

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

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

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Volume 176

Inquiry Proceedings



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Mr. Bruce Gibson, Esq., **for** the RCMP
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Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis
 (Retired)



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MURRAY SAWATSKY, continued:

BY MR. HODSON:

Q Good morning, Mr. Sawatsky. If we could go to page 023377. Yesterday we finished up with the part of your report that looked at your investigation regarding David Milgaard and there was just, in the summary, there was a question at the end, I just want to go back about this point, and I think the Commissioner asked you a question about Nichol John's evidence at trial, and I think this is the paragraph, I'll just read it and I'll have a few -- actually, just go back up to the top and I think here it says:

"The issues discussed were the circumstances ... which, according to David Asper, if properly interpreted, show David Milgaard was not responsible. This included arguments about whether Milgaard was in the vicinity at the time and whether he was separated from Wilson and John long enough to complete the



1 rape/murder..."

2 And I think you told us that this part of the
3 investigation focused on, number one, whether or
4 not David Milgaard was in the vicinity of where
09:07 5 the murder took place around the time; correct?

6 A Correct.

7 Q And secondly, whether he would have had the
8 opportunity, in other words, that he was away from
9 Wilson and John for a time period that he could
09:07 10 have the committed the crime; is that correct?

11 A That's correct.

12 Q And then the next paragraph you say:

13 "All of the facts concerning these
14 circumstances were heard at trial. The
09:07 15 jury obviously made a determination that
16 the times involved did afford Milgaard
17 the opportunity to commit the
18 rape/murder. No doubt, the evidence of
19 Ronald Wilson and Nichol John played a
09:07 20 large role in the jury's decision..."

21 And I think that was the question about, and I
22 guess this is the question, are you saying that
23 the evidence of Nichol John that put her and
24 Mr. Wilson and Mr. Milgaard in the vicinity
09:07 25 around the time of the murder, is that the



1 evidence you are referring to, or are you
2 referring to her statement where she said she
3 witnessed the murder, but -- which was in
4 evidence at trial?

09:07 5 A No, I was referring to the former.

6 Q To being in the vicinity?

7 A Correct.

8 Q Then in 1993 when the RCMP is investigating this
9 matter, can you comment on, when you are looking
09:08 10 at this question of David Milgaard's guilt or
11 innocence, can you tell us what -- what was the
12 relevance or the significance of Nichol John's
13 1993 version of events and, in particular, to what
14 extent if any did you rely upon her May 24th, 1969
09:08 15 sworn statement which we know was later not
16 adopted in court?

17 A I think as I mentioned yesterday, I didn't
18 place -- I found Nichol's statement to be weak,
19 but there were elements in that statement that
09:08 20 certainly could be corroborated by other means, so
21 there were -- we were left, I think, with the same
22 sense as the initial investigation, that certainly
23 they were in the vicinity and that there was an
24 opportunity. I don't recall exactly what Nichol's
09:09 25 statement said about that, so I would have to



1 maybe just take a quick look at it, but certainly
2 I think I was left with the belief that they were
3 in the vicinity and had the opportunity based in
4 part on her statement.

09:09 5 Q I think her evidence at trial was to that effect,
6 I think she confirmed parts of her statement at
7 the trial, that they were in the vicinity, but
8 certainly she did not testify about witnessing the
9 murder, and so again, is it correct to say that
09:09 10 when you investigated this matter in 1993, you may
11 have had the same sense that the jury had, or
12 looked at the same information the jury would have
13 that Nichol John put David Milgaard at the scene,
14 gave him an opportunity, but that you did not put
09:09 15 much if any weight on her statement of May 24th
16 saying she witnessed the murder, or tell me how
17 much weight --

18 A I think that's probably a fair assessment. I
19 think because the fact that they were in the
09:10 20 vicinity and had the opportunity is corroborated
21 through other means, through other witnesses.

22 Q Okay. And so to the extent that Nichol John gave
23 evidence at trial and repeated it in 1993 about
24 being in the vicinity and other -- let's talk
09:10 25 about incriminating statements that were



1 corroborated by others; for example, the compact
2 and the stopping the woman for directions. Those
3 matters you would have relied upon?

4 A Yes.

09:10 5 Q When it came to her saying in the statement that I
6 saw David grab a girl and drag her down the alley
7 and stab her, did you rely -- to what extent if
8 any did you, in 1993, rely upon that in your
9 investigation?

09:10 10 A Certainly I think, you know, I was aware of it,
11 but as far as its value and our ability to
12 corroborate that, it was of limited value.

13 Q And I guess coupled with that was her 1989, 1990,
14 1991, '92, I think she testified in the Supreme
09:11 15 Court, during that time frame on a number of
16 occasions she was interviewed by, through hypnosis
17 twice, that there was some evidence that she had
18 some -- I don't know how to describe it, but
19 flashbacks and/or vague recollection of something,
09:11 20 of being there and witnessing something but not
21 clear what it was, and you would have been
22 familiar with that body of evidence?

23 A Yes, I was familiar with that.

24 Q And to what value if any did you and your
09:11 25 investigators place on that in looking at David



1 Milgaard's guilt or innocence?

2 A Well, again, a lot of that, along with some new
3 evidence that she told us, was something we
4 couldn't corroborate through any other means, so
09:11 5 it was of very limited value.

6 Q So is it correct to say that at best what Nichol
7 John was able to tell you in '93 is that they were
8 in the vicinity of the murder?

9 A Correct.

09:12 10 Q And that she corroborated the compact, stopping
11 the woman for directions and a few other things
12 that other witnesses corroborated?

13 A Yes.

14 Q If we can now go to 023379, and this relates to
09:12 15 Larry Fisher, and back in June you told us that,
16 and we should probably just go over this again,
17 that in 1992 to '93 when your team was
18 investigating this matter and looking at David
19 Milgaard as a -- suspect is probably the wrong
09:12 20 word, but when you looked at whether or not there
21 was evidence that established David Milgaard's
22 guilt or innocence, you said you did the same for
23 Larry Fisher; correct?

24 A Correct, to the extent that we could.

09:12 25 Q Right. And I think you told us that in 1992 when



1 you went to look at David Milgaard and whether or
2 not he was guilty or innocent of the crime, and I
3 appreciate that it was collateral to the main
4 purpose of your investigation, but that you had
09:13 5 the benefit of the fact that in 1969, '70, '71,
6 that he was, David Milgaard was fully investigated
7 by the Saskatoon City Police and in part by the
8 RCMP, that there was an investigation and that
9 many witnesses who had information about David
09:13 10 Milgaard, his activities that morning, had been
11 interviewed and given statements and indeed given
12 evidence at trial; correct?

13 A That's correct.

14 Q And so if you were trying to go back and say okay,
09:13 15 what happened in 1969, you had the benefit of the
16 fact that many people were asked that in '69 and
17 had that evidence recorded either at trial or in
18 statements; correct?

19 A That's correct, and in reports subsequent as well.

09:13 20 Q Right. And then when you look at what you had for
21 Larry Fisher, I think what you told us is that,
22 that you did not have any investigation or any
23 reports or witness statements about Larry Fisher's
24 potential involvement in the Gail Miller murder
09:14 25 from back in '69, '70; correct?



1 A That's correct.

2 Q And some of the examples you gave is that -- I
3 mean, if the police had investigated Larry Fisher
4 in 1969, '70, presumably they would have went and
09:14 5 got his work records, they would have talked to
6 people in and around the scene to see if they saw
7 anything, they would have talked to his wife and
8 they would have gathered as much information as
9 they could to find out what evidence or
09:14 10 information existed to either prove that he
11 committed the crime or to eliminate him; is that
12 fair?

13 A That's fair.

14 Q And so in 1992 when you looked at who is the more
09:14 15 likely perpetrator, Mr. Milgaard or Mr. Fisher, I
16 think you told us that you had far more
17 information to work with on Mr. Milgaard than you
18 did on Mr. Fisher?

19 A Yes, that's correct.

09:15 20 Q And that in 1992 when you went to find out and get
21 the information, would it be fair to say that you
22 were not able to get as much information about Mr.
23 Fisher's activities in 1969 as you were with
24 respect to David Milgaard?

09:15 25 A Yes, that's fair to say.



1 Q And is that something, just your comment -- let me
2 put it this way. If you had been investigating
3 Larry Fisher in 1969, 1970 as you did in 1992,
4 would you agree that you likely would have
09:15 5 obtained far more information that would have
6 assisted you in determining whether or not he
7 committed Gail Miller's murder?

8 A Yes, I'm assuming that there would have been more
9 information available to examine than there was.

09:15 10 Q And, for example, if you were able to obtain work
11 records, number one, that established he was at
12 work the morning of January 31, 1969, that would
13 have been -- would have eliminated him or might
14 have eliminated him as a suspect; correct?

09:16 15 A Yes. It would have been helpful.

16 Q And alternatively, if you learned that he was not
17 at work that morning as he said he was, that might
18 be evidence that would support Mr. Fisher as the
19 perpetrator?

09:16 20 A Yes.

21 Q So now I think if we can just go to the next page,
22 in 1992 is it correct to say that, and I won't go
23 through them, but a significant number of the
24 allegations made of criminal wrongdoing that your
09:16 25 group investigated related to Larry Fisher in the



1 sense that it was either lookit, there was
2 information about Larry Fisher, Larry Fisher is
3 the killer, there's information about him, the
4 police had it, the police should have had it, the
09:16 5 Crown had it, the Crown should have had it, and so
6 in the course of your investigation you would have
7 fairly -- you would have investigated everything
8 you could about Larry Fisher as a suspect; is that
9 fair?

09:17 10 A Yes, not only from the perspective you just
11 mentioned, but also we made attempts to get those
12 things you spoke of earlier like his work records.
13 We interviewed the police, tried to get
14 information, as much information as possible from
09:17 15 the first interview by the police, we made
16 requests of Mr. Beresh who was Mr. Fisher's
17 counsel to set up an interview with Larry Fisher,
18 so we did try to speak with Mr. Fisher and get as
19 much information as we could around that time as
09:17 20 possible.

21 Q Would you agree, Mr. Sawatsky, that the
22 information you gathered in your investigation
23 with respect to trying to identify Larry Fisher as
24 the perpetrator of Gail Miller's murder would have
09:17 25 been the same information you would have gathered



1 if you in fact had been given the task of
2 investigating the murder of Gail Miller and
3 whether Larry Fisher committed that crime?

4 A That may be fair to say. I'm not certain what
09:18 5 other evidence, you know, was ultimately gathered
6 during the investigation of Mr. Fisher, you know,
7 after he was identified by the DNA, but yes, we
8 would have probably attempted the same sources for
9 information.

09:18 10 Q Let me phrase it a bit better. If you had been
11 asked in 1992 to re-open the investigation into
12 the death of Gail Miller and investigate whether
13 Larry Fisher committed that crime, would you agree
14 that if you had conducted that investigation, that
09:18 15 you would have gathered virtually the same
16 information that you did in fact gather in the
17 investigation you conducted?

18 A Yes, I think that's likely the case, the way the
19 case would have been.

09:18 20 Q And so here we have these allegations, *Larry*
21 *Fisher Culpable*, and we have five categories, the
22 behaviour the day of the murder, Fisher in the
23 vicinity -- I think I've lost B.3 somewhere -- but
24 Larry Fisher matches profile, and admissions, so
09:19 25 those would have been generally the areas that you



1 would have looked at to try and determine whether
2 or not Larry Fisher was responsible for the murder
3 of Gail Miller?

4 A That's correct.

09:19 5 Q Go to the next page, and here you say:

6 "It is Mr. Wolch's contention that Larry
7 Fisher is likely responsible for
8 Miller's assault and murder. This is
9 based largely on the belief that the
09:19 10 circumstances surrounding crimes
11 committed by Larry Fisher make him a
12 more probable suspect in the Miller
13 murder than David Milgaard."

14 And is that correct, that that would have been
09:19 15 one of the primary grounds, is that based upon
16 Mr. Fisher's other crimes, he is a more probable
17 suspect or in fact the perpetrator?

18 A That's correct.

19 Q And in your experience as an investigator, is that
09:20 20 a tool that you had used in investigating crimes,
21 to look at whether or not, for example, there's a
22 signature or there's a certain modus operandi that
23 might suggest a perpetrator is responsible?

24 A Yes.

08:45 25 Q And it's referred, I think, to similar-act or



1 similar-fact-type evidence or profiles, and that's
2 something you were familiar with?

3 A Yes, and something that I had made extensive use
4 of.

09:20 5 Q And can you tell us just generally as an
6 investigator, when you have a rape/murder like
7 this, what are some of the things that you look
8 for? You know, I think the suggestion here is
9 look at the circumstances of Gail Miller's rape
09:20 10 and murder, look at the circumstances of Larry
11 Fisher's rapes for which he was convicted, and try
12 and draw some conclusion from that that number 1,
13 I guess, says is he a suspect, which I think every
14 witness has said yes, it certainly makes him a
09:21 15 suspect because he was in the vicinity at the time
16 and had committed at least three -- or two rapes
17 and an attempted rape before the murder and
18 therefore was a person who had committed rapes --
19 not murder but rapes -- and therefore was a
09:21 20 suspect. But can you tell us, as an investigator,
21 what do you look for in comparing other offences
22 to the offence you are investigating and --

23 A Well, certainly the ability to do that is enhanced
24 greatly now with the Violent Crime Linkage
09:21 25 Analysis System which, you know, looks at, you



1 know, various aspects of each crime, looks at the
2 actions of victims, looks at the actions of the
3 accused, etcetera. But prior to that, as an
4 investigator, you would generally take a look at
09:21 5 the general circumstances, things like the time of
6 the day, the approach, the actions of the victim,
7 you know, was the victim walking in an alley, was
8 she on a street, was she near a bus stop, any
9 number of things of the victim, what did the
09:22 10 accused person say or the perpetrator say, what
11 did he do, did he have any unusual
12 characteristics, was he left-handed, right-handed,
13 did the approach involve a knife, was there
14 threats of violence, you know, were there unusual
09:22 15 statements made, those sorts of things. So I
16 think what you would look for is anything in the
17 approach of, or the actions of the perpetrator
18 that would be similar to perhaps another crime you
19 were investigating, and see if you could draw any
09:22 20 comparisons or any links that would sort of
21 satisfy you that it appeared -- the crime appeared
22 to be committed by the same person.

23 Q

24 And we've heard various evidence, and we have had
09:22 25 a chance to see in some documents, sort of
differing views on everything from the



1 circumstances of the rape are very similar to the
2 murder to the other extreme, saying they are not.
3 And on the one hand we've heard some evidence or
4 some reports that say lookit, they happened in a
09:23 5 back alley, the victims were undressed, they were
6 young women, they were in the vicinity, and those
7 types of circumstances. On the other extreme,
8 we've heard evidence or seen reports that people
9 say lookit, they are quite different because Mr.
09:23 10 Fisher didn't kill, at least prior to the murder,
11 didn't kill or stab or harm in a significant way
12 any of the -- not in a significant way -- but
13 didn't stab any of his previous victims, although
14 there was physical violence. And as well, at the
09:23 15 other extreme, is people saying lookit, there are
16 only so many ways a perpetrator can rape a
17 stranger. And so how do you -- I wouldn't mind
18 your comment on that. Is it a subjective thing
19 where, depending on how you look at it, you can
09:23 20 find similarities or you can find distinctions,
21 and what is the value of that as an investigator?
22 A I think, certainly, it is a very subjective thing.
23 I think it's more objective now with the
24 V.I.C.L.A.S. system that's currently in use, but
09:24 25 certainly just as an investigator looking at it



1 without any sort of specialized training or
2 specialized expertise, it's a subjective thing.

3 You did mention the level of
4 violence, and I think that's an important thing,
09:24 5 because generally speaking behaviour tends to
6 become more violent over time as opposed to less
7 violent. So I guess what I am suggesting there is
8 very often when, early in an offender's history,
9 he may show signs of, I guess, limited violence
09:24 10 where it may be grabbing, holding, perhaps binding
11 arms, etcetera, all the way to -- progressing to
12 the point where this person commits murder. So
13 it's unusual I think, in cases I've looked at or
14 in my experience, to see a murder committed and
09:24 15 then, after, less-violent crimes. I'm not saying
16 that it can't happen, because we know it did, but
17 certainly it's not that common. So level of
18 violence is another important point to look when
19 you are examining offenders' actions.

09:25 20 Q And can you tell us the significance of -- and
21 what would be the investigators' term, is it
22 similar-fact evidence or is it profiling, or what
23 would you, as an investigator, call it;
24 information gathered that would put -- that would
09:25 25 suggest Mr. Fisher is a suspect or the



1 perpetrator, in other words looking at his other
2 crimes and gathering that information?

3 A Yeah, it would be looking at
4 similar-fact/similar-act evidence.

09:25 5 Q Okay. And, as an investigator, can similar-fact
6 evidence that would say Mr. Fisher -- let's put it
7 at the highest possible value, saying lookit,
8 based upon the comparison of these crimes this one
9 is very, the Gail Miller murder is very similar to
09:25 10 previous crimes committed by him and crimes
11 committed after the murder, and a number of
12 similarities that put it at the highest level. As
13 an investigator, do you still need more
14 information or evidence to link Mr. Fisher to the
09:26 15 crime, or as an investigator is it sufficient to
16 say lookit, these are -- he committed some other
17 crimes that are very similar, therefore he's the
18 perpetrator?

19 A Yes. Generally speaking what it provides you
09:26 20 with, having a similar fact, is that it provides
21 you with an investigative lead which you then need
22 to follow up and determine whether there's other
23 evidence available before you can lay a charge.

24 With V.I.C.L.A.S. and that
09:26 25 system now, I understand that that system is



1 capable of being pretty certain in some of its
2 findings, in other words it gives you a stronger
3 lead I think, perhaps, than we as investigators
4 had before where you simply looked at two or three
09:26 5 sets of circumstances, tried to draw a link, and
6 then sort of said well, it appears to me like
7 these three are similar, and then you go out and
8 sort of work on them and investigate them and try
9 and determine whether or not there's evidence to
09:27 10 support the same person committing all of the
11 crimes.

12 Q And can you just tell --

13 COMMISSIONER MacCALLUM: What's the name of
14 the system, sir?

09:27 15 A The V.I.C.L.A.S. system.

16 COMMISSIONER MacCALLUM: V-I?

17 A Yes, V.I.C.L.A.S., it's the Violent Crime Linkage
18 Analysis System, the V.I.C.L.A.S. is an acronym.

19 COMMISSIONER MacCALLUM: So V-I --

09:27 20 A C-L-A-S.

21 BY MR. HODSON:

22 Q And when was that system put in place?

23 A I would suggest, well, my best recall would be the
24 mid to late '80s. But certainly it has become,
09:27 25 you know, with use it's become much more refined



1 and much better over the years. There has been
2 continual improvements made to the information
3 that tracked, the information that's fed in, the
4 way the analysis is done. It's a very
09:27 5 highly-skilled -- the requirement to be an analyst
6 is a highly-skilled requirement and, therefore, a
7 lot of training is involved.

8 COMMISSIONER MacCALLUM: Violent, what is
9 it, just repeat the full title?

09:28 10 A Violent Crime Linkage Analysis System. And, right
11 now, the RCMP has a policy that requires its
12 investigators to submit information, statements
13 and I believe a little booklet that goes into MO
14 of the offender and victim, into the system, and
09:28 15 it extends to -- I don't know that I'll get all
16 the offences here -- but it's mostly violent type
17 of offences, murders, attempted murders, any
18 offences of violence, any sexual offences.

19 COMMISSIONER MacCALLUM: So you can charge
20 just on the basis of an appropriate profile
21 yielded by that system; can you?

22 A I'm not sure, My Lord, that I would go that far,
23 but I know the system is often able to say to
24 investigators "we're very certain that this is
09:28 25 your offender", and of course the investigator



1 then has to go out and gather the evidence and try
2 and corroborate that. But they, I know that in
3 recent times they have become, the V.I.C.L.A.S.
4 analysts have been becoming more and more accurate
09:29 5 in their ability to identify offenders through
6 certain patterns of behaviour.

7 COMMISSIONER MacCALLUM: Okay.

8 A Perhaps by their 'signature', a word that Mr.
9 Hodson used a moment ago.

09:29 10 BY MR. HODSON:

11 Q And if we could just --

12 A And if I could just complete my answer --

13 Q Sure?

14 A -- on the V.I.C.L.A.S. system, there is also
09:29 15 policy through the Saskatchewan Police Commission
16 that requires all municipal police services to use
17 V.I.C.L.A.S. as well in the province, and to use
18 the RCMP's policy as a guide for their
19 submissions. So that system is working, alive and
09:29 20 well and working in this province.

21 Q So, currently, the Saskatoon City Police Service
22 is required, in major crimes, to utilize
23 V.I.C.L.A.S.?

24 A Yes.

09:29 25 Q And V.I.C.L.A.S., so who; is it an RCMP



1 department; is that who runs V.I.C.L.A.S.?

2 A Well the RCMP actually started it, but I believe
3 it's a national police service now, and all police
4 services and all accredited police agencies in
09:30 5 Canada use it.

6 Q Okay.

7 A I know that it's even been moved internationally,
8 where it's being used in the States and in
9 European countries as well, I believe. But it
09:30 10 was, I think, started by the RCMP.

11 Q Yeah. And it's my understanding, Mr. Sawatsky,
12 and please correct me if I'm wrong, that for
13 certain crimes, and let's say a rape/murder,
14 certainly in that case, that the investigating
09:30 15 police agency would complete a form that has been
16 designed by the V.I.C.L.A.S. experts that say
17 "here are the things that are important to us",
18 and everything from time of day, types of wounds,
19 words spoken, etcetera, and that that information,
09:30 20 there is a fairly sophisticated form that's
21 required to be filled out that is sent in to
22 V.I.C.L.A.S., and that investigating officers are
23 allowed to access V.I.C.L.A.S.; in other words
24 "here's the form in our case, here's all the
09:30 25 information that's put into the system", it's



1 analysed, and someone comes back and might say,
2 "lookit, this is very similar to another crime or
3 another couple of crimes that we're looking at";
4 is that correct?

09:31 5 A That's correct.

6 Q And so if V.I.C.L.A.S. had been in place in 1969
7 and the first two rapes and the attempted rape
8 were into that system with those circumstances,
9 presumably -- and the Gail Miller murder would
09:31 10 have been put into the system, presumably
11 V.I.C.L.A.S. would have given some feedback to the
12 officers saying "it appears to be the same
13 perpetrator" or "it doesn't appear to be, if it
14 is, and here's why", but that would be the
09:31 15 process?

16 A Yes, and I think that's fair to say.

17 Q And so prior to V.I.C.L.A.S. it would be officers,
18 police officers, relying on their own judgement
19 and experience in the connecting -- in looking at
09:31 20 whether the crimes are connected?

21 A That's correct.

22 Q And we'll comment back to the V.I.C.L.A.S. issue a
23 bit later. So, just back on comparing the crimes,
24 V.I.C.L.A.S. or whatever system would come back
09:32 25 and say, "lookit, based upon analysis", and I



1 think what you are saying is V.I.C.L.A.S. just
2 elevates the level of analysis and perhaps the
3 reliability of the analysis?

4 A Yes.

09:32 5 Q It says "this person is more likely to be the
6 perpetrator based upon his other crimes"; is that
7 fair?

8 A That's fair.

9 Q And back to the question the Commissioner asked,
09:32 10 as an investigating officer, in the absence of any
11 evidence that would put -- that would link the
12 perpetrator to the murder, either physical
13 evidence, eyewitness evidence and admission, or
14 some other piece of evidence; as an investigator,
09:32 15 is the similar-fact information sufficient?

16 A No.

17 Q And so in the case of Larry Fisher in 1993 when
18 you're looking at him as a suspect, as the
19 perpetrator, is it correct to say that looking at
09:33 20 his other crimes, at best, would say he's a good
21 suspect or a likely suspect, or in the case of
22 V.I.C.L.A.S. we're almost certain he's a suspect,
23 but in the absence of something more you would not
24 be able to charge him with the crime?

09:33 25 A No.



1 Q You would agree with that?

2 A I agree with that, yes.

3 Q Yeah. And in 1992 and '93, as an investigator,
4 would you agree that it was more difficult, in
09:33 5 1992 and 1993, than it would have been in 1969 and
6 1970, to find evidence that would link Larry
7 Fisher to the murder of Gail Miller?

8 A Yes, that was certainly the case, work records,
9 those sorts of things weren't available to us that
09:34 10 likely would have been available in 1969.

11 Q If we can go to 023 -- actually, sorry, we'll just
12 go through. I think the first B, you then go
13 through the allegation, and I think this just
14 recites what information was provided. If we can
09:34 15 go to 023383. And then, here, you summarize, I
16 think, the grounds that were put forward by Mr.
17 Wolch to support that Larry Fisher is the most
18 likely person to have been responsible. Number 1:

19 "- Fisher lived in the basement of the
09:34 20 Cadrain house a little more than a block
21 from the scene of Miller's murder."

22 What, when you are investigating that in
23 1992-'93, what was the significance of that?

24 A Well it certainly was suspicious but, in itself,
09:35 25 was not evidence that would suggest Mr. Fisher was



1 responsible. But it certainly was something that
2 could perk somebody's attention.

3 Q Would the significance be that he lived in the
4 vicinity and, for example, took the same bus as
09:35 5 Gail Miller; would that be the significance of
6 that?

7 A Yes. As I've indicated, it certainly would make
8 you, as an investigator, would provide you with
9 something to -- that you could perhaps follow up
09:35 10 on or would try to follow up on, see if you could
11 maybe develop more evidence that would help
12 establish whether or not this person was a suspect
13 simply for this reason.

14 Q And if he lived three doors down from Cadrain or a
09:35 15 block away from Cadrain's house, you would have
16 the same suspicions?

17 A Yes.

18 Q There was evidence that Gail Miller's wallet was
19 found, I think, three or four doors down from
09:35 20 Cadrain's house, and I take it that would have
21 been something that Larry Fisher, living at the
22 Cadrain house, would have been significant in
23 that, as a suspect, the fact that Gail Miller's
24 wallet was found in the vicinity of where he lived
09:36 25 would be relevant?



1 A Yes, it would.

2 Q But if he lived two doors down or a block away it
3 would still be relevant?

4 A Yes, it would.

09:36 5 Q So the simple fact that Fisher lived in the
6 Cadrain's basement, are you telling us, had no
7 significance other than it put him in the vicinity
8 of the murder and in the vicinity of where the
9 wallet was found?

09:36 10 A Yes, that's, I think that's fair to say.

11 Q And, in other words, there was nothing that --
12 there was nothing that tied him to any activity at
13 the Cadrain house that morning, but the fact that
14 he lived there as opposed to another house, you
09:36 15 know, one house away wouldn't have made any
16 difference?

17 A No.

18 Q Is that -- next:

19 "- Fisher is alleged, by his former wife
09:36 20 Linda, to have reacted suspiciously when
21 she confronted him with the possibility
22 of him being involved. In addition,
23 Linda Fisher claims the morning of the
24 murder, she was missing a knife which is
09:37 25 purported to be similar to the murder



1 weapon."

2 Can you tell us the, sort of again, the
3 significance of -- what use, if any, can you make
4 of this information, the Linda Fisher
09:37 5 information? And I think there's probably two
6 parts; one, her account of what she says happened
7 the morning of the murder, her confrontation with
8 her husband, the fact that he wasn't at work and
9 the accusations and his response; and secondly,
09:37 10 the missing knife, which I think she later
11 acknowledged was not -- at least initially the
12 missing knife, the knife she said was missing,
13 was not the maroon-handled paring knife; correct?

14 A Correct.

09:37 15 Q So what do you make as an investigator, in 1992,
16 of what Linda Fisher has to say; is that -- is
17 that information or evidence that links Larry
18 Fisher to the murder of Gail Miller?

19 A I think in this case, as you mentioned, we did
09:38 20 follow this up to the extent that we could and it
21 doesn't necessarily link him to the murder. It
22 causes one to have some suspicions but we know
23 that suspicion is not enough to base a charge
24 upon.

09:38 25 Q Next:



1 "- After attacking Miller, Fisher is
2 alleged to have assaulted (V4)----
3 (V4)---. At the time of this assault,
4 he was allegedly following a route he
09:38 5 often used between his home and that of
6 his brother-in-law, Clifford Pambrun.
7 Fisher is alleged to be similar in size
8 and complexion to (V4---'s attacker
9 ...",
09:38 10 and I think, and we've heard a fair bit of
11 evidence on this, I think the allegation was --
12 or not the allegation -- the suggestion was that
13 Larry Fisher had Cliff Pambrun's car the morning
14 of the murder, killed Gail Miller, drove the car
09:38 15 back to Cliff Pambrun's house, and then walked
16 back down the tracks and assaulted (V4)----
17 (V4)---. And we've heard evidence from
18 Mr. Pambrun that might dispute that his car was
19 used that morning, we've heard some evidence that
09:39 20 he -- his car might have been used, but is that
21 something -- tell us what, what your, generally
22 what your investigators did and whether or not
23 what is suggested here was borne out, and if it
24 was borne out whether that would be a link to the
09:39 25 crime?



1 A Yes, we did, we did some considerable amount of
2 work on this as well. We also followed up with
3 Mr. Pambrun and, at the end, it was our view that
4 this was unlikely. I'm not saying it was
09:39 5 impossible but it certainly was unlikely to have
6 happened.

7 Q And why, why was that?

8 A It, I think it was very difficult for us to see
9 how the time frames would allow for Mr. Fisher to
09:39 10 have returned the vehicle and done what was
11 alleged he had done. Also, Mr. Pambrun indicated
12 a similar thing to us, that he doubted that Larry
13 Fisher had his vehicle that day. The -- we
14 certainly had some doubts about the manner in
09:40 15 which Ms. (V4)--- had identified Mr. Fisher as her
16 attacker, that identification. I think it was, we
17 didn't feel, particularly strong. So I think, in
18 looking at this in its, you know, entirety, we
19 weren't of the view that it was a very strong
09:40 20 likelihood that it happened that way.

21 Q And if you're looking for information that would
22 link Larry Fisher to the murder and to supplement
23 the similar-fact evidence, which we'll get to a
24 bit later, I think you told us yesterday that if
09:40 25 (V4)---- (V4---'s version of events were true and



1 it was Larry Fisher that attacked her that
2 morning, I think you told us that your
3 investigators concluded that that would likely
4 eliminate him as the perpetrator of Gail Miller's
09:40 5 murder; is that correct?

6 A It's certainly possible that that could be looked
7 at that way.

8 Q And was that because of the timing and the
9 distance?

09:40 10 A Yes.

11 Q And so, again, as far as the, let's just take the
12 (V4)---- (V4)--- allegation and say as a piece of
13 evidence at the end of the day, did that provide
14 information that would link Larry Fisher to the
09:41 15 murder of Gail Miller?

16 A No, it didn't. In fact, it was probably weak at
17 best. But, no, it didn't link him to the murder.

18 Q Did it tend -- did it tend to go the other way? I
19 mean let's back up, I think it was put forward as
09:41 20 "here, RCMP, take a look at the (V4)---- (V4)---
21 matter, that will -- and the Cliff Pambrun car
22 theory, and when you review that and investigate
23 that your conclusion should be that that
24 establishes or helps to establish that Larry
09:41 25 Fisher is the killer of Gail Miller". I think you



1 said that didn't happen?

2 A I think that's what Mr. Wolch was putting forward,
3 yes.

4 Q Yeah. Did it go the other way? At the end of
09:41 5 looking at the (V4)---- (V4)--- assault did your
6 investigators conclude that that might be
7 information that tends to exculpate Mr. Fisher as
8 opposed to inculcate him? I mean where did this
9 information sit on the continuum?

09:42 10 A I think personally how I looked at it is I didn't
11 think that this likely happened so it wasn't
12 evidence that tended to inculcate Mr. Milgaard in
13 the sense that --

14 Q I'm talking Mr. Fisher, I'm sorry.

09:42 15 A -- Fisher in that sense. I think, in looking at
16 it, I don't think it happened. I don't think it
17 was Fisher. Sorry, I didn't mean to suggest that
18 Mrs. (V4---'s complaint wasn't genuine because
19 there's no evidence to suggest it wasn't, but I
09:42 20 don't think that this was Fisher who did it, so
21 therefore it doesn't have any weight at all with
22 regards to Fisher's activities that morning in my
23 view.

24 Q And if it had been established that it was Mr.
09:42 25 Fisher, I think you've told us then that would



1 tend to be more on the exculpate side than the
2 inculpate side as far as Mr. Fisher is concerned?

3 A I do agree with that, yes.

4 Q And so, if it had borne out, it would not have
09:43 5 linked Mr. Fisher to the murder?

6 A Correct.

7 Q And why do you say you don't think it was Mr.
8 Fisher who assaulted (V4)---- (V4)---?

9 A I'm just, I guess I just have doubts about the
09:43 10 ability of Ms. (V4)---, after all these years,
11 to -- and from a very poor photograph, to be so
12 certain that it was Larry Fisher. There is no
13 other evidence to indicate that it was Linda
14 Fisher.

09:43 15 Q Okay. And then:

16 "- Fisher was seen using the same bus
17 stop as Miller by Mary Gallucci."

18 And I don't think there's any dispute about that
19 evidence that Larry Fisher and Gail Miller used
09:43 20 the same bus stop and, at least on some
21 occasions, caught the actual same bus, but was
22 that information your people gathered?

23 A Yes, it is.

24 Q And can you tell us, does that, in and of itself,
09:43 25 link Larry Fisher to the murder, or where does



1 that fit into --

2 A No, it doesn't, but it's certainly, again, a piece
3 of information that could be viewed as something
4 suspicious, something that you would want to do
09:43 5 your best to follow up on, as we did.

6 Q And if we compare that, earlier you said the
7 evidence of Wilson and John putting David Milgaard
8 in the vicinity of the murder at the time of the
9 murder was significant; correct?

09:44 10 A Correct.

11 Q And, again, would you agree, then, the fact that
12 this information that Larry Fisher caught the same
13 bus as Gail Miller, or went to the same bus stop
14 and on occasion, at a minimum, caught the same
09:44 15 bus, would that also be information that would put
16 him in the vicinity at or about the time of the
17 murder?

18 A That's correct.

19 Q And so I'm not asking you to compare but I guess,
09:44 20 would you agree that both Mr. Fisher and Mr.
21 Milgaard, based on the information you gathered,
22 would have been in the vicinity at the time with
23 opportunity? Subject, I guess, and we'll get to
24 Mr. Fisher's work records, but apart from whether
09:44 25 he went to work or not, putting that aside; they



1 would both have been in the vicinity at the time?

2 A I agree with that, yes.

3 Q And then the other ground is:

4 "- He committed at least three sexual
09:45 5 assaults (rapes) in the same general
6 area around the same time using a modus
7 operandi which was strikingly similar to
8 the circumstances surrounding the Miller
9 murder. Fisher's modus operandi
09:45 10 involved the use of a knife and pursuit
11 of women in uniform (e.g. nurses)"

12 And again, I think we've touched on that with the
13 V.I.C.L.A.S., any further comment on that
14 about -- and we'll get into your report a bit
09:45 15 later where you talk about the similarities --
16 but anything to add? I mean I think that was
17 probably the main ground brought forward, that
18 the comparison of Mr. Fisher's previous crimes
19 should be what gets you over the top in
09:45 20 establishing his guilt?

21 A That's right, yup.

22 Q Go to the next page, and you say here:

23 "Many of these examples have
24 already been addressed when dealing with
09:45 25 specific issues relating to our



1 investigation of the police and Crown
2 prosecutors i.e., Linda Fisher's
3 complained to the police in 1980, her
4 missing knives, and links between the
09:46 5 physical evidence found near the Cadrain
6 home where Fisher lived."

7 And I take it, in this report, you are simply
8 saying, lookit, we've touched on much of these
9 issues in other parts of the report, in other
09:46 10 words we're not going to repeat everything we've
11 already said in the report; is that the intent?

12 A Yes, yes.

13 Q The first issue you look at is the behaviour the
14 day of the murder, and you go through, and her
09:46 15 account -- and I won't bother going through that
16 -- but Linda Fisher's account of going in to the
17 police in 1980 and her recollection of the morning
18 of the murder. And it says:

19 "During her testimony at the
09:46 20 Supreme Court, Linda stated the news
21 report basically said, 'This morning a
22 woman was found stabbed to death'.
23 Checks were made of local Saskatoon
24 radio stations for information on dates
09:46 25 and times of broadcasts and the only



1 radio station with records from 1969 was
2 CFQC."

3 And then you go on to put the times that the
4 reports were made, the first report was at 12:25
09:47 5 p.m., and what they said is:

6 "... body of a young woman found in a
7 snowbank ...",

8 so no mention of a stabbing but the fact that a
9 body was found, and then later reports I think
09:47 10 that day, a murder, they provide the name. And
11 then the next day:

12 "murder ... recovered knife blade, the
13 girl's sweater and one of her
14 snowboots.",

09:47 15 and that the newspaper report, the first report,
16 was February 1. Can you tell me, what was the
17 purpose of investigating the media reports?

18 A I think we were trying to put credibility to Linda
19 Fisher's statement, in other words to try and make
09:47 20 a determination as to the time, she thought it was
21 the morning of the murder so we wanted to see,
22 okay, what were the news reports that day.
23 Because she had indicated that she had received a
24 report on the radio, was it that day, was she
09:47 25 perhaps mistaken and it was the next day or a week



1 later or something, I think we were trying to help
2 with our -- to find out exactly, or as close as we
3 could, to the day.

4 Q And what did you conclude about whether -- in
09:48 5 light of the information you obtained about the
6 radio reports did you reach any conclusions as to
7 whether Linda Fisher's encounter with Larry Fisher
8 was the morning of the murder, or the next day, or
9 another day?

09:48 10 A Umm, I think there was -- I think we were sort of
11 of the view that perhaps it could have been the
12 next day, --

13 Q The Saturday?

14 A -- but we weren't able to sort of be certain of
09:48 15 that.

16 Q Now I suppose, if it did in fact happen on the
17 Saturday, that might explain why he was in his
18 good clothes and wasn't at work. But if the
19 discussion she had with him on, was on Saturday
09:48 20 rather than the morning of the murder, you would
21 agree that wouldn't eliminate him as a suspect.

22 A No.

23 Q Is that correct?

24 A No, no, it wouldn't eliminate him as a suspect.

09:48 25 Q So, similarly, his reaction to the accusation



1 would still be relevant; correct?

2 A Correct.

3 Q And, as well, I suppose the only issue is that if
4 the discussion with him on Saturday, was on
09:49 5 Saturday rather than the morning of the murder,
6 then you may not have Linda Fisher's evidence that
7 he wasn't at work on the morning of the murder?

8 A That's correct.

9 Q If we can then go to the next page. And, again,
09:49 10 you refer to Larry Fisher's evidence at the
11 Supreme Court about the incident with Linda, which
12 he acknowledged that he had an encounter and that
13 he -- she accused him of being involved in the
14 murder, and it says:

09:49 15 "Larry acknowledges the confrontation
16 took place although he doesn't call if
17 the argument involved the issue of a
18 knife. He believes that the incident
19 could have taken place on the day
09:49 20 following the murder, which would be
21 Saturday ... If this is the case, it
22 would mean that Linda is mistaken about
23 the day the incident took place.
24 Nevertheless, it is clear from his
09:50 25 testimony that Linda made accusations



1 concerning his possible involvement in
2 the death of a girl and that he reacted
3 in a shocked manner."

4 And, if Linda Fisher was mistaken on the day,
09:50 5 would that have any impact on the balance of her
6 recollection?

7 A No, it wouldn't.

8 Q And the next page, your *Investigators Comment*:

9 "Larry Fisher's behaviour,
09:50 10 when confronted by his wife Linda, was
11 one of shock. Mr. Wolch would argue it
12 was because of his guilt, but Fisher
13 says it was due to his disbelief that
14 she would accuse him. Linda was not
09:50 15 aware of the fact Fisher had committed
16 several rapes preceding the Miller
17 murder, nor is there any indication she
18 was even suspicious of him. Therefore,
19 her statement accusing him of attacking
09:50 20 someone would have little basis of fact.
21 His shocked reaction could have been
22 because her accusations - however
23 baseless they might have been - struck
24 home."

09:51 25 Any clarification on that?



1 A No.

2 Q So I take it that the confrontation with Linda,
3 whether it was the morning of the murder or the
4 next day, in and of itself, did it provide you
09:51 5 with any evidence that would link Larry Fisher to
6 the murder of Gail Miller?

7 A No.

8 Q Would it be in the category of being suspicious?

9 A Yes, it would.

09:51 10 Q Next, *Fisher in Vicinity*, and you go through the
11 Mary Gallucci information, and here you say:

12 "After having raped and murdered Gail
13 Miller, Mr. Wolch claims that Fisher's
14 serial rapist behaviour led him to
09:51 15 assault (V4)---- (V4)---. He suggests
16 (V4)--- was attacked on a route normally
17 taken by Fisher as a shortcut between
18 his place and Clifford Pambrun's (whose
19 car he used to borrow). Fisher admitted
09:51 20 he used this route in the Supreme Court,
21 but he emphatically denied assaulting
22 (V4)---."

23 And then you go on and talk about the (V4)---
24 information:

09:51 25 "About one block from her home, she



1 checked her watch and saw it was 0707
2 hrs..."

3 And then:

4 "While reading the Toronto Star
09:52 5 91-08-11, (V4)--- saw a photograph of
6 Larry Fisher. She stated she
7 immediately recognized him."

8 And I think it was that identification, sir, that
9 you took issue with or had some trouble with?

09:52 10 A Yes. I'm not suggesting that there was anything
11 sinister about that, I'm just -- I know it was a
12 very poor photograph that she had made the
13 identification from.

14 Q And I think you said the comment earlier that it
09:52 15 would have been 20 years later that --

16 A That's correct.

17 Q And what, as an investigator, would you have
18 concerns that -- we've heard some evidence about
19 photo identification. Would you have concerns
09:52 20 that the identification made by (V4)---- (V4)---
21 was from a photograph that related to a story that
22 said Larry Fisher was the person who killed or may
23 have killed Gail Miller that morning; in other
24 words, that when she looked at the picture and
09:53 25 read the story, that it was in connection with



1 saying this person had killed Gail Miller? Would
2 that be a concern to you as an investigator, that
3 that information might influence a person in
4 making the identification?

09:53 5 A It's possible, it's possible. I think my
6 principal concerns were more around the time that
7 had evolved since the assault and the quality of
8 the picture that she made an identification from.

9 Q Okay. And then if we can scroll down, here it
09:53 10 says:

11 "(V4)--- claims she was assaulted at
12 0707 hrs. and that it would normally
13 take about 25 minutes to reach the bus
14 stop from her home. Our investigator's
09:53 15 walked this route and found it took them
16 6 minutes."

17 And again, where did that fit in, if any, in
18 looking at the (V4)---- (V4)--- matter?

19 A Well, it certainly showed that there was a bit of
09:54 20 a discrepancy in what she gave us as the time it
21 took to walk and us to walk it, so certainly it --

22 Q I believe her evidence, and certainly at the
23 Commission, was that her 7:07 time was based upon
24 her recollection of looking at her watch right
09:54 25 around the time, I think shortly before the



1 assault; is that correct?

2 A Yes. She has always maintained very firmly that
3 that was the time.

4 Q And here:

09:54 5 "It is theorized by Mr. Wolch et al that
6 if Fisher was Miller's attacker he
7 probably used Pambrun's vehicle which he
8 returned following the offence. He
9 would then have walked from Pambrun's,
09:54 10 along the railway tracks (his normal
11 short cut route) to return home. En
12 route he encountered (V4)---, whom he
13 assaulted as part of the "high" he was
14 on following the Miller murder. It took
09:54 15 our investigators 5 minutes to drive
16 from the murder scene to Pambrun's and a
17 further 8 minutes to walk to the
18 location of (V4---'s assault."

19 And the next page:

09:55 20 "The evidence suggests Gail Miller was
21 seen in her boarding house at 0645 hrs.
22 She is believed to have left at
23 approximately 0700 hrs. in order to
24 catch a bus and arrive for work at 0730
09:55 25 hrs. Regardless of whether or not she



1 walked down Avenue "N" or "O", the 20th
2 Street bus arrived at 0649 or 0704 hrs.
3 It would have taken her about 3 minutes
4 to walk from her house to the bus top on
09:55 5 20th Street. Therefore, her initial
6 confrontation with her assailant would
7 have occurred at approximately 0700 hrs.
8 Miller's assailant sexually assaulted
9 her and stabbed her numerous times. Her
09:55 10 purse was put in a nearby garbage can
11 and her other belongings were thrown
12 into adjacent yards.

13 If Larry Fisher was Miller's
14 assailant he would have attacked her
09:55 15 within minutes of 0700 hrs. The rape,
16 murder, and disposition of the articles
17 would take several minutes to complete.
18 It would take him at least 8-10 minutes
19 to drive to Pambrun's, return the
09:55 20 vehicle, and *then run* to where he is
21 alleged to have attacked (V4)--- at 0707
22 hrs. This does not seem to be a
23 plausible theory."

24 Again, that would have been the conclusion of
09:56 25 your investigators?



1 A Yes, it is.

2 Q And I think you told us, your investigators did a
3 fair bit of work on this theory as far as timing,
4 the Pambrun vehicle and whether or not this theory
09:56 5 could actually work?

6 A Yes, we did.

7 Q "If one were to assume Fisher attacked
8 Miller on foot then he would have had to
9 complete the rape and murder, dispose of
09:56 10 her purse etc., and get to the location
11 of (V4---'s assault by 0707 hrs. It
12 takes 8 minutes to walk this distance.
13 Since her attack occurred very close to
14 0700 hrs., this also seems improbable.

09:56 15 The noted facts and
16 circumstances do not support the theory
17 Fisher is responsible for both the
18 Miller and (V4)--- assaults."

19 And those would have been your conclusions?

09:56 20 A Yes.

21 Q What about this -- when we heard a bit about this
22 from Dr. Rossmo, an earlier witness, the
23 suggestion that Ms. (V4)--- was attacked by Larry
24 Fisher as part of the "high" he was on following
09:56 25 the Miller murder, as an investigator, did you



1 have -- what were your thoughts about whether Mr.
2 Fisher, having committed the rape and murder of
3 Gail Miller, would then have an encounter with
4 Ms. (V4)---, and I think it's fair to describe
09:57 5 that assault as being far less significant. What
6 were your thoughts as an investigator as to
7 whether it was likely that a perpetrator, having
8 raped and killed Gail Miller, would commit the
9 assault on (V4)---- (V4)---?

09:57 10 A Yeah, I think I know what the question, or where
11 you are going. I'm not aware of something like
12 that happening before, I've never worked on a case
13 where there was a serious assault followed by a
14 very minor assault, and I'm not aware of any
09:57 15 instances where that has happened.

16 Q As an investigator, would it strike you as being
17 unusual to have the, an assault of the nature on
18 (V4)---- (V4)--- following so closely on the rape
19 and murder of Gail Miller by the same person?

09:57 20 A Yes, it would.

21 Q Now next, B.4, Issue: *Larry Fisher Matches*
22 *Profile*, and this relates to, this is a summary of
23 what Mr. Fisher acknowledged at the Supreme Court
24 when questioned by Mr. Wolch:

09:58 25 "(a) that he had an inner hatred or



1 anger from his early youth and from the
2 problems he was having in his marriage,
3 which prompted him to take it out on
4 innocent victims;

09:58 5 (b) he chose to attack at night by
6 forcing his victim into an alley or some
7 secluded place;

8 (c) he had his victims not look at his
9 face and had a pattern of conscious
09:58 10 thought that he didn't want to get
11 caught;

12 (d) when he attacked women, he was
13 seeking power, strength, domination and
14 the real thrill was the grabbing and
09:58 15 controlling of women;

16 (e) the sex came later to fulfil it all;

17 (f) he followed a pattern wherein he
18 attacked his victims quickly, from the
19 side, completing the offence within five
09:58 20 to ten minutes;

21 (g) there was a connection between the
22 victim and travel by bus;

23 (h) a knife was used in most of his
24 attacks;

09:59 25 (i) he undresses his victims, removes



1 the bra, has them take off their coat
2 which he tells them to lay on, often has
3 them cover their face with their
4 garments, but does not remove his own
09:59 5 clothes."

6 And that would have been -- is that fair to say,
7 that was a summary of what was put forward as
8 being the similar fact, or some of the similar
9 fact evidence that your investigators should have
09:59 10 relied upon in concluding that Larry Fisher was
11 the perpetrator?

12 A That's correct.

13 Q And then you go on to say that:

14 "Fisher denied planning his attacks,
09:59 15 except for (V5)---, who he saw on a
16 bus..."

17 And:

18 "He indicated his attack on (V1)- was
19 one instance where he did stalk the
09:59 20 victim."

21 And I take it you are just reciting some of Mr.
22 Fisher's other evidence?

23 A That's correct.

24 Q If we can scroll down, you say here:

09:59 25 "As noted earlier, an investigation of



1 Larry Fisher was not within the scope of
2 our investigation, but given that we had
3 amassed many of the available facts a
4 decision was made to address Mr. Wolch's
10:00 5 concerns. Therefore, the question as to
6 whether or not Fisher and/or Milgaard
7 best fit the offender profile for the
8 Miller murder is being explored by an
9 analysis of Fisher's crime vs. Miller's
10:00 10 murder and will be the subject of a
11 supplementary report. It must be
12 stressed however, that the results of
13 such an analysis are intended as an
14 investigative lead not as evidence of
10:00 15 guilt or innocence."

16 And can you just elaborate on that?

17 A Yes, I think that goes back to a larger extent to
18 what we were talking about before, is that we
19 decided in this case to have the, to have someone
10:00 20 who is trained in this discipline to have a look
21 at Mr. Fisher and see whether or not his actions,
22 or the actions of the perpetrator the morning of
23 the Miller murder fit with the victimology on the
24 assaults, the sexual assaults, and we were trying
10:00 25 to stress that of course this is simply an



1 investigative lead and once you have an answer,
2 that you have to follow up on and either prove or
3 disprove.

4 Q And just comment on that last point, "...are
10:01 5 intended as an investigative lead not as evidence
6 of guilt or innocence." Is that correct?

7 A Yes.

8 Q And so if the analysis shows that the crimes are
9 very similar; in other words, Mr. Fisher's crimes
10:01 10 are very similar to Gail Miller's murder, does
11 that mean it's a very good investigative lead?

12 A Yes, it does.

13 Q Is it evidence of guilt or innocence?

14 A No, it's not. It's certainly something that you
10:01 15 would then as an investigator want to follow up on
16 and see what evidence you could develop.

17 Q And similarly, if the analysis shows that the
18 crimes are not similar, does that -- is that proof
19 of innocence?

10:01 20 A No, it's not.

21 Q Does it eliminate that person as a suspect?

22 A No, it doesn't eliminate that person as a suspect,
23 but I think as an investigator it would cause you
24 to want to work more to try and determine any
10:01 25 leads you could find.



1 Q And maybe on this point, are you telling us that
2 similar fact evidence to an investigator is
3 limited to being an investigative tool or lead as
4 opposed to evidence of guilt or innocence?

10:02 5 A Yes.

6 Q I think if we can go, and I think the
7 supplementary report is attached, and that was a
8 profile done by I think Mr. MacKay; is that
9 correct, an officer, Inspector MacKay?

10:02 10 A That's correct.

11 Q And if we can go to page 023494, and this was part
12 of a supplementary report, I think that after your
13 report was filed or completed, the analysis was
14 done and this was filed as a supplement; is that
10:02 15 correct?

16 A Yes.

17 Q And am I correct that the conclusions that you
18 reached in your report regarding Larry Fisher and
19 David Milgaard, were those conclusions reached
10:03 20 before you got the analysis, the profile?

21 A Yes.

22 Q And so your report was completed and then this
23 report came later; is that correct?

24 A That's correct.

10:03 25 Q And so do I take it from that that the -- what is



1 the correct term for this, is it a profile or what
2 do they -- I guess supplementary report -- did not
3 influence the conclusion of your investigators in
4 the conclusions they reached in the report; is
10:03 5 that correct?

6 A No, it did not.

7 Q So here, if we just go through and touch on a
8 couple of points, if we can go to the next page,
9 and the next page, please -- sorry, 497 -- here's
10:03 10 the --

11 "...Ron MacKay ... was provided with
12 background information on the murder of
13 Gail Miller and the crimes committed by
14 Larry Fisher. In addition he was given
10:03 15 as much detail as was available to us on
16 the personalities of both David Edgar
17 Milgaard and Larry Earl Fisher."

18 Now, I think we heard from, I think it may have
19 been Dr. Rossmo, that normally profiling is done
10:04 20 sort of in the absence of -- prior to convictions
21 or prior to charges being laid; in other words,
22 before you know the end result. Is that fair?

23 A That's fair.

24 Q And in this case, this analysis was done looking
10:04 25 at two people, one of whom had been convicted,



1 although the conviction had been set aside, and
2 one person who was a suspect, so it would be a
3 little bit different than the usual profiling; is
4 that fair?

10:04 5 A Yes, that's fair to say.

6 Q Then go to the next page, I just plan on going
7 through parts of this, I think he says here:

8 "This analysis should not be considered
9 all inclusive or as a substitute for a
10:04 10 thorough and well planned investigation.
11 Opinions expressed are drawn from my
12 analysis of material provided using
13 personal investigative experience,
14 educational background and research
10:05 15 conducted by the FBI into similar
16 cases."

17 And I think you told us earlier that there is a
18 certain amount of subjective -- subjectivity in
19 this type of analysis; is that correct?

10:05 20 A Yes, that's correct.

21 Q If we can go to page 023500 and it's talking about
22 *Offender Characteristics and Traits*, it says:

23 "Offender "profiles" are arrived at by
24 considering all available information in
10:05 25 total."



1 And then goes:

2 "The offender's behaviour displayed in
3 this crime is consistent with that of a
4 white male acting alone and I found no
10:05 5 indication of a second offender."

6 And then goes on to talk about offender age,
7 estimate in the range of 16 to 23 years.

8 Next page, his conclusion
9 here:

10:06 10 "The initial motive of this offender was
11 most likely robbery, hence the damage to
12 her purse strap."

13 I'm wondering if you can elaborate on that point,
14 what would be the significance of the damage to
10:06 15 Gail Miller's purse strap, or are you able to
16 answer that?

17 A Well, I guess if you wanted to look at the
18 circumstances of our investigation, we certainly
19 had reason from several witnesses to believe that
10:06 20 Mr. Milgaard was interested in committing a
21 robbery that morning and finding some money, so
22 that may, again may or may not be evidence that
23 would support that Mr. Milgaard could be
24 responsible.

10:06 25 Q And, sorry, when I read this, I wondered if what



1 was being said here is that because the purse
2 strap, the damage to the purse strap suggesting
3 that the purse may have been grabbed which caused
4 the damage to the purse strap as part of a
10:07 5 robbery. Is that -- am I reading that wrong?

6 A No, I think that's what he's suggesting.

7 Q Yeah. Now, I suppose another interpretation would
8 be that if the rape was the motive as opposed to
9 robbery, that grabbing her may have also resulted
10:07 10 in damage to the purse strap as well?

11 A Yes.

12 Q And it could be interpreted either way?

13 A Could be interpreted either way.

14 Q If we can scroll down:

10:07 15 "The rapid escalation of violence in
16 this crime suggests an offender who
17 harbours a great deal of anger at
18 society in general and females in
19 particular."

10:07 20 And then goes on to say:

21 "It is very unlikely that this was his
22 first violent offence. He would have
23 poor control of his anger and has likely
24 exploded on past occasions."

10:07 25 And then goes on to talk about education. So



1 again, this would be the type of information that
2 analysts would look at to try and identify what
3 type of person committed the crime?

4 A That's correct.

10:07 5 Q And then on the next page -- sorry, just go back
6 to the previous page, the bottom:

7 "The injuries inflicted on the victim
8 suggest that his right is his dominant
9 hand when he engaged in activities such
10:08 10 as throwing a ball but not necessarily
11 in handwriting."

12 And then the next page:

13 "Given the time that has passed since
14 this crime, the investigative options
10:08 15 are very limited. It is a suitable case
16 for entry on VICLAS..."

17 And I take it, do we take it from that, Mr.

18 Sawatsky, that in trying to do the analysis 20
19 years later, it's a little more difficult?

10:08 20 A Yes, I believe that's what he's suggesting there.

21 Q And if we can go ahead to page 504, I won't go
22 through this in too much detail, but this is
23 where, further to the initial report, I think Mr.
24 MacKay then goes through:

10:08 25 "I have reviewed the material on the



1 above sexual assaults to arrive at an
2 opinion as to the likelihood of the same
3 offender being responsible for all."

4 And this is where he looked at all of the Fisher
10:09 5 assaults, and he says:

6 "The reader is therefore cautioned that
7 the scientific certainty usually
8 associated with other forms of forensic
9 analysis is not available within
10:09 10 criminal investigative analysis."

11 And is that just a heads up to say lookit, this
12 isn't -- this isn't like DNA, this is
13 subjective -- or this is analysis and it's an
14 investigative tool as opposed to certainty?

10:09 15 A Yes, I think he's trying to set out the parameters
16 of his investigation.

17 Q Then to page 023507, he says:

18 "The overall behaviour within the
19 assaults of..."

10:10 20 And then he lists all the Fisher assault victims,
21 "...is consistent with all seven crimes
22 being committed by the same offender.
23 The significant departure from
24 consistent behaviour (morning vs night
10:10 25 time attack, lack of immediate physical



1 control, absence of verbal behaviour,
2 difference in initial physical contact,
3 and the absence of an effort to push or
4 drag the victim to a second location)
10:10 5 noted in these cases leads me to opine
6 that (V4)--- was not victimized by the
7 same offender."

8 And I think that was your conclusion for other
9 reasons; is that correct?

10:10 10 A That's correct.

11 Q And then to the next page, the bottom, he says:

12 "All things considered, Fisher's
13 behaviour, circa 1968-1970, is not
14 consistent with the behaviour observed
10:10 15 within the murder of Gail Miller. This
16 is particularly significant in light of
17 the (V5)--- assault, that was subsequent
18 to the Miller murder, and wherein he was
19 bitten on the finger by his victim. His
10:10 20 only response to this victim resistance
21 was to hit her on the chin to make her
22 let go. This is not the response to
23 such a victim resistance I would expect
24 to see in an offender who had previously
10:11 25 exhibited the behaviour seen within the



1 murder of Gail Miller. For all these
2 reasons, he is therefore not considered
3 to be a likely suspect in this case."

4 And:

10:11 5 "There is insufficient reliable
6 information regarding the personality of
7 David Milgaard, circa 1969, on which to
8 formulate an indirect personality
9 assessment. An opinion as to his
10:11 10 viability as a suspect, from such a
11 perspective, in the murder of Gail
12 Miller is therefore not available."

13 So it would appear that Inspector MacKay, sort of
14 the bottom line conclusion was that in looking at
10:11 15 the four sexual assaults in 1968 and 1970 and in
16 particular the fourth one that occurred about a
17 year after Gail Miller's murder, that he felt
18 that Mr. Fisher was not a likely suspect; is that
19 correct?

10:11 20 A Yes, that's the conclusion I would have drawn as
21 well.

22 Q And -- but again, is that -- let's just talk about
23 that for a moment. Would that -- would that
24 eliminate Larry Fisher as a suspect, this
10:12 25 analysis?



1 A No, and I believe MacKay was fairly careful to
2 suggest that in his preamble, that this does not
3 eliminate him, in my view does not eliminate him
4 as a suspect.

10:12 5 Q And I take it, though, as far as the analysis and
6 the comparison of crimes and what we now know with
7 the conviction of Larry Fisher for the crime, it
8 would appear that notwithstanding the
9 dissimilarities, he did commit the murder and the
10:12 10 rapes?

11 A Yes.

12 Q And so what does that tell you as far as the
13 analysis done or the investigative value of that?

14 A I guess it could be a number of explanations. One
10:12 15 perhaps is because there was not very much known
16 about what the actions of the accused were in the
17 murder of Gail Miller, you know, in each of the
18 rapes we have the victim as a witness who can say
19 this was the approach, this is what was said, this
10:13 20 is what was done. That wasn't available in the
21 Miller, so that could be one explanation. Another
22 explanation is that he was simply wrong in his
23 analysis, you know.

24 Q And again, and I think you've answered this, but
10:13 25 just to clarify, this analysis that Inspector



1 MacKay did, did it form any part of the
2 conclusions that you and your investigators
3 reached in your report?

4 A No, it didn't.

10:13 5 Q Go back to 023390, or 391, I think here you go
6 through the last issue, was *Admissions*, and I
7 think in the course of the Supreme Court reference
8 there were a number of jailhouse informants who
9 came forward alleging that Larry Fisher had either
10:13 10 confessed to the crime or made admissions relating
11 to the Gail Miller murder; is that correct?

12 A Yes, that's correct.

13 Q And I won't go through them all. If we can maybe
14 go to page 023393, I think all of these, or most
10:14 15 of them -- put it this way, all of the jailhouse
16 informant evidence I believe was tendered at the
17 Supreme Court reference; correct?

18 A That's correct.

19 Q And in fact some of them testified, and you
10:14 20 conclude:

21 "The evidence concerning the prison
22 incidents described here were dealt with
23 by the Supreme Court. These incidents
24 do not appear to be evidence inculpatating
10:14 25 Larry Fisher in the rape and murder of



1 Gail Miller."

2 And I take it that was your conclusion, that the
3 information from the jailhouse informants would
4 not be evidence that would link Larry Fisher to
10:14 5 the crime?

6 A That's correct.

7 Q As an investigator, are there issues with
8 credibility of jailhouse informants generally?

9 A Yes.

10:14 10 Q Go to the next page, here is your summary on Mr.
11 Fisher:

12 "Mr. Wolch strongly believes the
13 evidence surrounding the Miller
14 rape/murder points towards Larry Fisher.
10:15 15 The basis for this is in the similarity
16 between Fisher's sexual assaults and the
17 circumstances of the Miller murder,
18 together with the details of Linda
19 Fisher's observations and her
10:15 20 confrontation with Larry the day of the
21 murder or the day following the murder."

22 And you say:

23 "We have noted discrepancies in various
24 statements given by Linda Fisher's about
10:15 25 her missing knives and there is some



1 doubt about the accuracy of her recall
2 in this regard. However, by Larry
3 Fisher's own admission, he could have
4 taken a paring knife from his house
5 close to the time in question because he
6 used a paring knife in several of
7 attacks."

8 And then goes on to talk about the encounter.

9 And you say:

10 "The missing paring knife and the
11 argument with Linda do not in themselves
12 implicate Larry Fisher in the Miller
13 rape/murder."

14 And again, that would be an accurate conclusion
15 then of your investigators?

16 A Yes.

17 Q And:

18 "Prison inmates who knew Fisher and had
19 exchanges with him which purportedly
20 made reference to the Miller murder are
21 not able to offer real evidence
22 connecting him to the crime. Our
23 investigation has not uncovered any
24 evidence which would suggest he was
25 responsible. In fact, if Fisher did



1 assault (V4)---- (V4)--- as alleged,
2 then the evidence would suggest he could
3 not have been involved in the Miller
4 attack."

10:16 5 And that was what you told us yesterday, that
6 that would provide him with an alibi arguably if
7 he had committed the (V4)--- attack?

8 A Yes.

9 Q And then you say:

10:16 10 "Our findings with respect to Larry
11 Fisher do not significantly alter the
12 evidence heard by the Supreme Court
13 concerning Fisher's possible
14 involvement. The only remaining area to
10:16 15 be further examined is to have his
16 crimes analyzed to determine whether he
17 would have been a likely suspect
18 according to his behavioral patterns."

19 And just pause there on the evidence heard by the
10:17 20 Supreme Court concerning Fisher's possible
21 involvement. What was the significance of that,
22 of the fact that the Supreme Court heard evidence
23 about Larry Fisher's involvement and their
24 conclusions?

10:17 25 A Well, what we had done was reviewed all of that



1 and then of course we went out and spoke with the
2 witnesses and followed up our own leads to try and
3 make determinations, and what we're suggesting
4 there is that what we found didn't change what was
10:17 5 already before the courts.

6 Q And was it a case of saying that lookit, the
7 Supreme Court heard Larry Fisher's evidence, they
8 heard evidence about the similarities of the
9 assaults, they heard from some of the jailhouse
10:17 10 informants, they heard from Linda Fisher, they
11 heard about the knives and the Supreme Court did
12 not reach the conclusion, not that they were asked
13 to directly, but in their reasons did not say that
14 Larry Fisher ought to be charged or there's a
10:17 15 claim against him; in fact, reached the conclusion
16 that David Milgaard had not established his
17 innocence. Is that correct?

18 A That's correct.

19 Q And so did you draw from that that -- I'm trying
10:18 20 to get a sense of what you read into the Supreme
21 Court's decision about whether or not, based on
22 all the evidence they heard, they felt that Larry
23 Fisher had committed the crime?

24 A I've never got the sense from any material I read
10:18 25 that the Supreme Court was of the view that Larry



1 Fisher had committed the crime.

2 Q And so was that -- I'm just trying to get a sense
3 of how, to what extent that might have influenced
4 you and your investigators, the fact that much of
10:18 5 the same information you looked at had been
6 presented to the court and the court reached the
7 conclusion that they did.

8 A Well, I think as an investigator you certainly,
9 you know, in working in the system for many years,
10:18 10 you certainly have trust and confidence in the
11 system and a conviction, you know, to an
12 investigator or to a police officer is
13 significant, but when we went out to investigate
14 this, I think if we had found something
10:18 15 significant that would have been new evidence or
16 fresh evidence or shed a different light on the
17 circumstances that were known to the court, we
18 certainly would have drawn that to the attention
19 of those who were providing us with advice on this
10:19 20 file.

21 Q If we can go to 023395, this now then is your
22 summary, if we can go to the next page, and this
23 is the new information, and I think this last part
24 of your report outlines new information that you
10:19 25 uncovered that had not been identified before; is



1 that correct?

2 A That's correct.

3 Q If we can go to the next page, and your first
4 paragraph is:

10:19 5 "Although several new pieces of
6 information came to light during our
7 investigation, there are no new critical
8 facts to report."

9 And we see this on a couple of occasions, or a
10:19 10 number of occasions in your report where you say
11 there's no new information. Would that be -- are
12 you saying no new information compared to what
13 had been put before the Supreme Court or what was
14 already known?

10:20 15 A That's correct, that in our view wouldn't
16 significantly change anything.

17 Q And so is it correct to say that in some respects
18 your investigation, although you looked at
19 everything, part of it was to say is there
10:20 20 anything that is new that was not presented to the
21 Supreme Court or not before the Supreme Court in
22 the reference?

23 A Yes. I think we felt an obligation to provide any
24 new information so that it could be -- so that it
10:20 25 was available.



1 Q And then here, with Nichol John, you indicate
2 that, I guess, 'new information' as:

3 "She confirmed she has experienced a
4 'flashback' memory of another 'female
10:20 5 being in the car'."

6 And you say:

7 "John's ...",

8 or:

9 "... it would explain aspects of the
10:20 10 case previously open for speculation and
11 further the case against David
12 Milgaard."

13 Can you explain that?

14 A Yeah. I guess, you know, one could perhaps
10:20 15 advance a different theory if Gail Miller had
16 actually been taken into the vehicle that morning,
17 --

18 Q Okay.

19 A -- and possibly the rape could have occurred in
10:21 20 the vehicle, then there's -- you know, it provides
21 a whole different scenario. Certainly, John's
22 memory was not very clear on that and, you know,
23 beyond simply reporting it, we didn't investigate
24 it any further.

10:21 25 Q And so your, did any of your conclusions depend or



1 rely upon this piece of new information?

2 A No.

3 Q And then, as well, a piece of new information is
4 that she drew a sketch and identified photos of
10:21 5 the rectory, St. Mary's, and I take it that was a
6 piece of new information?

7 A Yes, the sketch was a piece of new information.

8 Q And, as well, but identifying the photographs?

9 A Yes, that's correct.

10:21 10 Q And I think you told us this before, correct me if
11 I'm wrong, but that that may have been relied upon
12 by your investigators to corroborate the evidence
13 that they were in the vicinity?

14 A Yes.

10:22 15 Q And then here, Mary and Michael John, Nichol's
16 parents giving information that Nichol had told
17 them that, she said:

18 "'I saw him kill her, I saw him stab
19 her.'"

10:22 20 And that would be information that wasn't
21 previously available; is that correct?

22 A Yes.

23 Q And then go to the next page. What did you make
24 of the parents' information, where did that fit in
10:22 25 as far as your investigation?



1 A Well certainly it helped us, you know, the
2 allegations were that Nichol had been coerced or
3 influenced to say certain things, and I think sort
4 of an admission like that to her parents before
10:22 5 she was interviewed is indicative of that not
6 happening.

7 Q And if we can go here, you say:

8 "Many questions have been
9 raised about the credibility of the
10:22 10 evidence provided by Nichol John. It
11 was alleged that her statement was
12 coerced and the evidence provided was
13 not true. We interviewed a former
14 friend of John's, Barbara Ann Wispinski,
10:22 15 who told us of a conversation they had
16 which would be some verification of
17 John's credibility and the truthfulness
18 of what she told the police."

19 And then you go on to outline this evidence:

10:23 20 "When Nichol John returned to
21 Regina following her trip with Milgaard
22 to Saskatoon and Alberta, she told her
23 close friend, Wispinski that Milgaard
24 killed a girl in Saskatoon. John stated
10:23 25 Milgaard left their vehicle with the



1 intention of committing a break and
2 enter and when he returned, he was
3 covered with blood. Milgaard threatened
4 John not to say anything."

10:23 5 Next page.

6 "The conversation took place
7 before John's first contact with the
8 police officers investigating David
9 Milgaard therefore, it would lend
10:23 10 credibility to what she later told the
11 police albeit reluctantly.

12 This is Wispinski's first
13 disclosure of her conversation with John
14 to authorities. It should be pointed
10:23 15 out that on 60-05-22 when asked by
16 D/Sgt. Mackie about what she might have
17 heard from Nichol John, Wispinski had an
18 opportunity to divulge this information
19 and did not do so. At that time,
10:24 20 Wispinski indicated John was disturbed
21 or upset about something and that she
22 had started to make statements about
23 what happened in Saskatoon, but the
24 statements were never completed."

10:24 25 Just on the latter point, what was the



1 significance of the fact that Barbara Wispinski
2 had not divulged to Detective Sergeant Mackie in
3 1969 that she told you in 1993?

4 A Well I think we were trying to be objective there
5 and say, you know, one could draw what you wanted
6 from it, but the fact that she told us and didn't
7 tell Detective Mackie when she had the
8 opportunity, I think, is something that was
9 significant enough that we should have pointed it
10 out.

11 Q Was it something that would go to the credibility
12 of Barbara Wispinski's 1993 statement?

13 A Yes, I believe it would.

14 Q And we saw, earlier in your report, the reference
15 to this information, saying if the information
16 from Barbara Wispinski is true then it would
17 support the following. What did your
18 investigators conclude, if anything, about whether
19 or not Barbara Wispinski's new information was
20 credible?

21 A I think we were unable to, you know, to really say
22 that it was very -- was solid, and I think
23 certainly by the way that we phrased this
24 paragraph would leave the impression that, you
25 know, we were putting it forward as a piece of new



1 evidence but that the way it had come out could be
2 suggested that perhaps it's not as credible --

3 Q And I suppose, --

4 A -- as one would like.

10:25 5 Q -- if it is credible, then I think what you have
6 said is that it would lend credence to the
7 conclusion that Nichol John was not coerced by the
8 police because she would have made admissions
9 before she even met the police?

10:25 10 A That's correct.

11 Q Next, Kenneth Cadrain, about the blood on --
12 witnessing blood on David Milgaard, and I think
13 we've touched on that:

14 "... was never previously interviewed
10:25 15 concerning this matter."

16 I think he was interviewed by Sergeant Pearson,
17 was he not, in 18990?

18 A That's correct, he was interviewed during that 690
19 investigation.

10:25 20 Q And then, as well, the next page. We've touched
21 on this, the Sandra Danchuk information about the
22 nosebleed, and I think you've told us that could
23 be both incriminating or inculpatory, or
24 inculpatory and exculpatory for Mr. Milgaard;
10:26 25 correct?



1 A Correct.

2 Q One, it might explain the blood on his pants, if
3 there was in fact blood on his pants that may have
4 come from an innocent source, a nosebleed, rather
10:26 5 than from Gail Miller; correct?

6 A Correct.

7 Q On the other hand it may have been evidence that
8 he had blood on him from -- or that Ms. Danchuk
9 actually saw blood; is that correct?

10:26 10 A Correct.

11 Q Probably an appropriate spot to break for the
12 morning, Mr. Commissioner.

13 (Adjourned at 10:26 a.m.)

14 (Reconvened at 10:53 a.m.)

10:53 15 BY MR. HODSON:

16 Q If we could go to 023401, please. And here we're
17 at the conclusions of your report, Mr. Sawatsky,
18 that covers -- just go through parts of this. And
19 you say here:

10:53 20 "This investigation resulted from
21 complaints by David Milgaard's solicitor
22 H. Wolch ... to the Provincial and
23 Federal Ministers of Justice that there
24 had been a cover up by officials in the
10:53 25 former Department of the Attorney



1 General."

2 And then the footnote down at the bottom is the
3 September 8th and September 16th letters from Mr.
4 Wolch to the Ministers; is that correct?

10:54 5 A Correct, yeah.

6 Q And so that would have been, I think you've told
7 us earlier the investigation resulted from the
8 Breckenridge allegations, and I think what you are
9 saying here, "and part of that was the letters
10:54 10 that were sent by Mr. Wolch to the ministers of
11 Justice or the Attorney General as noted"?

12 A Yes.

13 Q "A subsequent press release by
14 Mrs. Milgaard alluded to the fact
10:54 15 evidence of a cover up was provided by a
16 former employee of the department."
17 And then it goes on to talk about that.

18 "Following the accusations of
19 a cover up, the Deputy Minister of
10:54 20 Justice asked the RCMP to conduct an
21 investigation to determine if any
22 evidence of wrongdoing existed."
23 And I think you've touched on that. Here you
24 say:

10:54 25 "Mr. Wolch's complaint



1 focused on four general areas of
2 concern, i.e. Larry Fisher was actually
3 responsible, the Saskatoon City Police
4 knew Milgaard wasn't responsible and
10:55 5 covered up the facts, the prosecutor ...
6 Caldwell was aware of similarities
7 between the Fisher crimes and the Miller
8 murder but he withheld the facts, and
9 that the Director, S. Kujawa had both
10:55 10 the Fisher and Milgaard files at the
11 same time and he covered up references
12 to the similarities. While the
13 allegations against Mr. Kujawa referred
14 to some of the former employee's
10:55 15 'evidence', at the outset of our
16 interview, Mr. Wolch was quick to
17 distance himself from the former
18 employee's allegations."

19 And those would be the Breckenridge matters; is
20 that correct?

21 A Yes, that's Breckenridge.

22 Q And here you say:

23 "Mr. Wolch emphasized his
24 complaint was that, despite all that had
10:55 25 occurred, evidence had not yet been



1 offered which satisfied him of
2 Milgaard's guilt. Along with his
3 associates, he outlined a myriad of
4 concerns, many of which related to Larry
10:55 5 Fisher - against whom he believed the
6 evidence was stronger. In accepting the
7 need to fully investigate Mr. Wolch's
8 concerns it was necessary to explore his
9 assertions and arguments, those of his
10:56 10 associates, together with those of
11 Mrs. Milgaard who had played a very
12 active role in investigating her son's
13 case. Consequently, many of the avenues
14 we pursued do not relate to the
10:56 15 allegations against the police or the
16 prosecutors and the results of our
17 investigation reflect this very broad
18 approach."

19 And I think we've touched on this a bit earlier,
10:56 20 but I think what you are saying is that you
21 investigated every allegation made by Mr. Wolch
22 and his associates, even if it didn't directly
23 relate to an allegation of wrongdoing?

24 A Correct.

10:56 25 Q Go to the next page. Here you say:



1 "Based on statements made by

2 Albert Cadrain, Ronald Wilson and

3 others, our investigation reveals that,

4 at times, the police investigators were

10:56 5 viewed as intimidating. However, with

6 the exception of Ronald Wilson, none of

7 the witnesses say they provided false

8 evidence at trial. Despite Wilson's

9 recantation, we found nothing to support

10:57 10 the allegation the police coerced

11 witnesses into providing fabricated

12 evidence."

13 And that would be the conclusion your

14 investigators reached; is that correct?

10:57 15 A Yes, yes it is.

16 Q If we can go to the next page. Actually, sorry,
17 just the bottom of the previous page. You say:

18 "Our review of the facts

19 established that early in their

10:57 20 investigation of the Miller murder, the

21 Saskatoon police did consider the

22 possibility the same person was

23 responsible for the rapes and the Miller

24 murder. However, once David Milgaard

10:57 25 was apprehended the police dropped this



1 approach to the investigation. Clearly,
2 in their minds, the police believed
3 Milgaard killed Miller and some other
4 unidentified offender committed the
10:57 5 rapes. This interpretation is supported
6 by statements of the police officers
7 involved, their reports, and the timing
8 of events."

9 And would that be an accurate conclusion --

10:57 10 A Yes, it is.

11 Q -- your investigators reached? And then you say:

12 "As noted above, the results
13 of our investigation do not support the
14 allegation that the police saw the
10:57 15 murder and rapes as being inextricably
16 linked. The possibility the same
17 offender may have been involved was
18 contemplated prior to Milgaard's
19 apprehension. But, nine months later
10:58 20 when Fisher was apprehended, we found no
21 evidence the Saskatoon police felt
22 Milgaard had been wrongly convicted of
23 Miller's murder. If such a thought did
24 enter the minds of the investigators, it
10:58 25 was not documented in any of the



1 available police files nor expressed by
2 any officers in statements made either
3 at the time or now."

4 And I think that's what you told us yesterday as
10:58 5 far as what your investigators found or didn't
6 find in pursuing this allegation; was that
7 correct?

8 A That's correct.

9 Q At the bottom:

10:58 10 "As a result of our
11 investigation we conclude that the
12 Saskatoon City Police conducted a
13 thorough and proper investigation of the
14 Gail Miller murder. We found no
10:58 15 evidence to support the allegation
16 police coerced witnesses into providing
17 false evidence and no evidence that they
18 deliberately covered up facts relating
19 to either David Milgaard or Larry
10:58 20 Fisher. We believe they followed
21 acceptable investigative techniques and
22 methods and acted in good faith during
23 both their investigation of David
24 Milgaard and Larry Fisher."

10:59 25 And would that be an accurate conclusion that



1 your investigators reached?

2 A Yes, it is.

3 Q Go to the next page. Here you summarize the
4 findings with respect to Mr. Caldwell; is that
10:59 5 correct?

6 A Yes.

7 Q And here, the issue of disclosure, you say:

8 "The issue ... was dealt with by the
9 Supreme Court ... Notwithstanding, we
10:59 10 questioned witnesses and examined the
11 relevant files to determine whether or
12 not there were undisclosed facts
13 indicating wrongdoing by the Crown ..."

14 And then go on to conclude, I think, that:

10:59 15 "The police supplied Caldwell with
16 considerable material and based on our
17 own examination of the files, we find
18 his explanation reasonable."

19 And that would be his explanation about not
10:59 20 connecting the rapes and the murder; is that
21 correct?

22 A That's correct.

23 Q And then, just scroll down, about his involvement
24 in the Larry Fisher apprehension in 1970. You
11:00 25 say:



1 "If Caldwell acquired information
2 indicating the wrong person was
3 convicted it would have been during his
4 prosecution of the case in 1969/70 and
11:00 5 not nine months later when the only new
6 information surfaced was the *identity* of
7 the culprit.

8 Although there are some
9 references to the unsolved rapes in the
11:00 10 reports given to Caldwell by the police,
11 based on our interviews of witnesses and
12 examination of files there is no
13 evidence Caldwell ever considered he had
14 convicted the wrong person. Similarly,
11:00 15 there is nothing to suggest he was aware
16 of information (e.g., that some other
17 offender might be responsible) which
18 might assist the courts in the
19 determination of Milgaard's guilt or
11:00 20 innocence either during his prosecution
21 of the case or later."

22 And, the next page, you conclude about the:

23 "... we found nothing to suggest the
24 contention material had been
11:01 25 intentionally removed."



1 I think you concluded there was no evidence that
2 he had deliberately removed any materials from
3 his file; is that correct?

4 A That's correct.

11:01 5 Q And so those would have been your conclusions with
6 respect to your investigation of Mr. Caldwell?

7 A Yes.

8 Q Then, scroll down, with respect to the allegations
9 against the Saskatchewan Department of the
11:01 10 Attorney General and Mr. Kujawa, you say:

11 "Based on the statement of a
12 former employee, others in the
13 Department such as the present Premier,
14 Mr. R. Romanow, were implicated in the
11:01 15 accusations of a cover up. The former
16 employee provided details which we've
17 determined were totally baseless, e.g.
18 about another clerk exposing connections
19 between the Milgaard/Fisher files,
11:01 20 closed door meetings amongst department
21 officials, and threats of job loss."

22 And the next page you talk about -- actually
23 just, sorry, there's -- go back to the previous
24 page. You say here:

11:01 25 "Files show that in 1969 the



1 department was sent copies of RCMP
2 reports detailing the circumstances of
3 the Miller murder. Included in these
4 early reports were comments that the
11:02 5 Saskatoon Police were examining the
6 possibility the same person was
7 responsible for rapes committed in the
8 months preceding the murder. There is
9 no indication Mr. Kujawa read these
11:02 10 early reports. If he did, he states
11 that later in 1970 and 1971 when he
12 handled the Milgaard appeal and dealt
13 with issues concerning the direct
14 indictment of Fisher, he made no
11:02 15 connection between the cases."

16 And would that have been an accurate summary of
17 what your investigators concluded?

18 A Yes.

19 Q And those early reports, you say:

11:02 20 "There is no indication Mr. Kujawa read
21 these early reports.",
22 those would be the 1969 RCMP reports that I think
23 we've heard evidence were sent routinely to the
24 Attorney General's office?

11:02 25 A That's right.



1 Q And:

2 "As far as we can determine,

3 Kujawa's responsibilities did not

4 require detailed knowledge of the

11:02 5 circumstances of the cases. When

6 handling the appeal Mr. Kujawa would not

7 have used police reports, but rather, he

8 would have used court transcripts and

9 prosecution reports. Similarly, his

11:03 10 responsibilities in seeking Fisher's

11 direct indictment involved matters of

12 process as opposed to concern about the

13 details of the crimes themselves."

14 And would that be an accurate conclusion your

11:03 15 investigators reached?

16 A Yes it is.

17 Q And:

18 "There is no indication from

19 our interviews of employees or in the

11:03 20 prosecution files which would suggest

21 Mr. Kujawa or anyone else in the

22 Department made a connection between the

23 Milgaard and Fisher cases. Further,

24 there is no indication anyone in the

11:03 25 department was cognizant of facts



1 suggesting Milgaard had been wrongfully
2 convicted.

3 To be implicated in the
4 wrongdoing alleged, the police, Mr.
11:03 5 Caldwell, and Mr. Kujawa would all have
6 had to have been involved in a masterful
7 scheme commencing near the outset of the
8 Miller murder investigation. The facts
9 do not support such a conspiracy;
11:03 10 neither do they support the idea that
11 one or the other acting separately
12 carried out acts of wrongdoing in the
13 investigation and prosecution of David
14 Milgaard."

11:04 15 And that would be an accurate statement of your
16 investigators' conclusions?

17 A Yes, it is.

18 Q And the next page:

19 "The available evidence does not support
11:04 20 allegations of criminal wrongdoing by
21 ...",

22 the people named. And then, as far as the
23 *Milgaard/Fisher Evidence*, your conclusion is:

24 "There is no new evidence
11:04 25 which would exonerate David Milgaard, or



1 that would inculcate any other person,
2 including Larry Fisher."

3 When you indicate 'new evidence', new compared to
4 what?

11:04 5 A Compared to what existed prior to our commencing
6 our investigation.

7 Q And so would that include the information that had
8 been gathered in the Section 690 process and
9 presented to the Supreme Court in 1992?

11:04 10 A Yes, it would have.

11 Q And so when you say:

12 "There is no new evidence
13 which would exonerate David Milgaard,
14 ...",

11:04 15 what was your starting point as far as the guilt
16 or innocence of David Milgaard?

17 A Well certainly we approached this investigation
18 objectively, with an open mind, and looked at all
19 the possibilities throughout the investigation.

11:05 20 Q And was it a case of looking, looking to see
21 whether there would be new information that would
22 change the status quo?

23 A Yes.

24 Q And what would the status quo be?

11:05 25 A Well the status quo at the time was that I believe



1 Mr. Milgaard at this -- I think the Supreme Court
2 had said that Mr. Milgaard was properly
3 convicted --

4 Q Yes?

11:05 5 A -- but that there was perhaps new information
6 that, put to a jury, could result in a finding of
7 innocence. So, certainly, we looked at all the
8 information that was available to us to see if
9 there was anything that, in our view, would shed a
11:05 10 different light on that material.

11 Q Okay. I just want to go through and have you
12 comment and confirm, and what I want to do is set
13 out what information you had in 19 -- let's say
14 1993 at this time, and we've gone through this,
11:05 15 but just to kind of quickly summarize what you had
16 by way of information against David Milgaard and
17 what you had by way of information against Mr.
18 Fisher. And would you agree with me, Mr. Sawatsky
19 that as a police officer in 1992 or 1993, that in
11:06 20 looking at the question of David Milgaard's guilt
21 or innocence or Larry Fisher's guilt or innocence,
22 you make those assessments based on information
23 and evidence; is that fair?

24 A That's fair.

11:06 25 Q In other words, there is no crystal ball that



1 allows you to say "this is what happened and this
2 isn't what happened", you base it on information
3 you gathered and the credibility of that
4 information; is that fair?

11:06 5 A That's fair.

6 Q And at the time you are looking at this, and
7 you've touched on this, that there was
8 uncertainty, is that fair, about whether or not
9 David Milgaard or Larry Fisher had committed the
11:06 10 crime?

11 A Yes.

12 Q And strong advocates on both sides of the issue, I
13 guess, or on all sides, strong advocates saying
14 David Milgaard was innocent, strong advocates
11:06 15 saying he was guilty; and similarly with Larry
16 Fisher, some saying he was guilty and strong
17 advocates saying he was innocent; or strong
18 advocates on all sides; correct?

19 A Yes, that's fair.

11:07 20 Q And is it correct to say your job, then, would be
21 to sift through and look at all the information
22 that was being put forward by people to say
23 "here's why we say David Milgaard is innocent,
24 look at all the facts and the conclusion that he
11:07 25 is innocent and Larry Fisher is guilty"; correct?



1 A Correct.

2 Q And, in fairness, as police officers you are not
3 the people who determine guilt or innocence, but
4 rather "here's information that would provide the
11:07 5 basis for you to conclude that he is guilty,
6 likely guilty, or that charges should be laid"; is
7 that correct?

8 A That's correct. And I think, in this particular
9 case, that we talked about in June the extra step
11:07 10 we had here in that our report would then be
11 examined in detail by Mr. Fraser and Mr. McCrank.

12 Q So let's just walk through, I'm going to walk
13 through what you had in 1993 by way of
14 corroborated evidence. And just so we're on the
11:07 15 same page here corroborated evidence, I think
16 you've said, is evidence of a witness that is
17 corroborated by some other known fact, is that
18 right, reliable fact?

19 A Correct.

11:08 20 Q And I think you told us that one of the yardsticks
21 or benchmarks you used here in this case, as to
22 determine what facts or what happened, was what
23 Mr. Tallis said David Milgaard had told him, in
24 other words David Milgaard's version of events as
11:08 25 communicated through Mr. Tallis?



1 A Yes, that was very helpful to us in this
2 investigation.

3 Q And so that would be one set of known facts, in
4 other words "we'll accept as being accurate what
11:08 5 Mr. Milgaard said happened at that time because he
6 is the one that is asserting that he's innocent"?

7 A That's correct.

8 Q And, as well, I think we have seen in other cases
9 there's other ways to corroborate evidence from
11:08 10 other witnesses who you determined to be reliable;
11 correct?

12 A Correct.

13 Q So I want to go through that and see where you
14 were in 1993 by way of corroborated evidence for
11:08 15 both Mr. Milgaard and Mr. Fisher, and those areas
16 that were not corroborated, in other words where
17 there was still some uncertainty. And since you
18 didn't know whether he was guilty or innocent at
19 the time, either Mr. Milgaard or Mr. Fisher, I
11:09 20 think there's some areas, would you agree, that
21 you couldn't corroborate?

22 A Yes.

23 Q So the first one, and let's deal with Mr. Milgaard
24 and we'll go through this quickly because we've
11:09 25 covered it all with you, but I think your



1 investigators found that obviously, on their trip
2 from Regina to Saskatoon preceding the morning of
3 Gail Miller's murder, there was a break-in at an
4 elevator, there was an item taken, there was a
11:09 5 discussion about -- amongst the group of Mr.
6 Milgaard, Mr. Wilson, and Ms. John, about breaking
7 and entering and rolling someone for money, and
8 there was a need for money. And that was all
9 information I think your investigators
11:09 10 corroborated; correct?

11 A Correct.

12 Q Secondly, that on the trip from Regina to
13 Saskatoon, based on what Mr. Tallis said, that
14 David Milgaard acknowledged he had a knife with
11:10 15 him, it was a flexible blade, not a bone-handled
16 hunting knife and not a paring knife, but
17 nonetheless a knife; correct?

18 A That's -- pardon me -- that's correct.

19 Q And you had Nichol John saying at trial, and I
11:10 20 believe later -- and I stand to be corrected on
21 that, whether she said it in '93 -- but certainly
22 evidence about witnessing a maroon-handled knife,
23 and I think she even said a bone-handled hunting
24 knife, and Ron Wilson saying the same at trial
11:10 25 but, later on, recanting that. So as far as the



1 knife is concerned, is it fair to say that you had
2 corroborated evidence that Mr. Milgaard had a
3 knife, not the paring knife or a bone-handled
4 hunting knife, and that some other evidence from
11:10 5 other witnesses that was not corroborated, in
6 other words you couldn't confirm through other
7 sources that either Ms. -- Mr. Wilson or Ms. John
8 were correct about David Milgaard having a
9 maroon-handled paring knife; is that true?

11:11 10 A Correct.

11 Q Okay.

12 A Correct.

13 Q Next, you had evidence that David Milgaard was in
14 the vicinity of where the murder occurred at
11:11 15 roughly the time the murder occurred, and I think
16 that came from Mr. Tallis; is that correct?

17 A That's correct.

18 Q And that would have been Ms. John also, I think in
19 1993, said "yes, we were in the vicinity", and I
11:11 20 guess "vicinity" can mean anywhere from in the
21 alley to within a block or two, but in the area.
22 Was it fair to say that you had corroborated
23 evidence that David Milgaard and his companions
24 were in and around Avenue N, Avenue O, around the
11:11 25 time that Gail Miller would have been murdered; is



1 that fair?

2 A That's fair.

3 Q You also had evidence that the group stopped a
4 woman for directions while they were in the
11:11 5 vicinity around the time -- and, again, I'm not
6 talking exactly -- but in the vicinity around the
7 time that Gail Miller would have been murdered; is
8 that correct?

9 A That's correct.

11:12 10 Q And, again, that's something, I think, that Mr.
11 Tallis would have corroborated for you, that David
12 Milgaard acknowledged that they were, at least
13 according to Mr. Tallis, in the vicinity, and they
14 did stop a woman for directions; correct?

11:12 15 A That's correct.

16 Q Yes?

17 A Yes.

18 Q And I guess one of the new pieces of information
19 that had been learned, that was not known at least
11:12 20 by the jury in 1970, was David Milgaard, when they
21 stopped the woman for directions, had told Mr.
22 Tallis that he had thought about -- and I can't
23 recall the exact words -- but either rolling her
24 purse or stealing her purse, that that was a
11:12 25 thought he had. Now he did tell Mr. Tallis that



1 he didn't do that, but that was his thinking at
2 the time, and that would be information that you
3 had; correct?

4 A Correct.

11:12 5 Q As well, that shortly after they stopped the woman
6 for directions their car became stuck, and that
7 David Milgaard and Ron Wilson left the car. And
8 so that would have been information that Mr.
9 Tallis had corroborated, that while in the
11:13 10 vicinity or -- and, again, I'm not saying
11 "vicinity", I use the term loosely, but in that
12 area -- after they stopped the woman Mr. Milgaard
13 would have been separated from his companions for
14 a time period?

15 A Yeah.

16 Q So that would have been corroborated?

17 A Yes, that's correct.

18 Q And that would have been the opportunity you
19 talked about before?

11:13 20 A That's correct.

21 Q Now you had different versions about how long he
22 was away and I think, through Mr. Tallis, Mr.
23 Milgaard "it was a short time", and Mr. Wilson in
24 1993 said, when he said, 15 minutes -- well, let
11:13 25 me back up. At trial, Mr. Wilson said around 15



1 minutes, he then recanted and I believe at the
2 Supreme Court initially said they were stuck and
3 David left the car for a couple minutes, and later
4 when examined by Mr. Wolch said they weren't
11:13 5 stuck, and then later, after cited for contempt,
6 said they were stuck and David left the car, and
7 then I think what he told you was sort of
8 somewhere in the middle; is that fair?

9 A I think that's fair.

11:14 10 Q So that, although you had corroboration that they
11 got stuck and that Mr. Milgaard left the vehicle
12 it wasn't clear, according to Mr. Milgaard's
13 version it was for a short time and Mr. Wilson's,
14 it was unclear what was -- what you could rely on;
11:14 15 is that fair?

16 A That's fair.

17 Q And would it be correct to say, then, that, and
18 this is referred to in the report where you talk
19 about being in the vicinity, opportunity, and
11:14 20 motive; would that have been what your
21 investigators -- tell me how that would have been
22 influencing your thinking, those areas that we've
23 just touched on?

24 A I think these areas all present those options.

11:14 25 Q Next we have, at the Cadrain house, David Milgaard



1 driving around the block, which I think was
2 determined by the investigators to be suspicious
3 about why he would be doing that, and as well some
4 suspicion that that may have been related to the
11:15 5 wallet being thrown out when it was found; is that
6 fair?

7 A That's fair.

8 Q And so I guess you didn't have corroboration -- I
9 guess you had corroboration that he drove the car
11:15 10 around the block, you had evidence that the wallet
11 was found three or four doors down, Gail Miller's
12 wallet, but you didn't have any corroboration that
13 he threw the wallet out; is that fair?

14 A That's fair.

11:15 15 Q And then as well you had corroborated evidence
16 that on the trip out of the city a compact or
17 cosmetic bag was found in the glove box of the Ron
18 Wilson car, that it had not been there earlier in
19 the day, that it had been thrown out by David
11:15 20 Milgaard and that he didn't have an explanation as
21 to why he threw it out, that would have been the
22 information you had that was corroborated; is that
23 fair?

24 A That's fair.

11:16 25 Q And then lastly, the motel room incident, I think



1 you said you would have confirmed that the
2 incident happened; in other words, that the
3 re-enactment -- in other words, there was a
4 stabbing motion, there was an admission -- I
11:16 5 shouldn't say admission, there were statements
6 made by Mr. Milgaard that yes, I killed her,
7 etcetera, and that you had different people with
8 different perceptions of that; is that correct?

9 A That's correct.

11:16 10 Q And I guess what you would not -- let me just go
11 through what was, if I can put it this way, still
12 up in the air or not corroborated; number one, the
13 issue of whether or not David Milgaard had blood
14 on his clothes, you would have had Albert
11:16 15 Cadrain's evidence that he saw it, you have Ron
16 Wilson's trial evidence saying that he saw it but
17 later then recanting it, and you would have Ken
18 Cadrain's later statement that was there as well.
19 Now, did you feel you had corroborated evidence
11:17 20 that there was blood on David Milgaard's pants or
21 was that something that was still not clear?

22 A No, that's still not clear.

23 Q And as well with that I guess you would have the
24 Danchuk information that said they did not observe
11:17 25 blood on David Milgaard, so that would be -- the



1 blood information was still a bit up in the air;
2 is that fair?

3 A Yes.

4 Q Secondly, you would have, let's look at Nichol
11:17 5 John and what was still I guess uncorroborated,
6 you would have had her original May 24th, '69
7 statement which I think you said you did not put
8 much stock in, at least the eye witness part of
9 that statement, because she later could not repeat
11:17 10 it; is that correct?

11 A That's correct.

12 Q And so she had a vague recollection of some
13 flashbacks and -- let me back up. I think in the
14 corroborated part of Nichol John's evidence it
11:18 15 was, the value was that she put them in the
16 vicinity that morning; is that correct?

17 A That's correct.

18 Q And the rest of her evidence -- pardon me, and the
19 compact as well?

11:18 20 A Yes.

21 Q But the, I guess the information or the
22 incriminating information in her May, '69
23 statement that was not adopted at trial, that part
24 of the information, in other words, the
11:18 25 information that was not before the jury for proof



1 of its contents, is it fair to say that that part
2 was not corroborated in 1993 either; in other
3 words, you weren't able to confirm that she did
4 witness the murder or didn't witness the murder,
11:18 5 it was still up in the air?

6 A Correct.

7 Q And then with Ron Wilson, you had his
8 incriminating evidence, if I can put it this way,
9 you had his comments that when David got back in
11:19 10 the car he said "I fixed her" and the next day in
11 Calgary saying that he had grabbed a girl and
12 jabbed her with a knife and put her purse in a
13 garbage can, the two admissions, you had that
14 which he had recanted and I think you told us
11:19 15 yesterday that because of the manner in which Ron
16 Wilson recanted and some other reasons, you
17 weren't able to determine whether or not the
18 recantation was credible; is that fair?

19 A That's fair.

11:19 20 Q And so you -- I think you told us you were not
21 able to corroborate whether or not David Milgaard
22 did utter the words "I fixed her" when he got back
23 in the car or whether he did in fact make an
24 addition to Ron Wilson in Calgary the next day; is
11:19 25 that correct?



1 A That's correct.

2 Q So when you investigated, although Ron Wilson said
3 I lied about that, you weren't able to verify the
4 truth of that; is that fair?

11:19 5 A That's fair.

6 Q He also recanted the cosmetic and compact incident
7 which I think you told us had been verified by
8 others which caused you to I guess have concerns
9 about the credibility of his recantation; is that
11:20 10 correct?

11 A Yes.

12 Q And then you had, I think, conflicting evidence on
13 the issue of getting stuck and David Milgaard
14 having a knife, I think that was recanted and
11:20 15 unrecanted a few times, and so that was, to the
16 extent that you had corroborated they got stuck,
17 to the extent that Ron Wilson said they didn't get
18 stuck -- let me back -- I guess he said both
19 things, didn't he, he later said they did and they
11:20 20 didn't?

21 A Yes, he did.

22 Q So then as far as -- let's compare in 1993, what
23 you investigated and learned, and compare that to
24 what the jury had before it, and let me just put
11:20 25 forward what I think you've told us are the



1 changes. I guess, number one, the jury didn't
2 hear David Milgaard; correct?

3 A Correct.

4 Q And what you learned in your investigation through
5 what Mr. Tallis said is that David Milgaard
6 corroborated some of the evidence, in fact, some
7 of the incriminating evidence; is that fair?

8 A That's fair.

9 Q In the sense that if what Mr. Tallis says David
10 Milgaard told him is true, he would have
11 corroborated that he was in the vicinity around
12 the time of the murder; correct?

13 A Yes.

14 Q He would have corroborated the intention that they
15 were looking at rolling someone, he would have
16 added the additional information that when they
17 stopped a woman for directions he thought about
18 taking her purse; correct?

19 A Correct.

20 Q According to Mr. Tallis, he would have also
21 corroborated the compact or cosmetic bag being
22 thrown out without reason; correct?

23 A Correct.

24 Q And as well he would have corroborated the motel
25 incident, but would have said it was --



1 corroborated that -- maybe that's too strong a
2 word. I think Mr. Tallis said that he didn't deny
3 it, but that if it did happen, it would have been
4 a joke; correct?

11:22 5 A I believe that's correct, yes.

6 Q And then as far as what -- I guess again as far as
7 the difference that you now had with -- I think
8 with Nichol John, is it fair to say that nothing
9 really changed as far as credible evidence that
11:22 10 you obtained from her compared to what the jury
11 heard?

12 A Yes, that's fair to say.

13 Q And similarly with Albert Cadrain, the same thing;
14 in other words, the jury heard about Albert saw
11:22 15 blood and he told you he saw blood?

16 A That's correct.

17 Q And the compact. And I guess the one change would
18 be Ron Wilson in that he was now saying on certain
19 of the incriminating things that didn't happen,
11:22 20 that David didn't have a knife, he didn't see
21 blood, he didn't make the two admissions, so that
22 would have been the difference I guess in your
23 investigation, the one significant change would be
24 Ron Wilson's recantation, that if credible, you
11:23 25 had information that the jury didn't have?



1 A That's correct, yes.

2 Q And if his recantation is not credible or is such
3 that you think it confirms his original evidence,
4 then you are really in no different position than
11:23 5 the jury was in as far as Ron Wilson is concerned?

6 A Yes.

7 Q Is that a fair overview or summary of what you had
8 by way of information about David Milgaard and his
9 involvement?

11:23 10 A Yes. Actually, I made a list here and I don't
11 recall anything else that I can offer.

12 Q And did your investigators, based upon the
13 information in your report, and certainly some of
14 which I've tried to summarize, did you reach any
11:24 15 conclusions about whether you felt there was
16 evidence to support that David Milgaard had
17 committed the crime, that he had murdered Gail
18 Miller?

19 A I believe at the end of the investigation when I
11:24 20 looked at all the evidence, it was my view that he
21 was responsible for the crime.

22 Q That would be in 1993 then?

23 A That would be in 1993, yes.

24 Q Now, let's take, if I can just take you forward to
11:24 25 where we are today, we now know the DNA results,



1 Larry Fisher has been convicted of the rape and
2 murder of Gail Miller and the Government of
3 Saskatchewan has acknowledged that David Milgaard
4 is factually innocent for the rape and murder of
11:24 5 Gail Miller. Now, with that knowledge, I want to
6 go back and take a look at the unanswered
7 questions I guess from 1993 and just take a look
8 at that. Back in 1993 would you agree that
9 everything that you corroborated as being true,
11:25 10 that our knowledge today that David Milgaard
11 didn't kill Gail Miller doesn't mean all of those
12 things still didn't happen; in other words --

13 A Yes, I believe that's a fair statement.

14 Q In other words, that they did in fact break into
11:25 15 an elevator, they did stop a woman for directions,
16 they were in the vicinity, David Milgaard did
17 leave the car, he did throw out a compact, there
18 was an incident in the motel room, and I'll come
19 back to these in light of the knowledge we now
11:25 20 have, but as far as the corroborated facts, it
21 would appear that the knowledge we have now that
22 David Milgaard did not commit the crime doesn't
23 change the fact that certain things happened that
24 were incriminating; is that fair?

11:25 25 A That's fair.



1 Q Now, if we go back and look at Ron Wilson's 1969
2 evidence and his later recantation, and I'm going
3 to suggest if in 1993 you would have known about
4 the DNA, Mr. Fisher's conviction and Mr.
11:26 5 Milgaard's innocence, which I think in '93 you
6 said you didn't know, you were uncertain, but with
7 the certainty that we now have, take a look at Ron
8 Wilson's recantation, is it fair to say that his
9 recantation -- or his evidence that he now says
11:26 10 no, David Milgaard did not admit saying "I fixed
11 her" and that "I stabbed her", that you can now go
12 back and say okay, I can now corroborate that part
13 of Ron Wilson's recantation and say that didn't
14 happen?

11:26 15 A Yes, that's a fair statement.

16 Q Now, we get a bit complicated because he also
17 recanted the compact and so again putting that
18 aside, but then if you go back and now with the
19 certainty that you now have about David Milgaard's
11:27 20 innocence in looking at Ron Wilson's recantation,
21 is it fair to say that you would then -- that
22 would allow you to look at other reasons as to how
23 it may have been that Ron Wilson made those false
24 statements at trial?

11:27 25 A Yes, I think that's safe to say.



1 Q We talked yesterday, let me just -- we talked
2 yesterday about your efforts in trying to figure
3 out Ron Wilson's recantation.

4 A Yeah, and that's where I was sort of going to go
11:27 5 with me answer.

6 Q Yeah, and the question here was trying to figure
7 out what happened in that room with Inspector
8 Roberts and Ron Wilson and how it came to be that
9 Ron Wilson ended up making statements which we now
11:27 10 know to be false. 1993 when you looked at them, I
11 think you told us you weren't sure they were
12 false, you couldn't corroborate that they were
13 false, and my question here is with the knowledge,
14 or with the corroboration you now have, I take it
11:28 15 you would take a different look at what happened
16 between Inspector Roberts and Ron Wilson; is that
17 fair?

18 A Yeah, that's fair, although I think we explored
19 that as far as we could and we weren't able to
11:28 20 sort of uncover anything that would suggest that
21 anything inappropriate occurred during the
22 polygraph examination, but -- that we were able to
23 determine. I'm not suggesting that that's not the
24 case, but we weren't able to determine that.

11:28 25 Q Right. But I suppose if in 1993 you knew for



1 certainty that Ron Wilson's -- that what Ron
2 Wilson said to Inspector Roberts with respect to
3 David Milgaard's admissions weren't true, as an
4 investigator would you say, well, okay, how could
11:28 5 it be that after meeting with Inspector Roberts
6 Ron Wilson ended up giving false statements?

7 A Yes, I think that certainly is a legitimate
8 question that one would have.

9 Q And I think you told us yesterday that due to Ron
11:29 10 Wilson's condition in 1993 and the fact that
11 Inspector Roberts didn't have his file notes, you
12 weren't able to go any further on that?

13 A Yes, that's fair to say.

14 Q And would that be the same today?

11:29 15 A Yes.

16 Q And similarly with Nichol John with the certainty
17 that you didn't have then that we have now, the
18 eye witness account of May 24th I think you told
19 us really didn't factor into your conclusions in
11:29 20 '93; is that right?

21 A Yeah. I believe I said it wasn't, in my view,
22 very strong evidence.

23 Q And similarly with the flashbacks, that wasn't
24 something that informed your views; is that
11:29 25 correct?



1 A No. Certainly those were less than credible I
2 would suggest.

3 Q And so certainly the balance of Nichol John's
4 evidence of being in the vicinity and the compact,
11:30 5 I think you've told us that that could still be,
6 or still is corroborated facts and that's still
7 the case?

8 A Yes.

9 Q Then Albert Cadrain and the blood, would you
11:30 10 agree, and I think we touched on this yesterday,
11 that Albert Cadrain may well have seen blood on
12 David Milgaard on the morning of January 31, '69,
13 but with the certainty we talked about, it wasn't
14 Gail Miller's, it could have been someone else's?

11:30 15 A Yes, it could have been someone else's. It could
16 have even been David's own blood.

17 Q Or it could have been something that looked like
18 blood?

19 A Correct.

11:30 20 Q Or it could be that Albert Cadrain was wrong?

21 A Yes, any of those.

22 Q So the fact that David Milgaard is innocent
23 doesn't necessarily mean that Albert Cadrain's
24 evidence of seeing blood was wrong?

11:30 25 A Correct.



1 Q And with the motel room incident, is it fair to
2 say that with the knowledge now, you can say that
3 the incident was a joke?

4 A Yes.

11:31 5 Q And that even though people perceived it -- let me
6 back up. I suppose it's quite possible that
7 people still perceived it as being serious even
8 though it was a joke; in other words, that David
9 Milgaard's innocence may not change at all the
11:31 10 fact that Craig Melnyk and George Lapchuk
11 witnessed what they saw and, rightly or wrongly,
12 believed it was serious?

13 A Well, I think it's safe to say that other people's
14 interpretations of it may not have changed, but I
11:31 15 think ours did, or could.

16 Q And so as investigators, you now say okay, well,
17 it must have been a joke because he didn't commit
18 the crime?

19 A Yes, that's a fair statement.

11:31 20 Q And on the compact or cosmetic bag, I suppose the,
21 with the information we now have, you can say that
22 it was not Gail Miller's cosmetic bag or compact
23 that was thrown out the window?

24 A Yes.

11:32 25 Q And again at the end -- I'm just trying to get



1 your sense, Mr. Sawatsky, about -- would it be
2 fair to say that notwithstanding the -- let me
3 rephrase that. That there was a significant
4 amount of suspicious or incriminating facts that
11:32 5 were corroborated that didn't necessarily prove
6 David Milgaard, back at the time -- did not prove
7 that he was involved, but were suspicious of his
8 involvement; is that fair?

9 A Yes, that's fair.

11:32 10 Q And that in 1993 you maybe didn't have -- I mean,
11 you had Wilson and John's original statements back
12 in '69 and some uncertainty later, but apart from
13 that, that there remained incriminating
14 information; in other words, it appeared --

11:32 15 A Yes, that's true, and I think in 1993 we still had
16 the benefit of knowing what happened through the
17 various court processes as well, including the
18 Supreme Court.

19 Q And would it be correct to say that with the
11:33 20 certainty that resulted with the DNA, the
21 conviction of Mr. Fisher and the acknowledgement
22 of Mr. Milgaard's innocence, that when you now go
23 back and look at everything you looked at in 1993,
24 the certainty you have now that you didn't have
11:33 25 then allows you to explain, to provide innocent



1 explanations for what was believed to be
2 suspicious activity?

3 A Yes.

4 Q Let's look at Larry Fisher now. Back in 1993 what
11:33 5 you had I think were basically three grounds;
6 number one, you had his other assaults, the
7 related assaults, two, you had Linda Fisher's
8 information about his whereabouts and behaviour on
9 the morning of the murder and a missing knife, and
11:34 10 three, you had jailhouse informants, and I think
11 you commented on that, and I think back in 1993
12 then, as far as -- let me ask you that. In 1993
13 what were your investigators' thoughts about Larry
14 Fisher's responsibility for the murder of Gail
11:34 15 Miller?

16 A Well, during our investigation we had certainly
17 not been able to uncover any solid evidence that
18 would lead us to believe he was responsible.

19 Q And would you have -- was he a suspect, was there
11:34 20 suspicions or --

21 A I think there were suspicions during the
22 investigation, certainly I recall writing Mr.
23 Beresh a letter and telling him that Mr. Fisher
24 was a suspect and him reacting quite surprised
11:34 25 that we would consider him a suspect, so I think



1 throughout our investigation he was certainly
2 somebody that we wanted to look at to try and get
3 some findings, evidence one way or the other.

4 Q And we heard this from Sergeant Pearson, that
11:35 5 what -- and your comment on this as investigators,
6 in order to be able to say that Mr. Fisher should
7 be charged for the murder of Gail Miller back in
8 1993, what as an investigator did you need and did
9 you have it?

11:35 10 A Well, we needed some evidence that would lead us
11 to believe that he was responsible and we didn't
12 have any -- we would have needed reasonable and
13 probable grounds to believe he was responsible.
14 We didn't have those.

11:35 15 Q And so what came in 1997, the DNA results, and I
16 think I'm stating the obvious, would connect him
17 to Gail Miller in the sense that his semen was on
18 her clothing; correct?

19 A Yes, and that certainly did change things.

11:35 20 Q And so with that certainty now to go back, is it
21 easier to say now that -- or let me ask your
22 comment on this. And now looking at the
23 comparison of the other assaults that he committed
24 in the Gail Miller murder, does that change your
11:36 25 view in any way of those with the benefit of



1 hindsight?

2 A Yeah, I guess it surprises me somewhat, but, I
3 mean, we know he committed those, we know he
4 committed the murder; therefore, one would have to
11:36 5 try and draw a link.

6 Q And is it a case of saying that I suppose some --
7 we talked about this earlier, that comparing the
8 similarities and differences between the Fisher
9 rapes and the Gail Miller murder, and we've seen
11:36 10 all kinds of comments and reports, some say very
11 similar, others say not, I think at Larry Fisher's
12 trial three of the seven were admitted as similar
13 fact evidence?

14 A Yes, I'm aware of that.

11:36 15 Q I suppose in hindsight one could say, well, I
16 still think there's as many differences as
17 similarities, we now know Larry Fisher killed Gail
18 Miller, but there are still a lot of differences
19 in the rapes; right, that's one view?

11:36 20 A Yes.

21 Q Or another view could be that it would confirm the
22 view of those that said there are many
23 similarities?

24 A Yes.

11:37 25 Q And so did it change your view -- I think you said



1 you were surprised. Was it your view that there
2 were not very many similarities between the Fisher
3 rapes and the Gail Miller murder?

4 A Yes, it was.

11:37 5 Q And is your view the same, has your view changed
6 in light of what you now know of the similarities?

7 A I don't believe it has.

8 Q I've completed my review then of the report, Mr.
9 Sawatsky, and now I just want to carry on with
11:37 10 sort of the post report work if I may. If we can
11 go back to 061442, please, and I think you told us
12 back in June that, just on the DNA issue, that
13 originally it was going to be part of your
14 investigation and that you relied upon the RCMP
11:38 15 lab people and experts in the area to advise you
16 whether or not DNA testing could be done; is that
17 correct?

18 A Yes, and in fact we had had a number of meetings
19 by telephone and in person with the folks who ran
11:38 20 the lab.

21 Q And I think you indicated that at some point in
22 the investigation you determined that you or your
23 investigators would not be doing the DNA work
24 because it could not be done before your report
11:38 25 was going to be done and you complete the report



1 and leave the further DNA testing up to others; is
2 that correct?

3 A That's correct.

4 Q And I think the record reflects that Gail Miller's
11:39 5 clothing was in fact in the possession of the
6 Federal Department of Justice, Federal Justice
7 lawyers; is that correct?

8 A Yes, that's correct.

9 Q And were you familiar or aware as to why they had
11:39 10 the clothing?

11 A It's my understanding that it was put into their
12 custody after the Supreme Court reference by the
13 court.

14 Q And did you understand that -- or what did you
11:39 15 understand Federal Justice was going to do with
16 these exhibits, and in particular the DNA testing?

17 A It was my understanding that once the science, the
18 DNA science had developed to the point where tests
19 could be done and that it wouldn't exhaust all the
11:39 20 DNA that was left on the, particularly the panties
21 I believe, that once the science had reached that
22 point where tests could be done, that the tests
23 would then be completed by Federal Justice and the
24 results provided.

11:39 25 Q And so if you are a police force investigating, or



1 in the investigation of Gail Miller, if you are
2 re-opening that murder investigation, I take it
3 that as a police officer looking at the exhibits
4 and determining whether any forensic work can be
11:40 5 done would have been one of the tasks as an
6 investigator; is that correct?

7 A Yes.

8 COMMISSIONER MacCALLUM: Just a minute.
9 Can I be sure, sir, that your understanding was
11:40 10 that once science had reached the point where the
11 remaining semen sample on the panties could be
12 tested, it would be tested?

13 A That's correct, My Lord.

14 COMMISSIONER MacCALLUM: As to what
11:40 15 remained after Ferris was finished with it, is
16 that what you understood?

17 A Yes. It was my belief there was something like
18 five nanograms, which I guess is a very small
19 amount.

11:40 20 BY MR. HODSON:

21 Q And I guess if the Gail Miller exhibits had simply
22 been returned to the Court of Queen's Bench after
23 the Supreme Court reference, once the Supreme
24 Court reference was done, is that something that
11:41 25 you as investigators might have pursued then, or



1 can you comment on that?

2 A I'm not sure if I'm understanding you correctly,
3 but I guess if there were, in my view, if there
4 were further investigation to be done with regards
11:41 5 to Mr. Fisher, for example, then the police
6 services jurisdiction to do that would be
7 Saskatoon, so if you are asking me if there's more
8 police work to be done, I don't believe it was our
9 responsibility, it would have been Saskatoon's
11:41 10 because that's where the offence occurred.

11 Q Right. And it would appear that for reasons
12 you've stated, and we'll certainly hear more
13 evidence on this, but the Federal Department of
14 Justice had the exhibits, and was it your
11:41 15 understanding that they were going to further the
16 investigation into whether these exhibits would
17 give information that might identify the
18 perpetrator of Gail Miller's murder?

19 A Yes, that's my understanding, is that they were
11:42 20 going to have them examined and then deal with the
21 results.

22 Q And so -- and I think we'll see this in some of
23 the documents, but would you agree with this, it
24 appears that when you are doing your
11:42 25 investigation, you've identified the DNA, parallel



1 to that or at the same time Federal Justice
2 lawyers had the exhibits with the purpose of also
3 doing an investigation and dealing with DNA; is
4 that correct?

11:42 5 A Yes.

6 Q And I think after you people concluded your report
7 or your work, you may have bumped into each other
8 and found that, I think you said lookit, DNA
9 testing should be done and then you people learned
11:42 10 that Federal Justice was also going down that
11 path; is that a correct summary?

12 A I think that's correct because we never ever had
13 the exhibits in our possession, so to speak, for
14 the investigation.

11:42 15 Q Okay. And we'll just go through -- this is a
16 letter from Neil McCrank to you, March 3, 1994, so
17 this is after your report, about a letter to Ron
18 Fainstein, and did you know who Ron Fainstein was?

19 A Yes.

11:43 20 Q Who was that?

21 A He's, I believe, a lawyer with the Department of
22 Justice.

23 Q And was he the fellow to your knowledge who was
24 coordinating Federal Justice's investigation
11:43 25 relating to Gail Miller's clothing?



1 A Yes.

2 Q And if we can go to 061443, and this is the
3 enclosed letter to Mr. Fainstein, and there's
4 reference here to arranging a meeting, and again,
11:43 5 just the time frame, this would be after your
6 initial report has been sent in, I think the draft
7 report, and this is talking about a meeting with
8 Mr. Fainstein and in arranging for Eugene Williams
9 to be present, and the main issues are:

11:44 10 "The possibility of a further DNA test
11 on the exhibits associated with Gail
12 Miller."

13 And:

14 "A general review of this file given
11:44 15 that the R.C.M.P. investigation and our
16 review of the allegations of attempting
17 to obstruct justice are drawing to a
18 close and it may be worthwhile to
19 discuss this with you and Eugene
11:44 20 Williams, who were involved in the
21 Section 690 review."

22 Can you tell us, what was the purpose of meeting
23 then with Mr. Williams; do you recall?

24 A Yeah, I think at that point we were still hopeful
11:44 25 that we may have the results at some time either



1 near the conclusion of our report.

2 Q Was the purpose of meeting with Eugene Williams
3 related only to the DNA or did it relate to your
4 investigation of the allegations of wrongdoing?

11:44 5 A No, I believe it was only for the 690 purpose, I
6 don't think it was -- it wasn't to explain to him
7 our results or anything like that.

8 Q No, no, sorry, let me rephrase that. Was one of
9 the reasons to meet with Eugene Williams to obtain
11:45 10 information from him that he may have had that he
11 gained through the Section 690 process that might
12 assist the RCMP in their investigation?

13 A Yes, concerning the exhibits and the DNA, yes.

14 Q Okay. So concerning the exhibits and the DNA, but
11:45 15 nothing else?

16 A Not that comes to mind, no.

17 Q Okay.

18 A I believe this was solely focused on the DNA.

19 Q If we can then go to 231469. Sorry, it's 231467
11:45 20 is the doc. ID. This is a March 4th, 1994 letter
21 from Mr. McCrank to Brian Richardson and Barry
22 Gaudette, and they were the RCMP lab people, is
23 that right, or some of the lab people you dealt
24 with?

11:46 25 A Yes.



1 Q And here it says:

2 "We are currently looking at
3 who has control of the exhibits and
4 whether or not we need further consents
11:46 5 in order to proceed with testing for
6 this investigation."

7 And so it appears, at this point, that your
8 group -- or you were still looking at pursuing
9 DNA at this time?

11:46 10 A Yes.

11 Q And one of the issues was, okay, the Federal
12 Justice lawyers have the exhibits, in fact I think
13 they had not only the exhibits, they had David
14 Milgaard and Larry Fisher's blood samples;
15 correct?

16 A Correct.

17 Q Is that correct?

18 A Correct, yes.

19 Q And so that was one of the issues, is how do you
11:46 20 people go about getting it, and it talks about a
21 meeting of March 22. If we can then go to 061457.
22 And I think this is a March 28th, '94 continuation
23 report of yours; is that right?

24 A Yes, it appears to be, I don't see --

11:47 25 Q I'm sorry, go ahead?



1 A I don't see a signature on it or anything, but --

2 Q And it says:

3 "On 94-03-21, Mr. McCrank and

4 Mr. Fraser were in Ottawa. The purpose

11:47 5 of their trip to Ottawa was to meet with

6 federal justice officials in an attempt

7 to clarify the situation with blood

8 analysis. They also wish to speak with

9 Eugene Williams concerning some of the

11:47 10 issues relevant to the Supreme Court and

11 its findings."

12 And so it would appear here that Mr. McCrank and

13 Mr. Fraser were interested in talking to Mr.

14 Williams about matters beyond the DNA; is that

11:47 15 correct?

16 A Yes, that's certainly the appearance.

17 Q And I don't think you were at this meeting, I

18 think we'll see a bit later --

19 A Yeah, I was sitting here doing my best to recall

11:47 20 this meeting --

21 Q Yes?

22 A -- and I couldn't recall it, so this is helpful.

23 Q Yeah, and I'll go through this with you, but it

24 appears that you did not go to the meeting but

11:47 25 ended up getting a report after and were asked to



1 do some follow-up work?

2 A Yes.

3 Q And so, here, Mr. McCrank and Mr. Fraser tell you
4 that:

11:48 5 "In the afternoon ... they went over to
6 the Crime Lab ... in an attempt to
7 determine at what stage the DNA
8 processes were presently at and whether
9 or not they could provide any additional
11:48 10 information ..."

11 And then again:

12 "On 94-03-25 I received a
13 call from Mr. Fraser. He stated that
14 during their meeting with Dept. of
11:48 15 Justice and their meeting with the Crime
16 Lab, several issues arose which required
17 clarification. Some of the issues that
18 arose have been addressed in our reports
19 to Fraser and McCrank, however Fraser
11:48 20 was not in a position to recall how they
21 had been dealt with.

22 I advised Fraser I would
23 provide him with answers to the
24 questions he was asking:

11:48 25 1) Eugene Williams stated that when he



1 interviewed Sharon Williams and took a
2 statement from her, she stated that when
3 she was involved in a relationship with
4 David Milgaard, that he had raped her.
11:48 5 She also advised of several incidents
6 where he was jabbing at her with a
7 knife. Fraser was unable to recall
8 whether our investigation had produced
9 similar evidence. I advised Fraser that
11:49 10 we were aware of Sharon Williams having
11 said this, however she was not as open
12 with our investigators. However, I
13 indicated I would again refer him to our
14 statement and would highlight those areas
11:49 15 for his attention."

16 If I can pause there, it would appear that
17 certainly Mr. Fraser and Mr. McCrank were
18 receiving information from Eugene Williams that
19 he, Mr. Williams, had gained in the 690 process,
11:49 20 and was providing it to you through Mr. McCrank
21 and Mr. Fraser relating to your investigation; is
22 that fair?

23 A That's fair.

24 Q And so would you agree, Mr. Sawatsky, that it
11:49 25 would appear here, at this point, that your



1 investigative team was receiving information from
2 Mr. Williams relevant to the work you were doing?

3 A Yes.

4 Q And it was information that Mr. Williams had
11:49 5 gained in the course of what he was doing in the
6 Section 690 process?

7 A Correct.

8 Q Next paragraph.

9 "Fraser stated that he was
11:50 10 told by Eugene Williams that Sask.
11 Justice had discredited Ronald Wilson
12 very badly at the Supreme Court
13 Hearings. Fraser requested we provide
14 him with a copy of that transcript. I
11:50 15 advised him we would obtain that and
16 send it to him asap."

17 So, again, would this be another example of
18 information that Eugene Williams provided to your
19 investigative team, being information related to
11:50 20 your investigation?

21 A Yes.

22 Q It says:

23 "Fraser is uncertain in his mind at what
24 point Wilson changed his story ...",
11:50 25 and goes on:



1 "... and stated that he had been coerced
2 by Saskatoon Police during the initial
3 stages of this investigation. Fraser
4 wondered if we could provide him
11:50 5 documentation outlining the steps that
6 Wilson took to making this statement.
7 Fraser also stated that he wants a
8 transcript of Mrs. Milgaard and Ron
9 Wilson's phone conversation. I advised
11:50 10 him that I was pretty sure that this was
11 sent to him along with our report,
12 however I would check on this and if he
13 did not have that I would provide it to
14 him."

11:51 15 And am I correct that it would appear that, in
16 light of what Mr. Eugene Williams provided to Mr.
17 Fraser and Mr. McCrank, they in turn came back to
18 you and said, "lookit, follow up on the
19 information we received and get us some more
11:51 20 information"?

21 A Yes.

22 Q And then here, on the DNA issue, it says:

23 "Fraser and I discussed the matter of
24 consent and it was his advice that we
11:51 25 not conduct any DNA testing until we had



1 met with Hersh Wolch at some point in
2 the future."

3 And then here:

4 "I'm not satisfied that the testing
11:51 5 process should be set aside ...",

6 actually, sorry, I -- it says:

7 "I feel it would be easy to get written
8 consent, however, our advice from Sask.
9 Justice has always been that written
11:51 10 consent is not required. I'm not
11 satisfied that the testing process
12 should be set aside because we have
13 always been of the view that this
14 process would be conducted. It seems
11:52 15 that we (the RCMP), Mr. McCrank and
16 Fraser don't entirely agree. In view of
17 this, I will be meeting with the CO and
18 the OIC Criminal Operations advising
19 them that we feel we should go ahead
11:52 20 with DNA testing."

21 And am I correct, Mr. Sawatsky, it appears that,
22 after meeting with Eugene Williams and Ron
23 Fainstein, Mr. McCrank and Mr. Fraser changed
24 their view about whether you people should be
11:52 25 doing the DNA testing; is that correct?



1 A Yes, it is.

2 Q And that prior to that meeting that was something
3 that you, the RCMP, were going to do, after the
4 meeting Mr. Fraser and Mr. McCrank said we now
11:52 5 don't think we should be doing it; is that
6 correct?

7 A That's correct.

8 Q And do you recall the rationale for that or --

9 A I'm not certain that I do, but I do recall that I
11:52 10 did change my mind, my view on that after --

11 Q And I'll show you some documents, I think they
12 ended up convincing you not to as well?

13 A Yes.

14 Q And was it the case that the Federal Justice
11:52 15 Department was undertaking the DNA review on their
16 own and that's why you and your people were not
17 doing it; was that possibly the reason?

18 A Yes, that could be the reason.

19 Q If we can go to 061461. I think this is your
11:53 20 Email of March 31, 1994, and is this to Officer
21 Leatherdale; is that right?

22 A Yes.

23 Q And that would have been one of your superior
24 officers, or --

11:53 25 A That's correct, that's my direct supervisor.



1 Q And I think you are going to your superiors on
2 this issue that the RCMP thinks DNA testing should
3 be done yet Alberta Justice does not; is that
4 fair?

11:53 5 A Yes.

6 Q And you say here:

7 "When we first started this
8 investigation and talked with Hirsh
9 Wolch he indicated that he was aware we
11:54 10 were in possession of the blood and
11 encouraged us to use it for DNA purposes
12 and stated we had his consent to do so.
13 Upon returning from Winnipeg, in order
14 to facilitate DNA testing, I felt we
11:54 15 should obtain and execute a Search
16 Warrant on our Lab, take the blood into
17 our possession and then have the test
18 done. We had research done by Terry
19 Hinz, Sask Justice Prosecutor in
11:54 20 Saskatoon. His opinion to us was that
21 we did not require any authority to do
22 tests on something that was legally in
23 our possession and that even if Milgaard
24 or Fisher did not consent we could still
11:54 25 do the tests. In any event, since we



1 were not looking at a prosecution (on
2 Milgaard anyway) we should go ahead and
3 do the tests.

4 Throughout this investigation we hav
11:54 5 kept in touch with the Lab awaiting the
6 time when they had their processes
7 refined to the point that they could do
8 the DNA and even in our final report
9 have made mention of this outstanding
11:54 10 fact. Our legal advisors, McCrank and
11 Fraser are now somewhat heritant about
12 DNA and whether or not we should do the
13 test and now feel we should do the test
14 if Wolch brings it up, otherwise ignore
11:55 15 it. They have some concerns about
16 consent. In my opinion, we could
17 contact Wolch today and I feel he would
18 consent and have David sign a consent
19 form. In the off-chance they refuse,
11:55 20 then the issue is ended..... I feel
21 that the fact McCrank and Fraser should
22 have no bearing on our investigation.
23 They do not make our decisions and have
24 been very careful not to. They have
25 been excellent to work with and I have



1 the utmost respect for both of them,
2 however, I really feel we should go
3 ahead with the DNA testing."

4 And is that a fair summary of your concerns at
11:55 5 the time?

6 A Yes, it is.

7 Q And if we can go to 053115.

8 A And I think what I was referring to as "decisions"
9 there was investigative decisions. I want to make
11:55 10 that clear. Throughout our investigation, you
11 know, other than providing us very good advice, we
12 did our investigation sort of on our own and
13 followed up the leads on our own, and when we
14 sought advice received it, but they didn't make
11:56 15 investigative decisions.

16 Q And did you feel getting the DNA testing done was
17 an investigative --

18 A I believe at that point I did, yes.

19 Q And what caused you to change? And I will be
11:56 20 taking -- we can wait until we go to the documents
21 but --

22 A I think that would be helpful if we waited until
23 we got to the documents.

24 Q Sure. Go to 053115. And I think this is a letter
11:56 25 to the forensic lab in Ottawa:



1 "... further to recent discussions ...",
2 this is dated -- actually, it's undated. Saying:

3 "This is to confirm that if
4 you are able to obtain results from an
11:56 5 examination of the victims panties using
6 a DNA process that we wish you to
7 compare your findings with the samples
8 of blood from David Milgaard and Larry
9 Fisher."

11:56 10 So it appears that there was at least some steps
11 taken to try and have the testing done; is that
12 correct?

13 A Correct. I don't recall this.

14 Q Oh, "OIC crops", who would that be?

11:57 15 A That would be my boss, Superintendent Leatherdale.

16 Q Okay. If we could go to 061462, actually, 061463
17 please. Here's a letter from Neil McCrank April
18 7, 1994 to the lab. It says:

19 "At this stage, we would ask
11:57 20 that you not conduct any further DNA
21 tests or any other scientific tests on
22 our behalf in the above-noted matter.";
23 is that correct?

24 A Yes.

11:57 25 Q So it would appear, in April of 1994, that the



1 RCMP lab was -- said "lookit, don't do any tests
2 on our behalf"?

3 A That's correct.

4 Q And was that because Federal Justice, the Federal
11:57 5 Justice lawyers were controlling that process as
6 far as the DNA testing, and had control of the
7 exhibits?

8 A Yes.

9 Q That's probably an appropriate spot --

11:57 10 COMMISSIONER MacCALLUM: Mr. Hodson, I
11 don't know if you misspoke, it's asking not the
12 DNA -- not -- the RCMP lab not to do DNA tests,
13 you said?

14 MR. HODSON: Pardon me?

11:58 15 COMMISSIONER MacCALLUM: What did you mean
16 to say, it's a letter asking that the RCMP not do
17 DNA tests?

18 MR. HODSON: Yes.

19 BY MR. HODSON:

11:58 20 Q Well, yes. This is a letter, Brian Richardson is
21 at the RCMP lab, is that correct?

22 A Yes.

23 Q And so this is a letter from Neil McCrank saying:

24 "At this stage, we would ask
25 that you not conduct any further DNA



1 tests or any other scientific tests on
2 our behalf in the above-noted matter."

3 COMMISSIONER MacCALLUM: Thanks. Okay,
4 1:30.

11:58 5 MR. HODSON: Yeah.

6 (Adjourned at 11:58 a.m.)

7 (Reconvened at 1:32 p.m.)

8 BY MR. HODSON:

9 Q Good afternoon. If we could go to 061463, please,
01:32 10 and this was the letter we had left, the April
11 7th, 1994, where Mr. McCrank was telling the RCMP
12 lab not to conduct further DNA tests and at this
13 time it sort of sets out what the plan is:

14 "...to complete our review and report to
01:33 15 the Saskatchewan Department of Justice.
16 At that time we may sit down with Hersh
17 Wolch, counsel for David Milgaard, and
18 outline our findings to him and also
19 indicate to him the possibility of the
01:33 20 further DNA test ... that could be
21 conducted..."

22 And:

23 "This would only be done on the
24 assumption that we would obtain the
01:33 25 written consent..."



1 Etcetera, and reviewing the matter with Justice
2 in early June:

3 "...and we will then make a decision as
4 to whether or not to approach Mr. Wolch
01:33 5 with the above proposal."

6 At this time, Mr. Sawatsky, what is your, and
7 I'll take you through some of these letters
8 later, but just generally as far as -- was there
9 a discussion about whether or not your findings
01:33 10 should be shared with Mr. Wolch before they were
11 made public or furthered on up the line?

12 A Yes, there was considerable discussion about that,
13 and I recall that I had given Mr. Wolch an
14 undertaking in our interview that I would come
01:34 15 back to him and provide him with the results, and
16 I felt that -- I felt bound by that, and of
17 course, you know, as time evolved I was out ruled
18 in that, but certainly that was my feeling, that
19 he should be appraised of the results.

01:34 20 Q And when you say to go back to meet with him, what
21 was your purpose in doing so, what would be your
22 reason for going back to Mr. Wolch?

23 A To just go back and tell him what our findings
24 were. I don't think my intention would be to
01:34 25 debate those with him, but simply to say here's



1 what we found and just so that he would know
2 beforehand what the results were.

3 Q Did you have any intention at any time to go back
4 to Mr. Wolch for his further input or for his
01:34 5 response to your findings?

6 A No, although there is correspondence I believe
7 from Mr. Wolch where he sort of suggested that
8 that would be a good idea. It was never my
9 intention to take that step.

01:35 10 Q And why not?

11 A Well, I think that once we had completed our
12 investigation, and it had been very thorough in my
13 view, that the findings spoke for themselves and
14 were supported by the investigation.

01:35 15 Q And I think you touched on this in June, I think
16 you characterized Mr. Wolch's role as basically
17 the complainant; is that fair, in a criminal
18 investigation?

19 A That's correct.

01:35 20 Q And would you normally go back to a complainant in
21 a criminal investigation and get input on what
22 areas to follow up on or get reaction to what you
23 found out?

24 A Rarely, although you would usually go back and
01:35 25 inform the complainant of your findings.



1 Q And so that I'm clear on this, are you telling us
2 that once your investigation was complete, it was
3 your desire to go back to Mr. Wolch and say
4 lookit, here's what the findings are for
01:35 5 information purposes?

6 A That's correct, and during the investigation
7 itself, you will see, and the file shows a couple
8 of times where we went to Mr. Wolch to seek some
9 further input or to clarify questions, but once
01:36 10 the investigation was finished, it would be my
11 view to simply inform him of the findings.

12 Q And so I think during the course of the
13 investigation, I know one occasion was to go back
14 and try and find out who the confidential police
01:36 15 source was, Tom Vanin, that was one of the reasons
16 you went back to him, to get information from him?

17 A Yes, that was one of the reasons.

18 Q And what is your recollection -- you said you were
19 overruled. By whom, as far as informing Mr. Wolch
01:36 20 of the results?

21 A Well, I believe there was some discussions held,
22 you know, between the RCMP, you know, certainly my
23 superiors, Alberta Justice, Messrs. McCrank and
24 Fraser and Saskatchewan Justice, and I think there
01:36 25 was an ultimate decision made, which my superiors



1 agreed with, that there would not be a meeting, or
2 that the report would be released without a
3 meeting happening.

4 Q And what was your understanding of the reasons for
01:36 5 that?

6 A I think there was some sense that Mr. Wolch
7 perhaps may use that information to get out in
8 front of the minister and sort of upstage the
9 minister and that he may put information out there
01:37 10 that would require the minister to respond, and I
11 think the minister, it was the view of the
12 department and others that the minister should
13 have the first opportunity to say what the results
14 of the report were.

01:37 15 Q Are you talking --

16 A Or the deputy minister, the minister or the deputy
17 minister on his behalf.

18 Q When you say put out there, are you talking the
19 media?

01:37 20 A Yes.

21 Q And so was it a concern that if the results of
22 your investigation were shared with Mr. Wolch
23 before the minister or deputy minister made them
24 public, that Mr. Wolch would put the results out
01:37 25 in the media in some way that was not viewed as



1 being appropriate by the department?

2 A Yes, I believe that's the paramount reason. There
3 may have been other reasons that were discussed
4 that I'm not aware of, but I think that was the
01:38 5 paramount reason.

6 Q So here, if we can go back to 061462, and this is
7 Mr. McCrank's letter to you of the same date,
8 April 7th, '94, talking about getting the report
9 to Justice in May or June, '94, and I think you
01:38 10 had delivered your report to Mr. McCrank and Mr.
11 Fraser, they in turn had not delivered their
12 report to the minister; is that correct?

13 A I believe that's correct.

14 Q And I think we'll see it's August of '94, I
01:38 15 believe, that McCrank and Fraser send their report
16 to the minister. Does that sound correct?

17 A That does.

18 Q And so here Mr. McCrank says:

19 "I believe it would be appropriate for
01:38 20 you to correspond with Mr. Wolch and
21 merely indicate that your report will be
22 delivered to this office in its entirety
23 and that it is up to this office to
24 decide what further steps should be
01:38 25 taken with respect to the matter.



1 Perhaps you would like to draft a letter
2 and send it to me for approval before
3 you ship it on to Mr. Wolch."

4 And so at this time it would appear that

01:39 5 Mr. McCrank and Mr. Fraser are telling you, tell
6 Mr. Wolch that you are sending it to us and he
7 can deal with us as far as further information;
8 is that right?

9 A That's correct.

01:39 10 Q 049619, this is a letter April 13th, 1994 from you
11 to Dr. Ferris, and you indicate here that you are:
12 "...investigating various issues dealing
13 with the physical and forensic evidence
14 relating to David's conviction."

01:39 15 And you are looking for the disposition of the
16 portion of the panties that he removed to do his
17 DNA analysis in 1988; is that correct?

18 A Yes.

19 Q And so it appears at this point that you were
01:39 20 still pursuing at least some of the DNA -- or
21 gathering some of the DNA information; is that
22 correct?

23 A That's right. I believe we were in the process of
24 getting the panties back so that they could be
01:40 25 sent to the lab.



1 Q And were you aware that at this time, or at some
2 time, maybe even prior to this, I think that Mr.
3 Williams or the Federal Justice lawyers may also
4 have been corresponding with Dr. Ferris as far as
01:40 5 his DNA work?

6 A I'm not sure. I'm not sure whether we were just,
7 you know, sort of doing some housework here and
8 cleaning up loose ends or whether there had been
9 some discussion and perhaps there's something
01:40 10 further, we'll get to that if you refresh my
11 memory, but I do recall this letter.

12 Q Yeah, I think there's other correspondence where,
13 after the 690 re-review, Federal Justice lawyers
14 had followed up with Dr. Ferris as well or were
01:40 15 doing some additional work, and we'll be hearing
16 about that I think from Mr. Fainstein, but I'm not
17 sure that there was ever any communication between
18 Federal Justice lawyers and your investigative
19 team on that regard. Do you --

01:41 20 A I don't recall it, no.

21 Q 061464, and this is a letter April 13th, '94 from
22 you to Mr. Fraser, and you recall before lunch
23 today I read you your continuation report where,
24 after Mr. Fraser and Mr. McCrank met with Eugene
01:42 25 Williams, Eugene Williams provided information to



1 Mr. Fraser and Mr. Fraser asked you to follow up
2 on that; is that correct?

3 A Yes.

4 Q And would this be the reply to him? You refer to
01:42 5 the points in the conversation and then enclosed
6 are copies of various information, and that
7 would -- am I correct this would be a response to
8 the information that Mr. Williams provided to Mr.
9 Fraser?

01:42 10 A Yes.

11 Q And then as well at the bottom we'll see the
12 response to the Sharon Williams information -- and
13 go to the next page -- and this relates to I think
14 Mr. Williams telling Mr. Fraser that Sharon
01:42 15 Williams had evidence or information that I think
16 David Milgaard had either raped her or forcibly
17 had sex with her and something involving a knife.
18 Do you recall that part I read you this morning?

19 A Yes, I do.

01:42 20 Q So here you go, a review of statements indicates
21 what you found, she did not disclose such details
22 in her statement to Sergeant Pearson, and then as
23 well your investigation, and then as well a copy
24 of his, of the Malanowich report. So this would
01:43 25 be just following up on issues raised by Mr.



1 Williams?

2 A By Mr. Fraser, yes.

3 Q By Mr. Fraser to you, but based on what Mr.

4 Williams -- based on information Eugene Williams

01:43 5 provided to Mr. Fraser that Mr. Williams obtained

6 in the 690 investigation that he conducted?

7 A Yes, I assume that, yes.

8 Q Go to 238788. I think this is your memo to file

9 May 13th, '94 dealing with the DNA, I'll read

01:43 10 parts of this, it says here:

11 "Near the end of the investigation

12 Mr. McCrank advised me that he and Mr.

13 Fraser were of the view we should not

14 conduct the DNA analysis. I did not

01:43 15 accept Mr. McCrank's advice and felt

16 very strongly that the process should

17 take place because the investigation had

18 been conducted in its entirety with the

19 view that this test would be done when

01:44 20 the lab could do it."

21 And then you talk about speaking with your

22 superiors.

23 "After that, I contacted Mr. Fraser and

24 explained that I felt we should go ahead

01:44 25 with the DNA analysis as planned. Mr.



1 Fraser stated several facts that have
2 caused me to change my view and I now
3 feel that we should not consider DNA as
4 part of this matter. Although, meetings
01:44 5 in the future with Sask Justice and Mr.
6 Wolch may cause a change in the present
7 circumstances, this opinion can then be
8 altered if necessary."

9 And scroll down:

01:44 10 "Basically, Mr. Fraser explains the
11 situation like this: The blood exhibits
12 provided by Mr. Milgaard and Mr. Fisher
13 were provided for the Sec. 690 process.
14 All of the exhibits that were entered
01:44 15 into the Supreme Court were turned over
16 to Federal Justice by the court at the
17 end of the process. Even though the
18 panties are in the Lab in Ottawa, they
19 and the remainder of the exhibits do not
01:44 20 belong to us, but rather to the Supreme
21 Court. Mr. Fraser and Mr. McCrank have
22 discussed this at length and feel it
23 would take an Order from the Supreme
24 Court to obtain the exhibits. This
01:45 25 would apply even if Milgaard and Fisher



1 provided another blood sample; we would
2 still require a Supreme Court Order to
3 get at the remainder of the exhibits.

4 As far as our

01:45 5 investigation is concerned, we have our
6 results and findings. The DNA analysis
7 will not alter anything we have found to
8 date, no matter what the results."

9 So would that be an accurate account of what your
01:45 10 thinking was at the time?

11 A Yes.

12 Q And so am I correct that, and again this is May of
13 1994, prior to this you felt that it was important
14 to get the exhibits, the Gail Miller clothing and
01:45 15 to do a DNA analysis on those for the purposes of
16 your investigation provided DNA technology would
17 allow it?

18 A Yes.

19 Q And I think you told us you were relying upon
01:45 20 other people, experts as to whether or not DNA
21 could be done on the clothing given the technology
22 at the time?

23 A That's correct.

24 Q And it appears here that the answer you get back,
01:46 25 which you ultimately agree with, is that the



1 Federal Justice lawyers have control of the
2 exhibits and the process to have them DNA tested
3 by virtue of either a Supreme Court order or by
4 virtue of the fact that David Milgaard and Larry
01:46 5 Fisher gave samples during the Section 690
6 process; is that correct?

7 A That's correct.

8 Q And but for the fact that Federal Justice lawyers
9 and/or the Supreme Court in some way were involved
01:46 10 in having control over both the Gail Miller
11 clothing and the Milgaard/Fisher blood, would you
12 have proceeded with that testing provided
13 technology allowed it?

14 A Up until this point, yes, we likely would have,
01:46 15 but after this point, no.

16 Q And what I'm trying to get at, is it fair to -- is
17 it fair to conclude that the reason that in the
18 course of the RCMP investigating this matter for
19 Saskatchewan Justice, is the reason you did not do
01:47 20 DNA testing with respect to Gail Miller's clothing
21 is because Federal Justice lawyers had the
22 clothing, had the blood and there was a Supreme
23 Court order or something in effect that precluded
24 you people, being the RCMP and McCrank and Fraser,
01:47 25 from getting the exhibits and doing the testing?



1 A I don't know that that was ever as clear
2 throughout the investigation as it was here after,
3 you know, I guess some research had been done by
4 Mr. McCrank and Fraser, so I think during the
01:47 5 course of our investigation we were sort of of the
6 view that if the science advanced to the point
7 where we could do the testing, we would be
8 informed of that and then we would have to take
9 whatever steps were appropriate to have that done,
01:47 10 but I don't know that any research, to the extent
11 that was done here, had been done previous, so
12 I'm not sure --

13 Q I guess here's my question. At this point, May of
14 1994, it appears, and I'm wondering if you agree
01:48 15 with this, that the reason the RCMP, your
16 investigators did not proceed with examining Gail
17 Miller's clothing to determine whether any stains
18 there would give rise to DNA analysis, the reason
19 you did not do that was because Federal Justice
01:48 20 lawyers had the exhibits and had the
21 Fisher/Milgaard blood and there was this issue
22 about whether or not the Supreme Court had control
23 over the exhibits as a result of the 690 and that
24 that was the only reason you didn't pursue with
01:48 25 that, the DNA investigation?



1 A Correct.

2 Q Right. And so in other words, to put it another
3 way, if at the end of the Supreme Court hearings
4 Gail Miller's clothing and the blood was turned
01:48 5 over to Saskatchewan Justice or to the Court of
6 Queen's Bench and had been provided to you, the
7 RCMP, when you were doing your investigation,
8 would it be fair to say that provided technology
9 allowed it, you would have proceeded with DNA
01:48 10 testing of her clothing?

11 A Yes.

12 Q In fact, the next page, I think you say:

13 "Bottom line, the exhibits do not belong
14 to us, they belong to the Supreme Court
01:49 15 and Federal Justice are the Court
16 Ordered custodians."

17 And I think that's similar to what you've already
18 told us, you were basically on the outside when
19 it came to pursuing the DNA testing?

01:49 20 A Correct, and I think, Mr. Hodson, just to add, I
21 don't think it had ever been as clear to me before
22 as it was at this time.

23 Q And so let me just follow up on that. Is it fair
24 to say that prior to Mr. McCrank and Mr. Fraser
01:49 25 coming back and saying lookit, someone else is



1 carrying the ball on the DNA, is it fair to say it
2 was your belief, since you were RCMP investigating
3 the matter for Saskatchewan Justice, that you
4 would have the ability to get the clothing, the
01:50 5 exhibits and to do the DNA testing?

6 A Well, I think that I always thought that the
7 process may not be as difficult, you know, I
8 always anticipated that it may perhaps require
9 some sort of documentation, some sort of a warrant
01:50 10 or something, but I don't think it was ever as
11 clear to me, the possession of these documents was
12 clearly in the Supreme Court and it was in their
13 domain, I don't think that piece was ever as clear
14 to me. I don't think that I ever thought we could
01:50 15 simply just go and get them and test them.

16 Q You may have thought there was a step, but you
17 didn't think there was this much of a step that
18 was required?

19 A Correct, yes.

01:50 20 Q And apart from this issue about Federal Justice
21 and the Supreme Court controlling that process, as
22 an RCMP investigator in this investigation, did
23 you want to have DNA testing done on Gail Miller's
24 clothing, would that have been a valuable
01:50 25 investigative step in the work that you did?



1 A Yes.

2 Q And in fact, Mr. Sawatsky, if in 1993 you were
3 able to have, to do the testing you wanted to do
4 and you would have got the results in 1993 that
01:51 5 were obtained in 1997, I take it that would have
6 had a significant impact on at least some of the
7 conclusions in your report?

8 A Yes, I believe it would have impacted some of the
9 conclusions.

01:51 10 Q Certainly with respect to the guilt or innocence
11 of David Milgaard?

12 A Yes.

13 Q 061499, just to complete the loop here, this is a
14 letter from you to Mr. McCrank attaching
01:51 15 information that one of your officers obtained
16 from Dr. Ferris. If we can go to the next page --
17 sorry, to 061498, and there was an earlier
18 request, I didn't show it to you, but I think
19 you had -- you wrote a letter to Dr. Ferris
01:52 20 looking for any remnants of his DNA testing and
21 then there was a letter I didn't show you where
22 you asked one of your members out in, I think
23 British Columbia, to contact Dr. Ferris, and it
24 appears that this is the response; is that
01:52 25 correct?



1 A That's correct.

2 Q And Dr. Ferris says he didn't receive the letter,
3 but he says:

4 "b) The portion of material extracted
01:52 5 from panties belonging to Gail Miller
6 was tested for D.N.A. results. There
7 was no success in this process and the
8 entire portion of exhibit was consumed
9 during the examination. Dr. Ferris
01:52 10 states he has nothing to report and is
11 not in possession of any exhibit which
12 can be returned.

13 c) Lab books detailing the examination
14 process may still be in existence and
01:53 15 should these lab books be deemed of
16 value to your investigation, Dr. Ferris
17 can be contacted to locate same."

18 And I think we have seen other evidence to
19 indicate that those had been sent to Mr.
01:53 20 Williams, Eugene Williams, back in 1992. Do you
21 know if you would have been aware of that?

22 A I know we were aware of his findings. I'm not
23 sure if I was ever aware of the fact that he had
24 sent notes and lab reports to Mr. Williams.

01:53 25 Q It may have been in '93.



1 A I may have been, but I don't have specific recall
2 of that.

3 Q Go to 061567, and it appears, this is July 21,
4 this would be when you send the final report and
01:53 5 the supplementary concluding report to
6 Mr. McCrank; is that correct?

7 A Yes.

8 Q And just for the record, if we can go to 033694 --
9 next page -- and the next page. This is the
01:54 10 supplementary report, July, '94, and this is the
11 part that I read to you earlier, this was the
12 report done by Mr. MacKay on the profiling;
13 correct?

14 A Yes, that's correct.

01:54 15 Q So then 247848, this is a letter August 5, 1994
16 from you to Mr. McCrank, and so this would be
17 after your final report is sent in but before
18 their report is sent to the minister, and it says:

19 "Further to our meeting of August 2nd,
01:55 20 following are examples of concerns
21 regarding interviews by Paul Henderson
22 and Joyce Milgaard."

23 And then -- I'll go through this with you, but do
24 you recall what prompted this response?

01:55 25 A I can only assume from the way in which it was



1 written that we must have had a meeting and I was
2 probably requested as a result of this meeting to
3 provide this to Mr. McCrank.

4 Q And it says:

01:55 5 "We've attached copies of reference
6 pages of taped interviews and/or
7 conversations which not previously
8 forwarded to you. The statements
9 obtained by our investigators are
01:55 10 contained in the statement volumes of
11 our report."

12 When you sent your report to Mr. McCrank and Mr.
13 Fraser, it appears that you didn't send them the
14 background work; in other words, the 50 boxes
01:55 15 that you sent to the Commission?

16 A That's correct.

17 Q And so is it a case that in going through the
18 report, they wanted you to give up some background
19 or backup source documents?

01:55 20 A I believe that to be the case, and I will also add
21 that I do recall earlier correspondence where we
22 had I guess alerted Mr. Fraser and Mr. McCrank to
23 the fact that we had some concerns about the
24 techniques employed by Centurion Ministries, so
01:56 25 this issue had been raised with him before.



1 Q And again I'll go through this letter with you,
2 and if the letter assists you in answering that's
3 fine, but what were the concerns that you had
4 identified with the manner in which Centurion
01:56 5 Ministries conducted interviews?

6 A I think we were just concerned with the general
7 techniques used and -- that they had used during
8 the interviews.

9 Q And what techniques concerned you?

01:56 10 A I think the prolonged questioning, the fact that
11 they had, you know, attempted to get people to say
12 things that perhaps they didn't want to say, the,
13 I think, sort of bothering people in places they
14 didn't want to be confronted, things like that.

01:56 15 Q And can you tell us generally, your investigators,
16 what influence did your conclusions regarding
17 their interviewing techniques have on the
18 credibility or weight that you put on interviews
19 and statements obtained by Centurion Ministries?

01:57 20 A Well I think, certainly, it made our difficult --
21 it made our task more difficult to try and
22 determine credibility, particularly when you have
23 a witness recanting something that's factual, as
24 an example. But, certainly, it would make it more
01:57 25 difficult to assess someone's credibility when the



1 questioned techniques were used during the
2 interview.

3 Q Did it cause you to question the veracity of
4 information obtained by Centurion Ministries?

01:57 5 A Certainly.

6 Q And you also mentioned interviews involving Joyce
7 Milgaard, did you have any concerns about the
8 interviews by Joyce Milgaard conducted on her own,
9 or just when she was conducting them with Paul
01:57 10 Henderson?

11 A I may need to refresh myself on that.

12 Q Sure.

13 A I'm not sure if I had any concerns with -- hang
14 on, I do recall, I think just the one telephone
01:58 15 conversation that she had with Mr. Wilson would be
16 an example of a concern that I had.

17 Q And that was the 1981 telephone call?

18 A Yes.

19 Q Now I take it, and we touched on this a bit
01:58 20 earlier, concerns about let's say the Centurion
21 Ministries interviews, you talked a moment ago
22 about the techniques used and the information
23 obtained from the witnesses; correct?

24 A Yes.

01:58 25 Q Did you have any concerns about what Centurion



1 Ministries and/or Joyce Milgaard were providing to
2 the witnesses in the course of the interview?

3 A Yes.

4 Q And what -- what was it about that that concerned
01:58 5 you?

6 A Well it appeared to me that all of the witnesses
7 were sort of approached, or many of the
8 witnesses -- I don't want to be, sound like I'm
9 saying every single one of them -- but were
01:58 10 approached from the perspective that "David
11 Milgaard is innocent and I'm here to sort of get
12 you to tell me that". I think that's the
13 inference that can be drawn from most of those
14 interviews.

01:58 15 Q And did you, did you and/or your investigators
16 have any concerns that witnesses may have been
17 provided information in the course of those
18 interviews that might have influenced their
19 responses then?

01:59 20 A Yes.

21 Q And can you think of any examples?

22 A One pops into my mind where I think a statement
23 was "well don't", something along the lines of
24 "don't you think David Milgaard has been in jail
01:59 25 long enough", and I think the response to that was



1 "yes", and I think it sort of went on from there
2 that. I think the inference that's drawn there
3 is, because he has been in jail long enough, you
4 should really cooperate here and say he's
01:59 5 innocent.

6 Q And we'll go through these, I think these were the
7 examples you provided back:

8 "1. Statement of Michael and Mary John to
9 our investigators:".

01:59 10 And I think Mr. and Mrs. John expressed concern
11 about how Paul Henderson spoke with them,
12 Mrs. John alleged that he swore at her because
13 she wouldn't give him Nichol's address. And:

14 "Mrs. John telephoned the Kelowna RCMP
02:00 15 because she was frightened of ...",
16 him, and that:

17 "Henderson made Mrs. John cry."

18 And, again, what -- what concerns would that
19 cause you at the time?

02:00 20 A It certainly seemed to be, you know, undue duress
21 being put on witnesses by the interviewer.

22 Q And?

23 "2. Statement of Albert Cadrain to our
24 Investigators:

02:00 25 - Pages 87-90 - throughout these pages



1 he says Henderson tried to get him to
2 change his story and he ... gave him
3 what he wanted to hear just to get him
4 off my ass ...'"

02:00 5 And I think we touched upon that a little bit
6 earlier and, again, can you just elaborate on
7 that? What would be the -- would this give rise
8 to concerns about the credibility of what
9 Centurion Ministries obtained from Albert
02:00 10 Cadrain?

11 A Certainly, when he makes a statement that he just
12 said -- told them what they wanted to hear, it
13 certainly would make anything he said after that
14 suspect, on one hand, and on the other hand I
02:00 15 guess you can say that it speaks to his
16 credibility in that he simply told us "the only
17 reason I gave him, said what I said, was for these
18 reasons", so he provided an explanation as to why
19 he would now say something different.

20 Q Item:

21 "3. Statement of Dennis Cadrain to our
22 investigators:

23 - Page 13 - Dennis indicates to members
24 that Henderson was '... trying to really
02:01 25 manipulate Albert ...' - '..he



1 (Henderson) writes it in such a way that
2 I had to tell him ... I didn't say this
3 ... tries to put words in your mouth.'"

4 And, again, do you have anything to add to that?

02:01 5 A I think that's just confirmation of the fact that
6 some of the statements appeared to have been
7 pre-written and then simply put to the witnesses
8 for signature.

9 Q Next page:

02:01 10 "4. Telephone conversation between
11 Henderson and Dennis Cadrain:
12 - Pages 8 - 9 - provides Dennis with
13 misleading information regarding Larry
14 Fisher in attempts to get Dennis to
02:01 15 encourage Albert to meet with
16 Henderson."

17 And we've seen that transcript, and I believe
18 that's where Paul Henderson told Dennis
19 Cadrain -- although he may have thought it was
02:02 20 Albert Cadrain at the time -- that Fisher has
21 confessed or is gonna to confess that day; is
22 that the transcript you are referring to?

23 A Yes, it is.

24 Q And can you tell us, what would be the concern you
02:02 25 would have in looking at a statement obtained from



1 Albert Cadrain, Dennis Cadrain, Ron Wilson or
2 Nichol John, or anybody involved, if the
3 interviewer had told that person that Larry Fisher
4 had confessed, or was going to confess that
02:02 5 morning, for the crime if, in fact, that were not
6 the truth?

7 A Well I think it would certainly cause particularly
8 a weak witness to really question themselves, and
9 could even influence them to change their story.
02:02 10 It may have no impact on a very strong witness,
11 they may say "I saw what I saw" and that's, like
12 it or not, but it could certainly influence some
13 witnesses.

14 Q And, in your view, would that be an appropriate
02:02 15 interviewing technique to say to, for example, Ron
16 Wilson or Albert Cadrain that "lookit, Larry
17 Fisher has confessed or is about to confess for
18 the crime, which means you lied at trial, and
19 therefore now is your chance to come out ahead of
02:03 20 the game and say you lied because the police made
21 you do it"? I think that was one of the
22 approaches that Mr. Henderson said he utilized
23 with these witnesses.

24 A Yeah. I didn't believe it was appropriate.

02:03 25 Q And why not?



1 A Well it seems to me that if you have a wrongful
2 conviction, and people become aware of that, and
3 it becomes known that there's investigators out
4 trying to get the truth, that people would
02:03 5 generally cooperate. And, I mean, I even take
6 that into our own investigation. I thought, for
7 example, Mr. Wilson would be most willing to talk
8 to us, I thought that Mr. Milgaard would be most
9 willing to talk to us, I expected these people
02:03 10 would be waiting for us to come. So I would think
11 that, having made up their mind to talk, that
12 there would be a certain amount of cooperation
13 with witnesses who felt someone was wrongfully
14 convicted.

02:04 15 Q And did you find that to be the case?

16 A No, that was not the case.

17 Q And tell us about what -- and I suppose if Mr.
18 Fisher had confessed, and that was truthful, would
19 that be an appropriate thing to tell a witness you
02:04 20 are interviewing; for example, "Ron Wilson, you
21 testified, and Albert Cadrain, you testified at
22 trial, gave incriminating information against
23 David Milgaard, someone else has now admitted to
24 doing the crime, explain your evidence"; would
02:04 25 that be appropriate?



1 A I don't believe it's appropriate for a private
2 investigator to say that.

3 Q And why not?

4 A Because it's misleading the witness and it may
02:04 5 cause the witness to say something that is not
6 true.

7 Q If the premise is, that Larry Fisher confessed is
8 true though, what if he had really confessed?

9 A Well then I think it would be appropriate.

02:04 10 Q Okay. But, if he hasn't, then it would be
11 inappropriate?

12 A Yes.

13 Q And would the risk there be that it might
14 influence the witness?

02:04 15 A Yes.

16 Q Next:

17 "5. Taped meeting between Linda Fisher,
18 Henderson and Milgaard:
19 - the meeting is being surreptitiously
02:05 20 taped before they ask permission to
21 begin taping.

22 Pages 12 and 34 - Linda describes her
23 knife as brown, wooden handle with
24 rivets and on Page 35 - Milgaard
02:05 25 suggestes 'sort of a brown, sort of like



1 a maroon colour' and Henderson adds
2 'paring knife that you would use for
3 peeling potatoes' -- after this Linda
4 adopts that as her story."

02:05 5 And, again, can you elaborate, I think you
6 touched on that earlier, but can you elaborate on
7 that point?

8 A Yeah, again that's, that's a very important piece
9 of information, because it certainly contaminated
02:05 10 Linda because, afterwards, she adopted that. So
11 that's providing a false piece of information, or
12 a piece of information that she wasn't aware of,
13 that she could then, later, adopt and use.

14 Q And when you say "later", would that be the 1993
02:05 15 mauve-coloured knife matter?

16 A Yes.

17 Q And then:

18 "6. Taped meeting between Fisher, Henderson,
19 Milgaard and Clifford Pambrun ...
02:06 20 Pages 30-33 - secenarios are run past
21 Clifford suggesting he and Larry were
22 out drinking and Larry could have taken
23 his car - Clifford never suggests this,
24 however after some discussion states
02:06 25 '...he could have taken the car...',



1 and then I think he gave a statement that had
2 similar comments. And, again, anything to
3 elaborate on that?

4 A That's just another example, I think, of where
02:06 5 they weren't satisfied with the first explanation
6 and continued on until they got what they wanted.

7 Q Now we've gone through -- actually, let me go
8 through one more example, and I'll come back to
9 this:

02:06 10 "7. There was concern over the Henderson
11 interview of Wilson. He was asked to
12 provide us with the tapes of this
13 interview, he said he forwarded them to
14 the Centurion office in New Jersey,
02:06 15 however, McCloskey states he never had
16 them."

17 Despite repeated attempts by
18 investigators to speak with Henderson
19 and his promises to respond, he never
02:06 20 did. A list of questions was forwarded
21 to him and they remain unanswered.

22 Supreme Court testimony of
23 Wilson states that he had been provided
24 food and drink by Henderson."

02:07 25 Just on that latter point, why would that be a



1 concern, if Henderson provided Wilson with food
2 and drink?

3 A Well, certainly there's indication, I think we
4 were aware of information that he had been given a
02:07 5 considerable amount of beer that night, and I
6 think that certainly would cause you to suspect
7 any statement that came as a result of that.

8 Q Now what about the fact that Mr. McCloskey -- or
9 Mr. Henderson's interview with Mr. Wilson was
02:07 10 taped and the tapes were never provided; what
11 conclusions did you reach about that?

12 A Well I think the conclusions we reached from that
13 was there was something on there that perhaps they
14 didn't want us to hear, and the difficulty sort of
02:07 15 from that is we were never able to get Mr.
16 Wilson's -- to sort of cooperate with us, so that
17 we could at least get his version so we may have
18 something with which to make an assessment.

19 Q And when you say "something on there that they
02:07 20 didn't want you to hear", that would what, somehow
21 colour the recantation?

22 A Yes.

23 Q And I suppose, if the tape provided a complete
24 exchange of what was discussed, that could do one
02:08 25 of two things. One, it might bolster the



1 recantation if the tape confirmed that nothing
2 improper was said to Mr. Wilson; is that correct?

3 A That's correct.

4 Q On the other hand, if improper things, at least in
02:08 5 your view, were said to Mr. Wilson, that might
6 cause you to further doubt Mr. Wilson's
7 recantation?

8 A That's correct.

9 Q Now you said you never did get the tape, did you
02:08 10 and your investigators conclude, based upon your
11 review of Mr. Henderson's other interviews, did
12 you conclude that he likely conducted an improper
13 interview of Ron Wilson when he obtained the
14 recantation?

02:08 15 A Yes, I do, I believe that. And as a result of
16 this interview, I mean, there was a very short
17 statement that came from many hours of an
18 interview that wasn't even written by Wilson, it
19 was written, appeared to have been written by
02:09 20 someone else.

21 Q Go to 032797. And this is the August 15th, 1994
22 letter from Bruce Fraser and Neil McCrank to
23 Mr. Cotter providing the report -- or their
24 report, pardon me. Go to the next page. A copy
02:09 25 is also provided to the Deputy Minister of Justice



1 for the -- and the Deputy Attorney General of
2 Canada; do you know why that, why the report went
3 to them as well?

4 A I don't. It must have been some sort of an
02:10 5 undertaking that either Saskatchewan or Alberta
6 had made.

7 Q Is it -- is it possible that, given that the
8 initial letter that Mr. Wolch sent back in
9 September 1992 where the Breckenridge allegations
02:10 10 were first made were made to the -- made to Kim
11 Campbell, the federal minister, and I think
12 then -- I think the first request was to the
13 federal minister to do something, the federal
14 minister said "this is a provincial matter", and
02:10 15 the province then responded; is that correct? I
16 think that's what the documents reflect?

17 A That's certainly possible, yeah.

18 Q And do you know if that might have been a reason
19 why they were, why the federal minister was
02:10 20 provided with a copy of this?

21 A Yes, that could be the reason.

22 Q Now I don't propose to -- actually, just go to the
23 next page, 032805. And I take it that,
24 Mr. Sawatsky, you would have had a chance to
02:11 25 review the Alberta Justice report at the time and



1 you are familiar with this document?

2 A Yes, I am.

3 Q And would this have been a document that Mr.
4 McCrank and Mr. Fraser then prepared based on the
02:11 5 report that you gave them?

6 A Yes, based on the report we gave them, the
7 questions that they asked and we provided answers
8 to.

9 Q And would it be fair to say that this report would
02:11 10 be consistent with what you and your investigators
11 concluded in your investigation?

12 A Yes.

13 Q If we can go to 032799. And this is a statement
14 by the Deputy Minister of Justice on August 16th,
02:12 15 1994. I think this is when at least the
16 McCrank-Fraser report was made public, and this is
17 Mr. Cotter providing the -- that report, and I
18 believe the 15 or 16-page report was made public.
19 But if you can go to 032803, which is -- sorry, I
02:12 20 stand to be corrected. I think what, here what
21 Mr. Cotter says is:

22 "Mr. McCrank and Mr. Fraser

23 have recommended that their sixteen-page
24 report and the 250-page RCMP analysis be
02:12 25 made public, but that the supporting



1 documentation not be made public. With
2 one, hopefully temporary constraint on
3 that, I intend to follow that advice."

02:12 4 And this goes on to the personal information and
5 the privacy considerations; is that correct?

6 A That's correct.

7 Q And maybe, if I can just summarize with -- what
8 appears to be in the documents, and tell me if
9 this is correct, it appears that after the report
02:13 10 was provided and the results made public, that the
11 provincial government and indeed the RCMP engaged
12 in an exercise to go through and vet the report,
13 the RCMP report, to remove any names, any
14 confidential information or names that should not
02:13 15 be made public; is that right?

16 A Yes.

17 Q And that took some considerable time, to get the
18 report into a form where it could be made public;
19 is that right?

02:13 20 A Yes, yes, that took some time.

21 Q And then I think ultimately the report and, your
22 report and the McCrank-Fraser report, were made
23 public; correct?

24 A Yes.

02:13 25 Q If we can then go to 061669. And this is August



1 17th, '94, so this is the day after Mr. Cotter
2 announced the results, Mr. Wolch wrote to you
3 referring to an earlier letter and saying:

4 "Obviously, I am in dismay

02:14 5 that you did not contact us prior to the
6 release of your report.

7 We are of course, most

8 anxious to obtain a full copy of the
9 report and to review the investigative
02:14 10 file."

11 And then if we can just go to 147961. Here is an
12 article -- sorry, if you can go to page 147963.
13 So this is August 17th, 1994, and I think we've
14 identified earlier that you would have had your
02:15 15 initial interview with Joyce Milgaard in, I
16 think, February of 1993; is that right? We
17 referred to that earlier?

18 A Yes, that sounds correct.

19 Q And I think there was some follow-up
02:15 20 correspondence with Mrs. Milgaard in December '93
21 relating to some Breckenridge documents, I think
22 we saw some papers back and forth; is that
23 correct?

24 A Yes.

02:15 25 Q And would it be fair to say that, after your



1 initial meeting with Mrs. Milgaard in January or
2 February 1993, you would have had no further
3 communication with her to advise her what it was
4 that you had done in the investigation or informed
02:15 5 her about any of your conclusions?

6 A That's correct. I do recall speaking with her on
7 the phone a couple of times during the
8 investigation because she was just interested in
9 how the investigation was progressing and when it
02:16 10 would be finished, but there was no exchange of
11 information other than time lines during those
12 conversations.

13 Q And then here she says, this is a comment:

14 "Joyce Milgaard said the RCMP
02:16 15 and the Alberta Justice Department had
16 to ignore 'hard facts' in order to reach
17 their conclusion.

18 'The RCMP were going out
19 trying to justify the conviction. They
02:16 20 were not going out trying to find the
21 truth.'

22 She noted investigators
23 tracked down her son's former cell mates
24 to see if he confessed. There's no
02:16 25 mention of the interviews in the report,



1 but if they had succeeded 'it would be
2 right out in the front of the report,'
3 she said."

4 And let me just pause there. The report had not
5 been provided to her, or anybody else, at this
6 point; is that correct?

7 A I --

8 Q I'm sorry to the -- August the 17th, 1994 your
9 report had not been provided to Joyce Milgaard; is
02:17 10 that correct?

11 A Yes, I believe that's correct.

12 Q And do you have any recollection as to whether or
13 not you would have tracked down her son's former
14 cell mates to see if he confessed?

02:17 15 A I would need to refresh myself on that.

16 Q I might be able to --

17 A I know there was some inquiries made with
18 custodians.

19 Q In fact I think in the report, and correct me if
02:17 20 I'm wrong, I believe that when you were
21 investigating the Ben Dozenko information where
22 Ben Dozenko claimed that David Milgaard confessed
23 to him, you actually went to a fellow named
24 Desjarlais who provided exculpatory information
02:17 25 for David Milgaard and said "he never confessed to



1 me", and --

2 A That's correct, I remember that now.

3 Q In fact, I'll find it, so just give me a moment.

4 UNIDENTIFIED VOICE: 208.

02:17 5 MR. HODSON: 208? If we can go, call up
6 page 023376.

7 COMMISSIONER MacCALLUM: Of what?

8 MR. HODSON: Oh, sorry, the doc. ID is
9 023167, which is the RCMP report.

10 BY MR. HODSON:

11 Q And this is where you were looking at -- one of
12 the issues relating to David Milgaard's guilt or
13 innocence was the fact that Bernhardt Dozenko, a
14 prison official, had testified at the Supreme
02:18 15 Court that David Milgaard had confessed to
16 murdering Gail Miller to him; correct?

17 A That's correct.

18 Q And it appears, here, that you investigated that
19 to see whether he had made, Mr. Milgaard had made
02:18 20 that confession to Mr. Dozenko. You said you
21 couldn't corroborate it but, in addition, you went
22 out and found information to suggest that, to
23 other people, he denied responsibility for the
24 offence; correct?

02:18 25 A Correct.



1 Q And again, here at the bottom, the *Investigator*
2 *Comment* is, about the confession:

3 "Other prison acquaintances state
4 Milgaard always maintained his
02:19 5 innocence, including Robert Desjarlais,
6 who was never previously interviewed."

7 And do I take it that one of the reasons for
8 interviewing Mr. Milgaard's cell mates would be
9 to find out whether they could have exculpatory
02:19 10 information, in other words, establish that he
11 did not confess to the crime?

12 A Yes.

13 Q And, as well, to see whether he did confess? I
14 take it it would go both ways; --

02:19 15 A It would go --

16 Q -- what, if anything, did he say?

17 A It would go both ways, yes.

18 Q And did this -- what was the reason for you going
19 out and talking to his cell mates, then, what
02:19 20 prompted that?

21 A I think we were trying to verify the fact that
22 somewhere in the investigation we had been told
23 that he had made an admission to a worker and
24 perhaps to cell mates. I don't recall
02:20 25 specifically the context in which we received



1 that, but that would be the reason, to see if
2 there was any other independent information.

3 Q And so 147963, so back on this article, I think in
4 fact investigators tracked down Mr. Milgaard's
02:20 5 former cell mates I guess in part to see if he
6 confessed but, as well, to see if he denied the
7 killing; is that correct?

8 A That's correct, to report on the findings.

9 Q And there is mention of the interview in the
02:20 10 report saying that he did not admit to the crime;
11 is that correct?

12 A That's correct.

13 Q It says:

14 "Milgaard's lawyer Hersh
02:20 15 Wolch said the investigation didn't
16 solve anything and he still wants a
17 public inquiry.

18 'We had no input, we weren't
19 there, we don't even know who they
02:20 20 talked to, what was said and there was
21 nobody there to argue our case.' Wolch
22 said he doesn't even know if Fisher was
23 interviewed.

24 Wolch expects once the RCMP's
02:21 25 250-page analysis of the case is



1 released, 'it will be full of areas to
2 criticize and legitimately so.'"

3 I'd like you to comment on this comment here
4 that:

02:21 5 "'We had no input ...'

6 Can you tell us what input Mr. Wolch,
7 Mrs. Milgaard, and their group had as far as what
8 it was that your investigators investigated?

9 A Well I think they certainly had full input into
02:21 10 all the matters that were investigated, and the
11 matters that were investigated were substantially
12 those that were raised by them. Not only that,
13 but a number of times during the investigation we
14 went back to require -- or to request
02:21 15 clarification either from Mr. Wolch or his
16 associates.

17 Q And so, on the point of:

18 "'We had no input ...'",
19 I take it; do you disagree with that --

02:21 20 A Yes.

21 Q -- suggestion?

22 A Yes, I disagree with that.

23 Q And he says:

24 "'... and there was nobody there to
02:21 25 argue our case.'"



1 In investigating a complaint of criminal
2 wrongdoing would it be your practice, as a police
3 investigator, to involve the complainant in
4 arguing their case throughout the course of your
02:22 5 investigation?

6 A No, it would not. Our job would be simply go out
7 and examine the evidence and then test that
8 evidence.

9 Q Now does this article -- and, again, there is a
02:22 10 number of others like it, actually, go to 217219.
11 And here's a *Globe and Mail* article, I believe
12 around the same date, it says *RCMP report called*
13 *whitewash by Milgaard*. And scroll down, please.
14 Actually, sorry, scroll up a bit. It says:

02:22 15 "Mr. Milgaard and his lawyers
16 dismissed the findings as a 'complete
17 and utter whitewash' of what they insist
18 is a ongoing coverup."

19 Now at this point, again, the report had not been
02:23 20 provided to anybody other than the minister;
21 correct?

22 A Correct.

23 Q And then down at the bottom, I guess this is
24 attributed to Mr. Milgaard:

02:23 25 "He said in an interview he



1 was flabbergasted by the review's
2 findings.

3 'Everybody is being cleaned
4 up and whitewashed by the RCMP of
02:23 5 Canada,' he said. 'I can't believe it.
6 But on second thought, maybe I shouldn't
7 been surprised.'

8 Mr. Milgaard said he was not
9 interviewed by the RCMP during their
02:23 10 review."

11 On the latter point, I think you've already
12 touched on this, but did you interview Mr.
13 Milgaard during your review?

14 A Yes, on two occasions.

02:23 15 Q Can you tell us just generally what your response
16 was, or your thoughts, to sort of the public
17 condemnation of your report before anybody had
18 actually read it?

19 A I don't think that I was surprised, to be quite
02:23 20 honest with you. I don't think I took issue with
21 it either way.

22 Q And why were you not surprised?

23 A I suppose I was probably disappointed, because I
24 had thought that Mr. Wolch and Mrs. Milgaard both
02:24 25 had confidence and trust in the fact that we would



1 do a thorough investigation, and certainly it's my
2 view that we did do a thorough investigation, and
3 I guess I was somewhat disappointed, but I wasn't
4 surprised.

02:24 5 Q Go to 061616. And here's a couple of documents.
6 August 18th, 1994, Criminal Operations, just
7 refers to:

8 "- In a conversation with Mr. McCrank,
9 on Aug2/94 Insp. Sawatsky reiterated our
02:24 10 position that prior to a public release
11 of findings, the police or Sask Justice
12 should meet with Mr. Wolch and inform
13 him of the results. Mr. McCrank stated
14 that he had told Mr. Cotter that he
02:25 15 recommended Sask Justice enter into a
16 'solicitor's agreement' barring Wolch
17 from going public with any of the
18 details of the report until Sask Justice
19 had made a release."

02:25 20 And then scroll down:

21 "- Insp. Sawatsky spoke with Mr. Cotter
22 on either Mon/Tues - Aug. 15/16, and he
23 made a point of stating that we should
24 decide when we should meet with Mr.
02:25 25 Wolch and decide on how the disclosure



1 should be handled."

2 Scroll down:

3 "- Insp. Sawatsky emphasized the need to
4 meet with Mr. Wolch prior to a public
5 release of findings on numerous
6 occasions during conversations with
7 Alberta Justice."

8 And I think that's consistent with what you told
9 us earlier, your view was that you favoured
02:25 10 informing Mr. Wolch of the results before they
11 were made public?

12 A Yes. Yes. As I indicated, I felt an obligation
13 to get back to Mr. Wolch, I had made him that
14 commitment.

02:26 15 Q And as far as informing the results, did that
16 include providing Mr. Wolch with a copy of your
17 250 page report before it was made public?

18 A I think I believed that he should be provided the
19 report in advance. I don't know if I was
02:26 20 necessarily of the view that it should be provided
21 when we gave him the recommendations, but at some
22 point in time I believed we should give him the
23 report.

24 MR. HODSON: I see it's 2:30. It may be
02:26 25 appropriate to take an afternoon break. We sit



1 until 3:30 today.

2 COMMISSIONER MacCALLUM: 3:30, yeah.

3 (Adjourned at 2:26 p.m.)

4 (Reconvened at 2:47 p.m.)

02:47 5 BY MR. HODSON:

6 Q If we can go to 061624, please, and this is an
7 August 19th, 1994 letter that Chief Superintendent
8 Leatherdale wrote to Mr. Wolch in response to Mr.
9 Wolch's August 17, 1994 letter stating that:

02:47 10 "Now that our report is in the hands of
11 the Deputy Minister for Saskatchewan
12 Justice, I feel it is most appropriate
13 that he respond to your request."

14 So it appears that once you gave your report to
02:47 15 Alberta Justice and through to Saskatchewan
16 Justice, the issue of what would happen to the
17 report would be their decision?

18 A That's correct.

19 Q 061708, and this is reference notes from C.O. Can
02:48 20 you tell me what these would be? It appears to be
21 notes relating to the handling of the file. Maybe
22 I can just read this second paragraph, it appears
23 to be an RCMP document, it says:

24 "We dealt with this as a criminal
02:48 25 investigation....into allegations of



1 obstruction of justice....the scope
2 broadened to take into the account the
3 murder and many related aspects in an
4 effort to deal with all of Wolch's
02:48 5 concerns. We felt that a meeting with
6 Wolch to inform him of the results of
7 our investigation was consistent with
8 the usual practice of informing
9 complainants of the action taken."

02:48 10 Would that be an accurate statement of your view?

11 A Yes. I'm wondering if this is perhaps just
12 some -- I think this is probably the commanding
13 officer who was Assistant Commissioner Proke at
14 the time I believe, and it could be that we were
02:49 15 just providing him with some background
16 information and our views on some information.

17 Q And maybe just so that I get this clear, that in a
18 normal -- this was a criminal investigation;
19 correct?

02:49 20 A Yes.

21 Q And your normal practice is that you would go to a
22 complainant in a criminal investigation -- once
23 you concluded your investigation, you would
24 normally go to the complainant at the conclusion
02:49 25 and say here is the results of our investigation,



1 that would be your normal practice?

2 A Yes, it would.

3 Q And in this case, the conclusion of your
4 investigation was provided to Alberta Justice and
02:49 5 then through to Saskatchewan Justice; is that
6 correct?

7 A That's correct.

8 Q And I think what you've told us, it was their
9 decision not to provide the complainant, Mr.
02:49 10 Wolch, with the results of the investigation
11 before they had an opportunity to publicly
12 announce it; correct?

13 A Correct.

14 Q And I think you told us your understanding of
02:49 15 their reasons were that they were concerned that
16 if the results of the investigation were provided
17 to Mr. Wolch, he would provide them to the media
18 before the Saskatchewan Minister of Justice could
19 respond and announce the results; is that a fair
02:50 20 summary?

21 A I believe that was our concern, yes.

22 Q And similarly, the normal method of handling --
23 and just so we're clear here, I think what you are
24 talking about is not a case where you would sit
02:50 25 down with Mr. Wolch and say here's our report,



1 here's all of our background work, here's
2 everything we've done, go to it, but rather here
3 are our results, here's what we've concluded and
4 here's why; is that fair?

02:50 5 A That's fair.

6 Q And would that be -- maybe courtesy is the wrong
7 word, but it would be -- or maybe it's the right
8 word. What would be the purpose of doing that, of
9 informing Mr. Wolch in your view of the results
02:51 10 before they were announced publicly?

11 A I would suppose the word courtesy may be an
12 appropriate term. It's simply to advise the
13 complainant that you, you know, completed your
14 investigations and what your findings were so they
02:51 15 hear it from you first and not from someone else.

16 Q And then again it says here:
17 "Copies of investigation reports are
18 transmitted to Sask Justice without
19 restrictions on disclosure/handling. It
02:51 20 has been a long standing policy of
21 public prosecutions, Sask Justice not to
22 disclose copies of police reports. To
23 our knowledge, copies of our the reports
24 have not been disclosed to anyone
02:51 25 outside of Sask Justice."



1 And that would be accurate?

2 A That would be accurate, yes.

3 Q And so again, as far as sitting down with Mr.

4 Wolch, you were not thinking of providing him, in

02:51 5 advance of public disclosure of the report, all of

6 the police investigation reports, statements and

7 interview notes, etcetera?

8 A No.

9 Q And 061631, they appear to be minutes of a meeting

02:52 10 between you, Mr. Dosenberger, Mr. Leatherdale and

11 the deputy minister and Mr. Moen; is that correct?

12 A Correct.

13 Q And this was about disclosure of the RCMP

14 investigation report, and go to the next page, it

02:52 15 says:

16 "It was agreed that the RCMP should meet

17 with Mr. Wolch to inform him about the

18 results of our investigation and that

19 Alberta Justice should take the lead

02:52 20 role in arranging a meeting. Further,

21 we agreed there was no need for Mr.

22 Cotter to be present at the meeting but

23 Mr. McCrank and Mr. Fraser should

24 attend.

02:52 25 The timing of the meeting



1 with Mr. Wolch was discussed. If
2 possible, it should coincide with public
3 disclosure of the police report. The
4 latter part of September was seen as a
02:53 5 target date for such a meeting."

6 Is that an accurate summary of what was
7 discussed?

8 A Yes, it is.

9 COMMISSIONER MacCALLUM: Was that 708? I'm
02:53 10 sorry.

11 MR. HODSON: If we can just go back, that's
12 September the 1st, 1994. I'm sorry, your
13 question?

14 COMMISSIONER MacCALLUM: I'm just looking
02:53 15 for the doc -- oh, 061631. Thank you.

16 BY MR. HODSON:

17 Q So it appears that the RCMP wrote to Mr. Wolch and
18 said lookit, disclosure of the report is a
19 Saskatchewan Justice issue. You met with
02:53 20 Saskatchewan Justice and they said lookit, the
21 RCMP should meet with Mr. Wolch, but have Alberta
22 Justice present and Alberta Justice should arrange
23 it; correct?

24 A That's correct.

02:53 25 Q Then 061664, September 14th, 1994, a letter to Mr.



1 Wolch arranging a meeting for September 27th I
2 think, 1994, with McCrank, Mr. McCrank and Mr.
3 Fraser and you; is that correct?

4 A Yes.

02:54 5 Q Now, that meeting didn't happen did it?

6 A No.

7 Q Do you remember why or what happened there?

8 A I know that the decision to meet with Mr. Wolch
9 was reversed and changed and amended a number of
02:54 10 times and I think what happened was after this
11 decision, there was another concern about meeting
12 with him and eventually it was decided that there
13 wouldn't be a meeting.

14 Q There would be?

02:54 15 A There wouldn't be a meeting, sorry.

16 Q And do you remember what that was?

17 A I think it was the same concern as before, that
18 perhaps the findings would be in the public domain
19 before the minister had a chance to sort of make
02:54 20 them public himself.

21 Q And so again the findings were out there, now you
22 were talking about the actual substance of your
23 report?

24 A Yes, sorry, the substance of the report, that's
02:55 25 right.



1 Q Yeah. So are you telling us that it was agreed to
2 meet with Mr. Wolch and then later a similar
3 concern arose that if the 250 page report was
4 provided to Mr. Wolch before the minister made the
02:55 5 report public, that it would find its way into the
6 public domain through Mr. Wolch; is that your
7 evidence?

8 A I believe so, yes. I believe that's what would
9 happen, that's my evidence.

02:55 10 Q If we can go to 238801, and this is a February 15,
11 1995 memo to file about the DNA exhibit testing,
12 and just by way of background, I think we have or
13 will hear evidence that in early 1995
14 representatives of David Milgaard or counsel
02:56 15 and/or Joyce Milgaard had contact directly with
16 Mr. Fainstein with Federal Justice, this was right
17 around the time of the Guy Paul Morin DNA matter,
18 and discussions were held directly between the
19 Milgaards and Federal Justice about getting DNA
02:56 20 testing done. Do you know if you would have been
21 aware of that at the time?

22 A I don't know. I don't recall having any
23 involvement in that.

24 Q Okay. And so -- and I had mentioned this earlier,
02:56 25 and I think you agreed, it appears that there were



1 two -- that you were doing your DNA -- or you were
2 considering DNA steps. At the same time, perhaps
3 unbeknownst to you, Federal Justice lawyers were
4 also looking at the same steps, but they had the
02:57 5 exhibits; correct?

6 A Correct.

7 Q And so here:

8 "At the termination of this project, our
9 Forensic Lab ... had not yet reached the
02:57 10 stage where they could conduct an
11 analysis of the exhibits..."

12 And you go on to review, if you are going to do
13 it, authority from the Supreme Court is required,
14 and then:

02:57 15 "I spoke with Mr. McCrank and he asked
16 me to speak with the Lab and ascertain
17 when they could do the analysis. Mr.
18 Gaudette advises they could do the test
19 as early as late March 95 but would
02:57 20 prefer to wait until at least the summer
21 because of the high profile nature of
22 this case.

23 I contacted Mr. McCrank and
24 we both feel that our investigation
02:57 25 would not want to be responsible for



1 pushing the Lab into a process that may
2 ruin the possibility of success later
3 on. For that reason, we feel we should
4 wait until the Lab is comfortable in
02:57 5 performing the test.

6 The other matter here is the
7 fact that we will be meeting with Mr.
8 Wolch shortly. During that meeting we
9 can indicate to him that the testing
02:57 10 procedure can likely be done in this
11 summer and that we will be asking for
12 him client's approval to perform the
13 test.

14 Both McCrank and I are of the
02:58 15 view that we should pursue DNA testing
16 on this file and once the Lab is in a
17 position to do it we should proceed."

18 And we're preparing for a meeting with Mr. Wolch.
19 So I take it from that that in early 1995 it
02:58 20 looks as though a meeting with Mr. Wolch is
21 planned to discuss the report and that you
22 believe the DNA testing issue will come up in
23 your meeting with Mr. Wolch?

24 A Yes.

02:58 25 Q And is that the purpose then of resurrecting the



1 DNA issue, in that in meeting with Mr. Wolch you
2 expected it to come up?

3 A I'm not certain of that. That could be a reason.
4 I'm not certain of that though.

02:58 5 Q Do you recall then why in February of 1995 you
6 would be concerned about DNA testing when your
7 report was completed?

8 A I'm not aware of any other reason why we would be.
9 I just don't have specific recall of how this came
02:58 10 about.

11 Q If we can then go to 061808, and this is a letter
12 April 21, 1995 to you from Ron Fainstein, and it's
13 dated April 21, '95, if we can go to the next
14 page -- sorry, go to 061811 -- and this is a
02:59 15 letter from the RCMP lab to Mr. Fainstein and
16 you'll see here a reference, the RCMP lab is
17 reporting to Mr. Fainstein regarding a:

18 "...letter of Feb. 21, 1995 from Mr.
19 Milgaard's lawyers (directed to your
02:59 20 office)..."

21 About DNA testing, and what other documents and
22 other evidence show is that on February 21, 1995
23 Mr. Milgaard's lawyers wrote to Mr. Fainstein
24 about embarking on some new DNA testing, and
03:00 25 again, it looks as though Mr. Fainstein is



1 informing you of that in April of '95; is that
2 correct?

3 A Yes.

4 Q And then if we can go to 061809 of this document,
03:00 5 and this is your memo to file regarding DNA
6 testing, it indicates you called Fainstein and
7 learned of the following and talks about a
8 February 6th:

9 "...Fainstein received a call from Greg
03:00 10 Rodden, Milgaard's legal counsel. At
11 that time Rodden was enquiring about
12 having tests completed on the Miller
13 exhibit. The call coincided with the
14 exoneration by DNA of Morin in Ontario."

03:01 15 And then Fainstein went on to provide you with
16 commentary about the discussions he had had with
17 the Milgaards and other experts; is that correct?

18 A Yes.

19 Q It would appear that your involvement then in the
03:01 20 DNA testing, I think after this memo I don't think
21 there's much further, it would appear that Mr.
22 Fainstein then, along with the Milgaards and their
23 counsel and experts proceeded on with the DNA
24 testing; is that right? Do you recall having much
03:01 25 further involvement, other until 1997 and the



1 warrant, do you recall having much involvement, or
2 any?

3 A I don't recall having any, no.

4 Q And so it appears at this point, April, 1995,
03:01 5 Federal Justice lawyers and David Milgaard's
6 lawyers and perhaps Saskatchewan Justice to a
7 degree and your lab, the RCMP lab, Federal Justice
8 starts to carry the ball in pursuing the DNA
9 testing. Was that your understanding?

03:02 10 A Yes, it was.

11 Q And you did not have any direct involvement after
12 that other than July when you are asked to swear
13 the warrant?

14 A Correct.

03:02 15 Q Or pardon me, the information. Go to 033291.
16 This is a letter of Mr. Wolch April 27th, 1995 to
17 the then Minister of Justice Ned Shillington and
18 this is a letter asking for an inquiry, and then
19 if we can scroll down, talking about -- I think
03:03 20 Mr. Shillington had earlier referred to your
21 investigation, but Mr. Wolch writes about:

22 "The Royal Canadian Mounted Police -
23 their investigation was clearly not an
24 inquiry. What is interesting is that at
03:03 25 the beginning of same, I advised



1 Inspector Sawatsky that once he has
2 gathered the information, I wish to sit
3 down and go over it with him to have
4 some input as to what I think might be
03:03 5 possible errors or Avenues to follow.
6 He advised me that that would be fine
7 and I even wrote to him later on asking
8 him when I would get the opportunity.
9 In spite of that the report was
03:03 10 concluded without my chance to review
11 same, and even to this date I don't know
12 what is in the investigation."

13 Did you agree with Mr. Wolch that after you had
14 gathered the information, you would sit down with
03:03 15 him, go over it with him and let him have input
16 as to what he thought might be possible errors in
17 your investigation or avenues to follow?

18 A No, I don't recall making that commitment. As I
19 indicated before, I do recall making a commitment
03:04 20 that I would meet with him at the end of the
21 investigation and provide him with the results.

22 Q But not for the purposes that he says in this
23 letter; is that correct?

24 A Correct.

03:04 25 Q And then he says:



1 "Seven or eight months ago, pursuant to
2 communication with Inspector Sawatsky a
3 meeting was arranged apparently for us
4 to be informed as to what information
03:04 5 was gathered and to have some input, but
6 the meeting was postponed at your
7 Department's request. We have indicated
8 that our willingness to meet on
9 relatively short notice, and we from
03:04 10 time to time receive communications from
11 Inspector Sawatsky that he is still
12 attempting to arrange a meeting."

13 And was that in fact the case?

14 A I believe at the time that's an accurate
03:04 15 recollection.

16 Q And then 061937, this is a June 30, 1995 memo, I
17 think this is Sergeant Dosenberger's reference to
18 Kathy Hillman-Weir, who I think is from
19 Saskatchewan Justice:

03:05 20 "...telephoned to discuss arrangements
21 for a meeting with Mr. Wolch. She says
22 it is up to us to contact Wolch and
23 arrange. She is not sure whether or not
24 if the D/M will participate - probably
03:05 25 not."



1 And then down at the bottom, and I think this is
2 Mr. Dosenberger's comment:

3 "I asked Shelley to call Wolch's office.
4 She did so and Wolch stated he was not
03:05 5 available the week of the 10th July
6 because he'll be in Newfoundland. Next
7 week is very rushed and it is necessary
8 to confirm with Greg Rodin first. He
9 asked about where the meeting will take
03:05 10 place - I told her Winnipeg or Regina -
11 latter being our reference. Wolch
12 indicated to Shelley that he thought
13 Alberta and that we would be paying the
14 shot! I told her we would not be paying
03:05 15 and to convey this to him during the
16 next contact..."

17 Do you know if that became an issue in setting up
18 the meeting, as to who was going to pay for --

19 A I don't recall that it happened before, but
03:06 20 certainly we would have traveled to Winnipeg at
21 our expense to meet with him. If the decision had
22 been made to meet with him, we wouldn't have
23 worried about the cost.

24 Q And then again 061884, this is a July 4th, '95
03:06 25 letter from you to Mr. Wolch about the meeting



1 indicating that you are open to meet to outline:

2 "...our findings into the allegations of
3 wrongdoing which emerged from our
4 meeting with him 92-11-26. We are
03:06 5 prepared to follow through on this
6 commitment and I am writing to ascertain
7 when this can be done.

8 It is my understanding that
9 Saskatchewan Justice plan to make our
03:07 10 report public very soon and accordingly,
11 we would prefer to meet as soon as
12 possible. If you can arrange your
13 schedule, we would be prepared to travel
14 to Winnipeg later this week."

03:07 15 And so this would have been what you sent to Mr.
16 Wolch?

17 A Yes.

18 Q And you talk here about the commitment that you
19 made to meet with him. Was this letter to follow
03:07 20 up on that commitment to get back to him and share
21 the information with him?

22 A Exactly, yes, that's what it was for.

23 Q Do you recall if your commitment to him was to
24 give him the results of the information before
03:07 25 they were made public or just to give him the



1 information?

2 A To give him the results of our investigation.

3 Q Was it --

4 A Before they were made public, yes.

03:07 5 Q Pardon me?

6 A Before they were made public.

7 Q And that's what you had originally discussed with
8 him?

9 A Yes. I don't know if I necessarily discussed the
03:07 10 timing, but my original commitment to him was that
11 at the end of our investigation we would provide
12 him with the results.

13 Q Right. And I guess -- I think what you are saying
14 is, as you said you would give him the results,
03:08 15 but did your commitment include to do so before
16 they were made public or just at the end of your
17 investigation?

18 A I believe just at the end of the investigation. I
19 don't think there was any discussion about before
03:08 20 they were made public.

21 Q And so on July 4, 1995, would this letter then be
22 to try and arrange a meeting for you to meet the
23 commitment then that you made to him?

24 A Yes, and I should add that, I mean,
03:08 25 notwithstanding that I don't recall making that



1 commitment, I believe that he should have been
2 given the results before they were made public and
3 I believed that all along.

4 Q Okay. If we can then go to 061885, I think this
03:08 5 is Mr. Wolch's letter back -- go to the next
6 page -- to your letter, and I think this is where
7 Mr. Wolch is expressing concern about waiting and
8 then now being told that the meeting has to happen
9 fairly quickly, it says:

03:09 10 "It is totally frustrating and I am
11 advised on even date that we should meet
12 this week to review the report. I am
13 also advised that I may not review
14 anything in advance to prepare myself
03:09 15 and to refresh my memory regarding these
16 matters."

17 Was there a request by Mr. Wolch to read the
18 report before you met with him or to have
19 something in advance that he could read, or do
03:09 20 you recall?

21 A You know, I'm sorry, I don't recall whether there
22 was a discussion with him about that. He must
23 have got it from somewhere, but I don't recall
24 having a discussion.

03:09 25 Q And then on the next page, Mr. Wolch says:



1 "It is becoming quite obvious to me that
2 the Government is not really interested
3 in who murdered Gail Miller or David
4 Milgaard's guilt or innocence but rather
03:09 5 is more interested in saving money and
6 embarrassment. Putting a favourable
7 spin on your report is far more
8 important than getting to the truth."

9 I appreciate that that comment is, at least in
03:10 10 part, about the government, but what is your
11 response to that as far as your role is
12 concerned, Mr. Sawatsky?

13 A You know, I guess I sort of look at this much like
14 I did the media release, I think there comes a
03:10 15 point where you don't really pay a whole lot
16 attention to comments like that. I really
17 didn't -- it didn't cause me a lot of concern. So
18 what sort of thing.

19 Q And 061941, and this appears to be a continuation
03:10 20 report around July, '95, July 12th, and this is
21 about when the report would be made public, and:

22 "The question arose should we the Force
23 be making any statements concerning the
24 report. It was decided that should
03:11 25 anyone ask the following would be



1 provided."

2 And you go through providing information.

3 "It was also decided that should any
4 allegations be made by the Milgaard side
03:11 5 then we would rebut that specific
6 allegations based on the report."

7 Did you anticipate that once the report was
8 released, that you would be criticized in the
9 media by the Milgaards?

03:11 10 A Yes, I think we were certainly prepared for that,
11 and this piece of correspondence is from a
12 Corporal Hoeft who was the media relations person
13 and I think he was seeking some guidance here as
14 to -- and probably confirming some discussions we
03:11 15 had about how the RCMP would respond to media
16 inquiries.

17 Q Go to 061941 -- sorry, 061944. We're now jumping
18 ahead to February 29, 1996. I think just on the
19 chronology, the report was released in July of
03:12 20 '95, your 250 page report minus some confidential
21 exclusions, but here it's February 27, '96, you:

22 "...received a call from Mr. Feinstein.

23 The issue of performing a DNA
24 test on Gail Miller's panties has again
03:12 25 surfaced and he wished to discuss our



1 views on having it done. I informed
2 Feinstein that we were still of the view
3 that our investigation was a "search for
4 the truth" and that the testing should
03:12 5 be done if possible.

6 He stated that there was
7 discussions ongoing between our Dr.
8 Fourney ... and Mr. Blake, one of the
9 leading USA experts. The discussions
03:12 10 involve the most appropriate method to
11 use when the test is done.

12 Feinstein felt that due to
13 the fact we may get an opportunity to
14 conduct the test we should look at all
03:13 15 the possibilities and wondered if we
16 should test the man who was out with
17 Gail Miller the night before she was
18 murdered, Dennis Elliott. He is of the
19 view that if the test eliminates
03:13 20 Milgaard it may be of benefit to
21 identify the depositor.

22 We certainly are not looking
23 at any other suspects but for
24 elimination purposes this may be
03:13 25 worthwhile."



1 And again, do you recall this discussion?

2 A Yes, I do.

3 Q And so what would be the purpose of getting Dennis
4 Elliott's -- testing Dennis Elliott?

03:13 5 A Well, I think there was a suggestion that perhaps
6 Gail Miller could have had consensual sex perhaps
7 some period of time before the rape/murder and
8 that we were aware that Mr. Elliott had been with
9 her either the night before or two nights before,
03:13 10 I'm just not certain which, and that I think Mr.
11 Fainstein's contention was that perhaps the
12 analysis may identify an unknown donor and that
13 this may help to clarify or eliminate the need to
14 go any further because it could be that if the
03:13 15 donor wasn't Mr. Milgaard, then perhaps it could
16 have been Mr. Elliott, and I think we suggested
17 several times throughout the report that the stain
18 could have come from a consensual sex partner or
19 from the victim herself.

03:14 20 Q And then here it appears that Mr. Fainstein -- is
21 it fair to say that the Federal Justice Department
22 asked you to go out and get Mr. Elliott to get a
23 sample for DNA testing?

24 A Yes.

03:14 25 Q And would that have been at the direction of Mr.



1 Fainstein then?

2 A Yes.

3 Q It says here, "We certainly are not looking at any
4 other suspects..." Would that include -- where
03:14 5 did Mr. Fisher fit in at this time?

6 A Well, at this time, as I indicated before, our
7 investigation was complete and our results were as
8 stated, we didn't have any reason, found no
9 evidence during our investigation that would cause
03:14 10 us to believe Mr. Fisher was responsible at that
11 time and I think this, I'm simply suggesting here
12 that although there are no other suspects, it's
13 possible that there could have been a consensual
14 partner and therefore, to me, this procedure made
03:15 15 sense.

16 Q If we can go to 036217. And this is a briefing
17 note of June 3rd, '97. And, just for the record,
18 I think it was July, early July 1997 that Gail
19 Miller's clothing and samples from Mr. Milgaard,
03:15 20 Mr. Fisher, and Mr. Elliott were sent to England,
21 so this would be the month prior, and this is a
22 briefing note relating to upcoming DNA testing; is
23 that correct?

24 A That's correct.

03:15 25 Q If we can go to the next page, and so this is the



1 briefing note with the background, if we can go to
2 the next page you say here:

3 "During the project Flicker
4 investigation, our investigators
03:16 5 researched the feasibility of having our
6 Forensic Lab DNA type the small
7 remaining portion of the original stain.
8 In consultation with Dr. Fournery of our
9 Forensic Lab in Ottawa, we were advised
03:16 10 that the DNA science had not progressed
11 to the degree where our Lab personnel
12 felt an analysis of the small remaining
13 portion could/should be undertaken."

14 And then:

03:16 15 "DNA testing has continued to
16 be an issue between our two levels of
17 Justice and Mr. Milgaard's counsel and
18 both sides have continued to revisit the
19 feasibility of having DNA typing
03:16 20 conducted on the remaining portion of
21 the stain on the panties which were
22 seized from the Miller murder crime
23 scene."

24 Scroll down. It says:

03:16 25 "An agreement has been reached amongst



1 the levels of Justice and Milgaard's
2 counsel for the DNA analysis to be
3 conducted in an independent laboratory
4 in Cornwall, England. The results of
03:17 5 this scientific examination are expected
6 in mid-July 1997."

7 And so I take it you would have been informed by
8 somebody in early June 1997 that an agreement had
9 been reached to have the garments tested?

03:17 10 A That's correct.

11 Q Do you know what went on from early 1995 to
12 mid-1997 to explain why it took that amount of
13 time to arrange for the garments to be tested for
14 DNA?

03:17 15 A I didn't know at the time and, you know, I was
16 busy working on other matters so this probably,
17 you know, was something that I wasn't actively
18 involved in. I do know, now, a little bit of
19 background. I've learned that there was some
03:17 20 discussion going on about the technique to be
21 used, or something. Other than that, I don't know
22 anything more about it.

23 Q And would it be correct to say, Mr. Sawatsky, that
24 -- or did you view it as your responsibility, from
03:17 25 1995 to 1997, to be carrying the ball in getting



1 the DNA testing done, or was that the Department
2 of Federal Justice lawyers?

3 A That's correct, it was the Department of Justice
4 federal lawyers in my view.

03:18 5 Q And then you say here:

6 "Current Status:

7 Police investigators have
8 never maintained that the stain in Gail
9 Miller's panties came from the killer."

03:18 10 And can you just, I mean I can go through all of
11 this, I'm just wondering if you can elaborate on
12 that point?

13 A Yeah. I think that there was -- there -- we,
14 throughout our investigation there was always some
03:18 15 uncertainty that there was other possibilities for
16 the stain being in the panties than that they came
17 from the killer. Certainly, you know, one would
18 have a reasonably strong belief that there is a
19 strong possibility the stain did come from the
03:18 20 killer, but I think we wanted to be alive to other
21 possibilities.

22 Q Okay. And then you go down and explain the four
23 possibilities:

24 "1. Gail Miller engaged in consensual sexual
03:18 25 relations with an unknown person prior



1 to the murder and the stain originated
2 from that person.

3 2. The origin of the stain is a bodily
4 secretion from the victim herself.

03:19 5 3. The stain is from the person responsible
6 for the murder (David Milgaard)

7 4. The stain is from an outside source."

8 And would that be -- I'm just wondering; did you
9 consider the possibility that it would be from a
03:19 10 perpetrator other than David Milgaard?

11 A And I think number 4 says:

12 "The stain is from an outside source."

13 Q Okay.

14 A I think that would be that consideration.

03:19 15 Q And then you say:

16 "The examination of this exhibit could
17 result in three findings:

18 1. Inconclusive results due to
19 contamination ...",

03:19 20 and:

21 "This result would end the issue for
22 both sides in this matter."

23 Who are 'both sides' there?

24 A Both for the Milgaard side and for the Fisher
03:19 25 side, because we were left with it was one of the



1 two.

2 Q Okay. And then:

3 "2. DNA typing reveals that David Milgaard
4 is the donor.

03:19 5 This would link David Milgaard
6 conclusively to the murder of Gail
7 Miller. However, when I interviewed
8 Mr. Wolch he told me he is prepared to
9 argue exhibit contamination and
03:20 10 tampering if the results show David
11 Milgaard is the donor of the stain on
12 the panties."

13 And is that something that Mr. Wolch told you?

14 A Yes, it is.

03:20 15 Q And:

16 "3. DNA typing determines the DNA present is
17 not from David Milgaard."

18 And you say:

19 "I would expect a strong statement of
03:20 20 Milgaard's innocence from the interested
21 parties. However, it is important to
22 keep this matter in perspective. Police
23 investigators have never claimed the
24 stain in the victim's panties is from
03:20 25 the killer; a negative DNA analysis does



1 not prove that Milgaard is innocent."

2 Can you just elaborate on that?

3 A Yeah, and what I think I was trying to suggest
4 there is during the investigation there were any
03:20 5 number of theories advanced and of course, you
6 know, because we didn't -- we weren't intimate
7 with what happened that day as far as the victim
8 was concerned there was theories advanced that it
9 could have been someone else, there could have
03:20 10 been two people involved, the stain may have been
11 contaminated, may have come from somewhere else.
12 So I think I was trying to suggest that that's not
13 necessarily an exoneration, but it could be, sort
14 of thing.

03:21 15 Q So if the DNA had matched Dennis Elliott, would
16 that have exonerated David Milgaard --

17 A No, it would --

18 Q -- in your view?

19 A No, it would not have.

03:21 20 Q If we could then go to 036212. Sorry, no, if we
21 can skip ahead, 068588, please. And this is a
22 July 3rd, 1987 fax, I think is this from you, can
23 you tell, sending a copy of the draft warrant?

24 A No, it's from A division, which is Ottawa, so it
03:22 25 would be from an investigator in Ottawa to me.



1 Q And I'll go through some of these documents but I
2 think, in early July 1997, did the Federal Justice
3 lawyers go to the RCMP and ask the RCMP to swear
4 an information for an warrant to seize, I think it
03:22 5 was Larry Fisher's blood that was being held by
6 them in Ottawa?

7 A Yeah, I think there were a number of exhibits from
8 Mr. Fisher being held. But yes, the warrant was
9 to seize material that the RCMP lab had, DNA
03:22 10 material the RCMP lab had on Larry Fisher.

11 Q And then, if we can go to 061913, and can you
12 tell -- did you get any, can you tell us how you
13 became aware that Federal Justice lawyers were
14 seeking to have you swear an information for a
03:22 15 warrant related to this DNA testing?

16 A I'm not sure if I was alerted through a phone call
17 or whether it was the preceding piece of
18 correspondence that indicated that when they sent
19 out the material they wished to have me swear.

03:23 20 Q And were you involved in the details and the
21 negotiations and the planning as to what was to
22 happen with the DNA around this time?

23 A No, I was not, I was not involved at all in --
24 up -- from the point we talked about a few minutes
03:23 25 ago up until this point.



1 Q So it looks like, in early '95, you had
2 discussions with Mr. Fainstein about what he was
3 doing; I think in '96 he asked you to go get
4 Dennis Elliott's blood, which you had people do;
03:23 5 and then in '97, in July, you got a call or some
6 information from them asking you to swear an
7 information, is that right?

8 A That's right.

9 Q And I'll go through this with you, but what was
03:23 10 your initial reaction, were you -- to the request?

11 A This was a -- this particular piece of
12 correspondence?

13 Q No, just the request from them to swear the
14 information, and I will go through --

03:23 15 A Well, I guess I was a little bit surprised, and
16 for a number of reasons. I didn't believe that I
17 was the right person to swear that information.

18 Q And why was that?

19 A Well I guess it's something that we'll get into in
03:24 20 more detail as the correspondence, but it meant,
21 in my view, opening another investigation into the
22 guilt or innocence of Mr. Fisher, and I didn't
23 believe that it was our responsibility to do that.
24 I also believed that, before any work was done to
03:24 25 determine if Fisher was the donor, that Milgaard



1 needed to be eliminated. And I suppose there's
2 probably a couple of other reasons that I'll
3 certainly get to as we progress through this
4 material.

03:24 5 **Q** Sure. Just on the first point, did you know why
6 Federal Justice was coming to you to get the
7 warrant signed as opposed to doing it themselves,
8 or to get the information sworn?

9 **A** I wasn't sure why they were coming to me but it
03:24 10 sort of seemed to me -- and, you know, I know that
11 there are differing views on this -- but it sort
12 of seemed like a little bit of a fishing trip or a
13 shortcut, and I think I maintained throughout that
14 you take it a step at a time, you eliminate one
03:25 15 and then you move on to see if you've got
16 information or grounds to go on to the next one,
17 not just throw everybody into the mix and, if one
18 doesn't work out, then go to the next one.

19 **Q** And so do I understand your view, at least from
03:25 20 the documents, to be that your view should be
21 first to test David Milgaard, and if he was
22 eliminated as the donor of the semen, then you
23 could look at Larry Fisher?

24 **A** Yes.

03:25 25 **Q** Or then there might be a basis?



1 A Yes, and Dennis Elliott would probably be in the
2 mix there somewhere as well, because if the stain
3 was not Milgaard's then they would certainly want
4 to eliminate Dennis Elliott.

03:25 5 Q Was he a suspect, though, Dennis Elliott?

6 A He was not, no, but his, as you recall, his DNA
7 had been provided so that he could be looked at as
8 well.

9 Q And I think, in this Email, you respond here that
03:25 10 those -- you talk about your investigation, and
11 however:

12 "Those issues surrounding the manner in
13 which the Police and Sask Justice
14 handled the original investigation and
03:26 15 trial, not the guilt or innocence of
16 Milgaard. However, because the two
17 issues are closely intertwined we were
18 able to determine certain facts about
19 Milgaard and Fisher. Bottom line, no
03:26 20 indication of any wrongdoing by
21 Saskatoon Police or Sask Justice as well
22 as a solid belief that Milgaard is
23 responsible for the murder and Fisher is
24 not. Saskatoon Police are the
03:26 25 department with Jurisdiction and should



1 be the ones to determine if any further
2 investigation is necessary. This
3 morning I spoke with Chief Scott and he
4 agrees with that position. I spoke with
03:26 5 Mr. Fainstain yesterday and he views
6 this as an extension of the Sec 690
7 (clemency) process. I view it as a step
8 into a new investigation, which is
9 clearly the call of Saskatoon ..."

03:26 10 police department. And would that be an accurate
11 summary of at least part of your views at the
12 time?

13 A Yes.

14 Q And am I correct here at this time, in July of
03:27 15 1997, your view is that, number one, you did an
16 investigation into criminal wrongdoing, and in the
17 course of that you gathered certain facts about
18 guilt or innocence and conclude, I think as you
19 say, that Milgaard:

03:27 20 "... a solid belief ... Milgaard is
21 responsible ... and Fisher is not.";
22 correct?

23 A Correct.

24 Q Number two, you are saying "testing DNA to
03:27 25 determine who killed Gail Miller is a matter



1 that's the jurisdiction of the Saskatoon police,
2 part of the administration of criminal justice";
3 is that fair?

4 A That's fair.

03:27 5 Q And that "if you want to get information, to
6 gather information to determine who killed Gail
7 Miller, the Saskatoon police are the police --
8 people who should be involved in the steps to
9 gather that information"?

03:27 10 A That's correct.

11 Q And Mr. Fainstein got back to you and said he
12 viewed this as a continuation of the Section 690
13 process, and you disagreed with him on that; is
14 that fair?

03:27 15 A That's fair.

16 Q And you say:

17 "2. If not, is Sask PD actively
18 investigating?"

19 You say:

03:28 20 "This is Saskatoon ..."

21 police department's:

22 "... call and as I mentioned there are
23 no grounds to believe Larry Fisher is
24 responsible. In fact, the original 1969
03:28 25 investigation surfaced many persons who



1 could be suspects, Fisher not being
2 among them."

3 And can you elaborate on that?

4 A I think, at the very outset of the investigation,
03:28 5 there were a number of possibilities that were
6 explored before the police sort of settled on Mr.
7 Milgaard as being responsible.

8 Q And then you go on to say:

9 "What is the role of the Sask. DOJ in
03:28 10 this matter? Should they not be
11 involved/consulted? Does Fainstain know
12 something that we or Sask. ..."
13 police department:

14 "... should know and if so, why does he
03:28 15 not turn over the evidence to those
16 responsible for the investigation?"

17 And, again, can you elaborate on that?

18 A Yes. I think the question being asked of me
19 there -- and I should just put this into context.

20 This is an Email from
21 Inspector Ghyslaine Clement, who was one of the
22 readers in our criminal investigation area in
23 Ottawa, and obviously she's trying to gather some
24 information for senior management of the RCMP to
03:29 25 respond to any questions that may come their way.



1 So these questions would be designed to try and
2 get some background, so my answers here were to
3 try and assist them in understanding what was
4 going on.

03:29 5 So I think her question is a
6 legitimate one in wondering what, because the
7 administration of justice usually falls to the
8 Attorney General in the province, I think she was
9 simply saying "what is the role of Saskatchewan,
03:29 10 the Department of Justice in Saskatchewan on this
11 matter", and then I responded to her.

12 Q And again, just so that we're clear, the numbered
13 paragraphs in the Email would be her questions to
14 you and what follows are your answers?

03:29 15 A That's correct. What I did was simply brought up
16 her Email and then typed in my answers underneath
17 her questions.

18 Q And so is the question she is asking you "why are
19 the Federal Justice lawyers doing it and not
03:29 20 Saskatchewan Justice and the Saskatoon City
21 Police?"

22 A Yeah, I think what she is doing is trying to
23 confirm what is the involvement of the Attorney
24 General and Saskatchewan -- and Saskatoon Police
03:30 25 Service in this matter.



1 Q And was that a concern that you had, as to why
2 they weren't doing it instead of Federal Justice
3 lawyers?

4 A Well it's certainly something that I wondered
03:30 5 about because, you know, I think furthering an
6 investigation and looking into another criminal
7 prosecution does, constitutionally, fall to the
8 Attorney General.

9 Q I see it's 3:30, Mr. Commissioner. I can indicate
03:30 10 for Mr. Sawatsky and the others I've got a, about
11 four or five documents left just on this DNA
12 issue, and then some questions for Mr. Sawatsky on
13 Police Commission matters. I hesitate to guess
14 how long it would be Monday, 'not long', how's
03:30 15 that. I understand -- pardon me, Tuesday. I
16 understand we are back here Tuesday at 1:00, so
17 certainly, no later than 2:00 counsel should be in
18 a position to examine Mr. Sawatsky on Tuesday.

19 COMMISSIONER MacCALLUM: Okay. Thanks.

03:31 20 (Adjourned at 3:31 p.m.)
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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR, CRR,
CBC, Official Queen's Bench Court Reporters for the
Province of Saskatchewan, hereby certify that the
foregoing pages contain a true and correct transcription
of our shorthand notes taken herein to the best of our
knowledge, skill, and ability.

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Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR, CRR, CBC

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Official Queen's Bench Court Reporter



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