Commission of Inquiry

Into the Wrongful

Conviction of David Milgaard

before

THE HONOURABLE MR. JUSTICE

EDWARD P. MacCALLUM

****

Transcript of Proceedings

and

Testimony before the Commission

sitting at the

Sheraton Cavalier Hotel at

Saskatoon, Saskatchewan

****

On Wednesday, September 20th, 2006

Volume 186

Inquiry Proceedings

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Ms. Joanne McLean,   **for** Ms. Joyce Milgaard

Ms. Lana Krogan-Stevely,   **for** Government of Saskatchewan

Ms. Catherine Knox,   **for** Mr. T.D.R. (Bobs) Caldwell

Mr. Garrett Wilson, Q.C.,   **for** Mr. Serge Kujawa

Mr. Pat Loran, Esq.,   **for** the Saskatoon Police Service

Mr. Chris Boychuk, Esq.,   **for** Mr. Eddie Karst

Mr. Bruce Gibson, Esq.,   **for** the RCMP

Mr. David Frayer, Q.C.,   **for** Minister of Justice

                             (Canada), The Hon. Vic Toews

Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis

                             (Retired)

Mr. Kenneth R. McLeod, Esq.,   **for** Eugene Williams

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1   ***Transcript of Proceedings***

2   *(Reconvened at 9:05 a.m.)*

3   COMMISSIONER MacCALLUM: Good morning.

4   ALL COUNSEL: Good morning.

5   ***EUGENE WILLIAMS, continued***:

6   **BY MR. HODSON:**

7   Q   Good morning, Mr. Williams. Call up 124983 and go

8   to 125022, and this is your examination of Mr.

9   Wilson and we were partway through when we broke

09:05 10   yesterday, and this part of the transcript, you

11   are showing him the June 4th statement and asking

12   him to read it and confirm its contents:

13   "...and if you do not confirm them I

14   would ask you to write in any changes

09:06 15   you wish to make to it."

16   And again, were you concerned, were you aware

17   that he had some changes to his recantation

18   statement or can you explain how that came about?

19   A   I had no reason to believe that he had any

09:06 20   changes, I simply wanted him to confirm it, and

21   sometimes after you've made a statement you may

22   have additional thoughts or realize that perhaps

23   something wasn't stated as clearly as it might

24   have been, so this was an opportunity for him to I

09:06 25   guess finalize his thoughts about the statement

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1   before I started questioning him about it.

2   Q   Okay. And in response, he indicated that there's

3   one addition he would like to make -- go down to

4   the bottom -- and next page -- and we have seen

09:07 5   the statement with the notation, but you say:

6   "So, for the record, the notation is

7   then on page 4 of the third full

8   paragraph, the paragraph which starts,

9   "This was not the truth," and you have

09:07 10   written in, "He had gotten a bone

11   handled hunting knife out of the

12   elevator he broke into"?"

13   And in his June 4th, 1990 statement, I think what

14   he had said is that his evidence about David

09:07 15   Milgaard having a knife was not the truth and Mr.

16   Wilson now is saying that although it wasn't a

17   maroon-handled paring knife, he was saying that

18   David Milgaard had a bone-handled hunting knife;

19   is that correct?"

09:07 20   A   Yes, that's correct.

21   Q   What was the significance of I guess two things;

22   number one, the fact that in his statement to Mr.

23   Henderson he said I think in essence that David

24   Milgaard did not have a knife on the trip to

09:07 25   Saskatoon, so that fact, and secondly, the

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1   significance of this information, namely, that Mr.

2   Wilson was now saying David Milgaard had a

3   bone-handled hunting knife?

4   *A*   Firstly, with respect to no knife on the trip, in

09:08 5   his earlier statement of June 4th he resiled from

6   his trial testimony, that he has now amended that.

7   The significance of the bone-handled knife is that

8   such, a knife of that description was found in the

9   alley, or one of the alleys close to where the

09:08 10   body was discovered. However, from my vantage

11   point, it wasn't that significant because the

12   murder weapon was established to have been a type

13   of paring knife with a maroon handle.

14   *Q*   So just on the latter point then, the fact that --

09:09 15   were you aware that there had been a bone-handled

16   hunting knife found in the alley?

17   *A*   In one of the alleys, yes.

18   *Q*   Yeah. So did this information, did you view this

19   information as being possibly incriminating to Mr.

09:09 20   Milgaard?

21   *A*   No.

22   *Q*   Okay. So back to the first point, what about the

23   fact that Mr. Wilson was now changing, or appeared

24   to be changing what he had said on June 4th about

09:09 25   the knife, did you put any stock in that? What

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1   significance if any did that have?

2   A   Well, it simply reinforced the fact that he had

3   given some thought to what he had said earlier and

4   perhaps another thought had arisen and sometimes

09:09 5   that happens.

6   Q   And would you agree that if Mr. Wilson was simply

7   trying to help David Milgaard and give whatever

8   was needed to help David Milgaard, that

9   volunteering this piece of information would not

09:10 10   necessarily be helpful in the sense of he did have

11   a knife?

12   A   That argument could be made. I viewed it more or

13   less as neutral.

14   Q   Go to 025, please. Here you are questioning Mr.

09:10 15   Wilson about his meeting with Mr. Henderson, and I

16   don't propose go through all of it, but I think

17   you tried to have him run through what happened

18   that day, what he looked at, what Mr. Henderson

19   gave him and the nature of the discussions; is

09:11 20   that correct?

21   A   That's correct.

22   Q   And why was that important?

23   A   Well, at the time I wanted to know whether his

24   memory had been refreshed and, if so, by what

09:11 25   sources. When you have a six or a seven or eight

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1   page statement which appears to be in narrative

2   form, it signals that -- and it's not in his

3   handwriting -- it signals that there may have been

4   a longer or larger discussion that preceded it and

09:11   5   that the statement was a summary or a synthesis of

6   what had happened. By contrast, I had seen a

7   number of police statements which took a question

8   and answer format and that would indicate, or it's

9   often used as an indication that from the

09:11   10   beginning to the end at least of that portion of

11   the interview, that that's all there was.

12   Q   So here, Mr. Wilson says that the document, being

13   his statement, was given at four or five o'clock

14   in the afternoon, and then if we can go to, I

09:12   15   think there's a later point that indicates they

16   started at nine a.m.; is that correct?

17   A   Yes. I seem to recall about seven or eight hours

18   of discussion culminated in the signing of the

19   statement.

09:12   20   Q   And then here you ask him, you say:

21   "Q   When did you start?

22   A   In-depth, I don't think we started

23   in-depth until after dinner."

24   And you ask:

09:12   25   "Q   What information did you obtain?"

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1		And I take it that was to find out what Mr.
2		Henderson had provided to Mr. Wilson to refresh
3		his memory?
4	A	Yes.
09:12 5	Q	And were you concerned about that?
6	A	I wouldn't call it concern. If you take a look at
7		Mr. Wilson's statement, it has specific denials of
8		four or five points. This is 15, almost 20 years
9		after the event, after he testified, and the
09:13 10		specificity of the denials prompted me to want to
11		question just whether or not -- how it came about,
12		and to the extent that he received additional
13		information which better informed his recall, I
14		was certainly interested to find out what that was
09:13 15		and, if so, that would help me make, or help my
16		boss make some kind of an assessment or weight to
17		be given to that statement.
18	Q	And then here you ask him:
19		"Q What information did you obtain?
09:13 20		A I got to see I believe a statement
21		from Shorty.
22		Q Albert Cadrain?"
23		And:
24		"A I don't know which statement..."
09:14 25		Is it likely or do you recall whether that would

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1		have been the June 20th, 1990 statement of Albert
2		Cadrain, the mental hell and torture statement we
3		referred to yesterday
4	A	Probably not, and I say that because the statement
09:14 5		was obtained on June 4th.
6	Q	No, I'm sorry, at -- oh, I'm sorry, okay, so this
7		is back --
8	A	I'm interviewing him in July.
9	Q	Right, okay.
09:14 10	A	His first statement -- or his statement to
11		Henderson was in June and I believe Albert
12		Cadrain's statement --
13	Q	June 20th, correct.
14	A	-- was later, yes.
09:14 15	Q	And then as well:
16		"...I believe that one was typed."
17		So that would have been likely one of his, either
18		his March 2nd or March 5th, 1969 statements; is
19		that your assumption?
09:14 20	A	Possibly, yes.
21	Q	And then a typewritten statement from his brother,
22		not Albert, and you indicate Kenneth, and I'm
23		wondering if that -- and he says yes. I'm
24		wondering if that might have been Dennis Cadrain's
09:15 25		statement which was obtained in late May?

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1   *A*   It's possible.

2   **Q**   And then a discussion about the transcripts and

3   you ask him:

4   "Q   From the Preliminary trial?"

09:15   5   "Q   Did you read them?

6   A   Yes, I did."

7   "Q   You read it all?

8   A   Yes."

9   And this is where the comment about begin at nine

09:15   10   o'clock. What was your sense as to whether or

11   not Mr. Wilson had read the entire transcript of

12   his evidence?

13   *A*   At the time I didn't zero in on that. What I

14   surmised was that he probably reviewed the

09:15   15   transcript and possibly read certain portions in

16   greater detail, but the important fact was that he

17   had at his disposal both the preliminary inquiry

18   and the trial transcripts for him to review.

19   **Q**   And again, did you see anything inappropriate

09:16   20   about Mr. Henderson providing Mr. Wilson with

21   those transcripts to review?

22   *A*   No.

23   **Q**   Go to the next page, and it talks about an

24   in-depth discussion around one o'clock, was it a

09:16   25   question and answer, started out that way:

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1   "Q   And how did it end up?

2   A   I just kind of said, "Enough is enough

3   and I'll tell you the truth."

4   Q   Did you obtain any information about the

09:16 5   investigation that Mr. Henderson was

6   conducting?

7   A   Just the basic background that I even

8   heard from my sister who had seen him

9   on T.V."

09:16 10   What was the purpose of that, asking about that?

11   A   Simply to identify any other additional sources of

12   information that might have informed his comments

13   on the statement.

14   Q   Were you concerned that that might have influenced

09:16 15   his statement?

16   A   It may have triggered some form of recall, yes, it

17   might have. I wouldn't call it concern, I just

18   needed to identify the potential sources.

19   Q   We've heard some evidence that, at least in some

09:17 20   of the interviews Mr. Henderson conducted, and I

21   can't recall his evidence with respect to Ron

22   Wilson, but that he, one of the approaches he used

23   with witnesses was we know Larry Fisher committed

24   the crime, we now have -- we now know who

09:17 25   committed the murder, it was Larry Fisher, things

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	1	of that nature, and would you have been familiar
	2	with that technique? I think he used it with
	3	Dennis Cadrain on one of the interviews. Were you
	4	aware of that?
09:17	5	A I was not.
	6	Q Would that have caused you concern if that
	7	information had been provided to Mr. Wilson as
	8	part of the interview of June 4th, 1990?
	9	A It certainly would have been a bit disturbing
09:17	10	because the presentation in that way might cause
	11	an interviewee to doubt the accuracy of what they
	12	had given before and to tailor their recollection
	13	to accord with their new understanding of the
	14	facts. It could have an influence.
09:18	15	Q If we can go to 028, 456, 457, you ask him whether
	16	or not Mr. Henderson provided the contents of
	17	medical or scientific reports or professional
	18	opinions. What was that in relation to?
	19	A I wanted to know whether, for example, he had seen
09:18	20	any of the Ferris report, the extent. If so, what
	21	impact. A follow-up would be what impact it might
	22	have had on his evidence.
	23	Q And then to, down at the bottom you ask him about
	24	were you aware:
09:18	25	"...that David Milgaard was due for a

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1   parole hearing in the next three or four

2   days?"

3   And this was after the June 4th statement. What

4   was the purpose of that line of questioning?

09:19 5   A   Well, Mr. Wilson's statement was first presented

6   to a Parole Board hearing I believe on June 6th

7   before we received it and I was curious to know

8   whether that was the initial purpose of it. I

9   wanted to know whether the goal or the objective

09:19 10   in interviewing Wilson was firstly for the purpose

11   of presenting that evidence to the Parole Board or

12   whether it was for presenting it to the minister

13   in relation to the 690 application because it

14   first appeared, as I recall, at the Parole Board

09:19 15   hearing.

16 Q   Go to 125030. You question him about the March

17   3rd, '69 statement to Inspector Riddell. It

18   appears you had him read it, you say:

19   "Q   That four-page document generally

09:20 20   describes some of the events that

21   happened on your trip to Saskatoon on

22   January 31st, 1969?

23   A   Yes.

24   Q   I think you will agree with me that it

09:20 25   does not and it did not contain all of

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1   the details that happened on that day?

2   A   No, it didn't.

3   Q   Things were left out?

4   A   A couple, yes."

09:20   5   What was the significance of that evidence?

6   A   The Riddell statement was the first, or one of the

7   first encounters that Mr. Wilson had with the

8   police, and that statement was bereft of any

9   references to any encounters with a woman in an

09:20 10   alley or a woman on the street in Saskatoon, as I

11   recall. It was a bland statement and had nothing

12   incriminating, and it contrasted with the later

13   statements that were taken in May significantly,

14   but I wanted to find out from Mr. Wilson whether

09:21 15   it was a complete statement and, initially, he

16   acknowledged that he had left some things out.

17   Q   And were you -- we had shown you yesterday the

18   newspaper article where Mr. Wilson was quoted as

19   saying, basically, that that first statement was

09:21 20   -- I can't recall the exact words -- I think the

21   truth, and words to that effect; was that one of

22   your purposes in questioning him?

23   A   Yes.

24   Q   Go to 039, please. And again, I won't go through

09:21 25   all of it, but you question him about, in some

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1   detail, about his session with Inspector Roberts,

2   is that right, and how long it took and what

3   happened; is that correct?

4 A Yes.

09:22 5 Q And what was your general assessment of how Mr.

6   Wilson described the polygraph session to you

7   compared to the impression you got when you read

8   it on the June 4th, 1990 statement?

9 A Well his demeanour was fairly relaxed and he was

09:22 10   calm and he didn't, he didn't display a great deal

11   of emotion such as anger or frustration, or some

12   of the things that I would expect to find from

13   someone who had been badly treated. And when you

14   recall things that were unpleasant, sometimes it's

09:22 15   reflected in the retelling, I didn't observe that.

16 Q And so what -- what did you make of that, then, if

17   anything?

18 A I just pursued it a bit more.

19 Q Go to the next page. Again, this relates to the

09:23 20   timing, about how long he was under the polygraph:

21   "Q   So maybe as long as six hours might be a

22   bit of an exaggeration?

23   A   A little bit, yes."

24   And you say:

09:23 25   "Q   I suggest to you ...",

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1   or then, pardon me, then his statement goes on to

2   say:

3   "... 'Finally I began to implicate

4   Milgaard in the murder telling the

09:23 5   police the things they wanted to

6   hear.'?"

7   And, to put this in a bit of context, I think in

8   Mr. Wilson's June 4th, 1990 statement he

9   described his treatment at the polygraph, and

09:23 10   then said:

11   "... 'Finally I began to implicate

12   Milgaard in the murder telling the

13   police the things they wanted to

14   hear.'?"

09:23 15   If you want me to bring up Mr. Wilson's statement

16   I can at any time, Mr. Williams, but I think

17   that's what you are asking him. You then say:

18   "Q   I suggest to you that you had implicated

19   Mr. Milgaard in the murder before you

09:23 20   got on the polygraph?

21   A   That's what I have been told.

22   Q   By whom?

23   A   I believe it was in the transcripts.

24   Q   That's what you have been told or is

09:24 25   that what you answered in response to

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1   questions that were asked by counsel for

2   Mr. Milgaard at both the Preliminary

3   Inquiry and at the trial?

4   A   That's what the transcripts say, yes."

09:24   5   And can you just explain the significance of that

6   line of questioning?

7   A   The message contained in the statement was that

8   the incriminating statements that were obtained in

9   1969 had been obtained as a result of persistent

09:24 10   questioning, perhaps the impression was left it

11   was inappropriate questioning, which turned a

12   neutral March statement into an incriminating May

13   statement, and that that result was the result of

14   inappropriate police behaviour, and it focused on

09:24 15   the polygraph. The significance of that, to me,

16   was that the polygraph was, I believe, on May

17   24th, but the --

18   Q   May 23rd, sorry.

19   A   -- I'm sorry, May 23rd -- but before Mr. Wilson

09:25 20   met Mr. Roberts, the polygraph operator, he had

21   begun to provide incriminating evidence about Mr.

22   Milgaard. So the narrative that had been

23   presented in the June 4th, 1990 statement by --

24   Mr. Wilson's June 4th, 1990 statement didn't fit

09:25 25   in with the facts that were observed from an

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1   outside source.

2   Q   And would that, would that be the trial

3   transcripts, then?

4   A   That would be the trial transcripts, and that

09:25 5   would be the earlier statement that he had made to

6   the police officers from Saskatoon.

7   Q   And maybe just to assist you here, Mr. Williams,

8   let's call up the Wilson statement, it's 000248,

9   and go to page 250. At the top, and this is page

09:26 10   3 of the statement, he says:

11   "I kept answering no, I didn't kill Gail

12   Miller and didn't think David Milgaard

13   had. I recall that I was questioned on

14   the polygraph twice for maybe as long as

09:26 15   six hours. It was like a sweat session.

16   My mind was exhausted and I was mentally

17   scrambled. I remember it now being like

18   brainwashing. Finally I began to

19   implicate Milgaard in the murder,

09:26 20   telling police the things they wanted to

21   hear."

22   And would that be the part of the statement,

23   then, that you were probing with Mr. Wilson?

24   A   Yes.

09:26 25   Q   And what did you conclude then, based on this

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1   questioning of Mr. Wilson, about the credibility

2   of, at least in your view, of this comment that it

3   was after the brainwashing and the polygraph that

4   he finally began to implicate Milgaard in the

09:26   5   murder?

6   A   Well I needed to know whether, I mean 20 years

7   after the event he could have gotten the order,

8   could have gotten the order of things wrong, so I

9   needed to find out whether, by presenting a

09:27   10   different suggestion to him, whether that would

11   jog his recall, and I suggested to him that

12   perhaps he had started to implicate Mr. Milgaard

13   not after six hours of a sweat session, but had

14   begun that well before his contact with the

09:27   15   polygraph operator.

16 Q   And, if that had been the true state of affairs,

17   what significance would that have in assessing the

18   credibility of Mr. Wilson's recantation?

19 A   Well, it certainly would have corrected the

09:27   20   impression left in that paragraph of the

21   statement.

22 Q   If we can go to 125042. And again, you follow up,

23   and I think what you did -- actually, sorry, let

24   me just back up. I think what you did is -- no,

09:28   25   the previous page -- I think you read to him from

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1   the transcript, the cross-examination by Tallis:

2   "... 'I take it that the first time you

3   ever implicated or suggested that David

4   implicated -- that David was implicated

09:28   5   in the Gail Miller murder was on May

6   23rd, 1969?' Your answer 'No.'

7   Question 'To the police?' Answer 'No,

8   it was the day before.' Question 'The

9   day before?' Answer 'In Regina.'"

10   Ken Walters and Ed Karst. And that was what I

11   think you referred to earlier, his evidence in

12   questioning by Mr. Milgaard's lawyer, that Mr.

13   Wilson at the trial said, or at the prelim, or

14   both, that, no, he implicated David Milgaard

09:28   15   before May 23rd; is that correct?

16   A   That's correct.

17   Q   And then the next page. He says -- he wants to

18   elaborate on it a bit and he says:

19   "A   ... When they were coming down to get

09:29   20   me, I'm scared, and to keep on

21   mentioning David, and I believe I said,

22   'Well, it's possible that David did do

23   it.' and that's the only way I can see

24   that he was implicated the day before."

09:29   25   And, again, what's -- what was the significance

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1   of that answer in assessing the credibility of

2   the recantation?

3   A   Well, this was a prior inconsistent statement that

4   was taken under oath at the prelim or at trial at

09:29 5   a time when the events, you know, were much

6   fresher or were -- would be expected to be much

7   fresher in the mind of the witness.

8   Q   If we can go to 125046. You state here, at

9   question 602, you -- after going through a bunch

09:29 10   of the transcript you say:

11   "Q   Those answers indicate that you had

12   implicated Milgaard in the murder before

13   you got to Saskatoon?

14   A   Yes, it does.

09:30 15   Q   Those answers were correct, were they

16   not?

17   A   Yes."

18   And what was the significance of that information

19   from Mr. Wilson?

09:30 20   A   Well it, it contradicts what he said on June 4th,

21   and puts the June 4th statement, or at least that

22   portion of it, in a completely different light.

23   Q   Go to page 125049. Here, again, back to the

24   questions about, here, the March 3rd, '69

09:30 25   statement. Was it your sense that Mr. Wilson was

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1   going back to the March 3rd statement, saying

2   "that's, that's the truth, and that's everything"?

3 *A* There was a fair bit of reliance on the March 3rd

4   statement, yes.

09:30 5 Q And here he says:

6   "A   Just a few things are deleted from there

7   from the other one.

8   Q   A few things?

9   A   Getting stuck and the knife and the

09:30 10   break and entry."

11   Did you view those as being significant omissions

12   from the March 3rd, '69 statement?

13 *A* Yes.

14 Q Why was that?

09:31 15 *A* The getting stuck, or -- was the event that was

16   the focal point of the trial. Getting stuck in

17   Saskatoon, and that's what I interpreted the

18   "getting stuck" to be, was one of the significant

19   -- that was the trigger for the separation of

09:31 20   David Milgaard and Wilson and Nichol and it was,

21   it was during that period of time I think, based

22   on the Crown's theory advanced for the murder,

23   that David Milgaard may have had the opportunity

24   to commit the crime, and so that omission from the

09:31 25   March 3rd statement was a significant one.

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1	Q	And did you view that as being incriminating,
2		then, or suspicious?
3	A	No, it just simply indicated that total reliance
4		could not be placed on the March 3rd, 1969
09:32 5		statement as the definitive or the complete truth
6		that recorded the events of those -- of that time.
7	Q	Would you agree that if Mr. Wilson was simply
8		trying to help David Milgaard in 1990, and sort of
9		recanting whatever it was that needed to be
09:32 10		recanted, that getting stuck might be something
11		that he would say didn't happen given that that
12		was the opportunity?
13	A	Yes, if that were his objective, yes.
14	Q	Now, in fairness, I think on later dates he, from
09:32 15		time to time, did say they didn't get stuck, but
16		did that give some credibility to the recantation
17		in the sense that there were incriminating,
18		arguably incriminating things that he did not
19		recant, namely the knife and getting stuck?
09:33 20	A	Well, it certainly bolstered it a bit, yes.
21	Q	Now were there also some things that he recanted
22		that you knew from other sources were true?
23	A	Yes.
24	Q	And was that one of the problems in trying to put
09:33 25		weight on the recantation?

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1   *A*   Well, it certainly made the task of assessing it a

2   bit more problematic, yes.

3   **Q**   I'm going to ask you about here, and just to put

4   this in context, at the trial Mr. Wilson testified

09:33 5   that -- and in his statement -- that the day after

6   the murder in Calgary, while Mr. Wilson was I

7   think phoning Heather Beaton from the bus depot,

8   and that's when Mr. Wilson said David Milgaard

9   allegedly admitted to grabbing a woman, stabbing

09:34 10   her, and putting her purse in the garbage can. So

11   the name Heather Beaton is in the statement, and I

12   believe his testimony was to the same effect, and

13   you ask him here about:

14   "Q   Didn't you also tell the police about a

09:34 15   conversation that you had with David at

16   the Calgary bus depot?

17   A   Yes, which was also bullshit.

18   Q   It was also bullshit. How did the

19   police know about Heather Beaton?

09:34 20   A   That I don't know. I was surprised

21   that you knew her name.

22   Q   The only person who knew about Heather

23   Beaton is Ronald Dale Wilson, right, and

24   Shorty Cadrain and possibly David

09:34 25   Milgaard and Nichol John?

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1   A   Um-hum.

2   Q   So if the police were going to plant a

3   story how would they get that

4   information about Heather Beaton unless

09:34   5   you told them?

6   A   Because I was in there trying to phone

7   Heather Beaton."

8   Can you explain what you were probing there and

9   what was the significance of this information?

09:34   10   A   Details, such as names that would be known only to

11   the interviewee, informed the assessment of the

12   claim that the story was planted by the police.

13   Usually when you concoct a

14   story, or when you devise one, you need to put in

09:35   15   certain details and you need to have some

16   appreciation of what the person planting the story

17   knows about your life or -- and it was just one of

18   those details that stuck out because Heather

19   Beaton didn't factor into any of the conversations

09:35   20   or any of the information that I had seen from

21   other -- from any of the other witnesses.

22   Q   Okay. If we can go to 054. And here you are

23   saying:

24   "Q   You are suggesting that the police

09:36   25   planted that story?

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1   A   Yes.

2   Q   How would they know about Heather Beaton

3   to put the story in that context?

4   A   Because it all fit in that way, that's

09:36 5   why. Sure I told them about probably

6   Heather Beaton and everything else and

7   needed a place to put it someplace.

8   That was a good place to put it.

9   Q   Why would they go to all the trouble of

09:36 10   getting Heather Beaton involved in this?

11   A   I'm the one that mentioned Heather

12   Beaton, not them.

13   Q   Doesn't it stand to reason, Mr. Wilson,

14   that if the police didn't know about

09:36 15   Heather Beaton they couldn't have

16   planted Heather Beaton into the context

17   of what follows?

18   A   This whole thing is a piece of shit.

19   That's what I'm trying to get across

09:36 20   to you.

21   Q   Just answer my question. If the police

22   didn't know about Heather Beaton how

23   would -- they couldn't have put it in

24   that context, could they?

09:36 25   A   They gave me the pieces and let me put

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1   it together the way I wanted to."

2   And, again, what was your reaction to that

3   answer, piece of information?

4   A   It didn't have the ring of truth.

09:37   5   Q   Let me just go back, and I want to -- if we go

6   back to Mr. Wilson's June 4th statement, 000248,

7   and go to page 252, and I think this is where this

8   line of questioning comes from. And this is Mr.

9   Wilson saying:

09:37   10   "- that when we were alone together in

11   Calgary, Milgaard told me he'd 'hit a

12   girl' or 'got a girl' in Saskatoon and

13   put her purse in a trash can.

14   This testimony was planted in

09:37   15   my mind by police. At no time did

16   Milgaard confess anything like this to

17   me."

18   Go back to the trip. Would it be fair to say

19   that you were testing that statement; whether it

09:37   20   was credible that that piece of information was

21   planted in Ron Wilson's mind by the police?

22   A   Yes.

23   Q   And is it fair to say that in light of the fact

24   that his statement included Heather Beaton, a fact

09:38   25   that was only known to him and not the police,

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1   that caused you to doubt the credibility of his

2   assertion that that was planted in his mind by the

3   police?

4   A   It certainly caused me to question how, and the

09:38 5   context in which, that alleged plant occurred.

6   Yes, it caused me to doubt that it was planted in

7   his mind by the police.

8   Q   Now let me just go through a scenario that might

9   explain how the Heather Beaton got into -- into

09:38 10   Mr. Wilson's fabricated story about what happened

11   in Calgary, that if -- if the police asked Mr.

12   Wilson, again in 1969, about "did David ever make

13   any admission to you after the trip when you were

14   in Calgary, can you think anywhere in Calgary, did

09:39 15   he ever say anything where he admitted being

16   involved in the murder", and if Mr. Wilson, for

17   whatever reason, chose to lie and say "yes, he

18   did, he did make an admission to me", the police

19   presumably would say "well where was it, what did

09:39 20   he say, tell me what happened", and Mr. Wilson

21   could have, in that scenario, said "okay", if he

22   was fabricating that, which he says he was, then

23   puts it in the context of a real -- of a true

24   event, namely they were at the bus depot, they

09:39 25   were phoning Heather Beaton, and he puts the

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1   admission into a known fact. Do you follow?

2   A   Yes, that -- that's possible. What --

3   Q   Oh, sorry, go ahead?

4   A   That's possible. Umm, what occurred to me was

09:39 5   this. If that had, in fact, taken place I would

6   have expected a more detailed narrative in the

7   statement that set out precisely how this story

8   came to be.

9   Q   From -- you are talking in June of '90?

09:40 10   A   In June of '90 from Mr. Wilson.

11   Q   Yeah. And so if Mr. Wilson had said in June of

12   '90 just that, that, for example, "for whatever

13   reason I decided to implicate David Milgaard and

14   give information that I knew not to be true,

09:40 15   either because I thought he was guilty, I was

16   afraid of my own predicament, the police were

17   pressuring me", whatever his reason, that he chose

18   to give false and implicating information to the

19   police and "here's how it came about, and I

09:40 20   decided to give them this confession which didn't

21   happen and I decided to place it in Calgary, and

22   here's how it came about"; would that have been

23   more credible to you than the statement where he

24   says "this testimony was planted in my mind by

09:41 25   police"?

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1   A   Yes.

2   Q   And is it fair to say that, based on your

3   examination of Mr. Wilson and the other facts,

4   that you found it difficult to conclude that that

09:41   5   statement could have been planted in his mind by

6   police?

7   A   The -- the image that -- or not the image, but the

8   narrative that Mr. Wilson set out as the context

9   in which this planting or manipulation took place

09:41   10   just wasn't supported by objective facts that we

11   had discerned, and I'm referring to the time with

12   the police. In total, certainly Mr. Wilson was in

13   the police, or was questioned perhaps six hours or

14   more, but it -- what I was able to learn was it

09:42   15   wasn't continuous, it was on separate days, with

16   different officers, in circumstances that did not

17   signal that there was coercion or manipulation.

18   Certainly, how a story is

19   planted is one of the indicia that I would look at

09:42   20   to determine whether or not the conclusory

21   statement that he was manipulated, and the police

22   planted it in his mind, whether or not that was

23   supported by the evidence.

24   Q   If we can go to 125072. And, in fact, is it fair

09:43   25   to say, Mr. Williams -- just back on this Heather

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1		Beaton story -- that if Mr. Wilson had said,
2		again, "I lied, I made this up and I told the
3		police, I fit it into this incident in Calgary
4		because they asked me whether, in Calgary, he had
09:43 5		made an admission and I told them this, but that
6		I, Ron Wilson, made it up for whatever reason";
7		how would you test the credibility of that?
8	A	I would have probed a bit more. I'm not certain
9		which questions I would ask at this moment, but it
09:43 10		--
11	Q	Yeah.
12	A	-- would be a line of questioning I would follow
13		up.
14	Q	Okay. And we touched on this back in June, and I
09:43 15		think you told us that in questioning the
16		credibility of a recantation, that you would probe
17		not only the substantive portion of the
18		recantation to test its truthfulness compared to
19		known facts, you would also test the truthfulness
09:44 20		of the reasons put forward for the recantation and
21		the truthfulness of that; correct?
22	A	Well, certainly the motives inform, yes.
23	Q	If we can go to 072, you ask him here about the
24		police:
09:44 25		"Q Did ...",

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1   they:

2   "... offer to withdraw any charges in

3   return for your testimony?

4   A   No.

09:44   5   Q   Did they offer you any deal whatsoever?

6   A   No."

7   And then the next page:

8   "Q   They didn't threaten you?

9   A   No.

09:44   10   Q   Similarly at the trial were you

11   threatened?

12   A   I was never threatened."

13   I think there is a few other references. What

14   was your sense, from Mr. Wilson, about his

09:44   15   interaction with the police back in 1969 and his

16   description of what the police did to him in the

17   questioning?

18   A   Okay. By his responses to my questions denying

19   either threat, promise, coercion, I was trying to

09:45   20   find, you know, a lever that the police would have

21   on him to coerce him or to manipulate him. And

22   ordinarily a promise or a threat is used to

23   persuade someone to testify in the manner that you

24   wish them to testify, and if they weren't holding

09:45   25   out something for him, for example if he had had

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1   outstanding charges and he might get some benefit

2   by way of, you know, "I'll talk to the Crown and

3   we'll see if we can make these go away", or "talk

4   to the --", you know, the stories about maybe get

09:45   5   a lighter sentence, then -- I was looking to see

6   whether there were any inducements for him,

7   offered by the police, to persuade him to

8   implicate Mr. Milgaard, or whether the police had

9   threatened him in some fashion to persuade him to

09:46   10   implicate Mr. Milgaard, and he didn't identify

11   any.

12   Q   Okay. If we can go to 079, just a line of

13   questioning here, it appears you probed:

14   "Q   Were you afraid of Eddy Karst?

09:46   15   A   No.

16   Q   Were you afraid of Charlie Short?

17   A   No."

18   "Q   You got along with Eddy Karst ...",

19   "Q   Those were the two fellows with whom you

09:46   20   dealt with?

21   A   Yes.

22   Q   You got along with Eddy Karst and

23   Charlie Short?

24   A   Seemed to, yes.

25   Q   They didn't intimidate or threaten or

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1   challenge you?

2   A   No.

3   Q   Certainly by the time you went to

4   Saskatoon they didn't tell you that they

09:46 5   were still looking at you as the prime

6   suspect in the murder of Gail Miller; is

7   that fair to say?

8   A   I would say that, yes."

9   What was the significance of that, this

09:46 10   information?

11   A   Again, that was just trying to find out if there

12   was any inducements or threats, and trying to

13   isolate the potential sources of them.

14   Q   Go to 125083, please. You have a line of

09:47 15   questioning here, I think you dealt with not only

16   his interaction with the police at the time he

17   gave this statement, but also what happened at

18   trial. You said:

19   "Q   ... the police weren't leaning on you in

09:47 20   any way; they had no hold on you?

21   A   They had no hold on me, no.

22   Q   You weren't in custody at that time?

23   A   No.

24   Q   You had an opportunity at trial to tell

09:47 25   the truth as you knew it then?

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1   A   I had opportunities, yes.

2   Q   Didn't you in fact tell the truth as you

3   then knew it?

4   A   No, I didn't.

09:47   5   Q   Why not?

6   A   I was scared.

7   Q   Of what?

8   A   Who is going to believe me now?"

9   And then you go on. What was the significance of

09:47 10   this line of questioning?

11   A   Well Mr. Wilson had, at some point in time Mr.

12   Wilson had been in custody and had had contacts

13   with the police while in custody. By the time the

14   trial had -- by the time of the trial he was out

09:47 15   of custody, and to the extent that he may have

16   been frightened, intimidated merely by virtue of

17   the fact of his custody, this change in

18   circumstances might have provided him with an

19   opportunity to come clean if, in fact, he had lied

09:48 20   previously, and that was essentially what I was

21   trying to probe at that point in time.

22   Q   And was the question there "if, if in fact the

23   police had manipulated and coerced you into lying

24   in your May 23rd and 24th statement, what happened

09:48 25   at the prelim and trial that caused you to lie

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1			again there"; is that the general --
2	*A*		That's the thrust of the question, yes.
3	**Q**		And did you learn anything in this interview with
4			Mr. Wilson to explain, at least to your
5			satisfaction, about what prompted him to lie at
6			the preliminary hearing and trial?
7	*A*		I don't recall specifically what his response to
8			the succeeding questions were, but I did come away
9			with a feeling that his explanation did not -- or
10			wasn't a satisfactory one.
11	**Q**		125110. You ask Mr. Wilson:
12		"Q	Other than what is contained in that
13			statement and the comments you had in
14			relation to another exhibit, and I
15			believe it's Exhibit "7", is there
16			anything else that you recall about that
17			trial testimony having reviewed your
18			evidence recently, both at trial and at
19			the Preliminary Inquiry, with which you
20			now take issue and say is not correct?
21		A	The only thing I can see is not right
22			he didn't have a decent defence
23			lawyer.
24		Q	And why do you say that?
25		A	Because he should have used my

09:48 (line 5)
09:49 (line 10)
09:50 (line 15)
09:50 (line 20)
09:50 (line 25)

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1   original statement first and then I

2   might have broken down and told the

3   truth.

4   Q   Anything else?

09:50 5   A   I just wish I hadn't been such a pill

6   head back then. It might have

7   helped."

8   What was the significance of this information

9   from Mr. Wilson?

09:50 10   A   Here is a witness critiquing the performance of

11   counsel in terms of his forensic account -- not

12   forensic accounting, but forensic examination

13   skills at trial. I just found it -- I found it a

14   surprising comment coming from Mr. Wilson, because

09:51 15   generally, unless they are professional witnesses,

16   witnesses are just happy to get off the stand and

17   usually don't analyse the performance of the

18   questioner, and what he was, what Mr. Wilson was

19   saying here is that Mr. Tallis had perhaps been

09:51 20   not as good as he should have been because it

21   appears as if he lacked certain information;

22   namely, the March statement, and had he that

23   information he would have been able to crack my

24   story. I felt that that was information that Mr.

09:52 25   Wilson obtained from another source and I was

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1   just --

2   Q   Did it affect your assessment of his credibility?

3   A   That alone, no, but certainly at the end of the --

4   at the end of the interview after I had had an

09:52 5   opportunity to either review my notes and reflect

6   on it, there did not appear, based on Mr. Wilson's

7   responses to my question, there did not appear to

8   be the factual foundation to support the thesis

9   contained in the June 4th, 1990 statement that he

09:52 10   had been coerced and manipulated by police because

11   the facts that I would expect to see in those

12   coercion situations did not exist and they came

13   from the description that Mr. Wilson provided to

14   me and, consequently, I seriously questioned the

09:53 15   veracity of the conclusions contained in the June

16   4th, 1990 statement.

17   Q   Did you have concerns about how the statement came

18   about?

19   A   Yes. If -- I would put myself in the role of a

09:53 20   Crown counsel trying to introduce a statement at

21   trial and if I tendered a six or an eight page

22   statement that was the result of eight hours of

23   interview between the person giving the statement

24   and the police, there would be an awful lot of

09:54 25   explaining to do, and I didn't get an explanation

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1		that seemed to satisfy me that --
2	Q	Did you consider -- what about the possibility,
3		and I think we heard some evidence about this
4		subject from Dr. Rossmo and Professor Boyd, that
09:54 5		Mr. Wilson, having realized or acknowledged 20
6		years later that he had lied at trial, was looking
7		for someone else to blame, and initially blamed
8		the police and it now appears here to blame
9		Mr. Tallis, as opposed to, I think in their words,
09:54 10		taking his own responsibility for that and
11		suggested that it might not be an uncommon
12		occurrence where a witness recants and is trying
13		to justify perhaps in his own mind his earlier
14		behaviour. Is that something that you considered
09:54 15		or you can comment on now?
16	A	I didn't consider it at the time. It's certainly
17		a possible explanation. I would leave that to
18		those, the psychiatrists and psychologists who --
19	Q	Of which I am not one.
09:55 20	A	-- better understand human behaviour.
21	Q	But again, just as far as looking at -- is it
22		correct to say, though, that in looking at the
23		recantation, what's put forward as the motive is
24		important to you in testing it?
09:55 25	A	It's certainly a factor, yes, in the

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1   circumstances.

2   Q   If we can go to 125111. Here the transcript shows

3   that Mr. Watson questioned Mr. Williams and it

4   appears that you took no objection to that?

09:55 5   A   I did not. He was entitled to question his client

6   to the extent that -- to the extent that I had

7   raised certain issues that ought to be addressed

8   to make the record clear, this was his

9   opportunity.

09:56 10   Q   Go to 220989, please. So that's the conclusion of

11   the Wilson transcript, and I think you've

12   commented on the conclusions you reached with

13   respect to that and I'll show you a document

14   later. Just generally, though, after you had

09:56 15   interviewed Ron Wilson then, tell us what

16   conclusions, if any, you reached at that time

17   about whether or not his recantation provided a

18   reasonable basis to conclude that a miscarriage of

19   justice had occurred?

09:57 20   A   I didn't assess the answers I had received from

21   Mr. Wilson in the context of whether or not it

22   alone signaled that, or informed the issue as to

23   whether or not there was a basis to conclude that

24   a miscarriage of justice likely occurred.

09:57 25   Following the interview I focused on a further

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1   review of the information that had been presented

2   at trial and compared it with the notes that I had

3   taken to assess whether or not the foundation for

4   the thesis contained in the June 4th, 1990

09:58 5   statement could be supported, and the thesis as I

6   understood it was that the police had brow-beaten,

7   or perhaps just by persistent questioning, warn

8   down this relatively youthful witness to the point

9   whereby he provided a statement that he felt was

09:58 10   what they wanted to hear and would implicate David

11   Milgaard, and so having asked him about the

12   circumstances and received his answers, I didn't

13   feel that those circumstances had been borne out

14   by the facts as he related to support the

09:58 15   conclusion that he had been coerced or

16   manipulated.

17   Q   And what about the substance then of his

18   recantation, I mean, the fact that he said I lied

19   at trial when I said David Milgaard admitted

09:59 20   killing her to me?

21   A   Well, I would merely point out in my report the

22   areas in which, or the factual discrepancies so

23   that the minister could assess it and give it the

24   weight it --

09:59 25   Q   But as far as your assessment of -- would you

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1　　　　　　agree that if a witness' recantation after

2　　　　　　investigation and probing was determined to have

3　　　　　　merit, to be credible, particularly of a witness

4　　　　　　that gave the evidence that Ron Wilson did, that

09:59　5　　　　　　that would be significant evidence that likely on

6　　　　　　its own would give rise to a miscarriage of

7　　　　　　justice; would you not agree?

8　　A　　It could provide the minister with a basis to give

9　　　　　　a remedy, yes.

10:00　10　　Q　　And so I appreciate your comments on the motives

11　　　　　　and the statement. Is it fair to say that the

12　　　　　　substantive merits of what Mr. Wilson was saying,

13　　　　　　what were your conclusions about that, as to

14　　　　　　whether it provided a basis to grant a remedy?

10:00　15　　A　　The conclusions that were contained in Mr.

16　　　　　　Wilson's statements weren't supported by the facts

17　　　　　　as they related them.

18　　Q　　So in other words, the ground put forward is Ron

19　　　　　　Wilson said the police manipulated, caused him to

10:00　20　　　　　　lie and therefore -- and his evidence is false;

21　　　　　　therefore, there's a miscarriage of justice.

22　　　　　　After your review, I think you are telling us your

23　　　　　　conclusions were that there's no merit to that

24　　　　　　allegation; is that fair?

10:00　25　　A　　That's fair.

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1   Q   Can you tell us, did -- what you learned in your

2   review of that allegation, namely, the

3   recantation, the circumstances and your follow-up,

4   can you tell us, did that influence your thinking

10:01 5   when you assessed other grounds and tried to reach

6   conclusions about the merits of that?

7   A   Well, we're talking July, 1990. By then, I think

8   that was the fourth or fifth ground that had been

9   advanced.

10:01 10   Q   Let me be a bit more specific. Are you able to

11   tell us whether, when you looked at the Larry

12   Fisher information, for example, in trying to

13   assess where that fit in, do you think you were

14   influenced in any way by what you had learned in

10:01 15   going down the path on the Wilson recantation?

16   A   I can't say for sure. I can tell you that having

17   looked at earlier grounds and having been

18   confronted with widely-covered news stories

19   indicating that a certain bit of evidence

10:02 20   represented this, and on closer examination I

21   formed a different view. Certainly you would look

22   at the information that is then presented with a

23   great deal of scrutiny, because if the assertion

24   has not been borne out by the fact and someone is

10:03 25   making another assertion, you look at it a bit

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1   more closely, and that, I think, is human nature,

2   but I guess my experience in dealing with matters

3   relating to criminal law has indicated that

4   sometimes it's just one little nugget in a file

10:03 5   that could have that ring of truth, so you run it

6   down.

7   Q   Can you comment on whether -- I mean, obviously

8   the Ron Wilson recantation was put forward on

9   behalf of Mr. Milgaard to say that there was a

10:03 10   miscarriage of justice, the verdict wasn't safe,

11   his evidence wasn't safe. After reviewing the

12   Wilson recantation as you've described in your

13   examination, did it -- can you comment on whether

14   or not your view on the safety of the verdict, if

10:04 15   I can put it that way, was neutral, you were more

16   confident in the safety of the verdict or less

17   confident, and I apologize if I'm not using the

18   right language, but I want to try and get a sense

19   of whether this maybe had a counter-productive

10:04 20   effect on your assessment of the safety of the

21   verdict?

22   A   It didn't have a, quote, "counter-productive"

23   effect. I guess the question I was looking at,

24   and the question that's firmly the focus I guess

10:04 25   of our inquiries, is whether, whether one

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1   particular ground that's advanced or the

2   cumulation signals that there's a foundation to

3   conclude that maybe this is something that should

4   go back to the courts, and whether it's Wilson

10:05 5   alone or Wilson in combination with Deborah Hall,

6   the information we had about Mr. Cadrain, the

7   Ferris, none of that seemed to really have an

8   impact on the foundation facts that were advanced

9   at trial for the conviction of David Milgaard.

10:05 10   COMMISSIONER MacCALLUM: Are we talking

11   about -- was your question, Mr. Hodson, did you

12   view the recantation to have a counter-productive

13   effect?

14   BY MR. HODSON:

10:05 15   Q   Yeah, and let me be a bit more specific. The

16   recantation, everything related to the Ron Wilson

17   recantation in June of 1990, the circumstances and

18   everything that happened, once you were done your

19   review of that, I'm trying to find out whether

10:05 20   what you learned in investigating that ground and

21   the conclusions you reached may have had a

22   counter-productive effect, and the premise was

23   that this was put forward as being a ground of the

24   miscarriage of justice and I'm trying to probe

10:06 25   whether it may have had a counter-productive

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1   effect in either giving you comfort that the

2   verdict was safer or how did it affect the other

3   grounds?

4   A   It didn't affect the other grounds. You know, 20

10:06 5   years ago I was a different person. Between the

6   trial and my interview, Mr. Ron Wilson had had a

7   number of events in his life and, you know, that

8   could have affected his recall. Applicants will

9   reach out for whatever support they think will

10:06 10   assist their case, so to the extent that someone's

11   recall is bad, that's one thing.

12   The one area that perhaps was

13   a bit of concern was the extent to which this

14   witness had been, let's say, influenced by

10:07 15   information about our process, about my

16   participation in that process and that that

17   information affected our ability to get the job

18   done quickly, or more expeditiously, and I felt

19   that that was counter-productive.

10:07 20   Q   And that would be the efforts to have you removed

21   and those matters that we talked about?

22   A   Well, yeah, because I had been on the case then

23   for, what, at least 18 months and in order to -- I

24   forget whether there were a thousand exchanges or

10:07 25   not, but in order to get someone up to speed to

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1		question Mr. Wilson would have taken some time for
2		preparation, etcetera, etcetera, and on the one
3		hand you had Mr. Wolch and Mr. Watson saying,
4		yeah, Wilson will talk to anybody but Williams.
5		Well, to get somebody up to speed would mean there
6		would be some time interval and --
7	Q	Did the process that we, that you went through to
8		get the interview of Mr. Wilson have a
9		counter-productive effect on your assessment of
10		his, or have any effect on how you assessed his
11		credibility?
12	A	No.
13	Q	Let me just go back and try and ask it, this
14		question a different way. Before Ron Wilson's
15		evidence even became an issue in the application,
16		I think you told us that it was what it was at
17		trial, and would you agree that it was fairly
18		incriminating evidence?
19	A	Yes.
20	Q	And that in the absence of anything being brought
21		forward about that, I suspect you could look back
22		at the transcript and say, okay, well, if David
23		Milgaard is innocent, then obviously Ron Wilson
24		lied at trial, something went wrong, correct, and
25		without even probing that you would have to reach

Timestamps: 10:08 (line 5), 10:08 (line 10), 10:08 (line 15), 10:09 (line 20), 10:09 (line 25)

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1		that conclusion; correct?
2	A	Yes.
3	Q	You would have to find a way to explain Ron
4		Wilson's evidence in light of the assertion that
10:09 5		David Milgaard is innocent; correct?
6	A	Yes.
7	Q	And so if that had never been probed, if Mr.
8		Wilson was not available, there's no other
9		information, you simply had the trial record,
10:09 10		presumably you would have to find a way to, or not
11		find a way, but have to consider some explanation
12		for Mr. Wilson's evidence in light of the -- I
13		mean, if Deborah Hall is correct and Dr. Ferris is
14		correct that David Milgaard is innocent, then how
10:09 15		is it that Ron Wilson said what he said at trial;
16		is that --
17	A	My analysis wouldn't go that way, and I'll tell
18		you why. The objective isn't to retry the case in
19		my mind, the objective is simply to review what
10:10 20		has transpired to see whether or not, whether
21		substantially or procedurally, there were defects
22		sufficient to call into question the validity of
23		the result or whether or not there were defects
24		sufficient that it merited a return to the courts
10:10 25		for the courts to deal with it.

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1   Q   No, and --

2   A   So that if, for example, the scientific evidence

3   in fact shed a completely different light on it,

4   and one of the first things that I explored was

10:11 5   DNA, now if the DNA had been performed, or I had

6   performed it and come up with a result that tended

7   to, that showed that David Milgaard was not the

8   donor of that sperm, then regardless of the Wilson

9   evidence, regardless of the Hall, then that would

10:11 10   have been a basis to send it back, so you look at

11   the nature of the defect and its impact in making

12   the assessment or in making a recommendation as to

13   what the minister should do with this.

14   Q   No, I appreciate that point, and I had understood

10:11 15   your evidence earlier to be that you still had to

16   figure out, or look at how the grounds fit into

17   the context of what happened at trial?

18   A   Yes.

19   Q   And so -- and what I'm getting at, though, is

10:12 20   let's take the Deborah Hall and the Dr. Ferris

21   information, that I thought you had said that you

22   had to put that in context to see what difference

23   that may have made and sort of what the other

24   facts were, and I think you said that you would

10:12 25   not pursue the Ron Wilson evidence unless its

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1   raised as a ground, but you would be aware of it?

2   *A*   Yes.

3   **Q**   And what I'm trying to get at is whether as a

4   result of having, probing the recantation, whether

10:12 5   you ended up concluding that Mr. Wilson's evidence

6   at trial was safer, for lack of a better word,

7   than if you had not looked at it. In other words,

8   that once you've gone down the path and questioned

9   him, do you then say, okay, I've now satisfied

10:12 10   myself that there wasn't anything wrong with Mr.

11   Wilson's evidence at trial, if you had not gone

12   down that path I suppose it's up in the air, and

13   that's what I'm trying to get at.

14   *A*   Okay, I think I better appreciate the thrust of

10:13 15   your question. I would simply answer it this way.

16   If Wilson's evidence about the recant had a

17   stronger factual foundation, it would have

18   prompted a consideration as to whether or not this

19   is fresh evidence, new evidence sufficient that it

10:13 20   should go back to the Court of Appeal for hearing

21   and determination and that would be -- that would

22   be the thought process that -- that was one of the

23   factors that I would be looking at.

24   Certainly to the extent that

10:13 25   the recant didn't seem to have that ring of truth

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1   to it, to the extent that it didn't seem to really

2   challenge the veracity of what had happened at

3   trial, it didn't take away from the body of

4   evidence that supported the conviction.

10:14 5   Q   Go back to this article, this would be July 25,

6   which I think is the day after your interview of

7   Mr. Wilson if I'm not mistaken. I think it was

8   July 24th. And you are familiar with this

9   article?

10:14 10   A   Oh, yes.

11   Q   And I think here it says:

12   "The federal Justice

13   Department is inflicting untold

14   psychological damage to David Milgaard

10:14 15   by delaying his application for a new

16   trial, Milgaard's lawyer charged

17   yesterday."

18   And down at the bottom:

19   "Asper said the department

10:14 20   investigators seem to be taking their

21   time while his client rots in jail.

22   "This is supposed to be

23   the final repository of justice in the

24   country," Asper said of appeals to the

10:14 25   justice minister. "From our

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	1		perspective, it looks a lot more like
	2		the three stooges."
	3		Eugene Williams, the
	4		department's chief investigator on the
10:15	5		Milgaard case, said the application will
	6		be delayed while senior management
	7		review his report."
	8		Can you comment on what -- what was your reaction
	9		to this article?
10:15	10	A	Disappointment, perhaps a bit of anger. It gave
	11		me the impression that here's someone who has one
	12		hand tied behind your back so he can punch you in
	13		the nose, and what I meant simply by that is this:
	14		We received the -- the complaint was that we were
10:15	15		slow and we were delaying things. Within the
	16		framework of the then existing 690 process,
	17		without the ability to compel the attendance of
	18		witnesses and the production of materials, we
	19		relied on persuasion to obtain co-operation.
10:16	20		We've just discussed the circumstances surrounding
	21		the interview of Mr. Wilson and it should be fresh
	22		in everybody's mind that although we were in
	23		Nakusp in June, Mr. Wilson declined to be
	24		interviewed. In fact, the very representatives of
10:16	25		the firm that are accusing us of delay and causing

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1   the client to rot in jail were the same ones who

2   were demanding or requesting that someone else

3   come in to do the interview and that of course

4   would necessitate delay, so on the one hand there

10:17   5   was a complaint about delay, but on the other

6   hand, there were actions which were forestalling

7   the completion of the report.

8   Admittedly, and to the reader

9   who is not fully apprised of the facts, when you

10:17   10   go back to the first paragraph of the article,

11   you'll see that in December, 1988, that is the

12   first date that is mentioned, and now this article

13   is July of 1990, a significant amount of time has

14   elapsed. What the reader doesn't know is that

10:17   15   first in December, 1988 the application was not

16   complete, trial transcripts weren't received until

17   I believe May. At the initial application two

18   grounds were advanced, but additional grounds had

19   been advanced between December of 1988, as late as

10:18   20   June of 1990. One month later, before those

21   grounds are fully investigated, there's a

22   complaint.

23   I can understand where someone

24   believes that the initial grounds advanced were

10:18   25   sufficient to merit a remedy why there might be

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1   some limitations. However, because of the

2   continued, shall we say, correspondence between

3   the department and representatives of the

4   Milgaards, either with me personally or with

10:18   5   Sergeant Pearson who was conducting the

6   investigation of the Larry Fisher matter with me,

7   there was sufficient exchange to dispel the notion

8   that we were tardy in pursuing or in following up

9   on this application and, consequently, the

10:19   10   headlines in my view were unfair, but the

11   juxtaposition of the dates of December of '88 and

12   the fact that it was then July of 1990 and the

13   omission to include, that there had been a number

14   of grounds that had been examined, certainly

10:19   15   framed us in a very unenviable position. The

16   reference to three stooges, well, comedy is not my

17   first line.

18   Q   If we can just go back to the full page, please.

19   It appears as well, Mr. Williams, that you did

10:20   20   comment:

21   "Williams said that if the

22   evidence uncovered so far in Milgaard's

23   application were compelling enough, the

24   application could be fast-tracked to the

10:20   25   minister's attention."

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1   They talk about the Donald Marshall case where it

2   only took six weeks, and go over to the next

3   column:

4   "However, in that case

10:20 5   investigators had conclusive physical

6   evidence..."

7   Talking about the *Marshall* case,

8   "...pointing to the real killer. So

9   far, Williams said, none of the evidence

10:20 10   presented in the Milgaard application

11   has warranted a fast-track response from

12   the department.

13   "That is a conclusion you

14   could safely reach," Williams said."

10:20 15   And then as well Mr. Corbett, the department's

16   general counsel, talked about a deadline and then

17   went on to say:

18   "...the process was awaiting Williams to

19   complete a face-to-face interview with

10:20 20   Ron Wilson -- the Crown witness who

21   claims he was pressured by Saskatoon

22   police..."

23   So it would appear here that -- would you have

24   talked to Mr. Lett about this? It appears Mr.

10:21 25   Corbett did as well.

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1   A   Yes.

2   Q   And was that a departure from what -- I mean I

3   think, earlier, you told us that you -- you could

4   not and would not comment. Was there a change

10:21 5   here that --

6   A   Well I generally would not comment on the

7   specifics of a case, but if that's generally that

8   procedure, saying okay, look, are you telling me

9   that if you've got conclusive evidence, without

10:21 10 referring to this case, generally if -- if there

11   is conclusive evidence, it signals that somebody

12   is factually innocent or there is a significant

13   basis to conclude that a miscarriage of justice

14   likely occurred, we would move on it.

10:21 15 Q   If we can go to 039507. This is an August 1, 1990

16   *Globe and Mail* article by David Roberts, and it

17   deals with a couple subjects. John Patterson in

18   that interview, which I will be going to next,

19   you'll recall Mr. Patterson's involvement in this?

10:22 20 A   Yes.

21   Q   And he was someone who had served time in jail

22   with Larry Fisher and made some statements, around

23   this time, about what Mr. Fisher may have said to

24   him; is that correct?

10:22 25 A   Yes.

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1 Q   And I just want to go through parts of this. I

2   don't think we have been through this article

3   before. It says:

4   "Mr. Milgaard's Winnipeg

10:22 5   lawyer, David Asper, also has disclosed

6   to the media a series of circumstantial

7   facts that he feels link a convicted

8   rapist to the Miller slaying.

9   The latest development

10:22 10   occurred Monday when a Regina man told

11   CBC television that a former prison

12   inmate - the same man that Mr. Asper and

13   Mr. Milgaard point to as the likely

14   killer - gave him a tacit confession

10:22 15   about 13 years ago.

16   William Corbett, senior

17   counsel for the Justice department's

18   criminal prosecutions branch, said

19   yesterday that the department wants to

10:23 20   discuss the Regina man's allegation. Mr

21   Asper said Justice department officials

22   may travel to Regina by the end of the

23   week.

24   Mr. Corbett noted that, as

10:23 25   Mr. Milgaard's supporters provide the

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1   department with new evidence on almost a

2   monthly basis, the review of the case

3   has slowed. He had hoped to brief

4   Ms. Campbell on the matter by the end of

10:23   5   August, he said, adding that there is no

6   clear-cut evidence to suggest that Mr.

7   Milgaard was intentionally dealt a

8   judicial travesty in 1970."

9   And then a quote:

10:23   10   "'Seventeen per cent of

11   people still believe Elvis Presley is

12   alive,' Mr. Corbett said in an oblique

13   reference to those who believe in Mr.

14   Milgaard's innocence."

10:23   15   Would you have discussed this quote with Mr.

16   Corbett around the time this appeared in the

17   newspaper?

18   A   Before the quote appeared in the newspaper, Mr.

19   Corbett spoke with me, because -- to debrief me on

10:23   20   his conversation with that reporter, and if you

21   would go back?

22   Q   Sure, go back to the full page.

23   A   Thanks. I would draw your attention --

24   Q   You can actually just touch the screen, Mr.

10:24   25   Williams, and they can bring it up.

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1   A   Okay. I'm trying to find the -- the part of the

2   report which basically says that --

3   Q   That?

4   A   No. If we could go back to the full screen, I

10:24 5   just need a moment's indulgence, please?

6   Q   Sure.

7   A   Yes.

8   Q   Sorry, on the left?

9   A   It's this portion here.

10:25 10   Q   Yeah.

11   A   "Mr. Corbett noted that, as Mr.

12   Milgaard's supporters provide the

13   department with new evidence on almost a

14   monthly basis, the review of the case

15   has slowed. He had hoped to brief

16   Ms. Campbell on the matter by the end of

17   August, he said, adding that there is no

18   clear-cut evidence to suggest that Mr.

19   Milgaard was intentionally dealt a

20   judicial travesty in 1970."

21   Now I draw your attention to that because, in

22   saying that, the reporter indicated or recited a

23   number of facts that had been publicly reported,

24   and recited a number of conclusions which folks

10:26 25   had drawn on those facts. For example, the

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1   allegation that Deborah Hall's evidence pointed

2   to the fact that, you know, two other witnesses

3   had lied, that Ferris' report had exonerated

4   David Milgaard, and other things. And in a

10:26   5   conversation with Mr. Corbett at that time, he

6   indicated to that reporter that you can't believe

7   everything you read in the newspaper, because

8   certain journals report that Elvis is still

9   alive, and it is in that context that the:

10:26 10   "'Seventeen per cent of

11   people still believe Elvis Presley is

12   alive,' ..."

13   was made. And that was shortly after the

14   conversation when there was a debriefing. That

10:27 15   is not, however, the context in which the quote

16   appears, because the reporter's take on it is

17   that that was an oblique reference to those who

18   believe in Milgaard's innocence. It was not. It

19   was an oblique reference to those who believe in

10:27 20   the accuracy of the facts recited in certain

21   journals as being 100 percent correct.

22 Q   And did this comment, we have seen this comment

23   come up later, did this comment about Elvis

24   Presley come up in the media after this point?

10:27 25 A   I believe it did.

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1   Q   And this reference that either Mr. Corbett or the

2   federal Justice Department held this view?

3   A   Correct.

4   Q   Do you know if any steps were taken to correct

10:27 5   this, at least from the Federal Justice's

6   perspective?

7   A   I don't recall. It's possible. But there's one

8   thing you have to remember. Over the course of,

9   there's several newspaper articles, I've spent

10:28 10   countless hours discussing our process and

11   procedures with various members of the press, but

12   most of the time the results of those

13   conversations never find their way into the story,

14   or what you might find is one or two lines as part

10:28 15   of a quote, and that's -- that's the business of

16   news reporting. And sometimes you are content, if

17   it's just a one-day story, and hopefully it's a --

18   as I heard one folks say, "might use that

19   newspaper to wrap food or fish and it will be

10:28 20   forgotten", but that quote has never been

21   forgotten.

22   Q   And can you comment on the effect it may have had

23   on the work that you were doing?

24   A   Well, certainly to the extent that the, let's say

10:29 25   the scope of complaint had now proceeded beyond me

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1   to one level higher, certainly it added some

2   impetus to the completion of the work as quickly

3   and as thoroughly as we could.

4 Q   I see it's 10:30, probably an appropriate spot to

10:29 5   break.

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

7   *(Reconvened at 10:51 a.m.)*

8   BY MR. HODSON:

9 Q   Go to 061821. Actually if we could just go back

10:51 10   to the article, 039507, and you'll see here:

11   "The latest development

12   occurred Monday when a Regina man told

13   CBC television that a former prison

14   inmate ... gave him a tacit confession

10:51 15   about 13 years ago."

16   And over on the right-hand side, here:

17   "Mr. Asper said, the

18   ex-convict in Regina, who refused to be

19   identified, said he served time at

10:51 20   Prince Albert Penitentiary with the

21   rapist in 1977."

22   And of course "the rapist" is Larry Fisher;

23   correct?

24 A   Yes.

10:51 25 Q   "He said the Regina man, a

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1   convicted armed robber, has had a clean

2   record since his release in 1978 and is

3   eager to give Justice Department

4   investigators his story of the rapist's

10:52 5   confession.

6   The man told Mr. Asper that

7   he and the rapist were playing hockey

8   one night in prison and got into a

9   stick-swinging duel. The rapist

10:52 10   threatened to stab him and dump him in a

11   snowbank.

12   'I did it before and got away

13   with it. I can do it again,' the Regina

14   man said the rapist told him.

10:52 15   The Regina man told Mr. Asper

16   that his recollection of the admission

17   is vivid. He is coming forward 13 years

18   later because a recent television

19   documentary about the Milgaard case

10:52 20   reminded him of the hockey game and

21   rapist's comments.

22   'My motive is that an

23   innocent guy is in jail,' Mr. Asper said

24   he was told."

25   Now is this when you would have first learned

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1		about this information, in this news article?
2	A	I believe so, yes.
3	Q	And what was your reaction to this type of
4		information that there was -- I mean obviously, at
10:52 5		this time, Mr. Fisher is on your radar screen?
6	A	Yes.
7	Q	And what was your reaction to this?
8	A	Well, on the one hand, well here we go again,
9		there's another avenue that we have to run down,
10:53 10		because this -- this is -- this is clearly another
11		bit of information that supports the contention
12		that Larry Fisher is the killer and we have to
13		look at it, run that down.
14	Q	If we can then go to 012681. And I take it if
10:53 15		what was reported in that article was correct,
16		that this fellow was saying Larry Fisher had
17		confessed to him, would that be a piece of
18		information that would assist you in your work in
19		trying to link Larry Fisher to Gail Miller's
10:53 20		murder?
21	A	Well we'd need to know what he confessed to, what
22		offence, yes.
23	Q	If it was a confession to the Gail Miller murder
24		and if it was a credible confession?
10:53 25	A	Well, that would certainly get our attention and

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1   that would certainly affect the results, yes.

2   Q   And so here's a memo August 2, 1990 from you to

3   Mr. Corbett commenting about attaching a:

4   "... recent transcript of the CBC

10:53 5   stories concerning the new informant who

6   allegedly received a confession from

7   Larry Fisher. Also enclosed is a copy

8   of the CP Wire story quoting me as

9   saying I would be meeting with the

10:54 10   informant later this week, that quote is

11   incorrect. I have not spoken to any

12   reporters to indicate a time or place of

13   a meeting."

14   And then go on to talk about that meeting.

10:54 15   "Since I did not confirm the timing of

16   any meeting the only person who could

17   confirm that meeting would be the

18   informant or someone to whom the

19   informant had advised of that meeting."

10:54 20   Can you explain what was happening there? What

21   was the issue about the public disclosure of your

22   meeting with the informant?

23   A   That comment relates to a portion of the story

24   which indicated that Justice Department officials

10:54 25   would be meeting with the informant who had been

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1   identified in the story. Umm, the impression is

2   that that information came from me, and it would

3   be -- it would not be appropriate for me to advise

4   the press the timing of those types of meetings,

10:55 5   particularly with an informant who wished to

6   remain anonymous.

7 Q   If we can go to the next page, here's the

8   attachment, and it's a wire story:

9   "The federal Justice

10:55 10   Department will interview a man who says

11   a fellow prison inmate confessed to a

12   murder similar to the one for which

13   David Milgaard is serving a life

14   sentence, CBC-TV reported Tuesday.

10:55 15   The man's statement is a

16   major breakthrough in Milgaard's fight

17   to have his conviction overturned, said

18   David Asper, lawyer for Milgaard.

19   'People, generally speaking,

10:55 20   don't admit to crimes unless they've

21   committed those crimes', Asper said.

22   'So that gives it a

23   circumstantial degree, at least, of

24   trustworthiness.'"

10:55 25   And then goes on to talk about:

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1   "The disguised man said the

2   other inmate went on to complain that

3   he'd received ...",

4   or it goes on to talk about what was reported on

10:55   5   the CBC. Do you recall how you became aware of

6   who this person was and how did you arrange the

7   interview with him?

8   A   I believe that, I believe that it came via either

9   Mr. Asper or Mr. Wolch, --

10:56 10   Q   And --

11   A   -- that information.

12   Q   And his name was kept confidential for a while but

13   it was John Patterson, correct, he testified at

14   the Supreme Court reference?

10:56 15   A   Yes.

16   Q   Yeah. So they would have given you the name; is

17   that correct?

18   A   Or -- yes, I believe that to be the case.

19   Q   Now also attached, if we can go to the next page,

10:56 20   is the CBC transcripts. What was the

21   significance -- or why did you go and get these

22   transcripts?

23   A   To get as much information as we could about the

24   story. To the extent that there were quotes, and

10:56 25   the quotes were attributed to Mr. Patterson, it

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1   would be useful for me, in terms of any interview,

2   to have precisely what he said.

3   Q   Is my understanding correct that, that the

4   information, that there wasn't a statement of

10:57 5   Mr. Patterson given to you but, rather, it was

6   "here's what he said to the media", and that's the

7   information being provided to you, and that you

8   followed up and then interviewed him, or am I

9   missing something?

10:57 10   A   My understanding was that Mr. Patterson had

11   contacted Mr. Asper, that Mr. Asper had recorded

12   what he had learned from Mr. Patterson, and it was

13   that record -- or it appears as if either that, or

14   Mr. Patterson had contacted the media, and they

10:57 15   had quoted Mr. Patterson in the -- in the various

16   stories.

17   So the way the story appears,

18   it looked as if the quotes were those of Mr. -- of

19   Mr. Patterson to the media, so I wanted to collect

10:57 20   as many of those as I possibly could.

21   Q   Okay. And, again, so here, if we can go to the

22   next page, and this is from the CBC interview:

23   "We were playing hockey ...",

24   etcetera. And then, down here, he said:

10:58 25   "And he said, I've done it before, he

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 1                              said.  I've got no problem doing it

 2                              again.  I said yeah right Fisher.  When

 3                              did this happen?  I said you're not

 4                              doing time for murder or manslaughter,

10:58  5                        so when did this happen.  And he said,

 6                              wouldn't you like to know he said."

 7              So that would have been at least one of the

 8              quotes that caught your attention; is that fair?

 9        A     Yes.

10:58 10        Q     And that:

11                              "The former inmate realized the

12                              importance of the incidents after he saw

13                              Fisher on a 24 Hours documentary about

14                              Milgaard."

10:58 15              And then to the next page.  Here's where, this is

16              July 31 where they report:

17                              "The federal Justice department will

18                              interview a man who has new information

19                              relating to the David Milgaard case."

10:58 20              And is that the comment where you said you didn't

21              tell anybody that?

22        A     That's correct.

23        Q     Who would you have talked -- obviously

24              Mr. Patterson you would have talked; had you

10:59 25              arranged the interview by this time?
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1   A   I don't believe I had.

2   Q   And then to the next page. Again, I think this is

3   the part that was quoted in the CP story:

4   "David Milgaard's lawyer says this is

10:59 5   the strongest piece of information yet

6   which may prove his client's innocence."

7   And down to the bottom:

8   "Late this afternoon it was confirmed

9   that the former inmate will give sworn

10:59 10   testimony to the Justice department

11   later this week."

12   And I think your evidence is that that would have

13   come from someone other than you; is that

14   correct?

10:59 15   A   Yes.

16   Q   If we can go to 016762. And this is the interview

17   of J.P. held before a court reporter August 4th,

18   1990. If we can go to the next page. I think, at

19   this time, Mr. Patterson wanted to keep his name

11:00 20   confidential, is that correct, that's why we're

21   seeing the initials J.P.?

22   A   Yes.

23   Q   And he was represented by Reg Watson in this

24   interview, is that correct, --

11:00 25   A   Yes.

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1	**Q**	-- as counsel? And it was under oath; is that
2		correct?
3	*A*	I believe it was.
4	**Q**	Actually, let me just check, it doesn't say -- oh
11:00 5		I'm sorry, yes, the next page he was sworn. Go to
6		page 767. It appears, here, you are questioning
7		him about his previous incarceration:
8		"Q Did you come into contact with Larry
9		Fisher there
11:00 10		A Yes, sir."
11		Next page. Here that he got along well with Mr.
12		Fisher. If we can go to the next page. And you
13		show him copies of the transcript of the CBC
14		Winnipeg news item and the comments attributed to
11:01 15		someone as 'unidentified' and he says:
16		"A It's not 'shake', it should be the word
17		'shank'."
18		And that would be the earlier document, earlier
19		transcript I think I showed you, is that correct;
11:01 20		that's what you showed him?
21	*A*	Yes.
22	**Q**	And then if you could scroll down:
23		"Q ... I'm giving you a pen, sir, I'd just
24		ask you to make that correction. You
11:01 25		are referring to page 2?"

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1   And then he says:

2   "A   At that time, Larry said to me, he said

3   I'll shank you, it should read, and I'll

4   initial your copy."

5   And:

6   "A   And I'll continue reading here."

7   He says:

8   "It's not quite the wording as should be

9   read - as the transcript of it.

11:02 10   Q   Well, make whatever corrections are

11   necessary, sir

12   A   It should read as I said you and whose

13   army."

14   And then he goes on to repeat this, and that's

15   the comment I said before:

16   "... 'I've done it before and I've got

17   no problem doing it again. And I said

18   yeah right, Fisher.' I asked him 'When

19   did this happen? I said you're not

11:02 20   doing time for murder or manslaughter,

21   so when did this happen. And he said,

22   wouldn't you like to know ...' That's

23   correct there. But there's parts that

24   have been omitted from this, the

11:02 25   continuation of the interview, which is

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1   very pertinent to this, which is not -

2   like they reported it here, that on page

3   3 here, there's a whole part of it that

4   is missing, that stopped me and really

11:02   5   made me look at this whole incident.

6   After here where like - yeah, see here

7   they put 'The former inmate realized the

8   importance of the incidents after he saw

9   Fisher on a 24 Hours documentary ...'

11:02   10   You know, prior to this part here where

11   they said this, they left out part of my

12   interview where I had had a conversation

13   with Larry Fisher. Being that I was on

14   short time in the spring of 1978, short

11:03   15   time meaning short term left in my

16   incarceration, I no longer fitted into

17   any of the shop programs or anything; I

18   took over as a dormitory and the

19   administration office cleaner."

20 And then it goes on to talk about the timing of

21 the hockey incident.

22   "In April of '78 Larry had gone up for a

23   transfer hearing. That was, he had

24   applied approximately ten months earlier

11:03   25   to be transferred to the new regional

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1   psychiatric centre which was opening in

2   Saskatoon, RPC we called it. And they

3   asked for a number of inmates who wished

4   to go into treatment program, to apply.

11:03   5   And Larry had applied. He came back to

6   the dorm after his transfer meeting, and

7   in the presence of myself, another

8   former inmate who is now up on rape and

9   murder charges in Toronto, which is

11:03   10   David Edward Faulds."

11   Then go on to the next page, just scroll down:

12   "And I said to him, I said well, why did

13   they turn you down Larry, and he said

14   they said because I've only got a short

11:03   15   period of time left on my incarceration

16   and they said that they felt I needed a

17   long term treatment program, so,

18   therefore, it would do me no good to

19   transfer now. And at that time he said.

11:04   20   - ... I'll show them fucking bastards.

21   He said I'll get out and I'll do it

22   again. He said I sat here for seven

23   years with no treatment, none at all."

24   And then the next page. Sorry, just down at the

11:04   25   bottom, previous page, and then he goes on to

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1   talk about:

2   "... in 1980, approximately two and a

3   half to three months after Larry Fisher

4   was released ... he indeed did what he

11:04   5   said he was going to do."

6   Next page:

7   "... he has gone out and did exactly

8   what he said he was going to do, in

9   front of myself and other witnesses.

11:04   10   And I left it at that, okay. Never

11   thought about it again."

12   And down at the bottom -- sorry, then he talks

13   about the David Milgaard documentary on Larry

14   Fisher, that:

11:04   15   "They just simply said that the person

16   that's now being questioned in the

17   Saskatchewan Penitentiary lived in the

18   basement of that house."

19   And on to the next page, if we can go to page

11:05   20   775.

21   Let me just pause there, Mr.

22   Williams, and get you to comment on that. And

23   I'll go through other parts of this, but what did

24   you -- what did you learn from Mr. Patterson when

11:05   25   you interviewed him?

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11:05

11:05

11:06

11:06

11:06

11:06

1   *A*   Well I, I basically wanted to confirm or probe

2   some of the comments attributed to him, and to

3   find out the circumstances of -- in which those

4   comments were obtained. I wanted to find out in

5   more detail what he had heard or overheard from

6   Larry Fisher, and to do that I wanted to get a --

7   to put those comments into a kind of a context to

8   find out the circumstances in which he came into

9   contact with Mr. Fisher, and initially you can see

10   that my -- my initial questions are fairly short

11   and his answers are quite lengthy, so that gave

12   him an opportunity to fully describe the

13   circumstances, and that would then be the

14   foundation for later questioning.

15   *Q*   Okay. And it appears that Mr. Patterson explained

16   about another conversation he had with Mr. Fisher

17   in the late '70s then, before he got released, and

18   that Fisher was upset that he couldn't get

19   treatment and that he was going to go out and do

20   it again; --

21   *A*   Yes.

22   *Q*   -- is that correct?

23   *A*   Yes.

24   *Q*   And if we can go ahead to 016775. I think, is it

25   fair to say that you confirmed with him the

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1   conversation that was in the CBC interview about

2   the conversation during the hockey game, that

3   "I've done it before", that was something that he

4   confirmed; is that correct?

11:07 5   A   Yes.

6   Q   Then if we can go to 016781.

7   A   Well I had confirmed, at that spot, that they had

8   been involved in a fight and that there was one

9   conversation, --

11:07 10   Q   Okay.

11   A   -- and he did, in fact, confirm it.

12   Q   And if we can go to 781. And then you go:

13   "Q   To that portion of the transcript ...

14   'When they showed his face, and who they

11:07 15   were talking to, the connection was made

16   there and that's when I got angry, very

17   angry.'"

18   And just to put that in context, I think he was

19   talking about when he saw the television show

11:07 20   that talked about Larry Fisher as being the

21   person identified as the killer of Gail Miller,

22   is that right, and his previous record?

23   A   Yes.

24   Q   That's what he was referring to? And he said he

11:07 25   got angry when he saw that television show. You

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1   said:

2   "Q   Why?"

3   And he said:

4   "A   Well, they missed a part - some words in

11:08 5   there also, where I said I was shocked

6   at first, stunned and then I got angry.

7   Angry that - that the person I knew in

8   the penitentiary, Larry Fisher, what he

9   had stated to me he was capable of doing

11:08 10   and had done before; what he said he

11   would do upon his release because he had

12   not received psychiatric treatment, and

13   the relationship as to the crimes that

14   they showed that he was convicted for,

11:08 15   within a block of that - of his

16   residence, and the fact that Gail

17   Miller's body was found in the exact

18   same way that he said he was going to

19   kill me, is when I got angry that they

11:08 20   hadn't even questioned this man.

21   Q   Would your response have been the same

22   if you knew, firstly, that the victim's

23   of Fisher's sexual assaults were not

24   found within a block of his residence?

11:08 25   A   Yes, I would have."

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1   And what was the purpose of that question?

2 A   As I sit here right now, I'm not sure.

3 Q   And, if I may assist, was that in reference to the

4   news story that had talked about the rapes being

11:09 5   within a block of either Fisher's residence --

6 A   It may well have been, yes.

7 Q   And then the next page you ask, here:

8   "Q   The threat to shank and throw you in the

9   snowbank?

11:09 10   A   Okay.

11   Q   Right, you made that connection?

12   A   Not at that time.

13   Q   Not at that time. But you made it after

14   you heard a number of things from the

11:09 15   CBC?

16   A   Yeah.

17   Q   I'm suggesting to you that some of the

18   things that you heard from the CBC

19   aren't factually correct?

11:09 20   A   I could say even if it wasn't

21   factually correct by the CBC, and, of

22   course, the media has things to twist

23   around, the fact that I know Larry

24   Fisher and the incidents that I've had

11:09 25   with him, the two incidents that I

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1   named in particular."

2   And do you recall what -- were there concerns

3   about whether Mr. Patterson had received

4   incorrect information in the news stories?

11:09 5   A   Based on those earlier comments, yes. As I'm

6   sitting here now, I haven't reviewed it recently,

7   but I can't specify which factual assertions in

8   the news stories I took issue with.

9   Q   Okay. If we can go to 016788, we'll go through

11:10 10   parts of this and see if that will assist you.

11   You ask him here:

12   "Q   Okay. Let me ask you this. How did

13   this interview take place?

14   A   I contacted CBC."

11:10 15   "A   Winnipeg. I contacted Regina here first

16   and they just referred me to Winnipeg.

17   Q   And to whom did you speak?

18   A   Cecil Rosner."

19   "Q   After the initial contact with Mr.

11:10 20   Rosner, what then happened?

21   A   After I spoke with Mr. Rosner, he

22   phoned me back a number of occasions

23   afterwards and we've gone over

24   basically the same question that

11:10 25   you've given me."

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1   And then 143:

2   "Q   Have you made contact with any other

3   individuals related to David Milgaard?

4   A   David Asper, Milgaard's lawyer,

5   contacted me.

6   Q   Did you initiate that contact?

7   A   No, sir.

8   Q   Did you question him as to how he came

9   to know of your whereabouts?

10   A   Yes, sir.

11   Q   Did you get a response?

12   A   Yes, sir. It was from the CBC.

13   Q   Did you speak with Mr. Asper about your

14   observations in 1977/78?

15   A   Yes, sir.

16   Q   What did you tell him?

17   A   Exactly the same thing that I have

18   told CBC. He had asked me also at

19   that time if I had had any previous

20   connections with David Milgaard. Did

21   I know David Milgaard, and if so, in

22   what fact did I know David Milgaard.

23   And I stated to him, as I stated to

24   you, I have only seen David Milgaard

25   from a distance twice."

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1   And then to the next page -- what was the purpose

2   in asking about whether he had contacted anybody

3   associated with David Milgaard?

4   A   I wanted to find out if there was a friendship.

11:12 5   If there was, that might have informed or

6   influenced what he was about to tell me.

7   Q   And then here you ask:

8   "Q   Okay. The Globe and Mail article,

9   Wednesday, August 1, 1990, I draw your

10   attention to the sixth column of that

11   article and to the last two lines of the

12   fifth column."

13   And that's the article we just referred to

14   earlier; correct?

11:12 15   A   Yes.

16   Q   And Mr. Patterson quotes from it, he says:

17   "A   Well, that doesn't read right either.

18   See, it says "Mr. Asper said the

19   ex-convict in Regina who refused to be

11:12 20   identified, said he served time in

21   Prince Albert Penitentiary with the

22   rapist in 1977." He first made contact

23   in '76 to 1978. "He said the Regina

24   man, a convicted armed robber, has had a

11:12 25   clean record since his release in 1978

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1   and is eager to give Justice Department

2   investigators his story of the rapist's

3   confession."

4   And Mr. Patterson says:

11:12   5   "No, that's not correct at all. And not

6   at any time with CBC, or talking with

7   Mr. Asper, did I use the word

8   'confession'. That is incorrect.

9   Q   Did Mr. Fisher confess anything to

11:13 10   you --

11   A   As to actually killing Gail Miller or

12   killing somebody?

13   Q   Firstly, as to killing anybody?

14   A   Right there, it's like I stated

11:13 15   before.

16   Q   You interpreted it to mean that he

17   killed someone?

18   A   He stated it right to me that he had,

19   and he no problem doing it again. He

11:13 20   says, I'll shank you and I'll stuff

21   you in a snowbank and the guards will

22   find you in the spring.

23   Q   And you interpreted that to mean that he

24   will kill you and put you in a snowbank?

11:13 25   A   That's the only way to interpret it

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1   when a guy tells you that.

2   Q   All right. From what you have just told

3   me, I gather that you did not say to Mr.

4   Asper that Fisher confessed to killing

11:13   5   Gail Miller?

6   A   No, sir.

7   Q   And I gather from what you have just

8   told me, that Fisher did not confess to

9   you that he killed someone, but he

11:13 10   threatened that he would kill you?

11   A   Well, I guess the way you're wording

12   it and saying in particular, I would

13   have to say that he said to me he has

14   killed somebody; he's admitted that he

11:13 15   has killed somebody and he'd have no

16   problem doing it again, and that I'm

17   his next victim."

18   Again, what was the significance of this

19   information?

11:14 20   A   Well, it clarified the statements contained in *The*

21   *Globe and Mail*. It's one thing to say that an

22   accused confessed to a killing, it's another

23   thing -- and that's pretty powerful, you know,

24   here you have a confession. On further -- when I

11:14 25   drew the article to the attention of Mr.

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1   Patterson, he read it and he corrected the use of

2   the word confession and for me that was important.

3   He maintained that in his discussion with Mr.

4   Fisher, he perceived Fisher to have said look, I

11:15 5   killed someone, but he didn't go so far as to say

6   that Fisher confessed to the killing of Gail

7   Miller. You know, one could draw an inference,

8   but confession was not his word, and the news

9   articles reported it as if it had been his word.

11:15 10   Q   If you can go to 016794, you ask here:

11   "Q   Okay. And I'm going to quote and ask

12   you..."

13   And I think this is from the news article,

14   "...whether Mr. Fisher said these words

11:15 15   to you "I did it before and got away

16   with it. I can do it again." Did

17   Fisher say those words to you?

18   A   No.

19   Q   Did you say those words to Mr. Asper?

11:15 20   A   No.

21   Q   You're certain of that?

22   A   Yes, sir."

23   What was the purpose of asking those questions?

24   A   Well, that was what was widely reported. This is

11:15 25   *The Globe and Mail* and I don't know, I don't have

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1   the article in front of me, but I believe that

2   those portions were up in quotes in the article

3   and that signaled to me, and it signals to most

4   folks who are reading, that when you put words

11:16   5   within quotes it's verbatim.

6   Q   So that's 039507, the quotes:

7   "I did it before and got away with it.

8   I can do it again," the Regina man said

9   the rapist told him."

11:16   10   So that's what you were probing?

11   A   Yes.

12   Q   If we can go back to the transcript. Now, what he

13   goes on to say, though, in the rest of that

14   answer, he says:

11:16   15   "When I spoke with Mr. Asper, I told him

16   that in 1980 I said that when he was

17   released from the penitentiary and he

18   had raped and stabbed that woman and cut

19   her throat, I said to him at that time,

11:17   20   I said, in his mind I guess he did get

21   away with it again, because he left her

22   for dead. As far as she was concerned,

23   she was dead. He had cut her throat and

24   left her there. And I said that relates

11:17   25   back to when he told me that he's done

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1   it before; he'd do it to me; he had no

2   problem doing it."

3   And so it appears that Mr. Patterson does say Mr.

4   Fisher did tell him that he has done it before;

11:17 5   is that fair, that he had killed before?

6   A   That was Mr. Patterson's take on it, yes.

7   Q   Yeah. So that although the exact words "I did it

8   before and got away with it, I can do it again"

9   weren't spoken, according to Mr. Patterson, what

11:17 10   he did confirm, though, is that Mr. Fisher appears

11   to have told him that he had done it before, i.e.,

12   killed somebody; is that correct? That's your

13   understanding of what --

14   A   Yes.

11:17 15   Q   And so what was the concern here, that it was --

16   it was extended to Gail Miller?

17   A   Yes. I mean, the article conveys an impression

18   that Larry Fisher confessed to Mr. Patterson and

19   the context was set out in that very narrow

11:18 20   fashion.

21   Q   And after your interview of Mr. Patterson, what

22   conclusions did you draw as to whether or not his

23   evidence or information as far as his discussions

24   with Mr. Fisher, whether they would assist you in

11:18 25   trying to find a link between Mr. Fisher and Gail

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1   Miller?

2   *A*   It -- the type of link that I was looking for was

3   not established on the basis of that interview.

4   It was certainly -- it was disturbing.

11:19 5   **Q**   And what about the -- and just for the record,

6   Mr. Commissioner, I won't go to them, but at the

7   end of the transcript Mr. Williams marked as

8   exhibits *The Globe and Mail* article and the CBC

9   reports, so those are there. Maybe if we can go

11:19 10   to 012669, CBC, this is your August 22nd, 1990

11   memo to file relating to this interview; is that

12   correct?

13   *A*   It is.

14   **Q**   And would it accurately set out your thoughts and

11:19 15   conclusions about this interview at the time?

16   *A*   Yes.

17   **Q**   If we can go to the last page, you say:

18   "Although it appears that Mr.

19   Fisher angrily threatened to kill

11:19 20   Mr. P., in 1977, the circumstances which

21   precipitated the threat, coupled with

22   the promise to re-offend and the fact of

23   re-offending is not sufficient, without

24   more, to link Larry Fisher to Gail

11:20 25   Miller's death.

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1   Mr. P. did not and does

2   not interpret Mr. Fisher's angry threat

3   to be a confession. Neither do I."

4   Would that be an accurate reflection of what you

11:20 5   concluded at the time?

6   A   Yes.

7   Q   And can you comment on -- did the fact that this

8   matter was reported in the media first in any way

9   influence your approach to it or affect your

11:20 10   assessment of it?

11   A   No. It was consistent with much of what we had

12   gotten since March of that year. Essentially the

13   application was being made in a public forum at or

14   about the time that we got it, but, I mean, it was

11:20 15   just another attempt to embarrass us into an hasty

16   decision.

17   Q   If we can go to 155223, this is your August 5,

18   1990 memo that talks about an interview of Craig

19   Melnyk on August 1; is that correct?

11:21 20   A   Yes.

21   Q   What would have been your purpose at this time of

22   interviewing Mr. Melnyk?

23   A   Well, I had spoken with Deborah Hall and I had

24   spoken also with George Lapchuk. I just thought

11:21 25   it would be prudent to firm up this aspect of the

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1   application and Craig Melnyk and George Lapchuk

2   were the two motel room, if I can refer to them,

3   they were the two witnesses at the Milgaard trial

4   who testified, and if I can summarize their

11:22   5   testimony, the so-called re-enactment at the

6   hotel, and their information came to the attention

7   of the police as a result of information provided

8   by I think Mr. Wilson.

9   My sense in reading the

11:22   10   transcript was that their information was an

11   important, an important part of the Crown's case,

12   and at the time I thought it desirable to see

13   whether or not there had been any changes to their

14   testimony.

11:22   15   Q   What did you make of the fact that it was Ron

16   Wilson who brought Melnyk and Lapchuk to the

17   attention of the police around the time of the

18   trial commencement?

19   A   Well, that was just another indicia that perhaps

11:22   20   signaled that maybe he had not been coerced by the

21   police, but may have had some information that he

22   thought would shed light on the killing, so --

23   Q   I take it from the memo that Mr. Melnyk confirmed

24   the veracity of his trial evidence?

11:23   25   A   Certain portions of it. I arrived at Mr. Melnyk's

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1   door unannounced, I tried several times to make

2   contact with him and without success, and I

3   obtained his address and just went to the door.

4   As it turned out, he was on his way -- he was

11:23 5   about to leave on a holiday and so we had a brief

6   conversation and in that context I didn't give

7   him -- while I had the entire transcript, I drew

8   his attention to what I thought were the salient

9   portions of that testimony, asked him to review it

11:24 10   and questioned him briefly about it.

11   Q   And then here it, you then say:

12   "In response to my questions concerning

13   conversations between Mr. Melnyk and

14   Mr. Wilson about what Wilson saw, Melnyk

11:24 15   said that Wilson told him that when

16   Milgaard came back to the car in

17   Saskatoon, he (Milgaard) had a wallet

18   and blood on his hands; or blood on the

19   wallet in his hands; Wilson made some

11:24 20   additional remarks about a wallet which

21   Mr. Melnyk did not recall."

22   What was the significance, if any, of this

23   information?

24   A   Well, it was pretty significant in the sense that

11:24 25   it went a little further than what Wilson had told

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1   the police, but it tended to confirm one aspect of

2   Wilson's testimony at trial in that he, Wilson,

3   separated from Milgaard. I didn't know quite what

4   to make about the additional details, but I have

11:25 5   produced it there.

6 Q   And then as well you showed him Deborah Hall's

7   affidavit, presumably the 1986 affidavit, that

8   stated Mr. Melnyk lied at trial?

9 A   Yes.

11:25 10 Q   What was his reaction to that?

11 A   He disagreed with her and basically said that, you

12   know, he had no axe to grind with Milgaard. I

13   took that to mean that he didn't dislike Mr.

14   Milgaard, but simply stated what he had seen.

11:25 15 Q   And as well that:

16   "Mr. Melnyk also noted that there was no

17   tradeoff for his testimony at trial. I

18   interpreted that to mean that he did not

19   receive any consideration for appearing

11:25 20   as a witness..."

21   Where did this issue come from?

22 A   One of the things -- it may well be that -- Craig

23   Melnyk had had some brushes with the law, I wasn't

24   certain at the time, I'm not certain now just the

11:26 25   nature of them, but it was conceivable that he may

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1   have been under charge or perhaps a serving

2   prisoner and there may have been an inducement for

3   him to provide a statement incriminating Mr.

4   Milgaard.

11:26 5   Q   Then the next page. Did you find anything in your

6   investigation to suggest that Mr. Melnyk and Mr.

7   Lapchuk were either paid money or given other

8   favourable consideration for testifying at the

9   Milgaard trial?

11:26 10   A   No, I did not.

11   Q   Did you ever make a comment to that effect to Mr.

12   Wolch or Mr. Asper?

13   A   I did not. I think in the context of -- there was

14   a conversation I recall around the time of the,

11:27 15   around the time of the Supreme Court reference

16   about a reward that was offered in connection

17   with, I think it was either police or -- there was

18   a $2,000 reward, and I did make an effort to find

19   out who the recipient of it was and I did find out

11:27 20   that it had gone to Albert Cadrain, but I don't

21   recall saying Lapchuk and Melnyk were paid.

22   Q   There is a newspaper article which I'll show you

23   later where Mr. Wolch is quoted as saying -- in

24   fact, it's in his April 25th, 1991 letter to the

11:27 25   minister, where he says that, to Minister Kim

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1   Campbell, that one of your officials implied that

2   these witnesses were paid, referring to Melnyk and

3   Lapchuk. Now, I'll show you those documents later

4   and I'll ask you later in the context of that, but

11:28   5   do you have any recollection of ever saying

6   anything of that nature or implying that, that

7   Melnyk and Lapchuk were paid for their evidence?

8   A   That was not my information at the time, and

9   certainly, based on my conversation with Mr.

11:28   10   Melnyk, he denied it, as did Mr. Lapchuk.

11   Q   Here it says:

12   "In closing, Mr. Melnyk noted:

13   "Whether Milgaard did it I

14   don't know, but what I saw, I saw.

11:28   15   There's no way that I imagined that."

16   Later he noted: "I can't

17   believe that all the witnesses who

18   testified, got together to convict

19   Milgaard. I came out here to get away

11:28   20   from the adverse publicity I received in

21   Regina."

22   And anything else to add to that? What was Mr.

23   Melnyk referring to there; do you know?

24   A   My only sense was that in the circles in which he

11:29   25   was then a part of, the fact that he testified in

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1   the trial was not well received and he wanted to

2   get away from that milieu. He also I think may

3   have been referring to perhaps published reports

4   that signaled that witnesses had gotten together

11:29 5   to perhaps concoct a story to frame David

6   Milgaard.

7 Q   155215, a memo of August 6th, 1990 -- sorry, page

8   215 of that -- August 6th, 1990, of your interview

9   with George Lapchuk, and I take it on the same

11:29 10   trip you went to see Mr. Lapchuk; is that correct?

11 A   That's correct. I saw Mr. Lapchuk first.

12 Q   You saw him first. And you say:

13   "After I explained the purpose of my

14   visit, Mr. Lapchuk told me that he had

11:30 15   mistaken me when he first spoke with me

16   for a representative of a Seattle based

17   religious organization. Apparently a

18   representative of that organization had

19   called him urging him to recant his

11:30 20   testimony in the name of the Lord. The

21   representative had noted that "Dale

22   Wilson has recanted, why don't you?"

23   Was that in reference to Paul Henderson do you

24   think?

11:30 25 A   I believe it was, or some organization of which

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1   Mr. Henderson was a member.

2   Q   And what's your recollection then of your meeting

3   with Mr. Lapchuk, did he initially try not to talk

4   to you?

11:30 5   A   Mr. Lapchuk wasn't anxious to speak with me, but

6   he was persuaded. He finally relented. George

7   Lapchuk was a bit of a tough guy. We had -- I

8   forget how I made contact with him, but I did,

9   probably with the assistance of Sergeant Tidsbury,

11:31 10   and there had been some telephone conversations

11   and he agreed to meet me.

12   Q   And I take it that Mr. Lapchuk confirmed his trial

13   evidence according to that note; is that correct?

14   A   Yes.

11:31 15   Q   And disputed Deborah Hall's affidavit?

16   A   Yes.

17   Q   Go to the next page, it says here:

18   "Mr. Lapchuk noted that he spoke with

19   Ron Wilson after the trial. Wilson told

11:31 20   him (Lapchuk) that he saw blood on the

21   clothes of David Milgaard when they were

22   in Saskatoon."

23   What was the significance of that information?

24   A   I believe that more or less -- well, it was some

11:31 25   confirmatory information about Wilson's testimony

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1   at trial which I believe was later recanted.

2   Q   And then it says:

3   "Recently Ron Wilson met George Lapchuk.

4   Mr. Wilson attempted to offer an

11:32 5   explanation for his recent actions.

6   According to Mr. Lapchuk, he (Lapchuk)

7   did not want to hear any explanations

8   from Wilson. (From his longterm

9   acquaintance with Wilson, Lapchuk gave

11:32 10   me some insights into Wilson's

11   character. I am left with the

12   impression that Ron Wilson had gotten

13   more than religion for changing his

14   story.)"

11:32 15   Can you elaborate on that comment, as to what Mr.

16   Lapchuk said or what you took from his comments?

17   *A*   The impression I received from speaking with Mr.

18   Lapchuk was that Mr. Wilson had received some

19   consideration for the recant.

11:32 20   Q   And in fact here it was suggested that there was a

21   financial incentive for Mr. Wilson to recant his

22   earlier testimony. Is that what Mr. Lapchuk said?

23   *A*   Mr. Lapchuk had said that, but it was in the

24   context of events that had occurred in 1980. I

11:32 25   believe at the time a reward had been offered or a

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	1		financial inducement had been offered to Mr.
	2		Wilson to change his testimony at that time and he
	3		had refused it.
	4	Q	And that he what?
11:33	5	A	Mr. Wilson I think at that time had refused to
	6		change his testimony in 1980, but that -- I think
	7		Lapchuk may have speculated that perhaps an offer
	8		was renewed to Mr. Wilson and he accepted it.
	9	Q	But was it anything more than speculation on Mr.
11:33	10		Lapchuk's part?
	11	A	Mr. Lapchuk, I heard from Mr. Lapchuk that he had
	12		that conversation with Mr. Wilson. His --
	13		Lapchuk's take on the conversation was that Wilson
	14		was trying to explain something, but I think it
11:33	15		was primarily speculation.
	16	Q	Okay. And then you say:
	17		"Despite his checkered past, Mr. Lapchuk
	18		left me with the impression that he told
	19		the truth at trial and is strong in his
11:34	20		recollection of the events today. He
	21		noted that the expression on Milgaard's
	22		face was so frightening that it remains
	23		vivid in his memory to this day. Much
	24		the same comment was echoed by Mr.
11:34	25		Melnyk when I spoke with him."

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1   Again, what was the significance of that

2   information?

3   A   That information addressed the suggestion by

4   Deborah Hall that what she observed in the motel

11:34 5   room was just a big joke and that everybody was

6   joking. Both Mr. Melnyk and Mr. Lapchuk were

7   frightened and having heard some anecdotes from

8   Mr. Lapchuk about some of his adventures, it would

9   take quite an event to frighten him.

11:34 10   Q   And so what conclusions did you reach then about

11   Mr. Melnyk and Mr. Lapchuk about, as far as their

12   recollection of the motel room incident being a

13   serious matter?

14   A   Well, they remained steadfast in their account

11:35 15   which had been the subject of their trial

16   testimony and cross-examination and nothing from

17   our interviews or our discussions altered the

18   accuracy of what they testified at trial.

19   Q   And can you -- what was your sense of the

11:35 20   significance of that evidence at trial?

21   A   The case against David Milgaard was a

22   circumstantial one and that circumstance, coupled

23   with others, was used as an important part of the

24   web that contributed to his contribution -- I'm

11:35 25   sorry, contributed to his conviction. As a

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1   result, if either -- if Melnyk or Lapchuk resiled

2   from that, it would certainly give us cause to

3   question or consider that there may be a basis to

4   believe that a miscarriage of justice may have

11:36   5   occurred.

6   Q   Go to 113521.

7   COMMISSIONER MacCALLUM: Excuse me, sir,

8   are you telling me then that you don't take the

9   motel declarations as a confession, but rather

11:36   10   simply as circumstantial evidence?

11   A   Yes.

12   COMMISSIONER MacCALLUM: Okay.

13   BY MR. HODSON:

14   Q   113521. This is an August 9th, 1990 letter to

11:36   15   Mr. Watson and it refers to a request to pose

16   additional questions to Mr. Wilson and to

17   ascertain whether Mr. Wilson will undergo a

18   polygraph test. Can you tell us what, to the best

19   of your recollection, what were the questions or

11:37   20   the areas of questions, and also why were you now

21   seeking a polygraph?

22   A   As a result of information received from Mr.

23   Lapchuk, and possibly Mr. Melnyk, I had a few

24   supplementary questions of Mr. Wilson because I

11:37   25   learned after speaking with Mr. Wilson of his

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	1		conversations with Lapchuk and I wanted to explore
	2		that.
	3		Secondly, we had received such
	4		contradictory information from Mr. Wilson in terms
11:37	5		of the June 4th, 1990 statement when compared to
	6		his remarks at trial and when compared to some of
	7		the answers he gave to my questions, so we weren't
	8		quite certain what to make of it in terms of what
	9		was the truth and that prompted the request for a
11:38	10		polygraph.
	11	Q	And so, sorry, back on the questions, were they to
	12		follow up on some of what Mr. Melnyk and Mr.
	13		Lapchuk told you?
	14	A	Yes.
11:38	15	Q	And the record suggests that you did not get an
	16		opportunity to question Mr. Wilson again; is that
	17		correct?
	18	A	That's correct.
	19	Q	And why not?
11:38	20	A	He declined to be questioned and, in relation to
	21		the, in relation to the polygraph, I learned from
	22		Mr. Watson that Mr. Wilson wanted, as a condition
	23		for the polygraph, he wanted to have the notes or
	24		the charts of his earlier polygraph session with
11:39	25		Mr. Art Roberts and those could not be provided to

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1   him and without that he declined to be

2   polygraphed. They couldn't be provided to him

3   because they could not be found.

4   Q   And 003413, this is the letter I think from

11:39 5   Mr. Watson of that date saying that if Mr. Wilson

6   is to undergo a polygraph, the questions and his

7   charts must be made available?

8   A   Yes.

9   Q   And I think by that time you had already checked

11:39 10   with Inspector Roberts and the Calgary and

11   Saskatoon police and the records could not be

12   located?

13   A   That's correct.

14   Q   Did that cause you a concern? You mentioned

11:39 15   earlier that when you interviewed Mr. Wilson about

16   his June 4th, 1990 recant, and we haven't got to

17   the tape yet, but certainly records or notes

18   relating to Mr. Henderson's interview with Mr.

19   Wilson, and I think you would agree that that was

11:40 20   an area that you were concerned with, finding out

21   what happened; correct?

22   A   Yes.

23   Q   What about with Inspector Roberts and his

24   interview of Nichol John and Ron Wilson back in

11:40 25   1969 and the fact that he spent an afternoon and

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1   evening with these two witnesses without a note or

2   any record, including the polygraph?

3 A   I was -- I was concerned that -- I would have

4   preferred to have had them but they could not be

11:40 5   found.

6 Q   No, but as far --

7 A   But --

8 Q   Okay. Oh, I'm sorry, carry on?

9 A   But as far as the notes, from an assessment

11:40 10   standpoint there had been at least an opportunity

11   to question the police officers, I'm not certain I

12   got their notes. There were some reports, I'd

13   call them occurrence reports, describing the

14   circumstances of the questioning and the narrative

11:41 15   of the police investigative steps in relation to

16   the securing of the questions -- or the statements

17   from Nichol and from Ron Wilson.

18 Q   Okay.

19 A   But --

11:41 20 Q   But I believe, Mr. Williams -- and correct me if

21   I'm wrong -- that there has not been, at least not

22   that I am aware of, a written record of what

23   transpired in the room with Inspector Roberts and

24   Nichol John and Ron Wilson by way of notes,

11:41 25   polygraph charts, police report, or statements,

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1   the statements were taken after?

2   *A*   That's correct.

3   **Q**   And, other than Inspector Roberts' evidence at the

4   Supreme Court, there would be no other source of

11:41 5   information, source of written information, to

6   find out what happened; is that -- do you agree

7   with that?

8   *A*   Yes, I do.

9   **Q**   And I'm just trying to compare your concern with

11:41 10   the fact that when Mr. Henderson met for a day

11   with Ron Wilson and arrived with a, ended up with

12   a six-page written statement at the end of six or

13   eight hours, would there be any difference in

14   approaching that if you compare that to Inspector

11:42 15   Roberts, who spent a similar amount of time that

16   produced two statements but, again, no record of

17   what happened?

18   *A*   Admittedly, on the face of it, they appear to be

19   similar. I note a couple of differences, however.

11:42 20   First, Inspector Roberts

21   didn't take the statements from Mr. Wilson or Ms.

22   John. Certainly, the effect of his examination

23   contributed, I suspect, in some measure to the

24   account that they provided to the police officers.

11:42 25   But I think, more importantly,

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1   the polygraph charts, the notes, were done in

2   1969, and some 20 years later they were -- could

3   not be located. The significance of the

4   polygraph, I guess, is probably -- or might have

11:43 5   been a live issue at trial, but there was an

6   opportunity to test that process and the procedure

7   for examining the witnesses by Mr. Roberts at

8   trial, and there was an opportunity to fully

9   canvass that issue there. It -- I'm not certain,

11:43 10   as I speak now, how that was dealt with, but there

11   was an opportunity to test it.

12   In terms of the disappearance

13   of the charts and the reports, 20 years had

14   elapsed, and I was aware of certain document

11:43 15   destruction procedures by some of the police

16   forces, so I didn't take anything sinister in

17   response to the fact that old records may not now

18   be in existence.

19   By contrast, Mr. Wilson was

11:44 20   examined on June 4th, and a request for -- which

21   was a recent event -- and our request for the

22   notes -- and notes had to have been taken over a

23   six or seven-hour period, I later learned that the

24   interview was taped -- those weren't forthcoming.

11:44 25   So that was a significant difference.

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1   Q   Do you recall being made aware, we've heard some

2   evidence before this Commission that Inspector

3   Roberts' interview of Nichol John and/or Ron

4   Wilson may have been tape recorded and/or listened

11:44 5   in on by officers in an adjacent room, were you --

6   does that --

7   A   That doesn't ring a bell. It may have happened

8   but I'm not --

9   Q   And so is it fair to say, then, that the

11:45 10   circumstances -- I think what you are telling us,

11   please correct me if I'm wrong, that the

12   circumstances under which the records of the

13   interviews, the Roberts interview of Wilson and

14   John and the Henderson interview of Wilson, that

11:45 15   because one was 20 years earlier and there was

16   other circumstances you did not -- you did not

17   have concerns that the Roberts interview notes and

18   charts weren't available, you saw some innocent

19   explanation for that; is that fair?

11:45 20   A   Yes.

21   Q   But on the Henderson interview of Wilson, because

22   it was only a month earlier, you had concerns that

23   -- in other words there shouldn't be a reason that

24   the notes and tape aren't available?

11:45 25   A   Well, it would have been nice to have had them.

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1 Q   Well, let's go to that question. So putting aside

2   who and how the notes, and where they went, would

3   you agree that, in looking at the credibility of

4   the Wilson recantation in June of 1990, it would

11:46 5 have been helpful to have the tape of that

6   interview and any of Mr. Henderson's notes?

7 A   Yes.

8 Q   Would you agree that, in determining the

9   credibility of Ron Wilson's and Nichol John's

11:46 10 statements that came out of their session with

11   Inspector Roberts, that it would have been helpful

12   to have either Inspector Roberts' notes or a tape

13   of that session and/or the polygraph charts?

14 A   Yes.

11:46 15 Q   And so would you agree that, in looking at both,

16   there is no distinction, really, between the two,

17   it would be helpful to have that background

18   information?

19 A   Correct.

11:46 20 Q   If we can go to 157100.

21   COMMISSIONER MacCALLUM: Umm, I -- I

22   thought the question was going to be, sir -- if

23   you'll forgive me, Mr. Hodson --

24   MR. HODSON: Sure.

11:47 25   COMMISSIONER MacCALLUM: -- in the result

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1   you saw an innocent explanation for the lack of

2   the Roberts' notes. Did you see, by contrast, no

3   innocent explanation for the lack of notes for

4   Henderson, or tape?

11:47 5   A   If I understand your question, Commissioner, I

6   felt that there was no reason why it couldn't be

7   produced --

8   COMMISSIONER MacCALLUM: Okay.

9   A   -- it -- by virtue of let's say the lack of -- or

11:47 10   the interval between the taking of the statement

11   and our request for it.

12   COMMISSIONER MacCALLUM: Yes. But, in

13   either case, the notes would have helped you?

14 A   Oh, indeed.

11:47 15   COMMISSIONER MacCALLUM: Both cases, I

16   mean?

17 A   Yes.

18   BY MR. HODSON:

19 Q   This is an August 14th, 1990 letter from Mr. Asper

11:47 20   to Minister Kim Campbell with a copy to you and

21   Mr. Corbett. And this is a letter that raises,

22   with the minister, concern about your, or the

23   department's use of Mr. Caldwell. And it says:

24   "It has come to our attention

11:48 25   that your officials have been to some

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1   degree using the services of Mr. T.D.R.

2   Caldwell, who is employed with the

3   Department of Justice in Saskatoon,

4   Saskatchewan. This is shocking since it

11:48 5   was Mr. Caldwell who conducted the

6   prosecution against David Milgaard in

7   1969. Apparently your officials have

8   told the media that unless Mr. Milgaard

9   specifically alleges prosecutorial

11:48 10   misconduct, in their view there is

11   nothing improper with the inclusion of

12   the original prosecutor in the present

13   investigation."

14   Can you comment on that? Did -- do you recall

11:48 15   whether you or others in your department told the

16   media what's attributed to you there?

17 A   The way it is characterized does not reflect my

18   recollection of any discussions I may have had

19   with the media. I did not, in the absence of any

11:49 20   suggestion of prosecutorial misconduct, I did not

21   think it improper to question Mr. Caldwell and to

22   obtain his assistance in terms of making contact

23   with the police investigators and in terms of

24   getting access to his files so that we could

11:49 25   assess the claims that had been made.

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1   "... the inclusion of the original

2   prosecutor in the present

3   investigation."

4   misstates the role that Mr. Caldwell played. He

11:50   5   played no greater role, by providing his file

6   material to me or taking time to discuss the

7   theory of the case to me, than he would have with

8   some of the folks, whether it's

9   Mr. Carlyle-Gordge or others who were interested

11:50 10   in the case, and who had access to his file

11   material. It was perhaps a good thing for me

12   that, at the time, he was a member of the federal

13   prosecution service, as it's now called, so

14   contacting him was not a problem. But my

11:50 15   understanding, and it was confirmed when I

16   visited, was that the file material was within

17   the -- was still with the ministry of the, I call

18   it the ministry of the Attorney General, I guess

19   it's Sask. Justice, and he facilitated because of

11:50 20   his knowledge of the officials there. I think it

21   was Fred Dehm who was the Crown prosecutor, he

22   made the introductions and allowed me to have

23   more rapid access to it, so if -- if that

24   activity qualifies as:

11:51 25   "... inclusion of the original

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1   prosecutor in the present

2   investigation.",

3   so be it. It was essential, at least initially,

4   for me to understand the Crown's theory of the

11:51 5   case, and what better person to obtain that from

6   but having a conversation with the prosecutor.

7 Q Prior to this letter was it your understanding

8   that -- or what was your understanding as to

9   whether any of the grounds put forward on behalf

11:51 10   of David Milgaard included any allegation of

11   prosecutorial misconduct?

12 A That -- that might have -- there wasn't any ground

13   raised specifically like that. There had been

14   some notations in certain articles about the fact

11:52 15   that -- or the suggestion that, for example, Mr.

16   Wilson's March 1969 statement had not found its

17   way into Mr. Tallis' hands, or the Ute Frank

18   statement hadn't, and --

19 Q Let me pause there. On that news article, do you

11:52 20   recall ever being advised by, directly by counsel

21   for David Milgaard that that was a ground of the

22   application, that Mr. Caldwell failed to disclose

23   the March the 3rd, '69 statements to Mr. Tallis?

24 A I don't recall that having ever been advanced.

11:52 25 Q And so that would have been something you read in

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1   the paper?

2   A   The contention, I think the inference that was

3   drawn from some of the articles, for example in

4   relation to Wilson, that's the latest example, was

11:53 5   that obviously Caldwell didn't have -- not

6   Caldwell -- but Mr. Justice Tallis did not have

7   the March 3rd, 1969 statement of Wilson because

8   had he, had he that document, he would have,

9   quote, in Wilson's terms, "destroyed him". The

11:53 10   inference is that the Crown didn't disclose.

11   Q   So --

12   A   Similarly with Ute Frank, some of the headlines

13   signaled that, you know, the Justice Department

14   had been sitting on this statement for 20 years,

11:53 15   and it would have signaled that two witnesses

16   lied. So the impression was, although it wasn't

17   stated, the impression in the press, which was not

18   corrected by those in the Milgaard camp, was that

19   there was a failure of disclosure.

11:54 20   Q   But what I am -- I'm sorry.

21   COMMISSIONER MacCALLUM: No, go ahead?

22   BY MR. HODSON:

23   Q   But I guess my question is, though, did you view

24   that to be a ground in the application in light of

11:54 25   the fact -- I think what you are telling us is you

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1   read it in the paper but it wasn't directly

2   provided to you in a communication on behalf of

3   David Milgaard that said "one of the grounds of

4   our miscarriage of justice is Mr. Caldwell failed

11:54   5   to disclose the Ron Wilson statement"?

6   A   By the time that we received this particular piece

7   of correspondence I had spoken with Justice

8   Tallis, one of the areas of our conversation

9   related to the relationship between the Crown and

11:54 10   the defence, and with respect to disclosure. As a

11   result of that conversation I had no concerns

12   about disclosure being fully made in accordance

13   with the best traditions of criminal law practice.

14   COMMISSIONER MacCALLUM: Well, sir, what

11:54 15   I'd like to know is did the fact that allegations

16   like this appeared in the press cause you to

17   investigate them as grounds for the application,

18   irrespective of the fact that they were not

19   included in the formal application?

11:55 20   A   I asked, I made inquiries about them, sir, and I

21   found no in -- no evidence that there was a --

22   that there were problems with disclosure.

23   COMMISSIONER MacCALLUM: Well did you feel

24   obliged to investigate them because they were in

11:55 25   the press, even though not in the application?

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	1	A	I'm not saying I felt obliged, but I did look at
	2		them, yes.
	3		COMMISSIONER MacCALLUM: All right. Thank
	4		you.
11:55	5		BY MR. HODSON:
	6	Q	Is it fair to characterize that allegation as
	7		being related somewhat to the Ron Wilson
	8		recantation? I suppose, let me --
	9	A	It -- it -- it factors into the Ron Wilson
11:55	10		recantation, it also was raised in relation to the
	11		Ute Frank statement.
	12	Q	Let me re-characterize that. I suppose, if Mr.
	13		Caldwell had not disclosed statements of key
	14		witnesses that tended to tell a different story
11:56	15		than what the witnesses said at trial, quite apart
	16		from Ron Wilson's recantation, that might be
	17		something that would give rise to a miscarriage of
	18		justice; is that fair?
	19	A	Yes.
11:56	20	Q	And so would you agree, then, that that is
	21		arguably a different issue that Mr. Wilson's
	22		recantation?
	23	A	Yes.
	24	Q	And so at this point I'm still not sure, I think
11:56	25		you said you investigated it, but was -- can we

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1   conclude, from that, that you were looking into an

2   allegation that you read in the paper about

3   non-disclosure, or had you dismissed the article

4   when you read it, based on what Mr. Tallis told

11:56   5   you?

6   A   I had dismissed it by then, because by then I had

7   taken a look at the Crown file and I'd seen the

8   correspondence and the exchanges between Mr.

9   Caldwell and Mr. Tallis.

11:56   10   Q   And then, the next paragraph down, it says:

11   "Moreover, it is of great concern that

12   evidence advanced by Mr. Milgaard is

13   being subjected to strict scrutiny by

14   your officials, while those involved in

11:57   15   the original investigation and

16   prosecution have not, as far as we can

17   tell, even been questioned, let alone

18   under oath. We wonder why the

19   investigation is not as balanced as it

11:57   20   ought to be."

21   I'm wondering what, your comment about that

22   statement, was that your view of what you were

23   doing or what you were supposed to be doing?

24   A   No. Umm, you know, I spoke with Mr. Justice

11:57   25   Tallis, it wasn't under oath. I did speak with

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1		Larry Fisher, it was under oath. Whether -- the
2		preferred course --
3	Q	Sorry, I'm -- I wasn't concerned about oath or not
4		oath, --
11:57 5	A	Okay.
6	Q	-- I'm more concerned about --
7	A	Strict scrutiny for some and not for others?
8	Q	And why the investigation is not as balanced, in
9		other words, why are you not investigating Mr.
11:57 10		Caldwell and others involved in the investigation?
11	A	Mr. Caldwell, if I can take the last question
12		first, there had not been any specific complaint
13		about Mr. Caldwell, first; and secondly, nothing
14		that I had discovered in looking at the other
11:58 15		grounds signaled a need to examine Mr. Caldwell's
16		activity or the activity of the -- well, there was
17		some suggestion, and we did follow up with respect
18		to the police officers and whether or not they had
19		acted improperly in relation to the witnesses,
11:58 20		that was examined.
21	Q	Okay.
22	A	We made probes of the -- of the points that had
23		been raised in the application, and I'll tell you
24		why.
11:58 25		The information from Deborah

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1   Hall came by way of an affidavit under oath. I

2   thought it appropriate, in those circumstances, to

3   question her under oath.

4   To the extent that there was

11:59 5   trial testimony that had been tested under oath, I

6   felt reasonably comfortable that that stood, and

7   to the -- unless there was some other compelling

8   reason that signaled a departure from that

9   information, and where circumstances permitted, I

11:59 10   would take it under oath, but if I couldn't I

11   accepted or took what I could.

12   My feeling was, and my

13   objective was, to get at the facts, and to get at

14   them in as strong a form that I could. While Mr.

11:59 15   Asper might take a different view, my objective

16   was to be impartial, and to pose the questions of

17   all of the folks that I met to test their

18   veracity.

19   Q   I see it's 12:00, Mr. Commissioner. Just a

12:00 20   reminder that we're back at 1:00.

21   COMMISSIONER MacCALLUM: Okay.

22   *(Adjourned at 12:00 p.m.)*

23   *(Reconvened at 1:03 p.m.)*

24   BY MR. HODSON:

01:03 25   Q   Good afternoon. If we could call up 157100.

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1	A	Mr. Hodson, before you ask your next question, I
2		would like to add to the answer to the last
3		question?
4	Q	Certainly.
01:03 5	A	It refers to the document that's on the screen and
6		the addition is simply this: The complaints that
7		are contained in the letter concerning the use of,
8		or the inclusion of Mr. Caldwell and concerns
9		about balance reflects, in my view, a
01:03 10		misapprehension of the 690 process. The
11		application is to the minister and the minister
12		and the minister's representatives will speak to
13		both the Crown and the defence in an endeavour to
14		get all of the facts that are required to make an
01:04 15		informed decision, and to the extent that you
16		speak to the Crown prosecutor in order to
17		facilitate the retrieval of file materials or to
18		question that individual about the Crown's theory
19		and where reliance was placed in relation to the
01:04 20		trial proceedings, that's entirely consistent with
21		the role of the minister's staff in conducting an
22		impartial investigation. That's the portion I
23		wish to add.
24	Q	Thank you. If we can just go down to this next
01:04 25		subject matter in the letter, and it's referring

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1   to:

2   "...the investigation into the

3   individual who is likely the true

4   perpetrator..."

01:04   5   And I think that's referring to Larry Fisher,

6   "...we are quite dismayed that

7   apparently little or no progress has

8   been made."

9   Now, since the July -- let me back up. Would you

01:05 10   have informed Mr. Asper and Mr. Wolch about the

11   polygraph session of Mr. Fisher and your

12   interview with him?

13   A   Either myself, or perhaps Mr. Pearson, would have

14   indicated to Mr. Wolch and Mr. Asper of our desire

01:05 15   to interview and to speak with Mr. Fisher.

16   Q   Do you recall whether you would have informed

17   them, though, that the interview was done and

18   here's what he said or would that be something at

19   the October 1 meeting?

01:05 20   A   At the time of this letter I suspect that we would

21   have said -- we would have interviewed him or at

22   least identified the fact that we had interviewed

23   him, but probably just basically said didn't get a

24   confession.

01:05 25   Q   And what about the polygraph, do you recall

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1		whether that was a subject you would have raised
2		with Mr. Wolch or Mr. Asper?
3	A	I'm afraid I don't recall. I wouldn't be
4		surprised if it had been raised, but --
5	Q	If it had?
6	A	If it had been.
7	Q	Yeah.
8	A	But I have no specific recall of discussing it
9		with them.
10	Q	Is it something you think would have been
11		disclosed to them at the October 1, 1990 meeting?
12	A	Yes.
13	Q	And do you have a recollection of disclosing that
14		to them, the fact that a polygraph was attempted
15		of Mr. Fisher?
16	A	I have no specific recall of that, of making such
17		a disclosure, but it's the type of information
18		that we would likely have made known.
19	Q	Okay. In this letter, and again this is August
20		14th, 1990, Mr. Asper writes that July 5:
21		"...we raised concerns that your
22		officials were not completely familiar
23		with the nature and substance of the
24		record of this new suspect. We
25		requested details regarding the

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1   suspect's seven other serious sexual

2   assaults, and have not yet received

3   same."

4   Are you able to tell us whether, as of August

01:07   5   14th, 1990, you take issue with this suggestion

6   that the details or the occurrence reports and

7   witness statements had not been provided by that

8   date?

9   A   I, quite frankly, don't take issue with it. My

01:07 10   recollection now is I'm not sure what we had

11   gotten by that date. It may well be that we

12   hadn't received much, if anything.

13   Q   I think, sorry, if I may, I showed you yesterday,

14   I think you would have had the (V5)-- (V5)---

01:07 15   file --

16   A   Yes.

17   Q   -- from mid July?

18   A   He speaks of seven other serious sexual assaults.

19   Q   I think those would be the two Winnipeg, (V10)

01:07 20   (V10)- and the four Saskatoon.

21   A   Yes. We --

22   Q   And so -- I'm sorry, go ahead.

23   A   I believe that Sergeant Pearson had been able to

24   recover or obtain the (V10) (V10)- file because

01:08 25   that was an RCMP investigation. I, at this

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1   moment, don't know or don't recall what progress

2   we had made in terms of getting Winnipeg's.

3   Q The letter goes on to talk about an investigator

4   that Mr. Asper has located, a former City of

01:08   5   Winnipeg police officer, and in fact I think he's

6   referring to Lorne Huff, the fellow who

7   interviewed Mr. Fisher in 1971. Were you familiar

8   with who Mr. Huff was?

9   A I became familiar with Mr. Huff afterwards.

01:08 10   Q And then what Mr. Asper seems to be saying here is

11   that:

12   "...it would appear that the RCMP have

13   withdrawn their involvement, and your

14   officials have become directly involved

01:08 15   without having given us the opportunity

16   to conduct an investigation."

17   And this is a letter to Minister Campbell, and

18   then:

19   "It should be noted that this has been

01:08 20   <u>our</u> investigation, and not that

21   conducted by your Department, which has

22   resulted in all of the new evidence now

23   before your officials."

24   We talked about this back in June, about when you

01:09 25   started to investigate Larry Fisher and you

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1   engaged Sergeant Pearson to do that, and what do

2   you have to say about Mr. Asper's contention here

3   that they were not given an opportunity to

4   conduct an investigation by having the RCMP

01:09 5   withdrawn?

6 A Well, that was news to me because my information

7   was that Sergeant Pearson was still conducting an

8   investigation. It's a bit of advocacy in the next

9   paragraph in which he indicates that it is the

01:09 10   Milgaard investigation which has resulted in all

11   of the new evidence before us. Certainly the

12   efforts of Mrs. Milgaard and Mr. Asper identified

13   a number of new areas for investigation, but we

14   weren't -- but we also did some checking and were

01:10 15   able to, shall we say, clarify the information

16   that had been provided to us.

17 Q I recall I think your evidence back in June to the

18   effect that when Larry Fisher became a suspect,

19   you had the RCMP conduct that investigation and

01:10 20   that you were conducting it as opposed to -- or

21   maybe it was Sergeant Pearson who talked about the

22   concerns of having a parallel investigation being

23   conducted. Do you recall that issue about --

24 A Yes.

01:10 25 Q And I thought your evidence was to the effect that

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1   you were desirous of having Mr. Pearson do the

2   investigation without a parallel investigation; is

3   that right?

4   *A*   Well, when you say a parallel investigation --

01:10 5   *Q*   By David Milgaard's counsel or people on his

6   behalf.

7   *A*   Yes.

8   *Q*   And so here, I just want your comment here, this

9   letter, I think Mr. Asper is saying that:

01:11 10   "In order for our investigation of the

11   new suspect to be complete, we will

12   require the co-operation of your

13   officials, both in providing our

14   investigator with all details of the

01:11 15   investigation into the suspect to date,

16   as well as providing us with access to

17   him. This kind of co-operation does not

18   appear to be forthcoming, and we are

19   most disturbed once again by what

01:11 20   appears to be an effort to preserve the

21   status quo rather than uncover the

22   truth."

23   What was your understanding as far as whether

24   they were, and Mr. Asper, whether it be Mr. Huff

01:11 25   or whoever, were doing their own investigation

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1		and your co-operation, or your alleged
2		non-co-operation with their investigation?
3	A	Well, it was news to me. I was aware that Mr.
4		Asper, Mr. Wolch and the Milgaards had been taking
01:11 5		investigative steps. Certainly the discovery or
6		the presentation of Mr. Wilson, obtaining
7		statements from Wilson, Cadrain and others
8		signaled, you know, an active role. I wasn't
9		aware, apart from I think at an earlier stage
01:12 10		there was an offer to have Mrs. Milgaard, Joyce
11		Milgaard attend at the Sask Pen and interview Mr.
12		Fisher, but apart from that, I wasn't aware of any
13		specific retainer of a private investigator or
14		someone other than Centurion Ministries as
01:12 15		conducting an active investigation and, quite
16		frankly, I wasn't happy at the prospect of
17		learning that, because in my view it was a matter
18		for the police and Mr. Pearson was already on the
19		file.
01:12 20	Q	And so do I take it from that that you were not --
21		I think, number one, you are saying you weren't
22		aware that they were doing their own investigation
23		and waiting for your co-operation; is that fair?
24	A	That's correct.
01:13 25	Q	And secondly, had you known that, you would have

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1   been inclined not to be in favour of them doing

2   their own investigation for the reasons you

3   stated?

4   A   They may. I couldn't prevent them, but certainly

01:13 5   I would not commit the RCMP to disclose the

6   results of whatever investigation it was

7   conducting to the Milgaards.

8   Q   And why not?

9   A   Firstly, it's -- on two bases; one, in relation to

01:13 10   the historical information, it was being done at

11   the behest of -- for the Minister of Justice.

12   Secondly, if the RCMP is saying now, then, we're

13   -- perhaps had re-opened the case and were

14   conducting a criminal investigation, as an officer

01:13 15   of the court, as a prosecutor, putting that hat

16   on, I could not and would not compel an

17   investigative force to disclose to a third party

18   that is not of a certain, shall we say,

19   classification, it's not another police or

01:14 20   official agency, the fruits of an ongoing

21   investigation. It's just not done and it's not my

22   place to do so.

23   Q   Can we go to 113354, this is an August 15th, 1990

24   memo to file indicating that you spoke with Mr.

01:14 25   Pearson on August 13th, 1990 and it talks about a:

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1   "...timetable in relation to his

2   participation, and identified the

3   matters which remained to be completed."

4   And that:

01:14 5   "Mr. Pearson indicated that he would

6   complete his report by August 25..."

7   Scroll down. It talks about interviewing

8   Mrs. Cadrain, Mike Robinson, follow-up on the

9   polygraph issue. Is it a correct read of this

01:14 10   that by this time, Mr. Williams, you were in the

11   process of concluding your investigation and you

12   were asking Mr. Pearson, or Sergeant Pearson to

13   complete his remaining tasks by August 25, 1990?

14 A   I asked him to give me an estimate as to when he

01:15 15   would finish and he provided me with that date,

16   but we were, true, we were winding it down or

17   running down the leads that were still

18   outstanding.

19 Q   If we can go to 004374, and just before we have

01:15 20   any answers, Mr. Williams, just a couple of

21   comments, and it may be that Mr. Frayer and your

22   counsel wish to speak to this.

23   This is an August 28th, 1990

24   memorandum from Mr. Williams to Mr. MacFarlane

01:15 25   that contains, for the most part, a summary of the

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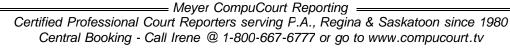*Central Booking - Call Irene @ 1-800-667-6777 or go to www.compucourt.tv*

1   investigative steps that he took, his assessment

2   of some of the information and his conclusions on

3   various matters. It is a memorandum -- as opposed

4   to being a memorandum from him to the file with

01:16   5   his summary of his work and conclusions, it is a

6   memo to Mr. MacFarlane.

7   I can state, Mr. Commissioner,

8   that it is not my intent to question about advice

9   Mr. Williams may have provided to Mr. MacFarlane

01:16   10   or anything of that nature, but I do believe the

11   document, at least for the most part, reflects a

12   summary of his investigative fact-finding work

13   and, in fact, deals with much of what Mr. Williams

14   has already testified to.

01:16   15   It's my understanding that

16   Mr. McLeod, on behalf of Mr. Williams, has no

17   objection; in fact, believes this to be an

18   appropriate document to question Mr. Williams.

19   Mr. Frayer, I'm not sure, maybe you can express

01:16   20   where you are at as far as my ability to question

21   the witness with respect to this document, and of

22   course the question here is this advice.

23   MR. FRAYER: Thank you, Mr. Hodson.

24   Mr. Commissioner, Mr. Hodson and I had a

01:17   25   preliminary discussion with respect to this

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01:17
1   particular document and the way he has

2   characterized it is the way that I agree with it.

3   It's an investigative narrative with

4   investigation done to date, much of which we've

01:17 5   heard through this witness to this point, and

6   further investigative steps to be taken.

7   It may very well be that

8   contained somewhere in this memorandum there may

9   be portions of it that could be considered to be

01:17 10   advice. I am comforted by what Mr. Hodson says

11   with respect to the manner in which he intends to

12   use this document and I'm satisfied that he can

13   proceed on that basis.

14   COMMISSIONER MacCALLUM: Thank you, Mr.

15   Frayer.

16   MR. FRAYER: Thank you.

17   BY MR. HODSON:

18   Q   Thank you. And the first paragraph, Mr. Williams,

19   I take it this is a document that you would have

01:17 20   prepared around August 28th, 1990?

21   A   Yes.

22   Q   And it's a 20 page document, fairly lengthy, and

23   deals with the work you had conducted to date in a

24   fairly detailed way; is that correct?

01:18 25   A   It's a summary of the steps we had taken and what

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1   the issues were and what we had found.

2   Q   And your first paragraph states that, it says:

3   "This memorandum is for information

4   only. It outlines the issues raised in

01:18 5   this application, describes the

6   investigative or other steps taken in

7   addressing those issues; summarizes the

8   findings to date, and identifies the

9   remaining issues to be resolved, and the

01:18 10   means by which the resolution of those

11   issues can be achieved."

12   And is it correct or accurate to say that first

13   paragraph is an accurate summary of where you

14   were at as far as your fact-finding or

01:18 15   investigation aspect of your work?

16   A   Yes. It's a written -- a fairly detailed status

17   report.

18   Q   And would it be fair to say that this would draw

19   from other files or other memos you had prepared

01:18 20   that we've already gone through and much of what

21   we've already commented or discussed in your

22   evidence is summarized in this memo?

23   A   Yes.

24   Q   If we can just scroll down, and it appears here at

01:19 25   the outset that you are identifying at least your

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1   understanding of the grounds that had been put

2   forward to that date; is that a fair way to state

3   it?

4   A   Yes, it is.

01:19 5   Q   And so you've characterized the Larry Fisher

6   information, the basis of the information --

7   and go to the next -- sorry, just the bottom, you

8   say:

9   "Further, counsel have drawn attention

01:19 10   to the police conduct during the

11   investigation by alleging that a key

12   Crown witness, Ronald Dale Wilson, was

13   manipulated and coerced by the police to

14   implicate David Milgaard in the death of

01:19 15   Gail Miller. The statement of Albert

16   Cadrain was also submitted to support

17   the contention that the police harassed

18   these teenaged witnesses."

19   And so on the Cadrain statement, it was not that

01:20 20   he recanted, but rather the police manipulation;

21   is that correct?

22   A   That's how I saw it at the time, yes.

23   Q   If we can scroll down, I don't propose to go

24   through this in detail, Mr. Williams. Would you

01:20 25   agree that this would reflect your thinking at the

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1		time as far as your, number one, the information
2		that you had gathered and, number two, the
3		conclusions that you drew as to whether or not
4		that information provided a reasonable basis -- or
01:20 5		might provide a reasonable basis to conclude that
6		a miscarriage of justice had occurred?
7	A	I agree with most of the characterization. It
8		does indeed set out my understanding of the
9		issues, the summary of the facts and there are a
01:20 10		number of factors discussed which bear on the
11		amount of weight, if you want to call it that,
12		that might be attributed to some of the statements
13		that were provided to us and -- but it is not a,
14		shall we say, it's not a document that I think
01:21 15		sets out a recommendation with respect to the
16		final question that would have to be determined.
17	Q	Fair enough, but if I were to ask you on August
18		28th, 1990 tell me what you've learned in your
19		investigation and the conclusions you've drawn
01:21 20		with respect to the grounds put forward in the
21		application, would this be a good summary of what
22		you thought at the time?
23	A	Yes, although some of the conclusions on the
24		various points aren't stated in that document.
01:21 25	Q	Okay. Now if we can go to the next page, I won't

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1   go through this, this is the Deborah Hall stuff,

2   the forensic report. Go to page 004378, and here

3   the heading is *Was Larry Fisher the assailant of*

4   *Gail Miller?* And I think you've told us that was

01:22   5   the, sort of the initial characterization of this

6   ground; is that correct, that Larry Fisher is the

7   killer, therefore, David Milgaard is not and

8   therefore there's a miscarriage of justice?

9   A   Yes.

01:22   10   Q   And then it goes on to set out, and I take it this

11   came from primarily the Linda Fisher information,

12   that was the initial bit of information that you

13   pursued on this ground?

14   A   Yes. Subsequently, if we're still on the topic of

01:22   15   Larry Fisher --

16   Q   Yes.

17   A   -- subsequently, as a result of information

18   obtained from the applicants, there was another

19   facet, shall we say, of the Larry Fisher insofar

01:23   20   as it related to the application of David

21   Milgaard, in that it was examined in relation to

22   whether or not the evidence surrounding Mr.

23   Fisher's convictions for sexual assault in

24   Saskatoon, what impact that might have had on the

01:23   25   jury had it been presented at trial.

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1   **Q**   And so that would be a related but a different

2   ground than Larry Fisher is the killer?

3   *A*   Yes.

4   **Q**   And so if we can scroll down here, you comment:

01:23 5   "Additionally I examined his prison

6   records and the available occurrence

7   reports relating to his convictions to

8   determine whether the circumstances of

9   the crimes for which he entered pleas of

01:23 10   guilty, bore any similarities to the

11   circumstances surrounding Ms. Miller's

12   death. They were not similar."

13   And do you recall what files or what information

14   you would have had and, secondly, elaborate on

01:24 15   your conclusion that the -- his other offences,

16   to the extent that you had information, were not

17   similar to the Gail Miller death?

18   *A*   The files that, or the most complete file I think

19   we had was, came from Winnipeg and there was one

01:24 20   from Saskatoon, I think it was (V5)-- (V5)---.

21   Apart from that, I believe we had a brief summary

22   of the incidents giving rise to the other three

23   sexual assaults for which pleas of guilty had been

24   entered into Regina. Admittedly, there was a

01:24 25   summary or a synopsis of the events which set out,

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1   I would call it the bare bones of the case, the

2   type of information that one would read in on a

3   plea of guilty, but it would set out the date,

4   time and place, some of the circumstances of the

01:25 5   activity that gave rise to the offence.

6   Q   Sorry, if I can just -- if you pause there. Do

7   you know if that -- was that the March 17, 1971

8   letter from Deputy Chief Corey to Ken MacKay? I

9   think that was the letter that was used by Mr.

01:25 10   Kujawa when he spoke to Mr. Fisher's guilty pleas.

11   A   I believe that was it.

12   Q   Okay.

13   A   And there were some details. One of the things we

14   looked at was, in terms of the other offences, was

01:25 15   the extent, the time, location, whether or not

16   there was anything in particular about the

17   offences which perhaps gave an identifier that,

18   you know, that was Larry Fisher as the assailant

19   of Gail Miller, the use of a weapon, the degree of

01:26 20   violence, whether or not there was an escalating

21   pattern of violence, things like that. There were

22   some similarities in the sense that some of the

23   offences involved the use of a knife, but that is

24   not an unusual event in relation to a sexual

01:26 25   assault, and in terms of, in examination of what

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1   was then available, my conclusion was it wasn't

2   similar, or there wasn't sufficient similarities

3   that pointed to Larry Fisher as Gail Miller's

4   assailant.

01:26 5   Q   Were you satisfied at that time that you had

6   sufficient details about each of these incidents

7   to make that assessment of similarity?

8   A   I had all that I could find and on that basis I

9   drew a conclusion. We were seeking or we had

01:27 10   sought fuller descriptions in the files, we had

11   sought the files but they weren't available.

12   Q   Did you give any thought to interviewing, either

13   you or Sergeant Pearson, interviewing the victims

14   with respect to those assaults where you did not

01:27 15   have, for example, a witness statement or an

16   occurrence report?

17   A   Yes.

18   Q   And what did you conclude?

19   A   We did not conduct the interviews and I suspect

01:27 20   that we didn't conduct them because that's --

21   certainly not at that time, because we were of the

22   view that at the initial look, there weren't

23   sufficient similarities based on what we had

24   discovered.

01:27 25   COMMISSIONER MacCALLUM: Just -- could I

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1   ask you for -- we saw that March 17th letter to

2   MacKay; did we not?

3   MR. HODSON: Yeah. Do you want to have it

4   called up? I'm wondering if we -- I don't have a

01:28 5   doc. ID.

6   COMMISSIONER MacCALLUM: Just make a note

7   of it, ladies, we can get it up afterwards and

8   then --

9   MR. HODSON: Yeah. It's the March 17th,

01:28 10   1971 letter from Corey to MacKay.

11   COMMISSIONER MacCALLUM: I would like to

12   show it to this witness and ask him if it's the

13   sort of thing that would be presented to a court

14   who was being asked to accept similar fact

01:28 15   evidence, just on the basis of that, the details

16   contained in that letter.

17   A   Okay.

18   COMMISSIONER MacCALLUM: That's what I

19   wanted to ask him.

01:28 20   MR. HODSON: We'll just maybe wait a

21   moment. I think someone here will --

22   BY MR. HODSON:

23   Q   And just, I'll just go through this briefly, Mr.

24   Williams, and assist you. It's a March 17th

01:29 25   letter, if we can go to the last page, it's from

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1   the deputy chief of police, Mr. Corey, to Ken

2   MacKay, and if we can go to page 1, and the

3   evidence we've heard is that after Mr. Fisher

4   confessed to two of the Saskatoon assaults in

01:29   5   Winnipeg, he was attempting to negotiate a plea in

6   Saskatchewan and I believe this was a letter

7   requested by Mr. MacKay in the Regina A.G.'s

8   office to get information about the offences, and

9   so it outlines the four Saskatoon offences -- and

01:29   10   if we can go to the next page -- it talks about,

11   for example, charge number one, this is the (V1)-

12   one, was walking down the lane,

13   "...grabbed from behind and, at knife

14   point, forced down a lane ... forced to

01:30   15   remove most of her clothing and was then

16   raped. (V1)- described her assailant as

17   a male in his early twenties, dark

18   hair... The knife appeared similar to a

19   paring knife."

01:30   20   Ms. (V1)- looked at photos, was unable to

21   identify him. And then similarly with the

22   (V2)----- rape, it goes on to describe some of

23   the facts there.

24   Is this a document, are you

01:30   25   able to tell whether this is familiar, whether it

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1   might have been something you had in August of

2   1990 when you were making that assessment?

3   *A*   Yes.

4   *Q*   Do you have a recollection of having this document

01:30   5   at some point?

6   *A*   Yes, or seeing it, yes.

7   *Q*   Now, Mr. Commissioner, did you have a question for

8   him on this document?

9   COMMISSIONER MacCALLUM: Well, on the basis

01:30   10   of this and whatever other information you had, I

11   gather he made the assessment, which is I suppose

12   somewhat similar to that which would be made by a

13   trial judge, in deciding whether evidence of

14   similar acts was admissible. And that's all I

01:31   15   wanted to get out of him, is the basis for

16   arriving at the conclusion that he did, that

17   there was not enough similarity?

18   MR. HODSON: Okay.

19   *A*   Admittedly a paring knife or a jackknife was used

01:31   20   in all -- at least in the first three, but one of

21   the things you would note would be the time of

22   day, the location, whether there was any

23   particular identifying aspect of it, the level of

24   violence, whether or not robbery was, you know, a

01:31   25   factor.

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1   BY MR. HODSON:

2   Q   If we can go back to the August memo, please. So

3   here, when you say they are not similar, are you

4   able to comment on whether you were looking at it

01:32 5   then as a prosecutor would in determining whether

6   this information could be admissible in a

7   prosecution against Larry Fisher?

8   A   Yes.

9   Q   What about the -- from a defendant's perspective,

01:32 10   from Mr. Milgaard's perspective, as that this is

11   evidence that is similar, that shows a similarity

12   such that it would be relevant and admissible at

13   his trial to point to a third-party perpetrator?

14   A   I was alive to that issue, and in a trial context

01:32 15   certainly that would be a, that would be a

16   consideration for the defence to raise reasonable

17   doubt.

18   Q   And so I -- what I am trying to understand.

19   Though, when you are looking at the similarities

01:32 20   what was it for, the purpose? Was it the

21   prosecution standard, or the defence standard, or

22   what was it that you were --

23   A   Well I was looking, I guess initially, from the

24   prosecution standpoint, whether or not there was

01:33 25   anything about what had happened, that one could

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1		look at that fact pattern and look at Gail Miller
2		and say "that is Larry Fisher's work in the
3		killing of Gail Miller", is there something we --
4		it happened that it was dark, most of them
01:33 5		happened at night, they happened in different
6		parts of the city, is there something about the
7		victim, is there something about the circumstances
8		which is so, so, so common in comparison with that
9		of Ms. Miller.
01:33 10	Q	Now so you have said here that, based on the
11		information that you had in August of 1990 and
12		your review of the information of the seven
13		assaults, if I can call it that, that's the four
14		Saskatoon, the two Winnipeg, and (V10) (V10)-;
01:33 15		correct?
16	A	Yes.
17	Q	And I think you said you had limited information
18		on -- let me back up. You did not have witness
19		statements from (V1)-, (V2)-----, and (V3)------,
01:34 20		but you did from (V5)---; is that correct?
21	A	I believe so, yes.
22	Q	And you would have had witness statements from
23		(V8)--- and (V7)--- in Winnipeg?
24	A	Yes.
01:34 25	Q	And (V10) (V10)- in North Battleford?

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1   *A*   Yes.

2   *Q*   So, on the basis of that, you concluded that there

3   were not sufficient similarities to the

4   circumstances surrounding Gail Miller's death as

01:34 5   the Fisher assaults; is that fair?

6   *A*   Yes.

7   *Q*   In 1991, on the second application, I believe you

8   would have been provided with additional

9   information, namely statements from the three that

01:34 10   you did not have in 1990; correct?

11   *A*   Correct.

12   *Q*   Namely (V1)-, (V2)----- and (V3)------?

13   *A*   Yes.

14   *Q*   Was there anything in those three statements that

01:34 15   you reviewed that caused you to change your view

16   about similarities between the Fisher assaults and

17   Gail Miller's death?

18   *A*   Well there were certainly additional details that

19   informed the assessment. I did not, for reasons

01:35 20   -- I did not make an assessment in terms of

21   similar fact or similar act in any, shall we say,

22   detailed way because I was aware, initially at

23   least, that -- or from fairly early on following

24   the receipt of that information that I would not

01:35 25   likely be the person making the assessment of that

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1   second 690 application.

2   Q   Okay.

3   COMMISSIONER MacCALLUM: Just one more

4   thing, please. Umm, as an evaluator of

01:35 5   similar-fact evidence, is it your opinion that an

6   interview of the victims would have given you any

7   more useful information than that which was

8   contained in the March 17th letter, together with

9   what other information you had, namely the

01:36 10   (V5)--- file?

11   A   I think an interview of the victims would have

12   been useful and would have been desirable if I had

13   reached what I would call a threshold question or

14   if I'd had a level of satisfaction of the

01:36 15   similarities. And here's what I mean by that.

16   Ms. Miller was -- Ms. Miller

17   was robbed and she was stabbed early in the

18   morning and with a level of violence that had not,

19   had not been approached in any of the cases before

01:37 20   her death, and it wasn't until 11 years later with

21   respect to (V10) (V10)-, and I had information

22   which informed the level of violence with respect

23   to (V10) (V10)- that prompted me to dismiss that

24   as a similar act incident in comparison to the

01:37 25   other assaults. The time of day, the locations,

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1   were the initial factors that prompted me to

2   discount some of the similarities. There didn't

3   appear to be any, quote, "identifying element",

4   other than the use of a knife, which is fairly

01:37 5   common.

6   In hindsight, it would have

7   been better, the evaluation would have been better

8   informed had we in fact interviewed the victims,

9   because it would have provided perhaps a better

01:38 10   factual foundation for making the assessment. I

11   did not do so and the assessment suffers as a

12   result.

13   COMMISSIONER MacCALLUM: Well it strikes

14   me, sir, that the similarities, we know that all

01:38 15   the sexual assaults with which you were concerned

16   were the work of Larry Fisher?

17 *A*   Yes.

18   COMMISSIONER MacCALLUM: That wasn't the

19   question.

01:38 20 *A*   No.

21   COMMISSIONER MacCALLUM: The question was

22   were they so similar --

23 *A*   To Gail Miller.

24   COMMISSIONER MacCALLUM: -- to the

01:38 25   circumstances of the -- Gail Miller's death that

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1   one could say "Fisher had a hand in this death"?

2   A   Yes.

3   COMMISSIONER MacCALLUM: You couldn't

4   interview Gail Miller, obviously, --

01:38 5   A   She's --

6   COMMISSIONER MacCALLUM: -- to get the

7   level of violence from her own mouth, so I just

8   fail to see at the moment, sir, what good it

9   would have done to interview the sexual assault

01:39 10   victims as a means of identifying Fisher as

11   Miller's murderer when you already had the

12   details, in writing, of what had happened to

13   them. I don't -- I don't quite understand the

14   urge to run around and quiz people all over again

01:39 15   about things like this.

16   A   Well that, I take your point, sir, Mr.

17   Commissioner.

18   BY MR. HODSON:

19   Q   Are you able to comment, Mr. Williams, about --

01:39 20   you later did learn more information about the

21   sexual assaults than you had in August of 1990; is

22   that correct?

23   A   That's correct.

24   Q   And do you recall whether there was anything there

01:39 25   that -- I appreciate that you did not formally,

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1   weren't asked to formally do an assessment, but

2   did you, did you consider it at all? Are you able

3   to comment on whether the information you didn't

4   have in August of 1990 might have affected the

01:39   5   conclusion you reached in 1990?

6   A   Certainly, it was stronger. I think, on balance,

7   I probably would, would have come to the same

8   conclusion as I had in August of 1990.

9   Q   And what was it, are you able to point to one, one

01:40   10   factor that was most significant, that stood out

11   in making this assessment? We have had a number

12   of people testify about their views in looking at

13   the Fisher assaults and the Gail Miller murder,

14   similarities and differences, and was there

01:40   15   something that stood out in your mind that swayed

16   you to the side of saying "lookit, I don't think

17   there's sufficient similarity"?

18   A   I was thinking, sir, after Gail Miller died in

19   1969 I would have expected what I would call an

01:40   20   increasing level of violence in relation to the

21   subsequent sexual assaults and I would have

22   expected, I guess, more of an element of theft or

23   robbery as part of it. Most of the other offences

24   took place in the evening, albeit that it was

01:41   25   dark, and by contrast Ms. Miller's death was early

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1   in the morning. Now we know that there was

2   another, there was another example that had been

3   brought to our attention that had occurred the

4   same morning that Gail Miller died. I didn't

01:41 5   think that was sufficiently similar in terms of

6   the manner of the approach and the nature of the

7   sexual contact.

8   Q   I think that was the (V4)---- (V4)--- incident and

9   I think that came out in August of '91, if I'm not

01:41 10   mistaken, right around the time of the second

11   application; is that the assault you are referring

12   to?

13   A   Yes.

14   COMMISSIONER MacCALLUM: As to the time of

01:42 15   day, sir, all the offences, including Miller's,

16   were apparently done under cover of darkness?

17   A   They were. I --

18   COMMISSIONER MacCALLUM: So does it make a

19   difference as between morning and evening?

01:42 20   A   Not when you take darkness as the common-place

21   factor, no, it doesn't.

22   COMMISSIONER MacCALLUM: Okay.

23   BY MR. HODSON:

24   Q   When you are looking at this question in August of

01:42 25   1990 about whether the -- Fisher's assaults are

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1   similar to the Gail Miller murder, is it fair to

2   say that you would attempt to do so without --

3   you'd go down that path and conduct that exercise

4   without considering the evidence against David

01:42   5   Milgaard, in other words the evidence against him;

6   is that --

7   A   That's correct. As I recall, one of the things

8   that happened following the receipt of the second

9   application and the fuller description of the

01:43   10   materials, I believe we, if not the Department of

11   Justice the RCMP, had sent the information out to

12   one of their analysts for evaluation.

13   Q   And I take it, when you look at the Fisher

14   assaults and the similarity, that you're trying to

01:43   15   do so keeping David Milgaard out of the picture;

16   correct?

17   A   Correct.

18   Q   I'm wondering if it's -- if you're able to --

19   well, let me put it this way: Is it difficult to

01:43   20   do that when you have been looking at the evidence

21   that existed against David Milgaard? And let me

22   ask the question this way. If you would have

23   looked at this information in 1990, and there had

24   been no David Milgaard conviction, charge, or

01:44   25   anything, he was completely out of the picture, it

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1   was an unsolved crime, and you looked at the Larry

2   Fisher rapes and the similarities and asked

3   yourself "are those similar to the Gail Miller

4   murder", compared to asking yourself that same

01:44 5   question with the knowledge that, number one,

6   David had been convicted of the crime; and two, 20

7   years later you had investigated a number of

8   grounds put forward to suggest that the evidence

9   against him was faulty, for lack of a better word,

01:44 10   and your assessment of that had been that it

11   wasn't as faulty as it had been suggested, and

12   sort of comparing those two I'm wondering whether

13   you -- whether you might look at it differently?

14   A   I think I probably would look at it differently.

01:44 15   Q   In what way?

16   A   Well to the extent that, in the first scenario,

17   there's -- you are still a whodunit and certainly

18   there were suspicions about Mr. Fisher's

19   involvement.

01:45 20   In the second scenario, you

21   have a number of allegations that have been placed

22   in support of Mr. Milgaard's position, and upon

23   investigation they're found to be not quite as

24   stated, so it -- you do look with a bit more

01:45 25   skepticism about a set of circumstances that are

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1   pointing towards another individual, and

2   particularly when you have a significant body of

3   evidence that was tried before -- tested before a

4   jury that resulted in Mr. Milgaard's conviction.

01:45 5   Q   Okay. Let me ask one further question, that I

6   think the other scenario was let's pretend there

7   was no David Milgaard, no conviction, and I think

8   what you are saying is that you would look -- you

9   might look at the Fisher information differently

01:46 10   if there had been no conviction and no David

11   Milgaard; correct?

12   A   Yes.

13   Q   Similarly, if in 1990 you looked at this and you

14   knew with certainty that David Milgaard was

01:46 15   innocent, might you look at it a bit differently?

16   And I'm not suggesting you did, sir, but if you

17   had that view at the time, that you were certain

18   that Mr. Milgaard was innocent, do you think you

19   might have looked at the similarity of the Larry

01:46 20   Fisher rapes compared to the Gail Miller murder

21   differently than if you felt that there was a

22   conviction there and that he was, based on what

23   the Court ruled, the person who had committed the

24   crime?

01:46 25   A   I guess my answer is this. If there was a

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1   separate head of evidence or a separate bit of

2   evidence that signaled that Mr. Milgaard was

3   innocent, I would probably still maintain that

4   whatever similarities existed between Mr. Fisher's

01:47 5   rapes and the killing of Gail Miller would not be

6   such that I would even consider charges against

7   Mr. Fisher, I would still hold the same opinion

8   that it -- there wasn't enough to link Fisher to

9   that murder.

01:47 10   Q   No, I appreciate that. But is it fair to say that

11   you might have viewed them as being more similar

12   than you did before; are you able to comment on

13   that?

14   A   I -- my comment is that the similarities wouldn't

01:47 15   change, no.

16   Q   Just go to the next page here. You talk about --

17   you state here:

18   "The evidence of Linda Fisher, and the

19   other circumstantial evidence does not

01:47 20   link Larry Earl Fisher to the murder of

21   Gail Miller."

22   And I take it that would have been your

23   conclusion, at the time, based on all the

24   information you had gathered and reviewed?

01:48 25   A   Yes.

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1   **Q**   You then go on to talk about the July 30th report:

2   "... the event as a 'chilling

3   confession' by Larry Fisher.",

4   and then go on to describe that. If we can

01:48 5   scroll down, here you say:

6   "Although the inmate was reminded of his

7   fight with Fisher after the C.B.C.

8   story, the former inmate noted that

9   Fisher did not confess that he murdered

01:48 10   anyone.

11   When confronted with a Globe

12   & Mail story dated August 1, 1990, the

13   former inmate denied telling David Asper

14   the words attributed to him by Mr.

01:48 15   Asper. The story line read:

16   "WRONG PERSON JAILED IN 1969 RAPE CASE,

17   EX-CONVICT SAYS"."

18   Go back to the story. Just on that, was that a

19   factor, the John Patterson incident? And when I

01:49 20   say "incident", the fact of how it was reported

21   and what you learned later, how did that affect

22   your conclusion about this Larry Fisher being the

23   perpetrator or the link?

24   **A**   Again, it built up some, some evidence that Mr.

01:49 25   Fisher was not a very nice man, but there wasn't,

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1   either alone or in combination with the other

2   information that we had gathered, I wasn't

3   satisfied of the link, sir.

4 Q   So, at this time, it would appear that --

01:49 5   COMMISSIONER MacCALLUM: Excuse me.

6   MR. HODSON: Oh, sorry?

7   COMMISSIONER MacCALLUM: Oh I see, yes, I

8   gotcha. Go ahead, Mr. Hodson?

9   BY MR. HODSON:

01:49 10 Q   Just on this issue of Larry Fisher I think, then,

11   if we could just jump ahead to 004392.

12 A   Yes.

13 Q   You talk here about, this is just towards the end,

14   I think this is under summary, you indicate that:

01:50 15   "The evidence of Linda Fisher ... does

16   not link Larry Fisher to the murder ..."

17   "Nor is the fact that Larry

18   Fisher is a convicted rapist, a link to

19   the murder of Gail Miller. The

01:50 20   circumstances of Ms. Miller's death do

21   not bear a similarity to the offences

22   for which Mr. Fisher was convicted."

23   Do I take it, from that, that as of August 28th,

24   1990, then, that based on your investigation you

01:50 25   did not find any evidence that would link Larry

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1		Fisher to the murder of Gail Miller?
2	A	Yes.
3	Q	And, in particular, the evidence of Linda Fisher,
4		the John Patterson statements, your interview of
5		Larry Fisher, and his other offences?
6	A	Yes.
7	Q	And I take it, then, that as far as the -- if we
8		go back to what was put forward by counsel for
9		David Milgaard as a ground, namely that Larry
10		Fisher is the perpetrator and therefore that there
11		is a reasonable basis to conclude that a
12		miscarriage of justice had occurred -- and we'll
13		deal with the defence issue in a moment -- but as
14		far as that ground, is it fair to say that you
15		concluded that there was no evidence that
16		established that as a ground, as least based on
17		your investigation?
18	A	Certainly not to my satisfaction, correct.
19	Q	And was it a case that "he might be the
20		perpetrator but we just don't have evidence", or
21		what's --
22	A	Yes.
23	Q	Yes?
24	A	Yes. You know, it's -- you did not ignore the
25		fact that it was possible that he may have done

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1   it, however, needed something to link it.

2   For example, if Linda Fisher's

3   knife was similar in appearance to the murder

4   weapon, that might have been a stronger link, that

01:52   5   might -- that would have been a very good link,

6   but it wasn't. If -- admittedly there were some

7   of Mrs., there were some of Gail Miller's clothing

8   or identification that was found near the Cadrain

9   residence, and I was aware of that, but it was --

01:52   10   it worked both for and against.

11 Q   How did the --

12 A   One of the things that had occurred to me was

13   this. If I'm -- if I've committed a serious crime

14   am I going to drop the evidence, incriminating

01:52   15   evidence, on my doorstep?

16 Q   In looking at this question, and I think you said

17   that although he may be -- there may be some

18   suspicion, there wasn't enough there to provide a

19   basis to say that there had been a miscarriage of

01:53   20   justice in David Milgaard's conviction; is that

21   fair?

22 A   Yes.

23 Q   And I think you told us back in June he didn't

24   have to prove, David Milgaard didn't have to prove

01:53   25   that Larry Fisher committed the crime, correct?

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1	A	Correct.
2	Q	And I think you said the threshold was something
3		to the effect that 'some reasonable basis', some
4		evidence to suggest that Mr. Fisher may be the
5		perpetrator, is that -- or was it higher than
6		that?
7	A	I think the word formulation I used was a
8		reasonable basis to conclude that a miscarriage of
9		justice may have occurred and, in the context of
10		the Larry Fisher information, taking a look at it
11		as to whether or not there was, call it,
12		sufficient fresh evidence that might be brought to
13		a Court of Appeal that might have affected the
14		verdict or the outcome.
15	Q	And when you say "may have affected" would you,
16		would your analysis or your examination of the
17		existing case against David Milgaard be a factor
18		in how you weigh whether or not the Larry Fisher
19		information sort of meets the threshold?
20	A	It certainly would be a factor, yes.
21	Q	Yeah. In other words if, if a couple of the
22		bricks in the case against David Milgaard had
23		crumbled, might the Larry Fisher information, even
24		though you couldn't link him to the murder, but
25		might it become more significant? In other words,

01:53 (line 5)
01:53 (line 10)
01:54 (line 15)
01:54 (line 20)
01:54 (line 25)

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1   what I am getting at is can you divorce the two,

2   Larry Fisher's culpability and David Mil -- the

3   case against David Milgaard?

4   A   They are -- they are related. I -- 'they are

01:54 5   related' perhaps isn't quite the meaning I want to

6   convey. What I want to signal is simply this. If

7   there are a couple of major elements that are --

8   have crumbled from the case against David

9   Milgaard, it certainly lessens your comfort level

01:55 10   and might certainly signal that, although

11   individually some of the information linking Mr.

12   Fisher isn't that strong, that coupled, however,

13   with shall we say deficiencies that have been --

14   that may have been discovered in relation to the

01:55 15   evidence led at trial, that might have prompted a

16   favourable result.

17   COMMISSIONER MacCALLUM: I wonder if we

18   could break and then sort of equalize the hours.

19   Thank you.

01:55 20   MR. HODSON: Certainly.

21   *(Adjourned at 1:55 p.m.)*

22   *(Reconvened at 2:14 p.m.)*

23   BY MR. HODSON:

24   Q   Just go back to 004379, and we talked about your

02:14 25   conclusions about the suggestion that Larry Fisher

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02:14
was the perpetrator. You had mentioned earlier in
your evidence on a couple of occasions that a
related ground put forward on behalf of David
Milgaard that related to the Larry Fisher rapes
was the suggestion that, the fact that David
Milgaard's counsel was not aware of these offences
and Mr. Fisher might provide a reasonable basis to
conclude that a miscarriage of justice may have
occurred, and I think we identified in sort of two
different scenarios, and I'll just go through
that, number one, at the time of trial, of David
Milgaard's trial, the (V1)-, (V2)-----, (V3)------
offences had occurred. Mr. Fisher was not a
suspect nor, I don't think, even on the radar
screen at the time, so at the time of Mr.
Milgaard's trial there was a question of whether
or not the fact that Mr. Milgaard's counsel was
not aware of these three offences somehow might
give rise to a miscarriage of justice. And,
secondly, before Mr. Milgaard's criminal
proceedings were concluded before the Supreme
Court, I think in 1971, that Larry Fisher had
committed another assault after Mr. Milgaard's
conviction in Saskatoon and two in Winnipeg, and
before Mr. Milgaard's criminal proceedings were

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1   concluded, he had, I think, essentially confessed

2   to all six of those, so in other words, he was

3   known to be the person who committed those

4   offences, and so I think the suggestion was, and

02:16   5   I'm not sure that it was put to you that

6   specifically, Mr. Williams, on the first

7   application, but I think that you generally

8   understood that that was one of the grounds.

9   Can you comment on, after you

02:16 10   had investigated Mr. Fisher and concluded that

11   there wasn't a link between he and Gail Miller,

12   what if any conclusions did you make regarding

13   this miscarriage of justice based upon the fact

14   that Mr. Milgaard did not have an opportunity to

02:16 15   raise these offences in his proceedings?

16   A   I think one of the observations you would make is

17   recognize that the absence of the opportunity to

18   put that evidence before a jury, you know, might

19   have, or could have had some impact on the result

02:17 20   of the deliberations. In the context of the 690

21   process, it's one of those situations in which it

22   would be examined, but it would be examined in the

23   context viewed in the strength of the case that

24   remained to support a conviction of David

02:17 25   Milgaard, so it's one of those factors that is

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1   presented and could have had an impact or an

2   effect had the minister chosen to give it more

3   weight than it was given.

4 Q   And are you telling us that that necessarily

02:17 5   involves a review of the strength of the case

6   against David Milgaard?

7 A   It does.

8 Q   By way of example, if Mr. Fisher were to apply --

9   not apply today, but if Mr. Fisher were to suggest

02:18 10   that his case was a miscarriage of justice because

11   person X was a better suspect than him, would the

12   DNA evidence have to be addressed before you would

13   look at a better suspect?

14 A   Yes. The case against -- certainly that's a

02:18 15   stronger compelling bit of evidence that would

16   have to be dealt with.

17 Q   And so no matter how good a suspect Mr. X might be

18   in the Fisher scenario, unless and until the DNA

19   evidence is addressed, it might be a tough sell;

02:18 20   is that a fair way to put it?

21 A   Yes, unless there's equally compelling evidence of

22   guilt for Mr. X, yes.

23 Q   If we can go to the next page, again, I don't

24   propose to go through this in detail, we've

02:19 25   covered most of it, but this would be your review

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1   of what you did with Mr. Wilson. If we can go to

2   004383, and I think you talked about this before,

3   *The recent allegations vs. the historical and*

4   *evidentiary record*, and I think you told us that

02:19   5   when you compared Ron Wilson's recantation

6   compared with the record and other known facts,

7   you began to doubt the credibility of his

8   recantation; is that correct?

9   A   Certainly some of the factual underpinnings that

02:19 10   had been inserted were not established.

11   Q   If we can go to 004387, here you comment again, we

12   touched on this about that part of his

13   recantation:

14   "That the police planted the story that

02:19 15   Milgaard confessed to getting a girl or

16   "hit a girl" in Saskatoon and put her

17   purse in a trash can."

18   You say:

19   "This portion of Mr. Wilson's statement

02:20 20   contains facts in the narrative that

21   only Mr. Wilson could know."

22   And you go on to say:

23   "How would the police know that detail

24   to put the conversation into the context

02:20 25   of the Milgaard admission. There is no

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1   indication on the police file that they

2   were aware of Ms. Beaton's existence or

3   identity before it was revealed by Mr.

4   Wilson. When interviewed Mr. Wilson's

02:20   5   comment was "the confession in the

6   Calgary bus depot did not happen." He

7   acknowledged that he, accompanied by

8   Milgaard, had tried unsuccessfully to

9   telephone Heather Beaton from the

02:20   10   Calgary bus depot."

11   And again, we touched on this, but was that a

12   significant issue for you when you looked at

13   assessing Mr. Wilson's credibility, this Heather

14   Beaton story and the fact that it was planted, or

02:20   15   suggested that it was planted?

16   A   Yes. I mean, the Heather Beaton fact alone, you

17   know, may not amount to much, but taken with all

18   of the circumstances that Mr. Wilson had set out

19   or described in his June 4th, 1990 memo to support

02:21   20   the allegation that he had been, you know, the

21   story had been planted, it was just another

22   factor, but it was, for me, one of the tips of the

23   iceberg that signaled that it was not a plant.

24   Q   And again, so that if Mr. Wilson had simply said I

02:21   25   lied about that, an admission, for whatever reason

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1		I was scared, police pressured me and I had to
2		give them an admission and I decided to say this
3		is when it took place because the Beaton
4		conversation did happen and I just chose that to
02:21 5		be when I gave the fabrication, and is that
6		something that you might have more readily
7		accepted?
8	A	That's possible, yes.
9	Q	As opposed to the fact that the police planted
02:22 10		that in my mind, that that was the concern?
11	A	Yes. Sometimes it's not just the allegation, but
12		how the allegation comes up, whether it's a
13		narrative or whether it's a pinpoint form, you
14		know, some basis.
02:22 15	Q	Did you consider, after your interview with Mr.
16		Wilson, that maybe he just got a little carried
17		away in his recantation and that even though you
18		may have concluded that the planting of the story
19		by the police may have been a bit, I think,
02:22 20		farfetched according to your -- I don't mean to
21		put words in your mouth, but that you had trouble
22		with it, that maybe there was a grain of truth to
23		some of it?
24	A	You know, I considered it and it's for that reason
02:22 25		that we probed it with Mr. Wilson, but I had to

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1   keep in mind that I did not get similar complaints

2   either from Mr. Cadrain, certainly in terms of the

3   police putting things in his mind, nor from Nichol

4   Demyen or Nichol John, and those were also factors

02:23   5   that entered the equation.

6   Q   Go to 004391, and just the comment here about Mr.

7   Caldwell, and I think you are stating here that:

8   "Mr. Caldwell did not participate in any

9   of the witness interviews, nor did he

02:23   10   participate in any dissemination of the

11   material obtained from them, which had

12   not been publicly disclosed by other

13   sources."

14   And I take it that would be accurate is it?

02:23   15   A   Yes.

16   Q   Go down to the bottom -- sorry, there, you say:

17   "Although a number of news reports have

18   featured various aspects of the Milgaard

19   case, most notably, the identification

02:24   20   of Larry Earl Fisher and the recanting

21   of the testimony of Ronald Dale Wilson,

22   the following observations can be made:"

23   And these would be your observations; correct?

24   A   Yes.

02:24   25   Q   "Deborah Hall has no new evidence to

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1   offer. Her description of events

2   mirrored that of the Crown witnesses.

3   She however believed that Milgaard's

4   actions were in gest. The fact that

02:24   5   Milgaard had consumed drugs was before

6   the jury."

7   I take it then that you did not think that there

8   was not much that Deborah Hall had to say that

9   would provide a reasonable basis to conclude that

02:24 10   a miscarriage of justice may have occurred?

11   A   There wasn't anything in Deborah Hall's statement

12   which had not already been presented to the jury

13   in terms of the narrative, and her conclusion that

14   Lapchuk and Melnyk had lied when examined more

02:25 15   closely revealed that her description of what took

16   place mirrored theirs; however, her perception of

17   the actions was that it was a joke, and I think

18   that suggestion was put to the jury and

19   consequently it wasn't new or fresh from that

02:25 20   vantage point.

21   Q   If you go on:

22   "The conclusion in Dr. Ferris report

23   ignores the obvious contamination of the

24   forensic sample."

02:25 25   And a few other comments. And I take it your

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1   conclusion there was that Dr. Ferris' report did

2   not provide a reasonable basis to conclude that a

3   miscarriage of justice had occurred?

4   A That's correct. Dr. Ferris himself, when asked to

02:25 5   consider the issue of contamination, stated that

6   it did not exonerate David Milgaard.

7   Q Next page, I read you already the Larry Fisher

8   conclusion, we dealt with that, you say:

9   "The public recantation of the trial

02:26 10   testimony of Dale Wilson has been

11   carefully scrutinized. It was first

12   disclosed to the National Parole Board

13   at a parole hearing for Mr. Milgaard on

14   June 8, 1990."

02:26 15   What was the significance, if any, of that fact?

16   A It was just part of the narrative, it just

17   signaled to me that it was presented to the Parole

18   Board I suspect in the hope or the expectation

19   that David Milgaard would have a favourable review

02:26 20   by the National Parole Board and would be

21   released, failing which the objective was to

22   submit it to the minister hopefully for his

23   release as well, that's all.

24   Q You then say:

02:26 25   "Mr. Wilson's charges of police

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1   manipulation and coercion are not

2   supported by his own description of the

3   police behaviour and attitude towards

4   him, when he described their questioning

02:26   5   and their investigative procedures."

6   And then you go on to talk about interviews with

7   policemen and you say:

8   "His present recall conveniently recites

9   a conclusion, i.e., I was manipulated,

02:27 10   but does not identify any action other

11   than police questions, in a friendly,

12   courteous, albeit persistent manner to

13   support the charge. Similarly the

14   charge of police coercion is not

02:27 15   supported by Wilson's description of the

16   tactics used by the police."

17   What if any conclusions did you draw about where

18   this allegation of police coercion and

19   manipulation came from?

02:27 20   A   At the time I didn't draw any -- it may have been

21   a suggestion put to him by his interviewer, but

22   that wasn't the issue for this report, that was my

23   assessment.

24   Q   You say:

02:27 25   "The same conclusions can be drawn with

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1   respect to Albert Cadrain. The number

2   of police contacts with Cadrain was made

3   because the accounts given by Wilson and

4   Nichol John did not correspond with

02:28 5   those provided by Albert Cadrain.

6   Nichol John and Ronald Wilson had

7   withheld information from the police

8   over a two month period."

9   What were you referring to in that latter

02:28 10   comment, about information withheld from the

11   police?

12   A   I was referring to what Mr. Wilson described as

13   things that had been omitted from his March

14   statement concerning, for example, getting stuck,

02:28 15   and some of the other things that he talked about.

16   Q   You then go on to talk about Nichol John and you

17   say:

18   "Ms. John continues to have nightmares

19   of a scene in which a man is sitting

02:28 20   astride a woman, in that alley. Her

21   sketch of the scene in her nightmare

22   corresponds to the scene of Gail

23   Miller's murder."

24   Can you tell us, what was the significance of

02:28 25   Nichol John and what she had to say by August,

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1   1990, where does that fit in in your assessment?

2   A   Well, nothing that she told me detracted from her

3   trial testimony and I think that's basically it.

4   She has, however, left me with the strong

02:29 5   impression that she had seen something but was not

6   able to recall it.

7   Q   And again, not looking to get into any advice or

8   discussions with Mr. MacFarlane, but just getting

9   a sense of the status of matters at the time, it

02:29 10   says:

11   "Based on the information gathered to

12   date, it does not appear that further

13   investigation beyond the interview of

14   Mrs. Cadrain which is being pursued by

02:29 15   the R.C.M.P., is required to determine

16   whether there was a probable miscarriage

17   of justice in this case."

18   Is it fair to say that other than maybe a few

19   loose ends, at this time your investigation was

02:29 20   essentially completed?

21   A   Yes, we were thinking of wrapping it up. I think

22   Sergeant Pearson had a few things that I may have

23   omitted to mention there, but I seem to recall

24   that his estimate was that he would be finished

02:30 25   and would provide a report towards the end of

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1   August, possibly the 25th or shortly thereafter.

2 Q Go to 004745 --

3   COMMISSIONER MacCALLUM: If that's a

4   different subject, I would just like to ask the

02:30 5   witness something.

6   MR. HODSON: Sure.

7   COMMISSIONER MacCALLUM: I think, as I

8   recall Sergeant Pearson's evidence, he really

9   hadn't given up on questioning Wilson?

02:30 10 A I'm sorry, questioning Wilson?

11   COMMISSIONER MacCALLUM: He had not really

12   given up on questioning Wilson, he wanted to go

13   further with him, but he left the impression,

14   with me at least, that you were not of the same

02:30 15   mind.

16 A You mentioned Wilson. You didn't mean Fisher?

17   COMMISSIONER MacCALLUM: Fisher, I'm sorry,

18   yeah. Sorry.

19 A Okay. That -- we may have had that difference of

02:31 20   opinion, sir.

21   MR. HODSON: If it might assist,

22   Mr. Commissioner, I do intend to cover, it's

23   coming up in early September, there's a

24   discussion I think between Mr. Pearson and Mr.

02:31 25   Williams on that. I can go to that right now if

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1   you want.

2   COMMISSIONER MacCALLUM: No, you don't have

3   to, just in your own time is fine.

4   BY MR. HODSON:

02:31 5   Q   This article is August 29th, 1990, about

6   *Ex-prosecutor helping probe Milgaard case*, and I

7   think it's a follow-up to the letter that was

8   written to Kim Campbell on that subject; is that

9   correct?

02:31 10 A   Yes.

11 Q   And can you tell us any particular concerns or

12   reaction with this article in the newspaper?

13 A   It's another, I guess, chapter in an attempt to

14   keep the story alive. It recites the claim of

02:32 15   conflict and suggests that yet there's something

16   else that's wrong with this process or the

17   application.

18 Q   And here the suggestion was:

19   "Williams said Caldwell has been ruled

02:32 20   out as a witness because in Milgaard's

21   application to the Justice Department,

22   there was no specific allegation of

23   prosecutorial misconduct."

24   And is that an accurate statement?

02:32 25 A   At that time, yes.

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1   Q   And were there later allegations of, or did you

2   view the August 14th letter to Kim Campbell as

3   changing that; in other words, putting his conduct

4   in issue?

02:32   5   A   No, I didn't. If I used the qualifier at the

6   time, that was wrong, I didn't see Mr. Caldwell as

7   a potential witness other than to assist me in

8   understanding the case. As far as I was aware,

9   there was no sustainable allegation of

02:33   10   prosecutorial misconduct.

11   Q   If we can go to 151588, this is an August 30th,

12   1990 memo to file. It appears you had another

13   conversation with Art Roberts:

14   "...to obtain additional details

02:33   15   concerning the format he used when he

16   performed polygraph tests on..."

17   John and Wilson,

18   "...and to determine whether there were

19   any police officers present during the

02:33   20   pre-test and testing sessions..."

21   Do you recall what prompted you to make those

22   inquiries?

23   A   I may have been prompted to do so as a result of

24   suggestions coming from some of my colleagues or

02:33   25   perhaps my superiors. Umm, in the second

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1   paragraph where it says Mr. Wilson --

2   Q   Yeah, I think that should be Roberts.

3   A   It should be Mr. Roberts.

4   Q   Right. So just for the record, the second

02:34 5   paragraph, it should read Mr. Roberts,

6   "...said that he would clearly explain

7   to the potential subject that the latter

8   was not under any obligation to take the

9   test."

02:34 10   And if we can scroll down, it says:

11   "Mr. Roberts noted that he would usually

12   conduct the pre-test and the testing

13   sessions alone with the subject. He

14   noted that it was generally best to have

02:34 15   no one else in the room, to distract the

16   subject. As best he can recall, <u>he</u>

17   <u>never had any police officers in the</u>

18   <u>hotel room (in which the Wilson test was</u>

19   <u>performed) with him during the pre-test</u>

02:34 20   <u>and the testing session</u>.

21   You've got that underlined. What was the

22   significance of that information?

23   A   The significance of that was, I guess it bore on

24   the issue of police coercion and possible

02:34 25   manipulation as set out in one of Mr. Wilson's

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1   statements, June 4th.

2   Q   Okay. You then,

3   "...related to Mr. Roberts Mr. Wilson's

4   statement concerning the presentation

02:35   5   and selection of the knife as the one he

6   had observed on David Milgaard."

7   And I think this related to Mr. Wilson's account

8   that he was shown knives and suggested which

9   knife to select; is that right?

02:35 10   A   It relates to that, yes.

11   Q   And:

12   "Mr. Roberts disagreed firmly with Mr.

13   Wilson's characterization. He noted

14   that Mr. Wilson's description reminded

02:35 15   him of a "peak of tension test" that he

16   probably had perform.

17   He said that the test was one

18   used to determine whether an individual

19   was truthful in identifying objects. A

02:35 20   pre-test session would be performed; the

21   subject would be questioned to determine

22   the right questions to comfortably

23   elicit a yes or no answer..."

24   And then:

02:35 25   "Typically, the suspected weapon would

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1   be placed in the middle of a row of

2   weapons, and the subject would be asked,

3   in turn, for example, "Did you see this

4   knife in X's possession in the car on

02:35   5   the trip between Regina and Saskatoon?"

6   The subject would know the order of the

7   questions. By the time the third

8   question was asked, the tension in the

9   subject would peak and then would

02:36   10   subside. The subject's responses to the

11   questions would be monitored on the

12   polygraph machine."

13   And I think we also heard some evidence from Mr.

14   Sawatsky on that. Again, can you tell us the

02:36   15   significance of that information?

16   A   It provides, shall we say, some clarification

17   possibly of, in relation to Mr. Wilson's statement

18   that he was shown the knife. It just adds to the

19   context.

02:36   20   Q   Did you have any concerns, based on your

21   discussions with Mr. Roberts, or your interviews

22   of anybody else, as to whether or not Mr. Roberts

23   may have improperly influenced either Wilson or

24   John in their statements or evidence?

02:36   25   A   No, sir.

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1   Q   Go to 015878, and this is a September 5, 1990

2   report to you, and attached, if we can go to

3   002369, is Mr. Pearson's report of August 28th,

4   1990, and I think you told us back in June that

02:37 5   Sergeant Pearson would regularly report, or

6   monthly report and you would eventually get copies

7   of this; is that correct?

8   A   Yes.

9   Q   And then if we can go to page 002376, here is his

02:37 10   *Investigator's Comments* regarding Mr. Fisher, he

11   says:

12   "At the time of this report Larry Fisher

13   has not been eliminated as a suspect..."

14   So that's August 28th, 1990,

02:37 15   "...even though he has agreed to answer

16   all questions that we have for him. The

17   investigators are at a disadvantage when

18   dealing with Mr. Fisher, as we have no

19   information on his movements at the time

02:38 20   of Gail Miller's murder. Being unable

21   to challenge Fisher's honesty, a valid

22   polygraph is absolutely essential if he

23   is to be cleared as a suspect."

24   And then I think that would have been -- do you

02:38 25   recall getting that report from Sergeant Pearson?

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1   *A*   Yes, I do.

2   **Q**   And then if we can go to, the doc. ID is 056743,

3   and go to 056790. And this is September 6th,

4   1990, and this is Sergeant Pearson's note, and the

02:38 5   Commissioner had referred to this a few moments

6   ago in relation to Sergeant Pearson's evidence,

7   but his note indicates:

8   "While at a psychological

9   profiling seminar being hosted by the

02:38 10   Prince Albert City Police, I received a

11   telephone call from Mr. Williams at my

12   hotel room in P.A. at the Marlborough

13   Inn. Mr. Williams stated he had

14   received my last report and seemed

02:39 15   somewhat concerned that I still

16   considered Fisher to be a suspect and

17   was asking why, in view of the denials

18   Fisher made during his interview with

19   us. I explained to Mr. Williams that,

02:39 20   in my mind, Fisher remains a suspect as

21   he has not yet provided answers to

22   questions which would properly explain

23   his activities as stated by his ex-wife

24   Linda Fisher. I still believe a

02:39 25   properly conducted polygraph examination

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1   is essential, as we know very little of

2   Fisher's activities on the date of Miss

3   Miller's murder and a polygraph is only

4   one method to determine the truthfulness

02:39   5   of his answers. I explained to Mr.

6   Williams that I am not prepared to take

7   at face value the answers provided by

8   Fisher to date. It was also explained

9   that Fisher's reluctance to cooperate

02:39   10   causes me some concern."

11   Now that's his note of the call. Do you agree

12   with that or do you have a recollection of what

13   was discussed and what prompted the call?

14 A   What promised the call, I guess, was my reading of

02:40   15   his earlier memo. He basically said he didn't

16   eliminate Fisher as a suspect, and we talked about

17   that. But, you know, at that point perhaps we

18   were going at slightly different purposes.

19 Q   What, explain that, what purposes?

02:40   20 A   Like what I now understand is that in addition to

21   assisting us for the purposes of a 690, he had

22   separate instructions from his headquarters to

23   reinvestigate the case, and to the extent that he

24   was involved in that and hadn't yet eliminated

02:40   25   Fisher as a suspect that was a valid purpose for

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1   him to pursue. I certainly was interested in that

2   outcome to the extent that his investigations, if

3   he turned up something that would link Mr. Fisher

4   to the Gail Miller homicide, I would certainly be

02:40 5   interested, and we had that exchange, and we left

6   it at that.

7 Q So, just so that I'm clear, what were your

8   purposes, then, in having Sergeant Pearson

9   investigate Larry Fisher and how did those differ

02:41 10   from his purposes?

11 A Well it's one thing to be investigating certain

12   aspects of the Milgaard application, it's another

13   to be launching a reinvestigation of a homicide

14   investigation, and what I now learn is that maybe

02:41 15   he had a wider mandate from his superiors than the

16   mandate that I had asked him to perform.

17 Q And so your mandate, and we covered this earlier,

18   your mandate to him was what?

19 A Well, essentially, to investigate the allegations

02:41 20   surrounding -- or brought up by Linda Fisher and

21   brought up by the Milgaards. But certainly, once

22   we had tracked it down, I didn't realize at the

23   time that he was, you know, still wedded to the

24   idea of the polygraph, because my hopes by then

02:42 25   for a successful polygraph were rapidly

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1   disappearing.

2   Q   And so your purposes in having Sergeant Pearson

3   investigate Larry Fisher would have been limited,

4   then, to what you needed to check for the purposes

02:42   5   of your 690 review; is that correct?

6   A   I think that's a synopsis of it, yes.

7   Q   And that would be something lesser than a complete

8   investigation as to whether or not Larry Fisher

9   killed Gail Miller?

02:42 10   A   Because that could take quite some time, yes.

11   Q   And so --

12   A   I mean, there's some overlap, but I thought that

13   it may have been a misunderstanding between us.

14   But I thought that, by then, the polygraphing or

02:42 15   the re-polygraphing of Mr. Fisher was probably not

16   going to happen and --

17   Q   For example, back in February of 1990 when you

18   received the Larry Fisher information, I take it

19   that you could have gone to your counterparts in

02:43 20   Saskatchewan and asked them to have the

21   appropriate police agency launch an investigation,

22   a murder investigation, and in other words "go

23   investigate whether Larry Fisher is the

24   perpetrator of the murder and, when you're done,

02:43 25   report back"?

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1   A   Yes.

2   Q   And in which case you likely would have had to put

3   your 690 review on hold pending that

4   investigation?

02:43   5   A   Possibly. But the other thing is they may not

6   have, based on the evidence that had been

7   provided, they might have said "look, this isn't

8   enough to launch an investigation".

9   Q   Okay. So in the circumstances, though, I think

02:43   10   you've told us you chose to get the RCMP to

11   provide assistance to you?

12   A   Yes.

13   Q   But I think you said back in June, and are saying

14   again today, what you had asked Sergeant Pearson

02:43   15   to do was something quite different than a -- than

16   the Saskatoon police would do if they were

17   re-opening the investigation into the death of

18   Gail Miller to determine if Larry Fisher was the

19   perpetrator?

02:44   20   A   It would be a cut down version, yes.

21   Q   Okay. And so here you said, in September of 1990,

22   did you become aware from Sergeant Pearson that he

23   had broader instructions from his superiors than

24   what you had, or what's --

02:44   25   A   No, I didn't become aware of that until I was

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1   reviewing some documents for the purposes of this,

2   this Inquiry.

3   Q   Okay. And do you recall what it was that caused

4   you to think that Sergeant Pearson was going

02:44 5   beyond what you had asked him to do?

6   A   Well, it wasn't so much then that I thought he was

7   going beyond what I had asked him to do, it was

8   just that I guess the last document had a

9   paragraph in which he said 'absolutely essential

02:45 10   to do the polygraph before he could eliminate

11   him'. Well, I was getting a fair bit of pressure

12   to wrap things up, and it was uncertain when we

13   could get that polygraph conducted for Fisher. We

14   knew that, or at least I knew that he was

02:45 15   scheduled for some surgery to deal with a medical

16   condition, and it may be some time if we -- after

17   that for rehabilitation or to get better, and it

18   was uncertain when we could get to that. And on

19   the other hand, I had the Milgaards asking for a

02:45 20   quick decision, and my own bosses saying "give us

21   what you've got and let's wrap it".

22   Q   And so is what you are telling us that it was your

23   understanding that, if Sergeant Pearson had been

24   conducting a typical murder investigation as a

02:46 25   police officer -- I'm not sure if any is 'typical'

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1   -- but if he was investigating, trying to

2   determine whether or not Larry Fisher killed Gail

3   Miller for the purposes of laying criminal

4   charges, was it your understanding, in September

02:46   5   of 1990, that Sergeant Pearson was not done, was

6   not satisfied that that investigation, if that

7   were the purpose, --

8   A Yup.

9   Q -- had been concluded?

02:46   10   A It -- for -- as far as he was concerned there was

11   still some things he had to run down, and I didn't

12   tell him to stop.

13   Q Pardon me?

14   A I didn't dissuade him from doing that, but I just

02:46   15   completed my report as at that time.

16   Q Now given that he, and I think his evidence was

17   that he was only involved because Federal Justice

18   asked him to, are you saying that he was free to

19   do whatever other police work beyond your mandate,

02:46   20   that you weren't stopping him from that?

21   A That's correct.

22   Q Did you have any understanding, though, that that

23   was -- or, I guess, why would he do that given

24   that his instructions were coming from you?

02:47   25   A Well, you'd have to ask him, I -- you know, we had

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1   the conversation and we had -- he expressed his

2   views and I said "okay".

3   Q And so what about the other area -- and I think

4   Sergeant Pearson, when we were dealing with this

02:47 5   note about following up with Mr. Fisher -- and I,

6   I could be wrong on this -- but I think his

7   evidence was to the effect that, since he was

8   getting instructions from you at this point, he,

9   although he had a few follow-ups he did not pursue

02:47 10   matters much further, would you agree with that,

11   at least as far as his work for you?

12   A I believe that's correct.

13   Q And do you recall a discussion with him as well

14   about interviewing the Fisher sexual assault

02:47 15   victims, was that around this time, or was that at

16   a prior date? I believe Sergeant Pearson

17   testified that he had a desire to interview them.

18   A I think that happened with respect to the second

19   application, --

02:48 20   Q Okay.

21   A -- and we had talked about it, and based on some

22   information that I had at the time, namely that

23   perhaps the second application would be decided or

24   would be referred to a Court, I asked him to hold

02:48 25   up on commencing those, or some of those at

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1   least -- I think there was exceptions but -- until

2   such time as a decision had been taken as to who

3   would be conducting the review of the second

4   application, and whether anything that I would do

02:48   5   or I would cause him to do might unduly interfere

6   with how that second application was processed.

7   Q   Okay. If we can just go back to 002376. And was

8   this the language, then, that concerned you in the

9   August 29th, 1990 report, that at this time:

02:49   10   "... Larry Fisher has not been

11   eliminated as a suspect ...",

12   and that it's:

13   "... absolutely essential if he is to be

14   cleared as a suspect.";

02:49   15   was it that language that caused you concern?

16   A   Yes, I think that's the paragraph that I was

17   referring to. You know, he may well be -- it's

18   one thing to clear someone as a suspect, it's

19   another thing to find evidence to link them to the

02:49   20   offence.

21   Q   And so is your concern, here, that you thought

22   Sergeant Pearson might be doing a murder

23   investigation as opposed to inquiring into the

24   grounds that you asked him to review?

02:50   25   A   It seemed -- well, they are connected, but it was

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	1		a bit wider.
	2	Q	And after your discussion with him, then, did you
	3		come away from that with a view that you had
	4		effectively stopped him from pursuing that, at
02:50	5		least for your purposes?
	6	A	Umm, no. We had an understanding.
	7	Q	And what was that?
	8	A	Well I understood that if he wanted to check it
	9		out and clear as a suspect, fine, let me know if
02:50	10		there was anything that linked them.
	11	Q	But as far as -- let's be clear on this. In early
	12		September 1990 is it fair to say that, as far as
	13		Larry Fisher was concerned, you, Federal Justice,
	14		did not have any further instructions for Sergeant
02:50	15		Pearson, he was done his work for you as far as
	16		Larry Fisher was concerned?
	17	A	By and large, yes.
	18	Q	Well was there anything left that you had asked
	19		him to do that he hadn't done?
02:51	20	A	Not specifically. He may have had -- there may
	21		have been some follow-up tasks that were in his
	22		job jar that he wanted to finish up.
	23	Q	Okay. 004394. And this is a September 10th, 1990
	24		letter, I think you mentioned this yesterday, this
02:51	25		is a letter from both Mr. Wolch and Mr. Asper. It

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1   says:

2   "We are writing to you

3   pursuant to your request that we

4   summarize our final position with

02:51   5   respect to the application by David

6   Milgaard under Section 690 ..."

7   I did not locate any written communication from

8   you to them asking for this, and it's not

9   referred to in the letter, do you think this may

02:51   10   have been a phone call?

11   A   Yes.

12   Q   And, do you recall, what was the nature of that

13   call?

14   A   The response may be a bit of confabulation because

02:52   15   I'm -- we had a number of calls. But, typically,

16   the calls with the request for "give me your final

17   submissions" would signal to Mr. Wolch and Mr.

18   Asper that we had completed our investigations

19   and, before concluding our report, "please

02:52   20   summarize your position so that that position is

21   presented to the minister."

22   Q   And so I think you've told us that, by the end of

23   August 1990, you had basically finished your

24   investigation; is that correct?

02:52   25   A   Yes.

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1   Q   Before you answer this question I want to make

2   sure that, Mr. Frayer, that I am not stretching

3   here, and indeed Mr. McLeod.

4   But are you able to comment on

02:52 5   whether or not -- you mentioned in one of your

6   earlier answers that you were getting some

7   pressure to get this done, and to the extent that

8   you're not getting into advice given or received,

9   are you able to tell us about what factors were in

02:53 10   play that might have prompted you to get the --

11   your investigation concluded sooner rather than

12   later?

13   And, Mr. Frayer, do you have

14   any --

02:53 15   MR. FRAYER: I have no problems with that.

16   A   Well you've drawn my attention to a couple of news

17   articles with some fairly damning headlines about

18   the impact that the delay in getting a decision

19   had had on Mr. Milgaard. There were public

02:53 20   complaints about the pace with which we were

21   proceeding, by Mr. Milgaard's counsel, and

22   certainly there were communications with --

23   between counsel and my superiors and letters to

24   the minister asking us to make haste in terms of

02:54 25   completing what work we had to do so that a

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1   decision could be forthcoming. To ensure that

2   whatever decision was taken fully reflected the

3   position of counsel, having regard to the fact

4   that the grounds that were initially identified in

02:54   5   the December '88 application had been expanded and

6   to ensure that we had a full appreciation of those

7   grounds, I had asked Mr. Wolch and Mr. Asper, I

8   forget which, to summarize their final position,

9   and this letter is their response to that request.

02:54   10   BY MR. HODSON:

11   Q   If we can go through, so this would have been what

12   you had asked them to provide, signaling to them

13   that "we're done our investigation, nearing

14   completion, give us a letter confirming the list

02:55   15   of grounds"; is that a fair way to put it?

16   A   Yeah. I -- you know, we had had things come in in

17   instalments and I wanted to make sure that, in

18   completing the report, we certainly zeroed in on

19   the grounds that they identified as being

02:55   20   significant and ensured that their concerns were

21   brought to the attention of the minister, not in

22   my words, but in theirs.

23   Q   And again, *Companions*, it talks about Ron Wilson's

24   evidence:

02:55   25   "... totally recants the incriminating

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1   evidence that he gave against David

2   Milgaard.",

3   and it also appears:

4   "... that the evidence of Albert Cadrain

02:55 5   is highly suspect ..."

6   Under *Unsavoury Witnesses*:

7   "Secondly, the evidence of

8   Messrs. Melnyk and Lapchuk has been

9   rebutted by that of Deborah Hall, who

02:56 10   did not testify at the trial and was

11   never interviewed by the police, as well

12   as Ute Frank, who was in fact

13   interviewed and gave a statement which

14   could have been useful to Milgaard, not

02:56 15   the Crown. Neither of these ladies had

16   anything to gain at the time that they

17   made their respective statements ...

18   while Messrs. Melnyk and Lapchuk were

19   not only of unsavoury character, but

02:56 20   given that they were pending at the time

21   of the trial on serious charges, had

22   everything to gain."

23   So, again, that would be -- anything different

24   there, in 1. and 2., that you had not already

02:56 25   received in earlier communications?

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1   A   No, sir.

2   Q   Next page:

3   "Thirdly, we have presented

4   your department with the two reports of

02:56   5   Dr. Ferris and Dr. Markesteyn, which

6   either totally exonerates Mr. Milgaard,

7   or entirely discredits the forensic

8   evidence tendered at the trial."

9   Again, nothing new there, would you agree?

02:56   10   A   That's correct.

11   Q   "Added to this evidence, we

12   have provided you with the identity of

13   the person who is very likely the true

14   killer. At the very least, the

02:56   15   undisputed fact that a serial rapist was

16   operating in Saskatoon at the time of

17   the Gail Miller murder, and that this

18   rapist had attacked at least two women

19   who resided in the neighbourhood where

02:57   20   Gail Miller was murdered, would have

21   been very relevant at the trial. We

22   have communicated with Mr. Justice

23   Tallis, and he advises that he was never

24   made aware of the fact that these rapes

02:57   25   were occurring in such short proximity

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1   before the Gail Miller murder. The jury

2   was never given the opportunity to

3   consider that Milgaard might not be

4   guilty because another person who had

02:57 5   committed two rapes and an indecent

6   assault was on the loose in Saskatoon

7   and that this person might be

8   responsible."

9   And I take it that's, I think we touched on that,

02:57 10   you were aware of that being a ground put forward

11   as it's stated there?

12   A   Yes.

13   Q   And then:

14   "Our submission goes further,

02:57 15   however, in that we say that even if one

16   accepts the untruthful evidence tendered

17   at the trial, the theory of the Crown is

18   simply not plausible."

19   And then it goes on to talk about various things

02:57 20   that would suggest that the evidence at trial, it

21   was impossible for David Milgaard to have

22   committed the offence, and is that something that

23   had been communicated to you earlier?

24   A   Not in that format. We had had discussions,

02:58 25   verbal discussions, in which this -- you know, the

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1   time, what I called the timing factor in the

2   alibi, had been discussed. This capsulizes the

3   submission.

4   Q   So the 'timing' was that, based on what the jury

02:58 5   heard, it wasn't possible for David Milgaard to

6   have committed the crime; correct? That was the

7   ground put forward. And I think you said earlier

8   that your answer to that was, well, the jury

9   thought otherwise, that unless there was something

02:58 10   different, there was nothing to provide a basis on

11   which a miscarriage of justice may have occurred?

12   A   Yes. Barring new evidence, this was simply

13   re-arguing a point that was fully litigated at

14   trial.

02:58 15   Q   And here:

16   "Furthermore, not only did he have an

17   alibi with the Manager of the hotel,

18   ...",

19   that was Rasmussen; now he testified at the

02:58 20   trial?

21   A   He did.

22   Q   And what did you make of this alibi ground?

23   A   The Crown's evidence established a total absence

24   of a car having been stuck in the vicinity of -- I

02:59 25   mean certainly that was, again, an issue that was

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1   dealt with at trial.

2   Q   Okay. I see it's 3:00, Mr. Commissioner.

3   COMMISSIONER MacCALLUM: Thank you.

4   *(Adjourned at 2:59 p.m.)*

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6   of our shorthand notes taken herein to the best of our

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12   _____, CSR

13   Karen Hinz, CSR

14   Official Queen's Bench Court Reporter

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18   _____, RPR, CSR, CRR, CBC

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