

1 **Vancouver, BC**

2 **November 9, 2011**

3 **(PROCEEDINGS RECONVENED AT 10:05 A.M.)**

4 THE REGISTRAR: Order.

5 MS. GERVAIS: Good morning, Mr. Commissioner. I would just
6 like to introduce Melissa Louie who is counsel
7 for the First Nations Summit.

8 THE COMMISSIONER: Thank you. Your name again is?

9 MS. GERVAIS: Melissa Louie.

10 THE COMMISSIONER: Thank you for appearing. Yes.

11 **DOUGLAS A. LEPARD: Resumed**

12 **EXAMINATION IN CHIEF BY MR. VERTLIEB CONTINUED:**

13 Q Thank you, Mr. Commissioner.

14 Deputy LePard, I appreciate this now your
15 third day in the witness stand and we do
16 genuinely appreciate that. We know how hard
17 you've worked to meet all the requests of the
18 commission over the last couple months and you've
19 been truly responsive and helpful and we do
20 appreciate that. I just want you to understand
21 the reason I'm going through your evidence in so
22 much length is I believe it will allow us to go
23 through individual police officers' evidence in
24 quicker fashion. That's the reason why I'm going
25 through it in detail with you, hoping that it

1 will allow for a smoother and quicker flow once
2 individuals come.

3 A Yes. Thank you.

4 Q I also want to make it clear that we understand
5 you had almost no involvement whatsoever with the
6 Missing Women Investigation. The only
7 involvement we've seen is when you were asked to
8 comment about some major case management
9 principles and that was all, so any of the
10 questions I put to you are from the reference
11 point of realizing you were not conducting this
12 investigation nor participating in any way; you
13 understand that?

14 A Correct.

15 Q In fact, you were in that timeframe a sergeant;
16 you were not in the kind of superior position
17 you're in today?

18 A Yes, that's correct.

19 Q Let's just continue then. I want to finish with
20 the phase evidence and then I want to come to
21 some topics such as dealing with informants and
22 the surveillance that was conducted and Mr.
23 Pickton as a suspect in a bit more detail. If
24 you would turn please to tab 6 of phase 4 --
25 sorry, tab 6, phase 4, volume 2.

1 A Yes.

2 Q This is a Missing Persons Review Team Case
3 Investigation Log?

4 A Yes.

5 Q The very bottom entry, last line, in 1999, just
6 read that to us please.

7 A The date of December 7, 1999, the initials are
8 1621, which I know to be Detective Constable Lori
9 Shenher, and it says: "Request for sergeant in
10 Missing Person Review Team full time to Field,"
11 which would be Sergeant Field.

12 Q Go to the next page, two days later, second line
13 from the top?

14 A "Sergeant request denied via Field by Dureau."

15 Q The next tab is tab 7. This is an RCMP document
16 from Constable Chris Gunn to Dan Dickhout.
17 Dickhout was VPD?

18 A Yes.

19 Q I just put this in to show that the Vancouver
20 Police in 2000 are still receiving information
21 about issues before this tribunal.

22 A Yes.

23 Q Let me move on to tab 10. This is a 2000 memo,
24 January 20. I wanted to ask you a question about
25 this one-page memo. Reading it it did not appear

1 that there was any preventative strategy in there
2 as it relates to protection of the vulnerable
3 women. Is that a fair read of this document?

4 A Yes, I agree.

5 Q Let's turn now to tab 11. This document that I
6 have is three pages, undated. We believe the
7 date is January 2000 but we're not certain. Can
8 you help us with that?

9 A That does sound to be about the right time
10 because that was the time that Sergeant Field was
11 meeting with Staff Sergeant Davidson and Corporal
12 Filer, the criminal profilers from RCMP, and I
13 believe this is Staff Sergeant Davidson's notes.

14 Q Turn to the first page under number 8, 8.1?

15 A Yes.

16 Q You mentioned that that was known in the police
17 circles as the "Valley murders"?

18 A Yes, that's what it was known.

19 Q 8.1, those three names, Olajide, Pipe and Yonker,
20 those relate to victims in a Valley murder case?

21 A Yes.

22 Q Just to shorten the chronology, there was a
23 belief at one time that Pickton might have been
24 responsible for those murders?

25 A Yes, there was certainly an investigative theory

1 that if they solved the 1995 Valley murders that
2 that might also result in solving the case of the
3 missing women because clearly it was a serial
4 killer, so it was a reasonable conclusion. I
5 think that many people, although they believed
6 that, also knew they couldn't rest on that theory
7 exclusively, that it wasn't necessarily going to
8 be true.

9 Q Understandable to think that or be wondering
10 about it. As events unfolded Pickton was
11 conclusively eliminated as a suspect in those
12 three murders?

13 A Yes, as conclusively as they could in that his
14 DNA was eliminated.

15 Q There was no DNA match and there was enough DNA
16 to match him to those murders and --

17 A There was suspect DNA and his did not match.

18 Q This was -- can we say by the beginning of 2000
19 Pickton had been eliminated in the Valley
20 murders?

21 A No. I believe that he was not eliminated until
22 about November -- I would have to check my notes
23 but I think it was later in 2000.

24 Q But in 2000?

25 A Actually, in 2001. I would like to check just to

1 make sure. I know that I have that document in
2 my report.

3 THE COMMISSIONER: Go ahead.

4 MR. VERTLIEB:

5 Q I'll tell you what, it's not material for the
6 questioning right now. During the break check it
7 and give us the date.

8 A Sure.

9 Q Just following, as you just said a moment ago,
10 Pickton was considered for that but it wasn't
11 conclusive. If you look at the bottom of this
12 page, "There's a strong probability of more than
13 three serial killers being responsible for the
14 outstanding unsolved murders of sex trade workers
15 in BC."

16 A Yes.

17 Q So that's your point, that people wondered if
18 Pickton was responsible for the Valley murders
19 but there was a recognition he might not be and
20 he could be responsible in other murder cases?

21 A Correct. My recollection is that he wasn't
22 excluded until 2001 but I would have to confirm
23 that.

24 Q The last sentence of this page: "The following
25 are three of many violent offenders known to

1 attack prostitutes capable of murder." The first
2 name is --

3 A Robert Pickton.

4 Q Now, the next page under Proposal, you see the
5 concept of creating a JFO task force to
6 accomplish the following objectives?

7 A Yes.

8 Q Is this the proposal that Field referenced
9 earlier, we discussed this yesterday, that Field
10 was considering a JFO herself, but is this what
11 we're talking about now as of a JFO becoming more
12 discussed by police?

13 A Yes. I think this representative of a number of
14 discussions that Sergeant Field had with Staff
15 Sergeant Davidson about how they could advance
16 the investigation generally, and she was very
17 clear in her mind that to have a chance at
18 success that they needed to have a JFO and it
19 appears from this and from all the documents that
20 I have seen is that Staff Sergeant Davidson was
21 very supportive of that.

22 Q Move to next tab 12, please. This is a Vancouver
23 Police document. It's a memo from Shenher to
24 Gord Spencer, an inspector, and Geramy Field?

25 A Yes.

1 Q The date is November 24, 2000, but we think, and
2 you can help please, it's a July 2000 memo. Can
3 you help us with that?

4 A I know that I did document that in my report and
5 it will be in my timeline so I could check that
6 on the break if you like.

7 Q If you don't mind. This shows that the VPD is
8 still active in the investigation as it relates
9 to the missing women?

10 A Yes.

11 Q And as it relates to Pickton. If you look at
12 page 3, Potential Suspects.

13 A Yes.

14 Q I'll read it out: "Having said that, there are
15 three men that stand out simply because of their
16 involvement and propensity toward violence
17 against sex workers in this area. They are:
18 Robert William Pickton," and two other names
19 blanked out?

20 A I think the important paragraph is the second
21 one, underneath his name there's a bigger
22 paragraph and then a smaller one in terms of yes,
23 it's correct that he was still on their radar and
24 being worked on but, again, further to what I
25 described yesterday: "Extensive work on Pickton

1 has been done by the Coquitlam RCMP and the
2 Provincial Unsolved Homicide Unit. We recently
3 became aware that Pickton has been interviewed by
4 RCMP members, but we do not know the contents of
5 that interview. It is my feeling that there is
6 more follow-up to be done with respect to his
7 activities and his property which was recently
8 sold. As of November 2, 2000 he was still living
9 there."

10 Q I was going to read that and I'm glad you did.
11 What emerged reading that is that Pickton
12 apparently had been interviewed but that
13 knowledge was not conveyed by the RCMP to the
14 VPD?

15 A Yes, that's correct.

16 Q Is that information you would have wanted to
17 know? I don't mean you personally, but I mean
18 the Vancouver Police Department.

19 A Yes, it was an investigation that was obviously
20 of great interest to the VPD, and as I comment in
21 my report, it's somewhat inexplicable that wasn't
22 shared with the VPD. I don't think they were
23 expecting to be necessarily asked to participate
24 or give advice about how that would be conducted,
25 but certainly to be advised of the results of it.

1 Q Is this an issue that speaks to the word
2 "coordination"?

3 A Absolutely.

4 Q I want to say as well, deputy, when the
5 commissioner comes to the recommendation part of
6 his work I know you have strong views and
7 opinions about going forward what needs to be
8 done. I don't wish to question you under oath
9 about that, I think that's more appropriate for
10 the study commission part of the commissioner's
11 work. I just want you to know that we are live
12 to the issues around going forward and
13 coordination and regionalization and issues like
14 that.

15 A Thank you.

16 Q What matters here though is that the RCMP did not
17 tell your police force about this in any way and
18 the contents?

19 A That's correct.

20 Q So that means as well you weren't informed it was
21 about to happen?

22 A No.

23 Q You weren't asked for any input on how to conduct
24 the interview?

25 A That's correct.

1 Q Were you asked for any input about the subjects
2 to be covered or tactics to be used?

3 A No. In fairness, it was the RCMP's discrete
4 investigation into that information so I would
5 not want to suggest that they had some duty to
6 take our advice, although I think that it's
7 always good to brainstorm these things. My point
8 is that it was obviously an investigation of
9 great interest to the VPD because he was the
10 VPD's number one suspect for the missing women
11 generally so that would have been of great
12 interest, and it was a surprise to the
13 investigators and a surprise to me when I learned
14 of this, that that information wasn't shared.

15 Q And important information, correct?

16 A Yes.

17 Q The first page you talk about -- not you
18 obviously but the victim profile is outlined.
19 You have read this document before?

20 A Yes.

21 Q I won't take you through all the points, the
22 document is here, but from your work would this
23 profile generally be something you're in
24 agreement with?

25 A Yes, absolutely.

1 Q What came through here is that these were women
2 who were living in the Downtown Eastside and the
3 idea of them travelling or going to Calgary or
4 whatever just didn't make sense?

5 A It was nonsense.

6 Q Tab 13, please. This is a document from the
7 Vancouver Police file, it's from Connor in the
8 RCMP, and it's to the officer in charge E
9 Division. Do you see that?

10 A Yes.

11 Q It's dated May 2002 which is of course after
12 Pickton was arrested?

13 A Yes.

14 Q The question I wanted to ask you, you have read
15 this document before?

16 A Yes, I believe so.

17 Q Is this information that you would have wanted to
18 know if you were part of the VPD investigation?

19 A The information about the meetings that occurred
20 i February of 2000?

21 Q Yes.

22 A Yes, of course.

23 Q Thank you. I wanted to turn to the next page
24 which is a confidential letter from McCartney to
25 Mike Connor dated May 7, 2002?

1 A Is that in the same tab?

2 Q It should be.

3 A It's not in my binder.

4 Q I'll read out the part I wanted to ask you about.

5 I'll give you the number for your counsel. It's

6 VPD-001-012282. This is a discussion and it

7 references the fact that there was going to be

8 preparation of an affidavit for intercept on

9 phones on Pickton. Do you remember that, that

10 there was discussion by the RCMP?

11 A I do remember reading that in Corporal Connor's

12 notes early on and certainly in the summer of

13 1999. I know there was also a report done by

14 Corporal McCartney in February of 2000 in which

15 he had done essentially an audit of the Coquitlam

16 file and made some recommendations, so I don't

17 recall specifically if that was in there but I do

18 recall reading his report.

19 Q You have a good memory because it does reference

20 what was going on at meetings in February of

21 2000. Here's what I want to ask you about.

22 McCartney's letter is referencing back to after

23 he's arrested and obviously some questions are

24 starting to be asked of what happened.

25 A Right.

1 Q McCartney says: "We went through various
2 scenarios and we're just getting ready to put the
3 push on the file. Of course February 19 Richard
4 Jung was murdered at the IMAX and everything went
5 into the dripper. From here on out we had a
6 string of attempted murders in the Johal homicide
7 until I left in September." When you read that
8 did that suggest to you that the RCMP were not
9 therefore as anxious about pursuing Pickton
10 because other events came up that took their
11 time?

12 A Generally I think that they were anxious to
13 proceed. At that time, February of 2000, it was
14 -- I think that it was noted that this was high
15 priority information that was absolutely worthy
16 of following up and Corporal McCartney had set
17 out a list of to-do's, investigative strategies
18 to pursue the information, and then as you
19 described there was intervening events, and so
20 obviously that was a factor and I can describe
21 what I think ought to have been part of the
22 critical analysis. I have that information in my
23 report in terms of what do you do when you've got
24 information that's so compelling like that about
25 such a serious issue when you don't have adequate

1 resources.

2 Q "Serious issue" meaning a serial murderer on the
3 loose?

4 A Certainly someone who is believed to have
5 committed at least one murder on the Pickton
6 property in Port Coquitlam and looked good for
7 being responsible for other murders as well.

8 Q Turn next to the next tab please, tab 15. This
9 is a VPD Administrative Report dated January 14,
10 2000 and this is a report to the chair and
11 members. That must be the police board?

12 A Yes. I have the report. I think the date is --
13 it's hard to read but I think it's February 14,
14 2000.

15 Q You're right, I misread it. February 14, 2000.
16 I wanted to ask you about the third page at the
17 bottom, last paragraph. "The RCMP are going to
18 submit a proposal to their boss, Chief
19 Superintendent Gary Bass, asking for funding and
20 resources for the following: to attempt to
21 profile the suspect or suspects." This is the
22 one I wanted to ask you about, the second one,
23 "re-open the Pickton file." The word "re-open"
24 jumps out because that sounds as though Pickton
25 file was -- well, what did you take that to mean?

1 A I thought it was an inaccurate characterization
2 of it because the file had never been closed. It
3 was continuously assigned to various
4 investigators throughout the time period but it
5 was clear that it had become a lower priority and
6 Sergeant Field and Detective Constable Shenher
7 would talk, for example, to members of the
8 Coquitlam RCMP, to Constable Yurkiw and it's
9 recorded in her notes and in documents saying
10 we're still working on it but it's a low priority
11 now because of others. So Sergeant Field was
12 having discussions. Those notes represent her
13 discussions with Staff Sergeant Davidson and it
14 would be more accurate to say "reinvigorate" that
15 investigation as opposed to "re-opening" it
16 because it was never closed. That's clear, for
17 example, from Corporal McCartney's notes in
18 February of 2000 of the audit that he did and
19 it's even clear in April of 2001 when there was a
20 brainstorming session in the Coquitlam Serious
21 Crimes Section in which they said this is still a
22 high priority to investigate and they also
23 discussed -- because by this time Evenhanded was
24 in its early days and they described it being a
25 high priority and it also said that one of the

1 actions agreed to was to forward a package on the
2 information about Pickton and their investigation
3 to date to Project Evenhanded to Inspector Adam
4 particularly.

5 Q We'll come to Evenhanded in a moment. Tab 16, a
6 memo from Geramy Field to Vancouver Police dated
7 April 10, 2000. The only reason I wanted to ask
8 you about this is the very last page and to
9 confirm the signature beside Field, whose
10 signature is it under "Conclusions"?

11 A Chief Constable Terry Blythe.

12 Q So the chief had knowledge of this investigation
13 on an ongoing basis?

14 A Yes, he was certainly aware of it.

15 Q The next document I want to ask you about is a
16 handwritten note, tab 17, a VPD document but it
17 seems to be an RCMP handwritten note.

18 A Yes. It may have been in our documents but
19 that's an RCMP form. It's their case file notes.

20 Q Do you know who wrote that file note?

21 A If I read over it I might be able to tell from
22 the context.

23 Q We thought it was believed to have been written
24 by Officer Zalys, Z-A-L-Y-S.

25 A Yes, that makes sense. He was the staff sergeant

1 in the Serious Crimes there.

2 Q Look at the handwritten note and the date of this
3 is -- can you help us with the date?

4 A In fact, as I read it, it reflects exactly what I
5 recall reading in Staff Sergeant Zalys's
6 statement.

7 Q April 2000; is that right?

8 A The date at the bottom right, yes, it looks like
9 April 8, 2000.

10 Q Just read the -- I want to have you read the
11 bottom: "Spoke to Sergeant Pollock as per
12 discussion." Read that paragraph for us.

13 A It says: "Spoke to Sergeant Pollock as per
14 discussion at MCS," which I assume he's referring
15 to major case management conference or course,
16 "about the file. His unit will get at it when
17 they can but" -- not sure what the next word
18 is -- "that might be a while."

19 Q "But that might be a while"?

20 A "But that might be a while. This was in large
21 part because of the recent homicide." There's
22 two words I can't read.

23 Q "Two members"?

24 A "Two members being seconded to the E Division
25 Major Crime Unit and other incoming priorities.

1 I told him that Inspector Moulton had told me
2 that 20 resources were forthcoming and to do the
3 best we can when we can. He would deal with
4 matters down the road should they arise."

5 Q So that last sentence, "Moulton had told me
6 that," I read it as, "no resources forthcoming"?

7 A Yes.

8 Q Moulton was in charge in Coquitlam?

9 A He was the second in charge. He was the
10 operations officer reporting to Superintendent
11 Rick Hall.

12 Q But at one time he was the top man on the Pickton
13 investigation; he didn't run the detachment but
14 he was running Pickton in Coquitlam?

15 A He was the senior officer that they were
16 reporting to. Staff Sergeant Zalys, Sergeant
17 Pollock and so on. He was the one that was the
18 hands-on manager person. I didn't see that
19 Superintendent Hall had any sort of hands-on
20 involvement.

21 Q "Moulton told me that no resources were
22 forthcoming and to do the best we can when we
23 can. He said he could deal with matters down the
24 road should they arise." You were not -- the VPD
25 was not aware of this document back at the time

1 of the year 2000?

2 A No.

3 Q Would it have been important for the VPD to know
4 that that was the RCMP Coquitlam view about how
5 they were prioritizing Pickton?

6 A Yes, absolutely.

7 Q Had that happened the VPD might have -- had you
8 known that how might it have affected the way
9 your police department handled Pickton?

10 A First of all, I should say that this didn't
11 absolve the VPD of being assertive on its own to
12 inquire but certainly the VPD in 1998 -- it's
13 documented in Corporal Connor's notes -- had
14 already been offered the resources from the VPD.
15 Inspector Moulton had acquired the use of our
16 strike force; Staff Sergeant Giles, Corporal
17 Connor documented it in his notes, offered
18 funding for example to assist with an undercover
19 project; that a joint force operation had been
20 proposed. So how that might have impacted is
21 that clearly resources were an issue that were
22 impacting on the Coquitlam RCMP but, as I've said
23 and as I write in my report, when you have
24 compelling information about a very serious
25 matter -- we're not talking about a ring of car

1 thieves or something like that -- information
2 about a very serious matter compels you to take
3 action. If the information is compelling, which
4 it was, then how do we resource it. I believe it
5 was Staff Sergeant Henderson said from the RCMP,
6 had we received a business case from the
7 Coquitlam RCMP we absolutely would have had the
8 capacity to staff it. Similarly, if the
9 Coquitlam RCMP had contacted the VPD and said,
10 look, this information, we agree it's really
11 solid but we're really struggling with resources,
12 it was entirely in the capacity of the VPD to
13 reassign resources and say let's work this
14 information to the bone, let's work on this
15 together, let's dedicate some staff to it, like
16 occurred in the summer of 1999, and really work
17 that information. The VPD had provided that sort
18 of assistance to other agencies even for
19 investigations that we did not have an interest
20 in, for example, in 1996 in the Terry
21 Driver/Abbotsford killer investigation, when we
22 stood down a strike force squad of ten members
23 and sent them out to Abbotsford to assist them
24 because they asked us. So certainly that was an
25 option for the Coquitlam RCMP but the Coquitlam

1 RCMP never communicated that to the VPD, never
2 made a request. In fact, I even see in one of
3 Deputy Chief Constable Evans' interviews that
4 Corporal McCartney was surprised to know that we
5 even had access to his memo of February 2000 and
6 said I might not have written it if I had known
7 it was going to be provided to the VPD. So
8 clearly they were holding on to that
9 investigation but weren't able to resource it,
10 and the VPD had a great interest in it obviously
11 because the women for the most part were going
12 missing from Downtown Eastside -- not all of
13 them, there was one from Surrey, several from New
14 West, there were other areas -- but for the most
15 part they were going missing from Vancouver, so
16 obviously we had a great interest in it and had
17 the VPD been asked to provide resources as the
18 VPD had when requested in the past, we would have
19 provided them or should have provided them but
20 were not given that opportunity.

21 Q I understand. You do speak to some of this in
22 your report that's an exhibit?

23 A Yes, I do.

24 Q This was written by Staff Sergeant Zalys?

25 A I believe it's Zalys.

1 Q And he's a staff sergeant?

2 A Correct.

3 Q At the bottom it looks like he's sending a copy
4 to Constable Yurkiw?

5 A Yes.

6 Q Wolthers and Fell, the next two tabs, 19 and 20.
7 Tab 20 is a May 12, 2000 memo to Terry Blythe,
8 the chief?

9 A Yes.

10 Q Written by Wolthers and Fell?

11 A I believe that it was written by Constable
12 Wolthers but on the behalf of both of them.

13 Q And the previous tab, May 9, 2000, from Field to
14 those two officers, they were detectives?

15 A They were detective constables.

16 Q Field writes, second paragraph: "After
17 discussions with Sergeants Lean and Paulson and
18 consultation with Keith Davidson, I have some
19 grave concerns over the integrity of the
20 investigation surrounding," and it's blanked out,
21 "and where it should be headed. I will discuss
22 this with you Tuesday." She's writing Fell and
23 Wolthers. They were focused on someone other
24 than Pickton?

25 A That's correct.

1 Q Was Field concerned about their focus and the
2 intensity of their focus on someone other than
3 Pickton?

4 A She was concerned not only with their focus on
5 someone else but other problems that had arisen
6 in the investigative team because of their
7 conduct and that they weren't doing other things
8 that they were assigned, that they were working
9 on that particular suspect, who was a worthy
10 suspect, but they were working on him to the
11 exclusion of all the other work that there was to
12 do on a variety of suspects and a variety of
13 investigative strategies.

14 Q That included Pickton?

15 A That included Pickton, yes.

16 Q Look at the last paragraph of tab 20 and then I
17 want to ask you a question. Last paragraph: "It
18 is unconscionable to think that personality
19 conflicts could cause the transfer of Detective
20 Constables Mark Wolthers and Doug Fell at such a
21 crucial time when the Vancouver Police
22 Department's Missing Persons Review Team are
23 narrowing in on one person responsible for the
24 Missing Downtown Eastside Women." Do you see
25 that?

1 A Yes.

2 Q Were you critical of Wolthers and Fell in your
3 report?

4 A I was.

5 Q We've read your report and it's for everyone to
6 read. Give us the essence of your criticism of
7 those two detectives.

8 A The essence of it was, number one, it was a
9 classic case of tunnel vision. They believed in
10 their suspect to the exclusion of all others and
11 wrote some things that were just ridiculous about
12 it; that they could tell from his body language
13 when they interviewed him that he was absolutely
14 responsible for all the missing women and things
15 like that that just can't be supported. But the
16 main problem was they had been such a disruptive
17 influence in the investigation. Detective
18 Constable Shenher had no supervisory authority,
19 Sergeant Field was not in the room actually to
20 deal with them because she had her full-time
21 assignment in the Homicide squad. They had lots
22 of energy but needed to be closely supervised and
23 so their conduct as reported to by every member
24 of the Missing Women Review Team was very
25 destructive to the work of the team.

1 Q They were detective constables?

2 A Yes.

3 Q So they had no officer rank, they were at the
4 bottom end of the -- they were constables?

5 A Yes, they did not hold the rank of detective
6 which at that time as I described had ranked
7 parity with corporal. They had no supervisory
8 authority or anything like that, they had not
9 been promoted. We call them "detective
10 constable" because they were in a plainclothes
11 role. They were constables in the same way that
12 Detective Constable Shenher was.

13 Q That's the bottom end of the ranks, as it were,
14 constable?

15 A It's the first rank, yes.

16 Q The question on a systemic basis, from your
17 review of the file can you tell us if the police
18 chief or any of deputies did anything to resolve
19 the conflict you've just discussed?

20 A Well, it wouldn't normally have been handled at
21 that senior a level. It was being handled by
22 Sergeant Field in consultation with her
23 inspector, Inspector Spencer, who I think was
24 very diligent in dealing with that. The problem
25 started because of the way they came into the

1 investigation and they brought some baggage with
2 them. They weren't selected by the investigative
3 team, but as Deputy Chief Constable McGuinness
4 outlined, it was so difficult getting resources
5 that they were two warm bodies that had a suspect
6 and it was, "Can you use them? Can you work with
7 them?" That was to generate some problems
8 because the people at the investigative level
9 felt rightly or wrongly that these two people
10 come with the endorsement of the deputy chief and
11 so we're stuck with them, so they were tolerating
12 them. And also because Sergeant Field was not
13 there seeing what was going on and Detective
14 Constable Shenher was left to deal with them, I
15 know there was a number of occasions she had to
16 speak with them about the importance of following
17 Detective Constable Shenher's direction and that
18 sort of thing and she was unsuccessful. Then the
19 investigation where they went to Lethbridge was
20 the straw that broke the camel's back and that's
21 when in consultation with Inspector Spencer they
22 decided that they would be leaving the
23 investigation.

24 Q In your report, page 267, footnote 374, this is
25 where you write footnote 374: "The failure of

1 Wolthers and Fell to report that they had
2 received pics of Pickton's photos had striking
3 similarities to an event in the Bernardo
4 investigation. As described on page 119 of the
5 Campbell report, a police officer failed to file
6 a report on an incident of stalking where he was
7 given Bernardo's plate number. Given that
8 investigators were looking just for that kind of
9 report and in the area where then Detective
10 Inspector Rossmo had advised he thought the
11 people responsible for Kristen French's abduction
12 would be found was a failure of monumental
13 consequences. The failure of Fell and Wolthers
14 to report on their information was similarly
15 confounding." They had photographs that they
16 were showing to sex trade workers and some of the
17 women identified Pickton and that information was
18 not passed on; is that what we're talking about?

19 A Yes. When I talk about it being confounding it
20 wasn't as serious in terms of the impact on the
21 investigation as the example I used from the
22 Bernardo investigation because there was other
23 information that already tied Pickton to the
24 Downtown Eastside that you mentioned; victim
25 1997, surveillance in 1998. There was other

1 information available. What was confounding
2 about it was that he had always been the Missing
3 Women Review Team's number one suspect. There
4 had been all this activity leading up to the
5 summer of 1999 and they chose not to share that
6 information which was -- it was completely
7 unacceptable that they didn't share that
8 information and not just that information but any
9 information, because part of the way an
10 investigation is supposed to work is each
11 investigator at the end of the day provides their
12 notes to the file coordinator about what they've
13 done and what they've accomplished so that all
14 that information that can come into the
15 investigation and be reviewed broadly in the
16 context of other information. So their decision
17 not to share that information was unacceptable,
18 hard to understand.

19 Q This also speaks to the issue around coordination
20 of a major investigation?

21 A Yes, it does speak to that, in that it's
22 important that there be systems in place that
23 ensure that the rules are followed, but no system
24 can address every possible -- if someone
25 intentionally does not follow the rules that are

1 put in place then it's hard to guard against
2 every human error.

3 Q Thank you. Next tab, tab 21, this is a VPD
4 document but it's from Elderberry, which was RCMP
5 language, May 15, 2000.

6 A Yes. When you refer to them as VPD documents
7 that is because the VPD came into possession of
8 the file notes of the RCMP, but that's what this
9 is.

10 Q You came into this evidence after Pickton had
11 been arrested?

12 A Sorry, I did?

13 Q Obviously -- I'm sorry, I realize --

14 A I just want to differentiate between the VPD and
15 myself.

16 Q I didn't ask a good question. My apologies.
17 We've already established that the information
18 RCMP had was not always shared with the VPD?

19 A Correct.

20 Q Was this document here in the VPD possession
21 prior to the Pickton arrest?

22 A I do not believe so. I don't recall seeing this
23 document.

24 Q Now, the last paragraph, there's a reference
25 to --

1 A I'm sorry, I'm going to correct myself. Now that
2 I see what's at the bottom of this, I do recall
3 this document. I do recall reviewing this
4 document. I do not believe that it was known to
5 the VPD at the time that it occurred.

6 Q That's our understanding as well, we thought you
7 had seen it.

8 A Yes.

9 Q Let's talk about this comment: "Lynn Ellingsen
10 appears to be back drinking and using drugs. She
11 was recently arrested about fighting with Leah
12 Best." I'm going to go into a separate
13 discussion with you about informant handling, but
14 for the commissioner's benefit, Ellingsen is a
15 woman who was the source of extremely important
16 information that had been relayed to Ross
17 Caldwell and Leah Best?

18 A And another witness as well -- another person as
19 well, yes.

20 Q The question I want you to think about for when
21 we discuss informants is whether this might have
22 been a good time to think about trying to
23 interview both of these two women since they seem
24 to be at odds. Might that have been a good time
25 for a police officer to interview them, because

1 they were unhappy with each other, to see whether
2 one of them would speak more openly about their
3 knowledge?

4 A While I agree with your general premise, that it
5 had always been part of the RCMP's strategy to
6 re- interview Lynn Ellingsen and it was
7 documented in the notes and I believe that that
8 was in Corporal McCartney's report of February of
9 2000, so yes, it would have been good. I don't
10 think that there was -- that they were going to
11 need to rely on them being mad at each other
12 because Leah Best had already been very
13 co-operative and provided them the information to
14 the best of her knowledge about what she had been
15 told about Lynn Ellingsen and that was extremely
16 consistent with the information provided to Ross
17 Caldwell and also to some extent to Menard.

18 Q The next tab 22, it's only in here for you to
19 confirm it's part of the Vancouver file and this
20 would be something for the recommendation phase
21 when we talk about data mining deficiencies.

22 A Yes.

23 Q Tab 25, please. August 23, 2000. This is when
24 Lori Shenher is still actively working on the
25 investigation?

1 A Yes, I believe so, yes.

2 Q I didn't understand this first paragraph. She
3 says: "As you are aware, I was working on loan
4 in the strike force August 17 and 18, 2000."
5 Strike force, that's Vancouver's --

6 A Surveillance unit.

7 Q You know about that because you did that, we
8 heard about that on Monday?

9 A Yes.

10 Q "This was a file for Detective Constable Porteous
11 where we were advised that obtaining photographs
12 of our targets was our top priority.
13 Unfortunately, none of the nine rolls of film
14 shot using two 35 mm cameras on August 17 was
15 useable. I believe some photos of value were
16 shot August 18." What's this about? We just
17 couldn't understand photos of whom and why?

18 A I actually don't know that. I would be
19 speculating.

20 Q The next tab 26, this is from Field to Spencer,
21 September 29, 2000.

22 A Yes.

23 Q "As you are aware we have suffered a setback in
24 our plans to have RCMP assist us with the Missing
25 Persons Review Team investigation. The major

1 problem has been a lack of manpower, both from
2 the investigative side of things and from the
3 availability of trained SIUSS data entry analysis
4 personnel." I want to deal with that paragraph.
5 What is SIUSS?

6 A It's an acronym and I believe it stands for
7 Special Investigation Unit Support Software -- I
8 might have gotten that partly wrong. It's
9 analytical software to support investigations.

10 Q What does she mean when she's writing to Spencer,
11 "The major problem has been a lack of manpower
12 from the investigative side of things and from
13 the availability of trained SIUSS data entry
14 personnel." What's the lack of manpower from the
15 investigative side?

16 A Well, by this time I believe what she's referring
17 to is the investigative team, the Missing Women
18 Review Team, by about this time has deteriorated
19 to the point where it's, again, Lori Shenher
20 working full time on it and Sergeant Field
21 continuing to work on it off the side of her
22 desk. By this time -- I would want to confirm in
23 my chronology -- but I think that Detective
24 Constables Fell and Wolthers are no longer in the
25 investigation, Detective Lepine and Detective

1 Constable Mark Chernoff have returned to their
2 homicide duties. I think by this time Detective
3 Constable Alex Clark had completed her assignment
4 which was mostly reviewing the records for
5 indigent burials and so on to try and see whether
6 she might find some of the missing women might
7 have been buried under an alias or something like
8 that. So by this time the investigative team
9 really didn't have much more investigative
10 capacity, and she also refers to the lack of
11 personnel because they never did have a properly
12 trained full-time person to operate the SIUSS
13 system to its potential, which was a systemic
14 problem in the VPD at the time, a complete lack
15 of trained analysts which is quite different from
16 today.

17 Q What is the handwritten note? It looks to be
18 addressed to Inspector Spencer.

19 A It says: "Inspector Spencer. Please make the
20 appropriate arrangements in CISBC," which is the
21 Criminal Intelligence Service of British
22 Columbia, "thanks," and it is signed by a deputy
23 chief and I'm not sure whose signature that is.

24 Q One of the three deputy chiefs?

25 A Yes.

1 Q The next document is tab 27.

2 A I believe it's Deputy Chief Unger's signature but
3 I'm not sure. It would make sense because that's
4 who was in charge of the investigation at the
5 time that Inspector Spencer was in Major Crimes.

6 Q If you look at the bottom handwritten note,
7 October '02, it seems to be addressed to DCC
8 Unger?

9 A Yes.

10 Q Is that from Geramy, "Thanks G"?

11 A Yes, I believe so.

12 Q The next tab 27.

13 A It could be from Inspector Spencer though.

14 Q It looks to be Unger who was one of the deputy
15 chiefs?

16 A He was one of the deputy chiefs that Inspector
17 Spencer reported to at that time.

18 Q Next document, October 2, 2000, talks about the
19 staffing issues, it's from Spencer to Unger?

20 A Yes.

21 Q It references significant staff shortages?

22 A Yes.

23 Q Look at the second page, Missing Persons Review
24 Team. This is what you were saying a moment ago,
25 at the time of this document, October 2000, it

1 would appear it was only Lori Shenher who was
2 assigned full time to the team?

3 A Right. By that time the investigation had run
4 out of steam really; they had lost capacity.
5 They still thought that they were dealing with a
6 historical issue, that there weren't new women
7 who had gone missing since the last report that
8 they were aware of which was January of 1999.
9 There had been some more reports but they were
10 historical from previous years, and so those two
11 things were working together and resulted in a
12 deterioration of the capacity of the
13 investigation to go forward, and this was during
14 the time that Sergeant Field was working with
15 Staff Sergeant Davidson and others trying to get
16 a joint force operation going and that was the
17 strategy that she was pursuing and that was
18 certainly supported by Inspector Spencer.

19 Q The next tab is 28, a memo from Field to Rossmo.
20 You've seen this?

21 A Yes.

22 Q The question I wanted to ask is what happened to
23 this request for additional work by Dr. Rossmo?

24 A I don't think that anything happened about it. I
25 do recall that when I interviewed him I asked him

1 about this and my recollection is what he said,
2 that was shortly before he left the VPD, first of
3 all, I believe, and secondly, he said: I didn't
4 really have anything to say, I had provided my
5 report. So I don't think he provided more
6 information after this request.

7 Q November 3, 2000, tab 31, a memo from Shenher to
8 Field. This is just before Detective Constable
9 Shenher leaves this work of the missing women?

10 A Right. I believe that she tried to leave earlier
11 but it wasn't until near the end of the year that
12 she actually did leave.

13 Q Burned out, as you said yesterday?

14 A Yes.

15 Q The third paragraph: "Several persons of
16 interest were discussed, most notably Robert
17 William Pickton," and another person who is
18 irrelevant.

19 A Yes.

20 Q Nothing had changed in terms of Pickton being a
21 person of interest?

22 A No. She notes that he was being discussed, she
23 notes that Corporal McCartney was now handling
24 the file in Coquitlam. It was still at the top
25 of her list and she still understood it to be an

1 investigation of some kind occurring in
2 Coquitlam.

3 Q Next page, Davidson and Filer -- tell us,
4 Filer -- we know Davidson, he's the profiler.
5 Tell us who Filer is.

6 A That was Corporal Scott Filer and he worked with
7 Staff Sergeant Davidson, another criminal
8 profiler in the RCMP.

9 Q "Davidson and Filer are going to submit a
10 proposal to Gary Bass." Gary Bass then was a
11 senior person in the RCMP, E Division?

12 A Yes.

13 Q "Asking for funding and resources for the
14 following:" and the second note is, "re-open
15 Pickton file."

16 A Again, that was the same -- probably copied and
17 pasted from the same memo that really
18 mischaracterized it slightly -- but
19 "reinvigorate" would have been a better word.

20 Q We've concluded phase 4 in the questions. I just
21 wanted to have you look at Exhibit 33 and if you
22 turn now because we're at the commencement of
23 phase 5 which we've styled as JFO Project
24 Evenhanded. By the end of this memo which is now
25 November 2000, if you look at this memo it seems

1 that eight women went missing after the fall of
2 2000 and associated with Mr. Robert William
3 Pickton.

4 A I'm having a hard time reading the font on the
5 boxes, but yes, there were more women going
6 missing. I do think that it's important to look
7 at not just the date of the report but the date
8 they were last seen.

9 Q I agree.

10 A That helps us know whether they were continuing
11 going missing or it was just the lag time of the
12 reports, because they often occurred long after
13 they were last seen.

14 Q I agree with that. There's actually more women
15 that were victims of Pickton but by our reference
16 to this document it would seem that eight women
17 went missing after November 2000 that we were
18 just discussing. I'll leave that with you
19 because you know this file very well. If I'm
20 wrong, please tell me.

21 A I believe that is consistent. I started it at a
22 different time but I looked at from the summer of
23 1999 forward and at the time that I was writing
24 it, because the numbers would change, there were
25 13 more women who had gone missing and at that

1 time, at the time of my writing, DNA belonging to
2 11 of them was found on the Pickton property.

3 Q So 11 women killed after --

4 A The summer of 1999.

5 Q And at that time Mr. Pickton was considered to be
6 the top suspect?

7 A Yes.

8 MR. VERTLIEB: This might be a good time to break.

9 THE COMMISSIONER: All right. Thank you.

10 THE REGISTRAR: This hearing will recess for 15 minutes.

11 **(PROCEEDINGS ADJOURNED AT 11:00 A.M.)**

12 **(PROCEEDINGS RESUMED AT 11:22 A.M.)**

13 THE REGISTRAR: Order. This hearing is now resumed.

14 MR. VERTLIEB:

15 Q Detective LePard, let's discuss Evenhanded which
16 is phase 5 as we've established. Evenhanded was
17 organized right near the end of 2000 and started
18 to work more actively the beginning of 2001?

19 A That's correct.

20 Q The memorandum of agreement which needed to be
21 signed was signed sometime in June of 2001?

22 A My recollection is it was May but you could be
23 right.

24 Q May/June. Nothing turns on it, but it was later
25 in the spring that the actual agreement was

1 signed?

2 A Yes.

3 Q You've read about Evenhanded as part of the work
4 you've done in the review task you've performed?

5 A I didn't look closely at the work of Evenhanded.
6 I looked closely at the work of the VPD and then
7 closely at the investigation of the Pickton
8 information in Coquitlam, so I did generally have
9 an understanding of what Evenhanded was doing. I
10 did speak to Don Adam. I did review the
11 correspondence between the RCMP and VPD and I
12 knew what their proposed strategies were and so
13 on. I really did not have a good understanding
14 of what they were doing until I read the
15 interviews that Deputy Chief Evans had done with
16 members of Evenhanded, although I certainly
17 followed the evidence and the trial and I knew
18 what happened post-arrest, post-February 5, 2002.

19 Q Let's discuss investigative strategies. The
20 first phase was going to deal with a number of
21 things including looking for crime scene DNA?

22 A Yes.

23 Q Given the circumstances of bodies being
24 destroyed, as it were, would you expect there to
25 be crime scene DNA in the way it's meant in the

1 wording of that project?

2 A No. If the assumption is the bodies were all
3 being disposed of, then you wouldn't expect to
4 find crime scene DNA, but I think it was more
5 than that. What their strategy was was to look
6 at historical cases where DNA analysis hadn't
7 been done because the technology wasn't available
8 and look at historical cases to see whether there
9 were exhibits that were suitable for analysis to
10 solve cases of serious attacks on sex workers and
11 in doing that create a suspect pool that they
12 would get cast-off DNA from, and I agree, there
13 wasn't much to compare it to at that point.

14 Q You said something I wanted to come to right now.
15 That is, the third phase would be obtaining DNA
16 samples from suspects for comparison. You
17 understand that was one of their plans as well?

18 A Yes.

19 Q From your work do you understand that in point of
20 fact DNA of missing and murdered women was on
21 Pickton's clothing that had been seized in the
22 1997 attempt murder?

23 A I came to learn that.

24 Q That DNA was not analyzed by the RCMP until after
25 Pickton was arrested?

1 A Yes. My understanding is it wasn't analyzed
2 until 2004.

3 Q Exactly. So phase 3, talking about obtaining DNA
4 samples from suspects, from your review of the
5 file, the RCMP with the clothing of Pickton from
6 1997 had his DNA and he was the suspect?

7 A Yes, that's true.

8 Q They also had DNA of two women who were proven to
9 have DNA found at the farm?

10 A That's my understanding.

11 Q Phase 4 as a strategy was following a DNA hit,
12 investigation to confirm or eliminate each
13 suspect. What does the language "DNA hit" mean?

14 A Well, a DNA hit would be, for example, if you
15 obtained -- if there had been an exhibit from one
16 of the historical cases of an attack on a sex
17 worker and it was then suitable for submission
18 for DNA analysis then that could be submitted to
19 the suspect DNA data bank which became available
20 in 2000 and a "hit" would refer to associating it
21 to a known suspect who had been identified, for
22 example, in another crime.

23 Q That means if someone from the police, and we
24 know it's not VPD, had gone to the clothing from
25 the 1997 attempt murder and analyzed it, a DNA

1 hit could mean DNA from one or more women found
2 on the clothing?

3 A Generally. It wouldn't occur that way because
4 what you're talking about in terms of the DNA
5 data banks is that there was a suspect data bank,
6 but what was available was that early on one of
7 the things that Sergeant Field had done was try
8 to get either DNA actually from the missing
9 women. She went to the BC Cancer Agency and got
10 pap smears to get DNA or she collected familial
11 DNA, so Evenhanded had DNA from victims or
12 familial DNA that would help them identify so
13 that could have been compared to DNA that was
14 found on Pickton's clothes if they'd had Pickton
15 DNA, which I understand they did, or familial DNA
16 that would have helped them. So not as direct as
17 getting a hit from the data bank because that was
18 for suspect or crime scene DNA, but certainly
19 possible to do that analysis.

20 THE COMMISSIONER: How many women's DNA did Evenhanded have?

21 A I would have to check my report but I would say
22 my recollection is of the 27 women that were on
23 the VPD list at one point they had over 20.

24 THE COMMISSIONER: Over 20 women's DNA was on Pickton's
25 clothing?

1 A No, no, sorry.

2 THE COMMISSIONER: Go ahead.

3 A They had collected DNA from the victims via pap
4 smears, for example, or familial DNA, but in
5 terms of the victim DNA that was found on
6 Pickton's clothing when it was analyzed, clothing
7 and boots in 2004, it's my understanding there
8 was DNA found from two of the women.

9 MR. VERTLIEB:

10 Q Those two women were Cara Ellis --

11 A And Borhaven.

12 Q And Andrea Borhaven. So it's clear to the
13 commissioner, DNA from Cara Ellis and Andrea
14 Borhaven was identified on Pickton clothing that
15 was in a police locker from the attempt murder in
16 1997?

17 A That's correct.

18 Q Not analyzed until 2004?

19 A Correct.

20 Q Both of those women are Pickton victims?

21 A Yes.

22 Q We discussed investigative strategies. One of
23 the premises of that work though was that
24 investigative leads would be from primarily sex
25 trade workers where bodies have been recovered;

1 correct?

2 A Yes.

3 Q The problem with --

4 A Or where it had not been a murder. For example,
5 a serious assault, so they had a victim.

6 Q But given what was known about Pickton putting
7 women through a grinder -- and I don't mean to
8 sound rude about that but that's the evidence --
9 would it make sense that you would be recovering
10 a body as a premise to your strategy?

11 A A couple of things. First of all, if the
12 assumption that you're operating under which is
13 in the MOU for Evenhanded is that you have
14 suspect or suspects who is able to dispose of
15 bodies, then that is going to make that difficult
16 obviously. But when you refer to Pickton, we
17 should be clear that Evenhanded was not looking
18 at Pickton. He was on their list of suspects,
19 they were never particularly looking at him and
20 there was some reasons for that, but I don't
21 think we should inform the discussion by saying
22 why would they do that if Pickton could get rid
23 of bodies because they weren't looking at
24 Pickton. But certainly the strategy -- and I'm
25 not saying it was a bad one -- but it would not

1 have led to Pickton because other than the victim
2 1997 incident he's never been identified to any
3 other offence to my knowledge as a result of the
4 examination of historical cases or anything like
5 that.

6 Q You led exactly to the next question I'll ask
7 you, was this Evenhanded investigation going to
8 get at Pickton?

9 A Not that aspect of it. That was not going to
10 lead to Pickton.

11 Q In terms of focus, was Evenhanded looking at this
12 investigation from historical perspectives or
13 from ongoing crime perspectives?

14 A My understanding is that when Evenhanded first
15 began its work in the beginning of 2001 that they
16 believed that the missings were historical.
17 Although the whole investigation was premised on
18 the belief that the missing women had met with
19 foul play, it was believed to be historical and
20 they operated under that assumption my
21 understanding is until about the summer of 2001
22 and then realized there had been reports that
23 they had missed -- I'm not saying that in a
24 pejorative way -- that they were aware of, other
25 information came forward, they did some more

1 intensive searching of other jurisdictions to see
2 if there were women meeting the profile of the
3 women from the Downtown Eastside who were also
4 missing, and I think that they determined that
5 there were another 18 not from the Downtown
6 Eastside necessarily but that met the profile and
7 possibly could be part of the series, and so at
8 that point realized that what they had was an
9 active serial killer, not a historical serial
10 killer, which certainly changed the urgency of
11 the investigation.

12 Q I was just going to ask you that, you're reading
13 my mind once again. Was there a sense of any
14 urgency that you gleaned from your review up to
15 the summer of 2001?

16 A No. I didn't glean that from my review and from
17 reading much more detailed information as the
18 task force was getting underway from reading
19 Detective Chief Evans' interviews, it was clear
20 that up until the summer of 2001 that it wasn't
21 proceeding on the basis that we've got an active
22 serial killer out there, and then after they did
23 realize that, I think in fairness there was a
24 sense of urgency and that's where the proposal
25 for the proactive team in the Downtown Eastside

1 was developed and that came together very
2 quickly.

3 Q If someone had read Dr. Rossmo's case assessment
4 from May 1999 where he talks about someone going
5 missing approximately every eight weeks, would
6 that have suggested to the people at Evenhanded
7 that this was something of more urgency?

8 A I think that based on the information that
9 Evenhanded had, because Dr. Rossmo's report was
10 based on historical data from prior to January of
11 1999, so the pattern that he was describing was
12 from 1997, 1998, leading up to the end of 1998
13 and January of 1999, so the pattern was occurring
14 then, but in fairness to Evenhanded their
15 information was that that pattern of going
16 missing every eight weeks was not continuing
17 until they realized that in fact it was
18 continuing and when they got better information,
19 better data, and I think that what they
20 determined was that it had in fact accelerated,
21 that there was a woman going missing I think as I
22 recall about once every six weeks on average.

23 Q You're aware of a report written by Brian Oger,
24 August 23, 2001?

25 A Yes.

1 Q The interesting thing about him is he was a
2 22-year-old data entry clerk?

3 A Yes.

4 Q He was not a police officer?

5 A No.

6 Q He was not a criminology student?

7 A No.

8 Q He was just in a short-term position helping
9 enter data?

10 A Yes.

11 Q He wrote a paper called The Serial Killer Theory,
12 and in that -- that's correct, you've seen his
13 paper?

14 A Yes.

15 Q I think you can help me on this, did he say the
16 most likely scenario was that the missing women
17 were victims of a serial killer and the problem
18 was ongoing?

19 A I would have to refer to the exact words but if
20 you're reading to me, yes, that sounds familiar.
21 Mostly what he was doing was repeating
22 information that was already known. That was the
23 whole basis of the creation of Evenhanded in
24 terms of it being ongoing. Can you give me the
25 date he wrote that again?

1 Q It's in tab 28, the Evenhanded binder, page 12.
2 This is a small binder, page 12, tab 28.

3 A Yes.

4 Q Page 12, he outlines his background: "I am only
5 a 22-year-old student, employed to run the
6 computer program which manages the files of this
7 case. I do not have a degree in criminology, I
8 have no experience as a police officer, I am not
9 a statistician, and I certainly do not enjoy
10 playing political games. However, as a person
11 who has read almost every sheet of paper in this
12 case, who knows the profiles of almost 70
13 murdered and missing sex trade workers, and has
14 read the criminal histories of almost 700
15 suspects, it is my considered and valuable
16 opinion that not enough is being done on this
17 project, and appropriate political and economic
18 pressure needs to be applied in order bring this
19 investigation up to par."

20 A Yes.

21 Q He writes at page 8 under a section called
22 Implications: "Prior to the beginning of August,
23 2001, it was assumed or hoped that the killings
24 had stopped after December of 2000, and that the
25 women were no longer going missing. However,

1 this can no longer be said with confidence."

2 Those are comments that you were reflecting on a
3 few moments ago; is that correct?

4 A Yes.

5 Q From your review does it appear to you that it
6 was after this date that the RCMP Evenhanded
7 Project took a different focus on making it an
8 active investigation rather than historical?

9 A Yes.

10 Q It is interesting that a 22-year-old student
11 without any of the training that he outlines that
12 was in his paper would sort out what was
13 happening in the environment in which he was
14 working, is it not?

15 A It shows the value of how someone that, as he
16 describes, is reading every piece of paper, if
17 that is true, and getting the big picture of
18 what's going on.

19 Q Then on August 30, Staff Sergeant Adam briefed
20 the VPD and RCMP senior management and he notes:
21 "From all indications sex trade workers are
22 continuing to go missing. There is a significant
23 urgency that we move quickly to identify a
24 suspect if possible."

25 A Yes.

1 Q Concerning the lack of urgency, when you did your
2 work -- this may not have been known to you but
3 the head of Evenhanded went on leave from June 14
4 to August 12, 2001.

5 A I learned of that.

6 Q So he was off basically two months. That speaks
7 as well to the lack of urgency, does it?

8 A Yes, that they didn't have a sense of urgency
9 because they didn't understand that women were
10 still going missing and, in fact, it seemed the
11 numbers accelerating.

12 THE COMMISSIONER: Who didn't have a sense of urgency?

13 A Mr. Vertlieb is asking me about the team
14 commander of Evenhanded who had gone on holidays
15 for several months, that was Inspector Adam.

16 MR. VERTLIEB:

17 Q Two months, June 14 to August 12. Evenhanded's
18 investigative strategy changed by the late fall
19 into the end of 2001?

20 A Well, what I would say is that they added some
21 strategies to their existing one. They didn't
22 abandon what they were doing before but they
23 added the proactive team of 12 police officers to
24 work in a semi-covert capacity on the Downtown
25 Eastside.

1 Q As you noted in your report though, it was Nathan
2 Wells who was a very junior officer with less
3 than two years' experience who ultimately took
4 the steps to obtain a search warrant which led to
5 the discovery of items from missing women which
6 then led to Pickton's arrest?

7 A Yes, that's what broke the case was Constable
8 Nathan Wells. I understand it was the second
9 search warrant he had ever written, got a search
10 warrant for firearms, and as a result of what him
11 and his team of investigators found in that
12 search that's what broke the case.

13 Q So we're clear, Nathan Wells, was he to your
14 knowledge part of Evenhanded investigation?

15 A No, he was not part of the Evenhanded
16 investigation and he was not part of the still
17 open investigation by Coquitlam Serious Crime
18 into the Pickton information, because to
19 understand, Mr. Commissioner, the Evenhanded
20 investigation which was looking at the issue very
21 broadly in terms of they had a suspect list I
22 think of over 600 potential suspects, although
23 their priority one suspects were much smaller
24 than that, between 21 and 39, I believe, so they
25 were doing an investigation generally, but the

1 Coquitlam RCMP still had an open investigation
2 into the specific information about this single
3 incident and this single suspect and that was
4 Willie Pickton. So at that time during 2001, for
5 example, after Corporal Yurkiw retired, that
6 investigation had been was assigned to Constable
7 Sherstone and I believe her supervisor at the
8 time was Corporal McCartney -- I could be wrong
9 about that -- but it was still an open file when
10 Evenhanded started its work in the beginning of
11 2001. By April of 2001 the investigative team in
12 Coquitlam had met to brainstorm, which is quite
13 appropriate, what they ought to do with that
14 information. They classified it as high priority
15 to continue in the investigation. They discussed
16 investigative strategies and one of their actions
17 was to forward a package on their investigation
18 and Pickton to the Evenhanded team. To this day,
19 I don't know whether that package was ever
20 forwarded. What I do know from my own review and
21 from reading Deputy Chief Evans' interviews is
22 that clearly Evenhanded was not familiar in any
23 detail with all the information in the
24 Coquitlam's RCMP file pointing to Pickton.

25 MS. TOBIAS: Mr. Commissioner, Cheryl Tobias for the

1 Government of Canada. I have listened to my
2 friend Mr. Vertlieb's questions to this witness
3 and note that a number of times the witness has
4 been asked or has responded as to information
5 contained within the interviews conducted by
6 Deputy Evans, and I would suggest that that
7 appears to me to be quite at odds with the
8 purpose of this witness's evidence. As I
9 understood it, he was testifying about the report
10 that he created that came out in 2010, but in my
11 submission it's quite inappropriate for him to be
12 offering any kind of opinion based on what a
13 witness might or might not have said to Deputy
14 Chief Evans and I would ask that he be instructed
15 to refrain from doing so in the future.

16 THE COMMISSIONER: The objection is because the Evans' report
17 is not before us that it is inappropriate for
18 Deputy Chief LePard to be commenting on a report
19 that is not before us?

20 MS. TOBIAS: Not precisely, Mr. Commissioner. It's not that
21 he's commenting on the report. He's either being
22 asked or is drawing some conclusions based on
23 reading transcripts of interviews that she
24 conducted, which is in my respectful submission
25 inappropriate on any level. For one thing,

1 Deputy Chief Evans herself is going to testify.
2 For another thing, it was my clear understanding
3 that the purpose of Chief Constable LePard being
4 called in the first place was to speak about the
5 report that he created long before those
6 interviews were conducted, and as others of my
7 learned friends have observed, it is, in any
8 event, the situation that this witness is being
9 asked time and time again to talk about what
10 other people's intentions were and so forth, and
11 I would like to add my voice to theirs in terms
12 of saying that I view that as quite
13 objectionable. But specifically at this point I
14 would ask that the witness be directed in the
15 future not to give evidence based on what he has
16 read or concluded in any way from Deputy Chief
17 Evans' interviews.

18 THE COMMISSIONER: That's what I said. All right. Mr.
19 Vertlieb.

20 MR. VERTLIEB: The deputy chief is coming as a witness and I
21 see absolutely nothing wrong --

22 THE COMMISSIONER: That's not the objection. The objection is
23 that he's being asked to comment on what her
24 evidence might be. Is that your objection?

25 MR. VERTLIEB: I'm not asking him to comment on that. I'm

1 asking him for his assistance. He covered
2 Evenhanded in his report, he mentioned it. Some
3 of this information he's elicited later than his
4 report, that's all I'm doing. But if it's any
5 comfort to the Department of Justice I have
6 concluded my questions on that subject area and I
7 want to move into a new subject area.

8 MS. TOBIAS: I understand Mr. Vertlieb has concluded his
9 questions in that subject area but this issue has
10 come up more than once. And, again, this
11 witness, as I understood it, was to be called not
12 as an expert but as someone who is a reviewer to
13 talk about the information that he collected, and
14 I renew my objection that it's inappropriate for
15 him to be asked to comment on what those people
16 have said to other people since then.

17 THE COMMISSIONER: Surely he's competent with his expertise
18 and background to comment on the investigation of
19 his own department and the RCMP.

20 MS. TOBIAS: With respect, I think that's taking it much too
21 far. Chief Constable LePard has testified about
22 gathering certain information over a period of
23 years sometime ago and that of course has some
24 benefit to yourself in the sense that he has
25 already collected certain information and you of

1 course don't want to start to reinvent a wheel,
2 if I may put it that way, but that has its limits
3 in my respectful submission. One of the limits
4 is that I don't think and I would submit that he
5 should not be asked about other things that those
6 witnesses have said to other people since then.
7 Those people will be heard from, Deputy Chief
8 Evans will hear from them, and his opinion should
9 not be solicited, especially when it comes to
10 what their intention was, what their strategy
11 was, what they realized at a particular point in
12 time. In my submission that's quite
13 objectionable.

14 THE COMMISSIONER: I agree that as far as the intention of
15 someone else is concerned that may be improper,
16 but surely he's a senior investigator, he's in
17 the top rank of policing and he can comment on
18 the efficacy of the investigation, particularly
19 since the Vancouver Police were involved in this
20 investigation. A lot of what you're saying goes
21 to weight.

22 MS. TOBIAS: I understand your point, Mr. Commissioner, but it
23 becomes particularly important with respect to
24 the Evenhanded investigation. This witness has
25 testified that his review of that investigation

1 was very limited and especially in light of that
2 -- I have not stood up to object to similar
3 questions being asked about the Coquitlam
4 investigation that he says he reviewed in detail,
5 although I don't want to be taken as saying his
6 review was exhaustive, but I have not objected to
7 that, but the witness having said, more than
8 once, that his review of the Evenhanded material
9 was very limited, add to that a partial review of
10 what has been said to other people, it's both in
11 my respectful submission misleading to this
12 inquiry and frankly a waste of time to ask a
13 witness who is not in a position to give a full
14 and informed answer when other witnesses who are
15 in that position are going to be testifying
16 before you.

17 THE COMMISSIONER: That surely is not a valid objection to
18 admissibility. It may well go to weight. You
19 conceded that he has a limited knowledge of
20 Evenhanded, and if he has a limited knowledge of
21 Evenhanded that's something you can cross-examine
22 him on. Surely you're not suggesting for a
23 minute that the actions and the strategies of
24 operation Evenhanded is beyond the scope of
25 criticism by any other officer. So you're

1 telling me that the only people who can comment
2 on Evenhanded are those people who were involved
3 in it?

4 MS. TOBIAS: No. With respect, that's not the nature of my
5 objection. What I'm asking you to do, Mr.
6 Commissioner, is simply to say that what this
7 witness is asked to comment on be on the basis of
8 what he reviewed for his report and not on the
9 basis of what people told Deputy Chief Evans.

10 THE COMMISSIONER: I understand that.

11 MS. TOBIAS: That is the actual objection that I'm making.

12 THE COMMISSIONER: All right. It seemed to go further than
13 that.

14 MS. TOBIAS: I was expanding behind it but that is the
15 objection.

16 THE COMMISSIONER: I understand your concern about Deputy
17 Chief Evans but the rest of what -- I'm well
18 aware of the fact that he wasn't personally
19 involved in the investigation and he's looking at
20 it from the outside based on the 2010 report, but
21 some of the opinions that he's rendered here this
22 morning are matters that you can cross-examine
23 him on.

24 MS. TOBIAS: Absolutely. That was my objection. I simply
25 said that especially in the light of fact that he

1 said his knowledge is limited, my actual

2 objection is with respect to the --

3 THE COMMISSIONER: Thank you.

4 MR. VERTLIEB:

5 Q Moving on to the subject of informants, we've
6 already talked about Bill Hiscox, H-I-S-C-O-X,
7 and he came through Crime Stoppers and Wayne Leng
8 and we covered what he discussed, his knowledge;
9 you're familiar with that?

10 A Yes.

11 Q We talked about his reliability and information
12 checking out and the credibility?

13 A Yes.

14 Q He mentioned about slashing a prostitute's throat
15 and stabbing her; you're familiar with that?

16 A Yes, that he was familiar of the 1997 incident.

17 Q We talked about P & B Salvage?

18 A Yes.

19 Q That was the first informant?

20 A Yes.

21 Q Let's go to Ross Caldwell. He was the second
22 informant?

23 A That's correct.

24 Q And Caldwell surfaced in the summer of 1999?

25 A Yes.

1 Q If you look at tab 7 on the informant binder, I
2 believe you'll find "Debrief". Do you have that?

3 A Yes, I do.

4 Q Just to help us, this is Detective Chernoff's
5 notes?

6 A Yes.

7 Q That's Mark Chernoff?

8 A That's correct.

9 Q He worked with Detective Lepine?

10 A Yes.

11 Q The two of them worked together so if we keep
12 referring to Chernoff it perhaps eliminates the
13 need to have Lepine brought into the discussion.
14 Are you satisfied that they both were informed
15 equally?

16 A Yes, they were working together.

17 Q This debriefing relates to Ross Caldwell?

18 A Correct.

19 Q July 19, 10:00 a.m., 1999?

20 A Right.

21 Q Just so the commissioner knows where we're going,
22 there were many occasions where your police
23 officers dealt with Ross Caldwell?

24 A Yes, that's right.

25 Q Caldwell had a girlfriend who was telling him

1 information?

2 A Yes -- well, he refers to her as a girlfriend
3 there. She was a friend who was a girl. I don't
4 think she was really a girlfriend.

5 Q Who is the woman he's talking about?

6 A He's talking about Lynn Ellingsen.

7 Q Lynn Ellingsen played an important role in this
8 information?

9 A Yes.

10 Q Just reading some of the information, the bullet
11 points, number 8: "The suspect's girlfriend told
12 the source of one incident that occurred -- a
13 homicide. The source is not sure if there were
14 other incidents involving missing prostitutes but
15 is assuming that the suspect has been involved in
16 other incidents. The suspect has told the
17 source" -- that's Caldwell?

18 A Yes.

19 Q "That he can get rid of girls without any trace
20 of evidence." "Suspect" meaning who?

21 A Pickton.

22 Q Go to the next page, eighth bullet point: "The
23 girlfriend" -- that's Ellingsen, correct?

24 A Yes.

25 Q "Told the source that they drove around until

1 they found a girl. They were able to gain her
2 trust because the suspect's girlfriend was in the
3 vehicle. The vehicle had a supply of booze and
4 drugs to supply the girl. The suspect flashed
5 lots of cash also to entice her to return to his
6 property in Port Coquitlam." We're talking about
7 Pickton?

8 A Yes.

9 Q "The source stated that the girlfriend was
10 present at the residence at the time of the
11 homicide. The girlfriend told the source that
12 'one thing led to another' and the girl was
13 ultimately disposed of. The girlfriend said that
14 she had no part of the homicide." Skipping down
15 a few points: "The source believed that the
16 homicide occurred sometime between February -
17 April 1999." You've seen this before?

18 A Yes.

19 Q There are so many women involved, but I'm just
20 going from memory standing here, did you check to
21 see if there was any woman that might have been
22 taken and last seen or killed around that
23 timeframe?

24 A I know that the investigators themselves looked
25 at that and there is commentary on the file about

1 who that could be.

2 Q Was that a Jacqueline Murdock?

3 A I believe that that is one of the names. I know
4 that it's a name of one of the missing woman and
5 I believe that might have been one of the names
6 floated as a possibility, but I know that there
7 was at least one other name as well floated as a
8 possibility.

9 Q Perhaps a Ms. McDonnell?

10 A That could be, because I believe she went missing
11 in January of 1999.

12 Q The point I want to ask you though, when the
13 source's information is that this happened
14 sometime between February and April 1999, your
15 police acting astutely checked out whether
16 someone could fit in that timeframe?

17 A Correct.

18 Q And the answer is yes, that could happen?

19 A Yes.

20 Q That would affect the reliability of the source's
21 information?

22 A Yes.

23 Q The last page: "The source" -- that's of course
24 Caldwell -- "saw a pair of handcuffs and several
25 rifles inside the trailer during that time."

1 A Correct.

2 Q Caldwell was again interviewed July 26, 12:30?

3 A Correct.

4 Q Would it be fair to say that your detectives were
5 very concerned about doing everything they could
6 with this source?

7 A Yes, absolutely.

8 Q Tab 8, please, the last sentence: "The source"
9 that's Caldwell, "spent one week at 'Willie's'
10 residence at the end of April, 1999. During his
11 stay there the source determined that 'Willie'
12 truly enjoys and 'gets off' killing things."
13 That's correct?

14 A Yes.

15 Q Look at the next page 3 under the title
16 "Information relating to a homicide": "'Lynn'
17 often confides in the source and has told him the
18 following." Lynn, that's Ellingsen?

19 A Yes.

20 Q First, "'Willie' was slashed by a hooker that he
21 had picked up in Vancouver." We know what that's
22 about, don't we, from 1997?

23 A Correct.

24 Q "His throat was slashed in the incident and he
25 was ripped off. This incident happened a few

1 years ago. 'Willie' has a hatred for hookers and
2 it was pay-back time. 'Willie' was no longer
3 successful picking up hookers on his own. The
4 girls didn't trust him, and because of all the
5 press about the missing women, he couldn't
6 convince them to come back to his place." That's
7 all the source's information to your detectives?

8 A Yes.

9 Q Look at the next page -- sorry, look at the
10 bottom of that page, page 3: "To entice the
11 prostitute cocaine rocks and alcohol were used.
12 'Lynn' convinced the girl that she was also a
13 prostitute and that the two of them would
14 tag-team 'Willie' at his place in Port Coquitlam.
15 Once back at his residence the girl was taken to
16 'Willie's' bedroom in the trailer. 'Lynn' did
17 not go into the room with 'Willie' or the girl.
18 'Willie' became rough with the girl," and I don't
19 need to repeat what he was going to do. "The
20 girl screamed and called 'Lynn' to help her, but
21 she did not go into the room. A short while
22 afterwards there was no more noise. 'Willie'
23 took her out of the bedroom in handcuffs and
24 exited the trailer. He brought her into the
25 barn." This is all -- I'm reading it correctly?

1 A Yes.

2 Q "'Lynn' stayed in the trailer. (The source did
3 not know if the girl was conscious at the time).
4 'Lynn' later walked into the barn where 'Willie'
5 had hung the victim by the neck and was 'skinning
6 her like a pig'. The victim's legs were being
7 skinned. 'Lynn' told the source that she didn't
8 realize that a human beings's fat was yellow.
9 She threw up and had to leave the barn. 'Lynn'
10 felt that 'Willie' gets off on it. 'Lynn' did
11 not see the victim afterwards and assumed she was
12 put into the meat grinder. Willie had a hollowed
13 out wall believed to be in the trailer where he
14 hid guns and 'stuff'. Willie offered to get her
15 other females identification if she wanted.
16 'Willie' had got jewellery from the girls,
17 however it had been stolen from him." I've read
18 all that correctly?

19 A Yes.

20 Q The information there is consistent with what
21 Hiscox said about feeding these victims to hogs?

22 A About being able to dispose of a body without a
23 trace, certainly.

24 Q And identification, it turned out that when the
25 young Nathan Wells went in identification was

1 found?

2 A Identification and an inhaler belonging to
3 Sereena Abotsway.

4 Q Remember earlier we read out he stayed with
5 Pickton, lived there for a brief period. Look at
6 the next page: "During the sources stay he
7 observed. A pair of handcuffs under 'Willie's'
8 bed, night vision equipment, a semi-automatic
9 rifle and clip, two wigs shown to him by 'Willie'
10 who retrieved them from the office desk drawer.
11 One of the wigs was blond, and the other possibly
12 red or brown. 'Willie' commented that he wore
13 them when he went downtown." I've read that
14 correctly?

15 A Yes.

16 Q So that's the second debriefing of informant Ross
17 Caldwell?

18 A Yes.

19 Q Detectives continued with Caldwell, they followed
20 up again July 30, 1999?

21 A Correct.

22 Q With more information. In here Caldwell talks
23 about he was being released from jail and he had
24 no residence so he contacted Willie to ask for a
25 place to stay, the bottom of page 2.

1 A Yes.

2 Q "They moved Lynn's bed into the back bedroom and
3 she slept in the same room as the source. When
4 they were moving the bed the source observed a
5 pair of handcuffs in between the mattresses." Do
6 you see that? I've read that correctly?

7 A Yes.

8 Q The third point: "During the stay in the trailer
9 the source observed cock fighting events were
10 taking place in the barn." That's illegal
11 activity, of course?

12 A Yes.

13 Q "Information from Lynn," page 4. The second
14 bullet: "Willie was having trouble getting girls
15 to get in his vehicle. He began to sweeten the
16 pot by bringing more drugs and booze along to
17 entice them to come back to his place. The
18 prostitutes weren't as easy to get as they used
19 to be. The girls trusted Lynn. Willie needed
20 her to get the girls."

21 A Yes.

22 Q Down a third of the way from the bottom: "Lynn
23 described the night they brought the girl back to
24 the trailer. Lynn gave the girl a 'rock' to
25 smoke and got totally 'wacked' and was totally

1 out of it." The bottom point: "Lynn heard the
2 girl yelling for help. She was saying, 'Come in
3 and help me girl.' Lynn went into the bedroom.
4 Willie appeared to be attempting a sex act and
5 was being rough. Lynn told the girl to 'relax,
6 it would be worse if she fought'." Then we heard
7 about the same event. "Lynn went into the barn
8 at some point and saw the girl standing on a
9 platform. The girl was 'hanging' up and Willie
10 was cutting strips from her legs."

11 A Yes.

12 Q This is, again, important information?

13 A Yes.

14 Q And it's consistent in detail with what Caldwell
15 has said on previous occasions?

16 A Yes. His statements were very consistent with
17 each other.

18 Q Does that go to the weight of the informant's
19 reliability?

20 A Yes.

21 Q The next tab. We have another visit with Mr.
22 Caldwell in August of 1999?

23 A Yes.

24 Q Now, "source" meaning Caldwell, this is tab 10:
25 "Source was at Ron Maynard's residence last

1 night." I think it's M-E-N-A-R-D.

2 A I think it's spelled wrong there.

3 Q Menard later on after Pickton's arrest became
4 someone who had information but Menard was not
5 interviewed at the time?

6 A At some point in the summer of 1999 Menard was
7 interviewed.

8 Q His information was not inconsistent with what
9 Caldwell or Hiscox was saying?

10 A My recollection is the first time the RCMP, I
11 believe it was Corporal Connor, spoke to him he
12 provided information that was consistent, not as
13 detailed as that, and then I think the second
14 interview he backed away from that a bit when
15 they interviewed him more formally. But in the
16 first meeting with him he referred to "something
17 bad going down," et cetera.

18 Q Third bullet point: "Ron told the source that
19 Lynn was extorting Willie for \$500 at a time.
20 Willie had been paying Lynn extortion money since
21 he kicked her out of his residence. She had
22 threatened to go to the police. Ron found
23 himself in the role of mediator between Willie
24 and Lynn." This is all correct?

25 A Yes.

1 Q Having read these comments about Lynn Ellingsen,
2 she could be considered by police to perhaps be
3 an accomplice in any murder that took place?

4 A That would certainly be one of considerations,
5 absolutely.

6 Q Would that give her a motive to lie if she was
7 questioned by police?

8 A Certainly.

9 Q "Ron told the source" -- seven bullet points
10 down: "Ron told the source that he knew the
11 reason for the extortions. He said it involved
12 the 'killings' on Willie's property." Last
13 point: "Maynard told the source that Willie told
14 him he wants to 'do' Lynn as she is causing him a
15 lot of grief with the extortions." The word 'do'
16 is in quotes. Did you take that to mean kill
17 Lynn?

18 A Yes, I did.

19 Q Page 2, third from the bottom: "The source said
20 that the way in which Lynn described the murder
21 of the East End prostitutes and the events that
22 led up to it, there is no doubt she knew
23 beforehand, that the girl was going to be
24 murdered by Willie."

25 A Yes.

1 Q That goes again to the point that Ellingsen would
2 have to be thought of as a possible accomplice or
3 party?

4 A Yes.

5 Q Caldwell was interviewed a number of times during
6 the summer of '99. The next tab 11 has another
7 statement of Caldwell?

8 A Yes, that's one where there's actually a
9 transcript of the interview.

10 Q It's again consistent, there's a discussion about
11 handcuffs?

12 A Yes. His information even on the occasion of the
13 interview that he clearly was not performing at
14 his best, if you actually look at the transcript,
15 what the words were he actually said, he was
16 remarkably consistent between his statements,
17 between the last two statements and the
18 information he provided in the other debriefings
19 where there's notes.

20 Q Caldwell said -- the reference to the page, page
21 38, that he could make, meaning Pickton, could
22 make people disappear and no traces of them.
23 "He's got the means there, he's got a meat
24 grinder".

25 A Yes.

1 Q So all the times Caldwell was interviewed his
2 comments were consistent?

3 A Yes.

4 Q And those comments would certainly support the
5 belief that Pickton was the number one suspect?

6 A Yes. What it supported was that whether he was
7 right or wrong, Caldwell believed he was telling
8 the truth. He believed in the truth of what he
9 was saying. The investigators believed that he
10 was telling the truth to him. Whether or not the
11 information he was relaying was correct or not,
12 he believed it was.

13 Q And that's the point?

14 A Yes.

15 Q So now at this point there are two informants?

16 A Yes.

17 Q Hiscox and Caldwell?

18 A Yes.

19 Q And potentially Menard who seems to have
20 knowledge as well?

21 A Yes. He has provided information that is
22 consistent, not as detailed, and was unaware at
23 the time that Caldwell was already talking to the
24 police.

25 Q There's another interview at tab 12 taken by

1 Detective Chernoff; you've seen that?

2 A Yes.

3 Q It appears that Detective Chernoff worked very
4 hard on developing Caldwell as an informant?

5 A Yes. That was their assigned role, to handle the
6 informant Caldwell, and I think they were
7 extremely diligent about it.

8 Q But at that time the Coquitlam RCMP to your
9 knowledge had charge of the overall Pickton
10 investigation?

11 A Yes. It's clear in Corporal Connor's notes that
12 he actually says that Chernoff and Lepine are
13 assigned to handle the informant Caldwell and
14 report back to him.

15 Q Your knowledge is that Caldwell's information was
16 relayed by Chernoff to RCMP Coquitlam?

17 A Yes. It was all in their file.

18 Q There's another tab 13 debriefing.

19 A Yes.

20 Q From Caldwell's work with your police force?

21 A Yup.

22 Q "Lynn is still extorting money from Willie."

23 A Correct, that's the allegation.

24 Q "Willie has offered Ron," meaning Menard, "to
25 deliver Lynn to the property so that he could

1 'take care of her.'"

2 A Yes.

3 Q I want to skip down a couple of points, fourth
4 from the bottom: "Ron described the exact same
5 story to Ross Caldwell that Caldwell had heard
6 from Lynn. Ron told Caldwell that this was what
7 Lynn had told him."

8 A Yes.

9 Q "Ross knows what is going on. Ross told Caldwell
10 that Willie disposes of the body parts into 45
11 gallon drums which are taken away to a recycling
12 plant."

13 A Sorry, I think you misspoke when you said "Ross".
14 He was saying "Ron" described to Ross. I may
15 have misheard you.

16 Q I may have misspoke. Thank you. Second to last
17 point from the bottom: "Ron," meaning Menard,
18 "told Caldwell that Willie disposes of the body
19 parts into 45 gallon drums which are taken away
20 to a recycling plant. He does not know where
21 this place is."

22 A Correct.

23 Q This is August 10, 1999?

24 A Correct.

25 Q I want to discuss surveillance with you after we

1 conclude on informants, but you do know that as a
2 fact Pickton was under surveillance by both
3 Special O and RCMP in the month of August 1999?

4 A Yes.

5 Q Tab 14 is another interview, information from
6 Caldwell?

7 A Yes.

8 Q Tab 15, this is after the arrest of Pickton --
9 after Pickton's search warrant, 2002, February
10 11?

11 A Yes.

12 Q Who is MacPherson, Ian MacPherson?

13 A My understanding is that he is a member of the
14 RCMP.

15 Q Was he part of Evenhanded?

16 A That is my understanding.

17 Q So let's now talk about Leah Best. She was also
18 an informant in this case?

19 A Yes.

20 Q And just without going through everything she
21 said in detail, tell us what Best was giving to
22 the police.

23 A She came in to the Burnaby RCMP around the same
24 time, the summer of 1999, and asked to speak to
25 someone about information about the missing women

1 case. She was referred to the Coquitlam RCMP and
2 she provided information that I'll just say in
3 summary was very similar to the same information
4 that Caldwell had reported. She reported the
5 same story about Ellingsen seeing the woman
6 killed in the barn.

7 Q Her information is tabs 21 and 22 of the binder
8 in front of you?

9 A Yes.

10 Q Now we have three informants: Hiscox, Caldwell
11 and Best?

12 A And I would say to some extent Menard.

13 Q I agree. But we certainly have those three and
14 Menard but Menard had no contact --

15 A He wasn't coming in volunteering information like
16 these three.

17 Q Is there something called a "multiplier effect"
18 when it comes to informants?

19 A I think that there is a multiplier effect
20 generally speaking when you're talking about
21 evidence that comes from different sources. It
22 just doesn't add up one plus one so you have to
23 consider it to have a multiplier effect because
24 you have to think about what are the
25 probabilities that there are going to be

1 independent sources of information. In this case
2 it was all arising from the same source because
3 there was other information as well that we can
4 talk about that created a multiplier effect.

5 But in respect of this particular incident,
6 you've got three different informants who are
7 providing very similar information and you've got
8 Caldwell and Best who are providing very
9 consistent information about a story that they
10 reported that Ellingsen had told them and there
11 is no evidence to my understanding that they knew
12 each other was coming forward to the police or
13 that they were colluding in any way, that they
14 were coming to the police independently, so
15 certainly that needs to be given considerable
16 weight. That doesn't mean that the story that
17 was told is true but it certainly is powerful
18 evidence that the story was told that Ellingsen
19 had said these words to her, and that becomes
20 important later on when she doesn't say, "Yeah, I
21 told that story but it was just a cock and bull
22 story." She denies telling the story completely
23 and that was not believable.

24 Q Her denial was not believable?

25 A Correct.

1 Q Why do you say that?

2 A Well, it was not believable because you had these
3 two informants who were coming forward and it's
4 being corroborated to some extent by Menard as
5 well who are independently providing information
6 that is extremely consistent about a story that
7 she has told and considering all the
8 circumstances it obviously needed to be taken
9 very seriously. As I said, if she said, "Yes, I
10 told that story but it simply wasn't true," that
11 would be one thing, but in fact she denied it
12 completely yet they have these two informants who
13 are coming independently of each other, who are
14 colluding, who are providing information that is
15 extremely consistent with the story that she's
16 told and these informants are believed. They
17 have no reason to lie. They are known to
18 Ellingsen and they seem to be motivated by
19 nothing else but wanting to do the right thing.

20 Q Then the multiplier effect or probabilities, as
21 you call it, would kick in to further enhance the
22 reliability of that information?

23 A Yes. If there was a dispute about whether they
24 were reliable or not, there were investigative
25 strategies that could have been embarked on to

1 try and put that issue to rest, but the fact is
2 that the investigators receiving that information
3 did believe it, they did believe that the
4 informants were being truthful.

5 Q The investigators meaning Chernoff and his
6 partner?

7 A Chernoff and Lepine but also Corporal Connor, who
8 I believe is the one that interviewed Best.

9 Q But all of that was upended by an interview with
10 Ellingsen where she denied ever being with Willie
11 when he picked up a prostitute?

12 A Correct. She denied anything to do with the
13 incident that she was alleged to have described
14 and she denied ever telling that story.

15 Q She denied ever helping him procure the services
16 of a prostitute?

17 A Yes.

18 Q Knowing that denial, would you have in mind
19 though that it needs to be weighed in the context
20 of her being perhaps a party to an offence or an
21 accessory?

22 A Yes, and particularly in consideration of the
23 information which they had at that time that she
24 was extorting Pickton on the basis she would
25 report to the police if he didn't keep giving her

1 money. So that added -- it made sense why she
2 would lie about it.

3 Q Let's set the timeframe for the commissioner.
4 We're now in the summer of '99?

5 A Yes.

6 Q There are on your recounting four informants:
7 Hiscox, Caldwell, Leah Best and then Menard?

8 A Correct.

9 Q All with the story that was consistent with
10 Pickton being involved in a murder?

11 A Yes.

12 Q Multiple murders?

13 A Possibly.

14 Q He was known to be number one suspect?

15 A Yes.

16 Q At that time?

17 A Yes.

18 Q And all of this went awry because of an interview
19 with Ellingsen where other police thought
20 Ellingsen's denial was believable?

21 A Yes. They not only thought Ellingsen's denial
22 maybe was believable but also did not believe
23 Caldwell, as it was described, a "flake," without
24 I would suggest sufficient analysis of the
25 content of his multiple statements and how it was

1 corroborated by other information that was
2 available and all the circumstances that were
3 known at the time. This wasn't information that
4 was just out of the blue about crimes not known
5 to have been occurring. This was in the context
6 of by that time I believe 27 women missing from
7 the Downtown Eastside and several other areas and
8 had to be viewed in that context and in the
9 context of the fact that Pickton had a history of
10 this sort of violent action and then even more
11 information was added, which I'm sure that you'll
12 get to ask me about, but there was a series of
13 pieces of information that started with the
14 Hiscox tips in July and August of '98 and then a
15 series of pieces of information that were
16 consistent and no information that was
17 inconsistent with the later information from
18 Caldwell and others about what Ellingsen had
19 described.

20 Q Are you telling the commissioner that you would
21 not have stopped just with the denial of
22 Ellingsen then but that you would have done other
23 things?

24 A Of course.

25 Q What would that be?

1 A Other investigative strategies.

2 Q Please.

3 A There were many things and they were
4 contemplated -- it's not like the RCMP in
5 Coquitlam did not think of these strategies.
6 There were many strategies that could be
7 considered. For example, if there was an issue
8 with the credibility of Caldwell and Best they
9 could have been polygraphed because that's very
10 compelling and a reasonably routine investigative
11 strategy for the police. An undercover operation
12 on Ellingsen was contemplated and that could have
13 been pursued but was not. An interview of
14 Pickton was considered and eventually that did
15 occur on January 19, 2000, there was an interview
16 of Pickton. So there were a number of things
17 that needed to be done to further that
18 investigation because the allegations were of
19 such a serious matter, and if you look at the
20 totality of the information that was available at
21 that time it was very compelling.

22 Q Speaking of polygraph, was there an offer to give
23 a polygraph to Ellingsen with respect to her
24 denial?

25 A Yes. She was asked to take a polygraph and she

1 initially agreed to it and then declined --
2 refused to take the polygraph which would be one
3 more piece of information that would be -- you
4 have to ask the question why, why is she refusing
5 to take the polygraph? It's not determinative
6 but it needs to be added to all the other
7 information available and highly suspicious.

8 Q Suspicious as it related to Ellingsen's denial?

9 A Yes.

10 Q Was any polygraph ever offered to Caldwell or
11 Hiscox?

12 A Not to my knowledge. Again, the investigators
13 dealing with them believed them and so in
14 retrospect if there were these other
15 investigators that came in that didn't believe
16 him -- it was never really clear to me whether
17 they just didn't believe him or they just didn't
18 believe the truth of the Ellingsen story, it
19 seemed to be a bit of both, but that's something
20 that could have been explored. Polygraph those
21 two informants and then say: Look, these people
22 do believe they're telling the truth so let's put
23 that aside. These people are telling the truth
24 and now what we need to do is verify whether
25 Ellingsen's information she provided them was

1 true, and there were a number of different things
2 they could have pursued.

3 Q And they were not pursued?

4 A Some of them were pursued. Namely, I mean, what
5 occurred after the summer of 1999 was that it was
6 agreed that the next step was to get Pickton in
7 for an interview but that didn't occur until
8 January 19 of 2000.

9 Q So an effort was made to interview Pickton in
10 September of '99?

11 A Contact was made with him to request that he come
12 in for an interview.

13 Q That was done by the RCMP?

14 A Yes.

15 Q Who was the RCMP officer?

16 A Constable Yurkiw.

17 Q And you've seen the notes of that?

18 A Yes.

19 Q What happened when Yurkiw asked Pickton to come
20 for an interview?

21 A She ended up speaking to Pickton's brother Dave
22 who convinced her to wait until the rainy season
23 because when the weather was good that is when
24 they were really busy, so she agreed to that,
25 that it would happen sometime later.

1 Q So she spoke to Pickton in September 1999?

2 A Yes.

3 Q And Dave said let's wait until the rainy season?

4 A Yes.

5 Q And Yurkiw interviewed him when?

6 A January 19 of 2000 is my recollection.

7 THE COMMISSIONER: Let me see if I've got this right. So the
8 police wanted to interview Pickton, Pickton's
9 brother Dave Pickton asked the police to defer
10 the interview until the rainy season came?

11 A Correct.

12 THE COMMISSIONER: All right. Presumably because they're busy
13 on their farm?

14 MR. VERTLIEB:

15 Q Would you have accepted that?

16 A No.

17 MR. VERTLIEB: I'm wondering if this is a convenient time to
18 break, Mr. Commissioner.

19 THE COMMISSIONER: All right. We'll adjourn.

20 THE REGISTRAR: This hearing is now adjourn until 2:00 p.m.

21 **(PROCEEDINGS ADJOURNED AT 12:30 P.M.)**

22 **(PROCEEDINGS RESUMED AT 2:01 P.M.)**

23 THE REGISTRAR: Order. This hearing is now resumed.

24 MR. VERTLIEB: Mr. Ward wants to address you on documents and
25 marking documents.

1 THE COMMISSIONER: Yes, Mr. Ward.

2 MR. VERTLIEB: Thank you. Cameron Ward, counsel for the
3 families of 20 missing, murdered women. Just to
4 ask that these binders we've been going through
5 for the last three days be properly marked as an
6 exhibit. I've been going over them closely as
7 they've been referred to, and I confess, I
8 haven't seen much, if anything, that can't be
9 evidence at a public inquiry of this nature and I
10 am concerned if they are not marked as exhibits
11 this issue is going to slide off into never,
12 never land so I'd ask again that they be marked
13 as exhibits.

14 THE COMMISSIONER: Wait a minute. They're now in for
15 identification, are they not?

16 MR. WARD: They are.

17 THE REGISTRAR: They've not been marked yet.

18 THE COMMISSIONER: They should be marked for identification.
19 What do you suppose is going to happen to them if
20 they're -- maybe I'll ask Mr. HERN, these are
21 your documents, are they not?

22 MR. HERN: Some of them are -- many of them are our documents.
23 You'll see at the top right-hand corner of these
24 documents it will say a number with "VPD" or
25 "RCMP" in front of them. Many of them are ours,

1 many of them are the RCMP's, but this particular
2 collection was only presented to us on Friday and
3 now they're marked as an exhibit for
4 identification. They need to be gone through to
5 deal with this confidential information issue and
6 one of the questions in terms of doing that --
7 there's two things. One is that the police
8 agencies have agreed to do it as a courtesy to
9 the commission because it's really the commission
10 that is putting them up on the website so we'll
11 do that and we've agreed to do that as a
12 courtesy. But one issue that I've discussed with
13 Mr. Giles and others is are we going to protect
14 the confidential information by redacting the
15 Exhibit B or whatever it is that is actually
16 being put to the witnesses or are we putting in a
17 substitutional document or set of binders for
18 that purpose. I think you have to look to your
19 own process where you're reviewing these things,
20 you probably -- you may want to be reviewing
21 these documents with that confidential
22 information in there for continuity, I don't
23 know.

24 THE COMMISSIONER: What you're telling me is that you haven't
25 had them redacted because there is information

1 there that deals with either ongoing
2 investigations or matters of privilege and
3 informants and all of that; is that what you're
4 telling me?

5 MR. HERN: No, there's two separate issues. The privilege --
6 anything privileged or that relates to an ongoing
7 investigation that's sensitive is already blacked
8 out and replaced by numbers by the RCMP vetting
9 formula. So what we're talking about is private
10 information that can be in the documents for all
11 the participants to work with and so on, but if
12 we're putting them up on the website, if the
13 commission is posting them as it has done with
14 exhibits to date, they're actually going on the
15 website for the entire world to see, you've got
16 some privacy issues there. Third party names
17 totally unrelated --

18 THE COMMISSIONER: That's what I was referring to.

19 MR. HERN: So I've got a lot of work to do, I've got all these
20 binders, and they're being introduced
21 concurrently with this witness of course and we
22 haven't even hit every tab yet. I need to take
23 those away when we break today, Mr. Giles is
24 going to provide me with them so I can get the
25 job done.

1 THE COMMISSIONER: You're telling me that because of the
2 voluminous nature of them you need more time to
3 go through them?

4 MR. HERN: Absolutely. What I've discussed with Mr. Vertlieb
5 is that we will aim to have that done for when we
6 resume after the break.

7 THE COMMISSIONER: Okay. Ms. Tobias, do you want to tell me
8 anything different or do you agree with that?

9 MS. TOBIAS: No. Cheryl Tobias for the Government of Canada.
10 I'm in agreement with my friend's position.

11 THE COMMISSIONER: Thank you.

12 MR. VERTLIEB: Mr. Hern and I have spoke and I think it's
13 reasonable that he wants some time and next week
14 when we're not sitting it will give him the time
15 to go through them and the plan is a week Monday
16 he'll be able to say --

17 THE COMMISSIONER: Yes. Thank you. I see no prejudice to
18 anybody by giving counsel time to go through the
19 documents in order to ensure that those issues
20 that have been referred to will be addressed and
21 they can become exhibits in due course with the
22 proper additions or deletions to them. I think
23 that's the proper thing to do. I don't think
24 there's any prejudice to anybody by not having to
25 mark at this time those exhibits -- actually, to

1 the contrary, there may be prejudice to someone
2 if they are marked as exhibits now.

3 MR. VERTLIEB: Thank you.

4 Q Department LePard, let's continue and finish up
5 the discussion about the informants.

6 A I'm sorry, I just wanted to -- you'd asked me to
7 check during the break, there was a date I was
8 not certain about and it had to do with when the
9 DNA exhibits were checked from 1997 when Pickton
10 was arrested for assault on victim 1997 and I
11 wasn't sure about the date and I thought it was
12 2001, and I checked my records and my report sets
13 out the exhibit was submitted for analysis in
14 November of 2000 and then I believe that the
15 results came back in early 2001. So it was in
16 November of 2000 that it was actually submitted
17 for analysis and it was sometime after that
18 Pickton was excluded as a suspect in the Valley
19 killings based on that analysis.

20 Q The other we talked about was the DNA from the
21 1997 attempt murder and that was not assessed
22 until 2004, 2005. We have a report -- just so
23 you know, we have a report dated August 31, 2005,
24 DNA showing Andrea Borhaven and Cara Ellis.

25 A Right. So in 2000 the bandages from him were

1 submitted to compare to the DNA from the Valley
2 murders and the DNA analysis that you're talking
3 about was his clothing and boots submitted in
4 2004 and you're telling me it came back in 2005
5 to see if there was victim DNA on his clothing.

6 Q And there was?

7 A Correct.

8 Q Thank you for doing that. Let's deal with Leah
9 Best for a moment. You have the informant binder
10 in front of you. Tab 21, bottom of page 6,
11 please. This is Leah Best, an informant,
12 speaking with Police Officer Marenchuk at the
13 Coquitlam RCMP?

14 A Correct.

15 Q August 7, 1999?

16 A Yes.

17 Q Bottom of page 6, read that, please.

18 A Best: "That uh she's wandering around in
19 the yard about 2:00 o'clock in the morning
20 at Willy's and found him in the barn and he
21 had a woman strung up and he was gutting
22 her. And I said oh, my god, that's
23 horrible. What did you do? And did he see
24 you? And she said yes he did see her
25 and...that's where I, I can't really

1 remember what um..."

2 Q The "she" meaning who, who is that referrable to?

3 A Referencing Lynn Ellingsen.

4 Q Thank you page 12, please. This is Leah Best.

5 Read the top paragraph, "Yeah. Because um she
6 thought, she said it was strange," please.

7 A She said:

8 "Yeah. Because um she thought, she said it
9 was strange because she'd be walking through
10 the yard and she'd find you know a shoe
11 here or some -- an earring. And when she
12 was cleaning up his house when she moved in
13 she found a bunch of womens, sets of womens
14 ID. And uh, and she said also that Willy
15 had a, a wall in his trailer and he had gun
16 behind it a false wall."

17 Q This was consistent with Hiscox's comment back in
18 1998?

19 A Yes.

20 Q Page 18, please. Leah Best. "She said something
21 about there's freezers out there" --

22 A "She said something about there's freezers
23 out there and she said her boyfriend checked
24 them out and...but I don't know, this is
25 where I sort of doubted her when she said he

1 found women's legs or something."

2 Q When the freezers ultimately were searched after
3 the search warrant and the arrest, body parts
4 were found in a freezer on Pickton's farm?

5 A I know body parts were found in close proximity
6 to his trailer. I don't recall whether they were
7 found in the freezer.

8 Q Did Ms. Ellingsen worry about being an accessory
9 on the evidence from Leah Best?

10 A I know that that was discussed.

11 Q Page 16.

12 A Page 16.

13 Q Yes, bottom of the page.

14 A Yes.

15 Q Was she concerned about her well-being,
16 referrable to Ellingsen?

17 A Best says:

18 "Yeah. Well she said didn't want to be um
19 what do you call it...when you're with a
20 murderer...you know..."

21 The response is:

22 "Accessory."

23 And she says:

24 "Accessory, yeah."

25 Q We discussed that earlier this morning?

1 A Right.

2 Q In terms of giving Lynn money, Lynn Ellingsen,
3 Best had information about that at page 21, 22,
4 bottom of the page?

5 A Yes.

6 Q "What was the money for, Leah?"

7 "I don't know."

8 "You don't know."

9 "Lynn asked him for money and..."

10 "How much money?"

11 "It was \$120?"

12 A Right.

13 Q This is where she actually heard Lynn getting
14 money from Pickton?

15 A That's what Best reported, yes.

16 Q In your report at page 315, footnote 444.

17 A Yes.

18 Q Let's set the stage for your footnote 444. We're
19 now at the time there's been a number of
20 informants and an interview with Ellingsen where
21 she was offered a polygraph and then denied it --
22 she denied it apparently on the advice of her
23 lawyer?

24 A Correct.

25 Q I think I've introduced footnote 444. Just read

1 that for the record, please.

2 A It says: "One could argue that the reason the
3 Coquitlam RCMP's work had gone 'nowhere'" -- it
4 was in reference to someone's statement I believe
5 -- "was because the investigation was derailed by
6 the Provincial Unsolved Homicide Unit's
7 assessment of the informants' credibility, by the
8 transfer of Corporal Connor at the height of the
9 investigation in 1999 and by the failure of the
10 RCMP to give adequate priority or resources to
11 the investigation or to work effectively with the
12 VPD following Corporal Connor's transfer."

13 Q You outline in your report a number of
14 investigative techniques that could have been
15 done, you mentioned some this morning, and there
16 are others in your report?

17 A Yes.

18 Q I won't take you through them but you're
19 comfortable with the way you've outlined it in
20 your report there are other techniques that could
21 have been considered?

22 A There are other strategies I put in my report and
23 it's not an exhaustive list. There are others I
24 thought of and I'm sure others could think of
25 some more as well. The point is there were

1 investigative strategies that were reasonable,
2 some of them not resource intensive at all.

3 Q What would be one that would not be resource
4 intensive?

5 A Well, for example, getting Pickton in again for
6 another -- if we were moving along to past the
7 interview that was done January 19, 2000 it would
8 not have been resource intensive to get Pickton
9 in for another interview with an expert
10 interrogator. That's one example they could have
11 done. Another was to consider whether there were
12 reasonable grounds to arrest Pickton -- that
13 doesn't mean charge Pickton -- that means arrest
14 Pickton on reasonable grounds and employ a
15 strategy of an interrogation coupled with a
16 cellmate. That's a pretty routine investigative
17 strategy. That could have been explored. Those
18 are examples of ones that are not resource
19 intensive and, in fact, the strategy of an
20 interrogation and strategy via cellmate were the
21 ones that eventually provided key evidence to
22 convict Pickton. There were others that would be
23 more resource intensive like an undercover
24 operation, whether using the police or someone
25 like Caldwell as an agent, cultivating another

1 informant like young Constable Wells was able to
2 do when he got Scott Chubb to provide him
3 information that was sufficient to get him a
4 search warrant.

5 Q The in-cell operative was sent into Pickton's
6 cell after he was arrested in 2002?

7 A Yes, that's right.

8 Q That's when Pickton made a statement he had
9 become sloppy and that he had killed 49 women?

10 A I think he said in the statement he had gotten
11 sloppy in response to Inspector Adam but he told
12 the cellmate that he had killed 49.

13 Q So in other words, that approach in fact --

14 A Was successful.

15 Q You've led then into the discussion I wanted to
16 have with you about Pickton as a suspect. We've
17 covered that a number of times. I won't go over
18 it. It's clear that he was the number one
19 suspect and even on documentation that was clear.
20 Top persons of interest showed Robert William
21 Pickton; you've seen those documents?

22 A Yes.

23 Q Can you find the binder we've called Pickton As a
24 Suspect. It's a small one as well.

25 I wanted to move to a discussion of the

1 interview of Pickton by Yurkiw and the quality of
2 it and your comments around that. I'm going to
3 also ask you about the quality of the work done
4 by Henley as it related to Pickton. Let's talk
5 about Yurkiw's approach. You told the commission
6 this morning that there had been an attempt in
7 September and the brother said wait until the
8 rainy season and he was ultimately interviewed
9 the following year, the beginning of 2000,
10 January of 2000?

11 A Correct.

12 Q You've seen the notes of that interview?

13 A I've seen the transcript, yes.

14 Q Apparently the interview took place between
15 Police Constable Yurkiw and Cater?

16 A Correct.

17 Q Did you see any evidence of preparation of the
18 kind that you would have thought would be
19 appropriate for investigation of a potential
20 serial murderer?

21 A No.

22 Q Tell us why you say that.

23 A There didn't appear to be an interview strategy,
24 there was no signs that they had an interview
25 script that often an interrogator will use, there

1 weren't baseline questions in which they try and
2 get a baseline on his behaviour, see how he's
3 going to react. There wasn't a transcript in any
4 way -- he wasn't provided his Charter warnings,
5 standard police warnings. Considering the
6 seriousness of the matter they were investigating
7 him for, that seemed unusual to me. There were a
8 number of different things that I set out in my
9 report that showed that it wasn't a well planned
10 interview. Now, in fairness, interviewing and
11 interrogation is something that many police
12 officers do not excel at. That's why the RCMP
13 have people like Don Adam who is an expert
14 interrogator and they have a team of interview
15 interrogators, the same as the VPD, our forensic
16 interview team, people that have real expertise
17 in this area and do it all the time. Often there
18 are people that were or are polygraph examiners.
19 I'm uncomfortable with this being all heaped on
20 Constable Yurkiw because she had a supervisor and
21 people who were monitoring her and she was very
22 frank herself in saying, "I wasn't the right
23 person, I know I flubbed that, I didn't go do a
24 good job," so I don't think I should be too
25 critical of her. What I am critical of though is

1 that it wasn't a successful interview but there
2 were definitely some things to follow up on in
3 the interview. For example, Pickton was evasive
4 in it. The investigators all seemed to be in
5 agreement that they believed he was lying in it,
6 so that is certainly compelling in terms of the
7 need for further investigation and, finally,
8 Pickton was asked several times would he consent
9 to a search of his property and several times he
10 said yes but that was not followed up on.

11 Q He consented to a search. By follow-up, tell us
12 why you say it was not followed up on?

13 A There was no attempt to search.

14 Q Pure and simple?

15 A Pure and simple.

16 Q You said he was evasive. What kind of questions
17 should he have been asked?

18 A I would want to refer to my report. I set some
19 of them out there, but at some point after
20 establishing some baseline -- the things you do
21 in an interview and interrogation in terms of
22 building a rapport and so on, then some baseline
23 questions, we call them BLQs, we call them
24 behavioural observation questions, but then he
25 needed to have them specifically put to him.

1 That didn't occur. It was fairly vague is my
2 recollection of reading the interview transcript
3 about, look, there's been these rumours about
4 you, or whatever, rather than specifically
5 putting it to him what was being alleged, and for
6 someone who has expertise, even if the interview
7 wasn't done well, somebody could look at the
8 videotape and the transcript and say there are
9 signs of deception and, in fact, there were
10 people that looked at it and there didn't seem to
11 be any disagreement that Pickton was lying. I
12 read the transcript and I thought there were
13 signs of evasiveness. The RCMP members were less
14 equivocal and said he was lying, we believed him
15 to be lying, so that demands follow-up.

16 Q You address this in your report at page 308. The
17 appropriate questions would have been: Did you
18 murder a woman on your property? Did you have
19 anything to do with the murder of a woman on your
20 property? You outlined questions, for example,
21 that could have and should have been asked?

22 A Yes. Those would be pretty standard questions
23 considering what was being investigated.

24 Q If you look at tab 9 in this binder you'll find
25 the interview between Yurkiw and Cater?

1 A Yes.

2 Q I'm going to ask you in a moment about the fact
3 it was in the presence of Gina Houston. Turn to
4 page 69, bottom of the page.

5 THE COMMISSIONER: Where is this?

6 MR. VERTLIEB: Tab 9, typewritten transcript of the interview
7 of Pickton in January 2000.

8 Q Yurkiw: "Uh-huh. So you just worked on the
9 family property your whole life. Because
10 these um rumours and allegations have come
11 out what would you um say if we asked if we
12 could search your trailer, go through your
13 trailer and have a look?"

14 Pickton: "Whatever."

15 Yurkiw: "You wouldn't have any problem with
16 that? There's nothing in there that we'd
17 find?"

18 Pickton: "No."

19 Yurkiw: "If we wanted uh samples out of
20 the soil, what would you think of that?"

21 Pickton: "Feel free."

22 That's part of the reference you have in mind
23 when you talk about the fact that he was
24 consenting?

25 A Yes. Now, it should be clear, he is saying that

1 I consent there, whatever, and he says later on
2 yes, feel free, come and look. I'm sure I don't
3 have to tell you, Mr. Commissioner, the police
4 would have to ensure it was informed consent.

5 Q Page 87, Yurkiw says:

6 Yurkiw: "Okay. Now we're talking about
7 going out to your, your trailer and having a
8 look through it. We would of course need
9 your consent before we did anything like
10 that?"

11 That's what you're now speaking of?

12 A Yes.

13 Q And he says:

14 Pickton: "Mmm hmm."

15 Yurkiw: "And it could take a while. Uh, if
16 we were to..."

17 Pickton: "I don't have nothing to hide."

18 Yurkiw: "...set that up for next week we
19 could do that?"

20 Pickton: "No problem."

21 Yurkiw: "I'd have to get approval through
22 our end first and..."

23 Pickton: "No problem."

24 Yurkiw: "Okay."

25 Pickton: "Bring boots."

1 Yurkiw: "And, uh, we'd have to make
2 arrangements too so you didn't have the
3 dog..?"

4 Pickton: "Yeah."

5 Yurkiw: "...ready to chew our arm off?"

6 Pickton: "No, the dogs are in, in the
7 kennel?"

8 Yurkiw: "Are they?"

9 That's the discussion you're referring to?

10 A Yes.

11 Q So the police would have a form, there's a
12 consent search form that I gather the person
13 would sign and then you go ahead and do your
14 search?

15 A Yes. In fact, when I reviewed the Coquitlam RCMP
16 file the consent search form was in the file.

17 Q Never taken to a conclusion?

18 A No.

19 Q Others may have questions about that interview.
20 I want to conclude on one point. Gina Houston,
21 she was in the interview room according to these
22 notes?

23 A Yes.

24 Q What do you say about that?

25 A Well, that's very undesirable for sure. She

1 interfered in the interview, was answering
2 questions for Pickton rather than him answering
3 himself, so it made it very unproductive, and
4 Constable Yurkiw noted that, that that was a bad
5 decision to allow her to be in there. In
6 fairness, if he had said, "I'm not going to be
7 interviewed without her in there," then she was
8 faced with a difficult challenge in that respect.
9 But as an interrogator I would have wanted to do
10 everything I could to control that environment
11 and it would not involve having another person in
12 there and it probably wouldn't have involved
13 having another police officer in there.
14 Generally an interrogator is going to do it
15 alone. You might have your backup interrogators
16 who are monitoring who can provide you
17 information and so on, but generally
18 interrogation is going to occur with one police
19 officer.

20 Q Why is that?

21 A Well, because you don't want the suspect to be
22 playing off, you want to have the undivided
23 attention of the suspect, and unless it's very,
24 very well practiced it's more likely to cause
25 more problems than it's worth to have that person

1 in there. Generally it has to be someone who has
2 a very clear understanding of where he or she is
3 going in that interview.

4 Q I have no more questions about that subject,
5 others may have. Let's move to a second
6 interview, this is by Corporal Henley. You'll
7 find this in the Williams report, Exhibit 2,
8 that's the Williams, 20 some odd pages. Mr.
9 Giles, thank you very much for helping. Thank
10 you, Mr. Giles. Turn please to page 17.

11 A Yes.

12 Q Starting at the top: "Just prior to Yurkiw
13 retiring from the force she had a brief
14 conversation with Henley and indicated that
15 Pickton was interviewed and his perception was
16 the investigation ended there. Corporal Henley
17 decided on his own initiative that he would go
18 and speak with Robert William Pickton at his
19 farm. He did so and relayed to Willie Pickton
20 what Caldwell and Ellingsen allegedly disclosed
21 about him killing people and doing all sorts of
22 horrible things." I want to stop there just for
23 a moment. Do you have a concern that Henley
24 decided on his own initiative to go out to the
25 farm and interview someone who is a suspect in a

1 potential serial murder?

2 A Yes.

3 Q Why, please?

4 A Well, first of all, he was incorrect. It says he
5 had a perception that the file was closed and in
6 fact the file was not closed and after Constable
7 Yurkiw retired it was assigned to another
8 investigator and was still subject to being
9 reviewed and there was other action plans
10 developed, so he was wrong about that.

11 Secondly, to just go off solo like that not
12 as part of an investigative strategy, again, this
13 was by his own words about killing people, so it
14 was a very serious matter. So it seemed very
15 unusual to me to do this in such a cavalier way
16 and not as part of an investigative strategy
17 which was being run by the Coquitlam RCMP, not by
18 the unit that he was part of it.

19 Q I wanted to ask you about the fact that he's
20 disclosing the names of an informant, Caldwell,
21 and revealing Ellingsen disclosing about him
22 killing people. What do you say about that?

23 A Well, that is something that needs to be done
24 with the greatest of care and consultation
25 because you could be putting people's lives in

1 danger. I did not see that -- maybe he did do
2 his due diligence on that and was satisfied that
3 Pickton already knew who had been providing this
4 information but I have no information suggesting
5 that. It just seemed to be -- it was almost like
6 it was a whim. It's described as a social call.

7 Q I was going to come to that. "He confronted
8 Pickton who basically denied any wrongdoing and
9 said that Caldwell and Ellingsen had ripped him
10 off and were using him. Corporal Henley
11 indicates this was more or less a social visit
12 with Pickton just to try and get a feel for his
13 personality and attitude." Would a social visit
14 be an appropriate approach to this type of
15 interview in this circumstance?

16 A He was a murder suspect. Corporal Henley says
17 that himself, that he's a suspect in the murders
18 of several prostitutes. If he believed that --
19 which a problem was that Corporal Henley was one
20 of the ones that had concerns about Caldwell's
21 credibility -- if he did believe that, then there
22 were ways that he could advocate for an
23 investigation to continue if he was under the
24 belief that the file had been closed, which it
25 had not been, and I find it highly unusual to

1 proceed in that way.

2 Q When you read Exhibit 2 did you see any criticism
3 by R.J. Williams about the events we've just been
4 discussing?

5 A Well, I read his conclusion in the last few pages
6 of the report and no, I did not see any
7 criticism.

8 Q I wanted to move to the subject of surveillance.
9 It will be another binder there. Do you have
10 that binder?

11 A Yes, I do.

12 MR. VERTLIEB: Mr. Commissioner, I did speak with Mr. Giles
13 about marking these binders for identification in
14 the last day or so, but I'm comfortable for our
15 purposes however the court wishes to handle the
16 marking of these. I was thinking that perhaps
17 each binder marked separately for identification
18 since they've been referred to in a different way
19 but I leave that --

20 THE COMMISSIONER: Does anybody have any concerns about that
21 procedure that's been suggested? All right.

22 MR. VERTLIEB: While I'm on that subject, I'm sorry, deputy,
23 there was a document that I forgot to ask to be
24 marked as an exhibit and Mr. Giles was kind
25 enough to remind me yesterday. It's the letters

1 that should be marked as an exhibit proper.

2 THE REGISTRAR: That was Exhibit 32?

3 MR. VERTLIEB: Yes.

4 THE REGISTRAR: The one that was restricted?

5 MR. VERTLIEB: Yes.

6 THE REGISTRAR: That will be a full exhibit and free of

7 restrictions?

8 MR. VERTLIEB: Yes. My understanding is everyone agrees with

9 that.

10 MR. HERN: I didn't follow which document you were talking

11 about and neither did Ms. Tobias so could you

12 clarify that.

13 MR. VERTLIEB: Rather than interrupt the deputy, let's have a

14 look at that at the break.

15 MR. HERN: That's fine, I just don't know what we're talking

16 about.

17 MR. VERTLIEB: We'll do that at the break.

18 Q Deputy, let's move to the subject of

19 surveillance. You know that area, you've talked

20 about your work in strike force in Vancouver?

21 A Yes. It's pretty historical but I'm familiar

22 with it.

23 Q That's helpful because I want to review

24 historical surveillance and you're familiar with

25 a review of the surveillance work that was done

1 on Pickton, you know he was the subject of
2 surveillance in 1998 and 1999?

3 A Yes.

4 Q Let's go through that, please. It appears that
5 in September 1998 Corporal Connor made the first
6 request for assistance from Special O for
7 surveillance on Pickton; does that sound correct?

8 A Yes.

9 Q Tell us about Special O as you understand it.

10 A I'm not an expert on Special O, but my
11 understanding is that they are a pure
12 surveillance team by the RCMP and I believe when
13 I started in policing they actually were special
14 constables, not full police officers but sometime
15 later they became a unit of fully trained police
16 officers. When I say a pure surveillance unit in
17 contrast to the VPD's strike force, my
18 understanding is that they limit themselves to
19 conducting surveillance, whereas the VPD strike
20 force is a surveillance and arrest unit so they
21 will actually catch, for example, a bank robber
22 in the act and arrest him at that time. That is
23 my understanding of it.

24 Q So the commissioner has the broad picture of the
25 surveillance as it relates to Pickton, there was

1 surveillance by both Special O and the Coquitlam
2 RCMP?

3 A There was surveillance by Special O. I don't
4 know about surveillance by the Coquitlam RCMP but
5 there was surveillance by the VPD strike force at
6 the request of the Coquitlam RCMP. Inspector
7 Moulton reached out to Inspector Ditchfield in
8 the VPD when Special O wasn't available.

9 Q Under the direction of Coquitlam RCMP?

10 A Yes.

11 Q Let's deal with the documents. First we have at
12 tab 1, it just shows a picture of Pickton and
13 it's a Coquitlam RCMP document?

14 A Yes.

15 Q And it talks about the scar on the left side of
16 his neck from ear to chest?

17 A Correct.

18 Q The second tab, this is a surveillance request
19 and it's federal government form and you see it's
20 bilingual?

21 A Yes.

22 Q Look at the Target's Suspected Criminal Activity
23 Offences, you see that on the form on the right,
24 Target's Suspected Criminal Activity?

25 A Yes.

1 Q Read that out.

2 A "Information of unknown reliability reveals that
3 this subject is responsible for the disappearance
4 of female prostitutes in Vancouver, Burnaby and
5 New Westminster. He apparently brings them to
6 his residence whereupon they are killed."

7 Q The date of this, the top right corner?

8 A September 24, 1998.

9 Q Turn the page please. This establishes the
10 specific objectives. Can you read that for us,
11 please.

12 A "To establish a lifestyle, associates, vehicles
13 utilized by him. To determine the frequency
14 Pickton visits areas worked by prostitutes.
15 Requested coverage is from afternoons and if
16 suspect is still up and about coverage should
17 last till he retires for the evening. It is
18 requested that initial coverage should be for
19 Thursday, Friday and Saturday. If subject is
20 seen to pick a female in these areas, plans will
21 be made the 'rider' in attendance stop and remove
22 female from vehicle." Last line: "Consideration
23 will be given after discussion with your office
24 with respect to a 'tail car' from this office."

25 Q Read the section: Reasonable and Probable

1 Grounds Justifying Request.

2 A "Information received that this subject is hiring
3 prostitutes from Vancouver, Burnaby and New
4 Westminster and bringing them out to his farm
5 where they are killed and buried on his property.
6 Subject has intimated that he disposes of bodies
7 in a food grinder and feeds the remains to his
8 hogs. Information received that this subject has
9 been seen in possession of numerous female
10 identification and purses. He also shown a
11 female associate (YELDS) bloody women's clothing
12 he has termed as his 'trophies'. Given our past
13 dealing with this subject and his violent contact
14 with prostitutes information has merit."

15 Q Tab 5 I refer you to please for the purpose of
16 dealing with the surveillance that was conducted
17 in 1998 in the fall. Our reading of these
18 documents shows that he was followed two
19 afternoons and two additional days but not
20 consecutive, so in other words, four days perhaps
21 at the most. Does that sound more or less
22 accurate to your recall of the surveillance at
23 that time?

24 A In that time period, yes.

25 Q On the 2nd and 3rd of October he was not observed

1 and on the 9th and 10th he moved around but
2 strictly local movement. Does that sound like
3 more or less what you recall?

4 A It's consistent with my recollection; I wouldn't
5 want to guarantee it without carefully reading
6 over the notes again.

7 Q That's fine. Now, there was surveillance then
8 again in 1999?

9 A Yes.

10 Q Let's talk about April and May 1999, our review
11 suggests it was one day and six afternoons.
12 There's a suggestion that Corporal Connor
13 indicated surveillance to be done between these
14 dates as time permitted. Does that ring with you
15 as the situation?

16 A Yes. I thought that I had added up at one point
17 the number of shifts of surveillance and I
18 thought the total was around 18 shifts of
19 surveillance.

20 Q There is more surveillance later on in July and
21 August?

22 A Yes.

23 Q I'm just covering April, May right now.

24 A Can you direct me to which tab?

25 Q 6 and 7.

1 A I see surveillance notes for April 30, this is in
2 tab 6, April 30, '99, and then May 3, 1999.

3 Q May 4 as well '99?

4 A Yes.

5 Q May 5?

6 A Yes.

7 Q And May 6 and 7?

8 A I do not see the surveillance notes for May 7; I
9 see them for May 6.

10 Q We have a note on the 7th. Let me ask you from
11 your review of these records, if I suggested it
12 was primarily during afternoon hours --

13 A Yes, it appeared there was more surveillance on
14 afternoon hours.

15 Q Given the circumstances around the sex trade
16 workers and the Downtown Eastside, would you have
17 requested afternoon hours or would you have
18 requested later in the day?

19 A I really can't criticize them for that in that
20 sex trade workers, particularly in the survival
21 sex trade, they're out there during the daytime,
22 they're out there at nighttime, and I did note my
23 recollection is that quite often when they were
24 on afternoon shift they didn't stop until they
25 were putting him to bed, in for the night.

1 Q Was there a plan of surveillance you noticed in
2 reviewing these records? If that was a plan, did
3 you see a plan for when they sat down and said,
4 "When should we follow this man?"

5 A I didn't see that. I'm not saying there wasn't
6 one but I didn't see that.

7 Q This information, does it seem to attach him to
8 the company P & B Building Supplies?

9 A Yes.

10 Q Which of course is what Hiscox had said?

11 A Yes.

12 Q Now, the next timeframe is July 1999 to August
13 1999. Our tally showed it at 13 and a half days
14 and afternoons consecutively. Tab 9, please.

15 A Yes. That sounds about right.

16 Q The records seem to suggest that on August 4, '99
17 Pickton went to Westcoast Reduction Limited, then
18 Patricia Hotel, then was lost?

19 A Correct.

20 Q If someone is lost in surveillance what is an
21 option for a police agency?

22 A It actually happens quite frequently in
23 surveillance that you lose the target. It's
24 nowhere near what it looks like on T.V. So if
25 you know the file really well, usually as soon as

1 you lose the target you go into hunting mode and
2 go to the places where you think the target is
3 likely to go to try to pick the target up again.
4 That's what most frequently happens in
5 surveillance when visual contact is broken.

6 Q Is there a device though that can be put on a car
7 so if you lose visual contact you can follow?

8 A Yes. At that time there are many challenges to
9 using these devices but that is an option to use
10 what we called at the time a bird-dog.

11 Q A bird-dog was available in 1999?

12 A Yes. We were using them in the '80s.

13 Q So that information August 4, has him attending
14 Westcoast Reduction Limited?

15 A Correct.

16 Q The records suggest that on August 4, '99 there
17 was a meeting at Port Coquitlam RCMP with a
18 discussion about paring down surveillance to
19 certain hours due to resources. Do you recall
20 discussion about resources, limited resources, as
21 it were, and surveillance?

22 A I recall that generally and surveillance is very
23 resource intensive, so it's not a decision taken
24 lightly to put a full surveillance team on to a
25 target, there has to be some value in doing that.

1 I do recall that that was an issue and that they
2 were having surveillance done when a surveillance
3 team was available, not on higher priority
4 targets, for example.

5 Q This surveillance from your review was not
6 treating Pickton as a higher priority?

7 A I don't want to jump quite that far because I
8 think that in the summer of 1999 the
9 investigation was being pursued quite diligently
10 and was being taken very seriously, so that
11 doesn't necessarily mean that if they weren't
12 doing surveillance all the time that it wasn't
13 being treated seriously. It's just that it's a
14 very resource intensive and expensive resource
15 and there has to be some belief that it's going
16 to be productive. You have to have a goal in
17 mind. The goal might be because you believe the
18 person is going to commit an offence while under
19 surveillance or that he is going to provide you
20 information about, for example, on an associate
21 that you want to identify or it might be you want
22 to get cast-off DNA, you want to see if he goes
23 to a certain area, so there's need to be a goal
24 for it.

25 Q Let's look at tab 12 which an RCMP document that

1 is in the VPD records. This is August 4, 1999,
2 7:00 a.m. Corporal Connor received only located
3 photograph, 1990 apparently, of Lynn Anne
4 Ellingsen. Do you see that?

5 A Yes.

6 Q She was made the subject of criminal profile.
7 When we read that she was the subject of criminal
8 profile on the detachment CABS does that mean she
9 had been in contact with the police prior to this
10 date?

11 A I have an idea but I think that would be guessing
12 and it would be better for an RCMP member to
13 interpret that.

14 Q Thank you. Let's go to 8:00 a.m. Read that out
15 to us please, starting at the beginning.

16 A "Meeting held with an identified investigational
17 group, myself, Sergeant Cathy Robertson will
18 manage resources for surveillance and inquiries
19 with Special I Section. Detectives Lepine and
20 Chernoff will handle Caldwell and other duties as
21 required. Corporals Campbell (Coquitlam Fraud),
22 Justason (Unsolved Homicide), Russ Nash (Division
23 Serious Crimes Section), Detective Ballantyne
24 (Unsolved Homicide) and myself (File
25 Coordinator), Constables Greig and Stuart of our

1 Serious Crimes Section were also in attendance.
2 During the meeting discussion was held with
3 respect to surveillance vis-a-vis resources. It
4 was felt that surveillance would be better served
5 by one team of specific hours. The fear of
6 Pickton going out and committing another offence
7 is probably a real fear but other investigation
8 is required on other matters within this
9 investigation and given the finite number of
10 resources consideration will be given to paring
11 down the surveillance hours. Detectives Chernoff
12 and Lepine were detailed to locate Caldwell and
13 speak with him in relation to proceeding with him
14 as a witness in this matter, etc. Detective
15 Ballantyne requested to locate the Missing Person
16 file on McDonnell. Corporal Connor was detailed
17 to meet with Pader Gulbransen of the New
18 Westminster Crown Counsel to discuss the
19 feasibility of a Part VI application at this
20 point."

21 Q McDonnell, that would be a woman who was
22 ultimately determined to be a murdered person and
23 referable to Pickton. Do you remember we talked
24 about the Ellingsen timeframe of 1999, that's the
25 McDonnell we're speaking of?

1 A That's what I believe.

2 Q The comments here, "The fear of Pickton going out
3 and committing another offence is probably a real
4 fear but other investigation is required and
5 other matters within this investigation and given
6 the finite number of resources consideration will
7 be given to paring down the surveillance hours."

8 A Yes.

9 Q The question I wanted to ask, there's reference
10 to Chernoff in here and his partner Lepine. To
11 your knowledge were Chernoff and Lepine reporting
12 back promptly to the RCMP on their dealings with
13 Caldwell?

14 A Reporting back promptly?

15 Q Yes.

16 A Yes.

17 Q That's August 4, 1999. I want to move then to
18 August 10 of '99. This will be an informant
19 binder, tab 12. Do you have that, deputy?

20 A Yes, I do.

21 Q Informant binder, tab 12, page 60?

22 A Yes.

23 Q Now, there's a discussion starting on the page
24 before about the value of Pickton's net worth,
25 whatever he's worth, his property and there's a

1 mention about many millions of dollars that he
2 seems to be worth. I don't care about that.
3 Then discussion about the townhouse development
4 and they're building some property, et cetera, I
5 don't care about that either. So here's the one
6 from Chernoff. "Had Ron been in discussion with
7 Willie about anything that you think is of
8 relevance?" Do you see that question?

9 A Yes.

10 Q This is Mark Chernoff and he's talking to Ross
11 Caldwell, the date August 10, 1999.

12 A Yes.

13 Q Caldwell: "Um, I guess Ron has, has heard
14 certain things, you know. But I meant..."

15 Chernoff: "You mentioned something earlier
16 about, uh, containers."

17 Caldwell: "Oh, well, I mean I asked Ron, I
18 said, hey Ron, 'how' you know 'how does he,
19 uh, dispose of these of these bodies and
20 stuff?' I said, you know? And he said
21 that, uh, it was simple. All he does is put
22 them in 45 gallon drums and gets it shipped
23 to, uh, some depot that, uh, uses it for
24 fertilizer."

25 A Yes.

1 Q That's August 10?

2 A Correct.

3 Q I want to discuss with you August 12
4 surveillance. Tab 8, please. Do you see that
5 tab?

6 A Yes.

7 Q I'd like you to turn to the very last page in
8 that tab, RCMP document 037-002087. Do you see
9 that?

10 A The last page in my tab 8 is 037-002096.

11 Q What I'm looking for is a document from August
12 12, 11:10 a.m.

13 A I do see that time on the document I'm looking
14 at. It has a different number but it looks like
15 the same document.

16 Q "Pickton departs the residence." Do you see
17 that?

18 A Yes.

19 Q Read that, please.

20 A "Pickton departs the residence in the white flat
21 deck 2887CW with some barrels in the back and
22 drives to Westcoast Reduction, Commissioner and
23 Stewart Street, Vancouver," and it gives some
24 numbers, I don't know what they are. I am
25 assuming that those may be the numbers of the

1 police officers who made that observation.

2 That's how often how they are in our surveillance
3 notes.

4 Q Thank you. Is there any indication to suggest
5 that whoever was following him got out of the
6 vehicle and went to look at where he went and
7 what he dumped from those barrels in the back?

8 A No.

9 Q Let's go back. August 10, Caldwell says -- he
10 puts them in 45 gallon drums and gets it shipped
11 to the depot that uses it for fertilizer. August
12 12, he's followed to Westcoast Reduction, and you
13 know that to be a reduction plant that takes
14 waste products and turns them into other products
15 including fertilizer?

16 A Right.

17 Q He's followed there, no indication to you that
18 anyone got out to watch and see what he was
19 doing?

20 A No indication in the surveillance notes that's
21 true.

22 Q Is there any indication that after he left
23 Westcoast Reduction that someone went to look and
24 see what he had dumped?

25 A Not in the surveillance notes.

1 Q We are informed on September 12, 2002, police
2 made a video of Westcoast Reduction. Can you
3 please turn to tab 18. You see the time 1:13?

4 A Yes.

5 Q And you see the date at the top?

6 A Yes.

7 Q Still from Project Evenhanded: Westcoast
8 Reduction DVD. That would be September 12 of
9 2002?

10 A Correct.

11 Q The first photo shows entrance into facility at
12 weigh scale. You see that?

13 A Yes.

14 Q Look at the next photo, receiving door?

15 A Yes.

16 Q And the third photo, the drop off pit?

17 A Yes.

18 Q Is there any indication that anyone who was
19 following this man went to look at what he had
20 put into that drop off?

21 A Not to my knowledge.

22 Q This surveillance was being performed on
23 surveillance request starting at tab 3 which is
24 April 21, 1999. Can you tell us the Target's
25 Profile and Suspected Criminal Activities, can

1 you read that?

2 A It says Target's Profile and Suspected Criminal
3 Activities: "Subject is a loner and tends to his
4 farm and animals. Subject also self-employed in
5 home/business demolition. Also runs a local
6 booze can, Piggy's Palace with his brother.
7 Pickton employs the use of prostitutes. In the
8 past a violent confrontation occurred with an
9 east end prostitute. Intelligence of
10 questionable reliability has surfaced that
11 Pickton may be responsible for the disappearance
12 and murder of a number(?) of local prostitutes.
13 Recently Pickton has been checked in New
14 Westminster 'stroll' in the company of
15 prostitutes and is presently under investigation
16 for the rape and strangling of a prostitute their
17 point. Several other like offences have been
18 identified but the victims will not come forward.
19 Pickton likely suspect."

20 Q The objectives, next page.

21 A "To establish a lifestyle and associates and
22 vehicles utilized by him. To determine the
23 frequency Pickton visits sex trade workers and
24 what area. To collect discarded material that
25 may contain his DNA. "

1 Q So the reference to collect discarded material
2 was part of the instruction of the surveillance
3 request?

4 A Yes. I don't really understand it because they
5 already had his DNA but that's what it says.

6 Q Surveillance was discontinued at 2:00 p.m. that
7 day at the request of the agency; is that a fair
8 reading of the record?

9 A Yes, from looking at the previous document.

10 Q I don't wish to be gruesome about this but you
11 know from your work that a search of the Pickton
12 farm produced fragments of bone?

13 A Yes.

14 Q If I used the term "long bones" do you know what
15 that refers to?

16 A I would assume that you're referring to arm and
17 leg bones.

18 Q Were any long bones found at the Pickton farm?

19 A Not to my knowledge.

20 MR. VERTLIEB: I'm wondering if this is a convenient time?

21 THE COMMISSIONER: All right.

22 THE REGISTRAR: This hearing will now recess for 15 minutes.

23 **(PROCEEDINGS ADJOURNED AT 3:02 P.M.)**

24 **(PROCEEDINGS RESUMED AT 3:26 P.M.)**

25 THE REGISTRAR: Order. This hearing is now resumed.

1 MR. VERTLIEB:

2 Q Thank you. The next subject would be a
3 discussion about obtaining of warrants. We've
4 covered a tracking device called a bird-dog in
5 the timeframe of '99 surveillance existed.

6 A Right.

7 Q To your understanding you can't get a tracking
8 device just by going to get one, you need
9 authorization?

10 A Correct.

11 Q And as you understand it, it's an authorization
12 that a justice of the peace can authorize?

13 A Yes, I believe that is correct. We actually did
14 not require them in the late '80s. That came
15 about as a result of some legislation I believe
16 in 1993 that flowed from some Charter cases in
17 the 1990s.

18 Q You're right. Initially you could get them as a
19 police tool and the Criminal Code was amended.
20 And a JP is able to give a tracking device, for
21 example, whereas video surveillance needs to come
22 from a judge?

23 A I believe that is true.

24 Q To get a tracking device does it refresh your
25 memory, having done this kind of work, that

1 really it's a very low threshold, you need to
2 have a belief that -- a suspicion that an offence
3 has been committed or evidence can be obtained?
4 It's not a high threshold?

5 A No, I think it's the lowest threshold of any type
6 of warrant that we would get.

7 Q That's because it's the least invasive in terms
8 of a person's privacy?

9 A Correct.

10 Q Moving up the line, let's continue. We've agreed
11 that the tracking device would be the lowest
12 form. I understand the highest form is a video
13 surveillance on the theory that's a personal
14 invasion of someone's privacy; you have to go to
15 a judge to get that, that's the highest one?

16 A I agree that it would be a very high level. I
17 think a wiretap, authorization for intercept of
18 private communications is very high threshold as
19 well so I'm not expert enough to know if one is
20 higher than the other.

21 Q I don't think for our purposes that matters.
22 We'll come back to the video but let's talk about
23 the next level which would be just a general
24 search warrant. This would have been under part
25 14, I believe -- part 15 of the code as it then

1 was. A general search warrant can be issued by a
2 justice of the peace.

3 A Correct.

4 Q That's lower than having to go to a judge to get
5 a video warrant?

6 A Correct.

7 Q The test there you have to have reasonable
8 grounds to believe that some item -- prescribed
9 items will be found in the place, you have to
10 have reasonable grounds and reasonable
11 probability?

12 A Yes.

13 Q So it's not a high threshold?

14 A Items relating to a criminal offence, yes, I
15 agree.

16 Q It could be any type of offence that's suspected
17 of having been committed?

18 A Yes, generally. There are some limitations
19 around some of the warrant sections in the
20 Criminal Code but, generally speaking, yes,
21 that's my understanding. I don't recall ever
22 having an offence that I wanted a search warrant
23 for that I couldn't get one for.

24 Q You need a reliable informant?

25 A Yes.

1 Q Hearsay apparently is allowed?

2 A Yes.

3 Q And you just said you never recalled a situation
4 where you didn't get a search warrant when you
5 went to get one?

6 A What I meant to say is there wasn't any offence
7 type that didn't lend itself to getting a search
8 warrant that I ever investigated, and yes, in my
9 experience generally you know going in whether
10 you think you have reasonable grounds. Sometimes
11 the JP might say you're a little weak here so you
12 go and work on it a bit more to get the
13 information sufficient to meet the test, but I
14 cannot think of a time I did not get a search
15 warrant where I was applying for one.

16 Q I'm not going to take you through the difference
17 between a JP and a judge with the commissioner
18 who has ample and lengthy experience with this.
19 Then the highest form would be the warrant for
20 video surveillance and wiretap. I don't need to
21 discuss wiretap with you but this would be in
22 what's called Part VI?

23 A Yes.

24 Q The reason I come to this one is there was a
25 mention in the records from RCMP in Coquitlam,

1 specifically Corporal Connor, about consideration
2 being given to Part VI?

3 A Yes, for video surveillance in the barn, for the
4 property at least.

5 Q The reason that underpins the higher standard for
6 video is the invasion of privacy; you could, for
7 example, get one in a person's bedroom?

8 A Yes.

9 Q That's where a judge gets involved and it's the
10 highest standard to get that kind of warrant?

11 A Yes.

12 Q Part of the test is because it's a tough test you
13 have to show that other investigative procedures
14 are unlikely to succeed so you have to show
15 you've exhausted every possible lead or approach?

16 A That you've exhausted every reasonable approach,
17 or my recollection on reading the legislation is
18 that there might be other investigational
19 approaches, but as you say, they're unlikely to
20 succeed, or there is some urgency to it is
21 sometimes part of the language as well.

22 Q On your review of the file did you see any
23 evidence to indicate that consideration had been
24 given to getting a tracking device?

25 A No.

1 Q Did you see any evidence to indicate in the
2 timeframe of 1999 and 2000 any attempt to get
3 just a general search warrant?

4 A I made some assumptions about Corporal Connor's
5 discussions with Crown counsel if he was seeking
6 a video warrant that that would have been
7 something to me obvious to discuss what other
8 options would be, but I didn't see anything in
9 the records specifically.

10 Q There is information in the records that shows
11 consideration was given by Connor to a video
12 surveillance warrant?

13 A Yes.

14 Q Given the issue around Pickton being lost, and I
15 took you to surveillance entry, would a tracking
16 device have been available to assist in following
17 him?

18 A As I said earlier, I wouldn't want to mislead
19 you, Mr. Commissioner, in that at that point we
20 really didn't call them a tracking device, we
21 called them a locating device because they really
22 weren't sophisticated enough to track somebody
23 but they were helpful to locate a vehicle if you
24 lost it, but I wouldn't want to minimize the
25 challenges involved in that you have to safely

1 put the device on the vehicle, you have to safely
2 get it off, there are issues with how long the
3 battery lasts, there are issues if you have
4 multiple vehicles, so there are many challenges.
5 It is not a simple thing. I have personally put
6 bird-dogs on vehicles and been involved in
7 investigations where we used them, and although
8 it's perfectly legitimate to consider its use,
9 it's not as simple as it might sound. There are
10 challenges.

11 Q Fair enough. Of course the challenge is always
12 relative to the nature of the offence being
13 investigated?

14 A Yes.

15 Q Others may have questions on that subject but I'm
16 going to leave that.

17 I want to go to a discussion that Dr. Lowman
18 had with the commissioner and it's in his report,
19 Exhibit 3, and I'm wondering, Mr. Giles, if you
20 would be good enough to give Deputy LePard
21 Exhibit 3. It's Dr. Lowman's expert report. I
22 just want to have a brief discussion with you. I
23 want you to understand that it's clear to
24 everyone that you weren't in any way involved in
25 this investigation and you've come in to give a

1 review based on your experience, I want to make
2 that absolutely clear. You've always said here a
3 number of times that there was no crime committed
4 in Vancouver and you understand that to have been
5 the police position back in the day, as they say?

6 A Correct.

7 Q I just want to ask you just a little bit about
8 this. Dr. Lowman talked about predatory violence
9 and he referenced this at page 27 in his report.
10 He talked about in his discussion of predatory
11 violence, he said: "Sometimes it is financially
12 motivated such as a planned robbery." That makes
13 sense, doesn't it? "On other occasions it's
14 designed to hurt or kill a prostitute. The
15 offender poses as a client in order to get the
16 intended victim to a secluded location where he
17 can carry out an attack." When he was here
18 before the commissioner he talked about that and
19 he said he's a person posing as a client in order
20 to carry out a different agenda and I said that
21 agenda being? And he said to murder the woman.
22 That's Dr. Lowman's opinion. I'm not asking you
23 to accept it or reject it, I don't want to do
24 that with you, but I wanted you to hear that's
25 one man's opinion.

1 A Yes, I did hear that evidence.

2 Q Whether it's right or wrong that's not for us to
3 worry about at this moment in the inquiry. The
4 reason I want to flag it with you is Deputy Chief
5 Constable Evans asked you about this as well.

6 A Yes.

7 Q Let me read from her interview. She said: "What
8 about the supposition that the offence actually
9 starts in Vancouver because when Pickton comes
10 down to lure these women into his car he has the
11 intent that he is going to kill them later on.
12 So clearly the offence is actually starting
13 although the women are going willingly in his
14 mindset he's doing it as part of the offence,
15 going to kill them." Mr. LePard: "Well, a
16 couple of things, first of all, there is some
17 merit to that" -- you said there is "some" merit
18 to that. "It does not take away though from the
19 fact that the Coquitlam accepted, asserted, took
20 responsibility for investigating Pickton, that
21 the VPD had all these other suspects...they had
22 plenty on their hands." Do you remember giving
23 that?

24 A Yes. I remember saying quite a bit more about
25 that issue as well though and would have quite a

1 bit to say about that.

2 Q Well, I don't want to be unfair to you at all.
3 I'll tell you what we'll do. I just want to
4 raise this -- Mr. Hern will have a copy of this
5 as well -- I'm happy to read more to you but I
6 don't want to read less than what you would want
7 to be read and I don't want to put you on the
8 spot right here. I can read some more if you
9 want and if you think there's more you can
10 clarify it later. Do you want me to read more?

11 A Or I can just tell you what my view is on that
12 issue if you like.

13 Q Please.

14 A So the intent, I don't think I need to explain
15 this to you, Mr. Commissioner, but someone having
16 intent does not constitute completion of a crime,
17 that there needs to be mens rea and there needs
18 to be actus rea and the elements of the offence
19 have to be completed. So there was no offence
20 that was committed in Vancouver; there's no
21 evidence of an offence that was committed in
22 Vancouver. Whether or not he had intent in his
23 mind does not constitute an offence and, in fact,
24 we don't know what the intent in his mind was
25 and, in fact, we don't know which, if any, of the

1 women that ended up at the pig farm in Coquitlam
2 were actually picked up by Mr. Pickton. There
3 was evidence that he was -- for example, the
4 Ellingsen story, that he picked up that one. But
5 there's also evidence that women went there many,
6 many, many times of their own accord, when
7 they're with others. The report to Crown counsel
8 on the Pickton case points out that there were I
9 think 13 women that spent at least one night at
10 his property, one women that had spent 40 nights
11 at his property. Constable Dickson pointed out
12 that he knew women had gone there many, many,
13 many times. Heather Chinnock who was a victim
14 who went missing from Surrey, her fiance reported
15 that she had been going out there since 1991,
16 that she had been there many, many times. So we
17 don't know when Pickton decided to kill anyone or
18 why he decided to kill anyone. Some women went
19 to his property and multiple times and were not
20 injured by Pickton. I have personally spoken to
21 a woman that had been to Pickton's property, in
22 his trailer, and was not injured.

23 So there's not a shred of evidence that a
24 crime was committed in Vancouver and we don't
25 know where Pickton formed the intent, or, as I

1 say, we're not able to say, my understanding is,
2 any offence, any woman that Pickton personally
3 picked up. Even the issue of the Ellingsen
4 story, in her evidence at trial it's different
5 than the information provided from the informants
6 in that I believe she denies that she was
7 involved in picking up the sex workers and going
8 out to the Pickton property. People can make
9 their own judgments about that information, but
10 the point is that women went out there by various
11 means, some of them probably in a car with
12 Pickton, but it is not known when he formed the
13 intent to kill them. It cannot be said, as
14 Dr. Lowman said, that each time he picked one up
15 must have been because he had the intent to kill
16 them because in fact many women had been there
17 many, many times over the years and it is a
18 mystery, I think, why Pickton decided to kill
19 some and not to kill others, or had women out
20 there as sex workers many, many times between
21 times that he killed, because we know there were
22 women killed between 1995 and 2002. All the
23 evidence is that women were killed from 1995 up
24 until his arrest in 2002 except for the so-called
25 Mission skull which was found in 1995 but

1 believed to have been a year or perhaps older
2 than that. Other than that, all the identified
3 victims went missing in 1995 and then up until
4 his arrest -- I think it was December of 2001.
5 So in between him killing women in 1995, 1996 and
6 so on, he also was having sex trade workers out
7 there visiting his property who were not being
8 killed. So it can't be said that every time Mr.
9 Pickton had a sex trade worker out to his farm
10 that he had the intent to kill because the
11 evidence is to the contrary. We really don't
12 know what went on in his mind.

13 Nevertheless, from a legal point of view,
14 there was no offence that was committed in
15 Vancouver no matter what his mindset was at the
16 time. If I were to give a few examples of that
17 issue, for example, victim 1997 was picked up
18 from the east end of Vancouver and taken out to
19 the farm where she nearly died. There was no
20 suggestion that because she had come from the
21 east end of Vancouver, that's where he picked her
22 up, that the VPD had responsibility for
23 investigating at that file. In 1995 when the
24 three women, Tammy Lee Pipe, Victoria Yonker and
25 Tracey Olajide were found out in the

1 Mission/Agazziz area, they were sex trade workers
2 from the Downtown Eastside, not only was there no
3 communication with the VPD about you have a role
4 in this -- in fact, the investigator was not
5 particularly happy about even providing the
6 information from the files to assist in the VPD
7 investigation until people more senior stepped in
8 on that. I could give other examples of, for
9 example, a sex worker that was reported missing
10 in 2009 from Burnaby, she worked in a massage
11 parlor, and was found in the trunk of a car on
12 Kent Street in Vancouver. Responsibility for
13 that investigation is Vancouver's and no one is
14 suggesting Burnaby because she went missing from
15 there has some role in the investigation.

16 In terms of your specific question about --
17 you referred to Deputy Chief Evans' question,
18 didn't the offence began in Vancouver. My
19 reference to there being some merit is of course
20 VPD has a role in this, of course VPD had some
21 responsibility because these women were reported
22 missing from Vancouver. The VPD did have a
23 responsibility to effectively investigate, but
24 once information was determined about foul play,
25 wherever that may have occurred, the

1 responsibility belonged to the agency of
2 jurisdiction and that was never in dispute. It's
3 in all the records. The RCMP in Coquitlam did
4 take responsibility for that, assigned an
5 investigator and so on. We've already been
6 through a lot of that evidence. I think that
7 that is in a nutshell.

8 Q I appreciate your answer. I wanted to give you
9 an opportunity because you were asked about it by
10 Deputy Chief Constable Evans.

11 The final area I want to ask you about very
12 briefly is the issue around the Archie Campbell
13 recommendations and this came out of the Bernardo
14 tragedy in Ontario and you're familiar with his
15 recommendations?

16 A Yes.

17 Q Those recommendations have been considered with
18 great focus across the country?

19 A Yes.

20 Q He spoke about a number things. As I said
21 earlier, we would like to have the benefit of
22 your input on this subject at the study
23 commission where it's a different environment,
24 but I do just want to ask a bit about this. He
25 did say the major case management system is

1 required for major and interjurisdictional serial
2 predator investigations?

3 A Yes.

4 Q This would certainly fit Pickton, major and
5 interjurisdictional serial predator
6 investigation?

7 A Yes.

8 Q He talked about the need for this based on a
9 number of factors. He spoke about co-operation
10 rather than rivalry; that's correct?

11 A That's correct.

12 Q He spoke about specialized training for senior
13 officers in charge, senior investigators and
14 interdisciplinary support teams?

15 A Yes.

16 Q He spoke about early recognition and linked
17 offences?

18 A Yes.

19 Q And the linked offences means the serial killer
20 has a number of offences and they are linked?

21 A Yes.

22 Q Coordination of interdisciplinary and forensic
23 resources?

24 A Correct.

25 Q And simple mechanisms to ensure unified

1 management, accountability and coordination among
2 police forces and law enforcement agencies?

3 A Yes.

4 Q In our discussion over the last several days more
5 than once we've had the word "coordination" come
6 to light?

7 A Yes.

8 Q We've also talked about the linking of offences
9 or the absence of it in this case; correct?

10 A Correct.

11 Q We've talked about forensic resources that were
12 available and perhaps not used?

13 A Yes.

14 Q And we've talked about accountability, that's
15 important as well?

16 A Yes.

17 Q And that's why more than once I was asking you
18 about the senior management being brought into
19 the loop and you understand why that would come
20 into play knowing Archie Campbell's
21 recommendations?

22 A Yes.

23 Q We covered that at the time this tragedy was
24 unfolding in our own province you seem to be for
25 the Vancouver Police availability the only person

1 really that had major case management skills that
2 were required and not assigned to this
3 investigation?

4 A I would say that I was one of the only two that
5 had the training. I think we had, as other
6 police agencies did, had some highly skilled
7 people, and excellent police work was done prior
8 to the major case management program being
9 developed as well.

10 MR. VERTLIEB: Deputy LePard, those the questions I wish to
11 put to you at this time. As I've said, I do wish
12 to see the Evans' report which is not yet
13 available because it could well be that I have
14 questions arising out of that that I want to put
15 to you for your input. If you don't mind, I'd
16 like to stand the deputy down and I have a few
17 procedural issues.

18 THE COMMISSIONER: Yes. Thank you for coming. We appreciate
19 that.

20 **(WITNESS STOOD DOWN)**

21 MR. VERTLIEB: We've come to the point in time where we've
22 been on schedule as we thought it would unfold.
23 I just wanted to tell you that we are going to
24 have a meeting at the end of the day with counsel
25 to see if we can discuss a witness list and I'll

1 report back to you once I have more information
2 about that.

3 We had planned to have a break because we
4 needed to see the Evans' report which we hoped to
5 have sooner, but you know well from us that that
6 is not available but we're making every effort to
7 get it. I had in mind as your counsel there were
8 times needed. I wanted Mr. Hern and DOJ,
9 Ms. Tobias and her colleagues, to be able
10 finalize the Williams' report so the attachments
11 can be marked and I want Mr. Hern and his
12 colleagues to finalize the documents that we've
13 been talking about the last several days and that
14 as you've heard will take some time and I think
15 Mr. Hern has a reasonable request as does the
16 DOJ, so it makes sense that we would take next
17 week off for that to be done because it's
18 important.

19 I should tell you I had in mind my learned
20 friend Mr. Ward's comments. He has an open
21 motion to adjourn that he filed with you and
22 that's still outstanding and I recall Mr. Ward
23 saying to you that he needed more time and he
24 referenced comments that he thought you had made
25 about giving him all the time he needed --

1 whether that's quite accurate doesn't matter. I
2 thought the break would assist every one of my
3 colleagues here, not just Mr. Ward. And also,
4 Mr. Commissioner, the lawyers are working under
5 enormous pressure to stay here and be on top of
6 this but they have other concerns and
7 requirements and obligations to their firms and
8 other clients so they need some time to regroup
9 and that's essential. All of that made sense for
10 us to take next week off while we allow our much
11 needed report to come in and the documents to be
12 finalized.

13 We're at the end of this. We've come a long
14 way and we have no more evidence and no need to
15 be here tomorrow. I'd like us to stand down
16 until a week Monday. I have one other comment
17 before Mr. Ward speaks. That is, the exhibit
18 that we were talking about earlier, it really
19 shouldn't be an exhibit. It's correspondence
20 between counsel.

21 THE COMMISSIONER: What exhibit is that?

22 THE REGISTRAR: Exhibit 32.

23 MR. VERTLIEB: I had another look at and I was perhaps --

24 THE COMMISSIONER: This is a letter dated December 15, 2010
25 from the Department of Justice to you.

1 MR. VERTLIEB: There is other correspondence but they are all,
2 as I understand it, letters between counsel.
3 They're not really documents about the case,
4 they're not documents that originated as part of
5 your terms of reference and they shouldn't be
6 marked in my view, but I wanted to raise it with
7 you. It's not the nature of evidence, as it
8 were, in the case.

9 THE COMMISSIONER: Do you agree with this?

10 MR. HERN: I don't have any issue with it. I can't remember
11 who tendered it. Was that Mr. Gratl or --

12 THE REGISTRAR: Mr. Ward.

13 MR. HERN: I have no issue with that.

14 THE COMMISSIONER: I'll ask Mr. Ward what his position is.

15 Ms. Tobias, what's your position on this document
16 that has apparently been marked Exhibit 32 but
17 Mr. Vertlieb now tells me it should not have been
18 marked because it's not evidence?

19 MS. TOBIAS: Cheryl Tobias for the Government of Canada. I
20 agree with my friend Mr. Vertlieb in the sense
21 that it's not evidence on the inquiry per se.
22 What I don't know is whether Mr. Ward is trying
23 to have it marked pursuant to some kind of
24 procedural application in which case it would
25 ordinarily would be marked only on that

1 application. Perhaps he can clarify.

2 THE COMMISSIONER: Yes. Mr. Ward.

3 MR. WARD: Indeed, it was marked as Exhibit 32 and nobody
4 objected to it, but in my position it should be
5 an exhibit. It does go to the issue of the
6 nature and quality or lack thereof of the
7 disclosure in this case to date. It contains
8 correspondence from my friend Ms. Tobias, for
9 example, saying there are two million documents,
10 and of course at this stage we have a tiny
11 fraction of that. It goes to that issue and it's
12 properly an exhibit in this proceeding is my
13 submission and it was marked some days ago.

14 THE COMMISSIONER: How does it go to disclosure of documents?

15 I haven't read it, quite frankly, so I don't
16 know, but it appears to be correspondence between
17 Ms. Tobias, Mr. Brongers on one hand and Ms.
18 Brooks and there's a letter here to Mr. Vertlieb
19 and Ms. Brooks from Judy Hoffman for Cheryl
20 Tobias. It's a series of communications. I
21 mean, I don't know how that can be marked as an
22 exhibit -- I know it has been but tell me why
23 this should be an exhibit. You can't just say it
24 goes to disclosure. Disclosure of what?

25 MR. WARD: It goes to the disclosure of the documents that the

1 RCMP have in their possession but have not yet
2 made available to this inquiry. You'll see in
3 there, for example, correspondence from Mr.
4 Vertlieb earlier this year, in effect, saying to
5 Justice are we going to have to get a court order
6 to deal with your inability to produce documents
7 to us properly -- I'm paraphrasing -- but it goes
8 directly to the application that I intend to
9 bring, which is not an application for
10 adjournment, although my friend keeps
11 characterizing it as that. It is an application
12 for full disclosure of relevant documents coupled
13 with in the event the application is either
14 successful or partly successful, some time to
15 review those documents. I'm not seeking nor have
16 I asked for any break in the hearing, especially
17 not next week, and I want to address my friend's
18 comments on that. My clients are here from
19 Ontario and Alberta and we were all expecting to
20 be sitting next week until we learned a day or
21 two ago that that would not be happening. I
22 suggest that we sit next week and we hear some
23 police officers who are actually involved in the
24 investigation of this case. I don't know why --
25 THE COMMISSIONER: Do you want to restrict your applause,

1 please.

2 MR. WARD: I don't know why we're taking time off all of a
3 sudden that wasn't scheduled and in the next
4 breath being told that we're going to possibly
5 have to reduce the number of witnesses or limit
6 cross-examination because we have to get this
7 thing finished by a certain time. I'm really
8 concerned about taking time off, I don't want to.

9 THE COMMISSIONER: Mr. Ward, you were the one that told me you
10 needed time to --

11 MR. WARD: To prepare --

12 THE COMMISSIONER: Wait a minute. Let me finish. I didn't
13 interrupt you so don't interrupt me. You were
14 the one that was asking for time off so you can
15 prepare and you said you wanted the Evans' report
16 and you needed time to prepare. So now, for
17 various reasons, we're down and you're opposed to
18 the adjournment. You were the one that wanted
19 the adjournment, now you don't want it. I'm in
20 your hands and I'm going by what counsel want
21 here and I want to see this thing done as quickly
22 as possible, but I assume that when you said a
23 week and a half ago that you needed an
24 adjournment, you were the one that brought it up,
25 you're the one that needed the adjournment and

1 now we've got an adjournment and you're opposed
2 to it.

3 MR. WARD: May I go ahead?

4 THE COMMISSIONER: Yes.

5 MR. WARD: The record will show what I said. The discussion
6 between us, as I recall it, came up in this
7 context: I said I was preparing an application
8 for proper disclosure and I needed more time to
9 prepare and I couldn't bring it on in the next
10 day or two. You indicated to me, "Tell me what
11 the documents are," were your words, in effect,
12 "and we'll look them up and we'll deal with it
13 and why do you need more time." Then I reminded
14 you, Mr. Commissioner, that you had said I could
15 have more time if I wanted. I wasn't seeking an
16 adjournment, I wasn't seeking to stand down. My
17 colleagues have been diligently working the last
18 week or two on the disclosure application which
19 we consider to be of critical importance in this
20 matter. We're being told we're facing some sort
21 of timeline here, that we have to finish these
22 hearings by the end of April, and I'm concerned
23 about taking time off in those circumstances. I
24 didn't ask for time off and I don't want it.

25 THE COMMISSIONER: I beg to differ with you. You asked for an

1 an adjournment; an adjournment means time off.
2 Now you've changed your mind. All I want is
3 counsel to be consistent. I'm trying to be fair
4 here to all parties and I have to ensure that all
5 the evidence is heard, everybody has an
6 opportunity to be heard. I don't particularly
7 like it when counsel gets up one week and asks
8 for time -- what does it mean, time? If it
9 doesn't mean an adjournment, what does it mean?
10 You said you were going to prepare documents in
11 order to get more time to prepare. I assume that
12 when you want more time to prepare you want an
13 adjournment, otherwise you could have weekends to
14 prepare. That wouldn't concern me or the
15 commission of the inquiry.

16 MR. WARD: It's all set out in the transcript and I will rely
17 on that. I remember what I said and I take issue
18 with the suggestion I'm saying one thing now that
19 was different before.

20 THE COMMISSIONER: You said it once before when you suggested
21 I told you you could have all the time you
22 wanted. I didn't say that because I got the
23 transcript prepared. I said I will give you
24 time. I want to be fair to you, I want to be
25 fair to everyone, and that's what I said, if you

1 need time I will give you time. Your clients'
2 positions are important, as is all the witnesses'
3 time is important. We have to be fair to
4 everyone. I'm quite prepared to go ahead at any
5 time but I understand the position that counsel
6 have here. It's a difficult case and there are a
7 lot of documents and in the interests of fairness
8 I'll accede to the application for adjournment
9 but, you know, it's -- as I said a moment ago,
10 and I'll say it again, I want to be fair here to
11 everyone and it's not just you. You are the one
12 that wanted more time and now Mr. Vertlieb has
13 given me these reasons why we can't go ahead so I
14 guess we're going to have to adjourn. In any
15 event, I don't know if there's any more I can
16 say. Ms. Tobias?

17 MS. TOBIAS: Mr. Commissioner, just to finish off on the
18 question that you asked me earlier with respect
19 to documents, given my friend Mr. Ward's response
20 that it's related to an application that he
21 intends to bring, my suggestion is that it should
22 be marked as the first exhibit on that
23 application, rather than an exhibit at large. I
24 will say part of the reason I say that is not
25 because we have a great concern about whether or

1 not you or anyone else sees that correspondence,
2 but if I can put it this way, it's a snapshot at
3 one point in time, and I'm sure my learned friend
4 Mr. Vertlieb would be the first to agree that
5 much water has gone under the bridge since then
6 and it's not a complete picture by any means, but
7 since Mr. Ward wants to deal with it with respect
8 to that particular subject, I think it should be
9 put to one side on the record and it relates to
10 that subject and we can proceed from there.

11 THE COMMISSIONER: You're telling me it should be marked for
12 identification in the event Mr. Ward brings on an
13 application?

14 MS. TOBIAS: Yes.

15 THE COMMISSIONER: I think that makes more sense because in
16 order for any document or any evidence to be
17 admissible there has to be some probative value
18 and it has to be relevant to an issue.
19 Correspondence between lawyers normally are not
20 relevant to an issue unless there are admissions
21 made, admissions that are made with prejudice,
22 then it becomes evidence in a hearing or in a
23 trial and I don't know what's here -- I'm just
24 told what's in the documents. I haven't read it.
25 There are a series of letters there, but if

1 you're content to have it marked as an exhibit
2 for identification purposes, not an exhibit but
3 for identification purposes, for Mr. Ward's
4 application then I'll accede to that.

5 MR. VERTLIEB: I agree with that.

6 MS. TOBIAS: I'm content with that.

7 MR. VERTLIEB: One last thing, I want the record to be clear
8 and I don't want to say anymore. Mr. Ward sent
9 an e-mail to all participants, October 28, 2011.
10 He had a formal notice of application, item
11 number 1. Order sought, an order that the
12 hearing be adjourned. I just wanted the
13 record --

14 THE COMMISSIONER: That's Mr. Ward's?

15 MR. VERTLIEB: That's Mr. Ward's application sent to all
16 participants October 28, 2011.

17 MR. WARD: My friend is being very selective. Perhaps he can
18 read the rest of the application and indicate if
19 he wants this to be on the record, what it is I'm
20 seeking in the application. I'm seeking
21 disclosure of documents from a number sources and
22 an adjournment to review those documents once
23 they're provided. I'm not seeking to stand this
24 down and never have been seeking to stand this
25 down in the absence of proper disclosure and I've

1 been ready every day.

2 THE COMMISSIONER: You're asking for an adjournment of --

3 MR. WARD: I am --

4 THE COMMISSIONER: Would you not interrupt me. Why is it that

5 you continually interrupt? I don't interrupt

6 you. I allow you the courtesy to speak. What

7 Mr. Vertlieb has read are your words asking for

8 an adjournment. As I understand it, one of the

9 documents at issue here is the Evans' report and

10 that hasn't been prepared and I'm told, according

11 to you, that that report will be ready

12 momentarily; is that correct?

13 MR. VERTLIEB: Yes.

14 THE COMMISSIONER: So if that's the case, in fairness,

15 everybody should have an opportunity to look at

16 that report. I'm just trying to be fair here

17 with all parties so everybody has an opportunity

18 to look at it. I know you wanted the adjournment

19 to look at documents, I appreciate that, but the

20 fact is you were going to apply for an

21 adjournment, and a moment ago you just told me

22 you didn't. So you were going to apply for an

23 adjournment to look at documents, and that's

24 fair, that's a fair request. We'll adjourn.

25 MR. WARD: Excuse me, I have more to say with respect to this

1 matter. Excuse me, I have more to say.

2 THE COMMISSIONER: Okay.

3 MR. WARD: I apologize if I in my enthusiasm over this issue
4 interrupted you. It was not my intent to do so,
5 Mr. Commissioner. My friend Mr. Vertlieb has
6 read one sentence from a three-page document in
7 which I am applying quite clearly for the
8 following relief, in addition to an adjournment,
9 which I say is to review these documents, an
10 order that commission counsel be directed to
11 obtain and deliver copies of the following
12 records to the applicants: Unredacted versions
13 of all records disclosed by the commission to the
14 applicants, all relevant records that have not
15 yet been disclosed by the commission to the
16 applicants that are in the possession or control
17 of the record holders listed below: City of
18 Vancouver, Vancouver Police Department, Vancouver
19 Police Board, Vancouver Police Union, Criminal
20 Justice Branch, Royal Canadian Mounted Police,
21 E-Comm, Constable Fell, BC Crime Stoppers, Metro
22 Vancouver Crime Stoppers, Office of the Police
23 Complaint Commissioner, Commission for Public
24 Complaints against the RCMP, Ritchie Sandford,
25 Barristers and Solicitors, the City of Port

1 Coquitlam including the fire and emergency
2 services, Dr. Kate Shannon, Westcoast Reduction
3 Ltd., and then I set out in several paragraphs
4 the reasons why I say those documents are
5 relevant and my assertions that they have not
6 been disclosed is another significant part that I
7 haven't read. The bottom line here is, I have
8 been concerned about the nature and degree of
9 disclosure from day one. I am seeking to bring
10 this application on, in the event it succeeds in
11 whole or in part, I will then need time to review
12 those documents and that was the adjournment I
13 was seeking. My position has continually been
14 inaccurately characterized. I never sought to
15 have this hearing adjourned for some other
16 reason. I didn't seek to have it adjourned for
17 some other reason and I was only trying to make
18 that point and I fear there has been some
19 misunderstanding.

20 THE COMMISSIONER: That's fair enough if you want these other
21 documents. I appreciate that and I understand
22 that. The fact is you wanted time, you wanted an
23 adjournment for time to look at that those
24 documents. As I understand it, one of the
25 reasons we're not going ahead next week is to

1 look at some of those documents, to look at
2 redaction and to receive the Evans' report, and
3 everybody will have an opportunity to read that
4 report, which I'm told is a lengthy report, and
5 that will give everybody here an opportunity to
6 look at that report and that's part of what
7 you're seeking. The fact is, you're seeking an
8 adjournment for that reason and I understand that
9 and I'm quite prepared to give you that and to
10 give it to everyone else. To say, well, that
11 wasn't the reason I wanted the adjournment, it's
12 another reason, the fact is we're adjourning so
13 every lawyer here will have an opportunity to
14 look at all of the documents and to do all of
15 those things that need to be done so we can get
16 on with this. That's my purpose.

17 MR. WARD: An adjournment would not trouble me at all -- in
18 fact, given the difficulty and complexity in this
19 case I would welcome it but for the fact I'm
20 being told we are going to finish evidentiary
21 hearings by April 30. My position on behalf of
22 my clients is that we can simply not do that and
23 do justice to this case. They have been waiting
24 for justice for a very, very long time and
25 they're entitled to it in my submission.

1 THE COMMISSIONER: You know what, they will get justice and
2 everybody here will get justice. This will be a
3 fair hearing. Your clients have had a fair
4 opportunity to be heard. They've been treated
5 with courtesy as they should be and they deserve
6 all that and we will see to it that they will
7 have that and I thank them that they're here.
8 Anything else?

9 THE REGISTRAR: Mr. Commissioner, subject to your approval
10 Exhibit 32 will now be marked for identification
11 D.

12 THE COMMISSIONER: Thank you.

13 **(EXHIBIT D FOR IDENTIFICATION: Correspondence)**

14 MR. SKWAROK: Excuse me. I beg your pardon. I'll move into a
15 completely different subject. Skwarok,
16 S-K-W-A-R-O-K, first name Mark, appearing for
17 Dr. Kim Rossmo. The deputy chief, Mr.
18 Commissioner, obviously interviewed a number of
19 people and came to various conclusions about what
20 they said and what they meant. Many of these
21 individuals will be appearing as witnesses in the
22 future. In the normal course one's failure to
23 cross-examine a witness could lead to an adverse
24 inference and I just want some assurance, if I
25 may, from this commission if I don't

1 cross-examine the deputy chief about what A said
2 to B that I will somehow be prohibited or frowned
3 upon if I wait for A and B to testify before I
4 cross-examine.

5 THE COURT: I don't frown upon anybody, Mr. Skwarok, least of
6 all you. You'll have an opportunity to
7 cross-examine the deputy chief if you want to. I
8 don't know what your position is so I --

9 MR. SKWAROK: Sorry, I don't want to waste time. The deputy
10 chief necessarily had to rely on hearsay and
11 double hearsay and on occasion triple hearsay.

12 THE COMMISSIONER: Yes, I know that.

13 MR. SKWAROK: I would like to save the time of cross-examining
14 him and simply rely on cross-examining, if
15 necessary, the actual individual, but I don't
16 want to be criticized for --

17 THE COMMISSIONER: I understand. I know what you're saying.

18 MR. SKWAROK: Do I have the commission's assurance?

19 THE COMMISSIONER: Thank you. Anything else?

20 THE REGISTRAR: This hearing is adjourned until Monday,
21 November 21st, at 10:00 a.m.

22 (PROCEEDINGS ADJOURNED AT 4:13 P.M.)

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I hereby certify the foregoing to
be a true and accurate transcript
of the proceedings transcribed to
the best of my skill and ability.

Margaret M. Wills
UNITED REPORTING SERVICE LTD.

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