

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

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Transcript of Proceedings

and

Testimony before the Commission  
sitting at the  
Radisson Hotel at  
Saskatoon, Saskatchewan

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On Wednesday, November 9th, 2005

Volume 93

Inquiry Proceedings



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1 Transcript of Proceedings

2 (Reconvened at 9:00 a.m.)

3 COMMISSIONER MacCALLUM: Good morning.

4 THOMAS DAVID ROBERTS CALDWELL, continued:

5 BY MS. KNOX:

6 Q Good morning, sir. Thank you, sir. Mr. Caldwell,  
7 if I can continue from where I was when we left  
8 off yesterday, but just having had the benefit of  
9 more time to make more mischief, just take you to,  
10 or go back to the story that I referred you to  
11 where it was suggested in 1989 in a newspaper  
12 report that you read that Albert Cadrain had been  
13 induced to give evidence by that \$2,000 reward  
14 that was offered by the Police Commission?

15 A Uh-huh.

16 Q You remember us talking about that yesterday. If  
17 we could bring up document number 006905, please.  
18 Mr. Caldwell, this is one of your to-do lists that  
19 we found in your file --

20 A Very good.

21 Q -- and it has a number of pages, this is the first  
22 page, and if I could go back to -- sorry, yes, go  
23 to 906, the second page of that to-do list. Thank  
24 you. Do you see number 14 of that list of things  
25 that you had for yourself to do as you prepared



1 for trial?

2 A I do.

3 Q And what you did in fact do was you made a list to  
4 yourself to check and see when the reward was  
5 offered and whether anybody had claimed it and I  
6 would presume that you were doing that because of  
7 the very concern that there might be some  
8 financial motivation by some witness to give  
9 evidence that might be slanted or in some manner  
10 not objective because of the financial  
11 possibilities that could come from the reward?

12 A That would be my assumption, "Reward offered when?  
13 Claimed?" to run that down and, you know, find out  
14 if that had indeed happened.

15 Q And in respect of that, if we could page down, and  
16 I gather from my discussions with you and your  
17 evidence that you don't particularly recall having  
18 any discussions with Mr. Tallis about it at this  
19 point in time?

20 A The reward?

21 Q Yes, and whether anybody might have claimed it as  
22 he, like you, was preparing for these witnesses  
23 who were coming forward?

24 A I don't believe I had any discussion with him  
25 along those lines.



1 Q I'm going to direct you to point number 2 in your  
2 list of to-do things that appears to be being done  
3 in January, because the page previous to this one  
4 in your file references Melnyk and Lapchuk and you  
5 have a reference there, "Cal - reward" and you  
6 have a phone number, 374-5219. I don't know if  
7 you remember, and others will be able to tell us  
8 whether in fact that's Mr. Tallis' phone number,  
9 but does this in fact refresh your memory and does  
10 it suggest to you that like you, he may have  
11 queried and you proffered information to him that  
12 none of the witnesses coming forward had applied  
13 for a reward and therefore that factor, he could,  
14 I guess, put his mind at rest on in terms of the  
15 bona fides at least of the reasons for coming  
16 forward?

17 A Yes. That Cal, I assume that's his home phone  
18 number. The first item is reward and then three  
19 Regina witnesses advised, Cal 8:45 Sunday, January  
20 18th, and then nil, meaning nothing, in opening  
21 address re -- I advised him that I wouldn't be  
22 putting in the three, two or three Regina  
23 witnesses in my opening address, the way I read  
24 that to be, on the cautious side I would assume,  
25 and then the same day I heard goes back to the



1           advised Cal. In other words, I told him the same  
2           day I heard about it.

3           Q       And that day, as I look at it now, being January  
4           18th, which was the night before trial?

5           A       That's right, ma'am.

6           Q       Okay. So the night before trial you had done your  
7           to-do list, at some point in time you had  
8           determined the issue about the reward and whether  
9           through his question or your first offering you  
10          let him know prior to trial that nobody had looked  
11          for or was getting the reward at that point?

12          A       That's how I see it now, ma'am.

13          Q       So, sir, again to take us back to where we were  
14          yesterday when you saw that newspaper story about  
15          Albert Cadrain, would this have been the kind of  
16          memory or the kind of material that you had  
17          somewhere in your memory that caused you to react  
18          to that story and know with a degree of certainty  
19          that it wasn't true that Albert Cadrain had been  
20          induced by the fact of getting a reward when he  
21          gave testimony in the trial?

22          A       I'm sure that struck me immediately, and that of  
23          course was the true situation, what you just  
24          mentioned.

25          Q       And again to go back where I started with this in



1 response to questions put to you by counsel for,  
2 on behalf of Mr. Milgaard and Mrs. Milgaard, would  
3 this kind of misinformation that was being put in  
4 the public record, as you knew it to be, influence  
5 whether or not, or how you perceived the  
6 allegation or the suggestion being put forward of  
7 David Milgaard's innocence and perhaps your  
8 determination, as it were, I think Mr. Lockyer  
9 suggested that you didn't sort of jump on board  
10 and say, 'oh my God, there's good reason to think  
11 that an innocent man has been wrongfully convicted  
12 here at that stage'?

13 A No, I didn't think that, and I had a good regard  
14 for Albert Cadrain as I'm sure I've made clear. I  
15 didn't, you know, believe for one minute what was  
16 alleged in the story and of course I felt it was  
17 terribly mischievous to put that kind of thing out  
18 because it's so difficult to pursue and remedy  
19 later on. I don't know if that's what you are  
20 getting at, but that's certainly how it seemed to  
21 me.

22 Q Okay. And, sir, I made note in passing last  
23 night, and I'm not going to take the time to go  
24 back and find my page, I should have been more  
25 efficient, and I'm sure it was a misstatement, but



1 in a question to you last Friday when Mr. Wolch  
2 was asking you about Albert Cadrain, he made a  
3 statement in his question that he thought that by  
4 this time, referring to the time he gave evidence  
5 at trial as I read the transcript, that Albert  
6 Cadrain was in a mental home was the word he used.  
7 It's correct, is it not, that there was no --

8 COMMISSIONER MacCALLUM: I don't think he  
9 said that. We can find it for you if you like.

10 MS. KNOX: Mr. Commissioner, if I can just  
11 have a minute.

12 COMMISSIONER MacCALLUM: Uh-huh. He said  
13 he was mentally ill at one point, but I think  
14 that related to a later time period.

15 MS. KNOX: Mr. Commissioner, if I could go  
16 to the transcript, page 18272, the question  
17 reads:

18 "Q But it's coming from a man, Cadrain,  
19 who, as time goes on, is becoming more  
20 and more incredible. In fact, by this  
21 time I think he's in a mental home."

22 COMMISSIONER MacCALLUM: Yes, but what was  
23 the context of that?

24 MS. KNOX: It was in terms of assessing the  
25 witnesses that he had available. If we go back a



1 bit in terms of assessing Albert Cadrain, he  
2 indicated the suggestion, preceding the question,  
3 that as time went on, Albert Cadrain's story was  
4 getting more incredible, and I took that to refer  
5 to talking that by August 26th he was talking  
6 about sex in the bathtubs in Regina and so forth.  
7 And the question that precedes it, perhaps we've  
8 gone a bit, but in any event he's talking about  
9 the fact that -- and I may be wrong, I noted this  
10 last night and I didn't read the entire passage,  
11 and it -- but certainly the suggestion was made  
12 that, at a point in time, that he was in a mental  
13 home. I took it to be, as I started with  
14 prefacing my question just perhaps in phrasing  
15 his question it wasn't stated quite clearly, and  
16 I was wanting to clarify for the record that at  
17 the time of trial, to this witness' knowledge,  
18 there was no suggestion of that, and in fact the  
19 early indications would appear that it was about  
20 1972 that he went into the Royal University  
21 Hospital.

22 COMMISSIONER MacCALLUM: Well, those facts  
23 are right, but I don't know if Mr. Wolch's  
24 suggestion is --

25 MR. WOLCH: No. I think, Mr. Commissioner,



1           what I was saying -- and I'm going by memory, I  
2           haven't rechecked this -- was that by the time  
3           the letters were written to the parole board, --

4           MS. KNOX:   Okay.

5           MR. WOLCH:   -- referring to the bathtub  
6           incident, that he was in the mental home.

7           MS. KNOX:   Okay.

8           COMMISSIONER MacCALLUM:   Thank you.

9           BY MS. KNOX:

10          Q           Okay.  And perhaps with that clarification, sir,  
11                      in 1972 when you wrote that first letter, had you  
12                      received any information from anyone, post-trial  
13                      and up to June of 1972, to suggest that Albert  
14                      Cadrain had begun to experience some mental health  
15                      problems?

16          A           No, that had never come to my attention, neither  
17                      plus nor minus.  In other words I hadn't heard  
18                      another word about Albert, in my memory, after the  
19                      trial, Ms. Knox.

20          Q           So after 1972, if that was the case -- and  
21                      certainly at some point it was, although Mr. Wolch  
22                      referenced it in the way he just inscribed it with  
23                      that intention -- in fact that wasn't information  
24                      that was in your store of knowledge?

25          A           It absolutely was not.



1 Q And in 1974, when you wrote the second letter, I  
2 take it from your answer you didn't know that?

3 A No. I essentially didn't hear anything more from  
4 or about Albert for a lengthy period after the  
5 trial.

6 Q And so in 1977, when the parole board contacted  
7 you again and you told them to refer to your 1972  
8 letter, this wouldn't be information that you had?

9 A No, no, I would not have.

10 Q And in 1989, when you read the article in the  
11 newspaper, I take it this wasn't information that  
12 you had, this is information that's come to you as  
13 a result of the years between the investigation  
14 re-opening with the 690 review in 1990 and this  
15 Inquiry?

16 A Yeah, that's right, Ms. Knox.

17 Q Okay. Sir, and I, again I'm just going to  
18 highlight some of the pieces of information that  
19 was -- that were coming to you, some because I  
20 found them in a file that you kept so we know they  
21 were in your possession, but I next want to bring  
22 up a document 004752. This is a document that's  
23 previously been referred to in the examination of  
24 Ron Wilson, among others, but is the story in the  
25 *Winnipeg Free Press* July 17th, 1990, and in that



1 story -- and I believe Mr. Hodson may have  
2 referred you to this in his direct examination for  
3 you -- but in this story two counsel, one in  
4 British Columbia, Mr. Watson who was counsel for  
5 Mr. Wilson, and Mr. Asper in Regina on behalf of  
6 the Milgaard efforts, basically went into a  
7 national press release, in effect indicating that  
8 they had good evidence that you had misconducted  
9 yourself in 1990. And you've reviewed this  
10 article and you know they said that they had  
11 looked at the transcripts of the trial and that  
12 you had not given to Mr. Tallis that first  
13 exculpatory statement of Ron Wilson on March 3rd,  
14 1969?

15 A That, that's correct. It appears that Mr.,  
16 Mr. Asper, as one would expect, was in Winnipeg in  
17 the article, but other than that that's -- I agree  
18 with you completely.

19 COMMISSIONER MacCALLUM: Just a moment. I  
20 think probably you just misspoke yourself, but  
21 "you had misconducted yourself in 1990", you  
22 said?

23 MS. KNOX: In 1969.

24 COMMISSIONER MacCALLUM: In 1969, you're  
25 referring to the article in 1990? Thank you.



1 BY MS. KNOX:

2 Q In 1990 it's alleged that in 1969 you acted  
3 unethically and contributed, it clearly says  
4 contributed to a wrongful conviction, because if  
5 Mr. Tallis had had that and he'd been able to use  
6 it he could have blown Ron Wilson out of the  
7 water.

8 COMMISSIONER MacCALLUM: Just refer to the  
9 exact reference in the article, if you would,  
10 ma'am.

11 BY MS. KNOX:

12 Q Okay. And I'll bring you to the first part of the  
13 article, Mr. Caldwell:

14 "A statement given by a star witness in  
15 the ... *Milgaard* case that could have  
16 discredited his entire testimony appears  
17 to have been withheld from defence  
18 counsel during the 1969 trial, two  
19 lawyers close to the case have charged."

20 A I see that.

21 Q And you see it goes on to refer to that March 3rd,  
22 '69 statement where he denied any knowledge?

23 A I see that now.

24 Q And then I'll skip down to the next part:

25 "Wilson's first statement stands in



1 stark contrast with another dated May  
2 23rd, in which he gave ... police  
3 officers several important pieces of  
4 testimony."

5 And I'll skip, however, the last part and go to  
6 the top. There is reference to the statement  
7 given to Paul Henderson in June 1990 where Ron  
8 Wilson claimed he was pressured by the police  
9 into testifying against Milgaard and in his --  
10 and in fact what he told Mr. Henderson, he was  
11 pressured into giving these statements; do you  
12 recall that evidence?

13 A I -- I do.

14 Q Okay. Now all the significant part, here, starts  
15 right here:

16 "The revelation of the first statement  
17 has created serious concerns about  
18 whether Cal Tallis, Milgaard's lawyer in  
19 1969 and now a Saskatchewan Court of  
20 Appeal justice, was ever told of its  
21 existence."

22 It notes that Mr. Tallis, understandably, will  
23 not discuss the case, and then goes on:

24 "David Asper, Milgaard's Winnipeg  
25 lawyer, noted Tallis made no reference



1 to the first statement in questioning  
2 Wilson at either the preliminary hearing  
3 or trial."

4 A I see that.

5 Q And he is quoted as saying directly:

6 "It is painfully obvious from the  
7 transcripts that Tallis did not direct  
8 Wilson to the original statement,' Asper  
9 said. 'It strikes me that it would be  
10 serious misconduct for the Crown not to  
11 provide that information to the  
12 defence.'"

13 Then he continues:

14 "It suggests to me that Tallis may  
15 never have known about it.'"

16 A I see all that. I -- of course it's clear that  
17 he, Mr. Tallis, did get the so-called first  
18 statement and if I'm correct, Ms. Knox, actually  
19 cross-examined on it as I recall?

20 Q Yes, and I'm going to direct you, for the record,  
21 to a document 007042, that being your letter to  
22 Mr. Tallis dated August 15th, 1969, and we have  
23 seen this a number of times. Your items number 2  
24 and 3 clearly sent to him, in advance of the  
25 preliminary inquiry, the March 3rd statement of



1 Ron Wilson together with his March (sic) 23rd and  
2 March (sic) 24th; --

3 A Yeah, I see that.

4 Q -- do you see that?

5 A Yes, I do, and that all happened of course.

6 Q And, sir, you've indicated that it's your memory  
7 that at the, at the trial it was -- certainly he  
8 was cross-examined on it, and again, if you  
9 recall, the witness, the cross-examination of Ron  
10 Wilson by myself, that was established. More  
11 importantly, however, I want to bring up document  
12 071707. And, sir, I'm not sure that you have seen  
13 this, but in looking to find, again, the passages  
14 of the transcript of the trial where Ron Wilson  
15 testified I located this document.

16 Mr. Commissioner, I don't know  
17 the authorship of this document, it is in  
18 CaseVault, it comprises a number of pages, but  
19 it -- basically what it is, it's a review of the  
20 trial transcript of Ron Wilson. The trial  
21 transcript itself is document ID 005172 with  
22 respect to Mr. Wilson's transcript, and it  
23 comprises page 179 to 365, chronologically, of the  
24 transcript of evidence at trial and it's on the  
25 basis of that numbering that this chronology



1 appears to be prepared.

2 And I'll skip the first parts  
3 and go to 071710, sir, and there is a reference to  
4 page 292 of the transcript, and I use it for this  
5 reason, because it's the shorthand way to  
6 establish on the record. In this chronology it's  
7 noted that at page 292 Mr. Wilson is questioned,  
8 and this was by, in fact, Mr. Tallis in  
9 cross-examination, he was -- that he gave a March  
10 3rd, '69 statement to Inspector Riddell and that  
11 he made no suggestion that -- or Riddell had made  
12 no suggestion to him that he, being Wilson, was a  
13 suspect in the Gail Miller murder; do you see  
14 that?

15 A I do.

16 Q So, clearly, the existence of that March 3rd, '69  
17 statement was not only known to Mr. Tallis, as  
18 established in your correspondence, but clearly  
19 apparent to anybody who read the transcript at  
20 trial?

21 A Yes, and he evidently acted on it the way I see  
22 this, Ms. Knox.

23 Q Okay. And if we could go down to an entry beyond  
24 that in terms of what he canvassed in front of the  
25 jury, this summary suggests that it was put to him



1 in his questioning by Mr. Tallis that when he was  
2 talking to Mr. Riddell, being the March 3rd, 1969  
3 reference just two blocks earlier or two points  
4 earlier, he told him, being Wilson, no one in the  
5 car had anything to do with the terrible thing  
6 that happened in Saskatoon, not him or the  
7 accused. So, again, you see that during the  
8 course of the cross-examination on page 295 this  
9 issue was clearly canvassed?

10 A I see that, ma'am.

11 Q And if we could go to the next page please, 711,  
12 slightly off topic of the statement of March 3rd,  
13 but setting out that in fact not only was he  
14 cross-examined about his first March 3rd  
15 statement, that he was cross-examined about an  
16 interview that he did with Detective Karst at page  
17 298 of the transcript, and which was shortly  
18 before May 9th, and again he confirmed to the  
19 police that there was no involvement by him or the  
20 accused in the murder?

21 A I see that as well.

22 Q Okay. So, Mr. Caldwell, you had knowledge, as the  
23 records indicate, that the possession of the  
24 transcript of this Inquiry was certainly in the  
25 hands of Mr. Asper and others, including



1 Mr. Watson, at the time this serious, very serious  
2 allegation was made against you, more  
3 specifically, and to some lesser degree against  
4 Mr. Tallis; didn't you?

5 A Yes, I did, ma'am.

6 Q Now sir, continue on, if we could go back to the  
7 article 004752. Referring to Mr. Watson, and  
8 there's evidence before the Inquiry through  
9 records that I won't bother to bring up, but  
10 a chronology of correspondence between  
11 representatives of the Federal Department of  
12 Justice to Mr. Watson in preparation for an  
13 interview of Mr. Wilson by Eugene Williams where  
14 they send material to him, including transcripts  
15 and statements?

16 A I see that in this.

17 Q And while Mr. Watson hasn't given testimony I  
18 assume, and I presume you assume, that the  
19 transcripts sent to him were of Ron Wilson's  
20 evidence, certainly at trial, and maybe  
21 preliminary inquiry?

22 A Yes, that's the only way that paragraph would make  
23 sense, because he acted for Wilson, as I recall,  
24 at some point.

25 Q Yeah. And in fact Mr. Watson says that he is



1 clearly making this statement to the press after  
2 he has got the package because he said he was  
3 shocked when he opened the package containing,  
4 among other things, the two conflicting  
5 statements; do you see that?

6 A Yes I do.

7 Q And if we could go to the next column, please.  
8 And then to bolster, if I may use that term, what  
9 Mr. Asper is saying about you, Mr. Watson took off  
10 the mantle and said not only does the first  
11 statement lend credibility to his client's recent  
12 recantation, it suggests a serious omission in  
13 information given to Mr. Tallis.

14 "I can see no reason (for the statement  
15 to be withheld),' Watson said. 'Any  
16 lawyer would have questioned it and it  
17 could have been quickly exposed in a  
18 court.'"

19 A I see all that, and it clearly is about that same  
20 sequence of events or non-events, depending how  
21 you look at it I guess.

22 Q So what we have here on July 9th, 1990 in the  
23 *Winnipeg Free Press*, to be picked up by press  
24 throughout Canada, is this accusation of  
25 misconduct against you by people who indicate they



1           have the records, they have read the statements,  
2           they have read the transcripts -- or Mr. Watson  
3           doesn't come right out and say that but certainly  
4           Mr. Asper is on record in a number of places  
5           saying he has read the transcripts -- and are  
6           making this allegation against you?

7           A           I see that as well, Ms. Knox.

8                       MR. WOLCH:   Mr. Commissioner, just for  
9                       clarification and in fairness to Mr. Asper,  
10                      whether Mr. Asper read the preliminary hearing  
11                      transcript or the trial transcript is something  
12                      we'll canvass later, but I have heard no mention  
13                      of any cross-examination at the preliminary  
14                      hearing on those statements and I wonder if My  
15                      Friend can set the record straight if there was  
16                      or was not?

17                     MS. KNOX:   Mr. Commissioner, I frankly  
18                     don't remember. I cross-examined Ron Wilson on  
19                     it extensively in his evidence here, I have a  
20                     specific memory of the testimony at trial, and  
21                     last night my computer froze on me, I couldn't  
22                     pull up the preliminary transcript or the  
23                     transcript of the evidence given by Ron Wilson,  
24                     certainly it's on the record, it's in J folder  
25                     before this Commission which is the folder in



1 CaseVault containing the Ron Wilson testimony.

2 MR. WOLCH: But I think, in fairness to  
3 Mr. Asper, it may very well be he read the  
4 preliminary hearing transcript and --

5 COMMISSIONER MacCALLUM: I think we're  
6 going to hear from him in any event.

7 MR. WOLCH: No, but if there was no  
8 questioning at the preliminary, that's something  
9 that will have to be canvassed at this Inquiry.

10 COMMISSIONER MacCALLUM: Oh yes.

11 MS. KNOX: Mr. Commissioner, I note, I  
12 appreciate the concern for Mr. Asper raised, but  
13 in light of the language used in this article I  
14 don't know the significance of whether it was  
15 raised at the preliminary inquiry, they concluded  
16 after a brief review of transcript that it  
17 wasn't?

18 MR. HODSON: If you go to the second  
19 column, the reference that Asper makes is to the  
20 trial, if you go down in the middle column about  
21 the sixth paragraph. Right there. No, up one,  
22 up two lines.

23 MS. KNOX: Yes, he does make specific  
24 reference in the article, it's inconceivable  
25 that, if he had known it, he would have ignored



1           it at the trial.

2           MR. HODSON: I will review right now the  
3           prelim, I don't know the answer whether he did or  
4           didn't, do you know if he did?

5           MR. WOLCH: No, I don't.

6           MR. HODSON: I can review the prelim  
7           transcript right now and we can clarify it on the  
8           record, but maybe you can --

9           COMMISSIONER MacCALLUM: All right, thanks.

10          BY MS. KNOX:

11          Q           Yeah. But that being said -- and I thank you, Mr.  
12           Hodson, for the assistance -- clearly Mr. Asper,  
13           in the national press, is indicating to all to  
14           read and see that he is talking about what  
15           happened at the trial; isn't he?

16          A           Well Ms. Knox, that very top line we're looking  
17           at, perhaps if it could be scrolled down, what I  
18           see is:

19                       "... Tallis made no reference to the  
20                       first statement in questioning Wilson at  
21                       either the preliminary hearing or  
22                       trial."

23           is the way I understood it, but --

24          Q           Thank you, a good point, Mr. Caldwell. Whether he  
25           read the preliminary inquiry transcript or not, he



1 was -- he stepped forward and went on public  
2 record --

3 A Uh-huh.

4 Q -- saying that it wasn't in the transcripts?

5 A In either of those --

6 Q Thank you.

7 A -- things.

8 Q So again, sir, did this kind of information,  
9 coming forth in the public which you were being  
10 called by the media about, examined about, and the  
11 world was talking about, the world as you know it  
12 in your community; did this in any way cause you  
13 to have concern or to formulate your opinion and  
14 the -- take the non-action that you did that Mr.  
15 Lockyer seems to, or seemed to suggest to you was  
16 a bad thing or an inappropriate thing on your  
17 part, that you should have stepped in, because of  
18 the possibility of an innocent man being  
19 convicted, and tried to set the record straight?

20 A No, the -- first of all I knew at that time, Ms.  
21 Knox, that this was not a correct statement of the  
22 facts. I believed I knew what, indeed, had  
23 happened in the -- in a broad sense in those  
24 proceedings.

25 Second, there was no earthly way



1           that I -- pardon me -- that I felt I, as an  
2           individual, could start trying to correct these  
3           false news stories that were going out. It was  
4           just extremely disturbing to me and people who'd  
5           know me, if you will, and I simply -- I just  
6           couldn't envision how I could start trying to  
7           correct it story by story, line by line, and  
8           untruth by untruth. I didn't do a whole lot at  
9           that time.

10        Q        Okay. And sir, without meaning to pry into your  
11        personal life or your personal resources, at that  
12        point in time, for you to attempt to challenge  
13        this, you -- were you able -- in a position where  
14        you had access to counsel without going into a  
15        personal hardship of paying for it yourself?

16        A        Yeah, no, this -- at that point I did not have  
17        counsel, Ms. Knox, on the enterprise in any, in  
18        any fashion.

19        Q        And did you have the resources that would have  
20        allowed you to get drawn into this fray with  
21        counsel to represent you to respond to these wrong  
22        allegations of misconduct being made by members of  
23        the bar in Manitoba and in British Columbia,  
24        indeed?

25        A        No, that would be totally out of the question. I



1 see this -- it simply couldn't happen in my state  
2 at that time.

3 Q Okay. The next document that I want to bring up  
4 is document number 332361. And, sir, this is  
5 another news story found in a file that you kept  
6 in 1990, and the headline reads *Conflict of*  
7 *interest alleged in Milgaard review*, it's a story  
8 reported August 30th, 1990 in the *StarPhoenix*.  
9 And it's an allegation being made that, because  
10 you are providing some information and assistance  
11 to Mr. Williams about the history of this file and  
12 so forth, that you are in a conflict of interest.  
13 And in fact I'll point you directly to a paragraph  
14 where David Asper and Hersh Wolch charged, it  
15 indicates that Mr. Asper and Mr. Wolch charge that  
16 Mr. Williams is in a conflict of interest and they  
17 are talking about filing a formal complaint to the  
18 Minister of Justice, and the statement is made,  
19 'If anybody asks me to illustrate a conflict of  
20 interest I could use the example of Caldwell being  
21 involved in the investigation of his own case,  
22 Asper said. He is clearly biased, how could they  
23 involve him.'

24 And, sir, again having that kind  
25 of allegation made about Mr. -- about Mr. Williams



1 was also making an allegation about you; wasn't  
2 it?

3 A That's correct.

4 Q And, in your community, imputing some wrongdoing  
5 or improper conduct to you --

6 A Yeah.

7 Q -- by virtue of the assistance that you were  
8 offering to Mr. Williams?

9 A That's correct.

10 Q Okay. If I could bring up the next document,  
11 please, 054461. And, sir, this is another  
12 document that was in the, I believe in the public  
13 domain in -- as of August 1991, and if I could  
14 take you to the clear indications is that this is  
15 a document -- if you go to the next page, page  
16 054462 -- that this is a document being prepared  
17 on behalf of Mr. Milgaard, maybe with some  
18 assistance from him as it quotes from him and  
19 makes a reference to putting his photograph in  
20 here, and I want to go to page 054464, please.  
21 And it's headed, it's part of this article, A  
22 Portrait of a Canadian Injustice, and it's the  
23 second question in the article, Unresolved  
24 Questions, and again it reads:

25 "Questions remain that seriously



1                   undermine the credibility of the  
2                   evidence used to convict David ...",  
3           Milgaard:  
4                   "... raise doubts about police  
5                   procedures and investigation practices  
6                   ... and, point out how additional  
7                   victims can be created by the  
8                   ineffectiveness of the ...",  
9           justice:  
10                   "... system ...",  
11           etcetera. It identifies a number of questions  
12           and puts in the number of questions, again number  
13           1:  
14                   "Two (2) knives were found at the scene  
15                   ... one (1) disappeared and was never  
16                   brought to Court."

17           The question is:

18                   "Why?"

19           A           Yeah.

20           Q           And Mr. Caldwell, there's been evidence from Mr.  
21                   -- Mr. Kleiv and Mr. Oliver and others that a  
22                   knife that was found by Mr. Oliver, Constable  
23                   Oliver as he was then, late in February '69, was  
24                   kept -- it was made available to, or knowledge of  
25                   it was made available to Mr. Tallis, the record



1 shows he cross-examined the -- Mr. Kleiv on it  
2 during the preliminary inquiry, it was available  
3 up to the time of trial and presumably, because of  
4 a decision made that it was not needed to be used  
5 for trial, the records show that it was turned  
6 back to Constable Oliver. But was there anything  
7 sinister, or any effort made to have a knife  
8 disappear, or did a knife disappear and not ever  
9 be brought to Court, as this question suggests in  
10 the public forum?

11 A No, that did not happen. And that same knife, I'm  
12 sure the investigation has shown, was later seized  
13 by one or two RCMP members from Constable Oliver  
14 as part of one of the various investigations that  
15 followed years later, Ms. Knox.

16 Q Mr. Caldwell, the record will show which one of us  
17 is right on that, but my memory of Constable  
18 Oliver's evidence, or Mr. Oliver as he now is, was  
19 that his locker -- he was asked to have his locker  
20 searched in an effort by police to find it --

21 A Oh, okay.

22 Q -- but I don't think they did, in fact, find it.

23 A I'm sure, I'm sure you are right, but at least at  
24 that point everyone knew where it was supposed to  
25 be.



1 Q Yes, during project Flicker or project Ferric  
2 somebody went to look for it, but in fact there is  
3 a clear chronology of that knife, descriptions of  
4 it, and Mr. Tallis had ample opportunity to work  
5 with it and he certainly didn't impute anything  
6 sinister about it. And this is something that's  
7 come in recent years, but repeatedly been put in  
8 the public media in various ways --

9 A Yeah.

10 Q -- to confront you or to impute some misconduct to  
11 you and others about that knife, isn't it?

12 A Yes, that's correct, and that's simply flatly  
13 wrong, that paragraph 1.

14 Q You've thought ahead of me, my question was was  
15 any such wrongdoing engaged in.

16 I want to go now to the bottom  
17 of the page, unresolved question number 10:

18 "Two woman (Deborah Hall and Ute Frank)  
19 who could refute the motel testimony of  
20 George Lapchuk and Craig Melnyk were  
21 never brought into Court to testify  
22 under oath; however, David's accusers  
23 were given the opportunity to testify.  
24 Why?"

25 And again, sir, with respect to Ute Frank you



1 had, had you not, disclosed her statement to Mr.  
2 Tallis?

3 A I'm sure I did that.

4 Q Sir, to refresh your memory there is a letter to,  
5 that you sent to him after you had interviewed her  
6 and she'd run out of your office -- or before  
7 you'd interviewed her telling him that you had  
8 gotten the statements that you anticipated from  
9 Detective Karst January 19th, 1969 -- sorry --  
10 1970, and you sent over the statements of Lapchuk,  
11 Melnyk, and Ute Frank to him; do you remember that  
12 letter?

13 A Yeah. The one thing, Ms. Knox, is that Ute Frank  
14 is not the person who ran out of my office, that  
15 of course was Nichol John.

16 Q Right, thank you for correcting me on that, Ute  
17 Frank was the one who indicated she was not going  
18 to testify?

19 A Absolutely. I got prepared for her, I had notes  
20 made, and she simply stopped and I knew that there  
21 was no point in me getting into -- her into Court  
22 in that state. And, of course, she attempted a  
23 come-back later on in part of the Supreme Court  
24 hearing, --

25 Q Right.



1 A -- was then anxious --

2 Q But in terms of what you did, --

3 A -- to testify.

4 Q -- you didn't call her for reasons, --

5 A Yeah.

6 Q -- and I presume that you made those reasons known  
7 to Mr. Tallis given that you had provided the  
8 statement to him that was obtained from her?

9 A I'm sure I did, because there'd be a question,  
10 "why are we not hearing from Ute Frank",  
11 undoubtedly I communicated all that to him.

12 COMMISSIONER MacCALLUM: What's the doc ID  
13 on the disclosure, please.

14 MS. KNOX: On the disclosure letter is  
15 007070 dated January 21st, 1970 to Mr. Tallis,  
16 second paragraph, I had Detective Karst go to  
17 Regina on January 19th to interview the people --  
18 and here it is -- supposedly involved in the  
19 incident, and on January 20th I received three  
20 statements, and I'll just summarize, from the  
21 three people. I now enclose a copy of each of  
22 those statements for your file.

23 COMMISSIONER MacCALLUM: Thanks.

24 BY MS. KNOX:

25 Q And, sir, the notes that you made reference to



1 with respect to your interview, if we could bring  
2 up doc ID 006298, those are the notes contained in  
3 your file from 1970 of your attempt to interview  
4 her and apparently you brought the termination of  
5 the interview for whatever reason?

6 A Yeah. This, Ms. Knox, would be the sort of guide  
7 sheet I intended to use when examining her in  
8 chief and a lot of introductory and background  
9 material, education, this and that, and then  
10 getting down to about three-quarters of the way  
11 down the page she just simply was not going to  
12 continue with the interview and clearly would not,  
13 would not be going to Court and changing that, in  
14 other words, being what I thought was truthful  
15 about her evidence, so I stopped at that juncture.

16 Q And, sir, if we could bring up document ID 277584.  
17 Sir, this is the statement of Ute Frank taken by  
18 Detective Karst January 19th, 1970 which attached  
19 presumably to the letter that you sent to  
20 Mr. Tallis?

21 A Yeah, it would have been.

22 Q And in terms of what information she had given and  
23 the reason why she was brought from Regina, I  
24 direct you -- well, number 1, she confirmed the  
25 party that Melnyk and Lapchuk were talking about



1           that Ron Wilson said they told him it happened in  
2           the motel didn't she?

3           A           That's correct.

4           Q           She confirmed the use of drugs, some of the people  
5           there in the room, including Melnyk, Lapchuk, she  
6           named Gary Silljer, Bob Harris, she indicated they  
7           had left, but Craig Melnyk and George Lapchuk  
8           continued to be there, and the very small  
9           handwriting there is "Debbie Hall was also there"  
10          I think is the --

11          A           That's right.

12          Q           So she basically was confirming what others had  
13          given you with respect to the goings on in the  
14          room; yes?

15          A           That's correct.

16          Q           And in particular, as we scroll down the  
17          statement, she talked about the fact that they  
18          were doing drugs?

19          A           That's correct.

20          Q           That she was having sexual relations in the room  
21          while the others were there with Mr. Milgaard,  
22          Hoppie she referred to him as?

23          A           Yes, that's correct.

24          Q           And she indicated she was quite stoned, wasn't  
25          aware of what was going on around her, she was



1 hallucinating quite a bit, but the important piece  
2 from the point of view of what information you had  
3 available, I recall asking Hoppie if he had killed  
4 that nurse they were talking about, which would  
5 confirm her remembering the news had come on and  
6 it was a subject of discussion in the room at  
7 least, and he just looked at me and smiled, so she  
8 didn't report the conversation in verbatim of what  
9 Melnyk and Lapchuk said, but certainly in January  
10 of 1970 she confirmed that the event had taken  
11 place, and at least the bare bones of it, if I  
12 could use that phrase?

13 A That's right, Ms. Knox.

14 Q Now, sir, if we could go back to question number  
15 10 in document 054464, that number 10 also refers  
16 to Deborah Harris -- Deborah Hall who could refute  
17 the testimony of Craig Melnyk and George Lapchuk  
18 and says she was never brought to Court to  
19 testify. Was it your information, or do you  
20 remember the information being given to you, which  
21 has subsequently been confirmed by Deborah Hall,  
22 that in fact she was not in the province in  
23 January of 1970?

24 A That's correct, and as you say, that has since  
25 been confirmed.



1 Q That in fact what appears to be the case, and I  
2 mean no disrespect to her, she was 16 years old,  
3 she could probably best be described as a run-away  
4 at that time?

5 A That's how I would take it.

6 Q Okay. So in fact in response to that question, if  
7 you had been asked it, the answer would be, as to  
8 why she was never brought into Court to testify  
9 under oath, was that she wasn't around to do it?

10 A That's how I recall the facts at the time.

11 Q Okay. Now, sir, with respect to Deborah Hall,  
12 you've become aware through the passage of time of  
13 how or what Deborah Hall has said about what  
14 happened in the motel room that night, and  
15 presumably we can extrapolate from that what she  
16 would have said had she been called to give  
17 evidence in 1970. Do you recall that in a 1981  
18 interview with Chris O'Brien, which is doc ID  
19 178010, where she's in a room, she's going through  
20 a transcript that he's giving her of trial  
21 testimony of Craig Melnyk and George Lapchuk, that  
22 if I can do a quick shorthand summary of what  
23 she's saying to Mr. O'Brien at that time, she's  
24 saying they are big fat liars, that never  
25 happened, I can't believe they said that, and I



1           won't take you to any part of it, one would have  
2           to read the whole of it because it's interspersing  
3           parts of what they said in their evidence with  
4           what she's saying to Mr. O'Brien, but summarily,  
5           and what she's testified to here, she told Mr.  
6           O'Brien, who was working for Mrs. Milgaard or  
7           working with Mrs. Milgaard, that these young men  
8           had lied in 1970?

9           A           That's correct. We looked at this document  
10           earlier I think in the hearing.

11          Q           And you were familiar with and you were made  
12           aware, as this matter was unfolding, of an  
13           affidavit she gave in the 690 application, or 617  
14           as the code was then, that was filed in the  
15           Supreme Court of Canada, and I refer to doc ID  
16           026356. Are you familiar with this? You've  
17           reviewed it with me?

18          A           I have.

19          Q           And, sir, you are aware that the essence of what  
20           she gave in her affidavit that was filed in  
21           Supreme Court of Canada, and if we could go to  
22           page 026361, it's found at page 5, and it is this  
23           paragraph that I've just drawn the parameters  
24           around, she says I remember seeing news pictures  
25           of the Gail Miller murder on television but



1           couldn't hear what was being said. Everybody in  
2           the room was chattering -- and I'm going to skip  
3           little bits of it, but not lose the essence --  
4           'Craig Melnyk said to David Milgaard, 'You did  
5           that, didn't you?' As Craig was saying this,  
6           David was punching a pillow trying to fluff it up.  
7           I remember him saying, in response to Craig  
8           Melnyk, 'oh yeah right' in a sarcastic or joking  
9           manner. David Milgaard then put the pillow back  
10          against the head-board, leaned back, crossed his  
11          arms against his chest. I believe his response to  
12          the comment made was in a joking manner. At no  
13          time did he use the pillow to reenact the murder.  
14          My interpretation of David Milgaard's response was  
15          that it was completely innocent and perhaps  
16          crudely comical. I know that if I had thought he  
17          was serious I would have left immediately. No one  
18          in the room thought anything of the conversation,'  
19          and then she goes on to say:

20                   "Craig Melnyk and George Lapchuk both  
21                   lied when they stated in their evidence  
22                   that David reenacted the murder by going  
23                   through a series of stabbing motions  
24                   against the pillow."

25          That essentially was what she said in 1986 --



1 A I see that.

2 Q -- in a sworn affidavit?

3 A I see that.

4 Q Now, sir, again in terms of how you were  
5 responding as to the bona fides of the suggestion  
6 that David Milgaard was an innocent man and  
7 whether you should have jumped on the band wagon,  
8 you became aware that Deborah Hall's evidence in  
9 this regard became substantially enhanced in 1989  
10 when she was examined by Eugene Williams as part  
11 of the 690 application didn't you?

12 A Yes, I did.

13 Q And, sir, I refer us to document ID 001285, the  
14 transcript of a November 6, 1989 interview with  
15 Deborah Hall --

16 COMMISSIONER MacCALLUM: Interview by whom?

17 MS. KNOX: Eugene Williams.

18 COMMISSIONER MacCALLUM: All right.

19 BY MS. KNOX:

20 Q If we can go to the next page, 286, perhaps that  
21 will make it clear. Eugene Williams was present,  
22 Deborah Hall and a court reporter in Regina were  
23 the persons present during this interview, for the  
24 record, and, sir, if we could skip to page 001313  
25 in terms of the examination of Ms. Hall as to the



1 information contained in the affidavit filed as  
2 part of the application, and go to question 183,  
3 Mr. Williams directs her to her affidavit material  
4 that David Milgaard was fluffing up a pillow in  
5 what had been described as, by others  
6 untruthfully, as a reenactment of the murder. Do  
7 you see that question?

8 A I do.

9 Q Now, sir, if we could skip to, and I'll have you  
10 look at page 001320, and in the ensuing pages  
11 there is a continuing examination by Mr. Williams  
12 of the content of her affidavit and at question  
13 238, contrary to, or expanding on what's in her  
14 affidavit, as the questioning goes on Miss Hall  
15 says -- Mr. Williams started to question:

16 "Q You, at that time --"

17 And she interceded with:

18 "A I thought he was a bit sick for his  
19 remark, you know, because he said  
20 something - excuse my language but I  
21 remember it as such - "fucking her  
22 brains, oh, yeah, right. I stabbed her  
23 I don't know how many times and then I  
24 fucked her brains out. Right." You  
25 know, something like that in that



1                   respect. It was crude; it was crude and  
2                   it was, you know, sarcastic."

3           And Mr. Williams says:

4                   "Q That is your recollection of what  
5                   Milgaard said?"

6           And she said yes. And then he says:

7                   "Q Notwithstanding what you heard, you  
8                   viewed that as just an innocent example  
9                   of a young man's crudity?"

10          And she said:

11                   "A Yeah, and being silly and stoned."

12          And then:

13                   "Q Now, you're certain today of your recall  
14                   of those words from Milgaard "I fucked  
15                   her and I stabbed her"?"

16          And she says in answer:

17                   "A It was something quite crude like that."

18          A           Yeah, I see all that.

19          Q           And you were made aware of that very different  
20                   information than what was contained in her 1986  
21                   affidavit?

22          A           That's correct.

23          Q           Sir, again, number 1, if a statement had been  
24                   taken from Deborah Hall in 1970 and she had said  
25                   in her statement what she said in the interview



1 with Eugene Williams in 1989 as to what David  
2 Milgaard had said in that room, but the only  
3 variation from Craig Melnyk and George Lapchuk  
4 being that she thought it was a sarcastic response  
5 as -- or a joking response as opposed to their  
6 perception that it was a kind of a scary  
7 response --

8 A Yeah.

9 Q -- would you have looked at and possibly put her  
10 on the stand at the trial?

11 A Yeah, I would. The first ingredient of course is  
12 that we had her available, which we didn't, but if  
13 she was physically in Saskatchewan, in Regina or  
14 in Saskatoon, I would have called her, I would  
15 have notified Mr. Tallis, and the fact that her  
16 statement, as I would have then understood it,  
17 would be slightly different from Melnyk and/or  
18 Lapchuk, would not act to prevent me calling her.  
19 I would feel I would have to call all the, what  
20 appeared to be credible witnesses at that time.

21 Q But, Mr. Caldwell, if you can take your mind back  
22 to 1979 and your role and task as the prosecutor,  
23 what Deborah Hall would have done in 1970 would  
24 have been to corroborate what the two boys said,  
25 Melnyk and Lapchuk, what Ute Frank gave in much



1           less detail, and which Ute Frank had sort of given  
2           a very limited amount of, but clearly she would  
3           have corroborated what -- that the incident had  
4           taken place, that that rather unfortunate language  
5           had been used and, believing as you believed at  
6           the time, David Milgaard had killed Gail Miller,  
7           that would have been of substantial significance  
8           left to the jury to decide if she said then that  
9           she thought it was only a joke, what weight they  
10          would give to it?

11         A           That would be exactly how one would have to handle  
12           it, you would have to call her and get her  
13           evidence out, and of course differences between  
14           these witnesses are things the jury has to sort  
15           out as they do reviewing any one incident, Ms.  
16           Knox, is the way I would describe it.

17         Q           Okay. And, sir, we've talked a lot, and I, like  
18           others, and last week you were questioned by Mr.  
19           Wolch about whether you were concerned enough,  
20           afraid enough or careful enough about Craig Melnyk  
21           and George Lapchuk giving evidence because of  
22           their criminal past and their pending charges, and  
23           he suggested to you that somehow because you  
24           hadn't directed your mind to the possibility they  
25           might be influenced by the hope of reward or



1 favour, that you had done something wrong or put  
2 damaging evidence before the Court, but whatever  
3 those young men might have hoped for in their own  
4 minds, unbeknownst to you in 1970, if we look at  
5 what Ute Frank said and what Deborah Hall has  
6 said, that in fact those boys weren't lying to the  
7 jury when they said the motel reenactment had  
8 occurred?

9 A That's correct.

10 Q They weren't lying when they said that David  
11 Milgaard had engaged in certain motions that they  
12 described as stabbing motions with a pillow, but  
13 they might have had Deborah Hall saying well no,  
14 he really wasn't stabbing the pillow, he was just  
15 fluffing it up?

16 A That's quite right.

17 Q And they would have had the serious versus the  
18 joking, but when all is said and done, despite  
19 everything that has been said about them and the  
20 suggestion that you dropped the ball because they  
21 were rounders who had something to gain, they gave  
22 factually, it appears, if we listen to Deborah  
23 Hall in 1989 and subsequently as she's testified  
24 in Supreme Court of Canada and in these  
25 proceedings, that what those boys said in 1979 is



1           what happened in the hotel room, subject to one's  
2           interpretation of his intent and his physical  
3           actions, be they hand going up and down, or as was  
4           seen in the Fifth Estate, taking the pillow by the  
5           side and pushing it back and forth versus up and  
6           down --

7           A           Yeah.

8           Q           -- the motions that were in issue here?

9           A           That's exactly how I would describe it, Ms. Knox.  
10          With any two, three or four witnesses there are  
11          inevitably differences in detail. Had I had all  
12          four of them, (a), available, and (b), willing to  
13          testify, in the case of Frank, I would have called  
14          them, and then a jury, as with every other factual  
15          issue, would have to decide who they believed and  
16          what they believed.

17          Q           Okay. Sir, if we could go to the next page of  
18          that article, "A Portrait of Canadian Justice" at  
19          054465, number 11 talks about the slash wounds,  
20          evidence that they were inflicted and most likely  
21          caused by a right-handed person, David is  
22          left-handed, why was that fact not explored by the  
23          police and the Crown prosecutor, T.D.R. Caldwell.  
24          Mr. Caldwell, you did in fact, or this issue was  
25          addressed in the trial wasn't it?



1 A It was.

2 Q It was squarely put before the jury that he was  
3 left-handed and there was some possibility that  
4 the wounds were inflicted by a right-handed  
5 person, but it was a matter clearly squarely put  
6 before the jury for them to pass judgment?

7 A That's correct.

8 Q Sir, there's number 14, and I'm not going to take  
9 any time to go there because I still haven't  
10 figured out human semen and dog urine, but you  
11 became aware of information that was put in the  
12 public press that the evidence with respect to  
13 human semen being found in the snow was actually  
14 dog urine as determined by forensic specialists  
15 who we'll hear from, Dr. Ferris and Dr.  
16 Markesteyn?

17 A That's my recollection.

18 Q Okay. Now, at this point in time, in 1969, '70  
19 when you were relying on -- doing the trial, were  
20 you relying on the expertise of your experts, Mr.  
21 Paynter or Mr. Penkala and others?

22 A That's correct, Dr. Emson, Mr. Paynter and any  
23 people in the investigative process who could shed  
24 light on that I would say.

25 Q Okay. And, sir, again in terms of the suggestion



1 by Mr. Lockyer as to whether or not somehow you  
2 failed in that you didn't come forward and try to  
3 find out the truth when it was being put forth  
4 that Mr. Milgaard was innocent in 1990, '91, did  
5 you subsequently come to learn that the opinion  
6 that this was dog urine was revised and likely in  
7 error, and I'm stating that in a shorthand way,  
8 I'm sure we'll hear much more about it --

9 A Okay.

10 Q -- but certainly there was forensic information to  
11 suggest that Mr. Paynter had checked and that this  
12 wasn't dog urine, it was human semen back in  
13 1969-'70?

14 A That's correct, Ms. Knox, and I think in the  
15 fullness of time, if I'm not mistaken, the  
16 gentleman who gave that opinion retracted it based  
17 on having more and better information.

18 Q Okay. But, sir, again in terms of your assessment  
19 or your participation in the campaign on behalf of  
20 Mr. Milgaard, would this have been a factor that  
21 influenced your perception of the bona fides?

22 A No, it would not.

23 Q Sir, the next document that you are familiar with,  
24 and that I'll refresh your memory on, is document  
25 ID 026935. This is a letter sent to Robert



1 Mitchell on April 20th, 1992 by Mr. Wolch, and I  
2 draw your attention to it because, if we can, and  
3 this is basically a letter written after the  
4 Supreme Court of Canada ruling where the Supreme  
5 Court of Canada made the statement that it was  
6 their perception based on the hearing that was the  
7 reference hearing that there had been a fair  
8 trial, that disclosure was proper in accordance  
9 with the standards of the day and so forth, a  
10 decision that you took some comfort from I  
11 believe?

12 A Oh, absolutely.

13 Q Okay. I want to direct you to page 026937. You  
14 earned yourself a specific three paragraphs in  
15 that letter in which it was essentially, if I can  
16 summarize what you are being accused of at this  
17 point in time to the then Minister of Justice,  
18 Mr. Mitchell, is having knowledge about the Larry  
19 Fisher tie to and possible involvement in the  
20 death of Gail Miller in 1971 and being quite  
21 complicit in covering up --

22 A That's the gist of it I take it.

23 Q -- in these first two paragraphs, and then of  
24 course there's the area that has been canvassed  
25 with you at length by him and by me yesterday



1           regarding your letters to the parole board?

2           A           That's right.

3           Q           He made the statement that these letters were  
4                       never shown to David at any time, only recently  
5                       through disclosure that they were able to obtain  
6                       them. You said yesterday that you never intended  
7                       that he wouldn't see them, you certainly didn't --  
8                       I'm trying to think of exactly your evidence, but  
9                       certainly you wouldn't have anticipated that the  
10                      parole board wouldn't share that information with  
11                      him?

12          A           No, I would not, I would have assumed rather that  
13                      those being letters that set out some presumed  
14                      facts and allegations, that they would in fact  
15                      have showed them to him and gone over them with  
16                      him.

17          Q           Particularly Mr. Wolch said to Mr. Mitchell, the  
18                      minister, that in those letters there were  
19                      anecdotes from unnamed social workers, stories  
20                      from a mentally ill Albert Cadrain and references  
21                      to non-existent psychiatric records which were  
22                      clearly prejudicial and irresponsible and, in the  
23                      absence of the ability to respond, extremely  
24                      damaging. Sir, again we canvassed this yesterday,  
25                      but when you wrote those letters you were relying



1 on existing psychiatric records?

2 A That's correct.

3 Q Anecdotes from named social workers I take it?

4 A Yeah. The unnamed social worker, Ms. Knox, could  
5 very well be the document which ended up with the  
6 phrase 'I think some day he will kill someone, but  
7 of course this is just a stab in the dark,' that,  
8 as we know at this point, hasn't resurfaced, but I  
9 read that document.

10 Q And in 1972 when you wrote the letters, you were  
11 aware as a result of a communication from Dr.  
12 McDonald five days earlier, June 5th, 1972, that  
13 those records were in existence?

14 A Oh, yes.

15 Q He invited you to invite the parole board to get  
16 them?

17 A That's correct.

18 Q So you weren't relying on non-existent, when you  
19 wrote your letters you knew the records existed,  
20 although you hadn't looked at them in some time,  
21 you told that to the parole board and you  
22 persisted up to 1977 inviting them to go and get  
23 the records for themselves didn't you?

24 A That's correct.

25 Q And that would have been clear to Mr. Wolch based



1 on the correspondence that they had from the  
2 National Parole Board?

3 A I would assume it would have to be clear. The  
4 mentally ill Albert Cadrain, to the extent that  
5 there's something to support that, of course, was  
6 a situation that prevailed substantially after the  
7 end of the trial and prelim when he gave his  
8 evidence.

9 Q Okay. But certainly not in 1972 when you wrote  
10 the letter to the parole board, 1974 and 1977,  
11 information that was within your purview?

12 A No, no, quite so.

13 Q Okay.

14 A And I think I mentioned that I essentially heard  
15 nothing either from or of Albert post trial, if  
16 you will.

17 Q But to take you back to the fact of the writing of  
18 this letter in 1992 to the Minister of Justice,  
19 post the Supreme Court of Canada, would it be fair  
20 to say that this, in this forum and others,  
21 bolstered or kept you in a position where you were  
22 continuing to be in, professionally and personally  
23 accused of ongoing misconduct from 1970 -- '69,  
24 '70, '71?

25 A Absolutely.



1 Q Okay. Sir, the next document I want to go to is  
2 document 162466 and, sir, this is a covering  
3 letter from Mr. Asper and it sets out a draft news  
4 release. I'm not sure that -- I couldn't lay my  
5 hands on the actual news release, but it, if we go  
6 to page 162467, it essentially goes through some  
7 of the history of developments between April 16th,  
8 1992 when the Supreme Court of Canada was,  
9 decision was released, and September 9th, 1992,  
10 which is the date of Mr. Asper's letter, and if we  
11 could go to the next page, please, again intended  
12 to be put out, and subsequently at various points  
13 put out in the public forum, you will see the, an  
14 allegation of misconduct against you, that you  
15 ordered released an exhibit, a knife, that was  
16 mysteriously missing at the time of trial when in  
17 fact it was, Constable Oliver was there and  
18 Sergeant Kleiv was there, the knife was there and  
19 in fact returned to him to take back to the police  
20 station, according to the records, January 28th,  
21 1970, so certainly not mysteriously missing?

22 A No, not in any sense of the word.

23 Q And certainly nothing about this that would be  
24 factually accurate from your perception because it  
25 clearly imputes wrong -- misconduct to you?



1 A That's exactly correct.

2 Q And again, was this the kind of information post  
3 the Supreme Court of Canada, post the relief that  
4 you got, temporarily from the decision that  
5 continued to cause you concern and might have  
6 influenced the actions that you took or didn't  
7 act, or didn't take as suggested to you by  
8 Mr. Lockyer?

9 A It -- I'm not sure, can you --

10 Q Reminding you -- maybe you haven't spent as much  
11 time thinking about this as I have, but it was  
12 suggested to you that somehow the fact that you  
13 didn't step forward and become engaged in  
14 investigating with the Milgaards or on behalf of  
15 the Milgaards the suggestion that David had been  
16 wrongfully convicted was somehow a negative action  
17 on your part as, if I'm summarizing Mr. Lockyer  
18 correctly is where I was going -- and I see that  
19 Mr. Wolch is standing.

20 MR. WOLCH: Mr. Commissioner, the witness  
21 has been asked before to comment on documents  
22 that he has never seen and then being asked to  
23 comment on how he would have reacted or how he  
24 did react to a document with that suggestion even  
25 though he hasn't seen it, and I've been patient a



1 bit because My Friend, to use that term cherry  
2 pick, here's allegation 2 out of 16, comment on  
3 that one, or whatever, I've been kind of patient,  
4 but now we have a draft release that My Friend  
5 acknowledges never even went out.

6 MS. KNOX: If you bear with me for a moment  
7 I'll get there.

8 MR. WOLCH: Well, then why are we asking  
9 him to comment for the third time on the second  
10 knife in a draft release that he couldn't  
11 possibly have seen to influence his conduct? If  
12 there is one in the public domain, again, that we  
13 have to go through, let's do it, but to start  
14 with a draft release I don't think is an  
15 appropriate use of our time.

16 BY MS. KNOX:

17 Q And -- I take Mr. Wolch's point in that regard.  
18 I'll try to stick to what I can clearly show today  
19 was in the public domain.

20 On that note, sir, if I could  
21 have brought up document 004204, this is a fax  
22 from Murray Brown that went to Eugene Williams,  
23 which is not as significant from your point of  
24 view as the next page, 204205, which was the  
25 document that Mr. Wilson referred you to during



1 the course of his examination, and this is the  
2 transcription of a press conference that was done  
3 by Mr. Milgaard, Mrs. Milgaard and Mr. Wolch in  
4 September, September 19th, 1992 you'll see?

5 A I see that, ma'am.

6 Q And, sir, this is a press conference that was done  
7 where the allegations were made that Mr. Wilson  
8 canvassed with you about Mr. Romanow, Mr. Lysyk,  
9 if I've got that pronunciation right, --

10 A Huh U.

11 Q -- Mr. Kujawa, and in that press release it  
12 referred to other senior government officials.  
13 Within the Province of Saskatchewan, were you the  
14 clearly-identified prosecutor in respect of this  
15 file, the representative of the government, as it  
16 were, with respect to the prosecution and  
17 conviction of Mr. Milgaard?

18 A Yeah, that would have to be known to the public,  
19 clearly, --

20 Q Now the --

21 A -- Ms. Knox.

22 Q Now, Mr. Caldwell, you were aware of this press  
23 conference, --

24 A Yeah.

25 Q -- it got great wide play in Saskatchewan, didn't



1           it --

2           A       I ab --

3           Q       -- because, again, it imputed misconduct  
4           post-Supreme Court of Canada?

5           A       I absolutely recall it.  When it hit the airways  
6           and papers I was absolutely dismayed by it because  
7           I couldn't believe that the allegations therein  
8           could be true, but clearly they needed to be  
9           followed up, the ones that didn't directly accuse  
10          me that is, the Regina part of the matter.

11          Q       But certainly it dealt with your file, going from  
12          your hands to Mr. Kujawa, and making people -- or  
13          officials in the prosecution making the connection  
14          between Fisher and Milgaard, and making -- or  
15          apparently having meetings behind closed doors for  
16          what was imputed to be clearly sinister  
17          purposes --

18          A       Yeah.

19          Q       -- that needed to be investigated?

20          A       That's exactly how I took it.

21          Q       Okay.  And, sir, it was as a result of this press  
22          release in September 1992, wasn't it, that you  
23          became under investigation by the RCMP, eventually  
24          gave what we have before us in the audio tape, a  
25          cautioned statement, --



1 A Uh-huh.

2 Q -- because there were clear, serious and pointed  
3 allegations of misconduct being made by -- about  
4 you related to this? This, in fact, was what  
5 triggered the review where the Alberta Justice was  
6 brought in to do an independent opinion after the  
7 RCMP had done an investigation, because these,  
8 indeed, were extremely serious --

9 A Yeah.

10 Q -- allegations, they weren't about mistakes, they  
11 were about conspiracy, collusion, deliberate  
12 coverup; weren't they?

13 A That's correct, Ms. Knox, and if my memory is  
14 correct I believe my statement in that respect has  
15 been reviewed in our Inquiry here, if I'm not  
16 mistaken.

17 Q Yes, it has, sir.

18 A Yeah, that's good.

19 Q And perhaps the best thing for me, best place for  
20 me to go in light of Mr. Wolch's caution, which I  
21 take as appropriate in fact, is to document number  
22 061236. Sir, this is a letter written by  
23 Inspector Sawatzky to Mr. Halyk of our firm  
24 regarding you, it's dated the 11th of May, 1993?

25 A I see that.



1 Q And you retained counsel, did you not, not in 1992  
2 when these serious allegations were made in that  
3 press conference about conspiracy, collusion, and  
4 deliberate wrongdoing which could be proven by  
5 Milgaards based on information that they had  
6 received from a former employee of the Department  
7 of Justice, it wasn't then that you got counsel,  
8 it wasn't until May 19 -- March 1993 when you were  
9 sued civilly?

10 A That's correct.

11 Q And, sir, at that point in time, when a civil suit  
12 was launched, you were able to avail of resources  
13 available through your Law Society insurance, and  
14 ultimately through your former employer, to get  
15 counsel for the first time; is that correct?

16 A That's correct, Ms. Knox.

17 Q Sir, in this letter, is it correct that this  
18 letter was directed because, as your counsel,  
19 Mr. Halyk wanted to know what it was that you were  
20 being accused of before you engaged in a cautioned  
21 statement with the police?

22 A That's, that's how it came about.

23 Q Okay. And, sir, I won't review all of these but  
24 I -- I'll go through some of them. Paragraph  
25 number 1, paragraph number 2, are just some



1 background as to the role that the RCMP are  
2 playing and why they want to talk to you. Number  
3 3:

4 "In more specific terms, it is alleged  
5 that Mr. Caldwell obstructed justice by  
6 withholding evidence. Outlined below  
7 are the allegations and/or areas of  
8 concern we wish to have Mr. Caldwell  
9 address during our interview."

10 And if I could just for a moment go to the last  
11 page, 061239, to place a frame of reference  
12 around the allegations, some of which I will  
13 canvass with you, Inspector Sawatzky wrote in his  
14 letter these allegations that he has gone through  
15 over the previous three pages are derived from  
16 meetings we had with Mr. Wolch, Mrs. Milgaard,  
17 and Mr. Milgaard?

18 A I see that.

19 Q This is your understanding of where these  
20 allegations of obstruction of justice were coming  
21 from in respect of you, obstruction of justice of  
22 course being a criminal offence apart from and  
23 separate from any ethical issues that it may  
24 engage for you as a member of the bar?

25 A That's right, Ms. Knox.



1 Q Number -- if I could go back to 061236, the first,  
2 3 a) the police reports in the Miller murder file  
3 link the Miller murder to the sexual assaults  
4 being committed, Mr. Caldwell had available all  
5 police reports and files and, I quote:

6 "... was well aware that ... police saw  
7 similarities between the rapes and the  
8 ..."

9 Gail Miller:

10 "... murder ...";  
11 that was one of the allegations?

12 A That's correct.

13 Q Go to page, the next page, please; that in that  
14 vein you had knowledge of Larry Fisher being  
15 apprehended for several of these sexual assaults,  
16 that -- and that that knowledge was suppressed by  
17 Mr. Caldwell so as not to arouse a concern that  
18 Fisher may have killed Miller?

19 A I see that.

20 Q That was an allegation that had been, in  
21 roundabout ways, put out many times, but clearly  
22 captured here by Inspector Sawatzky for you to be  
23 confronted with?

24 A That's correct.

25 Q Thank you. I'll skip the next one. And the one



1 after that, an allegation that a victim by the  
2 name of (V4)--- was attacked and police reports  
3 revealed the police assumed the same person that  
4 murdered Miller attacked the victim, this offence  
5 committed by Fisher was not disclosed to the  
6 defence; did you have any police reports in your  
7 file that showed that the police assumed, during  
8 the course of your prosecution of David Milgaard,  
9 that the same person who attacked (V4)---- (V4)---  
10 had killed Gail Miller?

11 A No I did not.

12 Q And sir, just on that note, in your extension of  
13 opportunities to review the file I don't think  
14 I've asked you, but when you let Gary Young review  
15 the file in '81, Peter Carlyle-Gordge review the  
16 file in '83, the (V4)---- (V4)--- statement was on  
17 it; wasn't it?

18 A It must have been, ma'am.

19 Q And all of those other women, (V6)-, (V11)--,  
20 (V9)----; those statements were in those -- in  
21 your file --

22 A Yeah.

23 Q -- 1981-1983?

24 A That's right.

25 Q Okay. And b), if we could go to b), and this has



1           been dealt with, a minor point, that you failed to  
2           disclose the identity of two witnesses, Mr. and  
3           Mrs. Merriman, who were in or had a view of the  
4           alley. The evidence through that investigation  
5           and this Inquiry establishes you had the reference  
6           to Mrs. Merriman, you didn't have the reference to  
7           Mr. Merriman?

8           A           That's correct.

9                       MR. WOLCH: Sorry, Mr. Commissioner, I have  
10           to rise again, I don't mean to, but My Friend  
11           should be careful in describing evidence or  
12           giving evidence herself. To say that the  
13           Merrimans were a minor point when they would be  
14           the people at the exact location where the  
15           offence occurred is hardly an apt comment to come  
16           from counsel as a minor point, that people of  
17           that significance weren't disclosed. That's a  
18           matter for argument at some point in time, but it  
19           shouldn't be led to the witness that this is a  
20           minor point, it's said to --

21                      MS. KNOX: And, again, I take Mr. Wolch's  
22           caution, I didn't mean to minimize the importance  
23           of it for purposes or argument.

24           BY MS. KNOX:

25           Q           But in -- and I think my reference to 'minor' was



1           that there was a single passage in your file in a  
2           report that made reference to Mrs. Merriman, that  
3           was the only part of the police file that  
4           contained that entry, albeit it turned out to be  
5           significant?

6           A           That's how I recall it exactly, Ms. Knox.

7           Q           So I stand corrected on the inappropriateness of  
8           the 'minor' phraseology.

9                                 Sir, in c) it's -- there is a  
10           reference to Mr. Rasmussen's evidence;  
11           Mr. Rasmussen was called to give evidence?

12          A           That's right.

13          Q           And it was opened to have evidence led with  
14           respect to him, and I believe you said if he  
15           didn't say he saw it then you would take that the  
16           jury would conclude he didn't see it, --

17          A           Yeah.

18          Q           -- but again --

19          A           No, that's exactly what I said earlier in the  
20           Inquiry, that if Mr. Rasmussen says he didn't see  
21           something, that's a presumption in favour, if you  
22           will, of the accused, because that's evidence that  
23           there was nothing. Someone wanted to pursue it  
24           and cross-examine, that would be another  
25           situation, but his evidence of not seeing (a)



1 blood or (b) unusual behaviour was all in favour  
2 of the accused, as I read it.

3 Q Okay. I'm gonna skip some of them, we've  
4 canvassed them, and go to f) in the list;  
5 non-disclosure of evidence that Rasmussen, John,  
6 Danchuk and Sharon Williams did not see blood on  
7 Milgaard's clothes. Again, clearly apparent on  
8 the transcript of evidence was that Mr. Rasmussen  
9 testified at preliminary inquiry and trial, --

10 A That's right.

11 Q -- the Danchuks testified and said they didn't see  
12 blood, their statements were disclosed to Mr.  
13 Tallis, but that evidence was put before the jury?

14 A Yeah, that's all correct.

15 Q And Sharon Williams, in fact, didn't see David  
16 Milgaard until after he got to St. Albert two days  
17 later and after you had evidence that he changed  
18 his clothes at the Cadrain house two days earlier?

19 A That is how I recall the sequence of events.

20 Q Okay. So her not disclosing that she didn't see  
21 it would -- there'd be no opportunity for her to  
22 have seen it?

23 A That's right, and evidently we were talking about  
24 a different set of clothing at that point, as I  
25 read this.



1 Q Okay. Sir, g) Mr. Caldwell failed to disclose  
2 certain facts and Simon Doell's evidence  
3 concerning the bus used by Miller, if we could go  
4 there for a moment. We've reviewed the report,  
5 you remember -- the police report -- you will  
6 remember the references to Mr. Doell, Mr. Doell in  
7 fact said that she used the bus at Avenue N;  
8 didn't he?

9 A That's what I recall, as we went on, was that it  
10 was somewhat ironic because if I had disclosed his  
11 evidence or called him he would have been another  
12 person giving evidence supportive of the Avenue N  
13 theory, as we've come to call it, so --

14 Q Yeah, but in fact, if that evidence had been  
15 proffered by you, --

16 A Yeah.

17 Q -- it would have been to support the theory that  
18 you were more inclined to lean towards, that she  
19 went to the bus at Avenue N?

20 A Exactly, right.

21 Q Yeah, so exculpatory versus inculpatory. So h),  
22 if we can go to the next page, please, to h) that  
23 the prosecution file is incomplete, various  
24 material from the file has been destroyed, what  
25 about the "C" file - yellow file folders purported



1 to have been used, did that exist and so on. Now  
2 your evidence is clear that your file is not  
3 incomplete, you kept everything that you had?

4 A That's -- that's correct.

5 Q And I believe Mr. Hodson asked you and you don't  
6 know what this C file thing is about, you never  
7 used yellow folders?

8 A That -- both of those are correct.

9 Q i) I'll just highlight, but that's referencing the  
10 script document?

11 A Okay, I'm sorry, letter i)? Yeah, I see that.

12 Q Yeah, basically indicating that you have  
13 possession of a very troubling document, noting  
14 that you denied seeing it, and it's here that  
15 it's -- it was alleged it confirms the allegation  
16 by Mr. Wolch, and in fairness to him there were  
17 two others from his office present when he was  
18 interviewed by Inspector Sawatzky, Mr. Bruce and  
19 Mr. Rodin I think, --

20 A Uh-huh.

21 Q -- so I'm not sure which one of them in the  
22 interview actually said that there were file  
23 markings indicating it was received and filed at  
24 Crown counsel's office, but you are clear --

25 A Uh-huh.



1 Q -- that it was not seen by you and you've never  
2 seen a copy with markings on it to suggest that it  
3 was?

4 A Both of those are absolutely correct.

5 Q Okay. I want to go off on a little bit of a  
6 tangent on that point just for a moment. In the  
7 allegation with respect to file markings, if we  
8 could bring up script document 006799 as one that  
9 we'll use, the file there in the interview done  
10 with the RCMP of Mr. Wolch and others that gave  
11 rise to these allegations, the markings that were  
12 talked about were these page numbers that appear  
13 on the side. At some point in time, we'll hear in  
14 particular there is a statement number 9, and it  
15 was the allegation to the RCMP that these were the  
16 markings that meant that you had to have it in  
17 your possession; do you see that?

18 A The -- that left-hand column of --

19 Q Yeah?

20 A -- numbers and names?

21 Q Uh-huh, names and numbers.

22 A I see, I see the column.

23 Q Okay. And but these are the only numbers and so  
24 forth that appear, and when these numbers -- were  
25 these numbers created by you?



1 A No, absolutely not.

2 Q These statement numbers, were these numbers  
3 assigned by you to the police statement, or were  
4 they on them when they came to you?

5 A I didn't create them and unless, unless these fall  
6 into the category that there was some  
7 determination later, I think, that Sergeant Mackie  
8 had done, had done something with a numbering  
9 scheme, --

10 Q Right.

11 A -- if that's --

12 Q And we have evidence in that regard.

13 A Yeah. But I don't know anything about them in  
14 this form, ma'am.

15 Q But these numbers, if that's what's being referred  
16 to in the allegation --

17 A Yeah.

18 Q -- as the way to know that you had seen the file  
19 because it had markings on it --

20 A Yeah.

21 Q -- that would have been put on it by you, these  
22 have no bearing or reference to any numbering  
23 system that you used except insofar as it was on  
24 the file materials --

25 A Yeah.



1 Q -- that you received from Saskatoon Police  
2 Service; right?

3 A That's right. That's the maximum you could give  
4 to it.

5 Q Okay. And sir, just continuing on -- and we'll  
6 skip the parole board one, we have been there a  
7 number of times -- if I could go back to 061238,  
8 please. In terms of allegations, I'll just skip a  
9 number of them, they have been canvassed. The 1  
10 1) there is the question about whether you  
11 provided the materials that were used by  
12 Mr. Romanow, Mr. Kujawa, Mr. Lysyk and others when  
13 they had the supposed closed-door meetings that  
14 were indicative of conspiracy, collusion, and so  
15 forth?

16 A Yeah.

17 Q Do you see that?

18 A The question is whether I provided head office  
19 with the alleged material that's there?

20 Q Yeah.

21 A No, I did not, in any shape or form.

22 Q Okay. So, even if it had been taking place, you  
23 didn't provide the material to be the --

24 A Yeah.

25 Q And I'm being facetious, --



1 A Yeah.

2 Q -- there's clear evidence --

3 A Yeah, I understand ma'am, and I certainly did not  
4 provide any material of that description.

5 Q Okay. If I could bring up document 053156, and  
6 again I don't have a source for this document,  
7 it's a document that was prepared, it has a series  
8 of -- or an introduction to an apparent intended  
9 interview. And Mr. Wolch, if you'll bear with me  
10 for a moment, I only have a quick reference. If  
11 we could go to paragraph number -- not a number,  
12 the one that I am framing here.

13 A Uh-huh.

14 Q The allegations in 1992 that gave rise to the  
15 police investigation that impacted on you, caused  
16 you to give a cautioned statement and so forth,  
17 will be shown by the evidence to be based on  
18 insider information, if I can use that term, that  
19 was received from a former employee; you know  
20 that, you know that employee to be a man who was  
21 identified as Michael Breckenridge?

22 A I heard -- I learned of that name.

23 Q Okay. And there is no date on this document, but  
24 certainly what this document indicates and what  
25 will be confirmed is that those very serious



1           allegations that were put in the record that  
2           generated this police investigation were based on  
3           information, or that could have been checked, was  
4           clearly wrong. Mr. Breckenridge said that he used  
5           to bring the files to those meetings in 1971, and  
6           subsequent investigation, as this document  
7           indicates, where he wasn't even working there in  
8           1971, he only went there in October 1973?

9           A       That's what I learned in due course, Ms. Knox,  
10           through this investigation, so --

11          Q       Unless and until that information was put out  
12           there would it be fair to say that the dismay that  
13           you felt when that press conference was done and  
14           you were, you with others were accused of serious  
15           criminal misconduct, continued to plague in your  
16           community and to affect you in your life?

17          A       Well, it certainly did. I -- the -- the  
18           accusations of this conspiracy in Regina between  
19           the Attorney General, the Deputy Attorney General,  
20           the Head of Public Prosecutions, was such a  
21           shocking accusation that I absolutely, you know,  
22           reeled back from it. I didn't believe it could be  
23           true, but I -- I was absolutely stunned by it when  
24           it happened, and of course somewhere down the way,  
25           of course, it would be a reflection on myself,



1 obviously.

2 Q Okay. And it did take a number of months for that  
3 police investigation to be completed and a report  
4 to be released that exonerated you of these many  
5 allegations that were made against you, in part  
6 based on what turned out to be al -- information  
7 from somebody who wasn't even working in the  
8 Department of Justice head office at the time?

9 A That's right, Ms. Knox.

10 Q Okay. Sir, the next big event, apart from your  
11 participation and being under suspicion of  
12 criminal misconduct, in your life and its impact  
13 on you would have come, I take it, when you were  
14 sued personally?

15 A That's correct.

16 Q And again, sir, can you indicate how it affected  
17 you when it was made public that you were being  
18 sued personally, and the theory that you had  
19 colluded, conspired, and done all kinds of awful  
20 things that resulted in an innocent man being  
21 convicted for murder impacted on you with your  
22 family and in your community, if I may?

23 A It was another, you know, very serious blow in the  
24 series that did happen to me, and of course the  
25 press were all over it and got to a stage where,



1 in our two-storey house, I would call down the  
2 stairs to my wife and say "how does the paper look  
3 this morning", and she would often reply  
4 "terrible".

5 I am quite conscious of a number  
6 of friends and acquaintances, not extremely close  
7 friends but people I'd known over the years in the  
8 city, who very clearly looked at me askance or  
9 avoided me completely after that for some period  
10 of time, and it was a thing that would, even  
11 though we got legal counsel, was extremely  
12 difficult to cope with for me and my family, Ms.  
13 Knox.

14 Q Okay. Sir, as a practicing member of the bar, all  
15 of your years of work had been in public service;  
16 hadn't they?

17 A That's right.

18 Q And as a practicing member of the bar, and as a  
19 member of the community, was your personal  
20 reputation and your integrity an important,  
21 perhaps the most important thing that you walked  
22 away from your career with?

23 A Yeah, that's what I have come to learn, I think  
24 through this Inquiry, in fact everyone's career  
25 comes to an end eventually. The one thing which



1 is irreplaceable is to come away from that,  
2 whenever it happens, with the respect of your  
3 peers and with your integrity intact. That,  
4 that's the one factor, when everything else such  
5 as salary and this, that, and the other is gone,  
6 that's -- I have now learned, of course, is of  
7 great -- is of the utmost importance in every  
8 respect.

9 Q Okay. Sir, I just have a couple of more items to  
10 canvass in this regard, and it's almost time for  
11 coffee, I think I can finish them fairly quickly.

12 I want to refer you to an  
13 article that appeared in the *StarPhoenix* March  
14 31st, 1993, I don't have a doc. ID, I have the  
15 original, I did give it to the staff this morning  
16 so that they could find it, it's in the database.  
17 Sir, this is a newspaper story I pulled from your  
18 civil litigation file within our office and the  
19 markings that appear beside it are mine.

20 A Okay.

21 Q If we could just go back for a minute, I handwrote  
22 the date on it as well, March 31st, 1993, it was  
23 put up by my office at the bottom when it was  
24 collected. But this is, again, a news conference  
25 that you became aware of because it was very much



1 front and centre in Saskatoon, Saskatchewan on  
2 March 31st, 1993 when you were sued civilly?

3 A Yes, that's so.

4 Q And it's quoting David Milgaard, and it basically  
5 says he is renewing his pitch for a public  
6 inquiry, the provincial government refuses to act,  
7 and then it says, 'In a news conference here  
8 Tuesday, Milgaard said the lawsuit he launched on  
9 Monday against Saskatchewan prosecutors and  
10 detectives in this case will force everyone  
11 involved to be accountable for their actions.'

12 A I see that.

13 Q And he is quoted as saying, 'That means the people  
14 will have to answer. They will be forced to  
15 answer now to all the different things they have  
16 lied about and all the different things that are  
17 evidence against them. And they are dead. That's  
18 how strong this claim is, it's that solid,  
19 Milgaard said. He also said that, by launching a  
20 civil suit, he will spark renewed interest in his  
21 case.'

22 And, sir, one of the people he  
23 was talking about there was you?

24 A Absolutely.

25 Q Okay. And how did that affect you in terms of,



1           again, reading this assault on your integrity on  
2           this date, post the Supreme Court of Canada  
3           decision as to your conduct in the trial?

4           A           It -- it again was -- had a cumulative effect.  
5                    After all the other accusations had been made and  
6                    essentially piled one on the other it was going to  
7                    be another, beginning of another long and arduous  
8                    process, because we're now into a civil action is  
9                    how I -- how it affected me at that time, ma'am.

10          Q           Okay. And this civil suit continued to hang over  
11                    your head until the 20th, or actually the 25th of  
12                    May, 1999 --

13          A           That's correct.

14          Q           -- when the notice of discontinuance was filed in  
15                    the Saskatchewan Court of Queen's Bench? Again,  
16                    Mr. Commissioner, I don't have a doc. ID, I have  
17                    an original with the Queen's Bench stamp as to  
18                    when it was filed.

19          A           I see that.

20          Q           And, sir, Mr. Hodson referred you to a book that  
21                    was done by Mrs. Milgaard, document number 269317,  
22                    and I have a copy of the book in my hand.

23          A           Yes.

24          Q           I know it's in CaseVault but I have the physical  
25                    volume in my hand.



1 A Okay.

2 Q You became aware of allegations made in this  
3 booklet about you and assertions that you had  
4 engaged in misconduct, deliberate misconduct,  
5 leading to the wrongful conviction of her son; --

6 A I did --

7 Q -- did you not?

8 A I did, I did become aware of that.

9 Q And again in that vein this continues to be out  
10 there, a troubling public document, I suppose,  
11 from your point of view?

12 A Absolutely.

13 Q And before we take the coffee break, if I could  
14 bring up 332039, and this is the press release  
15 that was given with you and on your behalf in 1997  
16 after you learned of the terrible -- or got the  
17 terrible confirmation that a wrongful conviction  
18 had occurred and extended your apology. You've  
19 been quizzed about this by Mr. Lockyer in  
20 particular and said "well, even though you were  
21 sorry, you didn't really mean it". I want to  
22 direct you again to paragraph -- or to the next  
23 page, the paragraph that I have circled. Sir, in  
24 1997 when you learned that you had been wrong, you  
25 and others had been wrong and that a miscarriage



1 of justice had occurred, you stepped up to the  
2 plate and you too asked for a public inquiry;  
3 didn't you?

4 A That's correct, Mr. Kujawa and myself did that,  
5 and that's set out in this paragraph.

6 Q Whatever you may have done by oversight or  
7 otherwise, you were quite prepared to have the  
8 light of public review cast on it by an objective  
9 forum, in fact you wanted that because of the --  
10 and was that, in part, because of the many wrong  
11 allegations that had been put out over the many  
12 years about you and how you had acted in respect  
13 of this file?

14 A That certainly was the final sentence:

15 "We ask that this decision by him be one  
16 that includes an instruction that the  
17 inquiry be held as soon as is  
18 practicably possible."

19 And of course, with all the massive incorrect  
20 information that was afloat over all those years,  
21 a public inquiry certainly would be the, in my  
22 estimation, the only way to follow the thing  
23 through and get down to, you know, truthful  
24 evidence, and that's where we are, getting there,  
25 today.



1 Q Would it be fair to say that, while Mr. Milgaard  
2 had been fortunate in establishing his innocence,  
3 at that point in time you wanted to clear your  
4 good name if you could?

5 A Oh, absolutely.

6 Q Sir, this may be the appropriate time for the  
7 coffee break.

8 (Adjourned at 10:34 a.m.)

9 (Reconvened at 10:51 a.m.)

10 BY MS. KNOX:

11 Q Thank you, Mr. Commissioner. Mr. Caldwell, I had  
12 gone through with you this morning and a little  
13 bit yesterday a number of, and skipped to the more  
14 significant of the allegations made against you  
15 that put, attack upon your personal integrity,  
16 your professional integrity, and I neglected to  
17 refer you to a document, 00707 -- sorry, no, I'm  
18 looking at the wrong number. 332331, if we can  
19 have that brought up. Thank you. Sir -- and the  
20 cover page on this is a fax cover sheet to  
21 Mr. Eugene Williams from you, so clearly a  
22 document that in, on August 22nd, 1991, fax cover  
23 sheet is 332322 for the record, but clearly a  
24 document or an allegation that you became aware of  
25 on or about August 21st, 1991, of course you sent



1           it to Mr. Williams, and do you recall the  
2           allegation or reading in your local paper that a  
3           Winnipeg lawyer, whose firm represents David  
4           Milgaard, says that the prosecution may have paid  
5           two key witnesses for their testimony during the  
6           Milgaard 1970 murder trial of nursing assistant  
7           Gail Miller?

8           A           I do recall that and I see that article here.

9           Q           If I could go back to the side, referring to this  
10          part here, and in the article it said in an April  
11          letter to Justice Minister Kim Campbell, Hersh  
12          Wolch says during his firm's investigation of the  
13          case, it was impossible to find out what  
14          arrangement was made with the two to secure their  
15          evidence, which he described as one of the  
16          strongest pieces of the testimony against the then  
17          16-year-old Milgaard. And, sir, within your file  
18          that was made available to Mr. Young and to Mr.  
19          Carlyle-Gordge, were all of your notes there about  
20          how Lapchuk and Melnyk had come forward as a  
21          result, or been found as a result of Ron Wilson's  
22          information on his drive to Saskatoon the night  
23          before trial?

24          A           All those notes would be in that file.

25          Q           The documentation with respect to your contacts



1 with Mr. Tallis, your interviews of them, all of  
2 that was part of your file?

3 A It was, and would still be there at that time.

4 Q Part of the record of the trial was their criminal  
5 records being introduced and essentially all of  
6 the information respecting their backgrounds being  
7 made public in front of the jury?

8 A That's right, it was all on that file.

9 Q Sir, you made your file available to Mr. Young,  
10 you made it available to Peter Carlyle-Gordge,  
11 Sandra Bartlett at some point in time saw it. Had  
12 Mr. Asper, when he was looking to find out what  
13 had gone on when he came to the file in about 1986  
14 I think, and Mr. Wolch asked to see your file,  
15 would that same information have been proffered by  
16 you to them up to the time you left the department  
17 in 1987?

18 A Yeah, it would have been proffered to them because  
19 it would still have been on the file, among other  
20 things.

21 Q And was your file available, in fact, to them by  
22 August 21st, 1991 in parts at least because of the  
23 reference and ultimately -- or sorry, the 690  
24 review and ultimately the Supreme Court of Canada  
25 reference?



1 A Yeah, the file should have been as it was and  
2 various information from it would have gone  
3 forward on those matters, Ms. Knox, in my view.

4 Q Do you recall being particularly disturbed when  
5 you read in the article that Mr. Wolch said a  
6 member of your department, referring to Kim  
7 Campbell, implied to us that they were paid --

8 A Yeah, that's --

9 Q -- Wolch said, adding it was his respectful  
10 suggestion that the entire ministerial system of  
11 review was seriously flawed?

12 A Yeah, this would be, since he's writing Kim  
13 Campbell, it would be the federal Department of  
14 Justice he's accusing there without names, and of  
15 course that, you know, that absolutely shocked me,  
16 that that accusation would be made, period.

17 Q Okay. And I'll skip parts of it and go to the  
18 paragraph where it was said, apparently by Mr.  
19 Wolch, at the trial there was no mention two other  
20 people were in the hotel room at the same time and  
21 those witnesses were not called to testify, which  
22 we canvassed earlier, being Ute Frank and Deborah  
23 Hall, for which obvious logical, legitimate  
24 explanations were available in your file, and  
25 indeed in statements given to Mr. Tallis, where it



1 was recorded by those witnesses, one of them at  
2 least, that Deborah Hall was no longer in  
3 Saskatchewan in January of 1970?

4 A That's correct, ma'am.

5 Q Okay. And then of course this is an interview  
6 given in 1991 and by that time Deborah Hall had  
7 given a statement to Eugene Williams, and I don't  
8 know whether it was known to Mr. Wolch, time and  
9 evidence will show that, but certainly she had  
10 given a statement that substantially supported,  
11 except in tone, what Melnyk and Lapchuk said in  
12 1970 at the trial had happened in the hotel room  
13 hadn't she?

14 A Yes, by that time that had occurred.

15 Q Sir, was this one of the articles, and again an  
16 allegation coming from third counsel now, Mr.  
17 Wolch, about -- that impacted on your peace of  
18 mind and your good name, as it were, to use a  
19 phrasing I used earlier, in your perception at  
20 least at that time?

21 A Certainly, because, among other, you know,  
22 incorrect and damning accusations, I can't think  
23 of anything as a category worse than accusations  
24 that witnesses have been paid to give evidence,  
25 period. This is totally outside the realm of what



1           certainly we're used to in this province and that  
2           absolutely almost floored me.

3           Q       Okay.  Sir, at -- and I'm almost finished  
4           everybody will be please to know -- in his  
5           cross-examination of you when he was questioning  
6           you as to your opinion, I suppose, as it were, of  
7           Mr. Milgaard, Mr. Wolch said to you in the  
8           transcript starting at around 18266, or in that  
9           vicinity, that you were dealing with a bunch of  
10          people, you had Melnyk with a criminal record, you  
11          had Lapchuk with a criminal record, Wilson with a  
12          criminal record, you had a whole bunch of people  
13          with criminal records, that David Milgaard in 1969  
14          when you were preparing this file for trial and  
15          you were looking at the bona fides of the  
16          suspicion or the accusation, charge against him,  
17          that he was the only one with no criminal record  
18          and he was the only one who was working at that  
19          particular time, and he referred to the fact that  
20          he was working for Maclean's Magazine at line 14,  
21          15 of that transcript?

22          A       I see that.

23          Q       Sir, again when you were dealing with him up to  
24          the point in time this offence was alleged to have  
25          occurred, on January 31st, 1969 is it fair to say



1           that the only information substantial that you had  
2           with respect to his history of working, or  
3           supporting himself, involved much of what was set  
4           out, including by Sharon Williams, about selling  
5           drugs, stealing, doing a whole bunch of things  
6           that didn't necessarily result in criminal  
7           conviction, but all of the information you had  
8           about him hardly painted him as a stand-up kind of  
9           guy, and I mean no disrespect in saying that?

10        A           That would certainly be how I would have to take  
11           it in view of all those sources of evidence as  
12           opposed to the simple and evidently true statement  
13           that he was working for Maclean's Magazine.

14        Q           Was it your understanding in 1969 that that  
15           employment with Maclean's was a new thing post  
16           January, 1969 and just weeks, maybe months, a few  
17           months, but certainly no more than a couple of  
18           months before he was arrested on May 26th, 1969?

19        A           That's how I recall the evidence, Ms. Knox.

20        Q           Okay. Mr. Wolch suggested to you that, and I may  
21           have covered this, but the notion that you would  
22           take seriously allegations like the ones being  
23           made by Albert Cadrain about him having sex with  
24           virgins in bathtubs was ridiculous. Balanced  
25           against that, or to weigh against that, and in



1 assessing the bona fides of that kind of conduct,  
2 would you agree with me you had the Ute Frank  
3 information from the motel information about not  
4 public acts of sex, but engaging in sexual  
5 activity in the presence of others after his  
6 partner had ingested drugs either with his  
7 assistance or by provision of the drugs to her in  
8 the room through him?

9 A That's correct, ma'am.

10 Q Sir, during the course of your cross-examination  
11 Mr. Wolch had played a tape that was, or a  
12 reenactment that was put in evidence in the  
13 Supreme Court of Canada and he, as that tape did,  
14 implored upon you to think how could the events  
15 have happened in 1969 in the way that you  
16 theorized in your preparation for trial and for  
17 the jury given the time frames and distances  
18 involved. Do you recall that?

19 A I did see that.

20 Q And at various points in time he and Mr. Lockyer  
21 urged upon you that if you had been thinking  
22 critically about this evidence, you would have had  
23 to conclude that somebody would have seen it?

24 A Somebody would have seen?

25 Q Seen Mr. Milgaard and the car being in the area,



1 being stuck and things like that, but basically  
2 they said to you it was ridiculous to think in  
3 that busy area of the city that this kind of thing  
4 could have happened and nobody would have seen it  
5 and you should have been aware of that, you were  
6 the prosecutor, that was your job. Do you  
7 remember --

8 A I --

9 Q I'm summarizing, I hope not unfairly, the tenor of  
10 the remarks made to you, particularly by Mr.  
11 Wolch.

12 A I recall that line of questioning, ma'am.

13 Q Mr. Caldwell, it's true, isn't it, when you are  
14 being -- it's being urged upon you that you should  
15 have been smarter than that and that somebody  
16 would have seen it, you know, people would have  
17 known. Mrs. Merriman, if she looked down the  
18 lane, she would have seen it and those kinds of  
19 remarks are being made to you as indications that  
20 you didn't sort of really put an objective mind to  
21 this, but your reality in 1969 was that somewhere  
22 between 6:45 a.m. and sometime after eight o'clock  
23 in the very area that people were talking about  
24 looking down the alley and so forth, Gail Miller  
25 got dragged off the street, she got stabbed and



1           brutally murdered and left either dead or to die  
2           and nobody saw anything or heard anything did  
3           they?

4           A       No, that's -- that's how I understood it in that  
5           sense, Ms. Knox.

6           Q       Might that reality have been a factor in terms of  
7           your overall assessment as to whether or not, if  
8           David Milgaard and these guys had been there in  
9           the way they described somebody might have seen  
10          them, given that you knew, however it happened, a  
11          woman had died and nobody saw it in the very same  
12          area, if they were in fact in that area?

13          A       That's right. I mean, the manner of the killing,  
14          where the young woman ended up, what happened to  
15          her, the surrounding factors and the, and the  
16          evidence we did have, I certainly reviewed and  
17          made an attempt, and I hope successfully, to call  
18          only admissible evidence about those things.  
19          There was no other, if you will, substantial or  
20          competing theory available at that time, Ms. Knox,  
21          and I attempted to call what I did in a proper  
22          fashion.

23          Q       Mr. Caldwell, during your examination by Mr.  
24          Hodson he asked you questions about when you were  
25          made aware of the identification of Larry Fisher



1 as the possible rapist, potential perpetrator of  
2 the Miller murder, and you had indicated initially  
3 you thought it might have been 1989, October,  
4 1989. Mr. Hodson said he would attempt to find  
5 documents that would pin this down for us. He did  
6 find a memo from Mr. Williams. I'm going to ask  
7 if I can have brought up 332399. Mr. Caldwell, do  
8 you recognize this document at all, and in  
9 fairness to you, I should say I haven't shown it  
10 to you because I've been reluctant to engage in  
11 conversation with you given that you are under  
12 cross-examination.

13 A Yeah. I have in fact not seen the document  
14 previously during the Inquiry.

15 Q Do you famously recognize the handwriting?

16 A Yeah, everything but the phone memo is my writing,  
17 Ms. Knox.

18 Q And the phone memo itself on the letterhead, or on  
19 the phone message pad is of the Government of  
20 Canada directed to Bobs, February 28th, from Gene  
21 Williams, which I presume means Eugene Williams?

22 A That's correct.

23 Q And within the -- it doesn't have a year on it,  
24 but other documents place a year around it, but  
25 certainly, and in particular we go to the bottom,



1           there's a notation by you of work that you did,  
2           15-3-90, which would be two weeks after this phone  
3           message came in?

4           A           I see.

5           Q           So you see as you look at it that you appear to  
6           have -- and if I could go back to the top,  
7           please -- you appear to have returned a phone call  
8           to Mr. Williams, these notes up here, being you  
9           phoned EW, and you made some notes about what he  
10          said, and you noted two tasks for yourself, the  
11          first being I'm to check any "Linda Fisher" or  
12          "Larry Fisher" and you have 334 O, presumably  
13          referring to the Avenue O address of the Cadrains  
14          where they were alleged -- not in fact alleged,  
15          did live?

16          A           That's how I would take that, Ms. Knox.

17          Q           There's some other stuff about Montague, I'm not  
18          even going to go there, I don't think it's  
19          important for our purposes.

20          A           Okay.

21          Q           But certainly would you agree that this document  
22          would pretty clearly put the date that you were  
23          requested by Mr. Williams to check into whether  
24          there was references to Fisher, Larry or Linda, in  
25          your file, to February 28th, 1990?



1 A Yeah, this would be -- again, I hadn't seen it,  
2 but this would clearly indicate the accurate date  
3 on which he, on which he phoned me and I returned  
4 his call evidently the same afternoon, got the  
5 directions to check any Linda Fisher or Larry  
6 Fisher -- address was added there, 334 0 -- and  
7 that's I'm sure the accurate version of that,  
8 ma'am.

9 Q 332387, please. Handwritten notes again by you?

10 A That's right.

11 Q Okay. And your notation respecting Linda, Larry  
12 Fisher, you've got the name Sidney Wilson in  
13 brackets, the date Friday, March 2nd, 1990?

14 A That's right.

15 Q You are indicating that you read files 1, 2, 3 and  
16 4, referring to files, your prosecution files back  
17 at your old office I presume?

18 A That's right.

19 Q That in file 3 you found McCorrison's police  
20 notes that had the reference to Fisher on page 5?

21 A That's correct.

22 Q And you indicated then you resumed review of the  
23 file, went through the witness statements and so  
24 forth and this essentially I presume represents  
25 what you found with respect to Fisher?



1 A That's correct.

2 Q Okay. And again this would place the dating of it  
3 to be 1990, not 1989 as you initially thought?

4 A That's exactly so.

5 Q Okay. Sir -- Mr. Commissioner, for the record, I  
6 should say there have been two new files added to  
7 CaseVault that were retrieved, as Mr. Hodson  
8 pointed out, from the federal Department of  
9 Justice, and we have the originals here, but  
10 essentially these files, or the file materials, if  
11 I can just grab them, these have been put on  
12 CaseVault -- if you can just open that envelope  
13 please -- and, sir, you recognize that as the file  
14 that is the S file that you were part of keeping  
15 when you were providing assistance to Mr. Williams  
16 while you were employed at the federal Department  
17 of Justice?

18 A Yeah. This is, as you note, ma'am, the first time  
19 I've seen it, but yes, I do.

20 Q And essentially what's represented there I suggest  
21 to you is a large bulk of documents that represent  
22 everything that you sent to Mr. Williams as a  
23 result of your, his first inquiry with the letter  
24 that we've had referred to of October 25th, 1989  
25 being, in this bundle, document 332101 it looks



1           like?

2           A           I see that letter here, ma'am, of --

3           Q           And with a couple of exceptions, if you do a quick  
4                   cruise through it, it has all of the attachments,  
5                   the only exceptions being some transcript that you  
6                   would have sent are outlined in the letter, if we  
7                   go to the next page, and sent to him in October,  
8                   1989, and the next page after that?

9           A           Yes, I see material relating to trial and then I  
10                   see on page 3 miscellaneous material.

11          Q           And if we could go to 104, please.

12          A           And four other attacks on nurses or other women by  
13                   knife-wielding assailants is the last heading.

14          Q           And this is the (V4)---, (V11)-- and all the  
15                   others that you sent as a result of your first  
16                   canvass of the file; would you agree?

17          A           That's correct.

18          Q           Okay. And, sir, then the second file, apart from  
19                   the documents I just drew out that confirm your  
20                   first contact about Larry Fisher, contains  
21                   basically a record of documents, news clippings,  
22                   calls made to you by the media, repeated calls  
23                   made by the media and so forth during the time  
24                   that you were still in that office; would you  
25                   agree?



1 A Yes, that's correct.

2 Q Clearly document to some extent what I was  
3 canvassing with you earlier, your ongoing interest  
4 in the allegations that were being made about you  
5 as part of these efforts to investigate or have  
6 investigated the bona fides of David Milgaard's  
7 conviction in 1970?

8 A Yes, that's what it would be, represent, ma'am.

9 Q Okay. There's a reference in the note, if I could  
10 go back to 332387 to Sidney Wilson in brackets up  
11 here, and you were asked if you knew a Sidney  
12 Wilson, the person who had allegedly called Mr. --  
13 not allegedly, who had -- the person who had  
14 called Mr. Wolch and told him that the real killer  
15 was Larry Fisher and he knew this because of  
16 information he got from Linda Fisher. You  
17 remember that evidence?

18 A Yes.

19 Q And documents that show that to be the case, but  
20 you were asked if you knew Sidney Wilson?

21 A All right.

22 Q You didn't know anybody by the name of Sidney  
23 Wilson?

24 A That's right.

25 Q Ultimately Sidney Wilson was determined to be



1 Bruce LaFreniere who testified here, and you  
2 didn't know Bruce LaFreniere?

3 A Either. No, that's so, ma'am.

4 Q And in subsequent documentation that got put on  
5 the file there's a memo done, and I had it in  
6 front of me and I moved some papers back and I  
7 lost it, but it doesn't have a year on it, but  
8 it's a notation of three or four different  
9 allegations being made, one, that arising from the  
10 Sidney Wilson information, one, that you had met  
11 with Linda Fisher and talked, interviewed her at  
12 some point in time, that came out and it has been  
13 part of the record, and it was your evidence that  
14 that never in fact happened and her evidence that  
15 never in fact happened.

16 A Did you say and her evidence as well?

17 Q Yeah.

18 A Yeah, my evidence certainly is that it did not  
19 happen.

20 Q But that is another allegation that was put out  
21 there to suggest, or impute improper conduct or  
22 knowledge that you might have had that you  
23 suppressed; was it not?

24 A That's correct.

25 Q Sir, in my final cherry picking, at some points in



1 time you have testified that when you examined  
2 your file in 1991-'92 at the Department of Justice  
3 offices in Regina, that there were things that had  
4 been taken off it?

5 A That's --

6 Q Also things that had been added to it?

7 A That's right.

8 Q You referred to the script document as something  
9 that had been added?

10 A That's correct.

11 Q There's some questions that have been raised in  
12 writing, if not publicly, as to whether or not you  
13 are being truthful in that regard. I just want to  
14 bring up a document, 006728, this is a multi-page  
15 story with respect to Mr. Milgaard and his  
16 conviction. Do you recall in fact that when you  
17 went back to your file you found in your file that  
18 was supposedly your 1969, closed in 1970 file with  
19 minor additions by you through the '70s regarding  
20 the parole board, that this was in your file  
21 somehow, although it's a 1990 story, the best I  
22 can determine, in 1990 or 1991?

23 A I'm sure that's correct.

24 Q I'm just going to ask to put on -- if you could  
25 put the sticky back on too, that was the more



1 important piece, the yellow sticker that was on  
2 that document, please. Yeah. There's a note on  
3 my copy of it that "None of this was part of my  
4 file." You made that note didn't you?

5 A That's my writing.

6 Q And this was something that indeed you found that  
7 somehow got added to your file after it went out  
8 of your hands and these various reviews of it  
9 started isn't it?

10 A Yes. This gentleman showed up in Saskatoon and  
11 interviewed me, Ms. Knox. I don't know if anyone  
12 realized that or not, the author of this matter,  
13 and somehow an article came out and I added that  
14 sticky editorial, if you will.

15 Q But clearly, and I'm not -- I don't know that this  
16 is exclusively what was found, and I know it's not  
17 exclusively what was found to be added, but this  
18 is an illustration of the fact that things have  
19 gotten added to your files?

20 A Oh, yeah.

21 Q Since 1969?

22 A Absolutely.

23 Q Just one other area and I'll be finished. Mr.  
24 Hodson to some degree, Mr. Wolch to a greater  
25 degree, quizzed you about actions that you took



1 during the prosecution, particularly around  
2 notations and the decisions you made in your file  
3 regarding accomplice evidence and possible  
4 instruction to the jury on accomplice evidence?

5 A Yes.

6 Q When you were making those notes and you were  
7 developing your trial strategy, did you have any  
8 evidence, or any credible evidence to suggest that  
9 Ron Wilson had been involved in the rape and  
10 murder of Gail Miller?

11 A Not whatsoever.

12 Q Okay. I'm going to ask if I can have brought up a  
13 report, 009391, this is a lab report that you had  
14 received and some of the items in it are of  
15 interest to you, it's not evidence that you used,  
16 but AA in that report is about exhibits received  
17 from Regina City Police on May 29th, 1969, one  
18 being a complete front seat of a car?

19 A Yeah.

20 Q Grey pants, wine-coloured house coat and other  
21 things?

22 A Yes.

23 Q But it goes through a chronology of items that  
24 were brought to the lab by the Regina City Police  
25 to be tested?



1 A That's my understanding.

2 Q Okay. And if we could go to the next page of the  
3 report --

4 COMMISSIONER MacCALLUM: Excuse me, went to  
5 the Regina RCMP to be tested?

6 MS. KNOX: Went to the Regina RCMP from the  
7 Regina City Police. Thank you, Mr. Commissioner.

8 BY MS. KNOX:

9 Q If we go to the next page of the report, he  
10 outlines the purpose, to conduct a serological  
11 exam of Exhibits AA to HH inclusive, and his  
12 indication that next -- that the data, that  
13 Exhibit AA, among others, was examined for the  
14 presence of blood?

15 A I see that.

16 Q And his conclusion that no blood was found on  
17 Exhibit AA, being the front seat of -- or sorry,  
18 that AA was tested for seminal fluid as well as  
19 being examined for blood?

20 A I see that, yeah, in the second line there.

21 Q And his conclusion that neither of those -- no  
22 seminal fluid was found on AA?

23 A That's correct, in the further down.

24 Q And no indications that blood was found, or blood  
25 was found on AA either, in paragraph 2?



1 A Yeah, and my bracket went through that, but not  
2 intended to obliterate it that no blood was found  
3 on AA, among other things, ma'am.

4 Q Okay. And if I could have brought up document  
5 009282, a report in your file from Regina City  
6 Police and had a covering letter dated June 2nd,  
7 1969, but basically indicating that they had gone  
8 out and found -- sorry, Ron Wilson's car that he  
9 and Mr. Milgaard and Nichol John had been in on  
10 January 31st, 1969?

11 A That's correct.

12 Q Had done a search of the car, and I won't go  
13 through all of it, but effectively what happened,  
14 according to this report, lab report, is the car  
15 was taken apart and it was examined to see if  
16 there was anything in it that would link the car  
17 that they were in on January 31st, 1999 (sic) to  
18 Gail Miller, vis-a-vis her being in the car by  
19 implication at the time she was raped and/or  
20 killed?

21 A That's my understanding.

22 Q Okay. Sir, if I could now have brought up a  
23 letter, 0 -- again, 007074, your letter to  
24 Mr. Tallis, January 15th, 1970, and if I could go  
25 to page 2, your paragraph indicating I believe I



1           have given you all of the laboratory reports I  
2           have received except one, and I enclose a copy of  
3           that which is November of 1969. Not this lab  
4           report that we just looked at, but indications  
5           that you had given over all the laboratory reports  
6           on the Gail Miller file that you had to  
7           Mr. Tallis?

8           A           Yeah, that's how this reads.

9           Q           Okay. So apart from any decisions or  
10           considerations you were giving as to whether there  
11           was any issue of accomplice evidence here, all of  
12           this information, excluding any involvement either  
13           certainly through use of the car of Mr. Wilson or  
14           contact by Mr. Wilson --

15          A           Yeah.

16          Q           -- had been disclosed to defence counsel?

17          A           That's correct.

18          Q           Sir, at any point in time did you find anything to  
19           suggest that Ron Wilson was an accomplice in the  
20           rape or murder of her?

21          A           No I did not.

22          Q           Did you intend, when you made your decisions with  
23           respect to trial strategy, to do anything  
24           improper, unethical, or in any manner to pervert  
25           the course of justice for David Milgaard?



1 A Absolutely not.

2 Q Okay. Sir, it was said to you by Mr. Lockyer  
3 during the course of his cross-examination of you,  
4 or you were asked whether you were familiar  
5 with -- and it has been raised by others -- the  
6 concept of tunnel vision in the investigation and  
7 prosecution of persons charged with criminal  
8 offences, and you and he agreed that it can happen  
9 and it's a really bad thing?

10 A Absolutely.

11 Q You were also introduced to the concept of, by Mr.  
12 Lockyer, of noble cause corruption --

13 A Yeah.

14 Q -- where police officers, who in their minds  
15 believe they have the right guy, do and say things  
16 that will cause the conviction to happen even  
17 though in their heart and soul they know they are  
18 either perjuring themselves, or massaging  
19 evidence, or rigging exhibits, or whatever, but  
20 because the ends justifies the means they will do  
21 what they have to get a conviction?

22 A Yes, Mr. Lockyer reviewed, went over that with me  
23 at some length, ma'am.

24 Q And Mr. Caldwell, not meaning in any manner  
25 whatsoever -- because my instructions from you are



1           certainly not that I ever should -- not meaning in  
2           any way whatsoever to diminish/minimize what  
3           happened to Mr. Milgaard, because you, as you said  
4           in your press conference release in 1997, realized  
5           it was a horrible thing and it had horrible  
6           consequences for him; during the years and months  
7           when the process started to review the bona fides  
8           of his conviction, and in particular when you look  
9           at some of the public statements made by counsel  
10          on his behalf and by advocates on his behalf that  
11          accused you of wrongdoing where there was clear  
12          evidence that you hadn't engaged in wrongdoing,  
13          does it occur to you that advocates can sometimes,  
14          too, fall into tunnel vision and become so driven  
15          by their cause that people who may have made  
16          innocent mistakes can become victims --

17        A           I think --

18        Q           -- of their zealotry?

19        A           Yeah, I think that would be a very legitimate  
20          example of how that could happen and can happen,  
21          Ms. Knox.

22        Q           Using the term loose, very, very loosely -- and by  
23          no means comparable to Mr. Milgaard's torture --  
24          have you, over the years, sometimes felt, as  
25          regards your integrity, your professional



1 reputation, that you have become a different kind  
2 of victim?

3 A Oh yeah, I'm quite sure that the cumulative effect  
4 of all of the accusations that were made over all  
5 the years have certainly made me, put me in a  
6 class, among other things, in which my, you know,  
7 I'm -- let's say my future career would certainly  
8 be very, very much circumscribed, to put it  
9 awkwardly.

10 Q Thankfully I hope, given your age now, you don't  
11 want to have a future career?

12 A Yeah. I'd like to have a few months at the very  
13 least, ma'am.

14 Q Apart from your career, Mr. Caldwell, it's true,  
15 is it not, that you have always been a very --  
16 apart from your professional integrity and your  
17 concern about your professional reputation and  
18 always doing your job fairly, ethically, and  
19 properly, you've been very profiled in this  
20 community as a musician, a member of your church,  
21 as a father and a husband, and all of those  
22 aspects of your life have been affected by these  
23 many allegations that have been made against you?

24 A That's correct.

25 Q Thank you. I have no further questions.



1 A Yeah. Thanks, Ms. Knox.

2 MR. HODSON: Just a couple of points, not  
3 in -- not by way of re-exam, but the issue raised  
4 about whether or not Mr. Tallis cross-examined  
5 Ron Wilson or referenced the March 3rd, '69  
6 statement at the preliminary hearing as opposed  
7 to the trial. If we could call up 007595 and go  
8 to page 007 -- so this is the preliminary hearing  
9 and this is Ron Wilson -- if we can go to 007671.  
10 And this is Mr. Tallis cross-examining Mr. Wilson  
11 and he says at 122:

12 "Q Pardon? Well, let's get it this way.

13 About on March the 3rd, a policeman came  
14 to see you at the jail, is that correct?

15 A It must have been the one that came  
16 with Ken Walters at the time."

17 Then goes on to say in 124:

18 "Q I'm referring to a specific occasion  
19 when a Mr. Riddell came to see you.

20 A Riddell, that's the name.

21 Q On an occasion when Mr. Riddell came to  
22 see you, you did give a statement in  
23 writing?

24 A Yes, I did."

25 So there was just, I was asked to clarify that,



1 so I wish to do that.

2 Secondly, Mr. Commissioner, the  
3 issue of the publication ban. I'm not sure if  
4 that -- that was put in place yesterday with  
5 respect to Ms. Knox's examination on the pre-'69  
6 Yorkton records, I presume that that's to  
7 continue? I simply wish to raise it and get  
8 direction.

9 We have not, obviously, put the  
10 documents up, and we have got the transcript and  
11 we have -- we will take out those portions of the  
12 transcript where reference is made to those  
13 records, I just want to ensure that that is so?

14 COMMISSIONER MacCALLUM: Do you wish it to  
15 continue, Mr. Wolch?

16 MR. HODSON: I think Mr. Wolch has said he  
17 doesn't care if the transcript goes public,  
18 the -- and my only concern or issue, I raise it,  
19 is that in the course of questions and answers  
20 the documents, or parts of the documents are  
21 quoted in the question, and that's why I raise  
22 it.

23 COMMISSIONER MacCALLUM: Yes.

24 MR. HODSON: And I will take whatever  
25 direction you provide on that, knowing that even



1 if we keep the documents off, if we put the full  
2 transcripts in, excerpts from the documents are  
3 in the transcript.

4 COMMISSIONER MacCALLUM: So two questions,  
5 Mr. Wolch; do you wish the publication ban to  
6 continue with respect to the Yorkton documents  
7 themselves?

8 MR. WOLCH: Well I guess, Mr. Commissioner,  
9 I can commence by saying that I've always had a  
10 reluctance against publication bans. I just  
11 don't like them. And, having said that, I really  
12 have a difficult time supporting the fact that  
13 evidence can be given here and not in the public  
14 domain, that is if people could hear it here, why  
15 can't they hear it somewhere else as people here  
16 are representatives of the community. So I have  
17 that basic reluctance.

18 And I think we can  
19 differentiate between the reports themselves and  
20 the testimony here, that is -- and I'm reminded,  
21 sir, by the document that My Friend put up at the  
22 end, the *Christian Science Monitor* article where  
23 Mrs. Milgaard is quoted in, herself, as saying  
24 that David wasn't a choirboy and he wasn't  
25 violent, and so it's never been our position that



1 David didn't have some difficulties, that's out  
2 in the public domain. Our focus has been whether  
3 those reports support a contention that David was  
4 in any way violent or there was anything in those  
5 reports about the 'stab in the dark' comment.

6 And, having said that, I don't  
7 see any difficulty in what I heard My Friend, Ms.  
8 Knox, question Mr. Caldwell about in public. I  
9 think most people hearing it will feel 'thank  
10 goodness that their backgrounds when they were in  
11 kindergarten wasn't being explored'. I think  
12 there are many of us in the courtroom who had  
13 more schoolyard fights than David ever did, many  
14 of us have been expelled from school or put in  
15 detention -- I'm probably speaking personally --  
16 and I think that a lot of us have had those kind  
17 of things, so I don't think anybody is going to  
18 get really, really carried away. But on the  
19 other hand, I just don't like the public thinking  
20 there is a ban on something, and so I really  
21 don't have any problem with anybody taking out of  
22 the transcript what's in the transcript. My  
23 Friend was given the opportunity to, I suppose,  
24 give it her best shot, pick out what she can, she  
25 did, I'm not too concerned about that.



1 I am concerned, though, about  
2 the reports themselves, and My Friend quite  
3 correctly left out portions that -- well, they  
4 aren't germane, but they deal with family,  
5 siblings, that sort of thing. So I would prefer  
6 that the documents not be made public because  
7 they really aren't involving David, or even come  
8 close to the issue.

9 But I believe I'm fair to say  
10 that the comments made under oath by the witness  
11 that My Friend thought were germane should not be  
12 subject to a ban, keeping in mind the principle  
13 that none of us like publication bans to begin  
14 with, and we try to use them as infrequently as  
15 possible.

16 So I think I've stated my  
17 position, sir, unless you have any other  
18 questions.

19 COMMISSIONER MacCALLUM: Thanks. Anybody  
20 else?

21 MR. HODSON: Ms. McLean, on behalf of  
22 Mrs. Milgaard, might wish to.

23 COMMISSIONER MacCALLUM: Yes?

24 MS. McLEAN: Just for the record, sir, so  
25 it's clear, Mrs. Milgaard and I did discuss this



1 with Mr. Wolch this morning, and I was aware of  
2 what position he was going to take, and that's  
3 what we agreed with this morning. Mrs. Milgaard  
4 has no objection to the transcript of what was  
5 said yesterday becoming public, but the documents  
6 themselves ought not to. Thank you.

7 COMMISSIONER MacCALLUM: Thank you. And  
8 Ms. Knox, you were up a minute ago, do you have a  
9 position on this?

10 MS. KNOX: Mr. Commissioner, perhaps my  
11 position is more driven by a discussion I had  
12 yesterday, mostly in the presence of Mr. Hodson,  
13 but I was approached by two members of the press  
14 at the end of the day asking me if I could help  
15 them know what they could report. And they, I  
16 was pleased to hear, pointed out that the public  
17 impression with respect to Mr. Caldwell's actions  
18 in writing those letters to the National Parole  
19 Board was now not quite right because of what  
20 they learned, and we learned, yesterday.

21 So Mr. -- so whatever way it's  
22 done, I think it's important that the press be in  
23 a position that they be able to set the record  
24 straight as they have a sense of unease, in  
25 particular the two who spoke with me.



1                   But the other point that I  
2                   would like to make, and I didn't have time to go  
3                   back and look, but Mr. Wolch cast the actions of  
4                   Mr. Caldwell in writing the letters in terms of  
5                   the psychiatric reports. What we had yesterday  
6                   was a little bit, but his -- and I canvassed with  
7                   him yesterday, and the record reflects, that also  
8                   what he had, for example, was information about  
9                   acts of coercive sexual behaviour, use of a gun  
10                  on one occasion, and so forth, from Nichol John,  
11                  Sharon Williams, and others. And in particular  
12                  with Sharon Williams there was some --

13                 COMMISSIONER MacCALLUM: Yes, but Ms. Knox,  
14                 I just want to hear about the Yorkton records.  
15                 That's all. I know all the rest of it.

16                 MS. KNOX: With the Yorkton matters,  
17                 certainly. Where I was about to go with this is  
18                 that when Sharon Williams testified there was a  
19                 publication ban as well, of some form, or there  
20                 was a restriction on how she could be  
21                 cross-examined.

22                 COMMISSIONER MacCALLUM: Oh, yes.

23                 MS. KNOX: And that's where, in my  
24                 prolonged and tired way, I'm trying to go.  
25                 Because I would suggest, given the attack that's



1           been made on him with respect to his bona fides  
2           and his actions with respect to the parole board,  
3           that it's important that we go back and revisit  
4           that because that was information --

5           COMMISSIONER MacCALLUM: Oh no, but I mean  
6           that ban was only a temporary one and it had  
7           nothing to do with the sensitivity of the  
8           material, it had to do with the authenticity of  
9           the document.

10          MS. KNOX: Okay.

11          COMMISSIONER MacCALLUM: Which was cured  
12          later on by the appearance of former Constable  
13          Malanowich, I think it was.

14          MS. KNOX: Okay, then that's what I needed  
15          to know, that's where I --

16          COMMISSIONER MacCALLUM: I think that's  
17          right.

18          MR. HODSON: Yeah. My understanding of  
19          that, that once Mr. Malanowich testified and  
20          confirmed the statement, there is no longer --

21          COMMISSIONER MacCALLUM: Yeah, there is no  
22          restrictions on that at all, no.

23          MS. KNOX: Thank you.

24          COMMISSIONER MacCALLUM: So, anyway, the  
25          result of all that, I believe, is that counsel



1 does not object to the transcript being posted on  
2 the web as it appears, however the publication  
3 ban which I imposed temporarily the other day  
4 relating to the Yorkton records and the numbers  
5 quoted by Mr. Wolch when he put them up is  
6 continued.

7 MR. HODSON: Thank you. And I believe that  
8 is all.

9 COMMISSIONER MacCALLUM: I just have a  
10 question if you have none?

11 MR. HODSON: Oh, I'm sorry.

12 COMMISSIONER MacCALLUM: I'll just make a  
13 note of this, please.

14 **BY COMMISSIONER MacCALLUM:**

15 Q Mr. Caldwell, you will recall that during the  
16 course of the evidence you gave I believe it was  
17 Mr. Pringle had some questions to ask you about  
18 the trial itself, and he pointed out the rather  
19 extensive interventions by the trial judge,  
20 Justice, former Chief Justice Bence, and you know  
21 what I am talking about; don't you?

22 A I do.

23 Q During the course of the Section 9 application --

24 A Yes, Mr. Commissioner, I recall it.

25 Q -- he rather closely questioned Nichol John, if I



1           can put it that way. And in your long experience  
2           as a prosecutor you will know that it matters very  
3           much what a trial judge asks a witness like Nichol  
4           John, especially when he asks it in front of a  
5           jury, it might have a profound effect upon the  
6           jury. And to be fair I think the tenor of the  
7           questions, as you yourself have said, as they  
8           appear on the record, demonstrate impatience by  
9           the judge?

10          A           Demonstrated -- did you --

11          Q           Demonstrated impatience?

12          A           Impatience, Mr. Commissioner.

13          Q           Yes. But it matters not only what he said, but  
14                      how he said it, and perhaps you are one of the  
15                      very few people around now that can tell us, or  
16                      perhaps can tell us from your memory, what was his  
17                      manner when he put those questions to the witness?

18          A           Well Chief Justice Bence was a, certainly an  
19                      imposing figure, and with the -- he, I would  
20                      suggest right up to, to if not including the piece  
21                      of evidence we're talking about, that he in effect  
22                      stayed out of questioning witnesses or taking  
23                      questions that weren't necessary. I thought he  
24                      stayed completely away from that in the trial  
25                      proper.



1 I think, by the time we were  
2 dealing with the Nichol John Section 9(2) matter  
3 it had -- it -- the non-contentious parts of that,  
4 I thought I was making the expected headway with  
5 them, Mr. Commissioner, that I would have hoped  
6 had continued through the whole process, but he --  
7 there came a point when she -- she was simply not  
8 going to continue. There had been a pattern of  
9 similar questions to which I thought she replied  
10 fine, there came a point when she was not  
11 continuing that, and I -- I -- clearly His  
12 Lordship would -- became, I think, impatient with  
13 that. And, of course, he would have a good  
14 knowledge of the overall evidence in the case at  
15 that point. He certainly, in my view, attempted  
16 to encourage her to get on with that process.

17 But I don't know, Mr.  
18 Commissioner, if I'm answering what you are --

19 Q No.

20 A Yeah, okay.

21 Q We all know what he said, it's on the record.

22 A Yes.

23 Q He said things like "stop crying, you didn't have  
24 any difficulty answering me before".

25 A That's so.



1 Q "Now, when it comes to the stabbing, you say you  
2 can't remember".

3 A Yes.

4 Q That's the sort of thing he would say.

5 A Yes.

6 Q What I want to know was what was his tone of voice  
7 and so on; was he being a bully, was he just  
8 saying it nicely to her, what was he doing?

9 A By no means being a bully, but I would suggest in  
10 a firm manner, indicating to all of us that he  
11 felt she wasn't coming through with things that  
12 she knew and could have said. I wouldn't --

13 Q Well, that's right, that's apparent from the words  
14 themselves.

15 A Yeah.

16 Q Did he raise his voice, sir?

17 A No, he -- he'd be sitting at the -- a distance  
18 from the witness, and of course the jury off to  
19 one side of him, I would be in front of him. The  
20 witness would be very close to him because the, in  
21 that courtroom, the witness box was right by the  
22 judge's dais. I would certainly feel that he may  
23 have raised his voice, sir, to the extent of  
24 making it clear that he, you know, he thought she  
25 should, should and could, do better with that



1 process.

2 I don't know, Mr. Commissioner,  
3 if I'm --

4 Q Well you are certainly being diplomatic, I'll put  
5 it that way, Mr. Caldwell.

6 A Yes.

7 Q I -- you see, my big concern is that an  
8 intervention by the Bench at that crucial stage,  
9 when the inquiry is into the witness' credibility,  
10 if the judge, inadvertently or otherwise, manages  
11 to destroy the witness' credibility in front of a  
12 jury --

13 A Uh-huh.

14 Q -- who then are -- have put to them the words of a  
15 statement which is not supposed to be considered  
16 by them for the truth of contents, the effect,  
17 possible effect of all of that is what concerns  
18 me, and so that's why I was interested in his  
19 manner of speaking --

20 A Yeah.

21 Q -- and whether he treated the witness kindly or  
22 didn't.

23 A I would think, Mr. Commissioner, he certainly -- I  
24 would call it a forceful statement of his views as  
25 that went on, and certainly he clearly was -- had



1           become impatient with how she was doing, and I  
2           wouldn't, I wouldn't think she was incapable of  
3           handling what His Lordship --

4           Q       Well I --

5           A       -- advanced to her.

6           Q       That's something for me to decide, I guess, but --  
7           so thanks, Mr. Caldwell, I didn't want to put you  
8           on the spot, but I'm afraid I had to.

9                    COMMISSIONER MacCALLUM: Is there any  
10           questions arising from that from other counsel?

11                    Mr. Caldwell, thank you very  
12           much for coming and for testifying for so long,  
13           and you are excused.

14           A       Mr. Commissioner, I wanted to thank both Mr.  
15           Hodson, yourself, and other counsel for the  
16           consideration I have been shown. Thank you.

17                    COMMISSIONER MacCALLUM: Thank you.

18                    MR. HODSON: The next witness is  
19           Mr. Pearson. I'm wondering, given the time of  
20           day, whether we should maybe break and allow Mr.  
21           Caldwell to gather up his documents and get  
22           Mr. Pearson ready? I can start now but --

23                    COMMISSIONER MacCALLUM: We can do that,  
24           yes, sure. 1:30 then?

25                    MR. HODSON: Sure.



1 COMMISSIONER MacCALLUM: Fine.

2 (*Adjourned at 11:42 a.m.*)

3 (*Reconvened at 1:30 p.m.*)

4 MR. HODSON: Good afternoon,

5 Mr. Commissioner. Just one clarification just on  
6 that publication ban regarding the documents, our  
7 document people have asked us to be clear. It is  
8 only the pre 1969 documents, the Yorkton records  
9 and the other ones are not, the later ones are  
10 not; correct?

11 COMMISSIONER MacCALLUM: That's correct.

12 MR. HODSON: Okay. And our next witness is  
13 Mr. Rick Pearson.

14 **RICHARD ALLAN PEARSON, sworn:**

15 COMMISSIONER MacCALLUM: Mr. Pearson, the  
16 second name is A-L-L-A-N?

17 A A-L-L-A-N.

18 COMMISSIONER MacCALLUM: A-L-L-A-N, thank  
19 you.

20 **BY MR. HODSON:**

21 **Q** Good afternoon, Mr. Pearson. Thank you for  
22 agreeing to attend and thank you for your patience  
23 in waiting to appear.

24 I understand, just for the  
25 record, that you are represented by counsel for



1 the RCMP, namely, Bruce Gibson and Rochelle Wempe;  
2 is that correct?

3 A Yes.

4 Q And that you are currently 61 years of age and  
5 reside in British Columbia?

6 A Yes.

7 Q And that you were a member of the Royal Canadian  
8 Mounted Police from 1965 to 2003?

9 A Yes.

10 Q So approximately 37 years, eight months I think  
11 was your term?

12 A Yes.

13 Q And that when you retired you retired with the  
14 rank of staff sergeant?

15 A That is correct.

16 Q And that your primary involvement in the David  
17 Milgaard matter, if I can call it that, was to  
18 assist the Federal Justice Minister, and namely a  
19 solicitor employed by the Federal Justice  
20 Minister, Mr. Eugene Williams, in the review of  
21 David Milgaard's two applications to the Federal  
22 Minister under Section 690 of the *Criminal Code*;  
23 is that correct generally?

24 A As it pertained to Larry Fisher, yes.

25 Q And so just, and we'll get into the details about



1           what work you did, but as far as your involvement,  
2           if I can call it that, in the David Milgaard  
3           matter, from start to finish, it would be  
4           primarily related to the Section 690 application?

5           A           That is correct, yes.

6           Q           And I understand, sir, that although you were  
7           employed by the RCMP in 1969 and 1970, that you  
8           had no involvement in the Gail Miller  
9           investigation; is that correct?

10          A           None whatsoever.

11          Q           And that prior to a phone call on February 28th,  
12          1990 from Eugene Williams, I understand, sir, you  
13          had no involvement in either the Gail Miller  
14          murder investigation or anything to do with David  
15          Milgaard or Larry Fisher; is that correct?

16          A           I did not know David Milgaard, I did not know the  
17          name, I did not know Larry Fisher. I was never  
18          involved in a 690 process before and I never knew  
19          Mr. Williams.

20          Q           And again we'll touch upon some of the later  
21          events a bit more specifically, but the Flicker  
22          investigation, if we can call it that, in 1993,  
23          and we'll deal with the details there, but just  
24          generally I understand, sir, that you did not play  
25          a significant role in the Flicker investigation;



1 is that fair?

2 A I was not involved in the actual investigation. I  
3 was involved in the Court process regarding  
4 exhibits that had been handled by me previously.

5 Q And then when Larry Fisher was investigated and  
6 prosecuted in 1997, I understand, sir, that you  
7 were not involved directly in that investigation;  
8 is that correct?

9 A That is correct.

10 Q And we will deal a bit more, again specifically, I  
11 just want to get some general background. If  
12 we --

13 A I would just like to make a correction.

14 Q Sure.

15 A I talked about Flicker. I really meant my  
16 involvement in the trial in the handling of  
17 exhibits. In Flicker itself I was not involved as  
18 I recall.

19 Q Right. So Flicker -- the 1993 investigation, and  
20 I believe, and I will take you to the specific  
21 documents, I think at the outset of their  
22 investigation you had a meeting with them, but my  
23 understanding from the documents and discussions,  
24 sir, are that you were not one of the  
25 investigators out doing the day-to-day work on



1 Flicker; is that fair?

2 A That's correct.

3 Q If we can just get a bit of your background, your  
4 police background starting in 1966 through to  
5 1990, if you can give us just a brief outline of  
6 your career with the RCMP, what types of police  
7 work you were doing?

8 A I was really what is considered a general  
9 detachment uniform police officer, had all of my  
10 police experience in the Province of Saskatchewan.  
11 I was primarily in small town detachments and had  
12 mostly operational experience. The years prior to  
13 1990 I was in charge of three different uniform  
14 detachments and when I moved into Saskatoon, that  
15 was my first experience on a plain-clothes,  
16 general investigation unit.

17 Q And when did you move into Saskatoon?

18 A I believe that was in 1988.

19 Q 1988. So from '65 to '88 you would have been in  
20 uniform and in various detachments working in the  
21 field; is that fair?

22 A That's correct, yes.

23 Q And then prior to Saskatoon when you were working  
24 in the field, did you investigate suspicious  
25 deaths, for example, serious crimes, were you



1 involved in that?

2 A Yes, we were involved in all different kinds of  
3 sudden death situations.

4 Q And so prior to coming to Saskatoon were you in  
5 charge, did you have any supervisory function  
6 prior to Saskatoon?

7 A Yes, I was in charge of three different  
8 detachments in the Province of Saskatchewan.

9 Q And which ones were those?

10 A That was Kindersley, Battleford town and  
11 Pierceland.

12 Q And so just generally how many officers then would  
13 be working for you?

14 A At the time there were 13 in Kindersley, I think  
15 five or six in Battleford, five or six in  
16 Pierceland.

17 Q And then when you moved into Saskatoon, tell us --  
18 in 1988 tell us what your job description was  
19 then?

20 A The general investigation unit is a plain-clothes  
21 unit made up of, at that time, five personnel, and  
22 they provided investigative assistance to  
23 detachment personnel within the Saskatoon  
24 subdivision within our organization, and they also  
25 provided assistance to outside agencies that may



1 seek our assistance in gathering information or  
2 investigating and assisting in crimes.

3 Q And were you in charge of that five person unit?

4 A Yes, I was.

5 Q And what was your rank then at that time;  
6 sergeant?

7 A That carried a sergeant rank.

8 Q And we've heard some evidence about this before,  
9 but the Saskatoon subdivision, what would that  
10 cover, the city and what else?

11 A Well, the RCMP as an organization is broke into  
12 operational divisions. Saskatchewan is a division  
13 and the province is broke down into six  
14 geographical subdivisions, Saskatoon is one of  
15 those subdivisions, and each subdivision is  
16 managed by an executive officer and within that  
17 subdivision there are a number of uniform  
18 detachments. Saskatoon subdivision covers  
19 basically an area from the Alberta/Saskatchewan  
20 border to a perimeter halfway between North  
21 Battleford and Saskatoon, 60 miles east, halfway  
22 to Regina sort of thing, and in that there's  
23 support services and GIS is one of those support  
24 services that provide assistance to a geographical  
25 area.



1 Q And so then who would you report to?

2 A Saskatoon at that time, there were two executive  
3 officers, an inspector and a superintendent, and  
4 there was Inspector Murray and Superintendent  
5 Goodman.

6 Q So let's go to February of 1990 when I think we'll  
7 hear, I think that's when you first became  
8 involved in anything related to David Milgaard or  
9 Gail Miller; is that fair?

10 A Yes.

11 Q So if we could just get a snapshot of in February,  
12 1990, let's talk firstly about your roles, your  
13 responsibilities and duties at the time. I think  
14 you were a sergeant in charge of the GIS unit or  
15 division; is that --

16 A They called it GIS section.

17 Q Section. And there were five officers in your  
18 section; is that correct?

19 A As I recall, yes.

20 Q And again what would be the general duties of that  
21 unit or section?

22 A They would provide general assistance to the  
23 outside detachments that required assistance. We  
24 would, for the most part, assist in serious  
25 crimes, any kind of investigation that would take



1 the uniform member away from his day-to-day duties  
2 over a period of time. We also provided  
3 assistance to outside agencies that may request of  
4 them to provide assistance.

5 Q And, for example, would the Saskatoon City Police  
6 be an example of an outside agency that you might  
7 assist from time to time?

8 A Yes, we had a close working relationship with the  
9 city police.

10 Q And so again February of 1990, would it be fair to  
11 say that the GIS would then be involved in murder  
12 investigations or suspicious death investigations?

13 A Yes.

14 Q And that would be part of your regular work; is  
15 that fair?

16 A Yes, that's correct.

17 Q And can you tell us, and again just estimate,  
18 February of 1990, how many suspicious death cases  
19 would you have been involved in as an  
20 investigator?

21 A I had about 25, 25 years served by the time I came  
22 to Saskatoon, and when you talk about all the  
23 sudden deaths, I'm not talking about homicides,  
24 but all the sudden death situations, I would say  
25 probably 150 deaths that I would have been



1           involved in as far as investigating.

2           **Q**       And what about homicides, murder, manslaughter,  
3                    death investigations with a criminal element, can  
4                    you give us a ballpark of how many cases you would  
5                    have been involved in investigating?

6           **A**       Oh, directly involved, probably 25 or 30, directly  
7                    involved.

8           **Q**       And did you head up any murder investigations, had  
9                    you, prior to February of 1990, been in charge of  
10                   any murder investigations?

11          **A**       I can't give you a name offhand, but I probably  
12                   was, but I just can't tell you offhand over the  
13                   years what the names are.

14          **Q**       And again let's go to February of 1990, and as far  
15                   as your experience and training, sir, would you  
16                   have had attended courses through the RCMP on  
17                   investigative techniques, things of that nature?

18          **A**       Yes, there was ongoing in-service training  
19                   provided through the organization, depending on  
20                   the level of service and experience you had, the  
21                   type of duties you were doing, but there were  
22                   courses in interviewing and investigating and  
23                   evidence gathering and managing and supervising  
24                   and things like that.

25          **Q**       And had you attended those, many of those courses?



1 A Yes, I've had, over the years, quite a number of  
2 courses.

3 Q And so again I'm not asking you to give a self  
4 evaluation, but in February of 1990, sir, did you  
5 feel comfortable and qualified to be involved in  
6 an investigation looking into a previous murder  
7 conviction and perhaps some information that might  
8 suggest someone else might be responsible for the  
9 murder?

10 A I felt I was, yes.

11 Q Now, let's just again, when we're talking  
12 background, I think from 1990 to 1992 is the time  
13 frame we'll focus most of our time on, and I think  
14 towards the latter part of 1992, at least  
15 according to the documents, I understand you would  
16 have had little further involvement in the Fisher,  
17 Milgaard, Miller matter; is that fair, after you  
18 were done in '92? You had some, I know you had  
19 some work, and I'll deal with all the details, I'm  
20 just talking generally.

21 A That's the primary time frame, yes.

22 Q Can you tell us again just briefly from 1992  
23 through until your retirement in 2003, sir, what  
24 your general duties were with the RCMP?

25 A I was promoted to staff sergeant, went in charge



1 of the drug section, and after a few years we then  
2 developed the integrated drug unit which was a  
3 culmination of the Saskatoon Police Service drug  
4 unit and the RCMP and we actually physically  
5 relocated our unit into their building to carry on  
6 all the drug functions in the geographical area,  
7 and then in the fall of 2001 I was approached if I  
8 would be interested on going on a 13 month  
9 contract, because I was considering retiring at  
10 that time, and asked if I would go on a contract  
11 to St. Lucia in the West Indies, and the  
12 government there had approached, I believe through  
13 the RCMP, to attempt to reorganize their police  
14 force and four RCMP members travelled to  
15 St. Lucia. We spent 13 months there reworking  
16 their organization as far as dealing with the  
17 criminal side of what was happening in their  
18 country and also reorganizing their public  
19 complaints system to deal more effectively with  
20 the complaints that the public had of their  
21 service.

22 Q And that would have brought -- then you retired  
23 after that; is that correct?

24 A Yes.

25 Q So again just a couple more questions about the



1 RCMP organization in 1990 to 1992. You would be a  
2 sergeant in charge of GIS in the Saskatoon  
3 subdivision; is that correct?

4 A Yes.

5 Q Who would you directly report to then at that  
6 time, 1990?

7 A The direct line was really to Inspector Murray,  
8 but Superintendent Goodman was the overall  
9 officer, he was the one that I probably dealt with  
10 more on a day-to-day basis.

11 Q And where was he located?

12 A In the same building on 8th Street that the GIS  
13 unit was involved in.

14 Q So Superintendent Goodman was your -- and who did  
15 he report to?

16 A He reported to the division headquarters which is  
17 located in Regina, and I think at that time there  
18 was the criminal on the operational side and  
19 there's the administrative side of the  
20 organization, depending on which issue you are  
21 dealing with, but for a criminal matter you would  
22 deal with the criminal operations officer, and I  
23 believe at that time Chief Superintendent Egan was  
24 in place.

25 Q Now, we'll deal specifically with the notes and



1 reporting that you did in connection with your  
2 work for the Federal Justice Department, but can  
3 you tell us generally your reporting requirements  
4 back in 1990 to 1992, to what extent were you  
5 required to report up the line, if I can call it  
6 that, about what you were doing?

7 A There was a reporting requirement to put reports  
8 in on an ongoing basis, there was no real definite  
9 time frame that you had to submit the reports, but  
10 there was an internal reporting procedure. The  
11 crime reports would go ahead with a summary of  
12 really what you were doing.

13 Q So, for example, in 1990 you in GIS could have  
14 been working on a murder case in Saskatoon, a  
15 fraud case south of Battleford and a rape case  
16 elsewhere, various different cases, various  
17 different locations with different agencies; is  
18 that fair?

19 A That's fair.

20 Q And notwithstanding that, there was a general  
21 requirement where you would report up the line on  
22 some basis to let your superiors know what it was  
23 you were doing; is that fair?

24 A Only for certain offences, certain offences that  
25 you were directly involved in, there was a



1 reporting requirement.

2 Q Would that be serious offences then?

3 A Yeah, that's basically categorized as serious  
4 offences.

5 Q Now, I want to turn now to your documents, sir.  
6 We have had, in our Commission database, a  
7 significant number of documents that we have  
8 already looked at from the 1990, 1992 time period  
9 that originated from you, and I want to just spend  
10 a bit of time to go through your, to go through  
11 these documents and what they mean to assist the  
12 Commission and to assist other counsel so that  
13 they know what reports you prepared and for what  
14 purposes. I intend to go through the significant  
15 parts of those documents in detail with you, but  
16 right now I wish to just touch on how these  
17 documents came to be.

18 Actually, I'll tell you what,  
19 I'll leave that, Mr. Pearson, let's maybe just  
20 touch on your involvement with Mr. Williams and  
21 than we'll go to the documents. Can you tell us  
22 when and how you first became involved in the  
23 David Milgaard/Gail Miller matter?

24 A A telephone call was received in my office and, as  
25 I recall, I had to, I returned a call to him and



1 he explained to me that he was involved in the  
2 application for -- I forget the term that he used,  
3 but it was under 690, and he had information that  
4 he wanted me to follow up on regarding the  
5 involvement of Larry Fisher.

6 Q And at that time, sir, did you become aware,  
7 either in that discussion or within a day or two  
8 of that, that Mr. Williams had been working on  
9 this matter for a number of months prior to the  
10 call with you?

11 A I don't have a memory of him relaying to me that  
12 this application had been in the process a long  
13 time. I was under the initial impression that  
14 this was something that had come up and it was the  
15 start of it.

16 Q And he then, I think you said, he had asked you to  
17 make some inquiries regarding Larry Fisher; is  
18 that correct?

19 A Yes.

20 Q If we can, if you can describe it for us, Mr.  
21 Pearson, in your -- we'll go through this, as I  
22 say, in detail, were you involved in every aspect  
23 of the work that Eugene Williams was doing on the  
24 690 application?

25 A No, I wasn't.



1 Q And just generally can you tell us, what role did  
2 you play, according to your understanding, what  
3 role did you play in the work that he was doing?

4 A I was providing assistance to him on the inquiries  
5 into this suspect Larry Fisher.

6 Q Did you take directions from Mr. Williams then as  
7 far as what type of things you should look at?

8 A In general terms, yes.

9 Q And so again would it be correct to say that you  
10 would only follow up an area, or pursue an avenue  
11 if Mr. Williams had asked you to do so?

12 A I don't think it was that restrictive, but I was  
13 providing answers to the issues that he was  
14 raising, but I never felt myself so restricted  
15 that I couldn't think outside the box.

16 Q And did you become aware, as you started to deal  
17 with Mr. Williams, that he was pursuing other  
18 avenues and looking at other matters that he was  
19 not involving you in?

20 A With regard to the Milgaard case?

21 Q Yes.

22 A Yes, absolutely.

23 Q And so again trying to look at it, to try and get  
24 a sense of where you fit on it, I'm trying to  
25 understand the degree of involvement you would



1           have had with him. On the one hand, let me  
2           suggest to you, and you tell me if this is right,  
3           were you Mr. Williams' confidante and assisting  
4           him in every aspect of the investigation and doing  
5           everything and knowing everything he did and he  
6           knew everything you did, for example; was that the  
7           type of relationship?

8           A        I was reporting to Mr. Williams on the areas  
9           pertaining to Larry Fisher. I was not receiving  
10          ongoing reports from the Justice Department on  
11          what was taking place on the investigation as a  
12          whole, I really had no information as to what was  
13          happening on their end with regards to the thought  
14          process going on in their office, but I did have  
15          discussion on an ongoing basis with Mr. Williams  
16          on the issues, but when you follow through on, you  
17          know, suspects Wilson and Lapchuk and Melnyk and  
18          John and the DNA evolution, those were issues that  
19          were primarily head manned by Mr. Williams. I was  
20          not involved in that day-to-day process.

21          Q        And so you tell me if this is correct, that to the  
22          extent that Mr. Williams was investigating or  
23          reviewing matters, a part of what he was doing you  
24          were involved in; is that correct?

25          A        Oh, absolutely, yes.



1 Q And a part of it you were not involved in; is that  
2 correct?

3 A That's correct, yes.

4 Q And the part that you were not involved in, can  
5 you tell us to what extent did you become aware of  
6 what else was going on?

7 A Well, through phone calls and just ongoing  
8 discussion, our primary method of reporting and  
9 communication, because there was initially no  
10 reporting protocol, it was really agreed to  
11 between Mr. Williams and I when we had our initial  
12 phone call, and we just continued using telephone  
13 as the primary method of exchanging information,  
14 but as it unfolded I realized that he was  
15 responsible and investigating other areas of the  
16 Milgaard matter that were not related to Larry  
17 Fisher.

18 Q And at the time that I think you've told us when  
19 Mr. Williams called him, had you ever met or heard  
20 of him prior to the call?

21 A No, I didn't know him.

22 Q Had you ever been involved in a section 690 or a  
23 similar review by the Federal Justice Minister?

24 A This was my very first time.

25 Q And can you tell us, what do you recall, what was



1 your understanding of what it was, or what section  
2 690 meant and what was being reviewed and what was  
3 it that the Federal Minister of Justice, through  
4 Mr. Williams, was asking you to investigate?

5 A Well, as I recall in very general terms, I didn't  
6 know a lot about the section, it's not something  
7 that we deal with on an ongoing basis, but I knew  
8 enough about it to know that there was a review  
9 that was being done and the Minister of Justice  
10 would be making some decisions based on a possible  
11 wrongful conviction.

12 Q And was it unusual for, and I think you said you  
13 were in an operational unit of the RCMP, to get a  
14 call from the Federal Justice Department to give  
15 them assistance, was there anything unusual about  
16 that?

17 A You mean getting a direct call rather than going  
18 through official channels, so to speak?

19 Q Well, both that and the fact you would get  
20 involved. Was this -- I think you said earlier  
21 you provided assistance to outside agencies?

22 A Yes. No, this wasn't unusual. I'm sure there's a  
23 protocol in place, but I got a direct call, I  
24 never thought that as being unusual. It happens  
25 all the time.



1 Q Now, you've touched upon this earlier, but I want  
2 to go over this. At the time you got the call  
3 from Mr. Williams, had you ever heard about the  
4 David Milgaard case?

5 A No, I didn't.

6 Q Had you heard about the Gail Miller murder?

7 A I never, no.

8 Q And Larry Fisher, did that name mean anything to  
9 you?

10 A Didn't ring a bell, no.

11 Q Did you know anything about the facts of the case  
12 prior to getting a call from Mr. Williams?

13 A Absolutely none.

14 Q If we can call up 332532, please, and, Mr.  
15 Pearson, this is an outline that I put together  
16 that I intend to use in my examination, and I just  
17 want to quickly go over and try and identify at  
18 the outset sort of what parts of the section 690  
19 review you were involved in and what parts you  
20 were not involved in, okay, so just generally, and  
21 I think if we go through, I've covered off the  
22 background, I'm going to go through in a moment  
23 the chronology and your documents. Then if we go  
24 down to the first 690 application, and just for  
25 the record, the first application was December



1 28th, 1988 and it was February 27th, 1991 that it  
2 was dismissed, and then a new application in  
3 August of '91, end of November, '91 it went to the  
4 Supreme Court with a reference that concluded with  
5 a decision in April of '92, so we'll cover your  
6 initial engagement and we've touched on some of  
7 that already.

8 Two, Larry Fisher as a suspect,  
9 if we can scroll down, I understand, sir, that  
10 that would be the primary focus of your work for  
11 Mr. Williams, was to investigate Larry Fisher as a  
12 suspect in the death of Gail Miller?

13 A Yes.

14 Q And again you spent some time directly with Larry  
15 Fisher himself and matters related directly to  
16 Larry Fisher; is that right, investigating  
17 matters?

18 A Yes.

19 Q Secondly, and we'll go through this with Linda  
20 Fisher, if we can go to the next page, you had  
21 direct dealings with Linda Fisher again presumably  
22 in connection with your investigation of Larry  
23 Fisher as a suspect; is that correct?

24 A Yes.

25 Q And again these are all matters that I've listed



1           that relate to Larry Fisher as a suspect that you  
2           had some involvement in. The (V10) (V10)- file  
3           you reviewed; is that correct?

4           A           Yes.

5           Q           You looked at work records for Larry Fisher, his  
6           access to a vehicle, interviewed Cliff Pambrun; is  
7           that correct?

8           A           Yes.

9           Q           And then as well reviewed the Saskatoon and Fort  
10          Garry rape offences --

11          A           Yes.

12          Q           -- the offences committed by Mr. Fisher in the  
13          first go-around, the first application, and I'll  
14          get to the second application in a moment. Is  
15          that correct?

16          A           Yes.

17          Q           And then again you also, I think we'll see when we  
18          go through, you also had some involvement on the  
19          first application investigation in looking at  
20          matters that related to David Milgaard's -- it  
21          says suspect, but he had already been convicted of  
22          the offence, but matters that I suggest would be  
23          categorized as relating to his guilt or innocence  
24          of the murder; is that fair?

25          A           Yes.



1 Q And so you reviewed his prison records, (b), you  
2 interviewed the Cadrain family members at the  
3 request of Mr. Williams; is that correct?

4 A I don't -- it's quite a large family. I'm not  
5 sure I interviewed all of them.

6 Q Some of them. Sorry, I should have phrased that  
7 better. You interviewed Dr. Emson, you reviewed  
8 the Saskatoon City Police Gail Miller murder  
9 file -- and we'll go through all this in detail,  
10 I'm just trying to set out the areas that you  
11 covered.

12 A Yes.

13 Q There was an interview with Jack Parker, a city  
14 police officer, and you had some involvement in  
15 the timing of events, and I put drive to the  
16 Trav-a-leer Motel, and again we'll touch on that,  
17 and in fairness, there's probably some other  
18 matters in here that I didn't list that might fall  
19 into this category, but again, at the end of the  
20 first application you would have looked at matters  
21 primarily relating to Larry Fisher as a suspect  
22 and some matters that went to David Milgaard's  
23 guilt or innocence with respect to the crime; is  
24 that fair?

25 A That's fair.



1 Q And is it correct as well, sir, that you had no  
2 dealings with Ron Wilson, Nichol John, or Albert  
3 Cadrain in relation to the first application?

4 A None whatsoever.

5 Q And in fact similarly with the second application;  
6 did you have any involvement with any of those  
7 three individuals?

8 A None, no.

9 Q And then if we go into the second 690 application,  
10 which I think August 14th of 1991 was when that  
11 was formally initiated, I will go through with you  
12 your engagement and then we'll get into the review  
13 of the Larry Fisher sex offences. And I think, as  
14 we'll see when we get to the document, the second  
15 application to the federal minister, the primary  
16 ground in that application was that Larry Fisher  
17 had committed a number of offences and that, based  
18 upon the circumstances and facts and modus  
19 operandi of those offences on a similar fact  
20 analysis, that suggested that he killed Gail  
21 Miller and that that was -- and that that was  
22 sufficient such that the federal minister should  
23 review David Milgaard's conviction. And I'm  
24 summarizing what I think was in the letter. Is  
25 that your understanding, generally, of what was



1 put forward in the second application?

2 A That's fair, yes.

3 Q And your involvement there, then, would be to  
4 review the police files, the records, and again  
5 we'll go through this about other offences at that  
6 time, Mr. Fisher's offences, the Fort Garry files,  
7 and we'll see your involvement in gathering  
8 information, and I think sending off to others the  
9 comparison of the sex offences and Gail Miller  
10 murder, and as well information from the  
11 Saskatchewan Police Commission regarding Larry  
12 Fisher's offences and some records; is that  
13 correct?

14 A Yes.

15 Q And then the next page, number 3, (V14)-- (V14)-.

16 And Mr. Commissioner, before I  
17 get into this area -- and we will be dealing with  
18 this in some evidence from Mr. Pearson later --  
19 Ms. (V14)- is a sexual assault victim, and from  
20 1968, and that offence became part of the second  
21 application by Mr. Milgaard. Mr. Pearson was  
22 involved in investigating that matter, there's  
23 obviously sensitivity to those matters, and I  
24 would ask, at least at this time, that there be a  
25 publication ban on her name. And I have been



1 reminded by the media, and rightfully so, that  
2 when the Commission is dealing with publication  
3 bans the media may have a right to be heard on the  
4 subject matter and at least to be told what we're  
5 seeking, so at this time I simply want to make  
6 sure that this woman's name -- whether it be, call  
7 it a temporary publication ban -- and I don't  
8 suspect the media will be concerned about the name  
9 but it may be from what follows -- and I will be  
10 asking for a broader publication ban on anything  
11 that might identify this woman when I get into it  
12 in detail and I will alert the media as to exactly  
13 what I am asking for and see if they have any  
14 concerns.

15 COMMISSIONER MacCALLUM: Okay. For the  
16 moment, then, her name won't be published.

17 MR. HODSON: Her -- the name or anything  
18 that might, anything that might suggest her name.

19 BY MR. HODSON:

20 Q I'm sorry, Mr. Pearson?

21 A Can I just add, now this is a very sensitive  
22 issue, and I really made some long-term promises  
23 to this family that we would take care of this  
24 issue. There are some other family names involved  
25 here as well that don't come under the (V10)--



1 (V14)- name, and I just hope that the identity  
2 can't be revealed through the other names.

3 Q And certainly at this, once we get into that, I  
4 will craft a much broader publication ban and  
5 allow the media an opportunity to see what it is  
6 I'm asking. And that's a fair point, Mr. Pearson.  
7 My intent would be that we can deal with this  
8 subject matter in a way that the names or  
9 identities of these people ought -- isn't  
10 necessary.

11 So at this point the temporary  
12 publication ban would be her name, or any family  
13 member name, or anything that might tend to  
14 identify her or her family members, if I could ask  
15 for that, and then I will deal with it more  
16 specifically once we get into the documents. And  
17 I raise it now because her name is in the outline.

18 COMMISSIONER MacCALLUM: All right. It's  
19 so ordered.

20 MR. HODSON: Thank you.

21 BY MR. HODSON:

22 Q And so again, and I think I have covered that and  
23 we'll get into that information as well, you had  
24 some involvement in reviewing the (V4)---- (V4)---  
25 matter; is that right?



1 A Yes.

2 Q And then I think, if we then go to the Supreme  
3 Court of Canada reference case in 1992, your  
4 involvement there, you were involved in  
5 interviewing two of the sexual assault victims,  
6 you were involved in obtaining some police  
7 officers' notebooks you did a number of interviews  
8 in connection with people who might be called to  
9 testify there or who gave statements for the  
10 reference, that list of people may not be complete  
11 but at a minimum I think those are the people you  
12 interviewed in connection for the Supreme Court.

13 And just on that, Mr. Pearson, I  
14 think Mr. Williams asked you to do some of these  
15 interviews; is that correct?

16 A Yes.

17 Q And did Mr. Asper ask you to do some interviews as  
18 well; do you remember?

19 A I believe he did. I just don't recall the name  
20 but I believe there was a request.

21 Q And Mr. Beresh?

22 A Yes.

23 Q And Murray Brown for the Government of  
24 Saskatchewan?

25 A As I, as I recall.



1 Q Yeah. And so -- and I think we'll get into  
2 this -- it looks like, from the documents that at  
3 and around the time of the reference, through Mr.  
4 Williams you were gathering information,  
5 statements and witnesses, for all of the parties;  
6 is that fair?

7 A That's fair.

8 Q And then, as well, you handled the, I think the  
9 transfer of exhibits to The Court; correct?

10 A From Saskatoon to the Supreme Court?

11 Q Yes.

12 A Yes.

13 Q And then as well I've just put general assistance,  
14 we'll see that, I think throughout the course of  
15 the reference certain tasks were assigned to you;  
16 is that correct?

17 A Yes.

18 Q And then the interview and statement from T.D.R.  
19 Caldwell we've heard about, and we'll talk about  
20 that, but that was a statement that you took  
21 during the reference?

22 A Yes.

23 Q And then assist in DNA testing 1992. I understand  
24 you went down to North Carolina with the group  
25 that went to test Gail Miller's clothing; is that



1 correct?

2 A During the Supreme Court review, yes.

3 Q Yes. And then, as well, Albert Cadrain's notes  
4 that were retrieved I think in the Montreal  
5 airport, I think you received those and handled  
6 that briefly, is that correct?

7 A That's correct, yes.

8 Q And then for post-reference, that's the Supreme  
9 Court reference, we'll touch on again what further  
10 investigations you may have been asked to do or  
11 not asked to do. There's some vehicle theories  
12 that were passed on by you that we'll touch on, I  
13 think you did a review of the police theory  
14 document, the five-page document that became an  
15 issue at the Supreme Court; you know which one I'm  
16 talking about?

17 A Yes, yes I do.

18 Q I'm scared to call it anything but the police  
19 theory document, I think it's been called many  
20 things, but it's the five-page document that it  
21 was suggested might have been a script for the  
22 police and their prosecutor?

23 A Yes, I recall the document, yes.

24 Q And then, last, the Breckenridge allegations of a  
25 cover-up, you were involved in the latter part of



1 '92, I understand, in following up on some of  
2 that; is that correct?

3 A That is correct, yes.

4 Q And then the 1993 review you met with the  
5 investigators involved at the outset and then, I  
6 think other than a few minor matters, would not  
7 have had much further to do with that; right?

8 A That meeting was more than just the investigators,  
9 it was senior management and representatives, --

10 Q I'm sorry?

11 A -- representatives of the Alberta Attorney  
12 General's Department who they would review -- be  
13 reporting to.

14 Q But at the outset you would have met and  
15 transferred or handed over what you had, is that  
16 fair, and then more or less bowed out of the  
17 Flicker investigation; is that fair, just  
18 generally?

19 A Yeah. The file was turned over later on, but yes,  
20 that's generally true.

21 Q And it's quite possible, Mr. Pearson, that you may  
22 have been contacted in '93 and had some  
23 involvement, I'm just trying to get a general  
24 understanding?

25 A Yeah, sure, yeah, that's right.



1 Q And I think it's important that we all understand,  
2 before we get into all the details of your  
3 documents, what -- what was your responsibility  
4 and what wasn't, and what you did and what you  
5 didn't do, and that's all I'm trying to cover now.

6 And then last, the Larry Fisher  
7 proceedings in 1997, I understand that again you  
8 had some role in the continuity of the exhibits,  
9 is that correct, in that you had handled some of  
10 the exhibits in '92 and therefore were part of the  
11 trial process?

12 A That's correct, yes.

13 Q And you, in fact, testified at the trial; is that  
14 right?

15 A That's right.

16 Q Next if we could call up 332525, please.

17 Mr. Commissioner, this is a  
18 document that I prepared or our staff prepared to  
19 put together a chronology of events again just to  
20 assist, assist the questioning of Mr. Pearson and  
21 to get an understanding of dates and what  
22 happened, and I just want to quickly go through  
23 parts of this. Again, we will see that Mr.  
24 Pearson has extensive and detailed notes of the  
25 steps that he took and we just wanted to capture,



1 in a few pages, the timing of what he did.

2 And again, I've touched on this  
3 already, December 28th, 1988 is the application,  
4 again your involvement in February 28 of '90. If  
5 we can scroll down, and I'll just touch on a  
6 couple of the highlights. March 14th of '90 you  
7 interviewed Linda Fisher. March 24th -- if you  
8 can scroll down please -- March 24th you attended  
9 with Eugene Williams to obtain her deposition.  
10 Next page. April 10th of '90 is your first  
11 meeting with Larry Fisher. May 8th, another  
12 interview with Larry Fisher. Scroll down. July  
13 9th, 1990, the polygraph exam of Larry Fisher.  
14 Then July 13th of 1990, identifying the Saskatoon  
15 City Police offence files or looking at those.  
16 Scroll down. July 18th you took a statement from  
17 Ken Cadrain, we heard from Mr. Cadrain about that,  
18 and I will be questioning you about that. Next  
19 page. Again, some statements up until I think  
20 December 1990, and then the Minister's decision  
21 dismissing the application on February 27th.

22 And then I think we jump down to  
23 August, being the second application, and then it  
24 looks like on -- two days later Mr. Williams calls  
25 you again and sets out the work you are supposed



1 to do for the second application. And scroll down  
2 to the bottom. We see on September 12th you get  
3 approval for an analysis of Larry Fisher's  
4 offences and the Gail Miller murder. And then the  
5 next page. October 10th, '91 that's forwarded to  
6 Mr. Williams, and again this is where you get a  
7 statement from Ms. (V14)-, and I think that's when  
8 that matter comes into your area of  
9 responsibility. And down at the bottom, actually,  
10 go to the next page. You will see the interview  
11 of one of the assault victims December 9th and  
12 then a selection of other interviews. And then we  
13 get into the January '92 period when the reference  
14 starts. And then I've covered this general period  
15 January to March 1992. And then scroll down to  
16 the bottom of the page. March 11th the DNA  
17 samples are taken and you travel, on March 23rd,  
18 to get the DNA checked. Next page. Again, this  
19 just touches on conclusion of the reference case,  
20 the decision, and some follow-up matters that  
21 we'll touch on. If we could scroll down to the  
22 bottom, please. September 18th, '92 you are  
23 requested by Mr. Williams to do some work with  
24 respect to allegations being made and you  
25 interview a couple people related to the



1 Breckenridge allegations. And then here, I think  
2 October 8th -- and we'll spend some time on  
3 that -- '92 is when you meet with -- if we can go  
4 to the next page -- the officers, RCMP officers  
5 and other senior officials from Alberta on the  
6 Flicker matter, is that right? So that would be  
7 the time frame?

8 A That's correct, yes.

9 Q And then again we look -- skip ahead, 1997 the  
10 release of the DNA, and then as well some  
11 involvement in the Fisher proceedings.

12 So, again, is that generally a  
13 fair time outline of where it was you were  
14 involved? And I appreciate, Mr. Pearson, it  
15 certainly doesn't have everything in there, but  
16 some of the high points.

17 A Yup, yeah, I agree.

18 Q If we can call up 056743 please, and I'll come  
19 back to what this document is in a moment when we  
20 touch on that, but this would be the typed notes  
21 that you would have prepared as part of your  
22 office file; is that right?

23 A Yes.

24 Q And, again, this would be the first entry, if you  
25 could just call out that, it was a call from Mr.



1 Williams soliciting assistance in the  
2 investigation involving an application under  
3 Section 690 *Criminal Code* filed on behalf of David  
4 Milgaard, it goes on to talk about receiving  
5 information from an individual who calls himself  
6 Sidney Wilson, the name Larry Fisher. And then  
7 paragraph 2, if you could call out please, it  
8 says:

9 "Williams advises there is potential for  
10 publicity and media interest in this  
11 case, and it is requested that we  
12 conduct our investigation as sensitively  
13 as possible. I advised Williams to send  
14 his instructions in writing with a brief  
15 history on the information that he was  
16 in possession of, and we would provide  
17 whatever assistance we could."

18 And, again, would that be an accurate note of  
19 what, generally what Mr. Williams --

20 A Yes.

21 Q -- would have asked you to do? If we can go to  
22 the next page. And it looks here, sir, that you  
23 then called Inspector Goodman and briefed him on  
24 what you were doing?

25 A That is correct.



1 Q And then it looks like March the 6th, 1990:  
2 "Correspondence received from Mr.  
3 Williams, outlining the requests that he  
4 wished fulfilled, as well as a copy of a  
5 letter he received from Milgaard's  
6 lawyer, outlining the new source of  
7 information. Our investigation will now  
8 begin. Copy of information received  
9 from Williams has been faxed for the  
10 info and file generation of OIC Crim  
11 Ops, "F" Division."

12 And the last point, can you tell us what that is,  
13 "OIC"?

14 A That's the officer in charge of criminal  
15 operations for division headquarters, F Division,  
16 that is the Province of Saskatchewan within the  
17 RCMP.

18 Q So is that who you would be sending reports to  
19 then?

20 A It was -- my report would go to Superintendent  
21 Goodman -- I see I have Inspector Goodman but I  
22 believe he was a superintendent at that time --  
23 and then he forwards the report to criminal  
24 operations.

25 Q So March the 6th, 1990, you say that's when your



1 investigation begins; is that correct?

2 A That's correct.

3 Q And then if we can go to 001810, and your note  
4 indicated that on March 6th, 1999 -- 1990,  
5 correspondence was received from Mr. Williams with  
6 the request, and it -- it's dated March 1990, but  
7 I'm assuming that this is the letter of  
8 instruction that Mr. Williams sent you on March  
9 6th, 19 -- or that you received on March 6th,  
10 1990; is that fair, sir?

11 A That's fair.

12 Q And this would be, I think when we looked at the  
13 call you had a discussion, he asked you to do some  
14 work, you said "send me your instructions in  
15 writing"; is that fair?

16 A That's fair.

17 Q And so, again, we'll just touch on parts of this.  
18 And, again, he refers to the call of February 28th  
19 and he says:

20 "I sought to identify the person, whose  
21 assistance I should obtain, to  
22 investigate certain facts concerning  
23 David Milgaard's application for mercy,  
24 pursuant to section 690 of the *Criminal*  
25 *Code*."



1           And again, would that be your understanding, that  
2           you were to investigate certain facts --

3           A           Yes.

4           Q           -- related -- concerning his application for  
5           mercy?

6           A           Yes.

7           Q           And then if we can go to the next page, I mean I  
8           think we've gone through this letter before, I'll  
9           just touch on the parts. There is a reference  
10          here, early on, that there are two Larry Fishers  
11          in the prison system, a Larry Earl Fisher and a  
12          Larry Brian Fisher, and I think it's the Larry  
13          Earl Fisher that people quickly identify as being  
14          the ex-husband of Linda Fisher; is that right?

15          A           That's right.

16          Q           And then, if we can just scroll down to the next  
17          full paragraph, Mr. Williams writes:

18                        "This case has stimulated widespread  
19                        public and media interest. As a result  
20                        every investigative step may, at some  
21                        future date, be subject to careful  
22                        scrutiny."

23          And here we are, Mr. Pearson, doing just that.

24                        "Accordingly, to avoid any suggestion of  
25                        a conflict of interest by an



1 organization responsible for determining  
2 the veracity of certain allegations, I  
3 am seeking the assistance of the Royal  
4 Canadian Mounted Police. I understand  
5 that the force did not take a leading  
6 role in the conduct of the Gail Miller  
7 murder investigation in 1969."

8 And, again, your note of the call on the 28th  
9 talked a bit about that; is that fair?

10 A That's fair.

11 Q And would you have known early on, Mr. Pearson,  
12 that this matter was a significant matter and one  
13 that was drawing public attention?

14 A I don't recall having that knowledge.

15 Q And then again, if we can scroll down, Mr.  
16 Williams says:

17 "Against this background, I am writing  
18 to obtain your assistance in  
19 determining:"

20 And then if we can go down:

21 "Re: Larry Earl Fisher",  
22 who is the Larry Earl Fisher who was convicted  
23 in -- of killing Gail Miller subsequently as  
24 opposed to Larry Brian Fisher, he outlines a  
25 number of requests:



1 "Please provide details of Mr. Fisher's  
2 personal history for the period December  
3 1968 to February, 1990 relating to his  
4 age, marital status, family members and  
5 associations, employment history,  
6 residence, illnesses or medical  
7 treatment, and his correctional  
8 institutional history. For example, was  
9 he a fellow inmate of David Milgaard, at  
10 any time? If so, what were the  
11 circumstances of their association?  
12 Further, of particular interest is Mr.  
13 Fisher's association, if any, with the  
14 Cadrain family, whose residence is noted  
15 above. For example, did they have a  
16 tenant named Larry Fisher."

17 And, again, some information about that. And if  
18 I can just pause here; is it fair to conclude  
19 from this, Mr. Pearson, that at this time these  
20 would be your marching orders, if I can call it  
21 that, the specific inquiries that Mr. Williams  
22 wanted you to make on his behalf?

23 A Yes, yes, he was specific there, but, you know,  
24 there was curiosity, I suppose, in Larry Fisher.  
25 I don't think it was just restricted to that



1 point-form request, but that was his initial  
2 official request to me, yes.

3 Q So that in the course of gathering information  
4 that Mr. Williams specifically asked for, if you  
5 came across something that, as a police officer,  
6 you might -- you thought might be relevant to what  
7 you or Mr. Williams was looking at, that that's  
8 something that you would obviously pursue; is that  
9 correct?

10 A Yeah, yes.

11 Q And then again to the next page, if we can go to:

12 "C. Re: Linda Fisher and Sidney Wilson",  
13 he asks you to:

14 "... determine the whereabouts of Linda  
15 Fisher, and whether she did form the  
16 conclusions attributed to her by  
17 Wilson."

18 And, again, that's the Sidney Wilson who phoned  
19 Mr. Wolch and said Linda Fisher had information  
20 that suggested her husband killed Gail Miller.  
21 And so again, "if she can", it's asking you to go  
22 to see her and get her story; is that fair?

23 A That's fair.

24 Q And then, as well, to gather some personal  
25 information about Linda Fisher and find out some



1 information from Sidney Wilson, who I think we now  
2 know is Bruce LaFreniere. Did you ever know a  
3 Bruce LaFreniere or deal with him at all?

4 A I never did know who the caller was during my  
5 involvement.

6 Q And then, again, the next page just concludes the  
7 letter.

8 If we can just pause there, and  
9 I want to just compare if I can, Mr. Pearson, was  
10 this -- this would be the first time you were  
11 involved in a Section 690 application; right?

12 A That's correct, yes.

13 Q And so there is the letter of initial instructions  
14 from Mr. Williams; would your approach on what you  
15 were doing be any different than if he would have  
16 said or someone would have said, "lookit, Mr.  
17 Pearson, go and find who the true killer of Gail  
18 Miller is, go investigate"? Would there be a  
19 difference in the approach you would take in that  
20 mandate versus what we have just touched on with  
21 what Mr. Williams said?

22 A Well, yes, because there was, you know, there was  
23 already a conviction in place, the justice system  
24 had already been there before me, so yes there  
25 would be a definite different approach on how you



1 would go about this.

2 Q If we could call up 001810.

3 And I take it, just on that  
4 point, would there be a difference if you were in  
5 charge of the investigation versus taking  
6 directions from someone else?

7 A Well I was, I was in a situation where I was  
8 following up on what somebody else wanted. They  
9 were taking the lead, so to speak, as to what they  
10 had to, I suppose, determine under their purview  
11 of 690, which was not something the police were  
12 really familiar with.

13 Q I see. This letter -- I'm sorry, 001814. And  
14 this was the attachment in the letter that Eugene  
15 Williams wrote to you on March the 6th, or that  
16 you received on March the 6th, 1990, and this is  
17 the letter that David Asper wrote to Eugene  
18 Williams that had the information on Sidney  
19 Wilson. And I take it, sir, that you would have  
20 been aware of the incident, or the version of  
21 events that the person named Sidney Wilson had  
22 related to Hersh Wolch, that Fisher had arrived at  
23 home on the morning of January 31, 1969 covered  
24 with blood, and that Fisher's wife had seen this,  
25 Fisher's wife then apparently heard of the murder



1 later that day and concluded that Fisher may have  
2 had some involvement, and that Fisher's wife went  
3 to the police a number of years ago with this  
4 information; is that -- so I take it that would be  
5 your first bit of information about Linda Fisher,  
6 is that fair?

7 A That's fair. In addition to telephone calls, of  
8 course, I had with Mr. Williams.

9 Q Right.

10 A I'm sure we had talked about this.

11 Q And then, down at the bottom, Mr. Asper writes  
12 that -- to Mr. Williams, he says:

13 "As we have indicated in our earlier  
14 correspondence, we have no funds with  
15 which to retain an investigator. We  
16 would very much appreciate your  
17 considering making sufficient funds  
18 available to us in order that we might  
19 take the appropriate steps, failing  
20 which we would very much like to be  
21 advised as to the status of any  
22 investigation that your office might  
23 undertake."

24 And at some subsequent point, Mr. Pearson, did  
25 you have occasion to talk directly to David Asper



1 in the course of your work on this investigation?

2 A Yes, I did.

3 Q And -- and I'll refer to a, I think it's in March  
4 or shortly after this, your first conversation;  
5 can you tell us just generally, did you maintain  
6 contact with David Asper throughout the course of  
7 your investigation?

8 A Yes, I -- I believe it had a good relationship  
9 with Mr. Asper, we had communicated back and forth  
10 on an ongoing basis, I always thought that we had  
11 a fairly cordial relationship. He provided  
12 information to me directly and I updated him on  
13 matters that I thought were appropriate at the  
14 time, and so we did, we did communicate via  
15 telephone. I think they are documented in my  
16 notes for the most part.

17 Q And generally, we'll get into the specifics, but  
18 generally did Mr. Asper, from time to time,  
19 provide you with information that assisted you in  
20 your investigation?

21 A Yes, he did.

22 Q And did you, from time to time, call him without  
23 him calling you first; in other words not report  
24 to him but give him a call and tell him what was  
25 happening?



1 A He -- who called who, but I do recall calling him  
2 on a specific call, whether it was to give him  
3 information or some other issue I don't recall,  
4 it's in my notes, but I did call him at times and  
5 he called me at times.

6 Q And do you recall whether you had any concerns, or  
7 Mr. Williams had any concerns, with you having  
8 direct contact with Mr. Asper?

9 A I don't recall there any -- being any concerns of  
10 that expressed by Mr. Williams, no.

11 Q Did you, at some point shortly after this initial  
12 engagement, become aware that Joyce Milgaard or  
13 David Milgaard or Mr. Asper had retained Paul  
14 Henderson to do some investigation work?

15 A I'm not certain when that name Centurion  
16 Ministries came into it. I believe that's the  
17 firm we're talking about?

18 Q Yes.

19 A Yes. Yeah, I'm not just too sure about the time  
20 frame, just off the top of my head, that I first  
21 became aware that this other agency was working  
22 for him.

23 Q I'll show you some documents, and it may have been  
24 after they took the statement from Linda Fisher,  
25 but at some point you would have become aware that



1           Joyce Milgaard and a fellow from Centurion  
2           Ministries were investigating as well; is that  
3           fair?

4           A       Yes, and I didn't know anything about Centurion  
5           Ministries, I didn't really know what kind of an  
6           agency they were, it sounded like a -- it sounded  
7           like a religious organization is what I thought  
8           they were. I didn't know if they were an  
9           investigating agency or someone who was, you know,  
10          supporting Mrs. Milgaard.

11          Q       And did you have any direct dealings with Paul  
12          Henderson?

13          A       No.

14          Q       And do you know if he ever called you with  
15          information?

16          A       I don't believe he ever called me.

17          Q       If we can then go to 008379. This is a letter  
18          March 8th, 1990 from Mr. Williams to you,  
19          Mr. Pearson, and I will show you a note a bit  
20          later, but I think you asked Mr. Williams to give  
21          you some background facts to help you when you  
22          went out to interview Linda Fisher and others;  
23          does that sound correct?

24          A       Yes, I did ask for, you know, just like I say, a  
25          synopsis of what this was all about.



1 Q And so, here, this is what Mr. Williams says:  
2 "... a synopsis of the facts concerning  
3 the location and timing of the murder;  
4 and, the physical evidence that was  
5 discovered at or near the murder scene."

6 And then he says, scroll down:

7 "I hope this will provide you with the  
8 necessary background information to  
9 assist your investigation."

10 So this would be your first, other than your  
11 phone call with Mr. Williams -- if we can go to  
12 the next page, please -- this would be your  
13 first, the first set of facts or information you  
14 had about what it was that led to Mr. Milgaard's  
15 conviction; is that fair?

16 A That's fair.

17 Q And, as well, the circumstances of Gail Miller's  
18 death; is that fair?

19 A That's fair.

20 Q And I won't go through all of this, but certainly  
21 the parts, I take it you would have learned that  
22 the evidence against Mr. Milgaard came in part  
23 from his travelling companions Nichol John and Ron  
24 Wilson, who had testified or given statements  
25 about seeing a knife that matched the murder



1           weapon; do you remember --

2           A           Uh-huh.

3           Q           -- seeing that? I take it you would have gone  
4           through and got an idea of what it was that --

5           A           Yes.

6           Q           If we can go to the next page, please, and it goes  
7           on, and I don't propose to go through it, it just  
8           talks about the details of a sketch of where  
9           things happened, where the body was found, and the  
10          Wilson and John evidence. If we can go to the  
11          next page. And then I think Mr., I think this is  
12          Mr. Williams' document that he prepared, but the  
13          author goes on to describe about Nichol John  
14          giving a statement to the police that included  
15          where she saw Mr. Milgaard grab a knife and begin  
16          to stab the woman, but then later on at trial when  
17          she testified she neither confirmed nor denied the  
18          truthfulness of the information. Do you remember  
19          that being a feature of the case, Mr. Pearson,  
20          when you first got it; that Nichol John had given  
21          a statement to the police saying a number of  
22          incriminating things, including that she witnessed  
23          the murder, but at trial said she couldn't  
24          remember?

25          A           I eventually -- whether I picked up on that at



1           this particular moment I'm not too sure, but I  
2           certainly did become aware of it.

3           Q       And then it says here, and it looks like this is  
4           Mr. Williams saying when I interviewed her she  
5           said that she told the truth in her statement even  
6           though she did not recall all the events today,  
7           and I'm assuming the I is Mr. Williams, and then  
8           again he sets out -- if we can just go back to the  
9           full page -- and I won't go through this, but Mr.  
10          Williams set out from the trial transcript, and if  
11          we can go to the next page, the questions and  
12          answers from the transcript, and again to the next  
13          page, and it goes on to talk about what happened  
14          at the trial. Here -- I take it you would have  
15          become aware that the issue of witnessing blood on  
16          David Milgaard's clothing that morning was  
17          evidence that was used against him at the trial  
18          and that Wilson noticed it and Albert Cadrain  
19          noticed it?

20          A       Uh-huh, yes.

21          Q       Scroll down a bit. He talks about Albert  
22          Cadrain's testimony confirming blood. Then the  
23          next page. Sorry, go to the next page. And at  
24          some point, either when you read this or at some  
25          subsequent point, you would have become aware of



1 the condition of Gail Miller's clothing; namely,  
2 that her uniform dress was down, rolled down at  
3 her waist and the stab mark was through the coat,  
4 but not the dress. Do you remember that being a  
5 feature of the crime scene?

6 A Yes.

7 Q And then the next page, it sets out about some  
8 forensic evidence at trial, about a frozen lump  
9 containing semen that suggested the perpetrator  
10 had blood type A, and I take it that would have  
11 been a fact, and we'll see when you pursue Mr.  
12 Fisher in your investigation that his blood type  
13 is an issue that you follow up on; is that fair?

14 A That's fair.

15 Q Now, just generally, are you able to recall  
16 whether you had any reaction when you read this  
17 summary, or learned the facts about anything  
18 related to guilt or innocence of David Milgaard or  
19 anything about the circumstances of the crime,  
20 does anything jump out that you remember today?

21 A I didn't form any opinions based on that primarily  
22 because it had very little to do with Linda  
23 Fisher. My task was to go and follow up on Linda  
24 Fisher. The material in here really had very  
25 little to do with any knowledge that, you know, of



1 -- the Fisher side, so to speak, wasn't part of  
2 this, but -- so it certainly enlightened me as to  
3 the history of the details leading to the  
4 conviction of David Milgaard, but how I could  
5 apply this to anything that Linda Fisher may have  
6 to say would be limited.

7 Q Just again back on the document that I read you,  
8 it says in there, and I think it's Mr. Williams,  
9 talks about him having interviewed Nichol John.  
10 Do you remember that point I showed you? Did Mr.  
11 Williams ever send you copies of the other work he  
12 had done on the file; for example, here's all the  
13 interviews I've conducted to date and here's all  
14 the other information?

15 A I received no information at all that I recall  
16 pertaining to those other witnesses.

17 Q Now, can you tell us, what reporting protocol was  
18 in place for you to report to Eugene Williams and  
19 anybody else with respect to the work you were  
20 doing on this file? Let's talk firstly with  
21 Eugene Williams.

22 A As I recall, there was no official protocol set up  
23 between the two of us, we didn't say I would like  
24 you to report to me in a certain format every so  
25 many days, it was an informal arrangement that was



1 really at the phone call level, and we certainly  
2 exchanged faxes, as far as getting statements and  
3 faxing him the statements, and from time to time  
4 he had material that he forwarded to me that I  
5 think is all on the record. As far as the  
6 documentation that I was generating, was primarily  
7 the police notes, and then there is the file  
8 report that stayed locally and then, as I  
9 mentioned earlier on, there was a reporting  
10 requirement that was an internal reporting  
11 requirement and those are reports of summaries  
12 that went forward to our headquarters, and on  
13 those I provided, as I recall, specific  
14 instructions to ensure they sent a copy of that  
15 report to Mr. Williams.

16 Q On how many occasions did you meet personally with  
17 Eugene Williams?

18 A On the first review?

19 Q Yes.

20 A I believe it was three times, possibly four. I  
21 would have to double-check my notes, but --

22 Q And would those be, and we'll go through those,  
23 would those be in connection with the interviews  
24 of Linda and Larry Fisher, for example?

25 A Yes.



1 Q And I think there was one visit with the city  
2 police; is that fair?

3 A Yes, once he came out on his own and was reviewing  
4 the file I believe of the city police.

5 Q And the second application, do you remember how  
6 many times you would have met with him?

7 A On the way through to Ottawa picking up exhibits  
8 and on the way back returning them he was at the  
9 airport, him and Miss Alain from the crime lab,  
10 and I also was with Mr. Williams, went out to  
11 British Columbia to review Fisher's files in the  
12 institution.

13 Q And so again just back -- let's just talk as far  
14 as between you and Eugene Williams, and I'll go  
15 through your reporting to your superiors within  
16 the RCMP, but as between you and Mr. Williams  
17 directly, you said by phone call, by fax as well;  
18 is that correct?

19 A That's correct.

20 Q And did you have any concerns or issues with the  
21 flow of communication between you and Mr. Williams  
22 in the course of your work?

23 A What do you mean by the concerns about the flow?

24 Q Did you get information to him -- did information  
25 flow back and forth without any difficulty, was



1           there any issues there that caused you concern  
2           that he wasn't getting your information or you  
3           weren't getting his information?

4           A        No, I think the information that I intended to  
5           provide him he received. I'm not sure what  
6           information he had that I should have had or could  
7           have had or -- but I didn't think there was any --

8           Q        When you needed to communicate with Mr. Williams  
9           and provide him information, were you able to do  
10          so?

11          A        Oh, yes, absolutely, sure.

12          Q        And when you asked him for information, did you  
13          get it, you know, in a reasonable time?

14          A        Oh, yes.

15          Q        Let's just talk again about your notes. I  
16          understand, sir, and there's three separate  
17          sources of your documents, if I can call it that,  
18          the first one would be your officer's notebook; is  
19          that correct?

20          A        Yes.

21          Q        And that would be your handwritten notes?

22          A        Yes.

23          Q        And can you tell us, just generally, what was your  
24          practice at the time for recording notes?

25          A        Well, you would hand write them into your notebook



1 on chronology of time and date as much as  
2 possible. There were times when you would put a  
3 note to file and pick it up at possibly a later  
4 date if you didn't have access to your notes at  
5 the time or -- but for the most part the notes  
6 were a chronology of what went on and for the most  
7 part they were entered at the time. There were  
8 times that you might come back at a later date and  
9 enter a note, there's a few times when the  
10 chronology does not fit, but for the most part  
11 that's the way they unfolded.

12 Q And I take it, sir, that in your other  
13 investigations, your, if I can call them, regular  
14 investigations, for example, where you are  
15 investigating a murder, and you keep a notebook in  
16 that type of investigation; is that correct?

17 A Yes.

18 Q And in this case you kept the same type of  
19 notebook?

20 A Well, this was not the only duty I had. Like I  
21 say, I was in charge of the GIS section and we  
22 probably had 35 or 40 investigations going on at  
23 any given time, so I was carrying some of the  
24 files myself, but I was primarily overseeing and  
25 supervising the other investigators who really



1 carried a lot more than I did as far as the  
2 operational work and there were general notebooks  
3 and on this particular case the notes were  
4 specific for this particular investigation, so  
5 they were kept separate.

6 Q Right. So you have a separate notebook for work  
7 on the 690 investigation?

8 A Yes, that's right.

9 Q But your practice and procedure as far as keeping  
10 notes would be the same as you would for other  
11 police files; in other words, I think we're all  
12 familiar with standard police officer's notebooks,  
13 and did you apply the same standards and system on  
14 this case as you did all of your other files; is  
15 that --

16 A Generally what I did, if I was on a serious  
17 long-term investigation, that I would have a set  
18 of notebooks specific to that particular  
19 investigation. If I was doing ongoing inquiries  
20 and general investigation over other  
21 investigations that weren't so "serious", I would  
22 have an ongoing notebook, might have entries  
23 covering numerous different files and  
24 investigations.

25 Q And just again on the time frame, I think when



1 Mr. Williams asked you to become involved, I take  
2 it you would have had other investigations  
3 unrelated to this matter that you were working on?

4 A Oh, yes, yes.

5 Q And did you continue to work on those matters?

6 A Yes.

7 Q Are you able to give us any sense of how much of  
8 your time was devoted to the work for Mr. Williams  
9 in the 1990-'91 time frame?

10 A Well, it's pretty hard to put it in a percentage  
11 figure, but it did take a lot of time, but there  
12 was a lot of other things going on as well, there  
13 was other homicides in the works and we had a lot  
14 of other priorities as well going on, but to give  
15 you a percentage of time I spent on this, it was  
16 significant.

17 Q And I take it you had, and we'll see a reference  
18 in here I think to a Caron murder, a Braun murder  
19 or Malm is it?

20 A Yes.

21 Q So I take it you had other murder -- you had  
22 murder investigations you were working on at the  
23 same time you were assisting Mr. Williams; is that  
24 right?

25 A Yes, and I don't want to take credit for all this



1           because there were other investigators who were  
2           certainly involved in these investigations, but I  
3           was supervising and overseeing what was going on  
4           there, yes.

5           **Q**       Just on your notebooks, and I understand, Mr.  
6           Pearson, that all of your notebooks were not only  
7           provided to the RCMP in the Flicker investigation,  
8           but as well had been turned over to the  
9           Commission; is that correct?

10          **A**       That's correct, yes.

11          **Q**       And if we could call up 332535, please, what we've  
12          done, Mr. Commissioner, to assist Mr. Pearson and  
13          other counsel, and I don't know that the need will  
14          arise to go to the notebooks very often, but if  
15          they do, they are all up here in paper copy by  
16          date, and we've put together in this document,  
17          which has been provided to all counsel, the date  
18          and the page range for that date and the notebook  
19          number, so that for any given date we can fairly  
20          readily find the note, and I will leave these up  
21          for counsel to look at, and certainly, Mr.  
22          Pearson, if at any time in giving your answers you  
23          wish to refer to part of your notebook, we can  
24          call them up on the screen for you or have your  
25          originals here if you need them.



1 I should point out, and maybe  
2 we'll just call up 058212, and I can show you, the  
3 manner in which they photocopied the notebooks was  
4 very efficient; however, somewhat confusing, and  
5 they have put two notebooks, different notebooks  
6 on the same page, and so I just want to point that  
7 out to everybody. You'll see this -- I'm not sure  
8 if you can tell from this, this is February 28th,  
9 1990, 4:00 p.m., called Eugene Williams, Federal  
10 Justice Ottawa, explained need to do further  
11 investigation on the David Milgaard case,  
12 etcetera, so that would be your note for February  
13 28th.

14 If we can just go back to the  
15 main page, please, and you'll see this note over  
16 here is from a different notebook, and I think  
17 that is April 20th, but if we could just -- I just  
18 want to show that.

19 If we can go back to 332535,  
20 you'll see what we've done for notebook number 1,  
21 it's got left column, so for the dates this is all  
22 left column. If we can go to the next page,  
23 please, 332536, you'll see notebook number 2 is on  
24 the right column and there's the April 20th date,  
25 so I am sure, Mr. Pearson, we will have this



1           figured out if we need to go to the documents, and  
2           as I say, the notebooks are up here by dates with  
3           tabs so if anybody needs to get them.

4                        So those would be the entirety  
5           of your notebooks, sir, is that fair, that you  
6           provided for the relevant time frame?

7           A           That's all the notes I have, yes.

8           Q           The next set of documents, 056743, if I can call  
9           that up, and I had read a part of that earlier,  
10          and we will be using this document extensively,  
11          Mr. Pearson, can you tell us what -- and this is,  
12          I think, 177 pages, 782 paragraphs running  
13          chronologically. Can you tell us what this  
14          document is?

15          A           It's basically a typed-up file report based  
16          primarily on my notes, and to a degree my  
17          thoughts, and they are not identical to the  
18          handwritten notes, there are some differences; not  
19          much mind you, but there are some details in the  
20          handwritten notes you may find that don't match  
21          up, so it's not like a transcript or something  
22          like that.

23          Q           And let's just go through, this is titled at the  
24          top occurrence report and it's got some general  
25          information about Mr. Williams, and I take it --



1 and the file, although we can't see it very well,  
2 I think it's file --

3 A 0893.

4 Q 90-893; is that right?

5 A That's right.

6 Q And so this would be a standard occurrence report  
7 form that you would prepare when you initiate a  
8 file?

9 A That's an RCMP report, yes.

10 Q And if we can just go to the next page, please,  
11 we'll see it's got continuation report at the top,  
12 page 2, and that you number the paragraphs and in  
13 fact have the date, and maybe go to the next page,  
14 and the time, so it looks as though, sir, that  
15 this is a running set of your dictated notes and  
16 thoughts; is that fair?

17 A Yes.

18 Q And I should go back to the full page, please. So  
19 here's something on March 7th, on March 8th  
20 there's an entry from nine o'clock, an entry from  
21 11 o'clock. Can you tell us, did you dictate  
22 these notes, did someone type them up for you  
23 then?

24 A Yes, a secretary typed them up.

25 Q And would you do this on a regular basis?



1 A They would accumulate for quite a while before I  
2 got to dictating them onto a report, yes.

3 Q And you take them from your notebook and then  
4 dictate onto this file?

5 A Yes.

6 Q And what was the purpose of this document, where  
7 did it reside and what was its function?

8 A It was a file report just to move material,  
9 information from the personal notebook into I  
10 guess a readable format.

11 Q And so this would be at your office at all times  
12 if someone wanted to -- if your superior, for  
13 example, wanted to find out what you were doing,  
14 they could go look at this file?

15 A Yes.

16 Q And so this would be a running chronology  
17 outlining what you undertook in this  
18 investigation; is that fair?

19 A Yes.

20 Q And again, for the record, it runs from February  
21 28th, 1990 to April 28th, 1992 and all the  
22 paragraphs are sequentially numbered; is that  
23 correct?

24 A Yes.

25 Q And we've had a chance to review this, Mr.



1 Pearson, in preparation for your evidence, and I  
2 think there's a couple of dates that might be out  
3 a bit which we will, I will identify as we go  
4 along, but for the most part, can you tell us that  
5 this would be an accurate record of the notes you  
6 would have made at the time that would outline the  
7 work you did on the investigation?

8 A Subject to some human error, yes.

9 Q When you mean human error --

10 A You know, like, I didn't proof them, I didn't  
11 proof the notes to what's there, so they are a  
12 different document, but they are accurate as far  
13 as I'm concerned.

14 Q And I think at least to the extent that where  
15 they've been compared to your notebook, there are  
16 certainly many similarities; is that -- they are  
17 not verbatim, but they are close; is that fair?

18 A Oh, very close.

19 Q And then the next report -- so again,  
20 Mr. Commissioner, and for the benefit of the  
21 parties, this document 056743 I intend to use as  
22 the primary document when I go through Mr.  
23 Pearson's evidence, I may from time to time go to  
24 the notebooks if we need to. The third type of  
25 report I think is the investigation report; is



1           that right?

2           A           Could I just add something --

3           Q           Sure.

4           A           -- on this previous report?

5           Q           Yes.

6           A           I'm not sure what the end date is on the typed-up  
7           version, but just by way of explanation, around  
8           that time I was seconded to a different task  
9           force, Martensville task force, and I actually  
10          left my office, relocated in another building, but  
11          I also carried on with the follow-up that was  
12          going on on this case, so I had additional  
13          handwritten notes that never got typed into that  
14          form.

15          Q           I see.

16          A           And those notes have been disclosed to the  
17          Commission, but I think that is about another 250  
18          pages of notes.

19          Q           Right. So --

20          A           So that is -- there's more in the system, but it's  
21          not typed up.

22          Q           I see. So the end of April, '92 you continued to  
23          make notes in your notebook, but they never made  
24          its way onto the office chronology because you  
25          were assigned elsewhere; is that correct?



1 A That's correct.

2 Q And then if we could, on the investigation report,  
3 if I can call it that, I take it that on the basis  
4 of a month or two you would send a report to your  
5 superior outlining what you had done; is that  
6 right?

7 A A summary report, yes.

8 Q And if we could call up 332553, please, this is a  
9 document that we prepared, Mr. Commissioner and  
10 Mr. Pearson, this just outlines the dates of the  
11 reports that you sent up, the doc ID and then the  
12 appendices attached to the investigation reports,  
13 and I understand, Mr. Pearson, that when you  
14 prepared a report; for example, if you took a  
15 statement, you would attach the statement as an  
16 appendix and send it up the line? Is that  
17 correct?

18 A That's correct, yes.

19 Q And in fact we have seen in documents that we have  
20 used today your appendix numbers on some of the  
21 documents, but this is just to assist the parties.  
22 The next document, if I could call up 332520,  
23 you'll see the appendices there and the dates.  
24 332520 is again a document we prepared that lists  
25 the appendices A to XXX referred to in the reports



1 and we've got the appendix, the date and the doc  
2 ID, and each of these doc IDs, we'll see at the  
3 top, reference to the actual appendix.

4 And so if I might, maybe if I  
5 could just call up the first report, we'll just  
6 take a quick look at that before we break, 004906,  
7 and I think PCR means what, is that --

8 A Previous crime report.

9 Q Previous crime report. So this is the first  
10 report, "F" Division, April 17th, 1990, your file  
11 number, and then you go on to talk about persons  
12 subject to this report. Maybe go to the next  
13 page, and then you talk about the complaint and  
14 investigation, and can you tell us, what would be  
15 the purpose of this report and when would you  
16 prepare it and what would you put in it?

17 A This is a report that goes up through headquarters  
18 advising senior management of what's evolving on  
19 this particular investigation.

20 Q And I think we'll see from the dates it wasn't  
21 monthly, but it would be some time frame you would  
22 report?

23 A There was no real set time that you had to have it  
24 in, but there was follow-up.

25 Q And again these reports, I take it you would rely



1 on your notebooks and the office file, the  
2 chronology to assist you in preparing this report?

3 A For the most part, and knowledge that you felt you  
4 accurately possessed.

5 Q And again, and we'll see this when we get into the  
6 specifics, but in some of these reports would it  
7 be fair to say that you will make comments or  
8 observations or express some views about things  
9 you have done or what might need to be done, is  
10 that fair, that might not be in your notes and the  
11 chronology?

12 A Yes. In the policy for setting up this, this is  
13 kind of a standard format, several of them changed  
14 over the years in the RCMP, but at this time I  
15 recall this was the format being used and there  
16 was a provision in there for "investigator's  
17 comments" where you could put some --

18 Q And so I --

19 A -- input.

20 Q Sorry. The point is, in these reports we may find  
21 items expressed by you that we don't find in your  
22 notebook or your chronology; is that fair?

23 A Yes, that's right.

24 Q And if we could maybe just go to the last page of  
25 this report, you'll see here -- actually, just go



1 to the previous page, and maybe just give an  
2 example here, in your summary you talk about  
3 expressing views on weapons and things of that  
4 nature. You are expressing your views on what has  
5 been done and what might need to be done; is that  
6 fair?

7 A Yes.

8 Q And then just to the next page, just to touch on  
9 these, here's where you have the appendices,  
10 correct, and then you would attach those to your  
11 report?

12 A Yes.

13 Q And then if you could just scroll down further,  
14 you say two copies -- actually, just go back, if  
15 you could call out this, under distribution you  
16 ask -- OC is?

17 A Officer commanding. That would be Goodman  
18 upstairs in my office.

19 Q And you say two copies for forwarding to "F"  
20 division and then criminal operations, please  
21 ensure material forwarded to Mr. Eugene Williams;  
22 is that correct?

23 A That's correct.

24 Q And so your understanding, or your intentions were  
25 to have this report go to Eugene Williams as well?



1 A Yes.

2 Q And I take it that prior to this report going to  
3 Mr. Williams, you may have discussed some or all  
4 of the information in this report?

5 A Yes. We had ongoing telephone calls and I don't  
6 believe there are too many surprises, so to speak,  
7 in these reports, as far as Mr. Williams is  
8 concerned.

9 MR. HODSON: This might be an appropriate  
10 spot to break.

11 *(Adjourned at 2:55 p.m.)*

12 *(Reconvened at 3:15 p.m.)*

13 BY MR. HODSON:

14 Q Mr. Pearson, if we can now go to the work that you  
15 did on the first Section 690 application, and I  
16 think you told us that primarily it was to  
17 investigate Larry Fisher as a suspect in the death  
18 of Gail Miller; is that correct?

19 A Yes.

20 Q And let's go to the document 056743 which is your  
21 chronology and go to page 056745, and I think your  
22 earlier letter said March 6th is when you were  
23 going to start the investigation, it looks like  
24 March 7th you contacted North Battleford RCMP, and  
25 by March 8th you had identified Larry Fisher's



1 mother and his ex-wife Linda and contact  
2 information; is that correct?

3 A That's correct, yes.

4 Q And as well then made some contact with the P.A.  
5 Pen to get some information, file material on  
6 Larry Fisher; is that right?

7 A Yes.

8 Q And I think if we take a look down at number 10,  
9 and we'll see this a bit later in the notes, but  
10 that when you contacted the Prince Albert  
11 Penitentiary, am I to understand from these notes  
12 that they had some information on Mr. Fisher's  
13 file that dealt with some Winnipeg rapes? Do you  
14 remember hearing about that?

15 A Yes.

16 Q And then if you can go down, and we'll take a look  
17 at paragraph 11, it says:

18 "Penitentiary Service has a letter on  
19 file addressed to Chief Kettles,  
20 Saskatoon Police Department, dated 20  
21 Oct 70, indicating that members of the  
22 Winnipeg Department interviewed Fisher  
23 and he denied any involvement in these  
24 offences (not sure which offences he was  
25 interviewed on)."



1           And again if we can call up 002019, and this is a  
2           letter that we have seen many times before, Mr.  
3           Pearson, I think this is the October 20th letter,  
4           that it appears the person in the Prince Albert  
5           Penitentiary office may have read parts to you  
6           over the phone, and where it says he denied any  
7           knowledge of the offences committed in your area,  
8           this is the one to Kettles. Do you see that?

9           A           Yes.

10          Q           So if we can just go back to the report, 056745,  
11           what I think the evidence is we've heard so far,  
12           Mr. Pearson, is that the Fort Garry police file on  
13           Larry Fisher for the 1970 offences, that that file  
14           was destroyed. In fact I think -- did you not  
15           follow up to try and get their police file?

16          A           Yes.

17          Q           And what were you told?

18          A           That when they amalgamated, the files were  
19           destroyed.

20          Q           And did you in fact get a file from the Prince  
21           Albert Penitentiary at some point on Larry Fisher  
22           that had information about the Fort Garry  
23           offences?

24          A           Yes.

25          Q           And the letter that I just showed you from



1 Inspector Perry of the Fort Garry police to Chief  
2 Kettles, was that document -- do you remember that  
3 being on there?

4 A I can't specifically remember the document, but  
5 there was a document that was saying some things  
6 that I was questioning about which offence they  
7 were related to.

8 Q So if we can just go back to at the time, and this  
9 is March 8th of '90, paragraph 11, at this time  
10 you make a note not sure which offences he was  
11 interviewed on. At this time were you aware as to  
12 whether or not Larry Fisher had been, other than  
13 the conviction in Winnipeg that was given to you,  
14 any other information about any offences anywhere  
15 else?

16 A Not that I recall.

17 Q And do you remember what if anything you made of  
18 this information in paragraph 11 that you got from  
19 Penitentiary Services?

20 A Well, it was just a question that I wondered which  
21 offence they were talking about.

22 Q Go to the next page, please, and again just for  
23 the date, this is still March 8th, and I think  
24 this is where you called Mr. Williams and asked  
25 for -- advising you located Linda Fisher and you



1           asked for a synopsis of the file so that you can  
2           better brief yourself before interviewing her, and  
3           I think that's the document that I just went  
4           through earlier, that synopsis; is that right?

5           A           Yes.

6           Q           And so I take it on March 8th then you were going  
7           to make efforts to interview Linda Fisher?

8           A           Yes.

9           Q           And then we see down here, paragraph 15, about  
10          again Larry Lafleur at Prince Albert Penitentiary  
11          about blood type of Larry Fisher. I won't go  
12          through all of these reports, but you'll see in  
13          the chronology here, Mr. Pearson, or at least I  
14          did when I went through it, a number of situations  
15          where you were seeking to get Larry Fisher's blood  
16          type; is that correct?

17          A           Yes.

18          Q           And was it difficult to find his blood type?

19          A           Yes, it really was.

20          Q           And why was his blood type important, or learning  
21          his blood type?

22          A           That came back to the blood type that was involved  
23          in the Milgaard conviction.

24          Q           Yes.

25          A           And there was the type A blood and the antigens of



1 the blood and I was just trying to find out if the  
2 blood type was the same or different.

3 Q And again would that be to either eliminate or  
4 leave him in as a potential suspect?

5 A Well, I don't think I would have made the decision  
6 to eliminate, but it would have been helpful in  
7 addressing some question.

8 Q And then again if you go down to paragraph 17 and  
9 18, I won't go through it, but it looks as though  
10 you made contact with RCMP in North Battleford and  
11 got some information about Larry Fisher's friend,  
12 or common-law relationship that he was living with  
13 in 1980, so again, you would be getting whatever  
14 information you could about Larry Fisher?

15 A Just some general information gathering, yes.

16 Q And then down, paragraph 18, you talk about  
17 checking the medical records at the Pen in an  
18 effort to get a blood type for Larry Fisher and  
19 making arrangements to go down there and review  
20 the file; is that correct?

21 A Yes.

22 Q And if we can go to the next page, please. So  
23 this is March 12th, which I think is a Monday,  
24 I've checked the calendar, so on March 9th the  
25 Friday, or March 8th the Thursday, you had a phone



1 number for Linda Fisher, March 9th you talked --  
2 on Friday talked to the P.A. Pen people, and on  
3 Monday, March 12th this details a conversation  
4 with Eugene Williams, and Mr. Williams advised  
5 that he had been in contact with David Asper and  
6 Mr. Asper said Sidney Wilson doesn't exist, they  
7 think it's Brian Wright. And then it says Asper  
8 apparently obtained this information from Joyce  
9 Milgaard, and it is not known exactly how accurate  
10 this is, and that at:

11 "Sometime during the past weekend, Joyce  
12 Milgaard went to Cando, Sask., and  
13 interviewed Linda, and also went to  
14 North Battleford and talked to Larry  
15 Fisher's mother, Maria."

16 I think that should be Marcy.

17 "Mrs. Milgaard apparently made inquiries  
18 to determine if the Justice Department  
19 has been investigating her compliant.  
20 Maria Fisher apparently called the RCMP  
21 members in North Battleford as she felt  
22 she was being bothered unnecessarily by  
23 Mrs. Milgaard."

24 And then again, if we can just pause there, is  
25 that accurate; did you become aware of that at



1 the time that contact was made?

2 A Yes. Yes, I believe there was more detail in my  
3 notebooks on that, but basically there was a  
4 concern about what is written there.

5 Q If we can just go down to paragraph 21, and then  
6 again this would be information that Mr. Williams  
7 gave you before you went to see Linda Fisher, I  
8 take it; is that right, by the date?

9 A Repeat that?

10 Q I say the date of this is March 12th and,  
11 according to your notes, this would be before you  
12 went out to see Linda Fisher; is that all right?

13 A Yes.

14 Q And then this talks about:

15 "Mrs. Milgaard provided her lawyer with  
16 information as follows."

17 Starting here:

18 "The night before the murder of Gail  
19 Miller, Larry Fisher went out in the  
20 evening and did not return, while Linda  
21 waited up ... When Linda awoke about 9  
22 am the day of the murder, Larry was  
23 present ...",

24 they had an argument, Linda heard a report on the  
25 radio -- just reading parts of this -- Linda



1 immediately accused Larry of the crime and went  
2 into a rage of accusations, Larry is said to have  
3 dropped his hands to his side and took on a look  
4 of shock. And then Linda has two uncles, Roy and  
5 Cliff, at the time Cliff loaned his car to Larry,  
6 and then also indications about what was  
7 observed.

8 So, again, I take it you would  
9 have received this information or had this, then,  
10 before you went out to see Linda Fisher?

11 A Yes.

12 Q And if we can go to the next page, please, you  
13 write:

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

23 Can you explain or elaborate on what Mr. Williams  
24 may have said to you about his concerns about  
25 Mrs. Milgaard conducting her own investigation?



1           A           I think he was just basically concerned that  
2                       someone else outside the so-called system was  
3                       conducting investigation, inquiries, that may  
4                       hamper ours.

5           Q           And did you share that concern?

6           A           Umm, I had concerns that developed more later on.  
7                       At this point the fact that she had been there and  
8                       was talking to Linda didn't really alarm me, but  
9                       later on, in the attempt to develop Fisher, there  
10                      were some concerns, yes.

11          Q           And what were those concerns?

12          A           Well when we got to the point of trying to get the  
13                      confidence of Fisher, as a suspect, to get him to  
14                      talk to us, there was this issue that negative  
15                      publicity may influence how he will deal with us,  
16                      so I really was interested in having a quiet a  
17                      time as possible and getting through to Larry  
18                      Fisher. The more publicity, the more noise being  
19                      made about it, the more alarmed he may become and  
20                      the more difficult that may be for us, that's --  
21                      that was the negative side.

22                                I suppose you could argue the  
23                      fact that maybe he would be scared into talking to  
24                      us, but that was my concern at the time.

25          Q           So at this time, again on March 12th, I think you



1 are saying -- I think you told us it was a concern  
2 later -- at this time the fact that Mrs. Milgaard  
3 had been to see Linda Fisher, tell us again; did  
4 that cause you any concern?

5 A I -- no, I can't really, when I reflect back I  
6 can't really say that I was alarmed. I know I  
7 realized this was David's mother out there looking  
8 for answers and evidence and, at that point, it  
9 didn't really alarm me that that was being done.

10 Q Did --

11 A But it had the potential to create difficulties,  
12 you know.

13 Q In what way?

14 A But that would -- but I'm talking about the very  
15 initial time. I think the potential to introduce,  
16 introduce evidence or -- you know, you don't have  
17 any control over what you are getting or not  
18 getting when you go to talk to an individual, it's  
19 difficult enough sometimes for a policeman to do  
20 it without having to go when someone else has been  
21 there before you, so there was some potential  
22 downsides to it.

23 Q So when you say "introduce evidence" what do you  
24 mean by that?

25 A Well introduce -- not, maybe I shouldn't use the



1 word "evidence" -- but introduce information that  
2 may influence what the person says or does when  
3 they respond to you when you interview them.

4 Q Now would the, would the flip side be true from --  
5 and I don't want to call it from the Milgaard  
6 side -- if you had interviewed a witness first and  
7 they then went and interviewed them, might they  
8 have the same concern, in other words whoever gets  
9 there first, the second person may have the same  
10 concern about the first person?

11 A Oh I -- yes, that potentially exists. People will  
12 react in a lot of different ways, but that was my  
13 concern, particularly when it got to dealing with  
14 Larry Fisher.

15 Q And again, we'll deal with this more specifically  
16 when we get into it, but was that an issue then?  
17 As far as your investigation, by the time you  
18 first met with Larry Fisher, to your knowledge,  
19 had he become aware that he was a suspect prior to  
20 you seeing him?

21 A Oh, I believe yes, he did.

22 Q And I think we'll see some documents here that  
23 suggest, after his mother was visited and after  
24 his sister, both his mother and his sister  
25 informed him that Mrs. Milgaard was making



1 inquiries about him; is that fair?

2 A That, that's fair.

3 Q And did that, the fact that he --

4 A And I may add some of that information may have  
5 also come from the fact that I was making  
6 inquiries as well.

7 Q I see. So the fact that he was aware -- I take it  
8 that if he was told "Sergeant Pearson of the RCMP  
9 is here to talk to you about Gail Miller's murder"  
10 he would be aware that he is a suspect --

11 A I --

12 Q -- or that he is being talked to?

13 A Yes.

14 Q Well we'll maybe deal with that when we get into  
15 the specific timing.

16 A Sure.

17 Q Now again, at this time, this talks about a phone  
18 call with Mr. Williams on March the 12th. If we  
19 could call up 016114, and this is a memo that Mr.  
20 Williams wrote to the file, and on March the 12th,  
21 and again it outlines -- and we will be hearing  
22 from Mr. Williams, Mr. Pearson -- but this is, I  
23 think, a file memo where Mr. Williams outlines his  
24 call with David Asper about the information of  
25 Sidney Wilson and the fact that Mrs. Milgaard, I



1 think, had gone to interview -- Joyce. It looks  
2 as though that this memo was the information that  
3 David Asper gave to Eugene Williams that at least  
4 some of which he passed on to you according to  
5 your note; is that -- do you see that?

6 A Uh-huh.

7 Q And my question here, there is a reference here  
8 about:

9 "Mr. Asper provided more particulars  
10 concerning Larry Fisher. For example,  
11 he filled in his middle name, and  
12 recited portions of Fisher's criminal  
13 record."

14 And then if we can call up 050467, and this is a  
15 letter of March 15th, 1990 from Mr. Asper to Mr.  
16 Williams, which again says:

17 "It's our understanding that Mr.

18 Fisher's record is as follows:",

19 and what I want to focus on is these December,  
20 '71 Regina, it lists Regina, two counts of rape,  
21 rape/indecent assault. We now know that these  
22 are the four Saskatoon offences and I think we've  
23 heard some evidence, Mr. Pearson, that the CPIC,  
24 when it prints off the record, it would print off  
25 the city where the guilty plea is entered as



1           opposed to where the offences took place; is that  
2           correct, that information?

3           A           That is correct, yes.

4           Q           And in fact, if we scroll down, you will see that  
5                       for the (V10) (V10)- attempted murder, which we  
6                       know took place in North Battleford, there had  
7                       actually been a change of venue and Mr. Fisher  
8                       pled guilty in Prince Albert. So this, it looks  
9                       as though the criminal record would identify the  
10                      charges as being Regina, and we'll see when we go  
11                      through your notes that for some time it appears  
12                      everybody, you, everybody who is dealing with  
13                      Linda and Larry Fisher is of the view that these  
14                      offences of Mr. Fisher's in '68 to '70 took place  
15                      in Regina rather than Saskatoon; do you remember  
16                      that being an issue or having that  
17                      misunderstanding for a while?

18          A           Yes, I do.

19          Q           And are you able to tell us -- or let me just back  
20                      up. Did you, yourself, also run a CPIC on Larry  
21                      Fisher at or about the time that Mr. Williams  
22                      asked you to assist?

23          A           Yes, I -- I think it was. I think the earliest  
24                      one was March, March the 8th, I do believe.

25          Q           March the 8th?



1 A I do believe.

2 Q And I guess, are you able to tell us where, sort  
3 of when we see your interview with Linda Fisher --  
4 and I don't want to get ahead here -- but I think  
5 in Linda Fisher's, both her statement to Joyce  
6 Milgaard and her statement to you, I think refers  
7 to offences in Regina, or certainly the interviews  
8 do; when Eugene Williams questions her on March  
9 24th she refers to offences in Regina, and then  
10 it's corrected, I think in July of 1990 it becomes  
11 apparent, and I'll take you to that. I'm just  
12 trying to understand, Mr. Pearson, are you able to  
13 tell us where or how you came to believe that they  
14 were Regina offences?

15 A I think, I think probably like everyone else, off  
16 the records that were generated. And if I, if my  
17 memory serves me correctly, I do believe the  
18 penitentiary records regarding the fingerprints  
19 that were taken also indicated Regina.

20 Q Okay. So --

21 A So that's where we got off track.

22 Q So if we can go back, and again, whether it was --  
23 are you able to tell us whether it was your own  
24 CPIC information or whether it was from Mr.  
25 Williams, who may have heard it from Mr. Asper,



1 are you able to tell us where you got your  
2 information from?

3 A Might have been more than one source, but I  
4 couldn't itemize them out now, as to which one  
5 came first.

6 Q Okay. If we could go back to 056748, please. And  
7 again, this is March the 12th, this is Monday, so  
8 after your conversation with Mr. Williams it looks  
9 as though the RCMP in North Battleford call you,  
10 and they have a complaint from Larry Fisher's  
11 mother that there were two people who were on her  
12 steps wanting to get in to talk to her about Larry  
13 Fisher, and that it was Mrs. Milgaard wanted to  
14 talk to Mrs. Fisher, she has a heart condition,  
15 she does not wish to engage in conversation,  
16 therefore called the police, and this was  
17 explained to Mrs. Milgaard and everyone departed.

18 So I guess, at this time, that  
19 you would have become aware that, in addition to  
20 Linda Fisher, that Joyce Milgaard and a male  
21 person had also visited Larry Fisher's mother; is  
22 that correct?

23 A Yes.

24 Q And did that, at the time, cause you any concern  
25 as far as what you were doing in your



1 investigation?

2 A Well it was starting to, starting to cause some  
3 issues in the fact that you are getting complaints  
4 from individuals calling the police saying that  
5 this, this is happening, and you are also tasked  
6 with doing the investigation that is obviously  
7 being followed up by, you know, a family member of  
8 David Milgaard.

9 Q Now this is March 12th, and I think you said you  
10 started on March 6th; did you feel that you were  
11 going quick enough at this time?

12 A Well, yes, I did.

13 Q If we can go down to the bottom paragraph, it's  
14 probably not a great question, "quick enough"; did  
15 you think that you were proceeding in a timely  
16 fashion is maybe a better question?

17 A Yes.

18 Q And at paragraph 28 it looks as though you  
19 requested information as to whether Mr. Milgaard  
20 and Mr. Fisher served time in the same  
21 institution, and back when I showed you Eugene  
22 Williams' letter of instructions to you, that was  
23 one of the things he asked you to follow up;  
24 correct?

25 A Yes.



1 Q And so, again, I take it that would it be fair to  
2 say that part of what you were doing was gathering  
3 information to answer the specific questions that  
4 Mr. Williams asked you to do?

5 A Yes.

6 Q And then, in addition to that, I take it applying  
7 your skills as an investigator to gather  
8 information that might be relevant to Larry Fisher  
9 as a suspect; is that fair?

10 A Yes.

11 Q If we can then go to the next page, looks as  
12 though then on Tuesday, March 13th you went up to  
13 the Prince Albert Pen and got the file, is that  
14 right?

15 A Yes.

16 Q On Larry Fisher?

17 A Yes.

18 Q And then went to North Battleford to interview  
19 Linda Fisher?

20 A Yes.

21 Q Now again, before we go through this, maybe you  
22 could just tell us, sir, in your own words, what  
23 is your recollection of your first meeting with  
24 Linda Fisher? And, again, I'll take you to the  
25 statements and the specifics, but just generally,



1           what do you recall about your dealings with her?

2           A       Well I, I met her as I recall at the institution  
3           where she was taking some upgrading. We actually  
4           talked in the police car. I was quite impressed,  
5           actually, with her. She was a very everyday,  
6           down-to-earth individual, I got the feeling that  
7           she was sincere about what she was saying. I felt  
8           good about what she was saying, she never really  
9           left me the impression that she was being  
10          vindictive or was looking for revenge or in scorn  
11          or disappointed, she gave me a generally good  
12          feeling about who she was. That was my gut  
13          feeling by the contact I had with her.

14          Q       And again, I'll get into the specifics, but did  
15          you have any sense -- describe for us what you  
16          understood Linda Fisher's position to be, or  
17          thoughts regarding her ex-husband, Larry Fisher's,  
18          responsibility for Gail Miller's murder; was it  
19          'he might have done it', 'I think he did it', 'I'm  
20          sure he did it', can you tell us what was your  
21          sense of what she was communicating to you about  
22          her belief that Larry Fisher may have been  
23          involved in Gail Miller's murder?

24          A       I think she believed strongly that he could  
25          possibly have done it.



1 Q And, again, can you tell -- and we will get into  
2 the statement in detail -- can you tell us what  
3 she was relying upon to say that? Does anything  
4 stick out in your mind as to what it was that  
5 prompted her to say "lookit, I think he did commit  
6 the murder"?

7 A Well I think, over the years, she had accumulated  
8 a lot of thoughts on it, but she had some  
9 information about the missing knife, she had  
10 information about him not being home that -- not  
11 coming home that night, not being at work the next  
12 day when he was supposed to, the argument, those  
13 kinds of things, I think, stuck in her mind as  
14 'could Larry have been involved'.

15 Q So, again, let's just maybe go through those. One  
16 would be, I guess, opportunity and the fact that  
17 -- and we'll see this when we get into the  
18 statement -- that she felt that the night before  
19 the murder and the next morning, that Larry was  
20 not at work, in fact he was in his work clothes  
21 when she woke up; is that right?

22 A Yes.

23 Q And, again, I'll get into the details about  
24 whether --

25 A You say he was in what clothes when she woke up?



1 Q Sorry, his dress clothes.

2 A Yes.

3 Q That's right, in dress clothes, and that she  
4 believed he had not gone to work and had been  
5 elsewhere; correct?

6 A Yes.

7 Q And I'll take you to statements and the deposition  
8 where there's some questioning about whether he  
9 might have been home or might not, but just  
10 generally speaking she was telling you "lookit,  
11 the morning of the murder I don't think he went to  
12 work", so that would be important, number 1,  
13 opportunity; is that correct?

14 A Yes.

15 Q Secondly, the knife she had -- and again we'll go  
16 into the details -- but she was missing a paring  
17 knife --

18 A Yes.

19 Q -- that morning?

20 A Yes.

21 Q And she was of the view that it might be the  
22 murder weapon or similar to the murder weapon; is  
23 that right?

24 A I believe that's fair to say.

25 Q Initially -- let me back up -- initially she is



1 saying "a knife went missing, I know the nurse was  
2 killed with a paring knife, you know", --

3 A Yes.

4 Q -- "I'm wondering if it was ours"; is that --

5 A Yeah, that's fair, yup.

6 Q And then would a concern also be the fact that she  
7 then, after the murder, discovered that her  
8 husband had been convicted of a number of rapes,  
9 and then in 1980 an attempted murder?

10 A Yes.

11 Q And would it be fair to say that that's something  
12 that weighed on her mind, that he had committed  
13 similar offences and maybe was the type of person  
14 who could have committed the murder?

15 A Yes, I think that's a fair characterization.

16 Q And is there anything else that you can think  
17 of -- and I'll go through the statements with  
18 you -- that were sort of significant in her mind  
19 that she might have been relying upon to say "I  
20 think he might have been responsible"?

21 A Well she was talking about the argument and that  
22 very shocked look that he had.

23 Q And that's -- I'm sorry, I should have brought  
24 that up -- that's where she accused him of, that  
25 morning, of having committed the murder and his



1 shocked reaction?

2 A Yes.

3 Q And she felt that that was a factor, in her mind,  
4 that he may have done it?

5 A That's right.

6 Q And again just generally, was -- when you met with  
7 her the first time was there -- did you get any  
8 impression of her having views as -- let me try  
9 and phrase this better. Was she saying "lookit, I  
10 have some views that David Milgaard didn't do it,  
11 that are completely unrelated to Larry Fisher", or  
12 were her concerns solely "I think my husband,  
13 ex-husband, committed the murder"?

14 A As I recall, it was more that she thought Larry  
15 could have done it.

16 Q And that, if he did it, therefore David Milgaard  
17 didn't do it; is that --

18 A Yes, obviously.

19 Q But did you get any sense from her that, apart  
20 from her suspicion that Larry Fisher had committed  
21 the murder, she otherwise had concerns or doubts  
22 about David Milgaard's guilt?

23 A Oh, I think that's fair, that she felt that. I  
24 just can't give you specifics but --

25 Q Sure. So then if we could go through -- so I take



1           it in your dealings with her, then, the areas that  
2           we touched on I think were opportunity, the knife,  
3           the previous offences, and the argument? And  
4           again, we may want to add to this list once we go  
5           through the statements, but at least those --

6           A       Not going to work.

7           Q       Pardon me?

8           A       Not going to work.

9           Q       Right. I had opportunity, that he wasn't at work,  
10          or he was home and not at work.

11          A       Okay.

12          Q       So those would be matters that you would be  
13          probing with her to see what -- what her evidence  
14          or her statement was with respect to those  
15          matters; is that fair?

16          A       She pretty well knew what she was going to tell  
17          me, there wasn't too much probing, she had all  
18          this stuff that she was going to say.

19          Q       Okay. But again as an investigator, though, to  
20          investigate whether or not Larry Fisher might have  
21          been, at the time might have been a person who was  
22          a suspect to have killed Gail Miller, would it be  
23          fair to say that establishing that Larry Fisher  
24          was in the house with Linda Fisher that morning of  
25          the murder rather than at work, that would be an



1                   important task I take it?

2           A           Yes it would.

3           Q           And, similarly, the knife might be something to  
4                   pursue?

5           A           Yes.

6           Q           If, for example, it was the same knife that killed  
7                   Gail Miller, that the one missing, that might be  
8                   something to pursue?

9           A           Yes.

10          Q           And as well the previous offences that she had  
11                   concerns about, I think in her statement she said  
12                   it wasn't until Larry was convicted in Winnipeg  
13                   that she first thought he was the one who  
14                   committed, may have committed Gail Miller's  
15                   murder, that would be an important thing to look  
16                   at; is that fair?

17          A           Yes, yes certainly.

18          Q           And as well the argument that she had and Larry's  
19                   reaction, that would be something to follow up to  
20                   get a sense on, is that fair?

21          A           That's fair.

22          Q           So again your report, and I think you probably  
23                   touched on most of this, you put at the time:

24                                 "She is a very open, sincere individual  
25                                 and did not appear to be motivated



1 through revenge, and seemed sincerely  
2 concerned about the facts surrounding  
3 the death of Milgaard, ...",

4 that probably should be Miller:

5 "... and the information that she  
6 possesses. She indicated to me the  
7 Miller murder had been on her mind since  
8 Larry Fisher, her ex-husband, was  
9 convicted of the rapes in Winnipeg in  
10 1970."

11 And, again, is that an accurate recording of what  
12 you would have thought at the time, sir?

13 A Yes. You know, of all the times I've reviewed,  
14 this was the very first time I realized that  
15 error. But, yes, that's generally what --

16 Q That "death of Milgaard"?

17 A Yes, yes.

18 Q If it makes you feel any better I didn't notice it  
19 until now either.

20 A Yeah. Amazing, isn't it.

21 Q So again, apart from that typographical error,  
22 that is what you thought then?

23 A Yes.

24 Q And is that -- again, do you have any reason to  
25 change your views, today, of what you thought of



1 Linda Fisher?

2 A No.

3 Q And then it talks about:

4 "Linda admitted having an alcohol  
5 problem in the past for which she  
6 received counselling, and that her  
7 personal life had not been easy, however  
8 she does come across as being an honest  
9 and sincere person."

10 Do you remember how this issue of her alcohol  
11 problem came up, did you raise it, did she raise  
12 it; do you remember?

13 A Well we just had a general discussion about her  
14 life, and where she was from and who she was, and  
15 she was very open. It was kind of, I suppose,  
16 probing, probing who she was, trying to get a  
17 feeling of whether or not she was, you know,  
18 sincere.

19 Q Did you have any concerns, before you went to see  
20 her, that alcohol may have been an issue, or an  
21 alcohol problem she had may have been an issue in  
22 her -- in the veracity or the credibility of what  
23 she had to say?

24 A No. I've dealt with many people with alcohol  
25 problems, but they could still function honestly



1 and sincerely and relate to the past, so that  
2 really wasn't an issue at that point.

3 Q Did it become an issue at any point?

4 A No, no, it really didn't.

5 Q Now, again, it goes to talk about her visit to the  
6 city police in 1980, and we've covered that with  
7 other witnesses, and I think on August 28th, 1980  
8 she went and gave a statement to the Saskatoon  
9 City Police at about 4:00 in the morning. And I  
10 take it she, here, it looks like she told you  
11 about that the first time you met with her; --

12 A Yes.

13 Q -- is that right?

14 A Uh-huh.

15 Q What, if anything, did that do as far as your  
16 assessment of her credibility and where did that  
17 play into the picture?

18 A Well it, it was obvious that she had this on her  
19 mind for many many years, and it had been on her  
20 mind, obviously, prior to going into the police  
21 station, so it's not something that just developed  
22 as a result of some recent activity that changed  
23 her life and she wanted to go out and get even  
24 with Larry Fisher, so it gave her some credibility  
25 as far as the continuity of how she felt.



1 Q And it says here that it was late at night, she  
2 had been drinking at the time; do you remember if  
3 that's something she volunteered or did you ask  
4 her?

5 A I think she, I think she explained that to me.  
6 But, you know, she was very open about that, she  
7 didn't -- you know, she thought possibly that  
8 might have been a negative to her, but she didn't  
9 really seem to hide it.

10 Q And so if we can just scroll down, then, to 32.  
11 You asked her about Sidney Wilson, which I don't  
12 think we need to spend any time about, and then  
13 you say it:

14 "The following key points were raised by  
15 Linda during our interview."

16 One:

17 "- A paring knife was lost from the  
18 Fisher residence just prior to the  
19 Miller murder."

20 And we've talked about that, that could be the  
21 murder weapon. Two:

22 "- Larry was in dress clothes at the  
23 time Linda go out of bed the next  
24 morning."

25 And, again, that might suggest that he, well he



1           certainly wasn't at work at the time, and may not  
2           have gone to work at the time of Gail Miller's  
3           murder; is that correct?

4           A           That's right.

5           Q           And then the next page:

6                       "- Larry's shocked reaction when she  
7                       angrily accused Larry of Miller's  
8                       murder, stuck with her."

9           The wallet, I didn't touch on earlier, but:

10                      "- That Larry's wallet was returned to  
11                      their residence a day or so after the  
12                      murder, which she thought was unusual."

13           Can you tell us what, if any, significance did  
14           you place on the wallet issue?

15           A           You know, personally, I didn't place much on the  
16           lost wallet and I, maybe I should have, but my  
17           thought was really that the wallet could be lost  
18           and returned, and to me that wasn't something that  
19           really stood out, but that was something that  
20           obviously was very bothering to her.

21           Q           Yeah. And then, next, you point out as a key  
22           point:

23                      "- That Miller was residing  
24                      approximately two blocks from Fisher's  
25                      residence, the murder scene being very



1 close to the Fisher residence."

2 So I take it, again back to opportunity, that he  
3 was in -- certainly lived in the area; is that  
4 fair?

5 A Yes.

6 Q Now what significance did you put on the fact that  
7 Larry Fisher was living in the Cadrain basement at  
8 the time of the murder?

9 A Well, when you start talking about the coincidence  
10 of him now being the suspect and David Milgaard  
11 and the people he was with being at that residence  
12 on the morning of the murder, was quite a  
13 coincidence.

14 Q Were you aware that, in the David Milgaard trial,  
15 that a wallet, Gail Miller's wallet, was located a  
16 couple of doors down from the Cadrain residence,  
17 and it was tendered in evidence; did you become  
18 aware of that at some point?

19 A I probably did. I certainly wasn't aware of it, I  
20 don't believe, at this time, but somewhere down  
21 the line I'm sure I did.

22 Q And then again you say:

23 "- Linda gave a statement saying  
24 basically the same things that she told  
25 me, to the Saskatoon City Police in



1 1980."

2 And again you told us that that, I think your  
3 words were, added to her credibility; is that  
4 right?

5 A Yes.

6 Q And then if we can go to 004916, please, and this  
7 is Linda Fisher's statement, is that correct, that  
8 you took March 14th, 1990?

9 A Yes.

10 Q Now can you tell us just generally what was your  
11 practice, Mr. Pearson, regarding your interviewing  
12 technique; tell us generally or even specifically  
13 with Linda, did you do interviews the same way  
14 every time or did you vary it on the subject?

15 A I -- there's a number of ways that interviews were  
16 done. A lot of times operationally you don't have  
17 the benefit of recording devices, you don't have  
18 the benefit of a comfortable office, you -- you  
19 are sitting in a police car writing out the best  
20 you can, and in this case, and in many cases when  
21 you are gathering information, I use the narrative  
22 portion, like, a discussion, and try to keep the  
23 conversation on topic and flowing and writing it  
24 out, and that's what was used in this particular  
25 case, of me writing out what she was saying. It



1 is written out generally in my words, it's not  
2 word for word, it's not a recording, but -- so you  
3 are trying to stay on topic and you are trying to  
4 move it through as she is covering the points that  
5 you want to have covered, and there is prompting  
6 and there is discussion during the statement  
7 taking.

8 Q When you say prompting, do you mean tell me about  
9 this?

10 A Prompting her to keep her on topic because a lot  
11 of times people are all over the place.

12 Q When you say generally narrative, my understanding  
13 of narrative is tell me your story and I'll record  
14 it. Is that -- is that what you mean by  
15 narrative?

16 A Well, I'm doing -- in this case I'm doing the  
17 writing based on what she is saying, I'm  
18 capsulizing her words in what I think she is  
19 saying, so that's what I mean.

20 Q And we've also heard of an interviewing technique,  
21 the question and answer, where a question is  
22 written out and an answer is written out?

23 A Yes.

24 Q Is that a technique you used from time to time?

25 A Yes.



1 Q And when would you use one over the other?

2 A It depends how much, you know, the -- if you've  
3 got specific questions in your mind, it's a good  
4 way of doing it, it's a cleaner way of doing it.  
5 It's still not as good as a taped interview where  
6 you actually get word for word and you get the  
7 tone of voice and you get, you know, probably a  
8 better product, but --

9 Q At the time, in 1990, was it your practice to tape  
10 record some interviews or --

11 A Sometimes.

12 Q Now, I don't believe this interview -- and most of  
13 your interviews were taped?

14 A No, they weren't.

15 Q And was there any reason for that?

16 A Well, most of it you were out in their home or in  
17 a police car or in an environment that really  
18 didn't, it wasn't conducive to good taping, and  
19 there are a lot of difficulties with taping as  
20 well, unless you have a good quality tape recorder  
21 and a controlled environment, there's background  
22 noises and there's sometimes gaps, and the other  
23 part is that you have to then have the tape  
24 transcribed and then the original tape becomes an  
25 exhibit and there's some side effects that come



1 along with that.

2 Q Once you had finished the narrative or the  
3 statement, what was your practice as far as  
4 witness review?

5 A There would certainly be a reread, I would read it  
6 to them and I would then ask them to read it and  
7 if there's any changes they want to make, make  
8 them or ask me to make them, and if they agreed  
9 with what they are reading, to sign it.

10 Q And then I think what we have seen, Mr. Pearson,  
11 is that the handwritten statement you would then  
12 have typed at a later date?

13 A Yes.

14 Q And I think, on your files, you've generally used  
15 typed versions but had the original statements on  
16 file; is that correct?

17 A The originals of all these are on file, yes.

18 Q Yes.

19 A Yes, the handwritten ones.

20 Q So, if we can go back, do you remember where this  
21 statement took place, where you were when you  
22 first -- where you took this?

23 A The -- the -- the first statement?

24 Q Yes?

25 A The first statement, as I recall it, was in the



1 police car at the high school in North Battleford,  
2 or out in the school yard. That's my  
3 recollection.

4 Q And do you recall, again, Linda Fisher's demeanour  
5 at the time; was she -- anything stick out in your  
6 mind?

7 A No, I -- just easy person to talk to, she was very  
8 open, as I described previously she was quite easy  
9 to deal with.

10 Q Did she seem at all intimidated by you; was it  
11 your impression that she was intimidated?

12 A No, no, I don't think she was intimidated by me.

13 Q And let's just talk generally; this was your first  
14 meeting with her, is that right, I think you  
15 talked to her on the phone?

16 A Yes, yes.

17 Q After this did you have occasion to have further  
18 meetings and discussions with Linda Fisher over  
19 the following couple of years?

20 A Oh yes.

21 Q Did she phone you frequently to talk?

22 A Yes, she did. She phoned me sometimes for  
23 so-called advice, you know, she was having some  
24 issues and she -- about going to the media, she  
25 was -- somebody wanted her to go to the media and



1 she didn't want to, she asked me if I -- if she  
2 should, things like that. So, you know, we had a  
3 pretty open dialogue.

4 Q When you met with her were you aware -- and I  
5 think that we touched on earlier the note that  
6 Eugene Williams had told you -- were you aware  
7 that she had met previous, the previous few days,  
8 with Joyce Milgaard and Paul Henderson, an  
9 investigator, and given two statements; did you  
10 become aware of that in your meeting with her?

11 A I -- I believe I did. I might have been aware of  
12 it before I went there.

13 Q Did you --

14 A I probably was but --

15 Q I'm sorry, did you actually have the physical  
16 statements before you interviewed Linda Fisher?

17 A No, no.

18 Q But you, would you have been aware that she  
19 actually gave statements?

20 A I'm not sure I was even aware she gave statements.  
21 I was aware that she had been talking to  
22 Mrs. Milgaard.

23 Q And, again, do you remember, after interviewing  
24 Linda Fisher and going through and getting her  
25 statement, did you have any concerns with the fact



1           that she had been previously interviewed by Joyce  
2           Milgaard and Paul Henderson before you talked to  
3           her?

4           A        I can't -- I can't recall anything that stands out  
5           about being concerned at that point.

6           Q        If we can go down to just parts of this statement,  
7           some general background, it appears here:

8                        "As far as I know, Larry never knew  
9                        David Milgaard and I certainly didn't, I  
10                      still don't."

11           Would this be something -- again, I referred to  
12           earlier where Mr. Williams had asked you to  
13           follow up to find out if Mr. Fisher and Mr.  
14           Milgaard knew each other; is that right?

15           A        Yes.

16           Q        And so would that be a case where you might prompt  
17           her and ask her that question --

18           A        Sure.

19           Q        -- and she'd give that answer? And then, again, I  
20           just want to go through parts of her description  
21           of the evening of January 30th, which is the night  
22           before the murder, she was at home:

23                        "At that time Larry was still working  
24                        for Masonry Contractors. I don't recall  
25                      if Larry came home for supper, but went



1 out after supper. What I mean to say  
2 was that Larry was not home after the  
3 supper hour. I waited up until the bar  
4 closed, 1 or 2:00 a.m. Larry never came  
5 home so I went to bed. I expected Larry  
6 to go to work the next morning. I do  
7 not recall him coming home, but when I  
8 got up sometime in the morning, I saw  
9 Larry in his dress clothes. He was  
10 dressed in flashy ... pants ...",?

11 etcetera.

12 "He was definitely not in his work  
13 clothes ...".

14 And I just want to go, maybe go back to the first  
15 page at the bottom, there is a couple where she  
16 says 'I don't recall if he came home for supper'  
17 and 'I don't recall him coming home when I got  
18 up'. And do you remember, Mr. Pearson, because  
19 this was an issue that was dealt with later by  
20 Mr. Williams in the deposition, what do you  
21 remember about Linda Fisher and whether she had a  
22 memory or whether she was sure that -- whether or  
23 not Larry Fisher was even home the previous  
24 night? Let me back up.

25 I think the issue is this, did



1 Larry come home after work on the 30th of January  
2 before he went out for the night, and secondly,  
3 was he possibly home and perhaps went to work and  
4 came back and was there when Linda Fisher woke up  
5 in the morning; and do you understand that being  
6 an issue --

7 A Yes.

8 Q -- that was probed later?

9 A Yes.

10 Q And again, just going back, when I look at this  
11 statement what was your assessment as to whether  
12 Linda could remember those things, I mean she --  
13 about those two issues?

14 A You know, I -- I'm not sure I can really  
15 accurately tell you what she thought at the time  
16 because I know, later, there might have been some  
17 discussion shortly after this where there was, the  
18 issue was "is it possible that he, you know, left  
19 and came back before you got up", and but --

20 Q To --

21 A To elaborate on that when that came into play.

22 Q And why would that be important, Mr. Pearson, to  
23 find out from Linda Fisher whether it's possible  
24 that Larry Fisher may have come home late at night  
25 while she was sleeping and got up and left early



1 in the morning and then came back at nine, between  
2 nine and 11 a.m.?

3 A Well, I suppose it would have given him an  
4 opportunity to commit the murder if he was out and  
5 around that morning.

6 Q So one possibility is if he came home, got home at  
7 two in the morning and was in bed until nine  
8 o'clock, that would mean he couldn't have  
9 committed the murder?

10 A If he was there, that's right.

11 Q Or if he came home at two in the morning and got  
12 up at 6:30 and went on the bus, went to work and  
13 then came home at nine a.m. and got into his dress  
14 clothes and was actually at work at the time of  
15 the murder, that might be something --

16 A That's the other option, yes.

17 Q Or three, that he got home at two in the morning,  
18 got up at 6:30, went out and killed Gail Miller  
19 and then came home at nine o'clock, that's, I  
20 suppose, another option?

21 A Sure, but to really, in fairness back then, those  
22 three options I don't think were articulated like  
23 that at that time. It was the belief that, you  
24 know, he didn't come home and the view of whether  
25 he may have left and come back, I'm not sure where



1           that came into play. I don't know if that's some  
2           questioning that we had introduced or that she had  
3           thought about, but it came into play.

4           Q       And again was it your impression after taking her  
5           first statement that Linda Fisher was of the view  
6           that Larry Fisher was not at her home at the time  
7           that Gail Miller was killed; in other words, not  
8           with her at home at the time that Gail Miller was  
9           killed?

10          A       Yes, yes.

11          Q       And was it your impression that Linda Fisher felt  
12          that Larry Fisher had not gone to work the morning  
13          of the murder?

14          A       Yes.

15          Q       And in fact had not come home the night before?

16          A       Yes.

17          Q       And then --

18          A       At least didn't come home until she went to sleep.

19          Q       Okay. If we can go to the next page, and then if  
20          we can just, it talks about here:

21                   "I can't remember what Larry gave as an  
22                   explanation of his whereabouts and I  
23                   don't even know who he was with the  
24                   night before."

25          And then talks about the argument and the news



1 cast, and then she says:

2 "... I immediately recalled that a  
3 paring knife was missing from our  
4 kitchen. The knife blade was silver  
5 with a wooden handle held together with  
6 rivets. It was an ordinary paring  
7 knife, it did not have the jagged edge."

8 And I take it, Mr. Pearson, getting a description  
9 of the knife would be an important part of your  
10 investigation?

11 A Sure.

12 Q And at the time, and I went through the report  
13 that Mr. Williams gave you that described the  
14 murder weapon as a maroon-handled paring knife I  
15 think with a serrated edge; is that correct?

16 A Yes.

17 Q And so at the time of your first meeting with  
18 Linda based on this description, did you come to  
19 any conclusion as to whether or not her missing  
20 knife was or was not the murder weapon?

21 A I don't think I ever eliminated all the suspicion  
22 that was going on on behalf of Linda. As far as  
23 saying was this a defining moment in whether or  
24 not I continued to suspect Linda, no. I know this  
25 description of the knife and all the issues that



1 evolved, but we were talking with someone who had  
2 a sincerity in what she was saying, she had a  
3 series of activities, and when you patch that into  
4 some other knowledge out there about Larry Fisher,  
5 you have to say who is really believable and would  
6 you dismiss this based on a different knife.

7 Q Let me just go back. First of all, I think the --  
8 a good description of the knife would be  
9 important?

10 A Yes.

11 Q And that's so you could compare it with the murder  
12 weapon?

13 A Yes.

14 Q And in fact if she had described the missing  
15 paring knife as a maroon-handled paring knife with  
16 a serrated edge, that might be a significant piece  
17 of evidence that might inculcate Larry Fisher; is  
18 that fair?

19 A Yes.

20 Q So, number 1, getting a description of the knife  
21 was important?

22 A Yes.

23 Q And do you recall, did you have the view that she  
24 had a good recollection of the knife? I mean, it  
25 appears that it's described in a fair bit of



1 detail.

2 A Well, that's what she gave me after some 20 years  
3 and she seemed pretty specific about what she was  
4 telling me. It is quite detailed for having lost  
5 this 20 years previous.

6 Q So let's go to the next step and say -- and I  
7 think subsequently you and/or others concluded  
8 that the knife that she lost either the evening  
9 before or the morning of the murder was likely not  
10 the murder weapon; is that fair?

11 A Yes.

12 Q Once you -- and that may have been something you  
13 realized in the car when she described it, it  
14 might have been you realized it later, but let's  
15 just talk about that for a moment. Did that fact  
16 of itself cause you to consider Larry Fisher to be  
17 any less of a suspect?

18 A No.

19 Q And why not?

20 A Well, there were two people, there were two people  
21 that really -- there was Larry Fisher and Linda  
22 Fisher --

23 Q Yes.

24 A -- and her sincerity, my gut feeling about her was  
25 that she had something here that she believed in,



1 and the knife became described differently than  
2 the weapon that was used. However, at that point  
3 I didn't feel that I was going to eliminate Larry  
4 Fisher as a suspect.

5 Q Let me ask that -- I'm sorry?

6 A It has to be, you know, it's a mitigating factor  
7 here about, you know, are all the other things  
8 true or is she wrong.

9 Q But as a police investigator, then, the fact that,  
10 and assuming that her description is accurate and  
11 credible, the fact that the knife she described  
12 going missing the evening before the morning of  
13 the murder was not the murder weapon --

14 A Uh-huh.

15 Q -- did that in your mind as an investigator  
16 eliminate Larry Fisher as a suspect?

17 A No.

18 Q Did it cause you to in any way question anything  
19 else that Linda Fisher had to say about her  
20 suspicions, either good or bad, make it more or  
21 less credible?

22 A I don't recall at this point of probing her about  
23 her credibility, if that's the question.

24 Q I'm just wondering if that fact -- now, in  
25 fairness, Linda Fisher wasn't saying to you that



1 my missing knife was the murder weapon; is that --

2 A Right.

3 Q She said I lost a knife that morning?

4 A Yeah.

5 Q Go down to the bottom, it says:

6 "During the argument, in my anger, I  
7 said something like "my knife is  
8 missing, you're probably responsible for  
9 killing that girl". I was very accusing  
10 and used an angry tone of voice. Larry  
11 usually argued back, but when I  
12 mentioned this murder, Larry just  
13 stopped, his face went pale and drained.  
14 Larry seemed shocked. At first I  
15 thought his shocked look was a reaction  
16 like "do you really think I could do  
17 this". In past arguments, Larry never  
18 seemed shocked about anything, but never  
19 saw the same reaction as I saw when I  
20 accused him of killing the girl that  
21 night."

22 Can you tell us, sir, as an investigator, what  
23 did this piece of information from Linda Fisher,  
24 where did that weigh in your consideration of her  
25 story and Larry Fisher being a suspect?



1           A           Well, that's a difficult one to assess. I mean,  
2                       relationships between people and how they react to  
3                       different things, that's pretty difficult to  
4                       really put a value on, but it's just another  
5                       incident that she seemed to take seriously. In  
6                       the relationship she had with Larry, she was  
7                       obviously struck by this shocked look. Now, for  
8                       me to diminish it and say, well, you know, it's  
9                       probably less than what you think it is or more, I  
10                      just had to take it at face value, that she was  
11                      shocked by what went on, and I can't really say  
12                      much more to that.

13          Q           And would it be fair to say that in her mind that  
14                      that was a factor that caused her to, one of the  
15                      factors that caused her to think --

16          A           Oh, absolutely.

17          Q           -- that Larry may have committed the murder?

18          A           Absolutely.

19          Q           And as far as your assessment of that, it was  
20                      there for what it was worth?

21          A           Yes.

22          Q           Go on to the next paragraph, it says:

23                      "I don't remember Larry's explanation  
24                      for not going to work that morning. I  
25                      don't recall if he went to work in the



1                   afternoon or not."

2                   And again I take it that would relate to the  
3                   issue of whether or not, if Larry was at work  
4                   that day, that would obviously give him an alibi;  
5                   is that fair?

6           A           Yes.

7           Q           And then:

8                               "I don't recall seeing any scratches or  
9                               cuts on Larry and I did not see any  
10                              blood on his clothes."

11                   Would that be something that you would have asked  
12                   her do you think?

13          A           Yes.

14          Q           Now, when we saw the letter from Mr. Asper to  
15                   Mr. Williams and the Williams' memo, the Sidney  
16                   Wilson story that went to Mr. Wolch was that Linda  
17                   Fisher saw Larry come home with blood all over his  
18                   clothes, do you remember that, and that's I think  
19                   what prompted you and others to go look for Linda  
20                   Fisher; correct?

21          A           Uh-huh, uh-huh.

22          Q           The fact that Linda is now saying lookit, I didn't  
23                   see any blood on his clothes, did that in any way  
24                   discredit the information from Sidney Wilson?

25          A           Well, nobody knew who Sidney Wilson was, it was



1 anonymous information, you really don't know how  
2 accurate that really is. I mean, they can say  
3 whatever they want, unless you can verify it, but  
4 it didn't really -- didn't really change much.

5 Q So the fact that Sidney Wilson said lookit --  
6 phoned Mr. Wolch and said I know Linda Fisher told  
7 me that her husband or ex-husband killed Gail  
8 Miller and he came home that morning with bloody  
9 clothes, the fact that you've now verified with  
10 Linda that that didn't happen, did that in any way  
11 negatively affect your assessment of either Linda  
12 Fisher's story or Larry Fisher as a suspect?

13 A I don't recall it as having a negative effect on  
14 how I viewed this. Like I say, the information  
15 came from where, someone out there that we didn't  
16 even know about that said certain things. She was  
17 saying look, this is what happened, and she was  
18 also saying I did not see blood. I don't think it  
19 diminished it, I think it was just more factual  
20 confirmation.

21 Q Then if we carry on, it says:

22 "If Larry would have come home on the  
23 night of Jan 30, he would probably have  
24 slept in the bed with me, but I don't  
25 recall him being in bed with me. I



1 cannot recall if the clothes I saw on  
2 Larry the night before, after supper,  
3 were the same clothes I saw on him the  
4 morning of Jan 31. He had very few  
5 dress clothes, only about two that he  
6 liked to wear."

7 And again, would you have been probing a bit with  
8 Linda Fisher?

9 A Yes, yes.

10 Q If you could just explain what and why you would  
11 be inquiring in this area?

12 A Well, I'm just trying to determine what knowledge  
13 she had about, you know, what he was doing when he  
14 left, or what he was wearing when he left, was he  
15 wearing the same clothes that you saw him wearing  
16 the next day to try and just determine whether --  
17 what kind of information she had.

18 Q And again she says in her statement if Larry would  
19 have come home on the night, he would probably  
20 have slept in the bed with me, but I don't recall  
21 him being in bed with me, which is different than  
22 saying he wasn't in bed with me; is that right?

23 A Yes.

24 Q And I'm just trying to understand, Mr. Pearson,  
25 whether this was an issue that -- put it this way,



1           when you were done with her first statement, did  
2           you still have some concerns as to whether or not  
3           it was possible that Mr. Fisher may in fact have  
4           been, had been in bed with Linda Fisher the  
5           morning of January 31 at the time of the murder,  
6           was that still a possibility that you thought  
7           might be --

8           A           That's a possibility, that was a possibility.

9           Q           And would that be why you would probe her about  
10          that?

11          A           Yes.

12          Q           Then again it talks about the wallet and I think  
13          you've already told us that that wasn't anything  
14          significant in your mind; is that right?

15          A           That's right, yeah.

16          Q           And then the next page, please, just at the top  
17          she talks about learning about Larry's charges in  
18          Fort Garry and she says:

19                        "He never made any confessions to me of  
20                        any crime. Larry was convicted of the  
21                        Winnipeg rapes (two) on 28 May 71 and  
22                        got 13 years. From 1971 to 1976 I  
23                        visited Larry often in P.A. Pen. He  
24                        wrote me letters explaining the Winnipeg  
25                        crimes. He also told me of the rapes in



1                   1968 in Regina, I wasn't aware of these  
2                   crimes until he told them to me in the  
3                   letters."

4                   Now, I'm wondering, Mr. Pearson, did the Regina  
5                   rapes, did that come from her or did that come  
6                   from you as far as the location; do you remember?

7           A        There was obviously quite some discussion going on  
8                   there regarding the offences and where this was  
9                   first introduced, was it from when Mrs. Milgaard  
10                  had been talking earlier on or was it from me,  
11                  because reading that statement, it could have  
12                  possibly come from me as well. I mean, I can't  
13                  say it absolutely did not, but I don't recall,  
14                  because there is some information there that looks  
15                  fairly specific that possibly Linda would not have  
16                  knowledge of.

17           Q        And so again you are talking about the two  
18                   Winnipeg rapes and the date. Is that possible  
19                   that came from a CPIC that you had?

20           A        That's possible, during our discussion, and that  
21                   she was, we were having a discussion and that was  
22                   introduced. That is a possibility.

23           Q        And in fairness, Mr. Pearson, I think Linda  
24                   Fisher's evidence about this statement before the  
25                   Inquiry was although she knew they were in



1                   Saskatoon, she said at the time for some reason  
2                   she thought they were in Regina?

3           A           Yeah, yeah.

4           Q           So again you are telling us that at this time you  
5                   thought that they were Regina rapes; is that fair?

6           A           Oh, yes, I did.

7           Q           And then it talks about a car:

8                                "Larry and I did not have a car, but we  
9                                did have access to Uncle Clifford's  
10                              car."

11           And then:

12                              "I don't know if Larry had Clifford's  
13                              car on Jan 30/31. I've talked to  
14                              Clifford several times, but he cannot  
15                              recall loaning his car to Larry during  
16                              the time of Gail Miller's murder."

17                   What significance if any would Larry's access to  
18                   a car be in getting information or investigating  
19                   him as a suspect?

20           A           I'm just reading this.

21           Q           Uh-huh.

22           A           Well, I think that just gives him some mobility,  
23                   but I think also at this point there was -- I'm  
24                   not sure if the information was already  
25                   introduced, it must have been, about this car



1 activity that was around the scene and whether or  
2 not Larry could have possibly been in a car that  
3 night.

4 Q And it may have been, and see if this refreshes  
5 your memory, there had been evidence of a fellow  
6 named Dennis Elliott who had dropped Gail Miller  
7 off at about two in the morning the night before  
8 the murder who noticed I think a '63 Ford vehicle,  
9 I think it was Ford --

10 A Yes.

11 MR. ELSON: Pontiac.

12 BY MR. HODSON:

13 Q Pontiac? I had a one out of three chance, I got  
14 it wrong.

15 A Yes.

16 Q Pontiac, red and black, I think I'm right on that.  
17 In any event, a suspicious person in the vehicle.  
18 And is that something that maybe the car might  
19 have been important for, access to a car?

20 A Yes.

21 Q What about the fact that the crime -- the morning  
22 of the murder it was 40 below, do you recall  
23 whether or not you had in your mind at the time  
24 any thought that a car might be involved by  
25 whoever committed the crime?



1 A That was one of the factors, yes.

2 Q So I take it that Larry Fisher's access to a car  
3 would be something then that you would pursue?

4 A Yes.

5 Q If we can just go back -- actually, let me just  
6 finish up the Roy Pambrun, and then as well she  
7 talks about her Uncle Roy burning a pair of good  
8 work boots in Roy's burning barrel.

9 "The other day, Mrs. Milgaard and I  
10 talked to Roy on the phone, all Roy  
11 recalls is that Larry came to the door  
12 without boots and borrowed a pair of  
13 Roy's."

14 Did that, the Roy Pambrun burning barrel thing,  
15 did that cause you to --

16 A It was something rather unusual, but people do  
17 unusual things, and -- but it was something that  
18 was very unusual.

19 Q So back at the time, I take it certainly on March  
20 14th, 1990 when you interview Linda Fisher, you  
21 are aware at that time of rapes in Regina in  
22 1971 -- maybe just scroll up -- is that fair?

23 A Yes.

24 Q Sorry, in 1968 in Regina. Tell me again, what  
25 significance would the fact that Mr. Fisher had



1 committed rapes in what you thought was Regina in  
2 1968 play in your thoughts or your investigation  
3 of Larry Fisher as a suspect in the death of Gail  
4 Miller?

5 A Well, I think the history of violence, sexual  
6 violence against women by Larry Fisher was in  
7 place at that time.

8 Q So if we just pause and look at it here, we've got  
9 the two Winnipeg rapes, we've got some rapes in  
10 Regina, so the fact that he's been convicted of  
11 offences of violence towards women and rapes, that  
12 would elevate your suspicion for him; is that  
13 fair?

14 A Yes.

15 Q And generally speaking, if you are looking at who  
16 may have raped and killed Gail Miller, someone who  
17 had a history of rape offences might be more of a  
18 suspect than someone who had not; is that fair?

19 A Yes.

20 Q And so the fact that they were rapes was  
21 important; is that correct?

22 A That's correct.

23 Q What about the location, at the time it says  
24 Regina. If you would have been aware at this  
25 time, sir, that they were in Saskatoon, would that



1           have changed your thinking in any way about either  
2           Larry Fisher as a suspect or what avenues you  
3           might pursue at the time?

4           A        I don't think it would have -- certainly would  
5           have maybe added to the suspicion, but it -- the  
6           fact that they were in Regina didn't take the  
7           suspicion away, and I suppose I look at it no  
8           different than if you were investigating a  
9           break-in at a local business, that if you find out  
10          that someone has a previous criminal record for  
11          breaking into six or seven businesses, anywhere in  
12          the country at any time, and you knew that person  
13          was in the area at the time this was taking place,  
14          that would be pretty suspicious.

15          Q        So let me just pick up on that. So the fact that  
16          Mr. Fisher had committed a number of rapes and  
17          that he physically happened to be within two  
18          blocks of the murder scene on the morning of the  
19          murder, that elevated your suspicions?

20          A        Yes, it sure did.

21          Q        And whether the rapes were in Winnipeg, Regina or  
22          Saskatoon, that didn't really matter, it was the  
23          nature of the crime; is that fair?

24          A        That's fair.

25          Q        We now know, and I'll get into this later, you



1 find out a number of months later that the crimes  
2 were actually in Saskatoon and they are, three of  
3 them anyway are in two months prior to Gail  
4 Miller's death and they are within a six block, or  
5 two of them are within a six block area of where  
6 the murder took place -- and I think you are  
7 familiar now, are you, with the three pre Gail  
8 Miller sexual assaults that Mr. Fisher was  
9 convicted of?

10 A Yes.

11 Q And so again, would the fact that the rapes that  
12 are being talked about here, where they happened  
13 and how they happened, would that have been  
14 something that would elevate your suspicion as  
15 well?

16 A I would suspect it would, yes.

17 Q And so the fact that they were -- well, we'll  
18 maybe pick up on that a bit later, but again, the  
19 fact that they were in Regina in your mind, that  
20 was significant, still significant?

21 A Yes.

22 Q After talking to Linda, did you believe that Larry  
23 Fisher was a suspect for the murder of Gail  
24 Miller?

25 A Did I believe he was a suspect?



1 Q Yes.

2 A He certainly wasn't eliminated as a suspect, and  
3 the suspicion was certainly there.

4 Q And so after talking to Linda, in your mind as an  
5 investigator did you conclude that Larry Fisher  
6 might be a person who may have committed this  
7 offence?

8 A Yes.

9 Q And someone that you ought to pursue and  
10 investigate further to get further information to  
11 either eliminate or confirm?

12 A Yes.

13 Q And in simple terms as an investigator, and I  
14 don't mean to say the job is simple, but the task  
15 would be with a suspect to either eliminate the  
16 suspect, and then if you can't eliminate them,  
17 then establish reasonable and probable grounds to  
18 charge; is that correct?

19 A In a criminal investigation, yes. This one here  
20 under 690, there's probably a few more  
21 complications to it, but in essence that's true.

22 Q And that's a fair point. And at this time I take  
23 it you are not investigating Larry Fisher as a  
24 suspect with a view to charging him; is that  
25 right?



1 A That's right.

2 Q And the fact that someone was already convicted of  
3 this crime, as a police officer would you have to,  
4 pardon the simple terms, but undo that conviction  
5 first before you could go out and charge somebody?

6 A Well, I would not go out and charge Larry until  
7 this other part of the process was dealt with. I  
8 mean, it's not something that I have enough  
9 knowledge on or probably even authority to deal  
10 with, but the fact that there's already a  
11 conviction in there does complicate the system I  
12 guess.

13 Q But as far as pursuing Larry Fisher for your 690  
14 job for Eugene Williams, you would be using much  
15 of the same skills as an investigator trying to do  
16 the same thing, trying to either eliminate or  
17 establish enough evidence to have a charge?

18 A Yes.

19 Q Then you would go back to Mr. Williams and say  
20 he's eliminated or there's reasonable probable  
21 grounds?

22 A Yes.

23 Q Now, is there a middle ground there, Mr. Pearson,  
24 just let's talk generally when you are  
25 investigating, where you can't eliminate a suspect



1 but yet you don't have enough evidence to lay a  
2 charge?

3 A Oh, absolutely.

4 Q And what do you do in that case?

5 A Well, lots of times you don't -- you can't do  
6 anything, but there are a lot of times you have  
7 suspects, but that continue to be suspects because  
8 you can't move them into the place where you could  
9 lay a charge against them because you have  
10 insufficient evidence.

11 Q If we can go to the next page, and again this is  
12 just the last page where Linda Fisher talks about  
13 the statement to the city police, and she talks  
14 about going to the city police shortly after  
15 receiving a flyer in the mail soliciting  
16 information on the murder. Do you remember how  
17 that came about, did she volunteer that, did you  
18 ask that to her; do you remember?

19 A I didn't know anything about the flyer so she must  
20 have mentioned that to me as the reason she went.

21 Q And then again:

22 "Larry was right-handed."; --

23 A Yes.

24 Q -- is that something you would have asked her, and  
25 his blood type?



1 A Yes.

2 Q So if we can just go through and have you  
3 summarize, then, after you took the statement from  
4 Linda Fisher, let's first talk about the knife,  
5 and I think you've told us that her description  
6 said to you that likely the wrong knife -- likely  
7 not the same knife as the murder weapon?

8 A Uh-huh.

9 Q Is that correct?

10 A *(Witness nods in the affirmative)*

11 Q Okay. And the fact that Mr. Fisher may have been  
12 convicted of a number of --

13 A And can we just, sorry, if I could just make a  
14 correction. I'm not certain, at that point, if I  
15 knew what the knife was like in -- even though  
16 there is a description, was it this maroon-handled  
17 knife.

18 Q I see.

19 A But right at that point, when I was taking the  
20 statement, I'm not sure the light came on and said  
21 "eh, we've got the wrong one here", but anyway.

22 Q At some point after that you would have reached  
23 that conclusion; is that fair?

24 A Yeah.

25 Q Maybe not right at the time, but at some time



1 after?

2 A Yeah, you'd notice that the knife she's talking  
3 about is different than the one.

4 Q And then secondly, as far as the opportunity, did  
5 you have a sense that, based on her statement,  
6 that based on what she said, if it was believable,  
7 that Larry Fisher was not at work on the morning  
8 of the murder; is that fair?

9 A Yes.

10 Q And you would have had information about, general  
11 information about some previous rape crimes?

12 A Yes.

13 Q This is probably an appropriate spot to break, Mr.  
14 Commissioner.

15 (Adjourned at 4:26 p.m.)

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