

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
TCU Place at
Saskatoon, Saskatchewan

On Tuesday, June 20th, 2006

Volume 166

Inquiry Proceedings



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(Retired)



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

COMMISSIONER MacCALLUM: Mr. Williams.

A Good morning, sir.

EUGENE WILLIAMS, continued:

BY MR. HODSON:

Q Good morning, Mr. Williams. Where we left off a week or so ago, we were in March of 1990 going through chronologically, and before I pick up on that point, I just want to deal with one discrete area and that relates to the Larry Fisher sexual assault files that you would have had access to on the first application, so I'm talking up until the minister's decision of February 27, 1991, and if we could go to 114920, please, and it's my understanding, Mr. Williams, that this was a memo that you prepared in October, 1991; is that right?

A That's correct.

Q And this was a memo that related to the second application filed in August of 1991, but I think it touches on, or outlines the information that you had relating to the Fisher sexual assaults on the first application; is that right?



1 A Yes.

2 Q And what you say here in the third paragraph:

3 "During the assessment of Mr. Milgaard's
4 first application, the Department had
09:03 5 obtained the police files concerning Mr.
6 Fisher's assaults of (V5)-- (V5)---,
7 (V7)--- (V7)---, (V8)-- (V8)---, and
8 (V10) (V10)-. Also, the Department had
9 a summary of the three 1968 assaults in
09:04 10 Saskatoon that formed the basis of other
11 guilty pleas. This summary was obtained
12 from Fisher's statements to Winnipeg
13 police, his interview in July 1990, and
14 court documents obtained by the
09:04 15 R.C.M.P."

16 And then it talks about the (V14)- matter. So I
17 think, and please correct me if I'm wrong, that
18 for the first application what you had, and I'll
19 take you through where these documents came from,
09:04 20 but it would be the two, information about the
21 two Fort Garry assaults; correct, the (V8)--- and
22 (V7)---?

23 A Yes.

24 Q And I think that included witness statements and
09:04 25 perhaps some police reports, you had basically the



1 circumstances of the rapes; is that fair?

2 A That's fair.

3 Q And then we had the (V5)-- (V5)--- file, that was
4 the 1970 occurrence, that was three weeks after
09:04 5 Mr. Milgaard's conviction, and I will show you
6 some documents shortly that suggest you got a
7 partial of that file, I think the rest of the file
8 came on the second application, but you had
9 information that detailed the circumstances of the
09:05 10 rape; is that fair?

11 A Yes.

12 Q And that was a file that I think was obtained from
13 the Saskatoon City Police; is that correct?

14 A I believe so, yes.

09:05 15 Q And then (V10) (V10)- was the 1980 North
16 Battleford incident and I think Sergeant Pearson
17 had collected information from the North
18 Battleford court and/or police file on that
19 matter; is that correct?

09:05 20 A Yes.

21 Q And then you say a summary of the three '68
22 assaults in Saskatoon, those would be the (V1)-,
23 (V2)----- and (V3)-----, the first three assaults
24 that were previous to Gail Miller's murder, and is
09:05 25 it correct that you would not have had any police



1 files with respect to those three matters?

2 A That's correct.

3 Q And I'll go through and identify what I think,
4 according to Sergeant Pearson's evidence and
09:06 5 records, you would have had and I'll ask you to
6 maybe confirm that.

7 We can start with 056743 which
8 is Sergeant Pearson's chronology and go to page
9 745. Is it correct, Mr. Williams, that Sergeant
09:06 10 Pearson, would he have been your point person in
11 charge for gathering information with respect to
12 the Fisher rapes; is that --

13 A Yes.

14 Q And here, we've touched on some of this before,
09:06 15 this is March 8th of 1990 and you recall your
16 evidence 10 days ago that I think initially the
17 information from Larry Fisher's criminal record
18 suggested convictions in Regina and Winnipeg;
19 correct?

09:06 20 A Yes.

21 Q And so just so that we're clear, when I'm talking
22 about the Fisher rape files, I'm referring to the
23 seven files, the two in Fort Garry, the four in
24 Saskatoon and then the (V10) (V10)- matter in
09:06 25 North Battleford, so the rape, attempted murder,



1 attempted rape. So you'll understand that when I
2 refer to the Fisher files?

3 A Yes.

4 Q And so here, I think this is after the CPIC is
09:07 5 obtained, Sergeant Pearson -- actually, if we can
6 just scroll up to paragraph 8, please, he
7 telephones I think someone at the Prince Albert
8 Penitentiary, and I think that's ultimately the
9 source of most of your initial information, is
09:07 10 from Larry Fisher's penitentiary file; is that
11 right?

12 A Yes.

13 Q So he has a phone call. If we can scroll down.
14 He's told about a letter on file addressed to
09:07 15 Chief Kettles, Saskatoon police, indicating that
16 members of the Winnipeg department interviewed
17 Fisher and he denied any involvement in these
18 offences, and then Pearson writes:

19 "(Not sure which offences he was
09:07 20 interviewed on)."

21 And so it looks like very early on Sergeant
22 Pearson identified, at least some mention of some
23 Saskatoon rapes; is that your recollection?

24 A Yes.

09:08 25 Q And was there some, and maybe confusion is the



1 wrong word, but uncertainty about, and I'll show
2 you some further prison documents that talk about
3 these Saskatoon incidents in more detail, about
4 where these fit in, whether they were different
09:08 5 than what was on the record? Do you recall having
6 those types of discussions with Sergeant Pearson?

7 A Yes. We were perplexed because the record
8 signaled Regina convictions and we had made the
9 assumption that because the convictions had been
09:08 10 registered in Regina, that the offences had also
11 taken place in Regina. Subsequently we learned
12 differently.

13 Q And so at this time I suppose one possibility
14 might be that these were other assaults that for
09:08 15 one reason or another didn't show up on his
16 record?

17 A Correct.

18 Q If we can go to the next page, again just for the
19 chronology March 9th of '90 Sergeant Pearson makes
09:09 20 arrangements, Lafleur is the fellow at the P.A.
21 Pen he talked to on the phone to go get the file,
22 and I think you told us, that would have been his
23 task as opposed to yours, to go out and get this
24 information?

09:09 25 A Yes.



1 Q And then to page 749, and so March 13th is when
2 Sergeant Pearson, according to his notes and his
3 evidence, is when he met, went to the P.A. Pen and
4 then got a copy of file material he had on Larry
09:09 5 Fisher, and I will show that to you in a moment.
6 And does that accord with your recollection, that
7 around -- this would be a couple of weeks after
8 the Sidney Wilson tip, if I can call it that, I
9 think Sergeant Pearson had collected information
09:09 10 from Larry Fisher's prison file; is that right?

11 A Yes.

12 Q Then if we can go to 338040, and this is just for
13 reference, this is a December 13, 1991 letter that
14 Sergeant Pearson prepared, and I just draw to your
09:10 15 attention where he says, he talks about, and I
16 think this is where he is sending the Fort Garry
17 police reports for inclusion in the Supreme Court
18 reference, and he says:

19 "During late March I came into
09:10 20 possession of the Fort Garry police
21 reports, copies of which are attached.
22 These particular reports are the only
23 ones known to exist and all Fort Garry
24 records I've been told are destroyed.
09:10 25 We were fortunate in locating copies of



1 the Fort Garry police files on Larry
2 Fisher's penitentiary file."

3 And again, that accords with your recollection
4 does it?

09:10 5 A It does.

6 Q Then 056750, which is part of 056743, it's the
7 Pearson chronology, 056743 is the doc. ID, and go
8 to page 750, and this is, paragraph 33 is March
9 14th, 1990, so this is the day after Sergeant
09:12 10 Pearson, or two days after -- or sorry, the day
11 after Sergeant Pearson picks up the files from the
12 Prince Albert Penitentiary and received a call
13 from you and:

14 "...also discussed circumstances
09:12 15 surrounding two offences which Larry was
16 involved in, in Fort Garry in 1970. I
17 have possession of several police
18 reports, which detail the two offences
19 Larry was involved in, in Fort Garry.
09:12 20 The offences actually took place..."

21 And gives the dates.

22 "Williams and myself discussed the
23 M.O.'s, we noted the knife he used in
24 the one offence, both were violent
09:12 25 crimes. We also discussed the North



1 Battleford offence, the knife used, the
2 M.O., and the viciousness of this
3 attack."

4 And again, would you agree with Sergeant
09:12 5 Pearson's note that these matters were discussed
6 on or about that date?

7 A Yes.

8 Q So again, this would be March 14th, two weeks
9 after the information from, you received from Mr.
09:12 10 Asper via Sidney Wilson. So would it be correct,
11 from this note, that the circumstances of Larry
12 Fisher's other offences, and the rape offences,
13 would be of significance to you in
14 investigating -- investigating Larry Fisher as a
09:13 15 ground in the Section 690 application?

16 A That's correct.

17 Q And in what respect?

18 A First, to the extent that the crimes for which he
19 had entered a plea showed a similarity or had any
09:13 20 similarities to the Gail Miller murder, that would
21 be significant, and secondly, bearing in mind that
22 at that point in time he had been identified by
23 David Asper and the Milgaards as having been the
24 culprit, we would certainly be looking at his
09:14 25 behaviour to see whether or not there were



1 similarities, whether or not there were any points
2 of contact that could link him in any fashion to
3 the Gail Miller murder.

4 Q And so is it your evidence, Mr. Williams, that at
09:14 5 least as of this date, perhaps earlier, that one
6 of the things that you looked at to determine
7 whether or not Larry Fisher could be linked to
8 Gail Miller's murder or was the culprit would be
9 the, whether there were any similarities between
09:14 10 his other offences and the Gail Miller murder?

11 A Yes.

12 Q And I think it's fairly obvious, but if there are
13 similarities, that might tend to show that he's
14 more likely the perpetrator; is that fair?

09:14 15 A Well, it would certainly give us some cause for
16 concern in terms of assessing the balance of the
17 information and assessing the extent to which this
18 merited a return to the courts.

19 Q And when you are looking for similarities, and you
09:14 20 touched on this a bit in your earlier evidence,
21 but what would you be looking for?

22 A Similarities in terms of the offence in terms of
23 time, opportunity, weapon used, whether or not
24 there were any signature events about the offences
09:15 25 that signal that it was done by the same



1 individual. There are a number of factors that
2 the police take a look at and we in consult with
3 an analyst would take a look at the offences to
4 see.

09:15 5 Q Now, would that, those similarities, would that
6 ever be enough to create a link to Gail Miller's
7 murder or would it be in the suspicion category?

8 A At this point in time it would be in the suspicion
9 category. For example, in another file a culprit
09:15 10 had a particular way of binding his victims which
11 was not ordinary, which was extraordinary, and
12 that was more or less a signature that signaled
13 that the person who had committed offence A was
14 also involved in offence B, so we were looking for
09:16 15 things like that. We were also looking for other
16 features of the offences to see whether or not
17 there were comparables to the Gail Miller
18 homicide.

19 Q And --

09:16 20 A -- to Gail Miller.

21 Q And you talked about this a bit earlier, and I
22 think Sergeant Pearson did as well, in looking
23 at -- and I'm not sure what the right term is --
24 but rapes committed by strangers to the victim,
09:16 25 would it be fair to say that there is a



1 commonality amongst those types of rapes
2 regardless of the perpetrator?

3 A Yes.

4 Q And again, so in looking at -- I think your
09:16 5 evidence earlier was that approaching someone
6 outdoors, that there's only so many ways -- and
7 maybe this is Sergeant Pearson's evidence --
8 there's only so many ways a person can grab a
9 woman and rape her?

09:17 10 A Yes. For example, and I'm no expert, but
11 sometimes people would have a ruse, whether it's
12 looking for directions, sometimes the victims
13 would all be approached from behind or would be
14 approached at a certain location or types of
09:17 15 locations, things like that.

16 Q And would time of day perhaps be --

17 A Time of day is a factor that you would look at as
18 well.

19 Q And age and appearance of victim?

09:17 20 A Age and appearance of victims. Sometimes victims
21 might have certain similarity of profession or
22 activity.

23 Q And what about, I mean the fact of comparing rapes
24 to a murder, and I think you knew at this time
09:17 25 that Gail Miller had also been raped as well; can



1 you describe what your thought process was about
2 how -- put it this way: If you were comparing
3 previous murders with the Gail Miller murder, that
4 would be one, one way to compare it; can you tell
09:18 5 us about comparing Mr. Fisher's rapes versus a
6 murder?

7 A Well, certainly, you would look at the nature of
8 the attack, how the killing occurred, whether or
9 not robbery was involved, it would be -- it's
09:18 10 often surprising to find that someone who was a
11 serial rapist, or someone who was convicted of
12 a -- or who has done a fairly hideous act, you
13 usually find an increasing or similar level of
14 violence, and so you would be looking at trends in
09:19 15 terms of how the offence, or offences, had
16 occurred.

17 Q And, again, would one consideration -- and we've
18 heard this, I think, from other witnesses -- be
19 that, unlike all of Mr. Fisher's other victims,
09:19 20 none of those victims were killed, whereas Gail
21 Miller was? Now the caveat that I think (V10)
22 (V10)- was maybe close, as close as you could get
23 to a murder --

24 A Yes.

09:19 25 Q -- without being a murder, --



1 A Yes.

2 Q -- but can you tell us what, if anything, you
3 considered about that fact?

4 A It was a bit perplexing because we would have
09:19 5 thought, particularly where there was resistance,
6 that there would be a fair bit more violence.
7 Like, it's just one of those things.

8 Q And again, maybe to put it more squarely, did you
9 consider whether -- what was it with Gail Miller
09:19 10 that, if Mr. Fisher was the perpetrator, why was
11 she murdered and the others weren't?

12 A That -- that was a question.

13 Q And, again, that was something that would be,
14 again, put in the mix with the similarities; is
09:20 15 that --

16 A That's correct.

17 Q And I take it the fact that the other victims
18 weren't killed didn't preclude him as a possible
19 perpetrator based on the similarities?

09:20 20 A No, it didn't.

21 Q It was just another factor; is that correct?

22 A That's correct.

23 Q If we can go to the next page, so here we've got
24 March 14th, and then I think we heard Sergeant
09:20 25 Pearson indicate that he called the Fort



1 Garry/Winnipeg police department for records and
2 was unable to obtain them. So then if we can call
3 up 333345, it's doc. ID 341. And we went through
4 this before, this is the March 15th letter that
09:21 5 Mr. Asper sent to you that identified the rapes --
6 and scroll down -- the dates of the offences, and
7 as well:

8 "... it is our understanding that some
9 of the offences occurring prior to the
09:21 10 murder of Gail Miller ...",

11 next page:

12 "... occurred both in Regina and
13 Winnipeg."

14 And so you told us earlier that you would have
09:21 15 relied on this letter, this information around
16 this time, and your thinking, I think you told
17 us, was that the offences in Mr. Fisher's
18 criminal record, at least those four offences
19 noted, would have been Regina/Winnipeg rapes as
09:21 20 opposed to Saskatoon rapes?

21 A Yes.

22 Q Then if we can go to 056754, yeah, 056754. And
23 this is now March 19th, and this is the
24 discussion, I think, where you are going to go
09:22 25 meet with the Saskatoon police in March 1990, and



1 I think you've told us, or do you have a
2 recollection of meeting with the Saskatoon police,
3 I think that was your initial meeting with them
4 relating to the, at least to the Fisher matters;
5 is that right?

6 A That's correct.

7 Q And you had previously met with them on earlier
8 aspects of your investigation; is that right?

9 A That's correct.

09:22 10 Q And would it be correct to say that this meeting
11 would have been related to, at least primarily, to
12 pursue the Larry Fisher information?

13 A Yes.

14 Q Then we go to 056758. I think this is around
09:23 15 March 22nd, this is before your meeting with the
16 Saskatoon police, and this is where Sergeant
17 Pearson had checked with the Regina Police to
18 check records for the Fisher rapes, and I think
19 that would be consistent with what your thinking
09:23 20 was at the time, that they were Regina rapes?

21 A Yes.

22 Q Then next page. This is March 23rd, 1990,
23 Sergeant Pearson talks about a meeting with Chief
24 Penkala, Deputy Chief Montague, Superintendent
09:23 25 McCorriston, and Inspector Quinn, and goes on to



1 talk about the meeting was very cordial and the
2 police were cooperative. Do you have a
3 recollection of this first meeting, as to what
4 was discussed?

09:24 5 A I do. In general terms, I thought it would be
6 prudent to speak with the chief and his senior
7 officials to explain, because there had been a
8 fair bit of media interest in the file and I
9 wanted the chief to know what our role was, why we
09:24 10 had involved the RCMP, that -- to indicate to him
11 that at the time, or at that time there had not
12 been any allegations of wrongdoing against the
13 members of his force of which I was aware of, and
14 also to let him know that I had been in contact,
09:24 15 or between myself and Sergeant Pearson we had been
16 in contact with members of his force and that we'd
17 received excellent cooperation and we had hoped to
18 continue that.

19 Q Now there's mention here as well, I think, that
09:25 20 efforts were made to search the Gail Miller file
21 for records of Larry Fisher. Do you have a
22 recollection as to whether or not you or Sergeant
23 Pearson would have asked the city police, at this
24 meeting, for any records they might have of rapes
09:25 25 committed by Larry Fisher 1968 to 1971?



1 A Yes.

2 Q And you would have asked for that information?

3 A Either myself, or Sergeant Pearson, or both.

4 Q Okay. And do you recall what you received back
09:25 5 from them by way of a response?

6 A At that time we didn't get very much, if anything.
7 I think they indicated they would look but, I
8 think subsequently we did get a few things, but
9 not very much.

09:25 10 Q And at this time, maybe I'll just call up at least
11 what I think Sergeant Pearson had from Larry
12 Fisher's prisoner file, if we can call up 338041.
13 And this is a document that's referred to in
14 Sergeant Pearson's notes, and this is a letter to
09:26 15 the chief of police saying they questioned Larry
16 Fisher, he denied any knowledge of the offences
17 committed in your area. And so, again, this would
18 be one, I take it one document that would suggest
19 that maybe Mr. Fisher was a suspect for rapes in
09:26 20 Saskatoon; is that fair?

21 A I think by then, yes.

22 Q And then if we can go to 338042. I believe that
23 this is also a statement that Sergeant Pearson
24 obtained in March 1990 from Larry Fisher's prison
09:26 25 file, and it is a statement given by Larry Fisher



1 October 1970, this is a statement given to the
2 Fort Garry police. If we can just enlarge that
3 please -- no, go up to the top, please. And so
4 here, we have been through this statement a number
09:27 5 of times, Mr. Fisher wants to clear up three more
6 things, the first one was in Saskatoon sometime
7 around this spring, which would be spring of '70,
8 downtown, saw a girl, and took her clothes off and
9 raped her around Avenue U. And, again, so this
09:27 10 wouldn't have a victim name or a date, but would
11 indicate an area and a general time frame, being
12 spring of '70; is that correct?

13 A Yes.

14 Q And then as well, if we can scroll down, the
09:27 15 second one was an attempted assault near the
16 university area where she ran away. And is it
17 fair to say that, at your initial meeting or your
18 meeting of March 23rd, 1990 with the Saskatoon
19 City Police, that you would have had, you and
09:27 20 Sergeant Pearson would have had this information
21 regarding Mr. Fisher and the possibility of rapes
22 in Saskatoon?

23 A Yes.

24 Q And I think the evidence we heard from Mr. Quinn
09:28 25 and some others is that, in the absence of a



1 victim's name or complainant's name, that the file
2 may not be accessible, or if Mr. Fisher did not
3 have a certain index card made up, that there
4 might not be any records available; was that -- do
09:28 5 you recall being made aware of that?

6 A Yes.

7 Q But would you rely on the Saskatoon City Police to
8 search their records and find out whatever they
9 had with whatever information you had?

09:28 10 A Yes.

11 Q And --

12 A Keeping in mind, at that time, we had no powers
13 of -- to compel the police, or anyone else, to do
14 anything.

09:28 15 Q Okay. But is it fair to say that you would say to
16 the city police, for example, "here is the
17 information we have, we don't have the victim's
18 name, we have this information, we have Larry
19 Fisher's name, tell us what, if any, files you
09:29 20 have relating to Mr. Fisher or these assaults"; is
21 that correct?

22 A That's correct.

23 Q And I think we've heard from other witnesses, and
24 indeed from a later Police Commission report, that
09:29 25 a search conducted in March 1990 of Larry Fisher's



1 name may very well have not shown anything because
2 there may not have been a file for him and, in the
3 absence of the victims' names, those files would
4 not be accessible; does that sound right?

09:29 5 A That's what I learned, yes.

6 Q And so then again if we could go to 338043. This
7 would be, again, part of the Fort Garry prison --
8 or this would be part of the prison file, this
9 would be information on (V7)--- (V7)---, and you
09:29 10 have a recollection of being made aware of that in
11 and around March of '90, getting some information
12 via Sergeant Pearson on the Fort Garry rapes?

13 A Yes.

14 Q And again, just for the record, 338045 is the
09:30 15 (V8)-- (V8)--- statement. 338048 is, I think this
16 is the 1981 police report related or a report
17 related to (V10) (V10)-, and I think you ended up
18 with most, if not all, of the -- you had full
19 information on (V10) (V10)- fairly early on in
09:30 20 March, or in March and April 1990; is that right?

21 A That's correct.

22 Q There wasn't the same difficulty with that, --

23 A In --

24 Q -- getting access to those files, as there were
09:30 25 the earlier ones?



1 A No, it was later in time; secondly, it was RCMP
2 North Battleford detachment.

3 Q Okay. If we can then go to 338052. And this is
4 again on the prison file of Larry Fisher that was
09:31 5 obtained by Sergeant Pearson in mid-March 1990,
6 and it's a day parole application form from
7 December 1974, and this document indicates 'an
8 R.M. of Fort Garry police department crime report
9 file number 3843/70 is available dealing with
09:31 10 charge no 3 of the rape of Ms. (V8)-- (V8)--- on
11 15th September 1970, and dealing with charge
12 number 4, possession of offensive weapon. No
13 police reports are available of the rape of
14 Ms. (V1)--- (V1)- on 21 October '68 at Saskatoon.'

09:31 15 And I believe this would have
16 been information that you and/or Sergeant Pearson
17 would have had at your March 23, 1990 meeting; do
18 you have a recollection of discussing this
19 incident with the police at that time?

09:32 20 A I know that we did speak about the assaults in
21 Saskatoon, I don't have a specific recall of what
22 was said at that time.

23 Q Do you think it's likely that, with this
24 information, either you or Sergeant Pearson would
09:32 25 have asked the city police if they had any record



1 on --

2 A On (V1)---, on Ms. (V1)-?

3 Q -- on (V1)--- (V1)-?

4 A Yes.

09:32 5 Q Do you have a recollection of being informed that
6 her file was not available at some point?

7 A Yes.

8 Q And I think -- and we'll deal with this a bit
9 later -- I think when, back in 1991 when the
09:32 10 Police Commission undertook their investigation, I
11 think they found a copy, a partial copy of the
12 file on microfiche, and you were provided with
13 that; does that assist your recall?

14 A It does. I believe that was provided for the
09:32 15 purposes of the Supreme Court reference, we did
16 get something.

17 Q Yes.

18 A Yes.

19 Q Again, if we could then go back to 056759. And I
09:33 20 think you are telling us that as of March 23,
21 1990, then, you would have sought from the
22 Saskatoon police any records they may have had
23 regarding Larry Fisher and any offenses in
24 Saskatoon based upon the information that you
09:33 25 received from Larry Fisher's prison file?



1 A That's correct.

2 Q And the purpose of getting that would be to, I
3 think you told us, to examine the circumstances of
4 those offences to see if they might assist in
09:33 5 connecting, either connecting Larry Fisher to the
6 Gail Miller murder, or assisting you in that
7 regard?

8 A That's correct.

9 Q 056760. And just so that I am clear on that,
09:34 10 would it be fair to conclude that around this time
11 you would have been, I think your word was
12 'perplexed', but trying to figure out where these
13 Saskatoon offences talked about on the prison
14 file; did you consider they might be the same ones
09:34 15 that were included on the criminal record or did
16 you think they were different ones?

17 A Possibly they were different ones to which no
18 charge had been levied, or laid, against Mr.
19 Fisher.

09:34 20 Q And if they were different charges, in other words
21 that they were ones that were unrelated to what
22 was on his record -- and we know that now not to
23 be the case but let's assume that there were
24 Regina/Winnipeg offences that he was convicted,
09:34 25 and these matters that you see on the prison file,



1 the confessions to a rape and an attempted rape in
2 Saskatoon and as well the (V1)--- (V1)- offence;
3 if those had not given rise to a charge would you
4 be interested in them still?

09:35 5 A Yes.

6 Q And for the same reasons as those that he was
7 convicted on?

8 A Yes. Secondly, bearing in mind that one of the
9 theses or thesis of the, of some of the
09:35 10 investigators initially was that whoever killed
11 Gail Miller was the serial rapist, certainly that
12 information could have had a bearing on the
13 outcome of the trial had that evidence been
14 presented at trial.

09:35 15 Q So in addition to those offences that Larry Fisher
16 was convicted of, if there was other offences that
17 he had committed but not been convicted of, those
18 would fit in with the argument that there was a
19 serial rapist out there, and that information
09:35 20 might have affected the jury's verdict had it been
21 presented to them?

22 A Yes.

23 Q And then here, just for the record, paragraph 77
24 and paragraph 80, I think this is where Sergeant
09:35 25 Pearson picked up the (V10) (V10)- file from the



1 RCMP, and I think you've told us that you would
2 have had -- I don't think there was any issues
3 about the information you had on those files?

4 A That's correct.

09:36 5 Q And then the next page. Again, this is still
6 March 24, Sergeant Pearson then is setting out
7 what he is focusing on, and that is obtaining two
8 Regina City Police files concerning their 1968
9 rape offences. So it looks as though, after your
09:36 10 meeting with the Saskatoon City Police of March
11 23, you and Sergeant Pearson are still pursuing
12 the Regina -- you've got the two Winnipeg files?

13 A Yes.

14 Q Am I correct in assuming there's four offences in
09:36 15 Mr. Asper's letter that he has got dates for, you
16 now have the two Fort Garry files, and it appears
17 that Mr. -- Sergeant Pearson is now pursuing the
18 two Regina files; is that right?

19 A That's correct.

09:36 20 Q And then if we can go to 004906. And this is a
21 report of April 17th, 1990 from Sergeant Pearson,
22 and I think his evidence was that he would report
23 up to his superiors but he would ask that these
24 reports be sent to you, and I think you would have
09:37 25 received these reports in the normal course?



1 A Yes.

2 Q And if we can go to page 913, please. So again,
3 this is April of 1990, this is Sergeant Pearson
4 reports here:

09:37 5 "It should be noted that Fisher first
6 became involved in violent sexual acts
7 in 1968 in Regina, and subsequently was
8 charged with two vicious sexual assaults
9 which took place in Winnipeg in Aug/Sep
09:37 10 1970. After his arrest in Winnipeg, he
11 admitted to the Regina offences and as
12 well, to several offences which took
13 place in Saskatoon and which he was not
14 a suspect for."

09:37 15 And I believe, although Sergeant Pearson couldn't
16 tell us exactly where that came from, it appears
17 that that would have been based on the
18 information in the prison file that had his, Mr.
19 Fisher's, statement for Saskatoon offences; is
09:38 20 that -- would that be your understanding?

21 A It is.

22 Q And what's written here, would this have been your
23 understanding at the time, as well, about the
24 status and location of Mr. Fisher's previous
09:38 25 assaults and convictions or confessions?



1 A That's correct, it was my understanding.

2 Q Then the next in the chronology is June 22, 1990,
3 and that's when the CBC ran a story, I think it
4 was June 21 or June 22, where they named Larry
09:38 5 Fisher for the first time; do you remember that
6 happening?

7 A Oh yes, yes.

8 Q And, again, in that video or in that, sorry, in
9 that news story CBC identifies the dates of the
09:38 10 offences of the four, which are the same dates in
11 Mr. Asper's March 15th, 1990 letter, and also the
12 reporter indicates that those offences took place
13 in Saskatoon. And I think that was the first, at
14 least in the media or at least in any document,
09:39 15 confirming or advising that those were Saskatoon
16 offences; do you recall being made aware of that
17 at the time?

18 A Yes. I believe we either saw the program or
19 received a transcript of it shortly after it was
09:39 20 aired, and I believe in July we received
21 correspondence which indicated that the offences
22 that we had assumed had taken place in Regina had,
23 in fact, taken place in Saskatoon.

24 Q Okay. And that's -- if we go to 056784, please.
09:40 25 And I think this is Sergeant Pearson's note. We



1 saw an earlier document, I think, where Mr. Asper
2 or Mr. Wolch may have called you, but here's where
3 you called him:

4 "... wanting to confirm if Saskatoon
09:40 5 City Police had any information on
6 convictions of Fisher ...",
7 etcetera.

8 "It was originally believed that these
9 were Regina offences but is now believed
09:40 10 Fisher went to Court in Regina and the
11 offences actually took place in
12 Saskatoon."

13 And then Sergeant Pearson made some efforts to
14 get some information; does that accord with your
09:40 15 -- is that accurate, what he's recorded here?

16 A It is.

17 Q Yeah. And then if we can go to 056787. And this
18 is a note, we've -- the date is incorrect, it
19 should be July 13th, 1990, and it says:

09:41 20 "Mr. Williams and myself attended the
21 Saskatoon City Police and met with
22 S/Sgt. Ron Bertrand and obtained a copy
23 of the 1968 offence file involving
24 Fisher."

09:41 25 And let me just pause there. I think, from



1 Sergeant Pearson's evidence and some other
2 documents, it may well have been the (V5)--
3 (V5)--- file as the '68 offence file could be
4 (V1)-, (V2)----- or (V3)-----, I believe from
09:41 5 some other documents and some other evidence that
6 it was the (V5)-- (V5)--- file, or a partial of
7 that, that was received; does that accord with
8 your recollection?

9 A I believe Ms. (V5)--- was a 1970 offence?

09:41 10 Q Yes.

11 A Okay.

12 Q Your memo that I showed you a bit earlier
13 indicated that on the first application you had a
14 partial, or you had information from the (V5)--
09:41 15 (V5)--- file, --

16 A Yes.

17 Q -- but not from the (V1)- file; is that right?

18 A That's right. The likelihood was that it was from
19 the (V5)--- file.

09:41 20 Q Okay. And it may well be, and I think there's
21 another document that I may provide you a bit
22 later that can assist you, but based on the
23 memorandum I showed you right when we started
24 today, your memo of October '91 saying --

09:42 25 A What we had.



1 Q Yes.

2 A Yes.

3 Q And so is it your recollection, then, that in July
4 of 1990 you would have received the (V5)-- (V5)---
09:42 5 file, or part of the (V5)-- (V5)--- file; that
6 would be the one file that you did get?

7 A Yes.

8 Q And you go on to talk about:

9 "We were trying to determine if his M.O.
09:42 10 (weapon) is consistent with any other
11 crimes. No weapon was used in the very
12 limited material that we received."

13 And then:

14 "Also met with Insp. Simpson ...",
09:42 15 on some other information; so does that note
16 accord with your recollection then?

17 A It does.

18 Q And do you have a recollection about the other
19 three files, then, in Saskatoon, about what you
09:42 20 were told as to whether or not they existed?

21 A I recall learning that efforts had been made to
22 track them down but they had not been located at
23 that time.

24 Q And would it be fair to say that on the first
09:43 25 application, then, what was your understanding



1 about whether or not files existed for the (V1)-,
2 (V2)----- -- Saskatoon City Police files existed
3 for the --

4 A Yeah.

09:43 5 Q -- (V1)-, (V2)----- or (V3)----- rapes?

6 A At that time there weren't any file materials
7 available for us, they had either been destroyed
8 or could not be located.

9 Q If we could go back to 155610. And just on that
09:43 10 last point, did you -- after, I think this was
11 July of 1990, were you then satisfied in your own
12 mind that you had taken whatever efforts needed to
13 be taken to get the Saskatoon City Police files?

14 A Yes.

09:44 15 Q And you were satisfied that you had what you were
16 told was available?

17 A Yes. I mean I have a distinct recall of walking
18 through a, I think it was an area, a storage area,
19 and, you know, we looked for some of the materials
09:44 20 and it wasn't there, and the senior officers from
21 the city police caused an investigation or a
22 search to be conducted, and I had no reason to
23 believe that the search wasn't a diligent one, and
24 nothing was found.

09:44 25 Q And if you did have information from the (V1)-,



1 (V2)----- and (V3)----- files would you have
2 reviewed it in the same manner as you did the
3 (V8)---, (V7)--- and (V5)--- files, --

4 A Yes.

09:44 5 Q -- you feel?

6 A Yes.

7 Q For the same reason?

8 A Yes.

9 Q We'll now go back to March 16th, 1990 and carry on
09:45 10 in our chronology here. So this is -- if we could
11 actually just go back to 332404 -- and this is
12 where we left off ten days ago. Just go to the
13 next page. This was the March 15th article that
14 talked about the double-edged knife, so that's
09:45 15 where we had finished.

16 If we can go to 155610. And
17 this is March 16th, and I think this is where you
18 got a copy of the statements of Linda Fisher, a
19 statement of her uncle, and that would be Clifford
09:46 20 Pambrun, and then Mr. Wolch says here:

21 "I would only re-emphasize that it is
22 not our task to solve the crime 21 years
23 later, even though it appears we may
24 very well be able to do so."

09:46 25 I wouldn't mind your comment on that. What did



1 you -- what was your response to that, if any?

2 A It was a subtle jab at the efficacy of our
3 investigative work to date.

4 Q Did you view it as your, one of your tasks, when
09:46 5 the application was filed, to go out and
6 reinvestigate the murder and try and solve the
7 crime?

8 A No.

9 Q Would that be something in your view that would
09:46 10 fall upon Mr. Milgaard's counsel to do if they
11 thought that was a ground to be put forward?

12 A Yes. I viewed counsel's role and any applicant's
13 role as simply to raise the grounds on which they
14 allege, or on which they say the conviction is
09:47 15 wrong. Had they identified this at the outset,
16 certainly we would have looked at it. It wasn't
17 done. But during the course of a 690 application
18 and review, the task of the investigating counsel
19 isn't to solve the crime, the task is to
09:47 20 investigate the grounds and to verify the
21 information that's been provided in support of the
22 grounds alleged.

23 Q Now, what about the next paragraph, he says:

24 "As you can appreciate, being totally
09:47 25 satisfied as to David's innocence, the



1 matter becomes more frustrating as days
2 go on. We are confident that any
3 tribunal looking at this matter in its
4 totality will without question come to
09:47 5 the conclusion that David is innocent.
6 Whether they could conclude that Fisher
7 is guilty, only time will tell."

8 And just your comment on this idea of a tribunal
9 looking at David's innocence and the conclusion,
09:48 10 what did you make of that, if anything?

11 A It's an argument that was advanced, keeping in
12 mind that in March of 1990 the two bases that had
13 been advanced before the Larry Fisher information
14 was Deborah Hall's affidavit and Dr. Ferris'
09:48 15 report and when examined, shall we say, carefully,
16 we had reached some tentative views that those
17 grounds didn't signal the innocence,
18 notwithstanding counsel's submission to the
19 contrary. This was part of the advocacy of Mr.
09:49 20 Wolch and it reflected his belief in his client's
21 innocence.

22 Q Again, as far as the tribunal, I think what you
23 told us in your earlier evidence is that under
24 690 -- let me ask it this way. Was there any way
09:49 25 you could set up a tribunal to determine David



1 Milgaard's innocence?

2 A No. Without a referral back to the Court of
3 Appeal to consider fresh evidence or without a
4 referral to a trial court for a new trial, there
09:49 5 would be no tribunal established.

6 Q And if it went back to a court, it would be a
7 criminal court or a criminal appellate court to
8 determine guilt or innocence in accordance with
9 the normal criminal standard?

09:49 10 A Yes.

11 Q And then as far as I suppose though a reference to
12 a court where the minister seeks advice, would
13 that be -- again, and I'm not sure what Mr. Wolch
14 is referring to, but might that be -- would that
09:49 15 be an option to say lookit, Court of Appeal, give
16 us your opinion whether you think David is
17 innocent or not?

18 A It might have been a -- a referral might have been
19 an option. Whether the question would be so
09:50 20 framed is another question.

21 Q Can you tell us to what extent, if any, this
22 letter -- again, was this a letter that would form
23 part of the grounds of the application relating to
24 Larry Fisher?

09:50 25 A Yes, in the sense that that's material that was



1 provided to us. It really didn't advance any
2 other ground other than to reinforce.

3 Q Maybe my question -- I'll be a bit more specific.
4 In your earlier evidence you indicated that unlike
09:50 5 the Ferris and Hall ground that was spelled out
6 specifically in a written application, the ground
7 as it related to the Larry Fisher information came
8 to you in different sources at different times and
9 in different formats or substance; is that
09:51 10 correct?

11 A Yes.

12 Q And so I think what you told us is that you
13 couldn't go to one document and say this is the
14 ground advanced by David Milgaard?

09:51 15 A That's correct. This is part of the submission
16 that Larry Fisher is the culprit.

17 Q And so again, you also told us that there was a
18 couple of different ways that the Larry Fisher
19 information could give rise to a ground, one would
09:51 20 be that he committed the crime, therefore, David
21 is innocent. The other one at the other end of
22 the extreme is this information might have
23 affected the verdict of the jury, in other words,
24 it doesn't necessarily go towards David Milgaard's
09:51 25 guilt or innocence or Larry Fisher's guilt or



1 innocence, but rather it's almost a procedural
2 argument, that this information was not before the
3 jury and it should have been and because it wasn't
4 it was a miscarriage of justice. Is that fair?

09:51 5 A That's fair, yes.

6 Q And so is it fair to characterize those two
7 grounds as one being innocence, in other words,
8 the guilt or innocence of David Milgaard and Larry
9 Fisher was alive with respect to the one ground?

09:52 10 A Yes.

11 Q With respect to the other ground, it was -- and
12 I'm talking about having that matter before the
13 court in David Milgaard's proceedings, the
14 information really had nothing directly to do with
09:52 15 either David Milgaard's guilt or innocence or
16 Larry Fisher's guilt or innocence, but rather
17 David Milgaard's lost opportunity to put that
18 information before the court; is that fair?

19 A Yes. Call it the fairness of the trial.

09:52 20 Q The fairness of the trial?

21 A Yes.

22 Q And so this letter, and again the innocence, would
23 you have viewed this as being in the first
24 category, that going to an argument that Fisher
09:52 25 did it, therefore, Milgaard didn't?



1 A Primarily, yes.

2 Q Go to 050603, this is the attachment to the letter
3 from Mr. Wolch, the statement of Linda Fisher, and
4 we've been through this with other witnesses, I
09:53 5 don't propose to go through it. Do you have any
6 recollection of any concerns -- maybe we'll go to
7 the typed one at 101298.

8 COMMISSIONER MacCALLUM: Excuse me,
9 counsel, before you leave that last point, this
09:53 10 is part of the general Fisher material through
11 which they hoped to show that Fisher was the
12 culprit and, therefore, if he did it, Mr.
13 Milgaard could not have done it. Now, just tell
14 me, was there any thinking on your part or
09:53 15 anybody else's to your knowledge that given the
16 fact that this was a two-stage attack according
17 to the physical evidence, that it might have
18 involved two attackers, first Fisher and then
19 Milgaard, was there any --

09:53 20 A There was some discussion about that.

21 COMMISSIONER MacCALLUM: Yes.

22 A Yes.

23 COMMISSIONER MacCALLUM: Okay. Sorry,
24 Mr. Hodson.

09:54 25 MR. HODSON: No.



1 A What I mean by that is between myself and Sergeant
2 Pearson, it's fair to say that we did talk about
3 various ways in which the offence may have
4 occurred.

09:54 5 COMMISSIONER MacCALLUM: Yes.

6 A And different scenarios, and that was one that was
7 discussed.

8 COMMISSIONER MacCALLUM: I should have
9 thought so, yes.

09:54 10 A Yeah.

11 BY MR. HODSON:

12 Q And so is that a case, Mr. Williams, then, that
13 establishing Larry Fisher as the culprit on that
14 first ground, if I can call it that, meant
09:54 15 establishing him as the culprit of both the rape
16 and the murder of Gail Miller?

17 A Would you repeat that, please, sir?

18 Q I'm sorry, that again back on the, if I can call
19 it, the first ground, if we can call it the Larry
09:54 20 Fisher ground --

21 A Yeah.

22 Q -- that if Larry Fisher committed the murder --

23 A Yes.

24 Q -- therefore, David Milgaard didn't?

09:55 25 A Yes.



1 Q And I think you told us that they didn't
2 necessarily have to prove it beyond a reasonable
3 doubt, but at some point saying lookit, perhaps
4 that it's likely he was the killer, that might be
09:55 5 enough to be a proper ground?

6 A Yes.

7 Q And I take it that in looking at the similarities
8 of the offences of Larry Fisher's rapes compared
9 to the Gail Miller murder, if that was put forward
09:55 10 as a ground to say Fisher's crimes are similar to
11 Gail Miller's murder, therefore, that should be a
12 factor to be considered in advancing that Fisher
13 therefore is the killer; right?

14 A Yes.

09:55 15 Q Together with -- and I think you are saying more
16 than that was needed?

17 A Yes.

18 Q And then just back to the Commissioner's question
19 then, I take it then that simply saying that
09:55 20 Fisher's rapes were similar to the Gail Miller
21 rape, it sounds like you and Sergeant Pearson then
22 also said, okay, but maybe that meant he raped
23 her, but he didn't kill her. Is that -- did I
24 understand your evidence? Was that a scenario
09:56 25 that was discussed?



1 A Well, there were a couple as I recall, what if
2 Miss Miller had been robbed first and then
3 assaulted later, sexually assaulted and killed
4 later or vice versa, what if she had been sexually
09:56 5 assaulted first and then robbed and killed later,
6 you know, those were possibilities that we tossed
7 around.

8 Q Okay. If we can go back to the Linda Fisher
9 statement. Do you recall anything, and again this
09:56 10 would be the statement taken by Paul Henderson and
11 Joyce Milgaard I think March 9th, 10th of 1990,
12 and I think at this time would you have known that
13 Paul Henderson, who he was or his involvement at
14 this time?

09:56 15 A No.

16 Q Do you have any recollection of having any
17 concerns about what was in this statement or what
18 wasn't in this statement?

19 A No. There was some -- the statement has a number
09:57 20 of conclusionary comments and it doesn't have --
21 and has, I would call it, focused details, so
22 there were just some questions about it that
23 arose.

24 Q And, for example, I think in this statement when
09:57 25 we went through it with other witnesses, there's



1 no description of the knife, of the missing paring
2 knife. Do you recall that being a matter of
3 interest to you?

4 A Certainly paring knives could take different forms
09:57 5 and we know, or we knew, based on the trial
6 evidence, what the murder weapon looked like, and
7 so it would be important to find out whether the
8 missing paring knife that Linda Fisher had
9 reported bore any resemblance to the paring knife
09:58 10 that had been located near the scene.

11 Q And on your previous testimony a few weeks ago, I
12 went through a couple of memorandums where Mr.
13 Asper had called you and given you information
14 that, about Linda Fisher's recollection of the
09:58 15 night before and I think we went through those
16 memos, one of which I think the information you
17 received from Mr. Asper is that Linda Fisher said
18 Larry Fisher caught the bus on the morning of the
19 murder and another, in another situation he told
09:58 20 you that no, he may have come home the night
21 before, or maybe not, and I think you told us that
22 that was one area that you had some questions
23 about?

24 A Well, certainly needed to clarify that.

09:58 25 Q And again, did the statement answer those



1 questions for you?

2 A Not completely.

3 Q Now if we can go to 012090, this is the statement
4 of Clifford Pambrun. Are you familiar with who
09:59 5 Clifford Pambrun is?

6 A Yes.

7 Q And this is a statement that talked about the car.
8 Do you have a recollection of what significance if
9 any you placed on this information in this
09:59 10 statement about -- I think he says:

11 "...it is possible that he --"

12 Being Larry Fisher,

13 "-- could have been driving the car with
14 my permission either during the daytime
09:59 15 or at night.

16 A Yes. The -- in relation to the Saskatoon police
17 investigation, Gail Miller had arrived at her
18 residence early, or late the evening before,
19 whether late the evening, in that evening or early
09:59 20 the next morning, and witnesses had testified that
21 there was someone sitting in a car outside the
22 building and the inference or the -- it then
23 became a question as to whether or not the
24 description of the car that was reported seen
10:00 25 outside her building may have matched the car that



1 Clifford Pambrun owned and may have loaned to
2 Larry Fisher. That might have been -- we were
3 looking again for some kind of link between the
4 victim and Larry Fisher and possibly the car could
10:00 5 provide such a link.

6 Q And what about the question of whether or not a
7 car was believed to be involved in the murder?

8 A That was also an aspect of it to the extent that
9 you could find the car and check the car to
10:00 10 determine whether or not there was any evidence
11 linking the victim to that car.

12 Q And do you recall whether in your discussions with
13 Sergeant Pearson or in your interviews, etcetera,
14 whether it was your belief that a car, that if
10:01 15 Larry Fisher committed Gail Miller's murder, that
16 he would have had to have had a car to be involved
17 in the murder or likely or not likely? Can you
18 tell us what your thinking was?

19 A The car might have been involved in a couple of
10:01 20 respects. First, if Larry Fisher had the car and
21 was surveying Miss Miller the night before,
22 second, some would suggest that although the
23 victim's body was found in the alley, that perhaps
24 the assault, or certain aspects of the sexual
10:02 25 assault may have taken place in the car because of



1 the very cold temperatures outside, and that the
2 location of the body was probably the final event
3 in a sexual assault gone wrong, that it may have
4 started in one location, the victim may have
10:02 5 attempted to escape and was then finally corralled
6 at the point where she was, her body was found.

7 Q Can you comment on whether you felt that if Larry
8 Fisher was the perpetrator, could he have done so
9 without having access to a motor vehicle that
10:02 10 morning?

11 A That was possible, yes.

12 Q So the fact that he didn't have a vehicle
13 didn't --

14 A It didn't exclude him, no.

10:02 15 Q 00 -- do you recall following up with Mr. Pambrun
16 or where that --

17 A I personally didn't follow up. I know that
18 Sergeant Pearson followed up on that particular
19 point.

10:03 20 Q And what is your recollection of the significance,
21 if any, of Cliff Pambrun's statement and/or
22 information regarding the car?

23 A It was a lead or a potential lead that may have
24 tied Larry Fisher in some fashion or another to
10:03 25 Miss Miller were we able to develop any



1 information from it.

2 Q And can you comment as well on, I think Sergeant
3 Pearson mentioned this or it was in one of his
4 reports, in comparing if in fact Larry Fisher did
10:03 5 have a vehicle and a vehicle was used in the
6 Commission of the offence with respect to Gail
7 Miller, I believe the other seven incidents, the
8 other seven assaults, other than the (V3)-----
9 which was the attempted rape where he told her he
10:03 10 had a vehicle, did not involve a vehicle. Was
11 that in your thinking at the time?

12 A Not at the time. Perhaps later on it came in, but
13 at that time we were just running with the current
14 information we had.

10:04 15 Q And so the car aspect would be, how can that --
16 how can that lead to a link between Larry Fisher
17 and Gail Miller?

18 A Well, firstly, if you are able to locate the car,
19 it might be possible to find some forensic
10:04 20 evidence there that might possibly link the victim
21 or Mr. Fisher to that vehicle. Secondly, in
22 relation to some of the witnesses who had observed
23 a car outside Gail Miller's residence the night
24 before her death, comparing Cliff Pambrun's car to
10:04 25 their description might be a useful thing to do to



1 determine whether or not it bore any resemblance
2 to the vehicle that had been reported there.

3 Q If we can go to 009476, and this is a letter March
4 20th, 1990 from Joyce Milgaard to the minister,
10:05 5 and I showed you a letter earlier I think in early
6 March where she had sent one, and go to the next
7 page, a couple of points, she says:

8 "A well respected forensic pathologist
9 has interpreted the evidence in my son's
10:05 10 case and concluded that the same
11 evidence used to convict him, in fact,
12 disproves his guilt."

13 And then down at the bottom:

14 "The officials in your department who
10:05 15 are handling this case have not given me
16 the slightest glimmer of hope. It has
17 been over a year now since my son's
18 application was filed and there has been
19 no indication or communication as to
10:05 20 what has been done."

21 Now, just on that -- let me just finish this
22 letter and I'll come back. Go to the next page,
23 she says:

24 "I cannot stand by in the hope that the
10:06 25 system which condemned my son will



1 secretly help to free him. I'm afraid I
2 have lost faith in the justice system."

3 And I think Mrs. Milgaard's evidence was at this
4 point, or perhaps even earlier, she had lost
10:06 5 faith in the justice system and I think that
6 included the work that you were doing on behalf
7 of the minister.

8 If we can just go back to the
9 earlier page, can you tell us -- I mean, I
10:06 10 presume you would have got a copy of this letter;
11 is that fair?

12 A Yes.

13 Q Did you -- and we talked a bit about this in your
14 earlier evidence. It appears here that Mrs.
10:06 15 Milgaard, at least in March, 1990, believes that
16 the Dr. Ferris report proves her son's innocence.
17 Is that a fair reading of this letter?

18 A Yes.

19 Q And that something should have been done many
10:07 20 months earlier to get him out of jail?

21 A Based on the Ferris report, yes.

22 Q And I think you've told us that within a few
23 months after getting, I think the transcripts and
24 everything in August of '89, you had concluded
10:07 25 that the Ferris ground was of little or no value;



1 in fact, was wrong I think was her evidence, that
2 it did not disprove his guilt. Is that fair?

3 A That's fair.

4 Q And I'm trying to -- at this point was there any
10:07 5 effort made to inform Mrs. Milgaard that what she
6 believed to be a solid ground for proving her
7 son's innocence was, at least in your view and
8 perhaps others and other scientists, not so, or
9 was that something that you left up to her own
10:08 10 counsel to deal with?

11 A That was something that her counsel could deal
12 with. I could not do so, firstly, because it
13 wasn't my decision to make as to whether or not
14 the information we had collected about Dr. Ferris
10:08 15 merited reconsideration by the courts. I could
16 make a recommendation. Secondly, Mrs. Milgaard --
17 David Milgaard, as the applicant, is represented
18 by counsel. It would be proper to channel, in
19 these circumstances, any communication about the
10:08 20 matter to counsel.

21 Generally we could tell or would
22 tell family members yes, we're investigating it,
23 yes, some of that investigation may involve
24 interviews, may involve getting opinions from
10:09 25 scientists, but without getting into the details



1 of the specific interviews or the specific
2 reports, and certainly by that time, and I'm
3 talking March of 1990, I had been in contact with
4 counsel for David Milgaard firstly to set up the
10:09 5 interviews with Deborah Hall, secondly, in
6 relation to conversations I had had with, who was
7 then justice of appeal Tallis, and as a result of
8 those discussions, at least, counsel knew that we
9 had been investigating it and I had written at
10:10 10 some point in early 1990 to indicate that whatever
11 research or work I had done was at or nearing
12 completion and if they had anything additional,
13 could they, as applicant's counsel, let me know.

14 Q Now, there's nothing -- just let's focus on the
10:10 15 value of the Ferris report, if I can put it that
16 way. There's nothing, I don't think, in writing
17 from anybody with the Department of Justice to
18 counsel for the Milgaards, and I think the first
19 formal communication would be at the October 1,
10:10 20 1990 meeting; is that right, of your view of the
21 Ferris information?

22 A That's right.

23 Q In June of 1990 I think you went and met with Dr.
24 Ferris, Dr. Markesteyn and Dr. Merry and I think
10:10 25 you told us that you assumed or believed that they



1 might have communicated to Mr. Asper the same
2 thing they communicated to you; is that fair?

3 A Yes.

4 Q Apart from that, did you think again, March, 1990,
10:11 5 are you able to tell us whether -- whether Mr.
6 Asper or Mr. Wolch would have been informed,
7 whether it be in an informal way, about problems
8 with the Ferris report?

9 A I didn't inform them. Whether they intuitively
10:11 10 felt that our reluctance to move on the
11 application based on the Ferris report signaled
12 that we did not accept it or had difficulties with
13 it I can't say, but I can tell you I did not
14 inform them.

10:11 15 Q And are you aware as to, in your discussions with
16 Mr. Asper, Mr. Wolch, did you become aware at any
17 point prior to your meeting with Dr. Ferris in
18 June of 1990 that Mr. Asper or Mr. Wolch had
19 doubts about the Ferris report similar to your
10:12 20 doubts?

21 A No. They didn't -- they didn't give me that
22 impression at all.

23 Q And we'll see in May of 1990 you'll recall where
24 Mrs. Milgaard tried to deliver the Ferris report
10:12 25 to the minister, Kim Campbell?



1 A Yes.

2 Q And again, just on this question, I take it you
3 would agree with me that it would have helped, or
4 would you agree with me, would it have helped
10:12 5 matters if Mrs. Milgaard would have been informed
6 earlier than she was, at least -- or let me
7 rephrase that. Would you agree it would have
8 helped that Mrs. Milgaard would have been informed
9 prior to when she was, whenever that might be,
10:12 10 that the Dr. Ferris report did not prove her son's
11 innocence?

12 A In hindsight, perhaps yes. However, you have to
13 keep in mind the context of the 690 application
14 process and that is that the person who informs
10:13 15 the applicant of the success or not of an
16 application is the minister and rightly or wrongly
17 that decision is taken only once the application
18 has been completed. It would be presumptuous of
19 officials to prejudge the minister's view on a
10:13 20 particular issue, to inform an applicant that that
21 ground is not meritorious, except in circumstances
22 in which a frivolous ground which could not
23 possibly give rise to a remedy is submitted, you
24 say, hey, look, even if what you say is true, this
10:14 25 couldn't possibly give rise, so those --



1 Q The screening?

2 A The screening, that would be the exception. But
3 once the application is made that passed the
4 screening, and particularly in a case like this
10:14 5 where in March of 1990 we've got, in addition to
6 the original two grounds, we now have Larry
7 Fisher, we felt obliged to follow that up before.

8 Q Just on the Ferris report, I think you've told us
9 at your October 1, 1990 meeting you would have
10:14 10 informed Mr. Wolch and Mr. Asper about all of your
11 concerns about the validity of the Ferris report;
12 is that correct?

13 A We had discussions about the strength of the
14 Ferris report.

10:14 15 COMMISSIONER MacCALLUM: By what date?

16 A October 1.

17 MR. HODSON: October 1 of '90.

18 COMMISSIONER MacCALLUM: October 1.

19 BY MR. HODSON:

10:14 20 Q And so at that meeting you would have, I think you
21 told us, you would have shared with them the
22 information you had from Patricia Alain that says
23 here are the problems with the Ferris report?

24 A Yes.

10:14 25 Q After that October 1, 1990 meeting and after



1 providing that information to Mr. Wolch and Mr.
2 Asper, did they and Joyce Milgaard and others on
3 behalf of David Milgaard continue to pursue in the
4 media and with you the Dr. Ferris report as a
10:15 5 ground in the application?

6 A They may have. I can't -- I know that until such
7 time as the decision was released, Dr. Ferris'
8 report figured quite prominently in media reports
9 calling for immediate action by the minister.

10:15 10 Q I believe, and I will show you some documents
11 after the Minister's letter, I think in Mr.
12 Asper's letter and indeed Mr. Wolch's letter after
13 Minister Campbell's decision I believe the Dr.
14 Ferris ground was pursued and was pursued right up
10:15 15 until I think February of 1992, at least according
16 to the records, until the secretor test was redone
17 on David Milgaard; is that correct?

18 A I believe so, yes.

19 Q If we can go down to the bottom, the statement
10:16 20 here:

21 "The officials in your department who
22 are handling this case have not given me
23 the slightest glimmer of hope. It has
24 been over a year now since my son's
10:16 25 application was filed and there has been



1 no indication or communication as to
2 what has been done."

3 And I think you talked a bit earlier about what
4 had been done and the steps you had taken, and
10:16 5 would you have informed Mr. Asper or Mr. Wolch
6 about the steps that you had taken?

7 A Yes, well they knew, because they complained about
8 them.

9 Q Okay. And those would be, just to recap on Dr.
10:16 10 Ferris, I think you told us --

11 A Well, in relation to Deborah Hall, they knew
12 because I had set up the interviews in
13 consultation with them. They also knew that I had
14 been speaking with chief -- or who was then
10:17 15 Justice Tallis. By January of 1990 they knew that
16 we had received reports dealing with the Ferris
17 ground.

18 Q And how, and why do you say that, or how?

19 A Because I, basically I told them that the
10:17 20 investigation had been complete.

21 Q Okay. And so January of 1990 you would have
22 informed Mr. Wolch and Asper that your
23 investigation with respect to the Dr. Ferris
24 ground had been completed?

10:17 25 A Yes, and do they have any other ground to submit



1 before we complete our report to the Minister.

2 Q And then, as far as the Larry Fisher information,
3 I think by March 20th, we've covered that, I think
4 Sergeant Pearson had interviewed Linda Fisher by
10:17 5 this point but you hadn't, and the steps we've
6 already talked about. I take it to the extent
7 that you and/or Sergeant Pearson, to the extent
8 that the record reflects discussions between you
9 and Sergeant Pearson on the one hand and of Mr.
10:17 10 Asper on the other, there would have been some
11 communication of the steps you had taken?

12 A Yes.

13 Q 335388. I'm sorry, just back on this letter, can
14 you -- can you tell us -- and, again, we've
10:18 15 touched on this before -- but what, what effect,
16 if any, would this letter have had on you and the
17 work you were doing investigating the matter?

18 A I would be asked to comment on the letter and to
19 possibly draft a response in reply to it.

10:18 20 Q And so again, similar to what you told us before,
21 a briefing note --

22 A Either a briefing note or a draft response. Quite
23 often the letter would come in the context of
24 another article or series of articles in the
10:18 25 media, and to the extent that it did -- now I'm



1 not certain whether or not this one did -- you
2 would be preparing a briefing note as well.

3 Q Okay. If we could then go to 335388. This is a
4 memorandum of March 27th, 1990 and it refers, I
10:19 5 think that should be March 21, 1990, your meeting
6 with Mr. Tallis; is that right?

7 A Yes.

8 Q Or a telephone discussion; is that correct?

9 A Yes. This was the second go-round. We had spoken
10:19 10 in November of '89 initially.

11 Q And then I think this --

12 COMMISSIONER MacCALLUM: March 21, '69
13 should be what?

14 A March 21, 1990, Your Honour.

10:19 15 COMMISSIONER MacCALLUM: Okay.

16 BY MR. HODSON:

17 Q And just for the record here, we saw this earlier,
18 the February 23, 1990 letter, just for the record,
19 is 157044, and that was a letter that Mr.
10:19 20 MacFarlane wrote to Mr. Tallis confirming
21 undertakings on behalf of the department; correct?

22 A Yes.

23 Q And, as well, I think that included the list of
24 questions; is that right?

10:20 25 A That's correct.



1 Q And if we can go to 335390, these would be the
2 questions, and did you draft these? These were
3 the written questions for Mr. Tallis?

4 A Yes, I drafted them.

10:20 5 Q And then if we could just go back to the first
6 page of this memo, and is -- am I correct that you
7 would have talked to Mr. Tallis on the phone, who
8 would have had the written questions, had an
9 opportunity to consider them, he would have given
10:20 10 you his answers and you would have recorded them
11 and put them into this memo?

12 A Yes.

13 Q And so I think you say the factual account of the
14 evidence in the trial of David Milgaard that is
10:20 15 contained in the Court of Appeal decision was the
16 backdrop for the responses to questions 1 to 3,
17 and I think attached to this is a court of appeal
18 decision, and am I correct that you literally took
19 that factual account and said to Mr. Tallis, "tell
20 me to what extent David Milgaard told you he,
21 based on his account of events, where did he
22 disagree with what ultimately was found as fact";
23 is that fair?

24 A That's fair.

10:21 25 Q And then you restate the questions that, I think,



1 relate to his activities that morning, and they
2 talk about the notebook. And then the next page,
3 'the summary of the facts which begins at page 208
4 of the', and I think that should be the
10:21 5 decision --

6 A Yes.

7 Q -- 'accords with counsel's recollection of the
8 account provided by David Milgaard, except as
9 noted by red underlining; (Appendix 2). Although
10:22 10 Milgaard accepted the chronology of events recited
11 by Wilson as accurate, he denied: being in
12 possession of a paring knife with a reddish-brown
13 handle; making disparaging remarks about the woman
14 from whom he had asked directions; hearing screams
10:22 15 from Nichol John and seeing her in a hysterical
16 state; telling Wilson that he had 'fixed her' and
17 saying that 'I got a girl in Saskatoon and I put
18 her purse in a trash can' and he thought she would
19 be okay; and, lastly, having blood-stained
10:22 20 clothing and going after the lady'.

21 And then, if we can scroll down,
22 'in answer to question 5, Milgaard acknowledged
23 asking a woman for directions in Saskatoon. He
24 also admitted throwing the compact out of the car
10:22 25 between Saskatoon and Calgary. Milgaard neither



1 explained the origin of the compact nor his
2 motives for removing it from the car. He also
3 admitted buying the paring knife in Rosetown.
4 Furthermore, he did not deny the account given by
10:22 5 Melnyk and Lapchuk, but explains the incident as
6 either a joke or being stoned.'

7 And then just down, 'Milgaard
8 did not wish to testify. Among the factors that
9 were considered in deciding upon this course of
10:23 10 action was the realization that Milgaard, despite
11 his denial of guilt, would confirm incriminating
12 testimony obtained from unsavoury Crown witnesses,
13 would be vague as to locations although agreeable
14 to the suggestion that the incidents described by
10:23 15 Wilson and John occurred generally in the area
16 described by them?'

17 And I take it that would be an
18 accurate record of what he had told you?

19 A Yes.

10:23 20 Q And what, can you just expand a bit on this,
21 what -- and again, here, the 'confirm the
22 incriminating testimony obtained from unsavoury
23 Crown witnesses'; who would those witnesses -- who
24 were you referring to?

10:23 25 A Melnyk and Lapchuk.



1 Q Okay. And 'would be vague as to locations
2 although agreeable to the suggestion that the
3 incidents described by Wilson and John occurred
4 generally in the area described by them.'

10:24 5 A Yes.

6 Q And was that, I think what Mr. Tallis told this
7 Inquiry is that, based on his discussions with
8 David Milgaard, if David were to testify he would
9 indicate that they were between 20th and 22nd
10:24 10 Street going up and down avenues and possibly in
11 the area where Gail Miller's body was found; does
12 that accord with what Mr. Tallis told you?

13 A Yes, it does.

14 Q And what about the information about -- let's talk
10:24 15 first about the compact. Can you tell us what the
16 significance, if any, you placed on that
17 information from Mr. Tallis that David Milgaard
18 had admitted that to him, that he had done it, and
19 had no explanation?

10:24 20 A It's just a circumstance, a piece of
21 circumstantial evidence. It raises the question
22 how did it get there, assuming that Nichol John's
23 testimony that she had examined the glove box on
24 the trip between Regina and Saskatoon and had
10:24 25 found no compact in it at that time, where did it



1 come from.

2 **Q** Now I think you would have received the affidavit
3 of David Milgaard, I think you got it in August of
4 1989, it was dated November of 1986; in that
10:25 5 affidavit I believe he denied throwing out the
6 compact?

7 **A** Yes.

8 **Q** Can you tell us what significance, if any, this
9 information from Mr. Tallis had in considering the
10:25 10 contents of Mr. Milgaard's affidavit?

11 **A** Well it certainly would dispute one of the key
12 circumstantial bits that the Crown, I think, used
13 to link him to at least the robbery or the murder
14 of Gail Miller.

10:25 15 **Q** But what about -- let me put it this way, let me
16 add the motel room incident, then I'll come back
17 to this. As well, I think from your memo, Mr.
18 Tallis, I believe, told you that David did not
19 deny the motel room incident to him but said that
10:25 20 he explained it as either a joke or being stoned?

21 **A** Yes.

22 **Q** Can you tell us, when you learned that information
23 from Mr. Tallis, what were your thoughts about the
24 Deborah Hall ground being included in the
10:26 25 application?



1 A Well the Deborah Hall ground certainly was
2 consistent with the explanation provided by David
3 Milgaard in that it was either a joke or was
4 stoned, but to the extent that the Hall affidavit
10:26 5 signaled that Lapchuk and Melnyk lied, that the
6 general impression that that leaves is that they
7 lied about the event having taken place, not about
8 the interpretation to be placed on the events that
9 everyone had seen.

10:26 10 Q And, again, let me maybe be a bit more specific on
11 that point. I'm trying to understand what you --
12 having heard from Mr. Tallis I think is it fair to
13 say that, based on what Mr. Tallis told you he was
14 told by David Milgaard, is it fair to say that
10:26 15 David Milgaard's version of events through his
16 counsel at the time did not accord with Deborah
17 Hall's affidavit?

18 A That's correct, it did not support it.

19 Q And so that I'm trying to -- did you, did you
10:27 20 consider how could they have included it in the
21 application given that his own counsel has told me
22 that -- evidence that seems to refute it?

23 A The only way they could have done so is if they
24 hadn't spoken with Justice Tallis before filing
10:27 25 that application.



1 Q And did you put any significance on that?

2 A Yes.

3 Q And what was that?

4 A It showed to me the level of research that had
10:27 5 gone into the application. It signaled to me that
6 some of the, some of the submissions, some of the
7 points that had been raised, were raised without a
8 full appreciation of the facts at trial, or the
9 information provided to counsel, and had it -- and
10:27 10 had it, had they known that, it might have
11 informed the shape of the application.

12 Q Yeah. Let's turn to Dr. Ferris. And I think you
13 talked to Mr. Tallis as well, either in this
14 conversation or perhaps the previous meeting,
10:28 15 about Dr. Ferris, and I believe your evidence
16 previously was -- and correct me if I'm wrong --
17 that after talking to Mr. Tallis you concluded
18 that he understood the secretor issue, and that
19 basically everything raised in Dr. Ferris' report
10:28 20 was a matter that he had considered and dealt with
21 at trial; is that a fair summary?

22 A Yes, or wanted to deal with at trial. What I had
23 understood from Dr. Ferris was -- or from Mr.
24 Tallis was simply this; he wanted Sergeant
10:28 25 Paynter's evidence in, except for the



1 contamination, because that would have provided a
2 fairly strong factual basis for arguing reasonable
3 doubt.

4 Q And again, in a similar vein to the Deborah Hall
10:29 5 information, did you place any significance or
6 reach any conclusions on the fact that Mr. Tallis
7 gave you information, when you met with him, that
8 seemed to refute the ground put forward in the
9 application as it related to Dr. Ferris' report?

10:29 10 A Yes. What it showed me was that Dr. Ferris hadn't
11 read the evidence at trial.

12 Q But, again, back to the point --

13 A It also refuted the basis of the ground advanced
14 based on Dr. Ferris.

10:29 15 Q Can you tell us what effect, if any, when you're
16 considering -- and I think, later, you will start
17 to consider or you are considering the Larry
18 Fisher ground, and then we'll get into Ron Wilson
19 and Albert Cadrain and some other matters. Can
10:29 20 you tell us, Mr. Williams, to what extent, if any,
21 sort of your observations about the Deborah Hall
22 ground and the Dr. Ferris ground might have
23 influenced your thinking when you approached other
24 grounds?

10:30 25 A Well, when you approach the other grounds you



1 certainly have to look at them very, very
2 critically, because you recognize that, earlier,
3 some of the submissions were either incomplete or
4 didn't take into account information that was on
10:30 5 the public record, so you tend to be careful and
6 you tend to be -- you tend not to be as accepting,
7 at first blush, of the information you receive,
8 and it reinforces the need to re-verify what
9 information you are getting.

10:30 10 Q Now just before we leave the Mr. Tallis meeting,
11 do you recall, in either your first meeting or in
12 the telephone conversation, do you recall him
13 telling you that David Milgaard also told him, Mr.
14 Tallis, that when they approached the woman for
10:31 15 directions, that he had thought about either
16 robbing her or stealing her purse; do you remember
17 being made aware of that by Mr. Tallis?

18 A Yes, I believe so.

19 Q And I think that, Mr. Tallis told us, was
10:31 20 information that was not otherwise on the record
21 and one of the reasons he didn't call Mr.
22 Milgaard. Can you tell us, did that factor in
23 your thinking anywhere?

24 A It was a bit of information. I knew that, based
10:31 25 on some of the evidence at the preliminary



1 inquiry, that the Crown had wanted to introduce
2 robbery as a potential motive, and that at trial
3 that evidence was excluded, and certainly, to the
4 extent that David Milgaard would take the stand at
10:32 5 his own trial, that could then be raised.

6 Q Is it fair to say that, after your discussion with
7 Mr. Tallis, I think you earlier told us one of the
8 reasons you wanted to talk to him was to find out
9 why, in a circumstantial evidence case, Mr.
10:32 10 Milgaard did not take the stand?

11 A Yes.

12 Q Is that fair? And did you come away from your
13 meetings with Mr. Tallis with a better
14 appreciation as to why he did not testify?

10:32 15 A Yes, certainly to the extent that had he taken the
16 stand and cross-examined on a compact, contacts
17 with the woman, and the narrative provided by
18 Wilson and John, certainly he would have confirmed
19 it and it might have strengthened the Crown's
10:32 20 case.

21 Q And the motel room incident as well?

22 A The motel incident as well.

23 Q Probably an appropriate spot to break.

24 (Adjourned at 10:32 a.m.)

10:52 25 (Reconvened at 10:52 a.m.)



1 BY MR. HODSON:

2 Q Mr. Williams, just back on the, I had asked you a
3 question earlier this morning about disclosing to
4 the Milgaard counsel, and I think you've told us
10:52 5 any communication you had would have been through
6 their counsel, Mr. Asper and Mr. Wolch; correct?

7 A Yes.

8 Q And this related to the question I asked about
9 Joyce Milgaard's letter to Kim Campbell saying,
10:52 10 you know, that -- relying heavily on the Ferris
11 report. And I think in -- on the October 1, 1990
12 meeting -- and we'll deal with this in more detail
13 later -- at that meeting did you share, with Mr.
14 Wolch and Mr. Asper, the fruits of your
10:53 15 investigation, if I would call it -- can call it
16 that?

17 A Yes.

18 Q And would that be, can you tell us, for example
19 with the Dr. Ferris report would it be either (a)
10:53 20 lookit, the Ferris report has no value, or (b)
21 here's what we have from Patricia Alain and here
22 is the concerns that she has raised or others have
23 raised about the Ferris report, and this is the
24 information that we'll give to the Minister?

10:53 25 A More the latter.



1 Q More the latter?

2 A Yes.

3 Q So not your own conclusions, is that what you are
4 telling us, but rather --

10:53 5 A Rather, this is what we've discovered, and have
6 you considered the question of contamination?
7 What, if any, impact will that have on your
8 assertion that Dr. Ferris' conclusions exonerate
9 David Milgaard?

10:53 10 Q And would, again, would that be -- would your
11 intent be, in part, to signal to them, then, that
12 there are concerns with Dr. Ferris' report?

13 A That there are questions about its -- about the
14 strength of it, yes.

10:54 15 Q And so is it fair to say that, still, the Minister
16 would be making the decision, though, and may put
17 a different light on this information than you
18 had?

19 A Correct, the Minister can make his or her
10:54 20 decision.

21 Q Now when you told that, provided that information
22 at the October 1, 1990 meeting -- and let's talk
23 about Dr. Ferris -- was there, later, any
24 suggestion, I think was it by Mr. Asper, that you
10:54 25 had been -- shown bias with respect to the Dr.



1 Ferris information; is that --

2 A Well, perhaps not specifically to the Dr. Ferris
3 information, but there was a suggestion or an
4 allegation that officials were biased about the
10:54 5 application, so at that point in time -- we're
6 talking October '90 -- the things in the
7 application were Ferris, Deborah Hall, Wilson, and
8 Larry Fisher.

9 Q Okay. And so the allegations of bias were after
10:55 10 this information was shared with them?

11 A Yes.

12 Q And so again, if we can just go back in time to
13 March of 1990, and I think I'd asked you the
14 question about disclosing to Mr. Asper and Mr.
10:55 15 Wolch concerns about Dr. Ferris' report, and am I
16 correct that whether it's in March of '90 or
17 October of '90, are you telling us that you
18 wouldn't have shared conclusion -- your
19 conclusions with them but, rather, "here's
10:55 20 information we've gathered that may affect your
21 ground"; is that correct?

22 A That's correct.

23 Q And you told us in your earlier evidence that, on
24 the basis of what happened with the Ute Frank
10:55 25 statement in October of 1989, you delayed



1 disclosure to Mr. Asper until the investigation
2 was complete; is that right?

3 A Yes.

4 Q And so, again, with respect to the -- let's go
10:56 5 back to March 1990 when Mrs. Milgaard writes to
6 the Minister saying, you know, Dr. Ferris' report
7 proves innocence. Are you able to tell us whether
8 or not what happened with Ute Frank's statement,
9 and the inclusion, or the sending of it to the
10:56 10 media, did that have an impact on your decision or
11 your -- or the timing of your disclosure of
12 information to Mr. Asper regarding your
13 investigation of Dr. Ferris' report?

14 A It had an impact on some of it. Certainly, in
10:56 15 relation to the Larry Fisher materials, we had --
16 he had requested us to provide him certain
17 information, and to the extent that we could and
18 to the extent that we could get certain
19 understandings about its further dissemination, we
10:57 20 did.

21 Q Okay, but let me phrase it a different way. In
22 October 1 of 1990, at that meeting, is it fair to
23 say that you or other officials would have said to
24 Mr. Wolch and Mr. Asper, "here is information
10:57 25 we've gathered from Patricia Alain and/or others



1 that suggest that Dr. Ferris' opinion may not have
2 accounted for contamination or there may be issues
3 with respect to the conclusion reached by him and
4 the emphasis you", being Mr. Wolch and Mr. Asper,
10:57 5 "place on it"; is that fair?

6 A Yes.

7 Q And what I am trying to get or to understand is
8 would you have shared that information with Mr.
9 Wolch and Mr. Asper prior to October 1, 1990 if
10:57 10 the Ute Frank statement incident had not occurred
11 in October of 1989?

12 A I may have. I don't know. I may have. It
13 certainly -- certainly the Ute Frank incident
14 highlighted, to me at least, the need for some
10:58 15 care and certain embargoes on information that's
16 provided.

17 Q So let's go back, again, to March 1990. Rather
18 than advising Mr. Asper, in response to Mrs.
19 Milgaard's letter to the Minister, instead of
10:58 20 saying to him "lookit, we don't think the Ferris
21 report has any value", again would you have
22 considered saying to Mr. Asper "here is what
23 Patricia Alain has told us, here's the information
24 we have gathered, you should be aware that we have
10:58 25 information that could detract from the opinion



1 reached by Dr. Ferris", as opposed to your
2 conclusion, or pre-judging, simply saying "here's
3 the information we've gathered"?

4 A I could have. I didn't.

10:58 5 Q And why?

6 A I felt that, in the circumstances, the first
7 person -- I felt it was too early to release it,
8 and in March of 1990 we were still working on the
9 Larry Fisher, or it was relatively new.

10:59 10 Certainly, the Ferris material and the Hall
11 material wasn't persuasive in terms of it didn't
12 go -- it didn't have the significance that the
13 applicants had placed on it based on what we'd
14 observed at -- up until that time, and I -- my
10:59 15 assessment was let's run with the Larry Fisher and
16 see where that takes us.

17 Q Was there a concern, in March of '90 or at any
18 time prior to October 1 of 1990, that if you
19 shared that information with Mr. Asper, any of it,
10:59 20 whether it simply be a copy of her memo, the
21 substance of her memo, or a summary of issues, was
22 there a concern that, if you shared that with Mr.
23 Asper, that it would be used against you in some
24 way?

11:00 25 A There was that possibility.



1 Q And can you elaborate on that; in what way?

2 A Well we had, by then, received a lot of critical
3 attention in the press, and my feeling was that
4 the better course of action would be to let the
11:00 5 Minister take a look at it first, or at least save
6 it to a point in time when you've more or less
7 rounded up all of the materials that might be
8 going to the Minister, let them have a chance to
9 take a look at it and have their comments before
11:00 10 it goes up, and so the Minister can take a look at
11 the entire file and the comments of the applicants
12 knowing, basically, what type of material had been
13 gathered.

14 Q And I think you alluded to this earlier, and we'll
11:01 15 see it in some later documents when we go through
16 them, that after the October 1, 1990 meeting is it
17 fair to say that comments that you may have made
18 or information you may have provided to Mr. Asper
19 and Mr. Wolch regarding the grounds of the
11:01 20 application, and perhaps views that different --
21 that differed from theirs, were taken to exhibit
22 bias on your part?

23 A Yes.

24 Q And was that a concern earlier on?

11:01 25 A Yes.



1 Q If we can go to 335386. This is just finishing up
2 on the Tallis memo or the meeting with Mr. Tallis,
3 and I think it was March 21, 1990 you met with
4 him, this is a May 11th, 1990 memo from you to Mr.
11:02 5 MacFarlane. And can you tell us what; would this
6 just be elaborating on some points in your earlier
7 memorandum?

8 A Yes.

9 Q And then, if we can go to the next page, I think
11:02 10 it's similar to your memo to file. And, again,
11 this talks about -- I think this memo focusses on
12 his reason for not testifying; is that right?

13 A Yes.

14 Q And then here you say:

11:02 15 "Secondly, Mr. Milgaard appeared to him

16 "...",

17 this is Mr. Tallis:

18 "... to be vague in dealing with the
19 issues that would be covered during his
11:02 20 testimony. For example, Milgaard did
21 not explain why he threw the compact out
22 of the car window. Nor did he respond
23 to the question 'where did it come
24 from?' Thirdly, Mr. Milgaard's denials
11:03 25 were lukewarm. These denials were not



1 characterized by the outrage and the
2 vehemence that one would expect from
3 someone confronting an unjust
4 accusation. For example, Milgaard
11:03 5 denied saying anything to Wilson in the
6 Calgary bus station. The words
7 attributed to Milgaard were tantamount
8 to a confession."

9 And I'm wondering, what was it that Mr. Tallis
11:03 10 said, was this your perception of what he was
11 saying or were these words that he used?

12 A These are my words which reflected my
13 understanding of what he told me.

14 Q And did you have the impression then, based on
11:03 15 your discussion with Mr. Tallis, that David
16 Milgaard was not vehemently denying these
17 allegations strongly enough?

18 A Yes.

19 Q And what effect, if any, did that have on your
11:03 20 investigation?

21 A It didn't, having regard to the grounds I was
22 investigating at that time, so we're talking May
23 of '90, when I spoke with Justice Tallis I think
24 that was November '69 --

11:04 25 Q '89?



1 A -- I'm sorry -- November '89, and then March or
2 early 1990. It helped put into some kind of
3 framework or context some of the information we
4 had received, maybe it improved, or it could have
11:04 5 some kind of impact on your comfort level. But
6 there were a number of questions about the case
7 which were out there, and one of them was why
8 didn't Mr. Milgaard testify given the nature of
9 it, of the Crown's evidence, and this tended to
11:05 10 help me get a better understanding of the context
11 behind the decision not to have the accused
12 testify at trial.

13 Q Okay. And would it be fair to say, then, that, as
14 opposed to I think when you started out you said
11:05 15 you wanted to find out why he didn't testify?

16 A Yes.

17 Q Were you then satisfied, then, that nothing
18 negative, or no inference should be drawn to the
19 fact that he didn't testify, at least in the work
11:05 20 you were doing?

21 A Correct. I mean, some people make good witnesses
22 and others are bad witnesses, and it's counsel's
23 assessment as to -- that's one of the assessments
24 counsel would make in advising the client to
11:06 25 testify or not. Certainly, the perception that a



1 jury may have will be influenced by the demeanour
2 and -- of a witness, and if you believe that your
3 strongest ability to develop reasonable doubt is
4 by keeping your client off the stand, that --
11:06 5 that's fair.

6 Q If we can go to 155227, the doc. ID is 155226, the
7 second page, and this is a letter March 22, 1990
8 from Deputy Chief Montague to you and in your
9 previous evidence I think you wrote to him on
11:07 10 March 1, 1990 asking him to search his files. Do
11 you recall us dealing with that letter?

12 A Yes.

13 Q And then he attaches some information which I'll
14 go through, but he also says:

11:07 15 "The statement taken from Linda Fisher
16 by Inspector K. Wagner August 28, 1980,
17 appears to have been referred to Staff
18 Sergeant J. Parker. We have not,
19 however, located any report of a
11:07 20 follow-up investigation and have not
21 been able to contact Parker, who is now
22 retired. Ken Wagner is now a Deputy
23 Chief with this Department."

24 And I believe this would have come up as a result
11:07 25 of Linda Fisher's interview of March 9th or 10th,



1 I think when she advised initially Joyce and Paul
2 Henderson, and then I think Sergeant Pearson,
3 that she had gone into the city police in 1980;
4 is that correct?

11:07 5 A That's correct.

6 Q Can you tell us generally, what did you make of
7 that, of the fact that she went in in 1980, and I
8 think you've looked at the statement that she gave
9 and the police report; is that fair?

11:08 10 A I did.

11 Q And can you tell us, what did you make of that?
12 Where did that fit in?

13 A Well, I found the timing a bit curious and I
14 wanted to find out why, why -- what was it about
11:08 15 that time that -- well, was there any significant
16 event that would have prompted that. That was
17 essentially it. I took a look at the statement to
18 see that, to compare it to what we later had
19 received from Paul Henderson and from Joyce
11:08 20 Milgaard and to see whether or not it contained
21 some additional details that we could use to get a
22 better picture of what her recollection was.

23 1980 was closer in time to the
24 event and certainly our experiences and our
11:08 25 memories fade as time passes and so there might



1 have been some opportunity to garner some
2 additional details from that statement. I later
3 learned, or in looking at this statement I came to
4 understand that sometimes the circumstances of its
11:09 5 taking, namely, that it had been given late, or
6 late at night or in the early morning hours in
7 time following some consumption of alcoholic
8 beverages might have had an impact on the police's
9 reception of it.

11:09 10 Q And where did you learn that from?

11 A I've forgotten exactly, but I believe that there's
12 some notation on a file that the folks had come in
13 and they had been --

14 Q Sorry, no -- yeah, I think the record shows that
11:09 15 it was at four in the morning or thereabouts that
16 she gave the statement.

17 A Yes.

18 Q What I was wondering is did you, did someone tell
19 you or did you learn that the police may have put
11:09 20 less significance on the statement in the middle
21 because it was in the middle of the night and she
22 had been drinking?

23 A No, that was my own perception. I know that based
24 on what was contained on the file, that it had
11:10 25 been referred to another officer.



1 Q Right. You talked -- before you said that you
2 were interested in the time and I guess I've got
3 two questions on that, one was, was it the time of
4 day that she went in or are you saying why 1980
11:10 5 rather than 1972?

6 A Did she have a motive quite apart from just
7 getting something off her chest that might inform.
8 The timing of that, was it at the instance or was
9 it prompted by any contact she may have had with
11:10 10 Mrs. Milgaard, was there some story line that
11 generated this desire to tell this some 10 years
12 after the event.

13 Q And how would that affect the credibility then of
14 the information?

11:11 15 A It's hard to say, but it's a circumstance that you
16 would want to take into account in terms of
17 receiving that evidence, receiving that material.

18 Q Now, we've had two factors put forward, I think,
19 before the Commission, that may have influenced or
11:11 20 been a factor in Linda Fisher going to the police
21 in 1980. I think in her, in a number of her
22 interviews, and indeed I think even before the
23 Commission she said that she recalled getting a
24 flier that had been put out by Joyce Milgaard
11:11 25 talking about any information that may lead, or



1 that may assist David Milgaard and talked about a
2 \$10,000 reward, although she said she wasn't going
3 in because of the reward, but that's what prompted
4 her to go in.

11:11 5 I think the record before the
6 Commission is that she went in in August of 1980,
7 the reward wasn't put out until December of 1980,
8 and so the other factor that may have influenced
9 her I think she said was that there was an article
11:12 10 in a newspaper right around the time that David
11 Milgaard had escaped from prison and as well I
12 guess a third factor is that Larry Fisher had been
13 picked up and charged with the incident involving
14 (V10) (V10)-. Now, do you recall any of those
11:12 15 three -- did you pursue any of those or where did
16 those factor in in your considerations?

17 A Certainly possibly the first one, the flier from,
18 launched by Joyce Milgaard, that would explain, or
19 one of the reasons why someone would come forward.
11:12 20 I don't recall hearing either from Mrs. Fisher or
21 from anyone that, you know, David Milgaard's
22 escape was a factor or that (V10) -- or Larry
23 Fisher's arrest in relation to the assault on
24 (V10) (V10)- was a factor.

11:13 25 Q Okay. And can you tell us then, and I believe it



1 may be covered in your interview of Linda Fisher,
2 certainly in others conducted around the time in
3 1990, how, if at all, would that have influenced
4 your thinking?

11:13 5 A It had -- it had very little if any influence on
6 my thinking, it was just one of the questions why
7 now. It puts into context the information that we
8 were provided.

9 Q And did you -- I think in this letter it says that
11:13 10 they are still, they haven't been able to locate
11 any report of a follow-up investigation. Did you
12 subsequently learn from the city police what they
13 did with Linda Fisher's statement?

14 A I think I did, but I don't -- my recollection is
11:14 15 that it was referred to Staff Sergeant Parker,
16 that he did something with it. He looked into
17 some of the circumstances, but didn't pursue it
18 much further.

19 Q And did that -- did that have any influence or
11:14 20 effect then on any of the work you did, the fact
21 that the police -- what the police did with the
22 1980 statement?

23 A No, it didn't. By then I had come to realize that
24 several members of the Saskatoon Police Department
11:14 25 weren't aware, and certainly some of those



1 involved in the homicide weren't aware of the
2 Fisher link to the Saskatoon and Winnipeg rapes,
3 so I'm not certain that they had followed that up,
4 they just put it aside.

11:14 5 Q And did that -- did you find anything unusual
6 about that, that this had not been pursued, did
7 that factor in in your investigation?

8 A No, it didn't. I think it was just one of those
9 unfortunate things, but it didn't happen. I
11:15 10 didn't read too much into it.

11 Q Go to the next page, and I think this is
12 follow-up, Mr. Asper I think had told you that
13 Sidney Wilson had provided information, or someone
14 had provided information that Linda Fisher had
11:15 15 been interviewed by the police. Do you recall
16 that being brought to your attention in around
17 February 28th, 1990?

18 A Yes, or --

19 Q Or around that time?

11:15 20 A Around that time.

21 Q And I think what you told us before is you asked
22 the city police, check your file, did you
23 interview Linda Fisher, and they say there is no
24 documented information to indicate she was
11:16 25 interviewed during this investigation, but then



1 they disclosed the 1980 report; is that correct?

2 A Yes.

3 Q Then they go on to summarize the statement, if we
4 can go down to the bottom, and again I think you,
11:16 5 there was also reference that Sidney Wilson had
6 talked to the police. That was information that
7 Mr. Asper provided to you as well; correct?

8 A Yes.

9 Q And here the police say:

11:16 10 "There is no documented information ...
11 that a Sydney Wilson or anyone else
12 contacted our department to advise that
13 Larry Fisher was responsible for this
14 homicide."

11:16 15 And then goes on to the reference -- go to the
16 next page -- about Detective McCorriston
17 interviewing him, this actually should be on
18 February 3rd, at the bus stop. And did you
19 become familiar with that police report and that
11:16 20 -- the one involving, I think it was the Monday
21 after the murder, where Larry Fisher was
22 interviewed at the bus stop?

23 A Yes, there was just a very short -- whether it was
24 an occurrence report I saw or a copy of a couple
11:17 25 of pages of notes or a notation in a notebook, I



1 saw information that Detective McCorriston had
2 interviewed Larry Fisher at the bus stop to
3 inquire about what he saw or didn't see the
4 previous Friday.

11:17 5 Q And again, did you place any significance on that
6 information, the fact that Larry Fisher was
7 interviewed by the police on the Monday a couple
8 of days after the murder?

9 A It was just another interesting fact that would go
11:17 10 into the mix. By itself, it certainly put him in
11 the vicinity, the same bus stop area that Miss
12 Miller may have used.

13 Q Then if we can go down here, I think you had asked
14 as well the police to check whether they had
11:18 15 interviewed Albert Cadrain about who else lived in
16 the house at the time; is that right?

17 A Yes.

18 Q And the police talk about:

19 "There are references in the file to
11:18 20 interviews having been conducted with
21 Albert Cadrain including a copy of the
22 statement taken from him."

23 Nothing to indicate Cadrain identifying any
24 individuals who resided there.

11:18 25 "Larry Fisher is not identified as a



1 resident or tenant in this dwelling by
2 Albert Cadrain."

3 Can you tell us at this point, did you have any
4 concerns about going to the Saskatoon City Police
11:18 5 being the force that investigated and --
6 investigated the Gail Miller murder which led to
7 the charge, prosecution and conviction of David
8 Milgaard, did you have any concerns about going
9 back to them and saying okay, assist me in going
11:18 10 through your files?

11 A I was certainly alive to the issue, or alive to
12 the charge or complaint that you are asking the
13 Saskatoon police to investigate themselves.
14 However, from my vantage point, there was only one
11:19 15 source for the information I needed and that was
16 the Saskatoon police. I wasn't asking them to
17 complete an investigation at my behest, I was
18 simply asking them questions as I would any other
19 witness and I felt that that was appropriate.

11:19 20 Q And so did you consider, for example, having an
21 officer attend for an examination under oath and
22 go through the file in that manner?

23 A I didn't because of the nature of the query. I
24 wasn't asking for testimony, I was asking for
11:19 25 someone to do some research, but whoever was



1 assigned, you know, I didn't anticipate any of
2 them would be -- firstly, they did not testify at
3 trial and the information they were providing was
4 not such that I felt it necessary to get that
11:20 5 information under oath. I was primarily looking
6 for file information and the file would speak for
7 itself.

8 Q Okay.

9 COMMISSIONER MacCALLUM: And if I
11:20 10 understand, Mr. Williams, you had no powers at
11 that time to march into the Saskatoon police
12 station and say, "all right, central registry is
13 off limits, I'm doing a search of this with my
14 own people," you had no such powers, eh?

11:20 15 A No, sir.

16 COMMISSIONER MacCALLUM: You just had to
17 rely on those people to provide the information
18 to you?

19 A That's correct.

11:20 20 BY MR. HODSON:

21 Q Did the fact that you did not have coercive powers
22 affect the approach you maybe took with some
23 witnesses?

24 A Yes.

11:20 25 Q In other words, does that mean that you would have



1 to be maybe less forceful than you otherwise would
2 be if you had coercive powers?

3 A Certainly if you have subpoena power, it's an
4 important, shall we say, persuader in getting
11:21 5 someone's co-operation, you can say lookit, we
6 would like to talk to you, we would prefer it if
7 you would come in and speak, but if not, then we
8 will obtain a subpoena to investigate. Knowing
9 that -- if a witness knows that he or she can't be
11:21 10 compelled, they have nothing to fear from a
11 refusal, there's no -- and where it really
12 impacted on us was in the timing of some of the
13 interviews that were done because you had to use
14 either moral suasion or developing a relationship
11:21 15 with the person to persuade them to talk to you,
16 and that was the case with a couple of the
17 witnesses, particularly Mr. Wilson, and, to a
18 lesser degree, Miss Nichol Demyen.

19 Q And so would you agree that -- let me back up. I
11:22 20 think you are saying that because you did not have
21 any coercive power, it presented challenges from
22 time to time in getting information and evidence
23 from witnesses; is that fair?

24 A Yes, and when you are talking about, well,
11:22 25 certainly civilians, but with respect to police



1 agencies, they don't have to give it to you.

2 Q What about -- would you agree that David Milgaard
3 would face the same hurdles, and his counsel, and
4 perhaps even to a greater extent, in approaching
11:22 5 witnesses to get the same information?

6 A Yes.

7 Q In other words -- and it may be a debate as to
8 whether witnesses would talk to someone from the
9 government before they would someone else, but you
11:22 10 would agree that he would have similar
11 challenges --

12 A Yes.

13 Q -- in getting people to talk to him, and perhaps
14 even more so in the case of some witnesses?

11:23 15 A Well, certainly, yes, some of the trial witnesses
16 were reluctant to talk to David Milgaard and Mrs.
17 Milgaard.

18 Q If we can go to 056755, and this is March 20th,
19 and this is a note of Sergeant Pearson's, we've
11:23 20 been through this before, this is about Linda
21 Fisher going to the prison to see Larry to try and
22 get cigarette butts and other information. Do you
23 recall being made aware of that?

24 A Yes.

11:23 25 Q And can you tell us, what was your reaction to



1 that and did you have concerns?

2 A I didn't think it was a good idea. My concern was
3 that at that point in time, and we're talking
4 March of '90, the preferred course of action would
11:24 5 be to gather the information without the
6 assistance of Linda Fisher and any type of
7 surreptitious manoeuvre.

8 Q If we can go to 332387, and this is a note, down
9 at the bottom, of Mr. Caldwell's, March 22, 1990,
11:24 10 and I'm going to be showing you a note in a moment
11 that I think you met the next day with the
12 Saskatoon City Police and Sergeant Pearson, and it
13 looks as though, at least according to Mr.
14 Caldwell's note, that he attended with you to the
11:25 15 provincial prosecutor's office, read file number
16 6, and Eugene Williams took copies of McCorriston
17 report, intact knife photo, photocopy, murder
18 still under investigation, initial statements of
19 Nichol John and Ron Wilson, also Dennis Elliott's
11:25 20 statements February 6, '69, (V4)---- (V4)---, both
21 from not used at trial. Do you have a
22 recollection of doing that?

23 A Yes.

24 Q And can you tell us, what was the purpose of that
11:25 25 meeting and/or file review?



1 A Well, at that point we -- I was looking at the
2 file, not just the prosecution file, but the
3 investigation file to determine whether or not
4 there was any material on there as had been
11:26 5 suggested that signaled that, you know, there were
6 some incidents of sexual assaults that the
7 prosecution may have had and not turned over,
8 etcetera, etcetera. That's essentially what I was
9 doing.

11:26 10 Q Okay. And we saw previously the October 25, 1989
11 letter I think you had written to Mr. Caldwell
12 based on a letter from Mr. Asper that said lookit,
13 Sandra Bartlett saw something on his file, he
14 checked, and then I think he sent you a fairly
11:26 15 detailed letter back which included some
16 statements; is that --

17 A Correct.

18 Q Can I -- I'm sorry, go ahead.

19 A And this was a follow-up to that.

11:26 20 Q And I think the (V4)---- (V4)--- statement was the
21 one that he sent you, but do you recall why you
22 would have got a copy of that statement at this
23 time?

24 A It may well have been that the initial copy that
11:26 25 we got was hard to read or -- I'm not certain



1 exactly why.

2 Q Do you recall at any time during the first
3 application any significance being placed on the
4 (V4)---- (V4)--- statement or information?

11:27 5 A (V4)---- (V4)---'s statement was placed by the
6 investigators on the file initially because
7 several investigators, or some of them at least,
8 had thought that it was relevant based on the
9 theory that Linda -- I'm sorry, Gail Miller's
11:27 10 killer was a serial rapist, and certainly to the
11 extent that (V4)---- (V4)--- was assaulted the
12 very same morning, there was some tie-in.

13 Q And again, did you -- were you aware again during
14 the first application that that statement had not
11:27 15 been disclosed to Mr. Tallis in the original
16 trial?

17 A I'm not certain. I think that's one of the things
18 I wanted to check with Mr. Caldwell, but if --

19 Q I think that's the evidence before the Commission,
11:28 20 that it was not.

21 A Okay. If it wasn't, then I certainly would have
22 checked with Mr. Caldwell and had been informed at
23 that time that it had not been disclosed.

24 Q And do you recall yourself putting any
11:28 25 significance on the first application -- let me



1 just help you out here. In August of '91 after
2 the second application is filed, (V4)---- (V4)---
3 came forward with information that said Larry
4 Fisher is the individual who assaulted her and
11:28 5 became part of the second application.

6 A Yes.

7 Q But I'm trying to go back. Do you recall --

8 A I didn't put much significance on it. A couple of
9 things as I recall occurred to me. One was that
11:28 10 Miss (V4)--- was, had been assaulted at or just
11 shortly after the anticipated time of the Miller
12 assault at a location significantly further away.
13 I believe that the description she provided of her
14 assailant wasn't close to the then physical
11:29 15 description of Larry Fisher and the nature of the
16 assault was much different from, in terms of the
17 violence that attended it, in comparison to the
18 violence that befell Gail Miller.

19 Q Would -- and I think at this time you would have
11:29 20 had it, so March, 1990, a copy of the statement;
21 correct?

22 A Yes.

23 Q Would the (V4)---- (V4)--- statement have been
24 part of the documents that you provided to Mr.
11:29 25 Wolch and Mr. Asper at the October 1, 1990



1 meeting?

2 A It may have been. I'm not certain as we speak.

3 Q Okay.

4 A I think so.

11:29 5 Q And again, what would be -- what was it that was
6 given to them at the October 1, 1990 meeting, was
7 there information that was not included?

8 A Yes, and that was the answers received from
9 Justice Tallis.

11:30 10 Q Apart from that, was any of the information that
11 you gathered, interviews conducted, reports
12 obtained, did you go through and remove any of
13 those from what were given?

14 A Not that I recall.

11:30 15 Q Let's just talk about the (V4)---- (V4)---
16 statement for a moment. I think later on in the
17 second application it certainly was put forward by
18 counsel for David Milgaard that this is
19 information that was significant and could have
11:30 20 been significant at trial if it had been disclosed
21 to Mr. Tallis, and I want to go back, when you are
22 pursuing the first application, trying to get your
23 take on the following question as to -- was this
24 something that was part of your investigation to
11:31 25 look at, okay, here's something that might be new



1 or is that something that Mr. Milgaard is
2 responsible to come up with?

3 A No, this is something that came up during the
4 course of our examination of the Larry Fisher
11:31 5 ground and I believe we provided it to him, this
6 was part and parcel of it. We knew about (V4)---
7 and we took a look at the statement of (V4)---, of
8 Miss (V4)--- at the time, and put it into -- and
9 considered it.

11:31 10 Q And so I take it on the first application, am I
11 correct that you did not -- I mean, it wasn't put
12 forward as a ground specifically?

13 A No, it wasn't.

14 Q And you became aware of it, but it did not become
11:31 15 a significant, or a factor in what you
16 investigated?

17 A That's correct. Based on what I understood the
18 description provided by Miss (V4)--- to be of her
19 assailant and knowing what I knew about the
11:32 20 physical appearance of Larry Fisher as he then
21 was, the description that Miss (V4)--- provided to
22 the police didn't seem to match, in my view, Mr.
23 Fisher's description.

24 Q Would you have assumed that Mr. Wolch and Mr.
11:32 25 Asper were already aware of this information based



1 on their research?

2 A No, I didn't make that assumption at that time.

3 Q And what I'm trying to get at is whether -- did
4 you feel it was part -- did you think it was part
5 of your investigation to look at this and say
6 okay, this might be a new ground, maybe Mr.

7 Caldwell, he didn't disclose this, maybe if he had
8 this would have given rise to a certain defence,
9 or is that something that you say is the
10 responsibility or was the responsibility of Mr.
11 Wolch and Mr. Asper to develop and put forward?

12 A Well, firstly, I don't think in the circumstances
13 that you've described it, that that would be the
14 responsibility of Mr. Wolch and Asper. It might
15 have been -- it might have been a ground or cause
16 for concern if, for example, by the contents of
17 that statement, you know, you could see the
18 obvious link to the Miller homicide, but in
19 hindsight you could say, hey, maybe he should have
20 disclosed it, but based on what was then known, I
21 didn't see anything untoward in not disclosing it,
22 I didn't see any obligation on Messrs. Wolch and
23 Asper to bring it forward.

24 I did see an obligation on my
25 part as I was going through the file knowing that



1 this issue had arisen, I saw an obligation to
2 collect that type of information because it
3 related to the complaint or the concern brought on
4 by Mr. Asper and Mr. Wolch that, you know, this
11:34 5 Larry Fisher was the culprit and here on the
6 homicide file was a report of an assault. I think
7 Miss (V4)--- wasn't -- I believe someone exposed
8 himself to her as I recall.

9 Q Yeah, I think what the records reflect is that she
11:34 10 had the books knocked out of her hand and the
11 individual ran his hand up her coat or leg.

12 A Yeah.

13 Q And then ran away.

14 A Yeah.

11:34 15 Q And I think her evidence was that it was at 7:07
16 a.m.

17 A In the morning?

18 Q In the morning, about six or seven blocks from
19 where Gail Miller's body was found, and we've
11:35 20 heard evidence from witnesses that say it couldn't
21 have been the same perpetrator, others say it
22 could be, so again, that based on the timing, I
23 think it's fair to say most witnesses have said it
24 was very tight.

11:35 25 A Yeah.



1 Q But I'm trying to get back to what your -- did you
2 consider that this might have been information
3 that, if it had been given to Mr. Tallis at the
4 time of trial, might have led to a chain of
11:35 5 inquiry that may have led him to the other sexual
6 assaults, to Mr. Fisher, or to something else; is
7 that something that would have crossed your mind
8 when you looked at that in your role as an
9 investigator?

11:36 10 A Yes.

11 Q And, again, so that on the first application you
12 would have concluded that there isn't anything to
13 that?

14 A Yes.

11:36 15 Q And, again, would you have, do you think, would
16 you have shared that information that you gathered
17 with Mr. Wolch and Mr. Asper at the October 1,
18 1990 meeting?

19 A I believe I did.

11:36 20 Q And so again, if they were of the view that the
21 (V4)--- statement, for example, gave rise to a
22 miscarriage of justice, then are you telling us,
23 then, they could have certainly brought it
24 forward?

11:36 25 A Yes. That -- like I mean in the context of the



1 first application, I don't think they relied on
2 it, but in the context of the second one they
3 certainly did.

4 Q Right. But what I am trying to understand is
11:36 5 whether --

6 A They could have, if having received it in October
7 or been exposed to it, they may have more
8 specifically alluded to it when they, quote, "gave
9 their final submissions" I think during early
11:37 10 January or late December of that year. But it
11 wasn't, quote, "specifically mentioned", it was
12 part of the Larry Fisher submissions.

13 Q Okay. Let's take a step back, though, and what I
14 am trying to get at is who -- you've told us that
11:37 15 your responsibility is to investigate the grounds
16 of what's put forward, and I think you've told us
17 that that -- I think you said that doesn't mean
18 you have the blinders on, you sort of look at
19 matters. But if David Milgaard wished to make an
11:37 20 application on the grounds that there was improper
21 disclosure at trial, and that was the grounds for
22 the miscarriage of justice, --

23 A Yes.

24 Q -- is that something that you would have expected
11:37 25 his counsel, then, to go out and get the Crown



1 file in some format or another, or get the
2 information from Mr. Tallis, or do whatever it
3 takes, put it forward to you, and have you
4 investigate that?

11:38 5 A Yes.

6 Q And so, in this case, it was not put forward as a
7 ground?

8 A No.

9 Q And in the course of your investigation on the
11:38 10 first application you came across certain
11 information that you became aware had not been
12 disclosed; is that fair?

13 A Yes.

14 Q Including the (V4)---- (V4)--- statement? And I
11:38 15 think you're telling us that you considered it,
16 concluded that there wasn't significance to it,
17 but that you think it was likely provided to Mr.
18 Wolch and Mr. Asper at the October 1 meeting as
19 being the fruits of your investigation; is that
11:38 20 fair?

21 A Yes.

22 Q And if they felt there was something to do with it
23 they could have, at that time or at any other
24 later time, brought it forward; is that correct?

11:38 25 A Yes. And I believe, separate from the October



1 meeting, there had been a specific request made of
2 me by Mr. Wolch and Mr. Asper for statements like
3 that.

4 Q For witness statements?

11:39 5 A Yes.

6 Q And that was prior to October 1?

7 A I believe so.

8 Q And, again, would you have any reason not to
9 provide Mr. Wolch and Mr. Asper any witness
11:39 10 statements that you obtained either from Mr.
11 Caldwell or from the police file?

12 A No. Subject to certain caveats, no, I wouldn't.

13 Q Subject to what?

14 A What I call certain caveats.

11:39 15 Q And would that be non-publication-related issues?

16 A Yes. I mean folks have given witness statements
17 15, 20, 20 years earlier. Certainly for the
18 purposes of them pursuing investigative lines,
19 fine, but for the purposes of it being the subject
11:39 20 of a newspaper article, that was not fine.

21 Q Okay. If we can go to 056759. This is now March
22 23, 1990, and this is the day you meet with the
23 Saskatoon police, we touched on this a bit
24 earlier. And it looks as though you and
11:40 25 Mr. Pearson had a meeting that day for two or



1 three hours, compared facts of the case, and
2 checking out the activities of Larry Fisher; do
3 you have a recollection of this meeting beyond
4 what's in this note?

11:40 5 A No, sir, I don't. I recall we met and we talked
6 about where -- what we had collected, what the
7 next steps would be, and we also discussed some of
8 the sources that might provide us with information
9 and, as I recall, we divvied up certain tasks.

11:40 10 Umm --

11 Q And this all related to Larry Fisher as a suspect?

12 A Yes.

13 Q What do you recall about efforts to get his
14 employment records from the time?

11:41 15 A I believe, as a result of investigations he had
16 conducted, Sergeant Pearson had identified the
17 employer and had tried to -- and had located the
18 employer, or certain of the representatives, and
19 discovered that the company was no longer in
11:41 20 business, and that just a month or two previous,
21 or within a very short period of time before we
22 launched our inquiries, had destroyed or caused
23 their records to be destroyed. I can recall
24 making calls of either -- Workmens' Compensation
11:41 25 Board in an effort to find out whether Mr. Fisher



1 had been on claim for that period, because that
2 would certainly explain or could provide one
3 explanation for why he wasn't at work and why he
4 may have been dressed up in his clothes, and we
11:42 5 checked on some other sources that might have a
6 record to signal whether or not he was at work on
7 that date. And, in addition, I think we tried to
8 find out the identity of his supervisors, some of
9 the people he worked with, to see if they had a
11:42 10 specific recall.

11 Q And so obviously, if there was a record that
12 confirmed that he was at work that morning, at
13 least at the time of the murder, that would tend
14 to exculpate him; correct?

11:42 15 A It certainly could.

16 Q And but similarly, if there was a record that he
17 was not at work that morning, that might be of
18 assistance?

19 A Well, it would certainly confirm the aspects of
11:42 20 Linda Fisher's account, yes.

21 Q And so you and Mr. Pearson divvied up those tasks,
22 and we've heard from Sergeant Pearson on some of
23 his efforts, and it sounds like you, as well, made
24 some inquiries?

11:43 25 A Yes. The bulk of them, however, fell to Sergeant



1 Pearson.

2 Q And was it a challenge doing this 20 years after
3 the fact, trying to investigate?

4 A Yes. You know, memories grow dim, some of the
11:43 5 records had been destroyed, and the witnesses
6 didn't recall.

7 Q And so just on the, I think the inquiries then
8 would be made March 3rd of 1990, of Mr. Fisher's
9 employer, is that right, around there?

11:43 10 A It began then, yes.

11 Q And did you then learn that they had been
12 destroyed within the previous, I think you said,
13 months, or just months prior?

14 A Yes, some of them, yes.

11:43 15 Q Now, just down at the bottom, just a comment here
16 about your dealings with the Saskatoon City
17 Police. Generally, throughout your investigation,
18 did you have any issues or concerns about the
19 information they provided by way of documents,
11:44 20 notebooks, access to officers for interviews,
21 anything of that nature?

22 A No, I received full cooperation from them, and
23 they were quite hospitable.

24 Q Paragraph 76 talks about Sergeant Pearson trying
11:44 25 to get letters that Larry Fisher had written to



1 Linda Fisher while he was in jail; do you remember
2 the significance of that or why you were pursuing
3 that?

4 A I -- I think -- I believe that sergeant Fisher
11:44 5 (sic) had received communications from Mrs. Fisher
6 -- I'm sorry -- Sergeant Pearson had learned that
7 Mrs. Fisher had some materials she thought might
8 be relevant and wanted to provide it to him.

9 Q Okay. If we can go to 004930. And this is, it's
11:45 10 called sworn statement of Linda Fisher, and I
11 think it was a question and answer examination
12 that you conducted before a court reporter; is
13 that right?

14 A That's right.

11:45 15 Q Ten days ago we, when you were testifying, we went
16 through some of the issues, I think you identified
17 for us some of the areas that you wished to pursue
18 with Linda Fisher; do you recall that, that
19 evidence, Mr. Williams?

11:45 20 A Yes.

21 Q And I think you told us about the description of
22 the knife, whether or not Larry Fisher caught the
23 bus the morning of the murder, whether he had come
24 home that night or not, and I think you had some
11:45 25 differing pieces of information in that regard; is



1 that correct?

2 A Yes.

3 Q When you went into your interview with Linda
4 Fisher did you have concerns about her
11:46 5 credibility?

6 A No. I didn't think, I wasn't worried that she was
7 lying, I just needed to clarify what she was
8 saying.

9 Q And when you say "clarify" what do you mean by
11:46 10 that; what were you concerned about?

11 A Well there were certain statements that had been
12 provided to Mrs. Milgaard and there were certain
13 statements she had provided to Sergeant Pearson
14 who had interviewed her, I was hoping to get some
11:46 15 additional details, because I felt that that would
16 help me better understand what it is she was
17 saying.

18 Q And would it be correct to say that whatever she
19 had to say, whether it be to you, to Sergeant
11:46 20 Pearson or Joyce Milgaard, would be an important
21 piece of information in considering the Larry
22 Fisher ground; is that fair?

23 A Yes.

24 Q Now this took place -- if we can maybe go to the
11:47 25 next page. And I think the exhibits, I think what



1 you put to her in the course of the examination
2 were her two statements to Joyce Milgaard, as well
3 as her original statement to the Saskatoon police;
4 is that correct?

11:47 5 A Well --

6 Q They were at least exhibited and she was
7 questioned on them?

8 A Yes. I'm reasonably certain that I did exhibit,
9 to her, her 1980 statement, her statement to
11:47 10 Mrs. Milgaard, and I think possibly her statement
11 to Sergeant Pearson. I'm not certain.

12 Q Okay. And can you tell us why did you have this
13 before a court reporter and under oath?

14 A By then, I felt that it would be preferable to
11:48 15 have a complete record, or an accurate record from
16 an independent third party. I felt that having it
17 under oath would certainly impress, impress
18 Mrs. Fisher about the seriousness of it, and it
19 was just a stronger form. In my view, moral
11:48 20 suasion could be brought into play of getting a
21 strong assurance that what we were hearing was the
22 truth. Previously I had questioned Ms. Hall, and
23 I had done so under oath with the benefit of a
24 court reporter, and I was aware in March of 1990
11:48 25 that there were certain complaints about my



1 treatment of Ms. Hall, and certainly, to the
2 extent that I had a transcript and a recording,
3 those two records helped to dispel accusations
4 that I had behaved improperly in my dealing with
11:49 5 the witness, and that factored into the decision
6 to also do -- or to also conduct the interview, on
7 oath, in front of a reporter.

8 Q And did the examination take place, I understand,
9 at the RCMP detachment; is that right?

11:49 10 A It did. There was a room that had been set aside
11 and --

12 Q And who selected the detachment; do you know how
13 that happened?

14 A I think I probably did in consultation with
11:49 15 Sergeant Pearson. We were looking for a place
16 that was -- would afford the privacy and was
17 convenient and comfortable for the witness. In
18 relation to Ms. Hall, I believe I had secured a
19 conference room in a downtown hotel, or a hotel.

11:50 20 Q And did you have any concerns that having Linda
21 Fisher attend at the police detachment to be
22 interviewed might, in some way, adversely affect
23 her or intimidate her?

24 A At that time, I did not. I was aware that she had
11:50 25 had some contacts with Sergeant Pearson, they



1 appeared to get along very well, and there didn't
2 appear to be any signs of intimidation, as I
3 observed.

4 Q It's been suggested by some, Mr. Williams, that
11:50 5 the examination under oath at the RCMP detachment
6 was done to intimidate Linda Fisher; is that the
7 case?

8 A That wasn't my intention and that was not the
9 case.

11:50 10 Q The -- can you tell us what, what were your
11 observations of Linda Fisher on that day as far
12 as -- this would be the first time you dealt with
13 her; is that right?

14 A It was. Mrs. Fisher appeared to be a shy woman
11:51 15 and, at the beginning, was a tad nervous. We had
16 took a few minutes, Sergeant Pearson had had
17 contact with her, he introduced her to -- or me to
18 her, and we gave her a brief description that I
19 would be questioning her about her earlier
11:51 20 statements, that for completeness we would be
21 doing it in the presence of a court reporter, we
22 ascertained whether she would have any objection
23 to providing it under oath, and when we received
24 no objection we then proceeded.

11:51 25 Q And, again, did you contemplate or consider



1 allowing Mr. Asper or Mr. Wolch to be present at
2 this interview?

3 A I did not. Mr. Asper and Mr. Wolch, via their
4 client, had already had an opportunity to speak
11:52 5 with Linda Fisher, they had done so, they had
6 chose not to invite us, and that -- that was
7 entirely their right. And to the extent that we
8 had some questions and -- that clarified, or could
9 clarify the information we had received, we felt
11:52 10 that it was entirely appropriate.

11 Q Now do you recall if you had any discussions with
12 Linda Fisher that were off the record, either
13 before or after this interview, that related to
14 the substance of her statements?

11:52 15 A I don't believe we did. There may have been some
16 discussion off the record about getting a letter
17 or some letters to Sergeant Pearson, but that,
18 that didn't have anything to do with the thrust of
19 her statement.

11:52 20 Q Again, your observation, can you tell us your
21 observations of her throughout the course of the
22 interview then? You said initially she was
23 nervous, did that --

24 A She was a little bit nervous or apprehensive, but
11:53 25 during the course of the interview she responded



1 to my questions, she didn't appear uncomfortable.
2 The tone of voice that was used was much the same
3 as what I am using now and she seemed, she seemed
4 responsive and quite con -- I wouldn't call it
11:53 5 content, but she was not displaying any signs of
6 unrest or apprehension --

7 Q What would --

8 A -- at the end of the interview.

9 Q Was one of your purposes in this examination to
11:53 10 challenge her on some of what she was saying?

11 A I'm not certain that that was the case. I think
12 what I wanted to find out was I wanted to confirm
13 certain of the things that she had said, and
14 eliminate other things, and one of the things I
11:54 15 wanted to confirm was the colour of the knife that
16 she lost, and try and get some, some context to
17 the discussion she had with Larry when she saw him
18 not in his work clothes, because that was a little
19 bit unclear in my mind.

11:54 20 Q And so in clarifying, then, with her, what, can
21 you tell us what was your strategy going in; how
22 did you plan on clarifying this?

23 A I wanted to question her about some of the events
24 about, or that surrounded her confrontation,
11:55 25 hopefully it would put things into context. I



1 wanted to -- just some of the questions, "what was
2 the colour of the knife", produce and show to her
3 the knife that we found, how did that compare to
4 the one she lost, and that was a key and that's
11:55 5 why I exhibited it to her.

6 Q Okay. If we could go to page 004936, please.

7 COMMISSIONER MacCALLUM: Before you do
8 that, could I just remark that the witness said
9 that 'the tone of voice was as I am using when
11:55 10 I'm speaking now', and of course that doesn't
11 mean much on the record, so may I observe, with
12 the agreement of all, that he was using an even
13 tone of voice in his testimony before us, and not
14 loud or exaggerated?

11:55 15 MR. HODSON: I believe Mr. Frayer will be
16 giving us the pleasure of listening to some of
17 that interview a bit later, so --

18 COMMISSIONER MacCALLUM: Okay, thanks.

19 MR. HODSON: -- we may hear Mr. Williams,
11:56 20 at least part of all of that interview, at a
21 later date.

22 COMMISSIONER MacCALLUM: Yeah.

23 BY MR. HODSON:

24 Q If we could just go to, just a couple points here:

11:56 25 "Q Was his work affected by the weather?"



1 Were you trying to find out whether there might
2 be some other reason he was at home, or can you
3 elaborate on that?

4 A Well I knew that the temperature that morning was
11:56 5 about 35-40 degrees, and he was working in
6 concrete, cement, and if it's really, really cold
7 you can't pour, you can't work certain types of
8 construction jobs, so that that's why I was
9 asking.

11:56 10 Q If we can go to 936 -- or sorry -- 938, please.
11 And here you talk about the -- and we have been
12 through this, Mr. Williams, with other witnesses,
13 and I think we will be through it again, so I
14 don't want to touch on all the details. But,
11:57 15 again:

16 "... tell me under what circumstances it
17 was that you gave that statement?"

18 And that would have been to the city police --

19 A Yes.

11:57 20 Q -- in 1980?

21 A Yes.

22 Q And I think you've told us that you wanted to
23 figure out why she went in when she did?

24 A Yes.

11:57 25 Q And here she says:



1 "There was a flier in the mail from
2 Milgaards saying that their son was
3 innocent ...",

4 etcetera. And, again, any significance to that
11:57 5 answer at the time?

6 A No, it was just to put in the context the timing
7 of her statement.

8 Q And then, the next page, you ask about when she
9 went in and whether she'd been drinking before she
11:57 10 went in; what prompted that question or that line
11 of questioning?

12 A I believe I had had some information from the
13 police that possibly she had been drinking.

14 Q I think it may have been in the police report or
11:57 15 even her statement --

16 A Yes.

17 Q -- that she'd had a few drinks?

18 A Yes.

19 Q And, again, what was the purpose in --

11:58 20 A Well certainly, to the extent that a witness has
21 been under the influence of alcohol, that might
22 affect their recall at that time.

23 Q Okay. And if we can go to 004945. And this is
24 where you get into the description of the knife,
11:58 25 and I think this is taken from the October -- or



1 pardon me -- from the 1980 statement, and I think
2 it's pretty clear that she's describing a knife
3 that is different than the maroon-handled paring
4 knife; was that your assessment?

11:58 5 A Yes.

6 Q What significance, if any, did you place on that
7 information?

8 A The inference that I guess we were asked to draw
9 was that Larry Fisher killed Gail Miller and used
11:59 10 a paring knife that he took from his wife's
11 kitchen, or at least that was one of the things,
12 and if that's so then you want to find out whether
13 the knife she was missing corresponded to the
14 knife that was found at the scene, and that's why
11:59 15 I asked her to describe it.

16 Q Now obviously, if the knife she was missing was a
17 maroon-handled paring knife, that might be
18 information that might link Larry Fisher to the
19 crime?

11:59 20 A Yes.

21 Q And we talked about this earlier, about going from
22 suspicion to linking Larry Fisher to the murder,
23 and if Linda Fisher described the murder weapon as
24 being a knife that she owned, or they owned, and
11:59 25 that went missing the day of or the day before the



1 murder, would that be evidence that would link or
2 could link Larry Fisher to the murder of Gail
3 Miller?

4 A Yes.

12:00 5 Q And the fact that she described the missing knife
6 as being different than the murder weapon, can you
7 tell us what conclusions, if any, did you draw
8 from that?

9 A That certainly, by the knife, it didn't link him.
12:00 10 But it was, you know, in all of the circumstances
11 he was still a person of interest.

12 Q And so it didn't exclude him?

13 A No.

14 Q Is that fair?

12:00 15 A Correct.

16 Q I see it's 12:00, it's probably an appropriate
17 spot to break.

18 COMMISSIONER MacCALLUM: Okay.

19 (Adjourned at 12:00 noon)

01:32 20 (Reconvened at 1:32 p.m.)

21 BY MR. HODSON:

22 Q Good afternoon. If we could call up the Linda
23 Fisher transcript, 004930, and go to page 948. I
24 just want to continue through this, Mr. Williams,
01:32 25 and get your perspective on what -- your lines of



1 inquiry and what prompted them. Here you ask
2 about line 4, and this relates to the discussion
3 between Linda Fisher and Larry Fisher where she
4 said that she accused him of killing the nurse,
01:33 5 and in her statements she indicated that this was
6 the morning of Gail Miller's murder. You recall
7 that being in her statements?

8 A Yes.

9 Q And so you say:

01:33 10 "How long before dinner did you say to
11 him, "You probably killed that nurse?"
12 Can you tell us, what would be the importance of
13 the timing of when she had this discussion with
14 Larry Fisher?

01:33 15 A The timing reflected or might have had a bearing
16 on the day in which she had the discussion. For
17 example, the body was discovered at 8:30 that
18 morning and the question was at what point in time
19 did the, either the radio or the media report the
01:34 20 finding of, firstly, a body, and then, secondly,
21 identifying the body more particularly by way of
22 profession, so that type of detail I might expect
23 coming out the next day, and secondly, it would
24 permit me an opportunity to check with media
01:34 25 sources wherever possible to determine when the



1 news was first broadcast and, if so, in what
2 detail.

3 Q And so, for example, if she said that on the
4 morning of the murder at around nine or 10
01:34 5 o'clock, which I think was in one version of
6 events, she had an argument with Larry Fisher
7 after hearing on the news that a nurse had been
8 murdered, that might cause you to conclude that it
9 wasn't the morning of the murder?

01:34 10 A Yes.

11 Q Now, let's just take that a step further. The
12 murder was on a Friday. If the argument and
13 exchange between her and Larry Fisher had been the
14 next day or the next week or something like that,
01:34 15 can you tell us what significance if any that
16 might have had in assessing her version of events?

17 A Well, the timing of the argument relates to the
18 discovery of when Larry did or didn't go to work,
19 so if the argument took place -- or at least that
01:35 20 would be one area to explore. If, in using the
21 argument as a reference point to locate when he
22 didn't go to work, --

23 Q Yes.

24 A -- then that would be of some significance.

01:35 25 Q So, for example, and I think it has been contended



1 by some that the argument may have taken place on
2 the Saturday, in which case Larry Fisher being
3 home in non-work clothes Saturday morning would
4 not be unusual?

01:35 5 A Assuming of course that he didn't work an
6 Saturdays ordinarily.

7 Q Right.

8 A Okay. I think her evidence was that he worked
9 Monday to Friday.

01:35 10 Q Okay. So again, that would be the significance of
11 the timing of the argument and the newscast, is to
12 try and pinpoint whether the day was the morning
13 of the murder?

14 A Yes.

01:36 15 Q And I think, is it fair to say, that Linda Fisher
16 believed it was the morning of the murder when she
17 thought back "do you recall that morning"?

18 A Yes. In her responses to me, yes.

19 Q So here when you ask the question she answers:

01:36 20 "A I don't know, it could have been maybe
21 between ten, eleven. Could have been as
22 soon as -- I'm not sure when I said it.
23 As soon as I started arguing or -- it
24 came on the newscast. Whenever it came
01:36 25 on the newscast is when I thought of my



1 knife, and I thought of something else
2 to accuse him off. That's -- I was just
3 accusing him of everything."

4 And so again, that -- do you recall finding out
01:36 5 when the matter was on the newscast?

6 A I know we asked the question. At this moment I'm
7 not certain of what the answer was.

8 Q And this may have been uncovered in the 1993 RCMP
9 investigation, I think it was 12:30 I believe was
01:37 10 when it was on.

11 A At the earliest.

12 Q At the earliest, and I'm not exactly sure whether
13 there was any reference to it being a nurse or
14 not, but certainly the murder was reported then.
01:37 15 Is that something you would have learned at the
16 time do you know?

17 A I don't believe I did find out.

18 Q Is it something that you thought based on, and
19 again this is 1969 with no internet and limited,
01:37 20 much more limited radio and television, would you
21 have been assuming that given the body was
22 discovered at 8:30, that it's unlikely it would
23 have hit the newscast or the radio cast at nine or
24 10 o'clock that morning?

01:37 25 A No, the fact that a body had been discovered in an



1 alley in a certain part of Saskatoon, it wouldn't
2 surprise me that, you know, you would get a news
3 bulletin about that. What would surprise me is
4 that you would get the level of detail about the
01:38 5 victim, that, for example, it was a nurse, because
6 generally after, once the police are called, they
7 will take certain steps to secure the scene and
8 there would be some time that will elapse for the
9 police to identify the victim and to find out
01:38 10 certain particulars about the victim, so I would
11 expect that those details would only surface some
12 significant time after the body was discovered.

13 Q And so just so that I have this right, on this
14 line of questioning, if it led to the conclusion
01:38 15 that the argument Linda Fisher had with Larry
16 Fisher was the morning after the day of the
17 murder, in other words, the next day or a
18 subsequent day, then that would, I think what you
19 are telling us, that that would mean she could not
01:38 20 verify that Larry was not -- or that she could not
21 say that Larry didn't go to work on the morning of
22 the murder?

23 A Correct.

24 Q Go to the next -- I think as well at the bottom,
01:39 25 if we can just scroll down, and I think she was



1 fairly consistent in all of her statements, saying
2 that it wasn't a serious accusation when she made
3 it, she was just mad at him, and that she really
4 didn't think it at the time that he had been
01:39 5 involved in the murder. Do you remember getting
6 that?

7 A Yes.

8 Q And what if any significance did you place on
9 that?

01:39 10 A Basically that apart from -- she wanted to egg him
11 on during the argument, that at that moment, and
12 by that I mean at the time that she was having the
13 argument she didn't have a factual basis to
14 believe that he had been involved in the homicide,
01:39 15 but apart from the bold accusation, she wanted to
16 get after him, so whether she really believed it
17 or not, she made the accusation and that's what
18 she admitted at the time, it was done out of anger
19 and for no other reason.

01:40 20 Q If we can go to 951, please, and here at the
21 bottom, it looks as though you show her the two
22 statements that she gave to Mrs. Milgaard and Paul
23 Henderson; is that correct?

24 A Yes.

01:40 25 Q And then I think was it your intent then to go



1 through and identify the statement and have her
2 clarify or question her about certain matters in
3 there?

4 A Yes.

01:40 5 Q Then the next page, they are marked, and it says:

6 "A Now I'm not positive he took the 7 a.m.
7 bus even.

8 Q You are referring to something which is
9 on what page?

01:40 10 A On page two."

11 And am I right that she raised some concerns
12 about what was in the statements when you showed
13 them to her?

14 A I wanted her to reread the statement and to
01:41 15 confirm the accuracy of it. It had been a little
16 bit of time that had elapsed between the taking of
17 the statement and my presenting it to her. It may
18 well be that in the interval she may have thought
19 of something else or wanted to clarify, but I
01:41 20 wanted to confirm that what I was presenting to
21 her as a written document was the statement that
22 she was prepared to affirm or at least confirm the
23 contents as being correct before proceeding to
24 question her further on it.

01:41 25 Q And I think just for clarification, in her



1 original statement to Joyce Milgaard of March 9th,
2 she says:

3 "He would normally get out of bed and
4 dress in time to catch the 7 a.m.
01:41 5 bus..."

6 And now she says:

7 "A Now I'm not positive he took the 7 a.m.
8 bus even."

9 You are referring to page 2, what line, etcetera,
01:41 10 and it would appear that she volunteered this
11 without a question; is that right, that having
12 looked at the statements?

13 A Without looking at the previous page, I would
14 assume so, yes.

01:42 15 Q Yeah. Let's just go back to the previous page,
16 the bottom, and actually just scroll up a couple
17 of lines. You gave two statements, you identified
18 them, this is a correct document, showing it to
19 her and ask her to look at that. And then the
01:42 20 next page, then it says:

21 "A Now I'm not positive he took the 7 a.m.
22 bus even."

23 And you say:

24 "Q You are referring to something which is
01:42 25 on what page?



1 A On page two.

2 Q On what line?

3 A The first line."

01:42 4 A Okay, and having my recall refreshed, I believe
5 she was re-reading her statement.

6 Q Yes.

7 A And she had gotten to page 2 and she made the
8 comment that you see at line 3 without further
9 prompting from me.

01:42 10 Q If we could just go to 050603 which is the
11 statement, and go to the second page -- or sorry,
12 just at the bottom here:

13 "I awakened in our bed... At the time,
14 Larry was working as a laborer for Jones
01:43 15 Construction. He would normally get out
16 of bed and dress in time to catch the 7
17 a.m. bus a block from our house to ride
18 to work."

19 So that's the reference in the transcript?

01:43 20 A That's correct.

21 Q And it appears that in reading her statement she
22 volunteered that the seven a.m. may be wrong?

23 A She wasn't sure.

24 Q If we can go back to the transcript, please, and
01:43 25 go to page 952. So again, that's where she says



1 I'm not positive he took that and then you query
2 that, and again, would that be something that
3 would prompt you to probe a bit further?

4 A Just to clarify what was contained in her
01:44 5 statement, yes.

6 Q And did that concern you, that the statement, I
7 think, had only been given maybe five or 10 days
8 earlier. Were you --

9 A I wasn't certain about the making of the statement
01:44 10 and what the mechanics of it had been, so I can't
11 say I was overly concerned. I just wanted to
12 assure myself that this individual at this time
13 was prepared to confirm what had been recorded and
14 attributed to her, that was my main objective at
01:44 15 that time.

16 Q If we can go to page 954, and this is where --
17 call out that part. Exhibit 1 is her statement of
18 August 28th, 1980 to the Saskatoon City Police,
19 that's the very first one, okay, and you say:

01:45 20 "Q Can you examine Exhibit 1 and indicate
21 to me the page of reasons or point out
22 to me the reasons why you thought that
23 Milgaard was innocent?"

24 And then can you tell us, what was the purpose of
01:45 25 that question?



1 A I was asking the witness the reasons behind her
2 conclusory statement that she thought David
3 Milgaard was innocent.

4 Q And so the reference to the conclusory statement
01:45 5 was in the statement saying I believe he's
6 innocent and you want to find out from her why she
7 thinks that?

8 A What is the factual foundation for that belief,
9 yes.

01:45 10 Q And did you have any concerns in asking the
11 question in that manner, asking her to list the
12 reasons why she -- that stood behind the statement
13 she had made?

14 A I had no concerns. I needed her to articulate her
01:46 15 reasons in her own words without any prompting
16 from me.

17 Q Okay. And so the answer is:

18 "A Because my knife was missing and Larry
19 was home. He was charged with rapes."

01:46 20 And then:

21 "A The page you mean?

22 Q Well, yes, I just want you to identify
23 to me those portions of the statement
24 which list the reasons why you thought
01:46 25 Milgaard was innocent?"



1 And then you go through and mark them on the
2 statements, and I'm wondering what the purpose of
3 that was, to have her mark them on the
4 statements?

01:46 5 A Just for identification I assume.

6 Q Then the next page, the top, you question her, and
7 again this is the 1980 statement is Exhibit 1:

8 "Q ...you have started with the paragraph
9 beginning, "The day of the murder or the
01:47 10 day after, I found my paring knife
11 missing"?"

12 And then you say:

13 "Q Can you help us now as to whether it was
14 the day of the murder or the day after
01:47 15 that you found your paring knife
16 missing?"

17 She says:

18 "A It would have had to be either the day
19 before or the same morning.

01:47 20 Q Perhaps you didn't understand my
21 question."

22 And then scroll down:

23 "Q As time has passed, are you able to tell
24 us whether it was the day of the murder
01:47 25 or the day after the murder?"



1 And she says:

2 "A Oh, I must have meant the day of -- the
3 day -- you know, like I probably meant
4 the day before or the day after. Like
01:47 5 meaning the day of the murder."

6 Can you explain what you were probing at here and
7 what you made of the answers you got?

8 A As recorded in her statement, there was some
9 uncertainty as to when she discovered the knife
01:48 10 missing and I was simply trying to -- in that it
11 seemed to signal that the discovery may have been
12 made on one of two days. I simply wanted to
13 pinpoint which day it was. Based on her response,
14 I didn't get very far because she wasn't certain.

01:48 15 Q And I take it -- I'm sorry, I think in the 1980
16 statement she said it was either the day of the
17 murder or the day after that her paring knife was
18 missing and I believe her statement or the
19 examination indicates that her argument with Larry
01:48 20 Fisher was after she knew her paring knife was
21 missing; is that --

22 A Correct.

23 Q So again, the paring knife being missing, that
24 timing also goes back to when the argument was
01:48 25 which then goes back as to whether or not Larry



1 Fisher was home that morning; correct?

2 A Correct.

3 Q And was it your observation that she was not sure
4 about the day the paring knife was missing?

01:48 5 A Her response at line 21 on 004955 signals that
6 there was still some uncertainty, as she says:

7 "A Oh, I must have meant the day ... you
8 know, I probably meant the day before or
9 the day after. Like meaning the day of
01:49 10 the murder."

11 It was confusing to me and I more or less let it
12 drop.

13 Q And then the next page, you then go back and you
14 question:

01:49 15 "Q And you have said to me that the
16 argument happened on the day of the
17 murder?

18 A Yeah.

19 Q And the reason you say that is because
01:49 20 that is when you heard the radio
21 announcement?

22 A Yes.

23 Q Do you know whether the radio
24 announcement was reporting an event of
01:49 25 that day or of a preceding day?



1 A Well, it was for that day.

2 Q No, was the announcement reporting a
3 death which occurred that morning or the
4 day before?

01:49 5 A It was for that morning."

6 Now, were you trying to get her to say that the
7 argument was the day after the murder?

8 A No. I was trying to get her to articulate when in
9 relation to the murder she discovered her paring
01:50 10 knife missing, so we went at it a slightly
11 different way and what I gleaned from this
12 exchange was that the argument took place on the
13 morning of the murder and that same morning she
14 realized that her paring knife was missing.

01:50 15 Q Now, if the argument had taken place the day after
16 the murder, on the Saturday or the Sunday --

17 A Yes.

18 Q -- again, would you agree that that wouldn't
19 exclude Larry Fisher as a suspect?

01:50 20 A Well, it would certainly lessen the suspicion.

21 Q Why is that?

22 A Well, in the sense that what was suspicious to
23 Linda was the fact that her husband was home at a
24 time when he wasn't supposed to be, he was -- and
01:51 25 it signaled to her that that -- since he wasn't at



1 work and he was up and dressed, he may have had an
2 opportunity to have contact with the victim and
3 possibly to be responsible for the murder, and
4 that, coupled with her, "missing paring knife"
01:51 5 added to the suspicion.

6 Q If we can go to 957, please, down at the bottom
7 there's a discussion here:

8 "Q You saw Larry at home that morning?

9 A Yes."

01:51 10 And then the next page:

11 "Q You're not certain what time it was?

12 A No.

13 Q You didn't hear him come in?

14 A Well, I might have, but now I don't --

01:51 15 I don't remember.

16 Q Okay. If I understand correctly, he
17 went out the night before?

18 A Yes

19 Q You stayed up 'til approximately 2 a.m.?

01:52 20 A Yes.

21 Q You went to bed?

22 A M'hm.

23 Q He wasn't home when you went to bed, was
24 he?

01:52 25 A No.



1 Q The next time you saw Larry was you say
2 between nine and ten in the morning?

3 A Yeah, the next time I realized that I
4 seen him. Like he could have came in,
01:52 5 crawled into bed, I wouldn't have
6 known or.

7 Q Okay. So he could have come in, crawled
8 into bed; he could have gone out?

9 A Yeah.

01:52 10 Q And come back?

11 A Yes.

12 Q And you wouldn't have been the wiser?

13 A No."

14 Can you tell us the significance of this line of
01:52 15 questioning?

16 A I was just trying to find out or narrow down with
17 the witness the opportunity she had had to observe
18 her husband between the night before and the
19 morning of the killing.

01:52 20 Q Was there some -- I think when we, 10 days or so
21 when you previously testified, there was a
22 memorandum I think that information had been
23 provided to you that suggested he may have come
24 home the night before; is that right?

01:53 25 A I believe there was some information to that



1 effect, yes.

2 Q And so was there some uncertainty in your mind as
3 to whether or not he had come home the Thursday
4 night before the murder?

01:53 5 A I certainly wanted to find out Mrs. Fisher's
6 recollection of those events.

7 Q And so when she says here, when you say:

8 "Q The next time you saw Larry was you say
9 between nine and ten in the morning?"

01:53 10 She answered:

11 "A Yeah, the next time I realized that I
12 seen him. Like he could have come in,
13 crawled into bed, I wouldn't have known
14 or."

01:53 15 Again, can you tell me the significance of that
16 answer?

17 A Well, it just signaled to me that she slept very
18 deeply and she admitted the possibility by that
19 response that he may have come home the night
01:53 20 before, she wasn't certain.

21 Q And if he had come home the night before, that,
22 would you agree, wouldn't preclude him from being
23 involved in the murder?

24 A No, not necessarily.

01:53 25 Q Then the next page, you say:



1 "Q Is it possible that he came in, went to
2 work early in a morning, came back early
3 from work because of the weather and
4 that's when you encountered him? Is
01:54 5 that possible?

6 A It's possible.

7 Q Because you had brought a picture
8 indicating that he had his good work
9 clothes on when you saw him?

01:54 10 A Yes, yes."

11 And can you just elaborate on what you were
12 getting at there?

13 A Well, Linda had stated in her statements that when
14 she encountered her husband on the morning of the,
01:54 15 what she said was the morning of the killing, he
16 wasn't wearing his work clothes, he was wearing
17 his "good clothes" and I understood that to me
18 that he had a certain type of clothing that he
19 would wear to work and that when he went out on
01:54 20 social occasions he had his "good clothes" and,
21 for example, if he were going out for recreational
22 purposes or possibly to a bar or concert or
23 something else, he would wear his good clothes,
24 and the fact that she saw him and she brought a
01:55 25 picture of him in his good clothes signaled that



1 whenever she had that encounter with him, it was
2 in circumstances in which he had not been coming
3 from work.

4 Q But this question would be geared at if this was
01:55 5 true then, that that would likely give him an
6 alibi for the murder; is that right?

7 A That's certainly one of the possibilities, yes,
8 that he could have gone to work and come back and
9 then changed as a possibility, it would have given
01:55 10 him potentially an alibi.

11 Q And if in the course of questioning Linda Fisher
12 you gleaned information that would have provided
13 Mr. Fisher with an alibi, would that have been
14 important information for you in your
01:55 15 investigation of this ground?

16 A Yes.

17 Q And would that be one of the purposes in examining
18 Mrs. Fisher, to find out whether there was any
19 facts that would tend to exculpate Mr. Fisher?

01:56 20 A Well, both, exculpate or inculpate.

21 Q Go to the next page, there's a question here about
22 laundry and the washing and noticing any blood,
23 and I think she said she didn't notice any blood
24 on his clothes or in the laundry. Can you tell us
01:56 25 the significance and why you went down this path?



1 A Yes, simply it's because there was a stabbing,
2 there was blood on the victim's clothing. Given
3 the nature of the assault, one would reasonably
4 anticipate to find blood splatter and some of it
01:56 5 going back onto the assailant's clothes. Since
6 Mrs. Fisher washed her husband's clothes, it
7 seemed to me that that was an area of inquiry I
8 should pursue.

9 Q And was this related to the information that Mr.
01:57 10 Asper provided you from Sidney Wilson, that Linda
11 Fisher had witnessed Larry Fisher coming home with
12 blood on his clothes the morning of the murder?

13 A That may well have prompted that line of inquiry.

14 Q And again to 004962, and you ask her again:

01:57 15 "Q And I take it that you did not hear
16 Larry come in even into your own
17 apartment?

18 A No."

19 Actually, just go back to the previous page.

01:58 20 Here you say:

21 "Q Earlier you told me that it was possible
22 that Larry could have come home, slept,
23 left for work, and returned before you
24 realized it?

01:58 25 A Yes.



1 Q Because you were asleep?

2 A Yes.

3 Q You did not hear anything?

4 A Not to my knowledge."

01:58 5 Next page, and then you say:

6 "Q Now having regard to what you've just
7 told me, is it still fair to say that
8 Larry did not go to work that morning
9 that you saw him in his dress clothes?

01:58 10 A Well, I don't know whether he had told
11 me he didn't -- why he didn't go to
12 work at the time, but I remember
13 giving him shit for not going, like
14 why didn't you go. And -- and I don't
01:58 15 know what excuse he gave me or --
16 because I figured it was because of
17 his drinking that he didn't go, so
18 that's why I --"

19 And then scroll down:

01:58 20 "Q In fact, he didn't tell you that he
21 hadn't gone to work?

22 A No.

23 Q You just assumed that?

24 A Yeah.

01:58 25 Q Did he tell you at any time that he did



1 not go to work?

2 A I'm not sure."

3 And again, this line of questioning, are you
4 trying to get her to back off her statement that
01:58 5 he didn't go to work that morning on the basis of
6 what she had told you about not knowing whether
7 he came home or not?

8 A I was just trying to get -- to find out whether or
9 not the suggestion that he didn't go to work came
01:59 10 from something he said, or something she observed,
11 or a combination.

12 Q Or assumed?

13 A Or assumed.

14 Q And then again the next page, I think that's where
01:59 15 you ask her:

16 "Q ... So you are assuming that he either
17 told you or that you assumed that he
18 didn't?"

19 And you're talking about going to work.

01:59 20 "A Yeah, because I seen him there.

21 Q But am I correct in thinking that you do
22 not know whether he did or did not?

23 A Yes."

24 And, earlier on, you were talking about going to
01:59 25 work, so that would be the line of questioning to



1 try and find out from her whether she could
2 positively state that he wasn't at work and, if
3 so, the basis for that?

4 A That's correct.

02:00 5 Q Next page. And here's some questioning on the
6 knife, and I think you've told us about that, that
7 if she could describe the maroon-handled knife,
8 that might be something that would link Larry
9 Fisher to the murder; is that right?

02:00 10 A That's right.

11 Q Page 004967. Actually, let me just scroll back,
12 sorry, to 965. And I think, after you've gone
13 through the description of the knife, you say.

14 "Q ... Did you know that a brown-handled
02:00 15 paring knife held together by rivets was
16 found in Winnipeg on September 19th,
17 1970, at the scene of a sexual assault
18 for which Larry was convicted?

19 A No."

02:01 20 And, again, would that be information you got
21 from the Fort Garry file or do you know where
22 that came from?

23 A That's correct, from the Fort Garry file.

24 Q And then you go on to talk about the paring knife,
25 being maroon-handled:



1 "... was entered as an exhibit in the
2 trial of David Milgaard ...";

3 did you know that. She answers:

4 "A No."

02:01 5 And then here:

6 "Q Okay. Aside from the fact that Larry
7 was at home when you didn't expect him
8 to be, and aside from the fact that your
9 paring knife was missing, and aside from
02:01 10 the fact that when you accused Larry in
11 anger of murdering the girl, he had --
12 he was silent and turned pale, is there
13 any other fact upon which you base the
14 conclusion that he was responsible for
02:01 15 killing that girl?

16 A No other fact."

17 And can you tell us; what was your intent in
18 putting the question to her that way?

19 A I wanted to make certain that I fully understood
02:01 20 the reasons why she accused, or felt that her
21 husband was responsible for killing Gail Miller,
22 and based on the responses that she'd provided
23 either in her earlier statement or in answers to
24 me, this was an attempt to distill my
02:02 25 understanding of her responses, as to the reasons



1 why she suspected her husband.

2 Q Okay.

3 A And having distilled it, I wanted to find out
4 whether there was something I had missed, so I
02:02 5 asked, "apart from these, is there anything else
6 that is the basis for your conclusion that he is
7 responsible", and I got -- she responded:

8 "No other fact."

9 Q Okay. So were you -- was it your intent to
02:02 10 restate, then, what she had already told you or
11 what you understood her to say about the basis for
12 her belief?

13 A That was the object of that question, and in the
14 event I didn't capture it all, to give her an
02:03 15 opportunity to include whatever else was the basis
16 for her belief.

17 Q Next page. You then ask her:

18 "Q The fact that a paring knife was found
19 in the vicinity of the victim, and the
02:03 20 fact that such a knife likely caused the
21 wounds, does that alter your views as to
22 the importance of your missing knife?

23 A This alters my views.

24 Q In what way?

02:03 25 A In that it's not my knife. If that's



1 the murder weapon, that's not my
2 knife. Mine was a wooden handle.

3 Q Okay. And in terms of attaching
4 responsibility to Larry, how does that
02:03 5 affect? How is that affected or is it
6 affected?

7 A Well, now I have more doubts, but --
8 but I still have my suspicions."

9 And I think this relates to you saying to her
02:03 10 that her missing paring knife does not match the
11 description of the murder weapon of Gail Miller;
12 is that right?

13 A That's correct.

14 Q And can you tell us, why would you then ask her
02:03 15 that question about "now that you know it's a
16 different knife does that alter your views?"

17 A I was trying to identify which of the factors that
18 she had attributed, or that she had based her
19 suspicion on, was the most telling. Certainly her
02:04 20 answer was, her answer was reflective of responses
21 of myself and possibly Sergeant Pearson in that
22 it -- that the fact that her missing paring knife
23 was not the murder weapon didn't entirely end the
24 matter for her, she still had her suspicions.

02:04 25 Q And was that the purpose of that line of



1 questioning, to see if the fact that she now
2 learned that her missing paring knife was not the
3 same as the murder weapon, whether she still was
4 suspicious?

02:05 5 A Yes.

6 Q Then 004969. Let's just talk a bit about the
7 other aspect of her, I think, suspicion was that
8 when she accused him of the murder, which she said
9 was done out of anger and not, at the time without
02:05 10 any basis to suspect him of having committed the
11 crime, that his reaction was one that took her
12 aback; and what did you make of that?

13 A I wasn't certain what to make of it. She had
14 indicated to us that generally, in their
02:05 15 arguments, that Larry was quite combative in that
16 he would always have a response to everything she
17 said, and he didn't have a response on this
18 occasion, he caught her quite by surprise so she
19 was, quote, "shocked" and perhaps later on, on
02:06 20 reflection, she thought maybe there was a reason
21 for his being shocked.

22 Q Now one reason would be because he had committed
23 the murder and he was shocked that she would
24 confront him with that?

02:06 25 A Yes.



1 Q And what other possible explanations were you
2 probing?

3 A The other possible explanations was that maybe he
4 was dumbfounded by the fact that his wife would
02:06 5 accuse him of killing someone.

6 Q Okay. There is also a line of questioning here
7 which, if we go to page 68, 968, and this is where
8 you asked her:

9 "Q ... You didn't know that in 1968 he had
02:06 10 committed a rape in Regina, did you?

11 A No."

12 And would it be fair to say that your information
13 at this time was that the rapes had been
14 committed in Regina?

02:07 15 A Yes.

16 Q And:

17 "Q You later found out that that was the
18 case?

19 A Yes.

02:07 20 Q And, in fact, there were two counts of
21 rape in Regina, isn't that a fact?

22 A Yes."

23 Did Linda Fisher's answer to that, and we talked
24 earlier about the various pieces of information
02:07 25 about where these rapes took place, did you rely



1 upon the fact that Linda Fisher said or confirmed
2 that the rapes took place in Regina, was that
3 something that confirmed -- or that you relied
4 on?

02:07 5 A No. At that point in time I was leading
6 Ms. Fisher, and I'm the one that suggested that it
7 happened in Regina. That was our, at least our
8 collective understanding between myself and
9 Sergeant Pearson at the time, I'm not certain
02:07 10 whether Linda knew all of the details of Larry's
11 convictions in terms of the location, she may have
12 just thought of Regina in the context of that's
13 where the plea took place. I -- I didn't put too
14 much --

02:08 15 Q Okay.

16 A -- stock in terms of the location at that time,
17 because we had all assumed that it was Regina, and
18 she didn't say anything to correct us.

19 Q Okay. Then scroll down:

02:08 20 "Q Thinking back ...",
21 scroll down, please:

22 "Q Thinking back, is it possible that his
23 shocked reaction to the accusation
24 reflected his realization that you may
02:08 25 have suspected him of rape in Regina?



1 A It's possible.

2 Q And that might have been an explanation.

3 A ... Yes."

4 And so, again, can you tell us what was your
5 thinking there, to try and find out what other
6 explanations there might be apart from him being
7 responsible for the murder?

02:08

8 A That might have caused him to not retaliate
9 verbally the way that she had come to expect
10 during their arguments, yes.

02:09

11 Q Why didn't you just accept her original statement
12 to Mrs. Milgaard that -- or to the police that
13 said, "lookit, the shocked reaction when I accused
14 him of this"; why would you probe further with her
15 as opposed to just accepting what had been given
16 to you?

02:09

17 A Shocked reactions may have a number of causes and
18 I needed to know which one. The -- because, as
19 you can see from the line of questioning, the
20 shocked reaction may have been from previous
21 sexual assaults, could have been from the murder,
22 could have been "how dare you accuse me because
23 I'm your spouse", I needed to explore that.

02:09

24 Q Go to the next page, please. And, again:

25 "Q Viewed in that context, have you -- do



1 you still maintain that the shocked
2 expression on his face could only have
3 come as a result of his implication in
4 Gail Miller's death?

02:09 5 A No only, no. Could have been from the
6 rapes or --

7 Q So that the shock could have reflected a
8 number of other events and not
9 necessarily any involvement in Gail
02:10 10 Miller's death; is that a fair
11 statement?

12 A Yes."

13 And, again, it appears here that you're looking
14 for other explanations that are inconsistent with
02:10 15 Larry Fisher's guilt or responsibility for Gail
16 Miller's murder?

17 A I'm looking for other explanations that might
18 explain the shocked reaction.

19 Q And I think, Mr. Williams, you are aware that
02:10 20 after this interview, in fact even at this
21 Inquiry, counsel, at least for Joyce Milgaard and
22 for David Milgaard, have taken the position that
23 your questioning of this witness and other
24 witnesses was to try and preserve the status quo,
02:10 25 in other words --



1 A To exculpate Larry Fisher --

2 Q Yes.

3 A -- and maintain the conviction?

4 Q Yes.

02:10 5 A Yes.

6 Q And I'm wondering how you respond to that
7 accusation?

8 A It is an argument that they have brought. My task
9 was to verify and to check and to probe. To the
02:11 10 extent that I would suggest other alternatives to
11 a witness, I thought that that was fair. To the
12 extent that I permitted the witness to express in
13 her words what she said, what she observed, what
14 her reasons were, I think that balances out the
02:11 15 equation. I have to take a balanced and objective
16 approach. Half of it, one might say, is
17 exculpatory, the other might be inculpatory. I
18 have to probe as you are probing now.

19 Q And I suppose if you're probing a statement that
02:11 20 is favourable to the Milgaard position, if I can
21 put it that way, your probing would be to
22 challenge some of the things that would be said in
23 the general sense, is that fair, testing them in
24 the sense to making sure they are accurate?

02:12 25 A Yes.



1 Q And similarly if the statement was the other way,
2 tended to be negative to David Milgaard's
3 position, again the probing would seem -- would
4 seem to be favourable to his position; would it?

02:12 5 A If I were probing negative to David Milgaard --

6 Q I didn't ask that very well, but I suppose a
7 statement that was -- I'm trying to think of an
8 example here that -- well let's take Deborah
9 Hall's statement that, when you examined her,
02:12 10 ended up having some inculpatory nature to her
11 statement; would you probe that to challenge that
12 to see what she believed?

13 A I thought I had, because she had, without too much
14 prompting from me, given or attributed certain
02:12 15 utterances to David Milgaard, and I had it read
16 back and I said "are you certain of that", and I
17 tried, in those circumstances, to get the context
18 of it.

19 And similarly, as you can recall
02:13 20 with Deborah, she had mentioned that Lapchuk lied
21 about her allowing him to take her home, you know,
22 that's let the chips fall where they may, yes.

23 Q If we can go to 004971. And you finish off here:

24 "Q All right. Those are the questions I
02:13 25 have. Is there anything you wish to



1 add?

2 A No, I just wish it could be proved one
3 way or the other.

4 Q I'm not certain I follow you.

02:13 5 A I wish Larry could either be proved
6 innocent or guilty or -- or I would
7 know for sure.

8 Q Okay. You say that you wish he could be
9 proved, because of the missing knife?

02:13 10 A Because of -- because I think maybe
11 it's not so much the evidence I'm
12 thinking as the -- the -- all his
13 other charges and circumstances and
14 everything."

02:13 15 And what did you make of that question from her
16 to you, or that comment?

17 A I had the distinct impression that Mrs. Fisher
18 was -- I guess wanted some closure on this issue.
19 She wasn't sure whether the man she had married
02:14 20 was a murderer or not, she had her suspicions, but
21 I think she was hoping that there would be
22 something in, whether it was information I
23 provided or information that she provided, that
24 could answer that question definitively, and there
02:14 25 wasn't. She still harboured suspicions about



1 Larry's involvement, she -- she wanted an answer
2 "yes" or "no", and at that time we couldn't
3 provide it.

4 Q If we can go to page 976, and she says here, right
02:15 5 at the very end:

6 "Q I wish to thank you very much for coming
7 down, ...",
8 or, I'm sorry, you do:

9 "... and I trust that our questions
02:15 10 weren't too much of an ordeal.

11 A No. I don't know. I kind of look at
12 it different now. I don't know. I
13 don't know.

14 Q Is there something you wish to add?

02:15 15 A No. I don't."

16 And I think what Mrs. Fisher told this Inquiry,
17 that after her interview with you, based on the
18 exchange that took place, she was still
19 suspicious of her husband but perhaps not as much
02:15 20 as he had been before the interview, or words to
21 that effect; did you have that sense?

22 A Yes, there wasn't a complete absence of suspicion,
23 but she was still uneasy about her husband --

24 Q Okay.

02:16 25 A -- and his potential involvement.



1 Q And, again, the -- her reaction to that, I think
2 you're aware, was relied upon by counsel for David
3 Milgaard to suggest that you, in your interview,
4 doubted her and caused her -- tried to convince
02:16 5 her that her suspicions were unfounded?

6 A That was their take on it. You had highlighted or
7 drawn my attention to earlier aspects of the
8 questioning in which I attempted to identify the
9 bases for her suspicion and to ensure that I had a
02:16 10 good understanding of all of the things that
11 prompted her to develop those suspicions and, as
12 you can see, at the end I maintain the posture of
13 asking open-ended questions in an endeavour to
14 identify anything else that might be lurking, but
02:17 15 had not yet been articulated, as the reasons for
16 the suspicion.

17 Q Can you tell us, was the purpose of your
18 examination to discover facts or to -- and/or to
19 probe her suspicions? In other words, was the
02:17 20 simple fact that she was suspicious of her husband
21 of significance to you, or was it the underlying
22 fact?

23 A I think it was the underlying fact. Linda Fisher
24 was portrayed as the wife of a convicted serial
02:17 25 rapist who had now come forward with some



1 important new information, including the discovery
2 that a knife, a paring knife similar to the murder
3 weapon, had gone missing from their apartment.
4 The location of the apartment vis-a-vis the --
02:18 5 David Milgaard's visit to Saskatoon, vis-a-vis the
6 location of the body, that was all significant in
7 terms of certainly casting some questions about
8 the correctness of the conviction. The fact that
9 it's a paring knife and that that was the murder
02:18 10 weapon, that it went missing from the home of a
11 fella who was later convicted or pled guilty to a
12 series of sexual assaults, that was significant.
13 It was significant for us to find out, with some
14 specificity, the relationship between the missing
02:18 15 paring knife and the murder weapon and to delve
16 into some of the circumstances giving rise to the
17 encounter that Mrs. Fisher had with her husband at
18 or about -- or either on the day or around the
19 time that Gail Miller was killed.

02:18 20 Q And is it fair to say that, going into your
21 interview of Linda Fisher, that you would have --
22 Larry Fisher, I think your term, is a person of
23 interest or a suspect, is that correct, or you
24 would have suspicion about him; is that fair?

02:19 25 A Yes, that's fair.



1 Q And, in examining Linda Fisher, one of the
2 objectives would be to see whether or not you
3 could elicit some evidence that would elevate
4 Larry Fisher from a person of interest to perhaps
02:19 5 someone who could be linked to Gail Miller's
6 murder; is that fair?

7 A Certainly, to the extent that she could provide
8 information that firmed up that connection, yes.

9 Q And one link, I think you've told us, would be to
02:19 10 describe the missing knife as the murder weapon.
11 That would be something that would put him at the
12 scene of the crime or --

13 A It would certainly go a long way towards doing so.
14 I mean, if the missing knife ends up to be the
02:19 15 murder weapon, that's pretty important.

16 Q And that would be, we talked about this before, a
17 link. That would be something that would link
18 him, I take it that's something more than
19 suspicion, that would actually link him to the
02:20 20 murder of Gail Miller, something that would put
21 him in connection with that murder; is that fair?

22 A It would be a very important piece of
23 circumstantial evidence that would tie Larry
24 Fisher to that scene via an item that belonged to
02:20 25 a close family member, --



1 Q Yeah.

2 A -- his wife.

3 Q And presumably as well, if there had been bloody
4 clothes that she discovered that morning, would
02:20 5 that be, again, some evidence that would link him
6 or could link him to the murder?

7 A Yes.

8 Q And thirdly, if he had made an admission to her of
9 that effect, would that be something that would
02:20 10 link him to the murder?

11 A Yes.

12 Q And I think, if we take a look back at the record
13 of David Milgaard's trial, that would be some of
14 the links that was presented as the evidence
02:21 15 against him; blood on his clothes, murder weapon
16 being seen by his travelling companions, and an
17 admission to Ron Wilson after the fact, is that
18 right?

19 A Those are three of the suspicious items that were
02:21 20 used as part of the Crown's case, yes.

21 Q And so again, in questioning Linda Fisher, would
22 one of the objectives then be to see if you could
23 find --

24 A Similar links --

02:21 25 Q -- similar links?



1 A -- to Larry Fisher.

2 Q Now is it fair to conclude that after, based on
3 your examination of Linda Fisher, that you did not
4 obtain or you did not get any evidence from her
02:21 5 that would link Larry Fisher to the murder?

6 A That's correct.

7 Q And so let's now talk about Larry Fisher as a
8 suspect or a person of interest. Are you able to
9 tell us whether, based on the examination of Linda
02:21 10 Fisher, did that remove him as a person of
11 interest?

12 A No.

13 Q Did it in any way lessen your interest in him as a
14 person of interest?

02:21 15 A No, we still had to pursue it.

16 Q If we can go to 004973 of this where they -- you
17 mark as an exhibit, and I think it's the photocopy
18 that you got, I think it was a black and white
19 photocopy of the murder weapon that you got from
02:22 20 Mr. Caldwell's file; is that right?

21 A That's right.

22 Q And I think, earlier in the examination, you
23 had -- you had her describe her missing paring
24 knife and the rivets, the type of brown handle,
02:22 25 the type of blade; is that correct?



1 A I did, yes.

2 Q Did you consider actually showing the actual
3 murder weapon, or a colour photograph of the
4 murder weapon, to her, to Linda Fisher?

02:22 5 A Had I had a copy, an actual colour photo, I might
6 have -- I would have shown it to her. When I
7 showed it to her would have -- I probably wouldn't
8 have showed it to her first, I wanted to get her
9 recollection unaided by the photograph, as best as
02:23 10 she could recall.

11 Q And then again, after she gave the description,
12 would be the fact that she gave a different
13 description than a maroon-handled paring knife;
14 did that dissuade you, then, from showing her a
02:23 15 colour photograph or the actual knife itself?

16 A I didn't have it with me so I couldn't have shown
17 it to her.

18 Q And, again, I think you are aware later, at Larry
19 Fisher's criminal trial, she did in fact identify
02:23 20 the maroon-handled paring knife as being a
21 different knife of hers, or similar to a different
22 knife of hers, that had gone missing years
23 earlier; were you aware of that?

24 A I wasn't until you told me.

02:23 25 Q Did you consider, at the time you interviewed



1 Linda Fisher, that, I guess, two things; one, that
2 the missing paring knife may have been the knife
3 used in the Winnipeg attacks or some other
4 attacks?

02:23 5 A Yes.

6 Q And did you consider whether the Gail Miller
7 murder weapon, the maroon-handled paring knife,
8 might have been a knife in addition to the brown
9 wooden one that went missing, that in fact there
02:24 10 may have been more than one knife missing from the
11 Fisher household; did that cross your mind?

12 A At the time, it did not.

13 Q So can you tell us, after your interview of Linda
14 Fisher, what -- what was your thinking about
02:24 15 her -- I think this line of inquiry of Larry
16 Fisher started with the Sidney Wilson information,
17 through to Mr. Asper, through to you, and I think
18 it's fair to say that Linda Fisher's version of
19 events differed than what Sidney Wilson had put
02:24 20 forward; is that correct?

21 A Yes.

22 Q But was --

23 A But I think the two significant variances,
24 firstly, first related to a description of the
02:25 25 knife and matching it to what was the murder



1 weapon, and the second referred to the bloody
2 clothing. And I think the Sidney Wilson account,
3 you know, had that, and the way we tried to
4 address it was whether or not, firstly, she had
02:25 5 made any observations about blood on clothes or
6 missing clothes, and to the extent that she could
7 not or did not confirm that aspect of the account
8 attributed to Sidney Wilson, who we now know is a
9 pseudonym for someone else, it certainly took away
02:25 10 from the strength of the initial information we
11 had received.

12 Q So are you telling us that, if the Sidney Wilson
13 information had been verified, that would have
14 been stronger information linking or making Larry
02:26 15 Fisher a suspect than would be the actual
16 recounting of events from Linda Fisher?

17 A I'm trying to signal that at the time of Gail
18 Miller's death Larry lived with his wife, and the
19 type of information attributed to Sidney Wilson
02:26 20 could only have come from someone within that
21 household, we know that it likely didn't come from
22 Larry, so it must have come from his wife, and to
23 the extent that she did not affirm two important
24 aspects of the story that had been attributed to
02:26 25 Sidney Wilson, it lessened the strength or the



1 weight of that.

2 Q Did you -- are you telling us that if the Linda
3 Fisher information had come to you directly
4 without any Sidney Wilson preamble, if I can put
02:27 5 it that way, would you have viewed the Linda
6 Fisher evidence the same way, or did the fact that
7 there was this unknown informant with this
8 information that turned out not to be verified,
9 did that somehow lessen the credibility of what
02:27 10 you got from Linda Fisher?

11 A No. What we got at a fairly early stage, whether
12 it came -- whether the tip came from someone other
13 than Linda Fisher or not, the key was Linda
14 Fisher, and so we asked the questions of Linda
02:27 15 Fisher. Certainly, when you ask to identify or to
16 contact your so-called informant and you find out
17 that that person can't be found, it raises some
18 questions. But we were able to speak with Linda
19 and, you know, she provided answers as best as she
02:28 20 could.

21 Q Go to 157062. This is a March 26th letter from
22 you to Mr. Asper, so this would be two days after
23 your interview with Linda Fisher, and you're:

24 "... writing to determine whether there
02:28 25 are any further submissions to be made



1 on behalf of David Milgaard in this
2 application under Section 690 ... If
3 further submissions are contemplated,
4 please submit them on or before April
02:28 5 12, 1990 so that a decision can be made
6 on a timely basis."

7 What was the purpose of this letter on this date?

8 A I wanted to narrow down whether there were any
9 additional areas that we needed to explore before
02:29 10 I started writing up a report to the minister.

11 Q Were you done with Larry Fisher at this time?

12 A I wasn't done with Larry Fisher but, certainly, we
13 had certain information that we had to explore and
14 we could finalize with respect to Larry Fisher. I
02:29 15 was more concerned about starting to complete a
16 report and then finding out that I would have to
17 set it down and embark on a brand new area of
18 inquiry. As it turned out, we did have to embark
19 on a couple of brand new areas of inquiry.

02:29 20 Q And so is it your evidence that this didn't signal
21 that you were done with Larry Fisher but, rather,
22 you wanted to know that --

23 A If there is anything else, because I had written
24 him in January asking much the same question and
02:30 25 then in February the Larry Fisher, as a ground,



1 surfaced.

2 Q Okay.

3 A Was there something else.

4 Q If we could go to 001809. This is a report from
02:30 5 Mr. Pearson to you April 2, '90:

6 "Since your trip to
7 Saskatoon, I have determined from church
8 and Vital Statistics personnel that
9 Larry's blood type is not on file with
02:30 10 theM."

11 And so I take it getting his blood type was still
12 being pursued by Sergeant Pearson for the reasons
13 stated earlier?

14 A Yes.

02:30 15 Q "I have also talked with Larry's boss, as
16 well as his foreman when Larry was
17 working in Winnipeg. A statement will
18 be obtained, however it has been
19 confirmed that no work records or time
02:30 20 sheets exist for Larry's activities on
21 Jan 30/31, 1969."

22 Is that correct?

23 A Yes.

24 Q And I think we heard from Sergeant Pearson that
02:30 25 you were unable to establish whether Mr. Fisher



1 was or wasn't at work on January 31, '69; is that
2 correct?

3 A That's correct.

4 Q And then the bottom paragraph:

02:31 5 "In the near future I will be accessing
6 the Saskatoon City Police file to seek
7 answers to several peripheral questions.
8 Following that, I will make personal
9 contact with Larry Fisher for the
02:31 10 purpose of covering the following
11 points: (i) securing blood sample (ii)
12 explore his reaction to taking a
13 polygraph examination (iii) obtain a
14 Chartered/Warned statement."

02:31 15 And I think that flowed out of the discussion you
16 and Sergeant Pearson had just prior to that, I
17 think in your meeting in Saskatoon; is that
18 right?

19 A That's correct.

02:31 20 Q What was the -- tell us about the polygraph, what
21 was the thinking there?

22 A I knew and Sergeant Pearson knew that from an
23 evidentiary standpoint a polygraph could not be
24 entered into evidence at trial, but as an
02:31 25 investigative tool it certainly lends a little bit



1 of comfort to investigators or to counsel
2 concerning the accuracy of the information you are
3 receiving, so in that context, one of the things
4 that I wanted to explore was to raise the prospect
02:32 5 of Mr. Fisher taking a polygraph to see whether he
6 would agree and also to see what his response to
7 that request would be, because that might be a
8 sign or it could signal -- we may be able to read
9 something from his reaction as to whether or not
02:32 10 he was afraid of it, it might signal some
11 participation that he wants to hide. If he's got
12 nothing to hide, what's the problem with the
13 polygraph, and if he passes, it adds a bit of
14 comfort to the suggestion that he has nothing to
02:33 15 do with it.

16 Q And so if he refused to take the polygraph test,
17 you might draw an inference that he might be
18 trying to hide something?

19 A Yes, that's certainly one of the inferences we
02:33 20 could draw.

21 Q And if he failed the polygraph test?

22 A Well, that -- it depended on where he failed. It
23 certainly would be an area of immense interest to
24 us.

02:33 25 Q Is it fair to say that although the polygraph --



1 let's take the example where Mr. Fisher failed the
2 polygraph on the critical question of whether he
3 was responsible for the death of Gail Miller. I
4 think you told us that you and Sergeant Pearson
02:33 5 knew that that would not be, could not be used in
6 the prosecution of Larry Fisher; is that --

7 A Correct.

8 Q However, could it be used in the context of
9 Mr. Milgaard's application under Section 690 and,
02:33 10 specifically, on the ground that Larry Fisher is
11 the killer; therefore, David Milgaard is not?

12 A That would certainly be an important piece of
13 information for the minister to know in terms of
14 making a decision as to whether to grant a remedy,
02:34 15 yes.

16 Q And so certainly pursuing the polygraph of Larry
17 Fisher, I guess depending upon the result, I take
18 it you viewed it would be of assistance to you and
19 to the minister in considering Mr. Milgaard's
02:34 20 application?

21 A Yes.

22 Q If we can go to 010045, please, and, sorry,
23 just on -- the other thing was to get a warned
24 statement or a chartered statement, a
02:34 25 chartered/warned statement from him. I take it



1 you and Sergeant Pearson then discussed
2 interviewing Larry Fisher?

3 A Yes.

4 Q And you've already told us you didn't have any
02:34 5 power to force Mr. Fisher to either talk to you,
6 Sergeant Pearson or to undergo a polygraph; is
7 that right?

8 A That's right.

9 Q And you talked about this a bit earlier. Did the
02:34 10 fact that you did not have the coercive power
11 cause you -- did it result in taking a different
12 approach in trying to get witnesses to co-operate
13 with you?

14 A Well, it certainly did. I mean, we were talking
02:35 15 about this in March.

16 Q Yes.

17 A And Sergeant Pearson was ready, willing and able
18 to get it done as soon as possible. We
19 contacted -- or we were made aware that Mr. Fisher
02:35 20 retained counsel and we started working with
21 counsel to get that done. Had we coercive powers,
22 certainly we would make the necessary applications
23 to court and arrange it.

24 Q And in the absence of the coercive powers, let's
02:35 25 talk specifically about Mr. Fisher, are you



1 telling us that you and Mr. Pearson had to -- it
2 took a little more time to develop a relationship
3 and get to the point where you could get a
4 favourable response to your non-binding request;
02:36 5 is that fair?

6 A That's fair, working with his lawyers, working --
7 speaking with Mr. Fisher and finally we got it.

8 Q If you would have had coercive power, would you
9 have interviewed him sooner than July of 1990?

02:36 10 A Probably, yes, but certainly if you have coercive
11 power and counsel for the witness knows that, that
12 informs the type of advice that, you know, you
13 expect counsel to give to the witness, because,
14 you know, you can approach counsel and say lookit,
02:36 15 we need your co-operation, we can do it the easy
16 way or we can get a subpoena for your client and
17 examine him under oath before a commissioner. We
18 would prefer to do it more informally, but that is
19 an option that is available to us, how would you
02:36 20 like us to proceed, is one way of doing it.

21 If you don't have the option of
22 compelling the attendance and questioning someone,
23 they can say simply, "Mr. Williams, I'm sorry, my
24 client chooses not to talk to you, good-bye."

02:37 25 Q In this case you and/or your department were



1 criticized for the speed in which you pursued
2 Larry Fisher and the interview of him; correct?

3 A Yes.

4 Q Both during the course of -- I think while you
02:37 5 were trying to do it, after and in fact probably
6 still to this day, is that fair, that the speed in
7 which you pursued Mr. Fisher to try and get that
8 information you were criticized for; is that
9 correct?

02:37 10 A There were many published remarks about that.
11 Yes, we were criticized for it.

12 Q And my question is this, did the fact that you did
13 not have coercive power delay you in your effort
14 to secure an interview with Mr. Fisher either
02:37 15 directly or indirectly as you've described?

16 A Yes.

17 Q 010045, this is an April 2, 1990 letter from Mr.
18 Asper, and this is in response to your March 26th
19 letter, and that was the letter I just showed you
02:38 20 saying do you have any more submissions?

21 A Yeah.

22 Q And I just want to go through parts of that.

23 "The first submission is the case
24 against David Milgaard was weak at best.

02:38 25 The evidence was of a circumstantial and



1 flimsy nature, and to some degree misled
2 the jury."

3 What is the -- can you tell us what significance,
4 if any -- is this a ground being advanced or how
02:38 5 did you take this statement in the letter and
6 what significance, if any, did you place on it?

7 A This was an attempt to re-argue the case that went
8 to the jury. Regardless of the view of the
9 evidence in 1990 and its strength, a case went to
02:39 10 the jury and the jury, based on that snapshot of
11 the evidence at that time, convicted. If you
12 signal that the jury was misled, and I'm reading
13 these remarks of April 2, 1990 in the context of
14 the other responses or the other letters about the
02:39 15 evidence that had been presented and about the
16 fact that some portions of it, most notably the
17 forensic evidence was not properly understood, so
18 when I see "to some degree misled the jury", I
19 infer from that that the reference is to the
02:39 20 secretor evidence, and of course the reference is
21 in the context of the 690 application to the
22 reports of Dr. Ferris. So I just take a look at
23 the first paragraph as a shot across the bow and
24 an attempt to re-argue what had been, or what
02:40 25 should have been put at trial.



1 Q Okay. And the next paragraph:

2 "The case for the prosecution
3 established an alibi for David Milgaard.
4 The report of Dr. Ferris concluded that
02:40 5 the forensic evidence which was used to
6 link Milgaard to the scene of the crime
7 not only failed to do so, but reasonably
8 excluded him as the perpetrator. The
9 jury never had the benefit of hearing
02:40 10 the evidence of Deborah Hall; nor did it
11 have the benefit of Dr. Ferris's appeal
12 to logic when he suggested that the
13 crime more than likely took place
14 somewhere other than the back lane."

02:40 15 Again, in the context of whether this letter
16 raises new grounds or in any way adds to what was
17 already put forward, can you respond to that or
18 did you view this as advocacy?

19 A It simply reinforces points that had been raised
02:40 20 previously.

21 Q And then:

22 "With the greatest of respect, this
23 information alone requires intervention
24 by the Minister of Justice pursuant to
02:41 25 Section 690."



1 Again, would that be a restatement of what you
2 had received before perhaps in a different
3 format?

4 A Yes. He's essentially saying our application is
02:41 5 so strong now that you need not look any further
6 than what we've already submitted to find a basis
7 for giving us a remedy.

8 Q Okay. And then:

9 "Since the filing of our original
02:41 10 application in December of 1988, we have
11 also acquired information which we
12 believe establishes the identity of the
13 true killer of Gail Miller. We are not
14 privy to the results of your
02:41 15 investigation into Larry Fisher, but
16 based upon what we do know, we are
17 satisfied that he is the culprit. If it
18 is discovered that Mr. Fisher is a Type
19 A secretor, then we are all the more
02:41 20 convinced. If he is not a Type A
21 secretor, then he might very well be as
22 innocent as David Milgaard."

23 Let me just pause there. What did you make of
24 that statement?

02:42 25 A Well, it contains an internal contradiction. On



1 the one hand it advances the proposition that the
2 real killer is Larry Fisher, but it opens up an
3 avenue and adopts a position that was advanced at
4 trial, namely, that Gail Miller's murderer had to
02:42 5 be a type A secretor and, therefore, if your
6 investigation reveals Larry Fisher is not a type A
7 secretor, then he, like David Milgaard, is
8 innocent.

9 The assumption is of course that
02:42 10 in relation to the forensic evidence, one, the
11 testing to determine David Milgaard's secretor
12 status was accurate and performed well, two, that
13 the samples that were recovered at the scene of
14 the offence, and those samples which contained A
02:43 15 antigens, one, were uncontaminated and therefore
16 correctly signaled the secretor status of the
17 donor and those were all factual elements that had
18 not been established to the degree of certainty
19 that we required to come to the conclusion that
02:43 20 first David Milgaard was innocent, and/or
21 secondly, depending on which, what evidence you
22 discovered about Larry Fisher, that that would
23 certainly point to him as either the killer or
24 exculpate him.

Q

Okay.



1 A So it's a nice submission, but its factual
2 underpinnings were not solid.

3 Q If we can just go on to the remainder of that. So
4 the first part I think Mr. Asper is saying -- and
02:44 5 this is in response to your letter have you got
6 any more submissions?

7 A Yes.

8 Q I want to try and understand what your view was of
9 what grounds, if any, new or amended, he was
02:44 10 putting forward. So he talks about we believe
11 establishes the identity of the true killer, we
12 are satisfied that Larry Fisher is the culprit,
13 and then goes on to say:

14 "However, the fact that Mr. Fisher was
02:44 15 in the midst of a spree of rapes and
16 other violent crimes at the time that
17 Gail Miller was murdered, coupled with
18 other circumstantial evidence, certainly
19 raises strong suspicion--the likelihood
02:44 20 of there being two violent rapists in
21 the same home in Saskatoon on the
22 morning that a nurse was murdered one
23 block away from that home is difficult
24 to accept."

02:45 25 And again, let's just talk about this strong



1 suspicion. In isolation, the suggestion that
2 lookit, here's information about Larry Fisher,
3 that because he was committing rapes at the time
4 in that neighbourhood there's some strong
02:45 5 suspicion, is that in and of itself sufficient to
6 be a ground to provide relief under Section 690?

7 A Keep in mind this is April, 1990.

8 Q Yes.

9 A At that time we knew that Larry Fisher had been
02:45 10 convicted of certain rapes, but we were of the
11 view that those rapes had been committed either in
12 Regina or in Winnipeg. The submission that there
13 be, as it turns out, to be quite prophetic, that
14 there were two violent rapists in the same home in
02:46 15 Saskatoon on the morning that a nurse was killed,
16 it's difficult to accept, and as it turns out,
17 there was only Larry Fisher and there was later on
18 found to be a connection between the Saskatoon
19 rapes and Mr. Fisher. However, at that time we
02:46 20 had no information that linked Mr. Fisher to the
21 rapes in Saskatoon. We did have information that
22 linked him to the rapes definitely in Winnipeg and
23 we believed rapes in Regina.

24 Q Just back to the question, though, is it enough to
02:46 25 say here is someone who we think is very, very



1 high suspicion that this person may have committed
2 the offence, can't prove that he did it, may not
3 even be able to give evidence that would link him
4 to the crime, but he's very suspicious, and is
02:46 5 that enough to get you in the 690 door?

6 A At that time it wasn't.

7 Q And again as far as the question I asked you
8 earlier, would this letter be one of the
9 communications or one of the documents that you
02:47 10 would rely upon in trying to identify and piece
11 together the grounds that were being advanced on
12 behalf of David Milgaard as it related to the
13 Larry Fisher information?

14 A Yes. It seems to crystalize the applicant's
02:47 15 thinking about the value and the utility and how
16 that should ought to be used in considering the
17 application.

18 Q And then at the bottom:

19 "We have no further submissions to make
02:47 20 at this time on behalf of Mr. Milgaard.
21 Quite some time has gone by since we
22 first made application pursuant to
23 Section 690 in 1988, and quite frankly,
24 we have patiently waited for a decision.
02:47 25 Mr. Milgaard is understandably anxious



1 about his fate, and in that regard, we
2 respectfully request that the Minister
3 take action pursuant to Section 690. If
4 your investigation with respect to Mr.
02:48 5 Fisher is successful, then we would
6 obviously take the position that Mr.
7 Milgaard is entitled to a free pardon,
8 but perhaps that matter should be
9 addressed once we are apprised of the
02:48 10 results of the Fisher investigation."

11 And what's your comment about -- where does that
12 statement fit in as far as being a new ground or
13 supplementing an existing ground?

14 A The sentence, "If your investigation with respect
02:48 15 to Mr. Fisher is successful," assumes that a
16 successful investigation conducted by or on our
17 behalf would conclusively identify Larry Fisher as
18 Gail Miller's assailant. Had that been the result
19 at that time, then the request for a free pardon
02:49 20 would have been appropriate.

21 Q Let me just pause you there. If, for example, the
22 DNA testing that was done in 1997 had been
23 conducted in 1990 --

24 A With the same result.

02:49 25 Q -- with the same result, is that the type of



1 information that might lead to a pardon?

2 A Yes. A free pardon is one of the royal
3 prerogatives and it's issued in circumstances in
4 which there's clear and conclusive evidence not
02:49 5 only of legal innocence, but also of factual
6 innocence, and certainly to the extent that the
7 Crown's theory of the case was that whoever
8 assaulted Gail Miller sexually was also her
9 murderer, to the extent that you were able to
02:49 10 exclude David Milgaard as the assailant, that
11 would certainly be fairly strong, presumptuous
12 evidence of his factual innocence and could
13 support a free pardon.

14 Q If we could go do 333373, this is an April 5, 1990
02:50 15 memo to -- I'm not sure if it's to Mr. MacFarlane
16 or to file, but he talks about a memorandum from
17 Craig Lovgren. Do you know who Craig Lovgren is
18 or was?

19 A I believe at that time Mr. Lovgren was possibly on
02:50 20 the minister's staff.

21 Q And it looks like this is a memo looking for a
22 status report and you say here:

23 "Counsel for Mr. Milgaard has
24 been invited to send any final
02:50 25 submissions, based on these "new



1 developments" to the department on or
2 before April 12, 1990.

3 The department's report will be
4 completed within two weeks of that time,
02:50 5 assuming that there are no additional
6 wrinkles disclosed in the final
7 submissions of counsel for Mr. Milgaard.
8 As each investigative step has borne
9 fruit, the results have been
02:51 10 incorporated into a paper which is the
11 basis of the departmental report."

12 And then you talk about:

13 "Should unforeseen events
14 dramatically alter our prognosis for the
02:51 15 completion of this application, we may
16 then consider the preparation of a
17 status report."

18 Was there pressure at this time, Mr. Williams, in
19 getting the application dealt with?

02:51 20 A Yes.

21 Q And where was the pressure coming from and in what
22 form?

23 A Well, I could look around in several directions.
24 There was pressure coming from the Milgaards, they
02:51 25 wanted a quick resolution, there had been



1 significant media pressure at that time which had
2 generated political interest both in the House of
3 Commons and in committee. Within the department
4 there were certain pressures to complete the tasks
02:52 5 that had been -- that had been identified, and
6 certainly the minister's office were asking when
7 are we going to get the report, and if we're not
8 going to get it soon, where are you, and so
9 whether it was from the applicant, from the
02:52 10 minister, from the press, from the politicians,
11 those were four significant constituencies who
12 were pressing for completion, and in April of 1990
13 there were still certain additional things to be
14 done with Larry Fisher as you can see from the
02:52 15 discussions and exchanges of correspondence I had
16 had with Sergeant Pearson. At the time perhaps we
17 were a bit optimistic about when we could complete
18 some of those tasks, but --

19 Q Did you contemplate at this time that you would be
02:53 20 interviewing Larry Fisher and having him undergo a
21 polygraph?

22 A Taking the statement and the polygraph, yeah.

23 Q Can you -- would it be fair to say that the Fisher
24 information, I mean, it was added as a ground on
02:53 25 February 28th, 1990. If that had been the date of



1 the initial application -- I'm just trying to
2 contrast time wise here. I take it that if that
3 had been the date of the application, February
4 28th, 1990, and the Fisher information had been
02:53 5 the only ground, I take it that you would have
6 taken a bit of time to get up to speed on file
7 much as you did with the Deborah Hall and Dr.
8 Ferris information?

9 A That's correct.

02:53 10 Q And then follow up with the investigation. With
11 this information or this ground coming on, I
12 hesitate to use the word mid, but midstream or in
13 the course of an existing application, I take it
14 that other than the background work that may have
02:54 15 already been done, would it be similar to getting
16 a new application?

17 A No, I think it would be a bit further advanced
18 than if it had been a brand new application,
19 primarily because by then I had reviewed the trial
02:54 20 and appellate transcript and -- or trial and
21 appellate record as opposed to transcript and had
22 a fairly good idea of how the submissions with
23 respect to Larry Fisher might or might not have
24 affected the conviction.

02:54 25 Q But putting that aside --



1 A Yes.

2 Q So had this been a fresh application, February
3 28th, 1990, it would have taken you some time to
4 do the background work to understand the
02:54 5 transcripts; is that fair?

6 A Yes.

7 Q And apart from that, though, would it be fair to
8 say that the Larry Fisher information was
9 basically like a new application?

02:55 10 A Yes, in the sense that it bore no relationship to
11 the other grounds that had been advanced. It's a
12 completely separate line of inquiry unrelated to
13 Debbie Hall's accusations against the accuracy of
14 two other witnesses' testimony and unrelated to
02:55 15 the scientific evidence that was suggested to have
16 been misleading.

17 Q And so here, if we can just go back, this is April
18 5, if we can scroll up, April 5 of 1990, which
19 would be five weeks after this information was
02:55 20 received, and again, are you telling us that, (a),
21 you may have been a bit optimistic about getting
22 the report done in two weeks, and (b), you were
23 under some time pressures?

24 A Yes.

02:56 25 Q And are you telling us that if there had not



1 been -- would you have done anything different if
2 there had not been time pressures?

3 A Probably not. When you say would I have done
4 anything different, I still had to make the
02:56 5 inquiries. The speed with which we might have
6 been able to do certain things might have been --
7 we may have been able to do certain things
8 quicker, but I wouldn't have done anything
9 different.

02:56 10 MR. HODSON: This is probably an
11 appropriate spot to break.

12 *(Adjourned at 2:56 p.m.)*

13 *(Reconvened at 3:15 p.m.)*

14 BY MR. HODSON:

03:15 15 Q Before the break we had talked about the April 5,
16 1990 memorandum to Mr. MacFarlane and I think you
17 told us that you were feeling pressure from a
18 number of quarters. If we could call up 010044,
19 please, this is an April 9th, 1990 memo to file
03:15 20 about a conversation you had with Hersh Wolch:

21 "Mr. Wolch telephoned today to
22 determine whether our investigation had
23 determined Larry Fisher's blood type,
24 and in a roundabout way to see whether I
03:16 25 would disclose any tendencies related to



1 my recommendation, (off the record of
2 course). He also wanted to alert me to
3 the fact that there will be further
4 media coverage of the Milgaard
03:16 5 application. In the past Mr. Wolch's
6 advice to me that he was having trouble
7 keeping the lid on this file, occurred
8 the day before another news item on the
9 Milgaard case appeared in Winnipeg or
03:16 10 Saskatoon.

11 In this regard I spoke with
12 John Maddigan who advised me that Dan
13 Lett of the Winnipeg Free Press had
14 contacted him concerning a story which
03:16 15 is slated to appear on April 10, 1990."
16 Which is the next day. And can you elaborate on
17 what's in this memorandum? Do you have any
18 further recollection of this and, in particular,
19 this discussion about trying to get your
03:16 20 tendencies of your recommendation?

21 A There was conversation, and I'm not going to say
22 it's verbatim, but you might get a question like
23 should I be happy with the results of the
24 minister's recommendation or is there anything we
03:17 25 should be worrying about, or, you know, a fairly



1 obscure question which the answer to which might
2 either give comfort or not by way of response.

3 Q And how would you respond to those questions?

4 A Say I'm sorry, I can't really comment, Hersh,

03:17 5 whatever I find will have to go to the minister
6 who may or may not accept what I have to say.

7 Q And then what about this comment about being
8 alerted to the fact that there will be further
9 media coverage and the comment that that heads up

03:17 10 usually occurred right before an article came out?

11 A That was an observation I had made. That was
12 Hersh's way of saying "look out, something is
13 coming down the pipe, but I really won't tell you
14 what".

03:17 15 Q In the media?

16 A In the media.

17 Q And did you -- what did you understand his purpose
18 in doing that to be?

19 A Maybe a professional courtesy, just be prepared,
03:18 20 there's just going to be something else that
21 you'll have to deal with.

22 Q Okay.

23 A But at the same time signaling that it's not of
24 his doing, but, you know, he's trying his best.

03:18 25 However, there's certain things he can't control



1 and press reports are one of them.

2 Q And then scroll down, I think you repeated your
3 invitation that he finalize submissions, and then:

4 "Mr. Wolch responded by asking why we
03:18 5 couldn't make a favourable decision now,
6 and then pursue the identity of the real
7 killer at a later date. I told him that
8 we had decided to make a full
9 investigation of all the facets of this
03:18 10 case that had come to our attention
11 before we completed our report. He
12 noted that the fact that they had
13 uncovered additional material may work
14 against his client because it extended
03:19 15 the time required to complete the
16 investigation."

17 Again, anything there you wish to elaborate on?

18 A No. He was attempting to signal to me that it's
19 ironic, or there's a certain irony in me asking
03:19 20 him to give additional submissions because the
21 minute he does, it extends the time for a
22 decision, and he thought that a favourable
23 decision was long overdue, so he felt as if that
24 request put him in an uncomfortable position to
03:19 25 the extent that if he were to come up with a brand



1 new area of inquiry, he would extend the time for
2 a decision having regard to the approach that we
3 had taken, was that we would look at it all and
4 then --

03:19 5 Q If, and maybe you can't answer this, but if all of
6 the grounds that were ultimately put forward in
7 the first application, and we haven't got yet to
8 the Ron Wilson, Albert Cadrain information, if
9 they had all been put in in the initial
03:20 10 application, December 28th, 1988, are you able to
11 comment as to whether you think your investigation
12 would have been done sooner than it was, where the
13 information came in somewhat piecemeal or
14 throughout the course of the application?

03:20 15 A I can say that had we received a completed
16 application, and by that I meant, I mean the trial
17 transcripts and the information about Larry
18 Fisher, when the first application arrived shortly
19 after December 28th, 1988, I'm reasonably
03:21 20 confident that we would have completed it much
21 quicker than we did, because I can attribute a
22 three-month delay to the fact that we didn't get
23 started on the trial record until May.

24 Q Okay. But apart from that delay, which you've
03:21 25 talked about, I think what was added was the Larry



1 Fisher, the Ronald Wilson, the Albert Cadrain
2 information; if that had been included in the
3 initial one? I think here --

4 A It would have speeded things up in the sense that
03:21 5 we knew you better be able to plan your workload
6 and to consolidate a number of areas of inquiry,
7 because what ended up happening was you'd go out,
8 you'd talk to the police about topic A, then you'd
9 come back and talk to the police about topic B.

03:22 10 Q Did the fact that the grounds came to you in at
11 least three, or whatever number of different
12 phases, did that make it more difficult and a
13 lengthier process for you to investigate the
14 grounds than if they had been provided in one
03:22 15 application at the outset?

16 A It lengthened the time taken to complete the work.

17 Q And so here I take it what you are saying is that
18 yes, if Mr. Wolch felt that he had new grounds to
19 put forward in April 1990, it may well extend the
03:22 20 time for you to respond because you'd have to look
21 at those grounds; is that fair?

22 A Yes.

23 Q And if those same grounds had been given in
24 December 1988 they might have already been looked
03:23 25 at before this time; is that fair?



1 A That's fair.

2 Q And do you recall how you left that conversation
3 with him, was that -- on this issue?

4 A Hersh usually got the last word, he basically
03:23 5 reaffirmed his client's innocence and that we
6 could look forward to some additional media
7 interest.

8 Q And what about the comment here that he had:

9 "... received support from a number of
03:23 10 professional sources in the medical,
11 legal professions and from the
12 judiciary."

13 A Essentially the conversation went like this, "you
14 know, I've spoken with a number of judges and a
03:23 15 number of professionals and they all say, you
16 know, that my client is innocent, and I mean if
17 they all get it why haven't you?"

18 Q And would that be based on what -- are you able
19 to -- is that based on what is in the media, what
03:24 20 has been informed by Mr. Wolch, are you able to
21 provide --

22 A I don't know what information he had parlayed to
23 them or what was their basis for coming to that
24 conclusion but, you know, that's -- that was his
03:24 25 position and that was his information to me.



1 Q Would it be fair to say that the information in
2 the media, at least based on what you read,
3 compared to the information that you had and were
4 investigating, were often significantly different?

03:24 5 A That's correct.

6 Q And that, again, if -- and maybe this is a
7 difficult question for you to answer -- but that
8 do you think it would be more likely -- well, let
9 me see if I can phrase it a bit fairer -- that if
03:24 10 the record of evidence was what was reported in
11 the media compared to what you had by way of an
12 evidentiary record, is it fair to say that the
13 media record was more favourable to Mr. Milgaard's
14 position than your evidentiary record, if I can
03:25 15 call it that?

16 A Yes.

17 Q In a significant way?

18 A Yes.

19 Q How fair was that?

03:25 20 A Fair.

21 Q Good. If we can go to 229635, please. And so
22 this is the next day, April 10th, 1990, of your
23 discussion with Mr. Wolch, an article by Dan Lett,
24 and it says:

03:25 25 "Important evidence from a



1 two-year-old federal investigation of
2 the David Milgaard case failed to make
3 its way to the justice minister's
4 office, contrary to assurances given the
03:25 5 Stony Mountain Correctional Institution
6 inmate and his lawyers.

7 The discovery was greeted with
8 grave concern and anger by Milgaard's
9 lawyer, David Asper, and Winnipeg
03:26 10 Liberal MP John Harvard, who charged
11 federal officials are demonstrating a
12 serious disregard for the well-being of
13 a man who has spent more than 21 years
14 in prison."

03:26 15 And did you understand that to be you, Mr.
16 Williams?

17 A Yes.

18 Q And:

19 "A spokesman for Kim
03:26 20 Campbell, who took over as federal
21 justice minister from Doug Lewis in
22 February, confirmed Milgaard's file has
23 never been forwarded to either minister.

24 'The file has never come up for
03:26 25 review,' said John Maddigan. 'Some bits



1 might have but ... I don't think he
2 (Lewis) got into the details.'"

3 Now let me just pause there. Would that be
4 correct, that at this point your report had not
5 been provided to the minister's office; is that
6 right?

7 A That's right.

8 Q And I think you had told us that in November of
9 1989, December of 1989, the report was completed
03:26 10 and it was making its way up to the minister's
11 office?

12 A That's correct.

13 Q And then in 1990, February, the Fisher information
14 came forward and you were in the process of trying
03:27 15 to complete the report based on the new ground; is
16 that fair?

17 A That's fair.

18 Q It says:

19 "Justice Department

03:27 20 investigators will not forward a report
21 to the minister until all the evidence
22 is collected, Maddigan said. 'There's
23 an ongoing information flow.'"

24 "However, Asper said he was
03:27 25 personally assured by Justice Department



1 investigators that Lewis had seen the
2 Ferris report and other important
3 details in January.

4 'The Justice Department
03:27 5 official told me: "It's out of my hands
6 now; the minister has it,"' Asper said.
7 'Now, I hear it never even made it to
8 (Lewis's) in-basket. That's
9 incredible.' "

03:27 10 Do you recall any discussion with Mr. Asper, he
11 doesn't say who the Justice Department official
12 is here, do you know whether you would have had a
13 discussion with him of this nature?

14 A I would have had a discussion with him, as you'll
03:27 15 recall, in January of 1990 I had written him
16 saying that we were nearing completion and if he
17 had anything additional could he please send it.
18 Now we didn't hear anything, and we may have had a
19 conversation in which I basically said "I have
03:28 20 forwarded my report", and the report was on its
21 way to the minister's office, in that before it
22 arrives there it goes through several levels of
23 review, and I can say that there did come a time
24 when I had submitted that report, where it was
03:28 25 being reviewed by senior officials on its way to



1 the minister, and it was out of my hands, but it
2 did not make its way to the minister's office
3 because of the intervening receipt of information
4 about Larry Fisher.

03:28 5 Q And did you ever tell Mr. Asper, then, that "the
6 minister has it"?

7 A No.

8 Q Do you know, of your own knowledge, whether
9 anybody else in your department would have told
03:28 10 him that?

11 A I -- I don't know of anyone else having said that
12 to him.

13 COMMISSIONER MacCALLUM: Are you talking
14 about -- the article talks about the Ferris
03:29 15 report, though, not yours.

16 MR. HODSON: Oh, I'm sorry.

17 COMMISSIONER MacCALLUM: Yeah.

18 BY MR. HODSON:

19 Q And other important details? I'm sorry, I might
03:29 20 have misread that.

21 A No, I did not, I would not send the Ferris report
22 up in isolation.

23 Q So that your departmental report -- the Ferris
24 report would not go up through the chain to the
03:29 25 minister's office without your departmental



1 report?

2 A No.

3 Q Okay.

4 COMMISSIONER MacCALLUM: And you didn't
03:29 5 tell Asper that?

6 A I didn't tell him that.

7 BY MR. HODSON:

8 Q Can you tell us what, what was your reaction or
9 response to this article, and I think it says
03:29 10 *Ottawa accused of disregard for well-being of*
11 *21-year inmate*, and I think you read the comments
12 here as being directed at you personally; is that
13 correct?

14 A Yes.

03:30 15 Q And what was your response to this article, if
16 any?

17 A I just got ready to do another briefing note.

18 Q And that would be up to the minister advising what
19 was happening?

03:30 20 A Well, certainly to deal with the contention that
21 certain allegations -- certain assurances had been
22 given. I mean those in the minister's office know
23 what they have received and what they haven't
24 received, there's quite a process for recording
03:30 25 materials that originate within the department, so



1 they would certainly be looking to the officials
2 to provide some explanation as to the
3 circumstances under which someone in the
4 department might have misled the applicant, and we
03:30 5 would certainly have to correct that impression.

6 Q And do you know whether you ever discovered
7 whether anybody in your department or the
8 minister's office had shared information with Mr.
9 Asper that he attributes to them in this article?

03:31 10 A I didn't make that inquiry, I -- from the, from
11 the circle of individuals who would have knowledge
12 of the file, I received no information that
13 signaled that they had had that conversation with
14 Mr. Asper.

03:31 15 Q Would you have told Mr. Asper and/or Mr. Wolch,
16 prior to this time, that the Dr. Ferris report
17 would not go to the minister's office except as
18 part of your departmental report?

19 A I don't recall telling them that. Is it possible
03:31 20 that I may have? I think in the context of, in
21 the context of a discussion as to how we report
22 up, I believe that I would indicate that all of
23 the material collected --

24 Q Yes?

03:32 25 A -- would be submitted to the minister for a



1 decision together with the departmental report and
2 recommendation.

3 Q So are you telling us that you would have informed
4 them that your information would go to the
03:32 5 minister's office only when you've completed your
6 investigation; is that fair?

7 A That's fair. And that our practice was to provide
8 the report and to provide materials that were
9 relevant to it at one time.

03:32 10 Q And I think you've told us, although you didn't
11 discuss the substance of some of the investigation
12 you were doing, did you advise Mr. Asper and Mr.
13 Wolch about the status of at least where you were
14 at within the department, where you were at in the
03:32 15 preparation of your report, and when it was sent
16 up the line? In other words, was that the type of
17 information you would share, that "I have done my
18 report, it is going through the department", or "I
19 expect it to be done in this much time"?

03:33 20 A Yes.

21 Q And is that something that you would have
22 discussed with them from time to time throughout
23 the process?

24 A Yes, and signaled to them in writing when I said
03:33 25 "look, we're nearing the completion of the report,



1 let's have your submissions". That's basically
2 our way of signaling we're nearing completion,
3 let's wrap, wrap it up, let's, let's get moving on
4 it.

03:33 5 Q Go to 056763, which is part of the Pearson
6 chronology. This says April 10th, 1990, so I
7 guess that's the same day as the article we just
8 touched on. It appears that Mr. -- or Sergeant
9 Pearson interviewed Larry Fisher at the Prince
03:34 10 Albert Penitentiary; is that right?

11 A Yes.

12 Q And I take it that Sergeant Pearson would have
13 relayed this information to you?

14 A He did.

03:34 15 Q And he says here:

16 "Nothing came from this
17 interview which would suggest Fisher was
18 involved in the murder; he said he
19 confessed to all his crimes when he was
03:34 20 sentenced in Winnipeg. I left my
21 calling card and list of the three
22 requests that I made. At this point I
23 await a request from his lawyer."

24 "Called Williams in Ottawa and
03:34 25 advised the progress to date. He will



1 be sending me further correspondence he
2 received from the family lawyer, in the
3 event there is additional information to
4 follow up on."

03:34 5 And then:

6 "I phoned Williams and
7 requested additional info on recent news
8 story re Dr. Farris's report.
9 Explanation provided which was unrelated
03:34 10 to my inquiries re Fisher. My inquiries
11 with Fisher are continuing and I hope to
12 hear from him and his legal counsel
13 soon."

14 And I think what Sergeant Pearson told us is
03:35 15 that, on the Dr. Ferris information, that you
16 essentially told him that that was an issue that
17 you were looking at and he need not be concerned
18 with it; is that correct?

19 A That's correct.

03:35 20 Q And then what about this information that, in the
21 interview:

22 "Nothing came from ..."

23 the:

24 "... interview which would suggest
03:35 25 Fisher was involved in the murder."



1 Did you expect -- let -- what was your
2 expectation; that someone would sort of readily
3 confess to a crime?

03:35 4 A I didn't expect a ready confession, but over my
5 dealings or during my dealings with Sergeant
6 Pearson I came to appreciate his skills as an
7 investigator, and not only what's said but how
8 it's said, and he was quite intuitive about the
9 manner in which information was delivered during
03:36 10 questioning. And what I drew from that was he
11 didn't get any cues, based on his discussion with
12 Mr. Fisher, that signaled a level of participation
13 in the Gail Miller homicide.

03:36 14 Q If we can just go back to, I think on your April
15 5th, 1990 memo, about the desire to have a
16 polygraph of Larry Fisher and interview him.

17 A Yeah.

18 Q I think Sergeant Pearson told us that the
19 interviewing process of someone who you suspect
03:36 20 for a crime is somewhat of an evolutionary process
21 and requires some relationship-building or rapport
22 that he might need to develop over time. Was that
23 your understanding of not only his style but what
24 other investigators might need to do with a
03:36 25 suspect?



1 A Yes.

2 Q And so that am I right that it wasn't a case of
3 getting in touch with Mr. Fisher, saying "did you
4 kill Gail Miller", "no", "thank you very much",
03:36 5 and move on?

6 A That's absolutely correct. You could ask the
7 question and be out of there in five minutes or
8 less, it wasn't going to work that way, and I left
9 it to Sergeant Pearson to determine the best way
03:37 10 of dealing with it.

11 Q Is it fair to say -- and I think we'll see this in
12 your questioning of him as well -- that, apart
13 from the critical question "did you kill her", it
14 was a number of other questions to try and get
03:37 15 other facts to see whether you might get some
16 information that might either link him to the
17 crime or lead to something that would link him to
18 the crime?

19 A Yes.

03:37 20 Q Or something that might cause you to question the
21 credibility of his denial?

22 A Yes.

23 Q Go to 333378. And this is a memo of April 12th,
24 1990 from Mr. Corbett to John Maddigan, and it
03:38 25 relates to that April 10th article that I showed



1 you saying *Ottawa* accused of disregard for
2 *well-being* of 21-year inmate, and he talks about
3 the continual delays are taking a toll, and he
4 says, 'the 'continual delays' referred to were
03:38 5 occasioned by additional submissions by Mr. Wolch,
6 another of Milgaard's lawyers. The most recent
7 submission (February 28 and March 15, 1990)
8 alleges that someone else committed the murder of
9 Gail Miller. This obviously required
03:38 10 investigation which is now taking place.

11 I believe the press should be
12 forcefully informed of the reasons for delay in
13 this case.'

14 Can you elaborate at all on this
03:38 15 and what may have prompted this?

16 A Certainly. I believe that an explanation was
17 required, or was requested from the minister's
18 office, and at the time I believe Mr. Maddigan
19 worked and was the press attaché, and as part of
03:39 20 the, quote, "departmental response" or the message
21 that the department would want to communicate to
22 the public is that there is another side to the
23 allegation that the department doesn't care about
24 the well-being of the applicant and that uncaring
03:39 25 feeling is demonstrated by the length of time it's



1 taking to deal with the applications --

2 Q Did --

3 A -- and that the other side of the story that
4 wasn't mentioned in the article, and that needs to
03:39 5 be told, is that "this is how we do things in
6 terms of this is the method we use for assessing
7 the applications, and where you have an applicant
8 feeding you information by instalments over a
9 lengthy period of time it will extend the time
03:40 10 required to assess the application, and it will
11 result in a longer delay".

12 Q And so is this an attempt to be -- to try and
13 perhaps get a more forceful response in the media?

14 A Well, try and get our explanation for the delays
03:40 15 before the public.

16 Q And did you -- I -- the April 10th article that I
17 just showed you, did you take issue with the
18 accuracy of what was stated in there?

19 A What the article didn't say was that it didn't
03:40 20 indicate that new grounds had been advanced in
21 February, on February 28th, which caused us to
22 launch a new series of inquiries, and that we were
23 getting additional information that had to be
24 checked out, and it didn't balance the message
03:41 25 that there were an uncaring group of bureaucrats



1 who were allowing someone to languish in jail for
2 21 years for a crime they didn't commit.

3 Q If we could just go back to 229635 for a moment.
4 229635. I think we've saw on this day, April 10th
03:41 5 is the day that Rick Pearson interviewed Larry
6 Fisher in jail, and so I take it at this time I
7 don't believe it's in the public domain, yet,
8 that -- any information about Sidney Wilson and
9 the possible new suspect; is that correct?

03:41 10 A That -- that's correct.

11 Q And so, again, I think, from what you have told
12 us, that you didn't, or the minister couldn't go
13 out and say to Dan Lett, "lookit, I would like you
14 to publish a story that we actually, there is
03:42 15 another suspect, we actually got in and
16 interviewed him today, and he might be the
17 murderer, and that's why we are taking a bit
18 longer. We got it five weeks ago, we've
19 interviewed his wife, got a statement, examined
03:42 20 her under oath, we've now got in to interview him
21 and we are hoping to get a polygraph from him and
22 we are hoping to examine him under oath", which
23 would be, I think, what you are telling us is
24 where you were at at the time?

03:42 25 A That's correct.



1 Q And, again, that is the information that you -- I
2 think you've told us is not the, for a number of
3 reasons you've told us, you could not put that out
4 in the media?

03:42 5 A That's correct.

6 Q And so what could you other than to say "there's
7 new grounds and we're looking into them"?

8 A We could try and persuade the press that we were
9 pursuing this diligently and --

03:42 10 Q Without giving them any of the details of what you
11 were doing?

12 A Without giving them the details, because the
13 minute you do that you will -- you could, given
14 the popularity of this item, you could start a
03:43 15 frenzy in which, while it starts out in print,
16 radio or television would want an update.

17 Q Now we also have seen in some articles, and we'll
18 see it again in some further articles, that when
19 the minister's office or you or others in your
03:43 20 department put forward the position that the
21 reason it's taking longer is because we get new
22 grounds, and I think in every instance, or most
23 instances there Mr. Asper would comment to the
24 effect that, I think, that "that's wrong or
03:43 25 ridiculous because we're being penalized for



1 putting more information"; is that correct?

2 A That's correct.

3 Q So even when you did comment and say "we're taking
4 longer because they gave us new grounds" the
03:43 5 response in the media, at least, was critical of
6 that response; is that fair?

7 A That's fair. There's -- there was no sympathy for
8 the departmental approach and angle on this
9 because several of the reporters were personally
03:44 10 convinced in the correctness of the cause without
11 fully investigating the underlying grounds for it.

12 Q Let me just go back to 056763 for a moment, it's
13 part of 056743. And this is where Sergeant
14 Pearson had interviewed Larry Fisher, and I should
03:44 15 have drawn this to your attention, and I think he
16 left the interview with him saying that he:

17 "... requested that he provide me with a
18 blood sample, take a polygraph
19 examination and provide a statement or
03:44 20 legal deposition. Mr. Fisher remained
21 cooperative but wished to discuss this
22 request with his lawyer."

23 And so it looks, on April 10, 1990, Sergeant
24 Pearson has made contact, he's interviewed Mr.
03:44 25 Fisher in prison, I don't believe he took a



1 statement from him but asked for a blood sample,
2 polygraph, and a deposition, and Mr. Fisher said
3 he'd consult his lawyer; is that correct?

4 A Yes, that's correct.

03:45 5 Q So this would be what, I think, the items that you
6 and Mr. Pearson had discussed a week or so
7 earlier; is that correct?

8 A Yes. I'm not certain of the exact date, but we
9 had discussed it.

03:45 10 Q And then I think the record reflects that it took
11 some time for Mr. Fisher to come around on all
12 three of these, the blood sample, the polygraph,
13 and the statement; is that right?

14 A That's correct.

03:45 15 Q Did it take longer than you had expected?

16 A It did. It was complicated in part because
17 between April 10th and when we did interview Mr.
18 Fisher, which I believe was in July, the CBC
19 identified him, and that created some additional
03:45 20 tensions for him and delayed the timing for his
21 providing some of the items that had been
22 requested, and it certainly had an impact on the
23 ability to get meaningful results from a polygraph
24 examination.

03:46 25 Q And can you explain that?



1 A In April, although we were investigating Mr.
2 Fisher, the public, and certainly those in the
3 penitentiary, weren't aware of it. However, when
4 the CBC, in its reports, named him as a suspect,
03:46 5 that information found its way into the
6 penitentiary and his life as a prisoner became a
7 lot more difficult in that he was apprehensive
8 about his continued well-being, and that
9 apprehension and his perception that he was in
03:47 10 some danger certainly exacerbated physical
11 conditions he had -- I believe he had either an
12 ulcer or gallstones -- and, as a result, his
13 physical condition adversely affected the ability,
14 or the polygrapher's ability to get meaningful
03:47 15 results when the polygraph was taken. It also had
16 an impact on our conversations with him because,
17 during them, he was in obvious or appeared to be
18 in obvious pain, and part of that pain may have
19 been occasioned by the emotional upset and the
03:47 20 apprehension that resulted from him being outed in
21 public as being the real killer of Gail Miller.

22 Q And was it your assessment that the public outing
23 of Larry Fisher as the real killer of Gail Miller
24 had an adverse impact, or had an adverse effect on
03:48 25 your ability to question him in July of 1990?



1 A Well, certainly it did, it heightened his
2 defensiveness and put our queries in a completely
3 different light.

4 Q And as far as the polygraph, is it your evidence
03:48 5 as well that the public outing of Larry Fisher in
6 -- by the media had an adverse effect on his
7 health and may have contributed to the
8 unsuccessful polygraph?

9 A To the extent that -- yes, to the extent that it
03:48 10 -- he became much more nervous, he was aware of
11 certain threats against him which affected his,
12 certainly his emotional condition, yes.

13 Q Would it have been your preference to have your
14 examination of Larry Fisher and the polygraph
03:48 15 conducted of Larry Fisher done before any public
16 pronouncement about him as a suspect had taken
17 place?

18 A Yes, it would have been our preference.

19 Q And do you think you would have had a more
03:49 20 meaningful result in both scenarios, both your
21 examination and the polygraph?

22 A To the extent that you have an interviewee who is
23 calm and not under pressure I anticipate, or
24 expected, that we would have gotten a better
03:49 25 result.



1 Q Now let's just, for a moment, focus on I think you
2 are telling us in addition to the pressure or
3 concern that might be on an individual who is
4 suspected of a crime is one thing; are you telling
03:49 5 us that, in addition to that, the fact that Mr.
6 Fisher was in a penitentiary where others there
7 were aware of that, that somehow that made the
8 situation worse?

9 A Yes. My information, and those involved in
03:49 10 penitentiary settings, come to understand that
11 there's certain rules in prison that abound. One
12 of the cardinal rules is that you don't let
13 somebody else do your time, in other words you
14 don't -- you don't permit someone to take a
03:50 15 conviction or take responsibility for a crime that
16 you've done and remain silent, and where that
17 happens someone who is accused of that is targeted
18 for, for discipline, and that discipline in the
19 penitentiary setting can be fatal.

03:50 20 Q If we could go to the next page, please. So I
21 think this is now -- actually, sorry, just go back
22 to the previous page. At the bottom you'll see
23 this is now April 20th. Go to the next page,
24 please. Okay. So April 20th of 1990 Sergeant
03:50 25 Pearson gets a call from you inquiring about



1 whether contact had been made with Fisher, and
2 then later that day Pearson returned a call to you
3 and you stated:

4 "... he had received a call from Mr.
03:51 5 Asper over the lunch hour and some
6 suggestion that local press are sitting
7 on this story and will be doing a
8 publicity release soon. Mrs. Milgaard
9 is coming back from England and will be
03:51 10 promoting publicity."

11 Again, do you have a recollection of that
12 discussion with Mr. Asper? I do have a note, if
13 we go to 333384, and see if this assists. This
14 is an April 20th, 1990 memo to file:

03:51 15 "David Asper called today to
16 find out whether there were any
17 developments in this investigation and
18 to advise that Mrs. Joyce Milgaard was
19 returning from her European trip sooner
03:51 20 than anticipated. He also said that he
21 had learned that Joyce Milgaard had told
22 members of the press (in Saskatchewan or
23 Manitoba I assume) details of the
24 alleged involvement of Larry Fisher in
03:51 25 the death of Gail Miller.



1 He expressed some concerns
2 about the impact, if any, that those
3 revelations may have on the outcome of
4 our investigation and upon Mr.
03:51 5 Milgaard's application. He indicated
6 also that his firm preferred that those
7 allegations be kept confidential until
8 they could be thoroughly investigated.
9 He expressed some concerns about the
03:52 10 risk of defamatory libel that the public
11 airing of those concerns could attract.

12 I told him that we were
13 diligently investigating the matter,
14 that I would prepare a report which
03:52 15 after review by my supervisors would be
16 presented to the Minister. I would not
17 speculate as to when that would be done
18 because I could not predict with
19 specificity when the investigation would
03:52 20 be completed. I did assure him that
21 this matter was being diligently
22 pursued."

23 And I'll just pause there. Do you have a
24 recollection of that discussion with Mr. Asper?

03:52 25 A Yes, and that note reflects the outcome of our



1 discussions and the topics we talked about.

2 Q And as far as this -- would this have been when
3 you first learned that Joyce Milgaard had told the
4 media about the name Larry Fisher or --

03:52 5 A No. At this point all I knew was that there was
6 another heads up that the media -- the media,
7 shall we say, campaign would be ratcheted up a
8 notch, that Mrs. Milgaard would be spearheading
9 it, that some members of the press, and I think at
03:53 10 that time Dan Lett was at the vanguard of the
11 press coverage, had received information about
12 Larry Fisher, but had agreed to keep it under
13 wraps. However, there was no guarantee that that
14 could be kept under wraps indefinitely.

03:53 15 Q Do you recall, would you have advised Mr. Asper
16 your concerns about that information being made
17 public?

18 A Yes.

19 Q And what would you have told him?

03:53 20 A Certainly that if it becomes public now while Mr.
21 Fisher is in the penitentiary, it will become
22 increasingly difficult for us to -- it might spook
23 him, for one, and secondly, it could adversely
24 affect his well-being in prison.

03:54 25 Q And do you recall any discussion about the risk of



1 defamatory libel?

2 A I think he was more concerned about the libel than
3 I. Libel would be the least of Mr. Fisher's
4 worries.

03:54 5 Q And then again, if you can scroll down, you talked
6 to Rick Pearson:

7 "... and I told him about my
8 conversation with Asper. I also
9 indicated that these conversations
03:54 10 usually preceded a media piece that was
11 critical about the speed of our
12 investigation."

13 And again, what did you mean by that?

14 A As you saw on April 9th, received a call from
03:54 15 Herh Wolch. April 10th Dan Lett wrote a story
16 which basically said that we've been sitting on an
17 application when someone had been in jail for 21
18 years. This is April 20th. My previous
19 experiences with these types of calls signaled to
03:54 20 me that there was to be yet another media story
21 critical of what we had been doing and I shared
22 that with Sergeant Pearson.

23 Q And if we can go to 011843, your memo of April
24 26th, 1990, a discussion with Sergeant Pearson,
03:55 25 and it talks about Sergeant Pearson. I take it



1 he's updating you on his efforts to get an
2 interview of Larry Fisher?

3 A That's correct.

4 Q And then talked about the blood sample and here in
03:55 5 your memo you talk about an earlier briefing you
6 had from him regarding his interview of Larry
7 Fisher?

8 A Yes.

9 Q We touched on that. 112912, please, and go to
03:55 10 page 112914, and this is a letter April 26, 1990
11 from Mr. Asper enclosing a memorandum that Mr.
12 Asper was sending to Mr. Wolch. Go to the next
13 page. This is April 26th, and:

14 "As you know, the Milgaard's
03:56 15 are becoming more and more anxious about
16 David's fate. To that end, Mrs.
17 Milgaard has now returned from England,
18 and is once again focusing her energy on
19 David's case. The original reason for
03:56 20 her return was that they were prepared
21 to "go public" with the entirety of the
22 case in an effort to publicize their
23 plight.

24 Based on my most recent
03:56 25 conversation with Sgt. Pearson, however,



1 I have been able to dissuade them from
2 doing anything at this point.

3 Joyce Milgaard contacted me on
4 Thursday, April 26th, to advise that she
03:56 5 had called Mr. O'Sullivan who is the
6 Warden at Prince Albert Penitentiary.
7 According to Joyce, O'Sullivan concurs
8 that she could very well be an "Ace in
9 the hole" for the investigator in terms
03:57 10 of obtaining a confession from Larry
11 Fisher. The Warden also indicated that
12 he would be prepared to make any
13 arrangements required to have Joyce
14 attend at the prison.

03:57 15 I have strongly cautioned Joyce
16 that it would be contrary to our advice
17 for her to get involved while the police
18 investigation is under way. She has
19 nevertheless asked that I communicate
03:57 20 with Sgt. Pearson and advise him that
21 she is available if he feels that her
22 presence could be of some value. Both
23 David and Joyce are prepared to respect
24 the judgment of Sgt. Pearson in this
03:57 25 matter, but they simply want him to know



1 that they are prepared to do anything
2 that might be of help. They also insist
3 that I forward a copy of this memorandum
4 to both Eugene Williams and Sgt.
03:57 5 Pearson, and I will have done so by the
6 time you read this.

7 Finally, both Joyce and David
8 have imposed a deadline of May 7, 1990.
9 They are prepared at that time to go
03:57 10 public, regardless of the stage of the
11 investigation, as they feel they can no
12 longer wait for what to them seems to be
13 an interminable process. They are very
14 adamant about this, and are prepared to
03:58 15 go forward over our advice to the
16 contrary."

17 Let's just talk first about your reaction to this
18 information about Joyce Milgaard and her
19 discussion with the warden and being the ace in
03:58 20 the hole in interviewing Larry Fisher. What was
21 your reaction to that?

22 A I was quite skeptical about it in terms of Larry
23 Fisher being prepared or to make revelations to
24 Joyce Milgaard at a time when he was not prepared
03:58 25 to do so to Sergeant Pearson. I was quite



1 skeptical and I caused certain calls to be made to
2 confirm whether the words attributed to Warden
3 O'Sullivan accurately reflected his conversations
4 with Joyce Milgaard.

03:58 5 Q And what did you find out?

6 A I found out that indeed she had called
7 Mr. O'Sullivan, but he did not share the view that
8 she would be an ace in the hole in terms of the
9 investigation, and in fact what I understood was
03:59 10 that she was attempting to visit Mr. Fisher at
11 that time as I recall and we were taking steps to
12 not -- to prevent that.

13 Q And so Mrs. Milgaard was trying to meet with Larry
14 Fisher in the penitentiary and you felt that that
03:59 15 would be --

16 A -- counter productive.

17 Q Counter productive. And what were your concerns
18 that if she had met with him, what were you
19 concerned may happen?

03:59 20 A Mrs. Milgaard was dedicated to the cause and quite
21 strong in her view that Mr. Fisher was Gail
22 Miller's murderer. I felt that that attitude
23 would spill over into any conversation she may
24 have with Larry Fisher, put him on the defensive
04:00 25 and, in effect, eliminate any possibility we may



1 have of getting the polygraph, two, getting the
2 deposition, and three, getting the blood sample.
3 There was no way we could compel him to do any of
4 those things and if he viewed himself as a target
04:00 5 of a murder investigation, his approach and level
6 of co-operation with us could well be much
7 different than what we had expected up until that
8 time. I would much prefer to have Pearson do his
9 investigation, he had already contacted Larry
04:01 10 Fisher, there was the beginning of a rapport, he
11 had already made contact with the lawyer and we
12 were moving, albeit not as quickly as others would
13 have us move, but the introduction of the mother
14 of David Milgaard at this time I felt would set us
04:01 15 back.

16 Q And you talked a bit about this earlier, that
17 unlike the other grounds, namely, Deborah Hall and
18 Ferris, that when this ground was Larry Fisher is
19 the killer, you felt that it required the
04:01 20 involvement of the police service to do that part
21 of the investigation?

22 A Yes.

23 Q And the fact that the nature of the allegation
24 being made, was that another factor then that
04:01 25 caused you to be concerned that -- I mean, for



1 example, if Mrs. Milgaard had wanted to go out and
2 interview Deborah Hall again, would you have had
3 the same concern?

4 A No.

04:01 5 Q And so the concern with Mr. Fisher was because of
6 the allegation against him and the impact her
7 contact with him may have had on your
8 investigation?

9 A Certainly. This is a homicide investigation and,
04:02 10 as we now know, the successful conclusion of it
11 would be the laying of an information against Mr.
12 Fisher. Along the way you certainly want to make
13 sure that whatever investigative steps you take
14 will result in the acquisition of evidence that
04:02 15 would be admissible at a trial.

16 Q Were you concerned that information Mrs. Milgaard
17 may have imparted to Larry Fisher at such a
18 meeting might be such that it might lessen the
19 validity of a subsequent confession, statement or
04:02 20 piece of evidence?

21 A Well, it certainly could have an impact, yes.

22 Q And was that something that you were concerned
23 with at the time as well?

24 A Yes.

04:02 25 Q And what about -- you talked earlier about the



1 fact when this information came forward you
2 indicated to Mr. Asper that you did, you were
3 investigating it?

4 A Yes.

04:03 5 Q And did you get some assurance from him that they
6 would not investigate it; in other words, that
7 they would let you do your investigation?

8 A Initially, yes. Keep in mind that at this time,
9 we're talking April of 1990, Mr. Asper had been in
04:03 10 touch with Sergeant Pearson and certainly he was
11 aware of Sergeant Pearson's involvement and the
12 types of things that he was doing in a general
13 way.

14 Q And then what about the deadline here of May 7th,
04:03 15 1990?

16 A It was an arbitrary deadline. We had no way of
17 knowing what type of timetable was available to
18 Mr. Fisher's counsel and we had no way of knowing
19 when we could make the arrangements for the
04:04 20 polygraph, certainly not within 10 days or 11 days
21 to complete both the polygraph and the deposition,
22 so it was certainly a red flag that had been
23 raised.

24 Q If we can go to 112912, and I think this is your
04:04 25 memo to file about the April 26th memo about the



1 warden, and here's where you indicate:

2 "The veracity of this information is
3 questionable. Sgt. Pearson spoke with
4 warden Sullivan."

04:04 5 And again here:

6 "She mentioned that Fisher had been seen
7 burning new boots by an uncle, and had
8 also been interviewed three times by the
9 R.C.M.P."

04:04 10 And this was information that Joyce Milgaard was
11 providing to the warden?

12 A Correct.

13 Q Do you know where that information -- would that
14 information have come from you or Sergeant Pearson
04:05 15 or do you know?

16 A I believe that came from Pearson after having
17 spoken -- he's repeating -- Pearson is relaying to
18 me the substance of his call with Warden Sullivan.

19 Q Right. So it appears here that Pearson is telling
04:05 20 you that Warden Sullivan was told by Mrs. Milgaard
21 that the RCMP had interviewed Larry Fisher three
22 times?

23 A Yes.

24 Q And had the RCMP interviewed Larry Fisher three
04:05 25 times?



1 A Not at that time.

2 Q And then here there's a discussion, and again this
3 would be Joyce Milgaard to Warden O'Sullivan to
4 Pearson to you; is that right?

04:05 5 A Yes.

6 Q And that apparently she had said that:

7 "Joyce had said her lawyer had asked her
8 to cut short her vacation overseas and
9 she was prepared to see Fisher and plead
04:05 10 with him to confess."

11 And I think there was an earlier memorandum where
12 Mr. Asper said that she had decided to come home.
13 Do you recall --

14 A There was some information to that effect, yes.

04:06 15 Q And do you know what was going on with that,
16 whether it was -- why she was coming home to deal
17 with this?

18 A No.

19 Q And did it matter to you?

04:06 20 A It didn't as long as it didn't interfere with what
21 we were doing.

22 Q And then again down at the bottom, it looks as
23 though you:

24 "...spoke with Mr. Wolch to ask how Mrs.
04:06 25 Milgaard could be the investigator's



1 "Ace in the hole". Mr. Wolch indicated
2 that a mother's plea might persuade
3 Larry Fisher to confess to the killing
4 of Gail Miller."

04:06 5 And did that conversation take place?

6 A I believe it did, yes. You know, I was quite
7 concerned with the prospect of Mrs. Milgaard
8 trying to tackle someone in the penitentiary. I
9 mean, this fellow had been doing 13 years. If he
04:07 10 wasn't a hardened con before he entered, keeping
11 in mind he was at Prince Albert Penitentiary which
12 is, I believe, a maximum security institution,
13 when you are dealing with a convict who has been
14 inside for a considerable period of time, you need
04:07 15 a certain skill level and understanding to
16 interview that person successfully. Nothing in
17 Mrs. Milgaard's background signaled to me that a
18 mother's plea would generate the compassion that
19 would warm the heart of a long-serving convict.

04:08 20 Q And again, did you have concern that Mr. -- was it
21 your understanding that Mr. Wolch shared her view,
22 that she might be able to get a confession or that
23 he --

24 A That's what I understood him to say, that she
04:08 25 could be helpful. I didn't share that view.



1 Q And then at the bottom you indicate:

2 "I suggested to Sgt. Pearson that he
3 contact warden Sullivan, and suggest
4 that Sullivan ensure that he record all
04:08 5 the details of his conversation with
6 Mrs. Milgaard while it was fresh in his
7 memory. Should Mrs. Milgaard choose at
8 a later date to publish the details of
9 their conversation, he could use his
04:08 10 notes of that conversation to refresh
11 his memory should that become
12 necessary."

13 And what prompted you to pass on this advice
14 through Sergeant Pearson to Warden O'Sullivan?

04:08 15 A It was merely a precaution, that in the event that
16 there was some dispute as to who said what, Warden
17 Sullivan would have recorded his past memory
18 relatively close to the time of the event. I was
19 getting one story from Hersh Wolch and David Asper
04:09 20 about the results of a conversation between Mrs.
21 Milgaard and Warden Sullivan, I was getting
22 another story from Sergeant Pearson who had been
23 speaking with Warden Sullivan and his account, or
24 the account attributed to Warden Sullivan as
04:09 25 relayed to Pearson was much different from the



1 account of the conversation that had been
2 attributed to Sullivan by Mrs. Milgaard and by --
3 and by counsel for David Milgaard, so it occurred
4 to me that perhaps at a future date there might be
04:10 5 some controversy and it would be helpful if he
6 recorded what he remembered while it was still
7 fresh in his mind.

8 Q Were you concerned here about -- I mean, did you
9 think that Ms. Milgaard may go to the media with
04:10 10 her version of events involving her discussion
11 with Warden Sullivan and have that information in
12 the media in a way that was discrediting of you or
13 your department?

14 A That was a possibility. What I saw was a
04:10 15 situation in which a story could evolve, that the
16 department or government refused to help in trying
17 to get a convicted rapist to fess up and that not
18 only had there been an offer of help, but also
19 that such an approach had been countenanced or
04:11 20 encouraged by the warden and we certainly wanted
21 to find out whether or not that was the case,
22 because it just seemed to me to be unlikely.

23 Q And so the concern would be that type of news
24 story might go out with what you believed to be
04:11 25 wrong facts attributed -- or a wrong position



1 attributed to Warden Sullivan?

2 A That was a possibility. There could have been
3 other uses that may have been made. I wasn't
4 certain what would happen at that time, but out of
04:11 5 an abundance of caution I certainly signaled to
6 him that he should record what he recalled while
7 it was still fresh in his mind.

8 Q And was your concern about that, was it influenced
9 by what, previous experience, or why were you
04:11 10 being this careful at this time?

11 A Maybe I've been burned once or twice.

12 Q Okay.

13 A It was just -- it just seemed to me to be an
14 incredible distance between the two versions and
04:12 15 it seemed prudent that he should take those steps.

16 Q Go to 056767, and this is May 3rd, 1990, and this
17 is where I think Pearson is advised by Mr. Carter,
18 who was Larry Fisher's lawyer, that Mr. Fisher
19 wishes to have until the end of May to think about
04:12 20 the request. So I think you were given the
21 deadline on April 26th of May 7th, Sergeant
22 Pearson talks to Mr. Fisher's lawyer on May 3 and
23 is told that Mr. Fisher wants a bit more time, to
24 the end of May, to consider the request?

04:13 25 A That's correct.



1 Q Now, apart from the pressure you had talked about
2 from various areas to get this thing done, did you
3 view Mr. Fisher's -- I mean, what was your
4 reaction to Mr. Fisher's position, that lookit, I
04:13 5 want to think about this for a bit longer?

6 A There wasn't much we could do. It was
7 disappointing, but at least at this juncture we
8 still had the possibility that he would
9 co-operate.

04:13 10 Q I suppose if he would have said no, no and no to
11 the three requests, you would be done, but you
12 would not be much further ahead as far as getting
13 information from him?

14 A That's correct.

04:13 15 Q And so waiting to try and get an opportunity to
16 talk to him, am I right that would have been
17 better than saying okay, well, we're not going to
18 bother, let's move on?

19 A If you cut it off at that juncture without at
04:14 20 least interviewing him, you would be accused of
21 not fully investigating such an important lead,
22 and any negative decision to the application would
23 be criticized on the basis that we didn't take it
24 seriously.

04:14 25 Q If we go to 004906, and I think this is a report,



1 I may have touched on it earlier, April 17th,
2 1990, and I think this is the first report that
3 Sergeant Pearson sent to his superiors and it
4 would end up getting to you at some point shortly
04:14 5 after; is that correct?

6 A That's correct.

7 Q And if we can go to page 004915, and this is as of
8 April 17th, 1990, so this is after Linda Fisher
9 gave a statement to Sergeant Pearson after you
04:15 10 interviewed Linda Fisher and I think Sergeant
11 Pearson had talked to Larry Fisher once on April
12 10th and he had done some other investigation, and
13 so here he says:

14 "In summary, from my examination of the
04:15 15 facts so far, there is nothing to
16 indicate that Larry Fisher was involved
17 in the murder of Gail Miller. The fact
18 that David Milgaard and Larry Fisher
19 were at the same residence on the date
04:15 20 of the murder and that Larry Fisher is
21 now known to have been a sex offender at
22 the time, appears to be mere
23 coincidence. While the circumstances
24 create suspicion, the facts support very
04:15 25 little at this point."



1 And that would have been what you received from
2 your investigator then in late April, 1990?

3 A That's correct.

4 Q And again, I think what Sergeant Pearson told us,

04:16 5 is that throughout his investigation that pretty

6 much was his bottom line, although the suspicion

7 may have increased, or decreased with various

8 pieces of information, that other than Larry

9 Fisher being a strong suspect, he was never able

04:16 10 to uncover any evidence that would link him to the

11 murder of Gail Miller; is that correct?

12 A Yes.

13 Q And did you rely upon this and other advice from

14 Sergeant Pearson then as far as your observations

04:16 15 or evaluation of the Larry Fisher information?

16 A I did.

17 Q And did you share that view, Sergeant Pearson's

18 view?

19 A Yes.

04:16 20 Q If we can then go to 010021, please, and this is

21 an article April 23 to April 29, 1990, and *Law*

22 *Times*, *The Hill*, I'm not sure what publication.

23 Well, I'm aware of the name of it, but is this an

24 Ottawa-based publication?

04:17 25 A It's an Ontario-based publication. The *Law Times*



1 circulates cases of interest and a portion of it
2 has a synopsis of cases that have been decided in
3 the courts and articles on topical concerns that
4 are law related.

04:17 5 Q And again the headline here *Feds Foot Dragging on*
6 *Review of Con's Case Following New Evidence*, it
7 talks about:

8 "The *Toronto Star* recently ran
9 a feature story on Milgaard's case, the
04:18 10 latest in a series of newspaper accounts
11 which at the very least raise some
12 serious questions about this man's guilt
13 or innocence.

14 What is truly amazing about
04:18 15 this case, however, is Ottawa's
16 remarkable reluctance to act in the face
17 of new evidence."

18 And then it goes on to say:

19 "Yet the federal Justice
04:18 20 Department has been aware of new
21 evidence in the Milgaard case for the
22 past 15 months and, to date, has done
23 nothing about it."

24 And I wouldn't mind, again we've touched on
04:18 25 similar types of articles, but again, is this --



1 can you tell me what response, if any -- would
2 this have come to your attention at the time?

3 A Oh, yes.

4 Q And what was your response to it?

04:18 5 A This is another in the litany of articles that
6 malign us for inactivity. It may well be that --
7 I guess in hindsight our media response was
8 certainly lacking, but the consistent message that
9 was being communicated to the public by the media
04:19 10 was that notwithstanding strong evidence that had
11 been submitted by the applicants, Federal Justice
12 had done nothing for 15 months. We knew that that
13 was not the case and we could say to reporters who
14 took the time to call, we could provide in a
04:19 15 general way a description of what we had done.
16 Nevertheless, those descriptions that we had
17 provided didn't seem to find their way into the
18 articles which seemed to have a common theme of
19 federal foot dragging.

04:20 20 Q And then as far as the, if we can just scroll over
21 here:

22 "Naturally, experts can
23 disagree legitimately on the importance
24 of particular bits of evidence. But
04:20 25 given the strength of Ferris's



1 conviction that Milgaard didn't murder
2 Gail Miller, surely the justice minister
3 must take a few moments out and act
4 accordingly."

04:20 5 I think you are telling us, would your concerns
6 be twofold, one, the process, in other words, the
7 article saying you've done nothing when you are
8 saying lookit, we've done a number of things,
9 they just haven't reported it or we haven't been
04:20 10 able to tell them; is that correct?

11 A Yes.

12 Q And the second thing is you would take issue with
13 the significance of the exculpatory evidence that
14 they are reporting on?

04:21 15 A Yes. I'm not certain what Mr. Hoy's background
16 is, he obviously has read either a portion of the
17 report or all of the report and has come to his
18 own conclusions about the strength of Dr. Ferris'
19 report and of its significance in terms of its
04:22 20 utility as part of the 690 process. His position
21 is quite clear, and he's of the view that Dr.
22 Ferris' report warrants immediate action and, to
23 the extent that neither Minister Lewis nor
24 Minister Campbell had taken that action, they
04:22 25 should be called to account for it.



1 Q Okay. If we could go to page 056771, please, of
2 the Pearson chronology. And this is his May 8th,
3 1990 note that we've gone through with him, but I
4 think what Sergeant Pearson told us is that
04:23 5 notwithstanding Mr. Fisher's lawyer saying "wait
6 until the end of May before Mr. Fisher talks to
7 you", he went out there anyway to talk to Mr.
8 Fisher; is that right?

9 A That's right.

04:23 10 Q And I think he said that that was done because of
11 the May 7th deadline; is that right?

12 A Yes.

13 Q And can you tell us what, how that came about, or
14 what was the thinking there?

04:23 15 A We were certainly aware of the deadline, and we
16 had heard about the request to postpone further
17 consideration, but we felt that it was important
18 enough that we pursue it at a faster rate.

19 Q Okay. Go to 213579. And, again, this is a letter
04:24 20 from David Milgaard to the minister May 9, 1990,
21 and it says -- I feel about -- it says:

22 "Your department will not disclose what
23 action it has taken in regard to the
24 conclusions of forensic expert ... Dr.
04:24 25 James Ferris. Why have I been held



1 hostage to this for 15 months? It has
2 been a nightmare for me.

3 The report and our request to
4 the department to empanel other experts
04:24 5 to prove Dr. Ferris's conclusions is a
6 very serious issue. In all likelihood,
7 this report once validated will see me
8 released. This means if the report is
9 correct, then someone made a big mistake
04:24 10 in ignoring this request in our
11 completed application which was with the
12 department of justice in Dec. of 1988."

13 Scroll back up, please. This, or do you recall a
14 request being made to you to empanel other
04:25 15 experts to prove Dr. Ferris' conclusions?

16 A Quite frankly, I don't. It may have -- there may
17 have been some suggestion in the December 1988
18 letter to have Dr. Ferris' report validated by
19 others, but I don't re -- I don't specifically
04:25 20 recall a request --

21 Q Do --

22 A -- to have a panel of experts make that decision.
23 There may have been something about referring it
24 to an independent tribunal or some tribunal, but
04:25 25 this, the way it's framed here seems to be a new



1 twist.

2 Q And, again, it appears that Mr. Milgaard, who is
3 the applicant here, we're now 15, 16 months from
4 his first application and it appears from this
04:25 5 letter that he believes that the Dr. Ferris report
6 proves his innocence and he believes that the
7 federal Department of Justice has done nothing
8 with respect to that report. And I think, from
9 what you have told us, (a) you've checked it out
04:26 10 within months after getting it, I think within six
11 or seven months; (b) you've concluded that it is
12 not what Mr. Milgaard believes it to be?

13 A Correct.

14 Q And, again, I asked you this question with respect
04:26 15 to Joyce Milgaard's letters to the minister here;
16 is it your evidence that notwithstanding this
17 apparent misunderstanding by Mr. Milgaard about
18 not only the substantive merit of Dr. Ferris'
19 report, according to your review, and his
04:26 20 understanding that you've done nothing with it,
21 are you telling us you were unable to get back to
22 him to say "lookit", --

23 A Mr. Milgaard is represented by counsel. As a
24 lawyer my task and obligation is to contact Mr. --
04:27 25 when I know someone is represented by counsel I



1 communicate with counsel.

2 **Q** Yeah, so let's go that route about saying to Mr.
3 Wolch and Mr. Asper, to communicate through them
4 to try and get to Mr. Milgaard. And, again, I
04:27 5 know we've touched on this subject before about
6 putting forward conclusions, but did you have
7 concerns at this time that he, and perhaps his
8 mother, may have had a different view about the
9 value of Dr. Ferris' report and the level of
04:27 10 activity you had undertaken that maybe was
11 different than what you had communicated to Mr.
12 Wolch and Mr. Asper?

13 **A** Yes, in this way, in -- I had not described in
14 detail to either Mr. Wolch or Mr. Asper the steps
04:28 15 that we had taken in terms of examining the Ferris
16 report, but in a general way indicated that we had
17 referred it and had gotten some opinions about it
18 in relation to the conclusions he had drawn.

19 To the extent that we had
04:28 20 communicated, at least in January and again I
21 think in either in March or April, that we had,
22 quote, "concluded our", or "nearing the conclusion
23 of our investigation", that, I guess, is one of
24 our ways of signaling to an applicant that "we've
04:28 25 looked at the grounds you advanced and we are



1 about to write a report".

2 Whether or not Mr. Wolch or Mr.
3 Asper relayed that information to their client, I
4 have no way of knowing, but certainly we had had
04:29 5 some contacts with them.

6 COMMISSIONER MacCALLUM: So are you saying
7 that they should, Wolch and Asper should have
8 known that you didn't hold the Ferris report in
9 high regard, otherwise -- as proving innocence?

04:29 10 A Yes.

11 COMMISSIONER MacCALLUM: Otherwise you
12 would have said so?

13 A If the Ferris report was the key to unlock David
14 Milgaard's cell, that, that key would have been
04:29 15 used in August of 1989. In other words if, during
16 the course of an application that has three
17 grounds, you find one ground that determines the
18 issue in the sense that it signals that there is a
19 likely miscarriage of justice, you don't wait to
04:30 20 run down the other grounds, because all you need
21 is one.

22 BY MR. HODSON:

23 Q So are you saying that, even though you didn't
24 state it to Mr. Wolch or Mr. Asper, you expected
04:30 25 that they would figure it out?



1 A Yes.

2 Q That's probably an appropriate spot to break for
3 the day.

4 *(Adjourned at 4:30 p.m.)*

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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

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 our 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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