

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

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

On Thursday, June 8th, 2006

Volume 160

Inquiry Proceedings



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Appearances:

Mr. Hersh Wolch, Q.C., **for** Mr. David Milgaard
Ms. Joanne McLean, **for** Ms. Joyce Milgaard
Ms. Lana Krogan-Stevely, **for** Government of Saskatchewan
Ms. Catherine Knox, **for** Mr. T.D.R. (Bobs) Caldwell
Mr. Jay Watson, Esq., **for** Mr. Serge Kujawa
Mr. Pat Loran, Esq., **for** the Saskatoon Police Service
Mr. Chris Boychuk, Esq., **for** Mr. Eddie Karst
Mr. Bruce Gibson, Esq., **for** the RCMP
Mr. Brian Hurley, Esq., **for** Mr. Larry Fisher
Mr. David Frayer, Q.C., **for** Minister of Justice
 (Canada), The Hon. Vic Toews
Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis
 (Retired)



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Transcript of Proceedings

(Reconvened at 9:02 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

EUGENE WILLIAMS, continued:

BY MR. HODSON:

Q Good morning, Mr. Williams.

A Good morning.

Q If we could call up 016133, please. Yesterday when we adjourned we were, we dealt with this memorandum and a bit about the Larry Fisher information and I think we went through this memorandum and the information and I believe you told us that, on a couple of points, that as far as the Larry Fisher information and how that became a ground for relief in the Section 690 application, I think you told us, and please confirm, that it was never articulated in one specific document saying this is the ground we want you to consider, minister, in the way that the Deborah Hall and Dr. Ferris information was put forward; is that correct?

A That's correct, in the sense that there was not a consistent dealing with it, it evolved over time.

Q Right. And so I think we will see as we go



1 through the documents it was raised as a ground in
2 correspondence from Mr. Wolch and Mr. Asper on a
3 number of different occasions in a number of
4 different ways; is that fair?

09:04 5 A Yes.

6 Q And it was also put forward in the media by Mr.
7 Asper, Mr. Wolch and others on behalf of David
8 Milgaard in a number of different ways as well as
9 a ground, the Fisher information, and how it
09:04 10 should give rise to a remedy; is that correct?

11 A Yes.

12 Q And so the grounds, or the basis upon which Larry
13 Fisher, the Larry Fisher information could give
14 rise to a remedy under Section 690 is found in a
09:04 15 cumulative chronology of correspondence, telephone
16 calls, media statements and things of that nature;
17 is that fair?

18 A Yes.

19 Q And I think what you've told us yesterday as well,
09:04 20 that in summary, I think there was maybe two or
21 three themes that you elicited from the
22 information as to how it might fit in. One was
23 that if Larry Fisher could be established as the
24 killer, or pardon me, the culprit or the
09:05 25 perpetrator, or the likely perpetrator, some link



1 to Gail Miller, that if he was the perpetrator,
2 therefore, David Milgaard wasn't, and you said
3 that would certainly be a basis for a remedy under
4 Section 690?

09:05 5 A Yes.

6 Q You also said that another theme or concept that
7 came, I think at some later point, was this notion
8 that there may have been a miscarriage of justice
9 or it was alleged that there was a miscarriage of
09:05 10 justice because David Milgaard did not have the
11 opportunity to present -- to present information
12 relating to the offences committed by Larry Fisher
13 and indeed Larry Fisher, after he confessed as the
14 perpetrator of those offences to the court before
09:06 15 his criminal proceedings were completed; correct?

16 A Yes.

17 Q And I think you told us there was two different
18 parts to that, one was looking at the time of his
19 trial and the fact that there were three unsolved
09:06 20 offences, and secondly, before his, before the
21 Saskatchewan Court of Appeal concluded its
22 decision on the appeal it became known that, it
23 became known at least to the state, if I can call
24 it that, that Mr. Fisher had confessed to at least
09:06 25 two of the four offences?



1 A Correct.

2 Q I think had been charged with the other two, I
3 think in December, so that the issue is that one
4 is looking at what was the opportunity deprived to
09:06 5 Mr. Milgaard at the time of his trial and a
6 related question then is what opportunity was he
7 deprived perhaps at the Saskatchewan Court of
8 Appeal or the Supreme Court of Canada, because I
9 think the information, more information became
09:07 10 available after the trial than he had before the
11 trial; correct?

12 A Correct.

13 Q So that would be another concept, and then I think
14 the third one you talked about, and there are
09:07 15 likely others we'll see as we go through the
16 materials, that this notion that today, or 1990,
17 if David Milgaard was tried then, certainly a
18 reasonable doubt could be raised because of the
19 Fisher information if there was a new trial, and I
09:07 20 think you told us that that, for reasons you went
21 into in some detail, that simply saying I can now
22 raise a reasonable doubt absent other grounds
23 would not normally be the basis for a remedy under
24 Section 690; is that correct?

09:07 25 A That's correct.



1 Q So now what I want to do is go through the early
2 1990 period and deal chronologically, primarily
3 with the Larry Fisher information, and focusing on
4 two themes, if I can, Mr. Williams, number 1,
09:08 5 what -- we will focus on what it was that was
6 being put forward on behalf of David Milgaard as
7 to how the Larry Fisher information should be used
8 for the basis of a remedy, and secondly, the steps
9 that you took to investigate, follow-up or
09:08 10 otherwise deal with the Larry Fisher information,
11 and I think if we start with 333341, please, and
12 there's a number of things that happened, if we
13 can go to the next page, on February 28th, 1990,
14 so I think yesterday we went through your
09:08 15 memorandum, so the first contact, I think David
16 Asper phoned you from Florida, phoned you in
17 Ottawa and relayed the information; is that right?

18 A That's right.

19 Q Was that -- do you remember what time of day, was
09:09 20 that early in the day, late in the day? Do you
21 have any recollection?

22 A My recollection is it was around 9:30, it was in
23 the morning between 9:30 and 10:30 or so.

24 Q And we'll go through what else happened on
09:09 25 February 28th then. So then it appears you got a



1 faxed letter from Mr. Asper's office the same day,
2 and we've been through this before, in the first
3 paragraph he summarizes again the information that
4 came from Sidney Wilson. What was your take
09:09 5 initially on this Sidney Wilson and the fact that
6 it was an anonymous caller? Did you have concerns
7 about that?

8 A Yes. Dealing with police over the years, I'm
9 aware that informants sometimes play an important
09:09 10 role. Sidney Wilson as a source of the
11 information certainly is or would have been a
12 person that we would have been interested in
13 dealing with and finding out, again testing his
14 observations and just discussing, you know, how it
09:10 15 was that he came into this information. My
16 attempts to identify Sidney Wilson were fruitless
17 because I later learned that there was no Sidney
18 Wilson as such, that it was some pseudonym, it was
19 a made-up name, and certainly that caused me some
09:10 20 concern.

21 Q In what respect?

22 A Well, you have -- here's a claim that someone else
23 committed a murder, that the source was Sidney
24 Wilson who turned out to be non-existent. It, you
09:11 25 know, it seemed something -- there was an element



1 of -- I'm trying to find the appropriate word, but
2 there was an unsettling element from my vantage
3 point, it just didn't seem to have all of the
4 characteristics of a true statement. However, it
09:11 5 wasn't my job to prejudge it, it was my job to ask
6 the questions and so I kept on probing about
7 Sidney Wilson, I kept on asking questions.

8 Q Are you telling us that it would have been better,
9 and we now know, I think, that the person who
09:11 10 telephoned Mr. Wolch's office was a person named
11 Bruce LaFreniere, that was not learned until 1993,
12 I think after your involvement was essentially
13 concluded; is that right?

14 A Yes.

09:12 15 Q And the evidence of Mr. LaFreniere before this
16 Commission is that he was the person who phoned
17 Mr. Wolch's office, but emphatically denies that
18 he's Sidney Wilson or gave the name Sidney Wilson,
19 but does acknowledge that he phoned Mr. Wolch and
09:12 20 he is, I think if I get this right, he heard the
21 information from a friend, Arnold Poitras, who
22 heard it from someone else who heard it from Linda
23 Fisher, so there was a, I think that was the
24 connection that was ultimately learned. That was
09:12 25 not something you were aware of in the work that



1 you did on the file; is that right?

2 A That's correct. Over the next day or two I had
3 contacts with Mr. Wolch's office in an endeavour
4 to locate Sidney Wilson or the person who supplied
09:12 5 the information and I didn't get a satisfactory
6 answer.

7 Q And I think it turned out that upon Linda Fisher
8 being interviewed both by Joyce Milgaard, by
9 Sergeant Pearson and by you, that she actually
09:13 10 disputed some of the key information that, let's
11 call him Sidney Wilson, provided; namely, that she
12 saw Larry Fisher come home covered in blood?

13 A Yes.

14 Q So that was part of it, that she said no, that
09:13 15 didn't happen, but I still believe my husband may
16 have committed the crime and went on to
17 corroborate I think everything else that Sidney
18 Wilson had provided, or some of it?

19 A Some of it.

09:13 20 Q So are you telling us it would have been better to
21 know who this person was so that you could probe
22 this person, find out the circumstances, things of
23 that nature?

24 A Yes. If you are making a serious, such a serious
09:13 25 allegation and you are attributing it to someone



1 so that that can be taken seriously, it's usually
2 better that it has a ring of truth, and just the
3 initial test, who's your source, and if that
4 doesn't pan out or if, when you ask the first
09:14 5 question where's this information coming from and
6 the answer isn't a satisfactory one, that you get
7 a pseudonym, that you get something that isn't
8 correct, it raises questions about the accuracy of
9 the balance of the information you've received.

09:14 10 If someone comes to me and says lookit, an
11 anonymous source or someone who doesn't wish to be
12 identified publicly has stated this and states it
13 from this vantage point, that's one thing.

14 Arrangements can then be made to maintain or
09:14 15 protect the anonymity of the source, but somebody
16 is up front with it in the sense that they are
17 saying yes, there's a source, there's a real
18 person who doesn't want his or her name identified
19 at this time, that I can understand, but if you
09:15 20 provide a name without any indicia that that name
21 is a pseudonym for an anonymous source, then
22 without more it tends to mislead.

23 Q So you are telling us that you had some suspicions
24 about, let's call it the source or Sidney Wilson,
09:15 25 you had some questions that you felt needed to be



1 answered that caused you to question, perhaps, the
2 veracity of some of the information?

3 A Well, when I first obtained the information, I
4 just received it and then I started asking
09:15 5 questions, where can I find this Sidney Wilson,
6 because one of the things I do is get additional
7 details, clarification and that's when it became
8 curious.

9 Q Did you have concerns that perhaps Mr. Asper or
09:15 10 Mr. Wolch had more information about Sidney Wilson
11 than you had?

12 A Yes. Evidently, he had contacted their office,
13 and what I had received could only be a summary of
14 it.

09:16 15 Q Okay. But did you have concerns that maybe they
16 knew more about who Sidney Wilson was and they
17 weren't telling you, or that there was something
18 there, that you weren't getting the full picture?

19 A Yes.

09:16 20 Q And why was that?

21 A It just seems to me that folks who are experienced
22 in this type of work would take the necessary
23 precautions to confirm some of the things, to
24 check some of the details provided, before you
09:16 25 would send it on to the Minister of Justice. This



1 is a huge area. When you accuse someone of murder
2 in the context of an ongoing 690 application that
3 has attracted the attention of the Minister of
4 Justice, at the very least you anticipate or you
09:17 5 expect that the information that's being provided
6 will have been sourced and will have been
7 confirmed in some manner or fashion, and, as part
8 of that confirmation, I would anticipate that the
9 person receiving the information initially would
09:17 10 ask some questions, "well how do you know this,
11 where were you, where did you learn this from, if
12 you learned it from someone else what was their
13 connection with the source", and track it down
14 through the line so that you would have a certain
09:17 15 comfort level in relaying this information instead
16 of relaying rumour or innuendo or speculation.

17 Q Now I think it was Mr. Wolch who took the phone
18 call from this individual; did you ever discuss,
19 or hear directly from Mr. Wolch, his version of
09:18 20 the interaction with Sidney Wilson, or was it from
21 Mr. Asper?

22 A I heard it from Mr. Asper. The letter that
23 followed, that you have up on the -- apparently
24 was dictated by Mr. Asper and signed off by one of
09:18 25 his associates or his staff.



1 Q Yeah.

2 A I may have discussed it with Mr. Wolch later, I
3 have no specific recall of that, in the early
4 days. I'm certain that I had discussions with Mr.
09:18 5 Wolch later about the Fisher matter, but not
6 specifically about Sidney Wilson, as we speak.

7 Q So apart from what Mr. Asper told you on the
8 telephone and this letter, and perhaps some
9 follow-up letters, you still had some questions
09:18 10 about what exactly was said between Mr. Wolch and
11 Mr. Wilson in this phone call of February 26th; is
12 that fair?

13 A Yes.

14 Q And I think what Mr. LaFreniere told us, who I
09:19 15 think is Sidney Wilson -- if we assume that for --
16 or who was the person who called Mr. Wolch's
17 office on February 26th, that he had concerns for
18 his own safety because of what he was saying about
19 a person who I think he believed to be dangerous,
09:19 20 Larry Fisher, that was his -- and he simply wanted
21 to get the information to someone so someone could
22 do something about it. And is that something
23 that, in your experience, might happen as well,
24 that a witness may want to give you the
09:19 25 information to cause an inquiry to be made, but



1 wants no part of it, doesn't want to be tracked
2 down but simply wants someone to do something with
3 the information?

4 A That happens.

09:19 5 Q Yeah. And so, in other words, it may be that the
6 information that was obtained on February 26th was
7 all that could be obtained from the --

8 A February 26th or 28th?

9 Q Well I think the contact is February 26th.

09:20 10 A Okay.

11 Q The phone call to you is on February 28th.

12 A Yes.

13 Q I know there is reference to the call being on
14 February 28th as well, but I think, my
09:20 15 understanding is that there is one call. Yeah, I
16 think the documentary record reflects that the
17 call was on February 26th to Mr. Wolch, --

18 A Okay.

19 Q -- and you were informed on the 28th. I'll check
09:20 20 and see. I think, actually the RCMP checked the
21 phone records is how they actually found
22 Mr. LaFreniere, so I'll maybe double-check that
23 and confirm. But again, if that's the situation,
24 that lookit, this is -- in fact I think Mr. Asper
09:20 25 attempted, as did Mrs. Milgaard, to try and find



1 this person through a radio station, and there is
2 a bit of conflicting evidence on that, about
3 whether or not he could be contacted through a
4 radio station by asking for Bud, and there's
09:21 5 different -- there's some inconsistencies there, I
6 think, from what we've heard; do you recall that
7 being a method to contact him?

8 A It seemed a little too cloak and dagger. There
9 was mention made of attempts to contact the person
09:21 10 by calling in the radio station and asking for
11 Bud, and apparently such an attempt was made, it
12 wasn't successful, and after that I believe the
13 office of Wolch Pinx Tapper concluded that Sidney
14 Wilson didn't exist, as such, as left it at that.

09:21 15 Q Would you agree that, apart from the circumstances
16 under which the information came to the attention
17 of Mr. Wolch and his firm, and the suspicions you
18 may have had about the source and the manner in
19 which the information was given and received, that
09:22 20 once the substance provided, in other words "here
21 is a person who is a suspect", that,
22 notwithstanding suspicions you may have had about
23 how it came to your attention, once it came to
24 your attention, that information should be
09:22 25 gathered about this individual?



1 A Yes.

2 Q And so, if we can go to the letter, I just want to
3 get your comment on a couple of points. The first
4 paragraph confirms the substance of the
09:22 5 conversation, and we went through this in your
6 memo, and here is the information that the source
7 provided; that the true killer is Larry Fisher;
8 that he arrived:

9 "... home on the morning of January
09:22 10 31st, 1969, covered with blood and that
11 Fisher's wife had seen this. Fisher's
12 wife then apparently heard of the murder
13 later that day and concluded that Fisher
14 may have had some involvement. Fisher's
09:22 15 wife then apparently told Wilson, who
16 claims that he went to the police a
17 number of years ago with this
18 information. We further understand from
19 Wilson that Larry Fisher is currently
09:23 20 imprisoned serving a sentence arising
21 from a rape or murder or both."

22 And I think what the record reflects is that the
23 information that Sidney Wilson provided, I don't
24 believe it specifically referred to Linda as the
09:23 25 name of the wife, it simply was 'Larry Fisher's



1 wife' -- I could be wrong on that -- but I think
2 a number of the documents, certainly this one,
3 simply says Larry Fisher's wife, it also does not
4 -- the caller did not identify that Larry Fisher
09:23 5 lived in the Cadrain basement at the time; is
6 that consistent with your memory about at least
7 the initial nugget of information?

8 A Yes.

9 Q And then we see here, in this letter, Mr. Asper
09:23 10 saying:

11 "Our information is that an individual
12 named Larry Fisher and his wife rented
13 the basement portion of the Cadrain
14 residence in Saskatoon for a period
09:23 15 covering the date of the death of Gail
16 Miller."

17 And I'm wondering what, what was your reaction to
18 that, did you go back and say "well how did you
19 know" or "where did you get this information"?

09:24 20 A I don't recall my response at that time, I -- I
21 may have questioned it, but I don't recall as we
22 speak.

23 Q Okay. And I think we'll then see some subsequent
24 information where Mr. Asper -- actually, if we
09:24 25 could just jump ahead to 009086, I'll come back to



1 this letter. So this letter identifies this
2 information, then here's your memorandum the same
3 date, again February 28th, 1990, this is now 2:45
4 p.m. And so we've had the first phone call from
09:24 5 Mr. Asper at about 9:30-ish, 9:45, we have the
6 letter that we just looked at, then:

7 "Mr. Asper ... called to
8 provide the following additional facts
9 to compliment his letter ..."

09:25 10 "Apparently Larry Fisher was
11 married to Linda Fisher when Gail Miller
12 was murdered. They had a daughter named
13 Tammy.

14 Apparently Larry Fisher took
09:25 15 the bus at approximately 6:30 a.m. on
16 January 31, 1969.

17 Linda Fisher was interviewed by
18 T.D.R. Caldwell about this matter at or
19 shortly after the event in 1969.

09:25 20 These details apparently
21 emanate from Joyce Milgaard who
22 mentioned the name Larry Bryan Fisher as
23 Gail Miller's assailant."

24 And, again, does this refresh your memory
09:25 25 about -- maybe you can just elaborate on what the



1 significance of this information was, and the
2 source of the information, whether that had any
3 significance to you?

4 A Well, this certainly provided some details that
09:25 5 enabled me to check out the information, and it
6 signaled to me that I should be making inquiries
7 of both the Saskatoon police and, also, the RCMP.

8 Q And, again, let's just go through about the
9 information about Linda Fisher and the daughter
09:26 10 Tammy and the fact that Larry Fisher took the bus
11 that morning; was that something that -- did you
12 follow up and inquire "well where did that come
13 from"?

14 A It was followed up at a subsequent time but it
09:26 15 was, those were all points that I had to, I had to
16 examine.

17 Q And point number 3, you've got:

18 "Check ...",

19 that's your writing:

09:26 20 "Check this out";

21 is that right?

22 A I believe so, yes.

23 Q And I think the evidence we've heard is that Linda
24 Fisher did not say she was interviewed by T.D.R.

09:26 25 Caldwell, and I don't think Sidney Wilson or Bruce



1 LaFreniere, who testified here, didn't tell Mr.
2 Wolch that. Mr. Caldwell says he didn't interview
3 Linda Fisher, Linda Fisher says he didn't, and I'm
4 just wondering if you can elaborate on how this
09:27 5 information came to be?

6 A I don't know. It was just material that was
7 relayed to me.

8 You'd asked me whether or not
9 that was my writing?

09:27 10 Q Yes.

11 A If you could just slide it over a bit?

12 Q Yeah.

13 A I don't think it is.

14 Q Okay. Do you have a recollection, at least, of
09:27 15 Mr. Asper, or are you able to confirm that Mr.
16 Asper would have told you this, paragraph 3, on
17 February 28th, 1990?

18 A I recorded, at or shortly after the phone call,
19 the information I received, and I hope that I
09:27 20 would record it to the best of my ability.

21 Q And did you have any questions at the time about
22 where Joyce Milgaard would get information about
23 the name of Larry Fisher's wife and daughter, the
24 fact that he took the bus, and the fact that she
09:28 25 was interviewed by T.D.R. Caldwell about this



1 matter at or shortly after the event?

2 A I had been made aware that Mrs. Milgaard had been
3 making certain -- a number of inquiries. At that
4 point I wasn't so concerned about the source of
09:28 5 the information emanating from Mrs. Milgaard, I
6 was more concerned about checking the accuracy of
7 the materials.

8 Q Okay.

9 A And it was something that you would put on the
09:28 10 back burner, this --

11 Q Okay. If we could go back to the letter, 333342.

12 COMMISSIONER MacCALLUM: What's that doc.
13 ID, I missed it?

14 MR. HODSON: I'm sorry, that, 009086.

09:28 15 COMMISSIONER MacCALLUM: Yes.

16 BY MR. HODSON:

17 Q Now there is a comment in here as well that -- and
18 let's just use the name 'Sidney Wilson' as being
19 the informant, I think it's Mr. LaFreniere, but
09:29 20 the documents refer to Wilson so let's use that --
21 according to Mr. Asper, Sidney Wilson told Hersh
22 Wolch that he, Sidney Wilson, went to the police a
23 number of years ago with this information. Again,
24 was that something of significance to you, that
09:29 25 the anonymous caller had gone to the police with



1 this information?

2 A Yes.

3 Q And so let's just try and recap, on February 28th,
4 1990, what you would know. You would know there
09:29 5 was an anonymous caller to Mr. Wolch saying "I
6 think the real killer is Larry Fisher, and the
7 basis of that is information from his wife", I
8 think that's not named at least in the call, may
9 have been, but it's stated as Fisher's wife; that
09:30 10 Fisher arrived home on the morning of January 31,
11 1969 covered with blood and that Fisher's wife had
12 seen this; Fisher's wife had heard of the murder
13 later that day and concluded that Fisher may have
14 had some involvement; Fisher's wife then
09:30 15 apparently told Sidney Wilson.

16 So the information seems to
17 emanate from Linda Fisher, somehow, to this
18 source, and the information is that Larry Fisher
19 came home on the morning of the murder covered
09:30 20 with blood, and that Larry Fisher's wife heard
21 about the murder and thought or concluded that he
22 may have been involved; that would be the
23 substance of the information, correct?

24 A Yes.

09:30 25 Q And that Sidney Wilson, the informant, had gone to



1 the police with this information a number of years
2 ago, and then, based on the phone call you had
3 with Mr. Asper the same day, that what was added
4 to that, not by Sidney Wilson but by Mr. Asper,
09:30 5 was that Larry's wife at the time was Linda, and
6 they had a daughter, that Larry Fisher took the
7 bus at approximately 6:30 a.m. on January 31,
8 1969, being the morning of the murder; correct?

9 A Correct.

09:31 10 Q Now let me just pause there for a moment. If
11 Larry Fisher took the bus at 6:30 a.m. on January
12 -- let's go to 009086. If that piece of
13 information is correct, that he in fact took the
14 bus at approximately 6:30 a.m. on January 31,
09:31 15 1969, what's --

16 A What's the significance of it?

17 Q Yeah?

18 A It would appear that, if he had taken the bus, he
19 would have been out of the vicinity at the time
09:31 20 that the victim left her apartment, and assumed
21 that, by then, he would have been at work on a
22 construction site at the University of
23 Saskatchewan.

24 Q So then, unless he got off the bus shortly after
09:32 25 and came back, he would not be --



1 A In the vicinity.

2 Q As well, and again just as far as the information
3 was added, that in addition to Sidney Wilson going
4 to the police Linda Fisher, the wife, was
09:32 5 interviewed by the prosecutor at or shortly after
6 the event in 1969, which presumably is the murder;
7 is that fair?

8 A Yes.

9 Q So that Mr. Caldwell would have interviewed Linda
09:32 10 Fisher at the time. And, again, would that have
11 been -- tell us about the significance of Sidney
12 Wilson going to the police and Mr. Caldwell
13 interviewing Linda Fisher, and how that might have
14 fit in?

09:32 15 A Well, as presented, it signaled that information
16 about Larry Fisher's involvement had been brought
17 to the attention of the Saskatoon City Police
18 shortly after the commission of the offence, at
19 least it had been done at a time in which the
09:33 20 prosecutor, Mr. Caldwell, was involved, and I
21 assume that if, if there's an interview by the
22 prosecutor it's either at or before trial or
23 during trial, but certainly before an adjudication
24 of the case. The inference is, or one of the
09:33 25 things that you may draw from that is that the



1 Saskatoon police and the prosecutor had
2 information about another killer, or a potential
3 suspect in 1969, and apparently did nothing about
4 it.

09:33 5 **Q** Now if we can just go back to the full page here,
6 please. You've talked before about checking the
7 source. Now I went through the information that
8 came from the anonymous source, Sidney Wilson, and
9 the one thing would be that he, the source, went
09:34 10 to the police?

11 **A** Yes.

12 **Q** And so you couldn't go to Sidney Wilson and say
13 "tell me which police you went to, what did you
14 say, when did you go", so you were left to verify
09:34 15 that with going to the police; is that fair?

16 **A** That's fair.

17 **Q** Here we've got the suggestion that Linda Fisher
18 was interviewed by Mr. Caldwell after the event in
19 1969 and, according to your note, that information
09:34 20 came from Joyce Milgaard; is that correct?

21 **A** Yes.

22 **Q** So, in this case, you could go to Mr. Caldwell and
23 check this, and as well go to Mrs. Milgaard
24 through Mr. Asper and say "okay, well where, where
09:34 25 did Mrs. Milgaard get this information"?



1 A I could have, yes.

2 Q And did you?

3 A I don't believe I did.

4 Q And, similarly, you could have gone back to Mr.

09:35 5 Asper and say "well where did Mrs. Milgaard get
6 this information about his wife and daughter"?

7 A I -- I --

8 Q And, sorry, and in the letter, that they lived in

9 the basement of the Cadrain house, I think that's

09:35 10 the information that came from Joyce Milgaard
11 around February 26th to 28, 1990.

12 A Yes. I wasn't so concerned about what steps had

13 been taken to obtain the information, I was more

14 concerned with finding out whether the information

09:35 15 presented to me was correct. Like, you know, I

16 took it as a given. Mrs. Milgaard had been making

17 some inquiries, I wasn't going -- at this point,

18 at least, I wasn't so concerned about where did

19 she get it, I was more concerned about "is this

09:35 20 true".

21 Q Okay. If we can just go back to the letter,

22 333341, please, or 342. The bottom paragraph Mr.

23 Asper says:

24 "Obviously, this could be

09:36 25 very important in the development of the



1 Milgaard s. 690 application, and one
2 which we respectfully believe ought to
3 be fully investigated. As we have
4 indicated in our earlier correspondence,
09:36 5 we have no funds with which to retain an
6 investigator. We would very much
7 appreciate your considering making
8 sufficient funds available to us in
9 order that we might take the appropriate
09:36 10 steps, failing which we would very much
11 like to be advised as to the status of
12 any investigation that your office might
13 undertake."

14 The first request seems to be "lookit, give us
09:36 15 some money, we'll hire an investigator and we'll
16 investigate Larry Fisher as the suspect in this
17 murder"; is that the fair reading of his request?

18 A Yes.

19 Q Would you have ever considered -- let's talk about
09:37 20 two things, number 1, whether you or Federal
21 Justice or the minister was in a position to do
22 that, and secondly, regardless of whether you were
23 or weren't, whether you would ever consider
24 funding and authorizing Mr. Milgaard's counsel to
09:37 25 investigate Larry Fisher as the perpetrator of



1 this crime?

2 A We weren't in a position to do it and consequently
3 we did not consider that request favourably. What
4 we did instead was retain or obtain the services
09:37 5 of the RCMP to investigate that aspect of
6 allegation, and what I mean by that is retain the
7 RCMP to investigate the allegation if Larry Fisher
8 was the perpetrator, was the killer of Gail
9 Miller. The materials -- there were certain
09:38 10 allegations concerning whether the informant had
11 gone to the Saskatoon police, so I made inquiries
12 of the Saskatoon police to see whether they had
13 any record of interviews of either Sidney Wilson
14 or Linda Fisher. Subsequently, I was advised that
09:38 15 after a search of their records they did turn up
16 an interview of, or with Linda Fisher I believe in
17 1980. There was nothing found about Sidney
18 Wilson.

19 Q Is it correct to say that because this ground
09:39 20 involved an allegation, and the allegation was
21 that Larry Fisher, not David Milgaard, killed Gail
22 Miller --

23 A Yes.

24 Q -- and that that would be the type of
09:39 25 investigation that would be not just more



1 appropriate, but essential that it be conducted by
2 a police force; is that fair?

3 A Yes.

4 Q Because it involved an allegation, an
09:39 5 investigation to determine whether or not there's
6 information to suggest someone else committed the
7 crime?

8 A Correct. It's homicide and it's a serious
9 offence. I am not a homicide investigator, but I
09:39 10 certainly have the ability to identify and, you
11 know, where the expertise for that type of
12 investigation resides, and in this case the
13 appropriate agency to look into it was the RCMP
14 primarily because it would be, in my view, it
09:40 15 would not have been appropriate to have the
16 Saskatoon police reinvestigate a case that they
17 investigated previously.

18 Q And so, number 1, you decided it should be a
19 police force and, number 2, it was the RCMP you
09:40 20 chose because the city police had been the
21 original investigators?

22 A Yes.

23 Q And what was it you were concerned, that they may
24 not -- why did you not think they were appropriate
09:40 25 to do it?



1 A I had no doubt that Saskatoon police had competent
2 officers to conduct the investigation. However,
3 the appearance would be unsatisfactory because the
4 perception would be here it is, the police were
09:40 5 being asked to reinvestigate themselves when the
6 allegation is that they mishandled or they had
7 information in 1969 identifying the real killer
8 and apparently did nothing with it, the optics
9 would be bad, number 1, and number 2, if an
09:41 10 investment in police resources were to be made,
11 you certainly wouldn't want to select the wrong
12 source for the investigation and be criticized on
13 the basis that how can you expect any other
14 outcome when you ask the police to reinvestigate
09:41 15 their own wrongdoing.

16 Q Okay. So again, just on this issue of, number 1,
17 of getting the police, let me contrast the Larry
18 Fisher information with the Deb Hall and Dr.
19 Ferris information, I think with that information
09:41 20 you followed up and pursued that in your role as
21 investigator for the minister because it didn't
22 involve allegations of -- I suppose Deborah Hall
23 might have involved allegations of perjury, but
24 apart from that, if we contrast that with the
09:42 25 Larry Fisher information which is the purpose of



1 the investigation, is to gather evidence and
2 information to determine whether or not he is the
3 person who committed the crime?

4 A Yes.

09:42 5 Q And so is it correct to say that because of the
6 nature of the investigation, it was required to
7 gather information about Larry Fisher as a ground
8 under 690, that required a police investigation?

9 A In my estimation it did and I asked the police to
09:42 10 help.

11 Q And is it also fair to say that if it turned out
12 that there was grounds based on the investigation
13 to pursue a charge, that it would be appropriate
14 to have the police doing that?

09:42 15 A Yes.

16 Q And as well was a consideration that Sergeant
17 Pearson and the RCMP, you talked earlier about the
18 fact that you did not have any coercive powers
19 under Section 690, did you feel Mr. Pearson or
09:42 20 Sergeant Pearson of the RCMP may have avenues
21 available to them as police officers that you did
22 not have as an investigator under Section 690?

23 A That's correct.

24 Q And so would it be correct to say that on February
09:43 25 28th, 1990, you decided then to take steps to



1 follow up this information that you received on
2 Larry Fisher?

3 A Yes.

4 Q And let's just go through a couple of follow-up,
09:43 5 and let's go to 332399 and we'll outline the steps
6 here. This is notes of Mr. Caldwell and so it
7 looks like February 28th you contacted him -- just
8 call up -- "2:50 p.m. - phoned Eugene Williams -
9 he got a second phone call: Only one letter." So
09:44 10 this looks like a discussion with Mr. Caldwell
11 after your one letter from Mr. Asper and your two
12 phone calls. If we can scroll down, number 1,
13 "I'm to check - any "Linda Fisher" or "Larry
14 Fisher". 334 Avenue O. R.C.M.P. address." Or
09:44 15 let me just back up, I think that's maybe number
16 1. So it looks like you phoned Mr. Caldwell and
17 asked him to check his file for any mention of
18 Larry Fisher or Linda Fisher?

19 A Yes, and asked him whether he had interviewed
09:44 20 Linda Fisher because I had to know, or were made
21 aware in my considerations with him that there had
22 been a significant list, I think over 95 people
23 had been interviewed, so --

24 Q Yes. Do you recall his answer at the time?

09:44 25 A I believe he -- I don't know if he -- he didn't



1 give me an answer that day or during the
2 conversation, but I think subsequently he advised
3 me that he hadn't spoken with Linda Fisher as I
4 recall.

09:45 5 Q I think Mr. Caldwell's evidence before the
6 Commission is that the name Larry Fisher, I think
7 his evidence was, although there was a letter back
8 in 1970 that referred to him, I think his evidence
9 was that when he heard it from you would have been
09:45 10 his recollection of when he first heard the name
11 Larry Fisher, or at least of the significance of
12 it. Do you have any recollection of your
13 discussions with Mr. Caldwell and what sense you
14 got as to whether Larry or Linda Fisher were names
09:45 15 that he had, either knew about or recalled?

16 A My recollection of our conversation or
17 conversations is that those weren't names with
18 which he was familiar.

19 Q The 334 Avenue O South would be the Cadrain
09:45 20 address. Do you know what this reference is to
21 RCMP address?

22 A No, I don't.

23 Q And then number 2, phone Montague, who was the
24 deputy chief who I think was in charge at the
09:46 25 time, I think he was the person that had been



1 contacted by you. Do you know what that was with
2 respect to?

3 A I don't. I can only surmise that during my
4 conversation with Mr. Caldwell, I indicated to him
09:46 5 that there had been information that Sidney Wilson
6 had gone to the police and that I would be making
7 a request of the police to look into that matter.

8 Q Okay. And I will show you in a moment the letter
9 to Deputy Chief Montague about that, so maybe
09:46 10 that's the reference there. If we could then go
11 to 333341 and go to page 344, it looks like on
12 February 28th you would have faxed to Mr. Caldwell
13 a copy of the February 28th letter from Mr. Asper?

14 A Yes.

09:47 15 Q And would that be in relation to your request to
16 him to review his file to identify whether he had
17 interviewed Linda Fisher and whether he had any
18 other information about Larry Fisher on his file?

19 A Yes, and I would provide to him the context in
09:47 20 which the request was made.

21 Q 333339. Did you have any concern in giving this
22 letter to Mr. Caldwell and asking Mr. Caldwell as
23 the prosecutor of the file to advise you whether
24 or not he interviewed Linda Fisher and whether or
09:47 25 not he had anything on his file about Linda or



1 Larry Fisher?

2 A No.

3 Q Did you feel that that's an inquiry you should
4 have made of him under oath in an examination
09:47 5 setting?

6 A No.

7 Q 333339 is a February 28th, 1990 fax and I think,
8 if we can go to the next page, I think you took
9 steps to try and get a copy of Mr. Fisher's
09:48 10 criminal record; is that right?

11 A Yes.

12 Q And this is not a very good copy, I apologize, and
13 here's Larry Earl Fisher.

14 A Shortly afterwards two Fishers had been
09:48 15 identified, a Larry Earl and a Larry Bryan. I'm
16 not certain, but I think the initial -- it was
17 just a Larry Fisher in prison and when we did
18 certain checks we found out there were two Larry
19 Fishers in prison at that time, the difference was
09:48 20 one was Larry Earl and one was Larry Brian.

21 Q Right. And it was Larry Earl that ended up being
22 the one that you investigated?

23 A Yes.

24 Q And I think this is the record of Larry Earl and
09:48 25 it doesn't, I've got a better copy I can show you



1 in a moment, but this -- why would you have -- and
2 this looks to be, if we can scroll up to the top,
3 on February 28th, 1990 at 12:28, Crown Attorney
4 Ottawa, that would have been your efforts to get
09:49 5 Mr. Fisher's record that day?

6 A Yes.

7 Q And why would you be getting his criminal record?

8 A A copy of the criminal record would confirm
9 whether or not that individual had committed the
09:49 10 rapes. Certainly sexual assault rape is an
11 indictable offence. If there was a Larry Fisher
12 with such a record, it would show up.

13 Q And so the information from Sidney Wilson to Mr.
14 Wolch is that Mr. Fisher was currently in jail?

09:49 15 A Yes.

16 Q So here, if we can actually go to 082547.

17 A I mean, by looking at the record, you could see --
18 you could see the record of convictions, the
19 sentence and it gives some indication as to
09:50 20 whether or not the person is currently in jail.

21 Q So I guess one step, is it fair to say, was to
22 find out who or which Larry Fisher you were
23 dealing with?

24 A Yes.

09:50 25 Q And so the criminal record might assist in that



1 respect?

2 A Yes.

3 Q And so here, this is one form of the record that
4 talks about the rape charges and it's got December
09:50 5 21, 1971 and the rape charges in Regina,
6 Saskatchewan, and can you tell us, what
7 assumptions did you make from this record or other
8 versions of his criminal record regarding Larry
9 Fisher's past offences?

09:50 10 A At first blush it appears as if the assaults
11 occurred in Regina because that's the location in
12 which the conviction and the sentence are
13 registered.

14 Q And I think we've heard evidence from everybody
09:51 15 who dealt with this, Mr. Asper, Mrs. Milgaard and
16 Sergeant Pearson, that for a number of months
17 everybody who was following up on Larry Fisher
18 relied upon the criminal record and mistakenly
19 assumed that the offences had been committed in
09:51 20 Regina because the record said that?

21 A That's correct. I must confess, I also formed
22 that view.

23 Q Now, let's just pause for a moment here. So
24 February 28th, 1990 you would get this record of
09:51 25 these offences. Can you tell us the significance,



1 at least initially, what your thought process was
2 in learning that Mr. Fisher lived in the Cadrain
3 basement at the time of Gail Miller's murder and
4 that he has five rape charges, one indecent
09:52 5 assault in at least the 1971 time period, this
6 doesn't list the dates of offences, that
7 information comes I think a bit later. Can you
8 tell us what significance it had at this time?

9 A Well, certainly suspicious and worthy of an
09:52 10 additional look.

11 Q And the fact being that he having been convicted
12 of a number of rapes might be a suspicious person
13 because of his previous crimes?

14 A The previous crime, number 1. Number 2, it at
09:52 15 least confirms in part some of the information we
16 had received. There was some additional
17 information that we still had to check out and it
18 just signaled that this was not merely a frivolous
19 claim, but it deserves some additional attention.

09:53 20 Q And if we assume that the information that you
21 received from Mr. Asper this day, that Larry
22 Fisher lived in the Cadrain basement at the time
23 of the murder, which was the case, the fact that a
24 convicted rapist lived in the Cadrain basement,
09:53 25 was within a block and a half of where Gail



1 Miller's body was found and to the extent that
2 physical evidence in and around the Cadrain house
3 was significant in David Milgaard's conviction,
4 happened to be living in the very house that David
09:53 5 Milgaard visited the morning of the murder, when
6 you looked at that thing, with that picture, can
7 you tell us what thoughts you had about
8 suspicions?

9 A Those factual elements signaled that we needed to
09:53 10 continue looking into this allegation.

11 Q Would it be correct to say that Mr. Fisher would
12 be considered a suspect or that he was suspicious?
13 I'm just trying to get a sense of what your
14 thinking was at the time, and if we can try and
09:54 15 focus on sort of the early few days if possible.

16 A I think you used the term suspect. I would have
17 labelled him a person of interest, that his
18 activities certainly pointed to some suspicion at
19 him as the potential killer, but we would have to
09:54 20 check it out further.

21 Q Okay. Now, what about the -- can you tell us what
22 significance, if any, you placed upon the -- two
23 things, one, we know from the record that he
24 committed five rapes and one indecent assault in
09:55 25 '71, I'll get back to the 1980 offence in a



1 moment. Did you view it as -- did it matter that
2 the rapes were in Winnipeg or Regina rather than
3 Saskatoon, did that have any significance?

4 A At first blush, yes, it did. One of the curious
09:55 5 things was -- when you take a look at, when you
6 read records, the date of the record doesn't
7 necessarily provide any signal as to when the
8 offence underpinning the record occurred and that
9 was something that we would have to check into,
09:55 10 but when you look at it, say, well, look, Gail
11 Miller was killed in 1969 and it doesn't appear,
12 at least when you first take a look at this, that
13 his activity started until sometime after she was
14 killed.

09:56 15 Q That's if you assume that the date of the
16 conviction being entered is close to the date of
17 the offence?

18 A Yeah, or within a year of.

19 Q Right. Now --

09:56 20 A You know, taking into account the usual intervals
21 in various jurisdictions for the adjudication of
22 certain types of offences.

23 Q Okay. Now, on March 15th, and I'll show you this
24 letter -- actually, why don't we bring it up now.

09:56 25 A But keep in mind when I'm first encountering that



1 record, that's shortly after noon on February 28th
2 and all I have is a statement, a record and I
3 think around that time I may have gotten Mr.
4 Asper's letter.

09:57 5 Q Okay. If we could just quickly call up 333345,
6 please. This is March 15th, 1990, a couple of
7 weeks later, and Mr. Asper sends you his
8 understanding of the record which is identical, at
9 least the top part, to what you had, and then he
09:57 10 goes on to say:

11 "It is our understanding that the
12 offence dates for some of the
13 convictions which are entered on the
14 record are as follows:"

09:57 15 Now, I don't think he indicates whether they are
16 the Winnipeg or the Regina. We now know them to
17 be the Saskatoon rapes for which he was sentenced
18 on December 21, '71 in Regina. Do you recall
19 whether a criminal record check at the time, were
09:57 20 you able to get the dates of offences from the
21 criminal record check?

22 A I don't recall, sir.

23 Q And where would you be able to get that
24 information to find out the dates that the
09:58 25 offences were committed?



1 A Typically what you would do is you would contact
2 the police force and ask them to pull their files
3 because that information would be contained on the
4 file. What you get from CPIC is basically a
09:58 5 recording of the convictions supported by print.
6 Sometimes there may be a summary of the offence
7 that goes along with it, but the better bet is to
8 go directly to the police force and to ask them to
9 pull their file on it.

09:58 10 Q Are you able to tell us, and I think Mr. Asper's
11 evidence was that he got this from a police
12 source, I'm not sure where, but a criminal record
13 check, and I'm trying to understand whether --
14 your criminal record that you obtained did not
09:58 15 have the dates of the offences and I'm wondering
16 whether perhaps Mr. Asper had a different type of
17 criminal record check or whether he got the
18 information elsewhere. Are you able to shed any
19 light on that?

09:59 20 A No, I'm not. The document you placed earlier, I
21 believe the criminal record --

22 Q Yeah.

23 A That's a CPIC printout, a Canadian Police
24 Information Centre printout, and as you can see in
09:59 25 the top left-hand corner, it has the FPS number



1 which is the fingerprint identifier for Larry Earl
2 Fisher, and 472715A, and it would then simply
3 recite the dates of the convictions, the location,
4 the charges and the disposition, and that is
09:59 5 typical of most CPIC --

6 Q I recall seeing in the database somewhere a
7 printout that had dates on there, so it may well
8 be that some different sources, the dates of the
9 offences, and I'm wondering if you -- your
10:00 10 understanding is that the dates of the offences
11 are not normally included on the CPICs that you
12 would normally get; is that correct?

13 A That's correct. They may be now, but that one
14 certainly doesn't have it.

10:00 15 Q So would you have gone to your source, or your
16 Crown attorney's office, give me the criminal
17 record of Larry Fisher and this is what you would
18 have received?

19 A Yes, I would cause a record check to be undertaken
10:00 20 usually by the police force and that's what I
21 received.

22 Q Okay. Now, what Sergeant Pearson told this
23 Commission is that I think later on, you know, in
24 mid March, once it was learned the dates of the
10:00 25 offences being '68, in and around the time,



1 presumably if Mr. Fisher was in jail on January
2 31, 1969, that would be a piece of information
3 that would be of assistance?

4 A Yes.

10:01 5 Q We know that wasn't the case. What Sergeant
6 Pearson told us is essentially to the effect that
7 lookit, the fact that there is a convicted rapist
8 living in the basement of the Cadrain house on the
9 day of the murder is suspicious, whether he
10:01 10 committed the rapes in Winnipeg, Regina, Toronto,
11 Saskatoon, from Sergeant Pearson's perspective he
12 said the important thing is he's a rapist and he's
13 in the vicinity, and then I think later on -- and
14 would you agree with that, with that view?

10:01 15 A I certainly do, I did.

16 Q If we can then go to 333350, and it looks as
17 though you made efforts again, this is February
18 28th, with Correctional Services, presumably you
19 would have had the FPS number for Larry Fisher and
10:02 20 trying to get information from Correctional
21 Services; is that right?

22 A Yes.

23 Q And she got back and said the preferred route is
24 by the RCMP and it looks like you called the RCMP
10:02 25 that day; is that right?



1 A Yes.

2 Q 157049, again this is also February 28th, 1990,
3 you wrote back to Mr. Asper thanking him for the
4 letter, and:

10:02 5 "Please be advised that the issues
6 raised will be carefully investigated
7 and considered. You will be advised of
8 the outcome of this application in due
9 course."

10:02 10 So Mr. Asper wrote to you and said lookit, give
11 us money so that we can investigate ourselves, if
12 not you should investigate, and your letter back
13 says you will investigate; is that correct?

14 A That's correct.

10:03 15 Q Then if we can go to 056743, please, and this is a
16 lengthy document, this is Sergeant Pearson's
17 chronology of notes of his dealings with you, and
18 we will be referring to this from time to time,
19 and if we can call out that, Sergeant Pearson
10:03 20 says:

21 "Again on February 28th, 1990, Williams
22 telephoned me from Ottawa, soliciting
23 assistance in the investigation
24 involving an application under Section
10:03 25 690, filed on behalf of David Milgaard,



1 who claims he was wrongfully convicted
2 of the non-capital murder of Gail Miller
3 of Saskatoon. Information was received
4 in the last day or so from Milgaard's
10:03 5 lawyer, Hershe Wolch ... who is claiming
6 that they received information from an
7 individual who calls himself Sidney
8 Wilson. Wilson states that the person
9 responsible for the murder is an
10:03 10 individual by the name of Larry Fisher
11 and that Fisher's wife saw her husband
12 with blood covered clothing on the
13 morning of the murder, and that she
14 apparently told Wilson later on that it
10:04 15 was Larry who committed this murder."

16 And then:

17 "Williams advises there is potential for
18 publicity and media interest in this
19 case, and it is requested that we
10:04 20 conduct our investigation as sensitively
21 as possible. I advised Williams to send
22 his instructions in writing with a brief
23 history on the information that he was
24 in possession of, and we would provide
10:04 25 whatever assistance we could."



1 Can you tell us how the engagement of Sergeant
2 Pearson came about, what steps did you take, who
3 did you call and how was he selected?

4 A Typically, when we required RCMP assistance, I
10:04 5 would work with the Federal Enforcement Branch in
6 Ottawa and I would, I had a contact there. I
7 would explain the nature of the work I required,
8 they would contact I guess the division in
9 Saskatchewan, relay the request, and division
10:05 10 would then identify someone who could assist, and
11 that information would be relayed back to me, and
12 once I'd received that, then I contacted Sergeant
13 Pearson. Prior to receiving the information from
14 the RCMP I had not had, I don't believe I'd had
10:05 15 any previous contact with Sergeant Pearson.

16 Q So you would have gone to the RCMP, or to its
17 management, saying "I need an individual who can
18 investigate these allegations"?

19 A Yes. And they identified Sergeant Pearson, and
10:05 20 relayed the information to me, and then I
21 contacted him.

22 Q And can you elaborate a bit, or can you tell us,
23 does this summary here; is this accurate, I mean
24 --

10:05 25 A That, that appears accurate, yes.



1 Q And so what was it that you were -- what was the
2 mandate you were giving to Sergeant Pearson?

3 A I was asking Sergeant Pearson to investigate those
4 claims fully.

10:06 5 Q So to investigate, would it be fair to say, to
6 investigate any evidence or information that might
7 tend to show that Larry Fisher is the perpetrator
8 of the crime?

9 A Yes.

10:06 10 Q Now you talk here in paragraph 2, or at least
11 Sergeant Pearson records a concern you express
12 about the:

13 "... potential for publicity and media
14 interest in this case, and it is
10:06 15 requested that we conduct our
16 investigation as sensitively as
17 possible."

18 Can you elaborate on -- these are his words,
19 okay?

10:06 20 A Those are his words. By then, I was fully aware
21 that the inquiry that we had undertaken had
22 attracted widespread publicity, and I thought it
23 fair to him to let him know that this will be a
24 fairly high profile investigation, so act
10:06 25 accordingly.



1 Q And were you concerned, at this time, that this
2 Larry Fisher information would be in the media
3 shortly?

4 A It would not have surprised me if it got into the
10:07 5 media shortly, yes.

6 Q And why would it not have surprised you?

7 A Based on my past experiences on the file.

8 Q Okay. And so was it fair to say that one of your
9 concerns was that Mr. Asper or Mrs. Milgaard, or
10:07 10 somebody on behalf of David Milgaard, would go to
11 the media with this information about Larry
12 Fisher?

13 A Yes.

14 Q And did you -- and I'll come back to this a bit
10:07 15 later when we see it come up in the documents;
16 would that have been a concern of yours at the
17 time?

18 A Yes. At the time I was working in the criminal
19 law area and I'm aware that, where you have
10:07 20 individuals in the penitentiary setting, there are
21 certain rules that exist and there's certain
22 protocols among prisoners. It could become very
23 difficult if it was widely publicized that Mr.
24 Fisher was now seen as a target, it could impede
10:08 25 our ability to deal with him, and it could also



1 have enormous repercussions in terms of the
2 penitentiary service and how they were able to
3 handle him.

4 Q Are you telling us that in the prison setting, if
10:08 5 other prisoners became aware that David Milgaard
6 may be serving a crime that Larry Fisher
7 committed, that prisoners would not view Mr.
8 Fisher very kindly?

9 A Yes.

10:08 10 Q And are you saying that one of the concerns would
11 be that, if this information became public, that
12 Larry Fisher's personal safety within the
13 institution may be compromised?

14 A Correct. In addition, you know, there were a
10:08 15 number of other features to it. We had to move,
16 and we had to do it responsibly. At this stage,
17 this is the first day, this is the first day of
18 the receipt of the information, we didn't know
19 what we were going to turn up, and we had to do it
10:09 20 in a sensitive manner, or sensitive, certainly, to
21 the needs of the folks involved.

22 Q And I suppose, at this time, you wouldn't know
23 whether or not Larry Fisher had committed the
24 crime; is that fair?

10:09 25 A What I knew was what I had been told, it was an



1 allegation that we had to check out, I didn't know
2 anything more.

3 Q If we could go to 001810. Sorry, just on the --
4 this media aspect, I think you also said that
10:09 5 publicizing Mr. Fisher or the investigation, were
6 you concerned that that might compromise your
7 ability and Sergeant Pearson's ability to conduct
8 the investigation, both directly with Mr. Fisher,
9 and with respect to gathering other evidence?

10:10 10 A It could have an impact, at that time I didn't
11 know how much of one, but, based on previous
12 activity, I was aware that it could have an
13 impact.

14 Q And is it fair to say that you had a bit of an
10:10 15 inkling, or maybe a little stronger, that this
16 information was going to hit the media?

17 A Yes.

18 Q And that was the heads-up you gave to Sergeant
19 Pearson, that --

10:10 20 A At that time, yes.

21 Q So here's a letter, it's dated March 1990, I think
22 it is -- it doesn't have a date on it, I believe
23 it is March 1, 1990 based on some other documents,
24 and I'll go through that with you. This would be
10:10 25 your set of instructions, then, to Sergeant



1 Pearson; is that right?

2 A Yes.

3 Q And, again:

4 "To obtain a better

10:11 5 understanding why the requests which
6 follow are being made, some background
7 information is needed."

8 You get into the application, the information you
9 learned on February 28th, the fact that
10:11 10 information from Mr. Asper is that they lived in
11 the Cadrain premises. You say:

12 "I am advised that these

13 premises were recently occupied by

14 Leonard Cadrain ...",

10:11 15 and a telephone number. Now Leonard Cadrain was
16 Albert Cadrain's father; do you know where that
17 information came from?

18 A Well, certainly the information about the fact
19 that Larry Fisher resided in the Cadrain residence
10:11 20 at 334 Avenue O South, that came from Mr. Asper.
21 He had written, or not -- he had telephoned me and
22 provided that information, which I believe I
23 recorded in an earlier memo.

24 Q Okay, I'm talking about the, this information
10:12 25 about the father and the phone number?



1 A Oh, Leonard Cadrain? I'm not sure.

2 Q Okay.

3 A I --

4 Q That's fine. If we can go to the next page. And,
10:12 5 again, you send the February 28th letter from Mr.
6 Asper as background, you identify the Larry Earl
7 Fisher, Larry Bryan Fisher, and I think this was
8 the -- in the memorandum you had from your call
9 with David Asper I think Joyce Milgaard had
10:12 10 identified him as Larry Bryan Fisher?

11 A Yes.

12 Q And you concluded that that was the wrong Larry
13 Fisher, it was Larry Earl Fisher; is that right?

14 A Yes.

10:12 15 Q And then here you say:

16 "This case has stimulated
17 widespread public and media interest.
18 As a result every investigative step
19 may, at some future date, be subject to
10:13 20 careful scrutiny. Accordingly, to avoid
21 any suggestion of a conflict of interest
22 by an organization responsible for
23 determining the veracity of certain
24 allegations, I am seeking the assistance
10:13 25 of the Royal Canadian Mounted Police. I



1 understand that the force did not take a
2 leading role in the conduct of the Gail
3 Miller murder investigation in 1969."

4 And, again, what did you mean by:

10:13 5 "... ome future date, be subject to
6 careful scrutiny."

7 You weren't referring to this Commission, I hope?

8 A No. It may have been prophetic. The reality is
9 that in February of 1990 I had been working on the
10:13 10 file for about a year, and the matter had
11 generated a fair bit of media attention, I had
12 every reason to anticipate that it would continue
13 to receive that. But, quite apart from that, I
14 didn't know whether Sergeant Pearson had been
10:14 15 involved in any type of 690 work in the past. I
16 did know, from my own work in 690, that the
17 results of investigations, at least internally,
18 were examined carefully. I expected that, given
19 the publicity that had been generated, that there
10:14 20 would be close scrutiny of whatever steps we took
21 at.

22 Q I'm sorry to interrupt, close scrutiny by Federal
23 Justice on the one hand?

24 A Both by Federal Justice, and by the media, and the
10:14 25 Milgaards.



1 Q Okay. Here you talk about, I take it at this time
2 you would have known that the RCMP had some
3 involvement in the initial investigation?

4 A To the extent that Sergeant Paynter performed the
10:14 5 serological exam, --

6 Q Oh, I see?

7 A -- yeah.

8 Q So that was your reference there?

9 A Yes.

10:15 10 Q Did you -- at this time were you aware that the
11 RCMP had provided some assistance in the
12 investigation? I'm -- Inspector Riddell took Ron
13 Wilson's first statement in early March, and they
14 had some peripheral involvement for a few months,
10:15 15 were you -- would you have been aware of that do
16 you think?

17 A I may have been, and maybe that's why I said:
18 "... did not take a leading role in the
19 conduct ...",
10:15 20 yeah.

21 Q Then again, scroll down, the information you are
22 asking him to get; is it fair to say that you were
23 putting forward your "here's what I'd like", but
24 you weren't -- were you intending to limit
10:15 25 Sergeant Pearson as to what he could or would



1 investigate with respect to Larry Fisher?

2 A No. This -- we weren't going to limit him, but
3 certainly, "whatever you reported, would you
4 kindly include the following".

10:16 5 Q Right. So that, if Sergeant Pearson felt he
6 should take additional steps, --

7 A He could.

8 Q So, here:

9 "Please provide details of Mr. Fisher's
10:16 10 personal history for the period December
11 1968 to February, 1990 ... correctional
12 history ...",
13 etcetera. And I take it that would be to find
14 out where he was at relevant times, just standard
10:16 15 background?

16 A Yes.

17 Q You asked for:

18 "For example, was he a fellow inmate of
19 David Milgaard, at any time?"

10:16 20 Why would that be of interest to you?

21 A I'm not certain, now, why I asked that.

22 Q Okay. And, as well, you talk about Fisher's
23 association with the Cadrain family; why would
24 that be -- do you remember why you were looking
10:17 25 for that information?



1 A Well, certainly, the allegation was that in 1969
2 Larry Fisher was a tenant of the Cadraings at 334
3 O.

4 Q Would it have been to see whether there might be
10:17 5 any connection between Larry Fisher and Albert
6 Cadraing who gave evidence, would be one?

7 A That was part of it, I think just to confirm the
8 assertion that Fisher was a tenant in the Cadraing
9 residence, I mean this is two days later.

10:17 10 Q All right. And then at the bottom you indicate
11 that:

12 "... Warden Jim O'Sullivan of the Prince
13 Albert Penitentiary has collected some
14 materials which may be of assistance."

10:17 15 Do you know what that relates to?

16 A Probably, on a penitentiary file there is certain
17 information that you get that accompanies a
18 prisoner, and there's -- sometimes it includes a
19 synopsis of the offences which gave rise to their
10:18 20 incarceration, as well as personal history, as
21 well as medical history.

22 Q And so that, on the Correctional Services file,
23 you were saying "there might be some information
24 that might assist us in the investigation of Larry
10:18 25 Fisher as a suspect"?



1 A It's a start, yes.

2 Q If we can go to the next page:

3 "Re: Linda Fisher and Sidney Wilson",
4 you ask to :

10:18 5 "... determine the whereabouts of Linda
6 Fisher, and ascertain whether she did
7 form the conclusions attributed to her
8 by Wilson. If she concluded that her
9 husband was 'involved', what was the
10:18 10 nature of his involvement; and upon what
11 facts did she base her conclusion.",
12 and discussions with Wilson, so again, probing
13 the accuracy and completeness of the information
14 from Linda Fisher?

10:18 15 A That -- yes.

16 Q And, as well, her personal history from December
17 '68 to the present, her association with Sidney
18 Wilson; I take it you were hoping to find out,
19 from Linda Fisher, who Sidney Wilson was?

10:19 20 A Yes.

21 Q And, again, that information there.

22 If we can then go to 025659.

23 This is a letter March 1, 1990 to Deputy Chief
24 Murray Montague at the city police. It appears
10:19 25 you had a conversation with him on March 1. You



1 say:

2 "I sought to identify the person, whose
3 assistance I should obtain, to
4 investigate certain facts concerning
10:19 5 David Milgaard's application ...",

6 again:

7 "To obtain a better
8 understanding why the requests which
9 follow are being made, some background
10:19 10 information is needed."

11 You provide that. And then:

12 "Recently, the Department of
13 Justice was advised by Mr. Milgaard's
14 counsel, David Asper, that Mr. Sidney
10:20 15 Wilson, address unknown, had identified
16 Larry Fisher, as the true killer of Gail
17 Miller. Further, Mr. Wilson apparently
18 went to the police 'a number of years
19 ago' ...",

10:20 20 with quotes around it, and I take it that's taken
21 from the information you got from Mr. Asper?

22 A Yes.

23 Q "... and provided the police with this
24 information."

10:20 25 Next page, and as well:



1 "Mr. Asper has also informed
2 me that Linda Fisher, who was ...",
3 I'm not sure if that's 'identified':

4 "... to me as the wife of Larry Fisher,
10:20 5 was interviewed by the Saskatoon police
6 force in connection with the Gail Miller
7 murder investigation.

8 This case has stimulated
9 widespread public and media interest.
10:20 10 As a result every investigative step
11 may, at some future date, be subject to
12 careful scrutiny."

13 So, again, the same concern you expressed to
14 Sergeant Pearson for the same reasons?

15 A Yes. I'm saying, it's another way of saying
16 "fellas, be thorough, be careful".

17 Q And then you go on to say:

18 "... to avoid any future suggestion of a
19 conflict of interest, by the
10:21 20 organization involved in determining the
21 veracity of this recent information, I
22 have sought and obtained the assistance
23 of the Royal Canadian Mounted Police, to
24 examine a number of these claims, some
10:21 25 of which are contained in the attached



1 letter dated February 28, 1990. I
2 understand that, unlike the Saskatoon
3 police, that organization played a minor
4 role in the conduct of the Gail Miller
10:21 5 murder investigation ..."

6 So would this be telling the Saskatoon City
7 Police, "lookit, the RCMP is now investigating
8 Larry Fisher as a suspect in the murder of Gail
9 Miller, and here's why I'm getting them to do
10:21 10 that, just so you know"?

11 A Yes.

12 Q Then you go on to say:

13 "However, there are certain
14 factual assertions which can only be
10:21 15 confirmed by the Saskatoon Police Force.
16 Accordingly I am writing to obtain
17 assistance in determining the following:
18 ..."

19 So is it fair what you are saying is "city
10:21 20 police, you are not investigating Larry Fisher,
21 the RCMP are, but there is a few things that
22 relate to this that only you can answer,
23 therefore, please assist in the following"?

24 A Yes.

10:21 25 Q Scroll down. And these requests, let's just go



1 through them, the first one:

2 "Did the Saskatoon Police

3 Force interview Linda Fisher during the

4 murder investigation of Gail Miller, or

10:22 5 at anytime thereafter in relation to

6 Ms. Miller's death?"

7 And I take it that Mr. Asper told you that,

8 according to their source, Linda Fisher had been

9 interviewed by Mr. Caldwell and perhaps by the

10:22 10 police; is that right?

11 A Well, certainly by Mr. Caldwell, and my take on

12 that was, if Mr. Caldwell interviewed Linda

13 Fisher, then the likelihood is that her -- she was

14 -- her name was brought to his attention by the

10:22 15 police investigators.

16 Q Right, right.

17 A So there would or could be a record of their

18 contact --

19 Q Okay.

10:22 20 A -- with her on their files.

21 Q And so:

22 "If so, what information did

23 Ms. Fisher provide?"

24 So this would be investigating that aspect of the

10:22 25 information that Mr. Asper had provided you?



1 A Yes.

2 Q 3:

3 "Can it be determined whether
4 Sidney Wilson, or anyone else, contacted
10:23 5 the Saskatoon Police Force to advise
6 that Larry Fisher was the true killer of
7 Gail Miller?"

8 And I take it, again, that was a piece of
9 information that was brought to you by Mr. Asper,
10:23 10 that Sidney Wilson went to the police with his
11 information; correct?

12 A Yes.

13 Q So you are trying to find out what is on the
14 police file in relation to that?

10:23 15 A Yes.

16 Q And 4:

17 "During the Gail Miller
18 murder investigation ...",
19 you talk about Cadrain interviewed by the police.
10:23 20 "Is there a record of that interview?",
21 of Cadrain:

22 "If so, does it disclose whether Mr.
23 Cadrain identified the individuals who
24 then resided at 334 Avenue "O" South in
10:23 25 Saskatoon? Did Mr. Cadrain identify



1 Larry Fisher as a resident or tenant in
2 his dwelling during his discussions with
3 police?"

4 Can you elaborate on what the purpose of that
10:23 5 request was?

6 A I think that was basically to delve into what I
7 thought was an inference contained in some of the
8 materials that I had received that possibly the
9 city police had been advised, at the time of their
10:24 10 interviews with Albert Cadrain, that Larry Fisher
11 was a tenant that may have had some implication in
12 this.

13 Q So in other words the inference, or the potential
14 inference, that lookit, if he was living in the
10:24 15 basement of the house and Albert Cadrain was a
16 main witness, find out, did they not talk to
17 Cadrain about Fisher, or find out what information
18 may have been brought out at that time?

19 A Yes.

10:24 20 Q Okay. Next page. And I think just indicating
21 that the questions or areas discussed by phone as
22 well as some new areas. So then, if we can just
23 pause here, I think this is March 1. So on
24 February 28 and March 1, 1990 you would have
10:24 25 received the information, obtained the criminal



1 record, engaged the RCMP to investigate, contacted
2 Mr. Caldwell to review his file for information,
3 and contact the Saskatoon City Police to review
4 their file regarding the matters in the
10:25 5 investigation; is that correct?

6 A Yes.

7 Q And so can you tell us whether, sort of your
8 thinking at the time, did you take this
9 information as significant information in the
10:25 10 course of your investigation?

11 A Yes. If I hadn't, I would not have taken any
12 steps to -- I -- to verify it.

13 Q And, at this time, I think we heard yesterday your
14 departmental report had been done and was
10:25 15 somewhere on the ladder, or maybe had gone from
16 the ladder over to the Minister. Would it be
17 correct to say that, as a result of what was now
18 happening, that the previous departmental report
19 would be rendered -- would be put aside, in other
10:26 20 words, that --

21 A It would be, it would be set aside, because what
22 we had was an entire new branch of inquiry which
23 had not been touched upon in any of the inquiries
24 we had done previously.

10:26 25 Q And so there wasn't a situation where you would



1 say "okay, well Minister, deal with the first
2 application because the Milgaards are anxious to
3 get an answer on Deborah Hall and Dr. Ferris, so
4 deal with that, give a decision, and then let's
10:26 5 make this a new application", or is it a case of
6 until such time as the Minister has replied, that
7 it's up to the applicant, if the applicant gives
8 you more grounds then it's a live ground that must
9 be investigated?

10:26 10 A Correct, the latter assertion is correct, it's a
11 continuing application. We had invited, in
12 January, additional facts, there was the signal
13 that there may be something else out there. That
14 something else surfaced, or at least one of them,
10:27 15 surfaced on February 28th, 1990. It caused us to
16 continue to investigate and, armed with this new
17 information, it would be premature to close off
18 the application and dismiss the application, if
19 that were to be the decision taken by the Minister
10:27 20 at that time.

21 Q This is probably an appropriate spot to break.

22 (Adjourned at 10:27 a.m.)

23 (Reconvened at 10:49 a.m.)

24 BY MR. HODSON:

10:49 25 Q If we could call up 009086. Mr. Williams, I think



1 I had asked you about this handwriting, and I
2 think you said you did not think that was yours.
3 It's my understanding that we will likely hear
4 evidence from Murray Brown that that was a note
10:50 5 that he put on that document at some later date,
6 and so the version, I think the version that I am
7 showing you is not necessarily the document from
8 your file -- I should have pointed that out -- we
9 simply grabbed one of the many copies. So I
10:50 10 should have informed you that this wasn't
11 necessarily from your file when I asked you the
12 question, but I think you've told us you don't
13 think it's your handwriting?

14 A No, it's -- my writing has changed over the years,
10:50 15 but it didn't look like mine.

16 Q Okay. Thanks. If we could go to 333355, please.
17 This is a memo March 2, '90, and it looks like you
18 got a call from a Bill Keith, who was the prison
19 living unit officer of David Milgaard, who was
10:51 20 calling to inquire about where the application was
21 at, and I think he was trying to consider escorted
22 temporary absence passes, and wondered if the
23 decision was going to be favourable. Do you
24 recall this conversation and what this was about?

10:51 25 A Yes.



1 Q And what was it?

2 A Mr. Keith was a living unit officer, and at Stony
3 Mountain I believe, and was part of the parole
4 regimen. David Milgaard had some escorted
10:51 5 temporary absence passes, and there was some
6 consideration by the parole officials about
7 continuing that, and it seemed as if, at least in
8 Mr. Keith's view, one of the factors that they
9 might take into consideration in terms of making
10:52 10 their decision was whether a favourable decision
11 from the Minister would be forthcoming. The
12 timing of that call in relation to the new
13 information signaled to me that, one, he wanted to
14 know if a decision would be forthcoming shortly,
10:52 15 and I tried to indicate to him no, it wouldn't be,
16 because of the additional material we had
17 received; and secondly, in light of the newness of
18 the information I couldn't really tell him when
19 we'd finish and what the outcome might be.

10:53 20 Q Now this last note, it says that Mr. Keith
21 mentioned that:

22 "... Larry Brian Fisher, a convicted
23 murderer was remanded to Stony Mountain
24 Penitentiary to await his trial for
10:53 25 murder. Coincidentally Larry Fisher is



1 the name of the person who has recently
2 been identified by Sidney Wilson as the
3 'true killer of Gail Miller'."

4 This is, I go back, this is a call on March 2,
10:53 5 1990. Now I think this is a different Larry
6 Fisher than the Larry Earl Fisher but, at this
7 point, can you tell me whether -- would this
8 topic have been introduced by Mr. Keith in the
9 call, this Larry Fisher information?

10:53 10 A Yes.

11 Q And I'm trying to understand why or how Mr. Keith
12 would know about Larry Fisher on March 2nd, 1990
13 and contact you about that; are you able to shed
14 any light on that?

10:53 15 A No, sir.

16 Q I take it that you did not say to him "do you have
17 any information about Larry Fisher"; is that your
18 evidence?

19 A Correct.

10:54 20 Q Did you presume that it would have come from David
21 Milgaard, then, or from someone on his behalf?

22 A There used to be a phrase called the "moccasin
23 line", and that is within the penitentiary system
24 word gets around very, very quickly, and I just
10:54 25 naturally assumed that he'd picked up some rumour.



1 I didn't question it, I didn't indicate to him
2 what we had, he volunteered it, as I recall.

3 Q But, again, this is within a day or two of your
4 call from Mr. Asper --

10:54 5 A Yes.

6 Q -- that you would get a call from a prison
7 official saying "oh, by the way, Larry Fisher is
8 remanded at Stony Mountain awaiting trial for
9 murder" out of the, apparently out of the blue,
10:54 10 and --

11 A My sense at that time was that someone closely
12 connected with the information about Larry Fisher
13 had provided that information to Mr. Keith. I
14 certainly did not.

10:55 15 Q Did you view this as a fishing --

16 A There were certain elements of it. Quite frankly,
17 the criteria that parole, prison and paroles use
18 as to whether or not to grant an ETA, that's their
19 criteria, and I wanted to de-link any suggestion
10:55 20 that David Milgaard was -- would receive or not
21 receive privileges to which he were entitled under
22 the parole system from any consideration that the
23 Minister of Justice may have under Section 690.
24 In other words, I didn't want to give him any
10:56 25 signals that would cause them, assuming that it



1 was a *bona fides* request, to make an adverse
2 decision against Mr. Milgaard on the basis of what
3 the Minister of Justice might or might not do with
4 the 690 application.

10:56 5 Q Go to 333356, please. This is a letter March 4th,
6 1990 from Joyce Milgaard to the Minister of
7 Justice, and before I get into the substance of
8 the letter, so March 4, 1990, this would be, I
9 guess, four days or five days after your call with
10:56 10 Mr. Asper, and I think you've told us steps you
11 had at least started in process. Is it fair to
12 say that you were waiting to hear back from Mr.
13 Caldwell, from Deputy Chief Montague, and Sergeant
14 Pearson --

10:56 15 A Yes.

16 Q -- with respect to the three avenues you set in
17 motion on February 28th; is that correct?

18 A That's correct, sir.

19 Q Would you have advised the Minister's office about
10:57 20 the Larry Fisher information, is that the type of
21 thing that you would report, or would you
22 investigate it like the other information?

23 A I think, in the profile that this application had
24 achieved, I would have -- we likely advised the
10:57 25 Minister's office that there had been additional



1 information that had caused us to embark on a new
2 avenue of inquiry.

3 As you will recall, I had been
4 receiving requests from Bernard Hanssens either
10:57 5 directly or indirectly via my supervisor,
6 Mr. Corbett, for a status report on this
7 application. By then, and what I mean by that is
8 around February 1990, the departmental report
9 would have been recalled and the Minister's office
10:58 10 advised that additional work was required before
11 we could complete the report, and, informally, I
12 would call down and speak to one of the advisors
13 to let him know of where things stood.

14 Q And so the minister's officer would likely be
10:58 15 aware that you were pursuing the potential that
16 there may be a suspect responsible for the murder?

17 A Yes.

18 Q Would you get into much by way of detail as to
19 what you were doing and those things?

10:58 20 A Not by way of detail. I would likely -- I would
21 say to them we received certain information which
22 identifies a new person, Larry Fisher possibly as
23 the culprit, we're taking steps to verify that
24 information, we'll keep you posted.

10:59 25 Q Okay. This letter again indicates:



1 "I know your department is doing
2 everything it can and I am most
3 appreciative of the time they are
4 spending on it. It's just so very hard
10:59 5 waiting for all of us, especially
6 David."

7 And then at the bottom:

8 "Isn't the new information terrific?"

9 Which I'm assuming relates to -- well, I'm not
10:59 10 assuming, I think Mrs. Milgaard told us it
11 related to the Larry Fisher information. If we
12 can go back to the first page, also a video
13 cassette of interviews with David were sent in.
14 Can you tell us -- I believe this is the first
10:59 15 communication by Joyce Milgaard to the minister.
16 We certainly went through where David Milgaard
17 sent letters to the minister. What effect if any
18 would this communication have on the work you
19 were doing?

11:00 20 A It wouldn't adversely affect what I was doing,
21 simply a question of some time watching the video
22 and drafting a response, so --

23 Q Would you have to do a briefing note for the
24 minister with respect to this letter then?

11:00 25 A Probably not, just draft a ministerial reply.



1 Q And 157051, this is your letter to Mr. Asper of
2 March 5 of 1990, and you are basically saying:

3 "... I would welcome the opportunity to
4 speak to Mr. Wilson directly."

11:00 5 And your phone number, collect, and:

6 "I would be grateful if you would use
7 your good offices to convey my request
8 to Mr. Wilson."

9 What prompted this letter?

11:01 10 A As you recall, the source of the information was
11 Mr. Wilson. I was trying to identify and locate
12 Mr. Wilson to speak with him further. Obviously
13 and ultimately we would want to talk to Linda
14 Fisher and to the extent that such an interview
11:01 15 would be in the offing, I would really like to get
16 information from Mr. Wilson so that I may be
17 better informed when I questioned Ms. Fisher.

18 Q And you were hopeful or believed that Mr. Asper's
19 office had a better ability to contact Mr. Wilson
11:01 20 than you?

21 A Yes.

22 Q If we can go to 105293, please. This is a March
23 7th, 1990 memo from Deputy Chief Montague to
24 Inspector Quinn and having Constable Farion review
11:02 25 the Gail Miller murder file and provide answers to



1 the questions posed and as well to follow up and
2 get notebooks of former officers. Did you become
3 familiar with Inspector Quinn and Constable Farion
4 being involved in the review of the police file?

11:03 5 A I recall meeting Inspector Quinn. I probably met
6 Constable Farion, but I believe I may have had
7 more dealings with Inspector Quinn than the
8 constable, yes.

9 Q And as far as your dealings with the Saskatoon
11:03 10 City Police in relation to the Larry Fisher
11 inquiries, who would it be that you had your
12 primary dealings with; do you remember?

13 A Deputy Chief Montague and Inspector Quinn.

14 Q If we can go to -- the doc. ID is 056743, these
11:03 15 are Rick Pearson's notes, and go to 056746, and
16 this is a note of March -- it doesn't show on this
17 page, but it's March 8th, 1990, this is Sergeant
18 Pearson's notes, and did you have an opportunity,
19 Mr. Williams -- you are generally familiar that
11:04 20 Sergeant Pearson would have prepared notes and
21 sent them on to you; is that correct?

22 A Yes, periodically I would get his continuation
23 reports and this looks like a copy of one of them.

24 Q All right. And so here he says:

11:04 25 "Called Eugene Williams, Federal



1 Justice, advising we had located Linda
2 Fisher, and requested he send a synopsis
3 of the file so I can better brief myself
4 prior to an interview with her."

11:04 5 And so I think that's -- that was one of the
6 tasks you had for him; correct?

7 A Yes.

8 Q And then here, contacted -- this is Pearson:

9 "Contacted Larry Lafleur of Prince
11:04 10 Albert Penitentiary in an effort to
11 determine the blood type for Larry Earl
12 Fisher."

13 And then it goes on to talk about that. Can you
14 tell us what would be the purpose of trying to
11:05 15 determine Larry Fisher's blood type?

16 A This may have been one of the investigative steps
17 Sergeant Pearson took as part of his
18 investigation, but certainly one of the
19 potentials, potential uses of it would be to see
11:05 20 whether he was A or B or just to try and identify
21 whether Larry Fisher could have produced the A
22 antigens found in the semen that was located at or
23 near the crime scene.

24 Q Okay. Now, in light of the information from Dr.
11:05 25 Ferris and the information you received from



1 Patricia Alain that suggested that the semen
2 sample was contaminated, what -- I guess the
3 question is what value would that semen sample
4 have with respect to Larry Fisher?

11:06 5 A Well, knowing that it had been contaminated
6 certainly reduced its value in the sense of
7 linking, but it would be nice to know in the event
8 that we were able to get something else that could
9 identify the blood type of the perpetrator.

11:06 10 Q And so, for example, if Larry Fisher was blood
11 type B, would that -- I guess my question is if
12 the frozen semen can't be used to eliminate David
13 Milgaard, how could it be used to eliminate Larry
14 Fisher?

11:06 15 A In hindsight, it couldn't, but at the time we were
16 just running down the avenues, checking out the
17 various things. This was one of them.

18 Q Now, I suppose if he -- and as it turns out, I
19 think the evidence is that Larry Fisher and David
11:06 20 Milgaard are both A secretors, so I think it's
21 fair to say that absent some further ability to
22 differentiate between A secretors, that regardless
23 of the use of the frozen semen, it could not
24 distinguish between those two gentlemen?

11:07 25 A Correct. Secondly, one of the things to keep in



1 mind -- but that's correct, you are absolutely
2 right.

3 Q And I suppose as well, would this be, and I think
4 Sergeant Pearson talks about this a bit later on,
11:07 5 that the blood type would be obtained, is it fair
6 to say that it would be then turned over to, would
7 you turn it over to Patricia Alain or someone or
8 would he turn it over to someone and say tell me
9 whether this has any value to us?

11:07 10 A No, at that point in time, and I think he was just
11 looking for a record of the blood type, perhaps
12 later we might try and get a sample which perhaps
13 might be used for DNA analysis or some other
14 analysis.

11:08 15 Q Okay. If we can go to 008379, March 8th, so that
16 was I think the date, that was the date of your
17 discussion with Mr. Pearson where he requested a
18 synopsis for his interview with Linda Fisher and
19 here's your letter to him of that date. If we can
11:08 20 go to the next page, this is a document then that
21 you would have prepared and sent to Sergeant
22 Pearson; is that correct?

23 A Yes.

24 Q If we can go to page 008382, and so here you
11:08 25 outline Nichol John's trial evidence and indicate



1 that when she testified:

2 "... neither confirmed nor denied the
3 truthfulness of the information
4 contained on pages 3 - 5 of her
11:09 5 statement. (When I interviewed her she
6 said she told the truth in her statement
7 even though she did not recall all the
8 events today.)"

9 And that would be taken from your November 8th
11:09 10 interview; is that right?

11 A It would be taken from my November interview, yes.

12 Q If we can go to 008384, the bottom, you make a
13 comment here, you say:

14 "Albert Cadrain's testimony confirmed
11:09 15 Wilson's observation of blood on
16 Milgaard's clothing, but differed in its
17 details. Cadrain stated that Milgaard
18 had blood in the stomach area of his
19 shirt and sprinkles of blood on his
11:09 20 pants. Cadrain saw Milgaard change his
21 clothes in the former's living room, and
22 place the soiled clothes in a suitcase.
23 Under cross-examination Cadrain admitted
24 that he did not mention seeing blood on
11:09 25 Milgaard's clothes when the former spoke



1 to the police in April, 1969 upon his
2 return to Saskatoon. Nichol John
3 testified that she did not see any blood
4 on David Milgaard's clothing."

11:10 5 Can you tell us, what was the significance of
6 these difference in details?

7 A Just to more or less complete the record.
8 Essentially what I -- what I provided by way of
9 summary was an excerpt of a portion of a report
11:10 10 that I had drafted and which sought to set out the
11 different versions of the witnesses in relation to
12 the topic of blood on Milgaard's clothing.

13 Q Okay. Then go to page 008387, and this is
14 information about the frozen semen:

11:10 15 "The analyst who examined the frozen
16 lump containing semen --"
17 I think they are talking about Mr. Paynter.

18 A Yes.

19 Q "-- determined that the donor of the
11:11 20 semen "probably had type "A" blood"
21 because of the presence of "A" antigens
22 in the semen. The analyst could not
23 rule out a donor who had type "AB"
24 blood.

11:11 25 Although the sample tested



1 "positive for blood" at the completion
2 of an initial screening, the analyst was
3 unable to chemically identify blood
4 because he did not have enough semen to
11:11 5 perform the confirmatory tests. The
6 analyst explained that the blood
7 screening test he performed narrowed the
8 potential contaminates of the semen to
9 blood, an extract from green leafy
11:11 10 vegetables, or an extract from a leather
11 product."

12 And then:

13 "At trial, Sgt. Paynter, the Crown's
14 analyst, said that 85% of the population
11:11 15 are secretors, namely, people who
16 transfer their blood group antigens into
17 their other bodily fluids..."

18 And then goes on to talk about blood types. So
19 is it possible that this might have been the
11:11 20 information that might have informed Sergeant
21 Pearson's view about getting Larry Fisher's blood
22 type to fit into this analysis?

23 A Yes.

24 Q Go to 010050. Just on Sergeant Pearson, is it
11:12 25 correct to say that -- 010050 -- is it correct to



1 say that his role was focused on primarily the
2 investigation of Larry Fisher as distinct to other
3 parts of the Section 690 application?

4 A That's correct.

11:12 5 Q In other words, I don't think, and the record will
6 reflect what he did, but I think he did not have
7 any involvement in reviewing the Dr. Ferris, the
8 secretor issue?

9 A By the time Sergeant Pearson had been made
11:12 10 available to us to assist, I had completed, or I
11 felt I had completed the work with reference to
12 Deborah Hall and also Dr. Ferris. You will recall
13 that in relation to Dr. Ferris we obtained the
14 assistance of Pat Alain, so as far as I was
11:13 15 concerned, those two avenues had been fully
16 investigated and thereafter we were focusing on
17 new materials and this particular area of interest
18 for Sergeant Pearson was Larry Fisher.

19 Q And later on when we get into the Albert Cadrain,
11:13 20 Dennis Cadrain and Ron Wilson interviews, I think
21 it's correct that you pursued those as opposed to
22 Sergeant Pearson?

23 A Yes.

24 Q And was there a reason for that?

11:13 25 A Yes. I felt that I could question Mr. Cadrain and



1 the nature of the subject matter under inquiry was
2 one I felt that I could handle, whereas in
3 relation to a police investigation into a
4 homicide, or a potential suspect, that's a matter
11:14 5 for the police because some of the devices, tools,
6 techniques for investigating that are beyond my
7 capacity or my ability, area of expertise, whereas
8 in terms of questioning witnesses or trying to
9 probe and test some of the statements, I felt that
11:14 10 by way of background and training I was at least
11 adequate to do that.

12 Q And so the fact that Sergeant Pearson is
13 introduced as an investigator on February 28,
14 1990, I think his evidence was, and I think you
11:14 15 are confirming this, is that he was not brought in
16 as the investigator of all subsequent grounds
17 brought forward or brought up previously, but
18 rather a discrete focus of inquiry; namely, Larry
19 Fisher as a suspect?

11:15 20 A That's correct.

21 Q And there might have been the odd task outside of
22 that scope that you may have -- we'll see as we go
23 through I think there might be the odd interview
24 or the odd piece of information that you may have
11:15 25 utilized him for; is that correct?



1 A Certainly in relation to some additional grounds
2 that were advanced later on I asked him to do
3 certain things to assist, and he did.

4 Q Did you want to keep his role looking at Larry
11:15 5 Fisher, did you want to -- was there a reason that
6 you didn't want him looking at other aspects of
7 the application, were you concerned that that
8 might impact on his thoughts on Larry Fisher?

9 A At the time that he came on to assist us, the
11:15 10 other aspects had been completed later on. As it
11 turned out, it was just a good division. I needed
12 him to remain focused on Larry Fisher and to the
13 extent that as best as I could I was more
14 interested in having Sergeant Pearson focus his
11:16 15 activities and services on the police aspects
16 without getting him more directly involved in the
17 assessment process of the application because that
18 was my function. I wanted to make sure that our
19 roles were clearly defined and that there wasn't
11:16 20 too much, what you might call smearing, so that he
21 remained, as he should, an objective investigator
22 without -- and maintained that role throughout, I
23 just felt that that would be the better way for us
24 to proceed.

11:17 25 Q And as far as the -- let's just jump ahead, the



1 interviews of Albert Cadrain, Ron Wilson, would it
2 be correct to say that those would be matters that
3 didn't necessarily require a police investigation
4 to follow up on?

11:17 5 A Initially, no. It may well have been that there
6 might have been some information coming out of
7 those interviews that required a police follow-up,
8 but in terms of doing the interviews, no.

9 Q Here is a memo, March 12, 1990, and this is Mr.
11:17 10 Asper's response to your request asking to arrange
11 to speak to Sidney Wilson, and Mr. Asper tells you
12 that he believes Sidney Wilson is really Linda
13 Fisher's common-law spouse and Sidney Wilson,
14 Asper does not believe that Sidney Wilson, who
11:18 15 possesses the characteristics attributed to him in
16 Asper's letter -- or sorry, I think he's saying he
17 doesn't believe Sidney Wilson exists?

18 A Correct.

19 Q And then it goes on:

11:18 20 "Asper provided additional details,
21 related to him by Joyce Milgaard as
22 follows:"

23 And then if we can scroll down:

24 "Because Mrs. Milgaard is Asper 's
11:18 25 source of information, and because this



1 information, if it were recited

2 truthfully could only come from Linda, I

3 assume that Linda has spoken with Mrs.

4 Milgaard."

11:18 5 Can you tell us, this call with Mr. Asper, did he
6 not tell you that Joyce Milgaard had interviewed
7 Linda Fisher? Let me maybe rephrase. When I
8 read this memo, you are saying you talked to Mr.
9 Asper, Mr. Asper provided you with a bunch of
11:18 10 information that could only have come from Linda
11 Fisher and in your memo you say, well, I assume
12 that Linda has spoken with Mrs. Milgaard, and I
13 read into that that obviously Mr. Asper didn't
14 tell you that she had interviewed them, otherwise
11:19 15 you wouldn't have to assume it. Is that fair?

16 A That's a fair assumption, yes.

17 Q So what -- can you recall this conversation? Did
18 you ask him where did you get this information
19 from, have you talked to Linda Fisher?

11:19 20 A I don't recall asking him directly. I may well
21 have, but I have no recall of that.

22 Q And so again Mr. Asper tells you information about
23 Linda Fisher and is it correct that he did not
24 attribute that to coming from Joyce Milgaard on an
11:19 25 interview?



1 A No, my sense is that Mr. Asper told me that Mrs.
2 Milgaard provided that information. It likely was
3 that I assumed -- maybe he told me specifically
4 that Mrs. Milgaard had spoken to Linda. I
11:20 5 certainly was under the impression that that had
6 happened. Now, whether Linda provided a statement
7 or something else as I was writing that, I
8 certainly was under no illusions that Mrs.
9 Milgaard had spoken with Linda Fisher.

11:20 10 Q Okay. So again, let's just go through the
11 information then provided.

12 "Linda reportedly told Mrs. Milgaard
13 that Larry was out the night of January
14 30, 1969. He did not return until Linda
11:20 15 had fallen asleep. When Linda awoke the
16 next morning around 9:00 a.m., she saw
17 that Larry was not dressed in his work
18 clothes, but was wearing his good
19 clothes."

11:21 20 So am I correct that the information that Mr.
21 Asper provided you on March 12th, 1990 was that
22 the night before the murder Larry Fisher did not
23 return until Linda had fallen asleep?

24 A Yes.

11:21 25 Q And did you understand that to be that he came



1 home then the night of January 30?

2 A Yes.

3 Q And that when she awoke the next morning at nine,
4 he was dressed in his work clothes -- not in his
11:21 5 work clothes, but was wearing his good clothes.

6 A I think the impression was that either he had come
7 home after she had fallen asleep and perhaps had
8 gone out or maybe he had stayed out all night and
9 she had confronted him when she got up the next
11:21 10 morning.

11 Q At this point is it correct that you were going to
12 be interviewing Linda Fisher, that was something
13 you knew was going to happen?

14 A Yes.

11:22 15 Q And would the purpose of that interview be to test
16 the completeness and accuracy of information that
17 you otherwise had about her?

18 A Yes.

19 Q And so would one of those things that you would
11:22 20 want to probe would be this information provided
21 here?

22 A Yes. There's some ambiguity as to whether he had
23 returned the night before or whether he had stayed
24 out all night. It was a detail that we could test
11:22 25 or explore.



1 Q And I take it that Mr. Fisher's whereabouts prior
2 to nine a.m. on the morning of the murder would
3 have been important?

4 A Yes.

11:22 5 Q What about the information in the February 28th
6 memo, that he had caught the bus at 6:30 a.m. on
7 the morning of the murder, where did that fit in
8 with this information?

9 A Well, it certainly wasn't consistent with it.
11:22 10 Either he caught the bus, I assume to go to work,
11 or -- that may have been one version and this was
12 a second, so we would have to sort it out.

13 Q Okay. And then as well:

14 "A fight ensued during which Linda
11:23 15 accused Larry Fisher of killing Gail
16 Miller when she heard a news bulletin
17 about the murder. Larry Fisher was
18 reportedly shocked by the accusation,
19 and did not respond."

11:23 20 Again, that would be information that presumably
21 would be significant in your assessment of her
22 information?

23 A Certainly in terms of identifying the timing of
24 when the fight occurred. That's just a general
11:23 25 narrative. It doesn't have details because keep



1 in mind, shortly after nine and there's a
2 confrontation, unless there was a bulletin, you
3 know, it's only within an hour, or within a half
4 on hour of the discovery of the body. Whether or
11:23 5 not the news media would have firstly arrived and
6 then secondly reported what had been discovered
7 with sufficient detail to provide Linda Fisher
8 with the information to, shall we say, confront
9 her husband then and there, is questionable, so
11:24 10 that's one of the things we had to look at.

11 Q Did this information in this memorandum that you
12 received from Mr. Asper, did this raise some
13 suspicious flags that you needed -- maybe
14 suspicious is too strong a word, some flags that,
11:24 15 some inconsistencies or questions that you needed
16 to pursue with Linda Fisher?

17 A Correct.

18 Q And pretty important, on pretty important areas;
19 namely, what day the discussion was, where Larry
11:24 20 Fisher was, whether he caught the bus that
21 morning, whether he was home the night before,
22 what time the news bulletin was on, things of that
23 nature?

24 A Yes, we certainly had to pinpoint some of the
11:24 25 details of his movements and the details of when



1 Linda Fisher acquired certain information so that
2 she could confront her husband.

3 Q And then as well:

4 "Linda Fisher had two uncles Roy and
5 Clifford. Larry Fisher habitually
6 borrowed Clifford's car. That car
7 apparently matched the description of a
8 car that Miller's date observed outside
9 Miller's residence when he took her
10 home, the night before she was killed."

11 Let me pause there. Can you tell me what
12 significance you placed on that information or
13 whether that information caused you to come up
14 with areas of further inquiry you thought you
15 needed to pursue with Linda Fisher?

16 A Certainly one of the theories that were
17 outstanding was that possibly Gail Miller had been
18 assaulted and killed elsewhere and her body
19 dumped. To the extent that Larry Fisher had
20 access to a vehicle, that may have been the scene
21 of an assault or some other offence, that that's
22 an area that we would want to explore.

23 Q And would you have at this time recalled or been
24 aware of the significance of the evidence at trial
25 of Henry Diewolf who witnessed a vehicle in that



1 alley?

2 A Yes.

3 Q And so was it your thinking at the time that based
4 on the evidence at trial, it appeared that a
11:26 5 vehicle was used by the perpetrator of the murder?

6 A There was some suspicion that a vehicle that had
7 been parked or had been observed in the area may
8 have been involved and that's something we would
9 want to explore.

11:26 10 Q And again, just what we've seen on the record,
11 Dennis Elliott, who was the individual who was
12 with Gail Miller the night before the murder,
13 dropped her off at home, I think around two a.m.,
14 and observed a car out front with an individual in
11:26 15 the car with the car running that he noted to be
16 suspicious and there's a description of the
17 vehicle and that information was provided to the
18 police and pursued, I don't think anything ever
19 came of it. Would you have been aware of that at
11:27 20 some point? Do you remember that?

21 A It, I believe, may have arisen at trial or was
22 discussed.

23 Q Okay. So again, this information, the fact that
24 Larry Fisher borrowed Clifford Pambrum's car and
11:27 25 that car matched the description of a car observed



1 outside Miller's residence when he took her home
2 the night before she was killed, would this be
3 information that you would need to pursue?

4 A Yes. Either I would pursue it or Sergeant Pearson
11:27 5 would pursue it.

6 Q And obviously if Larry Fisher had a vehicle that
7 matched the description of a vehicle outside Gail
8 Miller's home at two in the morning, that would be
9 significant information?

11:27 10 A Yes.

11 Q And again, would that be information that you
12 would want to probe for completeness and accuracy?

13 A In a discussion, yes, with Ms. Fisher.

14 Q And again, would you, and you may have touched on
11:28 15 this earlier, I think you weren't prepared to
16 simply accept this as information, saying okay,
17 well, that's information, that's obviously enough
18 to point that he's a suspect?

19 A There isn't the degree of detail that's required.
11:28 20 It's certainly suspicious and we need to pursue it
21 further.

22 Q Next page:

23 "Furthermore, Linda Fisher is reported
24 to have discovered that her pairing
11:28 25 knife was missing, a few days after Gail



1 Miller's body was discovered."

2 Again, that information, can you tell us what
3 significance that information would have for you
4 and what areas you would want to follow up on
11:28 5 with that?

6 A Certainly.

7 Q You or Mr. Pearson, sorry.

8 A Yeah. Well, certainly that the murder weapon was
9 a paring knife and to the extent that Gail -- to
11:29 10 the extent that Linda Fisher was missing a paring
11 knife around the time of the killing, that was
12 certainly significant, to find out whether it was
13 in fact the weapon that was used in the murder.

14 Q So again, that was something you would want to get
11:29 15 more detail on such as what did the knife look
16 like and did it match the description of the
17 murder weapon?

18 A Yes.

19 Q And then your comment:

11:29 20 "Somewhat disturbing is Mr. Asper's
21 revelations that Mrs. Milgaard has been
22 conducting her own investigation and has
23 interviewed Linda Fisher, and attempted
24 to interview Larry Fisher's mother in
11:29 25 North Battleford, Sask."



1 Can you tell us, what did you find disturbing or
2 of concern about that?

3 A We had been asked to conduct the inquiries, and we
4 were doing so with the assistance of the RCMP.

11:30 5 How we did it, we could control that process, and
6 also the information, and test it in terms of its
7 reliability. To the extent that I had, by then,
8 been made aware of Mrs. Milgaard's attempt to
9 contact other witnesses, and particularly where
11:30 10 you're dealing with, I guess, sensitive
11 information, some of the folks who had been
12 contacted were not happy with the nature of the
13 contacts and I just felt that, if we were looking
14 into it, having Mrs. Milgaard ahead of us might
11:31 15 create some difficulties for us.

16 COMMISSIONER MacCALLUM: You mean,
17 referring to people unhappy with contacts by
18 Mrs. Milgaard?

19 A Yes.

11:31 20 BY MR. HODSON:

21 Q Would that have been the Nichol John --

22 A Nichol John, for example.

23 Q Okay. Now let -- you said "some difficulties", so
24 if you could just elaborate, the -- I think you
11:31 25 are telling us that one would be that, based on



1 your experience with Nichol John, are you telling
2 us that her contact with Mrs. Milgaard made her
3 less willing to talk to you; is that what you are
4 saying?

11:31 5 A Well, she was unhappy with the nature of the
6 contact, and it took -- and she was reluctant to
7 speak with us. My preference is, or my preference
8 at that time, if the Milgaards had referred the
9 Larry Fisher matter to us to investigate, let us
11:32 10 conduct the investigation, we had the RCMP working
11 on the file. I could see, certainly, you know,
12 she -- we knew she had interviewed Linda Fisher --
13 yes, I note here that Mr. Asper told me that
14 Mrs. Milgaard had interviewed Linda Fisher. Why
11:32 15 she would want to talk to Larry Fisher's mother is
16 another matter, but since we were on it, I'd just
17 prefer to have one source.

18 Q Okay. So the difficulties, though, one would be
19 that contact by Mrs. Milgaard with the witness
11:32 20 Linda Fisher -- and let's talk just generally --
21 any other witnesses related to this investigation,
22 your concern was that might have a negative impact
23 on the willingness of these witnesses to cooperate
24 with Sergeant Pearson or you, based on your
11:33 25 dealings with Nichol John?



1 A That's part of it. The second part of it is
2 sometimes when you are interviewing someone about
3 historical events, how you ask the questions can
4 really inform the quality of the answers you get,
11:33 5 in other words if you suggest a certain scenario a
6 witness may or may not remember all of it but may
7 adopt a form of words that seems plausible, so you
8 can have confabulation as opposed to their honest
9 recall, and from my vantage point the methodology
11:33 10 used in questioning really informed the quality of
11 the information you get from the responses.

12 Q And so would that be important information for you
13 to know when you go, or Sergeant Pearson goes to
14 interview Linda Fisher, what information may have
11:34 15 been provided to her, prior to your meeting, by
16 Mrs. Milgaard?

17 A Yes.

18 Q And to find out whether that information provided
19 by Mrs. Milgaard to Linda Fisher might influence
11:34 20 or have influenced, either consciously or
21 subconsciously, her answers; is that what you are
22 saying?

23 A That's fair, yes.

24 Q Were you made aware that the interview, or at
11:34 25 least parts of the two interviews that



1 Mrs. Milgaard conducted of Linda Fisher, were
2 recorded and there was a transcript prepared of
3 that --

4 A No.

11:34 5 Q -- interview?

6 A No. I am aware of it now, I wasn't at the time.

7 Q And, again, would that information have been of
8 assistance in -- you in sorting out whether or not
9 Linda Fisher had or had not been influenced in the
11:34 10 information she gave to you and Sergeant Pearson
11 by her interviews with Joyce Milgaard?

12 A It certainly would have, yes.

13 Q Would you -- or when did you become aware, we know
14 now that Paul Henderson, an investigator with
11:35 15 Centurion Ministries, was also attending with
16 Mrs. Milgaard to interview Linda Fisher; did you
17 know that?

18 A Not at that time.

19 Q And is that something you became aware of in 1990
11:35 20 or '91, in that time frame?

21 A I believe so, yes.

22 Q And --

23 A We became aware of Paul Henderson's activity in
24 relation to questioning of Mr. Wilson and Mr.
11:35 25 Cadrain.



1 Q And we will get to those people later. Did you
2 come to have concerns about Paul Henderson and his
3 contact with witnesses?

4 A I came to -- the nature of some of his contacts
11:35 5 raised some questions about what had transpired
6 during the interview because, particularly with
7 respect to Mr. Wilson, because given the length of
8 the time that they'd spent together, the volume of
9 the statement was disproportionately small to the
11:36 10 amount of time that they had purportedly spent,
11 and so it raised some questions.

12 Q And I'm trying to understand, did you, after you
13 heard of Mr. Henderson in connection with his
14 interview of Ron Wilson, I think he also
11:36 15 interviewed Albert and Dennis Cadrain, did you at
16 that time become aware that he had also
17 participated in the interview of Linda Fisher?

18 A If I did, I didn't -- I don't recall it at this
19 time.

11:36 20 Q Okay. So are you telling us that you may not have
21 known, back in '91, 1990-'91, that Paul Henderson
22 was with Joyce Milgaard when she interviewed Linda
23 Fisher?

24 A Correct.

11:36 25 Q And that may be something you recently learned?



1 A Or I may have heard about it after. I just, right
2 now, have no present recollection of that.

3 Q Okay. Here you say -- would you have advised Mr.
4 Asper, I think we see some later memos, about your
11:37 5 concerns about Mrs. Milgaard investigating and
6 talking to these witnesses?

7 A Yes.

8 Q You would have raised that with him and said
9 "lookit, I don't think this is wise", or words to
11:37 10 that effect?

11 A Well, yes, or "Why? Look, if you've asked us to
12 do the investigation, what's going on?"

13 Q Would there have been anything -- let's just take
14 a step back. I suppose, if Mr. Asper and Mr.
11:37 15 Wolch chose not to share the Larry Fisher
16 information with you, in other words decided on
17 their own to go and investigate and gather
18 information to present to you once they had
19 conducted their investigation, that would be their
11:38 20 prerogative; is that fair?

21 A That's fair.

22 Q And in that regard they could do whatever they
23 like, if they wanted to go and interview these
24 people and have Mrs. Milgaard do it, or whatever
11:38 25 else, that was their right to investigate how they



1 chose?

2 A Correct.

3 Q And then, once they did that, you would then go
4 and check the completeness and accuracy of the
11:38 5 information?

6 A Correct.

7 Q And in this case, though, is your concern that,
8 instead of doing that, what they did is they said
9 "lookit, here is a new ground, and we'd like you
11:38 10 to investigate it"?

11 A Yes.

12 Q And so you were investigating it and encountering
13 concerns because they now, too, were
14 investigating; is that a fair summary?

11:38 15 A That's a fair summary. They had asked us to
16 make -- to investigate it, we were, we were
17 investigating it, and I don't think we delayed
18 that investigation but we were confronted with the
19 fact that, at every turn, they had already been
11:39 20 there ahead of us. So it just didn't seem to make
21 sense to me that on the one hand you would ask me
22 to do a job, and on the other hand you would have
23 been there trying to do, or trying to do the same
24 type of work in advance of my arrival.

11:39 25 Q And was the concern, I think further you are



1 telling us, is that you felt that what they were
2 doing was having a negative impact on what you
3 were trying to do, you and Mr. Pearson; is that
4 correct?

11:39 5 A It had the potential to have a negative impact
6 because, when you're dealing with historical
7 information, how the question is asked is really
8 important in terms of the quality of the
9 information and the quality of the response you
11:39 10 get.

11 Q Now what about the flip side, being their concern
12 -- when I say "their" being the Milgaard concern
13 -- that if you get there first you may impart
14 information to the witness the same way you say
11:40 15 they may; how do you respond to that? In other
16 words their --

17 A I say that, you know, it's my job to ask
18 questions, it's my job to ask questions in a
19 meaningful way so that an informed response can be
11:40 20 obtained and that the response will reflect the
21 recall of the witness, and not mine.

22 Q And so, just to be more specific -- I think we see
23 this spelled out later -- the concern is that if
24 you've got to the witness first, by the time they
11:40 25 get to the witness they will think that you have



1 somehow influenced the witness, and we saw that
2 with Deborah Hall and we'll see it when we get to
3 Linda Fisher; you were aware that that concern was
4 in play as well?

11:40 5 A Yes, well the -- certainly with respect to Deborah
6 Hall, yes.

7 Q So did this become a race to see who could get to
8 the witness first?

9 A Not as far as I was concerned, no.

11:41 10 Q If we can go to -- actually, sorry, this:

11 "I relayed the information I
12 obtained to investigators from the city
13 and RCMP forces who are conducting
14 separate but related investigations."

11:41 15 That would be Deputy Chief Montague and Sergeant
16 Pearson?

17 A Yes.

18 Q 056747.

19 And Mr. Commissioner, when I --
11:41 20 this is Sergeant Pearson's chronology, the doc. ID
21 is 056743 and I'll simply, if it's all right, just
22 refer to the six-digit number of the page, and I
23 think we can identify, from the fact that it's
24 Sergeant Pearson's chronology, where it's from?

11:41 25 COMMISSIONER MacCALLUM: Yes.



1 BY MR. HODSON:

2 Q So here, March 12th:

3 "Had a telephone conversation

4 with Eugene Williams, indicating he had

5 been in contact with David Asper and it

6 is now believed that no such person as

7 Sidney Wilson exists ...",

8 and, again, you go on and provide the information

9 you got from Mr. Asper to Sergeant Pearson; is

10 that right?

11 A Yes.

12 Q And then next page.

13 A Before you go --

14 Q Oh yeah, sorry?

15 A If you can go back?

16 Q We can go back. Full page, please.

17 A If you take a look at the last sentence of

18 paragraph 19.

19 Q Yeah:

20 "Maria Fisher apparently called the RCMP

21 members in North Battleford as she felt

22 she was being bothered unnecessarily by

23 Mrs. Milgaard."

24 And I think that was information that Sergeant

25 Pearson, as an RCMP officer, might have obtained;



1 is that right?

2 A He obtained it, and he relayed it when he sent
3 that report in later on.

4 Q And so can you tell me what, what concern would
11:43 5 you have about that?

6 A If your method of approaching the witness puts
7 them off, and you're approaching witnesses before
8 we arrive, it certainly inhibits our ability
9 sometimes, or it may lessen or prevent a witness,
11:43 10 or the witness may not be willing to talk to us at
11 all, and thus we -- perhaps an important source
12 might be foreclosed from us.

13 Q Was there a concern -- and I think Sergeant
14 Pearson talked about this a bit, I'll get your
11:43 15 take -- was there a concern that this contact
16 might end up informing Larry Fisher that he's a
17 suspect before you, or before Sergeant Pearson,
18 wants him to know that he's a suspect?

19 A That was a possibility. I hadn't thought of it at
11:44 20 that time but that was certainly a consideration
21 that a policeman would think of.

22 Q I think what Sergeant Pearson said was that, and I
23 think what we now know is I think that either
24 Larry Fisher's mother and/or sister, somehow
11:44 25 information got to Larry Fisher after, shortly



1 after this or within a time frame after, that he
2 became aware that he was being a suspect?

3 A And that might prompt him to be quite defensive
4 and might prompt him to -- it might inform how he
11:44 5 reacted to our requests for information from him.

6 Q And again, as far as investigating a homicide, as
7 to which witnesses to contact, when to contact
8 them, what to say, what not to say, were you
9 relying upon Sergeant Pearson and his expertise to
11:44 10 make those decisions?

11 A Yes.

12 Q If we can go to the next page. So here, and,
13 again, I think he just reiterates:

14 "Eugene Williams expressing
11:45 15 concern at this time to me that
16 Mrs. Milgaard is conducting her own
17 investigation, which may hamper the
18 investigation the authorities are trying
19 to pursue. Williams and myself
11:45 20 discussed the possibility of taking a
21 legal deposition and arrangements will
22 be made to have this done."

23 And I believe that would be of Linda Fisher; is
24 that right?

11:45 25 A Yes.



1 Q And so you had decided, then, that you were going
2 to examine Linda Fisher?

3 A We would certainly like to question her, yes.

4 Q And I think what we saw is Sergeant Pearson went
11:45 5 out and took a statement from her in advance; is
6 that right?

7 A I think Sergeant Pearson interviewed her and
8 took --

9 Q Took a statement?

11:45 10 A -- a statement from her.

11 Q Right.

12 A Yes.

13 Q And so that would be a step he took?

14 A Yes.

11:45 15 Q You told him you would like to have a legal
16 deposition?

17 A Yes.

18 Q Why -- and we'll see that was under oath; is that
19 right?

11:45 20 A Yes.

21 Q And why did you decide to have that deposition
22 under oath?

23 A I felt, in view of the seriousness of the matter,
24 that that would be the preferred course.

11:46 25 Q And would that be because she was making an



1 allegation that someone may have committed the
2 murder?

3 A Yes.

4 Q Or did commit the murder?

11:46 5 A Did commit the murder. That was what had been
6 relayed to us. I also wanted to get a complete
7 record.

8 Q 045168. March 13, 1990:

9 "Mr. Asper called ...",
10 indicating:

11 "... he had just left Mrs. Joyce
12 Milgaard. He led me to believe that as
13 a result of his conversation with
14 Mrs. Milgaard, she would refrain from
11:46 15 attempting to interview the individuals
16 who are connected with the Larry Fisher
17 allegations."

18 Do you recall anything beyond what's in this
19 note?

11:46 20 A No, sir. We spoke, and he said he had spoken with
21 his client, and that she'd agreed to let us do our
22 work.

23 Q And are -- I think it's your evidence that you
24 would have told Mr. Asper, specifically requested
11:47 25 "please advise your client not to do this, it's



1 hampering our investigation"; is that fair?

2 A Yes.

3 Q And so he got back to you here saying that he had
4 talked to her and told you that she would not, or
11:47 5 she would refrain from attempting to interview
6 individuals, is that right?

7 A That's right.

8 Q Did you subsequently discover that she had
9 attempted to interview witnesses?

11:47 10 A Attempted to, yes, and did, yes.

11 Q Did you ever go back to Mr. Asper on that point,
12 or was this --

13 A No.

14 Q We'll deal with those, I think, interviews in a
11:47 15 chronological order. Then, as well, Mr. Asper
16 provided some details regarding:

17 "... the arrangements ... made with

18 'Sidney Wilson'."

19 and the call to the radio station, this is that
11:47 20 information about Bud, etcetera; do you recall
21 any significance about this information?

22 A It seemed a little bizarre, but sometimes the
23 truth is stranger than fiction.

24 Q Did this, when you say it was, I think it was
11:48 25 bizarre, did you have -- again you told us, I



1 think, you had some suspicions about this source,
2 is that right, and how the information came to the
3 attention of Mr. Wolch?

4 A Yes.

11:48 5 Q 333358. And this is your report, I think it says
6 Rick Reardon, that should be Pearson:

7 "... that Joyce Milgaard had visited
8 Larry Fisher's mother in North
9 Battleford on March 11, 1990.

11:48 10 Mrs. Fisher, who is recovering from a
11 heart ailment, was unaware of the
12 intended visit. When Mrs. Milgaard
13 announced the reason for her visit,
14 Mrs. Fisher, who has been instructed by
11:49 15 her doctor to avoid stressful situations
16 refused to speak with Mrs. Milgaard.
17 Apparently Mrs. Milgaard persisted, and
18 Mrs. Fisher called the police.

19 The R.C.M.P. officers who
11:49 20 responded to the call determined that
21 Mrs. Fisher did not wish to speak with
22 Mrs. Milgaard. They then escorted
23 Mrs. Milgaard from the property because
24 she was trespassing."

11:49 25 And this would be the incident that you were



1 speaking about earlier?

2 A Yes.

3 Q Did you ever try and talk to Mrs. Fisher, Larry
4 Fisher's mother?

11:49 5 A No.

6 Q Do you know if Sergeant Pearson did?

7 A I'm not certain if he did. I certainly didn't.

8 Q 056745 of the Pearson continuation report. Again,
9 I think what Sergeant Pearson told us, that one of
11:50 10 his tasks was to try and follow up and get
11 information regarding Larry Fisher's criminal
12 record and his previous crimes; is that fair?

13 A Yes.

14 Q And so that one of his jobs would be to go out,
11:50 15 find out the particulars of the offences, and
16 gather that information; is that correct?

17 A Yes.

18 Q So here, this is March 8th, we've got -- we know
19 from the record that he has the two Winnipeg
11:50 20 offences, and he talks here about:

21 "Penitentiary Service has a
22 letter on file addressed to Chief
23 Kettles, Saskatoon Police Department ...
24 indicating that members of the Winnipeg
11:50 25 department interviewed Fisher and he



1 denied any involvement in these offences
2 (not sure which offences he was
3 interviewed on)."

4 And I think, if we can go to the next page --
11:51 5 sorry, actually, just go back to the previous
6 page. Here, I think what this is is Sergeant
7 Pearson is on the phone with the P.A. Pen, and I
8 think you told us the penitentiary file will
9 often have details about previous offences; is
10 that right?

11 A Yes.

12 Q So it looks like, on March 8th, he's getting
13 information on the phone about the Winnipeg
14 offences from Larry Lafleur, and here -- and we
11:51 15 have seen this letter before of October 20, '70 --
16 talks about involvement in offences, and I think
17 Pearson says he wasn't sure which ones they are.
18 And then the next day -- next page, I'm sorry, or
19 I'm sorry, go to 056749. March 13th, 1990 he:

11:51 20 "Met with Larry Lafleur in
21 P.A. and obtained the file material he
22 had on Larry Fisher."

23 And do you recall that happening, the -- I think
24 that was primarily the Fort Garry or the Winnipeg
11:51 25 rape material; do you remember getting that and



1 reviewing that with Sergeant Pearson?

2 A We discussed it, yes.

3 Q Okay. And I'll show you a note a bit later that
4 might assist you on that. If we could get 002019.

11:52 5 This is the October 20th, 1970 letter that was in
6 the Correctional Services file of Larry Fisher,
7 it's one of the documents Sergeant Pearson
8 received information on the telephone on March
9 8th, and I think was in the materials that he
11:52 10 received. And, again, this is from the inspector
11 in Fort Garry to Mr. Kettles of the Saskatoon
12 Police Department and talks about interviewing
13 Larry Fisher:

14 "... denied any knowledge of the
11:53 15 offences committed in your area."

16 And I could leave it at that. Do you recall
17 whether, at this time, any significance to this
18 letter; do you remember this, the significance of
19 this at the time?

11:53 20 A No, sir, I don't.

21 Q I think what Sergeant Pearson's note, and his
22 evidence, was that at this time the criminal
23 record suggested convictions in Regina. This was
24 a letter on the Fort Garry file that appeared to
11:53 25 suggest that Larry Fisher had been interviewed in



1 Winnipeg about some Saskatoon offences, but denied
2 them, and I think that was the extent to which was
3 on -- on --

4 A Yes, it's coming back now. It's basically, at
11:54 5 that time, we didn't have any reason to think that
6 Mr. Fisher had been involved in Saskatoon
7 offences, based on that material and based on a
8 cursory examination of the criminal record, which
9 indicated that the convictions were registered in
11:54 10 Regina.

11 Q Right. And I think Sergeant Pearson testified
12 shortly after this he made inquiries of the Regina
13 Police to try and locate copies of those offences;
14 is that right?

11:54 15 A That's correct.

16 Q And so is it your recollection that, until I think
17 it was July 4 of 1990 or thereabouts when I think
18 Mr. Asper called you indicating that the CBC
19 informed him that they were Saskatoon offences,
11:54 20 would that have been the first time you realized
21 that the offences Larry Fisher had committed were
22 in Saskatoon?

23 A Yes.

24 Q 333359. Just in the chronology here, this is
11:55 25 March 13th, and do you recall yesterday we saw



1 that Bruce MacFarlane sent out a list of questions
2 to Mr. Tallis to be answered, and so here it looks
3 like you are following up with that information
4 with Mr. Tallis?

11:55 5 A Yes.

6 Q 001808. This is a document, I'm not sure if you
7 would be familiar with this, this is from
8 Superintendent MacGibbon to Sergeant Pearson
9 saying, this is March 14, 1990:

11:55 10 "I would remind you that this
11 investigation is to be thoroughly
12 conducted, with no stones left unturned.
13 While Mr. Williams indicated he wished
14 only certain points covered, I would ask
11:56 15 that all possible avenues be completely
16 explored to ensure no criticism is
17 forthcoming at a later date."

18 And, again, would you have -- were you aware of
19 that direction from Sergeant Pearson's superiors?

11:56 20 A I was not.

21 Q Would that be anything that would be -- again, I
22 take it that would be something you would not take
23 issue with, though?

24 A No, sir.

11:56 25 Q 056749. This is March 14th, 1990, and this is



1 when Sergeant Pearson went and interviewed Linda
2 Fisher and took a statement, and I think the notes
3 reflected that he would have, at least generally,
4 informed you of the information; is that right?

11:56 5 A That's correct.

6 Q Can you tell us --

7 COMMISSIONER MacCALLUM: What page is that,
8 I'm sorry?

9 MR. HODSON: This is page 056749.

11:57 10 COMMISSIONER MacCALLUM: 749?

11 BY MR. HODSON:

12 Q Yeah. The significance of, I think it's learned
13 here that in 1980 Linda Fisher had gone in to the
14 Saskatoon City Police and gave a statement with
11:57 15 her sort of generally saying "lookit, I think my
16 ex-husband Larry Fisher killed Gail Miller or may
17 have killed Gail Miller", words to that effect,
18 we'll see it in detail later. Can you tell us
19 what, when you got this information, what did that
11:57 20 signal to you, what was your significance of the
21 -- your assessment of the significance, and what
22 steps did you think you needed to take to probe
23 that information?

24 A It certainly highlighted the need to interview
11:57 25 Linda Fisher. One of the things that was drawn to



1 my attention was the fact that the, a statement to
2 the city police was given at a time when she had
3 been drinking, and that certainly would have, or
4 could have, informed their reception of the
11:57 5 information.

6 Q Okay.

7 A So that someone who has been drinking, or whether
8 they are inebriated or they have the smell of
9 alcohol on their breath, that's a factor that
11:58 10 informs the assessment of the quality of the
11 information that's being provided.

12 Q And so was your concern here that maybe she gave
13 credible information but, because she went in at
14 4:00 in the morning and had the smell of liquor,
11:58 15 that the police may not have taken it as seriously
16 as they should have?

17 A That is -- certainly was a concern, yes.

18 Q Or I guess another concern might be, is that
19 because of the circumstances under which she went
11:58 20 in, maybe the -- maybe that informs you or others
21 about the credibility of the information?

22 A Those were two sets of concerns, diametrically
23 opposed, but certainly those were concerns. The
24 circumstances of the giving of the statement has,
11:58 25 sometimes has a bearing on the further steps taken



1 in relation to that statement.

2 Q So in assessing and going to interview Linda
3 Fisher, and getting the information to find out
4 what she said in 1980 and the circumstances under
11:59 5 which she gave it, would be an important matter?

6 A Yes.

7 Q And would it be similar to what you told us
8 yesterday about Nichol John, that any time you're
9 interviewing a witness about let's say historical
11:59 10 events, to the extent that they talked about this
11 matter earlier, i.e. in 1980, to learn the
12 circumstances of what they said and what they said
13 would be important in evaluating what they
14 currently have to say; is that correct?

11:59 15 A That's correct, sir.

16 Q Probably an appropriate spot to break.

17 (Adjourned at 11:59 a.m.)

18 (Reconvened at 1:31 p.m.)

19 BY MR. HODSON:

01:31 20 Q If we could go back to Sergeant Pearson's
21 continuation, page 056750, and this is March 14th,
22 1990, and Sergeant Pearson talks about a call from
23 you indicating you had talked to David Asper and:

24 "Mrs. Milgaard has apparently obtained a
01:32 25 statement from Linda, which I was aware



1 of. We also discussed circumstances
2 surrounding the two offences which Larry
3 was involved in, in Fort Garry in 1970.
4 I have possession of several police
01:32 5 reports, which detail the two offences
6 Larry was involved in, in Fort Garry."

7 It's got the dates of the offences.

8 "Williams and myself discussed the
9 M.O.'s, we noted the knife he used in
01:32 10 the one offence, both were violent
11 crimes. We also discussed the North
12 Battleford offence, the knife used, the
13 M.O. and the viciousness of this
14 attack."

01:32 15 Now, the Fort Garry matters we talked about
16 earlier I think briefly, the North Battleford
17 offence would be the (V10) (V10)- offence of
18 1980, the attempted murder conviction; correct?

19 A Yes.

01:33 20 Q And I think at this point, am I correct that
21 Sergeant Pearson had collected certainly some
22 information from the Fort Garry offences and as
23 well information on the (V10) (V10)- offence; is
24 that right?

01:33 25 A That's correct.



1 Q And it appears that what -- I think that
2 information was at some point provided to you by
3 Sergeant Pearson in one of his reports; is that
4 correct?

01:33 5 A Yes.

6 Q So here, can you tell us what would be the
7 significance of discussing -- I'm assuming M.O. is
8 the modus operandi, the knife and that, that would
9 be the purpose in discussing those matters?

01:33 10 A Firstly, he would be -- he relayed to me the
11 information he collected and we examined the
12 information to compare it with the information
13 surrounding the killing of Gail Miller to see
14 whether there were points of similarity and, if
01:34 15 so, which ones.

16 Q And if there were similarities, would that tend to
17 be information that might be supportive of Larry
18 Fisher as a better suspect?

19 A It would certainly deepen the suspicion that had
01:34 20 been generated about his involvement in that
21 killing.

22 Q And can you tell us a bit about it, what -- and
23 would you agree that comparing crimes, comparing
24 the previous rapes and the subsequent rapes to the
01:34 25 Gail Miller murder, would that require some



1 subject of analysis and some objective analysis,
2 or is it an objective art?

3 A I think it's a combination. I think things you
4 would look at is, for example, timing, the
01:34 5 location, the weapon used, whether or not there
6 were any distinctive ways of approaching the
7 victim, level of violence.

8 Q And would you be looking at these crimes to say
9 based on what Larry, based on what we know Larry
01:35 10 Fisher did to these other victims, might that
11 inform us better as to whether or not he is more
12 or less likely to be involved in the Gail Miller
13 murder?

14 A I think that's a fair assumption, yes.

01:35 15 Q And would it ever be the case that that
16 information would enable you to link Larry Fisher
17 to the murder?

18 A That information alone does not. Sometimes when
19 you are looking at using similar act or similar
01:35 20 fact evidence as an indicator for identity, you
21 know, you have to be very careful, and I think
22 certainly we would be looking at that information
23 to see the extent to which it could be used as an
24 identifier, but based on my recall there wasn't or
01:36 25 didn't appear to be anything that was so unique



1 about those two in comparison with the Gail Miller
2 that signaled that the same person committed all
3 three offences.

4 Q Okay. So you are talking about the two Fort Garry
01:36 5 offences, I think one involved a knife, one did
6 not, I think both were late at night; is that
7 correct?

8 A Yes.

9 Q And so is it your recollection that in, at least
01:36 10 in your initial review of the two Fort Garry
11 offences and the Gail Miller murder, are you
12 telling us that there were, although there may be
13 some similarities, there was also some
14 differences?

01:36 15 A Yes.

16 Q And are you able to go any further than that and
17 tell us what at the time you would have thought
18 about that comparison?

19 A Not at that time. I mean, at that time he had
01:37 20 merely relayed to me what he had discovered. I
21 think when you embark upon using similar act or
22 similar fact as an identifier, you really have to
23 be very careful and you have to do a fairly
24 detailed assessment of the facts to establish
01:37 25 whether or not there are those sufficient points



1 of similarity that signal the work of one person
2 to the exclusion of others.

3 Q When you say you have to be careful, are you -- be
4 careful in the sense that you don't put too much
01:37 5 emphasis on it?

6 A Correct. If you take a look at the number of
7 sexual assaults that are committed, a huge number
8 of them are committed by assailants with a knife.
9 The fact is, having regard to the fact that knives
01:38 10 are frequently used, you then take a look to see
11 whether or not there are any distinct approaches,
12 for example, whether the persons are approached at
13 a particular location, if they are approached in a
14 specific way and that that approach is repeated
01:38 15 continuously, then you would compare that with
16 what you know about Miss Miller's killing to see
17 whether the M.O. of the Fort Garry killings leads
18 you to any informed guesses as to who might have
19 committed the killing of Gail Miller.

01:39 20 Q I think you said the Fort Garry killings. They
21 were actually --

22 A I'm sorry, the Fort Garry assaults.

23 Q And on that point, would the fact that, I think
24 although the Fort Garry rapes were described here
01:39 25 as vicious attacks, there was no stabbings, I



1 believe, nor obviously were the victims killed.
2 Would that be something that -- tell me how that
3 would affect your thinking.

4 A The level of violence that was used would
01:39 5 certainly be an important fact, and not just the
6 level of violence, but the circumstances in which
7 violence occurred. Where, for example, you have a
8 victim who complies with the request, the level of
9 violence you anticipate in those cases would be
01:39 10 different from a situation in which the victim
11 resists.

12 Q So it would be important if you had a victim of
13 Larry Fisher's who resisted to then look at what
14 happened to that victim to try and get some
01:40 15 insight into Larry Fisher's modus operandi?

16 A Yes, what his response was to the resistance.

17 Q And again, in your experience in comparing
18 offences, back to my earlier question, can you
19 take a set of offences and say okay, compare
01:40 20 these, take this set of rapes compared to the Gail
21 Miller and have three different people take a look
22 at it and come up with three different results?

23 A That's possible. Ultimately what you would do is
24 you would refer that type of evidence to an
01:40 25 analyst, a trained analyst.



1 Q And again, in your experience, is it the case that
2 sometimes you will have people with different
3 views about the significance of these comparators?

4 A Yes.

01:40 5 Q Now, the (V10) (V10)- matter in 1980 I think
6 involved -- I think the earlier, the two Fort
7 Garry assaults were young women I think around the
8 20-ish age. Would that be -- I take it the age of
9 the victim would be a factor, the time of day
01:41 10 would be a factor; is that right?

11 A Yes.

12 Q The manner in which Mr. Fisher approached the
13 victims would be an indicator?

14 A Yes.

01:41 15 Q What happened if they did or didn't resist --

16 A Yes.

17 Q -- would be an indicator. And what physical
18 assault, stabbing, striking might take place?

19 A Yes. I think the literature, or there is
01:41 20 literature that signals it as -- serial rapists or
21 those who commit offences of that type, typically
22 you would find an escalating degree of violence as
23 time goes on.

24 Q Now, am I correct in what you said as far as --
01:41 25 let's take the scenario where you do look at



1 assaults in and around the time of Gail Miller's
2 murder and if it's a situation where there are
3 sort of many striking similarities, is it your
4 evidence that that will increase the suspicion,
01:42 5 but will never provide the link between Larry
6 Fisher and Gail Miller?

7 A In the circumstances of the facts that we looked
8 at, it did increase the suspicion. We did not
9 find a link.

01:42 10 Q And --

11 COMMISSIONER MacCALLUM: Which attack are
12 you talking about?

13 A We're talking of the Fort Garry attacks.

14 COMMISSIONER MacCALLUM: Oh, okay.

01:42 15 BY MR. HODSON:

16 Q And so again -- and I take it when you talk about
17 a link, would that be the equivalent of a
18 prosecutor or a police force looking at the
19 investigation and saying is there enough there for
01:42 20 me to prosecute or to lay a charge, or is it
21 something less?

22 A It's something less, it's something that puts
23 Larry Fisher at or near the scene.

24 Q And I think what Sergeant Pearson said was a
01:43 25 really good or very good suspect, but until I can



1 find something that connects him to the scene,
2 either by way of a witness or physical evidence or
3 a confession, that the similarities do nothing
4 more than fuel suspicion. Would you agree with
01:43 5 that?

6 A Yes.

7 Q So again, in this analysis, would I be correct
8 that when you are looking at the Fort Garry rapes,
9 and we'll talk about (V10) (V10)-, at this time it
01:43 10 would be for that information, that the end
11 product might be to say you know what, really
12 there are some similarities, this heightens our
13 suspicion and take that information and couple it
14 with whatever else, but on its own not enough to
01:43 15 say this is the perpetrator or the likely
16 perpetrator?

17 A Correct. Enough to keep you going.

18 Q And I suppose the converse is if you look at them
19 and say they are so different in nature, the Gail
01:44 20 Miller murder is so different than these other
21 offences, that would maybe lessen the suspicion,
22 if that's the right grammar? It probably isn't,
23 but --

24 A Well, it certainly wouldn't increase the
01:44 25 suspicion.



1 Q Now, (V10) (V10)- as well, at this time you would
2 have looked at, who I think was 56 years old at
3 the time in 1980, and I believe was attacked at
4 least in part in her home and much more violent
01:44 5 than any of Mr. Fisher's previous convictions at
6 this time. Can you tell us, what was your initial
7 view of how the (V10) (V10)- offence fit in on
8 this similar fact, similar act comparison?

9 A Well, it was completely different from the others
01:45 10 in terms of the age of the victim, and secondly,
11 certain information had been brought to our
12 attention which explained, in part, the severity
13 of the assault.

14 Q And what was that?

01:45 15 A It concerned some personal information about Larry
16 Fisher and the -- what I had learned, or the
17 information reaching me, was that Mr. Fisher had
18 been assaulted as a youth by someone who resembled
19 Ms. (V10)-.

01:45 20 Q Who was what, who resembled --

21 A Someone who resembled Ms. (V10)-, (V10) (V10)-.

22 Q Okay.

23 A And that perhaps that, that resemblance, may have
24 fuelled the degree of, and severity of, the
01:46 25 assault, and it may have been, in part, fuelled by



1 revenge.

2 Q And was that information that came to you via
3 Sergeant Pearson; do you recall?

4 A Either via Pearson or via certain information on a
01:46 5 psychiatric file.

6 Q Or on a Court file either relating to the -- some
7 information relating to Larry Fisher?

8 A Yes.

9 Q And I may be able to put my hands on that document
01:46 10 when you return and maybe can assist you with
11 that. I believe there was something in some
12 subsequent reports that dealt with Mr. Fisher's
13 psychological position at the time, and that's
14 what you would be referring to?

01:47 15 A That's it, yes.

16 Q And is it fair to say, at this point, that you did
17 not have information with respect to the four what
18 you thought to be Regina assaults?

19 A That's correct.

01:47 20 Q Down to paragraph 35. Again:

21 "David Asper ... phoned ...",
22 this is Sergeant Pearson. Once Sergeant Pearson
23 became involved in the investigation we -- and I
24 think both Sergeant Pearson and David Asper
01:47 25 testified that they had fairly frequent contact



1 and a fairly good exchange between them. Did
2 your contact with Mr. Asper lessen after Sergeant
3 Pearson became involved, or did you continue on
4 discussions with him?

01:47 5 A There were discussions, but certainly to the
6 extent that Mr. Asper was aware of Sergeant
7 Pearson's involvement, he tended -- "he" being Mr.
8 Asper -- contacted Sergeant Pearson as and when he
9 needed to.

01:48 10 Q What, if any, instructions did you provide
11 Sergeant Pearson regarding the information he
12 could, or should, or should not, provide to Mr.
13 Asper about his investigation?

14 A Well, Sergeant Pearson is a police officer, and is
01:48 15 fully aware of what was required of him in his
16 capacity as an officer. I don't recall providing
17 him with any specific information with respect to
18 what he might or might not disclose. In my
19 conversations with him I fully anticipated that
01:48 20 the results of his investigation, in terms of the
21 details, he would probably retain for himself.

22 Q So the expectation of you would be that he would
23 disclose as much as he would otherwise disclose in
24 a regular criminal investigation; is that fair?

01:49 25 A Yes.



1 Q So, here, Sergeant Pearson writes that:

2 "Mr. Asper explained that he
3 had been to Saskatoon within the past
4 couple of days to see Joyce Milgaard, to
01:49 5 tell her to let authorities investigate
6 the new evidence, and to share her
7 information with everyone. Asper was
8 expressing concern that Mrs. Milgaard
9 has become very mistrusting of everyone
01:49 10 and has become somewhat of an
11 independent investigator, and is
12 reluctant to turn information over to
13 even her lawyers. She is particularly
14 mistrusting of the Saskatoon City
01:49 15 Police, and in fact believes there is a
16 cover-up conspiracy by them regarding
17 her son's murder charge."

18 And then it goes on to talk about Mr. Asper's
19 knowledge of the file. Again, this is similar to
01:49 20 the previous information about Mrs. Milgaard and
21 her investigation, but I think what's added here
22 is Mr. Asper saying that Mrs. Milgaard is not --
23 is mistrusting to provide her information even to
24 her own lawyers, let alone to you. Did you have
01:50 25 a concern that -- I think you've already told us



1 your concern about Mrs. Milgaard doing her own
2 investigation, it now appears here that,
3 notwithstanding the previous discussion and your
4 request not to investigate -- and I think you
01:50 5 told us she did continue to investigate -- did
6 you have concerns that the information she was
7 generating may not be provided to you?

8 A Yes, I was -- that was of concern.

9 Q And why was that?

01:50 10 A The quality of the information, or the quality of
11 the decision is informed by the amount and quality
12 of the information you collect, to the extent that
13 you don't have the full picture it affects the
14 quality of the decision you make.

01:50 15 Q And so that, if Mrs. Milgaard had interviewed
16 witnesses, the -- as much information as was
17 available about that interaction, whether it be an
18 interview, a tape or a statement, that would be of
19 assistance to you in the work you were doing, and
01:51 20 Mr. Pearson; is that what you are telling us?

21 A Certainly. And this, the introduction of Larry
22 Fisher as the killer of Gail Miller, signaled a
23 much different approach to this matter. We were
24 no longer going after his -- well, we were going
01:51 25 after historical information, but one of the



1 outcomes might be a potential prosecution of
2 someone else, and in those circumstances you'd
3 have to ensure that whatever evidence you
4 collected would not be -- would be collected in a
01:51 5 form that would ensure its admissibility in Court,
6 it would be collected in a form that would ensure
7 that the strongest possible weight be given to it.
8 To the extent that you have someone investigating
9 it along with the police, using tactics or using
01:52 10 questioning methods which may adversely affect the
11 quality of the information you obtain, that would
12 certainly be of some concern.

13 Q And so that would that be the case in dealing with
14 witnesses other than Larry Fisher?

01:52 15 A Yes.

16 Q And as well as getting information from Larry
17 Fisher; would that be a concern?

18 A To the extent that Mr. Fisher was, shall we say,
19 rattled, to the extent that he perceived himself
01:52 20 as a target of the investigation and not merely as
21 someone who could assist or provide assistance in
22 relation to 690, it could inform what he said, how
23 he said, and the speed with which we obtained that
24 information from him.

01:53 25 Q We have heard some evidence from Mr. Henderson and



1 Mr. Asper that, I think at the time Linda Fisher
2 was initially interviewed in March of 1990, the
3 discussion -- and I think it was raised with Linda
4 Fisher -- the idea of either Mr. Asper and/or
01:53 5 Ms. Linda Fisher going in to see Larry Fisher and
6 trying to convince him to confess in exchange for
7 the Milgaards going to either you, or somebody, to
8 cut a deal for him; were you aware of that?

9 A No, I wasn't.

01:53 10 Q Is that the type of thing that might cause you
11 concern that if it did happen, in other words that
12 a confession was obtained under those
13 circumstances, that it might be something that
14 would negatively impact the subsequent prosecution
01:53 15 of Larry Fisher?

16 A I hadn't thought of that. I had thought that, had
17 someone approached Larry Fisher and asked him to
18 confess, he'd say "to what", you know. It's -- it
19 would certainly put him on notice that at least
01:54 20 his wife, or those close to him, thought him a
21 murderer, and if that were the case I fully -- I
22 wouldn't expect him, having spent so many years in
23 custody, to want to confess to an offence that
24 would, or could, result in him spending the rest
01:54 25 of his life behind bars.



1 Q I think the leverage that either Mr. Asper and/or
2 Mr. Henderson were thinking of -- and I think they
3 both said it was a plan that was not
4 implemented -- the leverage was to say that
01:54 5 "lookit, if you don't confess we're gonna go
6 public and make you public enemy number one in the
7 media, and here, if you confess to us we'll go get
8 you a better deal with the feds, you help us,
9 we'll get David out of jail, you might get a
01:55 10 lesser sentence and you avoid being smeared in the
11 public as a killer", something along that line;
12 were you aware of that?

13 A I was not.

14 Q And had you been made aware of that back -- this
01:55 15 is a discussion, I think, March 10th, 1990, the
16 day of or the day after they first interviewed
17 Linda Fisher; again, if you had been made aware of
18 that information what, would you have had any
19 concerns about that?

01:55 20 A I'd say "stop".

21 Q And why?

22 A It's -- Larry Fisher was then serving -- such a
23 plan was destined to fail -- serving a 12 or a
24 13-year sentence. There is no way an experienced,
01:55 25 or someone who's been through the system, would



1 confess --

2 Q And --

3 A -- in those circumstances.

4 Q And if he did, in exchange to a promise by either
01:56 5 Mr. Henderson or Mr. Asper that he would avoid
6 publicity or something of that, would you have
7 concerns about the use of that confession in a
8 subsequent prosecution?

9 A It would certainly be problematic. A confession
01:56 10 is probably the worst thing that can happen to a
11 homicide investigation because, unless there is
12 some evidence independent of that confession, if
13 that confession is withdrawn at any point in time
14 you have nothing.

01:56 15 Q Uh-huh.

16 A That's the first observation. The second
17 observation is that, insofar as the prosecution of
18 homicide offences are concerned, those are
19 prosecuted, at least in Saskatchewan, by the
01:56 20 public prosecutions office, our office has no
21 jurisdiction to prosecute them. And, secondly, we
22 would never presume to interfere or to signal to
23 anyone, either suspected or charged, that we would
24 broker a deal in a potential prosecution over
01:57 25 which we had no authority to act.



1 Q Okay.

2 A It's, for me it would be a non-starter, it would
3 -- and not to mention, of course, it would tip off
4 Mr. Fisher to the fact that, at least in some
01:57 5 circles, he was being viewed as a prime suspect.

6 Q And what would your concern then be as, in your
7 role as an investigator, and I appreciate that
8 Sergeant Pearson was the police investigator; are
9 you saying that your ability to get information
01:57 10 either from Mr. Fisher or about Mr. Fisher is
11 compromised or may be compromised when he becomes
12 aware that he is a target of your investigation?

13 A Yes.

14 Q And can you elaborate on that, please?

01:57 15 A My observation of human nature has been that where
16 someone is -- is or has made an accusation,
17 whether publicly or privately, and are questioning
18 you about it, you tend to be certainly more
19 careful in your responses; and, secondly, you may
01:58 20 be tempted, given his history and his involvement
21 with the criminal justice system, to simply say
22 "look, I'm under suspicion, I have been accused, I
23 have nothing to say to you, I have a right to
24 remain silent and I choose to exercise that
01:58 25 right".



1 By contrast, if you approach him
2 on the basis, "lookit, we're investigating this
3 and we need to help, we need to ask you some
4 questions to assist in our assessment", that is a
01:58 5 completely different perception of the personal
6 threat that the witness may be subjected to.

7 Q Now we will deal with, later, we know that you
8 interviewed Larry Fisher in July of 1990 --

9 A Yes.

01:59 10 Q -- after his name had been publicized in the
11 national media as the killer of Gail Miller?

12 A Yes.

13 Q You've used the term "rattled" a couple of times,
14 what, when you interviewed Larry Fisher, what was
01:59 15 your perception of his demeanour in response to
16 you? Well, let me ask you this. Were you
17 concerned that his reaction to you was influenced
18 by the fact that he had been publicized as the
19 killer of Gail Miller?

01:59 20 A Yes. I -- in terms of his demeanour, he was quite
21 defensive, he was very cautious. In terms of his
22 demeanour at the time of the interview, we were
23 informed, and certainly his physical response
24 signaled, that he was in some bit of discomfort,
01:59 25 if not pain. On two, at least two occasions



1 during the course of the interview, we suspended
2 the questioning because he appeared to be in some
3 serious discomfort and pain as a result of, I
4 believe it was, gall stones.

02:00 5 Q And are you -- let's just go back a bit. And if
6 you could have had your way, so to speak, would
7 you have preferred to interview Larry Fisher
8 yourself at a point when, although he may have
9 been aware, I mean he'd have to know that you are
02:00 10 talking to him because you're investigating David
11 Milgaard's wrongful conviction application?

12 A Yes.

13 Q So he'd have to know it was in connection with the
14 death of Gail Miller?

02:00 15 A Yes.

16 Q Can you tell us, though, that, had there been no
17 publicity and no accusation made against him, how
18 you might have approached him or what you would
19 have done different than what you did in July of
02:00 20 1990?

21 A I don't know if my approach and what we did might
22 have been different. I think what I would have
23 anticipated would have been the main differences
24 would be Larry Fisher's general willingness, and
02:01 25 secondly, the degree of caution and the defensive



1 stance he took during the course of that
2 interview.

3 Q If, as we now know having Larry Fisher convicted
4 of the offence, that he committed the crime, that
02:01 5 whether or not it is a direct accusation and
6 publicized or whether it's a softer approach, if
7 he's there knowing he has committed the crime, do
8 you think he's going to be any more cooperative in
9 a setting where he's not directly accused than he
02:01 10 is when he is directly accused?

11 A Perhaps -- you know, at that point in time he was,
12 he had been publicly identified as Gail Miller's
13 killer. Notwithstanding that, he did agree to the
14 interview. The fact that he was, quote, "being
02:02 15 accused" by the media and by others certainly
16 heightened his caution and certainly informed how
17 he answered and the, just the interplay during the
18 course of the interview.

19 Q The, apart from the direct conversation that you
02:02 20 may have had with him, I think Sergeant Pearson
21 also talked about the fact that if Mr. Fisher did
22 not know he was being named as a suspect in the
23 murder of Gail Miller, that there could have been
24 other investigative techniques deployed, whether
02:02 25 it be with an informant, a wiretap, things of that



1 nature, some other investigative matters to try
2 and get information from him before he knows that
3 he is being targeted as a suspect; was that
4 something you would have considered or did
02:02 5 consider?

6 A Yes.

7 Q And, again, that's something that, once he became
8 aware he was a suspect, became more difficult?

9 A Well, impossible. He became very, very cautious.

02:03 10 I mean if you're publicly accused of murder you
11 would certainly be a bit circumspect in terms of
12 what you say about that event and to whom you
13 would say it, whereas the introduction of an
14 undercover, the introduction of an informant, some
02:03 15 other technique in a situation in which someone
16 has not been pre-alerted to the police's interest
17 in them, I think our experience is that, in the
18 latter circumstances, your chances of getting
19 information is much better if the target isn't
02:03 20 aware of your interest.

21 Q I'm reluctant to ask this next question in a room
22 full of defence lawyers, but would there also be a
23 concern, I think what we saw is that once he
24 became aware that he was a suspect he retained
02:04 25 legal counsel that was present for the most part,



1 certainly at your interview, --

2 A Yes.

3 Q -- and with Sergeant Pearson's; would that be a
4 concern as well, that -- that -- an ability to
02:04 5 interview him before he gets a chance to go and --

6 A Lawyer up?

7 Q Yes?

8 A No, that wouldn't be of concern. I think some of
9 the other investigative techniques that Sergeant
02:04 10 Pearson contemplated would not involve such a
11 formal setting of, you know, as having a formal
12 interview with a lawyer and would be, shall we
13 say, scenarios which would place individuals in
14 contact with Mr. Fisher outside of the context in
02:04 15 which the lawyer would be involved.

16 Q Did you -- and we'll get to the details later --
17 we do know that, I think at some point in March of
18 1990 Larry Fisher was alerted, I think either
19 through his sister or his mother, about -- I think
02:05 20 from Joyce Milgaard's visit to Larry Fisher's
21 mother, and/or some other way, he became aware
22 that he was -- the finger was being pointed at
23 him, and we know in May of 1990 the fact that the
24 police were investigating an unnamed suspect at
02:05 25 the Prince Albert Penitentiary, and then on June



1 21st or 22nd of 1990 the CBC reported him by name?

2 A Yes.

3 Q Did you see any upside, in the work that you were
4 doing investigating Larry Fisher in connection
02:05 5 with the Section 690, was there any upside that
6 you saw in having these allegations and
7 information (a) being made known to Larry Fisher,
8 and (b) made known to the public?

9 A There were no upsides, it was all down.

02:05 10 Q If we can go to the next page, please. This is
11 March 15th, 1990 and Sergeant Pearson, I think
12 what I showed you earlier, is he obtained from
13 Larry Fisher's penitentiary file some information
14 on the Fort Garry offences. He says:

02:06 15 "I phoned Winnipeg P.D.'s
16 record section, looking for files re
17 Fisher and the two rape offences in Aug
18 and Sep 70. I was advised these files
19 were destroyed in 1974, after Fort Garry
02:06 20 amalgamated."

21 And that's information you would have been aware
22 of back at the time?

23 A That's correct.

24 Q That you got some information from Correctional
02:06 25 Services, but the actual police force who



1 investigated Larry Fisher in -- for the Fort Garry
2 offences had destroyed their records?

3 A Yes.

4 Q Did this information cause you any concern, were
02:06 5 you suspicious in any way that this police force
6 had destroyed the records relating to their
7 investigation on Larry Fisher?

8 A 20 years after the event, knowing what I did about
9 the various patterns of destruction, no, it
02:07 10 didn't. There -- a number of police forces,
11 depending on the locale, you know, have file
12 destruction policies as part of their normal way
13 of conducting their business, because they don't
14 have unlimited resources to store or maintain
02:07 15 those records once there does not appear to be a
16 reason, related to the administration of criminal
17 justice, to keep those records in existence, and
18 so they -- to make room for the new files, older
19 files are culled and destroyed. That is a fairly
02:07 20 pervasive program across police forces, and the
21 fact that Fort Garry destroyed theirs 20 years
22 after the event --

23 Q Actually, I think it was four, they destroyed them
24 in '74.

02:07 25 A Okay.



1 Q This is 19 --

2 A Okay. It didn't bother me.

3 Q And the fact that they were completed cases, did
4 that cause you any --

02:08 5 A No. By then, two things; first, there had been no
6 appeal, it was a guilty plea; and secondly, there
7 didn't appear to be any requirement to keep the
8 file. It didn't bother me at all.

9 Q And so you would have relied upon the information
02:08 10 that Sergeant Pearson obtained from Correctional
11 Services regarding those offences?

12 A That was the best information available to us, it
13 was the only one.

14 Q If we can just go to the previous page, I forgot
02:08 15 to ask you about this comment. I think this is
16 where, I believe, the first mention is made of the
17 suggestion that -- "a cover-up conspiracy" by the
18 Saskatoon City Police. Would you -- do you recall
19 becoming aware of that, around that time, that
02:08 20 Mrs. Milgaard believed the Saskatoon City Police
21 had been involved in a coverup or conspiracy, in
22 other words deliberate wrongdoing with respect to
23 her son's conviction?

24 A I'd heard of that charge, yes.

02:09 25 Q And was it around this time, was it prior, do you



1 know, or --

2 A Time has really compacted. It may have been
3 around this time, yes.

4 Q If we could go to page, go to 332053, please.

02:09 5 This is a March 15, 1990 memo to the file and it
6 looks like you're setting out a number of matters.
7 So this is March 14th, and it looks like you had a
8 discussion with Mr. Asper on I think March the
9 12th or March 13th, in around there, Sergeant
02:09 10 Pearson talked to Asper on the 14th or the 13th, I
11 think the 14th -- I'm sorry, he talked to him at
12 5:30 on the 14th, so this would be the same day as
13 Mr. Asper talked to Sergeant Pearson:

14 "Mr. Wolch called to inquire
02:10 15 when the investigation will be completed
16 and to advise that his client had been
17 persuaded to avoid contacting potential
18 witnesses. Mr. Wolch mentioned that
19 Linda Fisher had given a statement to
02:10 20 Mrs. Milgaard. Wolch agreed to telefax
21 a copy of that statement.
22 Notwithstanding his assurances that he
23 did not wish to publicize the latest new
24 development in this case, I am advised
02:10 25 by Sgt. ...",



1 Pearson -- it says Reardon, that should be

2 Pearson --

3 A It should be Pearson.

4 Q "... that both Mr. Asper and

02:10 5 Mrs. Milgaard's picture appeared with an

6 accompanying story on March 15, 1990."

7 And, again, can you elaborate on your comments
8 and concerns there?

9 A In relation to my conversation with Mr. Wolch,

02:10 10 certainly he had called approximately two weeks

11 after we had received the information signaling a

12 brand new development with an interest in finding

13 out how soon we could finish it up. It just --

14 the reality was that a number of new and

02:11 15 interesting information had been received, we had

16 not yet had the time to fully examine it and

17 consequently I would have told him that look,

18 we're working as fast as we can, but I can't tell

19 you, can't predict with any degree of certainty

02:11 20 when this will finish.

21 Q Was Mr. Wolch suggesting that he thought you

22 should be done the investigation?

23 A I don't know if he made that suggestion, but I

24 think he was curious to know when we would finish

02:11 25 because that was a consistent refrain or request



1 and had been ongoing for some time. I could well
2 appreciate that his client had been incarcerated
3 for some period of time and who was then acting
4 under the impression that exculpatory material had
02:12 5 been provided to the minister, you know, merited
6 the immediate decision. That was one aspect.

7 The second aspect is that in
8 light of the fact that Rick Pearson was on the
9 file and was looking at someone who was in the
02:12 10 penitentiary, the publicity would not further or
11 help to facilitate the conclusion of that
12 investigation.

13 Q Did Mr. Wolch provide you with assurances that he
14 did not wish to publicize the Fisher information?

02:12 15 A I understood him to convey that message, yes.

16 Q Go down to Sergeant Rick Pearson:

17 "Rick Pearson interviewed Linda Fisher
18 on March 14, 1990 in North Battleford
19 Saskatchewan. He obtained a statement
02:13 20 from her which he will forward to me.
21 He highlighted the salient facts she
22 provided, and agreed to arrange a
23 further meeting with her and two family
24 members, during the week of March 19,
02:13 25 1990. Further, he agreed to co-ordinate



1 certain inquiries surrounding the
2 conviction of Larry Fisher for sexual
3 assaults in Winnipeg in August and
4 September 1970, and to obtain if
02:13 5 possible, photos of the knife, or the
6 knife itself that was recovered after
7 one of those assaults."

8 And let me just pause there. I think in Sergeant
9 Pearson's interview with Linda Fisher on March
02:13 10 14, 1990, we don't need to bring it up, but I
11 think she identified the knife certainly in that
12 interview, if not then with you, as being
13 different than the murder weapon; is that right?

14 A That's correct. My recall is that by and large
02:14 15 she confirmed in broad strokes the information
16 that we had received via Mrs. Milgaard from David
17 Asper on February 28th. In relation to the knife,
18 I believe she described it as a wooden-handled or
19 brown-handled paring knife.

02:14 20 Q And so would the efforts be to go check the knife
21 in Winnipeg to see whether that might be the
22 missing paring knife?

23 A Yes.

24 Q And so in other words, 20 years later is it
02:14 25 possible that Linda Fisher, the knife missing may



1 have been something missing later that was related
2 to the Winnipeg offences; would that be one
3 scenario?

4 A That was a possibility that we couldn't ignore.

02:14 5 Q If we can go to the next page, it says:

6 "I spoke with Bobs Caldwell and after
7 our discussion he agreed to provide:
8 1) investigation report concerning Larry
9 Fisher that was made during the Gail
02:15 10 Miller investigation;"

11 Let me pause there. Would that be the
12 information I think that was in the second
13 statement of Linda Fisher that she gave to Joyce
14 Milgaard that said, was asked about her husband
02:15 15 being stopped at the bus stop, or do you know
16 where this came from?

17 A Yes, I think that that was it, there was a brief
18 report because the police officers had, they went
19 to the bus stops that they thought that Gail
02:15 20 Miller might have used and they interviewed
21 persons who were at the bus stops around the time
22 that they expected she would have taken the bus
23 and one of those reports detailed a conversation
24 between a police officer and Larry Fisher.

02:15 25 Q And where did you get -- you would have had that



1 information on March 15th, 1990. Did you get that
2 from the police?

3 A I believe I got it either from the police or from
4 Bobs Caldwell.

02:16 5 Q And again, is that something -- tell us why that
6 might be something you would want to look at?

7 A I would certainly want to look at that because, as
8 you may recall, one of the points highlighted in
9 the Sidney Wilson allegation was that the police
02:16 10 had spoken with Fisher at or about the time of the
11 initial investigation and wanted to find out the
12 details of that.

13 Q I think the Sidney Wilson information was that
14 Linda Fisher had talked to -- did you understand
02:16 15 that it was Larry Fisher?

16 A I thought Sidney Wilson had said that Linda Fisher
17 had talked to Bobs Caldwell.

18 Q Yes.

19 A If --

02:17 20 Q And that Sidney Wilson had talked to the police.

21 A Okay. Then I'm mistaken.

22 Q I could be mistaken as well, but that -- so in any
23 event, the fact that the police talked to Larry
24 Fisher after the murder was something you wanted
02:17 25 to find out. What was the nature of that?



1 A What was the nature of the contact.

2 Q And again, I think you had already asked the city
3 police to check their file for contact with Linda
4 and Larry Fisher; correct?

02:17 5 A Correct.

6 Q And here Mr. Caldwell, who would have access to
7 his prosecution file, presumably you would be
8 asking him to check that as well; is that right?

9 A That's correct.

02:17 10 Q And then as well you asked, or Mr. Caldwell agreed
11 to provide a copy of the newspaper story and to
12 make inquiries concerning retaining the services
13 of a reporter in North Battleford. Presumably
14 that was for the --

02:17 15 A The interview of Linda Fisher.

16 Q Right. Okay. If we can go to 333345, we looked
17 at this a bit earlier, this is a March 15th, 1990
18 letter from Mr. Asper to you:

19 "Enclosed please find a photocopy of the
02:18 20 statement taken from Linda Fisher when
21 Mrs. Milgaard visited with her at her
22 home ... photocopy of a newspaper
23 clipping dealing with the most recent
24 conviction involving Larry Fisher."

02:18 25 I think that related to (V10) (V10)-, and then



1 our understanding of the record is as follows.
2 And I think that information corresponds almost
3 identical to the CPIC information that you
4 received; is that right?

02:18 5 A That's correct.

6 Q And then here:

7 "It is our understanding that the
8 offence dates for some of the
9 convictions which are entered on the
02:18 10 record are as follows:"

11 And what we now know is that that's the (V1)-,
12 (V2)-----, (V3)----- and (V5)-- (V5)---
13 assaults, those four dates, being the four that
14 Mr. Fisher pled guilty to December 21, 1971 in
02:19 15 Regina. And do you know the dates of the
16 offences, was that information that you did not
17 have yet at that date, was this new information
18 to you?

19 A I believe it was.

02:19 20 Q And do you know where that information, did you
21 ever follow up with Mr. Asper to find out where he
22 got the dates?

23 A I don't believe I did.

24 Q And again, as far as sources of that information,
02:19 25 I think we will see later when the information



1 came out to Mr. Asper from the CBC, that one
2 source for that would be to go to the Regina
3 Queen's Bench Court file where Mr. Fisher pled
4 guilty to the charges and get copies of the
02:19 5 information that would indicate the date of the
6 offence and the location of the offence?

7 A Yes, it would.

8 Q And is that something, did you consider taking
9 that step to get more information about those
02:20 10 offences?

11 A We did.

12 Q And when did you do that?

13 A I believe shortly after that there was a
14 conversation between myself and Sergeant Pearson
02:20 15 and at some point in time he went to Regina in an
16 endeavour to find out more.

17 Q And I think, is it fair to say, that -- that would
18 be in July, 1990?

19 A Yes.

02:20 20 Q I think prior to that I think Sergeant Pearson
21 said his efforts were with the police forces to
22 try and get the police files for those offences?

23 A Yes.

24 Q And presumably the police files would show the
02:20 25 dates, the names of the victims and further



1 details?

2 A Yes. They would have all the occurrence reports
3 and numerous reports.

4 Q And I'm wondering, though, this is March of 1990,
02:21 5 we know in July, 1990 Sergeant Pearson would have
6 gone to the court file to get the further
7 information. Are you able to tell us why that
8 step was not done sooner, whether it was
9 considered or whether you were pursuing other
02:21 10 avenues for that information?

11 A I believe we were pursuing other avenues, or
12 certainly we may have been looking at different
13 areas of investigation.

14 Q Okay. We'll come back to that when we get to
02:21 15 that. Apart from the offence dates, apart from
16 the court file that would have the offence dates,
17 were you aware at this time whether there was any
18 other source that you could access to identify
19 either the dates of these offences and the
02:21 20 location apart from the police files or the court
21 file?

22 A Well, certainly you could have asked Larry Fisher
23 to -- or find out from his counsel.

24 Q So his counsel at the time or his current counsel
02:22 25 to get --



1 A Yeah, those were potentials. His current
2 counsellor I don't believe knew of it and the
3 counsel at the time, I think we discovered, was no
4 longer practicing.

02:22 5 Q So again, the court file, the police file, perhaps
6 Correctional Services, but I think Mr. Pearson had
7 already pursued that?

8 A Yes.

9 Q So again, and I think what we will see as we go a
02:22 10 bit further, that certainly some or all of the
11 police files relating to the Saskatoon charges, or
12 at least some of them weren't available. Were you
13 aware of any source other than the court file, the
14 police file or the Correctional Services file, and
02:22 15 I guess Mr. Fisher, defence counsel for himself,
16 as to where you could determine the date of the
17 offence and the location of the offence?

18 A No, I wasn't.

19 Q And certainly on the court file would indicate not
02:23 20 only the date of the offence in the information,
21 but as well the location; is that right?

22 A Yes.

23 Q Do you know where Mr. Asper obtained the dates
24 from on March 15, 1990?

02:23 25 A I don't. He may have mentioned something about



1 receiving it from a reporter or from a
2 confidential source, but I was happy to get the
3 dates and went on with that.

4 Q And if we can scroll down, he says:

02:23 5 "This would appear to indicate that Mr.
6 Fisher had committed at least three
7 rapes prior to the murder of Gail Miller
8 in Saskatoon. Furthermore, it is our
9 understanding that some of the offences
02:23 10 occurring prior to the murder of Gail
11 Miller occurred both in Regina and
12 Winnipeg."

13 And so was it your understanding, and I think Mr.
14 Asper has testified that at this time he thought
02:24 15 they had been committed in Regina and that was
16 your understanding as well?

17 A That's correct.

18 Q If we can go back to the previous page, is it a
19 correct reading of this letter and your
02:24 20 understanding at the time that based on this
21 information from Mr. Asper, that we know Gail
22 Miller's murder was January 31, 1969, that in the
23 previous October, November, 1968, that Mr. Fisher
24 had committed rapes in Regina?

02:24 25 A Yes.



1 Q And that after Mr. Milgaard was convicted on
2 January 31, 1970, three weeks later, that Mr.
3 Fisher committed a rape in Regina?

4 A Yes.

02:24 5 Q That was your --

6 A That was our understanding.

7 Q Now, actually I think -- and it says:

8 "Furthermore, it is our understanding
9 that some of the offences occurring
02:25 10 prior to the murder of Gail Miller
11 occurred both in Regina and Winnipeg."

12 If we can go to the next page. Can we get them
13 side by side, please? And I think, is it a fair
14 reading of this that -- I think actually what Mr.
02:25 15 Asper is saying is that actually these four rapes
16 occurred in both Regina and Winnipeg, so in other
17 words, some of the rapes prior to the Gail Miller
18 murder could have been in Winnipeg?

19 A Yes.

02:25 20 Q Because all we have here is May of '71, December
21 of '71, Winnipeg, Regina, I think what Mr. Asper
22 is saying here is that here's four dates of some
23 of those offences, not identifying whether it's
24 Winnipeg or Regina, some of the offences occurred
02:26 25 prior to the murder -- or some of the offences



1 which occurred prior to the murder occurred both
2 in Regina and Winnipeg, so namely, the October,
3 November, '68 rapes, he's telling you that some of
4 those, those were committed in Regina and
02:26 5 Winnipeg; is that your understanding?

6 A That's my understanding.

7 Q And can you tell us what significance if any the
8 location and the dates of those rapes at this
9 time, that information, what was your assessment
02:26 10 of that, where did that fit in?

11 A Well, it certainly pointed to Mr. Fisher as a
12 rapist, but it seems as if he was doing his deeds
13 outside of his home town, but it still merited
14 some further consideration.

02:26 15 Q Now, I think later, certainly in July, information
16 was provided that confirmed that these four rapes,
17 these four dates were all Saskatoon as opposed to
18 Regina and Winnipeg?

19 A There was three rapes, one indecent exposure.

02:27 20 Q Yeah. In Saskatoon?

21 A Yes.

22 Q And the fact that they were in Saskatoon rather
23 than Regina and Winnipeg, would that be
24 significant information?

02:27 25 A Yes, that would be. Well, particularly in



1 relation to the first three, it situates it in
2 Saskatchewan or in Saskatoon, it situates it in
3 the same locale as the homicide of Gail Miller.

4 MR. HODSON: This is probably an
02:27 5 appropriate spot to break for the afternoon.

6 (Adjourned at 2:27 p.m.)

7 (Reconvened at 2:49 p.m.)

8 BY MR. HODSON:

9 Q Go back to 333345. Mr. Williams, this information
02:49 10 provided by Mr. Asper in this March 15, 1990
11 letter -- sorry, just go back to the full page. I
12 think you told us the information about his record
13 corresponded with what you had for the record;
14 correct?

02:49 15 A Yes.

16 Q And the information that he also provided was I
17 guess to expand upon what was in Mr. Fisher's
18 record, were two things, the dates of the offences
19 of some of the convictions and, secondly, that
02:50 20 some of the offences that occurred prior to the
21 murder of Gail Miller occurred both in Regina and
22 Winnipeg. Did you have any reason to doubt or
23 question this information that Mr. Asper provided
24 to you at the time?

02:50 25 A I did not.



1 Q Go to the next page, please, and I take it, did
2 you rely upon it then in instructing Sergeant
3 Pearson in his investigation?

4 A I did.

02:50 5 Q There's reference here:

6 "Secondly, we reviewed the transcript of
7 the preliminary enquiry, and can confirm
8 that a double-edged bone-handled
9 hunting-type knife had been found at the
02:50 10 scene of the crime shortly after police
11 attended the scene. The police clearly
12 believed that this knife might have had
13 something to do with the crime, and the
14 pathologist agreed that some of the
02:50 15 wounds could have been inflicted with a
16 double-edged blade. Oddly enough, this
17 weapon was lost after being taken into
18 police custody, and never played any
19 part in the trial proceedings."

02:51 20 And again, I think this is the first mention of
21 this -- I'm not sure, was this a new ground or
22 was this just further information or tell us what
23 significance if any this information had?

24 A It was some information concerning a second knife.
02:51 25 In fact, during the investigation and in the



1 period immediately following the discovery of the
2 body and for some weeks and months after that, and
3 what I mean by that is, by weeks and months after
4 the snow departed in the spring there were three
02:51 5 knives that were found in the vicinity. A
6 bone-handled knife was one of them, but it was --
7 it didn't disappear, it was just found to have no
8 connection with the offence.

9 Q And I think we've heard from both Mr. Caldwell and
02:52 10 Mr. Tallis at this Inquiry that that was their
11 view of the significance of the knife, in fact, I
12 think what Mr. Tallis said is that he did not
13 think it was in his client's interests to have a
14 second possible murder weapon introduced at trial
02:52 15 particularly when Nichol John's evidence was that
16 she had witnessed David Milgaard having, I think,
17 a hunting knife or bone-handled hunting knife in
18 the car on the trip to Saskatoon. Do you recall
19 seeing that information?

02:52 20 A Yes.

21 Q So when this information comes here about -- can
22 you tell us, how did you treat that, and we start
23 to see this from this point on in various
24 correspondence with Mr. Asper and Mr. Wolch where
02:52 25 there would be, in letters sort of here's



1 something else that we say is unusual or
2 suspicious. Did you treat them as new grounds,
3 did you treat them as arguments? Can you tell us
4 what and how you would deal with them just
02:53 5 generally?

6 A Informed by my knowledge of having read the
7 transcripts, I just put it aside as an argument
8 that was easily dealt with by reference to the
9 trial transcript.

02:53 10 Q And so, and I think what Mr. Tallis told us is
11 that at the prelim, preliminary hearing, he
12 questioned Officer Oliver about the knife because
13 at the prelim there's no jury and he would have an
14 opportunity to inquire about the knife. At trial
02:53 15 I think Mr. Caldwell's evidence is that he had it
16 available at the trial in the event that it needed
17 to go in as an exhibit. He did not, the Crown did
18 not view the knife as being part of the case --
19 oh, sorry.

02:53 20 MS. KNOX: Just for the record, the
21 transcript from the preliminary inquiry indicates
22 that Constable Oliver was not called as a
23 witness, it was constable, or Identification
24 Office Kleiv who he questioned about it and he
02:54 25 asked Identification Officer Kleiv to check his



1 notebook about the knife and then there was a
2 subsequent meeting between Mr. Tallis, Mr.
3 Caldwell and Identification Officer Kleiv where
4 he apparently was given a history about the knife
02:54 5 and the fact that it was in Identification
6 Officer Kleiv's possession. Constable Oliver did
7 not testify.

8 MR. HODSON: Okay, thank you for that
9 clarification.

02:54 10 A Okay.

11 BY MR. HODSON:

12 Q And again as far as the knife, I think at trial
13 the view of the prosecutor and defence is that
14 neither party wished to have the knife submitted
02:54 15 as evidence and hence it was released back to the
16 police. Would this suggestion here:

17 "Oddly enough, this weapon was lost
18 after being taken into police custody
19 ..."

02:54 20 And I think later on the allegation is amplified
21 to say that I think Mr. Caldwell deliberately hid
22 the knife or did something to the knife to keep
23 it from Mr. Tallis. Would that be the type of
24 information that would be, if proven, a ground
02:55 25 under Section 690? I'm trying to understand



1 whether this is information that you say lookit,
2 this was dealt with at trial, it's not a ground?

3 A Unless the knife could have been linked to the
4 killing in terms of having identified it as a
02:55 5 murder weapon, whether one knife found in the
6 alley some months later didn't or -- did or didn't
7 make its way in, not much turned on it as far as I
8 was concerned.

9 Q Okay. Then here:

02:55 10 "The pathologist further testified that
11 there was a sufficient quantity of blood
12 in this sample --"

13 Sorry, let me back up. They talk about the
14 vaginal aspirate, and you are familiar with that,
02:55 15 that I think when Dr. Emson was doing the
16 autopsy, the vaginal aspirate was, after he
17 reviewed it for spermatozoa, he discarded it?

18 A Yes.

19 Q And I think what Dr. Emson has told this
02:56 20 Commission, in hindsight he probably should have
21 kept it, not probably, he should have kept it, it
22 wasn't. Here Mr. Asper says:

23 "The pathologist further testified that
24 there was a sufficient quantity of blood
02:56 25 in this sample such that he could have



1 typed its blood grouping. However, the
2 police never asked for that sample to be
3 retained; nor for it to be tested for
4 blood grouping, and accordingly the
02:56 5 pathologist discarded it entirely. It
6 is odd that with the degree of
7 microscopic testing of the scene and of
8 other exhibits, that this very obvious
9 point would have been missed. Moreover,
02:56 10 to our knowledge, there was never any
11 direct comparison between the semen
12 found at the scene of the crime and that
13 provided voluntarily by David Milgaard."

14 I just want to break it down into two parts. The
02:56 15 first part, Mr. Asper is saying lookit, it's odd
16 that they never checked the vaginal aspirate that
17 they threw away with other information. Again,
18 was that something that -- I'm trying to
19 understand whether you said okay, this is a new
02:57 20 ground of the miscarriage of justice, or is this
21 argument or is this narrative or how did you view
22 it?

23 A Those are two observations concerning the
24 completeness of the forensic work and the
02:57 25 collection of exhibits from the deceased.



1 Certainly those are matters that might have been
2 raised at trial. They did not engage, in my view,
3 consideration under Section 690.

4 Q Okay. And then the next one is, he says:

02:58 5 "... to our knowledge, there was never
6 any direct comparison between the semen
7 found at the scene of the crime ...",
8 and I think that is the semen, the frozen semen
9 that we've talked about:

02:58 10 "... and that provided voluntarily by
11 David Milgaard."

12 And I believe that was a reference to, after Mr.
13 Milgaard was arrested, he provided a pair of
14 undershorts that may have had semen on there.
02:58 15 I'm not sure that there was any other sample
16 provided at the time. Can you tell us, I think
17 you've already told us that the frozen semen or
18 the semen found at the scene was in a vial, you
19 had the vial, and it had disintegrated, is that
02:59 20 right, there was just residue?

21 A Yes.

22 Q So you couldn't test, you couldn't test the
23 undershorts that Mr. Milgaard provided to the
24 police in '69 with the semen, I take it that
02:59 25 that's a given?



1 A Yes, that's -- yes.

2 Q What did you understand Mr. Asper saying or asking
3 you to do, if anything, here?

4 A Well, if -- he had raised these points. My
02:59 5 assessment of that was that certainly those are
6 some items that might have been explored at trial,
7 they weren't. I'm not sure what to make of it,
8 it's just -- it's not -- it's not the type of
9 information that seems to me to signal that it
03:00 10 merits consideration of a 690 ground. Those were
11 failings in terms of the investigation that might
12 have been put to some of the witnesses in their --
13 in the defence's attempt to develop reasonable
14 doubt against Mr. Milgaard.

03:00 15 Q Okay. And then, if we can just scroll down, it
16 talks about vacuum samples. Then:

17 "We are encouraged that you have
18 assigned this task to an investigator,
19 and we feel that there are many leads
03:00 20 that ought to be pursued. We are most
21 willing to co-operate in any way with
22 your office, and if you require any
23 further assistance, please do not
24 hesitate to call."

03:00 25 Now, if you look at the letter, I think most of



1 these matters, the -- well, I shouldn't say, I
2 guess some of the matters may refer to Larry
3 Fisher, others may not. Was the -- I understand
4 your evidence to be that Rick Pearson was not
03:01 5 assigned as the investigator to go and
6 investigate every lead out there that related to
7 whether or not David Milgaard was properly
8 convicted; is that fair?

9 A That's fair.

03:01 10 Q He was an investigator to pursue that aspect of
11 the 690 application that related to Larry Fisher?

12 A That's correct.

13 Q Did you, at this time or at some later point,
14 understand that Mr. Asper's view or Mr. Wolch's
03:01 15 view may have been that, now that you had a police
16 investigator involved, that he was actually there
17 to investigate every argument, lead, or ground
18 that had been put forward to you either orally
19 and/or in writing?

03:01 20 A I didn't understand that to be Mr. -- Sergeant
21 Pearson's role at all.

22 Q No, I appreciate that, but I'm wondering whether
23 you became aware that perhaps Mr. Asper and Mr.
24 Wolch viewed that? In other words, here's a
03:02 25 letter that has a whole list of things, now in



1 fairness they may all relate to investigation of
2 Larry Fisher, the bone-handled hunting knife I
3 mean may or may not, I suppose, if -- if Larry
4 Fisher isn't the suspect, but certainly the semen
03:02 5 issue, the hair samples may or may not relate to
6 Larry Fisher. I'm trying to get a sense of
7 whether Mr. Asper or Mr. Wolch may have had the
8 view, or taken the position, that Sergeant
9 Pearson's role was beyond investigating Larry
03:02 10 Fisher, but that he was really there to
11 investigate whether or not David Milgaard was
12 wrongfully convicted for whatever reason?

13 A They may have formed that view, I didn't take that
14 view, and consequently, in my dealings with
03:02 15 Sergeant Pearson, most of my requests of him were
16 directed towards investigating whether there was
17 evidence tending to signal that Larry Fisher
18 committed the offence against Gail Miller.

19 Q If we can go to the next page?

03:03 20 COMMISSIONER MacCALLUM: I'm sorry, from
21 your dealings with Mr. Asper in particular, can
22 you tell me that he appeared to be under that
23 impression, that Pearson was in fact doing,
24 anything that came along that would seem to be
03:03 25 favourable to the Section 690 application should



1 have been investigated by him?

2 A No, I tried to dispel -- in my conversations with
3 Mr. Asper and Mr. Wolch I tried to indicate to
4 them that Sergeant Pearson was there to help us on
03:03 5 the Larry Fisher evidence.

6 COMMISSIONER MacCALLUM: Okay.

7 A That in relation to the others, that I would deal
8 with those, and assisted by Sergeant Pearson as
9 and when required.

03:03 10 COMMISSIONER MacCALLUM: Okay.

11 BY MR. HODSON:

12 Q And I guess, sorry, just in follow-up to that, I'm
13 -- it appears in subsequent -- from this letter
14 that I just showed you -- if we go back a page --
03:04 15 and from subsequent letters, it appears that Mr.
16 Asper, for the most part, more frequently now --
17 and in some cases Mr. Wolch -- are sending, start
18 to send you letters saying "here's more
19 information that sheds doubt on Mr. Milgaard's
03:04 20 conviction", sometimes it relates to Larry Fisher,
21 sometimes not, and in other words "here are some
22 more leads for you to go and investigate", and I
23 guess a couple of questions. One, how did you
24 discern whether they were new grounds in the
03:04 25 application, in other words supplemental to the



1 application, and if so I think for the most part
2 they were leads to be pursued, in other words it
3 wasn't "here is a ground we've fully investigated,
4 the missing knife is now a new ground, here's why
03:04 5 it's a miscarriage of justice and here's the
6 background information and evidence", instead it
7 is "it's very odd the knife went missing, there
8 are a number of leads for your investigator to
9 follow up, please follow up".

03:05 10 I mean I'm trying to get a sense
11 of whether -- how you were marshalling the
12 information you were now receiving, and in
13 particular new arguments, leads, requests to
14 investigate, things of that nature? And I will go
03:05 15 through the letters with you, and we'll deal with
16 them specifically, I'm just looking for a general
17 comment?

18 A I would analyse the submission to determine
19 whether or not it related to a matter that might
03:05 20 have been dealt with or should have been dealt
21 with at trial as one category. A second category
22 is whether or not it related to Larry Fisher and
23 should be referred to Sergeant Pearson, whether it
24 related to some other ground that had been
03:05 25 advanced previously, and that this was a



1 supplementary fact that might not have been
2 considered, and if -- and possibly a fourth
3 category I would put under the frame of
4 observations.

03:06 5 Q Okay.

6 A Those, those were the categories.

7 The observations about things
8 that might have happened at trial, in my
9 estimation at the end of every trial there are
03:06 10 always things you might have done differently or
11 could have done differently, and to the extent
12 that that information was available, wasn't
13 pursued, or that that line wasn't pursued, so be
14 it.

03:06 15 Clearly, if the fact related to
16 a significant piece of evidence that might have
17 had a bearing on innocence or guilt, in light of
18 what we now know the evidence to be at trial --
19 because by then I had completed my review and
03:06 20 assessment of the evidence tendered at trial so I
21 had a firm foundation as to the factual basis and
22 I could then assess the implications that whatever
23 submission came in had, or potentially could have
24 had, on the proceeding.

03:07 25 COMMISSIONER MacCALLUM: I missed your



1 third category, I'm sorry. Number one was the
2 trial evidence, you know, properly put forward;
3 the next one was Larry Fisher?

4 A Yes.

03:07 5 COMMISSIONER MacCALLUM: The third one was
6 what? The fourth one was miscellaneous.

7 A Miscellaneous.

8 COMMISSIONER MacCALLUM: Anybody remember
9 the third one? Nobody was paying attention,
03:07 10 there, I guess.

11 A Let me --

12 COMMISSIONER MacCALLUM: I guess I should
13 alert everybody that there will be a test.

14 A I think the third, Mr. Commissioner, would be new
03:07 15 grounds or information relating to a ground that
16 had been advanced.

17 COMMISSIONER MacCALLUM: Okay.

18 A That -- when I say a "new ground" I mean an area
19 that, when properly assessed, might have given
03:07 20 rise to a relief under Section 690, or facts
21 related to a ground that had been previously
22 submitted.

23 COMMISSIONER MacCALLUM: Okay. Thank you.

24 BY MR. HODSON:

03:08 25 Q If we can then go to the next page, this is a



1 note, and these are notes that are attached to the
2 March 15th, 1990 letter, I don't think they go
3 with that document; are these your notes, is this
4 your handwriting?

03:08 5 A That's my handwriting.

6 Q And I'm gonna guess that these may be your
7 handwritten notes of your February 28th, 1990 call
8 with David Asper; is that possible?

9 A Yes, I'm -- yes, it shows a time 9:49, and I
03:08 10 believe that was the number from which he was
11 calling, and that area code is not a Canadian area
12 code, as far as I'm aware.

13 Q That's actually the Florida area code, that's the
14 number that he said he could be reached at in
03:08 15 Florida, I believe?

16 A Yes.

17 Q And it says:

18 "calling from Wpg. Larry Fisher from NB
19 is alleged to have killed Gail Miller",
03:08 20 and then here:

21 "Dec. 24/88

22 Fisher's wife said that Fisher killed
23 Mystery person tried to contact".

24 Do you know, the December 24/'88, what that date
03:09 25 related to?



1 A It may have related to a date or a time in which
2 Mrs. Fisher might have contacted the police, or
3 the December -- yeah, I think that, that may be
4 it.

03:09 5 Q Now December 24th, '88 would be, I mean, the
6 closest date I guess that we have in -- December
7 28th, '88 was the date of the application, and so
8 it's got:

9 "Dec. 24/88

03:09 10 Fisher's wife said that Fisher killed
11 Mystery person tried to contact";
12 are you able to shed any light on that?

13 A I think it's a note that's been abbreviated,
14 'Fisher's wife said that Fisher killed Gail
03:10 15 Miller, mystery person tried to contact the
16 police' -- now I'm confabulating about the second
17 one -- 'tried to contact someone, I think, in
18 authority'.

19 Q Would that again --

03:10 20 A That would have been the very rough note that I
21 would have taken during the time of the
22 conversation and shortly after that I would use
23 those rough notes, while the conversation was
24 still fresh in my mind, to either dictate or type
03:10 25 out the memo to file.



1 Q And again, then, do we know where this December
2 24/'88 date, are you able to tell us where that
3 fits in?

4 A No.

03:10 5 Q Is that a date that David Asper would have given
6 you in the call?

7 A Quite possibly.

8 Q And then scroll down:

9 "Anonymous person called radio station
03:10 10 Don't know who."

11 Was that your information, that an anonymous
12 person had called the radio station?

13 A I think that was part of the narrative relayed to
14 me by Mr. Asper.

03:11 15 Q Now I wouldn't mind pursuing this a bit, because
16 we've had, there's been some evidence that this
17 person called Mr. Wolch and that, in order for Mr.
18 Wolch or someone in his office to get ahold of
19 him, they were to call a radio station. This
03:11 20 here, and I think there's some other references,
21 suggest that the person actually called the radio
22 station, and that that's -- I'm trying to
23 understand; what was your recollection of how this
24 person, did he call the radio station before he
03:11 25 called Mr. Wolch, or how did that come about?



1 A I'm -- I'm not certain as we speak. The best aid
2 or guide that I can refer to would be the note to
3 file that I would have done shortly after that.
4 Admittedly, these notes are fairly cryptic, the
03:11 5 file memo I believe embellishes them or completes
6 the rough notation, but certainly, to the extent
7 that the note was done within a very short period
8 of time after the conversation, I'm reasonably --
9 I'm confident that it accurately reflects what was
03:12 10 stated to me at that time.

11 Q If we can just put up 016133 beside that, 333347
12 is the other document, okay. So here I think your
13 note is:

14 "Anonymous person called radio station",
03:13 15 and here you have:

16 "The Informant did not reveal the name
17 of the wife, nor did he reveal his own
18 name."

19 And I remember earlier, when we had talked about
03:14 20 this -- and I think this now confirms it -- that
21 when Sidney Wilson phoned Hersh Wolch he did not
22 use the name 'Linda'; is that correct, is that
23 your understanding of what you were told by Mr.
24 Asper?

03:14 25 A Yes.



1 Q And then I think later that day --

2 A There was a subsequent call in which additional
3 information was provided.

4 Q And so when Mr. Asper told you "the wife's name is
03:14 5 Linda", that would be information that Mr. Asper,
6 you believe, got it from a source other than
7 Sidney Wilson?

8 A Yes.

9 COMMISSIONER MacCALLUM: I'm confused about
03:14 10 the dates here. I thought the handwritten notes
11 were from December 24th, 1988?

12 A No, Commissioner.

13 COMMISSIONER MacCALLUM: Oh, that's right,
14 February 28th, 1988?

03:14 15 A It would be February 28th, 1990.

16 COMMISSIONER MacCALLUM: Yeah.

17 MR. HODSON: And so, here, I guess if we
18 were --

19 COMMISSIONER MacCALLUM: No, the written
03:14 20 memo is February 28th, 1990?

21 MR. HODSON: Yeah, and I think Mr. Williams
22 has told us the handwritten note was 9:49 on
23 February 28th, '90.

24 BY MR. HODSON:

25 Q This is his -- your handwritten note of the call



1 which you then dictated your memo?

2 A Yes.

3 Q And so both your handwritten notes and your memo
4 indicate that, apparently, contact was made via a
03:15 5 radio station; correct?

6 A Yes.

7 Q If we could call out -- yeah. So anonymous
8 caller -- that's fine:

9 "Anonymous person called radio station"
03:15 10 is in your handwritten note and, as well, that
11 was the information that Mr. Asper provided, is
12 that the caller called via radio station?

13 A Yes, contact was made via some intermediary in a
14 radio station, yes.

03:15 15 Q And how -- and I appreciate these, this is just
16 information you got, I'm trying to understand how
17 a person would make contact through a radio
18 station to Mr. Wolch to give the information, or
19 do you have the same question I have?

03:15 20 A I have the same question. I didn't delve too
21 deeply into the mechanics of how communication was
22 made to the Wolch firm at the time. I had
23 certain, I had certain reservations about some of
24 the information I was receiving, but I put those
03:16 25 aside and I focused on essentially what they were



1 saying and focused my attentions on trying to
2 verify it as opposed to worrying about some of the
3 mechanics by which the information was provided.

4 Q And again, put up your memo on the right, any --
03:16 5 any idea what the December 24/'88 date might refer
6 to from looking at your memo?

7 A No, sir.

8 Q Okay. And then I think at the bottom:

9 "Whose Larry Fisher",

03:16 10 and then am I right that the bottom would be
11 information that you subsequently followed up on
12 to try and get information about Larry Fisher?

13 A That's correct.

14 Q And date of birth, it's much of the information
03:16 15 that's contained in the memorandum, is that right?

16 A Yes.

17 Q And then if we can go to the next page of the
18 document on the left, and again this looks to be
19 the other Larry Fisher, Larry Bryan Fisher, you
03:17 20 would have again tried to find some information on
21 him; is that right?

22 A Yes. I think initially the Larry Fisher that Mr.
23 Asper had talked about, and the reference to New
24 Brunswick, I believe the reference was to Larry
03:17 25 Bryan because at February 28th, 1990 my



1 information, or the information I subsequently
2 obtained, was that Larry Bryan may have been in
3 New Brunswick at one time. Certainly my notes
4 show that he was in Kent Institution at that
03:18 5 moment. Kent, I believe, is in British Columbia.

6 Q Okay. But you, I think fairly soon, determined
7 that it was Larry Earl Fisher that was the person
8 being referred to?

9 A Yes.

03:18 10 Q If we can go to 332403. This is a fax March 15th,
11 1990 from Mr. Caldwell to you, and go to the next
12 page. So if March 15th is the date that you got a
13 letter from Mr. Asper, and was the day after you
14 had talked to Mr. Wolch, so then here we have an
03:18 15 article *Lawyer digs up more data to bolster*
16 *Milgaard request*, at the bottom:

17 "New information is being
18 sent to Ottawa that further suggests
19 David Milgaard is innocent, ..."

03:19 20 If we can go to the next page. Actually, I'm
21 sorry, yeah, so that's the photograph, so here's
22 the article.

23 "New information is being
24 sent to Ottawa that further suggests
03:19 25 David Milgaard is innocent, says the



1 convicted murderer's lawyer."

2 And presumably that would be the Larry Fisher
3 information?

4 A That's correct.

03:19 5 Q And this is a, and I think this is *StarPhoenix*,
6 *StarPhoenix* exclusive. Did you have, I think you
7 told me earlier you thought that this would be
8 publicized and I take it, when this happened, were
9 you concerned at all?

03:19 10 A I wasn't surprised. At that point I don't believe
11 there had been any indication as to, you know, the
12 details of the new information so, you know, that
13 was consistent with what had happened previously.

14 COMMISSIONER MacCALLUM: Did that have a
03:20 15 separate document number?

16 MR. HODSON: Yeah, this is 332403.

17 COMMISSIONER MacCALLUM: Yes, okay.

18 MR. HODSON: It had the picture on the
19 previous page, the picture is actually right
03:20 20 above this.

21 BY MR. HODSON:

22 Q So, again, would this be, I think, the start of --
23 and we'll see some later documents in the media
24 that talk about the new information; would you
03:20 25 then get a call from the media and a request from



1 the Minister to do a briefing about "what is this
2 new information"?

3 A Yes.

4 Q And, again, would do the follow-up required with
03:20 5 that?

6 A That's correct.

7 COMMISSIONER MacCALLUM: Could I see the
8 entire thing?

9 MR. HODSON: Sure. Then, if we can go to
03:20 10 the next page.

11 BY MR. HODSON:

12 Q Now would this have, again as far as new
13 information being sent, did this cause other media
14 people to inquire of you "okay, what is it, what
03:21 15 did you get, what are you doing with it", things
16 of that nature?

17 A Yes.

18 Q And here I think:

19 "Asper applied to the Federal
03:21 20 Justice Department more that a year ago
21 to have the case re-examined, but he and
22 Joyce are growing impatient with the
23 pace of the review. They have decided
24 to bolster their application with more
03:21 25 information.



1 'There are a number of areas of
2 concern that deal with the process of
3 the (original) investigation,' Asper
4 said while taking a break from examining
03:21 5 the evidence.

6 Asper and Milgaard wonder why,
7 for example, semen found in Miller's
8 body was never checked for its blood
9 type. At the preliminary hearing ...",
03:21 10 and then it goes on to talk, and I think this
11 tracks what was in the March 15th letter to you,
12 at least that part does.

13 "'If they did a comparison
14 and found a match, you could bet your
03:22 15 bottom dollar that it would have been in
16 court,' said Joyce Milgaard.

17 There's also the question of a
18 missing knife. A double-edged,
19 bone-handled knife with a 7.6 centimetre
03:22 20 blade was found near Miller's body on
21 the day of the murder. But it
22 disappeared before the preliminary
23 hearing. A second knife was found in
24 the spring when the snow melted. It was
03:22 25 single-edged.



1 Asper said it would be
2 'helpful' if it could be shown that the
3 second knife presented be the Crown
4 wasn't the murder weapon.

03:22 5 Testimony at the preliminary
6 hearing didn't rule out the chance that
7 Miller's wounds were caused by a
8 double-edged knife."

9 And it goes on to talk about the murder weapon.
10 Can you go back to the full page, please. Can
11 you comment on this, that Mr. Asper and Mrs.
12 Milgaard are saying they are growing impatient
13 with the pace of the review, and so this is March
14 15th, 1990. What comment or response do you have
03:22 15 to make to that suggestion?

16 A Well, two things, bear in mind that in my letter
17 to Mr. Asper and Mr. Wolch on January 10th I
18 indicated to them that we had completed our
19 investigations and invited them at that time to
03:22 20 provide us with additional information if they had
21 any, or additional grounds. I guess you could say
22 that as a consequence to that invitation,
23 additional grounds were provided on February 28th,
24 1990 and those grounds identified Larry Fisher as,
03:23 25 or accused Larry Fisher as the culprit.



1 Within two weeks of that time,
2 notwithstanding the fact that Mr. Asper was made
3 aware of Sergeant Pearson's involvement and was in
4 contact with him knowing the nature and the type
03:23 5 of work he was doing and within two weeks
6 certainly having brought to our attention the
7 statement of Linda Fisher and knowing that we
8 intended to interview her, it was passing strange
9 that notwithstanding the activity that we had been
03:23 10 doing on the file, notwithstanding the information
11 that we had provided about the status of our
12 investigation into the early grounds, that you
13 would have the comment that they were growing
14 impatient with the pace of the review. It makes
03:24 15 for good copy. It doesn't fully reflect what was
16 happening.

17 Q And can you tell us what impact this type of
18 statement in the media to the public has on your
19 work and, in particular, whether from your
03:24 20 superiors or from the minister, what happens when
21 something like this gets put in the newspaper?

22 A That story, in combination with the other stories,
23 paints the picture of departmental inactivity when
24 in fact that's not the case.

03:24 25 Q Does --



1 A Secondly --

2 Q Oh, sorry, go ahead.

3 A It generates questions not only within the
4 minister's office, but also from members of the
03:24 5 caucus and from the opposition. To the extent
6 that the minister is called upon to respond to
7 those questions, departmental officials have an
8 obligation to brief the minister and that means
9 taking time away from pursuing investigative
03:25 10 leads, assessing the evidence that has been
11 provided and using that time to brief, and
12 properly brief the minister.

13 Q And did it have the effect of putting pressure on
14 you to try and speed up what it was you were
03:25 15 doing?

16 A Yes. At this point of the investigation we had
17 given this case a fairly high priority. It wasn't
18 a question of setting it aside, we were, I think
19 as you will see from the activities of Sergeant
03:25 20 Pearson and from the activities that we had
21 conducted, that as fast as we could we were moving
22 towards resolving some of the factual issues that
23 were generated by the information that had been
24 provided to us.

03:25 25 Q Did this type of pressure have the effect of



1 limiting you on some of the investigation
2 inquiries you might have made or might have asked
3 Sergeant Pearson to make because you were being
4 pressed from above and from the media to get this
03:26 5 thing done?

6 A I would hope not. There's an expression we would
7 use, be quick but don't hurry, and essentially
8 what I'm trying to convey is that there's a
9 certain level of thoroughness that has to be
03:26 10 expected on, in terms of verifying this
11 information. You do it as quickly as you can and
12 you don't cut corners that ought not to be cut.

13 Q And can you comment lastly on, you talked about
14 this a bit yesterday, about I guess the effect
03:26 15 this has on the public perception about, and I
16 think this relates not to the substance of what
17 you and the minister are looking at, but the
18 process, and again, would this be -- you told us
19 yesterday about if the public hears, I think your
03:27 20 words today were departmental inactivity, that
21 this is sort of another piece of information that
22 gets out to the public where the public might
23 perceive that you are doing nothing in response to
24 the application?

03:27 25 A Correct. It's a clever use of language. To the



1 extent that it records the impatience of both Mr.
2 Asper and Joyce Milgaard, the implication it
3 leaves the reader with is that the review is going
4 at a very slow pace. They are impatient with the
03:27 5 pace of it.

6 Q Now, Mr. Asper's evidence was that this
7 information was put in the media deliberately to
8 influence and put pressure on you and the minister
9 and I wouldn't mind your reaction to that as to
03:27 10 what impact if any it may have had on the process.
11 I'll ask you this question again when we get into
12 later articles.

13 A In terms of the process, by March 15th, within two
14 weeks, actually within a week of it we had started
03:28 15 in motion an investigation by Sergeant Pearson, we
16 had asked the city police to review the materials,
17 we had asked Bobs Caldwell to check certain things
18 on his file, we had identified and located Linda
19 Fisher and arrangements were being made to
03:28 20 interview her. There were four or five
21 significant pieces of information that had been
22 supplied to us within the previous two weeks and
23 we were moving on all of those fronts in an
24 endeavour to verify the information. At that
03:28 25 juncture there was precious little else that we



1 could have done to complete or to speed it up.

2 Q Would you agree that with respect to David
3 Milgaard who was in jail and Joyce Milgaard who
4 has been seeking for many years to try and get her
03:29 5 son out of jail, that impatience on her part and
6 on her son's part might be expected in these
7 circumstances?

8 A I certainly expect that the impatience might be
9 expected. I think understanding of the process
03:29 10 and understanding of the steps taken might temper
11 that impatience.

12 Q And I suppose that -- are you saying that lookit,
13 you can understand them being impatient, the
14 concern here is to put it in the newspaper for the
03:29 15 purpose of trying to influence the public against
16 your position, or to influence your position I
17 think were Mr. -- or to put pressure on you?

18 A Legitimate pressure, as I mentioned, there is an
19 accountability framework and if we're slow, then
03:30 20 by all means using the press to spur us into
21 action is legitimate. However, if by what I would
22 call part information, if by innuendo an
23 incomplete picture is presented, I would take
24 exception, but I understand the process and that's
03:30 25 part of the game that's played.



1 COMMISSIONER MacCALLUM: I'm not sure I got
2 this all straight. Now, I thought the import of
3 the question was Mr. Asper said that the press
4 coverage was a deliberate attempt to pressure the
03:30 5 department to get moving.

6 A Yes.

7 COMMISSIONER MacCALLUM: And your response
8 to that was in terms of the process, you said
9 within a week. Did you mean within a week of the
03:31 10 article appearing or within a week of you
11 starting work on the matter?

12 A Within a week of us getting the information from
13 David Asper.

14 COMMISSIONER MacCALLUM: All right.

03:31 15 A We had already started things and he knew that we
16 had started things because by March 15th he had
17 already been in contact with Rick Pearson. He
18 knew that Pearson was --

19 COMMISSIONER MacCALLUM: So in terms of
03:31 20 pressure that got you moving, you were there
21 already; is that what you are saying?

22 A Yeah, and he knew that, so this -- if the
23 objective was to light a fire under me, you know,
24 I had already -- I had already been up and
03:31 25 running.



1 COMMISSIONER MacCALLUM: Yes, all right.

2 MR. HODSON: I see it's 3:30,

3 Mr. Commissioner, and just for the record, Mr.

4 Williams will be returning on June 19th.

03:31 5 Next week on Monday, and I

6 think we are at TCU Place, at one o'clock we will

7 be resuming with Mrs. Joyce Milgaard, likely

8 Monday, Tuesday, and Peter Markesteyn on

9 Wednesday and I believe John Quinn on Thursday,

03:32 10 subject to the timing of the other witnesses.

11 COMMISSIONER MacCALLUM: Quinn, former city
12 police?

13 MR. HODSON: Yes.

14 COMMISSIONER MacCALLUM: Okay. So until
03:32 15 Monday then at Teacher's Union?

16 MR. HODSON: Yes.

17 COMMISSIONER MacCALLUM: Teacher's Credit
18 Union?

19 MR. HODSON: Yes.

03:32 20 (Adjourned at 3:32 p.m.)

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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of my knowledge, skill, and
ability.

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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