

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

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Transcript of Proceedings  
and  
Testimony before the Commission  
sitting at  
TCU Place at  
Saskatoon, Saskatchewan

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On Tuesday, June 27th, 2006

Volume 170

Inquiry Proceedings



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**Appearances:**

Mr. Hersh Wolch, Q.C.,           **for** Mr. David Milgaard  
Ms. Joanne McLean,               **for** Ms. Joyce Milgaard  
Ms. Lana Krogan-Stevely,       **for** Government of Saskatchewan  
Ms. Catherine Knox,              **for** Mr. T.D.R. (Bobs) Caldwell  
Mr. Garrett Wilson, Q.C.,       **for** Mr. Serge Kujawa  
Mr. Rick Elson, Esq.,           **for** the Saskatoon Police Service  
Mr. Chris Boychuk, Esq.,       **for** Mr. Eddie Karst  
Mr. Bruce Gibson and Ms. Rochelle Wempe, **for** the RCMP  
Mr. David Frayer, Q.C.,       **for** Minister of Justice  
  (Canada), The Hon. Vic Toews  
Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis  
  (Retired)



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**MURRAY JOHN SAWATSKY, SWORN**

- BY MR. HODSON

34970



Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MR. HODSON: The next witness is Murray  
Sawatsky, I would ask him to come forward.

MR. SAWATSKY: Good morning.

COMMISSIONER MacCALLUM: Good morning.

MURRAY JOHN SAWATSKY, sworn:

BY MR. HODSON:

Q Morning, Mr. Sawatsky. Thank you for agreeing to  
testify before this Commission of Inquiry.

For the record, I understand  
that you are represented by counsel Bruce Gibson  
and Rochelle Wempe; is that correct?

A That's correct, My Lord.

Q And you currently reside in Regina, Saskatchewan?

A That's right.

Q And your age?

A 57.

Q Sorry, I didn't prepare you for that one. And I  
understand, sir, that you were an RCMP officer  
from 1969 until your retirement in 1998; is that  
correct?

A That's correct.



1 Q So 29 years with the RCMP?

2 A That's right.

3 Q And, when you retired in 1998, I understand that  
4 your rank was inspector?

09:04 5 A That's correct.

6 Q And your involvement, sir, in the David Milgaard  
7 matter, if I can put it that way, would be the  
8 1992 investigation into criminal wrongdoing that  
9 was brought about by certain allegations made in a  
09:05 10 letter dated September 16, 1992 from Mr. Wolch as  
11 well as statements made at a public press  
12 conference on September 19, 1992 by Mr. Wolch and  
13 Joyce Milgaard; is that correct?

14 A That's correct.

09:05 15 Q And that investigation, I think, was termed  
16 Flicker, the Flicker investigation; is that  
17 correct?

18 A Correct.

19 Q It's my understanding the RCMP would have a name  
09:05 20 for various investigations, is that right, and  
21 that's how it was --

22 A That's correct. The first letter, the F  
23 designates the division, in other words this is F  
24 Division so all investigations from this division  
09:05 25 would have -- begin with the word, with the letter



1 F.

2 Q Okay. And we'll certainly deal with the scope of  
3 the investigation in much more detail, but perhaps  
4 just to state at the outset, am I correct that the  
09:05 5 investigation you engaged in was a criminal  
6 investigation to determine if various police,  
7 Crown, and government officials committed criminal  
8 offences in their involvement in the David  
9 Milgaard matter; is that correct?

09:06 10 A That's correct, it was a criminal investigation.

11 Q And I believe the report was completed in 1994 and  
12 provided to the Alberta Justice Department; is  
13 that correct?

14 A That's correct.

09:06 15 Q And we will hear about fellas named Neil McCrank  
16 and Bruce Fraser who were, I think, the Deputy  
17 Attorney General and the Calgary Chief Prosecutor  
18 at the time?

19 A That's correct.

09:06 20 Q And it's my understanding that they became  
21 involved because the targets of your investigation  
22 were the Premier of Saskatchewan, sitting members  
23 of the Legislature, and other officials, the  
24 government itself is who -- of Saskatchewan was  
09:06 25 who you were investigating?



1 A That's correct, officials within the justice  
2 system as well, and the police.

3 Q Okay. I'm wondering if you can just give us a  
4 chronology of your work history with the RCMP and  
09:06 5 then, once we're done that, your work history  
6 since then. It's my understanding, maybe we can  
7 go back to 1969, I think February of 1969 you  
8 started?

9 A That's correct.

10 Q Okay.

11 A I trained at Regina, and after training was  
12 transferred to B.C., worked in Powell River, B.C.  
13 for approximately a year, and then was transferred  
14 down to university detachment, which is situated  
09:07 15 at West Point Grey in Vancouver, where I served  
16 until 1976. In 1974 I was moved into plainclothes  
17 investigations and into GIS work, general  
18 investigation work, and then was transferred in  
19 1976 to Langley. And I continued working in  
09:07 20 Langley in an under -- a plainclothes capacity  
21 until 1981, '80 or '81, when I was transferred  
22 into polygraph section and was trained at the  
23 Canadian Police College in the use of polygraph  
24 and then went into Regina -- pardon me -- was  
09:07 25 transferred into Vancouver and worked in polygraph





1 section for two years in Vancouver, and then was  
2 transferred to Victoria and continued there as a  
3 polygraph examiner until 1986, where I was -- and  
4 promoted to sergeant, by the way. And then I was  
09:08 5 transferred to Port Alberni detachment and was in  
6 charge of a combined plainclothes drug  
7 investigation and general investigation unit. I  
8 stayed in that capacity until 1989, where I was  
9 then transferred to North Vancouver and promoted  
09:08 10 to staff sergeant and was placed in charge of a  
11 watch, in other words a group of street officers  
12 who work over a 12-hour period. I was in that  
13 position for one year and then I was commissioned  
14 to the rank of inspector and transferred to Regina  
09:08 15 as the Assistant Officer in Charge of Regina  
16 Subdivision until 1992, and then I was the Acting  
17 Officer in Charge for a year, and then in 1993, I  
18 believe, I was transferred up as -- into the  
19 criminal operations area as the officer in charge  
09:08 20 of contract policing. And then in 1995, I  
21 believe, or '96, I'm just not certain on the  
22 dates, I started the major crimes program and  
23 became the major crimes officer and wrote the  
24 program and the policy for the major crimes unit,  
09:09 25 and remained there until I left the force in 1998.



1 Q Okay. And then what, can you tell us what  
2 occupations you have been engaged in since you  
3 retired from the RCMP?

4 A Yes. In 1998 I was hired by the Department of  
09:09 5 Justice as the Director of the Saskatchewan Police  
6 Commission, and held that position for a number of  
7 years, and then about three years ago I guess I  
8 was moved into the Executive Director of Law  
9 Enforcement Services Branch with Saskatchewan  
09:09 10 Justice.

11 Q And, just briefly, what are your duties as the  
12 Executive Director of the Law Enforcement  
13 Services?

14 A We run a number of programs out of the branch that  
09:09 15 are in support of law enforcement; private  
16 investigators, security guards, Aboriginal  
17 policing, public disclosure committee, Coroner's  
18 Branch, and we also administer the RCMP contract,  
19 and I also administer the Saskatchewan Police  
09:10 20 Commission. The Police Commission sets standards  
21 and acts as a discipline body for municipal police  
22 within the province.

23 Q If we can just go back into the 1992 time frame,  
24 when you became involved in this matter, had you  
09:10 25 had any experience investigating murders?



1 A Yes, considerable experience. I -- in the past,  
2 my past, I had worked on a number of murders, both  
3 in B.C. -- as a polygraph examiner I did a number  
4 of polygraphs of either suspects or people who  
09:10 5 wanted, who the police wanted to eliminate as  
6 suspects in murders. I investigated a number of  
7 murders here in Saskatchewan as well when I was  
8 the officer in charge of major crimes, where I  
9 would not necessarily be the street investigator,  
09:10 10 but would supervise the investigation.

11 Q And what about on other types of major criminal  
12 investigations; were you involved in any  
13 investigations involving high-profile accused or  
14 suspects, things of that nature?

09:11 15 A Yes. In B.C. I was involved peripherally on the  
16 Air India investigation. I was also involved in  
17 the Clifford Olson when I was at Langley  
18 detachment, where I was the Langley detachment --  
19 myself and another member were the Langley  
09:11 20 representatives to that task force on Clifford  
21 Olson.

22 Q And did you do a fair bit of investigative work,  
23 then, on the Clifford Olson matter?

24 A Yes, yes. However, that work was interrupted when  
09:11 25 I was moved into polygraph, I transferred away



1 from Langley.

2 Q And in your capacity as both a polygraph operator  
3 and a police officer can you tell us your  
4 experiences in, both in number and -- let me just  
09:11 5 start with number of witness interviews or suspect  
6 interviews you would have been involved in in your  
7 career prior to 1992?

8 A Well I think I did around 600 polygraph  
9 examinations in the time that I was a polygraph  
09:12 10 examiner, but interviewing witnesses, accused,  
11 almost on a daily basis throughout my entire  
12 career. My entire career was operational, I  
13 didn't spend any time in administrative-type  
14 duties until I came to Regina.

09:12 15 Q I see. And did you have any experience in dealing  
16 with interviews of youth, sort of the 16 to  
17 20-year age group?

18 A Yes, yes, a lot of experience with both youth and  
19 adults.

09:12 20 Q Now prior to your involvement in the Flicker  
21 project or the Flicker investigation can you tell  
22 us, let's start with the original Gail Miller  
23 murder investigation, did you have any involvement  
24 in that?

09:12 25 A No, I did not.



1 Q And can you tell us in 1992, when you became  
2 involved, what was your -- what was your level of  
3 knowledge about the Gail Miller murder and David  
4 Milgaard's conviction?

09:12 5 A Well having spent, you know, most of my career in  
6 B.C., and not coming to the province until 1990,  
7 November of 1990, I had heard a bit in the news  
8 but I really wasn't very intimate with the  
9 details. I was aware of the *Milgaard* decision,  
09:13 10 certainly, the decision regarding adverse  
11 witnesses that the Supreme Court had ruled on, you  
12 know, back in the '70s or whatever. But as far as  
13 the facts of the case or circumstances around  
14 this, I was not very knowledgeable, I hadn't heard  
09:13 15 very much, it wasn't in the news much in B.C.

16 Q Then as far as -- but would you have been aware  
17 that the Supreme Court had had a hearing and had  
18 dealt with the matter, I think, a few months, six  
19 months or so, prior to your involvement; would you  
09:13 20 have been generally aware of that?

21 A Yes. And of course, once I came to Saskatchewan,  
22 then it was in the news a bit more here and I did  
23 learn a bit more about it.

24 Q Were you involved in any way in the Section 690  
09:13 25 investigation conducted by the federal Justice



1 Department?

2 A No, I was not.

3 Q What about Larry Fisher, did you have any dealings  
4 with Larry Fisher or know of him prior to your  
09:13 5 involvement in the Flicker investigation?

6 A I -- I don't believe I did. I don't recall any  
7 involvement with Larry Fisher at all prior to  
8 Flicker.

9 Q And let's just talk the last item on your  
09:14 10 experience. Did you have experience, prior to  
11 1992, in -- you had mentioned the Clifford Olson  
12 task force -- others projects where you would  
13 assemble a number of officers with a fairly major  
14 undertaking and supervise or be involved in the  
09:14 15 supervision of those officers?

16 A Yes. In Port Alberni I think we had three or four  
17 murders in the time that I was there, I supervised  
18 those. I also worked on a number of murders as an  
19 investigator when I was in Langley and then, like  
09:14 20 I say, I did a number of polygraph tests of  
21 suspects.

22 Q So being involved with a team of investigators was  
23 not something new to you?

24 A No, it was not.

09:14 25 Q And leading a team of investigators was also not



1 something new to you?

2 A Correct.

3 Q If we could call up 338552, which is a document  
4 that we've prepared, Mr. Sawatsky, a chronology  
09:15 5 that we may, from time to time, refer to.

6 And, just for the record, this  
7 is a document that I -- we prepared, Mr.  
8 Commissioner, and it's based upon -- what it does  
9 is gives a chronology of events, a description of  
09:15 10 the event -- these are our words under Event, not  
11 Mr. Sawatsky's -- and a Doc. ID, and it's more of  
12 a reference document. And what I would like to  
13 do, Mr. Sawatsky, is just quickly go through the  
14 chronology of some significant events with you.

09:15 15 Perhaps I should preface my  
16 remarks by indicating that this Commission has,  
17 over the course of hearing many witnesses,  
18 referred on many occasions to the work done by  
19 your officers and by you in the Flicker  
09:15 20 investigation. We've looked at transcripts, at  
21 interviews, documents assembled, so we are quite  
22 familiar with a significant amount of the work  
23 product generated in your investigation, but what  
24 I would like to do is just try and go through at  
09:15 25 the outset and get some time lines on what it was



1           you did, and then we'll go through in a bit more  
2           detail.

3                       And the starting point, I think  
4           you alluded to earlier, would be the September  
09:16 5           16th, 1992 letter to Kim Campbell, and I don't  
6           think you were involved at this point, but we'll  
7           see from the documents, and we've heard from other  
8           witnesses, this was the genesis of your  
9           investigation; is that correct?

09:16 10          A           That's correct.

11          Q           And that was a letter to the minister, we've seen  
12           that document, we'll see it a bit later, saying  
13           that certain officials committed criminal offences  
14           in their involvement in the David Milgaard matter  
09:16 15           and the letter demanded a federal inquiry I  
16           believe; is that correct?

17          A           That's correct.

18          Q           And that was followed up by a public press  
19           conference where these and other allegations were  
09:17 20           put forth and, in particular, the allegations  
21           stemming from Michael Breckenridge, and he's an  
22           individual you are familiar with; is that correct?

23          A           Yes, I am. He was one of the subjects of this  
24           investigation.

09:17 25          Q           Was it correct to say that, at least your





1 understanding at the outset, that it was the  
2 Michael Breckenridge allegations that resulted in  
3 your criminal investigation?

4 A I think that's the issue that got everything  
09:17 5 moving.

6 Q Okay. And I think is it correct that as you got  
7 into it, certainly other issues arose and were  
8 investigated; is that correct?

9 A Yes, that's safe to say. Certainly after we went  
09:17 10 to Winnipeg and spoke with Mr. Wolch, and I don't  
11 want to get ahead of you here, but that's when we  
12 really recognized I think the magnitude and the  
13 scope of this investigation, so yes, there were a  
14 large number of allegations.

09:17 15 Q But is it correct to say that initially it was the  
16 Michael Breckenridge allegation that you were  
17 called upon to investigate? It became broader,  
18 but initially that's what you were charged with?

19 A That's correct.

09:18 20 Q And then if we can scroll down to the bottom, I  
21 think October 8th, and I'll show you some  
22 documents, 1992, was when you first personally  
23 became involved in the matter and there was a  
24 meeting there with various people to start  
09:18 25 things -- to start the investigation, or to start



1 the planning of the investigation; is that  
2 correct?

3 A That's correct.

4 Q And is it correct that initially it was you and  
09:18 5 Sergeant Williams that were the two officers  
6 tasked with this?

7 A That's correct.

8 Q And would I also be correct in saying that until,  
9 prior to the meeting with Mr. Wolch in I think  
09:18 10 November of 1992, that you and Mr. Williams were  
11 maybe of the view that you two were going to do  
12 the investigation?

13 A I think that's the case, and I think also so was  
14 the executive of the RCMP of the view that the two  
09:18 15 of us would do it.

16 Q And then after the meeting with Mr. Wolch, and  
17 we'll deal with this in a bit more detail, as a  
18 result of what was provided to you in that  
19 meeting, the investigative team expanded  
09:19 20 significantly; is that fair?

21 A Exactly. We realized that the magnitude of the  
22 area we had to cover would require a concerted  
23 effort and a number of investigators.

24 Q If we can go to the next page, and again we'll  
09:19 25 touch on some of this in a bit more detail, but



1           October 9th I think is when Brent Cotter, the  
2           Deputy Minister of Justice of Saskatchewan, was  
3           involved in engaging Neil McCrank and Bruce Fraser  
4           from Alberta and we'll see from the documents, and  
09:19 5           tell me if my understanding is correct, that in  
6           order to do a criminal investigation, you as the  
7           RCMP would normally have justice officials who  
8           would be the prosecutors who would give you legal  
9           advice with respect to criminal charges; is that  
09:19 10          correct?

11          A           That's correct.

12          Q           And normally if you are investigating Saskatchewan  
13           criminal offences, you would report to  
14           Saskatchewan Justice, to prosecutors there for  
09:19 15           legal advice and for, to give your report to on  
16           whether charges should be pursued or not pursued;  
17           correct?

18          A           That's correct.

19          Q           And in this case because of what, because who you  
09:20 20           were investigating were the premier of the  
21           province, a sitting MLA of the province and other  
22           government officials and former government  
23           officials, it was decided by the Saskatchewan  
24           Justice Department that they ought not to be  
09:20 25           involved in any way and Alberta Justice was



1 brought in to do what Saskatchewan Justice would  
2 normally do; is that a fair summary?

3 A That's correct.

4 Q And then that's who you would have dealt with, and  
09:20 5 is it correct to say a fairly significant  
6 involvement, relationship with Mr. Fraser and  
7 Mr. McCrank developed?

8 A Yes. We had a number of meetings over the time  
9 and provided them with updates, reports and we had  
09:20 10 of course numerous phone calls with them.

11 Q And then we see here as well there's a reference  
12 to a letter that Sergeant Pearson was relieved of  
13 any responsibility, and my understanding, and  
14 please correct me if I'm wrong, from the record  
09:20 15 and other evidence, is that initially when the  
16 letter was sent by Mr. Wolch to Kim Campbell on  
17 September 16th, 1992 raising the Breckenridge  
18 allegations, that Sergeant Pearson I think,  
19 through maybe Eugene Williams or through Federal  
09:21 20 Justice, went out and interviewed a couple of  
21 witnesses, I think Wollbaum and Styles, on  
22 September 19th, and did a bit of initial leg work  
23 before Federal Justice, Saskatchewan Justice and  
24 Alberta Justice got the investigation arranged; is  
09:21 25 that fair?



1 A That's correct.

2 Q And I think initially it was, the complaint was  
3 made to Federal Justice, they started to look into  
4 it, and am I correct that, and I'll show you some  
09:21 5 documents later, that when Federal Justice  
6 realized that the complaint that was made to them  
7 was a complaint of criminal conduct in  
8 Saskatchewan, that both the federal government and  
9 the Saskatchewan government said that's a matter  
09:21 10 of provincial jurisdiction, the investigation of a  
11 criminal offence, not appropriate for federal  
12 government to deal with, and that's when  
13 Saskatchewan Justice got Alberta Justice and got  
14 the RCMP involved; is that a fair summary?

09:22 15 A That's exactly what happened.

16 Q And so for a couple of weeks before you got  
17 involved, I think there were some interviews, and  
18 we'll deal with these a bit later, but is it fair  
19 to say once you started, did you start fresh from  
09:22 20 square one?

21 A Yes, yes, we did.

22 Q And just on, while we're on that, on the  
23 Breckenridge matter, at what point in your  
24 investigation, and we've heard evidence already  
09:22 25 before this Commission about Mr. Breckenridge,



1 evidence that he did not work with the  
2 Saskatchewan Justice Department when he said he  
3 worked there, namely, in 1970, '71, when did you,  
4 at what point did you become aware of that in the  
09:22 5 investigation?

6 A I would think it would have been fairly early on  
7 in the investigation because, if I recall  
8 accurately, he was one of the, sort of the first  
9 areas that we went into when we started the  
09:22 10 investigation, so although, you know, I can't say  
11 exactly what time during the investigation, I  
12 think that would have been one of the early areas  
13 that was followed up on.

14 Q And we'll come back to that a bit later. And then  
09:23 15 if we can just scroll down, I think then we get  
16 into, just to try and get a bit of a time line,  
17 October 30, 1992 is when Saskatchewan Justice  
18 notified Mr. Wolch that the allegations of  
19 wrongdoing had been referred to the RCMP and that  
09:23 20 you will be contacting him further, and then you  
21 write him on November 2nd and then meet with  
22 him -- sorry, yeah, write to him, and then if we  
23 can just scroll down, and we'll see this letter a  
24 bit later, Mr. Wolch asks you to expand the scope  
09:23 25 into all criminal wrongdoing as well as



1 misconduct, namely, ethical duties; is that  
2 correct?

3 A That's correct.

4 Q And did you in fact expand the investigation to  
09:23 5 include looking at those matters?

6 A No. We maintained that we would conduct a  
7 criminal investigation into allegations of  
8 wrongdoing such as obstruction of justice. I  
9 didn't feel competent to make any determination as  
09:24 10 to whether someone had made a breach of the *Law*  
11 *Society's Act* or something like that.

12 Q And then if we can go to the next page, and we'll  
13 talk about this a bit later, but the media, can  
14 you just give us a very general comment, that is  
09:24 15 it correct to say that how this matter had been  
16 played out in the media prior to your involvement  
17 was an issue that your investigative team was  
18 aware of and considered and dealt with throughout  
19 the investigation?

09:24 20 A Yes.

21 Q And why was that, can you just elaborate a bit on  
22 that?

23 A Well, I think, you know, probably to a large  
24 extent, coverage in the media was somewhat  
09:24 25 responsible for having this investigation



1 commence, you know, the allegations that were made  
2 in the media, so throughout the investigation  
3 there were times when the media became aware of  
4 things that were occurring and would report on  
09:25 5 those.

6 Q And as conducting a criminal investigation, let's  
7 just talk generally, your practice as a police  
8 officer conducting a criminal investigation, would  
9 it be your practice to share the results of your  
09:25 10 information with the media or to give the media an  
11 update about what it is you are doing, who you are  
12 doing it with and things of that nature?

13 A Generally that's not the practice, and it wasn't  
14 our practice here.

09:25 15 Q And why would that -- why would you not share or  
16 inform the media and the public about what you are  
17 doing in the course of a criminal investigation,  
18 what would be the reasons you would not?

19 A The general reason would be so that you don't  
09:25 20 influence, you know, the findings, the findings at  
21 the end, and secondly, so that you are not seen as  
22 being speculative and trying to guess what the  
23 results may be, so generally speaking, the media  
24 aren't informed until the investigation is  
09:25 25 complete, and certainly if there's any charges





1           that result, media coverage could influence the  
2           right to a fair trial.

3           Q       Now, November 26, and we will be dealing with this  
4                   meeting in some detail, I think you and Sergeant  
09:26 5                   Williams met with Mr. Wolch, Greg Rodin and Bob  
6                   Bruce in Winnipeg; is that right?

7           A       That's correct.

8           Q       Who did you consider to be the complainant in your  
9                   criminal investigation?

09:26 10          A       Well, certainly Mr. Wolch was a complainant, but  
11                   when we went to Manitoba he had a great deal of  
12                   documentation and as we were doing the interviews  
13                   it's obvious that others participated with him and  
14                   provided information as well, and Mr. Wolch  
09:26 15                   appeared to be the main spokesperson.

16          Q       And so as far as the criminal investigation then,  
17                   he would be the primary person that would be the  
18                   source of information and the source of  
19                   allegations then that you would investigate?

09:26 20          A       Yes, and he's the person that I would have gone to  
21                   for further information or for clarification  
22                   during the investigation.

23          Q       And would complainant be the right term or  
24                   informant? I guess it wouldn't be an informant  
09:26 25                   unless a charge --



1 A Complainant is a term that I would use.

2 Q And is it correct to say, Mr. Sawatsky, that your  
3 criminal investigation was essentially an  
4 investigation of everything that Mr. Wolch put  
09:27 5 forward on behalf of his client or his group of  
6 people, Mrs. Milgaard, Mr. Rodin, Mr. Bruce, Mr.  
7 Asper, but the Milgaard group if I can call it  
8 that?

9 A Yes. In fact, I took great care to make sure that  
09:27 10 every signal allegation that he provided us was  
11 documented so it could be followed up and I  
12 believe even went back to Mr. Wolch to ensure that  
13 I had everything.

14 Q And did you in fact, and when I say you, your  
09:27 15 team, did you investigate then every allegation or  
16 issue put forward by Mr. Wolch's group to you?

17 A That's correct, and, My Lord, I think it's  
18 important that I say that I didn't investigate all  
19 of this personally, you know, I had a team of  
09:27 20 investigators who were assigned tasks and they  
21 went out and each investigator investigated the  
22 tasks that they were assigned and came back and  
23 reported on those tasks their finding. I read,  
24 probably read everything single statement and, you  
09:28 25 know, every single report, but certainly I did not



1 do all the work myself.

2 Q And I have an organizational chart that I'll show  
3 you in a moment and I'll get you to expand on  
4 that, Mr. Sawatsky, so when I'm talking you, I'm  
09:28 5 likely talking about your team, okay, unless I say  
6 otherwise, so I think, Mr. Commissioner, I should  
7 point out, I think Mr. Sawatsky is essentially  
8 giving evidence on behalf of the group of people,  
9 not only his personal knowledge, but he's here as  
09:28 10 well to give evidence about what the people did,  
11 and I think as we go through, that will become  
12 clear, what he did and what others did.

13 And on that point, Mr. Sawatsky,  
14 I should just -- you did mention that at one point  
09:28 15 in time you would have read all this information.  
16 We received over 50 boxes of materials from the  
17 RCMP related to your investigation. Much of it --  
18 well, all of it is part of the Commission  
19 database, much of it has been referred to.

09:28 20 For the record,  
21 Mr. Commissioner, I advised Mr. Sawatsky that he  
22 did not need to read all of that material for his  
23 evidence, he has not done so. As far as certain  
24 interviews, he's familiar with some, he's  
09:29 25 certainly familiar with his report that I will



1 take him through.

2 If, Mr. Sawatsky, in the event  
3 that any of my questions or questions from other  
4 counsel are such that you would like to go back  
09:29 5 and read a specific interview or a source  
6 document, please let me know and I will make sure  
7 that that happens, but I did not think it was a  
8 valuable use of Mr. Sawatsky's time to go through  
9 all of that.

09:29 10 COMMISSIONER MacCALLUM: Okay.

11 BY MR. HODSON:

12 Q If we can go down to the bottom. I think around  
13 mid December, is it correct to say that -- maybe I  
14 can summarize it this way, that initially the  
09:29 15 criminal investigation was into the Michael  
16 Breckenridge allegations, it then quickly moved to  
17 investigation of obstructions of justice in 1970,  
18 and then to a very broad investigation of any  
19 wrongdoing at any time related to the matter; is  
09:30 20 that fair?

21 A That's correct.

22 Q And so before you started the investigation, the  
23 scope had expanded to the broadest form; is that  
24 correct?

09:30 25 A That's correct.



1 Q And we'll deal with some documents that touch on  
2 that. If we can then go to the next page, I think  
3 in December of '92, I think initially is it  
4 correct that you would have assembled your team,  
09:30 5 and we'll deal with that in a moment, and started  
6 to gather documents and information; is that  
7 correct?

8 A That's correct.

9 Q And as far as your dealings, I think this talks  
09:30 10 about your dealings with the Government of  
11 Saskatchewan, the Saskatoon City Police, you would  
12 have spent some time gathering and absorbing the  
13 material that was out there?

14 A That's correct. I requested information from  
09:30 15 Saskatchewan Justice through Mr. Quinney and also  
16 through the chief of Saskatoon Police Service for  
17 file material that Saskatoon police had.

18 Q And then I think around this time, perhaps late  
19 '92, even early '93, your officers would have  
09:31 20 already started reviewing documents, analysing  
21 documents, identifying witnesses, interviewing  
22 witnesses; is that correct?

23 A Yes. The very first part of the investigation was  
24 spent on simply cataloguing the documents that we  
09:31 25 had to ensure that we were able to have examined



1 each and every document and had a list and a  
2 chronological order of all the documents.

3 Q And I recall seeing a document somewhere that said  
4 that was about a five week process where your team  
09:31 5 was involved in going through all the documents;  
6 is that right?

7 A That's correct.

8 Q And would that have been pretty much a full-time  
9 exercise, that five week period?

09:31 10 A Yes, it certainly was. I had a lot of unhappy  
11 investigators who didn't really like doing that  
12 process. It was very tedious and arduous.

13 Q So that would be about 10 or 12 officers then  
14 spending five weeks going through -- and let me  
09:31 15 just back up. You would have received, I think,  
16 documents from Hersh Wolch; is that correct, or  
17 his group?

18 A That's correct, and file material from  
19 Saskatchewan Justice Public Prosecutions as well  
09:32 20 as Saskatoon police file.

21 Q And so your initial gathering, you would have  
22 spent five weeks with your officers cataloguing  
23 that, and is it correct as well that as you went  
24 through the investigation you would become aware  
09:32 25 of other sources of documents and that you would



1 pursue those as and when the issue arose?

2 A That's correct. I recall there were some media  
3 articles and things like that in that package as  
4 well.

09:32 5 Q And, for example, prison files, I think at some  
6 point those may have become -- prison records?

7 A Yes, and of course as we gathered new information,  
8 that was also catalogued and assigned to members  
9 to investigate as well.

09:32 10 Q And then just scroll down, I think then we see  
11 February 25 and 26, I think we'll deal with this a  
12 bit later in detail, you and Sergeant Williams and  
13 Constable Jorgenson spent a couple of days  
14 interviewing Mrs. Milgaard; is that right?

09:33 15 A That's correct.

16 Q And is it correct to say that much like Mr. Wolch,  
17 what Mrs. Milgaard provided to you, did you follow  
18 up on everything that she gave you?

19 A Yes. If I recall correctly, Mrs. Milgaard really  
09:33 20 didn't provide too much more, but certainly  
21 provided a lot of what Mr. Wolch had provided us  
22 and we certainly took great care to make sure we  
23 got everything that Mrs. Milgaard had to offer as  
24 well.

09:33 25 Q And what about Mr. Asper, did you have a chance to



1 sit down with Mr. Asper and do the same with him?

2 A I don't recall if I -- I don't think I interviewed  
3 Mr. Asper.

4 Q I think there's some documents that suggest there  
09:33 5 was phone calls made, but -- and I stand to be  
6 corrected on this, I think he, at that time he had  
7 left the law firm and I think it indicated to the  
8 effect that everything he had Mr. Wolch would have  
9 had. Does that sound right?

09:33 10 A I recall that now, thank you.

11 Q And then just again as far as the, and we've got a  
12 tape of that meeting, would there have been any  
13 allegations or issues that Mr. Wolch or Mrs.  
14 Milgaard or any of their group raised that you  
09:34 15 would not have investigated?

16 A No. We investigated, I believe, everything that  
17 they gave us.

18 Q Next page. We can actually go through to page 7  
19 of that, to 558, and I think over the course of  
09:34 20 1993 the officers would have been involved in the  
21 leg work of the investigation; is that correct?

22 A That's correct.

23 Q Are you able to give us any sense of how much of  
24 the officers' time would be spent on this file  
09:34 25 compared to other -- was this a full-time job,





1 close to full time?

2 A This was a full-time job for the team, yes.

3 Q So --

4 A However, due to courses, holidays, sickness, those  
09:35 5 sorts of things, there were times when  
6 investigators were away, but generally speaking,  
7 this was a full-time task for the investigative  
8 team.

9 Q And that would be for about a year and a half time  
09:35 10 period, sort of late '92 through '93 and into the  
11 early or mid part of '94?

12 A That's correct.

13 Q And I think January 13th, 1994 we see the draft  
14 final investigation report and synopsis of  
09:35 15 interviews was provided to Mr. McCrank, and would  
16 that be sort of the end point at least of the  
17 initial investigation; is that correct?

18 A That's correct.

19 Q And then there would be a process of review with  
09:35 20 the Alberta Justice people, and then I think  
21 ultimately they -- if we can go to the next  
22 page -- I think we see, and we'll get into this in  
23 more detail, it's my understanding that you gave  
24 your original investigation report and there was  
09:35 25 at least a couple of issues still outstanding, one



1 being the question of doing some DNA analysis and,  
2 secondly, some profiling, and am I correct that  
3 ultimately it was decided that your report would  
4 be issued and provided before those two things  
09:36 5 could be dealt with and they would be dealt with  
6 in supplemental reports?

7 A That's correct.

8 Q In other words, you didn't want to wait until the  
9 DNA would be done because you didn't know when it  
09:36 10 would be done?

11 A Yeah, the science for DNA was developing during  
12 the time of the investigation and we were waiting,  
13 you know, for that to be -- to the point where the  
14 lab could make those tests.

09:36 15 Q And then the next page, I think down at the bottom  
16 we see August 15th, 1994, I believe Alberta  
17 Justice provided their report to Saskatchewan  
18 Justice and that was a summary or a synopsis of  
19 the work that you did as well as Alberta Justice's  
09:36 20 views on whether charges ought to be laid?

21 A That's correct.

22 Q And that report I think was made public at that  
23 time?

24 A Yes, it was.

09:37 25 Q And in that report Alberta Justice indicated that



1           there was no basis for any criminal charges to be  
2           laid against anybody; is that correct?

3           A       That's correct.

4           Q       And then I think if we go to the next page, would  
09:37 5           it be correct that over the next number of months,  
6           perhaps even into the next year, there were  
7           certain issues addressed regarding privacy  
8           concerns about what part of your Flickr report  
9           could be disclosed to the public and steps were  
09:37 10          taken to review that?

11          A       That's correct. There were names in there --  
12          there were names of people who wished their  
13          identity to be protected and who we had received  
14          advice that their identity should be protected.

09:37 15          Q       If we can go to the next page -- actually, page  
16          12, two pages over, to 563, I think that there's  
17          some indication there about getting some, a legal  
18          opinion about what could be disclosed, and then I  
19          think ultimately the report in a redacted version  
09:38 20          was made public in 1995; is that correct?

21          A       That's correct.

22          Q       And then I think a bit later, in around July of  
23          1997, you would have had some involvement in the  
24          steps that were taken to do a DNA analysis; is  
09:38 25          that correct?



1 A That's correct.

2 Q And that resulted in the DNA test I think on July  
3 18, 1997; is that correct, somewhere around that?

4 A Somewhere around there, yes.

09:38 5 Q But up until -- would it be correct to say that  
6 when you delivered your report in mid '94, that  
7 that would be, other than a couple of the items  
8 left outstanding, you would have completed your  
9 investigation?

09:38 10 A Yes. Yeah.

11 Q If we can call up 338551, please, and this is a  
12 document, I think we prepared it, or it's prepared  
13 on information you provided to us. This would be  
14 the team then that was involved in the Flicker  
09:39 15 investigation?

16 A That's correct.

17 Q And at the top would be Superintendent Egan; is  
18 that correct, being the top ranking person?

19 A That's right, Chief Superintendent Egan.

09:39 20 Q And Superintendent Johnston would be who you  
21 reported to; is that --

22 A That was my direct supervisor, that's correct.

23 Q And then you would be the chief investigator, and  
24 I think, as the note indicates here, the members  
09:39 25 of the project team would be you and those people



1 below you; is that correct?

2 A That's correct.

3 Q So I think 11 people in total?

4 A That's correct, and as I say, over the course of  
09:39 5 the investigation, that number changed from time  
6 to time depending on what people were, other  
7 things were happening in people's lives.

8 Q But would it be correct to say that for about a 12  
9 to 18 month period, the people on this chart, you  
09:40 10 and below, this would have been a full-time  
11 engagement but for perhaps court appearances,  
12 holidays and other miscellaneous matters?

13 A Correct.

14 Q In other words, they were pulled off other RCMP  
09:40 15 duties to devote their full time and attention to  
16 this investigation?

17 A That's correct. I was given the opportunity by  
18 the executive of the division to select the team  
19 members, which I did, I had picked each one of  
09:40 20 those people, and if I, you know, wasn't aware of  
21 them from personal knowledge, I certainly  
22 interviewed their supervisor to make a  
23 determination as to their suitability, so  
24 certainly I had a lot of influence as to who the  
09:40 25 members of the team were.



1 Q And were they from the Regina detachments for the  
2 most part?

3 A They were from a number of -- they were all from  
4 around Regina from a number of areas, Regina  
09:40 5 detachment, from commercial crime, from  
6 intelligence areas. They were all basically in  
7 Regina, but from various units.

8 Q Okay. And what were you looking for then when you  
9 put the team together as far as who and numbers  
09:41 10 and skill sets?

11 A I was looking for seasoned, competent, skilled  
12 investigators.

13 Q Would this have been a high-profile, sensitive  
14 investigation, is that a fair way to put it?

09:41 15 A We certainly felt it was.

16 Q And was that because of who were the targets of  
17 the investigation, in part?

18 A Yes.

19 Q Namely, the premier and I think a judge at the  
09:41 20 time, Mr. Lysyk, was Allan Blakeney a person who  
21 was interviewed as well as having some possible  
22 involvement?

23 A Yes.

24 Q Being there at the time I guess?

09:41 25 A Yes.



1 Q Mr. Tallis, who was a Court of Appeal judge at the  
2 time, there were suggestions of wrongdoing against  
3 him; correct?

4 A Yes.

09:41 5 Q And Mr. Caldwell?

6 A Yes.

7 Q And various police officers?

8 A That's correct.

9 Q And so did that figure in your decision as to who  
09:41 10 you get and how many you get and how you approach  
11 the investigation?

12 A Yes, it did. Certainly we wanted -- you always  
13 want competent investigators, but I felt that I  
14 needed investigators who had considerable  
09:42 15 experience so they wouldn't be intimidated in any  
16 way by people they were interviewing or things  
17 they heard that were going on.

18 Q Did you, at the outset, address your mind to the  
19 fact that your investigation, regardless of what  
09:42 20 you concluded, would be subject to significant  
21 public scrutiny?

22 A Yes. In fact, I think I even mentioned to the  
23 team, that there was a very good chance that a  
24 public inquiry could result at some point in the  
09:42 25 future. So yes, it was on my mind, the fact that



1           our, certainly our actions would be subject to  
2           scrutiny.

3       Q       And scrutiny by the public, by the government as  
4           well, --

09:42 5       A       Yes.

6       Q       -- and by the Milgaard group; is that fair?

7       A       Yes.

8       Q       And I think we'll see that in some documents you  
9           -- a mention made to people that "lookit, whatever  
09:42 10          you do, document it, because you will be called to  
11          account for it at some later date"; is that fair?

12      A       That's correct.

13      Q       And so, going into this, is it fair to say that  
14          you knew whatever you concluded would have to  
09:42 15          stand up to the test of all people with all  
16          interests?

17      A       That's correct.

18      Q       Let's talk a bit about some of these people. So  
19          Staff Sergeant Tost, is it Tost or --

09:43 20      A       Tost, yeah, Lee Tost.

21      Q       And can you tell us just a bit about him and what  
22          his role was and his background?

23      A       Yes, sir. Lee was the file coordinator and almost  
24          acted as my second during the investigation. He,  
09:43 25          a very experienced man, he had run a number of





1 projects as a drug, in charge of the drug unit,  
2 and had considerable experience in conducting  
3 investigations.

4 Q And what was the file coordinator, what was his  
09:43 5 job then?

6 A His role was generally to review correspondence  
7 that came in, ensure that it was followed up on,  
8 that investigative leads were followed up. His  
9 job was also to keep me informed, brief me on a  
09:43 10 regular basis as to what was going on, to apprise  
11 me of any issues that he felt I should know about,  
12 but generally speaking he, kind of he along with  
13 Sergeant Dosenberger kind of ran the  
14 investigation.

09:43 15 Q So we see Sergeant Dosenberger, what is "PIRS -  
16 Indexing", what does that stand for?

17 A The PIRS is an acronym for the police information  
18 system.

19 Q So is it correct that Mr. Tost and Mr. Dosenberger  
09:44 20 would be involved in organizing the file work and  
21 coordinating who investigated what, when, and how,  
22 and analysing the results?

23 A Yes, the two of them would be responsible for sort  
24 of the day-to-day activity of the investigators  
09:44 25 and the assigning of tasks, as you mentioned.



1 Q And so I won't bring up any documents on this  
2 point, but what we have seen in the Flicker files  
3 is that if officers go out and interview a witness  
4 and the witness gives new information about a  
09:44 5 potential other witness or lead, that that report  
6 goes back and somehow, in the system, that lead  
7 would be assigned to two other officers to follow  
8 up; would that be Mr. Tost and Mr. Dosenberger?

9 A That would be those two, yes.

09:44 10 Q And so they were really quarterbacks, for lack of  
11 a better word, of gathering all the information  
12 and deciding what it meant, whether any further  
13 work was required, and if so who should do it, how  
14 they should do it, and when they should do it?

09:44 15 A Correct.

16 Q And they both would then keep you informed, on a  
17 fairly regular basis, about what was happening?

18 A That's correct. And I should add that they did  
19 not do any investigations themselves, they simply  
09:45 20 reviewed material and supervised the  
21 investigation, so they didn't interview suspects  
22 or witnesses or anything like that.

23 Q But, for example, if -- and am I correct that  
24 every interview was done by two officers, for the  
09:45 25 most part?



1           A           That -- we tried to keep it that way if possible.  
2                       I know there are times when perhaps one would do  
3                       it but, generally speaking, we tried to use the  
4                       team approach to all investigations.

09:45 5           Q           And why was that?

6           A           I think for a number of reasons. Probably most  
7                       importantly is that with two officers you rarely  
8                       have to go back for a second interview, there  
9                       would be -- between the two of them, they cover  
09:45 10           all the issues. Secondly, when you have a team of  
11                      two, one gets the opportunity to observe, more,  
12                      the conduct of the person you are interviewing,  
13                      and I think, also, it gives them a chance to  
14                      discuss afterwards what they got from the witness  
09:45 15           and sort of put it into good perspective.

16                               So a team approach, from here  
17                      and from my past in B.C., we found to be very  
18                      effective in getting out all the information that  
19                      a witness or a suspect had to provide.

09:46 20          Q           And what we have seen before the Commission by way  
21                      of the product of these witness interviews is, in  
22                      some cases, sort of handwritten notes of what a  
23                      witness says, we have seen written statements, we  
24                      have seen taped interviews, and so I take it that  
09:46 25           a variety of methods were used to record the



1 information from witnesses?

2 A That's correct. Because what the team would do  
3 is, when they were assigned to a task, would  
4 review all the file material that we had, which  
09:46 5 was all catalogued so they could for quick  
6 reference, so they would review that, they would  
7 review anything else that they felt was  
8 appropriate, and then go out and do the interview,  
9 and generally would make the decision beforehand  
09:46 10 as to how they were going to conduct that  
11 interview, whether it would be recorded or simply  
12 a handwritten statement would suffice.

13 Q And can you give us any idea of what circumstances  
14 would prompt a statement or a transcript of the  
09:46 15 interview versus an officer's notes of what was  
16 said?

17 A I think, generally, probably the length would be  
18 the biggest determiner. If you felt that the  
19 witness, you know, simply had very little  
09:47 20 information to provide, quite often just a  
21 handwritten statement will work. But if you are  
22 going, if it's going to be fairly lengthy or time,  
23 a long time during the interview, then it's better  
24 to tape record.

09:47 25 Q And with respect to some of the more significant



1 -- let me put it this way, the targets of the  
2 investigation, I think in those cases for the most  
3 part those interviews were tape recorded; is that  
4 right?

09:47 5 A Yes. And, of course, a tape recorded interview  
6 does provide a much more accurate reflection of  
7 what occurred during the interview for Court  
8 purposes or record purposes.

9 Q And we see, throughout the Flicker documents,  
09:47 10 that -- it's my understanding, when we get to the  
11 report, that there were 68 issues or allegations  
12 that were investigated, is that correct, about  
13 that?

14 A That sounds about right.

09:47 15 Q And three of those were sort of catch-all, one was  
16 police, one was Crown, and one was Caldwell, I  
17 think, that had a bunch of sub-issues under it; is  
18 that correct?

19 A That's correct.

09:48 20 Q And am I also correct that in the course of  
21 investigating an issue, what we have seen in the  
22 documents is it may give rise to 10 or 15  
23 sub-files, in other words 10 or 15 different  
24 people would get interviewed on the one point?

09:48 25 A Yeah, very frequently that happened.



1 Q And so if you would go to look at an issue you  
2 might find 10, 20 files open on that one issue  
3 because 10 or 20 different witnesses or subject  
4 matters were followed up on?

09:48 5 A That's correct.

6 Q And at the end your job, with the rest of the  
7 team, was to draw it all together, come to some  
8 conclusions, and provide a report; is that  
9 correct?

09:48 10 A That's correct.

11 Q Now let's talk a bit about Corporal Templeton and  
12 these people over here. Who was he and what -- or  
13 I'm sorry, I should go back to Sergeant Williams.  
14 Can you tell us who he was, why you selected him,  
09:48 15 and what his role was?

16 A Sergeant Williams was the NCO in charge, or the  
17 non-commissioned officer in charge of the general  
18 investigation section in Regina. He was only with  
19 us for a very short time because he was promoted  
09:49 20 and transferred to B.C., so he was not with us  
21 throughout the entire investigation.

22 Q And was he replaced, or other duties were --

23 A I don't believe he was.

24 Q And then what about Corporal Templeton?

09:49 25 A Corporal Templeton was a very experienced



1 investigator, had worked on a number of projects,  
2 had worked in the internal affairs area of the  
3 RCMP. That's the area that reviews conduct of  
4 police officers who are -- who public complaints  
09:49 5 are made against. Umm --

6 Q Let me just pause there. Would that be one of the  
7 reasons you selected him then?

8 A Yes.

9 Q And because the targets of your investigation  
09:49 10 included the Saskatoon City Police and government  
11 officials?

12 A Correct.

13 Q And so Corporal Templeton had some experience in  
14 investigating obstruction-type charges, and  
09:49 15 particularly investigating other police?

16 A That's correct, plus Corporal Templeton was an  
17 excellent interviewer, as were all of the team  
18 members.

19 Q What about Corporal Dressler?

09:50 20 A Corporal Dressler's background was in  
21 investigations, and I believe at the time he was  
22 on commercial crime, which is, you know, dedicated  
23 to sort of white collar-type investigations. But,  
24 certainly, Corporal Dressler was a very  
09:50 25 experienced investigator as well.



1 Q And Constable Dyck?

2 A And Constable Dyck was attached to the Regina  
3 General Investigation Section, again a very  
4 senior, seasoned investigator.

09:50 5 And, as you'll notice, I tried  
6 to assign the teams a corporal and a constable, so  
7 that you had the senior working with perhaps a  
8 less, or a more junior member, but all of the  
9 investigators from this team certainly were all --  
09:50 10 you know, had probably more than ten years  
11 service.

12 Q So Constable Dyck would have worked primarily with  
13 Corporal Templeton then; was that the team?

14 A That's correct, generally they worked as a team.

09:50 15 Q Can you tell us, and would that be then that you  
16 had Templeton/Dyck, Dressler/Cunningham,  
17 Gagne/Homeniuk, sort of three different teams of  
18 investigators?

19 A Exactly. And then we also used Jorgenson quite a  
09:51 20 bit to work, to fill in when one of the team  
21 members was missing, in fact I recall doing an  
22 interview or two where I used Jorgenson to assist  
23 me.

24 Q So perhaps even four different teams of  
09:51 25 investigators. Can you comment on what, what





1 difference it would make having four different  
2 groups of investigators out talking to people, as  
3 opposed to one officer going and talking to  
4 everybody and gathering the information, apart  
09:51 5 from the workload?

6 A Apart from workload I think generally what it does  
7 is it provides a better opportunity to -- it  
8 prevents things like the investigation getting out  
9 of focus, because you have people looking at  
09:51 10 various elements, but not necessarily looking at  
11 the whole investigation. The only people that  
12 would look at the whole investigation would be  
13 Staff Sergeant Tost and Dosenberger, and they are  
14 in a position to have a very objective look as the  
09:51 15 work comes in, so having a number of teams out  
16 investigating gives the opportunity for more  
17 objective material to come back to the  
18 investigative team.

19 Q So that --

09:52 20 A Or come back to the coordinators.

21 Q So that Templeton and Dyck may not necessarily  
22 know what Gagne and Homeniuk are doing or have  
23 uncovered; is that --

24 A That's correct, however, I should add that we also  
09:52 25 had briefings.



1 Q Yes?

2 A You know, regular briefings to sort of fill the  
3 team in on what was going on. But, generally  
4 speaking, they wouldn't be aware of what the other  
09:52 5 team was doing unless they were filled in during  
6 the meeting.

7 Q Okay. So their job was to go out, gather the  
8 information, provide it to Tost and Dosenberger,  
9 who would then analyse it, and bring in the three  
09:52 10 or four groups' work, and decide then what further  
11 work needs to be done?

12 A That's correct.

13 Q And Constable Cunningham and Dressler -- or  
14 Dressler, sorry, was commercial crime; Constable  
09:52 15 Cunningham?

16 A Constable Cunningham, I believe at the time, was  
17 on Regina General Investigation as well, again a  
18 very senior and seasoned investigator.

19 Q And what about Constable Jorgenson; can you tell  
09:53 20 us his background and why he was selected and what  
21 role he played?

22 A Yes. He was in Regina detachment at the time and,  
23 as I recall, had considerable experience, and  
24 again, was a very good investigator. Constable  
09:53 25 Jorgenson I probably knew less about than most of



1 the other team members, and I recall speaking with  
2 his supervisor prior to sort of assigning him to  
3 the task team.

4 Q And what role did he play, then, in the  
09:53 5 investigation?

6 A He was the exhibit custodian who handled a lot of  
7 the exhibits, but like I say, he -- that wasn't a  
8 full-time job for him so he did do a lot of  
9 interviews and work with other teams, team  
09:53 10 members.

11 Q Corporal Gagne, what was his background and what  
12 role did he play?

13 A I believe he was in the intelligence area, working  
14 on -- in the Division intelligence area when he  
09:53 15 was seconded to this, again a very senior,  
16 experienced officer.

17 Q And Constable Homeniuk?

18 A And Homeniuk, I think, was with the GIS section as  
19 well, the Regina GIS section as well, again a very  
09:54 20 senior, experienced investigator.

21 Q And then PS Shelley Sentes; was she part of the  
22 document management?

23 A Yes, she was, and did all the computer stuff,  
24 entering the data, typing, that sort of stuff.

09:54 25 Q And as far as the resources, then, that you had at



1           your disposal to conduct this investigation, did  
2           you -- at the end of the investigation were you  
3           satisfied that you had both sufficient and  
4           competent resources to do what you were asked to  
09:54 5           do?

6           A       Yes.

7           Q       Okay. If we can go to 338570. And we won't spend  
8           much time on this. This, Mr. Commissioner, is a  
9           document that we prepared just to have on the  
09:54 10          record the Flicker report document ID's, and  
11          there's various versions, but it's my  
12          understanding that the Flicker report -- and we'll  
13          spend some time with this later -- volume 1, and  
14          then it had a number of volumes, supplementary  
09:55 15          report, and then some interviews -- we'll go to  
16          the next page -- I think up to volume 4; is that  
17          correct? That comprised the Flicker report; the  
18          initial report, supplementary report, and then a  
19          collection of some of the key interviews; is that  
09:55 20          correct?

21          A       Yes.

22          Q       And then, in addition to that, you have all of the  
23          background documents that supported that?

24          A       That's correct.

09:55 25          Q       If we can go to 338566, please. This is an



1 outline that I -- we prepared, Mr. Sawatsky, for  
2 your use, and we've gone through some of this  
3 already. If we can actually just go to the next  
4 page, touch on a couple of things under your  
09:56 5 involvement. And I think we've just gone through  
6 this, but your overall responsibility, chief  
7 investigator, assembly of task force/investigative  
8 team, conduct of 'high profile' interviews, is  
9 that right? Can you explain that a bit?

09:56 10 A Yeah, that was, I was told at the beginning of the  
11 investigation by my supervisor that it would be my  
12 responsibility to participate in the interviews  
13 with some of the high-profile people who were  
14 named as suspects.

09:56 15 Q And then, as well, your duties to report to senior  
16 commanding officers and prepare the final report  
17 and advice to Alberta Justice; is that correct?

18 A That's correct.

19 Q And can you tell us, your senior commanding  
09:56 20 officers would have been Superintendent Johnston  
21 and Chief Superintendent Egan; is that right?

22 A That's correct.

23 Q And so did you have, as part of your regular  
24 duties as you would with any other criminal  
09:56 25 investigation, an obligation to report -- to



1 report up, if I can put it that way?

2 A Yes, yes, and that was done both verbally and in  
3 writing.

4 Q And can you tell us just briefly, was it done on a  
09:57 5 monthly basis, was there some type of protocol in  
6 place for that?

7 A I think at the beginning of that, of the -- pardon  
8 me -- I think at the beginning of the

9 investigation it was more frequent, and then as

09:57 10 the investigation started to slow down perhaps the  
11 reporting slowed down. But I think, generally

12 speaking, when there was some, enough material to  
13 provide a report of some substance, then a report

14 was provided. But certainly I briefed them, you

09:57 15 know, on a fairly regular basis as to the

16 activities of myself and the investigative team.

17 Q So you would report to your superiors and you'd  
18 also report to Alberta Justice; is that correct?

19 A That's correct.

09:57 20 Q Did you report, at all, to anybody with  
21 Saskatchewan Justice?

22 A No.

23 Q If we can go down to Terms of Reference and Scope  
24 of Project Flicker -- and we'll talk about this in  
09:57 25 more detail -- I think we've tried to identify,



1 here, the six meetings or so that would be  
2 meetings involving your -- and these would be more  
3 formal meetings likely involving Mr. Fraser and  
4 Mr. McCrank; is that correct?

09:58 5 A That's correct.

6 Q And there is some minutes of those, we'll go  
7 through some of those, and I take it, in addition  
8 to that, your investigative team would have other  
9 frequent informal meetings?

09:58 10 A Yes. And as well, in addition to the meetings,  
11 the formal meetings we had with Mr. McCrank and  
12 Mr. Fraser, we certainly called them, contacted  
13 them from time to time. I know some of the  
14 investigators would contact particularly Mr.  
09:58 15 Fraser on legal issues or points of law during the  
16 investigation so, although there may have only  
17 been a number of formal meetings, there certainly  
18 was lots of informal communication.

19 Q And Mr. Fraser at the time, am I correct, was the  
09:58 20 chief prosecutor in Calgary; is that right?

21 A That's correct.

22 Q And then for criminal investigation targets, I'm  
23 not sure if this list is complete, but certainly  
24 these; Mr. Kujawa, Mr. Lysyk, Mr. Romanow,  
09:58 25 Mr. Blakeney, Mr. Caldwell, Mr. Karst, Mr. Tallis,



1           those would be all people that would be -- maybe  
2           'subject' would be a better word than 'targets' --  
3           but people who you had allegations of criminal  
4           conduct that you were investigating; is that  
09:59 5           right?

6           A           That's correct.

7           Q           So they were suspects; is that a fair way to put  
8           it?

9           A           That's correct, yup.

09:59 10          Q           And then I've got other police officers and other  
11           people; does anybody else come to mind? And as we  
12           can go through the documents we may identify it,  
13           but are there any others that you can recall?

14          A           Nothing else comes to mind looking at that list.

09:59 15          Q           And certainly what's in the report may shed some  
16           further light, but certainly these people were,  
17           would it be fair to say, would be the high-profile  
18           people that -- or some of the high-profile people  
19           who were alleged of criminal wrongdoing?

09:59 20          A           That's correct.

21          Q           And the criminal wrongdoing, I think, was  
22           obstruction of justice; is that right?

23          A           Yes.

24          Q           And we'll see that in the report a bit later, but  
09:59 25           basically the allegation was these people were





1 involved in deliberate wrongdoing, obstructing  
2 justice, deliberately convicting an innocent  
3 person and covering it up would be the basic  
4 allegation, and each one maybe had a different  
10:00 5 particular as to how, what role they played in  
6 that, but that was basically the complaint; wasn't  
7 it?

8 A Yes, that summarizes it very well.

9 Q Then, if we can go to the next page, we'll talk  
10:00 10 about this in more detail later when we talk  
11 about -- when we go through some of the documents,  
12 but can you tell us; was your investigation the  
13 investigation into the death of Gail Miller?

14 A No.

10:00 15 Q Was your investigation into the guilt or innocence  
16 of David Milgaard or Larry Fisher?

17 A No, it was not.

18 Q In the course of your investigation did you gather  
19 information that might bear on those issues,  
10:00 20 namely the guilt or innocence of David Milgaard,  
21 Larry Fisher, or the death of Gail Miller?

22 A Yes. And I think, because we, during the  
23 interviews we interviewed such a large number of  
24 people that a number of the very same witnesses  
10:01 25 and evidence that was used at trial became



1           available to us, as well, throughout the  
2           investigation.

3           Q       And so, and I think we'll see this when the report  
4                   is done, did you at the end, at the end of your  
10:01 5                  investigation, provide some findings or your views  
6                  on the information you had gathered and how that  
7                  might bear on either David Milgaard or Larry  
8                  Fisher's guilt or innocence or the -- or Gail  
9                  Miller's death?

10:01 10          A       Yes.

11          Q       And why, can you just explain a bit about that,  
12                   why and how that came about?

13          A       I think in part, for the very reasons you've  
14                   mentioned, I mean we spent some two years on this  
10:01 15                  investigation. We looked at, you know, a lot of  
16                  evidence, evidence which was available at trial  
17                  and used at trial, we were aware of a number of  
18                  Court proceedings that had occurred, and I think  
19                  we felt that there was going to be an expectation  
10:01 20                  that we would provide some comment as to whether  
21                  anything new surfaced from our investigation that  
22                  wasn't already known that either pointed to Larry  
23                  Fisher or pointed at David Milgaard, or either  
24                  way.

10:02 25          Q       In looking at the issues in the report, and what



1 your team investigated, would it be correct to say  
2 that you -- or let me ask you; did you, when a new  
3 issue came in, did you sit down and say "okay,  
4 well how does this fit with one of the criminal  
10:02 5 obstruction charges, and if it doesn't fit we  
6 won't look at it"; in other words information  
7 relevant to David Milgaard, Gail Miller, and Larry  
8 Fisher brought forward? For example, some time  
9 was spent on, there was a suggestion that a  
10:02 10 blanket was found in someone's driveway that may  
11 have been in Larry Fisher's car or something like  
12 that; did your group sit down and say "okay, well  
13 before we investigate this we better see how it  
14 fits with this allegation of criminal wrongdoing",  
10:02 15 or did you simply say "lookit, it's background,  
16 it's context, if it relates to Gail Miller, David  
17 Milgaard, or Larry Fisher, we'll pursue it"?

18 A I think perhaps a little bit of both, but probably  
19 the latter, that, you know, we wanted to pursue it  
10:03 20 to see where it would go, and if it proved to be  
21 nothing then that was fine, but if it did afford  
22 some evidence that would assist us then we  
23 certainly wanted to capture that.

24 Q And would a significant part of your investigation  
10:03 25 be just that, that you would follow up things that



1 would end up providing little or no information of  
2 value in your investigation?

3 A Yes, there were a number of issues that were dead  
4 issues at the end.

10:03 5 Q But again, just so that I understand this, on --  
6 would it be correct to say that anything relating  
7 to the guilt or innocence of David Milgaard or the  
8 guilt or innocence of Larry Fisher would be  
9 included as part of your criminal investigation  
10:03 10 because it would be the background or context or  
11 may lead to something that would be relevant in  
12 that investigation?

13 A That's correct.

14 Q In other words that you ended up, even though it  
10:03 15 wasn't the investigation into the death of Gail  
16 Miller, you ended up gathering much of the same  
17 information you would have had it been an  
18 investigation into the death of Gail Miller?

19 A That's correct.

10:04 20 Q And but I think what you are saying, as well, is  
21 that wasn't the purpose of the investigation, it  
22 was for another purpose, but at the end, when you  
23 gathered the information, you felt it appropriate  
24 to comment on what you gathered?

10:04 25 A That's correct.



1 Q You also mentioned the fact that you talked about  
2 anything new, and can you tell us, when you did  
3 report on what you found in your investigation --  
4 and we'll deal with this in much more detail when  
10:04 5 we get into the report -- but what was the  
6 significance of the fact that David Milgaard had  
7 been convicted of the crime back in 1970, and as  
8 well, the significance of what the Supreme Court  
9 decided in April of 1992?

10:04 10 A Well I guess, as an investigator, it's always in  
11 the back of your mind. Certainly, we were looking  
12 for any evidence we could find, but in -- in -- as  
13 I mentioned before, we weren't reinvestigating the  
14 Gail Miller murder, but we were certainly  
10:04 15 conscious that David Milgaard had had the benefit  
16 of a trial, there had been an appeal, and that  
17 certainly there had been a reference to the  
18 Supreme Court where the Court had made the comment  
19 that he had been properly convicted. I believe  
10:05 20 that's the term, but --

21 Q Yes?

22 A -- I don't want to try and quote what they said.

23 Q I think, actually, "he had the benefit of a fair  
24 trial" were the words they used. But in any  
10:05 25 event, so that -- and what about what the Supreme



1 Court found in their reference, some of their  
2 findings and some of the issues they dealt with,  
3 did that play a role -- and I'll deal with this  
4 more specifically later when we get into  
10:05 5 documents -- but, just generally, did it play a  
6 role in your work?

7 A Some of their work was certainly helpful to us in  
8 gathering background and preparing to interview  
9 some of the witnesses.

10:05 10 Q Yeah. Actually, sorry, what the Supreme Court  
11 said:

12 "It is appropriate to begin  
13 by stating that in our view David  
14 Milgaard had the benefit of a fair trial  
10:05 15 in 1970."

16 And so that would have been something that was a  
17 consideration by you in looking at this  
18 information?

19 A Certainly that, that was known to us, and like I  
10:06 20 say, would have been in the back of our mind.

21 Q Okay. We'll come back to that issue a bit later.  
22 On sources of information, documents, I think  
23 you've told us the Saskatchewan Justice Department  
24 would have been a source of material; is that  
10:06 25 correct?



1 A That's correct.

2 Q And did you have access to Rick Pearson's file  
3 that he did on the 690 application?

4 A Yes, we did.

10:06 5 Q And the Saskatoon City Police files?

6 A Yes, they provided us the entire, their entire  
7 investigative file.

8 Q And can you just comment generally on the  
9 Saskatoon City Police, were they cooperative with  
10:06 10 you in providing documents and information?

11 A Yes, they were. They provided us with everything  
12 they had and also assigned an investigator to  
13 assist us with inquiries that we needed to make  
14 with officers, with files, etcetera, within  
10:06 15 Saskatoon Police Service.

16 Q And what about Saskatchewan Justice, were they  
17 cooperative with you as far as providing  
18 documents, information, and access to their  
19 people?

10:07 20 A Yes, both Mr. Quinney and Mr. Brown made sure that  
21 we got whatever we required.

22 Q Eugene Williams' file, did you -- he was the  
23 investigator that was working for the Minister of  
24 Justice, did you have access to any of his  
10:07 25 information or interview notes; do you know?



1 A I recall getting some material from Mr. Williams,  
2 I don't know if we got everything that he had, but  
3 I do recall him, you know, coming to see us and  
4 providing us with some documentation.

10:07 5 Q And so, where he may have interviewed witnesses  
6 that you were interviewing, that may have been  
7 information that you received?

8 A That's correct.

9 Q Now the identification -- and I've got prison  
10:07 10 records and other sources, I think we see  
11 throughout the file that your people would go  
12 and -- your officers would go gather, for example,  
13 the Fort Garry police files, they made efforts to  
14 get those, prison records, letters, diaries,  
10:07 15 things of that nature, whenever a piece of --  
16 whenever a document might be relevant and it was  
17 available it was pursued by your people; is that  
18 correct?

19 A That's correct.

10:08 20 Q And your officers would have had coercive powers  
21 to compel, within the law, production of  
22 documents, things of that nature, if necessary?

23 A That's correct.

24 Q Identification of allegations and issues, we've  
10:08 25 talked about that, and I think you've told us that





1           that was something that stemmed exclusively from  
2           what Mr. Wolch and his group provided to you?

3       A       That's correct.

4       Q       All right.

10:08 5       A       And then anything that come up during the  
6           investigation, as you mentioned, quite often there  
7           were splinter investigations that resulted.

8       Q       And next, witness interviews, I take it that who  
9           was interviewed flowed from the allegations and  
10:08 10       the issues; is that correct?

11      A       Yes.

12      Q       And we are putting together a document, the  
13           Commission, of the number -- the people who were  
14           interviewed, and when, and would it be correct to  
10:08 15       say that it would be in the hundreds --

16      A       Yes.

17      Q       -- as to witnesses? And I think, although I can't  
18           give you an exact number, I think that, with the  
19           odd exception, virtually every witness that has  
10:09 20       testified before this Commission of Inquiry would  
21           be a witness that was interviewed by you or talked  
22           -- or by your people, pardon me, your team, or at  
23           least contacted for an interview; is that fair?

24      A       That's fair.

10:09 25      Q       And, in addition to the people this Commission has



1           heard, there are -- and I hesitate to use a number  
2           until we get the document -- but possibly 50, 100,  
3           maybe, additional people that were talked to that  
4           have not appeared before this Inquiry?

10:09 5           A       Yes, I would agree, there certainly were a number.

6           Q       And, just generally, were there any witnesses, can  
7           you tell us, who -- who would not cooperate with  
8           you, or who did not sort of respond favourably for  
9           your request to get information from?

10:09 10          A       Well, I recall several attempts to interview Larry  
11          Fisher, and he did not cooperate; Ron Wilson was  
12          very, very difficult to interview and was  
13          non-cooperative; David Milgaard was very, very  
14          difficult to interview and, in fact, I ended up  
10:10 15          with an interview with him that was almost of no  
16          value. I don't recall, specifically, others. I  
17          think pretty well everyone else cooperated with an  
18          interview.

19          Q       What about Paul Henderson with Centurion?

10:10 20          A       I know we asked for information from Paul  
21          Henderson, and I know he was uncooperative in  
22          providing a lot of documentation, tapes and those  
23          sorts of things.

24          Q       Okay.

10:10 25          A       So, thank you for that, that's another person.



1 Q And Mr. McCloskey did interview by telephone, I  
2 think, by Centurion; there is a record of that?

3 A Yeah, I didn't participate in that interview, but  
4 I believe there is a record of him being  
10:10 5 interviewed.

6 Q And any other witness that comes to mind, of a  
7 significant nature, that you had difficulty  
8 getting information from to do your work?

9 A I don't believe so. You'd have to refresh me if  
10:10 10 there is someone.

11 Q No, that's fine, and if it comes up in the course  
12 I'll certainly raise it with you, but nothing  
13 comes to mind?

14 A Nothing comes to mind right now.

10:11 15 Q You talk about your relationship with Alberta  
16 Justice officials and I think you've described  
17 that, your relationship with them would be the  
18 same relationship you would have with a prosecutor  
19 in any criminal investigation you would undertake;  
10:11 20 correct?

21 A That's correct. I think perhaps there may be just  
22 one subtle difference, we were never of the view  
23 that we would lay charges against anyone without  
24 running it past Alberta Justice.

10:11 25 Q I see.



1 A And as you know, in the normal course of an  
2 investigation, a police officer will quite often  
3 lay a charge without necessarily consulting or  
4 having, you know, full disclosure to Crown.

10:11 5 Q And would that be because of the nature of the  
6 allegations and the nature of the suspects?

7 A That's correct.

8 Q And would there be other cases that you would  
9 investigate as an RCMP officer, that due to the  
10:12 10 nature of the charges or who is being charged, you  
11 might go to the Crown for advice before you lay  
12 the charges?

13 A For sure, yes, that happens quite often,  
14 particularly in serious cases, or complex cases.

10:12 15 Q And then we talk about the relationship with  
16 Saskatchewan Justice, Brent Cotter, and you've  
17 told us there really was no relationship; is that  
18 right, no reporting and no -- I mean, I think in  
19 one meeting he may have been present, at least in  
10:12 20 the notes. Do you recall having any direct  
21 contact with Saskatchewan Justice other than  
22 gathering information from them?

23 A No, there was no contact, and I do recall a  
24 meeting where Mr. Cotter was present, but I  
10:12 25 believe the investigation was already complete.



1 Q Okay.

2 A At that time.

3 Q And then just down at the bottom we see your  
4 interviews conducted by Murray Sawatsky, and I may  
10:12 5 not have them all, but the first two being with  
6 Mr. Wolch and Mr. Rodin, Bob Bruce, and then with  
7 Mrs. Milgaard, and then I think Mr. Kujawa, Mr.  
8 Caldwell, Mr. Romanow and Mr. Tallis, you would  
9 have been involved in those directly?

10:13 10 A That's correct. In addition to that, I had a  
11 number of interviews with David Milgaard.

12 Q And when you say those did not result in any --  
13 can you expand upon that, was that because he was  
14 unable to provide information, or what was it that  
10:13 15 rendered them of little value?

16 A I found it very difficult to focus Mr. Milgaard on  
17 what the issues were and principally what I wanted  
18 him to do was to provide me with, you know, an  
19 outline of what happened that morning and  
10:13 20 certainly -- and when I say that morning, I mean  
21 back on January 31st, 1969 -- but secondly, to  
22 tell me where there was coercion or where he was  
23 forced to do certain things, you know, which may  
24 lend evidence of on obstruction of justice, and I  
10:14 25 found that I simply couldn't focus him. It was



1           like trying to capture smoke.

2           Q       But as far as his willingness to sit down with  
3                   you, he was prepared to do that, it's just that --  
4                   or was that a challenge?

10:14 5           A       No. I recall on one occasion he actually just  
6                   showed up at the office and presented himself and,  
7                   you know, sat for a few minutes, you know, asked  
8                   some questions about what was going to happen with  
9                   the investigation, where it was going to go, who  
10:14 10           was going to review it and then left, and the  
11                  second time was at my request and all he seemed to  
12                  be interested in is where he could get a hair cut,  
13                  so --

14           Q       Can you tell us, what would be -- you mentioned  
10:14 15                  earlier that you viewed Mr. Wolch as the  
16                  complainant in the investigation, although there  
17                  was others who maybe fed information to him or  
18                  through him. What would be the normal  
19                  relationship between the investigators of a  
10:14 20                  criminal offence and the complainant as far as  
21                  reporting and providing information to the  
22                  complainant?

23           A       It depends on the case, but generally speaking,  
24                   you go out and investigate and when your  
10:15 25                  investigation is complete, whether you lay charges



1 or whatever, then you would generally brief the  
2 complainant as to what has happened. There are  
3 occasions, you know, serious crimes, murders and  
4 those sorts of things where the procedure is  
10:15 5 sometimes a bit different where you may brief the  
6 family, you know, of the victim, for example, as  
7 the investigation is ongoing, but generally  
8 speaking, you receive your complaint from the  
9 complainant, you go out and investigate it and  
10:15 10 when you are finished you would provide the  
11 complainant with the result.

12 Q And in this case did you see any need to and did  
13 you in fact report to Mr. Wolch and tell him what  
14 you had done, when you had done it during the  
10:15 15 course of the investigation?

16 A No, we didn't.

17 Q And did you think it was appropriate for you to do  
18 that?

19 A I believe at the very end I know I wanted to meet  
10:15 20 with him and sort of advise him of the results,  
21 but I was overruled in that.

22 Q And that would be the results of the -- and we'll  
23 come to that a bit later, I think that's -- and  
24 there's some letters on that, but up until your  
10:16 25 investigation is completed, once you got the



1 information from Mr. Wolch and Mrs. Milgaard,  
2 other than going back to them for follow-up or  
3 further information, I think you told us that you  
4 would go back and say lookit, have you got  
10:16 5 anything else?

6 A That's correct.

7 Q Did you -- are you telling us that it would not be  
8 your normal practice then to go back to a  
9 complainant and say okay, here's what we've  
10:16 10 uncovered from this witness, what do you think  
11 about that, give us some input, give us your  
12 ideas, and involve the complainant, Mr. Wolch, for  
13 example, in your investigation?

14 A We didn't do that. I'm not saying that's never  
10:16 15 done, but in this investigation I never felt the  
16 need to do that.

17 Q And why was that?

18 A Mr. Wolch had been, you know, provided us with  
19 full disclosure, with everything he had, and there  
10:16 20 was simply no issues that required additional  
21 follow-up with him, and if there were, we simply  
22 contacted him and got that material or  
23 information.

24 Q You talked earlier about not disclosing the, let's  
10:17 25 call it the fruits of the investigation until the





1 investigation is completed. Would that be your  
2 normal practice?

3 A That's generally the way investigations are  
4 conducted, yes.

10:17 5 Q Did you have concerns about sharing the fruits of  
6 your investigation before it was completed with  
7 the Milgaard family?

8 A Yes.

9 Q And why?

10:17 10 A Well, perhaps one reason is that they would run to  
11 the media, there was always a sense that, you  
12 know, the information could end up in the media.

13 Q And would that hamper your investigation?

14 A Definitely.

10:17 15 Q If we can go to the next page. Now, the final  
16 report, I think we've talked about it, Volumes 1  
17 to 4, and again we'll go through that a bit, the  
18 circumstances surrounding the release, and I think  
19 you talked about, I think, once the investigation  
10:17 20 was done there was some discussion about do we, at  
21 what point do we share this with Mr. Wolch, and  
22 we'll deal with that in chronological order, and  
23 then the last couple of parts are the serology and  
24 DNA testing and that's something that -- is it  
10:18 25 correct that in the course of your criminal



1 investigation, DNA testing was an issue that was a  
2 live issue?

3 A That's correct.

4 Q Can you tell us, how would that be -- where did  
10:18 5 that fit in in investigating whether or not  
6 government and police officials had committed, had  
7 obstructed justice? Can you just tell us where --  
8 I mean, I appreciate that DNA would either, would  
9 eliminate possibly or inculcate somebody to the  
10:18 10 crime, but how did that fit into the criminal  
11 investigation?

12 A Well, I think to have that information available  
13 to the investigative team would have been helpful  
14 in certainly assessing all of the evidence.

10:18 15 Q And so is it correct to say that throughout the  
16 course of your investigation, would it be, your  
17 starting point would be that David Milgaard had  
18 been convicted of the crime in 1970, the Supreme  
19 Court of Canada in April, 1992 said they could not  
10:19 20 find evidence to establish that he was innocent,  
21 either beyond a reasonable doubt or on a balance  
22 of probabilities, but that there was new evidence  
23 that may affect the verdict, they ordered the  
24 conviction set aside, and the three grounds I  
10:19 25 think of new evidence were, number one, the Larry



1 Fisher information, two, the Ron Wilson  
2 recantation, and three, the motel incident, and  
3 said lookit, that information, there's new  
4 information that may affect the verdict. The  
10:19 5 Government of Saskatchewan then announced that  
6 they were not proceeding with the trial, so at  
7 that point -- and they were not proceeding with  
8 any investigation of Larry Fisher at that time.  
9 Would that be a fair status of the thing when you  
10:19 10 became involved?

11 A Yes, that's a fair assessment.

12 Q And so when you are looking at this information as  
13 far as Mr. Milgaard versus Mr. Fisher, that would  
14 have been the legal status, he had been convicted,  
10:20 15 it had been set aside, but no further trial?

16 A That's correct.

17 Q Would it also be correct to say that in the course  
18 of uncovering information, and I want you to just,  
19 let's just compare Mr. Milgaard and Mr. Fisher, as  
10:20 20 far as in 1992 to 1994 when you are gathering  
21 information about what happened in 1969 and 1970,  
22 the fact that David Milgaard had been investigated  
23 by the police for the Gail Miller murder in '69,  
24 '70 and Larry Fisher wasn't, meant that you had  
10:20 25 far more information about Mr. Milgaard in '69,



1 '70 than you did with Larry Fisher?

2 A That's fair. We virtually had very little on Mr.  
3 Fisher and, as I mentioned, he was not willing to  
4 consent to an interview.

10:20 5 Q And that as far as the information gathered on Mr.  
6 Fisher by 1992, is it fair to say that to try and  
7 get, for example, the same type of information  
8 that you might have, or that you did have about  
9 David Milgaard's conduct and activities in '69,  
10:21 10 '70, it was much more of a challenge to get the  
11 same from Mr. Fisher because memories were 23  
12 years later and there wasn't a record of an  
13 investigation?

14 A Correct.

10:21 15 Q In other words, if I put it this way, if the -- if  
16 Mr. Fisher had been fully investigated for the  
17 murder of Gail Miller in '69, '70 and there was a  
18 record of everything that was done with respect to  
19 him, that would have been of assistance to you?

10:21 20 A It certainly would have been, and as I recall, we  
21 did attempt to try and get some of that  
22 information, employment records and those sorts of  
23 things, and we were unsuccessful.

24 Q And so when in '92 when you start to gather the  
10:21 25 information, and you talked earlier about the



1 innocence or guilt of Mr. Milgaard or Mr. Fisher,  
2 is it a case of your starting point is here, he's  
3 been convicted, he had a fair trial, the Supreme  
4 Court said he hasn't been able to prove his  
10:22 5 innocence but there's three grounds of new  
6 information, and that really what you looked at,  
7 is there anything new that wasn't there before  
8 that would bear on the issue of either his guilt  
9 or innocence or Mr. Fisher's guilt or innocence?

10:22 10 A That's correct.

11 Q And so again just back on the DNA, I suppose if  
12 DNA testing could be done, or could have been  
13 done, and shed some light on Mr. Milgaard versus  
14 Mr. Fisher or someone else, that that would have  
10:22 15 been information that would have been of  
16 assistance in examining the conduct of police and  
17 government officials?

18 A Certainly.

19 Q We're done with that document. If we could go to  
10:22 20 I think 060887, please, and this is an October 6,  
21 1992 memo I think from, I think it might be from  
22 Mr. Egan to the commissioner in Ottawa; is that  
23 correct?

24 A That's correct.

10:23 25 Q And I think this sets up the first meeting -- call



1           that out, please -- that's arranged for October 8,  
2           1992, and that was when you first became involved;  
3           is that correct?

4           A       That's correct.

10:23 5           Q       And so at this meeting it appears that your  
6           superiors were saying lookit, here's who's coming,  
7           McCrank, Fraser, Superintendent Johnston, who was  
8           your superior, Inspector Wass, you, Sergeant  
9           Pearson, a member involved will attend for  
10:24 10          background support. So that was:

11                        "In light of the allegations of  
12                        obstruction, a criminal investigation  
13                        may be required. The purpose of the  
14                        meeting will be to determine the  
10:24 15                      appropriate course of action and the  
16                        development of an operational plan to  
17                        deal with the investigation."

18           And I think Sergeant Pearson told us that he was  
19           there sort of almost for a hand-off because he  
10:24 20           had done a bit of the leg work the week prior,  
21           plus had been involved in the Section 690; is  
22           that correct?

23           A       That's correct.

24           Q       And then 060842, please, and this is your  
10:24 25           handwritten note of October 8th, '92 just



1           indicating who was there at the meeting; correct?

2       A       That's correct.

3       Q       And this would be the starting point saying okay,  
4           what do we have to do, how are we going to do it;  
10:25 5           is that right?

6       A       That's correct.

7       Q       And here you and I think Sergeant Williams --  
8           Pearson is there, but he's bowing out and handing  
9           off; correct, so it's you and Mr. Williams?

10:25 10      A       That's correct.

11      Q       And I think you told us, your expectation at this  
12           time was that it would be you and Mr. Williams who  
13           would be conducting the investigation?

14      A       That was my understanding, yes.

10:25 15      Q       And as far as the scope of that, I think there was  
16           a newspaper article, some article somewhere that  
17           suggested this would be maybe initially thought to  
18           be maybe a month-long investigation or a couple of  
19           weeks type of thing?

10:25 20      A       That's correct. We were just going to investigate  
21           the one or two allegations that were out there and  
22           could have, likely would have been handled very  
23           quickly.

24      Q       And then it was the meeting with Mr. Wolch then  
10:25 25           that changed that?



1 A That's correct.

2 Q Due to what further information he provided at  
3 that meeting?

4 A That's correct.

10:25 5 Q Are you able to answer the question, and I'm not  
6 sure if this is maybe a question that is better  
7 for Murray Brown, but if the Breckenridge  
8 allegation had not been made, namely, what  
9 Mr. Breckenridge said, are you able to tell us  
10:26 10 whether or not the RCMP would have investigated  
11 the other matters that Mr. Wolch provided to you  
12 at the November meeting, and if you are not  
13 able -- if you are not the person to tell us that,  
14 then I'll find someone else who will, and maybe  
10:26 15 Mr. Murray Brown, but I'm wondering if you are  
16 able to comment on that.

17 A I'm not able to comment. I think all I can say is  
18 that I wasn't aware of the, sort of the amount of  
19 information that Mr. Wolch had available and  
10:26 20 provided to us. Perhaps someone else was, but I  
21 wasn't.

22 Q So that would have been someone else's decision  
23 about whether or not there would have been a  
24 criminal investigation of obstruction of justice?  
10:26 25 In the absence of Mr. Breckenridge's allegations,





1           you are saying I don't know, someone else --  
2           someone else made the decision to start the  
3           investigation, it wasn't you?

4           A       Exactly.

10:27 5           Q       And can you tell us, if Mr. Wolch would have come  
6           to you directly and said lookit here, I've got a  
7           bunch of information, I would like the police to  
8           investigate this, can you tell us what would be  
9           the process there? Are those matters that you  
10:27 10          would then take a look at and if it appears to be  
11          a valid complaint, that you might investigate and  
12          follow up on them?

13          A       I certainly would have discussed, you know, with  
14          my supervisor as to how it should be handled, so,  
10:27 15          yes, if he would have provided us with that  
16          information, I certainly would not have done  
17          nothing with it, I would have acted on it.

18          Q       So is it fair to say that as police, that if  
19          information comes in that says someone has  
10:27 20          committed a crime or complaining to you police --  
21          now, I guess there's an issue of jurisdiction,  
22          whether it's RCMP or Regina City or Saskatoon City  
23          Police, but putting aside that distinction,  
24          someone comes to you and says I think a crime has  
10:28 25          been committed, will you investigate, I take it



1           your normal procedure would be to check out the  
2           information and, if it's credible, conduct an  
3           investigation and see where it leads?

4           A       That's correct. I believe the *Criminal Code*, the  
10:28 5           *RCMP Act* and the *Police Act* all require police to  
6           investigate where it's appropriate.

7                   COMMISSIONER MacCALLUM: Mr. Hodson, did  
8           you mean that Mr. Wolch had come to Mr. Sawatsky  
9           directly?

10:28 10           MR. HODSON: Yeah.

11                   COMMISSIONER MacCALLUM: Instead of through  
12           the press with Breckenridge, is that what you are  
13           --

14                   MR. HODSON: Yes, and I'm just saying if he  
10:28 15           showed up, called you one day and said lookit --

16                   COMMISSIONER MacCALLUM: Because he did  
17           come directly by writing to him, didn't he, with  
18           respect to the investigation?

19                   MR. HODSON: Oh, I'm sorry, as far as --  
10:28 20           yeah, I guess maybe the question was that in the  
21           absence of the Breckenridge allegations in the  
22           media.

23                   COMMISSIONER MacCALLUM: Yes.

24           BY MR. HODSON:

10:28 25           Q       In other words, let's say on September 15th, 1992,



1 before the letter goes to the Federal Minister and  
2 before the press conference of September 19th, if  
3 Mr. Wolch had simply phoned you and said lookit,  
4 I've got some information here that says Roy  
10:29 5 Romanow, Serge Kujawa, others may have committed a  
6 crime, we would like you to investigate it, here's  
7 the information I have, here's Michael  
8 Breckenridge, he came and told us that some  
9 nefarious activities took place, I think it might  
10:29 10 lead to a criminal charge, here you go, and I take  
11 it in that scenario, apart from the jurisdiction  
12 whether it's Regina, Saskatoon or -- my  
13 understanding is the RCMP can find a way to have  
14 jurisdiction for that investigation?

10:29 15 A Yes, and I certainly would have taken the  
16 information and acted upon it, I wouldn't have  
17 just ignored it.

18 Q Right. And so if it was information, then, is it  
19 correct to say that it would be investigated in  
10:29 20 some way; in other words --

21 A Yes.

22 Q And if it was valid, it would be pursued possibly  
23 to a full investigation?

24 A That's correct.

10:30 25 Q And that what happened in this case, your contact



1 with Mr. Wolch came I think after the matters were  
2 put into the media and then after you were asked  
3 by the provincial government to investigate the  
4 matters that were reported in the media, you ended  
10:30 5 up going to him and got the information that way?

6 A That's correct.

7 MR. HODSON: This is probably an  
8 appropriate spot to break for the morning.

9 COMMISSIONER MacCALLUM: Okay.

10:30 10 (Adjourned at 10:30 a.m.)

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

12 BY MR. HODSON:

13 Q If we could call up 060882, please, and I just  
14 want to show you a few documents here, Mr.  
10:49 15 Sawatsky, to see what, whether this would have  
16 been brought to your attention around October 8th  
17 or not. We have from the record, this is an  
18 October 1, '92 memo from I think Mr. Wass to the  
19 commissioner about some events that had  
10:49 20 transpired; namely, the interviews done by  
21 Sergeant Pearson, and then if we can go to 154207,  
22 this is a September 21, 1992 letter from Chief  
23 Superintendent Egan to Mr. Quinney that has  
24 Sergeant Pearson's interviews that he conducted I  
10:50 25 think, and it talks here about assisting, you'll



1 see here, assisting the Federal Department of  
2 Justice, and then the next page is Sergeant  
3 Pearson's report about the interviews he conducted  
4 of Patricia Styles and David Wollbaum on September  
10:50 5 19th, and both of those people were mentioned by  
6 Mr. Breckenridge as working with him at the time.  
7 I think the evidence we've heard is that although  
8 the name Breckenridge had not been provided to the  
9 authorities by Mr. Wolch, or identified in the  
10:51 10 press conference, you'll see on the next page I  
11 think through some way I think Sergeant Pearson  
12 and others concluded that it must have been  
13 Michael Breckenridge who gave the statements,  
14 you'll see that here, based on what's on the  
10:51 15 statement. Anyway, he ended up talking to Styles  
16 and Wollbaum who said lookit, we don't know  
17 anything about what Mr. Breckenridge is alleging,  
18 things of that nature. I'm trying to understand  
19 whether this -- would this have been information  
10:51 20 that would have been provided to you at the start  
21 of the investigation?

22 A I recall seeing the statement, but I don't, the  
23 other two memos that you showed me prior to this  
24 one I don't recall reading. I'm not saying I  
10:51 25 didn't, but I don't recall seeing them.



1 Q Okay. So then as far as the Breckenridge  
2 allegations then, would you -- those would have  
3 been matters that your team then followed up on;  
4 is that correct?

10:51 5 A That's correct, yes.

6 Q And as well, I don't have it here, but there was a  
7 newspaper article I think on September 21st or  
8 22nd that reported on the press conference about  
9 these allegations that alluded to the fact that  
10:52 10 the government had checked and said lookit, the  
11 person who they are relying on for these  
12 statements didn't work in the department at the  
13 time, and so that that was an issue raised in the  
14 public. Do you remember being made aware of that  
10:52 15 or is that something you discovered from  
16 Mr. Breckenridge?

17 A I probably was aware of it, but I don't have any  
18 specific recall of that.

19 Q In other words, there was some suggestion that  
10:52 20 almost at the time the allegations were made and  
21 the checks that were made by the government were  
22 that Mr. Breckenridge didn't work there in '70,  
23 '71 when he says he -- or around then, that he  
24 witnessed this exchange between Mr. Romanow and  
10:52 25 Kujawa, and I'm wondering whether you learned that



1 early on and said okay, well, what's the point of  
2 investigating these allegations if he didn't work  
3 there when he said these events happened. I'm  
4 trying to understand how that -- how did the  
10:53 5 information that Mr. Breckenridge didn't work  
6 there in '70, '71, when it came to your attention,  
7 how did that impact the investigation?

8 A I don't have any specific recall of that, but I  
9 think my answer now is I don't know how believable  
10:53 10 that was; in other words, that may or may not be  
11 true. If it was reported in -- are you suggesting  
12 it was reported --

13 Q No, no, I'm just saying -- so are you telling us  
14 that notwithstanding what may have been said about  
10:53 15 Mr. Breckenridge and whether he worked there or  
16 not or what Mr. Pearson had learned from Wollbaum  
17 and Styles, you would investigate it and your team  
18 would come to its own conclusions about whether or  
19 not he worked there at the time he said he did,  
10:53 20 whether or not he was credible, whether or not  
21 what he said could be corroborated, things of that  
22 nature?

23 A That's correct. In my view, he needed to be  
24 interviewed to see what evidence he had to offer.

10:53 25 Q And I think your team ended up interviewing him on



1 a couple of occasions; is that right?

2 A That's correct.

3 Q And so notwithstanding what some other people  
4 might have said about him or what the papers may  
10:54 5 have said about him, as an investigator  
6 investigating criminal wrongdoing against these  
7 people, you are telling us that your team had to  
8 interview him directly and get the information and  
9 reach your own conclusions?

10:54 10 A That's correct.

11 Q If we can go to 060891, this is an October 9th,  
12 '92 letter from Mr. Cotter to Mr. McCrank, it's  
13 CC'd to Chief Superintendent Egan. I'm not sure  
14 if you saw this or received it or not, but I just  
10:54 15 want to ask you a few questions about what is  
16 stated and get your, whether this was your  
17 understanding of what you were doing and what was  
18 happening. Brent Cotter, who was the deputy  
19 minister at the time, says to Mr. McCrank:

10:55 20 "As you are aware, at our request the  
21 RCMP are presently investigating the  
22 most recent allegations forwarded to  
23 Federal Justice by Mrs. Milgaard. They  
24 have been instructed to seek any legal  
10:55 25 advice that may become necessary during





1 the course of the investigation from you  
2 and your senior personnel."

3 And is that consistent with what your  
4 understanding was?

10:55 5 A Yes, it is.

6 Q And the recent allegations forwarded to Federal  
7 Justice by Mrs. Milgaard, I think the first would  
8 be the September 16th, 1992 letter, which is  
9 004064, and we have reviewed this letter, and I'll  
10:55 10 review it again with you in a moment, if we can  
11 call that out, this is the letter to Kim Campbell  
12 that initially sets forth the allegations; is that  
13 correct?

14 A That's correct.

10:56 15 Q And this would be, if I can call it, the genesis  
16 of the criminal investigation; is that fair? This  
17 is the starting point, and things were added to it  
18 as you went along, but this would be the starting  
19 point of the allegations of criminal wrongdoing?

10:56 20 A That's correct.

21 Q And if we can just go back to the letter 060891,  
22 so again just so we know what the allegations at  
23 this point are, October 9th, it would be the  
24 letter to the minister and as well I believe  
10:56 25 what's appended to the Flicker report is the



1 September 19th, 1992 press conference with Mrs.  
2 Milgaard, David Milgaard, and Hersh Wolch repeated  
3 and elaborated much of what was in the letter and  
4 as well some other information about wrongdoing by  
10:57 5 various people; is that correct?

6 A That's correct.

7 Q And so those would be the allegations both  
8 directly in a letter to the minister and publicly  
9 made that were the starting point for your  
10:57 10 investigation?

11 A Correct, yeah.

12 Q And then:

13 "...the police will pursue these  
14 allegations in the same way as they  
10:57 15 would investigate any other allegations  
16 of wrongdoing and that, if necessary,  
17 your office will advise them of the  
18 appropriate scope of the investigation.

19 Upon the conclusion of the  
10:57 20 investigation the report of the RCMP  
21 will be forwarded directly to you."

22 Is that accurate?

23 A That's accurate.

24 Q And:

10:57 25 "It is my understanding that after due



1 consideration of the report you will  
2 advise me and Justice Canada  
3 concurrently as soon as is reasonably  
4 possible, whether any basis exists for  
10:57 5 the laying of criminal charges and if  
6 so, the nature of the charges and who  
7 they should be laid against."

8 And again, was that your understanding of the  
9 process?

10:57 10 A Yes, it was.

11 Q And Justice Canada, would they be involved because  
12 they were the ones who received the initial  
13 complaint of criminal wrongdoing?

14 A It could be, you know. In my view the Attorney  
10:58 15 General is certainly responsible, but it could be  
16 out of protocol or out of courtesy that they would  
17 be notifying Federal Justice.

18 Q That's something that was for someone else to  
19 worry about as opposed to you; is that fair?

10:58 20 A That's correct, yeah.

21 Q And then the next page, Mr. Cotter goes on to say:  
22 "Should anything further be required in  
23 relation to the investigation, you will  
24 communicate directly with the  
10:58 25 investigating police team under the



1 direction of Chief Superintendent Doug  
2 Egan. We wish to ensure the complete  
3 independence of both the investigating  
4 police and you. In light of the  
10:58 5 sensitivity of this matter, any  
6 communications pertaining to the  
7 investigation should occur directly  
8 between you and the police."

9 And did that in fact happen?

10:58 10 A That happened.

11 Q And:

12 "Your charging decisions will be based  
13 upon the usual charging standards  
14 applied in Saskatchewan:  
10:58 15 -a reasonable likelihood of conviction  
16 -that it is in the public interest to  
17 proceed."

18 And would that have been the charging standards  
19 that you would have utilized in conjunction with  
10:59 20 Mr. Fraser and Mr. McCrank?

21 A That's correct.

22 Q And that Mr. Cotter said:

23 "I undertake to follow your  
24 recommendations and make public your  
10:59 25 conclusions. Should the evidence and



1 all relevant considerations result in  
2 charges being laid, I also confirm that  
3 the prosecution will be handled by your  
4 officials. In that event we will come  
10:59 5 to an accommodation on the issue of  
6 resources."

7 And:

8 "It is my view that the nature of these  
9 allegations warrant that exceptional  
10:59 10 care is taken to see that justice is  
11 both done and seen to be done."

12 And again, would that be something that was  
13 operative in your mind as well, and your team?

14 A Yes.

10:59 15 Q Then if we could go to 004064. And this is Mr.  
16 Wolch's September 16th, 1992 letter, and I take it  
17 that you would have, fairly early on in the  
18 process, received a copy of this or been made  
19 aware that this was, perhaps to call it the  
10:59 20 original complaint, but it would be -- it would be  
21 a document that would be part of the original  
22 complaint that you were investigating; is that  
23 correct?

24 A That's correct.

11:00 25 Q And here:



1 "However, new evidence has  
2 been obtained which makes it imperative  
3 that the Federal Government order an  
4 inquiry into the entire Milgaard matter.  
11:00 5 Briefly, this evidence consists of a  
6 witness who was a former employee of the  
7 Saskatchewan Attorney General's  
8 Department who has come forward with  
9 information concerning activities in the  
11:00 10 Department shortly after David  
11 Milgaard's conviction."

12 They provide a copy of Mr. Breckenridge's  
13 statement, and then:

14 "Mrs. Milgaard, along with  
11:00 15 the investigator in question, met with  
16 this witness to follow up on the  
17 information contained in the statement.  
18 The witness described an incident which  
19 involved his refiling the Milgaard and  
11:00 20 Fisher files, which were requested for a  
21 meeting which was attended by  
22 Mr. Romanow, attorneys in the Attorney  
23 General's office, and police officials."

24 And I think, is it correct to say that the  
11:00 25 allegation there was that Mr. Romanow and Mr.



1 Kujawa, and perhaps others, knew, I think the  
2 allegation was they knew that Mr. Milgaard was  
3 innocent, that Fisher committed the crime, but  
4 they deliberately took steps to cover that up?

11:01 5 A Certainly, there's an indication there that there  
6 was steps taken to cover it up.

7 Q But with the knowledge that they knew Mr. Milgaard  
8 was innocent, and that they knew Mr. Fisher had  
9 committed the crime, and that's what prompted the  
11:01 10 coverup?

11 A That's correct.

12 Q And then to the next page. It goes on to say:

13 "Mr. Mitchell has not seen

14 fit to order an inquiry into the  
11:01 15 Milgaard matter, nor does he seem  
16 inclined to do so. In light of the  
17 evidence linking the present Premier of  
18 the Province of Saskatchewan to the  
19 Milgaard case, we would suggest that it  
11:01 20 would be impossible for the Milgaard  
21 family to obtain any form of impartial  
22 inquiry in the Province of  
23 Saskatchewan.",

24 and then goes on to ask for an inquiry under *The*  
11:01 25 *Federal Inquiries Act*. So that would be at least



1 one of the starting points, then, or probably the  
2 initial starting point for you; is that correct?

3 A Correct.

4 Q If we can go to 060893. And this is an October  
11:02 5 13, 1992 memo of Chief Superintendent Egan, and it  
6 simply talks about the fact that Mr. Pearson is  
7 involved in another matter, he'll be relieved of  
8 any responsibility for further inquiries, and that  
9 you and Sergeant Williams will conduct the  
11:02 10 investigation concerning the latest allegations by  
11 Mrs. Milgaard. So that would have been, although  
12 you met on October 8th, this was maybe a bit more  
13 of a formal handoff; is that right?

14 A Yes, this would have been our marching orders, so  
11:02 15 to speak.

16 Q And then, again, I think there's some -- and we'll  
17 see a few documents here in the initial stages  
18 sorting out who would get back to Mr. Wolch as the  
19 letter went to Federal Justice, and we'll see a  
11:03 20 letter later where Kim Campbell writes and says  
21 "lookit, you've asked me for a federal inquiry,  
22 but it's into a criminal investigation, which is  
23 something we can't do, so we've referred it to the  
24 police" essentially?

11:03 25 A That's correct. I recall, I recall seeing that





1 letter, yes.

2 Q And so down at the bottom, and again this is your  
3 superior, saying:

4 "One of our strong

11:03 5 recommendations in discussions with Mr.  
6 McCrank was that Saskatchewan Justice  
7 make a public announcement advising that  
8 a criminal investigation into  
9 Mrs. Milgaard's allegations was being  
11:03 10 conducted by the RCMP and that the  
11 investigation would be reviewed by the  
12 Alberta Attorney General's Department  
13 upon its completion."

14 Can you shed any light on that; what would be the  
11:04 15 reason that the RCMP would want that to be put  
16 out in the media at that time?

17 A It would be just to show that Saskatchewan  
18 Attorney General's Department was not involved in  
19 making any decisions concerning the results of the  
11:04 20 investigation and whether it was appropriate to  
21 lay charges.

22 Q And was there a fair bit of information in the  
23 media, around this time, about the Breckenridge  
24 allegations?

11:04 25 A I believe there was, but even if there hadn't



1           been, this would have been the appropriate course  
2           of action.

3           Q       To --

4           A       Even if there hadn't been, but there was.

11:04 5           Q       To let the public know that the matters were being  
6           investigated?

7           A       Exactly, and that they were going to be reviewed  
8           by an independent group of people.

9           Q       So that Alberta Justice was involved, not  
11:04 10          Saskatchewan Justice, that was the significance  
11          that the RCMP wanted out there?

12          A       Yes, very much so.

13          Q       If we can go to 060901. And I want to take you  
14          through a few documents, Mr. Sawatsky, that show  
11:05 15          the evolution of the scope of the Inquiry, and I  
16          think, if we can just walk through these, you  
17          might be able to shed some light on this. So this  
18          is your October 19th, '92 letter to Mr. Fraser,  
19          and you have a draft of your letter to Mr. Wolch,  
11:05 20          and then -- and you're asking for his comments.

21                   And if we can go to page 060903.  
22          And this is a draft, this letter was not sent, I  
23          don't believe, and this is what you ask Mr. Fraser  
24          to comment on. And you say:

11:05 25                   "I've been appointed to



1                   conduct a criminal investigation. The  
2                   purpose of the investigation will be to  
3                   determine if representatives of  
4                   Saskatchewan Justice and/or the Crown  
11:05 5                   Attorney's office of Saskatchewan caused  
6                   an Obstruction of Justice by willfully  
7                   expressing evidence in 1970."

8                   And then you go on to talk about the September  
9                   23, 1992 letter about having additional  
11:06 10                  information, and go on, and I'll bring that  
11                  letter up in a moment. So that this would have  
12                  been your initial letter, draft, and this would  
13                  have been your initial -- the initial thought  
14                  about what the scope would be; is that correct?

11:06 15           A           That's correct.

16           Q           And is it fair to say that it was limited to,  
17                        really, the Breckenridge allegation, although --  
18                        limited in time and limited to the Justice  
19                        officials?

11:06 20           A           Exactly, except I do ask for whatever other  
21                        information he does have to be provided.

22           Q           Okay, but -- and as far as identifying for him the  
23                        scope of the investigation, it's initially put in  
24                        this letter as being limited to Justice and Crown  
11:06 25                        Attorney's office and 1970 suppression?



1 A That's correct.

2 Q So no police?

3 A Not at this time, no.

4 Q And then 060844. And this, these are your  
11:07 5 handwritten notes, are they, sir?

6 A That's correct.

7 Q So October 19th, '92 you just write that the  
8 letter was sent to Fraser for his review, and he  
9 says, 'The letter will not be sent until Mr.  
11:07 10 Fraser advises all necessary steps have been taken  
11 and that Department of Justice Ottawa and Sask.  
12 Justice have corresponded.'

13 And if we can go to the next  
14 page, and this is October 21, '92, you say,  
11:07 15 'Received a call from, a phone call from Bruce  
16 Fraser. He states that the dilemma now is with  
17 the wording Sask. Justice will be placing on their  
18 letter to Hersh Wolch.'

19 And I think, as part of this,  
11:07 20 both Justice Canada and Justice Saskatchewan are  
21 both drafting their own letters back to Mr. Wolch  
22 in response to the allegations, and you as well  
23 are drafting a letter to Mr. Wolch about the scope  
24 of your investigation, and am I correct that  
11:08 25 everybody -- what Mr. Fraser is doing is trying to



1 make sure that everybody is on the same page?

2 A Correct.

3 Q And so here, 'Apparently Sask. Justice wants to be  
4 fairly restrictive and keep the investigation to  
11:08 5 whether or not Sask. Justice officials obstructed  
6 Justice by covering up evidence in 1970.

7 This is the same issue I  
8 understood I was to investigate.'

9 And so that's what you have  
11:08 10 already told us, primarily the Breckenridge  
11 allegation?

12 A That's correct.

13 Q And then Mr. McCrank, you can scroll down,  
14 'However, Mr. McCrank and Fraser feel the scope  
11:08 15 should be widened to cover whether or not there  
16 was ever a coverup (Obstruction of Justice) by  
17 anyone, including the police. Mr. McCrank is in  
18 contact with our Deputy Attorney General  
19 Mr. Cotter to discuss this issue and resolve it.  
11:09 20 The view of the Alberta A.G. is that if we don't  
21 broaden the issues of the investigation, then we  
22 leave it open for Mrs. Milgaard or Hersh Wolch to  
23 find other areas where a coverup occurred.'

24 And can you just elaborate on  
11:09 25 that?



1 A Yeah. We had some discussion that, you know, we  
2 would investigate this issue, it would go wherever  
3 the investigation took us, but then as soon as  
4 that was completed there would be another one, it  
11:09 5 would be into a series of continuing, ongoing  
6 investigations on matters that were raised. So I  
7 think it was, in discussion with Alberta Justice  
8 it was our view that why not broaden it out to  
9 include everything, so that it was all  
11:09 10 investigated and nothing was sort of left  
11 lingering.

12 Q Okay, so an exhaustive investigation as opposed to  
13 a focused one?

14 A Exactly.

11:09 15 Q And then, 'If our A.G. agrees with expanding the  
16 mandate of this investigation, then I will have to  
17 compose another letter to Mr. Wolch which  
18 specifies that the investigation will focus on  
19 whether or not there was a coverup.

11:09 20 I can see this being  
21 considerably more work than originally  
22 anticipated.'

23 So is it fair to say that at  
24 this point, although you haven't met with Mr.  
11:10 25 Wolch, based on discussions with Mr. Fraser, that



1           it looks as though your mandate may be  
2           significantly expanded to cover everything?

3           A       Yes.

4           Q       And so then, if we can go to the next page,  
11:10 5           October 22, 1992, 'Received call from Bruce  
6           Fraser. He advises that our Deputy Attorney  
7           General, Mr. Cotter, is now in agreement that this  
8           investigation should be expanded to look at all  
9           aspects of whether or not there is any evidence at  
11:10 10          all of a coverup.

11                       To this end, Sask. Justice will  
12          be corresponding with Hersh Wolch and advising him  
13          this matter has been turned over to the RCMP to  
14          investigate.

11:10 15                       However, before Sask. Justice  
16          can do so, the Federal DOJ wants to correspond and  
17          advise Wolch this has nothing to do with the  
18          Section 690 application and is a provincial  
19          matter. The difficulty being that fed DOJ feels  
11:10 20          the letter to Wolch should be signed personally by  
21          the Minister, Honourable Kim Campbell. She is  
22          unavailable until at least next week.'

23                       So it looks like, at this point,  
24          the feds, Federal Justice, Saskatchewan Justice,  
11:11 25          and Alberta Justice are all on the same page that,



1           number 1, the allegations made by Mr. Wolch were  
2           matters of a criminal nature and ought to be  
3           investigated under the direction of the province  
4           as a provincial matter as opposed to a federal  
11:11 5           matter; is that correct?

6           A           That's correct.

7           Q           Number 2, they had nothing to do with the Section  
8           690 process?

9           A           That's correct.

11:11 10          Q           And that Saskatchewan Justice felt that, since the  
11           allegations were of criminal conduct against  
12           government officials, they should not be involved  
13           at all in the process, and they arranged to have  
14           Alberta Justice be the advisors and/or  
11:11 15          prosecutors?

16          A           Correct.

17          Q           And, lastly, the scope of the investigation would  
18           be to cover any allegation of wrongdoing, --

19          A           That --

11:11 20          Q           -- criminal wrongdoing?

21          A           That's correct.

22          Q           And so that's October 22nd, and then the parties  
23           are sorting out who and how this gets  
24           communicated, both publicly and to Mr. Wolch; is  
11:12 25          that correct?





1 A That's correct.

2 Q If we can go to 060904. This is a letter of  
3 October 26th, 1992 from Mr. Fraser to you. If we  
4 can go to the next page. And he just, he provides  
11:12 5 a redraft of your letter and says it's been  
6 reviewed by Mr. McCrank, and asking you to hold  
7 off on the letter until you hear that both Federal  
8 and Saskatchewan Justice have responded to Mr.  
9 Wolch; is that right?

11:12 10 A That's right.

11 Q And then the next page is the letter that I think  
12 ended up being sent, and that is:

13 "I have been appointed to  
14 conduct a criminal investigation. The  
11:12 15 purpose of the investigation will be to  
16 determine if there was any criminal  
17 wrongdoing during the handling of this  
18 file."

19 And so that would have been the mandate, then,  
11:13 20 that you pursued in your investigation?

21 A That's correct.

22 Q And then:

23 "In correspondence to the  
24 Federal Department of Justice dated  
11:13 25 September 23, 1992, you mention that you



1                   have a 'great deal of additional  
2                   information.' As part of this  
3                   investigation, I would like to examine  
4                   all relevant material.

11:13 5                   I will be contacting you within  
6                   the next week so we can make  
7                   arrangements to meet."

8                   And, again, that would have been the request,  
9                   then, that precipitated the meeting with Mr.  
11:13 10                  Wolch?

11           A           That's correct.

12           Q           Okay, and I think that's sent out in November,  
13                        I'll come back to that in a moment. So this would  
14                        have been vetted by McCrank and Fraser?

11:13 15           A           That's correct.

16           Q           And again 060907. Go to the next page. This is a  
17                        memo from Egan to -- from Chief Superintendent  
18                        Egan to the file, and basically confirms the  
19                        action plan, and I think we've been through all of  
11:14 20                        this about matters not within the purview of  
21                        Federal Justice, they are referring the matter to  
22                        Saskatchewan Justice, Kim Campbell will send a  
23                        letter, Saskatchewan Justice will then send a  
24                        letter to Wolch advising the RCMP have been  
11:14 25                        assigned and that legal advice from Alberta, then



1           you'll write a letter to Wolch seeking  
2           information, and then after the receipt of the  
3           information/evidence from Mr. Wolch a further  
4           meeting will be held. So this was the plan that  
11:14 5           was put in place and that happened; is that  
6           correct?

7           A       That's correct.

8           Q       And then if we can go to 061701. This, then, is  
9           Mr. Cotter's letter to Mr. Wolch saying that the  
11:15 10           matters raised in his September 16, 1992 letter to  
11           the Federal Minister was referred to the  
12           Saskatchewan minister, he has reviewed it and  
13           referred it to the RCMP. If we can scroll down --  
14           actually, up a bit, please. He then goes on to  
11:15 15           tell about the involvement of the Alberta Attorney  
16           General, and then:

17                        "As part of their inquiries,  
18                        it is my understanding that the RCMP  
19                        will be contacting you to request any  
11:15 20                        further information you may have in  
21                        order that a complete examination of  
22                        your and the Milgaard's allegations may  
23                        be conducted."

24           So that would be the Minister's -- Saskatchewan  
11:16 25           Justice letter to Mr. Wolch explaining what they



1 are doing and why; correct?

2 A Correct.

3 Q And then if we can go to 060916. And this is a  
4 letter to you from Alberta Attorney General that  
11:16 5 has -- if we can go to the next page -- this is  
6 Kim Campbell's letter to Mr. Wolch of, I think,  
7 October 28th, and again responding to the  
8 September 16th letter and the request for:

9 "... a public inquiry to determine  
11:16 10 whether former senior officials in the  
11 Ministry of the Attorney General of  
12 Saskatchewan were involved in a failure  
13 to disclose information ...",

14 etcetera, *The Inquiries Act*, the federal one:

11:16 15 "... to cause an inquiry to be made in  
16 the circumstances described in section 2  
17 of that Act. I have given careful  
18 consideration to the circumstances and  
19 allegations set out in your letter but  
11:16 20 have concluded that the Inquiries Act  
21 does not authorize the Governor in  
22 Council to undertake an inquiry in the  
23 circumstances of this case. However, I  
24 have also concluded that I should refer  
11:17 25 your letter to the Attorney General of



1 Saskatchewan for his further  
2 consideration, having regard to the  
3 nature of the allegations now being  
4 advanced. That office, as you know, has  
11:17 5 the constitutional authority for the  
6 administration of justice in the  
7 Province of Saskatchewan ..."

8 And was it your understanding that the Federal  
9 Minister was saying, here, that due to the nature  
11:17 10 of the allegations being criminal, a federal  
11 inquiry could not delve into that, and because  
12 they were criminal allegations it was appropriate  
13 for the province and the police to deal with that  
14 constitutionally; is that correct?

11:17 15 A Yes, I agree.

16 Q Then 060914. And this is the actual date of the  
17 letter that you sent to Mr. Wolch, and I've  
18 reviewed it before, but that's when you would have  
19 made your first contact with him after you were  
11:18 20 aware that the province and Federal Justice had  
21 written to him; is that correct? Now this might  
22 be a draft from the file, but I think this would  
23 be a copy of what was sent; is that correct?

24 A I -- that appears to be the original letter that  
11:18 25 was drafted.



1 Q Oh, I'm sorry.

2 A That was never sent.

3 Q Okay, I'm sorry. So it says:

4 "Send 92/11/04"?

11:18 5 A Yeah, however, there was the other one that was  
6 edited by Mr. McCrank and Mr. Fraser that actually  
7 went out. That's unsigned.

8 Q Okay. So if we go back I think it's, if I'm not  
9 mistaken, identical.

11:18 10 A Well, I hope the mistake was fixed before it went  
11 out.

12 Q Yeah. Actually, if we just go back to 060906 for  
13 a moment. So, again, this would be the letter,  
14 then, dated I think November 4th that went out.  
11:19 15 I'll see if I can get my hands on a signed copy  
16 somewhere, but this would have been the substance  
17 of the letter that you wrote?

18 A That's correct, this is the letter that I think  
19 would have went out.

11:19 20 Q Okay. And so that would be "if there was any  
21 criminal wrongdoing during the handling of the  
22 file", that's the broader language; right?

23 A That's correct.

24 Q Yeah. And then you refer here to some  
11:19 25 correspondence dated September 23, 1992. If I can



1 call up 060873, this is Mr. Wolch's September 23,  
2 1992 letter to Bruce MacFarlane at the Department  
3 of Justice, and I take it this would be the letter  
4 that you are referring to in your letter?

11:19 5 A Yes, it is.

6 Q And if we can just scroll down here, I think the  
7 language that you quoted in your letter, Mr. Wolch  
8 says -- and I think Mr. MacFarlane had asked for  
9 the name of the -- of Breckenridge, I think people  
11:20 10 suspected it was him but it had not been formally  
11 provided. Mr. Wolch says:

12 "My instructions regarding  
13 the name and address of the informant  
14 are to ascertain the manner in which the  
11:20 15 entire matter will be investigated. We  
16 feel he should be part of a broader  
17 picture. We would like an opportunity  
18 to provide the investigator with a great  
19 deal of additional information which, in  
11:20 20 part, may have been forwarded ..."

21 So it was this, this language, that caused you to  
22 say "okay, what additional information do you  
23 have?"

24 A Exactly. In fact, I even quoted that line, I  
11:20 25 believe.



1 Q Exactly. And if we can just go up to the, and the  
2 comment here where Mr. Wolch says:

3 "We know there has been a coverup, and  
4 the question of compensation for David  
11:20 5 Milgaard has never been properly  
6 addressed.",

7 and then goes on to talk about some other  
8 information. And, again, the coverup allegation  
9 would be one that you would -- you would have  
11:21 10 taken out of the earlier information you had?

11 A That's correct.

12 Q And then if we can go to the next page. And,  
13 again, I think what Mr. Wolch is saying in this  
14 letter at this time, his client with wants a  
11:21 15 federal inquiry, and:

16 "My instructions are that the  
17 minister should receive advice on this  
18 matter from an independent impartial  
19 party. Given the fact that the evidence  
11:21 20 to clear David Milgaard was available in  
21 1970, the continuing attitude of  
22 Saskatchewan, the turning down of the  
23 first application for mercy in February  
24 of 1991, ('Seventeen per cent of people  
11:21 25 still believe Elvis Presley is alive')





1 and the fact that people who are  
2 rightfully convicted are released with  
3 more assistance than David has received,  
4 I can certainly understand why the  
11:22 5 Milgaards are so concerned."

6 And can you tell us, Mr. Sawatsky, did you feel,  
7 at the time you became engaged in this  
8 investigation, that you were an independent and  
9 impartial party and the appropriate party to  
11:22 10 investigate allegations of criminal wrongdoing  
11 against the people that you investigated?

12 A Yes, I did.

13 Q And is it fair to say that, as far as  
14 investigation of criminal offences, that that's a  
11:22 15 matter done by police?

16 A Yes.

17 Q And I guess the choices are the RCMP or a  
18 municipal force?

19 A In this province, yes.

11:22 20 Q So the Saskatoon City Police, the Regina City  
21 Police, or some other municipal police force, or  
22 the RCMP?

23 A That's correct.

24 Q And, engaging in this investigation, did you feel  
11:22 25 any concerns, either yourself, your team, or the



1 RCMP, that you would not be in a position to  
2 independently and impartially look at the  
3 allegations that were being made?

4 A No, I did not.

11:22 5 Q Was there anything with respect to the  
6 allegations, or the people who were the targets of  
7 your investigation, that differed from some of the  
8 other investigations of a criminal nature that you  
9 engaged in that caused you concern that you might  
11:23 10 not be the appropriate force or people to do it?

11 A No, I was not concerned about interviewing some of  
12 the people who were named as suspects.

13 Q If we can then go to 060915. What about the idea  
14 of police investigating police, is that something  
11:23 15 that you had, you had been involved in before?  
16 And I appreciate it's RCMP investigating what  
17 Saskatoon City Police did, again, is that  
18 something that you had done before, --

19 A Yes.

11:23 20 Q -- you had been involved in before?

21 A Yes, I have been involved in investigations,  
22 internal investigations, where I'm investigating  
23 another police officer.

24 Q And what about investigating -- now, at the time,  
11:23 25 the Saskatchewan Government would have had what



1 type of relationship with the RCMP?

2 A I think a very good relationship.

3 Q Okay. I'm sorry, I asked that --

4 A A very good working relationship.

11:24 5 Q As far as the -- contractually, it's my  
6 understanding, in 1992, that the RCMP would  
7 provide contract policing in areas in the province  
8 where there was not a municipal police force, so  
9 it would conduct police work in Saskatchewan and  
11:24 10 report to the Attorney General from time to time?

11 A That's right. The RCMP are the provincial police  
12 service under contract to the province but also  
13 does municipal policing under contract as well.

14 Q And did you have any concerns that you would be  
11:24 15 investigating alleged criminal conduct by members  
16 of the Government of Saskatchewan with whom the  
17 RCMP had a relationship with?

18 A No.

19 Q Again, is that something you had been involved in  
11:24 20 in the past, where you may have been investigating  
21 people who -- government people,  
22 government-related people?

23 A I don't recall specifically where I had  
24 investigated government-related people. I  
11:25 25 certainly have been involved in investigations



1           where high-profile or well-known people were  
2           involved.

3           Q       Okay. And I suppose if we just, just go down the  
4           list, the Saskatoon City Police were the subject  
11:25 5           -- targets of the investigation, so let's assume  
6           for the moment that they would not be the  
7           appropriate police force. Would it be correct to  
8           say that the options would be RCMP or, I guess,  
9           Regina City Police, or some other municipal police  
11:25 10          force?

11          A       Correct.

12          Q       And as far as the resources and ability to handle  
13           an investigation of this nature in 1992, and  
14           without in any way being critical of other  
11:25 15          municipal police forces, would -- would this be  
16           the type of investigation that would be better  
17           suited to the RCMP than perhaps a municipal police  
18           force?

19          A       I think likely, because of the relationship with  
11:25 20          the province, but certainly the resources, I'm  
21           sure, would tax another police service, but  
22           certainly they would have the expertise, in my  
23           view, to do it.

24          Q       Okay. So here, on November 6, 1992, Mr. Wolch  
11:26 25          gets back to you and says:



"I am somewhat concerned,

however, that your mandate appears to be

to conduct a 'criminal investigation'.

While it is true that what we allege

could amount to a obstruction of

justice, there is clearly the

possibility that there were breaches of

duty that occurred which would have to

be explored. I trust the word criminal

would include breaches of provincial

statutes, such as 'The Law Society Act'

and the ethical duties that must be

observed by Crown counsel."

And I note, in a document that I'll show you a

bit later, that I think it was Mr. Fraser had

indicated that you would also look at misconduct,

in other words that if information came along

that might give rise to misconduct of the nature

suggested by Mr. Wolch, that that might be

something that Mr. Fraser would look at; do you

have a recollection of that?

A I do. And certainly, in my view, that would be  
the appropriate person to review that. You know,  
we may get the evidence, but I don't know that we  
would be competent to make a finding for a --



1 Q And we'll see in the documents a bit later, but I  
2 think what the documents suggest is that what Mr.  
3 Wolch asked to be reviewed here as to whether or  
4 not, for example, Mr. Caldwell or Mr. Kujawa  
11:27 5 breached the code of conduct of the Law Society,  
6 that might have been, or was, a matter that Mr.  
7 Fraser considered based on information you  
8 gathered, or do you have any recollection of that?

9 A I do have an independent recollection of the fact  
11:27 10 that, if there were some suspicion or suggestion  
11 of a breach of the code of conduct, that they  
12 certainly would do what needed to be done.

13 Q So that that --

14 A Or they would report it to the Law Society or  
11:27 15 whatever. I don't know what the course of action  
16 is, but --

17 Q And I think I can show you a document a bit later  
18 that confirms that. So that what Mr. Wolch asks  
19 for here, is it your evidence that yes, that would  
11:27 20 be a consideration, maybe not by the RCMP but  
21 certainly by the prosecuting attorneys, Mr. Fraser  
22 and Mr. McCrank?

23 A Correct.

24 Q And then if we can go to 327715, is the doc. ID,  
11:28 25 and go to page 327727. And this is an article in



1           The Globe and Mail November 17th, 1992, and it  
2           just talks about, I think your Inspector talked  
3           about:

4                               "'We're looking for criminal  
11:28 5                               wrongdoing,' ..."

6           If we could go back to the full page, please, and  
7           just call up that column. And so here, we have  
8           been through this before, but the investigation  
9           was ordered after the Minister received new  
11:28 10           allegations, or referred new allegations of  
11           coverup, etcetera, and then this is where they  
12           mention that Mr. Breckenridge was not in the  
13           department at the relevant time.

14                            So would you have been aware,  
11:29 15           around this time, that there was at least some  
16           reports that Mr. Breckenridge was alleged not to  
17           have worked there at the time he said he did?

18       A           Yes, I'm sure I was.

19       Q           And then down here, so they talk about the scope,  
11:29 20           and then here:

21                            "But Mr. Milgaard's Winnipeg  
22                            lawyer, Hersh Wolch, said yesterday that  
23                            it would be impossible to focus solely  
24                            on Mr. Romanow. 'That's only one small  
11:29 25                            piece of the puzzle and a very minor



1 piece,' he said. 'They have to look at  
2 the actions of the Saskatoon police at  
3 the time and the actions of the Crown in  
4 disposing of the Fisher case.'

11:29 5 Mr. Wolch added that the  
6 investigation should not be limited to  
7 allegations of criminal wrongdoing, but  
8 also should deal with the ethics of the  
9 Crown and the police."

11:29 10 And, again, would that -- I think you've told us  
11 that that was something that was part of, if not  
12 your mandate, certainly Mr. Fraser's mandate?

13 A Yes.

14 Q And I want to go through a couple of other news  
11:30 15 stories of the time around November 17th, I think  
16 this is when it was made public, and just, can you  
17 comment generally about, and you talked about this  
18 a bit earlier, about the fact that this had been a  
19 highly publicized case; is that correct?

11:30 20 A Yes. I recall there was quite a bit of media  
21 activity around this case at the time.

22 Q And were you -- I think you mentioned early you  
23 were concerned that what information you provided,  
24 whether it be to Mr. Wolch or Mrs. Milgaard or to  
11:30 25 the media, or externally, was it fair to say you





1           felt that it would likely end up in the media  
2           based on what had happened previously?

3           A       Yes.

4           Q       And I think you told us that you wanted to avoid  
11:31 5           that because it would hamper your investigation?

6           A       That's correct.

7           Q       If we can go to 327715, please, and I'll just go  
8           through a few. These are newscasts on November  
9           17th, 1992 and I think this is when either a  
11:31 10          statement was made or it became public. They talk  
11          about:

12                   "The mounties will investigate the  
13                   actions of Roy Romanow and Serge  
14                   Kujawa..."

11:32 15          And then if we can go to the next page, it says:

16                   "Joyce Milgaard is alleging that one  
17                   time Attorney-General, Roy Romanow, and  
18                   prosecutor, Serge Kujawa, had evidence  
19                   in 1971 that her son may have been  
11:32 20          innocent of murder. And she is  
21                   concerned that the RCMP investigation is  
22                   an attempt to shut her up."

23          And then quotes her:

24                   "If it is because I'm down here in  
11:32 25          Ottawa, lobbying, you know, for a



1 full-blown federal inquiry, and they're  
2 trying to shut me up -- then it is not  
3 good news."

4 And the next page, Hersh Wolch:

11:32 5 "I'm hoping that it is a wide  
6 investigation into potential  
7 wrong-doings by Crown, police, and not  
8 just a look at a very narrow aspect of  
9 it -- which it may be. I hope it is  
11:32 10 not."

11 And again just on that, the potential wrongdoings  
12 by Crown and police, I think you told us that's  
13 what you were doing?

14 A Exactly, and that it was very broad.

11:32 15 Q Can you tell us here, and again this is Mrs.  
16 Milgaard saying lookit, if it's an attempt to shut  
17 me up, then it's not good news, and I'll show you  
18 a few comments later, did you ever hear from Mr.  
19 Wolch or Mrs. Milgaard that they were not  
11:33 20 supportive of your investigation; in other words,  
21 they didn't think it was a good idea or they  
22 didn't want you to be doing this prior to the  
23 conclusion of your investigation?

24 A I don't recall. I know when I first met with Mrs.  
11:33 25 Milgaard, she was somewhat skeptical, but after a



1 full discussion I think she was, at least  
2 indicated to me she was okay with the scope.

3 Q And when you say skeptical, in what way?

4 A That, you know, this wouldn't be broad enough, it  
11:33 5 wouldn't uncover what she had hoped it would  
6 uncover, etcetera, but I think after my interview  
7 with her she felt differently.

8 Q And I think that interview took place over two  
9 days?

11:33 10 A Yes, it did.

11 Q And we have the tapes of those and a transcript, I  
12 think it was about six or seven hours; is that  
13 right?

14 A Yes. It was very lengthy, I know that.

11:33 15 Q And she provided you with significant documents  
16 and information for you to pursue?

17 A Yes. However, a lot of it was what had already  
18 been provided by Mr. Wolch, but I know she did  
19 provide some additional information.

11:34 20 Q And so the trepidation or the concern was that you  
21 may not be covering everything she wanted you to  
22 cover and investigate?

23 A Well, I very much had a sense that she wanted a  
24 public inquiry and at the end perhaps was prepared  
11:34 25 to settle for us having a look at this and that's



1 sort of what she indicated.

2 Q What about Mr. Wolch, did he ever say lookit,  
3 don't waste your time on this, we don't want a  
4 criminal investigation, we want something else,  
11:34 5 this won't give us what we want, or did you find  
6 him to be supportive of the investigation that you  
7 were undertaking?

8 A Well, he certainly, you know, when I went to meet  
9 with him, he certainly provided me with everything  
11:34 10 he had available at the time, and in fact I even  
11 asked for some follow-up and I did get some of  
12 that follow-up from him. He didn't indicate to me  
13 that he was not supportive of it that I recall.

14 Q If we can go to page 719, 327719 -- actually, to  
11:35 15 720 -- and again, these are comments in the media  
16 at the time, and about, the reporter talks about  
17 Serge Kujawa:

18 "...dealt with Fisher and Milgaard at  
19 the same time, but never pursued a  
11:35 20 possible connection..."

21 And then quotes Joyce:

22 "I think it is obvious that it is more  
23 than incompetence. I think it's obvious  
24 that it was a plan, and I think this is  
11:35 25 what has to be determined.



1 Who planned this? Who did it?"

2 And then Mr. Wolch:

3 "Clearly there was a cover-up. Was it  
4 deliberate or wasn't it deliberate?

11:35 5 We're waiting for the answers. I mean,  
6 it's pretty hard to imagine that it  
7 wasn't deliberate, it is so obvious."

8 And so these would be the matters then that you  
9 were investigating; is that correct?

11:36 10 A That's correct.

11 Q And then to page 327722, and then again this is  
12 the same day, Mrs. Milgaard is quoted with another  
13 reporter, it says:

14 "David's mother Joyce Milgaard says  
11:36 15 she's pleased there'll be a police  
16 investigation surrounding her son's  
17 murder conviction but, she says there  
18 are unanswered questions still about how  
19 excessive the RCMP investigation will  
11:36 20 be."

21 And then it quotes her:

22 "I'm grateful that the RCMP is going to  
23 be going out don't get me wrong but,  
24 what guidelines do they have? How much  
11:36 25 time can they spend on it? What



1                   questions are they going to ask? I need  
2                   to know more about it."

3                   And do you recall having that discussion with  
4                   Mrs. Milgaard?

11:36 5           A           I do, I recall being very specific with Mrs.  
6                   Milgaard about the scope and the mandate of the  
7                   investigation so that she fully understood what we  
8                   were doing.

9           Q           And that would be similar to what you've told us,  
11:36 10                   anything and everything she gave you you would  
11                   investigate?

12           A           Yes.

13           Q           And --

14                   COMMISSIONER MacCALLUM: What's the date of  
11:36 15                   this, please?

16                   MR. HODSON: This is November 17th, 1992.  
17                   These are -- all the media articles I think are  
18                   all this date.

19           BY MR. HODSON:

11:37 20           Q           What about as far as resources, how much time can  
21                   they spend on it, do you recall any discussion  
22                   with her about -- would you have made her aware or  
23                   Mr. Wolch or did they ever ask how many officers  
24                   do you have working on this and give us an idea of  
11:37 25                   your resources?



1 A I don't have specific recall of that, but I guess  
2 I would be surprised if I didn't sort of suggest  
3 to her what we were doing as a team and how we  
4 were approaching this investigation, so I feel  
11:37 5 that I probably did cover that with her.

6 COMMISSIONER MacCALLUM: Did you meet her  
7 after this article or before, sir?

8 BY MR. HODSON:

9 Q Yeah, I'm sorry. Your meeting with her was  
11:37 10 January of '93, January 26th I think?

11 A That's correct.

12 COMMISSIONER MacCALLUM: Okay.

13 BY MR. HODSON:

14 Q And so -- and I guess, are you satisfied, Mr.  
11:37 15 Sawatsky, we went through the organizational chart  
16 about who was involved, do you think that  
17 information would have been shared in one form or  
18 another with Mr. Wolch and/or Mrs. Milgaard?

19 A Yes. I don't -- like I say, I don't have an  
11:38 20 independent recall of that, but I'm sure at some  
21 point in our discussions I must have told them how  
22 we were going to approach this and investigate it.

23 Q And if they would have asked the question, was  
24 there any reason you would not have told them,  
11:38 25 that lookit, here are the 11 people that are going



1 to work on this full time until we are done our  
2 investigation, would there be any reason not to  
3 share that with them?

4 A Absolutely not.

11:38 5 Q And then as well:

6 "Joyce Milgaard says the RCMP  
7 investigation of a possible cover-up is  
8 one more small step toward proving that  
9 her son David, had nothing to do with  
11:38 10 the murdering of Gail Miller."

11 And let me just pause there. I think you told us  
12 that although that wasn't the focus of your  
13 investigation, to prove that her son David did  
14 not commit the murder, that as part of your  
11:38 15 investigation you would be gathering facts and  
16 evidence that might bear on that question?

17 A Yes.

18 Q And so one scenario, if you concluded that there  
19 was in fact obstruction of justice and that  
11:38 20 government officials deliberately framed David  
21 Milgaard, covered up that case, that would be  
22 information that would be of assistance in  
23 establishing his innocence?

24 A For certain, yes.

11:39 25 Q And so the main thrust of your investigation might





1 have shed light on that, and I suppose the flip  
2 side is if you go through and at this time you  
3 don't know what your results are going to be, but  
4 if you go through and conclude there's no criminal  
11:39 5 wrongdoing, no framing, no cover-up, that may not  
6 bear on the question of David Milgaard's  
7 innocence?

8 A That's correct.

9 Q And I suppose, though, if what's being put forward  
11:39 10 is that the reason he's innocent is because he was  
11 framed and there was a cover-up, if you don't  
12 prove -- if the grounds aren't established, then  
13 that might cause some to doubt the original  
14 proposition; is that fair?

11:39 15 A That's fair.

16 Q And not -- let me put it a different way. If the  
17 allegations of wrongdoing are without merit, I  
18 suppose the issue of David Milgaard's innocence is  
19 still a live one?

11:39 20 A Correct.

21 Q But the fact that the basis upon which people put  
22 forward these allegations as saying this will  
23 prove his innocence, that the failure to establish  
24 that might, might have an impact, or might be a  
11:40 25 factor in looking at David Milgaard's innocence?



1 A Yeah, that's correct. I think I follow you.

2 Q Yeah. And we'll come back to that point a bit  
3 later. And I suppose as well that, as you told us  
4 earlier, that in the course of investigating the  
11:40 5 criminal matters, your team would acquire  
6 information and evidence that would be of  
7 assistance in dealing with the question of David  
8 Milgaard's innocence; correct?

9 A Yes.

11:40 10 Q So in that sense, your criminal investigation  
11 might be of assistance in determining David  
12 Milgaard's innocence depending on what you turn  
13 up?

14 A That's right.

11:41 15 Q And to take an extreme example, if you would have  
16 gone and interviewed Larry Fisher and he confessed  
17 to you of the crime, I suppose then your  
18 investigation would have borne fruit in the sense  
19 of establishing David Milgaard's innocence?

11:41 20 A Yes, but we would still have to complete the other  
21 aspect of the investigation.

22 Q Certainly, yeah. No, no, I appreciate that.

23 A Yes.

24 Q Your primary purpose is the criminal wrongdoing,  
11:41 25 but in the course of it you might get information



1           that would assist the question, assist in dealing  
2           with the question of David Milgaard's innocence?

3           A       That's correct.

4           Q       And then go to page 327725, again these are all,  
11:41 5           this one again is November 17th, 1992, this is now  
6           a different radio station in Regina, and go to the  
7           next page, and the announcer says:

8                   "The investigation is good news for the  
9                   Milgaard family.

11:42 10           Joyce Milgaard says the family will  
11           assist in the investigation."

12           And quotes her:

13                   "Really, all I know is that they are  
14                   meeting with Hersh Wolch later this week  
11:42 15           and in the meantime, our team is digging  
16           up information and putting a package  
17           together for the RCMP that, Hersh will  
18           be able to give to them and start them  
19           in the right direction."

11:42 20           And again, would that be consistent with what  
21           your experiences were with Mrs. Milgaard and Mr.  
22           Wolch?

23           A       Yes.

24           Q       What -- again, once this investigation was  
11:42 25           started, would it be -- would it be correct to say



1           that the complainant, I suppose, once they've made  
2           the complaint, the matter then becomes the police  
3           responsibility to investigate; is that correct?

4           A       That's correct.

11:42 5           Q       What if Mr. Wolch had come and said lookit, don't  
6           bother any more because we don't think this is  
7           going to get us what we want, we want an inquiry  
8           so don't bother, we don't want it pursued, is that  
9           something then that might have resulted in the  
11:43 10          investigation being aborted or is that  
11          something --

12          A       I don't believe so, but certainly that decision  
13          would not be made by me.

14          Q       Okay. The government, either Mr. Fraser or  
11:43 15          perhaps Mr. Brown would be the -- or the  
16          Government of Saskatchewan, they would be the  
17          decision-makers on that?

18          A       I would expect that there would be some discussion  
19          with, you know, with our senior people and then I  
11:43 20          would be given instruction based on that.

21          Q       But I suppose the fact that the allegations of  
22          criminal wrongdoing are made in the public domain  
23          might have a bearing on the police; in other  
24          words, the fact that the complainant says I don't  
11:43 25          want you to investigate the complaint that I've



1           made public doesn't necessarily mean that -- in  
2           other words, the complainant doesn't control  
3           whether you do or don't investigate; is that fair?

4           A       Exactly, yes.

11:43 5           Q       If we can go to 327732, and again, sorry to repeat  
6           on this, but here is Mr. Cotter in a news report,  
7           and again this is also November 17th, 1992, and  
8           he -- and I'm going to ask you whether this is,  
9           accords with your understanding. He says:

11:44 10                   "I need to give you a little bit of  
11                   background I think. As you probably  
12                   know the Milgaards wrote some weeks ago  
13                   to the federal Department of Justice  
14                   asking for a federal inquiry and made  
11:44 15                   allegations about Mr. Kujawa and  
16                   Mr. Romanow.  
17                   The federal Department of Justice  
18                   examined those allegations and concluded  
19                   they didn't really have the  
11:44 20                   jurisdictional authority to order an  
21                   inquiry and the Deputy Minister of  
22                   Justice for Canada communicated to me  
23                   that in his judgment these are really  
24                   matters of allegations of wrongdoing  
11:44 25                   that the province would normally look



1 into.

2 I concurred in that view and after the  
3 Minister of Justice responded to the  
4 Milgaards the material was referred to  
11:44 5 Justice Saskatchewan.

6 I reviewed it relatively, recently in  
7 the last 10 days or so, and I referred  
8 it to the RCMP as I would any other  
9 allegations of wrongdoing."

11:45 10 Again, is that consistent with your understanding  
11 of what happened?

12 A Yes.

13 Q And 327734, again the same date of this interview,  
14 same interview, Mr. Cotter, the Deputy Minister of  
11:45 15 Saskatchewan, says:

16 "The scope of the mandate from our  
17 perspective was the allegations of I  
18 think you would call it in affect....I  
19 think the Milgaards called it  
11:45 20 allegations of coverup, coverup against  
21 Mr. Kujawa and Mr. Romanow and that was  
22 the communications that I personally  
23 made to the RCMP.

24 But, you should know and I think this is  
11:45 25 fair to describe it in this way that, it



1 is really the RCMP's judgment that is,  
2 they think more should be examined that  
3 will be their call and we would not  
4 interfere."

11:45 5 And in fact was that the case and in fact is that  
6 what happened?

7 A Yes.

8 Q Go to 060852, this is your handwriting, your notes  
9 from November 9th, '92; is that correct?

11:46 10 A Yes.

11 Q I showed you earlier the letter from Mr. Wolch  
12 where he asked you to go into Law Society and  
13 lawyer conduct; is that --

14 A Yes, he did.

11:46 15 Q You remember that letter, and you say you faxed it  
16 to Mr. Fraser for his advice, and then the next  
17 page, had a discussion with Mr. Fraser:

18 "Fraser advised his feelings are that we  
19 should pursue the investigation and our  
11:46 20 file will contain any misconduct  
21 (criminal or conduct) violation. This  
22 can all be examined at the end of the  
23 investigation."

24 Is that correct?

11:46 25 A That's correct.



1 Q So it appears November 9th, 1992 Mr. Fraser said  
2 yes, Mr. Wolch wants us to look at misconduct, any  
3 misconduct, criminal or otherwise, and yes, we  
4 will look at that; is that correct?

11:47 5 A That's correct.

6 Q And with your caveat I think earlier that it might  
7 be Mr. Fraser who is more appropriate to look at  
8 ethical, lawyer ethical issues as opposed to a  
9 police investigator; is that fair?

11:47 10 A Yes.

11 Q And then here, you spoke with Mr. Wolch. Would  
12 you have told him at that time that you were going  
13 to cover all areas of misconduct?

14 A Yes.

11:47 15 Q And then you also say that -- I mean, Mr. Wolch  
16 asks you about what information you have and you  
17 say that I have reviewed the 690 material, but  
18 would appreciate all info he had, and am I correct  
19 that the 690 material would have been Sergeant  
11:47 20 Pearson's reports; is that --

21 A That's right.

22 Q And that would have -- I think what we've learned  
23 is that that would only be part of what Federal  
24 Justice looked at at the time, but that that would  
11:48 25 have been some of the background information you





1 had had?

2 A That's correct.

3 Q And then 004001, this is a note from Chief  
4 Superintendent Egan talking about, it's November  
11:48 5 19th, the media, he says:

6 "Please note from the attachment --"

7 And the attachment is just indicating that all  
8 media inquiries are to go to Dave Hoeft. Did I  
9 pronounce that right?

11:48 10 A That's correct.

11 Q And/or you, and Mr. Egan says here:

12 "...advised that Insp. M.J. Sawatsky,  
13 assisted by Sgt. R.J. Williams, have  
14 been assigned to investigate this  
11:49 15 matter. Cpl. D.F. Hoeft of Regina  
16 Sub/Division, will handle all media  
17 inquiries from an RCMP perspective.

18 From our various contacts  
19 within the news media we have been  
11:49 20 advised that both David Milgaard and  
21 Mrs. Milgaard are in frequent contact  
22 with various individuals within the  
23 media. It is expected that they will  
24 continue to influence the media for  
11:49 25 their own purposes. I have directed



1                   that our investigators be very discreet  
2                   in their dealings with all parties in  
3                   light of the foregoing."

4                   And can you elaborate on that concern, Mr.  
11:49 5                   Sawatsky?

6           A       Yeah. It kind of speaks for itself, but certainly  
7                   that's clear direction to me that we need to be  
8                   very careful about what, you know, we say  
9                   publicly, and I know that was a very big concern  
11:49 10                  of Chief Superintendent Egan's and I certainly  
11                  shared his thoughts that we need to be careful.

12          Q       And what was the concern here about the fact that  
13                   David and Joyce Milgaard are in frequent contact  
14                   with individuals of the media and they will  
11:49 15                  continue to influence the media for their own  
16                  purposes? Do you know what that would have been  
17                  related --

18          A       Well, I think our sense, right or wrong, had been  
19                   that the Milgaard family had used the media to  
11:50 20                  sort of draw attention to certain areas, or  
21                  certain issues that they wanted highlighted  
22                  publicly, and that we didn't want to have that  
23                  issue, or that problem when we were doing our  
24                  investigation.

11:50 25          Q       Okay. Now, we have heard evidence, at least in



1 part, from Mr. Williams who talked about what  
2 happened when he was investigating on the Section  
3 690 application and information that was put  
4 forward in the media. Was that one of the  
11:50 5 concerns that the RCMP had, that if what happened  
6 in the Section 690 applications happened in your  
7 investigation, that that might hamper your  
8 investigation?

9 A I don't know if there was any one specific thing  
11:50 10 that was referenced here, I think it was just  
11 simply a matter of there had been sort of an  
12 ongoing series of events with the media where  
13 things were brought into the media that perhaps in  
14 our view we wouldn't want the same to happen  
11:51 15 during our investigation.

16 Q And when you say "be very discreet in their  
17 dealings with all parties", would the concern  
18 there be that information shared with, and I'll  
19 come back to who the parties are, but information  
11:51 20 shared with people might end up in the media?

21 A Yes.

22 Q And again, who -- you've already told us that  
23 certainly with Mr. Wolch, I take it that -- you  
24 told us that was a concern, that any information  
11:51 25 you provided to him, you had a concern that it



1 might end up in the media; is that correct?

2 A That's right.

3 Q And what about Mrs. Milgaard?

4 A Yes, definitely with Mrs. Milgaard that concern  
11:51 5 was there.

6 Q And what about witnesses, was that a concern in  
7 talking to people, that somehow what may come out  
8 of an interview or what might be said by one of  
9 your officers might end up, in one way or another,  
11:51 10 ending up in the media?

11 A I guess there's always that danger, but certainly  
12 if you think that's going to happen, you can, you  
13 know, ask for co-operation of the witness not to  
14 go forward with that, but that can happen during  
11:51 15 any investigation.

16 Q And if we can go to 060856. Actually, 060842 is  
17 the doc. ID, and go to 060856, and I think this is  
18 November 26th, 1992, you and Sergeant Williams  
19 went to Winnipeg and met with Mr. Wolch, Greg  
11:52 20 Rodin, lawyer, and Bob Bruce; is that right?

21 A That's correct.

22 Q Now, who did you understand -- what did you  
23 understand Greg Rodin's involvement to be and who  
24 he was?

11:52 25 A I think he was doing some work to assist Mr. Wolch



1 in gathering information, I think he did some  
2 interviews, gathered documentation, sort of acted  
3 like an investigator.

4 Q And were you familiar with what involvement he  
11:52 5 would have had in the earlier investigations, the  
6 earlier matters, or was that -- do you know what  
7 level of knowledge Mr. Rodin had or what previous  
8 involvement he had?

9 A I don't, no.

11:53 10 Q And who decided to have Mr. Rodin and Mr. Bruce  
11 there, was that Mr. Wolch's decision? Did you  
12 care who he had there?

13 A No.

14 Q And Robert Bruce, what was your understanding of  
11:53 15 who he was and what role he had played?

16 A Sorry, I may have mixed myself up there.

17 Q Okay.

18 A I think when I answered when you asked about  
19 Rodin, I was actually answering for Bruce.

11:53 20 Q Okay.

21 A Mr. Rodin, it's my understanding that he was legal  
22 counsel and was working with Mr. Wolch. Mr. Bruce  
23 was the investigator.

24 Q Okay.

11:53 25 A Sorry, I confused the names.



1 Q No, that's fine. We'll go back and let's talk  
2 about Mr. Bruce then again. It was your  
3 understanding he was an investigator used by the  
4 Milgaards in their earlier work?

11:53 5 A Yes, that's correct.

6 Q And again, was it your sense that he had detailed  
7 knowledge of the facts or documents or information  
8 or what was your sense about that?

9 A I know during the meeting he provided background  
11:53 10 information when requested and he offered, you  
11 know, filled in the gaps at times, and also had  
12 documentation that he had provided, so yes, I got  
13 a sense that he was fairly familiar with the  
14 information that we were being provided with.

11:54 15 Q And what about Mr. Rodin, did you have any sense  
16 of, as counsel, where and to what extent he had  
17 been involved?

18 A Well, certainly I got the sense that Mr. Wolch was  
19 lead and that Mr. Rodin was more just assisting  
11:54 20 Mr. Wolch, but that certainly he had done some  
21 independent work on his own, but that, you know,  
22 Mr. Wolch was aware of Mr. Rodin's activities.

23 Q And what was the purpose of this meeting, what was  
24 the -- what did you tell Mr. Wolch the purpose of  
11:54 25 this meeting was?



1 A We were hoping that they would provide us with all  
2 the information they had and, as I indicated  
3 earlier, we didn't want to sort of have to  
4 continue to go back and continue to receive more  
11:54 5 allegations or more innuendos of cover-up as we  
6 were moving along, we simply wanted it all laid  
7 out on the table so we could do a complete  
8 investigation of everything.

9 Q And would that have been communicated to Mr.  
11:54 10 Wolch, that this is your opportunity to tell us  
11 everything you have and everything you wish to  
12 have us investigate?

13 A Yes, and I believe Mr. Wolch even asked me at one  
14 point, you know, what I had, and whether -- I  
11:55 15 think he was trying to gauge how much information  
16 he had to provide me and I asked him to provide me  
17 everything he had.

18 Q Right. And I think that was in the earlier note  
19 about -- I think he wanted to know how briefed you  
11:55 20 were on the matter; is that right?

21 A That's correct, yeah.

22 Q And what would your response to him have been  
23 about that?

24 A I simply -- I recall advising him that I just  
11:55 25 wanted everything he had, that I didn't want to be



1 selective, I would simply prefer it if he just  
2 provided me with everything.

3 Q And at this point would you and Sergeant Williams  
4 still be on the learning curve as far as learning  
11:55 5 about the Gail Miller investigation, the David  
6 Milgaard conviction?

7 A Very much so, yes.

8 Q In other words, some information, but certainly --  
9 you hadn't talked to any witnesses yet or  
11:55 10 identified anything by way of issues?

11 A That's correct.

12 Q And so would you have approached this meeting then  
13 with a clean slate saying tell me everything I  
14 need to know?

11:56 15 A Yes.

16 Q And we'll go through the transcript this  
17 afternoon. I take it you tape recorded the  
18 meeting?

19 A Yes.

11:56 20 Q And why did you do that?

21 A Just in the interest of making sure that we were  
22 able to recall everything that was discussed in  
23 the room. I also made notes and, you know, in an  
24 attempt to make sure that I didn't miss anything.

11:56 25 Q Would this then be the equivalent then of an





1 investigating officer's interview with the  
2 complainant; in other words, complainant, tell me  
3 everything it is you say I ought to investigate to  
4 give rise to criminal charges?

11:56 5 A Yes, that's exactly how I approached that  
6 interview.

7 MR. HODSON: Mr. Commissioner, I see it's  
8 close to 12, and before I get into the  
9 transcript, maybe we can break now.

11:56 10 COMMISSIONER MacCALLUM: Yeah, sure.

11 MR. HODSON: And we'll start at 1:30.

12 COMMISSIONER MacCALLUM: Yeah.

13 *(Adjourned at 11:56 a.m.)*

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

01:32 15 BY MR. HODSON:

16 Q Good afternoon, Mr. Sawatsky.

17 Just when we broke at noon we  
18 were talking about just at the time of the  
19 interview with Mr. Wolch, which was November 26th,  
01:32 20 1992. I just want to go back. We -- you told us  
21 about the scope of your investigation into  
22 criminal wrongdoing and misconduct, and I want to  
23 just go back and touch upon the groups of people  
24 that you would have investigated, and let's -- and  
01:32 25 you tell me if I'm correct, that you would have



1 investigated, let's talk about the original  
2 investigation into the death of Gail Miller. Is  
3 it correct to say that your investigation included  
4 an investigation of the police investigation, the  
01:33 5 conduct of the police investigation, back in '69?

6 A Very much so, yes.

7 Q In other words, you looked at the conduct of the  
8 police officers involved in the investigation, and  
9 again looking for criminal wrongdoing or  
01:33 10 misconduct, but certainly looked at their conduct;  
11 is that correct?

12 A That's correct.

13 Q And is it correct to say that, even though it was  
14 a criminal investigation and looking for  
01:33 15 criminal -- whether there was a basis for criminal  
16 charges, that where that necessitated you looking  
17 at what they did, how they did it, why they did  
18 it, and trying to make an assessment of their  
19 conduct?

01:33 20 A Yes.

21 Q And so in some cases it may be conduct that might  
22 fall below obstruction of justice or misconduct,  
23 but might be conduct that you would otherwise  
24 comment on; is that fair?

01:33 25 A Yes.



1 Q And so I think we see that, for example, an  
2 officer who interviews a witness, you might say  
3 we've reviewed this in detail, we don't think  
4 there's any evidence that this officer created any  
01:34 5 criminal offence, obstruction of justice, or any  
6 ethical or criminal misconduct, but our  
7 observations are that his or her conduct, you  
8 know, here's what we have to say, maybe they were  
9 overzealous or maybe they weren't, or things of  
01:34 10 that nature; is that correct?

11 A That's correct.

12 Q So that even though, I guess the point is that I  
13 think you are telling us that even though it was  
14 an investigation for evidence of a criminal wrong,  
01:34 15 that it required you to look at the conduct of a  
16 number of people, and even where it fell short of  
17 the basis for a criminal charge you would make  
18 some observation about what you learned?

19 A That's correct.

01:34 20 Q And so we look at the police officers, and the  
21 report speaks for itself, but I think you would  
22 have interviewed and reviewed the conduct of many,  
23 many Saskatoon city police officers in the course  
24 of your investigation?

01:34 25 A Yes.



1 Q And, again, for the purposes of determining  
2 whether or not their conduct amounted to criminal  
3 obstruction of justice?

4 A That's correct.

01:35 5 Q And, again, where -- and I think we know the  
6 conclusion is you didn't find any grounds, but is  
7 it fair to say in your report you still, or your  
8 team, provided your observations about what you  
9 learned from them and your comments about how they  
01:35 10 conducted the investigation?

11 A Yes.

12 Q And similarly, if we can call them witnesses or  
13 that people were involved back in '69-'70 as  
14 people that were the subject of police interviews,  
01:35 15 I'm thinking primarily of the witnesses at trial,  
16 the motel room incident, people of that nature,  
17 would it be correct to say, as well, that your  
18 investigation would require you to probe their  
19 statements/conduct as well back in '69-'70, were  
01:35 20 they telling the truth, if so why not, how were  
21 they treated, what did they have to say?

22 A Exactly, those were the exact things we were  
23 after.

24 Q And, in addition, is it correct to say that you  
01:36 25 would look at a couple of things with witnesses.



1 One, I think you asked most, if not all of them,  
2 "how did the police treat you, did they pressure  
3 you, did they coerce you", and things of that  
4 nature?

01:36 5 A Yes, that was important.

6 Q And that would be important, to find out  
7 whether -- to judge the conduct of the police?

8 A That's right.

9 Q And, with the witnesses themselves, is it correct  
01:36 10 to say that you would also try and get a sense of  
11 whether they were telling the truth back then and,  
12 if not, why not?

13 A Yes.

14 Q And if we could then shift to the trial itself, I  
01:36 15 think Mr. Caldwell, his conduct in all aspects of  
16 dealing with David Milgaard would have been the  
17 subject matter of your investigation?

18 A That's correct.

19 Q And, in fact, his dealings or non-dealings with  
01:36 20 Larry Fisher as well; correct?

21 A Yes.

22 Q And so, again, you would be looking at Mr.  
23 Caldwell's conduct throughout. Again, the  
24 ultimate purpose would be to see whether there's  
01:36 25 any grounds for laying a criminal charge for



1 obstruction of justice, but to get to that point  
2 it would require you to critically review  
3 everything he did in the course of his prosecution  
4 of David Milgaard and subsequent; correct?

01:37 5 A Yes.

6 Q And would the same go for Mr. Tallis as defence  
7 counsel, that I think that -- and I'll show you  
8 some documents where his conduct was called into  
9 question, so again you would do the same critical  
01:37 10 analysis of his conduct in the defence of David  
11 Milgaard and subsequent, again for the ultimate  
12 purpose of determining whether there's grounds for  
13 a criminal charge, but, again, to get there you  
14 would want to look critically at everything he did  
01:37 15 and didn't do?

16 A That's correct.

17 Q And would the same go, then, for Mr. Kujawa as  
18 well, who was the individual who handled the  
19 appeal and had some discussions with Mr. Caldwell  
01:37 20 during the trial; would the same answer you  
21 provided for Mr. Caldwell and Mr. Tallis apply to  
22 Mr. Kujawa?

23 A That's correct.

24 Q And then again with Mr. Romanow, Mr. Lysyk,  
01:37 25 Mr. Blakeney and others, again would you have the



1 same answer, you would review everything they did  
2 or didn't do in relation to David Milgaard or  
3 Larry Fisher and try and determine whether that  
4 conduct met some basis for a criminal charge but,  
01:38 5 falling short of that, to critically review what  
6 they did or didn't do?

7 A That's correct.

8 Q And so, apart from the investigation and trial,  
9 would it be correct to say, as well, that to the  
01:38 10 extent that the Larry Fisher -- that the Larry  
11 Fisher information, if I can put it that way,  
12 would you agree that that would have been central  
13 to your investigation; in other words who knew  
14 what about Larry Fisher when and what did they do  
01:38 15 with it?

16 A Yes, that was critical.

17 Q And so in your, in your investigation of all of  
18 these people, that would be something you would  
19 pursue to find out, back in '69-'70 or back in  
01:38 20 1970, which police officers knew about Mr. Fisher,  
21 what they knew, what they did with it or didn't do  
22 with it, similarly Mr. Caldwell, Mr. Kujawa,  
23 Mr. Romanow and everybody, everybody who became  
24 involved in the matter, that would be a question  
01:38 25 you would approach to find out what did they know



1 about Mr. Fisher and what did they do with it?

2 A Yes.

3 Q If we can go to 023046, please. And so this is  
4 the transcript of the meeting with Mr. Wolch,  
01:39 5 Mr. Rodin, and Mr. Bruce, and it was attended by  
6 you and Sergeant Williams; is that correct?

7 A That's correct.

8 Q And is it right to say, at this point, you were a  
9 two-person task force?

01:39 10 A That's right.

11 Q And I'll go through parts of this and just ask for  
12 your comment. This would have been taped by you  
13 and then transcribed by somebody with the RCMP?

14 A That's right.

01:39 15 Q Yeah. And I believe, Mr. Commissioner, we do have  
16 the audio tape in the Commission's database, I  
17 don't propose to play any of it but I'll use the  
18 transcripts.

19 If we can go to the next page,  
01:40 20 and it appears that the starting point, you say, I  
21 think Mr. Wolch says is there anything in  
22 particular, or do you want us to just start  
23 talking and give an overview, and you say:

24 "How about you give us that opportunity  
01:40 25 as we go along I would just as soon





1 start at the beginning and you give us  
2 what we have and our intentione are to  
3 read through all the material that we  
4 have, any files etc. and maybe we'll see  
01:40 5 things of own as well that we want to  
6 work on, but we would like you to give  
7 us everything you have that you feel is  
8 relevant and we're prepared to look into  
9 everything and be as thorough as we  
01:40 10 can."

11 And would that have been the principle that  
12 guided you, then, in your subsequent  
13 investigation?

14 A Yes.

01:40 15 Q And I think we'll see in this transcript, it  
16 appears that Mr. Wolch, Mr. Bruce and Mr. Rodin,  
17 in the course of discussing things with you,  
18 appear to be reading from documents and providing  
19 you documents; is that a correct read of this  
01:41 20 document, that as part of the meeting they were  
21 talking but they were also saying "here's a  
22 document, here's what it says, here's its  
23 significance", and basically turning these  
24 documents over to you?

01:41 25 A That's correct.



1 Q And then Mr. Wolch starts off:

2 "Let me just tell you at the outset that  
3 why I've never talked to that clerk in  
4 the AGs office in Saskatchewan in my  
5 life. I consider him to be the least  
6 important bit of evidence that we have  
7 quite frankly. I think you have to go  
8 back and get a picture of the whole  
9 thing. I say this because my

01:41 10 frustration in the Milgaard case has  
11 been that I have never yet had an ...",

12 I think that should be 'adversary':

13 "... advisory trying to debate the case  
14 on its merits on its lack of evidence.  
01:41 15 Whenever I said to anybody, show me the  
16 case against David Milgaard no one takes  
17 that challenge. What they do is well a  
18 jury convicted him or well, he  
19 contradicted himself in court when he  
01:41 20 said he had chicken soup in the morning  
21 or you have the legal premise that  
22 everything was done properly. No one  
23 has ever come to me and said here is why  
24 you should think he is guilty because  
01:42 25 there is nothing. I will hold that



1 challenge until the end of the case,  
2 when you have finished everything you  
3 have looked at, you come to me and say  
4 here is some credible evidence that  
01:42 5 points to guilt ?.. a tidle of it. and  
6 there isn't. Let me start with that."

7 And let me just pause there, and let me just  
8 ignore the Breckenridge comment for a moment, but  
9 as far as that issue, in other words let's go  
01:42 10 through and debate whether or not there is any  
11 evidence to show that David Milgaard is guilty or  
12 innocent, would that be something that was -- was  
13 that what you went to see Mr. Wolch for?

14 A Well, not really, but I think, as we talked about  
01:42 15 this morning, everything that we could gather  
16 about David Milgaard would certainly be helpful to  
17 the overall investigation. But no, that was not  
18 the purpose of us being there, the purpose of us  
19 being there was to try and get as much information  
01:42 20 from him about the allegations against those  
21 people who were the subjects of our investigation.

22 Q Okay. And then I think you go on to say:

23 "I think, I just want to clarify a bit  
24 of our position too because we are not  
01:42 25 really concerned with that aspect. Now



1 as we dig of course we may find things  
2 that go one way or the other and we are  
3 certainly prepared to share those, but I  
4 think the big thing is that we want to  
01:43 5 look at is - was there a cover up by  
6 anyone from the time it was first  
7 reported to the investigator until now."

8 And I think that's what you have told us this  
9 morning, that yes, it's relevant, but it's not  
01:43 10 why we are here?

11 A Yes.

12 Q Can you tell me, I take it going into the meeting,  
13 is it correct to say that the Breckenridge  
14 allegation would have been the allegation that you  
01:43 15 were primarily investigating?

16 A Yes, it was certainly serious in our view.

17 Q And it had been made in a public forum against the  
18 Premier and other officials?

19 A That's correct.

01:43 20 Q Did it surprise you or concern you in any way when  
21 Mr. Wolch told you that he had not talked to this  
22 individual before?

23 A I don't know if it surprised me, because I think  
24 it's common for, you know, like perhaps someone in  
01:43 25 Mr. Wolch's position to rely on what he has been



1 told by an investigator or something, so I don't  
2 think I was surprised by that. I was perhaps a  
3 little bit surprised that he sort of downplayed  
4 the importance of that witness.

01:44 5 Q That's my next question, what -- why did that  
6 concern you?

7 A Well I, like you say, I think that's the main  
8 reason that we went there, and that was sort of  
9 our focus, and then to sort of learn that this is  
01:44 10 now no longer really that important I guess was a  
11 bit of a surprise. However, that didn't make any  
12 difference, because we still felt it was important  
13 to go talk to this person, to interview this  
14 person to find out what, in fact, he could  
01:44 15 provide, regardless of what Mr. Wolch's feelings  
16 may have been at the time.

17 Q And, again, are you saying that, based on what Mr.  
18 Wolch said, is that maybe Mr. Breckenridge's  
19 statement may not be, the words are "the least  
01:44 20 important bit of evidence", and I think he says:

21 "I consider him to be the least  
22 important bit of evidence that we have  
23 quite frankly."

24 So that was his assessment, that what  
01:44 25 Breckenridge had to say was at the bottom, and



1           you are saying, okay, well I would have thought  
2           it might be more important based on what I heard?

3           A       Exactly, but I wanted to make my own determination  
4           as to the importance of what he had to say, or  
01:44 5           what evidence was there.

6           Q       And so that if he then said "well,  
7           Mr. Breckenridge simply confirms a whole bunch of  
8           other things and here are the other things", if it  
9           led to criminal wrongdoing then did you care  
01:45 10          whether it came from Mr. Breckenridge or where it  
11          came from?

12          A       Exactly, I didn't care where it came from.

13          Q       But let's just go back to the fact that it was the  
14          Breckenridge allegations, you told us, that  
01:45 15          prompted the investigation; did you read into this  
16          or get any sense that maybe there was some  
17          problems with the Breckenridge information?

18          A       I don't know that I necessarily thought -- I --  
19          let me back up a bit. I suppose I probably did  
01:45 20          think that this seems odd to me, that the main  
21          reason we went there was for Breckenridge, and yet  
22          when we get there it's sort of downplayed.

23          Q       Let's go a bit further. If what Mr. Breckenridge  
24          said was true, that the Premier of the province  
01:45 25          and Serge Kujawa were in an office with the



1 Milgaard file and the Fisher file, discussed it at  
2 the same time, then told people -- with a paper  
3 shredder in the office, and then told people to  
4 mind their own business, that would certainly, if  
01:46 5 true, suggest that the Premier, being the Attorney  
6 General at the time, Mr. Kujawa, and I think  
7 Mr. Lysyk was the other fellow, considered the two  
8 files together in secret, and then made comments  
9 to other individuals, that on its face the  
01:46 10 Breckenridge information, if proven, would you  
11 agree, would likely be evidence of a criminal  
12 offence?

13 A It would certainly be pretty serious, yes, I would  
14 certainly want to try and get to the bottom of it.

01:46 15 Q And so, if that allegation were true, that might  
16 be as good as you could get as far as establishing  
17 that senior officials were involved in a coverup?

18 A Exactly.

19 Q I suppose, unless you had other evidence of the  
01:46 20 same nature, is it correct to say that in coverups  
21 and conspiracies very rarely do you get an  
22 eyewitness who says "I happened to be in the room  
23 and I saw them, they had two files, they did (a),  
24 (b) and (c), and this led to the coverup"?

01:46 25 A Yes, there is no doubt that was very -- would have



1           been very strong evidence.

2           **Q**       So the Breckenridge evidence, if true, would be --  
3                   I don't know what the right adjective is -- but,  
4                   as far as establishing a criminal offence, would  
01:47 5                   be maybe as good as you could get other than an  
6                   admission from the conspirators?

7           **A**       Yes.

8           **Q**       And so going into the interview, when Mr. Wolch  
9                   tells you right at the outset:

01:47 10                    "That's the least important bit of  
11                    evidence that we have quite frankly.",  
12                   what was your reaction?

13           **A**       Well, like I say, I think I was a little bit  
14                   surprised but I was certainly interested in what  
01:47 15                   else he had to provide. You know, that may be the  
16                   least of his concerns, so he may have had a whole  
17                   bunch of stuff that he was going to provide that  
18                   was of more concern and that was, that he felt was  
19                   stronger. And like I said, I certainly wanted to  
01:47 20                   test Mr. Breckenridge myself anyways, regardless  
21                   of what Mr. Wolch may have thought.

22           **Q**       And when you later, your team tested  
23                   Mr. Breckenridge, did you go back to this initial  
24                   interview and look at this again and have any  
01:47 25                   concerns about how it was that it was a big enough





1 concern to prompt the investigation but once, when  
2 you started, it was the least important bit of  
3 evidence?

4 A I don't think so, no, I don't think I --

01:48 5 Q Didn't have --

6 A No, I don't think it concerned me a lot.

7 Q And is it correct to say that, by this point, that  
8 if it was the Breckenridge information that  
9 prompted the investigation, so be it, you were  
01:48 10 conducting a criminal investigation and whatever  
11 information he had you would pursue?

12 A Exactly.

13 Q And the fact that the Breckenridge information may  
14 have turned out not to have any credibility, but  
01:48 15 that didn't mean you wouldn't look at everything  
16 else he provided to you?

17 A That's right.

18 Q So, down at the bottom, Mr. Wolch says:

19 "The reason that I say what I did is  
01:48 20 that it will become evident I believe  
21 that when you look at it there was a  
22 real desperate desire to solve this  
23 crime where the evidence that we brought  
24 forward that tended to go in favour of  
01:48 25 David was simply washed aside and there



1 was a tunnel vision, straight ahead and  
2 later when it became obvious to anybody  
3 that they likely had the wrong guy or be  
4 the most charitable and that is that  
01:48 5 there is evidence that we don't believe  
6 in, but others may think him innocent  
7 was covered up. And you have to be  
8 deaf, dumb and blind not to have seen  
9 it. So to give you a picture you have  
01:49 10 to go back to what was happening in  
11 Saskatoon ...",

12 and then he gives a lengthy review of, I think,  
13 his observations about the case. And then if we  
14 can just walk through parts of this, and I think  
01:49 15 that's -- would that be a fair, I mean the  
16 transcript speaks for itself but I think Mr.  
17 Wolch then went through and said "lookit, here's  
18 our theory, here's what we think happened back  
19 during the investigation, why it went wrong, and  
01:49 20 here are some of our thoughts as to what  
21 happened"?

22 A That's correct.

23 Q And if we can go to the top of the next page, and  
24 there's just a comment here, and I think we can  
01:49 25 maybe save some time, I'll just summarize. I



1 think what they talk about here is Mr. Wolch and  
2 then Mr. Rodin saying to you, lookit, in the  
3 police files it's clear that the Saskatoon City  
4 Police, at one point in the investigation, linked  
01:49 5 Gail Miller's murder to some earlier rapes;  
6 correct?

7 A Correct.

8 Q And that was one of the foundations of the  
9 allegation of frame and coverup, or whatever it  
01:50 10 was, coverup and conspiracy; is that the police  
11 linked the rapes to the murder and then later,  
12 when they caught the rapist, they then realized  
13 that that was the murderer and covered it up?

14 A Correct.

01:50 15 Q Yeah. So I think they are going through the  
16 report saying "lookit, here's where it's linked".  
17 And then go to 023051. And then, here, what you  
18 say is:

19 "So the point you are really trying to  
01:50 20 make is that they were actively pursuing  
21 the rapist as the killer murderer."

22 Mr. Wolch:

23 "Oh yeh. It was clearly in their mind.  
24 It was more than just a possible. They  
01:50 25 believed that it was the same guy."



1 And so this was the same point we just talked  
2 about; correct?

3 A Correct.

4 Q Then the next page, I think you then ask:

01:51 5 "Maybe just jumping ahead, did Saskatoon  
6 police ever suspect Fisher until he was  
7 arrested here in Winnipeg."

8 "No",

9 "So he was never ever a suspect. His  
01:51 10 photo wasn't in one of those lineups."

11 Mr. Wolch:

12 "No he was unknown to the police except  
13 for some question at the bus stop. No  
14 was knows too much about it. It doesn't  
01:51 15 appear they put the connection together  
16 when the fact that he lived at the  
17 Cadrain home. They didn't twig to that  
18 either."

19 Mr. Rodin:

01:51 20 "They did have that information when  
21 they interviewed him on February 3rd."

22 Mr. Wolch:

23 "I don't foul people on deliberate  
24 missing. If they were really astute  
01:51 25 they would have put it together because



1                   you got ...",

2                   and then:

3                   "You're talking 25 or 23 years ago. Now  
4                   days if we would have done that the  
01:51 5                   computer would ... you got a problem  
6                   here."

7                   Then Mr. Wolch goes on to talk about Mary  
8                   Gallucci.

9                   So the issue of whether or not  
01:52 10                  the police connected Fisher to the crime right at  
11                  the time, i.e. February 3rd, that was a matter  
12                  that was discussed, and it appears here they are  
13                  saying "they didn't, and maybe they should, maybe  
14                  they didn't"?

01:52 15           A           That's correct.

16           Q           And if we could go ahead to 023057. Perhaps just  
17                       go to the previous page at the bottom. This is a  
18                       discussion about Albert Cadrain, and I take it  
19                       that Albert Cadrain would have been a central  
01:52 20                  figure in your investigation of what happened back  
21                  then, he was one of the key witnesses?

22           A           Yes, he was.

23           Q           And, in particular, one of the issues was -- I  
24                       think we heard some evidence that Albert Cadrain  
01:52 25                  voluntarily went into the Saskatoon City Police



1 with his observations of blood on David Milgaard,  
2 correct, that was your understanding?

3 A That's correct.

4 Q And that he had had some previous contact with the  
01:52 5 Regina Police and there was a fair bit of  
6 discussion about what, if anything, the police may  
7 have done that prompted Albert Cadrain to go in on  
8 March 2nd, '69, or whether he went in on his own;  
9 is that correct?

01:53 10 A That's correct, yeah.

11 Q And would you agree that, if he went in on his own  
12 with this information inculcating David Milgaard,  
13 that might be significant in considering the  
14 conduct of the police in their dealings with him?

01:53 15 A Yes.

16 Q As compared to another witness, for example Ron  
17 Wilson, where they say "lookit, the police went to  
18 him and initially he said nothing and later gave  
19 incriminating information", then in that context  
01:53 20 you might look at, well, what did the police do  
21 with him in between that resulted in his story  
22 changing?

23 A That's correct.

24 Q And so with Cadrain, I think what you are telling  
01:53 25 us, the circumstances of him going in to the



1 police became an important issue?

2 A Yes.

3 Q And so, here, Mr. Wolch says:

4 "But whatever it was, they came back to  
01:53 5 Regina, and Cadrain got picked up for  
6 vagrancy. And the police questioned him  
7 about the Gail Miller murder in Regina.  
8 Now there is different descriptions of  
9 what happened there, but if you were to  
01:54 10 ask Cadrain now he was probably hung by  
11 the testicles when he was being  
12 questioned. But basically his version  
13 is that he was tortured or questioned  
14 vigorously."

01:54 15 And then Robert Bruce:

16 "I think the words stripped naked and  
17 threatened to be found dead in an alley  
18 some place."

19 Williams:

01:54 20 "Where would the connection from  
21 Saskatoon to Regina be then. How would  
22 they even know when they picked this guy  
23 up for vagrancy, how would they  
24 interrogate him for .."

25 And then Wolch:



1 "I saw his name on a list of people to  
2 be questioned. Where did I see that."

3 Williams:

4 "But there must have been some  
01:54 5 indication from Saskatoon to put this  
6 out."

7 And do I take it, there, that Mr. Williams is  
8 probing, okay, well how did the Regina Police  
9 know to question him about the murder, and was  
01:54 10 that as a result of influence from the Saskatoon  
11 City Police, and what is the connection between  
12 the Regina Police and the Saskatoon police in  
13 connection with Cadrain's initial questioning?

14 A I think that's exactly what he was getting at.

01:54 15 Q And then Mr. Wolch:

16 "There could have been."

17 The question is:

18 "But there must have been some  
19 indication from Saskatoon to put this  
01:54 20 out."

21 Wolch:

22 "There could have been. I saw a list.  
23 I thought I saw it in the material ..."

24 "There was a list of people that they  
01:55 25 were potentially people they questioned."





1 And I saw Cadrain's name on it."

2 Williams:

3 "That was issued by the Saskatoon  
4 police."

5 Wolch:

6 "I'll try and find that again. I know I  
7 saw it. Remind me. Make a note of  
8 that."

9 And Bruce says:

01:55 10 "Was that handwritten or typewritten."

11 "I saw it yesterday. That's why"

12 And I think we'll pick this up a bit later on, I  
13 think that document might be identified.

14 Then Robert Bruce says:

01:55 15 "One of the interesting points that went  
16 on with this case is that Albert was  
17 questioned somewhere exactly when I  
18 don't know. I assumed he was in  
19 custody. He went to work for some nun's  
01:55 20 farm or something and then made it back  
21 to Saskatoon right at the beginning of  
22 March. Now somehow or other he was to  
23 contact somebody from the Saskatoon  
24 Police Dept. ...",

01:55 25 I'm not sure if that:



1 "Now somehow or other he was to contact  
2 somebody from the Saskatoon Police Dept.  
3 Contacted the priest --",  
4 that doesn't read right but:

01:55 5 "... contacted the priest in the church  
6 at the corner - this is St. Mary's.  
7 This guy called Father Murphy. He is  
8 now at the Arch Diocese in Edmonton.  
9 Now, Murphy says that whoever talked to  
01:56 10 him was not there in his official  
11 capacity as a policeman, but worked for  
12 the police department. And gave him  
13 this information. Now as a result of  
14 this, he called in Albert Cadrain. This  
01:56 15 I understand, and said to Cadrain, now  
16 Albert if there is anything you know  
17 about this murder, you're family could  
18 really use the money. And he starts.  
19 And it's after this that this bull  
01:56 20 business about the blood starts to come  
21 up."

22 And Wolch:

23 "But was that after Regina."

24 So, again, it would appear here that the  
01:56 25 information given to you by Mr. Wolch, Mr. Bruce,



1 and Mr. Rodin is that the explanation for Albert  
2 going into the police on March of 1969 is that  
3 Father Murphy, a priest, was contacted by the  
4 Saskatoon City Police saying "lookit, get Albert  
01:56 5 in here, he goes to Albert and says "lookit, your  
6 family needs the money, there is a reward, get in  
7 there and give the police some information", and  
8 that's what prompted Albert to go in and give the  
9 information to the police?

01:56 10 A Yes.

11 Q And, if that were true, that might be something  
12 that might suggest improper conduct on the part of  
13 the police?

14 A Yes, it's possible.

01:57 15 Q And so, again, that would be -- would this be,  
16 then, one of the issues or allegations you would  
17 have then investigated to see whether or not this  
18 information were true?

19 A Yes.

01:57 20 Q And then they go on in some further discussion  
21 about Regina. Mr. Wolch:

22 "I'm aware of that, but what I'm getting  
23 at is and the question is more valid in  
24 Regina, out of the blue, Albert Cadrain  
01:57 25 is questioned."



1 Bruce:

2 "Same address. Same street."

3 And then he goes on. Then Mr. Sawatsky:

4 "What did he tell the Regina Police .."

01:57 5 Bruce:

6 "He knew nothing."

7 "He lived on the same street as Gail

8 Miller is what triggered it. That's the

9 best guess. I'll try and find that

01:57 10 list. It might have been later."

11 And, again, do you know if a list was ever

12 produced that had Albert Cadrain's name on it as

13 being somebody that the Regina Police should be

14 investigating or interviewing back in February of

01:58 15 '69?

16 A I don't recall the list, but I do recall that this

17 was, you know, thoroughly investigated, but I

18 don't recall being provided a list at that time or

19 thereafter. I won't say we weren't, but I don't

01:58 20 recall it.

21 Q And, again, I don't believe the Commission has any

22 evidence of any list prior to March 2nd, 1969 of

23 Albert Cadrain being someone that the Regina

24 Police should investigate for the Gail Miller

01:58 25 murder; was that your understanding?



1 A That's my understanding, yes.

2 Q And then, if we can scroll down to here:

3 "Whatever it was, he was totally knew  
4 from nothing, but alleges he got the  
01:58 5 shit scared. He was very frightened  
6 about all this. He then goes back to  
7 Saskatoon and his mother tells him a  
8 girl was murdered the same morning that  
9 Milgaard and you and Wilson left town.  
01:58 10 And somehow from that he goes to the  
11 police."

12 Bruce:

13 "As far as we are all concerned, it is  
14 as a result of contact with Murphy when  
01:59 15 he went to the police."

16 And so, again, that would have been the position  
17 put forward at the time, that Father Murphy, via  
18 the Saskatoon police, is what prompted Albert  
19 Cadrain to go in with his incriminating  
01:59 20 information?

21 A Yes.

22 Q Mr. Wolch says:

23 "He talks to Murphy. They talk about a  
24 reward. And the next thing you know  
01:59 25 he's with Eddie Karst. There is some



1 discrepancy as to how he got to Karst  
2 ... not that relevant. But he gets to  
3 Karst fairly quickly and at that point  
4 in time, it just progresses from having  
01:59 5 seen nothing to David Milgaard giving  
6 girls heroin in Calgary and raping in  
7 bathtubs. He went from a relatively  
8 calm kid to a complete lunatic. Which  
9 is what he is now, he's off the wall.  
01:59 10 But it just progressed. Every meeting  
11 he knew more and more and more. But  
12 that's how it started. So you have  
13 Cadrain going to the police with this  
14 and raising Milgaard's name for the  
01:59 15 first time. That's the first time the  
16 police ever heard of Milgaard."

17 An do I take it, from that, that the position put  
18 forward was that, when he went into the police on  
19 -- in early March 1969, it was something that the  
02:00 20 police did to Albert in the course -- I think  
21 what Mr. Wolch says:

22 "... it just progresses from having seen  
23 nothing to David Milgaard giving girls  
24 heroin ...",  
02:00 25 etcetera. And was it your sense that something



1           happened when Albert went in that caused him to  
2           give incriminating evidence and that he didn't go  
3           in there intending to give incriminating  
4           evidence; was that your understanding of this?

02:00 5           A           I think that's what they were alleging, yes, and,  
6           certainly that's what we needed to look into.

7           Q           And, in fact, Detective Karst did or said  
8           something or was part of something that caused  
9           Albert Cadrain to change his evidence from saying  
02:00 10          I saw nothing, to I saw blood?

11          A           Yes.

12          Q           Or to the incriminating evidence?

13          A           Yes.

14          Q           And then if we can scroll down -- actually, just  
02:00 15          go back up to the top, and then you ask:

16                    "How had this Cadrain been with your  
17                    investigation. Has he been cooperative  
18                    with you people..."

19          Let me just pause there. I take it you would  
02:00 20          have known that as part of the 690 application in  
21          the Supreme Court matter, that many of these key  
22          witnesses had been interviewed by investigators  
23          or lawyers or people on behalf of the Milgaards;  
24          is that right?

02:00 25          A           That's correct.



1 Q And so that when you get this information about  
2 Cadrain, was it your understanding that this would  
3 have been the result of an investigation conducted  
4 by either Mr. Wolch or people on his behalf that  
02:01 5 gave rise to these allegations?

6 A That's correct.

7 Q And so your questioning here:

8 "How had this Cadrain been with your  
9 investigation. Has he been cooperative  
02:01 10 with you people..."

11 Correct?

12 A That's exactly what I was wondering, is how they  
13 found him when they did their investigation.

14 Q And even more specifically, do you have a  
02:01 15 statement from him that says everything that  
16 you've just told me about what happened to him,  
17 would that have been of assistance to you?

18 A Yes, it certainly would have been of assistance.

19 Q And so again, would you -- I think we see this as  
02:01 20 well throughout the interview, when allegations  
21 are made or positions are put, you asked, okay,  
22 well, where did you get it from, have you got that  
23 information, have you got a statement where  
24 Mr. Cadrain says this, for example?

02:01 25 A That's correct.





1 Q And in some cases would it be correct to summarize  
2 that they did not have the background document  
3 that said that and their position was lookit, we  
4 think that's what happened, we don't have the  
02:01 5 evidence, but this is what happened and here's why  
6 we think it happened, and in other cases they said  
7 yes, here's the information that supports what we  
8 have to say?

9 A Yes.

02:02 10 Q And then the issue about Albert Cadrain's mental  
11 condition, and he says:

12 "We could show him to you on tape. It  
13 would appear that he had mental problems  
14 early on. Going through the trial, you  
02:02 15 don't have any sense of him being  
16 mentally ill. Read the transcript or  
17 police report. His own brother says he  
18 was extremely mentally ill right through  
19 that thing. He now is convinced he sees  
02:02 20 the Virgin Mary in blood."

21 And goes on to talk about it. So would that  
22 be -- what did you take from this exchange about  
23 Albert Cadrain's mental condition and how that  
24 might fit into what it was you were doing?

02:02 25 A Well, I guess the suggestion was that all of this



1 had caused him, you know, to have a psychiatric  
2 incident or a mental incident.

3 Q And I suppose if Albert Cadrain was mentally ill  
4 at trial and the police and/or prosecutor knew  
02:03 5 about it and did nothing about it, that might be  
6 something that would go to the issue of possible  
7 criminal -- obstruction of justice; is that  
8 correct?

9 A Yes, it's possible.

02:03 10 Q So that's where it would fit in?

11 A Yes. It would also fit in with whether the police  
12 had put any undue influence on him to cause that  
13 or create that.

14 Q Okay. So that on that question, his mental  
02:03 15 condition, would inform you on the extent to which  
16 the police may have influenced his evidence?

17 A Yes.

18 Q And is that something, and again we'll get into  
19 the report a bit later, but Albert Cadrain's  
02:03 20 mental condition at the time of the investigation  
21 and trial then is a matter that you and your team  
22 pursued?

23 A Yes.

24 Q Go to the next page, and then Mr. Wolch says:

02:04 25 "You seen Milgaard, Wilson and John,



1 three young kids, were all interviewed  
2 separately with no chance to talk to  
3 each other. They had all gone their  
4 separate ways and they were not even  
02:04 5 interviewed by the same person and if  
6 you take their three statements, it's  
7 incredible how similar they are that  
8 nothing happened. Initial statements.  
9 Nothing happened. It was like. But  
02:04 10 they were all fairly consistent on minor  
11 detail. Where we went, what we did and  
12 it was all like three normal kids saying  
13 nothing happened. It just seems to us  
14 that when they ended up finding her  
02:04 15 wallet beside the Cadrain house, that  
16 must have turned everything around. Yeh  
17 wait a minute."

18 Bruce:

19 "Because by that time they were really  
02:04 20 stuck."

21 Wolch:

22 "They had nowhere to go. They didn't  
23 put too much credence in Cadrain's story  
24 that Milgaard may be the guy involved.  
02:04 25 But finding the wallet beside Cadrain's



1 house .. yeh ... I'm mean this is very..  
2 that's a major sort of find and now  
3 everything turns to Milgaard because  
4 they desperately want to solve this  
02:04 5 crime."

6 And just a couple of questions here. On this  
7 issue about Milgaard, Wilson and John giving  
8 their initial statements where nothing happened  
9 and being fairly consistent, was that something  
02:05 10 that was put forward to you in support of the  
11 suggestion that the police acted improperly in  
12 their dealings with Wilson and John?

13 A Yes.

14 Q And can you just explain, what was your  
02:05 15 understanding of what Mr. Wolch was putting  
16 forward about the initial statements of Wilson and  
17 John, and Milgaard, but I think the allegation is  
18 that Wilson and John changed their story.

19 A I think Mr. Wolch was suggesting that the three of  
02:05 20 them had simply provided statements initially that  
21 nothing had happened and that in fact was the  
22 case, nothing had happened, so any statements that  
23 were subsequent to their initial statements were  
24 likely obtained through coercion or some  
02:05 25 misconduct.



1 Q And were untrue?

2 A And were untrue.

3 Q And so is it your understanding the position was  
4 that the initial statements of Wilson and John in  
02:05 5 early March, '69 were true and that everything  
6 that was added after the fact was false and the  
7 result of improper police conduct?

8 A Correct.

9 Q That was the position or theory put forward?

02:06 10 A That's my understanding of what he was trying to  
11 get at there.

12 Q If we go to the next page, please, there's mention  
13 here, and we see this in a couple of spots,  
14 Mr. Bruce says:

02:06 15 "I guess this is the yellow notebook.  
16 This is. We've never seen the yellow  
17 notebook, but I assume it's the C file.  
18 Down here you've got notes."

19 And I know we looked, being the Commission, for  
02:06 20 the yellow notebook and the yellow file and the C  
21 file and are you able to shed any light on what  
22 this was or what this is?

23 A No, we weren't, except at one point in time, and I  
24 think when we probed that a bit further, if I  
02:06 25 recall correctly, they indicated that it was a



1 file that contained what they thought was other  
2 reports and partway through the investigation we  
3 did receive a box of file material or a folder of  
4 file material from Murray Brown and Murray  
02:07 5 indicated that this is something they had found in  
6 one of the offices in public prosecutions and I'm  
7 -- correctly or incorrectly, I think this, there  
8 may have been something in that as to what they  
9 were referring to, so whether it was correct or  
02:07 10 not, I sort of assumed that might be the C file or  
11 the yellow file that they were talking about.

12 Q Okay. But there was some mention of a yellow  
13 notebook on a C file or some yellow file that  
14 Mr. Bruce had noticed somewhere; is that right?

02:07 15 A Yes. I don't recall the yellow notebook, but I do  
16 recall a C file.

17 Q And then here, if we can scroll down:

18 "You made reference to the yellow  
19 notebook on C file that you've never  
02:07 20 seen. What is that."

21 Mr. Bruce says:

22 "We have binders that are files that we  
23 got from Saskatchewan, they appear to be  
24 the prosecution file. It seems  
02:07 25 everything that we have, except sporadic



1 pieces of it. It starts off being  
2 numbered at 001 and goes on - the  
3 highest number we have is 500. Now this  
4 is made up of exactly the same stuff as  
02:07 5 the ABCE and F binders that they call  
6 them, which we have. The police files.  
7 Now Asper says that these ABCD numbers  
8 were put on this case after. I'm not  
9 positive, but the first reports. We  
02:08 10 have a complete set of ABCDE binders,  
11 more or less. The A & B binders are all  
12 of the incident reports. They start off  
13 and run more or less, they run pretty  
14 much chronologically. They start off  
02:08 15 with the report.

16 Bruce:

17 "The yellow notebook. There is a note  
18 on one of the things that so and so left  
19 a note in the yellow, this is one of  
02:08 20 these incident reports or investigation  
21 reports that somebody left a note in the  
22 yellow workbook. It sounds to me that  
23 the yellow workbook was like a working  
24 thing that they left in the coffee  
02:08 25 lounge or something. And I assume this



1 from, although it is called C, it's a C  
2 number on it, so that then there is the  
3 C file the D file, there is a bunch of  
4 witness statements and the E file is  
02:08 5 evidence reports so somebody has  
6 organized this stuff. There is no cross  
7 over. I can show you exactly."

8 Sawatsky:

9 "So you are thinking that this yellow  
02:08 10 workbook may have been like a pass on  
11 thing where they wanted everybody to  
12 know so they jotted pieces of  
13 information to that.

14 Bruce:

02:09 15 Even more obvious than like the whole  
16 file."

17 And I think Mr. Bruce was talking about a '69  
18 police investigation file; is that right?

19 A That's what I think, the conclusion I drew about  
02:09 20 that.

21 Q And so that would have been a matter of your  
22 investigation, the suggestion that there were  
23 missing investigation files from the police, this  
24 yellow notebook, and as well I think we'll see a  
02:09 25 suggestion that in Mr. Caldwell's file, some of





1 the police reports were destroyed in a suspicious  
2 fashion; is that right?

3 A Yes.

4 Q Yeah. And if we can go to the next page --

02:09 5 actually, go to 064, 023064. And this is the  
6 discussion about (V4)---- (V4)---, and I take it  
7 you became familiar with who (V4)---- (V4)--- was?

8 A Yes.

9 Q And I think the suggestion made was that she was  
02:10 10 attacked on the morning of Gail Miller's murder at  
11 7:07 a.m. about seven blocks away; is that  
12 correct?

13 A That's correct.

14 Q And in 1991 after seeing a newspaper report, came  
02:10 15 forward and said Larry Fisher was the person who  
16 attacked her?

17 A That's correct. I think she saw a picture.

18 Q A picture?

19 A Of Larry Fisher.

02:10 20 Q And we will look at this a bit later, but is it  
21 correct to say that (V4)---- (V4)--- figured into  
22 the investigation in a number of different ways, a  
23 number of different issues?

24 A Yes.

02:10 25 Q Everything from disclosure to the question of,



1 well, if Larry Fisher assaulted (V4)---- (V4)---  
2 at 7:07 a.m. on Avenue H, could he have possibly  
3 killed Gail Miller?

4 A Correct.

02:10 5 Q And that was one issue that, I guess not only how  
6 the authorities dealt with (V4)---- (V4)---'s  
7 information, but whether her information in and of  
8 itself, what did it do to the contention that  
9 Larry Fisher was the perpetrator?

02:11 10 A Well, certainly we wanted to look at it to try and  
11 make a determination as to whether -- I think the  
12 allegation from Mr. Wolch was that the rape of  
13 Gail Miller had occurred and then -- by Mr. Fisher  
14 and then subsequent to that there was a hasty  
02:11 15 sexual assault done some seven blocks away, so we  
16 certainly put a lot of investigative effort in  
17 trying to determine whether or not that theory  
18 worked.

19 Q Wasn't the theory this, that Larry Fisher killed  
02:11 20 Gail Miller, had Cliff Pambrun's car, drove the  
21 car to Cliff Pambrun's house, dropped the car off,  
22 walked home down the railroad tracks and at 7:07  
23 a.m. assaulted (V4)---- (V4)--- on his way home  
24 and then went home?

02:11 25 A Yes, we looked at that.



1 Q And that was a theory, and I think an alternate  
2 theory was that if he didn't have the car, then he  
3 may have run or walked from where he killed Gail  
4 Miller to Avenue H, assaulted (V4)---- (V4)--- and  
02:12 5 then gone wherever?

6 A That's correct.

7 Q But is it correct to say that the theory or  
8 position put forward on behalf of David Milgaard  
9 in all respects -- pardon me, the position put  
02:12 10 forward that Larry Fisher was the killer of Gail  
11 Miller always included an allegation that he also  
12 attacked (V4)---- (V4)---?

13 A Yes.

14 Q And so in other words, it wasn't -- there wasn't a  
02:12 15 scenario where they said lookit, he may not  
16 have -- the (V4)---- (V4)--- was part and parcel  
17 of Larry Fisher as the killer?

18 A Yes.

19 Q And your team spent a fair bit of time  
02:12 20 investigating whether that part of the theory was  
21 possible or could have happened; is that correct?

22 A That's correct.

23 Q And that would include the credibility of (V4)----  
24 (V4)--- --

02:12 25 A Yes.



1 Q -- looking at that. Whether it was physically  
2 possible to be in the places where Mr. Fisher was  
3 supposed to be at the times to have committed both  
4 crimes, that was something that your people spent  
02:13 5 some significant time on?

6 A Yes.

7 Q And then here, Mr. Wolch says:

8 "No question, her identification of  
9 Fisher now is suspect with the passage  
02:13 10 of time I don't quarrel with that. But  
11 what is important though is that when  
12 she was attacked, she described her  
13 attacker as about 5'5 or 5'6, short  
14 stocky build, dark complexion. And that  
02:13 15 all matches Fisher. The one unique  
16 feature about Fisher is the shortness.  
17 That is what all the witnesses ... they  
18 all pick on their attacker as being..."

19 And then goes on. So again, that would have  
02:13 20 been -- I take it the issue of (V4)---- (V4---'s  
21 identification 21 years later was an issue that  
22 your people looked at as well?

23 A Yes.

24 Q If we can go to 023067, and this is where Mr.  
02:13 25 Wolch starts discussing what we have called the



1 Mackie summary, and that is the five page document  
2 that is four pages of, from the police file and  
3 one page of notes with the following suggestions  
4 at the bottom. You are familiar with what that  
02:14 5 document is, the Mackie summary?

6 A Yes, I am.

7 Q Okay. And so I will try my best to keep calling  
8 it the Mackie summary, it has been called a number  
9 of different things. For your information, Mr.  
02:14 10 Mackie testified before the Commission and  
11 indicated that he believed he was the author of  
12 the document, although -- at least the fifth page,  
13 although the first four pages he thinks was  
14 prepared by someone else, I think it's a  
02:14 15 compilation of what was in the investigation  
16 reports, but certainly the fifth page he said he  
17 believes is his, okay, and I think that was one of  
18 the conclusions your people reached, you couldn't  
19 be definitive, but thought that he might have  
02:14 20 played a role on that; is that correct?

21 A That's correct.

22 Q So here Mr. Wolch says:

23 "Here is a document that is absolutely  
24 fascinating. Now this came from the  
02:15 25 prosecution file or the police file."



1 And Bruce:

2 "That's what rumor has it. The thing  
3 that I would really like to find out  
4 about this case is if all of these 1-500  
02:15 5 numbers are prosecution numbers, then  
6 and the A numbers are police numbers, I  
7 don't have a sense of why the police  
8 would be writing something like this.  
9 See Caldwell denies ever having seen  
02:15 10 this document and nobody would admit to  
11 like anybody writing it up. I got a  
12 tape of Mackie saying when he got back  
13 from holidays he wrote up a list of all  
14 of the things that all pointed to  
02:15 15 Milgaard. This is it. From the early  
16 80s. Now if one is to believe that the  
17 prosecution had nothing to do with this,  
18 yet it is covered with prosecution  
19 numbers. All of those files that have  
02:15 20 got numbers like 1 59 200 without the  
21 prefix of a letter, all seem to be  
22 prosecution numbers. Because all of  
23 those or a majority of those documents  
24 have little notes of Caldwell's  
02:15 25 handwriting in the margin. Don't, I'm



1 not positive, I'd like to know for sure  
2 who had what. You know Caldwell will  
3 say that the police had more stuff than  
4 he did. It was on record as saying this  
02:16 5 and he didn't have that and one day he  
6 doesn't have that much to do with it and  
7 then the next day he was intimately  
8 involved from the time of the crime."

9 Wolch:

02:16 10 "These papers here are absolutely mighty  
11 fascinating because I'd know who  
12 prepared it. We got it from either the  
13 prosecution or police files."

14 And Bruce:

02:16 15 "It was reportedly from the  
16 prosecution."

17 Wolch:

18 "It is a summary of putting the case  
19 together and on the left hand margin  
02:16 20 there is like Miller file page 352. Now  
21 it starts with the (V1)- rape. The  
22 (V1)--- (V1)- rape. Description of the  
23 man who raped her. Now you got to  
24 understand this was prepared fairly  
02:16 25 early on. We can always pinpoint the



1 day it was prepared. This is before the  
2 case before Milgaard is even charged and  
3 what's really fascinating. I starts off  
4 with (V1)- rape and (V1-'s blood  
02:16 5 grouping and they've got (V1)- clothing  
6 revealed her attacker was a group 'A' an  
7 'A' group secreter. So they know and  
8 they know that Gail Miller's attacker  
9 was..."

02:16 10 And then go on to the next page, Mr. Wolch says:

11 "It's a summary before it happens.

12 That's absolutely, really fascinating.

13 You see because at the bottom there are

14 suggestions and the suggestion is that

02:17 15 Nichol John, Wilson and Cadrain be

16 brought to Saskatoon where with all

17 present, the true story can be obtained

18 even if hypnosis or polygraph are

19 necessary. So what you have to

02:17 20 understand is that at this point in

21 time, the three young people have all

22 said nothing happened. Somebody

23 prepares a summary saying they saw a

24 nurse, they asked her for directions.

02:17 25 This is what happened. And low and





1                    behold the three kids are brought from  
2                    Regina to Saskatoon and they give them  
3                    the story they were expected. This ...  
4                    It speaks for itself. But what we  
02:17 5                    learned in the Supreme Court was the  
6                    following, that they called in an Insp.  
7                    Roberts of Calgary who was the great  
8                    interrogator and he has written articles  
9                    on it. And he brought in his  
02:17 10                    deceptograph, that's what they called it  
11                    then. They took the three kids from or  
12                    two of them anyway from Regina to  
13                    Saskatoon and these are young people,  
14                    pretty nervous and they bring them into  
02:17 15                    small rooms and Roberts testifies to  
16                    this. His techniques are to stick close  
17                    to the person and intimidate them and  
18                    with Nichol John, a rather frightened 16  
19                    or 17 year old, he gives her Gail  
02:18 20                    Miller's blood stained uniform. This is  
21                    his version. You know. Look at this.  
22                    And then starts telling her, you know,  
23                    what if you or your sister had been  
24                    raped. He gives her all this crap and  
02:18 25                    low and behold she gives the story that



1                   they had predicted she would give. And  
2                   that's exactly what happens. Ron Wilson  
3                   also gives a story, but there is a  
4                   contradiction. You see, what happens is  
02:18 5                  Nichol John gives a story that she had  
6                   seen the murder. But her story is  
7                   physically impossible because you have  
8                   to understand that when Gail Miller was  
9                   stabbed, the stab wounds went through  
02:18 10               her coat, but not through her dress, so  
11                  obviously she had to throw her dress or  
12                  coat on. The Nichol John version is  
13                  that she's walking down the street and  
14                  she's stabbed. Well it couldn't have  
02:18 15               happened unless she's walking with her  
16                  dress down to her ankles."

17               Now, we'll spend a fair bit more time on this  
18               issue, Mr. Sawatsky, but is it correct that what  
19               Mr. Wolch was putting to you is that the Mackie  
02:18 20               summary, his position was Wilson, Cadrain and  
21               John told the truth in their first statements.  
22               Now, with Cadrain, let me take Cadrain out of  
23               there for the moment, Wilson and John did, that  
24               the Mackie summary was prepared and the script on  
02:19 25               the fifth page, being the summary of items, his



1 allegation was that the police sat down with  
2 Wilson and John and got them to say what was in  
3 the summary; in other words, coerced them to  
4 follow what was in the summary?

02:19 5 A That's correct.

6 Q That was the allegation?

7 A That was the allegation.

8 Q And if that were true, that would be, and again  
9 would be, might be considered obstruction of  
02:19 10 justice and criminal conduct?

11 A Correct.

12 Q Or maybe I can go stronger, would be, to have -- I  
13 think the suggestion was the police said Wilson  
14 and John, here's what we think happened -- or say  
02:19 15 the following: In other words, they then gave  
16 statements that were consistent with what the  
17 police predicted in the summary document?

18 A That's right.

19 Q And that it wasn't true and that it was obtained  
02:20 20 by criminal means?

21 A Correct.

22 Q And I take it that that's something you  
23 investigated; is that correct?

24 A Yes, we did.

02:20 25 Q And did you investigate both sides of that;



1           namely, did you investigate to see whether what  
2           Mr. Wolch alleged happened was true?

3           A       Yes.

4           Q       In other words, did you investigate to say, okay,  
02:20 5           well, let's go from the starting point that what  
6           Wilson and John said at trial, or in their  
7           post-Mackie summary statements, let's presume that  
8           that's all a lie and go back and let's check into  
9           it and see whether this allegation is true; in  
02:20 10          other words, whether the post-Mackie summary  
11          evidence of Nichol John -- in order for Mr.  
12          Wolch's allegation to be true, that meant that  
13          what Wilson and John said in May of 1969, at least  
14          what was added, was false?

02:21 15          A       That's correct.

16          Q       And did you proceed and test that proposition?

17          A       Yes, we tested this both ways, we tested that  
18          proposition as well as looked at trying to find  
19          the reason and the intent in writing this  
02:21 20          document.

21          Q       Okay. So just that we're clear on this, you would  
22          have said, okay, let's go from the starting point,  
23          let's find out if what Wilson and John said at  
24          trial, or the post-Mackie summary in the  
02:21 25          statements, if that's false, because if that's



1 false, or much of it's false, or all of it's  
2 false, then how did it get there?

3 A Exactly.

4 Q And so I think there was a suggestion made  
02:21 5 yesterday that you did not test that side of it;  
6 in other words, on the assumption that let's start  
7 and say, okay, let's assume Wilson and John, the  
8 May, '69 statements are lies and then go back, and  
9 you are telling us that was tested?

02:21 10 A That was tested along with this.

11 Q Okay.

12 A What -- like I say, what we did was looked at this  
13 and tried to find the genesis of this document,  
14 why it was written and the reason it was written.

02:22 15 Q And would you agree that if it turned out that the  
16 police had predicted what would happen and told  
17 the witnesses to give evidence in accordance with  
18 a summary or a script of what they thought  
19 happened and the evidence they gave was false,  
02:22 20 that would be very important in your  
21 investigation?

22 A Correct.

23 Q If we can go to the next page, scroll down, again  
24 I think there's some further discussion about what  
02:22 25 is in -- is it correct to say that you would have



1           spent, or your team would have spent a fair bit of  
2           time looking at the May, '69 statements of Wilson  
3           and John; is that correct?

4           A       Yes.

02:22 5           Q       Because the suggestion is they knew nothing in  
6           March, in May here's what they now say happened,  
7           and so you would look at the new information and  
8           say is that credible, did it happen, can it be  
9           corroborated by other facts, is it false, and if  
02:23 10          so, how did they end up saying it?

11          A       Correct.

12          Q       And that would be a focal point in your  
13          investigation?

14          A       Yes.

02:23 15          Q       So here Mr. Bruce says:

16                    "He said that they got stuck, --"

17          And I think he's talking about Wilson,

18                    "-- Karst is alleging that Wilson said  
19                    that they were stuck and that Wilson  
02:23 20                    left and Milgaard left the car before  
21                    and this is only Karst's word on this  
22                    report that's written after. The  
23                    statement, it's difficult for me to  
24                    believe Karst would write this because  
02:23 25                    Karst wrote Wilson's statement. It's



1                   difficult for me to believe that Karst  
2                   would write allow a statement to be  
3                   written, that would not include this  
4                   crucial piece of information. Then he  
02:23 5                   goes back to the next day and says to  
6                   Wilson, isn't there anything else would  
7                   want to put in. Whatever went on, but  
8                   it's highly unlikely that something that  
9                   important would be left out. So I would  
02:23 10                  believe that Karst has fabricated this  
11                  piece of information and he still sticks  
12                  by it, I think."

13                  And again, this would be an allegation that's  
14                  saying that Mr. Karst fabricated information and  
02:24 15                  put it into Ron Wilson's statement?

16           A           Correct.

17           Q           And that would be an allegation that you would  
18                        investigate and pursue?

19           A           Yes.

02:24 20           Q           Next page, again an issue here, Mr. Wolch says:

21                        "What's interesting is, I'm going back a  
22                        bit, in the summary they say on seeing  
23                        the nurse, she was approached on the  
24                        pretence of getting directions with a  
02:24 25                        view to stealing her purse. Now nobody



1 had ever said that. Nobody."

2 "Until it was put into a summary."

3 And I think we'll see that when we look at that  
4 document, I think that was identified as one item  
02:24 5 in a four page summary that did not appear to be  
6 in any other investigative report; is that  
7 correct, on the Nichol John -- or am I testing  
8 your memory here?

9 A You are testing my memory. I'm not sure.

02:24 10 Q Okay. We'll come back to that, I'll just flag  
11 this here, and I think when we look at the  
12 analysis, and the evidence we've heard, that in  
13 the summary of what Nichol John had to say,  
14 there's reference to her seeing a nurse, but  
02:25 15 that's not in her statement of March 11th.

16 A I understand.

17 Q And again, I think that's something your  
18 investigators looked at, so we'll come back to  
19 that.

02:25 20 Go to 023074, just down at the  
21 bottom, this is where I think Mr. Wolch talks  
22 about the theory:

23 "Here's the Cadrain Fisher house"

24 And I think he's showing you on a map:

02:25 25 "You got (V1)- attacked here, (V2) here





1 and (V5)--- later, and Miller here,  
2 (V4)-- there and he takes the shortcut  
3 right back to his house. Clifford  
4 Pambrun is the guy whose car he normally  
02:25 5 borrowed. So our theory being Miller  
6 drives back to Pambruns --"

7 I think that should be Fisher,  
8 "-- drives back to Pambruns, drops off  
9 the car, goes home, comes across (V4)--  
02:26 10 gives her a grab, keeps on going and  
11 then he's home."

12 Next page:

13 "All these attacks are in his own area."

14 Question:

02:26 15 "You feel (V4)--- was attacked after  
16 Miller."

17 "Yeh."

18 Sawatsky:

19 "Or before."

02:26 20 Wolch says:

21 "After."

22 And I take it that was always the position as  
23 well, that (V4)--- was attacked after Miller  
24 according to Mr. Wolch's theory?

02:26 25 A Yes.



1 Q Did you people look at the other side of it,  
2 saying okay, is it possible that she was attacked  
3 before Gail Miller was attacked?

4 A I think we did, but I think, as I recall, (V4)---  
02:26 5 was very consistent with the time, that she was  
6 certain of the time and therefore we were of the  
7 view it couldn't have happened before.

8 Q And am I correct that since Gail Miller would have  
9 left her house I think around 6:45 a.m. and it was  
02:26 10 40 below, if she was attacked after (V4)--- at  
11 7:07 a.m., that she would have to either be late  
12 for work, which was contradicted by the evidence  
13 of one of her roommates, or be standing outside  
14 for half an hour in 40 below weather waiting for  
02:27 15 the attacker to finish with (V4)--- and come home?

16 A That's correct, and I should just back up a wee  
17 bit there. I know (V4)--- was always very  
18 consistent with her time as it occurring. What  
19 perhaps was uncertain at some times was when the  
02:27 20 Miller, when the Gail Miller murder occurred, so  
21 we were always quite satisfied that the report  
22 from (V4)---, the time was correct.

23 Q Okay. And then Mr. Wolch says:

24 "And that's not uncommon with the  
02:27 25 profiles of these kind of rapists.



1                    Their biggest thrill is almost, they're  
2                    still on a high. Common sense sort of  
3                    tells you well he would have been  
4                    frustrated and built and built, and I've  
02:27 5                    put that to a police expert and he said  
6                    no. It was more an after thought. He  
7                    was still in that certain state of  
8                    mind."

9                    You say:

02:27 10                   "Yeh. I've heard a lot of interesting  
11                   profiles done by FBI and things like  
12                   that and what you say is exactly the  
13                   sort of things I read. It's not like  
14                   normal sex where your done and that's  
02:28 15                   it -- you're expended, it continues."

16                   And you go on to talk about that. There appears  
17                   to be a discussion about almost profiling or what  
18                   do sexual predators, I mean, does it make more  
19                   sense that -- or does it fit a rapist raping and  
02:28 20                   murdering a woman and then shortly after coming  
21                   across another woman and having a less  
22                   significant sexual assault encounter, if I can  
23                   put it that way, that's sort of the issue, and I  
24                   think that's something that later on your people  
02:28 25                   looked at as well, does it make sense that after



1           having raped and killed someone, that Mr. Fisher  
2           would then go and have a less severe attack on  
3           another woman.

4           A       Correct, yup.

02:28 5           Q       And that just gets into the mix of trying to help  
6           you to understand did he or didn't he, being Mr.  
7           Fisher, encounter (V4)---- (V4)--- that morning?

8           A       Yes.

9           Q       Go to page 023077, again this is Mr. Wolch, he  
02:29 10          says:

11                    "It is interesting. We found out in the  
12                    Supreme Court that there was a lady  
13                    named Helen (V9)---- a nurse who lived  
14                    within yards of Gail Miller who at 8  
02:29 15          o'clock in the morning was going to work  
16                    when a short dark guy grabbed her and  
17                    tried to attack her. We have a police  
18                    report on that."

19                    "Is that in there somewhere."

02:29 20          "I'll get it for you. It's on the  
21                    list."

22                    And again, I think here:

23                    "Morning is unusual but Helen (V9)----  
24                    was attacked at 8 o'clock in the  
02:29 25          morning, about two weeks earlier I guess



1                   it was. She was in nurse's uniform  
2                   also."

3                   So again, this would be information that I think,  
4                   in addition to this, there was other suggestions  
02:29 5                   that other attacks, that prior to the Gail Miller  
6                   that had not been, that Mr. Fisher had not been  
7                   charged or convicted of, but the suggestion was  
8                   that lookit, here's a whole bunch of other  
9                   unsolved incidents involving attacks around that  
02:29 10                  time that might bear on the issue; is that  
11                  correct?

12           A           That's correct.

13           Q           Next page. Mr. Bruce goes on to say about:

14                    "They were predominantly eliminating  
02:30 15                   people on the basis of their blood  
16                   type."

17           And:

18                    "They made such an incredible investment  
19                   in these two lumps. You know they are  
02:31 20                   most likely dog urine. This is a report  
21                   in the paper that the dog was at the  
22                   scene of the crime along with the  
23                   mounties scouring for evidence."

24                   And so again, we will touch on this a bit later,  
02:31 25                   but the allegation made here was that the frozen



1 lumps of semen tendered at the trial of David  
2 Milgaard, I think Mr. Bruce is saying they are  
3 most likely dog urine, and here he goes a bit  
4 further saying it was -- it may well have been  
02:31 5 the police dog; is that right?

6 A Yes.

7 Q And, again, is that something that your  
8 investigators would have investigated fairly  
9 significantly?

02:31 10 A Yes.

11 Q This whole secretor/dog urine issue?

12 A Yes.

13 Q Go to page 084, please. And here you asked the  
14 question about the Supreme Court:

02:32 15 "Was the Supreme Court very narrow in  
16 its focus, like it didn't allow you to  
17 sort of bring in"

18 Mr. Wolch:

19 "We don't care about propriety, whether  
02:32 20 the investigation was good or bad or  
21 indifferent. All we want to know is, is  
22 it wrong to keep this conviction going.  
23 And we're not here as a jury, we're here  
24 do you have credible evidence"

02:32 25 "That could change the verdict"



1                    basically. That's what they wanted to  
2                    hear. They took a very legal approach."  
3                    "They weren't going to find guilty  
4                    persons. They said at the beginning as  
02:32 5                    far as Fisher's concerned, they'll never  
6                    pronounce him guilty because if they  
7                    did, he'd never get a fair trial in the  
8                    future. ... And they quite correctly  
9                    said as far as the police are concerned,  
02:32 10                   we're not going to blacken people who  
11                   are not on trial. We're not going to.  
12                   Not our purpose."

13                   Mr. Rodin:

14                   "Did they, did Alberta or anybody send  
02:33 15                   you an official sort of terms of  
16                   reference of what you are to  
17                   investigate. Are you expecting that."

18                   Let me just pause there. What would be the  
19                   significance of this information and your  
02:33 20                   question about what the Supreme Court dealt with?

21                   A                   I'm just not sure, but I don't think we had the  
22                   complete transcripts from the Supreme Court at  
23                   that time, so maybe I just sought to get a little  
24                   bit more information about the Supreme Court. But  
02:33 25                   I may, I may be able to answer that better if we



1 back up a bit in the statement, and I saw the  
2 discussion leading up to that.

3 Q I think, if we can just go up, I think you are  
4 talking about getting transcripts of the trial.  
02:33 5 And I'm not sure much turns on it, but maybe you  
6 were just inquiring about what happened at the  
7 Supreme Court?

8 A That may very well have been that.

9 Q And I take it that, subsequently, your people  
02:33 10 would have investigated that, reviewed the  
11 decision, and gathered information about what had  
12 happened at the Supreme Court?

13 A Yes, we did, we were provided with all that  
14 material at a later time.

02:33 15 Q So here, just down at the bottom then, Mr. Rodin  
16 asks you about whether Alberta -- and I think he  
17 is talking about Fraser and McCrank, because by  
18 this time you would have told them that Fraser and  
19 McCrank were your Crown advisors; is that correct?

02:34 20 A Yes.

21 Q And you, you say:

22 "No. In fact, how it was left with us  
23 is that we are allowed to look at  
24 whatever we want and then we are to  
02:34 25 refer to Alberta for any legal opinion





1 or anything like that. And I would  
2 suppose that that we can go so far as  
3 that if it is very obvious to us that  
4 there is an obstruction of justice here,  
02:34 5 we would on all likelihood lay charges.  
6 Alberta will prosecute any charges that  
7 should arise or could arise, especially  
8 if it involves Sask. Justice people.  
9 But, no, we were left really wide open.  
02:34 10 We have a look at it and the advice  
11 given to us by them is to look at  
12 everything we could possibly find  
13 because they felt that this may be the  
14 last real good look we would have at  
02:34 15 it."

16 Mr. Wolch:

17 "That makes sense."

18 You say:

19 "They were really good. They said look  
02:34 20 you phone us for any legal opinions, but  
21 otherwise get out and do your thing."

22 And Mr. Rodin:

23 "So the scope of your investigation  
24 would include, not only criminal conduct  
02:35 25 but unethical conduct generally. And



1 specifically to look at, if you feel  
2 that's appropriate,"

3 You say:

4 "Exactly. I phoned one of our  
02:35 5 representatives, Mr. Fraser and asked  
6 him about that. And I said we're not  
7 really geared to look at that sort of  
8 thing and he said that if there is any  
9 misconduct, it would be so obvious to  
02:35 10 you that you would have a problem seeing  
11 it. I was concerned well maybe we'll  
12 miss something. He said, it'll be so  
13 obvious to you you'll see it and he said  
14 and if it's not a criminal thing, he  
02:35 15 said then it's going to have to be  
16 looked after on format. You'll see it,  
17 it'll be obvious and it will be in your  
18 report and you'll know what to do with  
19 it. So I felt comfortable by that that  
20 we're okay then. That we'll probably be  
21 able to see that. We certainly don't  
22 want to miss anything either."

23 And so, again, I take it from that exchange that  
24 Mr. Rodin and Mr. Wolch, you would have  
02:35 25 communicated to them, as it's stated here, that



1           you are investigating everything, even conduct  
2           below criminal conduct?

3           A       That's correct.

4           Q       Then, if we can scroll down, Mr. Rodin says:

02:36 5                       "We certainly have a major concern about  
6                       disclosure in this case."

7           And then:

8                       "... which applied at the time and if in  
9                       fact there was correspondence that we'll  
02:36 10                      get to between Caldwell and Tallis  
11                      wherein disclosure was discussed and  
12                      where both Tallis and Caldwell  
13                      acknowledged a standard disclosure that  
14                      applied to this case and at the time  
02:36 15                      generally. And one of our main concerns  
16                      is that in October of 1970 when the  
17                      Fisher evidence came to light, ..

18                      Supreme Court of Canada there was a lack  
19                      of disclosure clearly at that time, even  
02:36 20                      forgetting about what other arguments we  
21                      could make about disclosure. At that  
22                      time there was a very serious breach of  
23                      duty to disclose ... basically that  
24                      Crown Counsel has a duty to disclose to  
02:36 25                      the defence credible evidence of which



1                   it is aware that it would tend to  
2                   exculp? the accused."

3                   And I take it, here, the allegation was that Mr.  
4                   Caldwell committed a very serious breach of duty  
02:36 5                   to disclose information, presumably amounting to  
6                   unethical conduct or criminal conduct; is that --

7           A           Yes.

8           Q           -- is that your understanding?

9           A           Yes, that's my understanding.

02:37 10          Q           Go to 023087. And then Mr. Williams, there is a  
11                   discussion here about David being called to  
12                   testify at the Supreme Court:

13                   "You put him on the stand at Supreme  
14                   Court."

02:37 15          I'm sorry, at trial, and then Williams:

16                   "Why wouldn't Tallis do that at the  
17                   trial. Is there any reason for that.  
18                   He never called one defence witness .."

19          Mr. Wolch:

02:37 20                   "... I'm troubled by this. I talked to  
21                   Ian Disbery. Do you know him at all.  
22                   He was the assistant lawyer to Tallis.  
23                   Basically Disbery and the Milgaards all  
24                   agreed they thought he was going to be  
02:37 25                   acquitted. They thought it was going to



1 be an acquittal. And Tallis told me  
2 privately at least that he felt you know  
3 he got a hippie drug sex, you know, that  
4 it might not look good. And Tallis to  
02:38 5 his credit said to me that he thought he  
6 was going to get a very favourable  
7 charge from the jury. And he might not  
8 get it if the judge didn't like Milgaard  
9 very much. He was just a punk kid ...  
10 So they decided they were likely going  
11 to get an acquittal and the judge's  
12 charge was very fair, I mean the judge  
13 almost told him to acquit. Which was  
14 very surprising. The charge, the jury  
02:38 15 was extremely fair ...",

16 and then it goes on to talk about a few other  
17 things. What was your understanding, here, about  
18 the allegations, if any, against Mr. Tallis? Did  
19 you understand, from this, that concern was being  
02:38 20 expressed about Mr. Tallis' conduct in the  
21 matter?

22 A Yes, certainly, and I think that was reinforced  
23 even more when I spoke with Mrs. Milgaard, because  
24 I know she was very strong on her thoughts about  
02:38 25 Mr. Tallis.



1 Q And I think -- and I'll show you this a bit later  
2 in your interview with Joyce Milgaard -- she  
3 alleged that Mr. Tallis was in collusion with Mr.  
4 Caldwell at the trial; and that's correct?

02:39 5 A That's correct, yeah.

6 Q And obviously, if defence counsel is in collusion  
7 with the Crown prosecutor, that would be criminal  
8 obstruction of justice?

9 A Yes, I would assume so.

02:39 10 Q And, as a result of that allegation, you  
11 investigated Mr. Tallis and Mr. Caldwell for  
12 criminal conduct, namely obstruction of justice,  
13 on the basis of that allegation?

14 A Correct.

02:39 15 Q And, apart from that, would it be fair to say as  
16 well that you looked at other aspects of Mr.  
17 Tallis' conduct, falling short perhaps of criminal  
18 conduct but perhaps misconduct or other, other  
19 conduct that might be part of the mix in trying to  
02:39 20 figure out what happened?

21 A That's correct.

22 Q And would it be correct to say that Mr. Tallis was  
23 on your radar screen because Mr. Wolch and  
24 Mrs. Milgaard put him there?

02:39 25 A Exactly.



1 Q Go to the next page. Again, here was a comment  
2 here about, this is the motel room incident:

3 "One thing that surprises me is Tallis  
4 never did ask him if it was a joke. You  
02:40 5 know, which really surprises me.

6 Because now you have very reputable  
7 people, Debbie Hall and there is a bank  
8 manager, I think, Bob Harris, you know  
9 very who say yeh I was in that hotel  
02:40 10 room.",

11 and go on. So, again, the question here about  
12 how Mr. Tallis dealt with the motel room incident  
13 was a matter that you would have looked into?

14 A Correct.

02:40 15 Q And again, I asked this question earlier, how  
16 would Mr. Tallis' trial tactics, and what he chose  
17 to do or not do fit into your criminal  
18 investigation of obstruction of justice?

19 A Well certainly if there was collusion between he  
02:40 20 and Mr. Caldwell, that certainly would give me a  
21 concern about obstruction of justice, however some  
22 of the other things that were alleged against Mr.  
23 Tallis were perhaps more things that should be  
24 reviewed by Alberta Justice to determine if there  
02:41 25 was a professional ethic breach or whatever.



1 Q And --

2 A And whether someone is called to the stand, or  
3 whether counsel chooses to call or not call  
4 someone to the stand, I'm not really competent to  
02:41 5 determine whether that's appropriate or not  
6 appropriate.

7 Q Is it correct to say, Mr. Sawatsky, that at this  
8 time, and indeed during the course of the  
9 investigation, you are not really sure where this  
02:41 10 allegation might lead, you're not sure what else  
11 might come out, and that ultimately, if you found  
12 evidence of collusion, this conduct might be  
13 relevant to that issue?

14 A That's fair to say, yes.

02:41 15 Q And so am I correct that at the end of the day,  
16 when you get all this information, you conclude  
17 that, lookit, we have got to look at everything  
18 put forward because we don't know where it leads,  
19 we don't know where everything may end up, so we  
02:41 20 have to follow up every piece of information,  
21 whether or not it's conduct that could give rise  
22 to criminal obstruction of justice?

23 A That's correct. And I think at this time, while  
24 this interview was occurring, I was prepared to  
02:41 25 take down anything that Mr. Wolch provided.





1 Q Right. But again, I think just so that we're  
2 clear, your investigators would follow up on this  
3 notion of why didn't Mr. Tallis ask the question  
4 about whether they thought it was a joke or  
02:42 5 question these witnesses or how he dealt with the  
6 motel room incident because you don't know, it  
7 might lead to criminal obstruction, it might not?

8 A Exactly.

9 Q But you can't discard it until you follow it up  
02:42 10 and know where it fits with everything else?

11 A Yes, that's right.

12 Q And would it be correct to say that, by the time  
13 you were done gathering information, that there  
14 were many, many issues that needed to be pursued,  
02:42 15 some that were related, some that weren't?

16 A Yes.

17 Q If we can go to the next page, sorry, to the next  
18 page. And here there is a discussion, this is Mr.  
19 Wolch talking about -- I'm sorry, go to the  
02:43 20 previous page -- talk about the blood type and the  
21 secretor. And Mr. Wolch says:

22 "What's interesting is that we now find  
23 out Milgaard's blood was wrongly grouped  
24 and everything else. It was wrong."

02:43 25 You say:



1 "Is it 'A'."

2 "It's 'A', but here's what happened.

3 This actually is kind of funny. The  
4 evidence in court was that Milgaard was  
02:43 5 a type 'A' non-secreter. The evidence  
6 in court the semen was type 'A'  
7 secreter. That's the evidence. Now the  
8 judge in talking to the jury doesn't say  
9 a word about that evidence. Not a word.  
02:43 10 There was 40 odd pages of evidence about  
11 that. Crown counsel in his opening  
12 address made a big deal of it. Not a  
13 word. Why not. Couldn't figure it out.  
14 No one could. So, when we looked at  
02:44 15 this, we gave it to an expert, a very  
16 good expert and he said Milgaard can't  
17 have done the crime. Unless he used  
18 somebody else's semen. It can't be his.  
19 That's right in the case. So, what I  
02:44 20 find funny is when we apply to have the  
21 case reopened, they talked their way  
22 around it. Like maybe he's one of these  
23 guys who bleeds into his or maybe".

24 Bruce:

25 "That was all evidence at trial. He".



1 And then Wolch:

2 "But they went farther than that. Every  
3 kind of excuse to get around this  
4 majoring consistency there's all kinds  
02:44 5 of ... could have got into it. ... When  
6 in actual fact, Milgaard is a secretor.  
7 They had it wrong. When they talked  
8 their way around it, when you have  
9 blinders on you can talk your way around  
02:44 10 anything."

11 And so am I correct that this secretor issue that  
12 in 1992, then, is put forward to you, that the  
13 manner in which the Crown presented this forensic  
14 evidence at trial, or the semen and the secretor  
02:44 15 issue, it was being put forward as that there was  
16 some impropriety by a number of people involved  
17 in that evidence; is that correct?

18 A That's correct.

19 Q Yeah. And, again, that somehow something was done  
02:45 20 deliberately wrong to put this evidence in that  
21 shouldn't have been in; is that --

22 A That's fair.

23 Q -- what I would ... Go to 023103. And I've  
24 skipped over a number of pages here but, for the  
02:45 25 record, what it talks about, it gets into Larry



1 Fisher and how his charges were dealt with in  
2 Manitoba for the Fort Garry rapes, and how he was  
3 dealt with in Saskatchewan, and is it correct to  
4 say that that became a significant part of your  
02:46 5 investigation, how Larry Fisher's assault, sexual  
6 assault charges, were dealt with in Manitoba and  
7 Saskatchewan in the early '70s?

8 A Yes.

9 Q And the allegation, and let me just go through  
02:46 10 some parts here, and I think this will assist in  
11 summarizing the allegation. Mr. Wolch says:

12 "It says that Fisher was convicted in  
13 Manitoba and wants to dispose of four  
14 outstanding charges against him in  
02:46 15 Saskatchewan. A little puzzling how it  
16 became four charges when he hadn't even  
17 confessed to two of them from what I can  
18 tell."

19 So, again, there is a question there, how did Mr.  
02:46 20 Fisher plead guilty to four when he only  
21 confessed to two. So then the next page.

22 "So, Kujawa is asking the Attorney  
23 General for a direct indictment, now in  
24 our view a direct indictment would mean  
02:46 25 that there be absolutely the minimal



1 publicity possible because it would take  
2 the man directly into Court of Queen's  
3 Bench. You wouldn't have a magistrate's  
4 court where the press hangs out. You  
02:47 5 wouldn't have the regular dockets. Now  
6 you may want to check into this, but  
7 I've talked to some Saskatchewan lawyers  
8 who tell me that direct indictments were  
9 the rarest of the rare. I talked to a  
02:47 10 lawyer named Mark Grayford the other  
11 day. He told me he's never heard of  
12 one. He has been practicing going back.  
13 Why a direct indictment. I don't quite  
14 understand that."

02:47 15 And then again, I think maybe I can just, I  
16 should go to 023107. Mr. Wolch says here:

17 "It's interesting. Fisher's pleas of  
18 guilty are set for Tuesday, 21 December  
19 at 2:00 in the afternoon. If you want  
02:47 20 to find the least amount of time to  
21 attract attention, go in right before  
22 Christmas to High Court at a 2:00 not a  
23 10:00 in the afternoon."

24 Then, again, to page 023109. It says at the  
02:47 25 bottom:



1 "I could walk into high court at 2:00  
2 now and it is highly unlikely anybody  
3 will notice it. And if I have a case  
4 from Vancouver or Regina, no one is  
02:48 5 going to give a shit at 2:00 today. In  
6 fact, walk in at 2:00 in Regina, no  
7 one's around, it's Christmas time. No  
8 one's there. You walk in, you do it and  
9 then to make sure no one even thinks  
02:48 10 about it, especially Fisher, you stand  
11 up there and say oh well we don't want a  
12 trial here, give him concurrent time you  
13 know, who is going to complain. Fisher.  
14 He never got a day for four rapes. Why  
02:48 15 is he going to bitch. He's not going to  
16 be unhappy with that. He snuck through  
17 there beautifully. Not a single day for  
18 four rapes at knife point. And you know  
19 the files closed and a little memo here  
02:48 20 saying the confessions might not have  
21 been voluntary so that's why we did it.  
22 Goodbye. And while all this is going  
23 on, he's got Fisher's file here, and  
24 Milgaard's file here. He's going  
02:48 25 Milgaard's appeal. He's got them both



1 on his desk. They're both sitting  
2 there."

3 And I take it that -- again, and I've skipped  
4 parts of here -- but am I correct, Mr. Sawatsky,  
02:49 5 and we've heard a fair bit of evidence on this  
6 point, that the allegation was something along  
7 the following lines; that when Mr. Karst took the  
8 confession from Mr. Fisher in October 1970 he and  
9 perhaps others became aware that Mr. Fisher was  
02:49 10 the true killer of Gail Miller and that David  
11 Milgaard was innocent, he took steps to cover it  
12 up, Mr. Caldwell became involved in communicating  
13 information to Mr. Kujawa in Regina where Mr.  
14 Kujawa was trying to deal with Mr. Fisher's  
02:49 15 charges quietly to avoid Milgaards, public,  
16 police and others from learning about Larry  
17 Fisher's conviction, that Mr. Kujawa was dealing  
18 with the Milgaard appeal and had the Milgaard  
19 file on his desk at the same time as the Fisher  
02:49 20 file, knew they were connected, and he, Mr.  
21 Caldwell, Mr. Karst and others, perhaps  
22 Mr. Romanow, Mr. Lysyk, knew that Mr. Fisher was  
23 the killer of Gail Miller and took the following  
24 steps to avoid detection; used a direct  
02:49 25 indictment instead of having Mr. Fisher appear in



1 Court, had the matters dealt with in Regina  
2 instead of Saskatoon, had them close to  
3 Christmas, 2:00 in the afternoon, asked for  
4 concurrent time as some part of a deal with  
02:50 5 Fisher to keep it quiet, and as a result, at the  
6 end of that process, this was all part of a  
7 design to cover up and prevent people from  
8 knowing about Mr. Fisher.

9 Now I maybe haven't put it as  
02:50 10 eloquently as others have put it, but that's  
11 basically the guts of the allegation?

12 A I think you've captured it very well.

13 Q And as far as the people involved, it may have  
14 included the people I mentioned, and perhaps some  
02:50 15 others; is that fair?

16 A That's fair.

17 Q And so that, in there, you would be investigating  
18 all aspects of that, what happened in Winnipeg  
19 with Fisher's confessions; correct?

02:50 20 A Correct.

21 Q Why was there a direct indictment, why was it in  
22 Regina, what about the publicity, things of that  
23 nature?

24 A Yes.

02:50 25 Q And if all of that, what I said, was true, and the





1 reason it was done was to cover up or prevent --  
2 to cover up a known killer so that an innocent  
3 person couldn't find out about it directly or  
4 indirectly, that would be something that would  
02:51 5 give rise to the basis of a charge, or likely; is  
6 that correct?

7 A Yes.

8 Q If we can go to 023115. And I think, at this  
9 time, we've heard evidence that Mr. Asper had left  
02:51 10 private law practice, I think September '92, and I  
11 think the Flicker file shows that he had a few  
12 telephone calls with people but really not much by  
13 way of involvement; is that correct?

14 A That's correct.

02:52 15 Q And would you have become aware that Mr. Asper had  
16 played a significant part in Mr. Milgaard's  
17 re-opening efforts?

18 A Yes.

19 Q Did you -- would you have liked to have had an  
02:52 20 opportunity to sit down and have the same type of  
21 interview with Mr. Asper as you had with Mr.  
22 Wolch, or were you, or were you fine with Mr.  
23 Wolch relating this information?

24 A I don't recall not being satisfied that Mr. Wolch  
02:52 25 was providing, you know, material that he had



1 obviously got from Mr. Asper. I may have asked  
2 Mr. Wolch, or Mr. Asper for an interview at some  
3 point in time, but I don't specifically recall  
4 that. I think I was satisfied that I had  
02:52 5 everything here that had been obtained.

6 Q You knew that Mr. Asper had worked in Mr. Wolch's  
7 law firm when he was doing his work?

8 A That's correct.

9 Q And so, here, you ask about Asper's connection.  
02:52 10 Mr. Wolch says:

11 "Let me explain it to you. What  
12 happened is, Joyce Milgaard came in to  
13 see me probably December, January  
14 1985/86 to say my son is wrongfully  
02:53 15 convicted. Will you look into it.  
16 Almost simultaneously around that point  
17 of time, David Asper came to see me. He  
18 was practicing commercial law and he  
19 basically said I live in my father's  
02:53 20 shadow. His father is Isie Asper who  
21 owns Global, SC TV I guess. He is very  
22 famous. He's exceptionally well known  
23 individual and David said I want to do  
24 something on my own. I do criminal law.  
02:53 25 So I gave him a job here. And he



1 started practicing criminal law. When  
2 Joyce came into the office, David just  
3 happened to be around with not that much  
4 work to do, and said David would you  
5 look into this. And he got hooked on it  
6 and I did eventually. And he started  
7 working on the case. That's how he got  
8 involved in the case basically. So he  
9 was always working here. He left here  
02:53 10 for about a year in the middle to go  
11 back with Global and Can West and then  
12 he came back so and he would be the one  
13 who would go see Milgaard or talk to the  
14 media mostly or doing a lot of leg work.  
02:53 15 And after the Supreme Court was  
16 finished, he decided to go back to  
17 Global and Can West, because. He's  
18 insane not to. But that's the whole  
19 story."

02:54 20 And then you say:

21 "So the big thing here is he doesn't  
22 have anything additional here. What he  
23 has you have."

24 Mr. Wolch:

02:54 25 "He shouldn't have anything additional



1                   that I can think of. I do know there is  
2                   a big documentary coming out on Global  
3                   and CTV has a big movie coming out.  
4                   What their researcher's show I don't  
02:54 5                   know, I doubt it is more than we have.  
6                   But there will be a movie coming out at  
7                   the beginning of the year I think. Who  
8                   knows. I think the American networks  
9                   wanted to. It is an interesting story.  
10                  In any event, he shouldn't have anything  
11                  more than that. You're more than  
12                  welcome to talk to him whenever you  
13                  want."

14               And Bruce says:

02:54 15                   "My impression is he would like to talk  
16                   to you."

17                  And I think the file indicates that there may  
18                  have been a few phone calls back and forth, but  
19                  it appears from here that Mr. Wolch is saying  
02:54 20                  "everything he has we have" and that appeared to  
21                  have satisfied you; is that right?

22           A           Yes, yes it did.

23           Q           If we can go to 117. And here is a suggestion,  
24                   again, about, it looks as though they are giving  
02:55 25                   you some information, and it says:



1 "The next portion of this folder is  
2 fairly important I think. And it goes  
3 through the press and there's more to it  
4 than that. But basically it focuses on  
02:55 5 Karst. Keeping in mind that Karst is  
6 the main investigator. Karst goes to  
7 Winnipeg. Karst gets the Fisher  
8 confessions, etc. etc. And yet when  
9 Karst was interviewed several times, he  
02:55 10 denied any knowledge of Fisher  
11 whatsoever. And that in our view goes  
12 to consciousness of guilt. Why would he  
13 deny any knowledge of Fisher."

14 And then Williams:

15 "I take it he took the stand and did you  
16 cross examine him on that."

17 I think this is referring to the Supreme Court.

18 "Yeh."

19 "What did he say."

02:55 20 "He said he came to Winnipeg with  
21 Nordstrom."

22 "No."

23 "Why he lied."

24 "He had a cute answer there."

02:55 25 "He does have a good answer."



1 And then Wolch:

2 "I didn't want to",

3 And then Williams:

02:55 4 "He admitted in Supreme Court that he  
5 lied",

6 Wolch:

7 "Knew about Fisher."

8 Wolch:

02:56 9 "Oh yeh. He admitted he lied but",  
10 "Awfully foolish not to admit there."

11 And Williams:

12 "How would he get the confessions."

13 So, again, this would be one of the allegations,  
14 and we touched on it a bit earlier, that Mr.  
02:56 15 Karst, because of his conduct in 1990 or '91 to  
16 the media, Mr. Wolch was saying this is  
17 consciousness of guilt and shows that he's lying  
18 about what happened back in 1970"; correct?

19 A That's correct.

02:56 20 Q Go ahead to 023125. And, here, Mr. Williams says:

21 "Have you uncovered anything at all that  
22 you don't think that Caldwell gave to  
23 Tallis."

24 Then you say:

02:56 25 "The reason we ask that is that in



1 reviewing some of the stuff we got  
2 there's something from the Supreme Court  
3 they are saying they were satisfied that  
4 adequate disclosure was made."

5 Wolch:

6 "Of the condition of the time."

7 Mr. Sawatsky:

8 "Is there something beyond that now that  
9 you".

10 Mr. Wolch:

11 "Oh yeh. There's something I think is  
12 important if you I'll just show it to  
13 you. You'll see it on tape. And your  
14 knowing of Saskatoon will help  
02:57 15 considerably. Let's say this is Avenue  
16 "O" okay. Here's the alley and here's  
17 where the murder takes place. Right  
18 there. Avenue "N". And here's 20th.  
19 And up here is where Cadrain and Fisher  
02:57 20 live. And here's the bus stop. Here's  
21 Gail Miller down here ...",

22 and I presume he's showing you a map; is that  
23 right?

24 A Yeah, or a sketch.

02:57 25 Q Or a sketch. And I think, if we can scroll down,



1 I think he then goes on to talk about the Crown  
2 theory about her being on Avenue N rather than  
3 Avenue O, and did you become familiar with that  
4 allegation?

02:57 5 A Yes.

6 Q And I think, if I can cut down to -- I think what  
7 the argument put forward here is that the Crown's  
8 theory that she was walking down Avenue N, and  
9 there were some witnesses who could have refuted  
02:58 10 that:

11 "Those two witnesses destroy it. So the  
12 Crown presents a theory that makes no  
13 sense at all that Gail came out of her  
14 door, detoured over to here, went up  
15 Avenue 'N' and it happened over here and  
16 she was dragged this way. Now, the  
17 first obvious question ...",

18 it goes on to talk about that. It says:

19 "What Tallis didn't know was Gail Miller  
02:58 20 had two roommates. Both of whom said  
21 every morning went up Avenue 'O'."

22 And then it goes on to talk about the Merrimans,  
23 and that evidence, which we've heard about.

24 And is it correct to say,

02:58 25 Mr. Sawatsky, that on the issue of disclosure you





1           asked them "lookit, did the Supreme Court not say  
2           there was adequate disclosure?"

3           A       Yes.

4           Q       And they said "at the time, but here's some more  
02:58 5           information that -- or something that either the  
6           Court didn't consider or that you" -- what was  
7           your understanding of what Mr. Wolch was saying  
8           was not decided by the Supreme Court about  
9           disclosure?

02:59 10          A       I think my understanding was that Mr. Wolch was  
11           suggesting that disclosure was perhaps adequate  
12           for the purposes at the time of the trial, but  
13           that there was other material that was around that  
14           should have been disclosed but wasn't, and so I  
02:59 15           think he was encouraging us to have a look at  
16           that.

17          Q       And did you look at the issue in conjunction with  
18           Mr. Fraser about whether or not the Crown properly  
19           disclosed matters to Mr. Tallis?

02:59 20          A       Yes.

21          Q       And, in fact, I think we saw a comment earlier  
22           that the suggestion was that the non-disclosure  
23           may have been obstruction of justice because of  
24           its nature, or perhaps misconduct, or perhaps even  
02:59 25           a lesser breach; is that fair?



1 A That's fair.

2 Q One of those three?

3 A Yes.

4 Q I see it's 3:00, probably an appropriate spot to  
02:59 5 break.

6 COMMISSIONER MacCALLUM: Okay.

7 (*Adjourned at 3:00 p.m.*)

8 (*Reconvened at 3:19 p.m.*)

9 BY MR. HODSON:

03:18 10 Q If we can go back to 023127, and again there's  
11 some discussion here that I won't go through, but  
12 it's some discussion here about what may have  
13 happened the morning of the murder and whether it  
14 was on a busy street, who may have seen it and why  
03:19 15 weren't these people who saw nothing disclosed to  
16 the defence, things of that nature. Does that  
17 generally sound familiar as something put forward  
18 as a concern by the Milgaards at this meeting?

19 A Yes.

03:19 20 Q And then here, example, Mr. Bruce says:

21 "Which they got Murray Dufus standing  
22 right here..."

23 It appears you are looking at a sketch or a map,

24 "...the time that the girl was really

03:19 25 killed at that 10 to quarter to 7 time."



1 Next page:

2 "At 7:00 in the morning, a girl is  
3 murdered, a car is stuck on 20th.  
4 Someone is going to see a car stuck on  
03:19 5 20th. 20th is a popular street. You  
6 know, three busses would have gone by in  
7 the course of the time of the so called  
8 murder. Just carrying through with some  
9 of the stuff here, you might find it  
10 interesting."

11 And Bruce says:

12 "I think the Supreme Court did, to be  
13 fair, the Supreme Court did hear all of  
14 this, but whether they were paying  
03:20 15 attention or not I don't know."

16 Wolch:

17 "They thought they were getting  
18 everything they wanted."

19 And you say:

03:20 20 "I think our concern was that is it  
21 necessary to look into that because who  
22 criticizes the Supreme Court."

23 And then go on. And can you tell us just, was  
24 the -- was the questioning here saying okay,  
03:20 25 well, what if this information you are giving me,



1           how much of this did you raise, how much of this  
2           was dealt with by the Supreme Court; is that  
3           your --

4           A       I think that's where I was going, yes.

03:20 5           Q       And can you tell us that -- how did, just  
6           generally, the Supreme Court decision, did the  
7           fact that these issues may have been raised at the  
8           Supreme Court, would have been dealt with by the  
9           court in what they were looking at, how, if at all  
03:20 10          did, that affect your, the scope of your  
11          investigation?

12          A       Well, I think that certainly we weren't -- unless  
13          something became very obvious that was incorrect  
14          or that the Supreme Court had missed or something,  
03:21 15          we certainly weren't going to comment on the  
16          quality of their investigation, so to speak, or  
17          their, the evidence tendered, so I think we were  
18          always very careful, particularly at the start of  
19          the investigation, to make sure that, or to look  
03:21 20          very closely at anything that the Supreme Court  
21          had looked at to see where the differences were.

22          Q       And is it correct to say that the fact that it  
23          might have been a matter addressed before the  
24          Supreme Court of Canada did not preclude you from  
03:21 25          looking into it?



1 A No, it didn't, but we certainly took care when  
2 doing so.

3 Q And, for example, I think on the issue of  
4 disclosure, it was talked about in the Supreme  
03:21 5 Court decision, and I think we see later on in the  
6 report actually some mention of that, about the  
7 fact that that issue having recently been dealt  
8 with by the court might influence your thinkings?

9 A Yes.

03:21 10 Q Let's contrast that with the Mackie summary, for  
11 example, we know that the Mackie summary, being  
12 the, you know, the five page document we just  
13 talked about, was introduced at the Supreme Court  
14 and I think dealt with Mr. Karst, so it was  
03:22 15 evidence in some form before the Supreme Court,  
16 but I take it that you and your team fully  
17 investigated that document and anything related to  
18 that document as it related to criminal  
19 wrongdoing; is that fair?

03:22 20 A Yes, they certainly would have, and they certainly  
21 would have reviewed anything that the Supreme  
22 Court would have had to say about that as part of  
23 the preparation for that review.

24 Q And so am I correct if we put it this way, that  
03:22 25 the simple fact that evidence issues, witnesses



1           may have been before the Supreme Court of Canada  
2           didn't preclude you from looking into any issue;  
3           is that correct?

4           A       That's correct.

03:22 5           Q       However, where the Supreme Court of Canada in its  
6           decision made a specific finding with respect to a  
7           specific issue, then you would look a little more  
8           closely at that and say, okay, well, where does  
9           that fit into with what we're looking at?

03:23 10          A       Correct.

11          Q       And again, the fact that they made a finding on it  
12          didn't preclude you from looking into it; correct?

13          A       Correct.

14          Q       But as far as your finding, it might have  
03:23 15          influenced the finding, your finding?

16          A       That's correct.

17          Q       And again, I think we can leave that to the report  
18          where we see that dealt with specifically. And  
19          again, if we can scroll down to the bottom, here's  
03:23 20          a comment about Mr. Tallis:

21                   "The bottom line is also in fairness and  
22                   I have a lot of respect for Tallis, I  
23                   mean, he could have gone and talked ...  
24                   it should have been a red flag as to  
03:23 25                   what is she doing on the wrong street.



1                   Disclosing address didn't even deal with  
2                   that. Like why is she on the wrong  
3                   street. Why would she and he never says  
4                   why wouldn't somebody see. There was  
03:23 5                   no, I mean in all fairness he could have  
6                   gone out and got these people too."

7                   And I think that's talking about the people who  
8                   the police talked to who said they saw nothing;  
9                   is that right?

03:24 10           A           Yes.

11           Q           And then Bruce:

12                   "The extent that Tallis said he looked  
13                   into things seems to be he drove past  
14                   one afternoon at 4 o'clock."

03:24 15           And is the implication, or maybe not even the  
16                   implication, maybe expressly stated, that lookit,  
17                   the Crown had all this, or the police and Crown  
18                   had all this information of all these people who  
19                   saw nothing that morning, that it would have been  
03:24 20           helpful to the defence and they didn't give it to  
21                   Mr. Tallis and so that's wrong, but then, you  
22                   know, Mr. Tallis, he could have gone out and got  
23                   it as well and he didn't, he only drove there one  
24                   afternoon, and so one or both of them somehow  
03:24 25           committed wrong by not finding out about all



1           these people who saw nothing. Was that your  
2           understanding of the allegation, so to speak?

3           A       Yes, it is.

4           Q       And again, that was something that even though it  
03:24 5           was a criminal investigation into obstruction of  
6           justice, you felt it appropriate and necessary to  
7           probe into these allegations made, that both the  
8           police, the Crown and Mr. Tallis somehow were  
9           wrong for not following up on these people in the  
03:25 10          vicinity who saw nothing?

11          A       That's correct.

12          Q       And then so here:

13                    "Yeh. He never had an investigator. He  
14                    didn't talk to any of these people. And  
03:25 15                   they were available and he never  
16                   requested of Caldwell anything in that  
17                   vein. But it would have been, to me it  
18                   would have been a red flag. What is she  
19                   doing on the wrong street. I mean  
03:25 20                   that's just too obvious. I can't quite  
21                   figure that out. Why would you allow  
22                   the Crown to have a theory untested  
23                   after some reason she detoured, on 40  
24                   below to go to a bus. Walked a block  
03:25 25                   out of her way. There's more to it.





1 We'll show you the video, you'll find it  
2 interesting I'm sure. Just for your  
3 information we have here Caldwell's  
4 prosecution report."

03:25 5 So again, that's relating to Mr. Tallis. Go to  
6 the next page, and here Mr. Wolch talks about:

7 "I think they have such blinders on that  
8 they believe they have the right guy so  
9 much that they can't look anywhere else  
03:26 10 and if you look at Caldwell's letters to  
11 the Parole Board it's just outlandish.  
12 I mean first of all there's no need for  
13 a prosecutor to write to the Parole  
14 Board, but he writes letters to the  
03:26 15 Parole Board talking about the crime and  
16 that David should never be released from  
17 jail."

18 And:

19 "Was he asked to do that."

03:26 20 Wolch:

21 "No."

22 "So he just did that on his own."

23 "Yeh."

24 And then scroll down:

03:26 25 "And a lot of it is very misleading,



1 about David's long psychiatric history.  
2 I mean here, keep in mind that Albert  
3 Cadrain by the end of this thing was a  
4 complete basket case and yet Albert  
03:26 5 Cadrain whose evidence was very  
6 important in the trial, knew Milgaard  
7 and told the police and myself of  
8 episodes in Calgary wherein Milgaard had  
9 young girls in his living quarters to  
03:26 10 whom he would supply heroin to the point  
11 where the girls completely lost their  
12 senses. One of these episodes involved  
13 Milgaard inviting Cadrain to have sexual  
14 intercourse with a girl in this state,  
03:26 15 whom Milgaard had in a bath tub filled  
16 with water. I mean it's craziness. He  
17 talks about Milgaards psychiatric state  
18 and his long history of psychiatric  
19 involvement and when you come right down  
03:27 20 to it, he wasn't an angel but he was  
21 nothing like that. He was a wayward  
22 kid. His worst conviction was a theft  
23 of an ..."  
24 "Does he say where he got that."  
03:27 25 "It's all here."



1 "His sources."

2 And I think, if we can go to the next page --  
3 actually, just on this bathtub incident, that was  
4 a matter that your investigators pursued; is that  
03:27 5 correct?

6 A Yes, they did look into that.

7 Q And am I correct that the relevance of that is  
8 this, that Mr. Wolch was saying that this incident  
9 described by Mr. Cadrain, and this was in a police  
03:27 10 report to Mr. Caldwell, about the conduct of Mr.  
11 Milgaard with a bathtub and heroin, was a story  
12 that should have caused Mr. Caldwell and the  
13 police to say Albert Cadrain, you are not  
14 credible?

03:27 15 A Correct.

16 Q And that they either didn't investigate the  
17 incident or, if they did, they should have got  
18 information that caused them to say Albert Cadrain  
19 was not credible?

03:28 20 A Correct, yeah.

21 Q And so that that again would go to misconduct or  
22 criminal conduct of Mr. Caldwell in how he dealt  
23 with the information Albert Cadrain gave about the  
24 bathtub incident?

03:28 25 A Correct.



1 Q And so is it correct to say that if Mr. Wolch  
2 hadn't raised the bathtub incident and Cadrain  
3 with you in this investigation, it wouldn't have  
4 been a matter that you people would have pursued  
03:28 5 as far as criminal conduct, or identifying  
6 criminal conduct?

7 A I wouldn't go that far. It's possible that as we  
8 did the investigation it became evident to us, it  
9 may be something that we wanted to look in on on  
03:28 10 our own, look into on our own.

11 Q So if he didn't provide it to you in the course of  
12 your investigation, one of your investigators said  
13 lookit, this information might tend to show that  
14 Mr. Caldwell committed misconduct because he  
03:28 15 didn't check out -- or he should have known that  
16 Mr. Cadrain was not credible based on this story?

17 A Right. If the team assigned to that, to  
18 investigate the background had come upon that  
19 information themselves and felt it was worth  
03:29 20 pursuing, then we would have pursued that as well.

21 Q So let's just follow this one through for a bit.  
22 I suppose if it turns out that the story lacks any  
23 credibility or foundation and Mr. Caldwell knows  
24 that, I suppose it could be an indicia of, well,  
03:29 25 that he knows he's not credible and puts him on



1 the stand anyway, that would be one example?

2 A Perhaps, yes.

3 Q And on the flip side, if it turns out that it was  
4 checked into by the police and either was verified  
03:29 5 or corroborated or some information on it, that  
6 that might respond to the allegation -- in other  
7 words, say okay, well, if something like this did  
8 happen, then maybe Albert Cadrain is credible?

9 A Correct.

03:29 10 Q And so again, as you told us earlier, until you  
11 follow up the allegations, you don't know where  
12 they're going?

13 A Exactly.

14 Q Then the next page -- sorry, go back to the  
03:30 15 previous page, and again let's talk about the  
16 letters to the Parole Board, I read you the one  
17 comment, and then here -- actually, scroll up a  
18 bit, and:

19 "This is unsolicited completely."

03:30 20 This is about the letters to the Parole Board:

21 "And he's dealing with a 17 year old boy  
22 who he's never talked to. He's, there's  
23 a letter back to Caldwell from the  
24 Parole Board, they're back and forth and  
03:30 25 they're just..."



1 And Bruce says:

2 "Buddy buddy with Street here. Street  
3 actually puts a note here on the bottom  
4 of the thing."

03:30 5 And I think Street here is the Parole Board  
6 member that he was being written to; is that  
7 right? I think that's what the documents show.

8 A I think so, yes.

9 Q And the suggestion here that somehow Mr. Caldwell  
03:31 10 and Mr. Street have a friendship that somehow is  
11 suspicious in some nature; is that correct?

12 A That's correct.

13 Q And then:

14 "Oh yeh. I mean he's really, letters  
03:31 15 back and forth and he uses Dr. McDonald  
16 a psychiatrist as one of the guys he is  
17 relying on from opinions of Milgaard and  
18 McDonald had seen Milgaard once in his  
19 life for barely an hour. But his  
03:31 20 letters back and forth to the Parole  
21 Board which shows his objectivity. He's  
22 really intimate with, letters back and  
23 forth."

24 Williams:

03:31 25 "What are the dates."



1 Wolch:

2 "All through the 70s up to 77. 72, 77  
3 he's still writing."

4 Bruce:

03:31 5 "It's my impression that he kept on  
6 writing to the Parole Board up until  
7 Asper got him to stop."

8 And then goes on to talk about those details. So  
9 I take it that the Bobs Caldwell writing to the  
03:31 10 Parole Board after the conviction was an area  
11 that you investigated to see if that either  
12 supported or was part of some criminal conduct on  
13 his part?

14 A That's correct.

03:31 15 Q And then to the next page -- and next page,  
16 please -- next page -- and here's a discussion  
17 again about Mr. Caldwell and Mr. Tallis'  
18 relationship and Mr. Bruce says:

19 "He's talking about how suggestions were  
03:32 20 made to him by the prosecution..."

21 And this is Ron Wilson,

22 "...to get the color of the knife handle  
23 right and give him a little more time  
24 than Milgaard's away from the car. This  
03:33 25 is a transcript of an audio tape that



1 Peter Carlyle Gorge made with Caldwell  
2 in 1980."

3 Wolch:

4 "What is the purpose of it."

03:33 5 Bruce:

6 "I'll give them the audio tape as well."

7 Wolch:

8 "No but is there anything in there."

9 Bruce:

03:33 10 "Well he does say..."

11 And this is Caldwell,

12 "...at one point that he and Tallis

13 worked once together before and put a

14 guy away. Then, and if somebody had a

03:33 15 stress analyzer, there appears to be an

16 incredible amount of stress come into

17 his voice when he finds out Peter

18 Carlyle Gorge has been talking to Nichol

19 John and maybe her memory is coming

03:33 20 back. But then when he finds out she

21 has no recollection of it, a huge sigh

22 of relief just about echoes."

23 Wolch:

24 "You have a tape of this."

03:33 25 I'll get it. So again, this would be an





1           allegation about a couple of things; one,  
2           suggesting that Mr. Caldwell and Mr. Tallis  
3           worked together, and I think this is expanded  
4           upon by Joyce Milgaard, is that right, in your  
03:33 5           later interview?

6       A       Yeah. I just, I think, need to back up a wee bit  
7           on that --

8       Q       Sure.

9       A       -- because I need the comments before that.

03:34 10      Q       Sure.

11      A       The discussion before that.

12      Q       And I think that's the -- I'm afraid -- it looks  
13           like it's jumping around a bit, so there's not  
14           much --

03:34 15      A       Are we on the page before that now?

16      Q       No. If the page before --

17      A       That's okay, this might be enough right here.

18      Q       Yeah, and there's talking about Caldwell's notes  
19           when talking to Roberts, and then go to the next  
03:34 20      page, I think this is a discussion, there's a  
21           transcript of Peter Carlyle-Gordge, his interview  
22           with Mr. Caldwell in '83. Do you remember getting  
23           that information?

24      A       Right, I remember now, yeah.

03:34 25      Q       Okay.



1 A Yeah.

2 Q Sorry, I should have pointed that out.

3 A I remember what this is about.

4 Q And so again I think Mr. Bruce is saying lookit,  
03:34 5 when Carlyle-Gordge talked to Caldwell in '83,  
6 Caldwell talked about he and Tallis working  
7 together to put a guy away, and then, according to  
8 Mr. Bruce, listening to the tape, he senses that  
9 Caldwell, I guess when he finds out Peter  
03:35 10 Carlyle-Gordge has been talking to Nichol John and  
11 maybe her memory is coming back, that Mr. Caldwell  
12 becomes very nervous about that, and I take it,  
13 would that be -- what would be suspicious about  
14 that or what did you read into that?

03:35 15 A Well, I think the suggestion was that it perhaps  
16 would, Nichol John would be able to provide  
17 evidence that would show some sort of misdeed on  
18 the part of Mr. Tallis or someone else.

19 Q Okay. Then if we can go to the bottom of this  
03:35 20 page --

21 A Or sorry, Mr. Caldwell as well as I look back on  
22 this.

23 Q And again it looks as though -- it looks as though  
24 you are going through documents and as they find a  
03:35 25 document they talk about it and they give it to



1           you. Does that maybe explain --

2       A       That's correct.

3       Q       -- some of the jumping around here?

4       A       Yeah.

03:35 5       Q       And then Bruce says:

6                       "Maybe you've got the xeroxes and the  
7                       copies. This is his affidavit to  
8                       Pearson which has got this other stuff  
9                       on the back of it where they ask  
03:36 10                      Caldwell in here specifically about that  
11                      list that was found..."

12           And again this is talking about Mr. Caldwell's  
13           affidavit before the Supreme Court, and Wolch:

14                       "Now we're back to the suggestion box.  
03:36 15                      ... What is all this."

16           Bruce says:

17                       "Looks like my writing. Yeh."

18           Wolch:

19                       "I just don't want to get too off the  
03:36 20                      track."

21           Next page, Bruce:

22                       "I think it somewhat significant that  
23                       they disappeared the murder weapon out  
24                       of this case."

03:36 25           Wolch:



1 "The murder weapon went missing. It was  
2 given away. It doesn't matter."

3 Bruce:

4 "They passed off the paring knife as the  
03:36 5 murder weapon."

6 Williams:

7 "Why."

8 Bruce:

9 "A review of the evidence disclosed that  
03:36 10 the paring knife blade was found broken  
11 impacted in the snow under the girl's  
12 body. The girl was lying face down with  
13 her left side more upward than her right  
14 side. She's got three puncture wounds  
03:36 15 through the coat into the prosterior of  
16 her left lung lobe which, one of those  
17 is the fatal wound. They've got to be  
18 the last, I would suggest to you,  
19 because these wounds are made by  
03:37 20 somebody standing over the girl's body.  
21 .. angle of the blade, you know when  
22 people have a knife and they stab with a  
23 blade the wound will be made like this.  
24 The fatal wound on her body is like  
03:37 25 this, indicating to me that somebody



1                   probably did it to her from the side,  
2                   which would make her prosterate."

3                   Maybe that's prostate -- or prostrate.

4           A           Prostrate.

03:37 5           Q           Wolch:

6                   "I have no doubt there was two knives,  
7                   but what is the purpose."

8                   And this appears to be a discussion between Wolch  
9                   and Bruce. Bruce:

03:37 10                  "But I'm saying that the fatal knife is  
11                   the one, the knife that did the fatal  
12                   wound, you know, because the girl's on  
13                   top, nobody put the knife underneath her  
14                   after they killed her with it. It's  
03:37 15                  broken because it's a flimsy cheeing  
16                   little paring knife. It's blown up in  
17                   the fuery of the attack, he's through  
18                   the handle away, he's pulled out this  
19                   other real good knife and used it to  
03:37 20                  finish her off and it's flown out of his  
21                   hand and gone through the fence and  
22                   turned up a month later."

23                  Wolch:

24                    "But the knife was given back to the  
03:37 25                  investigator during the trial, I think



1 it was."

2 Bruce:

3 "Tallis, difficult to read Tallis. He  
4 comes, he very early in the Preliminary  
03:38 5 Hearing says that there was a melting,  
6 he brings it out in his testimony in  
7 examining or cross examining Kleiv that  
8 there was a melting operation went on at  
9 the scene of the crime after. A month  
03:38 10 later. Built this plastic and started  
11 melting the snow. Was anything found he  
12 asks. That's when this knife comes out.  
13 The knife, he's led to believe  
14 originally by Kleiv is a double edged  
03:38 15 knife. He gets into this whole business  
16 of some of these wounds, he's got these  
17 photographs, that some of these wounds  
18 look like they're sharp on both  
19 edges..."

03:38 20 Just scroll down, he asks Kleiv, and he's talking  
21 now about Tallis' examination of Kleiv. Just go  
22 back up.

23 "He's asked Kleiv to tell where the  
24 knife is now, nobody will tell him where  
03:38 25 the knife is. .. I don't know.



1                   Somebody gave it to so and so and  
2                   somebody took it and their wife was  
3                   sharpening it you know and he just gets  
4                   bull shitted around completely about  
03:38 5                  this knife and just forgets about it.  
6                   It's, I wonder, because here's Tallis  
7                   coming up with thing about the melting  
8                   operation. How does he know from the  
9                   melting operation. I never saw anything  
03:39 10                or anybody told him that. It's not, in  
11                  any of the information of the stuff  
12                  that's disclosed to him, I can hardly  
13                  that they didn't report this knife that  
14                  was found as a result of the melting  
03:39 15                operation, but there is a picture  
16                  appeared in the Star Phoenix. Now if  
17                  he's reading the Star Phoenix why the  
18                  hell doesn't he know that there was a  
19                  rapist active in the neighbourhood."

03:39 20                Again, I think this is Mr. Bruce's comment on  
21                  Mr. Tallis suggesting that something suspicious  
22                  is going on with this second knife with  
23                  Mr. Tallis; correct?

24           A           Correct.

03:39 25           Q           And that's something that you investigated?



1 A Yes, we did.

2 Q And then if we can scroll down, please, and then  
3 Bruce says:

4 "It was a 6" long bone handled hunting  
03:39 5 knife with a whole in the side of the  
6 handle where they believed a compass had  
7 once been."

8 "His name is Oliver. Now, I started  
9 ranting about this knife to Keith

03:40 10 Rosilecky who was writing the movie for  
11 CTV. And he and Joyce and another guy  
12 whose working on the documentary for  
13 Global here in Saskatchewan and they  
14 went and they talked to Oliver. I

03:40 15 wouldn't have done this. But they went  
16 and they said that she would like to  
17 talk to you about your involvement in  
18 the Milgaard case. And he said I didn't  
19 have hardly anything to do with that at  
03:40 20 all. And he said, well you found this  
21 bone handled knife here he says. And  
22 then you got it back. And he said I  
23 don't want to talk about that, you'll  
24 have to come and see me at the station.

03:40 25 So they went to the station the next day





1 and got the official ... This just  
2 happened six month ago..."

3 Etcetera. And Wolch:

4 "Reports are here. Basically what's  
03:40 5 very curious is that February, January  
6 28th, 1970, it was given by Caldwell  
7 back to Oliver that would have been  
8 during the trial."

9 And then Bruce:

03:40 10 "Two days before the trial was over.  
11 Obviously, Oliver saying I want that  
12 knife back, I want that knife back and  
13 everybody's saying hold your horses and  
14 Caldwell finally when it's obvious  
03:40 15 Tallis is never going to ask about it  
16 again, because I don't believe Tallis  
17 brings it up at trial. Tallis brings it  
18 up, loses it and forgets about it  
19 completely in the preliminary hearing."

03:41 20 And then scroll down, here, Bruce:

21 "It's a trophy. He gets it back. It's  
22 a trophy just like Gail Miller's wallets  
23 a trophy. Just for a different guy for  
24 a different reason."

03:41 25 And then:



1 "Ask Oliver I guess if he's still got  
2 the knife."

3 So that lengthy review there, was it your  
4 understanding then that the theory was that the  
03:41 5 maroon-handled paring knife that was believed to  
6 be the murder weapon was not, according to  
7 Mr. Bruce and Mr. Wolch, the murder weapon, but  
8 the bone-handled hunting knife was?

9 A Correct.

03:41 10 Q And that somehow between Mr. Oliver, Mr. Caldwell  
11 and Mr. Tallis, one or all three of these people  
12 did something improper, criminal, in dealing with  
13 the knife, and somehow it didn't become evidence  
14 at trial?

03:41 15 A Correct.

16 Q And so did the bone-handled hunting knife become a  
17 significant part of your investigation team's  
18 investigation?

19 A Yes, it did.

03:41 20 Q And would it be correct to say that that would be  
21 to see whether or not, whether Mr. Caldwell,  
22 Mr. Tallis or Mr. Oliver were involved in criminal  
23 obstruction of justice with respect to what, if  
24 anything, they did with this bone-handled hunting  
03:42 25 knife?



1 A Yes.

2 Q 023138, I'll point this out again, this is a  
3 further discussion about the Schellenberg incident  
4 and the bathtub incident. I won't go through it,  
03:42 5 but just note the page number for the record, and  
6 again what Mr. Bruce says:

7 "I'm interested. I'll tell you why. If  
8 I were to talk to Shelinberg and I said  
9 did they ever talk to you and he says  
03:42 10 yeh and I said well what did they say.  
11 What did they say or what did they ask  
12 you or what did you tell them.

13 Shelinberg said I said Cadrain was out  
14 of his god damn gord."

03:43 15 And so I think the suggestion here is that the  
16 police did talk to Schellenberg who said Cadrain  
17 is crazy and that was then concealed from the  
18 defence and should have been used by the  
19 prosecutor and the police to say Albert Cadrain  
03:43 20 is not credible?

21 A Correct.

22 Q Next page, and again on the Schellenberg thing you  
23 say:

24 "The other thing is --"

03:43 25 And on the previous page you are talking about



1 Schellenberg, you say:

2 "The other thing is, what does this have  
3 to do with anything anyhow."

4 Wolch:

03:43 5 "You're right but, but you read up here  
6 you got police report where this Cadrain  
7 started off knowing nothing at all and  
8 is building every day knowing more and  
9 more has now got to the point where  
03:43 10 they're out in Calgary and Milgaard is  
11 taking virgins on heroin into bathtubs  
12 so when he defrocks them the blood will  
13 be easily washed away. And he then  
14 writes the Parole Board saying look at  
03:44 15 this man, he got to keep him in jail,  
16 he's giving heroin to these girls and  
17 have intercourse in a bathtub..."

18 And then Bruce:

19 "Shelinberg can show whether Caldwell  
03:44 20 found out this was bull shit or not."

21 And Wolch:

22 "And kept on going on it. And carried  
23 it on."

24 And then at the bottom, scroll down, maybe this  
03:44 25 is the --



1 "So you don't think it would be somewhat  
2 criminal for Caldwell for them to find  
3 out that Cadrain was out of his gord and  
4 still carrying on with this whole case."

03:44 5 And that maybe summarizes it, saying lookit,  
6 that's the criminal obstruction that they are  
7 alleging, is that Caldwell found out, based on  
8 the Schellenberg incident, that it wasn't  
9 reliable and yet continued on; is that correct?

03:44 10 A Correct, yeah.

11 Q Go to 023141, I think this is dealing with Nichol  
12 John, and I think there's some questions here  
13 about her evidence and Wolch says:

14 "I think if somebody sat down with her,  
03:45 15 it might be possible to say Nichol, no  
16 one's going to hurt you, no one's going  
17 to bother you, just tell us the truth.  
18 You know, and I bet she would say to  
19 you, yeh I got scared and I made up the  
03:45 20 story that you wanted to hear. And then  
21 when I got to court I couldn't go  
22 through with the bull shit so I didn't  
23 want to get in trouble for lying, so I  
24 said I couldn't remember. Simple.

03:45 25 Instead of all this psychiatrists .. and



1 bull shit, you don't forget murders and  
2 rape. And you don't screw the murderer.  
3 You don't party after you've seen a  
4 rape, you just don't."

03:45 5 So again, that would have been the theory or  
6 position on Nichol John, that -- as an  
7 explanation as to how she ended up giving the  
8 statement that she did?

9 A Yes.

03:46 10 Q Next page, there's a discussion here about the  
11 compact or cosmetic bag, and that's a matter you  
12 were familiar with, whether -- I think there was  
13 evidence at trial that David Milgaard, after  
14 leaving Saskatoon, grabbed either a cosmetic bag  
03:46 15 or a compact from Nichol John who found it in the  
16 glove box and threw it out the window; is that  
17 right?

18 A Yes, that's right.

19 Q And I suppose the importance of that, if it did  
03:46 20 happen, is it might be evidence that would tend to  
21 be incriminating, I think that was the view by the  
22 investigators and at the time of trial; is that  
23 correct?

24 A That's correct.

03:46 25 Q And I suppose if it didn't happen and yet people



1           gave evidence about that, that it might be  
2           indicative of improper police questioning as to  
3           why would these witnesses say this happened if it  
4           didn't happen?

03:47 5           A           Correct.

6           Q           And so again, it would be important for the  
7           criminal investigation, but also may also bear on  
8           David Milgaard's guilt or innocence?

9           A           Correct.

03:47 10          Q           And here, Robert Bruce says:

11                       "I spent a lot of time investigating  
12                       this compact incident and tracked it  
13                       through all of the statements and  
14                       testimony. And until Tallis signed on  
03:47 15                   to it, I was totally convinced, well I'm  
16                       still totally convinced that it's bull  
17                       shit, that it never happened. If he  
18                       threw anything out the window, it was a  
19                       coke can and a potato chip bag."

03:47 20          Sawatsky:

21                       "So have you asked David about that.  
22                       What did he say."

23          Bruce:

24                       "You can't ask David about any of this  
03:47 25                   stuff. You know, he just. It was a



1 non-day, a nothing day. There's nothing  
2 in the list of instructions that he gave  
3 to Tallis, that Tallis denies he ever  
4 got that mentions it."

03:47 5 So it appears here that the allegation is that  
6 the compact never happened and that somehow  
7 Tallis is wrong when he says David Milgaard told  
8 him it did happen?

9 A Correct.

03:47 10 Q And did you view this as being part of an  
11 allegation that Tallis was giving false  
12 information about the compact bag perhaps as part  
13 of his collusion or whatever else was being  
14 alleged against him?

03:48 15 A I don't know that at this point I had reviewed  
16 Mr. Tallis' testimony in the Supreme Court.

17 Q Okay.

18 A And I certainly hadn't interviewed him, so no, not  
19 at that time.

03:48 20 Q But again, just to go back, the suggestion here is  
21 lookit, the compact thing didn't happen, and  
22 Mr. Bruce says:

23 "...until Tallis signed on to it, I was  
24 totally convinced, well I'm still  
03:48 25 totally convinced that it's bull shit,





1                   that it never happened."

2                   Which means then that when Mr. Tallis says David  
3                   Milgaard told me it happened, which he testified  
4                   at the Supreme Court -- what I'm trying to get is  
03:48 5                   was your understanding that what Mr. Bruce was  
6                   saying is lookit, Tallis is mistaken or this is  
7                   part of a bigger wrong that he's part of?

8           A           Yes, I understand you now. Yes, that's correct.

9           Q           And it was the latter one?

03:48 10          A           Yes.

11          Q           Or both?

12          A           No, the latter one.

13          Q           The latter one. So that you took this as saying  
14                   lookit, Tallis is part of some cover-up and now  
03:49 15                   he's lying about saying David Milgaard told him he  
16                   threw the compact out?

17          A           Correct.

18          Q           And 023147, and you say at the bottom:

19                   "Exactly. And the second question I  
03:49 20                   want to throw at you is .. I guess the  
21                   question in my mind is that is really  
22                   our concern isn't David's guilt or  
23                   innocence, but I don't think we can  
24                   totally divorce ourselves from thinking  
03:49 25                   about it and. Let's say that for a



1 minute here, that they did encounter her  
2 walking along the way and they decided  
3 they were going to rob here. The three  
4 of them. So they pulled into the alley,  
03:49 5 they grabbed her, threw her in the car,  
6 took her clothing and while she was in  
7 the car, they got carried away and raped  
8 her and then they, then he got out of  
9 the car with her and ended up killing  
03:50 10 her."

11 Mr. Wolch:

12 "Sure."

13 Mr. Sawatsky:

14 "Now of course, both Nichol and Wilson  
03:51 15 are accomplices to murder. So the only  
16 way they have have of saving themselves  
17 is to lie and of course their lies,  
18 under pressure they admitted to pieces.  
19 What are your thoughts on that. How do  
03:51 20 we deal with that in our own minds  
21 here."

22 So let me just pause here. What was the purpose  
23 of posing that to Mr. Wolch? And I can go  
24 through the answer, if you'd like, if that may be  
03:51 25 of assistance?



1 A It may be because what I was trying to do was just  
2 explore further with Mr. Wolch, you know, some  
3 theory about the murder, and of course Nichol and  
4 Ron Wilson, the statements that they gave to the  
03:51 5 police.

6 Q So in other words the theory that's saying "okay,  
7 you Mr. Wolch say Cadrain" -- or pardon me --  
8 "Wilson and John were pressured and they made up  
9 lies", and you put back to him, "okay, did you  
03:51 10 consider that maybe they were pressured and did  
11 give lies because they were involved"; --

12 A Yes.

13 Q -- is that right?

14 A Exactly.

03:51 15 Q And did that, that a less-than-innocent  
16 explanation for subsequent false statements would  
17 be that they were part of the incident and trying  
18 to cover up, --

19 A Correct.

03:52 20 Q -- and you were just posing that to say "what do  
21 you think about that?"

22 A Yes.

23 Q And I suppose in that case, if the police did  
24 wrongly influence or did pressure these witnesses  
03:52 25 and they did give false evidence but it was to



1 protect their own involvement in the crime that  
2 they were involved in, that would be relevant in  
3 considering an obstruction -- of whether or not  
4 there had been an obstruction of justice.

03:52 5 A Yes, it would.

6 Q I think the answer, well:

7 "Where they were going was to Cadrain's  
8 house. It's common ground that he was  
9 able to recognize Cadrain's address  
03:52 10 because of the church on the corner.

11 That was his land mark."

12 And then they go on to discuss, I think Mr. Bruce  
13 and Mr. Wolch, as to why they don't think what  
14 you pose is accurate. If we could then go to  
03:53 15 023157, and then at the bottom, and they are  
16 talking here about:

17 "Two people living in the same house.

18 ..",

19 namely Fisher and Milgaard, sort of the  
03:53 20 coincidence of those people being in the same  
21 house the morning of the murder. And you say:

22 "We sure are running into coincidences.

23 What really",

24 and then Bruce says:

03:53 25 "That's what the Justice Dept. said



1 about the rapist in the basement. You  
2 know we figured that the first  
3 application was a lead pipe cinch once  
4 the Fisher information was .. rapist  
03:53 5 living in the same. At the end of the  
6 trail... Coincidental isn't it. I mean  
7 that was the extent.. The Minister of  
8 Justice."

9 And then:

10 "Caldwell is exceptionally good friends,  
11 I understand, with Ray Natyshyn. We  
12 heard, I heard that the reason the first  
13 application was ..",

14 and then a break:

03:54 15 "is because the word came from the Prime  
16 Minister's office ...",

17 "I thought maybe for a long time he was  
18 the Justice Minister when Caldwell got  
19 in with the Justice Dept. but the timing  
03:53 20 wasn't",

21 etcetera. And did you understand this to be,  
22 Mr. Sawatsky, a suggestion that, on the first  
23 application under Section 690, that as part of  
24 the coverup Mr. Caldwell went to his friend Ray  
03:53 25 Hnatyshyn, who was in government at the time --



1 I'm not sure if he was the Governor General but  
2 in government at the time -- and that that may  
3 have explained why the first application was  
4 dismissed?

03:53 5 A That's correct.

6 Q And so that would then bring Mr. Hnatyshyn into  
7 the suspects that you were investigating as part  
8 of criminal obstruction of justice; is that  
9 correct?

03:53 10 A That's correct.

11 Q If we can scroll down to the bottom, I'm sorry,  
12 here, that Williams says, well:

13 "What would be the bottom line here.

14 What is the whole, I know obviously  
03:53 15 you're looking at saying well Milgaard  
16 didn't do it and Fisher did it, can he  
17 still be charged and is there enough  
18 evidence."

19 And so I take it the position put forward by Mr.  
03:54 20 Wolch was that lookit, not only are we saying  
21 David Milgaard didn't do it, but Larry Fisher did  
22 commit the murder; is that correct?

23 A Yes.

24 Q And then obviously, if there was the basis to lay  
03:54 25 a charge against Larry Fisher for the murder of



1 Gail Miller, that would essentially -- or assist  
2 in answering the question as to whether or not  
3 David Milgaard did it; correct?

4 A Correct.

03:54 5 Q Perhaps, if he was convicted, it would answer the  
6 question; if he was charged with the crime, it  
7 might assist in addressing David's -- Milgaard's  
8 guilt or innocence?

9 A Correct, yeah.

03:54 10 Q And here Wolch says:

11 "What I recommend that from the  
12 beginning is that they assign an  
13 independent prosecutor, let's say  
14 Alberta. Anybody who has not been  
03:54 15 tainted with the case before. Someone  
16 fresh, have the Milgaard Fisher evidence  
17 presented to him. What do we have on  
18 Larry Fisher. Have him or her say we've  
19 got enough to prosecute, we don't have  
03:54 20 enough to prosecute him or we should get  
21 more. Direct an investigation. Have  
22 investigators say bring me all you got  
23 on Fisher and what you think we can do  
24 and then have somebody say we haven't  
03:55 25 got nothing or we do have enough.



1 That's all."

2 You say:

3 "Maybe that'll form part of our report  
4 here to."

03:55 5 Mr. Williams says:

6 "I'm was just wondering if the  
7 prosecutor shouldn't sit in here  
8 sometime."

9 Wolch says:

03:55 10 "You mentioned to me Fraser. If Bruce  
11 Fraser saw everything on Fisher and he  
12 said it is hopeless, we can't prosecute  
13 him, I'm satisfied. He's an honest guy  
14 doing his job. If he says I think we  
03:55 15 should keep the file open, and you guys  
16 should go out and try to find more, see  
17 if you can get a little more. If we get  
18 a little more we can get him. Try some  
19 trickery, try befriending, confessions,  
20 who knows. That's fine too. If he says  
21 we got enough now to prosecute that's  
22 fine too. An honest appraisal is all I  
23 ask for. I'll be happy with that."

24 A couple of questions on that. Did you in fact,  
03:55 25 at the end of your investigation, go to Mr.





1 Fraser, as Mr. Wolch suggests, and ask him  
2 whether he believed that you had a case to  
3 prosecute Larry Fisher?

4 A Yes, that would have been part of the review of  
03:55 5 the -- of our investigation that Alberta Justice  
6 conducted.

7 Q And what was Mr. Fraser's response to that?

8 A That there was no evidence from our investigation  
9 which would provide enough evidence to prosecute  
03:56 10 Larry Fisher.

11 Q And what about this other comment about what  
12 efforts to go out and try and get evidence from  
13 Larry Fisher?

14 A I think what Mr. Wolch was suggesting was that  
03:56 15 we -- you know, I think obviously he was very  
16 committed to his belief that Fisher was  
17 responsible, and I think he was encouraging us or  
18 trying to encourage us to do whatever we could to  
19 try and gather that evidence.

03:56 20 Q And did you have any concerns about that?

21 A Well, I guess I'm a little surprised at the  
22 terminology, but -- you know, trickery, etcetera,  
23 etcetera, but, I mean, sometimes those techniques  
24 are employed in investigations.

03:56 25 Q If we can go to the next page. And then, here,



1 Mr. Wolch:

2 "If somebody can go and say, yes we can.  
3 If Bruce Fraser says we haven't got  
4 enough and we'll never have enough,  
03:57 5 that's fine. He's an honest guy doing  
6 his job. I accept that. That's the one  
7 end of it .. The other area that really  
8 bothers us, and we're convinced of it,  
9 is that in October of 1970, Karst,  
03:57 10 Caldwell, Kujawa knew .. well there was  
11 evidence that would call into question  
12 the Milgaard conviction, a conviction  
13 they probably believed in and said oh  
14 this better not get around. And that's  
03:57 15 really all they say. Romanow? I'd be  
16 shocked if he was part of a conspiracy.  
17 It doesn't ring true to me. And I've  
18 never met the guy. It doesn't ring true  
19 that they would bring him into this and  
03:57 20 say let's cover it up. I don't buy that  
21 but, unless this guy has got some very  
22 cogent evidence that doesn't, I don't  
23 think he goes any further than Karst. I  
24 mean Karst ... because it's the case of  
03:57 25 his lifetime and this is the case, the



1 biggest and best case he's ever had in  
2 his life, there's no way he doesn't put  
3 the Fisher connection and he lies to  
4 cover it up to all the media and lies  
03:58 5 and lies and lies. He knew bloody well.  
6 Caldwell, here's a case he's led his  
7 life, I mean, when I was first hired by  
8 Joyce Caldwell phoned me up and said  
9 you're wasting your time. I don't even  
03:58 10 know how he found out. But here. I  
11 prosecuted for eight or nine years and  
12 I've done some major murder cases. The  
13 day the guy was convicted I was gone. I  
14 mean I had no. I never once in my life  
03:58 15 went to the Parole Board and said think  
16 about this and think about that.  
17 Personally I'm so upset. I mean I did  
18 some pretty horrendous cases. I did my  
19 job, the guy's convicted and that's the  
03:58 20 end of it. I don't write letters and  
21 follow it for ten years."

22 Scroll back up, please. This comment here  
23 about -- you would have known at this time that  
24 the allegations publicly made, and the  
03:58 25 allegations made to Kim Campbell, were that Roy



1 Romanow was involved, based on what  
2 Mr. Breckenridge said, in a coverup; correct?

3 A Correct, yeah.

4 Q And you were investigating the allegation that Mr.  
03:58 5 Wolch provided to Kim Campbell, and it was  
6 repeated at the press conference, that Roy Romanow  
7 was involved in a coverup; correct?

8 A That's correct.

9 Q And can you tell us, what was your reaction when  
03:59 10 Mr. Wolch said here that:

11 "Romanow? I'd be shocked if he was part  
12 of a conspiracy. It doesn't ring true  
13 to me."?

14 A Well I guess I was a little bit surprised that he  
03:59 15 was sort of, now, backing away from that  
16 accusation, but at the same time it didn't change,  
17 in my mind, the fact that we still had to follow  
18 that up to the very end.

19 Q And, indeed, you investigated Premier Romanow,  
03:59 20 interviewed him as part of -- as a suspect in a  
21 criminal investigation as a result of the  
22 allegations made?

23 A That's correct.

24 Q And, again, at this point it doesn't appear from  
03:59 25 the transcript that you went back and said "well



1           why would you say that now, how come, how come you  
2           said this before", or was it something you would  
3           just leave to your people to go and investigate?

4           A           That's correct.

03:59 5           Q           And then down at the bottom:

6                        "This guy lived the case. So Caldwell  
7                        had to have known that the Fisher  
8                        evidence would taint it. Because Kujawa  
9                        had both .. files on his desk but his  
04:00 10                      assessment is so weird, I mean, even  
11                      know the Supreme Court is silly in  
12                      thinking this is a closed endeavour. I  
13                      mean I don't know how an intelligent  
14                      person can say that. I mean if I come  
04:00 15                      to you and say here's evidence that  
16                      somebody else did the crime isn't that  
17                      cogent. I mean, you know, it's beyond  
18                      me that he can now say the Supreme Court  
19                      is silly in how can they think this is  
04:00 20                      admissible evidence. How can they think  
21                      it's not. I mean if you're charged with  
22                      a crime and you got an eye witness and  
23                      the eye witness said he did it, are you  
24                      telling me in your case you can't bring  
04:00 25                      in the eye witness that says he did it."



1 So, again, it appears here that certainly Karst,  
2 Caldwell and Kujawa are people that are  
3 specifically singled out as people who they are  
4 alleging are part of a criminal obstruction;  
04:00 5 correct?

6 A Correct.

7 Q Go to the next page. And this is where Mr. Bruce  
8 brings up (V14)- (V14)-, and we have been through  
9 this a number of times before, but I take it that  
04:01 10 the (V14)- incident, and again whether she was  
11 assaulted by Mr. Milgaard, Mr. Fisher or somebody  
12 else, I think that was a subject matter of various  
13 police reports as well, and that's something that  
14 your department followed up as a result of this  
04:01 15 issue being put forward in this interview; is that  
16 correct?

17 A That's correct.

18 Q And can you tell us; how did that fit into your  
19 investigation?

04:01 20 A I'm not sure, at this point, that we necessarily  
21 saw it fit in, but I think it was necessary for us  
22 to investigate it to see if any evidence came from  
23 that that would assist us in our overall  
24 investigation.

04:01 25 Q Right. And then next page, and I think there is a



1 discussion here about -- I mean the evidence we've  
2 heard is I think Mrs. (V14)- had indicated she  
3 felt she was raped by David Milgaard, wanted to  
4 see a picture of him, Joyce Milgaard then showed  
04:02 5 her a picture of Larry Fisher and there is a  
6 dispute as to whether or not she identified him.  
7 Mrs. Milgaard says that she thought she did, Mr.  
8 Henderson says no, and according to Mr. Pearson  
9 Mrs. (V14)- says no she didn't, so that was sort  
04:02 10 of the background. And here, scroll down please,  
11 Bruce says:

12 "She told Joyce, she was told by the  
13 police that investigated, came back and  
14 told her that they had caught the guy  
04:02 15 and that it was Milgaard."

16 Wolch:

17 "Joyce pulled a trick on her. Somebody  
18 pulled a trick on her."

19 "They showed her pictures and said  
04:02 20 here's David Milgaard, did he do it. Is  
21 that what happened. Yeh, that's the guy  
22 who did it and it was Larry Fisher's  
23 pictures."

24 And so again, I take it that until you  
25 investigate this matter you're not sure where, if



1 at all, it fits in on the investigation?

2 A That's correct.

3 Q So that's the end of the transcript that I wish to  
4 go through with you. Can you tell us, was the  
04:03 5 entirety of the discussion with Mr. Wolch  
6 recorded, or were there any other discussions  
7 before or after that were not on the tape?

8 A Certainly there was, you know, greetings and  
9 exchange of discussion beforehand, and there was  
04:03 10 also some discussion after the end of -- the tape  
11 was turned off as we were leaving.

12 Q And what was the nature of that discussion?

13 A Well I recall, when we were leaving, I asked Mr.  
14 Wolch if it would be okay if I interviewed David  
04:03 15 Milgaard, and I recall Mr. Wolch's response was  
16 somewhere along the lines of "yes, go ahead, but  
17 you won't get anything from him".

18 I also recall Mr. Wolch making  
19 comment about maybe he is in fact responsible  
04:03 20 because he said, in his practice of law, he had  
21 often run into other lawyers who had had clients  
22 who were convicted of a crime and the lawyer  
23 believed, right up until the time of the  
24 conviction, that the client was in fact not  
04:03 25 guilty.





1 I believe that's pretty well all  
2 the comments that I recall we had afterwards.

3 Q And what did you make, if anything, about that  
4 comment?

04:04 5 A Well it kind of --

6 COMMISSIONER MacCALLUM: Which?

7 BY MR. HODSON:

8 Q The last one, the one about that -- Mr. Wolch  
9 about David Milgaard's guilt or innocence?

04:04 10 A Well, it surprised me, because I wasn't sure  
11 whether he was just playing with my head or just  
12 what he was doing, but it did surprise me as an  
13 unusual comment to be made.

14 COMMISSIONER MacCALLUM: What do you recall  
04:04 15 him saying?

16 A I recall him making a comment, My Lord, to the  
17 extent that perhaps, maybe David Milgaard did do  
18 it, and that Mr. Wolch said that he had known many  
19 lawyers who had had clients who were convicted  
04:04 20 notwithstanding the fact that their lawyer  
21 believed right up until the time of the conviction  
22 that they were innocent.

23 COMMISSIONER MacCALLUM: Okay.

24 A Mr. Wolch also made another comment, that he  
04:04 25 indicated that -- about the panties and the stain



1 on the panties, and he indicated that we should go  
2 ahead and do an analysis there, and that if it  
3 came back to be David Milgaard he was prepared to  
4 argue contamination.

5 BY MR. HODSON:

6 Q And when was that discussion?

7 A That was, I believe, afterwards, on the way out of  
8 the office.

9 Q So at the first meeting?

04:05 10 A Yes.

11 Q And so that he wanted to do the DNA analysis of  
12 the panties, but that if it turned out to match  
13 David Milgaard, he would argue that the panties  
14 were contaminated?

04:05 15 A Yes.

16 Q In other words, that it wasn't him?

17 A Yes, yes.

18 Q And what did you make, if anything, of that  
19 comment?

04:05 20 A I don't know that I took -- I think he was just  
21 suggesting to me that he -- that there could have  
22 been -- the stain could have been contaminated.

23 Q And did you make any notes of any of these  
24 discussions, or --

04:05 25 A I didn't, but I do recall thinking that they were



1 unusual comments, and therefore they sort of stuck  
2 with me.

3 Q So when you were done your interview with Mr.  
4 Wolch, Mr. Rodin and Mr. Bruce, can you tell us  
04:06 5 just -- and, again, I'll go through some documents  
6 -- but just generally, presumably you and Mr.  
7 Williams would have sat down and tried to digest  
8 this; is that correct?

9 A That's correct.

04:06 10 Q And we had earlier saw a document that I think a  
11 couple weeks earlier, once it was determined that  
12 the scope of the investigation, the criminal  
13 investigation, would be much broader than  
14 initially anticipated to cover anything and right  
04:06 15 any wrongdoing; correct?

16 A That's correct.

17 Q And I think at that point you said "okay, this is  
18 going to be bigger than I thought and we may need  
19 more people"?

04:06 20 A Yes.

21 Q After the meeting with Mr. Wolch, Mr. Bruce, and  
22 Mr. Rodin, did you then have a better idea about  
23 how much broader it would be?

24 A Yes. I certainly felt that one of the first  
04:06 25 things I needed to do when I got back to Regina



1 was to talk about enlarging the size of the  
2 investigative team.

3 Q And so can you just tell us generally, is that  
4 what followed up then, you went back to get more  
04:06 5 help?

6 A Yes, and certainly sat down with my supervisor and  
7 advised him that I would require more assistance,  
8 and also took time to have transcripts made of the  
9 interview with Mr. Wolch.

04:07 10 Q And did you, at that point, decide "here's kind of  
11 the numbers that I need, based on what I sort of  
12 sketch out, this is what I would like to have on  
13 my team based on what we think is there"?

14 A I think I was -- I would have liked a couple of  
04:07 15 more investigators but we were -- you know,  
16 certainly didn't have the luxury of having a lot  
17 of investigators available, so I was content with  
18 the number that I have got, that I was able to  
19 acquire.

04:07 20 Q And did you have any -- sort of what was your  
21 initial reaction to all the information that you  
22 were provided and the allegations made; did you --  
23 do you have any recollection of anything standing  
24 out as being noteworthy, or any thoughts you had  
04:07 25 at the time?



1 A I think I was perhaps a bit surprised at sort of  
2 the depth of the allegations, you know, that --  
3 the seriousness of them, and certainly wanted to  
4 ensure that we had captured everything that Mr.  
04:08 5 Wolch had provided, and that we got together a  
6 team that could investigate it very well and very  
7 thoroughly.

8 Q And so I take it it would be, to the extent that  
9 the allegations, the number and who they were made  
04:08 10 against, it would be as important to prove they  
11 are true as to prove they are not true, or to  
12 establish, is that correct, that the investigation  
13 would be to find whether -- the extent to which  
14 they could be substantiated?

04:08 15 A That's correct.

16 Q 060842. Was there anything, any particular  
17 allegation that stood out as anything that  
18 sounded -- that had more of a ring of truth to it  
19 or less of a ring of truth to it than others, or  
04:08 20 was it all just put into the mix?

21 A I think, at that time, I was fairly open-minded  
22 about everything that had been brought up, so  
23 certainly I was prepared to investigate all of the  
24 allegations, you know, with diligence.

04:09 25 Q Did you have any thought in your mind about, if



1 all of what or any of what is said to have  
2 happened is true, how did this not come out at the  
3 Supreme Court hearing; do you remember having that  
4 thought? This would have been five months, six  
04:09 5 months after the Supreme Court had dealt with the  
6 matter at a hearing; did you ever consider or pose  
7 the question "well, if all of this happened, how  
8 come it wasn't put before the Supreme Court of  
9 Canada five months ago?"

04:09 10 A I don't know that I had had a chance to sort of  
11 review the transcripts in the Supreme Court, so I  
12 don't know that this would be evidence that they  
13 would have heard, so I'm not sure if I can answer  
14 the question, I --

04:09 15 Q No, in fair -- are you telling us that so what if  
16 that was the case, you were doing a criminal  
17 investigation, and you would do what -- you would  
18 follow up everything they gave you?

19 A Yes. Thank you for the answer.

04:10 20 Q Okay. I'm getting good at those. 060857, and go  
21 to page -- yeah, 0857. This is a November 30th,  
22 '92 note about -- with Quinney, and it appears  
23 here that Mr. Quinney has the earlier  
24 understanding that, lookit, you are only looking  
04:10 25 at the Breckenridge matter, not everything else;



1 is that right?

2 A That's correct.

3 Q And did that end up getting cleared up?

4 A It did, yup.

04:10 5 Q 060858. And this is December 1:

6 "Fraser called back a short time later.

7 He advises that the D/AG's of Sask &

8 Alberta have discussed this and are

9 clear that the investigators are not

04:11 10 restricted in anyway."

11 And then:

12 "We have scheduled 92 Dec 14 as our next  
13 meeting."

14 If we could then go to 060924, please.

04:11 15 COMMISSIONER MacCALLUM: Could I have that  
16 last doc. ID, please?

17 MR. HODSON: Sure.

18 COMMISSIONER MacCALLUM: 0808?

19 MR. HODSON: 060858 is the page number, the  
04:11 20 doc. ID is 060842.

21 BY MR. HODSON:

22 Q And this is a letter December 3, 1992 from Mr.  
23 Wolch to you, it looks as though it's a follow-up  
24 to the meeting; is that correct?

04:11 25 A That's correct.



1 Q And the first item he provides is the name and  
2 address of the ex-file clerk as Mike Breckenridge.  
3 Would you have had -- do you know whether you  
4 would have had that information from other sources  
04:11 5 before?

6 A Yeah, we did have that information, it was known  
7 to us. But I don't think it had been, I'm not  
8 sure that it had been released publicly, that it  
9 had been talked about in any of the media releases  
04:12 10 or anything up that time, but we did have that  
11 information already.

12 Q And I think, in going through the transcript that  
13 I just went through with you -- and I stand to be  
14 corrected on this -- in the interview with Mr.  
04:12 15 Wolch, other than the discussion on the first page  
16 where he says that Mr. Breckenridge is the, sort  
17 of the least bit of evidence we have, I don't  
18 think there was any other discussion at your  
19 interview about Mr. Breckenridge; is that right?  
04:12 20 I don't think that was in there?

21 A No, I don't think there was, I think you're  
22 correct in that.

23 Q And then, again, you would have been aware, I take  
24 it, that at some point in 1991 the -- Mr. Asper  
04:12 25 and Mr. Wolch were contacted by a member of the





1           Saskatoon Police Department who gave them  
2           information on a confidential basis?

3           A       Yes.

4           Q       And I take it that would be information you wanted  
04:13 5           to get. What was your understanding of what this  
6           person knew, or may have known, or where he fit  
7           in?

8           A       Well I think they were receiving information in a  
9           couple of areas, number one concerning missing  
04:13 10          files, and the second one was sort of about the  
11          atmosphere or the relationships that were present  
12          in the Saskatoon Police Service at the time, that,  
13          you know, one group didn't talk to another group,  
14          etcetera, and that that may have factored into the  
04:13 15          investigation sort of not being conducted  
16          properly. So we felt, I felt, it was important  
17          that we have the name of that person so we could  
18          interview that person and find out what he or she  
19          had to offer.

04:13 20          Q       And on the missing files, if we -- and we've heard  
21          a fair bit of evidence on that, where did that fit  
22          in in your investigation; what was the  
23          significance of that allegation?

24          A       Well, I suppose that it would certainly provide --  
04:13 25          could assist us in determining whether or not



1           there was an obstruction of justice, if someone  
2           had deliberately destroyed material that may have  
3           provided information about the guilt or innocence  
4           of either Mr. Milgaard or Mr. Fisher.

04:14 5           Q           And would you have investigated that issue, then,  
6           for that reason?

7           A           Yes.

8           Q           And was it your -- what was your understanding  
9           that this informant, what information could he  
04:14 10          give you that might assist in that regard then?

11          A           Well I think we were very keen to interview him to  
12          find out what information he could provide, and  
13          could he provide more information than we were  
14          being provided with, you know, by Mr. Wolch.

04:14 15          Q           And then in addition you said as far as the, in  
16          addition to the records there was also some  
17          discussion about -- and I can't recall your words  
18          -- about what was going on amongst the police  
19          officers at the time or police at the time; is  
04:15 20          that another area that --

21          A           Yes, there was -- and I'm sorry, I'm just not  
22          certain where the allegation came from, but I know  
23          there was an allegation that relationships within  
24          the police service were very poor at the time,  
04:15 25          and --



1 Q In 1969?

2 A -- in 1969, and that perhaps one group would  
3 withhold something from another group, and  
4 therefore there was a number of individuals within  
04:15 5 Saskatoon Police Service who believed that Fisher  
6 was responsible, or that Milgaard was not  
7 responsible, and that that information would have  
8 never been exchanged. So there was just a sense,  
9 or an indication to us that there was a climate  
04:15 10 of -- within the police service that may have led  
11 to perhaps a fabrication of evidence or an  
12 obstruction of justice.

13 Q And if that information was coming from this  
14 confidential informant are you telling us that  
04:15 15 that would be why you'd want to explore that?

16 A Exactly.

17 Q Did you have reason to believe that perhaps some  
18 of the other information you received from Mr.  
19 Wolch relating to Saskatoon City Police conduct,  
04:15 20 files, records, etcetera, may be in some -- or in  
21 some part stem from what this informant may have  
22 told them, --

23 A Perhaps.

24 Q -- provided either by hearsay, rumour or whatever,  
04:16 25 that --



1 A Yes, that's certainly possible.

2 Q And how significant was it for your investigation  
3 to learn who this person was and to interview him?

4 A Well, if we were going to lay a criminal charge,  
04:16 5 we certainly needed someone with information. We  
6 couldn't introduce hearsay evidence, so we  
7 certainly needed first-hand evidence about what  
8 was going on, and a witness that could testify, so  
9 it was very important that we identify this person  
04:16 10 and have him or her available.

11 Q And, here, Mr. Wolch says:

12 "Insofar as your request for the name of  
13 our contact ... we have spoken with  
14 David Asper and Paul Henderson, who are  
04:16 15 the only individuals who have spoken to  
16 this contact. We are advised by Mr.  
17 Asper and Mr. Henderson that:

18 (a) our contact has no information  
19 relevant to the Miller murder or the  
04:16 20 Milgaard conviction;

21 (b) our contact knows nothing of the  
22 Fisher cases, nor does he have any  
23 specific knowledge of any subsequent  
24 coverup;

04:17 25 (c) our contact's involvement consisted



1 of retrieving the Nichol's file from  
2 police records and showing it to Paul  
3 Henderson.

4 As our contact has no knowledge  
04:17 5 or information which would be of  
6 assistance, and as the disclosure of his  
7 identity will have severe ramifications  
8 for him, we are taking the position at  
9 this time that we cannot divulge his  
04:17 10 name to you. I am sure that the  
11 R.C.M.P. is sensitive situations where  
12 the identity of contacts or informants  
13 must remain confidential and that you  
14 will understand our position in that  
04:17 15 regard. We have been advised, however,  
16 that if you have any questions which you  
17 would like to ask our contact, you may  
18 put them in writing and we will forward  
19 to him for his reply."

04:17 20 Were you satisfied with this response, in other  
21 words were you satisfied?

22 A No.

23 Q And why not?

24 A Well I think, as an investigator, I wanted to  
04:17 25 assess the value of this person's information



1           myself, and I was not prepared to accept Mr.  
2           Wolch's assessment that this person had nothing to  
3           provide, it -- I mean there is a number of reasons  
4           why this -- he could say that. Number one would  
04:18 5           be maybe the -- he did have more information to  
6           provide but simply didn't want to be interviewed  
7           and didn't want to be part of the investigation  
8           because it would disclose his identity, so we felt  
9           very much that we had to try and find out who this  
04:18 10          person was and find out just what this person had  
11          to offer.

12          Q       And, again, did you draw any conclusions from the  
13                  fact that he wouldn't, he or they wouldn't  
14                  disclose his name, but whether he did or didn't  
04:18 15                have any valuable information to provide?

16          A       Well I guess I was surprised that it would be  
17                  raised during our interview as something we should  
18                  look into and then all of a sudden we were told  
19                  "no, don't bother, because this person has nothing  
04:18 20                to provide", so I think that I felt we had to find  
21                  out whether or not this person has something to  
22                  provide and offer this person the opportunity to  
23                  tell us what he knew.

24          Q       And would go whether it be in support of or to  
04:18 25                  maybe answer some of the allegations?



1 A Yes.

2 Q I mean would it cut both ways, I guess?

3 A It would have, and it may have simply provided  
4 some background information, we may have never had  
04:19 5 to use this person as a witness.

6 Q And were you prepared to make arrangements to  
7 protect this person's identity, in other words to  
8 try and get the information without putting his  
9 job in jeopardy?

04:19 10 A Yes, but we would have needed to have known what  
11 he could provide before we could make any  
12 commitments along those lines.

13 Q And so this is something you've dealt with before,  
14 confidential informants, and there was ways, ways  
04:19 15 to get your information without -- while, at the  
16 same time, protecting his need for  
17 confidentiality?

18 A Yes, certainly, and that's something that we would  
19 have discussed extensively with our advice --  
04:19 20 legal advisors, Messrs. McCrank and Fraser.

21 Q Then we scroll down. The blanket, which I had  
22 raised earlier, and I take it this is something  
23 that ended up spending -- or that your  
24 investigators followed up on. You maybe just want  
04:20 25 to quickly read that. I think there was a



1 suggestion that a blanket found, a blood-stained  
2 blanket may have been something that Larry Fisher  
3 had in his car from Cliff Pambrun, or something  
4 like that?

04:20 5 A Yes.

6 Q And that was something that your people  
7 investigated?

8 A Yes.

9 Q Next page. Paragraph 5 is (V14)-, we've touched  
04:20 10 on that. Paragraph 6, Mr. Wolch says about the  
11 hunting knife:

12 "We can advise that we are in the  
13 process of putting together the file  
14 material available touching upon this  
04:20 15 issue."

16 And then:

17 "Constable Oliver is apparently a desk  
18 sergeant now. We believe that this  
19 knife may in fact be crucial evidence  
04:20 20 and that attempts should be made to  
21 acquire it or, barring that, to obtain  
22 as complete a description of the knife  
23 as possible."

24 And, again, that would just supplement what was  
04:20 25 provided to you at the earlier meeting?





1 A Yes.

2 Q As well, Mr. Wolch says:

3 "You may wish to contact Dave Roberts at  
4 The Globe and Mail..."

04:21 5 And I think you ended up, or your investigators  
6 did contact various media people; is that right?

7 A Yes, yes.

8 Q And they were put forward to you as people who had  
9 done some of their own witness interviews; is that  
04:21 10 correct?

11 A That's correct, that they were put forward as  
12 people who may have something to offer our  
13 investigation.

14 Q And then as well Mr. Wolch says:

04:21 15 "We can advise you that Joyce Milgaard  
16 is very gratified that there is now an  
17 investigation being conducted into a  
18 possible cover-up, and into other  
19 aspects of the case. She is of course  
04:21 20 anxious to speak with you and provide  
21 whatever assistance she can."

22 And then goes on to give some contact  
23 information. And I take it that you did in fact  
24 follow up with her and have a fairly lengthy  
04:22 25 interview with her?



1 A That's correct.

2 Q Scroll down, the letter says:

3 "Paul Henderson, the investigator for  
4 Centurion Ministries, has indicated his  
04:22 5 willingness to speak with you."

6 A contact number. Do you recall, I think you  
7 said earlier there was some correspondence with  
8 him. Did you ever get a chance to interview him?

9 A I don't believe we did.

04:22 10 Q What about Neil Boyd, the Boyd report, do you  
11 recall whether your investigators would have  
12 talked to that or reviewed that report?

13 A I know there would have been follow-up on that. I  
14 don't recall offhand what the result of that was.

04:22 15 Q Okay. And then at the bottom:

16 "As I believe we have already advised  
17 you, there are numerous documents  
18 missing from the prosecution file. We  
19 are currently attempting to identify the  
04:22 20 missing documents. Once we compile a  
21 list of missing documents, we will  
22 forward same to you. In the interim, we  
23 would suggest that it might be most  
24 helpful to your investigation for you to  
04:23 25 secure a complete copy of the



1 prosecution file, which we believe would  
2 be numbered 001 to over 500."

3 And that would be an issue that you people would  
4 follow up on, whether there was missing documents  
04:23 5 from the prosecution file?

6 A Yes.

7 Q Were you familiar with what, or was that handled  
8 by somebody else as far as what, what you were  
9 looking at there or what the concern or allegation  
04:23 10 was?

11 A I know that that was followed up on, I don't  
12 recall the results, but certainly I guess the  
13 allegation would be that certain documents were  
14 missing that may have shown David Milgaard was  
04:23 15 innocent.

16 Q And I think what this Commission has heard by way  
17 of evidence is that the Gail Miller murder  
18 investigation file, the police file, the  
19 investigation reports were numbered sequentially  
04:23 20 1 to 500 and something and that's how the police  
21 kept track of the investigation reports. When the  
22 file was turned over to Mr. Caldwell for  
23 prosecution, I think the evidence, from Mr.  
24 Caldwell in any event, was that he only received  
04:24 25 those investigation reports that were referred to



1 in the police summary document and that was his  
2 explanation as to why his prosecution file  
3 wouldn't have the same complete 1 to 500  
4 investigation reports. Does that assist your  
04:24 5 memory?

6 A Yes, it does.

7 Q And so the question I think posed was we know the  
8 police file has 1 to 500, why doesn't Mr.  
9 Caldwell's have the exact same police reports, and  
04:24 10 the suggestion is because the ones that are not on  
11 his file either went missing for sinister reasons;  
12 is that correct?

13 A Yes.

14 Q And that would be something you pursued?

04:24 15 A Yes, it was.

16 MR. HODSON: Mr. Commissioner, the next  
17 document I propose to go through is fairly  
18 lengthy. It might be an appropriate spot to  
19 break for the day.

04:25 20 COMMISSIONER MacCALLUM: Good.

21 (Adjourned at 4:25 p.m.)

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**OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:**

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,  
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contain a true and correct transcription of our shorthand  
notes taken herein to the best of my knowledge, skill, and  
ability.

\_\_\_\_\_, 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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