. Yes, that's

24   fair.

25 Q   Now here's her letter where she turns us down, and

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1   if we can just turn to page 85, I just want to

2   highlight this paragraph here:

3   "During the investigation of this

4   matter, a number of comments were made

5   publicly which tended to suggest that

6   officials within the Department were not

7   impartial in their approach to the

8   application. That was simply not the

9   case. At all times I have had and

10   continue to have full confidence that

11   officials within this Department have

12   handled the inquiry fairly, objectively

13   and competently, and that their approach

14   to the examination of the case was at

15   all times wholly consistent with the

16   best traditions of the criminal justice

17   system in Canada."

18   Now, as she's writing this you've never seen the

19   first RCMP report, haven't done a similar act

20   analysis, and are you aware that -- were you

21   aware of one of the officials comparing the

22   Milgaard application to the belief that people

23   have, I think it was 17 percent of the population

24   believes that Elvis is still alive; was that

25   brought to your attention?

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1   *A*   No.

2   **Q**   She goes on to say:

3   "In view of the allegations that were

4   made, senior officials concluded that,

5   in the particular circumstances of this

6   case, especially in view of the public

7   perceptions that could flow from these

8   unwarranted allegations, it would be

9   appropriate to seek the advice of

10   eminent counsel with considerable

11   experience in matters of criminal

12   litigation."

13   So that, because the allegations are unwarranted,

14   they are seeking advice, not to consider the

15   allegations, but presuming them to be

16   unwarranted:

17   "... eminent counsel with considerable

18   experience in matters of criminal

19   litigation. The Honourable William R.

20   McIntyre, Q.C., ... in Vancouver, was

21   retained for that purpose. Mr. McIntyre

22   has considerable experience in criminal

23   litigation, ... a former member of the

24   ..."

25   British Columbia Supreme Court:

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1   "... the Court of Appeal for British

2   Columbia and the Supreme Court of

3   Canada."

4   He has reviewed the case in detail, and provided

5   me with advice; do you see that?

6 A   Yes.

7 Q   Did you, as the investigator, even know that

8   Mr. McIntyre was looking into the case?

9 A   No. The decisions were being made in Ottawa, I

10   really wasn't privy to -- I wasn't involved in

11   this.

12 Q   Well it's not a criticism of you, sir.

13 A   Well no, I know, I'm not making it sound like it

14   is. I'm just saying that I really don't have any

15   knowledge of this.

16 Q   So you didn't know it was even going to

17   Mr. McIntyre?

18 A   It -- there may have been a discussion with Mr.

19   Williams, but again, I just don't recall.

20 Q   Okay. Do you have any idea what was given to him?

21 A   No.

22 Q   Okay. You are in the same position as us. Do you

23   have any idea what his opinion was?

24 A   Not that I can recall, no.

25 Q   Well I don't think you would know it because

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1   nobody -- none have us have ever seen it.

2   A   Okay.

3   Q   I don't know if you noticed, but yesterday -- and

4   it had coverage in today's media -- the Department

5   of Justice released the report of Justice Kaufman

6   in the Truscott matter, that is he was retained by

7   Justice to look into that and they released that

8   today; do you have any idea why they are not

9   releasing the one here?

10   A   I have no idea. I have no idea at all.

11   Q   If you go down to the bottom of the page Kim

12   Campbell says:

13   "I have reviewed the information and

14   submissions you have provided, which

15   included your initial application dated

16   December 28, 1988, the subsequent

17   information and materials you furnished

18   between ...",

19   '89 and '90, and the submissions you presented in

20   person in October of '90:

21   "In addition the entire record of the

22   trial and appellate proceedings have

23   been reviewed. Over three dozen

24   individuals (some of whom testified at

25   trial, while others did not) were

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1   interviewed ...".

2   The three dozen strikes me as a bit much. Now

3   that was none of the Fisher victims; do you know

4   who those three dozen people are?

5   A   I don't know who they --

6   Q   If you go to the next page:

7   "... or re-interviewed by the RCMP and

8   departmental counsel ..."

9   I'm trying to think who three dozen people are if

10   you don't put in the victims?

11   A   Yes. Like I don't know, I don't know what was

12   submitted out of Ottawa.

13   Q   Okay.

14   A   I mean I think it's on record here, what I did, so

15   --

16   Q   Oh, I appreciate that, and I trust that

17   Ms. Campbell, when she testifies, will clarify

18   these issues. Now she goes on to say:

19   "The issues raised ...",

20   and if we can look at them, I just want to

21   highlight number (4) is the only one that really

22   concerns yourself:

23   "(4) the allegation that ... Larry Fisher

24   may have committed the ...",

25   crimes and the:

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1   "... unsolved rapes in Saskatoon could

2   have had on the jury's deliberations;

3   ..."

4   Now if you look at this letter, and if we can

5   just turn to the last page of it for a second

6   just to see how many pages it is -- I think it's

7   12, I think, I'm not sure, I believe it is 12

8   pages -- of those 12 pages, when I read through

9   it, there is only one paragraph that appears to

10   deal with Larry Fisher. If we can turn to 793.

11   Now, out of all those 12 pages, this appears to

12   be the only portion that deals with Larry Fisher,

13   who would obviously be quite crucial to the

14   application, and here's how it's dealt with. If

15   we could just highlight that paragraph:

16   "Inquiries were also made concerning the

17   submission that one Larry Earl Fisher

18   was Gail Miller's assailant. The

19   observation of Linda Fisher, his former

20   wife, that her paring knife was missing

21   at the time of the murder was fully

22   investigated, in addition to other

23   assertions. Neither Ms. Fisher's

24   suspicions, which were conveyed to the

25   police in 1980, nor other well

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1   publicized assertions by her, provide

2   any evidence to link Larry Fisher to

3   Gail Miller's death."

4   I take it you would disagree with that from what

5   you saw?

6 A   Uh-huh.

7 Q   Correct?

8 A   Yes.

9 Q   "Ms. Fisher noted that the photo of a

10   knife similar to the murder weapon

11   indicated a different handle type,

12   colour and blade from her missing

13   knife."

14   Now that's focusing, again, on her recall of the

15   knife, not the fact that a paring knife was

16   missing and all the other things that we know

17   occurred that morning, including him not going to

18   work, etcetera, etcetera. Then she goes on:

19   "However serious Mr. Fisher's criminal

20   record may be, the entire record at

21   trial and in this application reveals no

22   evidence to connect him with the killing

23   of Gail Miller. Although it was, as you

24   have conceded, quite coincidental that

25   Mr. Fisher resided at the Cadrain

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1   residence during Mr. Milgaard's visit,

2   no guilt or suspicion of guilt can be

3   attributed to Fisher in the absence of

4   some form of evidence linking him to the

5   crime."

6   Well, pausing there, we have Mrs. Fisher, I think

7   you may have had a jailhouse informant, I'm not

8   sure, but you also have similar acts that haven't

9   been looked at; correct?

10   *A*   Yes.

11   *Q*   I mean --

12   *A*   I think when you also look here you have to look

13   at the suspicion, you know. Like I said, anyone

14   can have suspicion depending on the individual

15   that's examining this and I certainly had

16   suspicion.

17   *Q*   But you hadn't done the similar act analysis?

18   *A*   No.

19   *Q*   And Ms. Campbell is definitely totally wrong in

20   this paragraph, is she not, to suggest that there

21   is no evidence linking it to him when it hasn't

22   even been looked at?

23   *A*   Well, I suppose at that point with the information

24   she had, maybe she's not wrong, but because that

25   part of it hadn't been looked at as far as the

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1   similarity, if you wanted to convert that

2   similarity to evidence, and then maybe again

3   that's the key as far as what is considered

4   evidence, suspicion converts to evidence, and

5   maybe this is, when they start talking about not

6   having a link, and again I'm not positive what,

7   you know, under 690 and the law, if there is a

8   requirement to have some threshold of, to accept

9   certain things as being persuasive, I just don't

10   know what Mr. Williams and Justice Hughes, to

11   consider this -- to consider what is evidence.

12   Was similarity something that would persuade them?

13   I don't know. Mr. Williams has to I think explain

14   that.

15 Q   Or Ms. Campbell has to explain it since she wrote

16   the letter?

17 A   Yeah, okay.

18 Q   But having said that, they didn't have and you

19   didn't have the '69 RCMP report and you hadn't

20   done your job, and it's not a criticism, in terms

21   of a similar act analysis?

22 A   That's fair.

23 Q   Now, if this opinion and this decision of

24   Ms. Campbell had been accepted, then obviously Mr.

25   Milgaard would have remained convicted of the

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1   crime and Mr. Fisher would have gone free;

2   correct?

3   A   It's certainly possible, yes.

4   Q   Now, there's been considerable discussion about a

5   second application, or a fresh application that

6   was accepted by Ms. Campbell. From your

7   perspective, was there any difference between the

8   first application and the second?

9   A   I don't think so, you know. I think if we go back

10   and we talk about this similarities and the

11   analysis that was done on the similarities, we

12   talk about, you know, my role of being responsible

13   or reporting to Mr. Williams. You know, I do

14   think that again going back to my very initial

15   thoughts on this, is that if we all were around

16   the table, this matter wouldn't have probably gone

17   to a second application. I'm sure if you and the

18   people that were representing Mrs. Milgaard were

19   of the view that, look, I think we can make a case

20   by putting the similarities together, and

21   that would be very compelling and convincing and

22   it would be evidence, that is something that, you

23   know, I certainly could have pursued, that's not

24   something difficult to do, but -- so I think it,

25   if the request would have been made, it certainly

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1   could have been done, and I don't know what more I

2   can say on that.

3   Q   No, I think your suggestion about being around the

4   table is a very good one and what you are

5   basically saying is I understand that all parties

6   have input, can dialogue and help each other

7   understand better the whole case, isn't that what

8   you are saying?

9   A   That's a given really. I think that's very

10   important, yes.

11 Q   You are not saying necessarily everybody sit down

12   at one meeting and discuss it?

13 A   No.

14 Q   You mean that everybody has to have input so

15   everybody knows what the other is doing and can go

16   forward?

17 A   Well, I think when you have a situation where

18   there's a potential for a wrongful conviction, I

19   think, you know, you have to draw up all the

20   history to this and put your heads together.

21 Q   Thank you. Now, you would appreciate that once

22   Ms. Campbell turns us down, it's pretty hard to

23   write her back and say you are not very smart,

24   please reconsider, that's not going to get you

25   very far is it?

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1   *A*   Like I say, I don't know the process that was in

2   play here.

3   **Q**   She has to be given a reason to think it's a

4   second application, but really, simply a request

5   to look at the same thing and perhaps be a little

6   smarter, isn't that what it really is, or let

7   Officer Pearson do his job? I'm going to direct

8   you to a response to that letter, 004416, and this

9   seems to be exactly what you are saying. If you

10   can go to -- this is a letter dated August 25th to

11   Ms. Campbell in response to her -- I'm sorry,

12   April 25th, in response to her turning down

13   David's application. If you go to 004420, I think

14   this is exactly what you were telling us,

15   highlight that paragraph there:

16   "It is, of course, very difficult to ask

17   you to reconsider your decision. We are

18   still proceeding to garner evidence to

19   exonerate David Milgaard. While clearly

20   I would welcome an opportunity to meet

21   with you in person and in particular,

22   with your advisors so that the matter

23   can be debated in your presence, and

24   where I am satisfied I can convince you

25   of the validity of our position, I have

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1   little doubt that your officials who are

2   most conversant with the case would not

3   accept that challenge.

4   What I do feel can and must be

5   done is the following:

6   1. Provide us with access to the

7   material that formed the basis of your

8   decision. That is, the entire

9   investigation including police reports,

10   witness statements and opinion evidence.

11   2. Provide us with the information that

12   went to Justice McIntyre and his

13   response."

14   Now, two we are still waiting for.

15   "It is my respectful suggestion that the

16   entire system of review pursuant to

17   Section 690 ... is seriously flawed.

18   The procedure is totally unclear and

19   without any procedural safeguards. The

20   result is totally unsatisfactory."

21   And skipping a little bit:

22   "The end result is that your officials

23   are not only the investigators, but they

24   determine credibility and then

25   ultimately through yourself make the

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1   decision. We do not know the basis and

2   have no opportunity to correct in front

3   of an impartial tribunal factual error

4   and illogical conclusion."

5   And I won't go further into that, but isn't that

6   what you are saying, that --

7   A   Yes, I believe today that's exactly what I'm

8   saying. I just don't believe that there should be

9   a process where we have to take positions,

10   particularly when you have a wrongful conviction,

11   I really believe in my heart that this should be

12   an open process and everyone should be able to,

13   again I'm saying lay your cards on the table, but

14   have all the information out there so that the

15   matter can be examined, and what form that takes

16   as far as legal, you talk about tribunals or

17   whatever, but at the end of the day there

18   shouldn't be obstacles in the way, particularly at

19   the end of the process where there is a potential

20   for a wrongful conviction.

21 Q   Yeah, because the point is that wrongful

22   convictions are devastating and they are a

23   terrible, terrible thing; correct?

24 A   I agree.

25 Q   They are a policeman and a Crown attorney's worst

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1   nightmare really?

2   *A*   Well, I think they are everybody's worst nightmare

3   because I don't think I know anybody that would be

4   content with letting someone be wrongfully

5   convicted and not have some feeling for an

6   injustice.

7   Q   And you do agree that in order for those advocates

8   for the wrongfully convicted, or the potentially

9   wrongfully convicted, you have to have access to

10   the materials that were in the hands of the

11   investigators and full, complete disclosure, it's

12   a must?

13   *A*   With -- I think with safeguards. I think, you

14   know, there are -- you have to be careful how far

15   you open the door as well because, you know, there

16   are many, many people with very vicious pasts and

17   have nothing to lose by taking advantage of

18   whatever opportunity they have, so while we can

19   say that the system should be more open, there has

20   to be some safeguards because you could have total

21   chaos if you don't.

22   Q   Well, for example, the Truscott report was

23   released today, but there were some privacy

24   concerns that were honoured?

25   *A*   Oh, yes, I'm sure.

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1   Q   That can be done?

2   A   Oh, yes.

3   Q   And furthermore, in order to get to this process,

4   there has to be an air of reality to the

5   application?

6   A   Yes.

7   Q   It can't just be some Larry Fisher type saying

8   hey, look at my case, there has to be some reality

9   to it?

10   A   There has to be a process I think.

11   Q   Yeah. So you can see at this particular point in

12   time, on David Milgaard's behalf there's no

13   information as to what went to Justice McIntyre,

14   whether it was slanted, biased or fair, there's no

15   indication as to what his response was, and there

16   was no chance to even address him as to the

17   position of David Milgaard. Furthermore, whether

18   he knew or didn't know that you hadn't even looked

19   into the similar act analysis we still don't know.

20   Are those all fair comment?

21   A   I believe so, yes.

22   Q   And in the interests of time, I'm not going to

23   take you to it, but in the same letter, if you go

24   to 418, just for the record sake there is the

25   response to Larry Fisher, and I'll paraphrase it

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1   by saying it takes serious, or serious concern

2   with the suggestion that it was ever conceded that

3   he was coincidental or it was a big coincidence,

4   the paragraph speaks for itself, but it does deal

5   with the response to that and it talks about the

6   newspaper warnings to women in the area. Were you

7   aware of that during your investigation?

8   *A*   Of newspaper articles?

9   **Q**   Yes, the warnings to women in the area to be weary

10   of the rapist?

11   *A*   Yes, I believe there were some old newspaper

12   clippings on the Saskatoon police file.

13   **Q**   "The fact that there was a serial rapist

14   in the area whose method of operation

15   was identical to the Gail Miller

16   incident; that this brutal rapist was

17   Larry Fisher who resided in the Cadrain

18   home and carried on with additional

19   attacks on women; has confessed in the

20   jail to another inmate of having stabbed

21   and dumped a body in a snow bank; would

22   have been evidence admissible in David

23   Milgaard's trial. It should also be

24   noted that a number of articles taken

25   from the deceased were found partially

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1   hidden near the Fisher residence. Larry

2   Fisher, not David, of course, would have

3   reason to have hidden those articles.

4   In your letter you indicated

5   that I have conceded as quite

6   coincidental that Larry Fisher was

7   residing in the Cadrain residence of the

8   murder."

9   You'll note as I go on the letter wasn't that

10   well written.

11   "I have also conceded that it is quite

12   coincidental that the Gail Miller

13   killing is similar right down to the

14   choice of weapon to some of the other

15   offences that Larry Fisher has

16   committed. I have conceded that the

17   victims are very similar to Gail Miller,

18   even down to the general nature of their

19   occupations and to their area of

20   residence. I have also conceded as

21   coincidental that Larry Fisher was not

22   home at the relevant time of the killing

23   and that in an interview with the Fifth

24   Estate he cannot recall how many times

25   he used paring knives on women. I have

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1   conceded that a number of articles of

2   Gail Miller were found within one very

3   short block of Fisher's residence. If

4   given a chance I believe I could

5   probably obtain a conviction against

6   Fisher in front of a reasonable jury,

7   but that however, is not the issue. The

8   evidence pointing at Fisher is evidence

9   admissible in the Milgaard case. The

10   jury never heard it."

11   And I go on from there, but in any event, taking

12   serious umbrage with the idea it's all a big

13   coincidence, sarcasm is sarcasm. And just for

14   the record sake, to refer to something I

15   mentioned earlier, 004 -- sorry, I think it's

16   681. My copy is kind of blurry.

17   MR. HODSON: What's the number?

18   MR. WOLCH: I think it's 0046 -- and I

19   think it's 01.

20   COMMISSIONER MacCALLUM: 004416?

21   MR. WOLCH: I'm sorry, 46, and then it's a

22   blank number 1. It's the article in *The Globe*

23   *and Mail.*

24   COMMISSIONER MacCALLUM: Oh.

25   MR. WOLCH: I want to refer to that next.

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1   If it's not 01, it could be 91. That's it. Just

2   that reference I made earlier, I want to be sure

3   we have it right.

4   COMMISSIONER MacCALLUM: What is the

5   number?

6   MR. WOLCH: It's 601 I think.

7   MR. HODSON: 004601.

8   COMMISSIONER MacCALLUM: Okay.

9   BY MR. WOLCH:

10   Q   It says here:

11   "'I don't want to talk about the

12   Milgaard investigation to you or anyone

13   else, good-bye,' William Corbett told

14   The Globe and Mail yesterday and banged

15   down the telephone. Mr. Corbett is the

16   senior Crown counsel who oversaw the

17   review.

18   Several months before

19   Ms. Campbell's decision, Mr. Corbett

20   already appeared to have made up his

21   mind that David Milgaard was guilty.

22   'Seventeen percent of people still

23   believe Elvis Presley is alive,' he

24   remarked in an interview with the Globe

25   last August."

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1   So I've drawn to your attention, as you will

2   recall, Ms. Campbell in her report indicates that

3   her people were all unbiased and fair and

4   impartial. That seems to contradict that; does

5   it not?

6   A   I never saw this article before, but yeah.

7   Q   If we can then go to 010002. Now, this is August

8   the 20th of '91, and for the record's sake and for

9   your information, Mr. Pearson, August 14th of '91

10   would have been the date of the so-called second

11   application.

12   A   Okay.

13   Q   And this is a memo from Mr. Williams to Mr.

14   Corbett and you'll see here --

15   MR. FRAYER: Mr. Commissioner, excuse me,

16   if I might direct a couple of comments with

17   respect to this document.

18   COMMISSIONER MacCALLUM: Go ahead.

19   MR. FRAYER: This particular document was

20   the subject matter of some discussion as between

21   Mr. Hodson and myself in an earlier stage of this

22   proceeding and at that time I indicated that we

23   took the position that this was a privileged

24   communication, that while it has been provided to

25   the Inquiry, that at this stage it's not a public

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1   document, and with that discussion in mind,

2   subject to the idea that at some later stage

3   someone will testify from the federal government

4   with respect to this document, at this time I'm

5   objecting to it being referred to and put into

6   the record of the Inquiry.

7   COMMISSIONER MacCALLUM: Okay. Do you have

8   anything?

9   MR. WOLCH: Sorry, I believe the document

10   is important, without going into it in detail, it

11   does refer to a direction given to Sergeant

12   Pearson which I think is important to know about.

13   I don't know why --

14   COMMISSIONER MacCALLUM: Well, it might be

15   important, but that doesn't mean that it's not

16   privileged of course.

17   MR. FRAYER: I think that's the same area

18   to which Commission Counsel was going to go when

19   he and I had the discussion with respect to

20   whether this document should be referred to at

21   all at this stage.

22   COMMISSIONER MacCALLUM: Yes.

23   MR. FRAYER: And once again, referring to

24   one portion of it will simply mean that

25   ultimately that document will become part of the

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1   public record, so at this stage I'm arguing that

2   it is a privileged document and that it can't be

3   referred to for the purpose of the examination of

4   this witness.

5   MR. WOLCH: Well, I take the position it's

6   an important document. I'm not sure how it got

7   into my possession to be candid.

8   COMMISSIONER MacCALLUM: Is it on the

9   database?

10   MR. HODSON: Sorry, if I might just

11   comment. The document I believe was received

12   from the Government of Saskatchewan and may have

13   been provided to them by Federal Justice. I

14   stand to be corrected. I had intended to ask

15   some questions of Mr. Pearson with respect to

16   information in this document. Mr. Frayer advised

17   me in advance, because the document was in the

18   folder, that they were maintaining privilege and

19   that at some later point this issue will have to

20   be dealt with and certainly, (a), what the

21   privilege is, and (b), whether it has been waived

22   given that it was -- given that we have it, so

23   again, that's an issue, and I think what Mr.

24   Frayer advised me, that he wished that no

25   questions be asked with respect to the document

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1   until that issue has been concluded and so I

2   determined I didn't need to ask Mr. Pearson about

3   it, but at some point we'll have to resolve

4   whether we're entitled to have it or not, so I

5   don't know what that does for Mr. Wolch, but --

6   and I think there may be one other document that

7   we've had the same issue.

8   MR. FRAYER: There was at least the other

9   document, the Rutherford document that we earlier

10   spoke to early on in this proceeding at which

11   time, Mr. Commissioner, you made a ruling with

12   respect to that, that at that stage the privilege

13   obtained and that it could not be introduced into

14   the public record.

15   COMMISSIONER MacCALLUM: Well, I think all

16   that Federal counsel needs surely is to establish

17   that it is in fact a document, a communication

18   between client and the principal and if he

19   asserts privilege, then that's it.

20   MR. WOLCH: It's not between a client,

21   it's between --

22   MR. FRAYER: It's an internal document.

23   MR. WOLCH: It's between Mr. Corbett, who

24   is defined as senior general counsel and E.F.

25   Williams is counsel, it's not a client, but I

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1   would say that the releasing it to Saskatchewan

2   is a complete waiver of privilege.

3   MR. FRAYER: And that's something that can

4   be argued at a later stage, Mr. Commissioner, but

5   for present purposes I take the position that

6   it's a privileged communication and at least at

7   this stage should not be examined on.

8   COMMISSIONER MacCALLUM: Well, yes, it

9   could be argued later, Mr. Frayer, but of course

10   later will probably be too late for the purposes

11   of Mr. Wolch's examination of this particular

12   witness, so maybe we should deal with it now.

13   MR. FRAYER: I mean, if we can redact all

14   portions of the document save and except the

15   paragraph that deals with the discussion between

16   Mr. Williams and Sergeant Pearson, then that

17   might answer the issue.

18   COMMISSIONER MacCALLUM: Yes, okay.

19   MR. FRAYER: If Mr. Wolch would be

20   satisfied with that, then I think from my

21   position I likewise would be satisfied.

22   MR. WOLCH: If I may, if I'm going too far

23   I apologize, but what I was attempting to show

24   through this document is that the Department of

25   Justice realized that it was not a fresh

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1   application, it was the same application, which I

2   think is important to know, that they realized

3   it. The idea that it was a brand new application

4   was a fiction and that's why I would like to try

5   and establish, and I don't know why this would be

6   privileged given that it was released, and

7   secondly, I'm a little concerned about the

8   position of privilege generally. I mean, from

9   Mr. Milgaard's point of view, the Department of

10   Justice asked him to waive privilege for every

11   lawyer he has ever seen and he has done that,

12   that any lawyer he has talked to can say whatever

13   they want about what David told them, but on the

14   other hand, Justice, who in the case of Truscott

15   says here we don't care about privilege, we're

16   going to release the material, now in this case

17   says they don't want to release it, it seems

18   somewhat inconsistent and ties the hands of this

19   Inquiry in terms of what's really important, and

20   that is trying to improve the system and not make

21   the same mistakes twice; that is, we know

22   mistakes were made, and we would like to know why

23   they were made, and so, Mr. Commissioner, you can

24   give the recommendations that will prevent this

25   from happening in the future. That's what we're

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1   really here for, beyond anything else, is to not

2   let it happen again, and we are here this far

3   into the Inquiry, we don't know what's in these

4   documents, we don't know what Mr. McIntyre was

5   given to consider, we don't know what his opinion

6   was even and how it was followed. Those are all

7   going to the heart of why we're here and maybe we

8   should address it at some point in time, that

9   that's what we're doing here, is trying to find

10   that out, and to be hampered by not having full

11   disclosure now on a decision-making process and

12   what was happening is disconcerting and it's not

13   so much a focus on blame, but more a focus on not

14   letting it happen again and that's all we're here

15   for, and, you know, if My Friend wants to say

16   Justice is asserting privilege, I don't know what

17   they want to assert privilege on or how far it's

18   going to go, but it is an issue that will have a

19   life of its own when we come to future witnesses

20   like Mr. Williams, Ms. Campbell, Mr. Corbett,

21   whoever comes to explain and help us for the

22   future, so whether we do it now or later I don't

23   know, but I welcome some direction as to when

24   we're going to do it.

25   COMMISSIONER MacCALLUM: Anything to add,

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1   sir?

2   MR. FRAYER: I have nothing to add, Mr.

3   Commissioner, thank you. I now have the document

4   in my hand, I can see the portion to which Mr.

5   Wolch wishes to refer.

6   COMMISSIONER MacCALLUM: Is your offer

7   still open then to refer to that particular part

8   only?

9   MR. FRAYER: I think I would like to

10   consider that. Perhaps if Mr. Wolch carries on

11   with his cross-examination and --

12   MR. WOLCH: If I may, for Mr. Frayer's

13   benefit, if you look at the document on page 2

14   under observations, I would like to go into the

15   first paragraph and the last paragraph of that,

16   and under action taken, I would like to go

17   through the middle paragraph, and the rest I'm

18   not too concerned about.

19   MR. FRAYER: Perhaps Mr. Wolch and I can

20   address that issue at the break, Mr.

21   Commissioner.

22   COMMISSIONER MacCALLUM: Yes.

23   MR. FRAYER: If he can carry on with the

24   balance of his examination and we can discuss --

25   MR. WOLCH: I can carry on.

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1   COMMISSIONER MacCALLUM: Thank you.

2   BY MR. WOLCH:

3   Q   Now, somewhat after this point in time you became

4   aware of the fact that the matter was going to the

5   Supreme Court?

6   A   Yes.

7   Q   And I take it that between the "first application"

8   and the "second application" the analysis of

9   similar act was perhaps carried on a little bit or

10   furthered or developed; would that be fair, that

11   it was now better understood, or do you know?

12 A   I just don't recall. I'm sorry, I don't.

13 Q   Okay. Let me ask you this, do you have any view

14   of the media's involvement as to how it affected

15   you or the investigation or the case?

16 A   I think initially, as far as trying to work with

17   Larry Fisher, it probably had some effect based on

18   the fact that it was the subject of one of his

19   concerns, is that his safety was at issue, so that

20   part of it there certainly seemed to have some

21   influence.

22 Q   Would it be fair to say that given Larry Fisher's

23   background, his -- the type of person he is and

24   the number of years he's been in jail, you weren't

25   all that optimistic that you were going to have a

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1   person cleansing his soul?

2   A   You don't know. I mean, that's an unknown, you

3   just don't know. In hindsight I could certainly

4   say that, but at the time I don't think I could

5   have.

6   Q   Okay. Did you find that the media pressure was

7   always a factor you were considering and Mr.

8   Williams was considering?

9   A   I think for the Larry Fisher part of it there was

10   a media influence there, but overall, I mean, the

11   media play, you know, an important role in keeping

12   people advised, there are stories out there all

13   the time, so that was, it was a high-profile case,

14   so it had a lot of media coverage, but to say that

15   affected me, I don't --

16   COMMISSIONER MacCALLUM: What did you --

17   don't what?

18   MR. WOLCH: Say it affected me were his

19   words.

20   COMMISSIONER MacCALLUM: Say that it

21   affected you. I didn't get the rest of it

22   though.

23   A   To say that the media overall affected me, I don't

24   believe so, but when you say how the media

25   affected the investigation, I think it was more to

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1   do with the initial stages of Larry Fisher

2   reacting to it.

3   BY MR. WOLCH:

4   Q   In fairness, it was the media that uncovered

5   information as well?

6   A   Yes.

7   Q   And I'm not sure you would be, but are you able to

8   offer an opinion as to whether anything would have

9   happened in terms of reopening this case without

10   the media pressure?

11 A   Gee, I don't know. I don't know if I could answer

12   that really.

13 Q   I didn't think you would, but I thought I would

14   try.

15 A   Yeah, okay.

16 Q   But in terms of the media pressure, so to speak,

17   or the media coverage, it certainly brought

18   forward witnesses and people who read about it,

19   heard about it and suddenly had something to

20   offer?

21 A   During the Supreme Court review?

22 Q   At any time.

23 A   Oh, yeah.

24 Q   A case in the media brings forward people who may

25   or may not have, you know, something of value to

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1   contribute?

2   A   Yes, I agree.

3   Q   Now if I can go back briefly to 250597 and go to

4   603, this is the same report that we looked at

5   earlier, and if I can bring out that paragraph

6   I've highlighted, this is back in that RCMP report

7   from '69.

8   A   Yes.

9   Q   It is mentioned that at approximately 8:25 a

10   complaint was received from (V4)---- (V4)--- to an

11   attempted indecent assault at 7:07 a.m. The

12   complainant was on her way to catch a bus, 22nd

13   and H, male 30, 5'5", etcetera, describes him,

14   person grabbed her, ran his hands up and down her

15   legs, she screamed, did not look back, etcetera,

16   etcetera. We've heard this many times, that's why

17   I go through it pretty quickly, and you know who

18   I'm talking about?

19   A   Yes.

20   Q   When did you first hear about her?

21   A   I believe, if I recall, there was some information

22   on the Saskatoon Police file, and there may have

23   been some notation on the file that she was

24   eliminated as a suspect, I'm just not sure, but

25   I'm sure there was some police material that re --

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1   involving her on the Miller police file, yes.

2   Q   Yeah. Now this report we've talked about you

3   didn't have any knowledge of, but would it be fair

4   to say that the Minister had no knowledge of

5   (V4)---- (V4)---, or do you know that? Because,

6   when she made her decision, was (V4)---- (V4)---

7   brought to her attention from any source?

8   A   I think -- I think, again, we have to go back in

9   my report --

10   Q   Well I'll try to help you?

11   A   -- to see if (V4)---- (V4---'s name was mentioned

12   before that time. I think it probably was.

13   Q   Okay. I'll try to help you, because the first I

14   know of (V4)---- (V4)--- surfacing is when she, as

15   she testified here, she read about it in the paper

16   and then called Mr. Asper, and this would have

17   been around the time of the Supreme Court

18   reference.

19   A   Yes.

20   Q   That's what I think to be the case. So I draw to

21   your attention 056409. Thanks. Now this document

22   will not be perfectly helpful on dates, but it

23   might draw you in the right direction, 056409.

24   You see, this is a note from yourself --

25   A   Yes.

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1   Q   -- to (V4----'s lawyer, and it's dated '91,

2   December 30th?

3   A   Yes.

4   Q   So it was pretty late in the game --

5   A   Yes.

6   Q   -- that, you know, we're getting involved with

7   (V4)---- (V4)---. So what I am getting at is, as

8   an investigator, might you agree with me that her

9   evidence is quite important? You know, I'll put

10   it in this term; she is attacked within a few

11   blocks of the Miller incident within a few minutes

12   of the incident?

13   A   Yes.

14   Q   It's all in the same area?

15   A   Yes, yeah.

16   Q   And that would be important from day one; would it

17   not?

18   A   I would think it would.

19   Q   Leaving aside your role in this case, putting

20   yourself back as an investigator, if you were

21   presented with the fact that Gail Miller's attack

22   occurred between 7:45 (sic) and 7:00 a.m., and

23   whether it's 7:07, 7:05, or 7:10, whatever it

24   might be, this young woman is attacked seven or

25   800 yards away would have been quite relevant from

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1   day one?

2   A   Yes. And, if I remember correctly, I think there

3   was some reference made to this by the initial

4   investigators that it was not involved in this or

5   something --

6   Q   You --

7   A   -- and I -- the complete report, I don't believe,

8   was there. I'm not even sure if there was a

9   separate report made on (V4)---, I'm just not

10   certain.

11   Q   Leaving that aside, I'm just talking about you as

12   an investigator, --

13   A   Yes.

14   Q   -- putting on your hat that -- not what somebody

15   else did, but you as an investigator, --

16   A   Yes, yes, it would be, yes.

17   Q   -- it's important, obviously?

18   A   Yes.

19   Q   This woman was attacked in the same approximate

20   area, same approximate time, that's a relevant

21   piece of information?

22   A   Yes, I agree.

23   Q   And this came forward through her, so would you

24   agree with me that we should be concerned that

25   this was really never disclosed by the authorities

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1   at any time to anyone acting for David Milgaard,

2   just in a general sense would that cause you

3   concern?

4   A   Yeah, I guess in the general sense, if you thought

5   there was something it was associated to, yes.

6   Q   Well let's look at it this way; --

7   A   Yes.

8   Q   -- we have somebody attack a woman, Gail Miller,

9   in 40 below?

10   A   Now I'm sorry, Mr. Wolch, are you talking about

11   back at this time or --

12   Q   At all times it should have been disclosed.

13   A   Okay.

14   Q   It's just something so basically relevant.

15   A   Yes, yes.

16   Q   We're talking about at 6:45 or thereabouts, in 40

17   below in the morning, a man is out there attacking

18   women. Now, I take it -- and the incidents of men

19   attacking women on the streets in 40 below is

20   pretty rare, it's not something you as an

21   investigator see very often, ever at all in your

22   life; right?

23   A   No, it's rare.

24   Q   It may be in the history of Saskatoon it only

25   happened twice, and both times in the same morning

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1   within 10 or 15 minutes, so the likelihood is it's

2   the same person who did them both; isn't it?

3   *A*   Well that has been debated as well, but like you

4   say, a very good possibility that it was the same

5   person.

6   **Q** I'm talking to you common sense, forget everything

7   else, --

8   *A*   Yeah, I agree.

9   **Q** -- and a very good investigator, which you are?

10   *A*   I agree, coincidentally, you would certainly have

11   to try and make an association between the two.

12   **Q** I mean the idea that there would be two, two men

13   out within a couple blocks of each other, it's

14   early morning hours and 40 below, attacking women,

15   I mean you have got a better chance to win the

16   lottery than have that, would you not agree, just

17   common sense?

18   *A*   Yeah, I think that's logic, yes.

19   **Q** Mr. Commissioner, I am going into a new area, I

20   don't know if you want me to break now or if you

21   want me to go a little longer, it's --

22   COMMISSIONER MacCALLUM: No, that's fine.

23   MR. WOLCH: Okay.

24   COMMISSIONER MacCALLUM: We'll break now.

25   *(Adjourned at 10:17 a.m.)*

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1   *(Reconvened at 10:36 a.m.)*

2   MR. WOLCH: Mr. Commissioner, before I

3   commence, I had some discussions with Mr. Frayer

4   during the break and I guess the bad news is that

5   we haven't arrived at any consensus, but the good

6   news is that perhaps we will leave it for another

7   time when we can argue with a broader picture of

8   the issue.

9   I can indicate to you that part

10   of my concern is that we're not being consistent

11   in this matter on what is privileged and what

12   isn't, and with other cases as to what is

13   privileged and what isn't. For example, Mr.

14   Commissioner, if I can draw your attention to

15   010019, we saw this memo several times before I

16   believe, and this is from Mr. Williams to file.

17   And clearly the same privilege argument could

18   have been made on this document earlier, that it

19   was -- that it was privileged, it's not much

20   different except in one case it goes to file and

21   in one case it goes to co-counsel, so there isn't

22   very much difference. So that document was gone

23   through previously by Commission Counsel, I

24   forget when exactly but I know he went through

25   it, so I'm not sure how we pick and choose what

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1   may and may not be privileged in this particular

2   case, particularly when it's released to

3   Saskatchewan Government, so we'll have to look

4   into that. And I'm also very concerned with the

5   accessibility to the reports that went to

6   Mr. McIntyre, went from him, and there I'm

7   talking about broader consistency. Because in

8   the *Truscott* case the very same type of report

9   has been released, and I'm not certain how we can

10   talk about transparency in decision-making and

11   there should be openness, and then find out that

12   government wants to be selective in what it

13   releases and to whom it releases it, that it's

14   okay for Saskatchewan to see it but not for

15   anybody else.

16   So those are concerns, but I --

17   it's an issue that I can overlook at this point

18   in time. I know I can question, whether it's Mr.

19   Williams, Ms. Campbell or Mr. Corbett at a later

20   time, and -- but -- and I think Mr. Frayer would

21   like to get some firm instructions as to what his

22   position should be, and maybe they will

23   reconsider, or at least determine what their

24   position is, and it will have to be argued at a

25   different time, but I think I can move on and not

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1   tie you up at this particular point in time with

2   that issue, if that's permissible.

3   COMMISSIONER MacCALLUM: Yes, that's fine,

4   Mr. Wolch. I just want to state the obvious, of

5   course. There are two questions here, one is a

6   policy question and the next one is a legal one,

7   and if a document is in fact privileged I don't

8   think I have any discretion to order that it be

9   considered, and if somebody wants to assert the

10   privilege, that's their right.

11   The other one is a question of

12   policy. The policy followed thus far has been

13   quite open insofar as giving up privilege is

14   concerned, so that's something you are going to

15   have to settle with your fellow counsel, I guess.

16   MR. WOLCH: And come back before you.

17   COMMISSIONER MacCALLUM: And the Federal

18   Government, of course, is in a special position

19   here constitutionally, and that's another thing

20   that's behind all of this as well, I would ask

21   you to keep that in mind too.

22   MR. WOLCH: Yes.

23   BY MR. WOLCH:

24 Q   Mr. Pearson, if we can carry on, I'll tell you

25   that I am optimistic that we'll finish this

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1   morning so we'll move ahead.

2   Now you, from time to time, have

3   heard some degrees of frustration during the

4   entire process from people advocating for David

5   Milgaard. You recall there's considerable

6   frustration through the media, and directly, with

7   the -- how the process was proceeding, and you

8   will recall from Ms. Campbell's letter that there

9   was an accusation, perhaps, that there was more

10   interest in discrediting David's position than in

11   terms of trying to get to the truth of the matter,

12   but I've clumsily paraphrased it?

13   *A*   Okay.

14   **Q**   Okay. Now it's fair to say that when the

15   applications were coming forward, on the positive

16   side for David there was a recantation by a major

17   witness and a very viable suspect, that turned out

18   to be the real killer?

19   *A*   Yes.

20   **Q**   And I wonder if you can perhaps comment on a few

21   aspects that were investigated which I can suggest

22   would have caused tremendous frustration on behalf

23   of the applicant and created a sense that, a

24   belief that the investigators or at least the

25   Justice Department was only interested in

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1   maintaining the status quo. And one I

2   specifically want to draw your attention to is

3   three pieces of evidence, and I would like your

4   comments on them. The first is Ken Cadrain; how

5   did he come forward, do you recall how he came to

6   your attention?

7   A   It was through the Saskatoon Police Service.

8   Q   Do you recall who specifically?

9   A   I think, I think I received a call -- it's in my

10   notes -- I think I received a call from

11   Mr. Simpson, inspector at the time I believe, and

12   it -- I recalled that Ken Cadrain was doing some

13   work at the mother or mother-in-law of one of the

14   constables at the Saskatoon Police Service, and

15   this was I believe shortly after there was some

16   publicity about Albert Cadrain and what he is

17   alleged to have said or seen, and I think Ken

18   Cadrain, if I'm not mistaken, didn't like what he

19   heard or saw and made certain statements, and that

20   came through the system eventually to me. I think

21   that's how it was pieced together.

22   Q   As an investigator you try to determine, to a

23   degree, credibility and what reliance can be put

24   on evidence; do you not?

25   A   Umm, yes, I think so.

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1   Q   Now let's look at Ken Cadrain's evidence in the

2   broader sense.

3   A   Yes.

4   Q   He would have been five years old at the time,

5   almost six?

6   A   Six, yeah, okay. He was five, yeah, he could have

7   been five.

8   Q   Yeah. And on the morning in question the most

9   that can be said is that David and/or his friends

10   turned up at the house, picked up Shorty, and

11   left, nothing was important about that morning

12   until much later; would that be fair?

13   A   That's fair.

14   Q   I mean the first time the five-year-old might have

15   understood it to be an important morning would

16   have been maybe six weeks or more later?

17   A   That's fair, yes.

18   Q   Would you normally expect a five-year-old, six

19   weeks later, to remember a non-event?

20   A   Well yeah, I don't know what I would expect a

21   young child to remember, everyone is quite

22   different. But, you know, it is a young, tender

23   age, there is no doubt about it. There seemed to

24   be some things that he said stood out in his mind

25   when he was talking about, you know, a virgin and

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1   such that he said was foreign to him, this may be

2   a statement that stuck in his mind. But, you

3   know, I think it's -- it's like everyone 21 years

4   later, you know, what did they really know at the

5   time versus what they picked up along the way, so

6   it's difficult to --

7 Q Would you expect that --

8 A -- view it with finality in assessment.

9 Q Would you have expected the police to have talked

10   to him then?

11 A Possibly, if it was known that he had something to

12   say.

13 Q But, if they thought he had something to say, they

14   would have likely talked to him?

15 A I believe so, yes, if they thought he had

16   something to say or if they knew that he had some

17   information.

18 Q Okay. Now here he is -- and I'll turn to 001477

19   -- now here he is, in 1990, talking about his

20   memory of when he was not even six years of age;

21   you see? And now he can remember staying home

22   from school that morning and:

23   "When I heard a knock on the door,

24   Albert answered ... opened the door ...

25   and something like "Hoppy, how are you

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1   doing."

2   Now this is 20 years later, he remembered that 20

3   years later. Now:

4   "They seemed excited ... immediately

5   Milgaard either asked for a pair of

6   pants or he had his own, I'm not

7   positive ... but I faintly recall him

8   asking Albert for pants."

9   And it goes further:

10   "... 'what happened to your pants' ...",

11   "... 'I screwed a virgin' or 'I was with

12   a virgin' ...",

13   we're back on the preoccupation with virgins,

14   but:

15   "... I didn't know what a virgin meant

16   ..."

17   So he would have remembered something he didn't

18   even know what it meant, do you see that, a

19   five-year-old remembering a word he doesn't even

20   know what it means?

21   COMMISSIONER MacCALLUM: Whose report was

22   that, Mr. Wolch?

23   MR. WOLCH: Pardon me?

24   COMMISSIONER MacCALLUM: Whose report was

25   that?

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1   BY MR. WOLCH:

2   **Q**   That's your report, I'm sorry, is it not?

3   *A*   That's his statement.

4   **Q**   Yes. Just go to the last page of this. I'm sorry

5   Mr. Commissioner, go to the last page, it's

6   001480; this is witnessed by yourself?

7   COMMISSIONER MacCALLUM: Ken Cadrain's

8   statement?

9   MR. WOLCH: Yes.

10   COMMISSIONER MacCALLUM: Thanks.

11   MR. WOLCH: July the 18th of 1990.

12   COMMISSIONER MacCALLUM: Okay.

13   BY MR. WOLCH:

14   **Q**   So you've got a man now saying he can remember

15   back then, when he was five years old, something

16   that he didn't understand, that would have meant

17   nothing to him; would you not have looked at this

18   and say "this is not worth anything"?

19   *A*   I don't think I looked at it at the time as being

20   not worth anything, I think I looked at it at the

21   time as being worth something, you know. Even

22   though you are, in hindsight now you can go back

23   and say, "well at five years old what would he

24   know", you know, he was an adult giving a

25   statement and, you know, you assess whether or not

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1   it's got value or not, you know. It is a -- was a

2   tough call, but I mean I took at face value, what

3   he was saying.

4   Q   If you turn to 001478 he says:

5   "I was never interviewed by the

6   police.";

7   do you see that?

8   A   Yes.

9   Q   And so would you expect that, if he had something

10   to offer back then, the police likely would have

11   talked to him?

12   A   If they would have known that he had something, or

13   if he ever indicated through his family or as a

14   child or as a kid that was present when this was

15   all happening, that's a possibility. But, you

16   know, maybe he never had anything to offer then, I

17   don't know.

18   Q   Okay. The second issue that may have caused

19   concern to the Milgaard side was the Ben, Ben

20   Dozenko; do you recall him?

21   A   Yes.

22   Q   Put into a nutshell, this is a prison guard who

23   claimed he heard a confession from David?

24   A   Yes.

25   Q   Correct?

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1   *A*   Yes.

2   Q   This was a man who had, I believe, alcoholic

3   problems and mental problems?

4   *A*   Yes.

5   Q   You recall that?

6   *A*   Yes.

7   Q   He is also the man who David escaped from; were

8   you aware of that?

9   *A*   I don't recall that, but it's possible, yes.

10   Q   All right, yes, and you -- and there was

11   absolutely no record of him ever reporting David

12   for it?

13   *A*   I -- well, that was followed up, --

14   Q   Yeah.

15   *A*   -- I think that came through his book if I'm not

16   mistaken?

17   Q   Yeah, not a documented portion anywhere.

18   *A*   There was no documents that were ever located that

19   I know of.

20   Q   I mean when David wouldn't turn the radio off, he

21   reported that, he reported everything but this?

22   *A*   Right.

23   Q   And he had a grudge to bear. So that's the second

24   element.

25   And then we turn to Mrs. (V14)-,

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1   is the third element that would have caused

2   concern to the Milgaard side, and we dealt with it

3   a bit, a bit yesterday, and if we can turn to

4   009098. Now I know I asked you this yesterday,

5   but I just want to point it out, if we can get to

6   the -- that little portion there.

7   COMMISSIONER MacCALLUM: This is what?

8   MR. WOLCH: This is 009098, sir. This is

9   the statement of (V14)-- (V14) on May the 14th

10   1968 in (V14)---- district of Saskatchewan, or

11   near (V14)-- I guess, (V14)----.

12   BY MR. WOLCH:

13   Q   Now at the time of this incident David would have

14   been 15 years of age; do you accept that?

15   A   Yes.

16   COMMISSIONER MacCALLUM: Which incident do

17   you mean?

18   MR. WOLCH: The (V14)-, the one I'm looking

19   at now.

20   COMMISSIONER MacCALLUM: Oh.

21   BY MR. WOLCH:

22   Q   Now she says in her statement:

23   "I never once saw the culprit's face

24   ...";

25   wouldn't that end the matter in terms of trying

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1   to get an identification?

2   A   You mean back when the offence took place?

3   Q   Yeah. There is no reason for her to lie back then

4   or make things up, I mean --

5   A   No, no, I --

6   Q   -- in terms of she says, "I never saw it, I never

7   once saw his face".

8   A   Yeah.

9   Q   What possible benefit is any kind of

10   identification 20 years later?

11   A   Umm, only she can possibly explain that. Like I

12   say, through her difficulties, she was having

13   maybe she felt that she had to see him. I mean

14   she was telling me that, you know, the voice

15   sounded similar, there was some general

16   descriptors she was giving, but when I became

17   involved in this I think it's well-documented that

18   I believed that there were identity issues as

19   well. However, the only piece of evidence that

20   would have put any concluding marks on this would

21   have been through the blood analysis, and that was

22   the only real lead there was that might have put

23   some real firmness to what was going on here.

24   Q   Well you knew that David was always willing to

25   give blood for anything?

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1   *A*   Yes.

2   **Q**   He gave samples whenever asked, a sample could go

3   anywhere, --

4   *A*   Yes, yes.

5   **Q**   -- there was no problem there?

6   *A*   Yes.

7   **Q**   But what I am getting at is how could there be

8   voice identification, like --

9   *A*   I am not saying that there would ever be

10   identification. I think I pointed out to

11   Mrs. (V14)- that there would be identity problem

12   if she -- because she was talking about having a

13   private prosecution, she was consulting lawyers,

14   she was adamant that in her mind David Milgaard

15   was responsible, and as we talked before I think

16   that came -- that was implanted in her mind by

17   possibly the police that returned her exhibits

18   from this particular offence. And then because

19   her name came through the 690, and one thing led

20   to another, and she had told me that she had a

21   child born nine months later thinking it may be a

22   relationship to the assault, really the only link

23   that was available in my opinion was who fathered

24   the child, and that way that would maybe be

25   evidence that this same person committed this

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1   crime. That was really the only avenue that we

2   could pursue.

3 Q Well --

4 A As far as identity, there was identity issue, I

5   think it's well documented in my notes as well.

6 Q Well, might I raise this question with you.

7   David's face and body was on television and in the

8   papers on a regular basis at that point in time,

9   that is there were photographs of him as a

10   16-year-old in the paper on a fairly regular basis

11   and there were television documentaries that --

12   where he walks around and says things, I mean

13   surely she would have had access to all that to

14   see him?

15 A And that was the issue, that was part of the

16   identity issue, in that she was saying that it was

17   David Milgaard, and she had seen his picture in

18   the paper, and so all of those things became a

19   factor in saying, well, identity is an issue as

20   far as prosecution.

21 Q Well --

22 A And her counsel had contacted me I think on a

23   couple of occasions, because they were interested

24   in pursuing this, and I said -- I did indicate

25   that, you know, "there are some real problems

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1   here".

2   Q   As I understand it, though, she wanted to get from

3   Mrs. Milgaard a chance to view a picture of David?

4   A   I believe that's what she wanted.

5   Q   But those pictures were in the media on a regular

6   basis?

7   A   Yeah, and I don't --

8   Q   That's what I am trying to understand?

9   A   I don't know at what point she, you know, saw

10   photographs of David Milgaard. I mean, there was

11   lots going on that I, in her life that I certainly

12   wasn't up to speed on.

13   Q   Uh-huh. Yet we're talking about a person who,

14   supposedly, she never even saw. It's just quite

15   bewildering to me. But if we can look at

16   009581 -- I hope I have the right number, no, I

17   don't think I do, could you try 009587, yeah,

18   okay. This is an affidavit of Mrs. Milgaard which

19   was filed in the Supreme Court pursuant to the

20   reference and I'm interested, and I think it's

21   paragraph 16, here you have Mrs. Milgaard's

22   affidavit:

23   "Oh May 5, 1991 in the company of Paul

24   Henderson I interviewed (V14)-- (V14)-

25   ... in the bus depot in Regina. She or

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1   someone on her behalf had contacted

2   David Asper and myself claiming that

3   Ms. Bear had information relevant to the

4   case. When I met with Ms. Bear she

5   asked to see a photograph of David. I

6   presented her with a photograph and when

7   she saw it she said "it could be him but

8   his hair was longer and dirtier". The

9   picture I showed was that of Larry

10   Fisher. When I told her this she was

11   quite taken aback. The reason I showed

12   her Larry Fisher's picture was because I

13   did not trust her. She had asked to see

14   David in prison but claimed that she

15   could not bear to watch him on

16   television. This made me suspicious to

17   say the least."

18   Do you see, now, why there was some concern about

19   'what's this all about, it doesn't make any

20   sense'?

21   A   Well, you know, I guess there's two sides to what

22   went on here and only Mrs. Milgaard and Mrs.

23   (V14)- can probably, you know, enlighten anyone as

24   to what was going on. I think there are some

25   differences in how they said their contact was

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1   and, you know, you could -- I'm reading what I say

2   here and I take that as fact, but it also has some

3   differences as to what Mrs. (V14)- says in her

4   statement to me, so, you know, there are some

5   differences.

6 Q   Keeping in mind Mrs. (V14)- is a lady who says she

7   never saw the person to begin him, she's had

8   alcoholic problems, she's had mental problems.

9 A   She has difficulties, yeah.

10 Q   And I appreciate how sensitive you are to them,

11   and you should be commended as I say, but there is

12   a degree of unreliability to her obviously?

13 A   Potential, yes.

14 Q   So my point is this, that with the application

15   going forward, I want to ask you if you can sense

16   the frustration that from the applicant side you

17   have highlighting the matter the recantation of

18   Wilson, you have the identification of Fisher, you

19   have what appears to be not much of an

20   investigation of Fisher by Justice in terms of

21   going through his victims, similar act analysis,

22   doing some real good police work and some good

23   work, and what you have really is a focus on a six

24   year old, or a five year old evidence, of a child,

25   a prison guard who has no credibility and no

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1   record of whatever he says, and a woman who never

2   even saw her assailant, so can you sense the

3   frustration from the other side, that here's real

4   evidence we're giving to you and you are off on

5   this tangent of trying to find anything you can to

6   maintain the status quo?

7   A   I don't think that's accurate at all really, I

8   don't think there was any tangent that was trying

9   to close the door on David Milgaard, I really

10   don't believe that.

11 Q   Not on your part.

12 A   I think, you know, when Larry Fisher came into

13   this, and I said many times and it's well

14   documented, my reports say the same thing, that he

15   was a good suspect, and that's kind of the

16   position I was taking because I honestly believed

17   it, and I really had nothing in my mind to try and

18   shut the door on David Milgaard. Information came

19   through from all sorts of different sources and

20   you assessed it and you reported it and you could

21   look back in hindsight and say, well, you should

22   have spent more time on this and less on that, but

23   that's just the way investigations are, and to say

24   that there was any effort on my part, I'll take

25   exception to that because I think I was

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1   open-minded and I was quite prepared to take this

2   wherever it may go and I will definitely never say

3   that David Milgaard was someone that we tried to

4   close the door on.

5 Q   I didn't say we. What I'm saying to you is this,

6   it would have been so much better if you were

7   heading an investigation and you could focus on

8   priorities such as Fisher's M.O. and could have

9   said to a junior constable, look, go check out the

10   five year old, go check out this, go check out

11   that, and I'll prioritise what I think has a

12   greater semblance of credibility to it, that's all

13   I'm suggesting.

14 A Okay. I agree with that.

15 Q You buy that?

16 A I buy that.

17 Q The very last matter I want to talk to you about

18   are the theories you developed, and when you

19   developed these theories, what was your purpose at

20   that time?

21 A I think that came to a conclusion at the end of my

22   involvement and it was something to be documented

23   to maybe assist in further consideration as part

24   of the investigation. It was information that had

25   floated around out there as far as how could this

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1   possibly have been committed and looking at how

2   could you possibly develop some evidence and how

3   could you link Larry Fisher to Gail Miller and the

4   purpose was to potentially look at this in a

5   different light, and, you know, we talk about the

6   similarities, how Fisher operated, and much of the

7   crime scene would fall into the similarities of

8   how Larry Fisher operated, but at the same time,

9   just to try and, again, going back to that time,

10   not having clarity as to how he could be involved,

11   it was potentially a way to look at it

12   differently, and again, not just Larry Fisher, but

13   looking at it based on the fact that David

14   Milgaard was also in the system.

15   Q No, and I commend you for doing it, I'm sure it

16   was quite a bit of work. You did it obviously

17   after the Supreme Court?

18   A It was typed up, so to speak, or formalized. I

19   think it was unfolding as time went on.

20   Q Did you attend the Supreme Court at all?

21   A No, I didn't.

22   Q Was there any reason for that?

23   A I was -- why I didn't as a witness or just to --

24   Q No, no, I mean to watch. You put considerable

25   effort into it. I would have hoped you would be

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1   there to watch and give guidance.

2   A   Yeah, I suppose if I would have been asked or

3   invited, but again, I was involved with lots of

4   things and it's not something that I can recall

5   wanting to attend. It's not that I didn't want

6   to, it's just something that life was moving on

7   and I was working and I never considered going as

8   a participant, or as a spectator.

9   Q   But having -- well, more than a spectator, I'm

10   thinking why you wouldn't be there to be a

11   resource person. In an ideal world surely having

12   an RCMP officer as a resource person who knows the

13   case can see that something is being missed or

14   something has been misunderstood or for that

15   purpose it would surely have been useful?

16   A   Well, as close as I got was submitting questions

17   that could pose, potentially be asked of Larry

18   Fisher to try and -- like I say, yourself and all

19   the other counsel, you had a chance to go at him

20   at the Supreme Court and you got closer to him

21   than I as a policeman would probably ever get

22   based on the fact that there would be legal

23   counsel between me and him, so that was the

24   opportunity. If he was ever going to provide

25   anything that would be incriminating or whatever,

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1   enlighten us as to how he may have been involved,

2   I think this was the opportunity, so to speak, but

3   at the end of the day, you know, I think we all

4   know he wasn't going to say anything.

5   Q   No, but I think, you know, with the benefit of

6   hindsight, it would be a good idea if you were

7   there to watch it as the investigator and be able

8   to forward the investigation, but I want to get

9   into your theories, and I thought about a method

10   of doing it, and rather than go through an awful

11   long background, I think I can -- I would like you

12   to look at a video that will speed things up

13   considerably. Have you ever seen the video from

14   the Supreme Court?

15   A   I never have, no.

16   Q   I would like you to see this and then I'll go into

17   your theories, and this will compress an awful lot

18   of material into one thing if I may.

19   A   But if I just, if I may, I mentioned this before,

20   in the theories, I mean, it's just a theory, they

21   could both be wrong, and if one happens to be

22   right, the other one is obviously wrong, so it

23   really --

24   Q   Oh, no, I agree with you on that, but the point

25   I'm going to get to at the end is how much more

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1   valuable it would be if you had input, you know,

2   back to your around-the-table position, that if we

3   didn't look at this adversarially perhaps, but

4   looked at it as people working together to figure

5   something out, and if you can watch this for the

6   first time, I will then go to your theories and it

7   will save me a lot of time.

8   A   Okay, sure.

9   COMMISSIONER MacCALLUM: You haven't seen

10   it before?

11   A   I haven't seen it before.

12   MR. WOLCH: It's not too complicated, but

13   if we can just put that on.

14   TRANSCRIPT OF NARRATION OF VIDEOTAPE REENACTMENT

15   "A single portrayal of the evidence

16   given at the trial of David Milgaard in

17   January of 1970 is virtually impossible

18   because of the many conflicting versions

19   given by the witnesses Nichol John and

20   Ron Wilson. This videotape attempts to

21   provide the viewer with a sense of the

22   area in which the crime occurred, and to

23   portray the alleged encounter with Gail

24   Miller.

25   It was unclear as to whether

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1   this alleged encounter occurred on

2   Avenue O or Avenue N between 21st and

3   20th Streets in Saskatoon, so both

4   versions are shown.

5   In the case of the encounter on

6   Avenue N, reliance was placed on the

7   statement given by Nichol John on May

8   24th, 1969, although her evidence was

9   considerably different at the trial.

10   In his closing address to the

11   jury, the Crown Attorney said the

12   following:

13   "Now, I'd like first to outline the

14   Crown's theory of the offence. The

15   evidence is that the girl, Miss Miller,

16   was standing at her residence home, 130

17   O South between, as I get it, 6:35 and

18   6:45 the morning of the murder. It must

19   be inferred that she set off on foot for

20   the bus line on 20th down either Avenue

21   P - excuse me, Avenue O or Avenue N, one

22   or the other. She had to go south from

23   her residence, and the Crown suggests on

24   the evidence that it was down Avenue N

25   proceeding southward on the west side of

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1   that avenue, proceeding towards 20th

2   Street where the bus line is."

3   Although the Crown committed

4   itself to the theory that Milgaard's

5   encounter with Gail Miller occurred on

6   Avenue N, this passage from the jury

7   address shows that the Crown also had to

8   allow for the possibility of an attack

9   on Avenue O.

10   Let us begin with an

11   examination of the Avenue O theory.

12   Gail Miller lived at 130 Avenue

13   O South which was slightly over one

14   block in a straight line from a bus stop

15   located on the southwest corner of

16   Avenue O and 20th Street. There was

17   also a bus stop located at the corner of

18   Avenue N and 20th Street. If Gail

19   Miller were to take the bus to work

20   along 20th Street, common sense suggests

21   that she would take the most direct

22   route to the bus stop, straight along

23   Avenue O to 20th Street.

24   As we see in this portrayal,

25   Gail Miller would leave her home from

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1   the front door and would have the option

2   of crossing over to the west side of the

3   street, either at 21st or when she

4   reached 20th Street. Here we see her

5   crossing over to the west side of the

6   sidewalk at 21st Street and then

7   proceeding south.

8   At this point, according to the

9   Crown theory, she would be stopped by

10   the Wilson vehicle and Milgaard would

11   ask her for directions.

12   "Hi. Do you know how to get to

13   the Peace Hill area?"

14   "No, I'm sorry."

15   "Stupid bitch."

16   Ms. Miller would then continue in a

17   southward direction towards 20th Street

18   and, according to Wilson and John, they

19   also proceeded in a southward direction,

20   arriving at an intersection on a street

21   with a center boulevard. Although 20th

22   Street has never had a center boulevard

23   or any sort of median, the Crown

24   nevertheless insisted that the street on

25   which the U-turn was made was 20th

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1   Street. Here we see the point at which

2   the car has reached the intersection and

3   begun its U-turn as well as the location

4   of Gail Miller, given her forward

5   progress, after the encounter with the

6   vehicle.

7   The evidence at trial disclosed

8   that once the U-turn was three-quarters

9   completed, the car became stuck and

10   Milgaard and Wilson got out of the car

11   and spent a considerable period of time

12   trying to get it unstuck. By the time

13   the decision was made for Milgaard and

14   Wilson to get out of the car and try to

15   push it, Gail Miller would have already

16   arrived at the bus stop on Avenue O and

17   20th. The evidence that Milgaard left

18   on foot to get help toward where the

19   girl had been walking in this version

20   removes the possibility of an encounter

21   with Gail Miller on foot. The alleged

22   encounter with Gail Miller on Avenue O

23   is simply not possible.

24   Moreover, David Milgaard was

25   looking for St. Mary's Church as a

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1   landmark to guide him to Cadrain's home.

2   Albert Cadrain lived one block south of

3   St. Mary's Church and, if this alleged

4   encounter had occurred on Avenue O, then

5   the Wilson vehicle would have been stuck

6   not more than 50 feet from this rather

7   imposing landmark, a landmark which, at

8   approximately 9:00 a.m. on the morning

9   of January 31st, 1969, in fact did guide

10   Milgaard to the Cadrain home.

11   The Avenue N theory evolved as

12   a result of the statement given by

13   Mr. Henry Diewold who was the caretaker

14   of St. Mary's Church. Diewold testified

15   that he walked from the rectory of the

16   church to the church itself at

17   approximately 7:00 a.m. and as he walked

18   he had a clear view into the east-west

19   portion of the T-shaped alley. He said

20   that he saw lights of a car positioned

21   at approximately the stem of the T in

22   the alley which would be approximately

23   at the point where the police vehicle is

24   positioned in this photograph. As he

25   returned from the church to the rectory

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1   at about 7:10 a.m. he saw the lights

2   again and saw a figure pass back and

3   forth in front of the lights.

4   The evidence of Marie Indyk

5   suggests that either she or Mr. Diewold

6   is mistaken about the time. In order to

7   connect this car with the murder and

8   with Wilson, John and Milgaard, the

9   Crown had to explain how it would have

10   been in the alley facing in a westerly

11   direction. The way that this was done

12   was to place Gail Miller walking in a

13   southward direction on Avenue N headed

14   towards the bus stop at 20th Street.

15   Here we see a portrayal of the

16   route that Gail Miller would take to

17   come directly out of her front door,

18   head south on Avenue O to 21st, then

19   east on 21st to Avenue N, then south on

20   Avenue N toward 20th. With temperatures

21   hovering about minus 40 Fahrenheit, it

22   is difficult to conceive of why anyone

23   would take the longest route possible to

24   a bus stop. In any event, as Gail

25   Miller proceeds south on Avenue N, we

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1   see and hear the alleged encounter with

2   her.

3   "Hi. Can you tell me how to

4   get to Pleasant Hill or downtown?"

5   "No, I'm sorry."

6   "Can we give you a ride

7   somewhere?"

8   "No, thank you."

9   "Stupid bitch."

10   Her response to the trio is inconsistent

11   with someone who had lived in the area

12   for several months, although at the

13   trial Nichol John testified that after

14   the encounter the vehicle went to the

15   intersection, made a U-turn, got stuck,

16   then got unstuck, then completed the

17   U-turn and pulled over toward the curb

18   before entering the alley behind the

19   funeral home. In her statement of May

20   24th, 1969 she told the police that

21   after the alleged encounter the vehicle

22   turned directly into the alley where it

23   became stuck. She described a period of

24   time spent trying to get the vehicle

25   unstuck with Milgaard and Wilson in the

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1   vehicle. She then described both of the

2   boys getting out of the car, trying to

3   push and then ultimately going to seek

4   help.

5   As we see in this portrayal of

6   that statement, Gail Miller is long past

7   the car and the entrance to the alley

8   before either Wilson or Milgaard leave

9   the vehicle. The Crown's theory of how

10   this crime occurred did not account for

11   the forward progress of Gail Miller

12   because in this, the most damaging

13   scenario for Milgaard, Gail Miller is at

14   20th Street and, according to Nichol

15   John's trial evidence, a considerably

16   longer period of time was spent at the

17   intersection and at the curb before

18   actually heading into the alley. An

19   encounter with Gail Miller by Milgaard

20   after leaving the vehicle to seek help

21   was simply not possible.

22   In spite of this, Nichol John

23   then stated that she saw Milgaard

24   encounter the woman that they had asked

25   for directions, grab for her purse,

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1   struggle and then draw with his right

2   hand a knife and begin several stabbing

3   motions at this woman. He then

4   supposedly dragged or moved this victim

5   into the east-west portion of the alley,

6   ultimately disappearing, as we see, to

7   the right into the north-south portion

8   of the stem of the T toward where the

9   body of Gail Miller was ultimately

10   found.

11   Nichol John's recollection is

12   fuzzy after this point. She claims that

13   she then ran from the car, came back to

14   the car and saw Milgaard at the T

15   portion of the alley depositing a purse

16   in a garbage can. Somehow both he and

17   Wilson were then back in the car and

18   inexplicably it became unstuck and they

19   drove away enroute to the motel, the

20   Danchuks and then Cadrains.

21   Aside from the fact that Gail

22   Miller's forward progress would have

23   precluded an encounter with Milgaard and

24   assuming that the car was stuck in this

25   area, there are several other factors

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1   which defeat this theory.

2   First, Gail Miller was stabbed

3   through her coat and not her dress.

4   This means that Nichol John would also

5   have needed to see David Milgaard remove

6   Gail Miller's coat, take her dress down

7   around her waist, replace the coat and

8   then stab her.

9   Also, the police identification

10   officers testified that there was no

11   sign of a struggle beginning at one

12   point and leading to where the body was

13   found and, in particular, there was no

14   blood in the snow.

15   In addition, identification

16   officers testified that there were no

17   signs of a car having been stuck

18   anywhere in the east-west portion of the

19   alley.

20   The Avenue N theory, according

21   to the most damming version, Nichol

22   John's May 24th, 1969 statement, simply

23   does not work, and works even less so on

24   the basis of Nichol John's evidence at

25   the trial.

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1   The stunning aspect of this

2   case is that the Crown had substantial

3   information in its possession not

4   apparently disclosed to the defence

5   which conclusively establishes the

6   fiction of the Avenue N theory.

7   1. Adeline Nyczai provided a

8   statement or January 31st, 1969 stating

9   that she saw Gail Miller alive between

10   6:35 a.m. and 6:45 a.m. dressed for work

11   but without her coat on. She stated

12   that Gail Miller usually left for work

13   before 7:00 a.m. This witness testified

14   at the trial.

15   2. Ann Friesen, another of

16   Gail Miller's roommates whose statement

17   apparently was not disclosed, said on

18   January 31st, 1969 that Gail Miller left

19   every morning between 6:40 a.m. and 6:45

20   a.m., walked straight south on Avenue O

21   to 20th Street and left by the front

22   door.

23   3. Betty Hundt, another

24   roommate, provided a statement on

25   January 31st, 1969 stating that Gail

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1   Miller left every morning at 6:45 a.m.,

2   going out the front door, and Miss Hundt

3   believed that Gail Miller walked south

4   on Avenue O to 20th Street.

5   4.   According to a witness by

6   the name of Mary Gallucci on the day

7   before the murder, a pretty nurse

8   travelled south on Avenue O to the bus

9   stop at 20th. This is consistent with

10   the statements of Nyczai, Friesen and

11   Hundt. Mrs. Gallucci also observed a

12   construction worker wearing a yellow

13   hard hat would come from south of 20th

14   Street to the bus stop on Avenue O at

15   approximately 6:45 a.m.

16   5.   At 226 Avenue N South Mr.

17   and Mrs. Arthur Merriman were waiting

18   for a taxi that they had ordered for

19   6:55 a.m. looking out their front window

20   directly at the spot where Nichol John

21   claimed that the car became stuck. They

22   saw nothing.

23   6.   Through the disclosure

24   process, the reference case contained

25   statements of many people who were out

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1   on the streets in the vicinity of the

2   crime. No one saw a vehicle stuck and,

3   if Wilson and John are to be believed

4   that the car became stuck at the

5   intersection of Avenue N and 20th, a

6   considerable amount of traffic,

7   including city busses, would have had to

8   circumvent the car. The notion that

9   neither Milgaard nor Wilson was able to

10   find any assistance to get the car

11   unstuck is simply untenable.

12   7. George Jones, a student who

13   lived on the southeast corner of Avenue

14   N and 20th Street, left his home a few

15   minutes after 7:00 a.m. and walked north

16   along Avenue N to 22nd Street past the

17   funeral home and the back lane. He saw

18   nothing.

19   8. Another witness interviewed

20   by police who lived at the southwest

21   corner of Avenue N and 20th Street drove

22   his truck north on Avenue N from 20th to

23   22nd Street past the funeral home and

24   the alley at approximately 7:00 a.m. He

25   saw nothing.

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1   Several independent witnesses

2   failed to corroborate the Avenue N

3   theory. In fact, they contradicted it.

4   The conclusion is that it, like the

5   Avenue O theory, must fail.

6   Consequently, there is no

7   credible evidence placing Milgaard at or

8   near the scene of the crime when Gail

9   Miller was killed."

10   VIDEOTAPE ENDS

11   BY MR. WOLCH:

12   Q   Mr. Pearson, when you did your theories, you

13   hadn't even known of the existence of this tape I

14   take it?

15   A   I don't -- I don't -- I've never seen the tape

16   before, this is the first time I've ever seen it,

17   and there was some indication out there that a

18   tape had been made or was being made. When I

19   first became aware of it, it may be a reference in

20   my notes. I just don't recall offhand.

21   Q   That tape might have been useful to you in

22   preparing your theories?

23   A   Certainly. I think all the information that was

24   analysed and dealt with certainly would have

25   been --

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1   **Q**   I think we're getting back to the point of lack of

2   communication.

3   *A*   Yes.

4   **Q**   This is what you've been talking about from the

5   beginning, is there doesn't seem to be or wasn't

6   any flow of information among the parties. For

7   example, you wouldn't have known about the tape in

8   the Supreme Court, the Milgaard people wouldn't

9   have even know you were doing theories?

10   *A*   That's right. That's correct.

11   **Q**   And everybody is in the dark of what everybody

12   else is doing, and much of what's on that tape,

13   for example, the people in the neighbourhood,

14   would you have been aware of that, the Merrimans

15   and the Joneses that you saw on the tape?

16   *A*   There was a lot of information on there, other

17   information I suppose you could apply that maybe

18   would add to the theory or detract from the

19   theory, you know, there was quite a lot of

20   information from people who had been in the

21   general area and had seen circumstantial things

22   going on, so again, this was a theory. Again,

23   what's the real, the real answer here, you know,

24   this theory doesn't add, doesn't answer that, it's

25   a theory, and Mr. -- it looks like the conclusion

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1   of the Crown's case, again they even use the word

2   theory, so everybody is theorizing here trying to

3   apply all the circumstances and facts to see whose

4   got the strongest theory, but in actuality, you

5   know, there was no stamp of finality to this.

6 Q But the better -- the better the known facts, the

7   better the theory?

8 A That's fair, yes.

9 Q Okay. Let's look briefly at 008894. Now, your

10   theory, if I can get to that part of it, is

11   predicated on the youngsters driving south on

12   Avenue N and Miller going south on Avenue N?

13 A That's the -- that's right.

14 Q Why would you put her on Avenue N?

15 A And again we're getting into what fits in here for

16   discussion purposes, for investigative purposes,

17   to -- I think there was, there still is some

18   confusion as to where they were stuck. I'm not

19   sure that's really clear where the car was stuck,

20   just my recollection of it, so for Gail Miller,

21   the possibility at the time that I was doing this

22   was that she could have possibly went out the back

23   door and was walking out the alley entrance and

24   could have been intercepted, and for that to

25   happen and the lights being seen in the alley by

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1   Mr. -- I think Mr. Diewold, there had to be an

2   approach from that street, and again that's a

3   theory.

4   Q   But your theory is based on the car never being

5   stuck?

6   A   Pardon me?

7   Q   Your theory is based on the vehicle never being

8   stuck?

9   A   I guess so, yes, because I don't think we knew,

10   correct me if I'm wrong, where this vehicle really

11   was stuck.

12   Q   Or if it was at all?

13   A   If it was at all.

14   Q   Yeah. If you go to 008898, you are going on the

15   premise that the vehicle was never stuck at the

16   location and then you explain why you've come to

17   that conclusion, but you are basing it on the idea

18   that the vehicle was never stuck, and I suggest

19   that the problem you had was getting the vehicle

20   to the T part of the alley.

21   A   Yes, that's possible.

22   Q   That threw it out if you are stuck at -- if you

23   are stuck in the entrance, then Diewold is not

24   seeing the vehicle at the T of the alley and

25   becomes very improbable.

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1   *A*   Yes, I think that's accurate.

2   **Q**   Now, believe me, I'm not being critical --

3   *A*   No, no.

4   **Q**   -- you are doing your best effort, but I guess the

5   point I'm making is a lot of material you wouldn't

6   have had that would have caused you difficulty as

7   you see the film, you have the roommate saying she

8   walks down Avenue O to the bus stop, logic

9   dictates that, you have the Merrimans at the

10   corner waiting for a cab, you have all that.

11   *A*   And that's true. I mean, if I had the benefit of

12   all the hindsight and all the information --

13   **Q**   Oh, sorry --

14   *A*   -- and all the thought processes there and I guess

15   part of it is time as well to put all this

16   together, you certainly would have developed this

17   maybe differently or in more detail or maybe you

18   would have concluded the fact that this just

19   absolutely doesn't work and it couldn't be a

20   theory that had any merit, so a lot of factors

21   come into play.

22   **Q**   I only take exception to your use of the word

23   hindsight. This was all available, it simply

24   wasn't brought to your attention, that is the

25   problem.

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1   *A*   All right.

2   **Q**   And that's I think one of the main flaws of what

3   occurred here, is that good investigators like

4   yourself weren't given the tools to work with, you

5   didn't have RCMP reports, you didn't have witness

6   reports, it's like you are creating something here

7   to the best of your ability, but you haven't got

8   the tools or the information. That is the real

9   flaw here isn't it?

10   *A*   Well, as I mentioned many times, I think in all of

11   this the, putting all the people together and

12   pooling your information for the common purpose

13   here is something that was necessary and is

14   necessary, and whether the process has changed now

15   today, I'm not sure, you know, for these 690

16   reviews.

17   **Q**   You sure hope it has don't you?

18   *A*   Well, I haven't been following it, but I would be

19   very disappointed if there hasn't been changes.

20   **Q**   Then if I can go to the other theory then, 008902,

21   this would be the other theory --

22   *A*   Yeah.

23   **Q**   -- and if you can go to the next page -- bear with

24   me for a second here. If you look at the top

25   here:

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1   "Upon departing from her residence, Gail

2   Miller was approached by Fisher and,

3   under threat of bodily harm, forced into

4   a car which was parked nearby."

5   And you give your basis for that and you point

6   out that Larry had access to Cliff Pambrun's car.

7   If we can just go down to (c):

8   "Under threats of bodily harm ... Fisher

9   forced Miller into a car and was driven

10   south on Avenue N, then turned right

11   into the alley behind the funeral home."

12   My question to you is why would it be Avenue N,

13   like, why in the Fisher theory do you put the car

14   driving down Avenue N?

15 *A*   I think to tie in the lights being seen in the

16   alley.

17 **Q**   Well, couldn't the car go down Avenue O into the

18   alley?

19 *A*   I suppose it could go a number of places, but my

20   theory is, you know, it went down N.

21 **Q**   And your theory has Gail Miller forced into the

22   car on Avenue N; would that be right?

23 *A*   Well, she could have been forced into the car any

24   time she came onto the street, wherever the car

25   was parked, he could have cut her off at the alley

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1   or cut her off when she came out the front door.

2   Q   Okay. Had you considered the following

3   possibility, I'll give you two, that Fisher waited

4   in front of the Miller home, he knows she goes to

5   the bus?

6   A   In a car?

7   Q   In a car.

8   A   Yeah.

9   Q   Saw her leave, drove down to the alley, parked in

10   the alley and then approached her in the lane when

11   she passed the lane to get to the bus the usual

12   way she walked and dragged her into the alley

13   towards his car, the approach being much the same

14   as with most of his victims? Do you follow that?

15   A   Yeah.

16   Q   That would be a simple way?

17   A   I think even in your video there, you indicated

18   there was no sign of a struggle.

19   Q   There doesn't have to be a struggle with a knife

20   to her throat.

21   A   Well, dragging her in the alley or whatever.

22   Q   Directing her.

23   A   I suppose the other theory, if we want to keep

24   talking about theories and what potentially could

25   have been, I suppose she could have been walking

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Rick Pearson
by Mr. Wolch
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1 down the alley, you know, maybe she always was in

2 the alley, but, I mean, where do we go with the

3 theories.

4 Q Well, we have roommates who say she walked down

5 Avenue O and that's logic?

6 A Yes, yes.

7 Q But -- or the other scenario is that Fisher just

8 parked his car in the alley and waited for her to

9 pass the alley on her way to the bus, which is

10 quite simple and easy to do.

11 A Yes, that is another possibility, yes.

12 Q Quite a realistic possibility isn't it, quite

13 simple and uncomplicated and --

14 A And what is the real answer here, I don't know,

15 but it's a possibility, because these are

16 theories, Mr. Wolch.

17 Q We know he did it, so --

18 A Yeah.

19 Q We know she walks down Avenue O and we know his

20 M.O. is to drag women into alleys or direct them

21 into alleys at knife point.

22 A That's right.

23 Q You know, it does make a bit of sense.

24 A And of course we're using a theory here that a car

25 was involved, but again, when we start talking

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1   about the real application of his similarities,

2   you would think maybe there was no car involved.

3 Q Except in 40 below there might be a change of

4   circumstance?

5 A Possibly, but of course these weren't very normal

6   behaviours to begin with and then you throw into

7   the mix here (V4)---, you know, I mean, there were

8   so many variables here that we're all scratching

9   our head aren't we.

10 Q No.

11 A Well, not now because we know the answer, but at

12   the time.

13 Q What I'm suggesting is after the incident he drove

14   the car back to Pambrun's, the direct route from

15   Pambrun's to his home would have passed (V4)---

16   and he grabbed at her. That's a very

17   logical conclusion isn't it?

18 A That is a possibility.

19 Q A very real possibility; would you give me that?

20 A Well, there's a pretty tight time frame between

21   (V4)--- and Miller and driving the car home and

22   walking back, I'm not sure how much variance there

23   is, but in my recollection it's a pretty tight

24   time frame, but it's possible.

25 Q In terms of tight time frame, we've heard from a

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1   number of witnesses that, you know, you have to

2   give latitude on times, people have different

3   watches, different recollections of time?

4   A   Sure.

5   Q   There's some variables, and in fact in the David

6   Milgaard theory, he was able to be across the

7   city, a much further distance in the same time

8   frame roughly?

9   A   Yeah, I agree.

10   Q   And the final small point I want to bring to your

11   attention or have you comment on is document

12   062884. Now, this is the superintendent's

13   comments on your two theories and he -- if we can

14   go to the top perhaps for a second if you don't

15   mind. This is a report prepared -- who would this

16   be?

17   A   That's a report that's going to Regina

18   headquarters to the officer in charge of criminal

19   operations and it's being authored by

20   Superintendent Goodman down on the right-hand

21   bottom.

22   Q   And he says the Milgaard/Wilson/John car theory,

23   and that's your theory of them all being involved,

24   etcetera, etcetera, would seem more plausible.

25   "I doubt Fisher would seek out another

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1   victim having just completed a sexual

2   attack which culminated in murder."

3   Had you seen that comment before, or have you

4   seen it before?

5   A Well I don't recall, you know, I -- that was

6   something that was put on there after it left my

7   office, but --

8   Q Yeah. Have you ever done a study of the -- of how

9   a punishment rapist thinks, or carries on, or --

10   A No, I haven't.

11   Q Okay. Do you accept the suggestion that it's

12   unlikely that Fisher, having just been sexually

13   satisfied, I suppose, would still bear some

14   aggression to women, and might attack another one

15   would be remote, or do you ascribe to that?

16   A I think, you know, I think there's more than, more

17   than sex involved here. When you take a look --

18   Q Of course.

19   A -- at the way he strikes fear and threats and

20   aggression, and the undressing and the

21   humiliation, and, you know, there is a lot more

22   than, I think, --

23   Q Yes, of course.

24   A -- more than sex.

25   Q And do you think that, once he is finished

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1   murdering, he is suddenly Mr. nice guy and back to

2   normal?

3   A   It may change him, I really don't know, like I --

4   Q   There could be a period where he is still in that

5   state where he could attack another woman very

6   easily?

7   A   That's, you know, I'm sure there are experts that

8   could probably enlighten us on that, but that is a

9   possibility, Mr. Wolch.

10 Q   Sure. Mr. Pearson, those are my questions for

11   you, and I, once again I want to thank you for the

12   efforts you put in in this matter and I, I

13   certainly heartily endorse your suggestions about

14   what could be done to improve in the future.

15   Thank you very much.

16 A   Thank you, Mr. Wolch.

17   **BY MS. McLEAN**:

18 Q   Unless somebody else wants to fill in for 20

19   minutes? No?

20   Good morning, sir. My name is

21   Joanne McLean, I represent Joyce Milgaard.

22   Primarily what I want to talk to you about is

23   systemic issues.

24   Now you've told us very

25   candidly, and you've said it several times, that

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1   you had, throughout your investigation, a real

2   faith in the system, and you were influenced to

3   some extent, or consoled perhaps to some extent,

4   by the fact that David Milgaard had been convicted

5   by the Canadian justice system?

6 *A*   I think that's fair, yes.

7 *Q*   And I guess you were probably even more consoled

8   or believed more in it because it had been through

9   the appellate process?

10 *A*   I'm not sure I broke it into stages. I just felt

11   that it had been through the justice system and

12   had been reviewed by, you know, a lot of people

13   with knowledge and expertise, and made a decision,

14   and I had some confidence in that.

15 *Q*   And your faith in the system is predicated on such

16   basic things like getting a fair trial; right?

17 *A*   Yes.

18 *Q*   And it's predicated, also, on a jury having heard

19   all the relevant evidence and decided beyond a

20   reasonable doubt that a person is guilty?

21 *A*   That's fair, yeah.

22 *Q*   And they'd reached their conclusion beyond a

23   reasonable doubt, and beyond that the system will

24   catch mistakes on appeal either to the Court of

25   Appeal of the province or to the Supreme Court of

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1   Canada, yes?

2   A   Yes, that's part of our system.

3   Q   Now you didn't know -- but, it's not only a part

4   of our system, but it's a part of why you had

5   faith in the system?

6   A   Absolutely, yes.

7   Q   Now when you started this you didn't have much

8   faith -- or much information about the Section 690

9   process; did you?

10   A   No, I didn't.

11   Q   And you'd never been involved in one?

12   A   Before this, no.

13   Q   Have you since?

14   A   No.

15   Q   Okay. Had you -- have you known anything about

16   Section 690; did you know it existed?

17   A   Umm, I think I knew it existed, I think I knew

18   there was a process for dealing with this

19   situation, but really having put much thought into

20   it or know much about it, I really can't say I

21   did.

22   Q   Okay. Did you have a basic understanding that it

23   would have existed as a means to address potential

24   miscarriages of justice?

25   A   Yes, I think so.

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1   Q   And those would be miscarriages which occurred

2   despite findings of juries and despite appeals,

3   there could still be someone in jail that didn't

4   belong there?

5   A   Oh yes, I think it was recognized that, you know,

6   it was a system run by people, and we all make

7   judgement calls, and sometimes they are wrong.

8   Q   Okay. Back in 1990, when you started on this,

9   there really wasn't a lot of knowledge about

10   wrongful convictions in Canada; was there?

11   A   I don't believe there was. I mean there were a

12   few cases out there, I could talk to you about the

13   *Truscott* case had been there for many many years,

14   but no, --

15   Q   Uh-huh?

16   A   -- you are right, there wasn't a lot of things

17   happening at that time.

18   Q   And the *Truscott* case is still out there 15 years

19   later and still not acknowledged to be a wrongful

20   conviction, correct, by the system?

21   A   Uh-huh.

22   Q   Back in 1990 we had the *Marshall case*, which had

23   been acknowledged as a wrongful conviction, and

24   you are aware of that in Nova Scotia?

25   A   Yes.

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1 Q And the next case that came out that caused a

2 great deal of publicity was the *Morin* case, but

3 back in 1990 he had not yet been wrongly

4 convicted, he was rightfully acquitted in 1990 but

5 he was still waiting for his trial which he was

6 convicted in '92.

7 A Okay.

8 Q Now in the 15 years since 1990 there have been a

9 lot of cases, and we know a lot more now about the

10 process of wrongful conviction, and the fact that

11 they really do happen and they are more common

12 than everybody thought; would you agree with that?

13 A Umm, I think there are quite a few cases out

14 there, yes, I do agree. There have been a number

15 of them exposed that are going through the system,

16 and I'm going now from through media, now whether

17 that's accurate or not, but that's what my source

18 is, reading like the general public do.

19 Q Okay. I mean you'd agree that sometimes a

20 wrongful conviction could be caused by something

21 that is not disclosed or not known at the time of

22 the trial?

23 A Yes, I think, I think disclosure is an issue, like

24 I say, putting all the information out there. And

25 I think the Supreme Court has recognized that

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1   through *Stinchcombe*, when they made their ruling,

2   --

3   Q   Uh-huh?

4   A   -- and that has certainly changed tremendously the

5   way information is shared for the benefit of

6   everyone. So that was, I think, a step forward,

7   and that was a case that came into play after

8   1990. And again, when you start talking about the

9   value of forensics, I think the most wonderful

10   development that we have had is DNA. That's, you

11   know, answered so many questions over issues that

12   we, as human beings, have in trying to interpret

13   the circumstances, and we need help, and DNA has

14   been a great help there.

15   Q   So we need something that's akin to a 690 process,

16   we need something that, that's like a Court of

17   last resort for people that have not succeeded in

18   having their appeals heard but who have some

19   problem with their conviction; agreed?

20   A   Well I think, you know, there's probably two

21   issues here; one is why are people wrongfully

22   convicted in the first place.

23   Q   Yes.

24   A   You know, is there something wrong with that

25   process.

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1   Q   Yes.

2   A   You know, we have this inherent right to remain

3   silent, and this is built into the way we do

4   business, and there's some fundamental processes

5   that we go through that maybe causes some harm

6   sometime. And I think, when you look at the

7   fundamental way that we administer justice, there

8   is some potential, maybe, that could ensure that

9   wrongful convictions don't happen as often as

10   maybe they are occurring, that ...

11   And the other part, of course,

12   is that, once there is a wrongful conviction or a

13   suspicion of wrongful conviction or new evidence

14   that may come to light, which is where we are at

15   with the 690, then there has to be a process which

16   is open and which has to, if we're to talk about

17   any adversarial parts of the system have to be

18   discarded, and we really have to, you know, get

19   around the table and make sure that this is

20   addressed, and that's the process, I think, that

21   has to be transparent and open and all those other

22   things that we talked about.

23   Q   Thank you. So, whatever process you use to

24   examine a complaint or a suspicion of wrongful

25   conviction, it might very well have to do with

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1   whether or not the jury should or could have had a

2   reasonable doubt if they'd heard all of the

3   evidence available; fair?

4   A   That's fair, but of course we have no idea what

5   juries, I mean juries think and how they come to

6   their conclusions and what they look at as

7   valuable, I mean it's -- we don't know that.

8   Q   Right.

9   A   But it is a factor, yes.

10   Q   And some things are simply common sense too?

11   A   Yes.

12   Q   The Department of Justice, in their 690 process,

13   requires that there be something new in a case.

14   And it kind of makes sense that people not be able

15   to keep going and dipping into the well saying "I

16   have been wrongly accused and I don't have

17   anything to substantiate it", but the emergence of

18   Larry Fisher in 1990 is certainly something new,

19   isn't it?

20   A   Yes.

21   Q   And ultimately, knowing what you knew, you had

22   doubts, really -- and I'm talking about 1990, '91,

23   '92 -- you had doubts, really, about whether was

24   it Fisher, was it Milgaard?

25   A   That's fair.

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1   Q   And the Supreme Court, in 1992, ultimately said

2   that the jury might have found differently if

3   they'd known about Larry Fisher, and you testified

4   the other day that that is something with which

5   you absolutely agree; correct?

6   A   I do, yes.

7   Q   And that goes directly to reasonable doubt, to a

8   basis for belief in the system, and a belief in

9   the convictions; doesn't it?

10   A   I believe that's, that's fair, yes.

11   Q   In August of 1991, we've heard this the other day,

12   that the Miller family had issued a statement in

13   August 1991 saying that they had a doubt about the

14   case; do you remember that?

15   A   I re -- I -- I believe that's true. I just don't

16   recall when they released that, but that was in

17   the mix there someplace, yes.

18   Q   Yeah, we just -- it was discussed the other

19   day, --

20   A   Yeah.

21   Q   -- that's really what I am asking about, you

22   remember that that happened, --

23   A   Oh yes, okay.

24   Q   -- and it became part of what has been referred to

25   as the second application for relief. So even the

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1   family of the victim, in August of 1991, had some

2   doubts about the validity of Mr. Milgaard's

3   conviction and thought it should be

4   re-investigated; and doesn't that tell you that

5   even the victim's family doesn't want the wrong

6   person in jail?

7 A   Oh, I -- I don't think I know of anybody who wants

8   the wrong person in jail. I really don't believe

9   that we will put anybody in jail and be happy with

10   that, that's really not in anyone's mind, I just

11   don't believe that.

12   And as far as the Miller family,

13   you know, their belief that a wrongful conviction,

14   I'm not -- you know, if that's something they got

15   through media and through the overall publicity

16   that was going on, maybe, you know, they were of

17   the view that there possibly could be a wrongful

18   conviction, but I don't know what their source of

19   information was.

20   But, at the end of the day, I

21   don't know of anybody who wanted to maintain a

22   wrongful conviction status.

23 Q   And the media that was going on at that time was

24   media about Larry Fisher, right, whether he was

25   named or unnamed; that's what you remember from

1   the media?

2   A   Yeah, there was lots of media going on, yes.

3   Q   But it's about the vicious sex offender that's in

4   the penitentiary that has a link to the case, who

5   is a potential other suspect, may have done it,

6   raped a number of women, etcetera?

7   A   Yeah, that's fair.

8   Q   But somehow the fact that Mr. Fisher was a vicious

9   sex offender and he had a record for similar

10   rapes, he lived within blocks of the offence, he

11   lived at the Cadrain house, his wife had provided

12   the police with a statement that believed she --

13   that he had done it, he can't be excluded from it

14   as a suspect, and that's somehow not enough for

15   David Milgaard, in 1991, to get a hearing into

16   whether or not he was potentially wrongly

17   convicted; do you see something wrong with that?

18   A   Well I, again I, I'm -- I think the process really

19   has to be open. And I can't explain the

20   decision-making process that went on outside of my

21   area of knowledge as I walk -- worked through

22   this, so I don't know what the thinking was, the

23   rationale that was applied. But, you know, I

24   certainly can say that, again, that Larry Fisher

25   at the time was, was a suspect, and why more

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1   emphasis wasn't placed on it as far as weighing it

2   in with all the other things that were going on, I

3   don't know, I wasn't involved in that particular

4   process.

5   Q   You took your, your 690 explanations or

6   instructions from Mr. Williams; correct?

7   A   I, I was engaged by Mr. Williams to carry out,

8   carry out tasks under 690 --

9   Q   Uh-huh?

10   A   -- in the field, yes.

11   Q   And you've told us --

12   A   And --

13   Q   -- the other -- sorry?

14   A   I'm sorry. And Mr. Williams was doing a lot of

15   tasks as well, it wasn't like he was sitting in

16   his office handing out the tasks to me, I mean he

17   was pursuing a lot of other aspects of his

18   inquiry.

19   Q   No, that, that's not really what I meant. I

20   wasn't suggesting he wasn't doing anything to be

21   helpful.

22   A   No, I'm just saying it was -- he was doing things

23   as well as I.

24   Q   Yeah. What I meant was that you, not having any

25   explanation or any experience in 690 applications,

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1   you took your direction from him as to what it

2   meant, what you had to get, what the process was,

3   what your task would be; correct?

4   A   That's fair, yes.

5   Q   And you understood that your task was to establish

6   a link or an association between Fisher and

7   Ms. Miller?

8   A   Yes.

9   Q   And you've told us that a link essentially means

10   hard evidence as opposed to suspicion?

11   A   Yes, I mean, something to convert the suspicion to

12   evidence.

13   Q   Yeah.

14   A   Now that came through with a similar fact

15   comparison and analysis, but putting, putting a

16   link between Larry Fisher and the Gail Miller

17   murder required something that was so-called

18   evidence.

19   Q   And you believed then, back in 1990, that your job

20   was to determine the facts, and within the

21   umbrella of needing to find a link between Fisher

22   and Miller, that's how you saw your job?

23   A   I believe in general terms, yes.

24   Q   Do you think now -- and this I'm asking you to

25   give us hindsight and retrospect -- do you think,

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1   now, that your job really should have been to see

2   if Mr. Fisher was a viable suspect?

3 A Do you think I should have considered whether he

4   was a viable suspect?

5 Q No, whether your job, your task, should have been,

6   rather than 'can you give us evidence that Fisher

7   is linked to this crime', I'm suggesting do you

8   think your task should have been 'determine

9   whether or not Mr. Fisher is a viable alternate

10   suspect for this crime'?

11 A Oh, I agree with the latter. You know, this,

12   under 690 this was not a re-opened homicide

13   investigation as a policeman knows it, --

14 Q Yes?

15 A -- it was an assistance role under that 690

16   process, and if you -- if you have someone who has

17   the potential to have been involved in this

18   homicide and he is a suspect, what do you do with

19   that.

20 Q Right. And Mr. Fisher is good as a suspect --

21 A Yes.

22 Q -- given his antecedents, given his residence, his

23   proclivities, he is good if he cannot be

24   eliminated; right?

25 A Yes.

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1   **Q**   And it's for a Court to determine if he's, in law,

2   an admissible other suspect at a trial; are you

3   with me?

4   *A*   Yes.

5   **Q**   And that should be a determination made at the

6   level of Court where it's in public, where all

7   parties have standing, representations, and

8   everything is out in the open; would you agree

9   with that?

10   *A*   I tendency -- I tend to agree with that, without

11   knowing all the specifics of how this would be set

12   up. But I do think that when you have a wrongful

13   conviction and you have an alternate suspect,

14   someone is going to be making key decisions here,

15   and it should have some formality and some

16   controls to it. The other part is to ensure that

17   it doesn't become a wide open process so everybody

18   is jumping into it because it's another crack open

19   in the door. But what you are saying, I generally

20   agree with.

21   **Q**   Would you generally agree that it seems that your

22   task through, certainly through 1990, was to

23   essentially try and prove that Mr. Fisher did it

24   as opposed to simply whether or not he could be

25   eliminated?

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1   *A*   In general terms, yes. I think, you know, there

2   was suspicion. Now whether other people suspected

3   or not, I had the suspicion, --

4   *Q*   Yes?

5   *A*   -- and moving it from suspicion to evidence to say

6   "he did it", meaning David Milgaard didn't do it,

7   that's -- that was the issue.

8   *Q*   That was the issue, as you saw it, was proving

9   that there was evidence --

10   *A*   That --

11   *Q*   -- that Mr. Fisher did it?

12   *A*   There had to be, you know, a link between Larry

13   Fisher and Gail Miller.

14   *Q*   And by "evidence" you mean -- or sorry -- by

15   "link" you mean evidence?

16   *A*   Well the suspicion had to be converted to

17   evidence. Okay? I mean anybody can suspect

18   anything, it depends on who you are, you know, but

19   there has to be something that will move this to

20   the next step.

21   *Q*   And you, you told us the other day in testifying

22   that in doing this, this process -- and I'm not

23   being critical of you -- you said quite candidly

24   that, during this process, you weren't thinking

25   about the possibility of -- or the effect on

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1   David's case as to whether or not David should get

2   a new trial or not, you weren't evaluating the

3   evidence with that in mind, you were simply trying

4   to see if there was a link between Fisher and

5   Miller; do I have that correct?

6   A   Yes. I don't think my position was elevating this

7   to making the decision, I was gathering

8   information and I was providing information to Mr.

9   Williams and, you know, that was really my role.

10 Q   Now, in retrospect, do you think that this case

11   would better have been investigated or headed, at

12   least, by someone who would be thinking about the

13   impact of this evidence on a retrial for David?

14 A   Possibly. You know I think, going back, there

15   should be a team approach used, there should be a,

16   you know, a -- more than individuals scattered

17   across the land. I think, again, we're going back

18   to some very, very basic issues here, and that is

19   putting your heads together and collectively

20   sharing and coming to a consensus and doing, you

21   know, the common good, and that's what, that's

22   what it's all about. So who that should be, I

23   mean that's open to debate, but it should be.

24 Q   And getting rid of the adversarial process as far

25   as that aspect is concerned?

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1   *A*   Well when we start talking about the adversarial

2   process I think our justice system, you know, we

3   do have, you know, sides so to speak. I mean we

4   can pretend it doesn't exist, but it does, you

5   know. You have prosecutors and defenders, and you

6   can call them winners or losers if you want to use

7   that term, but at the end of the day I think

8   positions maybe harden and the system goes on.

9   But I really think it's important that, at some

10   point, we drop this.

11   And I think one of the obstacles

12   that gets in the way here is, you know, we --

13   civil litigation becomes an issue, and people run

14   for cover, and that's just the reality of it.

15   *Q*   Yeah.

16   *A*   And nobody wants to talk, nobody wants to be open,

17   nobody wants to discuss what they are really

18   thinking, they are all playing a game, and I think

19   at the end of the day we have to have a process to

20   say "look, you know, we're taking that risk out of

21   the mix, we have to find out did we make a mistake

22   because we have an innocent person in jail", and

23   if we can find a process where you can take that

24   out of the mix as far as the litigation and all of

25   the repercussions that are going to have --

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1   happen, I think then you will start getting some

2   real communication and some real process being

3   made.

4   Q   Thank you. That may be an appropriate point, Mr.

5   Commissioner.

6   *(Adjourned at 11:59 a.m.)*

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

8   BY MS. McLEAN:

9   Q   Sir, back in 1988, '89, '90, '91 and '92 and

10   following years when Mr. Milgaard was dealing with

11   the Department of Justice, the equivalent to what

12   we've been calling 690 of the *Criminal Code* set up

13   an application for mercy. Did you understand that

14   that's what was being done here?

15 A   I think maybe in general terms, yes.

16 Q   You heard it called an application for mercy?

17 A   I think so, yes.

18 Q   And I'm just going to advise you that there was

19   then no codified procedure whatsoever for how to

20   apply, how applications would be dealt with, what

21   sort of tests would be applied, so in this respect

22   the only test that you know about is what

23   Mr. Williams has conveyed to you, which -- that

24   there has to be a link between Mr. Fisher and

25   Ms. Miller; right?

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1   *A*   Yes.

2   **Q**   Doesn't that sort of set up a situation that David

3   Milgaard can't get out of jail until his

4   replacement is found?

5   *A*   I really don't know if that's the criteria, that

6   there has to be a replacement, I really don't know

7   about that. All I can say is that the, the fact

8   that there had to be some link between Larry

9   Fisher and Gail Miller. That was -- the logical

10   conclusion I suppose you could draw is that

11   without any evidence as such, then nothing can

12   change, I suppose you could infer that, yes. Now,

13   I don't know if that's the only criteria. I mean,

14   like, I don't know.

15   **Q**   Okay. I'm not speaking of the rest of the

16   application, any other grounds there might have

17   been, but at least with respect to the Fisher

18   issue, that was your understanding, there had to

19   be evidence?

20   *A*   My understanding is there had to be something to

21   link Larry Fisher to the homicide of Gail Miller,

22   yes.

23   **Q**   And by link, you mean evidence as opposed to the

24   suspicions that you had and that you reviewed with

25   Commission Counsel?

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1   *A*   Yes.

2   **Q**   And in the circumstances of this case, that's

3   really an impossible hurdle to meet, isn't it,

4   with respect to Mr. Fisher?

5   *A*   Well, I don't know if that's the only factor that

6   was considered, you know, that was my task when I

7   was talking about Larry Fisher, but in the

8   totality of everything that's considered, which I

9   don't know of everything that was considered, if

10   that was the finality of it, you know, I really

11   don't know the assessment or the analysis of

12   everything that was applied by Mr. Williams and

13   the people he was with. I'm only speaking of the

14   Larry Fisher component of it and what was relayed

15   to me and what we were attempting to do.

16   **Q**   Now, I can't -- I can't really think of anything

17   else that you personally could have done given

18   your mandate. You set out to check into his work

19   records; yes?

20   *A*   Yes. There is background information on him, yes.

21   **Q**   And you were unable to prove that Mr. Fisher was

22   not at work on the morning of the murder?

23   *A*   Yes.

24   **Q**   And in 1990 and 1991 when you were looking into

25   it, the records for Mr. Fisher's employment no

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1   longer existed. Do you remember that?

2 *A*   Yes.

3 Q   Do you remember learning that the records for his

4   former employer had been destroyed in 1988?

5 *A*   Yes.

6 Q   So if Linda Fisher's statement in 1980 had been

7   followed up, it looks like the records for his

8   work may well have been available then?

9 *A*   I would suspect so, if they were destroyed in '88,

10   yes.

11 Q   So if you can't show that Mr. Fisher was not at

12   work, you can't provide evidence that he had the

13   opportunity to kill Ms. Miller because he might

14   have been at work?

15 *A*   Unless he confesses or something like that, but to

16   go through 20 years later looking for records to

17   show if he was at work or not, yes, that was not

18   possible.

19 Q   And even if you could have been able to show that

20   he had the opportunity, he might have been

21   assaulting Ms. (V4)--- then, you told us that the

22   other day?

23 *A*   That is a possibility. That was an activity that

24   took place in the neighbourhood during the time

25   frame, yes.

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1   Q   So (V4)--- is potentially an alibi? I mean, he

2   could have done them both, but (V4)--- is

3   potentially an alibi you told us?

4   A   I don't think I told you that, but I'm just

5   saying -- I don't think I used that word alibi,

6   but the potential was there that he could have

7   been involved in both of them, that is a

8   possibility.

9   Q   And you can't prove, because there's no work

10   records, you can't prove at all that there was a

11   false alibi given to the police on the morning of

12   February the 3rd when he claimed that he had been

13   on an early bus and at work at the time of the

14   murder, you can't prove he lied to the police?

15   A   No, I think other than what Linda was saying.

16   Q   Right. Her word against his; yes?

17   A   Yeah, I guess that's basically what it boiled down

18   to.

19   Q   Even if you could prove that he gave a false alibi

20   to the police about his whereabouts on January the

21   31st, it could have been a false alibi to divert

22   attention for the (V4)--- assault?

23   A   That's a possibility.

24   Q   Now, as for a confession, you didn't have one in

25   1990 and there was never likely to be a confession

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1   from Larry Fisher was there?

2   A   There was no confession in 1990 and none that I

3   know of. Whether there ever will be I don't know.

4   Q   And when he actually agreed to talk to you, it was

5   only with an undertaking that anything he said

6   would not be used against him; correct?

7   A   Yes, in general terms as I recall.

8   Q   Eye witnesses after 21 years, you weren't likely

9   to find any?

10   A   It was very difficult on every phase after 20

11   years based on memories and records and that sort

12   of thing.

13   Q   Even so, there was no question, not that it would

14   necessarily have done any good, but there was no

15   questioning in this respect of the caretaker of

16   the church, passengers on the bus, roommates of

17   Gail Miller with respect to anything they could

18   have said about Mr. Fisher?

19   A   Not that I recall, no.

20   Q   And similarly, you are not aware of any

21   questioning back in 1990, 1991 of any member of

22   the Cadrain family with respect to Mr. Fisher?

23   A   There was discussion -- there was discussion with

24   Cadrains as far as Fisher living in the basement

25   and things like that. They didn't really know

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1   Larry Fisher.

2   Q   I thought you had no dealings with Albert Cadrain.

3   Who was it that told you about the --

4   A   Well, there was Celine, Celine Cadrain and there

5   was Kenny Cadrain, but Albert Cadrain I did not

6   have direct contact with, no.

7   Q   As far as I can recall, Mr. Williams questioned

8   him in June of 1990, but didn't ask him about Mr.

9   Fisher. Now, the other thing that you could find

10   potentially would be forensics and you start

11   trying to get blood immediately, a blood type from

12   Mr. Fisher?

13   A   Yes.

14   Q   Mr. Fisher refuses it, unlike David Milgaard who

15   is giving blood and saliva and samples and

16   statements and all the rest of it, you found it a

17   little unusual that Mr. Fisher, if he was

18   innocent, would not want to cooperate and give

19   samples?

20   A   That's right, yes.

21   Q   But that also is only suspicion?

22   A   That is suspicion, yes.

23   Q   But it doesn't go beyond suspicion, it doesn't

24   elevate it to evidence?

25   A   In my opinion, no.

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1   **Q**   On September the 12th of 1991, you've told us that

2   you finally obtained then Mr. Fisher's blood type,

3   he had consented to give it and you were advised

4   that it was type A, which is in fact the type, the

5   blood type of the assailant of Gail Miller; yes?

6   *A*   Yes.

7   **Q**   That's something that was actually already known

8   because the (V1)- assault to which he pled guilty

9   was a type A assailant, that's something that's in

10   the Milgaard file, and you may well not have been

11   able to put that together in the absence of the

12   names of his victims, so I'm not criticizing you

13   for it.

14   *A*   No, no, and I have no recollection of that.

15   **Q**   But the effect of that type A blood grouping is

16   simply that it doesn't exclude Mr. Fisher?

17   *A*   That's right.

18   **Q**   Can you think of anything else that would have, or

19   could potentially, in the real world in 1990,

20   amount to evidence that would link Mr. Fisher to

21   Ms. Miller?

22   *A*   You know, again, other than try and maintain some

23   contact with him, you know, we were -- you know,

24   the polygraph is a police tool and, as flimsy as

25   that may be, it was one potential option that

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1   existed, but there wasn't much, I have to admit.

2   Q   Well, as an option, I mean, you are talking about

3   a police-conducted polygraph where you could

4   interrogate him afterwards when you tell him he

5   failed it; am I right?

6   A   Yeah, you are basically looking at trying to get

7   him to tell you something that would incriminate

8   himself.

9   Q   The mere fact of failing it, the mere fact of

10   passing it, would have absolutely no evidentiary

11   value?

12 A   That's right.

13 Q   So would you agree with me, sir, that this really

14   was an exercise that was doomed to failure insofar

15   as getting evidence to put before a Minister of

16   Justice or to put before an official?

17 A   It was very difficult, it really was, and you are

18   talking 20 years later and, you know, at the time

19   frame may have been less, we possibly could have

20   got some evidence. Like you say, you've mentioned

21   the employment records, if you would have had

22   something where you could have cornered Larry

23   Fisher maybe through an interrogation, interview,

24   something to present to him that he was lying to

25   you, it may have developed into something, but

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1   those are unknowns, you just don't know what could

2   potentially evolve, but after this length of time,

3   yes, it is difficult, and in the absence of

4   forensics, i.e., DNA and such, there was some real

5   problems.

6   Q So this task has set up a huge, and I would

7   suggest to you an insurmountable hurdle to

8   somebody in David Milgaard's situation where he's

9   sitting in jail maintaining he's innocent?

10 A It is difficult if you are looking at the

11   development of evidence, but on the other hand,

12   you know, the similarity aspect, which really was

13   a basis of the 690 and we did carry this through,

14   was the other potential that was there.

15 Q And that's the one that was a difference in the

16   approach by the federal authorities in 1991;

17   right?

18 A Well, it was used in the second application, yes.

19 Q Yeah. But that's something, as you are aware,

20   that Mr. Wolch and Mr. Asper had been asking for

21   the circumstances and the details of Mr. Fisher's

22   offences throughout 1990?

23 A I don't know what they had been asking for, and I

24   don't know if they asked for a similar act

25   comparison or not.

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1   Q   No, the basis for one, the evidentiary record.

2   A   Oh, okay.

3   Q   They were looking for statements, they were

4   looking for --

5   A   Okay, yes, yes.

6   Q   Yeah. Would you agree that the lawyers and

7   officials within the Department of Justice may

8   share the same kind of bias that you had in favour

9   of the system, and I'm not being critical there,

10   but you told us that you had a kind of belief or

11   some sort of satisfaction from the knowledge that

12   Mr. Milgaard had been through the system and had

13   been convicted after in fair procedures and all

14   the rest of it?

15   A   Yeah, yeah.

16   Q   And that gave you some measure of comfort?

17   A   And, you know, I wouldn't use the term bias

18   because bias sounds like it's something that's

19   purposely done and you are carrying it because you

20   are not prepared to open your mind to other

21   things, so bias really isn't a word that I would

22   use here, but I do think that when you take a look

23   at the system that we all are a part of, you have

24   confidence in it, and I would say that confidence

25   certainly carries some weight and that weight has

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1   influence on everyone, and it had influence on me.

2   Q   And it could influence people to want to maintain

3   or to see that what had happened was maintained?

4   A   Oh, I think it affects everyone differently, yes.

5   Q   For instance, when you were, when you spoke to

6   Kenny Cadrain, that's the six year old, in July --

7   July 18th of 1990 is when you talked to him and he

8   told you that he had no recall of seeing blood and

9   you reported that in addition to taking the

10   statement and turning over the statement of Kenny

11   Cadrain, you also reported it in your August 28th,

12   1990 report that he had said that he did not

13   recall seeing any blood.

14 A   Yes.

15 Q   It would have been inaccurate, completely contrary

16   to the evidence that you had obtained if Mr.

17   Williams was to report to other people that

18   Mr. Cadrain had given a statement that he had seen

19   blood?

20 A   Yes, yes. I mean, he indicated to me he didn't

21   recall seeing blood.

22   BY MS. McLEAN: Mr. Commissioner, just for

23   the record, this is the document, one of the

24   documents that was referred to this morning that

25   Mr. Frayer takes exception to and asserts

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1   privilege and by agreement with him I've referred

2   to it this way. The document is actually 004374

3   and that's just to obviate having the argument

4   now as to the privilege.

5   COMMISSIONER MacCALLUM: Okay.

6   BY MS. McLEAN:

7   Q   And you were, sir, out of the loop, really, on the

8   larger investigation. Did you have any idea how

9   important it was to corroborate the evidence of

10   Albert Cadrain in 1990 that he had seen blood?

11   I'm talking about Albert, the brother.

12   A   Yeah. You know, I just, I don't recall, I don't

13   recall the specifics of that. I'm going based on

14   the documentation that's in place now at this

15   date, but --

16   Q   Yes?

17   A   But to go back and say how do I recall everything

18   at the time, --

19   Q   No, I don't think you would.

20   A   -- I just don't have it there, I'm sorry.

21   Q   Do you have some sense that his evidence was

22   coming into question in the sense that he was

23   having some psychiatric problems, possibly

24   hallucinations?

25   A   Yes, I was aware that there were some mental

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1   issues that he had had, and that had apparently

2   come on a little later in life, you know, after,

3   after this, after the Milgaard investigation.

4   Q   And you understood from Kenny that it actually had

5   only been in the last couple of years?

6   A   That was according to Kenny, yes.

7   Q   Yeah. Were you ever aware that it had been much,

8   much, much earlier than that?

9   A   If I had knowledge, I don't recall it now, but --

10   Q   Okay. Just on the Kenny six-year-old issue, your

11   evidence -- could we have 19407, please? I hope

12   it's right.

13   COMMISSIONER MacCALLUM: Not enough digits.

14   Is it a transcript?

15   MS. McLEAN: It's a transcript. I hope

16   it's enough digits because, if it's not, I'm in

17   big trouble.

18   COMMISSIONER MacCALLUM: And if there are

19   any more we're all in big trouble.

20   BY MS. McLEAN:

21   Q   Okay. This is the question and answer, here,

22   of -- Commission Counsel asked you, and it was

23   essentially whether or not the fact that Kenny

24   Cadrain was telling you about something that

25   happened when he was six-year old, --

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1   *A*   Uh-huh.

2   **Q**   -- if that had had any impact on you or --

3   *A*   Uh-huh.

4   **Q**   -- weight you put on it. And your answer, sir,

5   seems to suggest that, because he was telling it

6   to you as an adult, that it would be more

7   reliable; is that -- is that the tenor of your

8   answer there?

9   *A*   Well, I think so, I guess that's really how I -- I

10   feel about that, you know. It's something he, as

11   an adult, is telling me that he recalled when he

12   was a child, and now you can debate how much he

13   really knew or how much he could really recall at

14   this late stage of his life, but that's how I

15   recall it.

16   **Q**   And that whatever it was that he recalled would be

17   after some 20 years exposure to his brother

18   talking about the case?

19   *A*   Well that, that's, you know, an assessment to be

20   made by someone, you know, it's what he was saying

21   and it's what I recorded.

22   **Q**   Kenny Cadrain's evidence -- for the record, don't

23   need to go to the, is at 2241 of the transcript --

24   is that he would have had more faith in his own

25   memories if they'd happened when he was an adult;

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1   in other words he seemed to be questioning his own

2   memories because they were memories from when he

3   was only six years old?

4   A   No, and I think that's normal, I probably --

5   probably everyone involved in this 20 years later

6   is questioning some of the memories that they

7   have, I mean that's just a given.

8   Q   And that much of the evidence he came to give some

9   20 years later might be the product of many, many

10   conversations he had with his family?

11   A   Yes, and I think that's probably universal.

12   Q   That can go down now, thank you. And I want to

13   explore what you had, briefly, in the way of

14   knowledge of the Fisher offences back in 1990.

15   Now in March of 1990, almost immediately on your

16   taking the case, you got some information about

17   the Fort Garry/Winnipeg offences; do you remember

18   that?

19   A   Yes, I think that was through the penitentiary

20   files, if I'm not mistaken.

21   Q   And one of the victims in Fort Garry/Winnipeg was

22   a nurse; do you remember that?

23   A   I --

24   Q   She was on her way to work?

25   A   Yes, I believe I recall that.

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1   Q   Excuse me, she was on her way back from work, not

2   on her way to work.

3   A   Yeah.

4   Q   Yeah?

5   A   I remember a nurse in there, yes.

6   Q   Do you remember one of those two victims having

7   been followed by Mr. Fisher off a bus?

8   A   I don't recall that, I -- if it's in the file I'm

9   sure that's what it said, but I just don't have a

10   recollection of it, I'm sorry.

11 Q   Okay. And do you recall that the weapon that he

12   had used with one of those victims was in fact a

13   paring knife?

14 A   Yes, I probably knew that.

15 Q   You remember that one, because you were wanting to

16   know whether or not that was the same one that

17   Larry -- that Linda Fisher was missing?

18 A   Yes, yeah.

19 Q   And you knew, I'd suggest, very little about the

20   file -- not that that's your fault -- but you knew

21   enough about the file to know that Gail Miller was

22   a nurse on her way to a bus when she was killed by

23   somebody with a paring knife?

24 A   Yes, I knew that.

25 Q   Okay. And you discussed, with Mr. Williams, the

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1   Winnipeg offences; correct?

2   A   Yes.

3   Q   056743, and it's at item number 33, I believe.

4   COMMISSIONER MacCALLUM: 064?

5   MS. McLEAN: 056743, it's the typed notes,

6   item number 33. That's page 33, they are

7   numbered here as paragraphs, yeah, there it is.

8   Okay.

9   BY MS. McLEAN:

10   Q   You discussed with Mr. Williams the circumstances

11   surrounding the two offences in Fort Garry, you

12   had the police reports which detailed them, --

13   A   Yes.

14   Q   -- and the two of you discussed the M.O.'s, noted

15   the knife he used in one offence, both were

16   violent crimes; and you also discussed the North

17   Battleford, and that's the (V10) (V10)- attempt

18   murder, the knife used there, the M.O., and the

19   viciousness of this attack; yes?

20   A   Yes.

21   Q   Okay. And, even then, your view was that it was a

22   pretty persuasive case that Mr. Fisher could have

23   been involved in the murder of Gail Miller?

24   A   He was certainly a suspect, yes.

25   Q   You found it pretty persuasive?

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1   *A*   Well, I don't know how you would describe

2   'persuasive', but he was certainly a good suspect,

3   unless I --

4   *Q*   Page 19033 of the transcript, please.

5   *A*   I used the word "persuasive", I can see, there in

6   line 13 if that's what you --

7   *Q*   Thank you. You stand by that answer, sir?

8   *A*   Oh yeah, oh yeah, that's what I said.

9   *Q*   In July of 1990 you learned the names of the

10   Saskatoon victims of Larry Fisher; remember that?

11 *A*   Yes.

12 *Q*   You interviewed Mr. Fisher and he essentially had

13   no memory of the Saskatoon offences?

14 *A*   I -- I just don't recall what, what happened

15   there, I just don't recall what his --

16 *Q*   Okay.

17 *A*   -- reaction was to that at that time.

18 *Q*   And do you remember, in mid-July, you got the

19   partial (V1)- file?

20 *A*   That was the first file? Yes.

21 *Q*   Yes.

22 *A*   Yes.

23 *Q*   So as of July you had a fair amount of detail

24   about the Fort Garry/Winnipeg offences and had

25   discussed those quite thoroughly with Mr.

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1   Williams; yes?

2   *A*   I had those, there were two partial files, they

3   were incomplete files, and I had the complete

4   (V10) (V10)- file from the North Battleford one.

5   *Q*   Yeah, but you had quite a lot of information --

6   *A*   Yeah.

7   *Q*   -- about the allegations to which Mr. Fisher pled

8   guilty in Fort Garry, you had --

9   *A*   Yes, I had possession of details, yes.

10   *Q*   Yeah. But you didn't have details of any of the

11   Saskatoon ones?

12   *A*   No.

13   *Q*   So would it be reasonable for Mr. Williams to take

14   the position in August of that year that the

15   offences of Larry Fisher were not similar to the

16   murder of Gail Miller, in your opinion?

17   *A*   Well, you know, this was all part of the basis of

18   the way I formed the suspicion was the fact that,

19   you know, Larry Fisher had this history and, you

20   know, again what that meant to Mr. Williams and

21   others, you know, I don't know.

22   *Q*   When you were discussing it with Mr. Williams in

23   March was he telling you that he didn't think they

24   were similar?

25   *A*   I don't recall the conversation, the details of

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1   the conversation, you know, I really don't.

2   Q   Your notes are fairly detailed; do you think

3   that's something you would have put in your notes,

4   that he was disagreeing with you that they were

5   similar?

6   A   Yeah, my notes are fairly detailed but, you know,

7   you have to appreciate the notes don't contain

8   everything you have in a discussion. I'm sure,

9   like some of his notes may be different than mine,

10   I mean --

11   Q   Uh-huh.

12   A   -- he may pick up part of the conversation that's

13   more important to him that's different than mine,

14   it's not a transcript of everything. But for me

15   to recall him ever saying that he doesn't believe

16   any of this, I don't have any recollection of that

17   kind of an approach.

18   Q   And again for the record, Mr. Commissioner, the

19   document reference there is 004374, and it's a

20   document to which Mr. Frayer takes -- or claims

21   privilege, and to be argued later.

22   I hope I need document 056790.

23   This is a discussion that you had on September the

24   16th with Mr. Williams, and this is the one where

25   Mr. Williams stated he had received your last

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1   report, and that would be your August of 1990

2   report; yes?

3 A   Yes, okay.

4 Q   And that's the report where you concluded that Mr.

5   Fisher remained a live suspect in the case; yes?

6 A   Okay, yeah.

7 Q   And:

8   "Mr. Williams stated he had received

9   ..."

10   your:

11   "... last report and seemed somewhat

12   concerned that ..."

13   you:

14   "... still considered Fisher to be a

15   suspect and was asking why, in view of

16   the denials that Fisher made during his

17   interview with us."

18   And then you gave an explanation of what you said

19   to Mr. Williams explaining why you considered

20   Fisher a suspect and that you aren't prepared to

21   take his answers -- 'his' being Fisher's --

22   answers at face value. Did it surprise you that

23   Mr. Williams was surprised that you considered

24   Mr. Fisher a suspect?

25 A   Umm, I don't know. I indicate here that I am

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1   somewhat concerned and it -- I don't know what

2   that concern was, but obviously at the time I had

3   some concern, and the concern may possibly have

4   been that maybe Mr. Williams didn't consider Mr.

5   Fisher a suspect. You know, that may have been

6   what it is, but I don't have a specific

7   recollection of what my concern was at the time.

8   Q Because it would be quite alarming, wouldn't it,

9   for somebody who's reviewing this case to be

10   willing to dismiss, as a suspect, a serial rapist

11   who lived in the area, who had an M.O. that was

12   the same, who used a knife, a paring knife, he

13   stalked his victims on the bus, he used the Gail

14   Miller bus stop, and couldn't be excluded by any

15   other means; it would be really troubling that

16   that's just dismissed, wouldn't it?

17 A Yes. But on the other hand, I'm not saying here

18   that Mr. Williams, that was his position.

19 Q Uh-huh.

20 A I can't speak for Mr. Williams, you know, he -- he

21   may very well have still considered him a suspect,

22   I really don't know.

23 Q Uh-huh.

24 A I'm just going by what I have got written here --

25 Q Uh-huh.

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1   *A*   -- and I have no recollection of what his concern

2   was, but I'm really kind of going with what's

3   documented.

4   **Q**   Uh-huh. And this may be something that you

5   discussed the other day. I want 056802, I

6   believe, and it's paragraph 267. I think you

7   discussed this with Commission Counsel the other

8   day, and this is the one about the downside risk

9   of a polygraph with Mr. -- with Mr. Fisher, it's

10   267. I'm sorry, Mr. Williams told you that:

11   "... a decision has been made not to

12   have Fisher take the polygraph ...",

13   and the history to this is that there had been a

14   few times there where he had said he had to

15   consult with superiors or colleagues; remember

16   that?

17   *A*   Yes.

18   **Q**   And:

19   "... a decision has been made not to

20   have Fisher take the polygraph ... His

21   superiors have met and decided, "the

22   down side risks outweigh the benefits"."

23   Do you have anything you can tell us to help us

24   with what was meant by "downside risks"?

25   *A*   Well I wrote it in there, I think, as a quote from

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1   him.

2   Q   Yeah.

3   A   But Mr. Williams, of course, is going to have to

4   try and explain --

5   Q   Uh-huh.

6   A   -- what he meant by that because my recollection

7   is really what's written down there, and to

8   elaborate on that I'd just be making some

9   assumptions here, I really would. And, you know,

10   the polygraph is controversial --

11   Q   Uh-huh.

12   A   -- in that it's not an accepted -- you know, as

13   evidence in Court, --

14   Q   Uh-huh.

15   A   -- and there are some issues that come with it,

16   but I suppose -- as to what does it really tell

17   you at the end of the day. It's a police tool

18   that I do think causes some difficulty sometimes

19   when it's used outside of that realm, and maybe

20   that's what they were assessing when they were

21   looking at this, like what will it really do for

22   them.

23   Q   Uh-huh.

24   A   But all I can say is that that's the end result of

25   the interest that I had of pursuing a second

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1   polygraph.

2   **Q**   Okay. If we can just back it up to the preceding

3   page and get paragraph 260, please. This is a

4   conversation that you had a few days earlier,

5   prior to the decision being made, --

6   *A*   Yes.

7   **Q**   -- and in your discussion with Mr. Williams there:

8   "Williams seems to have concerns that

9   the polygraph results are not admissible

10   ...",

11   you've just talk talked about that:

12   "... and could be persuasive in terms of

13   disposition of the case."

14   Do you have any recollection of what was

15   discussed there?

16   *A*   No, I --

17   **Q**   How could they have an effect on the disposition

18   of the case?

19   *A*   No, I'm just going by what I read here as well. I

20   don't have details of the conversation, I have got

21   it documented like I believe that it evolved, but

22   to elaborate on it I'd be speculating.

23   **Q**   I suppose the results could be persuasive in terms

24   of the disposition of the case if the serial

25   rapist operating in the neighbourhood would take a

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1   polygraph and fail it would be pretty hard to turn

2   down the application then; wouldn't it?

3   A   Well I would think that's one option, yes.

4   Q   001783, please, it's the Campbell letter. Umm,

5   the third page, which is 786, Ms. Campbell in her

6   letter here says:

7   "Respecting some of the points raised

8   ...",

9   now she's speaking of the entirety of the

10   application:

11   "Respecting some of the points raised,

12   there are no reasonable grounds to

13   believe that the evidence or information

14   made available would have affected the

15   verdict of the jury at trial. With

16   other points, the information provided

17   was simply unreliable."

18   Now you had provided essentially the bulk of the

19   information about Larry Fisher, and that

20   consisted of the statement of his ex-wife and

21   your efforts to secure evidence about his prior

22   criminal conduct, that would not be something

23   that you'd expect to be described as

24   'unreliable'; would you?

25   A   I don't, no. I don't believe it should be, no.

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1   Q   Neither is it something that you would think would

2   not have affected the verdict of the jury?

3   A   No, I -- I'm sorry, I'm missing where you are

4   reading the 'unreliable'?

5   Q   At the very bottom here:

6   "Respecting some of the points raised

7   ...",

8   and she's talking about the entirety of the

9   application

10   A   Yes, yeah.

11   Q   And I'm suggesting to you that in her, in her

12   letter you would have to assume that she's putting

13   the Larry Fisher evidence into the category of 'no

14   reasonable grounds to believe that it would have

15   affected the verdict of the jury at trial'?

16   A   Uh-huh.

17   Q   And that's completely contrary to your position;

18   isn't it?

19   A   As far as him being eliminated as a suspect, yes.

20   Q   Well it's something that certainly affected your

21   view of the guilt of David Milgaard?

22   A   Yes.

23   Q   It brought it into doubt for you; yes?

24   A   Yes. If -- if, you know, if Larry is a suspect,

25   then someone else wouldn't be.

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1   Q   Or may well not be guilty?

2   A   Possible.

3   Q   Remember, that's the only threshold we need on

4   miscarriage of justice. And going also to page,

5   it's page 10 of the letter, and it appears at

6   1793, you've told us this one is something that

7   you disagree with.

8   A   Where are you at?

9   Q   I'm circling it here, we'll bring it up,

10   "although":

11   "Although it was, as you have conceded,

12   quite coincidental ...",

13   Mr. Wolch has already dealt with that this

14   morning:

15   "... Mr. Fisher resided at the Cadrain

16   residence during Mr. Milgaard's visit,

17   no guilt or suspicion of guilt can be

18   attributed to Fisher in the absence of

19   some form of evidence linking him to the

20   crime."

21   And you've told us already, I believe, that you

22   do not agree with that statement?

23 A   Well I think you certainly can form suspicion

24   however you wish, and some people may not have

25   suspicion under these circumstances, I did. Umm,

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 1   now evidence is quite something else, but

 2   suspicion is --

 3   Q   Uh-huh. Do you think any reasonable person would

 4   have suspicions based on what you knew and had

 5   turned over?

 6   A   Well all I can say is that, you know, I had

 7   suspicion; is that your question?

 8   Q   And Mr. Williams apparently finalized his report

 9   to the Minister, or to his superiors or colleagues

10   in December of 1990, we've never seen that report;

11   did you know it was happening?

12   A   I have no recollection of it, and I don't believe

13   there's any reference to that in my notes, so I

14   really -- I just have no recollection.

15   Q   And you were never consulted about the evidence or

16   the advice that was given to the Minister?

17   A   No.

18   Q   You were still investigating the crime in February

19   of 1991, and still investigating Larry Fisher

20   specifically?

21   A   Well, it was still an open file --

22   Q   Uh-huh.

23   A   -- and, you know, there was -- but as far as when

24   I may have found out about, about that, I just

25   don't recall, I --

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1   Q   Does it trouble you, now, that a letter such as

2   this had gone out, dismissing Mr. Milgaard's

3   application, when you were still investigating Mr.

4   Fisher?

5   COMMISSIONER MacCALLUM: Are you

6   referencing the Minister's letter?

7   BY MS. McLEAN:

8   Q   Yes.

9   A   Well it's, you know, it's hard to reflect back 15

10   years to say what I felt at the time. It was, you

11   know, a process that, you know, I never felt I was

12   part of the decision-making process.

13   Q   Uh-huh.

14   A   I didn't feel that it was really, rightfully, my

15   position to be in. I was, you know, providing

16   assistance to Mr. Williams, and he and others were

17   assessing the totality of everything and making

18   inquiries on their own on other aspects of it, --

19   Q   Uh-huh.

20   A   -- and they came to conclusions based on that.

21   Q   Well that's why I'm confining my questions of you

22   just to the Fisher aspects of it?

23   A   Yes.

24   Q   Because you really can't speak to the

25   reasonableness of conclusions on other matters.

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1   *A*   Right.

2   **Q**   But, in respect of Fisher, there is a claim made

3   on behalf of David Milgaard that a likely suspect

4   is one Larry Fisher as a result of an anonymous

5   tip?

6   *A*   Yes.

7   **Q**   That claim is investigated, because it's

8   immediately conveyed to the proper authorities at

9   the Minister of Justice and it's appended to the

10   already-existent Section 690 application; right?

11   *A*   Okay.

12   **Q**   You are the investigator, you haven't reached any

13   conclusion on the Fisher issue yet; right?

14   *A*   Other -- there is no conclusions, no, it's not

15   concluded.

16   **Q**   And the only conclusion that you have reached,

17   i.e. Fisher is still a suspect, --

18   *A*   Yes.

19   **Q**   -- is contrary to the assertions in this letter

20   dismissing the application; yes?

21   *A*   Yeah, that's -- that's a reasonable conclusion,

22   yes.

23   **Q**   Now the second application, as it's called, goes

24   in on August the 14th of 1991. Mr. Wolch's

25   letter, 008427, he sets out that he'd -- he'd

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1   written to the Minister without response in April,

2   and that this is a second letter now being

3   written. He is saying that the Milgaards had gone

4   ahead with efforts to try and get further evidence

5   that would establish David's innocence, and he

6   says:

7   "When we first made our application the

8   suggestion that Larry Fisher was the

9   perpetrator was not the main thrust

10   ...",

11   and it wasn't, it was something that was appended

12   when the information came out:

13   "... and we were at that time advised by

14   your Department that there were no

15   police reports available on past

16   offences of Mr. Fisher. Whereas we

17   suggested there was a distinct pattern

18   and although the similarities were never

19   placed before you, we accepted that we

20   were at that time at a dead end."

21   And then it goes on to advise the Minister of the

22   efforts that have been made by Centurion

23   Ministries to go and interview the victims.

24   Going over to the next page, speaking of the

25   Miller family:

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1   "The fact is that the Miller family is

2   clearly in support of an open

3   investigation and feel that this new

4   evidence, and by that I refer to the

5   Larry Fisher evidence in particular, has

6   caused them to have a very reasonable

7   doubt as to David Milgaard's guilt.

8   Their statement is enclosed."

9   And that, sir, is a reference to the statements

10   that had been obtained by Mrs. Milgaard and by

11   Mr. Henderson as they approached the victims of

12   Larry Fisher and told them that he had done it;

13   yes?

14   *A*   Yes, okay.

15   *Q*   And by -- I should clarify -- by "telling them

16   that he had done it", by telling them that Larry

17   Fisher is the name of the individual who had been

18   convicted --

19   *A*   Yes.

20   *Q*   -- some 20 years earlier --

21   *A*   That's right.

22   *Q*   -- of their rapes, informing them for the first

23   time that the culprit had been caught. Continuing

24   on that page is the same issue there. The

25   startling development was the -- was learning that

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1   four of the victims of Larry Fisher had never been

2   told that anyone had been charged or convicted,

3   and then that they had lived in fear and it's

4   absolutely inexcusable, and I don't think there's

5   any further comment we can make to that. And then

6   he asks, Mr. Wolch asks the Minister to:

7   "... treat this letter as a fresh

8   application to re-open the ... case."

9   And says that:

10   "It is our view that had you been aware

11   of these additional developments your

12   decision would not have been the same.

13   We are not asking you to declare David

14   Milgaard innocent, as obvious as it may

15   be. We are simply asking that you have

16   an impartial tribunal adjudicate this

17   matter with full disclosure and with Mr.

18   Milgaard being properly represented."

19   And you understand, sir, that that was a request

20   that it be referred to a court for some type of a

21   hearing?

22 A   Yeah, okay, yeah.

23 Q   Now you didn't speak to the victims of Larry

24   Fisher until sometime in 1991, not because you

25   didn't want to, but because you were, shall we

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1   say, discouraged from doing so?

2   A   I -- I interviewed the two that there was no, no

3   police records on, there was no history --

4   Q   Yeah?

5   A   -- other than what Centurion Ministries had

6   produced.

7   Q   Yeah, and your interviews took place after

8   Mrs. Milgaard and the investigator from Centurion

9   Ministries?

10   A   That was after the second 690, yes.

11   Q   Yeah. So in respect of the 690, you had nothing

12   to do with interviewing witnesses, and everything

13   that there was coming from the victims came to

14   Mrs. Milgaard, Mr. Henderson, and through the

15   Milgaard lawyers it came to the Department of

16   Justice and then to you; yes?

17   A   As I recall, that's how it worked, yes.

18   Q   Okay. And we reviewed earlier the materials that

19   you had in 1990 with respect to Mr. Fisher's

20   victims at Winnipeg, you had the North Battleford

21   (V10) (V10)-, you had a little bit of (V1)-,

22   that's all you had?

23   A   As I recall, yes.

24   Q   And then in 1991, September, as a result of the

25   searches of Saskatoon files, eventually part of

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1   the (V3)------ file appears, part of the (V4)---

2   file appears and what looks to be the entirety of

3   the (V5)-- (V5)--- one and part of the (V2)-----

4   one roughly?

5 A My recollection is that through the search by the

6   Sask Police Commission, the (V5)--- file surfaced.

7 Q Yes.

8 A Where the rest of them surfaced, I just don't

9   recall if they surfaced at that time, I thought

10   there were a couple of them that never did

11   surface, but that's just my recollection.

12 Q Well, they never surfaced in their entirety,

13   there's just some references that are scattered in

14   the --

15 A References or file material?

16 Q File material.

17 A Okay. I don't recall that. I recall the (V5)--

18   (V5)--- file as one that surfaced with some

19   completeness through the search by the microfiche

20   tapes and I believe over at the city police.

21   There was no hard copy on their file and it wasn't

22   found I believe until they did a microfiche search

23   and located it.

24 Q Yeah.

25 A That's my recollection.

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1   Q   I don't want to mislead you, sir, because you are

2   quite correct.

3   A   Okay.

4   Q   The files themselves did not surface.

5   A   Yes, okay.

6   Q   There was some material relating to those victims

7   that was part of the Milgaard file.

8   A   Okay.

9   Q   But nobody gets that or understands any of that

10   until after September of 1991.

11   A   Okay.

12   Q   So the point is, by the time the application is

13   decided by the Minister of Justice Campbell,

14   there's no information that is available to put

15   before her in any form apart from the information

16   about the Winnipeg Fort Garry offences, (V10)

17   (V10)- and a little bit of (V1)-; you agree?

18   A   I think that's as I recall it, yes.

19   Q   And Mr. Wolch is pointing out to the minister in

20   August of 1991 that there is information that he's

21   got now that wasn't and couldn't have been in

22   front of her when she made her original decision;

23   you agree?

24   A   Well, you are telling me that. I mean, I don't

25   recall it, but --

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1   Q   Okay. If those circumstances, as I've outlined

2   them, are true, okay, it would be absolutely wrong

3   for Mr. Williams to take the position that Mr.

4   Wolch was wrong in stating or assuming that the

5   similarities of the offences were not brought to

6   the minister's attention and that he had a

7   sufficient idea, or sufficient information from

8   the documents to be able to assess the (V2)-----,

9   the (V1)-, the (V5)--- and the (V3)------

10   offences, that would be quite wrong because that

11   didn't exist until the summer of 1991?

12 A   I don't know what information Mr. Williams

13   possessed that he received through Mr. Wolch, I

14   don't know all the correspondence that may have

15   gone back and forth --

16 Q   Okay.

17 A   -- I can only really relate to the information

18   that I discussed with Mr. Williams based on the

19   knowledge we had of the files that existed.

20 Q   Okay.

21 A   And so that was really the information we've

22   already talked about.

23 Q   Again for the record, that's the third and final

24   one that Mr. Frayer takes exception to, it's a

25   different document, it's 010002, he is asserting

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1   privilege and that will be argued at a later time.

2   By agreement that's the way I can put the

3   question, although he doesn't appear to be here.

4   MR. FRAYER: I was out of the room. I

5   apologize.

6   MS. McLEAN: I was just saying you agree

7   with me.

8   MR. FRAYER: Yes.

9   BY MS. McLEAN:

10 Q   And I think given what you've already told us

11   about your views and your position on openness and

12   everybody being at the table and trying to work

13   together to right injustices, everybody in your

14   view that's a party or is an interested party

15   should know what kind of submissions are being

16   made to a minister when somebody's freedom is at

17   stake?

18 A   With my knowledge of how the system works, and

19   again, I'm not real familiar with the legalities

20   of privilege and such, but, you know, just as a

21   logical, common sense, grass roots, every day

22   approach to this, you would say that, you know,

23   let's all discuss the issue with the information

24   we have. There should be no hiding behind it.

25 Q   Okay. Would you think that the system into making

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1   inquiries or redressing claims of wrongful

2   conviction ought to be something that's proactive,

3   where the system is open to examining cases,

4   rather than reactive and making the applicant go

5   through what are sometimes insurmountable hurdles

6   to get justice?

7 A   Well, you know, in the -- academically I suppose

8   you could make an argument that it should be wide

9   open and proactive, but I do know that in reality

10   there are a lot of dangerous situations I think

11   that could open up with people that would take

12   advantage of any crack in the door and that's the

13   challenge here, to be open, but not to the point

14   where your system is being abused by those people

15   who are waiting in the wings to abuse it, and

16   there are a lot of them, let me assure you, so

17   that's the dilemma.

18 Q   Well, as long as you have some kind of a threshold

19   screening, which is what they've done in the UK

20   where they've got the Criminal Cases Review

21   Commission, it's an independent body that examines

22   claims of wrongful conviction, it's proactive, it

23   has an independent board, has independent

24   investigators, they were not allied to anybody,

25   and when that was first being set up one of the

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1   red flags or one the concerns, one of the cautions

2   was that they would be troubled by all kinds of

3   spurious claims, and that's essentially what you

4   are saying now isn't it?

5   A   It has the potential.

6   Q   You will be happy to know that's not what

7   happened.

8   A   But it still has the potential.

9   Q   Uh-huh. Now, as far as this case, if not for the

10   efforts of the Milgaard family, and specifically

11   David's mother, do you agree he might very, very

12   well still be in jail?

13   A   Well, I have to say, I have to, you know,

14   acknowledge Mrs. Milgaard, I have great admiration

15   for her as an individual and as a mother who is

16   believing strongly in the cause of the situation

17   her son was in and I think David should be very,

18   very proud of his mother, so from a very personal

19   point of view, I have to admire what she has done.

20   Now, to say that if she hadn't done this would he

21   still be in prison? I don't know if Larry Fisher

22   or how Larry Fisher would have ever surfaced,

23   possibly he could have, I mean, there are unknowns

24   there, but I think she was very instrumental in

25   getting this whole process to where it is today.

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1   Q   I wasn't really looking for applause for her,

2   although she probably enjoyed it --

3   A   Well, I believe it.

4   Q   -- but she knew stuff in the very early days of

5   your investigation about Larry Fisher. For

6   example, she knew that Larry Fisher had been

7   questioned by the police February the 3rd of 1969,

8   she knew it before you knew it -- I'm not

9   suggesting it's your fault because you were not

10   given the materials, but she is focused, motivated

11   and very knowledgeable about the case, and it

12   requires somebody like that to properly

13   investigate a case; does it not?

14   A   Yes, I do, but, you know, and the other side of

15   that, having said these nice things about Mrs.

16   Milgaard because I really believe them, there's

17   also the fact that the world that she was

18   operating in, she developed I believe a mistrust

19   for the justice system and as a result I think she

20   did go along on her own maybe through mistrust or

21   frustration or hitting her head against the wall

22   or whatever may have been the cause of this and,

23   you know, she went parallel to the justice system

24   or on her own, and again when I talk about the

25   importance of everybody having a chance to put all

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1   the information together, she may have had

2   information that could have been valuable many

3   years ago that may have spurred this on as well.

4   I mean, these are all speculation.

5 Q   Uh-huh.

6 A   But there is a downside when you have a system you

7   don't trust and I guess that's hopefully what will

8   come out of all of this, is that we will have a

9   better system, because if Mr. Milgaard is a

10   reflection of other people out there doing the

11   same thing and not getting the response, then I

12   think we have to do some self examination, and I

13   believe sincerely with that, but on the other

14   hand, if people don't trust the system and they

15   harbour their own information and, you know, I

16   believe there's some indication very early in my

17   dealings with Mr. Asper that they were having some

18   of the same concerns with Mrs. Milgaard over this

19   issue, and I just think that this is a symptom of

20   maybe a system that should be more open so that

21   these things don't happen so that people don't

22   have to be frustrated for years to have the matter

23   dealt with.

24 Q   It was the Milgaards in July -- sorry, Milgaard

25   counsel, I'm going to collectively call it the

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1   Milgaards as we're known -- July 4th of 1990,

2   document 010019 it has been referred to, it's the

3   memo that indicates that Mr. Wolch has now

4   provided the names and addresses of the Saskatoon

5   victims and that that had been obtained by the

6   media. Remember?

7   *A*   I remember that, yes. I remember him saying that,

8   yes.

9   Q   The disclosure that was inherent in the 690

10   process gave access to counsel for Mr. Milgaard,

11   gave him access to the police files such that they

12   were able to extract information about the

13   Saskatoon victims from it, that's what we talked

14   about earlier today. As a result -- and that's in

15   January of 1992, and as a result you were asking

16   for anything that they found, again this sharing

17   of information which is important; right?

18 *A*   Okay.

19 Q   And on July the 5th of 1990, document 010033, Mr.

20   Wolch is looking for the first time, in writing,

21   details of Mr. Fisher's offences and the purpose

22   is for similar act. Okay, July 5th of 1990.

23 *A*   Uh-huh.

24 Q   I'm not -- again, I want to make it clear, I'm not

25   directing this at you, I'm not faulting your

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1   investigation, you did what you were instructed to

2   do and what you did, but the fact of the matter

3   is, is between July 5th of 1990, when that request

4   was made, and February 27th of 1991, so about

5   seven or eight months later, nothing came to Mr.

6   Wolch answering those requests, there's no

7   details, no information, February 27th, 1991 the

8   application is dismissed, so after February 27th

9   the counsel for Milgaards, Mrs. Milgaard had to go

10   with the assistance of Centurion and get their own

11   details directly from the victims.

12   COMMISSIONER MacCALLUM: After what date?

13   BY MS. McLEAN:

14   Q   After February the 27th of 1991 Centurion came on

15   board to do that specific investigation. Now,

16   that certainly was not a desirable state of

17   affairs was it?

18   A   No, it wasn't, no.

19   Q   Do you agree that the system as it has been

20   reflected so far in this exchange is a little too

21   reactive and needs to be more proactive? I think

22   you would agree with that?

23   A   Reactive?

24   Q   Reactive to complaints is when something is

25   brought forward, there is a reaction to it, okay,

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1   we'll investigate it now, are you going to tell us

2   specifically that Larry Fisher actually abducted

3   -- or sorry, sexually assaulted women on the same

4   block within the same radius of the Miller? Okay,

5   we'll look into that, reactive, as opposed to

6   proactive where we're trying to make sure we've

7   only got people in prison who actually did the

8   murder.

9 A Yes.

10 Q Would you support the creation of an independent

11   body --

12   COMMISSIONER MacCALLUM: I think he

13   indicated his understanding of the question, but

14   I don't think he answered it.

15   BY MS. McLEAN:

16 Q Oh, he didn't answer? Should be more proactive

17   rather than just reactive?

18 A Yes, I think there's a responsibility to pursue

19   these things.

20 Q Do you think there's an advantage in having an

21   independent body consisting of several bodies,

22   physical bodies who have some training and some

23   expertise in wrongful convictions in exploring

24   what tends to go wrong with them, there's some

25   value in that?

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1   *A*   I haven't spent a great deal of thought looking at

2   all the options that would work --

3   Q   Uh-huh.

4   *A*   -- but I do think I'm open to change, I think

5   change is always something that should be embraced

6   and examined and looked at, and if through the

7   wisdom of the people that know a lot more of the

8   law and the issues than I, believe it's worthy of

9   doing, then give it a try.

10 Q   A good idea to have people involved in it that

11   have no vested interest in maintaining the

12   conviction?

13 *A*   Well, I don't know. Now I think you are

14   suggesting that if you were maybe in the justice

15   department you believe that or if you are a

16   policeman you believe that --

17 Q   Uh-huh.

18 *A*   -- and I can only speak for myself, you know, I

19   have no personal interest to make sure that a

20   person that's convicted stays convicted, I really

21   in my heart don't believe that.

22 Q   I'm not for a moment suggesting you were.

23 *A*   And I also say that -- so does that mean that

24   because I'm a policeman I couldn't be objective in

25   pursuing this or does that mean a prosecutor

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1   couldn't be or a defence lawyer would have a

2   different view, because I don't think there's

3   anyone who endorses a wrongful conviction, so who

4   is the right people to really do this? There's a

5   question mark as to who that may be. That's open

6   to debate I guess.

7   Q   Okay. I'm not, again, I'm not for a moment

8   suggesting that you were an inappropriate person

9   to investigate or to do anything, I think your

10   investigation within the limitations you were

11   given was absolutely commendable, and in a

12   thoroughly professional and unbiased way, I'm

13   talking about decision-making people, that perhaps

14   we ought to not have police who were involved in

15   the case. It's as simple as when you first got

16   the assignment, the police force that was involved

17   in the case is not really a good one to look into

18   whether anything was done wrong. Yes?

19   A   But you know, having said that, as a police

20   organization of a professional, accredited police

21   department, I think the only way you get better is

22   to self examine the mistakes you may have made and

23   if you are going to take an entire organization

24   and isolate them and leave the impression they are

25   not capable of participating in a review of a

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1   mistake that may have been made I think is denying

2   them the opportunity to look at themselves and

3   grow and change and become professional in what

4   they do, so there's a downside. I mean, the

5   public perception could be that, well, you know,

6   if they initially investigated this, then they

7   shouldn't be involved in this follow-up

8   investigation.

9   Q   Yeah.

10   A   The other side of that is that, you know, if the

11   police department is going to grow and be more

12   professional, you have to give some confidence and

13   credit that they are going to be no different than

14   you or I, that they don't want a wrongful

15   conviction either, and so in there there's a place

16   for them to participate.

17   Q   Uh-huh. And perhaps that's a matter of education

18   where you can do something to impact on the

19   culture that's giving the belief in the conviction

20   because it's happened in the courtroom or --

21   A   I think it's much simpler than that, I think it's

22   just taking the specific particular case.

23   Q   Yeah.

24   A   You don't have to re-invent the police department,

25   you know. I mean, sure, there might be cultural

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1   issues, there might be management issues, every

2   department has that, but I do think when you look

3   at a wrongful conviction case and if there is a

4   mistake that was made in the investigation, this

5   is a great opportunity for the police department

6   themselves to change the way they do business and

7   to look at what went wrong and to learn by it and

8   it's a great opportunity to learn. I mean, we all

9   make mistakes.

10   Q   Uh-huh.

11   A   To not let them participate I think is an

12   injustice to them as a police organization.

13   Q   Okay. The fact of the matter here is that if not

14   for the efforts made by the Milgaards' counsel and

15   the efforts of Mrs. Milgaard, everything would

16   have ended with the dismissal on February 27th of

17   1991 with Ms. Campbell's letter, and the same

18   thing, you don't have a lot of detail about this,

19   but the same thing was happening after 1992 with

20   respect to the DNA. You remember when you were

21   still involved there were efforts to do DNA

22   testing while David Milgaard was still in jail?

23   A   Yes.

24   Q   And that, from the prosecution point of view,

25   would be to see if he could be incriminated by the

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1   DNA testing; right?

2   *A*   Yes.

3   Q   And from 1992 there was an effort which started in

4   1995 when it was discovered with the *Morin* case,

5   that the DNA problems could actually be overcome

6   after many years, at that point there's an

7   intention by David Milgaard to seek DNA testing to

8   clear his name, notwithstanding that he's been out

9   for three years and walking around as a guilty man

10   in everybody's eyes, and it took some two years to

11   get agreement to have DNA testing done and we all

12   know what the results of that was in July of 1997.

13   Would you support, as part of the, I guess in our

14   better world, that there be a ready access to DNA

15   testing in cases such as this where it could

16   conclusively demonstrate somebody's innocence?

17   *A*   Absolutely.

18   Q   And I'm speaking financially as well, not simply

19   releasing exhibits. Yes?

20   *A*   I'm not going to discuss the finances and who

21   should pay for it, I'm just talking about the

22   value of DNA testing and some finality it may

23   bring to an investigation.

24   Q   Thank you. Are there any other recommendations or

25   advice that you would like to give that you

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1   haven't been asked about?

2   *A*   No, I really can't think of any. I'm sure if a

3   person sat down and put their head to this, you

4   could come up with some great ideas and some

5   suggestions, but right off the top of my head, no,

6   I don't.

7   **Q**   Thank you very much, sir.

8   *A*   Thank you.

9   **BY MR. FOX:**

10 **Q**   Mr. Pearson, I'm Aaron Fox, I'm the lawyer for

11   Eddie Karst. I'm near the end of the batting

12   order, so the game is just about over. I just

13   wanted to ask you a few questions about some of

14   the things that you've raised, and Mr. Boychuk of

15   our office was here for a good part of your

16   testimony, so I'm hoping I've got most of this

17   correct.

18   There was just a couple of

19   references you made at various times to practices

20   of taking statements and interviewing witnesses

21   and so on and would it be fair to say that in

22   general terms police today would be far better

23   educated and probably taught an awful lot more

24   about practices in taking statements and so on

25   than what would have existed in 1969?

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1   A   Yes, I believe there have been a lot of in-service

2   training courses put together for those things,

3   yes.

4   Q   There was some discussions, for example, by My

5   Learned Friend Mr. Wolch about speaking to, say, a

6   witness like Kenny Cadrain when he would have been

7   five or six years old. I take it an officer today

8   would have, would probably have an awful lot of

9   training about interviewing a young person and how

10   they might be handled and how they might be

11   influenced or not influenced, that sort of thing,

12   formal training versus what would have existed in

13   1969?

14   A   Well, I think even today that aspect of

15   interviewing children and such is somewhat

16   specialized as well. I mean, most people get some

17   basic exposure to it, but training for dealing

18   with young children and such is a bit of a

19   specialty just because of the child psychology

20   involved.

21   Q   Okay. Now, you were asked some questions about

22   driving around a witness or taking a witness to a

23   location to see if they can identify the location,

24   that sort of thing. Do you recall that being

25   discussed?

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1   *A*   Gee, faintly.

2   **Q**   It was pretty early in the procedure.

3   *A*   Yeah.

4   **Q**   I think Mr. Hodson probably asked you some

5   questions about that, but if we've got, for

6   example, and in this case we're speaking

7   specifically of Nichol John and Ron Wilson, trying

8   to establish with them, the police in 1969

9   received some information from Albert Cadrain, Ron

10   Wilson, Nichol John are identified as being with

11   David Milgaard, they were at certain places in

12   Saskatoon, so you want to find out from these

13   people if they can identify where they were. The

14   first step I guess would be to see if just on a

15   free basis, narrative basis, without having to go

16   anywhere, can they tell you exactly where they

17   were and what locations they were at, what streets

18   they were on and that sort of thing, that's where

19   you would start; correct?

20   *A*   That's logical, yes, sure.

21   **Q**   And you would hope, you know, and in a perfect

22   world they would be able to say yeah, I drove down

23   22nd Street and I turned right at Avenue H and

24   went one block north and pulled down a back alley

25   and that's where I parked, now you've got the

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1   information and that's great; correct?

2   A   Yes.

3   Q   But not surprising that if you had, especially

4   when you are dealing with a couple of witnesses

5   who were not familiar with the city, they probably

6   wouldn't be able to give you that kind of

7   description as to where they went?

8   A   That's right.

9   Q   Now, would I be correct as an investigator,

10   though, you are probably not going to just leave

11   it at that, they don't know the city, they can't

12   give you the exact route they took, as an

13   investigator certainly investigating, I might

14   suggest any offence, but certainly a murder

15   offence, you are going to see if you can follow up

16   on that, maybe they can give you some further

17   information; would that be fair?

18   A   That's fair.

19   Q   And I don't think there would be much question

20   that it probably wouldn't be very good police

21   tactics to drive a witness to a specific location

22   and say this happened at this exact spot, do you

23   recognize it, is this where it took place sort of

24   thing, that probably wouldn't be where you would

25   want to start?

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1   *A*   That's right.

2   **Q**   But driving through the general area, patrolling

3   through the area, seeing if they can pick out any

4   landmarks or identifications or anything that

5   might come back to them about the morning that you

6   are questioning them about, that would be fairly

7   standard procedure; would it not?

8   *A*   Yes, I think that would be something that you

9   would certainly consider doing, as long as you

10   weren't leading them on with pointing out certain

11   highlights, but try and help them recollect the

12   scene or landmarks or streets or information that

13   may assist yourself.

14   **Q**   And you hope that maybe they will be able to say,

15   yeah, that building looks familiar, I remember

16   being parked there, or this alley looks familiar,

17   I remember driving down it, that sort of thing?

18   *A*   Yes, that's quite acceptable as far as I'm

19   concerned.

20   **Q**   Sort of almost, sort of a similar procedure that

21   you, and little different tact, but the same sort

22   of thing, for example, when you interviewed Sharon

23   Williams, when you interviewed Ms. Williams you

24   asked her before showing her any statement or

25   anything basically to tell you what she remembered

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1   about David Milgaard in 1969; would that be

2   correct?

3 A Yes.

4 Q And when she had some difficulty remembering,

5   providing the statement in hopes that that might

6   assist her in maybe recalling something or

7   bringing thinks back to her?

8 A Yeah, that's right. We're 20 years later, so you

9   have to --

10 Q I understand from your evidence, Mr. Pearson,

11   there was no direct investigation by you of the

12   conduct of Eddie Karst in relation to the

13   investigation of the Gail Miller death. Would I

14   be correct in that?

15 A Yeah, I didn't participate in any aspect of that,

16   and I never knew Mr. Karst either.

17 Q Okay. Peripherally you would have seen the

18   reports that he had prepared and that sort of

19   thing?

20 A Yes.

21 Q Okay.

22 A Anything that was documented on the file I

23   probably would have seen.

24 Q Anything that was documented on the file. We saw

25   some of his reports, I won't bring them up, but

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1   you may recall that, for example, he noted some of

2   the inconsistencies between what Nichol John said

3   at one point in time, what she said at a later

4   point in time; similarly, what Ron Wilson said at

5   one point and what he said at a later point in

6   time?

7   A I have no recollection of that.

8   Q You were asked a number of questions on this, the

9   subject matter of David Milgaard having gone

10   through the judicial system and having had a

11   preliminary hearing, having had a trial, having

12   been found guilty, having exhausted his rights of

13   appeal, and I don't think you were suggesting in

14   any way that just because that happened that's the

15   end of the story, automatically we close the book

16   on it, but it certainly is of some significance in

17   looking at, well, has there been an injustice

18   here, it's a factor that you would look at and

19   consider?

20   A I believe so, yes.

21   Q As a police officer investigating a case, would it

22   be fair to say -- I'll ask you personally, and I'm

23   sure you've been involved in many criminal

24   investigations that led to charges and ultimately

25   convictions. Would you consider that case closed

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1   in terms of no possibility of a mistake having

2   occurred, no possibility that this individual

3   might be innocent, in fact, of the charge that

4   he's faced?

5 A Yes, I think in general terms, you know, you

6   investigate a case and you develop the evidence

7   and you review it with the prosecutor and in

8   Saskatchewan, I don't know what it's like today,

9   but the police had the authority to lay the

10   charge, you went through the system. If there was

11   a conviction, that's where the policeman left it

12   for the most part, unless you came across

13   something that was significant as a new bit of

14   evidence or something new to consider, but for the

15   most part, the mind-set was that after the charge

16   was laid and the matter was dealt with in Court

17   through a conviction, that was pretty well the end

18   of it.

19 Q And to some extent, even I suppose after your

20   investigation is finished, for you as an officer

21   that might be the end of it in the sense that you

22   gathered the evidence, somebody is going to look

23   at it, a decision will be made on a charge, and

24   ultimately somebody else is going to decide

25   whether or not that evidence is sufficient to

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1   register a conviction or not?

2   A   Yes, it does elevate or remove itself out of the

3   police environment into a prosecutorial area of

4   the justice system, but yeah, it does move along

5   the structure.

6   Q   Would it be fair to say, since the advent of the

7   discovery and use of DNA, and specifically how

8   it's been able to establish that some innocent

9   people have been convicted of offences, that there

10   might be more of an open atmosphere today to sort

11   of questioning, or at least looking more closely

12   at convictions if somebody comes along afterwards

13   and says "you know, I didn't actually commit that

14   offence"?

15   A   I believe so, if you have got the availability of

16   DNA that's going to provide an answer for you,

17   absolutely.

18   Q   Well, even in more general terms, would it be fair

19   to say that simply because we know now that here's

20   someone who's been convicted -- and I'm not

21   talking about the *Milgaard* case specifically --

22   A   Okay.

23   Q   -- but other case where we know someone has been

24   convicted, for all intents and purposes it looks

25   to be a good conviction, the person proclaims his

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1   innocence and lo and behold DNA establishes that

2   the person is innocent, it's caused us, I would

3   say generally, to perhaps take a second look when

4   people step up and say "I actually didn't commit

5   that offence"?

6   A   Oh, yeah, absolutely. I mean the world has

7   changed significantly since 1969, and to a degree

8   since 1990, but it is changing all the time. But

9   I do believe there is, the openness is coming into

10   the system, and I think we recognize that there

11   are some wrongful convictions that are -- that

12   have come into the system, I mean Milgaard is one

13   but there are others as well, so I think we're all

14   more sensitive to that.

15 Q   You were asked a lot of questions throughout the

16   course of the last few days, Mr. Pearson, about

17   sort of the couple competing theories you had

18   which, in very simple forms, had either David

19   Milgaard committing the murder of Gail Miller or

20   Larry Fisher committing the murder of Gail Miller,

21   and obviously if Mr. Fisher did it then Mr.

22   Milgaard didn't, or vice versa, at least based on

23   the theories that you had; correct?

24 A   Or -- or neither one of them.

25 Q   Or either one of them?

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1   A   Neither one of them.

2   Q   One of the questions, though, that I suppose would

3   exist when you are looking at -- and again going

4   back to 1969 or '70, if we're looking at Larry

5   Fisher as being a possibility of having committed

6   the murder of Gail Miller, you still are looking

7   for, first of all, some direct link, some direct

8   evidence directly connecting him to that offence;

9   would that be fair to say?

10   A   I think that's fair to say, yes.

11   Q   The mere fact that he has been involved in other

12   serious rapes, none of them involving a death but

13   other serious rapes, could make him a suspect,

14   possibly, but you still have to be able to --

15   that's not enough to just sort of say "I'm going

16   to charge this person with something"; fair to

17   say?

18   A   That's fair to say. Going back to that time

19   period, if you --

20   Q   And I'm talking about that time period?

21   A   And I know in that time period Larry Fisher, I

22   don't think, had a criminal record at that point

23   so that wasn't a known, but I think if you would

24   have had Larry Fisher, known that he was involved

25   in the criminal activity at the time, it certainly

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1   would have created some suspicion, there is no

2   doubt about that. And I think at that point, if

3   he was pursued as a suspect, you may have been

4   able to verify some of these things that we

5   haven't been able to do 20 years later, like was

6   he at work that morning and, you know, and --

7   yeah, the memory is fresh in everyone's mind,

8   including Linda's, --

9   Q   Yeah.

10   A   -- and it may have put some more finality or

11   firmness to it.

12   Q   I guess what I was looking for was any direct

13   evidence directly linking Larry Fisher to the

14   death of Gail Miller, and I must confess I don't

15   think I see that beyond the DNA, which was only

16   discovered in 1997; would that be correct?

17   A   Oh, when we start talking about direct evidence, I

18   think you are right.

19   Q   And then I suppose the second problem that arises

20   then is that, okay, even if we thought of Mr.

21   Fisher as a suspect, what do we do with these five

22   people who have given evidence at the trial of

23   David Milgaard, which have given some fairly

24   incriminating evidence against him, would that be

25   correct, still have to make some assessment "well,

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1   what's goin' on there"?

2   A   Yes.

3   Q   "Why did Albert Cadrain voluntarily walk into a

4   police station and say 'David Milgaard had blood

5   on his pants that morning and I think he killed

6   that nurse'?"

7   A   Yeah. Oh, I have to agree, there had to be some

8   basis for this, I mean it went through a lot of

9   hands to get to the conviction stage so I imagine

10   there was some basis to believe that certain

11   things took place.

12 Q   Sure. And when you are looking at that evidence,

13   I know Mr. Wolch this morning, he stated that you

14   would give a greater degree of reliability if

15   witnesses -- if a witness volunteers the

16   information versus being prompted or led, and you

17   agreed with that statement? Do you want me to

18   repeat that?

19 A   You mean if a person voluntarily came in and

20   wanted something --

21 Q   Yeah?

22 A   -- as opposed to you going out there and trying to

23   get it out of him?

24 Q   Yeah?

25 A   I agree that it gives you a certain degree of

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1   confidence that -- but, on the other hand, I mean

2   you have to take a look at what is motivating this

3   as well.

4   Q Sure.

5   A I mean there is motivations behind all of these

6   things.

7   Q How did they end up coming to see you in the first

8   place?

9   A That's right, yes.

10   Q But having said that, I mean I suppose if you are

11   looking at the conduct of the police, we look at

12   the conduct of Albert Cadrain before he ever had

13   any contact with the police, walks into the police

14   station voluntarily and says "David Milgaard had

15   blood on his clothes that day and I believe he is

16   responsible for the murder of Gail Miller for

17   these reasons", again fairly significant in the

18   sense that it's volunteered, it's not prompted,

19   it's not extracted by the police, it's brought in

20   and laid in their doorstep, so to speak?

21   A Well, it obviously had an impact on them, and it

22   was something that came out of the blue to them.

23   Q I'm going to talk just a little bit about the

24   paring knife, Mr. Pearson. I think you were asked

25   if you could identify the paring knife in your

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1   home, were you, sir?

2   A   What's that?

3   Q   Your -- a paring knife?

4   A   Yes?

5   Q   I think you were asked earlier if you could

6   identify the paring knife in your home?

7   A   Yes, I was asked that.

8   Q   Okay. And do you know when the last time was that

9   you peeled potatoes?

10   A   Last night. No, quite -- no, a long time ago.

11   Q   No. And the point I was making, and should

12   Mr. Wolch testify at some point in time I'll ask

13   him that question as well, but the point I'm

14   making is while you might not be very familiar

15   with what the paring knife looks in your home, if

16   there is somebody in your house who uses it on a

17   daily basis, if there was someone in your house

18   who was a housewife home with a child and peeled

19   potatoes on a regular basis, they might be able to

20   tell you pretty accurately what that paring knife

21   looked like; you would agree with that?

22   A   That's a possibility, yes.

23   Q   Sure. I just wanted to clarify one thing.

24   Mr. Wolch, this morning, asked you about the RCMP

25   report of Officer Rasmussen which made reference

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1   to the possibility of the similarities or the

2   possibility that the person who had committed

3   sexual offences in Saskatoon also had been

4   responsible for the death of Gail Miller. Would I

5   be correct that when you reviewed the Saskatoon

6   Police Service file, when you got that and

7   reviewed it, there was reference there to the

8   possibility -- to that possibility?

9   A   In that report?

10   Q   No, no, in the Saskatoon Police Service file that

11   you saw?

12   A   No, I don't recall, I just don't recall.

13   Q   And I'm asking you if you -- if there was an

14   indication that -- for example you said that you

15   saw that there was warnings put out in the

16   newspaper, you remember seeing something about

17   newspaper articles being published which warned

18   people in Saskatoon to be careful because there

19   was somebody out there committing sexual assaults,

20   or rapes at that time as they were described; you

21   had some recollection of seeing that?

22   A   Yes, I do believe that I saw some of those

23   articles.

24   Q   Okay. And do you know if that was in reference,

25   and is it possible that that was in reference to

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1   the possibility that someone who had committed the

2   rape of Gail Miller and murder of Gail Miller may

3   have been the same perpetrator?

4   *A*   I -- that's logical, but I just don't have a

5   recollection.

6   Q   You were asked some questions about the, about

7   (V4)---- (V4)---, and specifically the suggestion

8   was put to you that there was a likelihood -- at

9   least that's how I understood it -- that if Larry

10   Fisher sexually assaulted and murdered Gail

11   Miller, he then probably went on and sexually

12   assaulted (V4)---- (V4)---; have you examined the

13   statement of (V4)---- (V4)--- in terms of what she

14   said happened?

15   *A*   Well yes I did, but to recall today exactly what

16   it said I really couldn't discuss it with you,

17   because I just don't recall.

18   Q   I'm not going to bring it up, Mr. Commissioner, --

19   *A*   Okay.

20   Q   -- but just for the record the statement number is

21   006404. I don't need it. But if we understand

22   that Gail Miller left her, her apartment someplace

23   6:45 or thereabouts at -- to walk to the bus stop,

24   and then we know the sort of brutal attack that

25   she was subjected to, you've obviously reviewed

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1   the file and saw particulars of that, a number of

2   stab wounds, a fair bit of blood, clothes removed,

3   clothes put back on, a sexual assault in the

4   middle of it all, that sort of thing, and that

5   obviously would have all had to have occurred

6   sometime after 6:45 a.m.; if then -- do you see

7   where somebody might then, in looking at the

8   (V4)--- complaint, her complaint being that at

9   7:07 a.m. -- and she's quite precise with her

10   time -- some seven or eight blocks away an

11   individual approached her from the front, no

12   effort to hide their face and no effort to hide

13   who they were, and basically ran his hands on her

14   thighs, in which case she threw up his books, the

15   person immediately backed off and left, no effort

16   to drag her anyplace, no effort to come up from

17   behind, no weapon or anything like that, and what

18   would have obviously had to have been almost

19   immediately after this brutal murder and rape of

20   Gail Miller, and no blood, no indication of

21   anything about it; do you see where somebody might

22   look at that and say "well that's just not

23   feasible that we're talking about one and the same

24   person"?

25   A   Oh, sure, I -- this could be interpreted

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1   differently by any different individual that looks

2   at this. I'm sure some people look at it and say,

3   you know, "the two are linked because of the

4   closeness in time and the neighbourhood, and so

5   therefore it had to be the same person", and

6   someone else might look at it and say "the crimes

7   are so different that it couldn't be the same

8   person", I -- you know, we'd be speculating,

9   really.

10   Q   Sure, sure. But it would appear that the

11   closeness of the time, in fact the closeness in

12   time may make it impossible that they could have

13   both occurred at the same time, but the closeness

14   in time is about the only link that there's there,

15   that certainly the modus operandi of those two

16   assaults are dramatically different; you would

17   agree?

18   A   Yes, they are different.

19   Q   Thank you, Mr. Pearson, those are all the

20   questions I have.

21   A   Thank you.

22   COMMISSIONER MacCALLUM: We'll break.

23   *(Adjourned at 3:03 p.m.)*

24   *(Reconvened at 3:20 p.m.)*

25   **BY MR. FRAYER:**

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1   **Q**   Mr. Pearson, you and I have been introduced to

2   each other earlier on in this proceeding, and just

3   to confirm for the record my name is David Frayer

4   and I am representing the Federal Minister of

5   Justice.

6   And just to confirm further

7   that, apart from some casual conversations that

8   you and I have had, that you and I have not

9   formally ever discussed the background of your

10   role in this 690 review; is that correct?

11 *A*   That's correct, yes.

12 **Q**   And if we can go back to, just to the day that you

13   were first contacted by Eugene Williams of the

14   Federal Justice Department in Ottawa, Mr. Wolch

15   went over some of that background with you and I

16   don't think you could ever identify how it was

17   that you were selected on that day for the role

18   that you were eventually going to play in this

19   review?

20 *A*   Umm, no, I had no idea.

21 **Q**   And your evidence essentially is that you think it

22   may be related to the fact that you were the NCO

23   in charge of the general investigation section in

24   Saskatoon?

25 *A*   Umm, yes.

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1   Q   A person of some considerable experience, in fact

2   by the time you commenced your investigation of

3   this matter you had 25 years on the force?

4   A   That's correct, yes.

5   Q   And how long had you been on the general

6   investigation section?

7   A   I was only a couple of years. Before that I spent

8   23 years on uniform managing detachments and

9   supervising and developing through that side.

10   Q   Right. And it's safe to say that, or fair to say

11   that shortly after being contacted by Mr. Williams

12   your activities started in earnest in this matter,

13   is that correct?

14   A   Yes.

15   Q   Yeah. And during the course of the time that you

16   were involved in this 690 review did you ever feel

17   overwhelmed by the responsibilities that you had

18   that were being placed upon you by the Federal

19   Justice Department and the responsibilities that

20   you still retained for managing and controlling

21   the general investigation section here in

22   Saskatoon?

23   A   I -- I don't -- I can't recall. I know we were

24   very busy, but all the policemen were busy,

25   everyone had a lot of work to do. But I just -- I

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1   fit it into the work that I was doing, and I -- I

2   don't recall feeling that I was overwhelmed and

3   not able to do the job, but --

4   Q   Okay.

5   A   -- that's my recollection.

6   Q   And while you didn't have anybody within the force

7   assisting you it's clear that, if you required

8   some assistance, that from time to time you could

9   go to other police officers to assist you, not

10   only here in Saskatoon or in the Province of

11   Saskatchewan, but in other provinces; is that

12   correct?

13   A   Yes, the resources were there, yes.

14   Q   Yeah. And from time to time you would do it, am I

15   accurate in that too, that --

16   A   Yes, that's fair.

17   Q   So you would use those, rather than travel out to

18   some location you might ask for assistance, for

19   example in the Dozenko matter you contacted Staff

20   Sergeant Denny Stewart of the general

21   investigation section in Winnipeg?

22   A   Yes, sure.

23   Q   And asked him to help you?

24   A   Yes.

25   Q   And he subsequently went out and did some

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1   interviews, I believe, --

2   *A*   Yes.

3   **Q**   -- and returned information to you?

4   *A*   Yes.

5   **Q**   And you've also given considerable evidence with

6   respect to your observations as to the systemic

7   problems that existed in the way that this

8   particular 690 review was being conducted at that

9   time, and we've heard from you some considerable

10   comment in that respect; --

11   *A*   Yes.

12   **Q**   -- is that correct?

13   *A*   That's fair, yes.

14   **Q**   I'm going to first of all take you to a

15   *StarPhoenix* article that has just been entered,

16   and it's doc. ID 332943, and if I can have that on

17   the screen please. This is a *StarPhoenix* item

18   that was published in *The StarPhoenix* on Friday,

19   November the 11th of 2005 which relates to the

20   testimony that you gave here on November the 10th,

21   the responses that were given to you -- or

22   responses that you gave as a result of questions

23   that were asked by Mr. Hodson. And I'm going to

24   direct your attention to the centre part of this,

25   under the picture of David Milgaard, and it says:

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1   "Williams contacted Pearson,

2   who worked out of the Saskatoon RCMP

3   detachment, and asked him to look into

4   the Fisher allegation.

5   Pearson said Thursday ...",

6   that's November the 10th:

7   "... he felt Williams did not tell him

8   everything about the Justice Department

9   investigation into Milgaard's claim of

10   wrongful conviction. He thought that

11   might have had something to do with the

12   restrictions inherent in the review

13   process, but didn't know for sure."

14   It went on, quoting you as saying:

15   "Pearson asked Williams for

16   background on the matter he was

17   investigating, but Williams apparently

18   did not tell him Fisher had been

19   questioned at a bus stop."

20   And then it goes on:

21   "As a result, Pearson learned

22   of it in bits and pieces ..."

23   And you will notice the headline of this article

24   is *Secrecy hampered conviction review: witness*,

25   and that's attributed to you.

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1   And I would ask you to comment,

2   first of all, on whether this is your observation

3   and whether this is reported accurately as being

4   the case, that secrecy hampered this conviction

5   review; would you say that that was the case?

6 *A*   I don't believe I said that --

7 Q   Right.

8 *A*   -- in my testimony, I -- if that's the inference

9   that's being left here. And I have to also say

10   that I have never seen this article before.

11 Q   Yeah.

12 *A*   Coming to Saskatoon, I have purposely not read the

13   newspaper or listened to the local media, because

14   I did not want it to play any part in what I was

15   saying. So when we start talking about secrecy, I

16   do believe that when we talk about Mr. Williams

17   being in Ottawa and me being here and we talk

18   about the exchange of information, and such was an

19   issue.

20 Q   Right?

21 *A*   Using the, a term of "secrecy", I really don't

22   think that's what I said, you know, I'm not sure I

23   said that in my testimony.

24 Q   Yeah.

25 *A*   But, at the same time, it was a matter of was

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1   information being exchanged between us.

2   Q   That's more the point, I believe, than any

3   suggestion that there was any secrecy. And I'm

4   not certain because I didn't review your evidence

5   of that date to see whether --

6   A   Yeah, yeah.

7   Q   -- those are your words or the words of the

8   *StarPhoenix*.

9   A   Yeah.

10   Q   But in any event, if those weren't your words but

11   that interpretation is put on how this was

12   conducted, you would take issue with the idea

13   that or the suggestion that secrecy hampered this

14   conviction review?

15   A   Yes, yes, I would.

16   Q   Okay. Thank you. Now with respect to the centre

17   portion of that:

18   "Pearson asked Williams for

19   background on the matter he was

20   investigating, but Williams apparently

21   did not tell him Fisher had been

22   questioned at a bus stop."

23   And sort of to go through the history of this,

24   and some of the documents that I am going to put

25   up on the -- put up on the screen are documents

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1   that aren't attributed to you so they are

2   documents that you may not have seen, and I'm

3   just going to go through it to show -- to reflect

4   just how this is inaccurate in terms of your role

5   in this, and when you came into possession of the

6   information that there indeed had been an

7   interview of Fisher as a bus stop some few days

8   after the murder of Gail Miller.

9   And the first of those

10   documents I would like to take you to is 010052.

11   If we could just have that brought up a little?

12   Thank you. This is a letter dated February 28th

13   of 1990, it's directed to Eugene Williams, and if

14   we scroll over to page 2, 010053, we'll see it's

15   authored by David Asper; and I believe that this

16   is a letter that you have seen, Mr. Pearson, is

17   that accurate?

18 A Just go back to the first part, I just have to

19   take a little read of it here.

20 Q Just take a look at it. I'm going to suggest to

21   you that, some days after your first conversation

22   with Eugene Williams, this particular letter came

23   into your possession --

24 A Yes.

25 Q -- from Mr. Williams?

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 1    A      Yes, it probably did.  I mean I just don't

 2           recall, --

 3    Q      Sure?

 4    A      -- but yeah, it probably did.

 5    Q      Okay.  And that letter -- and we'll get to the

 6           correspondence from Mr. Williams in a minute -- is

 7           the first letter that is sent to the Justice

 8           Department that suggests that a person by the name

 9           of Larry Fisher may have been involved in the

10           murder of Gail Miller.

11                      And if I can then move on to

12           332053, and we'll just identify this document,

13           this is a file -- memo to file by Mr. Williams

14           dated the 15th of March of 1990.  And in this

15           particular document it relates the results of a

16           telephone communication with Mr. Wolch on March

17           the 14th, 1990, it's dated the 15th of March of

18           1990, this memorandum, the fact that you had

19           conducted an interview of Linda Fisher on March

20           14th.  And then on page -- the next page, 332054,

21           there is reference to T.D.R. Caldwell, who was the

22           prosecutor in the *Milgaard* case, and Mr. Williams

23           says:

24               "I spoke with Bob Caldwell and after our

25                discussion he agreed to provide:
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1   (1) investigation report concerning Larry

2   Fisher that was made during the Gail

3   Miller investigation;"

4   And the next of the documents -- and that's

5   likely a document that you haven't seen?

6   A   No, I haven't seen it.

7   Q   And the next document is 050467, and this is a

8   letter directed again to Mr. Williams, it's dated

9   March the 15th of 1990. And if we can go over to

10   050468 and look at the top paragraph in this

11   document, it says, and I read from there:

12   "As you are probably aware, Mr. Fisher was

13   interviewed by the police in Saskatoon on

14   February 5, 1969. Evidently, Mr. Fisher

15   took the bus to work from the same bus stop

16   used by Gail Miller. He was apparently

17   waiting at that bus stop while the police

18   were asking individuals if they had seen or

19   heard anything on the morning of the murder.

20   Mr. Fisher apparently told the police that

21   on the morning of the murder, he had caught

22   the bus at 6:30 a.m. or 7:00 a.m. and had

23   gone to work. You will see from

24   Mrs. Fisher's statement that her husband did

25   not go to work on the date of the murder."

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1   Now this particular document is dated, as I said,

2   the 15th of March of 1990, and that's one day

3   after you had conducted an interview of

4   Mrs. Fisher?

5 *A* Okay.

6 **Q** And then if we can just go to your notes, it's my

7   understanding, if I can just take you to -- I'll

8   show you this on 056753. If we can go just to the

9   bottom, scroll down to the bottom, and -- sorry.

10   This is a conversation that took place, a

11   telephone conversation that took place on March

12   16th of 1990, some two days after you had

13   conducted your interview of Linda Fisher; is that

14   correct?

15 *A* Yes.

16 **Q** And there you record that:

17   "Linda indicates that Mrs. Milgaard had

18   Larry's statement which was given to the

19   police, indicating he left for work at

20   6:30 a.m. and checked at the bus stop,

21   but had seen nothing. Linda states

22   Larry did not work that morning, but may

23   have taken the 6:30 a.m. bus and

24   returned by the time Linda got up in the

25   morning."

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1   So it's safe to say, Mr. Pearson, that when you

2   conducted your interview of Linda Fisher on the

3   14th of March you were unaware of the existence

4   of this particular interview by the police; is

5   that correct?

6   A   According to this, yes.

7   Q   Yes. And that would be the first time that this

8   was communicated to you.

9   And so you can -- and if there's

10   one further document that I will take you to, and

11   that's 332387, and if we can just highlight the

12   bottom portion of this, please. These are notes,

13   and we've already heard from Bobs Caldwell, the

14   prosecutor, these are his notes of a meeting that

15   he had on the 22nd of March of 1990 where he

16   attended with Eugene Williams to the provincial

17   prosecutors office and they went through a series

18   of files. If we can just scroll down to the

19   bottom, just raise it up a bit please, and we'll

20   see Larry -- I think it's at this time that Mr.

21   Williams comes into possession of the McCorriston

22   report. And that's, if I can just take you to

23   that, 'EW', meaning Eugene Williams, 'Took copies

24   of G. McCorriston's report'. So it appears here

25   that, for the first time, Mr. Williams is given a

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1   copy of Mr. McCorriston's -- or Officer

2   McCorriston's report of his interview of Larry

3   Fisher?

4   A   Right.

5   Q   So it's very clear that, at the time when you

6   conducted the interview, that nothing was being

7   kept from you because it wasn't within the

8   knowledge of anybody in Justice, more specifically

9   Mr. Williams; would I be accurate in that

10   statement?

11   A   I think you are accurate in that statement, yes.

12   Q   And it seems too that at some later stage, and I

13   won't go to them, but some considerable time

14   later, as part of your investigation you were

15   looking for the McCorriston notes, and I believe

16   that at some stage or other you were advised that

17   McCorriston's notes had been taken home, and

18   that's subsequent to that. Do you recall if you

19   ever came into possession of his notes, I'm not

20   talking about the report, but his notes of this

21   part of the investigation?

22   A   Yes, I did come into possession of his notes.

23   They were at his home and they were retrieved from

24   him from his residence.

25   Q   Thank you. Now, what I would like to do too,

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1 bearing in mind that Mr. Hodson covered this in

2 some considerable detail, is just take you to one

3 phase of the investigation, and that's at the

4 start of this investigation, the fateful day that

5 you were contacted by Mr. Williams and left a

6 voice mail message to contact him in Ottawa which

7 started you out on a fairly extensive and fairly

8 complicated investigation that resulted in a

9 report of, by my calculation, some 782 paragraphs

10 and 177 pages, so this was a work effort by you

11 that already other counsel have commended you for,

12 and I think it's commendable as you read through

13 it that you have such an excellent record of the

14 background of this investigation and what you did

15 from time to time throughout it, but what I want

16 to go to is just to demonstrate that while there

17 were difficulties in the relationship between you

18 and Mr. Williams in terms of the geographical

19 aspect of how this review was being done, that

20 over the course of the years in which you were

21 involved, there were a number of face-to-face

22 meetings with Mr. Williams, there were exchanges

23 of letters, there were faxed communications sent

24 back and forth and there were a substantial number

25 of telephone conversations with, between yourself

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1   and Mr. Williams, sometimes initiated by you,

2   sometimes by him, and those telephone calls would

3   be placed at all time of day and night. Am I

4   accurate in that?

5   A   Yes, in general terms that's true. I think --

6   when you start talking about telephone calls, as I

7   indicated that was our primary way of indicating,

8   and I think during my tenure on this, I think

9   there was close to 150 telephone calls that were

10   placed between Mr. Williams and myself.

11   Q   And some of those would be done after hours from

12   residence to residence, things of that nature?

13   A   From time to time, yes.

14   Q   Just because of time, distance and some of the

15   things that you've already --

16   A   Yes, yes.

17   Q   -- referred to. Now, as I said, I would like to

18   take you to sort of where this, where this all

19   initiated and just go through the notes, not in

20   any great detail, leading up to the interview of

21   Linda Fisher that was done by Mr. Williams on

22   March the 24th of 1990, and in doing that I would

23   like to refer to page 056744 of your occurrence

24   report, paragraph 4. If we look at that:

25   "Correspondence received from Mr.

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1   Williams, outlining the requests that he

2   wished fulfilled, as well as a copy of a

3   letter he received from Milgaard's

4   lawyer --"

5   Which I believe is the February 28th letter from

6   Mr. Asper,

7   "-- outlining the new source of

8   information. Our investigation will now

9   begin. Copy of information received

10   from Williams has been faxed ..."

11   And so on. So it was fairly shortly after your

12   first conversations with Mr. Williams, one of

13   which was that you had asked specifically for

14   instructions to come from him in writing?

15 A Just to give me some background as to where to

16   start, yes.

17 Q And so what resulted some very few days later was

18   document 001810, and if we could just have that

19   up, please, and this particular document is just

20   dated no specific date in March, but it's March of

21   1990 and it's directed to your attention, Mr.

22   Pearson, and I believe if we go to the last page,

23   and I believe it's a three page document -- sorry,

24   four, please, it's a four page document

25   authorized, or authored, I should say, by Eugene

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1   Williams, and if we can go back to page 1, please,

2   or the first of the pages, that's 1810. So

3   essentially what is being done here, as I

4   understand, is this is the written confirmation of

5   the request for your services that comes from Mr.

6   Williams very early in March, or in March of 1990,

7   and what he says is:

8   "I am writing to confirm the substance

9   of our telephone conversation of

10   February 28, 1990. I sought to identify

11   the person, whose assistance I should

12   obtain, to investigate certain facts

13   concerning David Milgaard's application

14   ..."

15   And so on. So what he does is he proceeds to

16   give you some background in paragraph 2:

17   "To obtain a better understanding why

18   the requests which follow are being

19   made, some background information is

20   needed. David Milgaard applied to the

21   Minister of Justice seeking among other

22   things, a new trial. He contends that

23   he was wrongfully convicted in January

24   1970 ..."

25   And so on.

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1   "This application spurred an

2   investigation into the reasons which

3   were asserted in the application."

4   And then there's information from an informant by

5   the name of Sidney Wilson that, address unknown,

6   who told Milgaard's counsel that Larry Fisher was

7   Gail Miller's killer. So you said a number of

8   times that your main focus through the 690 review

9   was the investigation relating to Larry Fisher,

10   so this really initiated and confirmed what your

11   role and responsibility was going to be?

12 A Yes.

13 Q Albeit that it didn't explain to you necessarily

14   what the 690 process was about, that's something

15   that you may or may not have understood at the

16   time, but in any event, this was the letter that

17   sort of initiated your commencing this

18   investigation. I don't intend to go through it,

19   it has been presented to you by Commission

20   Counsel.

21   If I can then go on to 746 of

22   your occurrence report, 056746, please, and if I

23   can just go to paragraph 14 and just have that

24   brought up, and here you called Eugene Williams

25   and advised that you located Linda Fisher. Now,

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1   missing from that of course is the various

2   attempts you made to locate, identify and locate

3   Linda Fisher, and you then said:

4   "... and requested he send a synopsis of

5   the file so I can better brief myself

6   prior to an interview with her. This

7   will be sent via courier service."

8   Now, I'm not certain whether I've ever seen what

9   was sent to you. Do you recall whether you

10   received anything from Mr. Williams?

11   A   I believe he did send me a synopsis of, kind of an

12   overview of the crime and the investigation and

13   some of the facts surrounding it.

14   Q   Okay. You don't remember the details of what that

15   consisted of, but you have a general recollection

16   of what he sent you?

17   A   I can't tell you now what -- but there was -- and

18   maybe it was something that I've seen since

19   preparing for the Inquiry, but there was a

20   synopsis I believe forwarded to me as a result of

21   paragraph 14 here.

22   Q   Okay. And if we can go to 056747, which is the

23   next page, this is a conversation right at the

24   top, if we can bring that up, please, and you've

25   testified as to this earlier, but on the 12th of

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1   March of 1990 at 10:30 you had a telephone

2   conversation with Eugene Williams and he goes into

3   some of the background relating to Bryan Wright

4   and to information obtained from Joyce Milgaard

5   and some other issues relating to the fact that

6   the Milgaards were in contact with --

7   A   Yes.

8   Q   -- the Fisher family?

9   A   Yes.

10   Q   And then if we can move on to 748, the next page,

11   and at the top, paragraph 23, I'm only pointing to

12   this to say that:

13   "Williams and myself discussed the

14   possibility of taking a legal deposition

15   and arrangements will be made to have

16   this done."

17   And when you say arrangements will be made to

18   have this done, that was one of the functions

19   that you were going to perform and that you did

20   perform; is that correct?

21   A   Yes, I was going to facilitate it and set it up.

22   Q   And you in fact made those arrangements?

23   A   Yes.

24   Q   And then on 056749, and I won't go through this

25   with you other than to just confirm that it was on

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1   the 14th of March of 1990 that you attended in

2   North Battleford, or actually the day before you

3   located and interviewed Linda Fisher and took a

4   statement from her?

5   A   Yes.

6   Q   All right. And if we can move on to 750,

7   paragraph 33, and just bring that up, please:

8   "Received a call from Mr. Williams in

9   Ottawa, advising he had been talking to

10   David Asper from Winnipeg.

11   Mrs. Milgaard has apparently obtained a

12   statement from Linda, which I was aware

13   of."

14   And you had been made aware of that fact by Linda

15   Fisher?

16   A   Possibly. Possibly.

17   Q   Yeah. I'm sorry, you couldn't have been because

18   your conversation was the 16th.

19   A   I think it's better explained in my handwritten

20   notes and I'm not -- I'm not sure.

21   Q   Do you wish to refer to your notes?

22   A   I'm just wondering if Mr. Williams had told me

23   this before this call. I don't know, let me just

24   check, maybe check my notes.

25   Q   Yes, please.

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1   MR. HODSON: What's the date?

2   BY MR. FRAYER:

3   Q   It's the 14th of March of 1990. 1630 hours he

4   received a call. 058227, please. It's on the

5   left-hand side I believe. Can we have that

6   brought up, please?

7   A   That's on the 14th?

8   Q   That's the 14th, okay.

9   A   So that's --

10 Q   Can you just read that out for us because there

11   appears to be -- I thought it was on the 16th of

12   March that you came into possession of that

13   information from Linda Fisher as a result of a

14   telephone call.

15 A   Call from Williams, he has been talking to

16   Winnipeg lawyer. Mrs. Milgaard obtained a

17   statement from Linda. We discussed circumstances

18   surrounding the two offences. Larry involved in

19   Winnipeg on Saturday, 19th of September, 1970, and

20   Sunday, August the 2nd, 1970. We discussed

21   M.O.'s, noted knife used in the one offence. Both

22   were violent. Also discussed North Battleford

23   offence, knife used and pretty well the same M.O.,

24   i.e., knife, dark, jumped from bush. Will check

25   with Fort Garry investigator to determine if

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1   Fisher blood type ever used and if photo available

2   of knife. Also, arrange to have Linda

3   re-interviewed for recording by stenographer,

4   etcetera. That was to do with the legal

5   deposition.

6   Q   The legal deposition. I don't see any reference

7   in those notes in what is found in 056750 under

8   the entry at paragraph 33 which is the one to

9   which I just referred you:

10   "Mrs. Milgaard has apparently obtained a

11   statement from Linda which I was aware

12   of."

13   Is that in there?

14   A   What date are you talking about now?

15   Q   I'm talking about March the 14th.

16   A   Okay. All I have in my notes here is that

17   Mrs. Milgaard obtained a statement from Linda.

18   Q   Oh, I see. I'm sorry. Okay.

19   A   Yeah.

20   Q   I've confused the issue.

21   A   Okay.

22   Q   I'm sorry, I apologize.

23   A   That's all right.

24   Q   So what we're talking about here is the actual

25   statement that she had taken and you were aware of

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1   its existence as a result of either having it

2   given to you or as a result of your conversation

3   with Linda Fisher?

4   A   I don't think I had it, but I was aware it was out

5   there because of the call I had with Mr. Williams

6   here on this date I guess, that's how it would

7   come to me.

8   Q   I'm sorry for confusing that issue, Mr. Pearson.

9   If we can just go to 056751, this again is -- at

10   paragraph 36, is another entry, just the bottom

11   part of that, this is March the 14th and it is

12   after the Linda Fisher interview, and the last

13   sentence in that paragraph 36 is:

14   "Attempt will be made to determine if

15   Fisher was ever interviewed by City

16   Police."

17   So that was an observation that you made, and I

18   think you've already testified as to that being

19   an important piece of evidence, if you had known

20   about it in advance of your interview with Linda

21   Fisher it would have been helpful?

22   A   I don't recall that, but yes, possibly.

23   Q   Okay. And if we just go to 056752, paragraph 46,

24   an entry on the 16th of March, and all I'm

25   pointing that out to say, right at the bottom,

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1   please:

2   "I placed a telephone call to Federal

3   Justice Mr. Williams, advising that I

4   will be arranging an interview with

5   Linda Fisher."

6   Now if we move over to 056753, and here's the

7   reference to the telephone conversation with

8   Linda Fisher, the very last paragraph on that

9   page, this is a conversation that took place on

10   March the 16th of 1990 and there's reference to

11   the fact that you are hearing from Linda Fisher

12   that Mrs. Milgaard was in possession of Larry's

13   statement which was given to the police

14   indicating he left for work and so on.

15 A   Uh-huh.

16 Q   So this is the first time that this information

17   comes to you. And I won't --

18 A   Just stop for a second?

19 Q   Yeah.

20 A   What date is this entry here?

21 Q   Well, the date that I have it, and it is March the

22   16th of 1990. If you go back -- I'll have to go

23   back a few pages, go back to 056752, the page

24   preceding this, you'll see that on the 16th of

25   March --

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1   A   But I thought we just looked at the 14th of March

2   indicating that I talked to Mr. Williams and he

3   had information that Mrs. Milgaard had taken a

4   statement from Linda Fisher, so I would have known

5   that, I would assume, at the time I went to talk

6   to her. Now, I don't know if that helps us,

7   but --

8   Q   Well, my concern was when you actually came into

9   possession of the information or when you were

10   informed that Larry Fisher had made a statement to

11   the police shortly following the Gail Miller

12   murder.

13   A   Okay, yeah.

14   Q   In any event, if we go back to the page we were

15   looking at, Linda Fisher is advising you by

16   telephone that she's aware of the fact that Mrs.

17   Milgaard had in her possession a statement

18   relating to an interview by the police?

19   A   Yes.

20   Q   And I'm not going to go through it other than, in

21   any more detail other than to say that you and Mr.

22   Williams finally got together face to face on the

23   23rd of March of 1990 here in Saskatoon, and

24   that's reflected at page 056759, you've already

25   given evidence with respect to this, and that was

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1   the, where you had a meeting with Mr. Williams, we

2   discussed several aspects of this file and to a

3   limited degree compared facts of the case so far

4   as evidence of the trial was concerned. So this

5   is your actual first face-to-face meeting with Mr.

6   Williams and there are conversations relating to

7   the background of this case?

8   *A*   Yeah.

9   *Q*   You don't have any specific recollection of the

10   types of things that were discussed?

11 *A*   No, I don't.

12 *Q*   And so what you are doing there, as I understand,

13   is just sort of making general observations as

14   to --

15 *A*   Well, this is kind of getting acquainted and just

16   covering some of these issues, yeah.

17 *Q*   And then that resulted in a meeting with members

18   of the Saskatoon Police Service and then

19   subsequently resulted in your attending up to

20   North Battleford with Mr. Williams to take a

21   deposition from Linda Fisher on March the 24th?

22 *A*   Yes.

23 *Q*   And I've gone through that just to sort of point

24   out and observe that while there's some suggestion

25   that there's delays inherent in this whole

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1   process, safe to say on the basis of what you and

2   Mr. Williams did within one month was a fair

3   accomplishment to the extent that after your

4   initial introduction and locating Linda Fisher and

5   attending to North Battleford, that within a month

6   you had interviewed and taken, you had taken the

7   statement on March the 14th and a formal

8   deposition had been taken on March the 24th?

9   A   That's right, yes.

10 Q   So you in fact had acted very expeditiously with

11   Mr. Williams in concluding that first portion of

12   the investigation?

13 A   Yes, I believe so.

14   MR. FRAYER: Okay, thank you. No further

15   questions, Mr. Pearson. Mr. Gibson will now ask

16   his questions.

17 **BY MR. GIBSON:**

18 Q   Mr. Pearson, for the record, as you know, I am

19   counsel for the RCMP. I don't believe that I'll

20   be very long with you and a couple of housekeeping

21   matters, so I'll be touching various points. I'm

22   not sure there's a lot of logic to the order I'm

23   doing this, but I'll touch on a couple of matters

24   with you.

25   You'll recall during your days

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1   of testimony I believe a number of times it was

2   raised with you the fact that initially in the

3   first few months of the investigation you were

4   under the impression that Larry Fisher's sexual

5   assaults had occurred in Regina. Do you recall

6   that?

7   A   Yes.

8   Q   And I believe that your evidence was that you had

9   run a criminal record check on Larry Fisher in

10   March of 1990 and it came back showing convictions

11   for the sexual assaults, I believe four of them,

12   and that those convictions were entered in Regina;

13   correct?

14   A   Yes, the record showed Regina as the location

15   where this took place.

16   Q   Eventually that was remedied I believe in July of

17   1990 where it became clear that Mr. Fisher had

18   been convicted in Regina, but the assaults had

19   occurred in Saskatoon prior to the Gail Miller

20   murder; correct, in and around that time I

21   believe?

22   A   That's correct, yes.

23   Q   And from your investigation, from the time you

24   commenced in March of 1990 through to July of

25   1990, the fact that you were operating under the

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1   notion that Mr. Fisher's sexual assaults had

2   occurred in and around the time of the Miller

3   murder in Regina, did that impact as to how you

4   looked at Mr. Fisher as a suspect and investigated

5   him?

6 A   No. I think I looked at the previous criminal

7   record as really the basis of forming suspicion

8   and, you know, it's not a normal police practice

9   to go and track down all of the previous police

10   files that a person may have to back up his

11   criminal conviction, unless of course it's going

12   to be part of something like a similar fact

13   analysis to get that kind of data out, so I was

14   really relying on the criminal record synopsis.

15 Q   To put it in a little more straightforward way,

16   was Mr. Fisher a good suspect regardless of where

17   those offences occurred?

18 A   Yes.

19 Q   And during the time between March and July, to

20   your knowledge were there any police records or

21   anything that would have been destroyed during

22   that time that would have somehow detrimentally

23   impacted upon the investigation, the fact that you

24   were operating on that wrong notion of him

25   having --

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1   *A*   No, I know --

2   **Q**   -- committed those crimes?

3   *A*   I know of no -- I have no knowledge of any files

4   being disposed of or destroyed or not being made

5   available during that time frame that may have

6   changed the outcome.

7   **Q**   Was there any problem in that period of time then

8   with your investigation, any downside that

9   occurred during those three to four months then as

10   to how you looked at Fisher, was there any other

11   avenue you could have explored differently had you

12   known they were in Saskatoon?

13   *A*   I don't believe so from an analytical point of

14   view for the similar fact portion, no.

15   **Q**   You made a comment in your evidence that you had

16   been tasked to investigate to see if there was any

17   possibility to charge Mr. Fisher, whether there

18   was reasonable probable grounds, and that was your

19   responsibility, to make the call on reasonable and

20   probable grounds. Is that fair to say?

21   *A*   No, I'm not sure if that was really where my head

22   was at that time as far as feeding the information

23   to Mr. Williams, but if there was something that

24   was considered evidence, it would certainly be

25   collectively considered, but I was in no position

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1   where I was going to go out and lay a charge, so

2   to speak.

3 **Q**   You had made that statement and I was just wanting

4   to clarify that point with you.

5 *A*   Sure.

6 **Q**   Is it fair to say that with a conviction out there

7   already resting with Mr. Milgaard, that you would

8   have consulted with Mr. Williams and perhaps

9   others before you would take any step towards

10   laying any charges in the set of circumstances?

11 *A*   Absolutely, yes.

12 **Q**   You had been asked what other types of

13   investigative steps you could have taken with

14   respect to investigating Mr. Fisher and his

15   possible connection to Gail Miller and you had

16   mentioned that there was a possibility you could

17   do an undercover operation or a part 6

18   communication intercept. Do you recall giving

19   that evidence?

20 *A*   Yes.

21 **Q**   I'm wondering if you can comment on whether there

22   would be any complications on doing a part 6

23   communication intercept in a situation where Mr.

24   Fisher's name, or at least an allegation that an

25   inmate serving time at Sask Penitentiary was

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1   responsible for the Miller murder, whether the

2   fact that that name is out there or that

3   implication back to Mr. Fisher is out there, what

4   impact that might have on trying to do a part 6

5   communication intercept? Is it your experience

6   that people may be less likely to have those kind

7   of communications where they might admit to

8   something if they know that they are being looked

9   at?

10   A   Oh, it's hard to really say what impact the press

11   publicity may have had, whether or not if you were

12   intercepting private communication he maybe would

13   have talked more, maybe would have talked less,

14   it's just a hard call to make, but -- so I don't

15   know what more I can add to that really.

16   Q   Were there difficulties in trying to do a

17   public -- sorry, a part 6 interception where Mr.

18   Fisher was in an institution?

19   A   Absolutely, you know, there are complications in

20   attempting to have any covert operation that would

21   involve bugging the areas that they resided in.

22   I'm not saying it has never been done, I have no

23   experience in doing this, and I have talked to

24   some people that indicate that there are a lot of

25   difficulties in trying to accomplish this, but it

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1   would be very difficult.

2   Q   And obviously that is because it's a phone that

3   would be within the institution that would be

4   utilized by more than one person?

5   A   It's not just a phone, it's putting a so-called

6   bug in a system to pick up conversation and then

7   to develop a scenario to stimulate conversation

8   and to get people to talk, and in incriminating

9   ways, and looking at the legality of using that as

10   evidence, but -- so it's not just telephone, it's

11   just conversation.

12   Q   And is that something that you seriously

13   considered at the time or didn't consider at the

14   time or can you comment on that, whether that

15   crossed your mind at the time?

16   A   No. To be honest with you, it wasn't something

17   that was seriously considered at that time. The

18   reporting relationship was, you know, pursuing

19   Larry Fisher for the interview and the polygraph

20   and it never got to the stage of opening it up to

21   a full police investigation.

22   Q   And the same with the reference about using a

23   police informant, or operator, rather, in a cell,

24   is that something that would have posed

25   difficulties because of it being in a federal

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1   institution?

2   A   Well, there's -- that would be more difficult in

3   that there's officer safety issues in providing

4   protection to the police officer that's involved

5   in that, so that would almost be, I wouldn't say

6   an impossibility, but it would be one that would

7   have to be very creative to carry out.

8   Q   You were asked a number of times about similar

9   fact evidence and analysis of that and what stage

10   that analysis took place throughout the 690

11   process and whether you were tasked with that, and

12   I don't want to delve on that a great deal, but

13   how easy is it to do a similar fact analysis, or

14   even put your mind to the possibility of doing a

15   similar fact analysis when there are a number of

16   files missing or the files are incomplete, did

17   that impact on doing that analysis at the outset?

18   A   That would have a negative effect on the analysis

19   if the files were missing and you had to then, you

20   know, gather information some 20 years later that

21   may be somewhat different from what was really on

22   record at the time. So there -- that created some

23   difficulties, to do an analysis with information

24   that was obtained today as opposed to 1969-'70.

25   Q   But at the outset, and I believe your evidence has

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1   been eventually you managed to get more

2   information on more of the files, is that fair to

3   say?

4 A   Information did surface from various sources but,

5   you know, some through Centurion, on that side,

6   and there was also through the investigation of

7   the so-called missing Fisher files at the city

8   police, and then the Sask. Police Commission went

9   and did their review of all of that and were able

10   to surface some material.

11 Q   And is it fair to say that, as more information

12   came to light, that possibility loomed larger in

13   your mind as to whether that would be an

14   appropriate thing to do?

15 A   Yeah, it certainly improved the potential or gave

16   you more potential to do that, yes.

17 Q   And would improve the possible accuracy of doing

18   that type of an analysis?

19 A   Yes, I believe so, without having to go to the

20   so-called victims and find that out again.

21 Q   And as far as making the determination on whether

22   to do a similar fact evidence analysis, were you

23   familiar with the law on similar fact evidence and

24   how that could be utilized in a trial process, or

25   did you have to rely on Mr. Williams or others on

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1   that subject?

2   A   Well I'm -- I'm not sure what knowledge I had at

3   that time. I certainly believe I would have had

4   some knowledge on similar fact evidence, but just

5   how it applied under, maybe under 690, I don't

6   know. This, 690 was a different process for me,

7   and I'm not -- I'm not sure if I maybe thought the

8   evidence might be applied differently. I really

9   can't make that recollection right now. But

10   similar fact evidence, I'm sure I had some

11   knowledge of it at that time, you know, I mean a

12   similar fact evidence knowledge of the law, and --

13   but it does have a process that you can apply it

14   as evidence.

15   Q   Okay. You had mentioned that you had never spoken

16   to Centurion Ministries, or I guess the staff that

17   worked at Centurion Ministries, at any time during

18   your part of the 690 process; is that fair to say?

19   A   Yeah. I don't know who Centurion Ministries were,

20   I understand they are, you know, they are American

21   based, and what their operating arrangements were

22   in Canada I don't --

23   Q   Okay. But I believe your evidence was that you

24   had spoken to Mr. Asper a number of times?

25   A   Yes. I spoke to Mr. Asper probably, I think I've

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1   got it documented, probably 15 times on the

2   telephone, never met him personally.

3   Q   And to your knowledge do you know if he was

4   communicating with the individuals that were

5   working with Centurion Ministries?

6   A   I was led to the assumption that he was.

7   Q   And in your discussions with Mr. Asper how would

8   you describe that dialogue between Mr. Asper and

9   yourself, did -- did he provide you with his views

10   on the case, or was he fairly guarded about what

11   he told you?

12   A   Oh, I felt fairly, fairly good about the

13   communication we had. It seemed to be fairly

14   open, he was free, seemed to be free

15   communication, he provided me with some of his

16   insight and some of the details of the Miller

17   homicide, and at one point he asked me if I would

18   intervene when David Milgaard was having some

19   difficulty in the institution to calm him down

20   over some of this stuff. I -- it was, I thought,

21   a pretty, pretty open dialogue that we did have.

22   Q   I note that Mr. Frayer just touched on your

23   dealings with Mr. Williams and the communication

24   that you had going back and forth between, between

25   him and yourself. I believe you gave evidence

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1   that you never gave your entire file over to Mr.

2   Williams, never disclosed every piece of paper

3   that was on your file, I believe you gave that

4   testimony the other day; is that --

5 A That's right, yes.

6 Q -- is that true? And you've gone through all of

7   your investigation reports that commenced 90/04/17

8   and the last report concluded 92/04/29, and I

9   believe there were nine in total with a number of

10   appendices, and I don't propose to go through

11   those again, and you have had a chance to review

12   those prior to giving your testimony and a chance

13   to review those, I believe the Mr. Hodson walked

14   you through those. Are you in a position to say

15   whether there was anything relevant that you

16   neglected to include in your reports? I know

17   that's a pretty open question but I'm assuming you

18   included in those reports what you thought was the

19   most important pieces of information to give to

20   Mr. Williams. After having gone through all the

21   preparation to testify here, and days on the

22   stand, is there anything that you felt that you

23   didn't communicate to Mr. Williams that was

24   relevant to the considerations that were taking

25   place under the 690 process?

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1   *A*   I -- I don't think so. When you start talking

2   about all the car, car stuff, the theory car

3   stuff, I don't believe Mr. Williams was advised of

4   everything I was doing regarding the vehicles

5   because it was a theory, and his view -- I mean I

6   recall having a discussion with him on that and

7   his view was that a vehicle was probably, a

8   vehicle was probably not involved because there

9   was never any evidence led at trial and such, and

10   there was certainly some basis for that position.

11   And so all of the inquiries I made about the car,

12   I probably didn't phone, tell him every time I

13   was, you know, making an inquiry about the car.

14   Q   Speaking of the car theory, in a similar fact

15   evidence where Mr. Fisher's car theory was that he

16   obviously killed Ms. Miller and that a vehicle was

17   involved -- correct, --

18   *A*   That's --

19   Q   -- I mean that's the gist of that theory?

20   *A*   Yes.

21   Q   Now as far as doing a similar fact evidence

22   analysis, the fact that there is no car in any of

23   the other offences that we're aware of, how does

24   that play in to doing the similar fact evidence

25   analysis on Miller where there may well be a car

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1   in play? Just on, if you were to look at what you

2   can do with that information where there is a car

3   in the Miller scenario in your theory, and there

4   is no vehicle in the other scenarios; how does

5   that tie in, then, in your view on similar fact

6   evidence?

7   A   Well there probably is no tie-in. I mean you can

8   have a suspicion based on some of the things that

9   people observe and see and the circumstances, and

10   you can put together a theory, but when you do the

11   similar fact analysis and it comes out that of all

12   the crimes committed by Larry Fisher he never did

13   use a car, you could then come to the conclusion

14   that, if we're going to apply similar fact

15   analysis that he was involved in this way with all

16   of his other victims, chances are that he never

17   used a car involved in the Gail Miller murder. So

18   they contradict each other, one is a theory and

19   the other one is a similar fact analysis, and the

20   similar fact analysis would indicate that Larry

21   Fisher didn't -- did not use a car.

22   Q   Mr. Frayer just went through with you whether you

23   felt overworked, you never had a chance to

24   undertake all of the tasks that you would have

25   wanted to do in assisting Mr. Williams in the 690

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1   process. In hindsight, and all the investigative

2   steps that you took during the 690 process, is

3   there any concrete step that you can look back now

4   and say "well I should have done something more

5   that would have tied it sooner to Mr. Fisher"?

6   Other than the DNA, we know that the DNA linked

7   Mr. Fisher to the crime, is there anything else

8   that you can think of that could have been done --

9   and I know you've talked about using an operator

10   in the prison system or using a part 6

11   communication -- can you think of anything else

12   that could have been done that would have somehow

13   tied Mr. Fisher to that crime sooner other than

14   through the DNA?

15 A   I, I can't think of anything, other than what I

16   have already articulated.

17 Q   Mr. Asper (sic) asked you a few questions about

18   your contact with Ms. (V14)- and raised with you

19   whether you considered it rather bizarre that she

20   would call the Milgaard group, if I can call them

21   that, rather than police to raise her concern

22   about the sexual assault that was visited upon

23   her; do you recall --

24   COMMISSIONER MacCALLUM: Mr. Gibson, I

25   think Mr. Wolch is taking umbrage there.

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1   MR. GIBSON: Oh, I'm sorry?

2   MR. WOLCH: I'm not Mr. Asper. I wish I

3   was.

4   MR. GIBSON: My apologies.

5   COMMISSIONER MacCALLUM: Maybe you better

6   start over again after that one.

7   BY MR. GIBSON:

8   Q   That's quite all right. Mr. Wolch raised some

9   questions with you about Ms. (V14)-, and in

10   particular whether you thought it was a little

11   strange that she would call the Milgaard group

12   with respect to her concern about being sexually

13   assaulted back in 1968, rather than to come

14   forward to the police; --

15 A   Yes.

16 Q   -- do you remember him discussing that with you?

17 A   Yes.

18 Q   And again, he raised as to why you might not

19   discount her evidence right away, and he went

20   through some reasons that you might consider doing

21   that; do you recall that again?

22 A   Yes.

23 Q   Umm, do you recall why the name (V14)- first came

24   to light for you as far as your assistance on the

25   690 process; do you recall if that was part of the

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1   application by the Milgaard group or not?

2 A   The first -- the first I ever heard of the name

3   (V14)-- (V14)- was through the material that was

4   forwarded as part of the second 690 application.

5 Q   Okay.

6 A   That was the similarity of the offences.

7 Q   And if we could just call up document 008400 at

8   008429, and I believe this is the second part --

9   or part of the second application on the 690

10   process, and if we can just go to the next page on

11   that, 430. And if we can just call that number

12   up, I guess it's a letter A up, and it references

13   Victim Reports, you can see at the top of that,

14   and (V14)-- (V14)-' name is referenced in that; do

15   you recall seeing this document before or not?

16 A   I can't recall, I -- I may very well have, I'm not

17   saying I didn't.

18 Q   Yes.

19 A   I just, maybe if I see some follow-up pages?

20 Q   I'll move ahead.

21 A   Is this part of the application?

22 Q   Part of the second application.

23 A   Oh, I'm sure I must have seen it.

24 Q   Okay. And if we can just go ahead to 443 in this

25   document, please, and maybe that might be

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1   information that you will recognize. If we can

2   just call the top of it out, and just scroll

3   through it so Mr. Pearson can see whether he has

4   seen that before. And it looks like a summary,

5   then, which I believe was prepared by Centurion

6   Ministries with respect to (V14)-- (V14)- and the

7   assault upon her?

8   A   Yes.

9   Q   And is this --

10   A   Yes, I believe I would have seen this.

11   Q   Okay. And, just, if we can go to that part there

12   where:

13   "She has panic attacks that someone

14   might hurt her, and has been worse since

15   she read about the *David Milgaard* case

16   and the possibility that he was

17   innocent. She looked at Larry Fisher's

18   picture and said it could be him ..."

19   Now I take it that that would be information that

20   you would have had during the course of your

21   assistance on the 690 application; correct?

22   A   Yes.

23   Q   And were those concerns raised there part of the

24   questioning that you addressed in dealing with

25   Ms. (V14)-?

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1   A   Yes, I think, I think this is the additional

2   information that I would have had in following up

3   with (V14)-, and she had, you know, given a little

4   bit of a different picture as to how this

5   unfolded, and her information was at odds a bit

6   with what was in this report.

7   Q   Okay. And is it fair to say that, regardless of

8   the emotional issues that Ms. (V14)- was facing,

9   those were questions that you had to address?

10   A   Yes.

11   Q   Okay. And Mr. Wolch raised the fact that, in her

12   first contact with the RCMP back in 1968, she was

13   not able to provide a description of her

14   assailant; do you remember that?

15   A   Yes.

16   Q   And you said that throughout your dealings with

17   Ms. (V14)-, and this particular issue, identity

18   was at issue?

19   A   Yes.

20   Q   Have you ever dealt with sexual assault victims

21   where they are a little bit reticent to come forth

22   with information as a result of the trauma that

23   they've been through, has that been your

24   experience, that they may not come forward with

25   all the information at one time?

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1   A   Yes, that's not uncommon, actually. You know,

2   people are -- it's a very personal, humiliating,

3   embarrassing, traumatic crime, you know, depending

4   on which degree, and some people can tell you in

5   great detail every, every second of it, and others

6   won't go there and disclose over time, so that's

7   not unusual.

8   Q   And again, in your dealings with Ms. (V14)- over

9   that period of time she was able to give you more

10   information through your various contacts with

11   her, but again is it fair to say you remained

12   somewhat suspect about what she was able to tell

13   you?

14   A   Well she was having a lot of personal problems,

15   you know, and I didn't want to discount her based

16   on that, but she had a lot of difficulties. And

17   as I mentioned before, she wanted to initiate a

18   prosecution, and I pointed out to her that she

19   would have some credibility problems based on not

20   just the difficulty she was having, but the fact

21   that she never reported the sexual offence part of

22   this during her initial contact with the police

23   back at the time when it happened, so -- and the

24   identity issue was always at play, and the only

25   option that really would advance this

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1   investigation was following up on her belief that

2   she possibly conceived a child during the sexual

3   assault, that was really the only evidence that a

4   person could possibly evolve out of here that

5   would stand.

6   Q   You were asked questions about a report that was

7   done back in 1969 by Corporal Rasmussen with the

8   RCMP -- the document number is 250957, it's not

9   necessary to bring that document up -- but in

10   paragraph 19 of that document there is a

11   connection made, a possible link between the

12   previous rapes in the Saskatoon area of where Mrs.

13   Miller was eventually killed; do you remember that

14   reference?

15 A   Yes.

16 Q   And if we could call up document 039068, and if we

17   could just -- it's a report of February 14, 1969

18   in the Regina *Leader-Post*, and it's got a

19   Saskatoon byline there, if we could just call up

20   that first paragraph there it says:

21   "Police are investigating the

22   possibility that the person who slashed

23   a 20-year-old nurses' aid to death

24   Friday may be the same person who

25   attacked three women here last fall."

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1   Were you aware that the Saskatoon Police Service

2   had made that connection between Ms. Miller's

3   death and the previous sexual assaults?

4   *A*   I -- I don't recall. You know, I may have, I just

5   don't recall.

6   Q   Okay. Would you agree with me that you were aware

7   that the RCMP were assisting the Saskatoon Police

8   Service in the Miller murder investigation but

9   they weren't the lead investigators on that?

10 *A*   No, the jurisdiction of the crime, so to speak, is

11   within the City of Saskatoon, and that's a

12   Saskatoon Police Service file.

13 Q   And --

14 *A*   And assisting was very common practice.

15 Q   Okay. And, to your knowledge, would jurisdiction

16   for three sexual assaults in the City of Saskatoon

17   also rest with the Saskatoon Police Service?

18 *A*   Yes, it would, yeah.

19 Q   And so the files that would relate to those

20   assaults would be held by the Saskatoon Police

21   Service; correct?

22 *A*   Yes, they would.

23 Q   And if a person was to do an analysis as to a

24   possible connection one would have to access

25   Saskatoon Police Service files; correct?

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1   *A*   Yes.

2   **Q**   Now the document 250597, you indicated that you

3   had not seen that report during your assistance in

4   1990, is that correct?

5   *A*   That's the Rasmussen report?

6   **Q**   Yes it is.

7   *A*   Yes.

8   **Q**   And are you aware of the retention practices for

9   files within the RCMP on where they assist other

10   police agencies; how long those files are

11   retained?

12   *A*   Oh, there's very specific policies in place, and I

13   don't know what they are, but it's quite a long

14   time, but I really -- they are quite complex,

15   actually, and there is a lot to it, but I don't

16   remember the details for the destruction

17   practices.

18   **Q**   And would that be a possible explanation as to why

19   you never ended up finding those on any of the

20   files that you tried to access within the RCMP

21   would -- could possibly have to do with the

22   retention periods for those types of documents?

23   *A*   In all likelihood that's what it was.

24   **Q**   Thank you, Mr. Pearson.

25   *A*   Thank you.

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1   **BY MR. HODSON:**

2   **Q**   Just, I've got a couple of matters on re-exam,

3   they are actually not re-exams but just matters I

4   should probably put on the record.

5   Mr. Wolch, if we could call up

6   044769, and he showed you this report which was

7   presented to the Members of Parliament and I think

8   he asked you, Mr. Pearson, if you'd ever seen that

9   before, and I think your evidence was that you had

10   not. And if I could call up 008 -- actually, just

11   go to the second page.

12   *A*   You know, there is a lot of pages to this, I mean

13   --

14   **Q**   Yeah. And if I call up 008400, and in your

15   evidence-in-chief I went through and there was a

16   letter from Mr. Williams to you May of -- 008400.

17   Actually, go to the next page -- no, that's the

18   wrong document, just one second. 008407. 008407.

19   I had put this to you, it's May 3, 1991, this was

20   after Minister Campbell's decision, and it's

21   sending you the Minister's letter, the report from

22   Centurion Ministries, and I don't think it had the

23   cover page on it. You want to just go ahead to

24   the next page, please, and if you can go ahead ten

25   pages, next page, next page, next page, one more,

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1   there. So I think that's the same first page.

2   And I'm just wondering, Mr. Pearson, when I had

3   asked you that question I think you had indicated

4   you had received it in May of 1991, and I think

5   they are the same documents that -- or the report

6   in December of '90 that Mr. Wolch showed you I

7   think was -- is the same report except for the

8   cover page that you received in May of 1991; is

9   that correct? I just point that out.

10   *A*   I have no recollection of it, but --

11   *Q*   Do you have any reason to dispute Mr. Williams'

12   letter to you in May of '91?

13   *A*   No, no, I don't think so.

14   *Q*   Okay. That's the only follow-up that I had, Mr.

15   Commissioner. Just one moment.

16   *(Discussion off the record)*

17   BY MR. HODSON:

18   *Q*   Yeah, and I may have -- Mr. Wolch said his

19   question to you was whether you saw that report

20   before Kim Campbell's letter, I had not written it

21   down that way, but in any event my only point was

22   I think in evidence to my questions you said in

23   May of 1991 you received it, and I think in

24   fairness in my questions you -- I don't think you

25   said you saw it before Kim Campbell's letter.

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1   But, apart from what's in the

2   documents, are you able to, from your own

3   recollection, say one way or the other what you

4   did or didn't get?

5   A   No, I can't, I just have no recollection, I really

6   can't.

7   Q   Yeah. Those are the only questions I had.

8   MR. HODSON: Thank you very much, Mr.

9   Pearson, for attending.

10   A   Thank you.

11   COMMISSIONER MacCALLUM: Mr. Pearson, you

12   are excused, thank you very much.

13   A   Thank you very much.

14   *(Adjourned at 4:29 p.m.)*

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2 We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,

3 Official Queen's Bench Court Reporters for the Province of

4 Saskatchewan, hereby certify that the foregoing pages

5 contain a true and correct transcription of our shorthand

6 notes taken herein to the best of our knowledge, skill,

7 and ability.

8

9

10

11

12   _____, CSR

13   Karen Hinz, CSR

14   Official Queen's Bench Court Reporter

15

16

17

18   _____, RPR, CSR

19   Donald G. Meyer, RPR, CSR

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