

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

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

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Volume 172

Inquiry Proceedings



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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, CONTINUED

- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MURRAY JOHN SAWATSKY, continued:

BY MR. HODSON:

Q Morning, Mr. Sawatsky.

A Morning.

Q If I could call up 227194, please. I think yesterday, where we ended off, we were chronologically in September '93. And I think around this time, yesterday, we saw a progress report that indicated your investigation was nearing completion and I think you were waiting to hear back from Centurion Ministries and you were still trying to get Ron Wilson to cooperate, and those were the two tag ends; is that fair?

A That's correct. And, overall, I think we were awaiting DNA as well.

Q Right. And I think, on the DNA, you told us, based on some documents, that although I think you had concluded that the DNA testing could not be done before your report would be done, although that sort of was a bit of a moving target, I think you revisited that on a number of occasions to go



1 to the experts and say lookit, can we do it now,
2 and if not then carry on; is that a fair summary
3 of how the DNA factored into your investigation?

4 A That's correct.

09:05 5 Q And then I think, ultimately, it was decided that
6 you did not wish to delay concluding your
7 investigation or release of the report by waiting
8 for DNA?

9 A That's correct.

09:05 10 Q And it appears, with the benefit of hindsight,
11 that you might have had to wait until 1997,
12 although we'll hear other evidence about that,
13 when the DNA was actually done?

14 A That's right.

09:05 15 Q Yeah. So, again, 227194. This is an article
16 September 11th, 1993, and I think, Mr. Sawatsky,
17 is it correct to say, I went through to try and
18 identify media reports sort of through your
19 investigation period, and I know there were some,
09:06 20 but it would appear that, unlike the Milgaard
21 application to the federal minister, there was not
22 much in the way of media coverage to your
23 investigation; would you agree with that? There
24 was some, --

09:06 25 A I would agree with that.



1 Q -- but I think it was basically done outside the
2 glare of the media; would that be correct?

3 A That's correct.

4 Q And I think you told us that, in advance, you took
09:06 5 steps to try and achieve that result?

6 A That's correct, or certainly to -- that any
7 information that went out was accurate.

8 Q And this article, just a couple of comments, it's
9 September 11th, 1993, *StarPhoenix*. It says, 'The
09:06 10 RCMP have interviewed about 200 people and spent
11 nearly a year investigating how David Milgaard's
12 murder case was treated by the province's justice
13 system.'

14 And then quotes Mr. Tost, 'We
09:07 15 will be a while yet', 'Every time we put a time
16 limit on, something else pops up'.'

17 So, again, that would be an
18 accurate summary, at the time, of where you were
19 at?

09:07 20 A Yes, it would be.

21 Q And then there's a quote here I want to ask you
22 about. 'Joyce Milgaard', she says, 'Joyce
23 Milgaard doesn't know what to expect since she
24 doesn't know the focus of the investigation'.

09:07 25 Did you tell Joyce Milgaard



1 the focus of your investigation when you met with
2 her in January of 1993?

3 A Yes, I did, I believe I was quite clear with her
4 on the focus of the investigation.

09:07 5 Q Did you tell her counsel the focus of your
6 investigation?

7 A Yes, I did.

8 Q And then she says, 'In an interview Friday she
9 said she had heard officers had talked to David's
09:07 10 former cell mates, which baffles her. She assumes
11 officers were trying to find out if David, who
12 publicly proclaimed his innocence, had ever
13 incriminated himself in Miller's murder.'

14 Do you recall what that may
09:07 15 have related to, the interview of his cell, former
16 cell mates?

17 A Yeah. Certainly, I don't recall names or
18 specifically what information we obtained, but I
19 know there was -- we did have information, at the
09:08 20 time, that there may have been something said to
21 cell mates that may aid or assist us in making a
22 determination in our investigation, so we
23 certainly did take steps to try and locate and
24 interview certain people who were serving with
09:08 25 Milgaard.



1 Q Let me put to you a couple of things that I think
2 come out of the documents, that may assist you,
3 and get your comment on it. I think in one
4 scenario, at the Supreme Court of Canada there was
09:08 5 evidence from a fellow named Ben Dozenko, a prison
6 guard or a prison worker who testified at the
7 Supreme Court that David Milgaard had confessed to
8 him; were you aware of that as being --

9 A I was aware of that. And I guess, when I looked
09:08 10 at this, I was more thinking of cell mates as
11 opposed to someone who worked within the system.

12 Q Yeah. And I think there's documents where you
13 made efforts to talk to Claire Hoffer, and other
14 people within the prison system, to follow up on
09:09 15 that piece of information; is that correct?

16 A That's correct.

17 Q As well, I think in the documents there were a
18 number of jailhouse informants who gave
19 incriminating evidence against Larry Fisher; is
09:09 20 that correct?

21 A That's correct.

22 Q And I think I recall seeing some steps taken to
23 investigate whether those cell mates may have had
24 contact with David Milgaard, and in other words --
09:09 25 and I want you to confirm whether this was the



1 case -- that one investigative step may have been
2 to check whether these jailhouse informants who
3 were coming forward and saying "Larry Fisher, you
4 know, admitted to committing the crime or gave me
09:09 5 incriminating evidence", checking the extent to
6 which they may have had contact with Mr. Milgaard;
7 did you recall --

8 A That --

9 Q Is that --

09:09 10 A Yes, I do recall that.

11 Q And so again, to the extent that David Milgaard
12 was a cell mate of a person who later came forward
13 as a jailhouse informant and said "I have
14 information that says Larry Fisher committed the
09:10 15 crime", would the relationship between David
16 Milgaard and that cell mate be of interest to you
17 in your investigation?

18 A Yes, it would.

19 Q And for what reason?

09:10 20 A It may show that there was either, there may have
21 been an opportunity to say something happened that
22 didn't happen, or that there may have been, you
23 know, perhaps an opportunity for Mr. Milgaard to
24 impress upon the cell mate that he should go
09:10 25 forward and say something that didn't happen.



1 There is also the other way of
2 looking at it, that a cell mate of Fisher's may
3 have had no contact with Mr. Milgaard and may very
4 have heard something from Mr. Fisher, so that
09:10 5 issue sort of cut both ways.

6 Q All right. So, again, is it your evidence, then,
7 that at least one of the purposes in talking to
8 David Milgaard's cell mates would be related to
9 investigating information that might be
09:10 10 incriminating of Larry Fisher?

11 A Correct.

12 Q And, to the extent that Mr. Milgaard would have
13 denied his involvement in the crime to cell mates
14 over the years, would that be relevant in your
09:11 15 investigation?

16 A Yes, it would.

17 Q Okay. And, if we can scroll down here,
18 'Nonetheless, Joyce Milgaard said she was
19 impressed after meeting Inspector Murray Sawatsky,
09:11 20 the leader of the investigation'. Quote, 'He was
21 either a very good actor or he's going to get to
22 the bottom of it.'

23 And would you have been aware
24 of this article at the time?

09:11 25 A I think I may have read it, but I certainly don't



1 have any recall of it now.

2 Q And is -- can you tell us what, what if any,
3 reaction you would have to that comment either you
4 were a good actor -- and I presume that's when you
09:11 5 met with her -- or you're going to get to the
6 bottom of it?

7 A Well I guess I had hoped, when I met with her,
8 that she would have come away thinking I am going
9 to get to the bottom of it rather than I'm a good
09:11 10 actor, but in any event, I guess that's her
11 impression.

12 Q And I ask you this question because of what's
13 stated in the article. When you met with Joyce
14 Milgaard in January of 1993 were you trying to
09:11 15 impress upon her or tell her that you were doing
16 something that you did not intend to do?

17 A No. In fact, I was trying to satisfy her that we
18 would do our very best to get to the bottom of all
19 the issues.

09:12 20 Q Would that have been a concern to you at the time,
21 based on your knowledge of what had happened
22 previously with respect to the Milgaards dealing
23 with authorities and police, but was that
24 something on your mind, to try and gain their
09:12 25 confidence and impress upon them that you are



1 going to do a thorough and fair job?

2 A Very much so, yes.

3 Q And with the hope that they would buy into the
4 investigation and the result?

09:12 5 A Yes.

6 Q 054643. And this is, just for the record I think
7 this relates to Bob Perry, and Mr. Wolch is
8 confirming you can meet with him. Bob Perry was
9 their investigator who -- the Milgaard
09:13 10 investigator who met with Mr. Breckenridge and
11 Mrs. Milgaard; correct?

12 A That's correct.

13 Q And it appears, I think we'll see this a couple of
14 times, you did this with Mr. Henderson. Can you
09:13 15 explain for us the reason you would go to Mr.
16 Wolch and say "lookit, we're going to talk to your
17 investigator, are you okay with it or do you have
18 any objection to it"; what would be the purpose of
19 that?

09:13 20 A We just wanted to make sure that there was no
21 privilege that existed that we would be violating
22 if we did do that interview.

23 Q And so I take it that, at least in connection
24 with -- we know that, if we just back up, what we
09:13 25 looked at yesterday, your efforts to find Sidney



1 Wilson, the police informant, Paul Henderson,
2 James McCloskey of Centurion Ministries, and here
3 Bob Perry; would you agree that, at least with
4 respect to some of the areas of your
09:13 5 investigation, you would have informed Mr. Wolch
6 of that?

7 A Yes, he certainly would have knowledge that those
8 areas were being examined.

9 Q And I think you may have covered this the other
09:13 10 day, but you did not send him a list and say
11 "here's everybody we have interviewed so far and
12 here's who we are going to interview"?

13 A No.

14 Q Go to 061486. And this is a briefing note, it's
09:14 15 September 24, 1993, if we can go to the next page.
16 And this deals with -- yesterday I showed you a
17 letter of September 9th, 1993 when Murray Brown
18 sent to you the file that they discovered in the
19 government's files that included the three 1969
09:14 20 RCMP reports; correct?

21 A That's correct.

22 Q And so here's just a -- go to the -- 061389,
23 please, is the briefing note. And we talked a bit
24 about this yesterday, 061389. This is a briefing
09:15 25 note of September 24th, '93 prepared by you; is



1 that correct?

2 A That's correct.

3 Q And would it be correct this briefing note would
4 be simply reporting to somebody, lookit, we found
09:15 5 some additional information and it appears that
6 earlier on the RCMP may have been of the view that
7 their involvement in the investigation was less
8 than it maybe turned out to be; is that a correct
9 reading of that?

09:15 10 A Yeah. I'm just sort of reading it now --

11 Q Sure.

12 A -- to get an understanding. *(Witness reading)*
13 Yes, this would have simply, this note could have
14 been requested, but it appears to me that it was
09:16 15 something that we generated, that was
16 self-generated by our team, and it simply was to
17 advise our headquarters, to update them on the
18 progress of our investigation, that new
19 information had been provided to us and we were in
09:16 20 the process of looking into that new information.

21 Q And just on that point, I think we see from other
22 documents when you started the investigation at
23 the end of 1992, is it correct that the RCMP were
24 aware that they had had some involvement in the
09:16 25 Gail Miller murder investigation?



1 A That's correct.

2 Q And I think Inspector Riddell took the statements
3 from Ron Wilson and Nichol John, and that that was
4 on the record, there was some evidence of that; is
09:16 5 that correct?

6 A Yes, there was some evidence that he assisted and
7 was present at meetings, and those sorts of
8 things.

9 Q And, as well, I think you've told us that the RCMP
09:16 10 files would have been destroyed many years prior
11 in accordance with your normal destruction
12 policies?

13 A Yes.

14 Q And so is it correct to assume that, as a police
09:16 15 force in 1992, you couldn't go back to your own
16 files to say "well, what involvement did we have
17 specifically, but we know we had some general
18 involvement", and I take it you concluded that did
19 not preclude you from doing the criminal
09:17 20 investigation that you were asked to do?

21 A Correct.

22 Q And when you came across the three Rasmussen
23 reports that detailed, provided more information
24 as to what the RCMP officers did at the time, did
09:17 25 that change your view, or the RCMP view in any



1 way, as to their ability to conduct a criminal
2 investigation?

3 A No, it did not.

4 Q And so here I think you are talking about what
09:17 5 these three RCMP reports provide, and I think you
6 say:

7 "... discusses in detail some of the
8 actions of the investigators in the
9 Saskatoon Police Department at the time
09:17 10 of the Gail Miller murder ... It also
11 contains reports from ... Riddell."

12 And you say:

13 "A cursory examination of this material
14 reveals it may be helpful in explaining
09:17 15 the police attitude around the time of
16 the murder."

17 Can you just expand on what you were getting at
18 there?

19 A Yes. One of the allegations, and I believe it
09:18 20 came through the confidential source Mr. Vanin,
21 was that the -- there was -- the internal workings
22 of the police service were somewhat in disarray,
23 that certain members didn't talk to others, that
24 those working in plainclothes were sort of
09:18 25 considered the elite and they didn't talk to the



1 uniformed personnel, that information wasn't
2 readily exchanged between them, and I know that it
3 was always something we wanted to look at to see
4 if that, in any way, impacted on the allegations.
09:18 5 And this, if I recall these reports correctly,
6 they provided a little bit of flavour as to what
7 the internal workings of the police service were
8 like at that time.

9 Q And did they support Mr. Vanin's or the
09:18 10 informant's or the Milgaards' contention?

11 A I don't believe they did.

12 Q So they provided, are you telling us, some
13 background as to how the Saskatoon City Police
14 internally were dealing with the morality and
09:18 15 homicide matters, plainclothes versus officer --
16 or uniform?

17 A I'm not sure if they were that specific. I would
18 need to review them just to comment further I
19 think.

09:19 20 Q But you are saying some background and some
21 flavour?

22 A That's correct.

23 Q 041900, this is Mr. McCrank's letter to Barry
24 Gaudette, the chief scientist, November 9, 1993,
09:19 25 and I had earlier showed you that telephone



1 conversation, and here:

2 "I understand that it is your best
3 estimate that you may be in a position
4 to conduct the test on the sample that
09:19 5 remains on the deceased's panties by
6 some time early in 1994. I also
7 understand that although you would not
8 be in a position to declare this in a
9 courtroom, you might be able to provide
09:19 10 me with the results of this test on the
11 understanding that it would not be
12 disclosed publicly until after you have
13 had a chance to have the technique
14 accepted in a courtroom. That would be
09:19 15 most satisfactory to me..."

16 and etcetera. So that would be an accurate
17 statement of what was happening at the time?

18 A Yes, it would.

19 Q And I think we'll see in the documents, and I
09:20 20 would like you to confirm this, that one of the
21 avenues being pursued was that the DNA technology
22 was evolving and although there may have been the
23 ability to test, the concern of the scientists was
24 that the testing method would not necessarily
09:20 25 stand up in court because it had not been through



1 enough testing? In other words, we can do a DNA
2 test, it might show you that, but because it's so
3 new and because it has not been validated, or
4 whatever scientists need to do to be comfortable
09:20 5 with it, it may not be admissible in a court
6 proceeding?

7 A That's correct.

8 Q And am I correct that your group said, well, we're
9 prepared to look at it with that caveat in any
09:20 10 event, if you can do it with the caveat that
11 lookit, it might not be admissible because it
12 hasn't been tested, you were prepared to look at
13 that as well?

14 A That's correct.

09:20 15 Q Can you tell us here, the focus here is on Gail
16 Miller's panties. What is your recollection of
17 the source of bodily fluids or semen on Gail
18 Miller's clothing that was available to do DNA
19 testing on and where did you get that information
09:21 20 from?

21 A Well, I understand that there was a stain on the
22 panties that, and that stain had been examined I
23 believe by Mr. Ferris and others and as a result
24 of that most of that material had been consumed
09:21 25 and that there was now very, very little left, and



1 the concern of the lab was that if they used that
2 very, very small amount, and I think it was five
3 nanograms or nine nanograms or something, that it
4 was so small -- in fact, when I asked for a
09:21 5 description, he said he wouldn't fit on the head a
6 pin, so a very, very small amount. So it was my
7 understanding that the lab was afraid that if they
8 used that and that entire remainder was consumed,
9 that would give -- there would not be an
09:21 10 opportunity to ever do another test.

11 Q And what was your understanding of whether or not
12 there were bodily fluids or semen on Gail Miller's
13 other clothing and, in particular, her dress?

14 A It was my understanding that no other bodily
09:22 15 fluids had been found on other garments.

16 Q And on what did you base that, where did you get
17 that information from?

18 A It was information in the file, information from
19 scientists that they had been examined and no
09:22 20 other evidence was on them.

21 Q And there's a couple of, I think in the record, I
22 think Dr. Ferris in 1988 when he did his report, I
23 think his conclusion was, or related to examining
24 the panties, and I believe the evidence reflects
09:22 25 that he had the dress but not the coat. Do you



1 recall whether you would have relied upon what Dr.
2 Ferris did or didn't do, was that part of your
3 understanding? Let me tell you, what did you
4 think Dr. Ferris had done in connection with
09:22 5 determining what sources of DNA material might be
6 on Gail Miller's clothing?

7 A I know that Dr. Ferris had had access to the
8 exhibits, I know he had examined them, and it was
9 my understanding that the only area where he felt
09:23 10 there was any scientific value was the panties
11 themselves and that's sort of what he was focusing
12 on.

13 Q Okay.

14 A I should add that I do know Mr. Ferris, I had
09:23 15 worked with Mr. Ferris on a number of cases when I
16 was in B.C., one in particular where I worked very
17 closely with him, so my understanding was that he
18 was sort of a leading scientist of the day and I
19 certainly trusted Mr. Ferris.

09:23 20 Q And did you assume that if there was semen or
21 material on Gail Miller's dress, that he would
22 have discovered it?

23 A Either he or our lab, and I believe that -- or the
24 RCMP lab. It was my belief that those exhibits
09:23 25 had been examined a number of times from 1969



1 onward.

2 **Q** Right, okay, and I'll get to '92 and North
3 Carolina in a moment, but just back on Dr. Ferris
4 then, I want to know what your understanding was
09:23 5 or assumption as to what extent if any he may have
6 checked the dress of Gail Miller for semen or
7 bodily fluids for the purpose of DNA testing.
8 Whether it was knowledge or assumption, can you
9 just tell us what your thinking was at the time?

09:24 10 **A** Yeah. I'm not sure if I recall correctly. My
11 thinking was that he had looked at some exhibits
12 and that he didn't see any value in them for
13 scientific testing except the panties.

14 **Q** Okay. And in 1992, I think the record reflects
09:24 15 that as part of the Supreme Court reference, I
16 believe the dress and other garments were examined
17 by Pat Alain of the RCMP lab. Were you aware of
18 that?

19 **A** I was aware of that.

09:24 20 **Q** And again, a similar test of some of the garments
21 for identifiable sources and I believe that report
22 indicated that none were identified; is that
23 correct? Is that your understanding?

24 **A** That's my understanding, yes.

09:24 25 **Q** And that in fact what was sent down to North



1 Carolina for testing was I think just the panties,
2 perhaps the girdle, but not the dress; is that
3 right?

4 A Yes, that's correct.

09:24 5 Q So when you started your investigation, are you
6 telling us that as far as the DNA testing, based
7 on what had happened before you came on the scene,
8 were you of the view that all that was available
9 for testing were the panties?

09:25 10 A Yes.

11 Q And that previous scientists, namely, Dr. Ferris
12 and Patricia Alain, and perhaps others, had
13 reviewed the exhibits for the same purpose; in
14 other words, to identify sources for DNA testing
09:25 15 and concluded that the panties were it?

16 A Yes.

17 Q Go to 061401. This is a November 15th, 1993
18 letter from you to Mr. Wolch and you are writing
19 him:

09:26 20 "...to request clarification of several
21 issues raised during our meeting with
22 you ... and issues set out in
23 correspondence received from Bob Bruce
24 on..."

09:26 25 February 4, 1993. And if we can scroll down to



1 the bottom, and there was discussions regarding
2 the yellow notebook and a C file which we've
3 talked about before, and then you say:

4 "So that we can deal with questions
09:26 5 concerning documentation could you
6 please provide clarification on this
7 issue."

8 And then the next -- or sorry, let me pause
9 there. So I think this was an issue that was
09:26 10 identified in your meeting with Mr. Wolch, Rodin
11 and Bruce; correct?

12 A Yes.

13 Q And I think then in the follow-up letter of
14 February 4, or February 1 -- or sorry, February 4,
09:27 15 '93, Bob Bruce sent you some further materials
16 that consisted of arguments before the Supreme
17 Court and notes that related to Mr. Asper's
18 concerns; correct? We talked about that
19 yesterday.

09:27 20 A Yes.

21 Q And one of the things in there was this suggestion
22 that there was a C file or a yellow file that had
23 been deliberately destroyed or had gone missing or
24 there was something nefarious about that file?

09:27 25 A That's correct.



1 Q And did you ever find out whether or not there
2 ever was such a thing as a C file or a yellow -- a
3 yellow workbook or yellow file?

4 A I know there was a considerable amount of time and
09:27 5 effort went into try to verify that and I know I
6 have the results in the report, but I don't recall
7 exactly what they are.

8 Q I think, and we'll go through this, I think what
9 the report concludes is that the only C files --
09:28 10 or there was no C file or yellow file or yellow
11 workbook that either the prosecutor or the police
12 had and the only reference to C file were in the
13 head office of the Government of Saskatchewan,
14 used C for certain files, but it did not appear to
09:28 15 connect to what Mr. Bruce had to say. Does that
16 sound right? And again I'll take you through that
17 in your report later, but --

18 A Yes.

19 Q And so here you are following up, and would it be
09:28 20 correct to say that your team spent a fair bit of
21 time trying to track -- going through documents
22 trying to track down what it was alleged by
23 Mr. Bruce and Mr. Asper about secret files or
24 yellow notebooks or missing files, things of that
09:28 25 nature?



1 A Yes.

2 Q Did you ever find anything that either identified
3 for you that there was either secret files or
4 missing files or a yellow file or a C file that
09:28 5 had the answers to many questions?

6 A No, we did not.

7 Q And did you find anything to suggest that
8 something like that existed but was destroyed?

9 A No.

09:29 10 Q And so here you are asking Mr. Wolch, I think this
11 is again around November, '93, to provide
12 clarification. Would it be correct to conclude
13 that you hadn't found anything yet and you are
14 going back saying lookit, what is it that -- help
09:29 15 us out here as to what it is we're supposed to be
16 looking for?

17 A Yes, that's correct.

18 Q And the next page, it says:

19 "During our meeting it was alleged that
09:29 20 the Crown failed to disclose the
21 identity of two witnesses who were in or
22 had a view of the alley the morning of
23 Miller's murder. The identity of these
24 two witnesses was not made clear. Were
09:29 25 you referring to Mr. and Mrs. Merriman?"



1 And I take it this is going back to the original
2 interview where an allegation was made but they
3 didn't name the people, your people went out and
4 found Mr. and Mrs. Merriman and you write back to
09:29 5 say lookit, have we got the right people; right?

6 A That's correct.

7 Q And then here, this is the -- and,
8 Mr. Commissioner, just on this point, yesterday I
9 talked about this letter from Bob Bruce, and maybe
09:30 10 we can just call it up, 046167. This is a letter
11 we looked at yesterday, this is the February
12 4th -- it's not dated, but your note is February
13 4th, '93 from Bob Bruce, and I think this is the
14 letter referred to in the letter; is that correct?

09:30 15 A Yes, it is.

16 Q And it attaches, it says:

17 "Here is some if not all of the stuff I
18 promised to send you two months ago..."

19 And I believe, and please correct me if I'm
09:30 20 wrong, that this information then was parceled
21 out to various files of the RCMP, and I think,
22 and we're in the process of trying to get it all
23 together, but I think what it consisted of was
24 arguments before the Supreme Court, either Mr.
09:30 25 Asper's argument and/or the government argument,



1 with notes on it that gave rise to various
2 issues. Is that your understanding?

3 A That's my understanding, yes.

4 Q And that those documents, and we'll see a bit
09:31 5 later in the report, I think that source material
6 you then turned around and put into a number of
7 issues that arose from Wolch and Asper -- or from
8 Asper and Bruce; is that correct?

9 A That's correct.

09:31 10 Q It might be just helpful at this point -- so I do
11 not have -- I will have, when you return in
12 September, I will put together those documents
13 just so that we can have them as to what was
14 given, but maybe if we can just go to the Flicker
09:31 15 report, 023167, just identify -- and go to page
16 023201, and here you've got *Issues Provided by*
17 *Robert Bruce and David Asper*, starting at number
18 50. Go to the next page -- full page, please --
19 to 60, and then the next page up to 64. So issues
09:32 20 50 to 64 came as a result of the material that
21 Robert Bruce sent to you, and I think what it was
22 is that Mr. Bruce was sending you, on behalf of
23 Mr. Asper, his issues; is that your understanding?

24 A Yes, it is.

09:32 25 Q Okay. So just -- and so that we know where that's



1 coming from, we can then go back to 061402.

2 061401 is the doc. ID, the second page. So here

3 you are asking for:

4 "We received material from Bob Bruce

09:33 5 on..."

6 February 4, 1993,

7 "...which included Mr. Asper's comments

8 on the Crown's written submission to

9 the..."

09:33 10 Supreme Court of Canada. And again, I'll have

11 that for you in September, but that was Mr. Asper

12 commenting on the Crown's argument saying this

13 isn't true, that's not true, etcetera, things of

14 that nature.

09:33 15 "Mr. Asper identified a concern about

16 page 7 of the Saskatchewan argument:

17 - a) The statement is made that, "...the

18 jury did not hear all of the evidence."

19 What evidence did they not hear?"

09:33 20 And:

21 - b) This note says: "Statements

22 withheld prove that Milgaard was not in

23 the vicinity". What statements?"

24 And so am I correct that after going through Mr.

09:34 25 Asper's notes on the Government of Saskatchewan's



1 argument before the Supreme Court which were
2 provided to you as allegations, you investigated
3 them and then went back here to Mr. Wolch saying
4 please clarify what this means; is that --

09:34 5 A That's correct.

6 Q 054601, this is a letter from you to Mrs. Milgaard
7 relating to Michael Breckenridge. The first
8 paragraph says:

9 "Recently, Mr. Michael Breckenridge
09:34 10 advised Cst. Jorgenson that during a
11 meeting between yourself and Bob Perry,
12 he was able to identify his initials on
13 papers that you showed him. As I
14 understand it, this meeting took place
09:34 15 on June 14, 1992."

16 And I think the evidence that this Commission has
17 seen by way of read-in and other evidence is that
18 at the June 14th, 1992 meeting Mr. Breckenridge
19 told allegedly Mrs. Milgaard and Bob Perry and
09:35 20 this is where he recounted taking the files in to
21 Mr. Romanow and Mr. Kujawa in '70, '71, the
22 Miller -- or pardon me, the Fisher and Milgaard
23 files, and as well indicated that
24 Mr. Breckenridge would have initialed documents;
09:35 25 in other words, any time he received or sent, he



1 would put his initials on that document. Do you
2 recall that being a piece of information?

3 A Yes.

4 Q And I think, and we'll see this in your report,
09:35 5 that one of the items that your investigators
6 pursued is that to -- and I think
7 Mr. Breckenridge, when he met with your people,
8 said yes, he would have initialed whatever he
9 showed to Mr. Kujawa and Mr. Romanow, I think
09:35 10 either did have or would likely have his initials,
11 and one of the matters that your investigators
12 pursued were to see whether or not
13 Mr. Breckenridge's initials were on any of the
14 Government of Saskatchewan's records that he
09:35 15 alleged he took into Mr. Romanow or Mr. Kujawa; is
16 that right?

17 A That's right.

18 Q And I suppose that if his initials were on the
19 documents, that might provide some corroboration
09:36 20 of his story that he had them and took them in?

21 A Yes, it would, it would be helpful.

22 Q And if his initials were not on any of the
23 documents, what would that tell you?

24 A That would, from what he had indicated, that would
09:36 25 mean that he likely did not show that document.



1 Q And here it appears, and I think this is in the
2 evidence from, that we've previously received,
3 Mrs. Milgaard I think contended that, or someone
4 contended that in the June 14th, 1992 meeting
09:36 5 Breckenridge had identified his initials on some
6 documents shown to him by Joyce Milgaard; is that
7 right?

8 A That's right.

9 Q And so here you are going back to her:

09:36 10 "...please advise ... which
11 papers/documents Mr. Breckenridge
12 identified to you as bearing his
13 initials. This would greatly assist us
14 in locating the papers in our files,
09:36 15 which I am sure you can appreciate, are
16 rather substantial. Should you be able
17 to locate these papers/documents, we
18 would appreciate receiving copies of
19 them."

09:36 20 And again, I think that's fairly straightforward.
21 Anything to add to the purpose of that request?

22 A No. I believe it has been covered.

23 Q 054602, and this is a letter back to you from Mrs.
24 Milgaard, go to the next page, it's December 20th,
09:37 25 1993, she says:



1 "I have been through all the boxes of
2 papers that I have here and have not
3 been able to locate the papers you asked
4 for.

09:37 5 I do recall the incident, and
6 because I was not really trustful of him
7 at the time, checking the initials he
8 showed us against his signature and they
9 matched. It would probably have been
09:37 10 some of the files that were released to
11 us by the Supreme Court and would have
12 had to have been the Attorney General
13 files otherwise his initials would not
14 have been there. I know that I had all
09:37 15 the rape victim files with me and the
16 Greenburg correspondence but I honestly
17 can't remember what else."

18 What did you make of this comment that:

19 "I do recall the incident, and because I
09:38 20 was not really trustful of him at the
21 time..."

22 A I think I was a bit surprised by it because of
23 course that allegation had come forward, you know,
24 in a very solid manner with some certainty to it
09:38 25 and this now showed that perhaps there wasn't as



1 much certainty that as originally claimed.

2 Q So this would be the June 14th meeting which would
3 be, I think, three months, the June 14th meeting
4 between Mrs. Milgaard and Mr. Breckenridge which
09:38 5 would be three months before the press conference
6 and the letter to the federal minister; correct?

7 A That's correct.

8 Q And so if I read this correctly, she's saying
9 lookit, I didn't trust him, therefore, I asked for
09:38 10 some proof and he showed me documents that had his
11 initials on them and therefore I, Joyce Milgaard,
12 put some weight on that?

13 A That's correct. It would seem that if there was
14 some weight placed on that, that material would be
09:38 15 available, or certainly would be kept and saved
16 and preserved so that it would be available.

17 Q And did your investigators search through the
18 documents that you had to look for his initials?

19 A That's correct.

09:39 20 Q And did you find anything with his initials on it?

21 A I would need to refer to the report, but I don't
22 recall that they did.

23 Q The report indicates that there weren't.

24 A I don't take issue with that.

09:39 25 Q And I think the record before this Commission, I



1 don't believe there's any document that has been
2 identified other than Mr. Breckenridge's
3 statements to Mr. Wolch that has his initials on
4 it, certainly by way of an office file. Would
09:39 5 that have been consistent with what your people
6 concluded?

7 A Yes, it would.

8 Q Go to 061445, please. This is a January 13th,
9 1994 letter from you to Mr. McCrank and it appears
09:40 10 that this is enclosing the draft report, Volume 1,
11 and synopsis of interviews, Volume 2.

12 "We previously forwarded to you copies
13 of statements taken during the
14 investigation however, due to
09:40 15 additions..."

16 etcetera. So it looks like January, '94 is when
17 the first draft of the Flicker report is
18 prepared; is that right?

19 A That's correct.

09:40 20 Q Can you tell us just generally how the report --
21 or pardon me, how the report was prepared, who had
22 input, who drafted it and what went into that?

23 A Yes. The report would have been prepared from the
24 analysis of all the documents and I think I
09:40 25 indicated yesterday that there was a large binder



1 that sort of followed all of the issues and the
2 investigators' comments were attached. The report
3 would have taken those comments and then
4 elaborated where detail was necessary in order to
09:41 5 give background information on it and the report
6 was prepared in such a way that the issues were
7 identified and then answered, and this draft would
8 have been forwarded to Mr. McCrank and Mr. Fraser
9 for their review and for their input and comment.

09:41 10 Q And I think you were the named author of that
11 report as the lead investigator or the person in
12 charge; is that correct?

13 A That's correct.

14 Q And would you have played a role in the drafting
09:41 15 of the report?

16 A To some extent. I certainly reviewed some of the
17 documents, reviewed some of the -- and reviewed
18 the draft, but I didn't personally draft that
19 report.

09:41 20 Q And would you describe this report as a team
21 report in the sense of your investigative team?

22 A Yes, various portions of that report would have
23 been likely referred to investigators for their
24 comment and whether they wished to add or take
09:41 25 away anything that was in it.



1 Q And would Mr. Tost and Mr. Dozenberger have played
2 a significant role in the analysis, collation and
3 presentation of the investigation information?

4 A Yes, yes, they certainly would have.

09:42 5 Q And so just again, that would all of the team of
6 investigators then have input and, in a sense,
7 maybe not formal approval, but it would have
8 passed the eyes of everybody on your team and that
9 yes, this is our report and we are all sort of all
09:42 10 on side with what is said?

11 A That's correct.

12 Q And then as far as Mr. McCrank and Mr. Fraser, can
13 you tell us just generally what, to what extent if
14 any did they have input into your report? I mean,
09:42 15 we know that when you gave the report to them they
16 in turn prepared their own report to the minister,
17 but as far as the drafting, the wording of that,
18 what input if any did they have?

19 A Very little input. Certainly they may have come
09:42 20 back to us and said, look, clarify this point or
21 you need to expand on this point and provide more
22 information or they may have come back and said
23 you haven't adequately investigated this,
24 investigate it more thoroughly. I don't recall
09:43 25 that happening, but certainly that's the reason



1 that it was sent to them, for review, for them to
2 take a critical look at it, ensure that we had
3 covered all the issues adequately and certainly to
4 look at any areas where they felt charges may be
09:43 5 appropriate or not appropriate and certainly to
6 look at those areas of conduct that we spoke of
7 yesterday, so really they were sort of a quality
8 review.

9 Q In looking at the documents, and I'll take you
09:43 10 through some of the back and forth, there appear
11 to be some wording or typographical issues or
12 things of that nature, but am I correct that there
13 did not appear to be any substantive changes or
14 issues that they addressed with you from your
09:43 15 first draft?

16 A That's correct.

17 Q And I don't believe, and I could be wrong on this,
18 but I don't believe there was any significant area
19 where they went back and said lookit, go and
09:43 20 reinvestigate this area; am I correct on that?

21 A No, there wasn't, and, I mean, it could be for a
22 number of reasons, it could be that they were very
23 satisfied, but I think that probably the major
24 reason is we kept them very informed as the
09:44 25 investigation progressed and they had the



1 opportunity to provide input as the investigation
2 was being conducted.

3 Q I was going to ask you about that. I think we saw
4 yesterday that these reports that you provided and
09:44 5 the interviews, synopsis, would they be sort of a
6 work in progress of this report that would be
7 provided to McCrank and Fraser as you went along?

8 A That's correct.

9 Q If we can go to 061418, please, and this is a
09:44 10 letter from Mr. McCrank to you. If we can go to
11 the next page, please, and Mr. McCrank is writing
12 to you January 14th with a letter from Brent
13 Cotter and a copy of a response, and I'll just
14 show you that to indicate that you got it, and if
09:45 15 we can go 061421, I want to go through an exchange
16 of correspondence between McCrank and Cotter on
17 the DNA issue, and so there's a reference here
18 about a discussion that McCrank and Cotter had and
19 indicating that:

09:45 20 (i) your review of allegations with
21 respect to the handling of the Milgaard
22 case was nearing completion;

23 (ii) the RCMP anticipated that, perhaps
24 by January, they would be in a position
09:45 25 to be able to do sophisticated DNA



1 testing with respect to genetic material
2 in minute quantity that was in the
3 deceased Gail Miller's undergarments and
4 that there was at least a possibility
09:45 5 that this test could establish the
6 individual from whom this genetic
7 material had come;

8 (iii) the RCMP are prepared to do the
9 DNA testing on the condition that
09:45 10 (because the technology has not yet been
11 "ruled upon" by any Court) the fact of
12 the DNA test being conducted and the
13 outcome of the test not be disclosed by
14 your report or by me, my Department, or
09:46 15 my Minister."

16 Next page:

17 "(iv) in your view it would be wise to
18 have the DNA testing conducted in order
19 to close the circle with respect to your
09:46 20 investigation.

21 My understanding is that you
22 are prepared to request that the testing
23 be done by the RCMP on the conditions
24 stipulated by them. I have reviewed
09:46 25 this matter and discussed it with the



1 minister. It is our joint view that you
2 should proceed to request this testing
3 on the conditions identified by the
4 RCMP. Accordingly, to the extent that
09:46 5 it is necessary, I am asking you to
6 expand the terms of reference with
7 respect to your review to include this
8 testing of the genetic term.

9 It is my understanding that
09:46 10 it will be acceptable to the RCMP to
11 have the fact that this testing was
12 done, and the result of the testing,
13 disclosed at some point in the future.
14 I take it that such a point would be
09:46 15 some time after the DNA process has been
16 ruled upon by the Courts in other cases.
17 I would like to have the assurance
18 through you from the RCMP that we would
19 be entitled to disclose the results of
09:47 20 this testing at the earliest opportunity
21 after the testing process has been
22 validated. It would be helpful if this
23 could be confirmed in writing by the
24 RCMP."

09:47 25 And can you just elaborate a bit on that, Mr.



1 Sawatsky, as to what was going on at this time?

2 A Yes. I'm aware that Mr. Cotter and Mr. McCrank
3 had spoken at a conference they were at and
4 obviously Mr. McCrank had updated Mr. Cotter to
09:47 5 the extent to which we were now working with
6 regards to the DNA analysis and had indicated to
7 him the results of the discussion with
8 Mr. Richardson and others from the lab in Ottawa
9 and that he was suggesting that we should
09:47 10 probably, or it would be maybe beneficial to us to
11 have the DNA results, or at least the preliminary
12 results at hand when we completed our
13 investigation, and Mr. Cotter is writing to
14 confirm that he agrees with that.

09:48 15 Q And so this issue of non-disclosure, am I correct
16 that the concern here is that if the process is
17 not validated, that you did not want to disclose
18 the results of the DNA test in the event that the
19 testing procedure was never validated?

09:48 20 A That's correct.

21 Q And so the concern in keeping it, I guess,
22 confidential would be because it may or may not be
23 usable in Court?

24 A That's correct.

09:48 25 Q So, in other words, do the test, wait for the



1 validation of the procedure, once the procedure is
2 validated then make it public?

3 A That's correct.

4 Q And then 061420. Just for the record here, a
09:49 5 couple letters, Mr. McCrank writes back saying
6 that the letter reflects the discussions and that
7 he is going to review this with the RCMP.

8 And then if we can go to
9 061450. And I think you then send it to the
09:49 10 commanding officer, the letter, and say:

11 "I intend to send Mr. McCrank a letter
12 confirming that our results can be
13 released after the process has been
14 validated."

09:49 15 In other words, you were agreeing to what Mr.
16 McCrank and Mr. Cotter had agreed to; is that
17 right?

18 A That's correct.

19 Q And then 061454. This would be a briefing note
09:49 20 to -- who would be Sergeant Allard, or --

21 A He would be, probably, a reader in the Enforcement
22 Branch in Ottawa.

23 Q And then this is a briefing note; what would be
24 the purpose of sending a briefing note?

09:50 25 A It would be just to update Ottawa, our



1 headquarters, on what was happening with this
2 investigation --

3 Q Right.

4 A -- to see if -- and I'm assuming that this is
09:50 5 likely in response to the letter -- just to see if
6 they had any concerns or thoughts that they wished
7 to provide --

8 Q Go to the next --

9 A -- on that issue.

09:50 10 Q Go to the next page. I think this may just be a
11 status report?

12 A Okay.

13 Q I should have shown you this. It just says:

14 "Current Status",

09:50 15 the date here is January 19th, I think that
16 should be '94, it's corrected in my copy:

17 "We are still awaiting
18 determination of a possible DNA analysis
19 by our Ottawa Forensic Laboratory with
09:50 20 respect to an item of clothing.

21 However, our investigation of the
22 allegations against the officials
23 involved is complete. A final draft of
24 our report outlining the results of the
09:50 25 investigation has been completed and



1 forwarded to the Attorney General for
2 Alberta for review.

3 We have found no evidence of
4 wrongdoing by either the police or the
09:51 5 Crown Prosecutors involved. The
6 Attorney General of Alberta is
7 responsible for announcing the findings
8 of our investigation. Consequently, we
9 are making no public disclosures in this
09:51 10 regard."

11 And that would be an accurate statement of what
12 was happening at that time?

13 A Yes. And you are right, that was simply an
14 updating report.

09:51 15 Q And again, as far as public disclosures, do I
16 understand that you would be making your report to
17 Alberta Justice and it would be for Alberta
18 Justice, or whoever they dealt with, to decide to
19 what extent, if any, this became public?

09:51 20 A That's correct.

21 Q Would you normally, in a criminal investigation,
22 announce your results to the public?

23 A No.

24 Q Go to 061427. And this is just a cover letter
09:51 25 that you send to Neil McCrank, a copy of a letter



1 that you received from Mr. Wolch, which I'll go
2 through in a moment, and you are asking for an
3 opportunity to discuss it with Mr. McCrank.

4 And if we can go to the next
09:52 5 page -- sorry, to 061704 is the doc. ID. And this
6 is a January 21, 1994 letter from Mr. Wolch to
7 you, now I think I had shown you earlier, I think
8 in November-December '93 you had sent him a letter
9 for some information. I don't think this responds
09:52 10 to that request but to deal with some other
11 matters. If we could just call this out, please,
12 he says:

13 "I would expect that you are
14 currently in the home stretch of your
09:52 15 investigation into David Milgaard's
16 wrongful conviction."

17 Let me just pause there. Would you have kept Mr.
18 Wolch advised at least of the time lines? In
19 other words, you know, "we're almost done", or
09:53 20 "we're close to being done", things of that
21 nature, maybe not the contents but at least when
22 you expected to be done?

23 A I don't recall if I did, or whether Mr. Wolch just
24 assumed we were nearing the completion, or whether
09:53 25 I had called him. I don't recall. Perhaps he



1 just assumed.

2 Q And then:

3 "As you know, we have not really
4 discussed the details of your
09:53 5 investigation since we met when your
6 investigation was just beginning. We
7 have no idea as to the results of your
8 investigation, what material you have
9 gathered or what your thoughts are about
09:53 10 the evidence you have uncovered."

11 And, on that last sentence, would you agree that
12 that's correct, in other words that you -- let me
13 ask you this; would you have told Mr. Wolch the
14 results of your investigation, the material you
09:53 15 have gathered, or your thoughts about the
16 evidence you have uncovered?

17 A No, we did not, we had not shared that with Mr.
18 Wolch.

19 Q And why not?

09:53 20 A Simply because we were in the middle of an
21 investigation and certainly were not going to
22 share material that we hadn't verified, or
23 anything to date, and it's not something that's
24 generally done.

09:53 25 Q And so your practice in connection with this



1 criminal investigation, as far as communicating
2 the investigative steps taken, the information
3 gathered, and your thoughts and analysis of the
4 evidence; are you telling us that it was the same
09:54 5 in this case as it was in other criminal
6 investigations you were involved in?

7 A Yes.

8 Q He says:

9 "Now is a critical time in
09:54 10 the investigation for all concerned. In
11 the past errors were made in the
12 handling of David's case which we were
13 able to point out and have corrected.
14 For example, Justice Minister Kim
09:54 15 Campbell's initial decision not to
16 re-open the case was contained in a
17 letter which was replete with error and
18 misunderstanding. We did not know what
19 information was presented to the
09:54 20 Minister by her Department nor did we
21 have a chance to review this
22 information. Accordingly, the Minister
23 did not have the benefit of our
24 perspective on the assessment she
09:54 25 received from her own Department when



1 she made her decision initially. The
2 Minister found herself in the rather
3 unhappy situation of having to reverse
4 herself because her initial decision was
09:55 5 clearly in error. We understand that
6 Department of Justice policy changed in
7 view of the predicament which Justice
8 Minister Campbell found herself in.

9 We want to avoid this type of
09:55 10 thing happening again. In that regard,
11 we believe it is crucial that we meet
12 with you prior to the release of your
13 report to discuss your findings and to
14 provide you with our position in respect
09:55 15 of same. We believe that this would be
16 a constructive way to proceed prior to
17 your conclusions being released. This
18 is certainly far more preferable than
19 having to proceed as has been the case
09:55 20 in the past, that is with the
21 intervention from a Prime Minister, the
22 media and the public at large."

23 Can you tell us, what did you make of this, what
24 was your reaction to this position?

09:55 25 A Well, first off, the second paragraph there where



1 it starts out:

2 "Now is a critical time in
3 the investigation ...",

4 I'm not aware of what happened with the federal
09:55 5 process, and I don't believe we had any of that
6 documentation, so I have no way of knowing
7 whether Mr. Wolch was accurate there or not.

8 In the second part, certainly
9 I think the intervention from the Prime Minister
09:56 10 and the media and everything, I didn't
11 necessarily take that as a threat. But,
12 certainly, it appears to me that it was maybe a
13 desire to perhaps take this into the public realm
14 once again if this meeting didn't occur and if
09:56 15 Mr. Wolch didn't sort of -- if we didn't accede
16 to his request here.

17 Q Okay. And so you say you didn't view it as a
18 threat; what did you view it as?

19 A Well, I wasn't threatened by it perhaps is a
09:56 20 better way to say it.

21 Q What did you understand the purpose of this
22 comment to be?

23 A That certainly, if he wasn't provided with this,
24 that there -- that it could, in fact, end up in
09:56 25 the public domain as a means to perhaps get it or



1 whatever.

2 **Q** Now, at this time, you would have known that the
3 results of your investigation would be viewed by
4 Mr. Wolch likely as being unfavourable; would that
09:56 5 be a fair -- or did you have a view on that?

6 **A** Yes, I believe I probably did feel that they would
7 be viewed unfavourable.

8 **Q** Now I suppose in one scenario, though,
9 investigating on -- and going back to David
09:57 10 Milgaard and saying "we've investigated and be
11 comforted, public officials and police did not do
12 any criminal wrong in the handling of your case"
13 could, in some sense, be viewed as a favourable
14 response to Mr. Milgaard; is that fair?

09:57 15 **A** Yes, it could be, but I think Mr. Wolch was of the
16 view that, and seemed quite strong that there had
17 been some misconduct, and certainly, I expect, was
18 expecting us to corroborate that.

19 **Q** I appreciate that. I'm talking about David
09:57 20 Milgaard for the moment; that David Milgaard in
21 some sense, would you agree that a criminal
22 investigation that goes back to the person and
23 says "lookit, we've investigated and we're
24 satisfied there is no evidence to support that
09:57 25 someone did criminal wrongdoing in your



1 investigation and prosecution" might be construed
2 as favourable to him in the sense that, although
3 at that time -- and at that time, certainly from
4 his perspective, he was saying "I'm innocent, I
09:58 5 have been wrongly convicted for various reasons",
6 going back and saying "well, one of the reasons
7 wasn't criminal conduct" might be viewed as a
8 favourable outcome of your investigation; would
9 you agree?

09:58 10 A Yes, I would agree with that.

11 Q And so when you go back, now let's talk about Mr.
12 Wolch, I think you're saying that you believed he
13 would not be -- that he would have -- he might
14 take some issue with the conclusions of your
09:58 15 investigation?

16 A Yes, I think I believed that.

17 Q And so, just tell me again, what did you make of
18 this suggestion that -- I think what he is saying
19 is, lookit, before you go public or before you
09:58 20 release your report give me a chance to meet with
21 you and discuss your findings and to provide you
22 with our position in respect of same, but what
23 about that from a complainant, did you normally --
24 in a criminal investigation would you go back and
09:59 25 say "okay, complainant, you or your lawyer come



1 in, here's our findings, you can now make
2 submissions to me as a police investigator, but
3 before I prepare my report"; have you ever done
4 that before?

09:59 5 A No.

6 Q And was that something that you would consider
7 doing as a police investigator and in a criminal
8 matter?

9 A Generally, no.

09:59 10 Q And again, as far as just a bit further, it says
11 that this is a constructive way to proceed, I
12 think saying because if you don't then the Prime
13 Minister, the media, and the public at large will
14 play a role; and did you see that as playing a
09:59 15 role in challenging your conclusions or what --
16 I'm trying to understand what, what you took from
17 that?

18 A Well I think what I took from that is that it was
19 possible that Mr. Wolch was suggesting that, if he
09:59 20 had the opportunity to review the report in
21 advance, it may save him from having to go and
22 take other means to sort of further his cause,
23 further his case.

24 Q And so a couple of ways would be, one, to go to
10:00 25 the Prime Minister, the public and the media



1 before you released your report to say "lookit,
2 Prime Minister, media, public, something is wrong
3 here, Murray Sawatsky won't release his -- won't
4 tell me the results of his investigation and let
10:00 5 me make submissions before he releases his
6 report", put public pressure on you to cause you
7 to do what he wanted you to do; that would be one
8 scenario?

9 A That could be, yes.

10:00 10 Q And I suppose another might be that after you
11 release your report, to go to the Prime Minister,
12 the media, and the public to say "Murray Sawatsky
13 is wrong, and he didn't give me a chance to
14 correct him the same way Minister Campbell didn't
10:00 15 give me the chance, and look what happened to her,
16 the same thing happened to Murray Sawatsky because
17 he didn't let me straighten him out before he
18 released his report"?

19 A That's correct.

10:00 20 Q And did you view that as being -- did you view
21 both of those as being what, the message being
22 sent here is if you don't, either before or after,
23 that's where I'm going?

24 A Yes.

10:01 25 Q And did that change your views on what you felt



1 was the appropriate thing to do, as a police
2 investigator, with respect to disclosure of the
3 results of your investigation to the complainant?

4 A No. But I do recall that at one point I thought
10:01 5 it may be helpful to sit down with Mr. Wolch and
6 explain the results before it was released
7 publicly, and I know I took that position in a
8 meeting --

9 Q Yeah.

10:01 10 A -- and, you know, it was eventually overruled.
11 But I did take that position at one point, that it
12 may be prudent to meet with him.

13 Q I think a bit later -- and I'll take you through
14 these documents, if I'm, if I'm -- I think what
10:01 15 the documents suggest, and I'll ask you to
16 confirm, that at the time the report was going to
17 be released by the Alberta Justice to Saskatchewan
18 Justice, Saskatchewan Justice making it public,
19 the question I think was "should we give Mr. Wolch
10:01 20 an advance opportunity to review the report and
21 the findings before we make it public"; was that
22 the issue?

23 A That was the issue, yes.

24 Q And I think, at that point I think -- and I'll
10:02 25 take you through the documents when we get



1 there -- but I think your position was in favour
2 of saying, lookit, give him an embargoed copy of
3 the report or give him a heads-up to at least let
4 him read it before it's made public; is that
10:02 5 right?

6 A Yes, I believe that was my position.

7 Q And would that be something different than what
8 Mr. Wolch is asking here, a chance to make
9 submissions and advocate to you to try and
10:02 10 influence the results of your investigation?

11 A No, I think that would be -- the purpose in
12 providing him with that would have then given him
13 the opportunity to make suggestions or comments to
14 us.

10:02 15 Q Okay. We'll come back to that. I think that's in
16 August '94, right around the time of the release
17 of this came up; is that right?

18 A Yes, I think it was very close to the release.

19 Q If we can go to 061430. Just again for the
10:03 20 record, I think this is where the RCMP confirm
21 with Mr. McCrank that you are agreeable to have
22 the DNA analysis done and not disclosed until the
23 testing process has been validated; correct?

24 A That's correct.

10:03 25 Q If we can go to 032942. And this is a memo from



1 Brent Cotter -- pardon me -- from Mr. Quinney to
2 Brent Cotter about this issue and Mr. Wolch's
3 request to meet with you, and I'll just take you
4 through part of this. Mr. Quinney says:

10:03 5 "On February 1, 1994 I received
6 a telephone call from Neil McCrank with
7 respect to the Milgaard case. They have
8 indicated to me that the police indicate
9 that they are almost finished with their
10:03 10 report and are simply awaiting the DNA
11 testing results ...",

12 and:

13 "... would probably be finished their
14 work by mid-March.

10:04 15 The purpose of Neil's call
16 was to advise that Herish Wolch had
17 written to the R.C.M.P. recently
18 indicating that he was aware the
19 R.C.M.P. were approaching the conclusion
10:04 20 of their investigation and he wanted to
21 be briefed on the results thereof so
22 that 'mistakes' would not be made as
23 they had been in the past. A copy of
24 the letter is attached. The police are
10:04 25 seeking advice as to whether or not this



1 type of a briefing should occur. Neil
2 was of the view that while they might be
3 prepared to make a recommendation as to
4 whether or not Wolch should be briefed,
10:04 5 this was a decision for Sask. Justice.
6 I advised that in all likelihood we
7 would follow a recommendation made by
8 Alberta as I understood that to be the
9 nature of our undertaking.

10:04 10 Although the decision has not
11 yet been made, I do believe that Alberta
12 will recommend against giving Hersh
13 Wolch a briefing on this file. We do
14 not disclose the contents of
10:05 15 investigations to anyone until such time
16 as the rules for disclosure kick in.
17 Neil is of the view that most likely
18 Wolch would like to 'set up' the
19 Minister so that if he is briefed he
20 will have time to prepare an attack and
21 when, and if, our Minister gets to
22 announce that everything was done
23 appropriately, he will once again attack
24 and attempt to regenerate the
10:05 25 controversy."



1 And, again, would you have been aware of this
2 concern by both Alberta Justice and Saskatchewan
3 Justice as being a factor in addressing Mr.
4 Wolch's request to get a -- to either make
10:05 5 submissions or get a briefing of your report?

6 A Yes, I was aware of that.

7 Q And it appears here, am I correct, that you would
8 have sought the advice of Alberta Justice on this
9 issue and it would have been their call as to
10:05 10 whether or not you would be giving Mr. Wolch
11 anything in advance of the release of your report?

12 A That's correct.

13 Q And, secondly, whether you would let him make --
14 the issue of letting him make submissions, is
10:05 15 that -- I'm trying to understand -- was that
16 something different than giving him an advance
17 copy of the report?

18 A No, I don't think so, I think that that was sort
19 of the secondary issue. The major issue was do we
10:06 20 provide him with a copy of the report.

21 Q Okay. And I think, just for the record, 061436.
22 You sent a letter to Mr. Wolch indicating that you
23 got his letter and:

24 "... contacting you in this respect in
10:06 25 the near future."



1 And then I take it, and we'll see this a bit
2 later, this issue came up again, did it not, with
3 Mr. McCrank, Mr. Fraser?

4 A Yes, it did.

10:06 5 Q If we can go ahead to 061490. And it would appear
6 that this is the final report, it says:

7 "Our investigation of
8 allegations against the Saskatoon City
9 Police and the Saskatchewan Department
10:07 10 of the Attorney General ... has been
11 completed.

12 Our report on this matter is
13 enclosed marked as Volume 1."

14 And then volumes 2, 3, and 4 were provided.

10:07 15 "As noted in Insp. Sawatsky's
16 report, we delved into several areas of
17 interest to Mr. Wolch which are still
18 outstanding namely, results of possible
19 DNA testing and criminal profiling
10:07 20 analysis. Results of our investigation
21 covering these areas will be set out in
22 a supplemental report."

23 And let me just pause there. Can you tell us,
24 this criminal profiling analysis, what -- and
10:07 25 I'll take you to that a bit later in the



1 supplementary report -- can you tell us how that
2 came about and why?

3 A I think we felt that it may be helpful to our
4 investigation to have a profile done of the Miller
10:07 5 murder and the Fisher assaults just to see -- to
6 provide us with some help as to making a
7 determination.

8 Q And I think we saw in the, at least in the
9 interview with Mr. Wolch, that one of their
10:08 10 contentions to you was that Larry Fisher was the
11 killer of Gail Miller because his earlier assaults
12 were very similar to the Gail Miller murder?

13 A That's correct.

14 Q And so would your getting a profile of -- and, in
10:08 15 fact, I think the Centurion Ministries report that
16 I think you were provided with, although it wasn't
17 a profiling analysis -- well, maybe it was -- but
18 it was basically saying, lookit, here's all the
19 similarities, we think this is proof that Larry
10:08 20 Fisher killed Gail Miller; correct?

21 A That's correct.

22 Q And so would the profiling be, that you were
23 requesting, be to address that or to respond to or
24 deal with that contention?

10:08 25 A Yes, that would either support that or refute



1 that.

2 **Q** And then the next page, it says:

3 "In the event applications are made for
4 public disclosure of our reports, I
10:09 5 should point out that they contain
6 personal information such as names and
7 addresses which certain individuals
8 asked remain confidential if at all
9 possible. As well, we've included
10:09 10 details on individuals who testified
11 before the Supreme Court in respect of
12 which the Court issued orders
13 restricting public disclosure.
14 Therefore, if at some time public
10:09 15 disclosure was to become a reality,
16 vetting would be required to ensure we
17 do not violate the Supreme Court ruling
18 and relevant privacy legislation."

19 And this is from the Assistant Commissioner. I
10:09 20 take it this would be the formal delivery of the
21 report?

22 **A** That's correct.

23 **Q** And I think the earlier draft would be close, if
24 not identical, to the final report; is that
10:09 25 correct?



1 A That's correct.

2 Q I'd like, now, to go to the report itself, 023167.

3 And just for the record, Mr.

4 Commissioner, this is the doc. ID of the Flicker

10:10 5 report that I propose to use in part because it

6 has attached the various appendices. This report,

7 however, is the version that was made public, so

8 that certain names are blacked out in the

9 document, and I do have, just for the record, an

10:10 10 unedited version of the report, it is 052660 is

11 the doc. ID of that, and so that has all the names

12 that are vetted out but it does not have the

13 appendices to it. So I will use the doc. ID I

14 have on the screen and for the benefit of any

10:11 15 parties, or for you, Mr. Commissioner, to get the

16 -- there is a few names that are blacked out, when

17 we get to them I can certainly tell you who they

18 are, but I will be using this version and this was

19 the version that was made public.

10:11 20 COMMISSIONER MacCALLUM: And I suppose it

21 would be prudent, then, to continue with the

22 publication ban as it existed from the Supreme

23 Court and as observed by the RCMP.

24 MR. HODSON: Yeah, certainly. I think our

10:11 25 publication ban on the names, certainly of the



1 sexual assault victims, continues. I will, to
2 the extent that there are any other -- I don't
3 think there are any other names in the report
4 that we need to be concerned about, but I'll
10:11 5 certainly check on that.

6 COMMISSIONER MacCALLUM: All right.

7 Well the media, then, will be
8 careful, please, to, if you see something blanked
9 out on the screen, to regard that as not
10:11 10 publishable material, even though you might hear
11 the name stated in evidence.

12 MR. HODSON: Thank you.

13 BY MR. HODSON:

14 Q So the date of this report January '94, and that
10:12 15 would be I think what we saw earlier, the date
16 that you were completed; is that correct?

17 A That's correct.

18 Q And just go through, I intend to spend some time
19 going through this with you, Mr. Sawatsky. If we
10:12 20 can go to page 023169, and I think it's pretty
21 self-explanatory as we go through it, I think
22 there's some background, the scope, methodology.
23 Then you get into the allegations against the
24 various parties, and I think if we divide them
10:12 25 into police, prosecutor and government, and then



1 how the issues are identified, you then go discuss
2 the investigation generally. If we can then
3 scroll down to Part V, the Saskatoon City Police,
4 and is it correct that's how you divided them up,
10:13 5 the three targets of your investigation, those
6 groups, --

7 A That's correct.

8 Q -- and the allegations? The next page. These
9 would be, again, Mr. Caldwell, Mr. Kujawa, and
10:13 10 then I think here is where you get into the other
11 allegations or issues that were presented to you
12 as suggesting that the evidence did not establish
13 that David Milgaard had committed the crime; is
14 that right?

10:13 15 A That's correct.

16 Q And I think that stems out of the allegations, for
17 example physical forensic evidence, it was
18 contended that, lookit, this evidence was not
19 handled properly, it proves his innocence or it
10:13 20 proves Fisher's guilt, things of that nature, and
21 so that's how it was dealt with; is that correct?

22 A Correct.

23 Q And then I think you ended up with the last two
24 parts -- scroll down, please -- the investigation
10:13 25 of David Milgaard and Larry Fisher, and then a



1 summary, and then the appendices. If we could
2 just go to the appendices, we can maybe identify
3 them, go to 023415. And this is the press
4 conference of September 19, 1992, and we have been
10:14 5 through this and actually had the tape played; why
6 would this be an appendix to the report or part of
7 the report?

8 A It appears -- I only have on the screen, you know,
9 the title to --

10:14 10 Q Yeah.

11 A It appears to be the genesis --

12 Q Yeah, go to the next page, I'm sorry.

13 A It appears to be the genesis of the investigation,
14 so --

10:14 15 Q Okay.

16 A -- this, yeah, this document contains the
17 Breckenridge allegation, --

18 Q Right.

19 A -- if I'm correct?

10:14 20 Q Yes, it does.

21 A And so this was sort of, as we talked yesterday,
22 kind of the genesis of this whole investigation
23 being commenced.

24 Q Okay. If we can go to page 023430. A map, and I
10:15 25 think that's Appendix B, and then the next page is



1 another map of, I think, some of the assaults,
2 which is Appendix C. 023432. And this is the
3 profile analysis. I think this ended up coming
4 later, did it not, a bit later after the initial
10:15 5 report?

6 A Yes, it did.

7 Q But then became added as an appendix?

8 A That's correct.

9 Q And then appendix -- if we can go to page 023437.

10:16 10 This is a document -- go to the next page --
11 you've seen this before, this is Mr. Penkala's
12 summary of the case to the Crime Index. And then
13 go to 023440. Appendix F is the Mackie summary;
14 correct?

10:16 15 A That's correct.

16 Q And, again, what would be the purpose of including
17 this document as an appendix?

18 A It's referred to in the report so, certainly, the
19 reader of the report may wish to examine the
10:16 20 document itself as they are sort of reading our
21 conclusions.

22 Q And again, I mean I appreciate that there was
23 many, many documents that you had that did not get
24 attached; what would be the significance of
10:16 25 attaching this document then?



1 A It was a fairly important document and a fairly
2 serious allegation and therefore we felt it would
3 be helpful to have it attached to the report.

4 Q And 023446. We'll deal with this document later,
10:17 5 I believe this was a report by your investigators
6 comparing the Mackie summary -- it's called the
7 Investigative Summary -- to the May statements and
8 an analysis done to look at -- I think to take the
9 script of the last page of the Mackie summary,
10:17 10 which Mr. Wolch says was then converted into
11 Wilson and John's evidence, correct, that was the
12 allegation?

13 A Correct.

14 Q And your people went and took what was in the
10:17 15 summary, and compared to what was in the
16 statements, to see whether or not that allegation
17 was true?

18 A Correct.

19 Q So this would be a background document, and I
10:17 20 think it's dealt with in the report as well?

21 A That's correct.

22 Q Is that correct?

23 A Yes.

24 Q Then if we can go to page 459, this is the
10:17 25 Breckenridge May 22, '92 statement, and then if we



1 can go to page 461 is his original letter to Mr.
2 Wolch, and then go to 463, this is his, some
3 documents that he provided. Was this his book or
4 his -- I think this is Mr. Breckenridge's -- or
10:18 5 information from him; is that correct?

6 A That's correct.

7 Q And actually go to, sorry, 023471, and again,
8 we've seen this before, this is a draft or a
9 manuscript of something that Mr. Breckenridge
10:18 10 prepared; is that correct?

11 A That's correct.

12 Q And again, what would be the purpose of putting
13 the Breckenridge information as part of the
14 report?

10:18 15 A As I indicated earlier, that was sort of the
16 starting point of our investigation and the
17 material that Mr. Breckenridge provided certainly
18 could be helpful to anyone reading the report.

19 Q And then 023476, and this is Appendix H, and this
10:19 20 is the May 21, '69 report of Inspector Riddell,
21 and this is the one that talks about the May 16th
22 meeting about reviewing the investigation that you
23 talked about earlier, this is the one that I think
24 you said dealt with the Mackie summary; is that
10:19 25 right?



1 A That's correct. This is some of the documentation
2 that was received sometime later from Saskatchewan
3 Justice.

4 Q And then 023478, this is a letter from Mr.
10:19 5 Caldwell to Mr. Tallis regarding the duty of
6 prosecuting counsel, and I take it the same --
7 that would be attached to assist the reader?

8 A That's correct.

9 Q And was disclosed -- was that because disclosure
10:19 10 was a significant issue that you investigated?

11 A Yes.

12 Q And 023481, persons mentioned in the report, again
13 that's just to assist the reader?

14 A Yes.

10:20 15 Q And as well, I don't think we need to call them
16 up, but Appendix L and M were the statements of
17 Cadrain and Wilson, the statements of March 2nd --
18 or sorry, June 24th, 1990 and June 4th, 1990, the
19 statements given by Cadrain and Wilson to Mr.
10:20 20 Henderson, and why would those have been included?

21 A Again, to assist the reader. They are referred to
22 throughout the report or in the report and
23 therefore to assist the reader.

24 Q If we can then go to 023171, please, I'll walk
10:21 25 through parts of this report with you, Mr.



1 Sawatsky. I appreciate you've got a paper copy
2 there, I'll try and give you page numbers, and
3 you'll see them in the top right. I'll refer to
4 our doc. ID. I think at the outset again you
10:21 5 simply summarize what Mr. Wolch provided you by
6 way of allegation and listed there I think into
7 four points; number one, that Larry Fisher is
8 actually the person responsible for Gail Miller's
9 murder, two, the police department was aware of
10:21 10 information and evidence that Milgaard may not
11 have been responsible, and:

12 "Persons in the department obstructed
13 justice by covering up this
14 information."

10:21 15 Three:

16 "...Caldwell, who prosecuted the
17 Milgaard case, was well aware that the
18 police saw similarities between the
19 Fisher rapes and the murder of Gail
10:21 20 Miller. Caldwell failed to disclose his
21 knowledge of the similarities to the
22 defence."

23 And lastly:

24 "The Saskatchewan Attorney General's
10:21 25 Department - primarily Mr. Kujawa - had



1 both Milgaard's file and Fisher's file
2 in their possession in 1970/71. The
3 Milgaard file was full of references to
4 the Fisher rapes and Mr. Kujawa should
10:22 5 have been concerned about Milgaard's
6 guilt in view of the numerous references
7 to Larry Fisher."

8 Would this just be a summary, an executive
9 summary of the various allegations that we'll see
10:22 10 detailed more fully in the report?

11 A That's correct.

12 Q I want to go through part -- here you say:

13 "Notwithstanding Mr. Wolch's allegations
14 regarding the innocence of David
10:22 15 Milgaard and the culpability of Larry
16 Fisher, the scope of our investigation
17 did not include a re-investigation of
18 the Miller murder. Nevertheless, since
19 our investigation of allegations of
10:22 20 wrongdoing and cover up by the police
21 and Crown prosecutors overlapped with
22 issues relating specifically to her
23 rape/murder, we did delve into this area
24 to some degree."

10:22 25 And you've told us about this in different ways



1 before, but I take it this is stated at the
2 outset of the report and this is accurate as far
3 as what your investigators did and didn't do?

4 A Yes.

10:23 5 Q Here you then say:

6 "During our investigation we explored
7 every aspect of Mr. Wolch's allegations,
8 as well as those provided by his
9 associate David Asper, private
10:23 10 investigator Robert Bruce, and Mrs.
11 Milgaard. This process involved an
12 extensive review of over thirteen feet
13 of police and prosecution files as well
14 as interviews of hundreds of individuals
10:23 15 whom we thought might have information
16 to offer. Our goal was to determine all
17 of the facts concerning the police
18 investigation of the Miller murder, and
19 Milgaard's prosecution. To accomplish
10:23 20 this our investigators travelled to five
21 provinces from B.C. to Ontario to locate
22 and interview relevant witnesses."

23 And is that paragraph true?

24 A Yes, it is.

10:23 25 Q Just on this issue of travelling, you mentioned



1 this yesterday, did your investigative team have
2 any constraints -- maybe that's not the right way
3 to put it, but were there any areas that you would
4 have liked to have investigated but did not
10:23 5 because of cost concerns?

6 A No.

7 Q If we scroll down a bit, I think you say here:

8 "We found that during their
9 investigation of the January 1969
10:24 10 rape/murder of Gail Miller the Saskatoon
11 City Police examined the possibility the
12 same offender might be responsible for
13 both her attack and several rapes
14 occurring in the latter part of 1968.
10:24 15 However, once all the evidence
16 implicating David Milgaard was uncovered
17 it was apparent to the police that while
18 certain similarities between the crimes
19 existed different offenders were
10:24 20 responsible. The subsequent arrest of
21 Larry Fisher in 1970 for the 1968 rapes
22 did nothing to alter the investigators
23 thinking - Milgaard had been convicted
24 by a jury eight months previously.

10:24 25 There was no effort by the police to



1 cover up information concerning Milgaard
2 or Fisher either during the course of
3 their investigation or later."

4 And again, that would have been one of the
10:24 5 conclusions reached by you and your team?

6 A Yes, it is.

7 Q And in this report when you -- I take it that the
8 report is to address whether or not a criminal
9 charge should be laid and whether there was enough
10:25 10 evidence for a criminal charge to be laid;
11 correct?

12 A Correct.

13 Q The charge is standard. You also told us
14 yesterday you would still elicit in the report and
10:25 15 put forward any information that might be
16 supportive or might be combined with something
17 else supportive of a charge, from misconduct down
18 to just negligence or something that was done
19 wrong; correct?

10:25 20 A That's correct.

21 Q And can you tell us generally when, on the
22 conclusion here when you say:

23 "There was no effort by the police to
24 cover up information concerning Milgaard
10:25 25 or Fisher either during the course of



1 their investigation or later."

2 Was it a case of you didn't find enough evidence
3 to lay a charge or a case of we didn't find any
4 evidence to support the allegation in any
10:25 5 respect?

6 A That's correct, we didn't uncover any evidence.

7 Q The latter or the --

8 A The latter.

9 Q And so are you telling us it wasn't a case of
10:26 10 saying, well, lookit, it might have happened, we
11 just can't find the evidence, or is it a case of
12 saying we've investigated it and we're satisfied
13 there's no basis?

14 A That's correct.

10:26 15 Q The latter?

16 A The latter.

17 Q And if there had been matters that were of a
18 suspicious nature, for example, that were there
19 that might not be enough to get to the charging
10:26 20 standard, would you have put that forward in your
21 report?

22 A Yes, we would have put that forward in our report,
23 and then I'm assuming that Mr. McCrank and Fraser
24 would have made comment on that as well.

10:26 25 Q And so would it be correct to say that a reader of



1 this report would be wrong then to take this and
2 say okay, well, they didn't find enough to lay a
3 charge against the police, Caldwell and Kujawa,
4 but they did wrong and there's lots of evidence,
10:26 5 it just fell short of laying a charge, would that
6 be an incorrect view of your report?

7 A I believe it would, yes.

8 Q What would be the correct view of your report?

9 A The correct view would be that there was no
10:27 10 evidence on which to be a charge and no evidence
11 of wrongdoing.

12 Q Scroll down:

13 "The allegations against the prosecutor
14 in the Milgaard case, T.D.R. Caldwell,
10:27 15 and S. Kujawa, who handled his appeal
16 before the Saskatchewan Court of Appeal,
17 also involve charges they were aware of
18 similarities between the crimes which
19 ought to have led them to the conclusion
10:27 20 the same offender was responsible.
21 Further, having recognized this
22 connection, they are said to have
23 covered up the facts rather than
24 disclose Milgaard's wrongful
10:27 25 conviction."



1 Scroll down.

2 "We found that Caldwell's prosecution
3 file contained a document which made
4 minor reference to the early police idea
10:27 5 that the same offender might be
6 responsible for both Miller's attack and
7 other unsolved rapes. The police court
8 brief contained pages wherein the names
9 of several rape victims were mentioned
10:27 10 (Fisher was later determined to be the
11 assailant). Also, among numerous other
12 statements, he had two victim statements
13 relating to minor sexual assaults for
14 which no one was ever charged but for
10:28 15 Mr. Wolch alleges were committed by
16 Fisher. The facts show that during his
17 review of the evidence against Milgaard,
18 Caldwell found these references to be
19 irrelevant and the statements to be
10:28 20 extraneous. In addition, Caldwell
21 disclosed all of the evidence which he
22 thought might, in any way, be of
23 assistance to the defence.

24 The allegations of cover up
10:28 25 against Kujawa are based on statements



1 made by a former office employee who
2 alleged that Kujawa was not only aware
3 of the similarities between Fisher's
4 offences and the Miller rape/murder, but
10:28 5 that he made statements and had meetings
6 with other officials aimed at covering
7 up the facts to do with Milgaard's
8 wrongful conviction."

9 Again, that would be an accurate account of your
10:28 10 view and your summary?

11 A Yes, it is.

12 Q And then you go on to talk about:

13 "Department of the Attorney General
14 files maintained in the Regina head
10:28 15 office contained copies of RCMP reports
16 submitted in March and May of 1969
17 covering the investigation of Miller's
18 rape/murder."

19 And those would be the Rasmussen reports that
10:29 20 were discovered in September, 1993; correct?

21 A That's correct.

22 Q "These reports make reference to the
23 fact that the Saskatoon police were
24 exploring the possibility her assailant
10:29 25 might be the same one who committed



1 other rapes in the months preceding her
2 attack. Kujawa may or may not have read
3 these reports. Following Milgaard's
4 January 1970 conviction Kujawa addressed
10:29 5 the Court of Appeal in November of 1971
6 primarily speaking to a legal issue
7 dealing with an adverse witness. At
8 about the same time, his office was
9 engaged in processing rape charges
10:29 10 against Larry Fisher arising out of
11 admissions he made subsequent to his
12 arrest in Manitoba. Three of these
13 charges were those rape offences the
14 police initially thought might be
10:29 15 connected to the Miller rape/murder.

16 We determined that neither
17 Caldwell, Kujawa, nor anyone else in the
18 Department saw any connection between
19 the circumstances of the Miller
10:29 20 rape/murder and Fisher's crimes.
21 Further, at no time did these
22 individuals have available facts which
23 tended to show Larry Fisher and not
24 David Milgaard was responsible for the
10:30 25 rape/murder of Gail Miller."



1 And again, would that be an accurate account of
2 what you and your team concluded based on your
3 investigation?

4 A Yes, that's accurate.

10:30 5 Q And then just scroll down:

6 "In this regard, we did not uncover any
7 new evidence which would exonerate David
8 Milgaard of the Miller murder, or that
9 would inculcate any other person,
10:30 10 including Larry Fisher. Since the
11 allegation of Larry Fisher's culpability
12 is the primary focus of Mr. Wolch's
13 complaint and because of the overlap of
14 issues touching on guilt/innocence, we
10:30 15 decided to pursue two unresolved facts.
16 Those being examination of the victim's
17 panties using DNA techniques, and a
18 violent crime analysis (criminal
19 profiling) of Larry Fisher, his crimes,
10:30 20 and the Miller murder. Results of our
21 investigation on these aspects will be
22 documented in a supplementary report."

23 Can you just elaborate a bit on this:

24 "We did not uncover any new evidence
10:30 25 which would exonerate David Milgaard of



1 the Miller murder."

2 What did that mean?

3 A It was -- during our investigation there was no
4 evidence that showed anything different than what
10:31 5 had already occurred.

6 Q So, sorry, just to pause there, when you say to
7 exonerate him, are you saying that you did not
8 uncover new evidence which would prove his
9 innocence?

10:31 10 A Correct.

11 Q Okay. "Or that would inculcate any other person,
12 including Larry Fisher," what did you mean by
13 that?

14 A That there was no evidence to show that Larry
10:31 15 Fisher or any other person may have committed the
16 murder.

17 Q And when you use the word inculcate any other
18 person, is that something more than be suspicious?

19 A Yes, it would be, I guess, evidence on which to
10:31 20 base a charge, or certainly to pursue an
21 investigation.

22 Q And again, just down at the bottom, the *Findings*
23 here:

24 "The available evidence does not support
10:31 25 allegations of criminal wrongdoing by



1 the Saskatoon City Police, T.D.R.
2 Caldwell, Mr. Kujawa, Mr. Romanow, or
3 others in the Saskatchewan Department of
4 the Attorney General (Saskatchewan
10:32 5 Justice)."

6 And that indeed was the conclusion of your entire
7 investigation?

8 A That is the conclusion, yes.

9 MR. HODSON: This is probably an
10:32 10 appropriate spot to break.

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

12 (Reconvened at 10:58 a.m.)

13 BY MR. HODSON:

14 Q Call up the Flicker report, 023167, and go to page
10:58 15 176. Now, Mr. Sawatsky, I want to go through
16 parts of this report, and let me just, before I
17 do, maybe outline for you, the Commissioner and
18 the parties my intent here. Obviously the report
19 speaks for itself, it's a report I think that
10:58 20 everybody is familiar with. However, in light of
21 what was said publicly, and even indeed in this
22 Commission about the report and the work of the
23 RCMP, I feel it necessary to go through this with
24 you at least to cover the significant portions of
10:59 25 it and ask you to, not necessarily adopt, but to



1 elaborate on certain parts of it and allow you to
2 expand on it, and so I will try to do that without
3 having us just sit here and read through it which
4 is not a productive use of time, so I will try and
10:59 5 hit the high points and give you an opportunity,
6 Mr. Sawatsky, to provide your comments.

7 And I also appreciate that
8 much of what's in this report is information that
9 you've already touched on earlier, so again, some
10:59 10 of it will be repetitive, but I'll try and
11 minimize that. Okay?

12 A Thank you.

13 Q And so again the allegation of wrongdoing was the
14 offence of obstruction of justice and that was a
10:59 15 *Criminal Code* offence; is that right, that you
16 were looking at?

17 A That's correct.

18 Q If we can just go to that, document 032805 and go
19 to page 032808, and this is the McCrank/Fraser
11:00 20 report to the government and they just set out the
21 *Criminal Code* provision, and I take it this would
22 have been one of, or the primary section that you
23 were looking at; is that correct?

24 A That's correct.

11:00 25 Q And so the allegation was that the Saskatoon



1 Police Service members, Mr. Caldwell, Mr. Kujawa,
2 Mr. Romanow, Mr. Lysyk and others committed acts
3 that would fall under this section; is that right?

4 A That's right.

11:00 5 Q So that:

6 "Every one who wilfully attempts in any
7 manner ... to obstruct, pervert or
8 defeat the course of justice --

9 In a judicial proceeding,

11:01 10 "-- is guilty of an offence."

11 And then I think under subsection (3) -- scroll
12 down, please:

13 "Without restricting the generality ...
14 every one shall be deemed wilfully to
11:01 15 attempt to obstruct, pervert or defeat
16 the course of justice who in a judicial
17 proceeding, existing or proposed,

18 (a) dissuades or attempts to dissuade a
19 person by threats, bribes or other
11:01 20 corrupt means from giving evidence;

21 (b) influences or attempts to influence
22 by threats, bribes or other corrupt
23 means a person in his conduct as a
24 juror; or

11:01 25 (c) accepts or obtains, agrees to accept



1 or attempts to obtain a bribe or other
2 corrupt consideration to abstain from
3 giving evidence..."

4 And I bring that up just to highlight the -- is
11:01 5 it correct that what you were really -- the
6 allegations were that these people undertook
7 deliberate conduct; in other words, it wasn't a
8 case of making mistakes or incompetence, it was
9 deliberate conduct, deliberate wrongdoing and
11:02 10 obstructing justice; namely, conviction of an
11 innocent person, covering it up and allowing a
12 guilty person to go free?

13 A That's correct.

14 Q If we can go back to 023176, and here on the scope
11:02 15 you indicate:

16 "A narrow interpretation of the scope of
17 this investigation might have deprived
18 us of relevant information. Too broad
19 an approach would have resulted in our
11:02 20 involvement with issues totally outside
21 of our mandate. We decided to gather
22 sufficient information to enable us to
23 attain a comprehensive understanding of
24 all the factors involved. The result of
11:02 25 this approach was that we investigated



1 material/issues which were "incidental
2 or relating to the specific terms of
3 reference".

4 Would it be correct to say that you erred on the
11:03 5 side of inclusiveness; in other words, if it was
6 on the borderline of being relevant, you
7 investigated it?

8 A Yes, I think that's fair to say. Although one
9 could say the scope of the investigation was
11:03 10 fairly narrow when it come to what criminal issues
11 we were looking at, we felt it may be necessary
12 for us to look very broadly at all the issues in
13 order to make that determination.

14 Q And so the fact gathering and investigation was
11:03 15 very broad as far as the issue of criminal
16 conduct, that was very specific; is that correct?

17 A That's correct.

18 Q The next page, scroll down to the bottom, and I
19 think here you set out what you looked at, police
11:03 20 files, justice files, statements by Centurion
21 Ministries, media reports. Can you tell us
22 generally what the media reports, what role if any
23 they played, or what did you get from those
24 reports?

11:03 25 A Well, I think it was important to see what was



1 being said in the media to see if it assisted us
2 in any way in developing issues and sort of to
3 ensure that we were covering all of that that was
4 being alleged.

11:04 5 Q And did you get any general sense about what was
6 being said in the media about the case and the
7 issues compared to what was on the record or what
8 you uncovered?

9 A In some cases what was being said in the media was
11:04 10 perhaps inaccurate as to what the facts were or as
11 to what the information that had been gathered to
12 that point.

13 Q And did that in and of itself factor in any way in
14 your investigation or was it something you just
11:04 15 noted?

16 A It was just something we noted. I don't believe
17 it caused us any difficulty or undue concern.

18 Q Did you determine whether, or consider whether
19 what was reported in the media as being inaccurate
11:04 20 might have been, in part, the source of some of
21 the allegations? Maybe I didn't ask that very
22 well.

23 A Yes. Yes, particularly with regards to the
24 Breckenridge matter.

11:05 25 Q What about the missing police files allegation,



1 was that something that had been -- I think we've
2 seen that that was in the media. What I'm trying
3 to get at is did you come to any conclusions that
4 some of the allegations that you were asked to
11:05 5 investigate were based on reports in the media as
6 opposed to, as distinct from other sources of
7 information?

8 A I'm not sure if I understand your question, Mr.
9 Hodson, but I don't recall that we specifically
11:05 10 found anything else in the media reports that
11 provided us with new issues.

12 Q Okay, no, that's fair enough. If we can then skip
13 ahead to 023181 and this is under *Background*, and
14 I asked you this question earlier with respect to
11:05 15 the progress report and I'll ask it again, under
16 *Background* you set out the details from the
17 Canadian Criminal Cases, and what would be the
18 purpose of -- go to page 023183 -- and then you
19 say:

11:06 20 "(End of details taken from Canadian
21 Criminal Cases)."

22 Would you be putting that in your report as being
23 the gospel truth or as here's what the court
24 found, the Court of Appeal found as a fact?

11:06 25 A I think basically just to set the stage for the



1 report that's to follow to give the reader some
2 background information.

3 Q And then you go on, and I won't go through this,
4 the facts and the background. If we can maybe
11:06 5 skip ahead to page 194, and here's where we get
6 into the allegations, and I think you talk in the
7 first paragraph about the meeting with Mr. Wolch,
8 Rodin and Bruce, the issues, then you met with
9 others, and then:

11:06 10 "A number of **supplementary questions** or
11 issues related to those already provided
12 to us were surfaced. To simplify follow
13 up, these were included in the
14 corresponding Wolch-Bruce-Asper-Milgaard
11:07 15 issues."

16 And I think the supplementary questions, we'll
17 see those were ones identified by either Mr.
18 Fraser, Mr. McCrank or your people; is that
19 right?

11:07 20 A That's correct.

21 Q And then here we see the Robert Bruce
22 correspondence, scroll down, please:

23 "...forwarded correspondence containing
24 additional issues. Included was a seven
11:07 25 page document submitted by Mr. David



1 Asper which challenges various aspects
2 of the written argument submitted by
3 Saskatchewan Justice to the Supreme
4 Court. New issues extracted from this
11:07 5 material were added to those provided
6 earlier by Mr. Wolch."

7 So do we take it from that that in addition to
8 Mr. Wolch, Rodin and Bruce and Mrs. Milgaard,
9 that in addition you got Mr. Asper's input as to
11:07 10 what issues he felt you should be investigating;
11 is that correct?

12 A That's correct.

13 Q And then it appears here that when you met with
14 David Milgaard, he did not identify any
11:08 15 allegation, any new allegations or, I think you
16 told us, any allegations at all; is that correct?

17 A That's correct.

18 Q So he himself didn't say to you lookit, here are,
19 here's where I think there's criminal wrongdoing?

11:08 20 A No, he didn't.

21 Q Did he have any information about any wrongdoing
22 by anybody when you talked to him?

23 A No, he didn't.

24 Q Go to the next page, here's where we see the
11:08 25 issues are numbered from 1 to 68 and I take it



1 that would be simply to identify what areas were
2 being covered? Is there any significance to the
3 numbering itself, there's no ranking?

4 A No, no, there's just an attempt to sort of show
11:08 5 what all the issues were and to which agency or
6 department the allegation is against.

7 Q And then I think we see Saskatoon City Police
8 issues, if we can go to page 197, and there's 15
9 issues for the police, then for Mr. Caldwell, he
11:09 10 has the four issues, and then here, this is where
11 it says *Supplementary Question*, I think this is
12 where, this would have generated from your people;
13 is that right, or can you --

14 A Yes, yes, I believe that's correct.

11:09 15 Q Then on to the next page, finishing with Caldwell,
16 then into the Department of the Attorney General,
17 Kujawa, and into the next page, and here again we
18 see *Supplementary Question*, and here's a good
19 example, 29:

11:09 20 "What is the date that Larry Fisher was
21 transferred from Stony Mountain to
22 Prince Albert? Was he required to
23 stay..."

24 "Determine if in fact Fisher would have
11:09 25 to appear in Regina ... court?"



1 And so that would be a question that your people
2 identified and you simply added it to an issue;
3 is that right?

4 A That's correct.

11:09 5 Q And then we see that at the bottom, provision of
6 the code. And so in looking at the issues, other
7 than where it says *Supplementary Question*, the
8 rest of those would be Wolch, Asper, Joyce
9 Milgaard issues?

11:10 10 A That's correct.

11 Q And then here, *Supplementary Issue* -- scroll down,
12 please -- would these be issues here that came out
13 of your findings or would they be items that came
14 from the Milgaard group?

11:10 15 A I believe these, they may have been issues that
16 were raised by the Milgaard group that we
17 identified, perhaps more detail that we wanted to
18 get from them.

19 Q Okay. If we can go to page 201, I think here we
11:10 20 have three catch-all or general categories,
21 police, Caldwell and Attorney General Kujawa, 47,
22 48, 49; correct, miscellaneous?

23 A That's correct.

24 Q And I think, correct me if I'm wrong, but in
11:10 25 looking at the Flicker files and in the



1 investigation, there were a significant number of
2 issues or tasks that fell under these three
3 miscellaneous categories?

4 A Yes, there were.

11:11 5 Q That those categories were quite large?

6 A Yes.

7 Q And the work done significant?

8 A Yes.

9 Q And the tasks would be identified by looking at a
11:11 10 list of the -- by looking at the Flickr file; is
11 that right?

12 A That's correct.

13 Q And then here we get into issues provided by
14 Robert Bruce and David Asper. We've not gone
11:11 15 through these, so I will quickly go through them.
16 The first one was that a blood-stained blanket was
17 turned over to the police, and I think this
18 related to, and we'll see it in the report, a
19 suggestion that a blanket the police found -- or
11:11 20 some woman phoned in five miles out of the city
21 and said she found a blanket in the snow, or her
22 dog found it, and the police had it -- determined
23 that it was animal stool on there, and then
24 Mr. Bruce and Mr. Asper said that that may be the
11:11 25 blanket that Mrs. Sonnleitner, friends of the



1 Fishers who lent Larry Fisher their car in 1967,
2 said a blanket went missing or a quilt. Was that
3 the connection?

4 A That was the connection, that's correct.

11:12 5 Q And the suggestion was that that blanket that the
6 police found had blood, not animal stool, and
7 indeed was the blanket missing from the
8 Sonnleitner car that had been lent to Larry Fisher
9 that was used in the murder of Gail Miller?

11:12 10 A That's correct.

11 Q And so that was an allegation or an issue that you
12 pursued?

13 A That's correct.

14 Q And that came from Mr. Asper and Mr. Bruce?

11:12 15 A That did.

16 Q And then here we get into the hair samples, and I
17 think the suggestion there, that the hair samples
18 taken from Milgaard and the sweater of Miller,
19 that these should have been used to match Mr.
11:12 20 Fisher; is that right?

21 A That's correct.

22 Q Next page, this is the bone-handled hunting knife
23 that I think we saw in both Mr. Wolch and Mrs.
24 Milgaard's interviews, and again, adding the
11:12 25 Hounjet pearl-handled knife as a possible suspect,



1 and as well I think Mr. Bruce and Mr. Asper put
2 forward and said the, some distinction between a
3 cosmetic bag and a compact. Was there any
4 significance to that, the fact that some called it
11:13 5 a compact, some called it a cosmetic bag?

6 A No, there wasn't, I don't believe we were ever
7 able to determine which it was.

8 Q But was that the issue, saying "lookit, it was
9 said by certain people to be a cosmetic bag and
11:13 10 some to be a compact, and that there was some
11 significance to that, in other words that showed
12 someone was lying; was that the allegation?

13 A I, yes I believe so, and I know we did a
14 considerable amount of work on that particular
11:13 15 issue.

16 Q And, as well, I think Mr. Bruce and Mr. Asper put
17 forward in the documents to you the suggestion
18 that the people who said David Milgaard threw out
19 either a cosmetic bag or a compact were lying and
11:14 20 that was fabricated and it didn't happen?

21 A That's correct.

22 Q And then here:

23 "... that Rasmussen, motel manager, says
24 he did not see any blood on Milgaard,
11:14 25 nor did he observe any unusual demeanour



1 from him.",
2 and the Crown failed to say that. Now
3 Mr. Rasmussen testified at trial and was
4 questioned about what he observed; what was your
11:14 5 understanding of this issue or allegation?

6 A It's my recall that he testified at trial as well
7 and I think, simply put -- and I don't recall what
8 the investigative results were of that, but we
9 certainly were going to look into it as it was put
11:14 10 forward to us as an allegation.

11 Q And certainly --

12 A It certainly -- sorry?

13 Q Sorry, again, it wouldn't be a case of saying to
14 Mr. Asper and Mr. Bruce that, lookit,
11:14 15 Mr. Rasmussen testified and was asked about what
16 he saw and didn't see blood, and was asked about
17 everything and the jury heard it, what is the
18 issue; and I take it what you did is you went and
19 followed up with him and investigated and --

11:15 20 A Exactly. As I have indicated, it wasn't our point
21 to challenge what they were bringing us, it was
22 simply our responsibility to go out and
23 investigate it.

24 Q Here we see:

11:15 25 "Evidence was withheld from the Defence.



1 Trial jury did not hear all the
2 evidence."

3 And go down:

4 "Statements withheld by Caldwell prove
11:15 5 that Milgaard was not in the vicinity."

6 And do you remember what that relates to?

7 A I think that was the Merrimans, but I think there
8 was also a large number of other statements that
9 sort of said people had not seen anything, and I
11:15 10 think the allegation there is that those were not
11 provided as part of the disclosure package.

12 Q And that:

13 "If Milgaard was not in the vicinity,
14 then there was no opportunity, and as
11:15 15 well, under cross examination, Wilson
16 agreed that the boys had not been
17 separated. This is consistent with
18 David's evidence."

19 And I think this was a suggestion that Wilson and
11:16 20 Milgaard were never -- never did leave the car
21 when they got stuck; --

22 A Right, --

23 Q -- that was the suggestion?

24 A -- that's correct.

11:16 25 Q And then:



1 "Non-disclosure of evidence that
2 Rasmussen, John, Danchuk and Sharon
3 Williams did not see blood on Milgaard's
4 clothing."

11:16 5 Again those people, other than Sharon Williams,
6 testified at trial; what was your understanding
7 of that issue?

8 A I think I would have to refer to the report.

9 Q Okay. And maybe I might be able to help you out
11:16 10 here. I think what they were saying is that,
11 lookit, Rasmussen, John, Danchuk -- let's leave
12 Sharon Williams for a moment because she didn't
13 see him until a day or two later -- but they all
14 didn't see blood and how come others did; is that
15 the gist of the argument?

16 A Yes.

17 Q And my question is, well, they all testified at
18 trial and told the jury they didn't see blood and
19 so what was the criminal wrongdoing that came out
11:17 20 of that, is what I am trying to elicit from you;
21 what did you understand to be the -- and what were
22 you investigating in relation --

23 A We were looking into that to see if there was a
24 criminal wrongdoing --

25 Q Okay.



1 A -- in regards to that.

2 Q And then:

3 "Wilson recants Milgaard's admission to
4 him."

11:17 5 And:

6 "Motel room incident is not sincere."

7 And we touched on that.

8 Paragraph 61, this has to do
9 with Milgaard's scribbler notes.

11:17 10 62:

11 "Insofar as the knives are concerned,
12 David denies having a knife. The
13 Manager of the grain elevator said that
14 he doesn't recall a knife being taken
11:17 15 from the grain elevator during the break
16 in."

17 And:

18 "If David had a knife that was not the
19 murder weapon, why didn't Tallis suggest
11:17 20 this to the witnesses?"

21 And I think, if I may take from other documents,
22 there -- the suggestion was, I think at the
23 Supreme Court Mr. Tallis said that David Milgaard
24 admitted to him, back in '69, that he had a knife
11:18 25 but it wasn't a paring knife, and I think the



1 suggestion here -- and correct me if I'm wrong --
2 is Mr. Bruce and Mr. Asper saying well that's,
3 that's not true, because otherwise why didn't
4 Tallis say to the witnesses 'didn't David
11:18 5 Milgaard have a knife but a different type of
6 knife'; is that the suggestion?

7 A Yes, that's the suggestion.

8 Q I think what Mr. Tallis told this Commission, that
9 the last thing he wanted the jury to hear was
11:18 10 confirmation that David Milgaard had a knife or a
11 different knife or any knife, would that be
12 consistent with that you understood to be his
13 position?

14 A Yes.

11:18 15 Q But that was the issue here, that something
16 nefarious happened here because Mr. Tallis did not
17 question the other witnesses about a different
18 knife that David said he had, and therefore David
19 didn't really have a knife and Mr. Tallis'
11:18 20 suggestion, that he did was somehow part of
21 wrongdoing; is that correct?

22 A That's correct.

23 Q And then:

24 "On the issue of becoming stuck and
11:19 25 separating from Wilson, it must be



1 recalled that Wilson said, under
2 cross-examination, that the car did not
3 get stuck at all. In his notes,
4 Milgaard describes the car getting
11:19 5 stuck, but only for a brief period of
6 time. If, in fact, the car got stuck,
7 the question is where. The heretofore
8 undisclosed evidence is irrefutable that
9 the car was not stuck in an area that
11:19 10 would provide for an encounter with Gail
11 Miller."

12 I think this is taken verbatim from notes that
13 Mr. Asper made on the government's argument; is
14 that right?

11:19 15 A That's right.

16 Q And:

17 "The Crown argues that Ute Frank's
18 evidence 'closely parallels' that of
19 Lapchuk, Melnyk and Hall. It parallels
11:19 20 the evidence only to the extent that
21 they were all in the hotel room. Ute
22 Frank was obviously on a different plane
23 of reality, according to her evidence."

24 And I think they were taking issue with Ute
11:19 25 Frank's evidence; was that right?



1 A That's right.

2 Q And then lastly, we have been through these, these
3 were the Issues Provided by Joyce Milgaard that
4 were not otherwise included in Mr. Wolch's
11:19 5 allegations; is that right?

6 A That's right.

7 Q Go to 023207. And this gets into the report, just
8 a couple of comments, you say here:

9 "To ensure our investigation

11:20 10 of the allegations of wrongdoing was
11 complete and as thorough as possible, we
12 re-examined all the circumstances
13 surrounding the conviction of David
14 Milgaard commencing at the point of the
11:20 15 murder of Gail Miller. We then
16 proceeded to scrutinize all subsequent
17 events of relevance."

18 Do I take it, from that, that you and your
19 investigators concluded that, in order to do your
11:20 20 criminal investigation, you needed to look at
21 every circumstance relating to Gail Miller's
22 murder?

23 A That's correct.

24 Q You then comment here about:

11:20 25 "... numerous individuals were



1 interviewed about events occurring
2 twenty-three years past. It is
3 important to note that their ability to
4 recall details was influenced in large
11:21 5 part by the significance of the
6 occurrence. In many instances, memories
7 were simply clouded by time, and in
8 others, by the desire to shut out
9 unpleasant events of the past. As well,
11:21 10 it must be remembered that many of the
11 witnesses interviewed were very young at
12 the time the events took place, i.e...
13 sixteen and seventeen years of age."

14 Can you tell us, what methods or what did your
11:21 15 investigators do to try and address this issue,
16 how did you approach witnesses and try and -- to
17 try test their credibility of what they were
18 saying in 1993 about what happened in '69-'70?

19 A I think the first was to approach the witnesses in
11:21 20 open and non-suggestive manner, allow them to
21 provide all the information that they could, and
22 then, if necessary, to in some cases provide them
23 with a copy of their statement to see if that
24 would assist them in refreshing their memories or
11:21 25 provide them with additional information; and



1 secondly, once the statement was obtained, to try
2 and support what was in the statement by other
3 known information or statements of other
4 witnesses.

11:22 5 Q And to what extent, if any, did you look at what
6 information may have been imparted to these
7 witnesses from 1969-'70 until 1993?

8 A I certainly know that would have been explored.
9 In other words if they, in their statement they
11:22 10 said they heard something or were told something
11 by someone, that would be followed up on to try
12 and determine, you know, the truthfulness of that.

13 Q Okay. And if -- let's just walk through this, and
14 let's take '69-'70. At the conclusion of Mr.
11:22 15 Milgaard's criminal proceedings would it be
16 correct to say -- and let's just walk through the
17 various people they would have encountered before
18 they got to you -- and would it be correct that in
19 the early 1980s many of these witnesses, and
11:22 20 particularly the significant witnesses, would have
21 had contact with Joyce Milgaard?

22 A Yes, many of them had contact with Joyce Milgaard.

23 Q And, as well, some with Peter Carlyle-Gordge; you
24 became familiar with who he was?

11:23 25 A Yes.



1 Q And you talked a bit about this yesterday, but
2 tell us again, what would you want to know as an
3 investigator in 1993 in trying to sort out the
4 credibility and reliability of what a witness says
11:23 5 in 1993; what would be the significance of
6 interaction between that witness and let's say
7 Joyce Milgaard? And I'll go through them all, but
8 let's start there.

9 A Well it would be very, in a general sense it would
11:23 10 be very important to know what witnesses were
11 told, whether they were promised anything, whether
12 there was any coercion involved or they were
13 offered any inducements. And, certainly, the best
14 way to do that is if you have a verbatim
11:23 15 statement, a tape-recorded statement that you can
16 examine the contents of that statement to
17 determine what was said or what may have been
18 suggested, but certainly to try and find out the
19 background, how the statement obtained, what led
11:23 20 up to the taking of the statement, and whether or
21 not there was any sort of influence by way of an
22 inducement or a promise or a threat or anything
23 like that provided to the witness.

24 Q What would be the importance to find out what the
11:24 25 witnesses were told by Mrs. Milgaard?



1 A Well, certainly, I guess the test of any statement
2 is its voluntariness, and I guess in order to
3 determine voluntariness you needed to determine
4 whether there was anything occurred that would
11:24 5 influence or impact on the voluntariness of that
6 statement.

7 Q Yeah. What about -- and again, we saw this in
8 some of the interviews of -- not only conducted by
9 Joyce Milgaard but, indeed, many others
11:24 10 subsequent -- of putting to the witnesses, lookit,
11 here's what I think happened or here's what we
12 know happened, here are the facts and here's our
13 theories, things of that nature; what concerns, if
14 any, would you have? Again in 1993, and the
11:24 15 witnesses you are dealing with, I want to go back
16 and travel with these witnesses from '70 until '93
17 and have you tell us what things you'd look for in
18 '93 and what impact their previous encounters may
19 have had. So what would be the significance,
11:24 20 then, of details or information that goes from an
21 interviewer to the interviewee?

22 A Well certainly a suggestion, although it may not
23 cause someone to change, you know, his or her
24 statement, it may be adopted by the person as
11:25 25 fact, particularly over a passage of time, or if



1 someone is -- perhaps if the recall isn't very
2 good, if the suggestion is made to them, they
3 could eventually adopt that suggestion as fact.

4 Q Okay.

11:25 5 A So if someone is provided with a fact that is not
6 truthful, or whatever, that could -- or that
7 didn't occur, that could influence them.

8 Q Okay. And, again, I take it that in '93, when
9 your investigators were doing the same thing with
11:25 10 these witnesses, can you tell us what interviewing
11 techniques you and your team would have employed
12 with witnesses? Were there things, certain rules,
13 that they should or shouldn't do in trying to get
14 information from these witnesses?

11:25 15 A Well, as I've said, certainly the first approach
16 would be to be objective and try and offer the
17 person you are interviewing the opportunity to
18 provide a pure version, or as pure a version as
19 possible, statement. In other words, allow the
11:26 20 person to provide complete details to whatever
21 extent they could without interrupting them,
22 without leading them, without providing them any
23 suggestions.

24 Q Yeah. And for example, I suppose even if we go
11:26 25 back to 1969, I think the allegation has been



1 made, and certainly on behalf of David Milgaard or
2 by his group, that what they say the city police
3 did to some of these witnesses is just that,
4 saying here's information, here's what we think
11:26 5 happened, with the view that the witnesses then
6 pick up that information as fact, and that would
7 be something you would want to guard against; is
8 that fair?

9 A That's something we'd watch for, that's for sure.
11:26 10 And I think the longer, and the more time passes,
11 the more, perhaps the more you would be able to
12 influence someone's memory, because it's not as
13 close to the event.

14 Q So that in talking to someone in 1993 -- or
11:26 15 sorry -- an event in '69-'70, if they are talked
16 to some -- by somebody in the mid-'80s, for
17 example, by then it might be easier, you are
18 saying, to influence their memory because their
19 memory will not be as good?

11:27 20 A Yes.

21 Q So, again, many of the witnesses would have talked
22 to Mrs. Milgaard. Just generally, in your review,
23 you would have got some of the tapes of her
24 interviews of the various witnesses and the
11:27 25 transcripts; is that right?



1 A Yes, we did get some tapes.

2 Q And, generally, did you have any concerns about
3 the manner in which Mrs. Milgaard interviewed
4 these witnesses, and in particular the questions
11:27 5 she asked or the information she provided to the
6 witnesses?

7 A Not with the tapes themselves, but I do -- or I
8 shouldn't say that. I do recall one particular
9 tape, and that is Ron Wilson, where there was the
11:27 10 suggestion made that there could be money to help
11 prove David's innocence, and I guess that comment
12 could have been taken, you know, both ways by
13 someone reviewing the statement. But, certainly,
14 we learned of other ways that perhaps witnesses
11:28 15 were pursued very diligently, that suggestions
16 were made to them that perhaps when they were
17 spoken to they were not, the information they
18 provided was not necessarily voluntarily provided,
19 there was some influence placed or undue pressure
11:28 20 placed on them to speak.

21 Q I asked this question of Mr. Williams, and if
22 you're not familiar with this part of the
23 interview please tell me, but in the 1981
24 interview of Nichol John by Tony Merchant and Mrs.
11:28 25 Milgaard, were you familiar with that, that had



1 taken place?

2 A I'm not now.

3 Q Okay.

4 A I'm sure I did review it at some point of time but
11:28 5 I'm not familiar with it now.

6 Q Okay. And in that interview Mrs. Milgaard, at
7 that time, believed a fellow by the name of Lorne
8 Mahar was responsible for Gail Miller's death.
9 And he was a person who had, I think, killed his
11:28 10 wife, and was tried, and I believe it was not
11 guilty by reason of insanity. But right around
12 this time and he had in fact been, I think, at St.
13 Mary's Church around the time so there was some
14 connection about the time. It turned out
11:29 15 subsequently that he was not at the scene at the
16 time, or there was some reason that said he could
17 not have done it, but that was her view at the
18 time. And when she interviewed Nichol John, and
19 we have been through this transcript a number of
11:29 20 times, basically says to her that, lookit, I think
21 you saw the murder, I think you saw this person
22 commit the murder, and you believe since David
23 something about purse snatching, that you assumed
24 it was David, but I think you saw it, you must
11:29 25 have been terrified and that's what I think



1 happened, and then went and showed her the map and
2 went through a bunch of details.

3 Can you tell us, in trying in
4 1993 to figure out what Nichol John remembers
11:29 5 about 1969-'70, as an investigator, would you have
6 a concern about that type of interview?

7 A Yes.

8 Q And why?

9 A Because it could have -- I'm not saying it
11:30 10 necessarily did because some people, no matter
11 what you suggest to them, you know, remain very
12 strong and very adamant in what they saw -- but it
13 would, something like that could potentially, you
14 know, plant something in someone's mind that was
11:30 15 not accurate.

16 Q Okay. So then let's just go ahead. I think Peter
17 Carlyle-Gordge -- and I take it it doesn't matter
18 which individual talked to these witnesses, to the
19 extent that people associated with the David
11:30 20 Milgaard case, whether they be on behalf of David
21 Milgaard, on behalf of the police or on behalf of
22 authorities, to the extent that they had contact
23 with these witnesses and interviewed them is it
24 fair to say that the interaction would be
11:30 25 important for you in assessing the reliability of



1 their information in 1993?

2 A Yes, it would.

3 Q And in particular the nature of the questioning,
4 whether it was aggressive, intimidating, etcetera,
11:30 5 would be, I think you told us, is one factor?

6 A Yes.

7 Q And, two, I think you said you would want to know
8 what was said by the interviewer, in other words
9 were details provided to the witness that, later,
11:31 10 the witness might have thought to be the facts?

11 A That's correct.

12 Q And I think you told us, please correct me if I'm
13 wrong, that as time goes on witnesses would be
14 more susceptible to suggestion about what would
11:31 15 have happened because their memory was not as
16 good?

17 A Yes. And I'm not suggesting all witnesses, --

18 Q Yeah?

19 A -- but certainly some witnesses, perhaps one who
11:31 20 may have not been that certain at the, from the
21 outset, being more subject to influence.

22 Q Yeah. And I'm just trying to get a general sense
23 from you and we'll deal with some specifics when
24 we get into the witnesses. So then I guess when
11:31 25 we get into the Federal Justice application, again



1 the fact that these witnesses may have had
2 interaction with Mr. Milgaard's lawyers,
3 investigators, and/or the Federal Justice
4 investigators, the same concern as to what was
11:31 5 said between them; you would want to know?

6 A Yes.

7 Q And can you tell us, you mentioned this yesterday,
8 what -- what would be the concern, if any, about
9 witnesses who may have testified in the David
11:32 10 Milgaard matter being told, lookit, Larry Fisher
11 is the person who committed the crime, he's
12 confessed, or things -- or suggesting to the
13 witness that, as a result of something else, your
14 evidence at trial must be wrong?

11:32 15 A To some witnesses that may have no impact
16 whatsoever, they may simply say, no, I saw what I
17 saw and I know what I saw, and that's it.
18 Perhaps, to some other witnesses who were either
19 weak or perhaps were uncertain of some areas, it
11:32 20 may cause them to doubt themselves and their own
21 recall.

22 Q And so the same way, would you agree that after
23 David Milgaard was convicted, that that might have
24 an impact on some witnesses thinking, okay, well
11:32 25 if he was convicted therefore he must have done



1 it, that might have an influence, post-conviction,
2 in their recollection; would you agree with that?

3 A Yes, it could, yes, I assume it could.

4 Q And then so subsequently, if they are told, no, it
11:33 5 wasn't him, it was Larry Fisher, certain
6 witnesses -- I'm not saying all -- but that might
7 have an effect on them as well to say, okay, well
8 if David didn't do it and Larry Fisher did, then I
9 guess maybe what I saw or remembered isn't quite
11:33 10 right?

11 A Yes.

12 Q And trying to rationalize, later, what their
13 evidence was?

14 A Yes. It could cause them to doubt, you know, what
11:33 15 they have said previously, or what they thought
16 previously.

17 Q And, for example, let's take Albert Cadrain. In
18 sighting blood, or what he thought was blood on
19 David Milgaard's pants, would you agree with me
11:33 20 that Albert Cadrain -- that David -- that the
21 premise that David Milgaard at the time, in 1993,
22 had nothing whatsoever to do with Gail Miller's
23 murder; would you agree that it was quite possible
24 that Albert Cadrain still saw either blood, or
11:33 25 what he thought was blood on David Milgaard's



1 pants, from a source completely unrelated to an
2 encounter with Gail Miller; that would be a
3 possibility?

4 A Yes, that's possible.

11:33 5 Q And so then in 1990, when Mr. Cadrain is told,
6 lookit, Larry Fisher committed the murder, not
7 David, therefore you lied about the blood or you
8 were pressured about the blood, one explanation
9 might be that he was telling the truth and he saw
11:34 10 blood but it had nothing to do with Gail Miller's
11 murder?

12 A Yes, that is an explanation.

13 Q And so a weak witness might say "okay, well I
14 guess I didn't see blood", a strong witness might
11:34 15 say "yes, I did"?

16 A Correct.

17 Q And I guess the trick, in '93, is to figure out
18 how all these previous encounters have affected
19 each and every witness?

11:34 20 A That's correct.

21 Q And so again, when we get to your investigation
22 and talking to these witnesses and trying to
23 figure out -- well let me add one further step, or
24 pardon me, two more. The Supreme Court of Canada,
11:34 25 presumably having dealt with this issue and made



1 its ruling where they said, lookit, we don't think
2 David Milgaard has established that he is probably
3 innocent based on the evidence, and that was in
4 the public domain; is that something that might,
11:34 5 again, be a matter that might influence a witness?

6 A It, I think it's possible.

7 Q And I'm -- for example I point out, I think, Linda
8 Fisher, who I think at various times had said,
9 "yes, I think Larry Fisher, I think my husband
11:35 10 committed it", then it's a suspicion that I think
11 he did, and after the Supreme Court ruling she was
12 quoted in the media saying "I really don't know
13 which of the two" -- or words to that "I really
14 don't know which of the two did it, I'd sure like
11:35 15 to know", and something to that effect.

16 So, in other words, that I'm
17 not saying it did have an effect with her, but
18 what happens in the Supreme Court might have an
19 impact on witnesses who maybe don't have a great
11:35 20 recall but are trying to rationalize what they
21 think might have happened?

22 A Yes, I think that's possible.

23 Q And is that something, as an investigator, you
24 encountered in this case, witnesses who think back
11:35 25 23 years and say "well, I try to remember, but if



1 I can't remember I'm trying to think what I would
2 have remembered", or trying to rationalize based
3 on what they believe to be the true state of
4 facts?

11:36 5 A That's true. And as you said, and perhaps to put
6 it differently, that's one of the difficulties to
7 try and sort out what is true, what the witness
8 actually recalls from memory as having occurred,
9 and what the witness may have heard or been told
11:36 10 and subsequently adopted throughout the pure
11 passage of time.

12 Q Now let's go to the media. And I think you are
13 aware that, 1989 to 1992, there was a significant
14 amount of information in the media about David
11:36 15 Milgaard's case?

16 A Yes, there was.

17 Q And about primarily, I think it's safe to say,
18 articles and information suggesting that he was
19 innocent and putting forward evidence and reasons
11:36 20 for that; you'd be aware of that?

21 A Yes, I'm aware of that.

22 Q And I think you've told us that in your
23 investigation you became aware of some of the
24 media information and concluded that some of it
11:36 25 was inaccurate?



1 A Yes.

2 Q Correct? And let me take the dog urine item for a
3 moment. And I think the evidence is that the,
4 based on the report from Dr. Markesteyn, reports
11:37 5 in the media were -- and they started with saying
6 the frozen semen used to convict David Milgaard as
7 his semen might be dog urine to, actually, a
8 statement in the *Toronto Star* I believe that, in
9 fact, it was dog urine. And certainly the
11:37 10 evidence, I think, before this Commission from
11 many people, a number of experts or people
12 involved at least at this Inquiry, have said in
13 their view it was not dog urine, it was human
14 semen, and Staff Sergeant Paynter who actually
11:37 15 tested it in 1969 said it was human semen. So in
16 that backdrop can you tell us, again as an
17 investigator in 1993 talking to witnesses, could
18 what was in the media have influenced witnesses as
19 to what they recalled back in '69-'70, or
11:38 20 influenced their thinking about the case?

21 A Yes, it could have.

22 Q And can you elaborate on that? In what way?

23 A I think certainly, as I've indicated before, a
24 witness who perhaps is uncertain of what he or she
11:38 25 recalled or saw now may adopt something they hear



1 as being what actually happened and start to doubt
2 their own belief.

3 Q And for example, I mean on the dog urine might be
4 one, is that something if someone said, okay, they
11:38 5 read that and they think my goodness, if David
6 Milgaard got convicted by dog urine then he must
7 be innocent, and therefore maybe I don't remember
8 things a certain way? And I'm not saying that
9 happened, I'm just trying to get a sense of would
11:38 10 that be something that could possibly be in play
11 with some of these witnesses?

12 A Yes, it's possible with some of the witnesses.

13 Q And, again, in your investigation did you
14 encounter some of these things that I have been
11:38 15 going through, that peoples' memory in 1993 was
16 influenced by not only their contact with previous
17 interviewers and advocates but, as well, what was
18 in the media about the case?

19 A Yes, and I think even by innocent conversations
11:39 20 with other people where perhaps circumstances were
21 discussed, so I think there is a number of things
22 that could have influenced their ability to recall
23 accurately.

24 Q So what did your team do to try and get to the
11:39 25 bottom of all of this then? How did you deal with



1 -- and let me ask, would this be different than
2 other types of investigations you had been
3 involved in, in other words in dealing with
4 witnesses who had been through so many different
11:39 5 processes?

6 A Yes. I have been involved in investigations
7 where, you know, witnesses were -- you know, had
8 been some, had been perhaps some time since the
9 occurrence and the witness' recall was difficult
11:39 10 based on that. I don't know that I've ever been
11 involved in an investigation where the period of
12 time since, from the incident to the time we were
13 investigating, was that long. But certainly what
14 you do is you look at the statement, you test it
11:40 15 against other known facts, things that you hear
16 from other witnesses, other evidence that's
17 available, the circumstances as you know them, to
18 try and make a determination, you go back to try
19 and clarify points with the witness where there's
11:40 20 uncertainty, so there's a number of things you
21 could do to try and get as much good information
22 and accurate information from a witness as
23 possible.

24 Q And would it be correct to say that it would
11:40 25 necessarily require you to go through the witness'



1 interaction with others from 1970 until 1993, in
2 other words "who did you talk to, what did they
3 say to you, what were the circumstances"? So in
4 other words let's take for example Deborah Hall,
11:40 5 would you have gone back and said "okay, we know
6 you talked to Chris O'Brien in 1980, what did he
7 say to you, what were you shown, you talked to
8 David Asper in 1986, you talked to Eugene Williams
9 in 1990, you testified at the Supreme Court", in
11:40 10 other words how did your travels through that
11 system affect what you now recall; would that be
12 part of the task?

13 A Yes, it certainly would.

14 Q And --

11:41 15 A It would assist the investigator in making a
16 determination.

17 Q And was that one of the reasons that your
18 investigation maybe involved -- required the
19 number of people it did and covered the amount of
11:41 20 documents and the time it took to do it?

21 A Yes, that would certainly be an explanation.

22 Q And I'm not trying to justify the time this
23 Commission has taken Mr. Sawatsky, that's not the
24 purpose of my question, but the -- was that
11:41 25 something that your investigators then, when they



1 went to a witness, would do, in addition to what
2 they now recall, but to sort of go back and review
3 everything that happened to them?

4 A Yes, they would certainly try and take each area
11:41 5 as far as they can to help make a determination as
6 to what, what the witness was telling us and to
7 verify that.

8 Q And were there questioning techniques, then, that
9 your people used to try and distill that down and
11:42 10 to still try and get what you thought to be
11 reliable information in 1993?

12 A Yes. As I've said, the initial approach would
13 certainly be one of tell me everything you can
14 remember, and then from there to certainly try and
11:42 15 assist where you could, in a constructive way, the
16 person to have the best recall possible.

17 Q If we can go down to the bottom of this page, just
18 a couple comments here, you say -- this is part of
19 your report, you say:

11:42 20 "In the latter part of our
21 report we deal with issues relating to
22 David Milgaard's culpability as well as
23 Mr. Wolch's assertion that the evidence
24 points to Larry Fisher."

11:42 25 And is the reason you looked at Larry Fisher is



1 because Mr. Wolch said "he's the real killer"
2 essentially?

3 A Yes, essentially.

4 Q And as far as David Milgaard's culpability, was
11:42 5 that something that you looked at, because Mr.
6 Wolch and Mrs. Milgaard said that's part of the
7 fabric of the frame and coverup allegation is that
8 he is an innocent person and they took these steps
9 to deliberately convict an innocent person; is
11:43 10 that how -- I'm trying to understand whether you
11 would have, apart from those allegations, would
12 you otherwise have considered or looked at the
13 evidence about David Milgaard's innocence?

14 A Yes, that's correct.

11:43 15 Q So it was related to the criminal allegation?

16 A That's right.

17 Q And here, in the report, you talk about:

18 "... the details of our investigation
19 ... we have provided an *investigators*
11:43 20 *comment* which represents our *analysis of*
21 *the facts.*"

22 And again as we go through this, I think under
23 investigators comment, that's the analysis and
24 conclusion; is that correct?

11:43 25 A That's correct.



1 Q If we can go to 209. There's just a mention here,
2 I think there's specific mention of the
3 information gathered by Centurion Ministries; why
4 would that -- can you tell us the significance of
11:44 5 that being included in the general investigation
6 part?

7 A I think just to set the context of the manner in
8 which the information was received and from whom,
9 and we wanted to make note of the fact that we
11:44 10 were provided additional information by Centurion
11 Ministries above what other witnesses or --
12 provided us, or other complainants.

13 Q And you go on to talk about getting the tapes
14 except for the Ron Wilson tape, and you say:

11:44 15 "The taped interviews were transcribed
16 and analyzed to assess the nature and
17 quality of information provided and to
18 discover new facts and information which
19 could be of assistance to this
11:44 20 investigation."

21 What -- the nature and quality of information
22 provided, which -- is that a flow from Paul
23 Henderson to the witness or the witness to Paul
24 Henderson, or both?

11:44 25 A Or both, yes.



1 Q Both. Then we go to the next page:

2 "It became apparent, early in our
3 investigation, that there was a
4 divergence between what certain people
11:44 5 told Centurion Ministries and what they
6 told us, or had told Canadian
7 authorities on other occasions. We
8 explored these contradictions in an
9 effort to establish which statement's
11:45 10 results were valid. The most notable
11 discrepancies had been identified within
12 our report under the applicable
13 allegation."

14 And can you elaborate on what became apparent
11:45 15 early on, what was this divergence?

16 A I think probably most notable would be Ron Wilson
17 and his recantation and the fact that now that was
18 a marked departure from anything that Ron Wilson
19 had said up until that time.

11:45 20 Q I believe in the report there's identified as well
21 some of the sexual assault victims, there were
22 some details that were different as well?

23 A Yes, there were a number of witnesses, and I would
24 perhaps need to go into the report to provide
11:45 25 better detail on that.



1 Q And I'll touch on that as we go through it, but
2 what is your recollection, did you or your
3 investigative team reach any conclusions about the
4 propriety of the Centurion Ministries, Paul
11:45 5 Henderson's interview with the witnesses?

6 A Yes, yes, we did. In fact, we were concerned
7 about the manner in which the interviews were
8 conducted, that we felt that perhaps there was
9 undue coercion or influence or pressure placed on
11:46 10 witnesses. In some cases we were able to see
11 instances of that and in others we weren't
12 provided with sufficient information to sort of
13 enable us to take that further.

14 Q Did that cause you to doubt any information
11:46 15 obtained by Paul Henderson from witnesses?

16 A It certainly caused us to doubt some of the
17 information obtained from -- I won't say every
18 single one was that way, but that seemed to be the
19 general theme throughout.

11:46 20 Q And apart from the credibility of the information,
21 I think you are saying in some cases it would
22 cause you to doubt the contents of statements that
23 he obtained; is that fair?

24 A That's fair.

11:46 25 Q What about in the big picture, did you draw any



1 inferences from that fact in the sense that, okay,
2 well why would -- I mean, if these two or three
3 statements, we've got some concerns, would you
4 draw any inference about the credibility of the
11:47 5 overall position?

6 A Well, it appeared that Centurion Ministries
7 approached, rather than in an objective fashion,
8 approaching witnesses to try and obtain
9 information, witnesses were approached from the
11:47 10 perspective that David Milgaard was innocent and
11 Mr. Fisher was guilty and the object of the
12 interview appeared to be to try and get the
13 witness to suggest that or say that.

14 Q And let's just take the scenario where you have a
11:47 15 witness, the witness who has lied at trial, at
16 least in part, lied at trial in part for various
17 reasons, and later then is being, in an effort to
18 recontact and is told in an interview that lookit,
19 Larry Fisher did it, you were manipulated by the
11:47 20 police, that's why you lied, and the witness then
21 says, okay, I guess I did, and then in giving a
22 recant, recants too much and gives reasons that he
23 may not necessarily believe in or be able to
24 establish, and then later on -- does that preclude
11:48 25 you from getting to -- but then later on it's



1 determined that, okay, some of the things that he
2 recanted were actually true, but does it preclude
3 your ability to go with the rest -- I'm not asking
4 it very well, but what I'm trying to get at is
11:48 5 does that preclude you from getting to the bottom
6 of it? And let me put it this way. If Ron Wilson
7 lied about only some of the things he recanted
8 about, in other words, that his recantation went
9 too far and may have been for the wrong reasons,
11:48 10 which is what I think some people who viewed his
11 statements have said, but that still there's a
12 couple of items in his trial evidence that he lied
13 about, does the fact that he over recanted and
14 gave reasons that did not prove to be credible
11:49 15 preclude you as an investigator or others from
16 getting credible evidence of his recantation?

17 A Well, I think -- it doesn't -- and I think it was
18 our hope that we could go back to Mr. Wilson and
19 perhaps, you know, through a very good series of
11:49 20 interviews or an interview could perhaps get
21 closer to what he had to offer and what he wanted,
22 wished to recant and what he would now claim to be
23 something that happened, so I don't think it
24 necessarily precludes it, but it certainly makes
11:49 25 it much more difficult.



1 Q And does it do so because his reliability is such
2 that if you later get and say, okay, he recanted
3 five things, three you recanted we know are true,
4 the two that you did recant, we assume those are
11:49 5 true as well because we don't trust your
6 credibility and we don't trust your reasons;
7 right? That's the difficulty, is the credibility
8 of the recanter?

9 A Well, in our case we were sort of left with
11:50 10 nothing to work with and couldn't trust the recant
11 at all. He offered no explanation and provided us
12 with nothing that we could rely on.

13 Q And similarly, Mr. Henderson I think, to get his
14 side of it, you already told us you couldn't get
11:50 15 that as well?

16 A Well, I think, I believe we got sort of a typed or
17 handwritten statement, but we didn't get the tapes
18 or access to any notes of how the interviewer
19 contacted Wilson, how they got together, we were
11:50 20 not provided with any of that, so it made it very
21 difficult to sort of look at that recantation and
22 try and sort out what elements of it could be
23 believable and what couldn't.

24 Q Let me try this a bit of a different way. You
11:50 25 have a person who recants, he says I lied at trial



1 and here are my five lies, I made up these five
2 lies, and the reasons I lied are because the
3 police manipulated, coerced and bullied me and
4 planted ideas in my mind, so here's my lies and
11:51 5 here's my reasons. What we've heard from other
6 witnesses, and I would ask for your comment, is
7 that in order to test that, you look at both the
8 lies and the reasons, you test the lies, you say,
9 okay, well, let's test the five lies, and if you
11:51 10 go out and determine that three of the five lies
11 are in fact not lies; in other words, you can
12 prove by other reliable evidence that they
13 happened, so in other words, the recanter has said
14 I lied about A, B and C when you now know he
11:51 15 didn't and can prove he didn't based on other
16 evidence, okay, that would be one way to test it;
17 correct?

18 A That's correct.

19 Q And if you find out that he lied on A, B and C,
11:51 20 you don't know about D and E, the fact that he
21 lied on A, B and C, does that cause you to doubt D
22 and E?

23 A Yes, it causes you to doubt -- in my view, it
24 causes me to doubt the entire recantation.

11:51 25 Q Right. And so when you go to D and E, and let's



1 say on D and E you maybe can't corroborate it with
2 other evidence, that those are out there on their
3 own and you don't have other known facts to deal
4 with it, is it your evidence that it becomes very
11:52 5 difficult, in fact, very difficult to believe D
6 and E or accept it as credible?

7 A Yes, it does.

8 Q Similarly, when you look at the reasons, would you
9 go to test the credibility of the five lies and
11:52 10 the recantation, go and look at the reasons and
11 say, okay, well, are those reasons true; would
12 that be one way to test it?

13 A Yes.

14 Q And the example I gave to I think Mr. Williams was
11:52 15 if the witness says I lied because I was paid
16 \$10,000 to lie and then you went and checked the
17 bank accounts and it turns out that he wasn't paid
18 \$10,000, the fact that he lied about the reasons
19 or wasn't credible, that might cause you to doubt
11:52 20 the recantation; is that correct?

21 A Yes.

22 Q And having gone through that, let's assume you go
23 through that exercise and say three of the five
24 lies that he says, you turn out, you say aren't
11:53 25 credible, they're not lies, they're true, and the



1 reasons you put forward aren't credible, okay, you
2 are at that point, can you go back and
3 rehabilitate this witness and say, okay, now let's
4 start over again and go back and see whether D and
11:53 5 E, maybe you did lie about D and E, or is it so
6 poisoned that you can't get back and say, okay,
7 did you lie about D and E, and, if so, why. Do
8 you understand where I'm --

9 A I do, and I think it is possible to, you know, if
11:53 10 you know the truth as to the motivation, I think
11 it is possible to go back and try and resurrect
12 those. I don't know how successful you would be,
13 and of course in this instance with Mr. Wilson we
14 never did get the opportunity to do that.

11:53 15 Q And to try and do that, does it depend upon the
16 credibility of the recanter after you've gone
17 through the exercise; in other words, after
18 rehabilitating him, you get to the point and then
19 he's got to be believable doesn't he?

11:54 20 A Yes, he does, you have to be working with someone
21 who you feel is putting forward his best effort
22 and that you trust and believe.

23 Q And he already had one or two strikes against him
24 because you've already caught him on a lie?

11:54 25 A Certainly.



1 Q And you already know he would have lied at trial
2 because he said he lied at trial, so he's got two
3 strikes; correct?

4 A Correct.

11:54 5 Q And the third strike is if you say you lied about
6 your reasons; right?

7 A Correct.

8 Q And so again to try and get to the bottom of this,
9 you are saying you need to have the credibility
11:54 10 and co-operation of the recanter; correct?

11 A Correct.

12 Q Would you also need then the other participant in
13 the interview that gave rise to the first
14 statement, in other words, to know what it was
11:54 15 that was said from the interviewer to the
16 interviewee; namely, Mr. Henderson to Mr. Wilson,
17 to say, okay, well what -- in order for us to go
18 back in time and try and rehabilitate this witness
19 and see whether we can get to the true
11:54 20 recantation, do you need that from the
21 interviewer, to say, okay, well, here's what I
22 said and here's what was done and try and undo
23 that?

24 A Yes. Like you say, it would be helpful to know
11:55 25 what that is so that you could overcome that in



1 the subsequent interview.

2 Q And again I think you are telling us that in your
3 case, is that something you would have tried to do
4 if given an opportunity?

11:55 5 A Yes.

6 Q And that was the path you went down, but you
7 didn't get Mr. Wilson or Mr. Henderson to go along
8 with it?

9 A That's correct.

11:55 10 Q And just again back on the question of just in
11 that scenario, did -- is it a case of saying,
12 okay, well, we have concerns about what Mr.
13 Henderson did with Mr. Wilson, did that cause you
14 to have concerns about then -- let's take Linda
11:55 15 Fisher, did you end up having concerns about Linda
16 Fisher and the manner in which Mr. Henderson
17 interviewed her?

18 A Yes.

19 Q And would -- in addition to what happened
11:56 20 specifically in that exchange, and I think you had
21 an interview tape, would you and your
22 investigators also say, okay, well, we know what
23 happened or we think this is what happened with
24 Ron Wilson, would that be a factor as well in
11:56 25 looking at the Linda Wilson (sic); in other words,



1 was it a cumulative effect in that what happened
2 with Mr. Wilson would impact your assessment of
3 Linda Fisher's credibility?

4 A It certainly would on, perhaps on the behaviour of
11:56 5 the investigator and something we would watch for,
6 and in fact did see in that statement.

7 Q Okay. If we can just scroll down, this is -- to
8 switch gears a bit, this is the RCMP role, and you
9 say here:

11:56 10 "At the outset of this investigation,
11 Saskatchewan Justice turned over to us
12 all of their files relating to the
13 Milgaard investigation together with
14 copies of Saskatoon City Police files.
11:57 15 Based on the content of these files and
16 from our interviews of former police
17 officers, we believed the RCMP rendered
18 assistance to the Saskatoon City Police
19 in an unofficial capacity and that our
11:57 20 role was relatively minor."

21 Your documents and files were destroyed in
22 accordance with RCMP policy.

23 "However, on --"

24 September 9, '93,

11:57 25 "-- several inches of misplaced



1 correspondence relating to the
2 investigation and prosecution of David
3 Milgaard was found by Saskatchewan
4 Justice staff in their file room. The
11:57 5 material was immediately turned over to
6 us. It included RCMP reports submitted
7 in May and June of 1969 by RCMP..."

8 etcetera. And then I think you told us this
9 yesterday, but I take it that that didn't cause
11:57 10 you to have any concerns about your ability to
11 objectively deal with the criminal investigation?

12 A No, it did not. As we indicated there, it was our
13 belief that the original investigators had a
14 fairly minor role and that was borne out once we
11:58 15 got that information.

16 Q Okay. If we could go to 023213 and Part V, if we
17 can go to the next page, this is the part that
18 deals with your investigation into the Saskatoon
19 City Police and the allegations; is that correct?

11:58 20 A That's correct.

21 Q And maybe just before lunch I'll just quickly go
22 through the organization here. I think what
23 you've done with these letters is you set forth
24 the allegation, and these come out of the issues,
11:58 25 and I think here's where you lumped the issues



1 together, so the B allegation is that the police
2 connected the Fisher rapes and the Miller murder
3 at the onset, and then the sub-issues are the
4 connection, members being split, photo lineups,
11:58 5 and then you have investigator comment. And then
6 C, the allegation is the police cover-up and then
7 sort of sub-issues that relate to the cover-up,
8 the missing files, Karst going to Winnipeg, and
9 then D, the allegation that witnesses are
11:59 10 intimidated, and then again some of the sub-issues
11 and then your investigative summary; is that
12 correct?

13 A That's correct.

14 Q And so you kind of narrowed them down and put them
11:59 15 I think into about four allegations here; is that
16 correct?

17 A That's correct, into four major topics.

18 MR. HODSON: This is probably an
19 appropriate spot to break before I get into the
11:59 20 details.

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

22 (Reconvened at 1:33 p.m.)

23 BY MR. HODSON:

24 Q Mr. Commissioner, as I've indicated, I feel like
01:33 25 the teacher on the last day of class before summer



1 holidays, so for counsel, if you want your report
2 card, you have to stay until 3:30, otherwise back
3 in September.

4 If we can call up 023167, the

01:33 5 report, and go to page 214, and go to page 215,
6 and this gets into -- I now want to get into, have
7 you walk us through what it was you did to
8 investigate the allegations against the police and
9 the investigative results, and I think here we
01:34 10 see, just to give some background, this is where
11 you start to group the issues that are identified
12 earlier; is that right?

13 A That's correct.

14 Q And then if we can kind of -- we've been through
01:34 15 much of this before, Mr. Sawatsky, so I may try
16 and lead you through some of this and indicate
17 just by summary rather than reading it, but here
18 only the Fisher rapes, I think your report
19 indicates that the city police did in fact connect
01:34 20 the 1968 rapes to the Gail Miller murder as one of
21 the theories of the investigation; is that
22 correct?

23 A That's correct.

24 Q And can you just give us some insight from your
01:34 25 own experience as an investigator about theories.



1 You were involved in a number of murder
2 investigations. Is it common for the police to
3 come up with theories or thoughts or ideas, things
4 of that nature, can you elaborate on that?

01:35 5 A Certainly. In a case like this, you can see where
6 they would sort of be grasping for leads, trying
7 to find some avenues of investigation to pursue,
8 and they would probably look back over a number of
9 incidents where there could be instances of sexual
01:35 10 assault, could be murders, could be assaults,
11 could be anything violent, they would probably
12 look back through their record to try and identify
13 any new information, any leads to pursue, so I'm
14 certain that, you know, as they went back through
01:35 15 their files, they would have probably found some
16 of these incidents and tried to make a
17 determination as to whether or not there was a
18 connection between the unsolved murder at the time
19 and these sexual assaults.

01:35 20 Q And, for example, I think we see from the police
21 file that another theory or area they looked into
22 were her former boyfriends, Gail Miller's
23 boyfriends and acquaintances, would that be
24 another theory, so to speak?

01:35 25 A Yes.



1 Q And I take it in a rape/murder, when you sit down
2 and look at that as a police officer, can you tell
3 us just generally what are the things that might
4 come to mind as possible theories for the
01:36 5 perpetrator?

6 A Sorry, could you --

7 Q Just generally speaking, when you have a
8 rape/murder, as to what theories, as to what --
9 what group the suspect might be in, is there some
01:36 10 sort of standard police protocol that you would
11 follow?

12 A I understand. You would, at that time, you know,
13 because certainly the resources were much more
14 limited than they are now, they would probably
01:36 15 check all their records, probably check with
16 neighbouring police departments, they would
17 probably perhaps make some checks through the
18 RCMP, they might go to criminal index records that
19 were in existence at the time through Ottawa
01:36 20 through Central Records, so there were probably
21 any number of things that would have been
22 available to them, but probably they would have
23 started, you know, closer to home right in their
24 own record system to try and see if there were any
01:36 25 crimes with similar M.O.s, where violence was



1 used, where sexual assault was used, etcetera.

2 Q And so again, is it a case of had there not been a
3 rape, just a murder, it might take a bit of a
4 different approach; is that fair? In other words,
01:37 5 who would have done this, who are the
6 responsible -- who would have a motive to kill
7 her?

8 A That's correct.

9 Q And with the sexual assault, am I correct that it
01:37 10 would be, okay, well, whoever did this also raped
11 her, maybe we should look at people who have
12 committed previous rapes?

13 A Correct.

14 Q And in this case I think what your investigation
01:37 15 turned up is that there were two earlier unsolved
16 rapes in Saskatoon that bore some similarity to
17 the Gail Miller murder; is that correct?

18 A That's correct.

19 Q And again, I think your conclusion was that the
01:37 20 police did connect them in the sense of they
21 looked for a common perpetrator for a while; is
22 that correct?

23 A That's correct.

24 Q And in your view, was that an appropriate
01:37 25 investigative step to take?



1 A It certainly was.

2 Q And when you have a theory like that that says
3 okay, these rapes are similar, and I think that
4 was your conclusion, that the two earlier rapes
01:37 5 were similar in nature to the murder?

6 A That's correct.

7 Q Does that mean that the person who committed those
8 rapes killed Gail Miller?

9 A No, it doesn't.

01:38 10 Q And what does it mean?

11 A It simply means that they would go back hopefully
12 to provide themselves with some leads, but it
13 could very well be that through the course of
14 investigation a suspect is developed by another
01:38 15 means that simply is not associated at all in
16 their view to the rapes and then they would likely
17 pursue that.

18 Q What about the other side of it, that says okay,
19 if it was the same person, why did the person who
01:38 20 killed Gail Miller not kill the earlier two
21 victims? In other words, the other two were
22 rapes, but no murder, this was a rape and murder,
23 would that be something on the other said to say
24 okay, well, maybe it isn't the same person?

01:38 25 A It could very well be at that time, yes.



1 Q And so again just in your experience, apart from
2 this case, in investigating murders or serious
3 crimes would it be a common occurrence for
4 investigators to have a theory of who may have
01:38 5 committed the crime to discover later that their
6 theory was wrong?

7 A Yes, that happens. I would suspect very often.

8 Q And I think -- have you had experience in murder
9 cases where you've come up with theories, followed
01:39 10 down that path thinking that this is the person,
11 the person that did A committed B, to find out
12 that your theory was wrong?

13 A Certainly. I recall the, just offhand, the
14 Clifford Olson case in B.C., we tracked down a
01:39 15 number of what we thought were very good leads
16 only to find that they didn't go anywhere and, you
17 know, the person was no longer a suspect.

18 Q So you had theories that a person had committed
19 the crimes that Clifford Olson was ultimately
01:39 20 convicted of?

21 A That's correct.

22 Q Someone other than Clifford Olson?

23 A That's right.

24 Q And you pursued that theory for a time thinking
01:39 25 that that was the person who committed the crime



1 based on that person's previous activities?

2 A Correct.

3 Q And got to a dead-end or found a better suspect;
4 is that --

01:39 5 A That's fair.

6 Q And when Clifford Olson came along and the case
7 against him was developed, did that mean that your
8 other theories fell by the wayside?

9 A That's correct.

01:39 10 Q And in this case I think your conclusion or your
11 investigation indicated that once Albert Cadrain
12 came along in early March, 1969 and further
13 evidence was developed, that at some point the
14 Saskatoon City Police, as a result of information
01:40 15 they gathered about David Milgaard, concluded
16 either consciously or -- directly or indirectly,
17 but concluded that the rapist who committed the
18 '68 rapes was not the murderer; is that fair?

19 A I think that's fair.

01:40 20 Q And is there, do you see anything wrong with that
21 as an investigator, that if another suspect comes
22 along and evidence is gathered that causes you to
23 think that he is the one who committed the crime,
24 that an earlier theory, being a theory, wasn't
01:40 25 correct?



1 A That's correct.

2 Q And so again in the course of your investigation,
3 did you see anything inappropriate or improper
4 about the Saskatoon City Police sort of abandoning
01:40 5 the rapist theory as the suspect?

6 A No, I didn't.

7 Q And I think, and again without going through all
8 the police reports, do you recall that there were
9 a number of other theories the Saskatoon City
01:41 10 Police had, and in particular, let me give you a
11 couple of examples that we've seen, the boyfriend
12 of Gail Miller, the fellow outside the vehicle
13 that night, she had been at a party three or four
14 months earlier, Gail Miller, there was an American
01:41 15 fellow there with a knife, and there's a number of
16 things in the reports that appear to be suspects
17 that were pursued and theories, and presumably
18 those were all abandoned as well?

19 A That's correct. I know they did a great amount of
01:41 20 work into her background and tried to determine
21 contacts, associates, boyfriends, they did some
22 work around the bus stop to try and determine
23 activity that morning, they followed up a number
24 of leads to try and develop suspects.

01:41 25 Q If we can go to the next page, and here, for the



1 record, these blanks refer to (V9) (V9)----,
2 Mr. Commissioner, that was a woman who filed a
3 report that a couple of weeks prior to the murder
4 she had encountered an individual on Avenue Q.
01:42 5 We, I think, had that evidence in before. And
6 there was an encounter, I don't believe it was a
7 sexual assault, it may have been a -- I don't want
8 to minimize it, but it was an encounter and the
9 fellow was not apprehended, and here:

01:42 10 "Mr. Wolch attributes two other offences
11 to Fisher, those being assaults on
12 (V4)---- (V4)--- and..."
13 (V9) (V9)----.

14 "In both instances these assaults were
01:42 15 minor in nature and the circumstances of
16 the attacks differ significantly from
17 those noted above. As well, it must be
18 emphasized *that in neither case has it*
19 *been established that Fisher was their*
01:42 20 *assailant.*

21 In (V4---'s case, she was on
22 her way to a bus stop at 0707 hrs.
23 69-01-13 when a man passing in the
24 opposite direction reached towards her
01:42 25 and ran his hand up and down her legs.



1 This incident occurred within a few
2 minutes of when Gail Miller was murdered
3 and just five short blocks away. It is
4 Wolch's contention, and (V4)---'s, that
01:43 5 Fisher was her assailant. If true, this
6 would put Fisher close to the scene of
7 Miller murder at the approximate time of
8 her attack.

9 Let me just pause there. You said yesterday, I
01:43 10 think, that you investigated, and the 7:07 a.m.
11 time Ms. (V4)--- was fairly certain on; is that
12 right, at the time?

13 A Yes, yes, I believe she was very certain in her
14 complaint to the police as to the time.

01:43 15 Q And certainly it was alleged by Mr. Wolch that
16 part of the proof that Larry Fisher committed Gail
17 Miller's murder is the fact that he assaulted
18 (V4)---- (V4)---; correct?

19 A That's correct.

01:43 20 Q After your investigation of this matter, or your
21 team's investigation, if you presume (V4)----
22 (V4)---'s evidence to you to be correct, namely,
23 that it was Larry Fisher who assaulted her on
24 Avenue H at 7:07 a.m., in your view did that make
01:44 25 it more or less likely that Larry Fisher had raped



1 and murdered Gail Miller?

2 A I believe it made it less likely.

3 Q And why is that?

4 A We did investigations on both sides of the time to
01:44 5 try and determine whether or not the assault, the
6 murder could have occurred either before or after,
7 and certainly it didn't appear that it would have
8 occurred after, so I know that when we looked at
9 it before, the time simply didn't fit, we had the
01:44 10 investigators sort of retrace, try to redraw the
11 steps both with a vehicle and without a vehicle,
12 and thoughts at the time were that there likely
13 was not a vehicle, if I recall correctly, and for
14 our, for that theory to work the time simply
01:44 15 didn't fit.

16 Q In fact, it has been suggested by some that
17 (V4))---- (V4)--- may have been an alibi for Larry
18 Fisher; would you agree that that was a
19 possibility, for the Gail Miller murder?

01:44 20 A Certainly that's a possibility.

21 Q Again, on these -- to the extent that your
22 investigators followed up on, I think you've
23 already told us that Mr. Wolch and Mr. Asper,
24 Mr. Bruce and Mrs. Milgaard gave you a number of
01:45 25 theories and reasons as to why you should conclude



1 that David Milgaard was innocent and Larry Fisher
2 was the killer; correct?

3 A Correct.

4 Q And is the (V4)---- (V4)--- theory one of those
01:45 5 that you followed up on to see whether or not the
6 allegation was borne out by the evidence?

7 A Yes.

8 Q And in your assessment, we'll see this at the end
9 of the report, when you say that there is no new
01:45 10 evidence to exonerate Mr. Milgaard or inculcate
11 Larry Fisher; did your investigation then consist
12 primarily of running down and testing the various
13 reasons that Mr. Wolch and his group and
14 Mrs. Milgaard gave you as to why they said David
01:46 15 Milgaard was innocent and Larry Fisher was guilty?

16 A Yes, it did.

17 Q In other words your report is, in essence, a
18 testing of everything that they gave you; is that
19 a fair way to put it?

01:46 20 A That is a -- pardon me -- that is a fair way to
21 put it.

22 Q And so at the end of the report, when you say
23 there's nothing new to suggest that David Milgaard
24 is innocent or Larry Fisher is the culprit , is
01:46 25 that basically saying everything they gave us by



1 way of allegations we checked out and none of it
2 was validated?

3 A That's correct.

4 Q And as part of that, in addition to the specific
01:46 5 facts and circumstances, whether it be physical
6 evidence, the (V4)---- (V4)--- theory, we had a
7 whole host of evidentiary pieces related to David
8 Milgaard or Larry Fisher's activities that you
9 would have tested and checked; correct?

01:46 10 A Correct.

11 Q And is it fair to say in addition to that, and
12 perhaps the biggest theory that they put forward
13 that you tested, was that David Milgaard is
14 innocent and Larry Fisher is guilty because
01:47 15 police, Mr. Caldwell, Mr. Kujawa, and government
16 officials committed criminal conduct, obstructed
17 justice, framed and convicted an innocent person,
18 covered it up and thereby obstructed justice?

19 A That's correct.

01:47 20 Q And that finding that would prove David Milgaard
21 is innocent if you -- if you validated what they
22 told you?

23 A That's correct.

24 Q And so, in some respects, it was an investigation
01:47 25 of checking into all of the reasons put forward by



1 Mr. Wolch and his group as to why they said David
2 Milgaard is innocent, Larry Fisher is guilty,
3 which included an investigation of criminal
4 conduct, but also checking out various other
01:47 5 theories and contentions?

6 A That's correct.

7 Q And, again, the next one is the:

8 "(V9) (V9)---- was indecently
9 assaulted two weeks before Miller's
01:48 10 murder, ..."

11 And, again, what did you make of this? I think
12 the evidence on this is that she -- Mr. Fisher
13 was never identified, but this was an unsolved
14 sexual assault, I think described of a minor
01:48 15 nature, and you see there that the --

16 A Yes. I had lost you for a moment, thank you.

17 Q And, again, Wolch's submission that:

18 "... given the circumstances of the
19 'Fisher rapes' and those surrounding
01:48 20 Miller's murder, the evidence ...
21 pointed to Larry Fisher ..."

22 In other words, I think what he was saying is
23 (V9) (V9)----, two weeks before on Avenue Q was
24 assaulted, that must have been Fisher and
01:48 25 therefore that confirms Fisher killed Gail Miller



1 and it couldn't have been David Milgaard because
2 he didn't assault (V9) (V9)----?

3 A Correct.

4 Q And, again, that's something you would test the
01:48 5 same way we've talked about; is that right?

6 A That's correct. And I believe that some of these,
7 that being one of them, would have been some of
8 the cases that went forward to -- for analysis --

9 Q Okay.

01:49 10 A -- at the end of our investigation.

11 Q Next page. And I think in your report you
12 conclude here that:

13 "Police reports detailing

14 victim complaints and follow-up

01:49 15 investigation show that the police tried
16 to establish a link between the Miller
17 murder and unsolved sexual offences
18 occurring at about the same time. This
19 is confirmed in reports submitted by

01:49 20 Insp. ... Riddell, one of the RCMP
21 members assisting the Saskatoon Police.
22 In a report dated 69-03-20, he indicates
23 that the police were not overlooking the
24 possibility the murderer could be the
01:49 25 same person responsible for attacks



1 occurring between 68-10 and 68-11 ...";
2 correct?

3 A Correct.

4 Q And I think this is what you alluded to earlier,
01:50 5 the RCMP report that you discovered in September
6 1993 simply provided confirmation of that which
7 you had already discovered from the police files
8 and Saskatoon City Police officers that, indeed,
9 they had in fact linked or established a link
01:50 10 between the earlier rapes and the murder?

11 A That's correct.

12 Q In your dealings with Mr. Wolch initially did you
13 get the sense that Mr. Wolch thought that was
14 being denied by anybody, in other words that
01:50 15 establishing that the Saskatoon City Police had
16 linked the earlier rapes and the murder, that
17 somehow that became an element of wrongdoing?

18 A I think I got from Mr. Wolch the fact that they
19 had never linked them, and should have, as opposed
01:50 20 to the fact that they were linked earlier. I
21 think Mr. Wolch's assertion was that they were
22 never linked and should have been linked, pardon
23 me.

24 Q If we can go to the next page. I think you then
01:51 25 get into, in your report, to try and identify when



1 -- and I think you will agree that prior to Mr.
2 Milgaard's conviction the investigation, the rapes
3 were known, I think the record reflects that the
4 rapes were known but Larry Fisher as the
01:51 5 perpetrator or even a suspect in those rapes was
6 not known; is that correct?

7 A That's correct, yes.

8 Q And here you say:

9 "The first indication or
01:51 10 reference to Fisher as a potential
11 sexual assault suspect surfaces on
12 70-09-19 when he is apprehended by the
13 Fort Garry Police Department in Manitoba
14 ... The Saskatoon City Police became
01:51 15 aware of Fisher's arrest shortly
16 thereafter."

17 And I think this talks about the September 25
18 letter and so I think, was it your investigator's
19 conclusion that Larry Fisher did not enter the
01:51 20 picture, at least in the minds of the Saskatoon
21 City Police, as the rape suspect or a rapist
22 until October or the end of September 1970, about
23 eight months after David Milgaard -- or nine
24 months after David Milgaard's conviction?

01:52 25 A That's correct.



1 Q What, if anything, did you make of the fact that
2 Larry Fisher was talked to at the bus stop on
3 February 3rd, 1969 as part of the police
4 investigation on the Gail Miller file?

01:52 5 A I know we tried to take that lead as far as we
6 could, and I think all we were able to get was
7 that he was simply eliminated by a, you know,
8 through an initial interview by a police officer
9 as not being someone who was worth pursuing any
01:52 10 further, so --

11 Q We heard, yeah, we heard some evidence of police
12 officers indicating that, based on the report,
13 that it appears -- again, Detective McCorriston is
14 deceased, he was the fellow who interviewed him --
01:52 15 but that it was likely an investigation of him as
16 a witness as opposed to a suspect, in other words
17 if you look at the report a number of people in
18 the vicinity were interviewed as "did you see
19 anything on Friday morning, who are you, where
01:52 20 were you", sort of that type of gathering as
21 opposed to "we think you are a suspect, tell us
22 where you were"?

23 A Yeah, that's correct. I perhaps didn't state that
24 very well but I think that he was -- it's very
01:53 25 common, in an investigation like this, to start



1 canvassing for witnesses, doing neighbourhood
2 inquiries, asking people who would have been
3 around at the time whether they had seen anything,
4 and I think that's the vein on which Mr. Fisher
01:53 5 was approached.

6 Q And I think we see in the police reports, in the
7 days following the Gail Miller murder a number of
8 police reports do that, there's door-to-door
9 searches, they are out on the street and they take
01:53 10 down the names of many, many people, names and
11 contact information, who were around the vicinity
12 in the days following and asking "lookit, did you
13 see anything on the morning of the murder", things
14 of that nature, and they ended up in the police
01:53 15 files; would that be standard police practice?

16 A Certainly would.

17 Q And that formed the basis of which Mr. Asper later
18 said to you, lookit, Mr. Caldwell committed
19 misconduct because he had all of these police
01:53 20 reports where all these people said they saw
21 nothing and, if he would have disclosed that, that
22 would have proven that they saw nothing and,
23 therefore, David Milgaard could not have committed
24 the crime because all these people were there and
01:54 25 didn't see him; is that -- did I get that point



1 right?

2 A Yes, you did.

3 Q Okay. So just back on the Fisher point, is it
4 correct that in your conclusions or in your
01:54 5 investigation that, again as stated here, that it
6 would be September 1970 that Larry Fisher as a
7 suspect or a potential -- or as a rapist, that
8 would be the first time it came to the police's
9 attention?

01:54 10 A Yes.

11 Q Can you tell us what, as an investigator, what --
12 again, this would be eight months after Mr.
13 Milgaard is convicted -- what would be sort of the
14 mindset, or your mindset, of an investigator once
01:54 15 a case is completed, a conviction entered, as far
16 as sort of continuing to investigate the matter
17 after conviction?

18 A I think the average police officer would simply
19 feel that the case is finished, it's done, and
01:55 20 someone has been convicted, they have had their
21 day in Court, they have had the benefit of a fair
22 trial, and the matter is now concluded.

23 Q And so at some point is there a line out there
24 where, if you got information that might cause you
01:55 25 to doubt what happened with the Court, is there a



1 line out there where you might do something with
2 that information?

3 A I think if, perhaps if you got something that was
4 compelling, you may act on it, but something that,
01:55 5 you know, was very weak or simply hearsay or a
6 rumour or something like that, I don't know that
7 that would cause somebody to sort of suddenly
8 question the conviction.

9 Q And would the type of evidence -- and let's take a
01:55 10 look at the David Milgaard case. You are familiar
11 with, I think it's fair to say, that all of the
12 evidence, the incriminating evidence that
13 convicted him, came from his friends; is that
14 correct?

01:55 15 A That's correct.

16 Q And so would that be a factor in sort of, from an
17 investigator's perspective, to say, lookit, here's
18 the evidence, it went to Court, he was convicted
19 on the basis of what, not only what -- basically
01:56 20 what David Milgaard said to his friends, namely
21 Mr. Wilson, the motel room incident, and other
22 information; would that be a factor in an
23 investigator's mind in thinking okay, well, move
24 on to something else?

01:56 25 A Yes, I think so. And like I said, unless



1 something compelling, perhaps an example would be
2 is if Mr. Fisher happened to confess when they
3 were interviewing him, then, you know, that might
4 be a reason to certainly suspect it, but
01:56 5 otherwise, I think as you said, the police officer
6 would accept the conviction and unless -- in the
7 absence of anything strong would simply carry on.
8 Q Okay. And if we can go to the next page, you say
9 here, and it says:

01:56 10 "The only indication that the
11 Saskatoon City Police had contact with
12 Fisher prior to October of 1970 is an
13 update in the Miller murder file where
14 Fisher is named as having been checked
01:56 15 by Detectives McCorriston and Parker at
16 6:49 AM, 69-02-03, on Ave. O South
17 during their general enquiries of people
18 in the area. He was one of over a dozen
19 individuals they stopped to question in
01:57 20 an effort to find information and/or
21 witnesses."

22 And, again, would that be an accurate conclusion
23 of your investigators about the purpose of the
24 Larry Fisher encounter?

01:57 25 A Yes.



1 Q And then you say:

2 "One of the startling

3 coincidences of this investigation is
4 that Fisher resided in the basement of
01:57 5 the Cadrain residence at the time of the
6 Miller murder. This put him close to
7 the murder scene and *indirectly* linked
8 him to the exhibits found in the area,
9 i.e. Miller's wallet and the toque.

01:57 10 Consequently, not only was Milgaard
11 linked to the murder scene and the
12 Cadrain residence, but so was Fisher."

13 And again, apart from it being a coincidence, was
14 there any significance you drew from that piece
01:57 15 of information?

16 A No, there was no significance, but I think in
17 writing the report we felt it was certainly
18 appropriate to be objective and to try and show
19 both sides.

01:57 20 Q And let's just walk through this address issue.
21 Certainly at the time I think it's obvious,
22 February 3rd, 1969, Albert Cadrain is not on the
23 radar screen of the Saskatoon City Police, he's
24 not gone in yet, and so the address 334 Avenue O
01:58 25 South is not of any significance to the police; is



1 that correct?

2 A That's correct, yes.

3 Q And so Larry Fisher's address is taken down, I
4 think if we look at the reports virtually every
01:58 5 other witness they talked to as well got the phone
6 address and or phone number, and would that be
7 standard police practice?

8 A Yes, it would.

9 Q And then, about a month later, Albert Cadrain
01:58 10 comes in with his evidence incriminating David
11 Milgaard and has the 334 Avenue O address and,
12 again, can you tell us whether in your
13 experience -- and again, back in 1969, I
14 appreciate you just started at the time -- but was
01:58 15 that something you thought perhaps the police --
16 or that should have, the same address should have
17 showed up somehow in a check, in other words that
18 someone should have got that and said Albert
19 Cadrain -- gone back through an earlier police
01:59 20 report and said, oh, here's another guy who lives
21 at that address ?

22 A You -- I don't know that I am -- have a sense
23 either way on that.

24 Q Okay.

01:59 25 A It's certainly possible that, you know, someone



1 looking at that could have made the connection,
2 and that may have been helpful to the
3 investigation, or it may not have.

4 Q What would --

01:59 5 A But I don't know that it would be misconduct to
6 not see it.

7 Q Would you agree that, with the benefit of
8 hindsight and the fact that Mr. Fisher has been
9 convicted of the murder, to go back and look at
01:59 10 the police report and look at the address, 334
11 Avenue O South on February 3rd, it's easier to say
12 well there it is right there, and he lived in
13 Cadrain's basement, why didn't someone see it?

14 A Well, Mr. Fisher wasn't known at that time,
01:59 15 though.

16 Q Okay.

17 COMMISSIONER MacCALLUM: He says "in
18 hindsight".

19 BY MR. HODSON:

01:59 20 Q No, and I guess maybe I didn't ask it well.

21 A Yeah.

22 Q I think now, we've seen this report that comes up,
23 the fact that Cadrain goes in on March 2nd, if you
24 put up the Cadrain statement of March 2nd, '69 334
02:00 25 Avenue O South; you put up the police report with



1 Fisher's name 334 Avenue O South; and now with the
2 benefit of hindsight, knowing that Mr. Fisher has
3 been convicted of the crime, to then go and say
4 well lookit, there was the connection right there,
02:00 5 they lived in the same house and it was right
6 there on the file, and I think your answer is that
7 at the time what we now know wasn't known; is that
8 correct?

9 A Yes.

02:00 10 Q If we can scroll down, you talk here about the
11 split:

12 "It must be emphasized that
13 the Saskatoon City Police were not aware
14 of Fisher until his arrest in 1970 so,
02:00 15 during the investigation of the Miller
16 murder, they couldn't have been 'split'.
17 If Mr. Wolch is alleging a split over
18 the 'rapist' vs Milgaard, then prior to
19 Milgaard's arrest and the determination
02:01 20 he wasn't responsible for the
21 outstanding rapes, there may well have
22 been discussions about the question of
23 whether or not the same person was
24 responsible. Subsequent to Fisher's
02:01 25 arrest in 1970, there is nothing arising



1 out of our investigation to indicate any
2 discussion took place about whether he,
3 and not Milgaard, was responsible for
4 Miller's death."

5 Are you able to elaborate on that at all?

6 A Yeah. Certainly that, I think what that paragraph
7 suggests is that we were unable to determine with
8 any certainty that that allegation had any
9 substance.

02:01 10 Q Would you view it as being inappropriate in any
11 way for police officers to -- let me give you the
12 following example -- that you have a, the rapist
13 theory, in other words the unknown rapist is a
14 suspect in the Gail Miller murder because they are
02:01 15 linked, and that David Milgaard comes along as a
16 suspect, and while he's being investigated to have
17 officers debate or discuss that lookit, you know,
18 if David Milgaard did it, then the rapist didn't,
19 this rapist theory looks pretty good, this rapist
02:02 20 -- and those types of discussions; would that be
21 part of normal police work, to go through that
22 process to try and review and debate and challenge
23 various theories and suspects?

24 A I'm not so sure if it was back then, but it
02:02 25 certainly is now. You know, I think when we



1 talked early yesterday -- or I don't know what day
2 we're on, Thursday -- I guess early Tuesday about
3 how these investigations are conducted with a team
4 approach, with regular meetings, generally
02:02 5 speaking theories like that are thrown out and
6 discussed during those meetings.

7 Q In fact would you go so far as to say that, if
8 there weren't those types of challenges and
9 questions, that that might be an unhealthy
02:02 10 environment?

11 A Yes, that -- that's possible. However, I think
12 when we look at the -- put this in perspective of
13 1969, you know, certainly this type of practice
14 wasn't followed then.

02:02 15 Q Again, did you find any evidence that there was a
16 split amongst Saskatoon city police officers to
17 the point that, at the time David Milgaard was
18 arrested and prosecuted, that some officers
19 thought he was not the person who had committed
02:03 20 the crime?

21 A No.

22 Q Next page. There is a discussion here about photo
23 lineups and:

24 "Our investigation has
02:03 25 determined that during their



1 investigation of the 1968 sexual
2 assaults, the police showed photo
3 lineups to the victims including those
4 victims of assaults later determined to
02:03 5 have been committed by Larry Fisher.
6 However, none of the line-ups shown
7 contained pictures of Fisher."

8 And then:

9 "After Fisher's apprehension
02:03 10 in Manitoba, the Saskatoon police
11 followed up by showing one of the
12 victims - (V5)--- - a photo of Fisher.
13 (V5)--- said she recognized Fisher, but
14 it is not clear how much reliability
02:03 15 ought to be placed on her identification
16 of him. There is no indication the
17 other victims were shown his photo
18 before he was charged."

19 And let's just talk about that for a moment.

02:04 20 What is the significance of the fact that at
21 least one of the Fisher victims was shown a
22 photograph of Larry Fisher and identified him at
23 least in -- to some extent?

24 A It could be that the Saskatoon police were simply
02:04 25 trying to follow up and verify Mr. Fisher's



1 admissions or Mr. Fisher's willingness to plead
2 guilty, I believe at that time, and they were
3 simply following up to ensure that, in fact, he
4 looked like a likely suspect.

02:04 5 Q Was one of the allegations of coverup that the
6 victims didn't know about Fisher, weren't told
7 about him, and that it was trying to cover it up?

8 A That's correct.

9 Q Would this information about (V5)-- (V5)--- tend
02:04 10 to contradict, or perhaps be evidence the other
11 way, on that allegation?

12 A Yes, I believe so.

13 Q And you say here:

14 "There is no indication the other
02:04 15 victims were shown his photo before he
16 was charged."

17 And we know here, from this Commission, that the
18 (V1)- and (V2)----- and (V3)----- -- the (V1)-
19 file is partially here, the (V2)----- file is
02:05 20 not -- there was no police file that would say
21 one way or the other whether the photo was shown
22 or not; was that your conclusion?

23 A Yes.

24 Q If we go down to Investigator Comment, so this
02:05 25 would be your analysis, being your team's



1 analysis, about this issue; is that correct?

2 A That's correct.

3 Q And it says:

4 "Mr. Wolch says since the

02:05 5 police had made an early 'connection'
6 between the other rape cases occurring
7 in 1968/69 and the Miller murder, when
8 Fisher admitted to the crimes in late
9 1970, the police should have realized
02:05 10 Fisher was also guilty of the Miller
11 murder.

12 It is clear from our

13 interviews of police officers and from
14 examination of investigation reports,
02:05 15 that during their investigation of the
16 Miller murder, the Saskatoon City Police
17 questioned known sexual offenders and
18 examined the circumstances of certain
19 solved and unsolved sexual assaults in
02:05 20 an effort to obtain leads and surface a
21 suspect. These actions are common
22 investigative practices when searching
23 for suspects of such crimes, but it
24 doesn't mean that having initially found
02:06 25 some basis to believe a connection might



1 exist that a continuous and unalterable
2 link is established in the minds of
3 those involved as the investigation
4 progresses.

02:06 5 The police *did* look for
6 '*connections*' between the *unsolved*
7 *sexual assaults* and the circumstances of
8 the Miller rape/murder, but they did not
9 establish a definite link between them
02:06 10 nor did they connect *Larry Fisher* to the
11 crime."

12 And let me pause there. Would that be an
13 accurate summary there, then, of your
14 conclusions?

02:06 15 A Yes, yes it would.

16 Q And so, just on this last part, you are saying
17 they did not establish a definite link between the
18 assaults and Gail Miller murders, in other words
19 'definite' in the sense that it is the same
02:06 20 person; is that correct?

21 A Yeah, that's correct.

22 Q It was a theory?

23 A It was a theory.

24 Q And, secondly, you are saying "nor did they ever
02:06 25 connect Larry Fisher to the Gail Miller murder"?



1 A That's correct.

2 Q And then you go on to say:

3 "In Milgaard's case, he was first
4 implicated in March of 1969 and was
02:07 5 arrested 69-05-31. It appears from the
6 police reports that from that point on,
7 the unsolved sexual assaults and the
8 murder were handled as being totally
9 unrelated. Fisher came to light nine
02:07 10 months after the Miller case was
11 considered solved. At the time of the
12 Miller murder, and during the subsequent
13 investigation and trial of David
14 Milgaard, the Saskatoon City Police did
02:07 15 not have any reason to suspect Larry
16 Fisher was responsible for the unsolved
17 68/69 assaults. He did not have a
18 criminal record, nor was he reported as
19 a suspect in any crimes until his
02:07 20 apprehension in the fall of 1970.

21 Following Milgaard's jury
22 conviction in January of 1970, our
23 investigation suggests the police put
24 the case against him to rest. His
02:07 25 conviction later withstood the appeal



1 process which, no doubt, reinforced
2 their belief they had a strong case.
3 When Larry Fisher was arrested there was
4 no reason for the police to question
02:08 5 David Milgaard's guilt. Admittedly,
6 there were certain similarities between
7 the Miller murder and several of the
8 Fisher assaults, such as location and
9 time frame, but we do not believe there
02:08 10 is any basis to suggest the police ought
11 to have re-opened the Milgaard case
12 based on these similarities. Simply
13 put, we believe the police saw the
14 Fisher rapes and the Miller murder as
02:08 15 two separate cases involving two
16 different offenders."

17 And that would be an accurate summary of your
18 conclusions?

19 A That would be an accurate summary. And even in
02:08 20 support of that, had the police made the
21 connection, it's obvious from the file that they
22 didn't interview Mr. Milgaard and ask him whether
23 or not he had committed any of those sexual
24 assaults, so I think that's further evidence that
02:08 25 they did not make a connection at all.



1 Q The fact that they didn't ask, try to connect
2 David Milgaard, or didn't ask David Milgaard about
3 the earlier rapes?

4 A That's correct.

02:08 5 Q Yeah. This point here, you say:

6 "Simply put, we believe the police saw
7 the Fisher rapes and the Miller murder
8 as two separate cases involving two
9 different offenders."

02:09 10 for the reasons you state. And in your view, Mr.
11 Sawatsky, in 1992, and based on your experiences
12 as a police officer, did you have any difficulty
13 with the view that the officers took at the time;
14 in other words with the conclusions they reached?

02:09 15 A No, I didn't.

16 Q And did you see their conduct as being reasonable
17 then?

18 A Yes, I did.

19 Q And, as a police investigator, I take it you and
02:09 20 your team would have drawn upon your own
21 experience as investigators in looking at what the
22 Saskatoon police must have faced in '69-'70 and
23 how they would have dealt with each of these two
24 matters; would that have been pulled into play?

02:09 25 A Yes, it certainly would have.



1 Q And so is it a case, you say here, you say:

2 "... there was no reason for the police
3 to question David Milgaard's guilt."

4 at that time. Is this a case of saying, lookit,
02:09 5 we've reviewed this and on this issue, not only
6 is it a case that there is no evidence for a
7 criminal wrongdoing, we accept all of the conduct
8 of the Saskatoon police as being appropriate in
9 the circumstances?

02:10 10 A That's correct.

11 Q In other words there wasn't anything that was left
12 there saying you know what, there is a few things
13 that cause us concern that may have been done
14 wrong or negligently or close to misconduct but
02:10 15 not criminal, or was it a case of nothing there
16 that would cause us any concern?

17 A That's correct, nothing there that would cause us
18 any concern.

19 Q If we could go, then, down to paragraph C.

02:10 20 Actually, just go back to the previous page and
21 have you just call out that. You say here that:

22 "These actions are common investigative
23 practices when searching for suspects of
24 such crimes, but it doesn't mean that
02:10 25 having initially found some basis to



1 believe a connection might exist that a
2 continuous and unalterable link is
3 established in the minds of those
4 involved as the investigation
02:11 5 progresses."

6 Would 'creating a continuous and unalterable
7 link' be tunnel vision?

8 A Certainly, it's possible.

9 Q In other words, that if you had --

02:11 10 A An example of that could be is if they now
11 suggested that there is a link and therefore,
12 because David Milgaard was a suspect, or in their
13 belief committed the murder, then he must also
14 have committed the sexual assaults, and that link
02:11 15 was never made.

16 Q And I think what we've heard of tunnel vision is
17 where the police get onto a theory and say "this
18 is it and nothing else" and won't move off the
19 theory; is that correct?

02:11 20 A That's correct.

21 Q And try and make everything fit the theory?

22 A That's correct.

23 Q And I think that's the allegation that's been made
24 against the police starting in March of '69 when
02:11 25 they got on -- when they got the information from



1 Cadrain, and I think you are telling us that if
2 they would have stayed on the rapist theory as
3 being unalterable, that would be tunnel vision as
4 well?

02:12 5 A Yeah, and --

6 Q Or could be tunnel vision?

7 A -- when you suggest that's the allegation, I think
8 the allegation perhaps is stronger than that. You
9 know, tunnel vision, there may not be any
02:12 10 wrongdoing in having tunnel vision, although it's
11 certainly regrettable, but when you deliberately
12 fabricate evidence I think that's a stronger
13 allegation --

14 Q Okay.

02:12 15 A -- than one of tunnel vision.

16 Q What I should have said is that one of the
17 allegations being made was tunnel vision?

18 A Correct.

19 Q Okay. If we can go to the next page. And this
02:12 20 deals with the coverup of Fisher by the Saskatoon
21 City Police and I think, Mr. Sawatsky, as I look
22 at this report, when you look at the police you
23 deal with any involvement they may have had with
24 coverup of files, and similarly with other people,
02:12 25 so this focusses on the allegation relating to the



1 police; is that correct?

2 A Yes.

3 Q And:

4 "Issues 10-15 deal with the

02:13 5 disappearance of several Fisher rape
6 files and the involvement of Det. Karst
7 in the Fisher investigation. The
8 overall thrust is that there was a
9 deliberate effort by the Saskatoon City
02:13 10 Police to conceal Fisher's assaults
11 because of the obvious negative effect
12 exposure would have on the Crown's case
13 against Milgaard."

14 And I think in other words, that if this gets
02:13 15 out, then that might mean David Milgaard -- it
16 may adversely affect his conviction; is that
17 correct?

18 A That's correct.

19 Q And the 'getting out' would be 'because we know
02:13 20 Fisher committed the crime and Milgaard didn't',
21 so it would be a deliberate step to prevent an
22 innocent person from getting out of jail; is that
23 right?

24 A That's right.

02:13 25 Q And then you go on:



1 "Det. Karst was the police

2 officer selected to interview Larry

3 Fisher in Winnipeg following his

4 September 1970 apprehension. Mr. Wolch

02:13 5 sees Karst's involvement as suspicious

6 for several reasons:

7 (a) All Saskatoon Police Department's

8 documentation on his interview with

9 Fisher and the ensuing investigation are

02:14 10 missing.

11 (b) In a television interview Karst denied

12 ever having met or having interviewed

13 Larry Fisher, but he later admitted

14 knowing Fisher after confronted with the

15 fact he took a statement from Fisher."

16 And:

17 "(c) Karst was attached to the Homicide Unit

18 and not the Morality Unit which was

19 responsible for the types of crimes

02:14 20 committed by Fisher and it does not make

21 sense for him to have been given the

22 assignment."

23 And then it goes on to talk about the Linda

24 Fisher matter, again, for coverup. And the claim

02:14 25 is that:



1 "The Saskatoon City Police
2 did not act upon Linda Fisher's
3 complaint because of their intention to
4 conceal the facts implicating Larry
02:14 5 Fisher."

6 So this would be laying out the allegations, is
7 that correct, at this point?

8 A That's correct.

9 Q And if we go through -- scroll down -- Issue 1 is
02:14 10 the destroyed and missing files:

11 "Wolch ..."

12 maintains:

13 "... that someone in the Saskatoon
14 Police Department deliberately destroyed
02:14 15 several files dealing with Larry Fisher.
16 They suggest there is a source within
17 the Saskatoon City Police who can offer
18 proof of the allegation."

19 And, again, if that -- I think you've covered
02:15 20 this with other allegations -- if that were true,
21 if in fact the police would have deliberately
22 destroyed the Larry Fisher files, that might have
23 been an indicia of coverup?

24 A Yes.

02:15 25 Q When you were looking at this allegation of



1 coverup did you go back and say well how would
2 somebody -- if this, in fact, were true one or
3 more people would have to get together and come up
4 with the plan to -- and depending on which version
02:15 5 of the allegation, in one sense it is to
6 deliberately frame an innocent person and then
7 cover it up; correct?

8 A Correct.

9 Q Another version is, well, after he is convicted,
02:15 10 then you find out he's innocent, then take steps
11 to cover it up --

12 A Correct.

13 Q -- and keep it covered up for 30 -- well, at this
14 time, 23 years; correct?

02:15 15 A Correct.

16 Q And was it something, based on your experience in
17 investigating crime, that if that, in fact, had
18 happened, that one or more people had been
19 involved in that type of activity to conceal
02:16 20 matters, destroy files and cover up, would it be
21 your expectation that somewhere along the way you
22 would find some piece of information or evidence
23 that would be incriminating, in other words that
24 it's difficult, difficult to destroy everything
02:16 25 and keep it secret from everybody; would you agree



1 with that?

2 A I would expect a leak.

3 Q And that in the course of your 200 and some
4 interviews, did you hear anything or see anything
02:16 5 that would suggest to you that something of the
6 nature alleged by Mr. Wolch and Mrs. Milgaard may
7 have taken place?

8 A No.

9 Q And again, would you have expected that to have
02:16 10 happened, that Mr. Kujawa, Mr. Caldwell, Mr. Karst
11 had been involved in this conspiracy and cover-up?

12 A Yes. I should add that one of the points missing
13 from this allegation of course is that we were not
14 able to interview Mr. Vanin who could have
02:16 15 provided us with something, but was unavailable to
16 us.

17 Q And I'm not sure if we covered this, but Mr.
18 Vanin's evidence before this Commission of Inquiry
19 is, I think it's fair to summarize, that he does
02:16 20 not substantiate the allegation of missing files,
21 his evidence is that he knew the files had been
22 missing for some time because he was told by Gus
23 Weir, David Asper or David Roberts, a reporter,
24 and that all that he did is find a file card copy
02:17 25 with Larry Fisher's name and file numbers and one



1 page and that's it, and that he never said files
2 were there and went missing and never was the
3 source for the allegations that were made in
4 August of 1991, and I take it that's -- he didn't
02:17 5 tell you that when you did your investigation?

6 A He didn't.

7 Q And again I maybe did a poor job summarizing it,
8 but from what I've told you of Mr. Vanin's
9 evidence, does that cause you to doubt in any way
02:17 10 the conclusions of your report on the subject?

11 A No, it doesn't.

12 Q And again, just on this issue of destroying files
13 and the cover-up, the fact that the (V5)-- (V5)---
14 file and part of the (V1)- file was in existence
02:17 15 and that a number of other unrelated files were
16 destroyed, can you tell us, what was the
17 significance of that fact?

18 A It appears that someone had preserved them for
19 some reason, either for an investigative purpose
02:18 20 or for a record purpose or whatever.

21 Q And if --

22 A So that certainly isn't evidence of someone
23 intentionally destroying files which may
24 contribute to the issues that we were examining.

02:18 25 Q And if you were going to destroy the Fisher



1 assault files to get rid of any evidence -- I
2 mean, let me back up. I think the allegation was
3 that the police never told the victims about
4 Fisher; correct, they kept it from the victims so
02:18 5 they wouldn't find out?

6 A Correct.

7 Q And that they destroyed the files so people
8 couldn't see that the police had connected Fisher
9 to those rapes and to the murder; correct?

02:18 10 A Correct.

11 Q And I take it that if that was the intent, that
12 the (V5)-- (V5)--- file which had a report that
13 confirmed that the police in fact showed a picture
14 of Fisher to her, that that might be the first
02:18 15 file you destroyed?

16 A Correct.

17 Q And the fact that it was there as opposed to the
18 other three, did you place any significance on
19 that?

02:19 20 A It's possible that that file had been pulled out
21 of the system for some reason and simply didn't
22 get put back in and perhaps wasn't destroyed along
23 with the others, so I think that certainly in my
24 view it supports our investigation, provides us
02:19 25 evidence that I believe supports our conclusion.



1 Q And let me ask it a bit differently, though, that
2 if police and/or government were going to go out
3 and destroy the Fisher files and its police who
4 are doing it and Mr. Kujawa and Mr. Caldwell,
02:19 5 would you expect that if they were going to do
6 that, they would be able to do it; in other words,
7 find the files and destroy them so that they
8 weren't found?

9 A Yes, I think they could probably arrange to have
02:19 10 that done.

11 Q And I don't mean to put it this way, but that if
12 being police officers and Crown officials knowing
13 what's there, would you expect that if they were
14 going to cover things up like this, that they
02:19 15 would be able to do it; in other words, that the
16 files would have been destroyed as opposed to a
17 couple of them coming up?

18 A Yes.

19 Q And what about the fact that on the Government of
02:20 20 Saskatchewan file, the Fisher confessions were
21 there, correspondence with Mr. Fisher's lawyer and
22 other matters of that nature, that there was
23 certainly, although maybe not complete, a
24 significant amount of documents available on the
02:20 25 government files; is that correct, relating to



1 this matter?

2 A That's correct.

3 Q If there had been a deliberate cover-up by any of
4 these people, would you have expected those
02:20 5 documents to be destroyed?

6 A Yes.

7 Q What significance if any did you put to the fact
8 that the Fort Garry police files, being the ones
9 where Mr. Fisher was dealt with in 1970, I think,
02:20 10 or '71, those records were destroyed in 1974 by
11 the Fort Garry police, yet I don't believe there
12 was any allegation that the Fort Garry police were
13 part of the conspiracy of destroying files. Did
14 you look at that at all as to how they would be
02:20 15 different than the Saskatoon City Police? In
16 other words, if there's nothing wrong with Fort
17 Garry destroying files in '74, 1974, why is it
18 that there is with the Saskatoon police destroying
19 files as part of a purging policy?

02:21 20 A Yeah. I'm not sure if I can answer the question,
21 perhaps the answer you are looking for, but
22 because the *Police Act* is provincial legislation,
23 the destruction of files could have been governed
24 by the *Police Act* and perhaps in Manitoba at the
02:21 25 time there was policy or regulation that said the



1 police would destroy certain files after certain
2 times. I believe back in 1969 and onward up until
3 about 1990 there were no regulations in
4 Saskatchewan around the retention of files for
02:21 5 police services and they basically set their own,
6 so I think if the police service felt the file was
7 important or should be retained in their archives,
8 they would simply retain it.

9 Q If I said to you, quite apart from this case, in
02:21 10 1990 if I told you that rape files for matters
11 that were concluded in 1971 where convictions were
12 entered had been destroyed and weren't in the
13 records kept by the police department 20 years
14 later, would that have caused you any concern on
02:22 15 suspicion?

16 A No, that would seem to me to be a reasonable time
17 to purge those types of files.

18 Q And if I told you that some of the files in that
19 time period were destroyed, some were saved, and
02:22 20 there doesn't appear to be any rhyme or reason as
21 to which ones were or weren't saved, would that
22 cause you any concern?

23 A No, unless -- I mean, if there was an allegation
24 and you were looking into it, it may be something
02:22 25 you, you know, would be able to take further, but



1 in this particular case it didn't cause us any
2 concern.

3 Q I suppose if every file from 1969, '70 and '71 had
4 been saved but for the four sexual assault files
02:22 5 involving Larry Fisher, that might be a different
6 story?

7 A That certainly would be a different story in my
8 view.

9 Q And is that what you found?

02:22 10 A No, that's not what we found.

11 Q Just -- I think you then go to describe the files
12 that were there, and we've already gone over this
13 here, it's consistent with the evidence at the
14 Commission.

02:22 15 If we can then go to the next
16 page, and am I correct in understanding that
17 this allegation -- the allegation of missing files
18 we know from other evidence was a matter that was
19 investigated by the Saskatchewan Police Commission
02:23 20 and they issued a report in late 1990, I think an
21 extensive investigation. Would you have been
22 generally aware of that at the time?

23 A Yes, I was aware of that.

24 Q And the allegation that was put to you in 1992 was
02:23 25 that notwithstanding what the Saskatchewan Police



1 Commission investigated and concluded, it was
2 being put to you again saying the files went
3 missing and they were deliberately destroyed and
4 the basis of that is our confidential police
02:23 5 informant can substantiate it; correct?

6 A That's correct.

7 Q And so without the confidential informant, you
8 went and, is it correct to say, reinvestigated
9 much of what the Saskatchewan Police Commission
02:23 10 would have looked at as well?

11 A Yes, we did.

12 Q To try and find out whether there was any merit to
13 this allegation that files had gone missing in
14 1990 and had been deliberately destroyed and
02:24 15 tampered with?

16 A That's correct.

17 Q And then later when you finally found out who the
18 confidential informant was, he wouldn't talk to
19 you?

02:24 20 A That's correct.

21 Q And on the basis of the investigation you
22 conducted, you concluded that there was nothing
23 sinister or suspicious about the status of the
24 Saskatoon City Police files?

02:24 25 A That's correct.



1 Q And just at the bottom you talk about:

2 "So we could verify the allegations of
3 missing files..."

4 You go on to talk about your efforts to try and
02:24 5 get ahold of this individual, corresponded in
6 early April with Mr. Asper explaining our
7 interests in speaking with him. Would you have
8 conveyed to Mr. Wolch and Mr. Asper that the
9 ability of your team to investigate this
02:24 10 allegation depended in part on the person who
11 they relied upon to substantiate the allegation
12 giving you information?

13 A Yes, I believe we informed them in correspondence
14 that this was crucial, or certainly serious, that
02:25 15 we were able to find this person and question him.

16 Q And if we can scroll down:

17 "Centurion Ministries documentation,
18 received --"

19 September 10th, '93,

02:25 20 "-- from Jim McCloskey ... indicates
21 that the "source" within the Saskatoon
22 City Police Department is..."

23 And it's redacted, in the original version it is
24 Tom Vanin. And just go to the next page, we've
02:25 25 gone through his earlier report, and then you



1 say:

2 "Our investigators interviewed..."

3 Tom Vanin,

4 "... in Saskatoon, at police

02:25 5 headquarters. When confronted with the

6 information outlined in the Centurion

7 Ministries report..."

8 Tom Vanin,

9 "...refused to acknowledge or deny the

02:25 10 report without the advice of legal

11 counsel."

12 And then it looks as though you then later

13 interviewed Mr. Asper who:

14 "...indicated that he believed that the

02:26 15 source showed Mrs. Milgaard and

16 Henderson a "list" of existing files,

17 and that later several files were found

18 purged from the list. Obviously, this

19 contradicts what is outlined in

02:26 20 Henderson's report."

21 So it appears that there were some contradictions

22 between what Mr. Asper, Mr. Henderson, Mrs.

23 Milgaard and the confidential informant were

24 saying about the missing files; is that correct?

02:26 25 A That's correct.



1 Q And then you go on to say:

2 "Given..."

3 Vanin's,

4 "... reluctance to speak with us about
02:26 5 this specific issue, we cannot
6 authenticate the Centurion Ministries
7 report, nor can we establish that
8 someone in the Department deliberately
9 tampered with their records relating to
02:26 10 Larry Fisher."

11 And again, I think, had you been aware at the
12 time that -- let me put it this way. You could
13 not authenticate it because Mr. Vanin wouldn't
14 talk to you; correct?

02:26 15 A That's true. He certainly would have assisted us
16 in authenticating it.

17 Q If you assume that his evidence before this
18 Commission is the same story he would have told
19 you in '92 or '93; namely, I can't authenticate
02:27 20 it, would it be fair to say your conclusion would
21 be that there was no substance to that allegation?

22 A Yes, it would.

23 Q You then go on to talk about:

24 "As to the question of when the files or
02:27 25 parts of them went missing..."



1 You talk about:

2 "A National Parole Board report

3 dated..."

4 September 12th, '88,

02:27 5 "...makes reference to the fact that
6 there are no police reports available
7 outlining the circumstances surrounding
8 the three rape and one indecent assault
9 offences for which Fisher was
02:27 10 convicted... Therefore, it is apparent
11 that in 1988 the files in question were
12 missing."

13 And indeed that was two months -- or pardon me,
14 two years before the August 30, 1991, or three
02:27 15 years before the August 30, 1991 allegation of
16 Mr. Asper that the files were there two weeks
17 earlier and had gone missing; is that correct?

18 A That's correct.

19 Q And you would have been aware of that specific
02:27 20 allegation, that not only were they missing, but
21 they existed on August 16th, being the date that
22 the second application was filed with the
23 minister, and in the two weeks that followed they
24 mysteriously were destroyed and went missing; is
02:28 25 that correct?



1 A That's correct.

2 MR. HODSON: This would be an appropriate
3 spot to break for the afternoon.

4 (Adjourned at 2:28 p.m.)

02:50 5 (Reconvened at 2:50 p.m.)

6 BY MR. HODSON:

7 Q If you can go to page 023225. Just finishing up
8 on the missing records here, Mr. Sawatsky, it
9 says:

02:50 10 "Also, it should be noted that the three
11 "Fisher" sexual assault files are not
12 the only files missing, other
13 non-related files from this time period
14 are also missing. This fact alone would
02:51 15 tend to support the finding that the
16 records were lost inadvertently."

17 And again, I think you touched on that earlier,
18 that would be an indication to you that it
19 wasn't, it may not have been a deliberate
02:51 20 destruction of these files because other files
21 unrelated were also destroyed?

22 A That's correct.

23 Q And then as well on the statement:

24 "Concerning Karst's interview with
02:51 25 Fisher in Winnipeg, there's a



1 typewritten copy of the statement taken
2 from Fisher by Karst, but there is no
3 other material available in the
4 Saskatoon City Police files, such as an
02:51 5 investigative report or handwritten copy
6 of the statement."

7 And:

8 "Karst was asked about the statement he
9 took from Fisher and he stated he didn't
02:51 10 know why the handwritten version is not
11 available."

12 Did that cause you any concern?

13 A No.

14 Q If we can scroll down, this is the issue about
02:51 15 Karst going to Winnipeg, and it says:

16 "Wolch doesn't believe Karst would
17 forget interviewing Fisher."

18 And you are familiar with Mr. Karst's
19 recollection, I think he said that he did not
02:51 20 recall going to see Fisher in Winnipeg, initially
21 stated to the media that he didn't know about
22 Fisher, then when they found the statement he
23 said okay, I guess I did, but I don't remember
24 going, and Mr. Wolch said that that was
02:52 25 consciousness of guilt, or words to that effect;



1 is that correct?

2 A Yes, I remember that.

3 Q And so here:

4 "He refers to a transcript of an
02:52 5 interview of Karst by the CBC as
6 evidence of Karst's intent to hide the
7 truth. He says the transcript shows
8 Karst remembers Fisher being checked by
9 Det. McCorriston four days after the
02:52 10 murder but yet he can't remember doing
11 the Winnipeg interview.

12 Karst explained the reason he
13 didn't recall Fisher was because, over
14 the years, he did numerous out of town
02:52 15 interviews while investigating murders,
16 etc., and he simply had no memory of
17 him. Once the TV interviewer confronted
18 Karst with the statement he took from
19 Fisher, Karst acknowledged he must have
02:52 20 gone to Winnipeg to interview Fisher."

21 Next page, you go on to say:

22 "Many police officers interviewed said
23 that Karst was considered the best
24 investigator/interrogator in the
02:52 25 department, and because of this, he was



1 given the Winnipeg assignment along with
2 Insp. Nordstrum from Morality."

3 And:

4 "The transcript referred to by Mr.
5 Wolch --"

6 And this is the media transcript,

7 "-- does not distinguish between the
8 interviewer and Karst's speech and it
9 appears Wolch is mistaken when he
02:53 10 attributes the comments about Fisher
11 being checked to Karst - they are the
12 interviewer's comments."

13 Did you have any, after having checked this, did
14 you have any concerns about the fact that
02:53 15 Mr. Karst went to interview Mr. Fisher in
16 Winnipeg, being a homicide detective going to do
17 a morality file, did that cause you concern?

18 A No, it didn't. In fact, I could see myself
19 handling something like that similar, you know,
02:53 20 the strengths of the people that you have working
21 for you, and quite often you would want to make
22 sure that someone you are sending out of town to
23 conduct a very important interview was who you
24 considered to be the strongest and perhaps the
02:53 25 best interrogator/interviewer as the report



1 indicates.

2 Q And so the fact that the Saskatoon city -- I think
3 the suggestion was that the police sent Karst in
4 homicide because he was part of the cover-up and
02:54 5 that way he could go and get the statement and
6 conceal it. Was that your understanding at least
7 of one of the inferences or suggestions?

8 A Yes.

9 Q And the fact that he was in homicide and not
02:54 10 morality, are you telling us you didn't, you
11 didn't see it as being suspicious in any way?

12 A No. I think the explanation certainly from my
13 perspective works because I could see myself doing
14 the same thing were I his supervisor.

02:54 15 Q What about the fact that Mr. Karst in 1990 did not
16 have a recollection of interviewing, taking the
17 statement from Mr. Fisher, did you find that to be
18 suspicious in any way?

19 A I don't think we found it remarkable because, you
02:54 20 know, a considerable number of years had passed,
21 obviously Mr. Karst interviewed a huge number of
22 people, and certainly when it was put to him and
23 he was given the opportunity to recall, he did so
24 voluntarily, he didn't try to hide it, so I didn't
02:54 25 view that as suspicious, and, you know, trying to



1 put myself in his shoes, I'm sure there's lots of
2 people I interviewed that I wouldn't recall like
3 that either.

4 Q Go down to C.3, *References to Fisher kept secret*
02:55 5 *from victims/investigators:*

6 "Several Morality officers, who
7 investigated the sexual assaults, stated
8 the fact that Larry Fisher was convicted
9 of a number of rapes did become known by
02:55 10 way of general conversation, eg.,
11 Nordstrum to Valila."

12 And so on that point, did you find out that some
13 police officers did become aware that Larry
14 Fisher had been convicted of these rapes?

02:55 15 A I'm not sure of that allegation. For some reason
16 it doesn't seem to tweak my memory here. I just
17 wonder if perhaps we can read a bit more, maybe
18 that will help.

19 Q Sure. I think the allegation here is that the
02:55 20 sexual assault victims were not informed about the
21 results of the police investigation and I think --
22 sorry, the allegation was that the Fisher
23 conviction was kept secret from other police
24 investigators; in other words, Mr. Karst, or
02:56 25 whoever was part of the conspiracy, deliberately



1 took steps so that the other police officers would
2 not become aware of the fact that Mr. Fisher had
3 been convicted, and I think here you are saying
4 several morality officers who investigated the
02:56 5 sexual assaults stated the fact that Larry Fisher
6 was convicted did become known by way of general
7 conversation.

8 A Yes.

9 Q Does that assist?

02:56 10 A Thank you. I recall that now, yes.

11 Q And so in other words, some officers did recall --

12 A It was known.

13 Q Let's talk about a couple of points on that, and
14 again I appreciate this is back in 1969, '70, in
02:56 15 that -- and again drawing on your experience as a
16 police investigator, and I appreciate you are in a
17 different environment in the RCMP, but would you
18 expect that the conviction here of Mr. Fisher for
19 these rapes, that this would be something of such
02:57 20 significance that it would be predominant amongst
21 the police ranks? I'm trying to get a sense of
22 how this would relate to other crimes being
23 committed, investigating an assault, and a sense
24 of whether -- I mean, is it reasonable to say
02:57 25 lookit, some officers may or may not have been



1 aware, that it was events that happened a year or
2 two earlier and they were onto other things, would
3 that be expected?

4 A I think that would be fair, and probably the other
02:57 5 reason that it wouldn't have much profile is the
6 fact that he pled guilty and it's not as if, you
7 know, the officers were put through a long trial
8 where they had to, you know, do research or review
9 files and prepare for court, so the fact that he
02:57 10 simply pled guilty would, you know, may not,
11 certainly would not raise it as -- to the degree
12 at which if a trial was held.

13 Q Would it be unusual then for, in the 1971 time
14 period, for -- I can't remember how many officers,
02:58 15 I think a couple hundred officers on the police
16 force, for many of those officers not to be aware
17 of the fact that Larry Fisher had pled guilty and
18 been convicted?

19 A Certainly. That didn't surprise me.

02:58 20 Q And 20 years later, in 1990 to be asked about
21 that, "officers, do you remember hearing about
22 Larry Fisher," again, would it surprise you that a
23 number of officers either say they didn't know or
24 don't remember hearing about the convictions?

02:58 25 A That doesn't surprise me.



1 Q And without in any way diminishing the seriousness
2 of those offences, I mean, we've heard the
3 suggestion that he was a serial rapist and sort of
4 most wanted criminal, things of that nature,
02:58 5 again, would that change your view at all, that
6 the fact that these are serious crimes and they
7 are solved and convicted, yet not something that
8 seems to be top of mind of all the officers at the
9 time, does that seem to be unusual?

02:58 10 A It's not unusual, and I go back to sort of my
11 original answer, that I think because, you know,
12 there was a guilty plea and probably wasn't talked
13 about much in the department, it didn't raise, you
14 know, a profile of it amongst the sort of rank and
02:59 15 file officers.

16 Q And I think in these cases the files had all been
17 concluded. Would one factor be that officers are
18 off working on other files; in other words --

19 A Certainly that could be.

02:59 20 Q -- unsolved crimes?

21 A Yes, that could be.

22 Q And so in summary then, did you find anything
23 unusual about the level of knowledge of the Fisher
24 convictions amongst Saskatoon city police officers
02:59 25 either in 1970, '71 or in the '90s when you



1 interviewed them?

2 A No, we didn't.

3 Q Next page, this has to do with the, being made
4 aware of disposition in court, and I think at the
5 time:

6 "According to the manager of Central
7 Records (Keelan), investigating officers
8 were not routinely made aware of court
9 dispositions. Complainants were not
02:59 10 informed of the results of the police
11 investigations or court dispositions and
12 no policy was in place requiring
13 investigators to do so."

14 And I think if I may just back up, I think the
03:00 15 allegation here was that the, of the four sexual
16 assault files, the Fisher files, I believe at
17 least the first three had been concluded before
18 Mr. Fisher confessed in Winnipeg. The fourth
19 one, the (V5)-- (V5)--- file I think was still
03:00 20 ongoing, but the suggestion was that none of the
21 investigators who were involved in those four
22 files could recall, at least in 1990 when asked,
23 could recall being made aware that Mr. Fisher had
24 been charged and convicted, and I think the
03:00 25 allegation was that as part of this allegation



1 that the police kept it secret, or the
2 conspirators kept it secret from other police
3 officers, was that they deliberately didn't go
4 back and tell the morality officers who
03:00 5 investigated the (V1)-, (V2)-----, (V3)-----,
6 (V5)--- rapes, that we caught the fellow, and I
7 think they were on concluded files. Did you find
8 anything unusual or suspicious about the fact
9 that in these circumstances the original
03:01 10 investigating officers either, (a), would not
11 have been aware, made aware back in 1970 that a
12 file they had formally worked on had been
13 concluded, and secondly, whether in 1990 they
14 might not recall that?

03:01 15 A I didn't find that unusual.

16 Q And based on your experience as an investigator
17 then, is that --

18 A Yes, and based on my knowledge of how the system
19 generally functioned.

03:01 20 Q And why would it not be unusual?

21 A They would simply be brought in and the records
22 would be kept in court and there may be nothing
23 ever sent to the police. Today it's a little
24 different because generally the conviction order
03:01 25 will go back to the police so that CPIC entries



1 can be made, etcetera, so at that time it probably
2 was the usual practice that the documents didn't
3 come back to the police.

03:01 4 Q It was also alleged that because the complainants,
5 and the allegation was that none of the sexual
6 assault victims were notified of Mr. Fisher's
7 arrest and conviction, we've heard from (V5)--
8 (V5)--- before the Inquiry that she in fact was
9 notified of Mr. Fisher's arrest and shown and
03:02 10 picture, but apart from that, in your
11 investigation did you find anything usual or
12 suspicious about the fact that if true, that if
13 none of the victims were told about Mr. Fisher,
14 did you find that to be unusual?

03:02 15 A I didn't find that to be unusual because if the
16 police didn't know they couldn't tell the victims,
17 but secondly, rarely were victims ever contacted
18 in those days unless they were to be a witness or
19 something, were they ever contacted on the
03:02 20 conclusion of a file. Fortunately all police
21 policy now is generally changed in that the victim
22 is very much contacted after the conclusion of an
23 offence.

03:02 24 Q And so maybe in 1990 standards, if you applied
25 that back to 1969, you might say based on how they



1 do it in the '90s, the fact that they didn't do it
2 in 1969 might be unusual, but in 1969, 1970
3 standards it was not unusual; is that correct?

4 A That's correct.

03:02 5 Q And so again the fact that the police did not
6 notify three of the four victims of Mr. Fisher's
7 arrest, did that cause you to be suspicious that
8 that may have been part of a conspiracy or
9 cover-up?

03:03 10 A No, it didn't.

11 Q If we can go down to C.4 is the 1980 statement
12 that Linda Fisher made to the Saskatoon police:

13 "During the evening she was in the
14 company of her then common law husband,
03:03 15 Brian Wright. She was drinking at the
16 time and for some reason she reflected
17 on the Miller murder and Larry Fisher's
18 1970 rape convictions in Winnipeg. She
19 was bothered my memories of Larry's
03:03 20 behaviour and when she expressed
21 concerns to Wright, he encouraged her to
22 go to the police and tell them what she
23 you knew."

24 And then it goes on about the statement. And you
03:03 25 are familiar with that statement are you?



1 A Yes, I am.

2 Q If we can go through the next page, and I think
3 this just sort of summarizes, I think Inspector
4 Wagner prepared a report, it went to Detective
03:04 5 Parker who denies having been given the file, and
6 you go on and recite your interview of her, and if
7 we can go to the next page, just jump down, and
8 this would be your investigator's comments, you
9 say:

03:04 10 "The Saskatoon City Police did not
11 conduct a follow-up investigation of the
12 information provided in Linda Fisher's
13 1980 statement. The reason for this is
14 not clear. There is no evidence it was
03:04 15 because of any cover up rather, it
16 appears to have been due to an
17 administrative oversight, or
18 indifference."

19 Can you elaborate on that a bit, please?

03:04 20 A Well, I think possibly either the file wasn't
21 acted on because administrative oversight means
22 that it perhaps didn't get delivered to the
23 appropriate people, but I think indifference was
24 probably more likely in this case, and I think
03:04 25 probably when you look at the circumstances here,



1 you have a woman coming in in the middle of the
2 night, you know, I understand she had been
3 drinking to some degree, it's 10 years later, Mr.
4 Milgaard had already been convicted, had been
03:05 5 through appeal and I think it would probably, I
6 think in her statement she described a knife that
7 was not consistent with the murder weapon, so I
8 think there was a number of things there that
9 would sort of lead to indifference, the fact that
03:05 10 she never really provided anything that would be
11 of value in furthering the investigation.

12 Q So let's just focus on the issue of cover-up
13 because I think this was put forward as one of the
14 basis of cover-up, that when she did come in, the
03:05 15 police deliberately covered it up as part of the
16 earlier cover-up that they had put in place, and
17 what was your view about that allegation?

18 A Well, there was no indication of that, because the
19 statement hadn't disappeared, the file hadn't
03:06 20 disappeared.

21 Q So are you telling us that, if it was part of a
22 coverup, they would have destroyed the
23 investigation report and the statement so that
24 people wouldn't be able to see it later?

03:06 25 A Potentially, yes.



1 Q And so the fact that it was there on the file,
2 what did that tell you about whether or not the
3 police were out to deliberately destroy files to
4 cover up Larry Fisher?

03:06 5 A It would certainly show that that was not the
6 case.

7 Q Now let's talk just generally about the police
8 conduct in not following up on that or taking
9 steps. What were your thoughts on that, did you
03:06 10 -- was it your view that perhaps more should have
11 been done, or could have been done, with that
12 statement?

13 A I think that's fair to say, sort of now at this
14 time, that more could have been done. However,
03:06 15 like I say, I'm of the view that likely the
16 investigator didn't place enough significance on
17 that file to do any more work on it.

18 Q And, again, would there be -- in your experience
19 did -- I mean you mentioned the fact that it was
03:07 20 in the middle of the night and she had been
21 drinking; would that have been a factor do you
22 think?

23 A It's possible that the, you know, the
24 investigator, you know, due to her physical
25 condition, placed less significance on what she



1 had to say.

2 Q The fact you also mentioned that the file had been
3 concluded and Mr. Milgaard had been convicted; do
4 you recall, again around this time frame 1980 or
03:07 5 even later in your experience with the RCMP, was
6 there any practice in place or what were the
7 practices of officers when information came in on
8 a concluded file where a conviction had been
9 entered?

03:07 10 A I don't know if there's -- it was necessarily
11 policy or a practice that was defined, but
12 certainly if -- within the RCMP, and I would
13 assume that it would be no different for municipal
14 police -- if someone came in with information that
03:08 15 was available, that would -- could perhaps further
16 an investigation, it would generally be taken and
17 assigned to someone to act on, and that appears to
18 be what happened here.

19 Q So even though Mr. Milgaard has been convicted of
03:08 20 the crime, ten years later it comes in, and I
21 think Inspector Wagner did assign it to Detective
22 Parker. And there's an issue there, Detective
23 Parker says he never got it, Inspector Wagner says
24 he did, and it appears, whether he got it or not,
03:08 25 Detective Parker didn't do anything to follow it



1 up, and are you telling us that the practice at
2 the time would be to do just that, assign it to
3 someone to follow up to see where it goes?

4 A That's correct.

03:08 5 Q And, if it did go somewhere, can you just
6 elaborate a bit on -- I'm trying to understand,
7 when do the police investigate concluded or solved
8 cases, in other words can you shed any light on
9 that, given that somebody has already been
03:09 10 convicted, here's information that says someone
11 else committed the crime?

12 A I guess if there was something, you know, that was
13 strong, that was persuasive, that would cause the
14 police to open the investigation, and I think what
03:09 15 would happen -- and likely what they tried to have
16 happen here -- was that it would go back to
17 someone who was knowledgeable with the file to
18 assess its value, and then once a determination
19 had been made it would be up to the investigator
03:09 20 to then make a decision as to what action should
21 result --

22 Q And --

23 A -- from that information.

24 Q And --

03:09 25 A But, certainly, this wasn't the strongest piece of



1 information. It was certainly something that
2 perhaps, in hindsight, one could say more work
3 could have been done on it.

4 Q And I guess, just on that point, in saying if a
03:09 5 woman comes in and says "I lived in the very
6 basement that David Milgaard visited that morning,
7 my husband is in jail for rapes that he committed
8 in and around that time, my knife was missing",
9 even though the description is different, "and I
03:09 10 think he may have committed the murder"; would
11 that not be -- and I appreciate, in asking that
12 question, now we have knowledge that you didn't
13 have at that time in 1980 -- but would that not be
14 something that would be worthy of pursuit?

03:10 15 A I think you would have to turn it over to someone
16 who could look into it and make a decision as to
17 how far that is worthy of pursuing. It could be
18 that an investigator may simply review the
19 statement and say it means nothing, it's of no
03:10 20 value, and toss it aside, or it could be that he
21 may feel that a further interview or further
22 follow-up is appropriate.

23 Q And, again, the next step as far as whether that
24 information is shared with either a prosecutor or
03:10 25 defence counsel; is that for someone else to



1 comment on?

2 A Yeah. I don't see that that would, it would be
3 likely that that would be shared with the
4 prosecutor unless the investigator attached some
03:10 5 importance to it, and then perhaps recognized the
6 gravity of this information and the fact that it
7 could mean that someone who was in jail shouldn't
8 be there, then I'm sure that there would be steps
9 taken to ensure that that information got to the
03:10 10 appropriate people.

11 Q And so again, if it's something worthy of
12 investigation, you are saying it should be
13 investigated, followed up, and if it turns out to
14 be something that might suggest an innocent person
03:11 15 is in jail it should then be turned over to the
16 Justice Department; is that -- that's how you
17 would see it go?

18 A That's exactly what I am saying, yes.

19 Q And, but initially there is a judgement call by
03:11 20 the police to look at not only the contents of the
21 statement but the circumstances under which it
22 came in, and an investigator, much like they would
23 on a piece of information on an unsolved case,
24 would make a judgement call about what extent, if
03:11 25 any, this should be followed up on and what value



1 it is?

2 A Yes, that's correct.

3 Q So the fact that it's after the conviction rather
4 than before maybe doesn't change too much; is that
03:11 5 fair?

6 A I think the fact that it's after the conviction
7 may have minimized the importance of it a wee bit.

8 Q If we can just go back up to the top here.

9 COMMISSIONER MacCALLUM: Excuse me, Mr.

03:12 10 Hodson, I just want to ask Mr. Sawatsky; the
11 answers you've given seem to indicate that you
12 wouldn't change the present system of discretion
13 which is vested in a duty officer to do --
14 receive these complaints and refer them and for
03:12 15 somebody else just to evaluate them and carry on.
16 You wouldn't prefer a system that saw some
17 automatic kind of referral in circumstances like
18 this, and mandatory action being taken by the
19 investigating officer perhaps, or somebody
03:12 20 familiar with the case?

21 A My Lord, I haven't given that a whole lot of
22 thought, but in this particular case I don't know
23 how it could have been handled differently. I
24 think the inves -- the file would be referred to
03:12 25 someone who is familiar with the case, that person



1 would assess its value and then would make, try
2 and make a determination as to what action should
3 be taken as a result. I don't know if -- you
4 know, where you would sort of draw a line if you
03:12 5 were saying "under certain conditions something
6 must be sent forward". You know, what would that
7 be? I guess any conviction, no matter how minor,
8 of an offence is -- on an innocent person is
9 certainly wrong, so it wouldn't matter, the
03:13 10 gravity of the offence wouldn't matter. But,
11 certainly, at what point do you sort of suggest
12 there's now, it's now reached the point where it
13 needs to be looked at by another set of eyes as
14 opposed to the investigator.

03:13 15 COMMISSIONER MacCALLUM: Well, I suppose
16 it's a question of who should have the
17 responsibility and the authority to weed out
18 frivolous complaints from genuine complaints.
19 Surely a, I suppose any busy detachment must
03:13 20 receive many frivolous complaints; is that so?

21 A You're -- that's correct.

22 COMMISSIONER MacCALLUM: And if each one
23 had to be referred automatically to a higher
24 authority you would have something of a log jam
03:13 25 of unworthy complaints; is that right?



1 A Yes, I think that's certainly a reasonable
2 response.

3 COMMISSIONER MacCALLUM: So you can't think
4 of any -- it's hard to view this matter without
03:13 5 hindsight, because we know that 1980 was a long
6 time before Mr. Milgaard's eventual release, so
7 it assumes an importance now, perhaps, which it
8 would never have been accorded back in 1980?

9 A Exactly.

03:14 10 COMMISSIONER MacCALLUM: But, you know, if
11 we can put that aside and just try to view it as
12 an officer would have in 1980, do you think
13 anything better could have been done?

14 A And I guess it sort of leads me to think, if you
03:14 15 forwarded it where would it go, and what
16 information would be available to the agency that
17 it's forwarded to to sort of assess its value and
18 make a reasonable determination as to whether it's
19 something that should be pursued and who should
03:14 20 pursue it. It's kind of a, without giving it a
21 lot of thought, it's kind of a difficult question.

22 COMMISSIONER MacCALLUM: Oh, indeed it is.
23 But I, if I understand you correctly, you seem to
24 be saying that there is no ready substitute for
03:14 25 the exercise of discretion by the officer on



1 duty?

2 A I think that's correct. And I think I'm also
3 saying, My Lord, the circumstances here, that
4 certainly seemed reasonable. You know, one can
03:15 5 maybe in hindsight say they should have done more,
6 but certainly the way they handled it seems
7 reasonable.

8 COMMISSIONER MacCALLUM: Thanks.

9 BY MR. HODSON:

03:15 10 Q Just on that point -- and regrettably you may have
11 the summer to think about it further, Mr.
12 Sawatsky -- but if Linda Fisher came into the
13 police station on March 1st, 1969 with this same
14 information she gave to Inspector Wagner, in other
03:15 15 words the same information about her husband,
16 what -- would it be correct to say that that might
17 have been pursued by the investigators in a
18 different way than how they handled it in 1980?

19 A Yes, it's certainly possible I think, and if she
03:15 20 would have come in with that information before
21 conviction -- that was, sorry, that was before
22 conviction, --

23 Q Right?

24 A -- I'm certain it would have been a very valuable
03:15 25 piece of information at that time.



1 Q Yeah. So that if she came in while they were
2 investigating the murder, in fact let's say the
3 day after the murder -- doesn't matter, whatever
4 day -- that analogy doesn't work because he wasn't
03:16 5 in jail until later. But my point is if the
6 Milgaard -- if the Gail Miller murder had not been
7 solved and there had been no conviction and no
8 charge, and Linda Fisher came into the police with
9 the same information as she did in 1980, would you
03:16 10 agree that the police would more likely
11 investigate that with a bit more vigour than they
12 did in 1980?

13 A Yes, I certainly think so, I think it would have
14 probably been followed up very vigorously.

03:16 15 Q And can we take it, from that, that where an
16 individual is convicted and appeals exhausted, and
17 time has elapsed, that police investigators -- not
18 as a hard and fast rule but generally speaking --
19 are less likely to go and investigate information
03:16 20 in a solved case; is that fair?

21 A That, yes, I think that probably is fair.

22 Q And back to the Commissioner's point about
23 frivolous information or information that comes
24 forward, I understand from your answer that there
03:17 25 are lots of pieces of information that come to the



1 police that are not credible, that take time to
2 pursue, and that discretion is exercised as to
3 what you pursue and what you don't pursue?

4 A Yes.

03:17 5 Q And that if you, if the police followed up every
6 piece of information or complaint put in on
7 unsolved cases, that that's maybe not a possible
8 task; is that fair? In other words, there is not
9 enough resources to do everything on unsolved
03:17 10 crimes, I mean you try but sometimes the demand is
11 greater than the supply?

12 A Yes.

13 Q If you add to that solved crimes I take it that
14 exacerbates the problem even more so, in other
03:17 15 words that if the police are investigating
16 unsolved crimes and then as well information on
17 solved crimes, is it fair to say that the solved
18 crimes information may go to the bottom of the
19 heap compared to unsolved crimes?

03:17 20 A Yes, I think that's fair.

21 Q And that, again, you talked about an officer
22 exercising discretion; is it -- I think you are
23 telling us that, lookit, because of the fact that
24 someone is convicted, rightly or wrongly, police
03:18 25 investigators will put some weight on that in



1 considering new information?

2 A Yes, I think that's fair to say.

3 Q And it may well be that there is a higher
4 threshold that has to be put in -- that is applied
03:18 5 to information in an old case that's been solved
6 than if it had been provided in an unsolved case?

7 A Yes.

8 Q And I think back to the Commissioner's question,
9 it is sort of "is there any better way to deal
03:18 10 with that", and keeping in mind that we're now
11 looking back at 1980 with information we now know
12 that wasn't known then, and again on that question
13 I think you are saying, lookit, discretion -- are
14 you saying you are going to have to rely upon the
03:18 15 discretion of police?

16 A I think, to a degree, yes. I mean I think the
17 right things were done here, the information was
18 taken, her -- she was afforded the opportunity to
19 provide all the information, the information was
03:19 20 provided to an investigator for follow-up and
21 obviously, you know, it was -- there was a
22 determination made at some point that the
23 information was not of value to be followed up on,
24 so I don't know what more could have been done.

03:19 25 Q And, just on this point, would you agree that as



1 far as a police officer or a police force, then,
2 the question --

3 A Oh sorry, I said I don't know what more could have
4 been done, perhaps I should have phrased that
03:19 5 better and said I don't know what more could have
6 been done that was reasonable at the time.

7 Q Yeah. And then I take it, as far as disclosing
8 information to a convicted person by a police
9 force, am I correct that that would be a
03:19 10 subject -- that would be a matter that you would
11 leave to the Justice Department as it -- I mean,
12 much like any criminal case, the police rely upon
13 the Crown as far as what ought to be disclosed to
14 defence counsel or accused in accordance with
03:20 15 rules of disclosure; is that right?

16 A Yes.

17 Q And so that if we're looking at how things might
18 be improved as far as getting this information
19 that comes into the police to a convicted person,
03:20 20 am I correct that the police role normally
21 wouldn't be to deal with the issue of contact with
22 defence counsel or with the convicted person, but,
23 rather, it would be through the Justice
24 Department?

03:20 25 A Yes, that's correct.



1 Q Now it's my understanding, from a note Mr. Gibson
2 just gave me, that it's now RCMP policy that all
3 complaints are signed off by the supervisor and
4 all complainants advised of action taken; is that
5 right?

6 A Yes, it is, and I believe in most municipal police
7 services that as well.

8 Q And that --

9 A But in this particular case it was handled by an
03:20 10 inspector, so certainly that's higher than a
11 first-line supervisor, but certainly that's the
12 case in municipal police services as well as the
13 RCMP.

14 Q And I think one of the concerns here as well, I
03:21 15 think from Linda Fisher, is that she never did
16 hear back from the police as to what happened with
17 it, and I take it you are saying now, in
18 accordance at least with RCMP practice, that in
19 this case she would be informed what action, if
03:21 20 any, were taken by the police; is that correct?

21 A That's correct.

22 COMMISSIONER MacCALLUM: So that with the
23 courtesy of Mr. Gibson we now know that all
24 complaints are signed off by the supervisor, and
03:21 25 then what happens, the complainant is notified?



1 MR. HODSON: I believe that's the case.

2 BY MR. HODSON:

3 Q That if this happened today with the RCMP, if
4 Linda Fisher came in with the complaint, number 1
03:21 5 the supervisor would have to sign off on this, in
6 other words have a look at this?

7 A That's correct.

8 Q And in this case it was maybe, I mean she ended up
9 going straight to an inspector because it was 4:30
03:21 10 in the morning and he happened to be the fellow
11 there, but if she had gone into the front desk
12 constable I think you are telling us, now, this
13 information would have to be reviewed by a
14 supervisor and signed off on that; is that
03:22 15 correct? Number one.

16 A That's correct.

17 Q So in other words someone senior would look at
18 that?

19 A That's correct.

03:22 20 Q And just on that point --

21 A The supervisor would make the decision as to
22 whether the follow-up conducted was appropriate.

23 Q Right, and so that the discretion wouldn't be the
24 desk constable, it would be a supervisor?

03:22 25 A That's correct.



1 Q And would you, in your experience from 1980
2 compared to today, would you agree that the
3 awareness of wrongful convictions amongst police
4 officers would be more so today than it would be
03:22 5 back in 1980?

6 A Yes.

7 Q In other words, in fact perhaps because of the
8 *David Milgaard* case amongst others, that in
9 convicted cases police officers would have more
03:22 10 awareness that there may well be people who are
11 convicted that are wrongfully convicted, and that
12 information that comes later might be important,
13 as compared to 1980?

14 A Yes. Mr. Hodson, maybe I can answer that question
03:23 15 a little more broadly.

16 I think that, generally
17 speaking, the level of accountability within
18 policing continues to be raised all the time, and
19 it's probably as high as it's ever been right now.
03:23 20 So accountability, how files are handled, how
21 investigations are conducted, oversight, those
22 sorts of things, I think that is now at an
23 all-time high when it comes to supervisors'
24 actions, etcetera. So police services, in my
03:23 25 view, are more accountable, now, to the public



1 than they have ever been before.

2 COMMISSIONER MacCALLUM: I just have to
3 interrupt again, I'm sorry, but I didn't get an
4 answer to the second part of my question which I
03:23 5 wasn't sure about. The complaints have to be
6 signed off by the supervisor, you said that they
7 would -- it would be the supervisor who would
8 decide whether the follow-up had been sufficient,
9 but wasn't there something about notifying the
03:23 10 complainant?

11 A Yes.

12 BY MR. HODSON:

13 Q Yes, that was the second point, --

14 A Yes.

03:23 15 Q -- and I was going to ask him that.

16 COMMISSIONER MacCALLUM: Oh, okay.

17 BY MR. HODSON:

18 Q Is that in this case, if Linda Fisher had gone
19 into the RCMP today, it's my understanding from
03:24 20 your earlier answer and Mr. Gibson's note that she
21 would be informed by the RCMP of the action taken,
22 that that's part of the policy, that the police
23 would actually get back to her and say "here's
24 what we've done with your information"?

03:24 25 A That's correct.



1 Q Did that address --

2 COMMISSIONER MacCALLUM: That does, yes.

3 BY MR. HODSON:

03:24 4 Q Okay. And again, just back on the discretion,
5 presumably then the supervisor, or somebody, still
6 has to make the decision as to whether this
7 information is valuable and what should be done
8 with it?

9 A That's correct.

03:24 10 Q And --

11 A The investigator is responsible to ensure -- or
12 pardon me -- the supervisor is responsible to
13 ensure that the follow-up was adequate.

03:24 14 Q And then I take it that could be anywhere from
15 'this is frivolous, not worth pursuing', to 'this
16 ought to be pursued' to the point that you get
17 information and then you go to the Justice
18 Department to say what, if anything, should be
19 done with it as far as notifying or disclosing
03:25 20 that to the previously-convicted person?

21 A That's correct.

22 Q And am I correct that it would not, you did not --
23 you would not view it as a police function for the
24 police to contact David Milgaard in jail and say
03:25 25 "by the way, we've got this information that just



1 came in"; --

2 A No, --

3 Q -- is that right?

4 A -- that would not be the police role.

03:25 5 COMMISSIONER MacCALLUM: Nor should it be?

6 A Nor should it be, My Lord.

7 BY MR. HODSON:

8 Q So again, if we're talking systemic and what might
9 improve the system, then you would view the police
10 role, in a situation of getting Linda Fisher-type
11 information, of investigating it, informing her,
12 and in the event that it was information that may,
13 may question the verdict, the original verdict,
14 that it be handed to the Department of Justice to
03:25 15 see how it ought to be, whether or not to be
16 disclosed, followed up, etcetera?

17 A Yes.

18 Q Just to finish up here on this, this is the
19 investigator comments on the coverup of Fisher:

03:26 20 "It is likely the sexual
21 assault files were either wholly or
22 partially purged during the 1980
23 conversion from paper to microfiche.
24 The fact other non related files from
03:26 25 this time period are also missing leads



1 to the conclusion that the loss was
2 inadvertent. This file conversion could
3 also explain why Karst's reports
4 detailing his interview of Fisher in
03:26 5 Winnipeg are missing. Furthermore,
6 without the benefit of a full interview
7 with Tom Vanin, the 'source within the
8 Saskatoon City Police', we are unable to
9 confirm the substance of the
03:26 10 allegations."

11 And I think we've already touched on all those
12 points; is that correct?

13 A That's correct.

14 Q And you also say:

03:26 15 "There is no evidence of any
16 plan or scheme to keep the results of
17 Larry Fisher's sexual assault
18 convictions from the investigators or
19 victims. The structure and operating
03:26 20 procedures within the Saskatoon City
21 Police were such that these details were
22 not routinely communicated to either the
23 other members or the victims. Karst
24 provides a reasonable explanation
03:26 25 concerning his recollection of the his



1 trip and interview of Fisher. Mr.
2 Wolch's reasons for believing he is not
3 truthful (reference to comments made
4 during a TV interview) were not
03:27 5 substantiated."

6 And that would be an accurate conclusion?

7 A That's correct, and certainly that does not
8 provide any evidence on which someone could
9 further an obstruction of justice charge.

03:27 10 Q Okay. And was there anything there that, short of
11 the charging standard, that you felt was
12 suspicious or of a wrongdoing or anything of that
13 nature?

14 A No, we didn't establish that at all.

03:27 15 Q And, again, it appears that in looking at how the
16 police handled notifying investigators and the
17 victims, and Karst's trip to Winnipeg, that you
18 went back and looked at the standards of the day
19 and said, lookit, is if what they did in handling
03:27 20 the Fisher assault files in '69-'70 was consistent
21 with how police handled similar matters, or in the
22 norms of the day, then that would suggest that it
23 wasn't part of any sinister conspiracy or plan or
24 coverup; is that right?

03:28 25 A That's correct. I think one thing that we saw



1 throughout the file was that things -- cer -- I
2 think what it brought home to me is just how
3 different things are now, and at the time, as to
4 the way they were back in 1969.

03:28 5 Q Okay.

6 A When you look back in 1969 the way this file was
7 handled, the way it was investigated, was the way
8 things were done. And now of course, you know, we
9 have major case management, we have files handled
03:28 10 in the manner in which this file was handled, or
11 you have a team approach, you have a coordinated
12 approach to investigations, certainly there's huge
13 changes that have taken place since 1969 in the
14 way these matters are handled.

03:28 15 Q And do you think -- let me ask you this -- whether
16 one possible explanation that might exist for some
17 of the suspicions that were raised, and that in
18 looking at what happened in 1969-'70 in relation
19 to the Larry Fisher charges with 1990 glasses, in
03:29 20 other words saying well, lookit how they did
21 everything, because they did things this way, that
22 somehow that difference may be part of what
23 fuelled the suspicion by those on behalf of David
24 Milgaard?

03:29 25 A Although that was never evident it certainly is



1 possible.

2 Q When you say it was never evident, I mean --

3 A I don't think there was anything we could sort of
4 put our finger on and say, well, this is the
03:29 5 reason that there is a misunderstanding here is
6 because things were done differently then, --

7 Q That --

8 A -- but I wouldn't suggest that that didn't factor
9 in.

03:29 10 Q But I think, in part, what we've just looked at,
11 what they are saying is, lookit, a homicide guy
12 went to Winnipeg, that's unusual; they didn't tell
13 the investigators it was solved, that's unusual;
14 they didn't tell the victims, that's unusual; they
03:29 15 did a direct indictment; it wasn't in the
16 newspaper, it was all these things that Mr. Wolch
17 said "lookit, these things stand out as being
18 different, when you put them all together they
19 mean that there is deliberate obstruction of
03:29 20 justice", and I think in your investigation you
21 are telling us you went through and checked each
22 of the facts that he said were suspicious and, I
23 think, found answers and said "no, there's an
24 explanation, an innocent explanation for
03:30 25 everything that was done that Mr. Wolch said was



1 suspicious". And my question was to try and get a
2 sense from you; is it possible that one reason he
3 may have thought some of these things were
4 suspicious, because the way things were done in
03:30 5 1990 were different than the way they were done in
6 1970?

7 A Yes, based on what you have suggested, yes I
8 agree.

9 Q Okay.

03:30 10 COMMISSIONER MacCALLUM: Would it also be a
11 factor, sir, that busy investigators who
12 routinely deal with quite shocking matters to
13 laymen like myself and other people,
14 non-policemen, don't tend to hold each case in
03:30 15 their memories, or do they?

16 A You know, My Lord, it seems to vary with some
17 investigators. Some investigators remember
18 absolutely everything for years and years and
19 years --

03:31 20 COMMISSIONER MacCALLUM: Yes.

21 A -- and others put it out of their mind as fast as
22 the matter is concluded, so I don't know that
23 there is any right, an answer either way.

24 COMMISSIONER MacCALLUM: I see. Thank you.

03:31 25 BY MR. HODSON:



1 Q And I think just on that point, we've heard
2 reference from time to time that the Fisher rapes,
3 that he was a serial rapist on the loose and that
4 the city and police, that this was sort of
03:31 5 foremost in their minds, catching the serial
6 rapist back in 1969-1970. Now I appreciate you
7 weren't there and part of it, but I think as part
8 of the follow-up to the Commissioner's question,
9 is from a police officer's perspective would you
03:31 10 view -- would it be unusual to say "okay, there
11 were two unsolved rapes and an attempted rape that
12 were unsolved in a two or three-month period" --
13 and I'm not trying to trying to downplay the
14 significance of it -- but would it be something
03:31 15 that would be so important to officers it would be
16 top of their mind on a daily basis?

17 A I'm certain, at that time, they were working very
18 hard, you know, trying to solve those and trying
19 to develop leads.

03:32 20 Q Apart from those officers who were working
21 directly on the cases, I'm talking the police
22 force as a whole?

23 A Yup. I would think that perhaps, regrettable to
24 say, it may have been more on their minds at that
03:32 25 time than today because, sadly, I think violent



1 crime is more prevalent today than it is, and
2 perhaps, you know, police officers are more
3 accustomed to it. Back in 1969, you know, perhaps
4 a rape or something like that may have been more
03:32 5 known or more thought of around the department.

6 Q Okay.

7 Mr. Commissioner, I see it's
8 3:30, and before, just before we adjourn, I'm
9 wondering if I might address one issue.

03:32 10 Our rules, Rule 24, states
11 that except with the permission of the
12 Commissioner, no counsel other than Commission
13 Counsel may speak to a witness about the evidence
14 that he or she has given until the evidence of
03:32 15 such witness is complete, and with Mr. Sawatsky
16 breaking over the summer there will be a need for
17 me, obviously, to meet with Mr. Sawatsky, which I
18 think is within the rules, and to discuss sort of
19 his future evidence. Unfortunately, the evidence
03:33 20 that he is going to give and finish is
21 inextricably linked to what he has already told
22 us, there isn't an easy dividing line.

23 My concern is with Mr. Gibson,
24 his counsel, who obviously has to be there when I
03:33 25 talk to Mr. Sawatsky, and I would just like to



1 state it on the record that I do need to speak
2 with Mr. Sawatsky to finish the rest of his
3 evidence, as does Mr. Gibson, and perhaps if I
4 could get -- I'm not sure if I need an order,
03:33 5 maybe I do -- just permission from you to allow
6 Mr. Gibson to participate and to talk to his
7 client over the summer about his evidence to be
8 given, which may necessarily refer back to
9 evidence he has already given, because I don't
03:33 10 know how he can avoid it.

11 COMMISSIONER MacCALLUM: And you have my
12 permission, subject to any objections which might
13 be voiced here and now from the room. That will
14 be fine.

03:33 15 MR. HODSON: Okay.

16 COMMISSIONER MacCALLUM: And, Mrs. Beitel,
17 you are invited to pronounce the words that
18 everybody has been waiting for.

19 (Adjourned at 3:34 p.m.)
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