

COMMISSION OF INQUIRY INTO  
CERTAIN ASPECTS OF THE TRIAL  
AND CONVICTION OF JAMES DRISKELL

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The Honourable Patrick LeSage, Q.C. Commissioner

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Transcript of Proceedings  
before the Commission sitting  
at the Winnipeg Convention Centre  
Winnipeg, Manitoba

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Tuesday, September 19, 2006

Volume 22

INQUIRY PROCEEDINGS

## COMMISSION STAFF:

Mr. Michael Code	Commission Counsel
Mr. Jonathan Dawe	Associate Commission Counsel
R.L. (Bob) Giasson	Chief Administrative Officer
Wendy Bergmann	Administrative Assistant
Kathy Karamchand	Administrative Assistant
Nancy Pelletier	Administrative Staff
David Bruni	Legal support staff

## APPEARANCES

Mr. Alan M. Libman and	
Mr. James Lockyer	For Mr. James Driskell
Mr. E.W. Olson, Q.C.	For Province of Manitoba
Mr. Jay Prober	For George Dangerfield
Mr. D. Abra, Q.C.	For The Estate of Bruce Miller
Mr. R. Tapper, Q.C.	For Mr. Stuart Whitley
Mr. D. Gates, Q.C.	For the RCMP
Ms. K. Carswell	For the Winnipeg Police Services and certain members
Mr. R. Wolson, Q.C.	For the Winnipeg Police Association and certain members
Mr. J. Kennedy, Q.C.	For the Association in Defence of the Wrongly Convicted

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1 Tuesday, September 19, 2006

2 Upon commencing at 9:30 a.m.

3 THE CLERK: All rise. This Commission of  
4 Inquiry is now in session.

5 THE COMMISSIONER: I know Mr. Code is not in  
6 town today.

7 MR. LOCKYER: Right.

8 THE COMMISSIONER: I'm not sure about Mr. Dawe.  
9 Should we stand down? We'll stand down for five  
10 minutes. I'd be surprised if he is far away.  
11 Perhaps we'll just stand down for five minutes.  
12 He is on his way now.

13 BY MR. LOCKYER:

14 Q Mr. Christianson, I just wanted to ask you a  
15 little bit about your CV, sir. I understand  
16 that your university education consisted of a  
17 four year BSc at the University of Winnipeg; is  
18 that right?

19 A Yes.

20 Q And that was, you attained that in 1984, is that  
21 right?

22 A Correct.

23 Q And so you don't have a masters degree or a  
24 Ph.D.; is that right?

25 A No.

1 Q And is that true of many people who work in the  
2 RCMP lab, as far as you know?

3 A We all have, all the specialists have a  
4 university degree, but not necessarily a  
5 graduate degree.

6 Q Post-graduate degree?

7 A Post-graduate, I'm sorry.

8 Q Right. Is it true, sir, that a fair number, if  
9 not perhaps the majority of them don't have a  
10 post-graduate degree, as far as you know?

11 A At one time I would agree. It's converging now.  
12 I would say it's almost even.

13 Q It's certainly not a prerequisite of employment  
14 in the lab?

15 A No.

16 Q And beyond that, sir -- is Mr. Christianson's CV  
17 filed? I'm not quite sure?

18 THE COMMISSIONER: Well --

19 MR. LOCKYER: It's not in the book.

20 THE COMMISSIONER: No, the CV isn't in the book.  
21 I thought it was simply covered in his  
22 statement. It's not a CV, strictly speaking.

23 MR. LOCKYER: Actually, no, the statement,  
24 Mr. Commissioner, suggests his CV is attached  
25 and it's not. It's page 1 of page 2 of the

1 statement.

2 THE COMMISSIONER: No, you're absolutely right.

3 MR. LOCKYER: Yes. I think it would be helpful  
4 if it was filed. I don't have a copy of it. I  
5 asked my friend for it in yesterday's  
6 proceedings.

7 MR. CODE: Yes, I gave you a copy at yesterday's  
8 proceedings.

9 MR. LOCKYER: Yes, I have it right in front of  
10 me, but I can't file one because I haven't got  
11 another one.

12 MR. CODE: We'll make copies at the break.

13 THE COMMISSIONER: Fine.

14 BY MR. LOCKYER:

15 Q And since that time, sir, being the only person  
16 who's got the benefit of having the CV at the  
17 moment, you have taken some courses here in some  
18 forensic matters; is that right?

19 A Yes.

20 Q For example, you list the hair and fibre  
21 section, textile plant study tour in 1985?

22 A Yes.

23 Q Forensic Science Certificate for the Hair and  
24 Fibre Section, 1985?

25 A Yes, that was issued upon completion of the

1           understudy training.

2       Q     And that kind of thing.  You have never  
3           published or written in any scientific field; is  
4           that right, sir?

5       A     I have never published, no.

6       Q     And something that I was interested in, there  
7           were two things.  First of all, I understand,  
8           sir, that you did receive training in DNA  
9           technology; is that right?

10      A     Yes.

11     Q     Both in, starting in 1992, you were in fact  
12           working in the field of RFLP DNA technology; is  
13           that right?

14     A     Yeah.  We were starting to transition into  
15           utilizing our RFLP technology.  I wasn't using  
16           it at that point myself.

17     Q     But you could come to use it sometime  
18           thereafter?

19     A     Yes, yes.

20     Q     So you became a DNA expert of sorts?

21     A     Yes, we refer to them as reporting officers.  So  
22           I was a reporting officer employing the RFLP  
23           technology.

24     Q     So what's that mean, the technicians do the work  
25           and you interpret the work and go into court?

1 A In my case it meant that I was responsible for  
2 searching exhibit material and selecting the  
3 exhibit material, and then technologists would  
4 extract it and visualize it for us, and then I  
5 would interpret it and write the report.

6 Q And then you'd testify in court?

7 A If called upon, yes.

8 Q Right. And then subsequently, sir, you also  
9 became, to use the term in your lab, a reporting  
10 officer using a PCR DNA technology; is that  
11 right?

12 A Correct.

13 Q Which was the next sort of step in DNA  
14 technology?

15 A The next evolutionary step, yes.

16 Q Yes. And that you continued to do until 2002;  
17 is that right, sir?

18 A Yes.

19 Q So for 10 years you were working here and  
20 testifying in the field of nuclear DNA; is that  
21 right?

22 A Correct.

23 Q Now, since 2002, sir, I'm not entirely sure I  
24 understand what you're doing. Your CV says that  
25 you are the case manager of the case receipt

1 unit. Is that an administrative job?

2 A Yes, it is. It's the unit that's responsible  
3 for triage function. We review the files that  
4 are to be brought into the lab and determine  
5 what exhibits should be submitted and the best  
6 route for them to go through the lab system to  
7 be utilized most efficiently.

8 Q Am I right then in saying, sir, that your work  
9 now engages your general forensic knowledge  
10 rather than your actual forensic expertise?

11 A Yes.

12 Q And I note as well, looking at your CV, sir,  
13 from 2002 to 2003, you were the acting local  
14 quality manager. I don't know what that means.  
15 Can you tell us what that means?

16 A Well, starting in the year 2000, the forensic  
17 laboratory system actively pursued  
18 accreditation, and we have been accredited since  
19 that time. One of the requirements of  
20 accreditation is that there is a quality manager  
21 on site at each location to review quality  
22 matters and ensure that we're following our  
23 standard operating procedures and guidelines.

24 Q Okay. So the location in this case would be  
25 Winnipeg?

1 A Yes.

2 Q So you were the quality control manager in that  
3 period for the Winnipeg lab as a whole; is that  
4 right?

5 A Yes.

6 Q And on the basis of your work, you were able to  
7 report in such a way that, would I be right,  
8 that ASCLD accreditation was being sought; is  
9 that right?

10 A Did you say ASCLD?

11 Q Yes.

12 A It's similar to ASCLD, but it's through a  
13 Canadian accrediting body. So instead of, I  
14 mean, it's the Standard Council of Canada is the  
15 accrediting body for this particular standard.  
16 So it wouldn't be ASCLD, it would be Standard  
17 Council of Canada.

18 Q So you were the quality control manager for the  
19 whole lab, sir, in Winnipeg until when in 2003?

20 A I would say it was in the summer or early fall  
21 of 2003.

22 Q And how did you come to stop being that? Was  
23 that because the job was complete, you got the  
24 accreditation, or what?

25 A No, the position was staffed by a full-time

1 member who was transferred in from Ottawa.

2 Q I see. So since 2002, sir, and maybe going back  
3 a little bit before that, maybe going back as  
4 far as 2000, you had not been what might be  
5 called a grassroots scientist?

6 A A bench scientist, yes.

7 Q Pardon?

8 A I guess I would say that I was slowly phasing  
9 out from about 2001.

10 Q Because I note in 2000 you became the local  
11 administrator for the National DNA data bank?

12 A Well, that was in addition to my role as a  
13 reporting officer.

14 Q Oh, all right, as a reporting officer within the  
15 DNA, now PCR section?

16 A That's correct.

17 Q All right. Now, insofar as DNA is concerned,  
18 sir, presumably you would view it as an advance  
19 for the cause of forensic science; am I right?

20 A Absolutely.

21 Q And as we've heard, you have been qualified and  
22 you have been both trained and qualified as an  
23 expert in the field of both RFLP and PCR DNA  
24 work. Is that right, sir?

25 A Yes.

1 Q So one would assume you probably understand the  
2 science pretty well, probably better than  
3 everyone else in this room it might be  
4 reasonable to say, except Mr. Burn. Is that  
5 right?

6 A As you say.

7 Q All right. And of course, one of the great  
8 advantages of it, sir, is the power of  
9 discrimination that it can provide in  
10 determining whether a person is included or  
11 excluded from being the donor of a particular  
12 sample; is that right?

13 A Yes.

14 Q Its degree of discrimination is not just a high,  
15 but in some cases, sir, it can be absolute,  
16 based on objectively provable statistics. Is  
17 that fair?

18 A I don't think we ever would use the term  
19 absolute. It's as powerful a technique as  
20 currently exists.

21 Q Certainly I've seen many reports in my time, and  
22 I'm sure you have, where the conclusion has been  
23 that the person to whom, the person with whom  
24 the DNA matches is the only person in the world  
25 with that DNA?

1 A I have never seen a report that says that.

2 Q You've never seen the FBI, for example, say  
3 that?

4 A I have never read a written FBI report.

5 Q All right. And there are two kinds of DNA, sir.  
6 First of all, there is the nuclear DNA; is that  
7 right?

8 A Yes.

9 Q And that is the kind of DNA that can, first of  
10 all, subject to what you just said, can in  
11 effect absolutely include someone as the donor  
12 of the DNA sample?

13 A Well, the nuclear DNA is the DNA that is related  
14 to the individual. It makes them the individual  
15 that they are.

16 Q Right. So it can, in effect, include a person  
17 to the point really of certainty, as a potential  
18 donor of a sample?

19 A It's possible to analyze the DNA to a point  
20 where you are comfortable with forensic  
21 inclusion. So, I mean, in theory there's no  
22 limit to how much information you can obtain  
23 from the DNA about that individual, but we have  
24 a restricted set of information that we obtain  
25 from it.

1 Q It can also, what it can do as well, nuclear DNA  
2 is absolutely excluded somewhat as the potential  
3 source of the sample; am I right?

4 A Yes.

5 Q And in the case of the other form of DNA  
6 testing, non nuclear or mitochondrial testing,  
7 sir, first of all in the context of inclusion,  
8 it's not always as absolute in its degree of  
9 discrimination; is that right?

10 A Well, I am aware of mitochondrial DNA obviously  
11 as part of my job, but I'm not an expert in that  
12 field. Mitochondrial DNA is a very complex area  
13 and I wouldn't really care to speculate about  
14 the discriminating ability of their tests. I  
15 have never been trained to do that.

16 Q I'm just asking you a fairly simple common  
17 knowledge question, sir, I would think. You  
18 surely know that mitochondrial DNA does not  
19 always give the kinds of figures in terms of  
20 discrimination that one can get from a nuclear  
21 result?

22 A Well, I understand that the amount of DNA is  
23 less, but I've never calculated the  
24 discriminating ability. I've never conducted  
25 that kind of a test.

1 Q I wasn't asking you to. I was just doing it in  
2 a very general sense.

3 So, for example, if we look at tab 9 of the  
4 book of documents that Commission Counsel used  
5 yesterday, sir, if you'd go to that? And this  
6 is the report of Dr. Bark from the U.K. on  
7 Mr. Driskell's case. And if you look at page 10  
8 of that report, you'll see that what the lab is  
9 doing there is providing what it calls a  
10 background on technical issues. Do you see  
11 that?

12 A Yes.

13 Q And if you look at the last paragraph of that  
14 page, sir, it seems to explain things really  
15 rather simply in terms of mitochondrial DNA and  
16 how it contrasts with nuclear DNA.

17 Mitochondrial DNA, I'll read it if I may,

18 "Mitochondrial DNA is much shorter in  
19 length than the chromosomal DNA and  
20 consequently has less features with which  
21 to observe differences between individuals.  
22 It is therefore likely to be less  
23 discriminating than chromosomal DNA.

24 Furthermore, mitochondrial DNA is received  
25 from one's mother and does not show

1 paternal characteristics. This means that  
2 brothers and sisters will have the same  
3 mtDNA type as their mother and also any  
4 other relative linked through the female  
5 line. Changes to the mtDNA type, through  
6 the natural process of mutation, occur at a  
7 slow rate. On average many generations are  
8 required before the sequence is altered by  
9 a single base."

10 Now, that's pretty simplistic stuff in a  
11 DNA context, sir. Presumably there's nothing in  
12 there that, A, you didn't know, and B, you  
13 didn't agree with. Am I right?

14 A My problem with this is that it's not my report,  
15 it's not our wording, it's not a type of  
16 analysis I do. And I'm simply not comfortable  
17 discussing their reporting procedure and how  
18 they summarize their evidence, because clearly,  
19 as you say, it is a very simple statement, it's  
20 not designed for a scientist. As a scientist, I  
21 look at this and I think this is designed for  
22 someone else's use, and I don't think it's for  
23 me and I'm really not interested in trying to  
24 interpret what they have done here.

25 Q I'm sorry, I haven't asked you to.

1 A You asked me to interpret their explanation  
2 and --

3 Q No, I have not. Let me ask the question again,  
4 sir --

5 A Okay.

6 Q -- so you can understand. First of all, is  
7 there anything in that statement you disagree  
8 with?

9 A I really, I guess I do not agree with everything  
10 that's in that statement.

11 Q What is it you don't agree with?

12 A Well, once again, my understanding as a  
13 scientist is that, you know, the mitochondrial  
14 DNA is a fairly complex dynamic type of --

15 Q Sorry, I'm not saying it isn't. I'm just  
16 asking, is there anything in that paragraph you  
17 don't agree with? If there is, tell me what it  
18 is? What line is it you don't agree with? What  
19 word is it you don't agree with? What sentiment  
20 is it you don't agree with? What's the problem?

21 A Well, the problem is that I'm aware that the  
22 mitochondrial DNA is a very complex system, and  
23 I'm simply not, I'm not familiar enough with it  
24 to comment. I mean, I can look at it and I can  
25 make a judgment, but I feel as though I am

1           branching out into an area that I have no  
2           particular knowledge in, on the level of an  
3           expert obviously.

4       Q     I'm not questioning you as an expert as such,  
5           sir, I'm questioning you as a witness. All  
6           right. I'm asking you, based on your 10 years  
7           training in DNA -- I have never been trained in  
8           DNA and I understand that paragraph, and frankly  
9           don't have a difficulty with it at all. You  
10          seem to, and I want to know what it is. I mean,  
11          you haven't defined your difficulty. Could you  
12          do so, please?

13       A     Well, based on my experience with nuclear DNA, I  
14           know there are many complexities that can arise,  
15           and I suspect that there are some of those with  
16           mitochondrial DNA, but I don't know. So I'm  
17           loath to go forward and try and start commenting  
18           on things that I'm clearly not qualified to  
19           discuss.

20       Q     Well, I mean, let's dissect it.

21                    "Mitochondrial DNA is much shorter in  
22                    length than the chromosomal DNA..."

23           True?

24       A     Well, from a forensic perspective, I understand  
25           that's true.

1 Q Yes.

2 "...and consequently has less features with  
3 which to observe differences between  
4 individuals."

5 True?

6 A Well, this is where a complication arises,  
7 because the features that you are discussing are  
8 based on how you measure those features. Now,  
9 you mentioned that we use PCR, and that's true.  
10 But in order to obtain the information from the  
11 DNA with our technology, we use primers and we  
12 visualize the DNA in a completely different  
13 manner from the way they do it with  
14 mitochondrial DNA. My understanding is that  
15 they sequence it. But I've never done it, and  
16 it's very difficult for me to compare, like to  
17 discuss the features that they are comparing  
18 because I never did it that way. I never  
19 analyzed those features.

20 Q I'm not asking you to. It doesn't talk about  
21 that. It talks about less, it just says less.  
22 It's a fairly descriptive word.

23 A Well, it's talking about the features that they  
24 used to observe differences, and I'm telling you  
25 that I'm not familiar with those features as

1           they apply to mitochondrial DNA, so how can I  
2           comment?

3   Q    All right, perhaps we should just keep moving.  
4           I think you have agreed, though, that you are  
5           aware that mtDNA can be less discriminating than  
6           nuclear DNA?

7   A    Yes.

8   Q    You have agreed with that, all right, when it  
9           comes to inclusion?

10  A    I agree that my understanding is that it's less  
11          discriminating than nuclear DNA.

12  Q    When it comes to inclusion, do you agree with  
13          that?

14  A    Well --

15  Q    I don't know why you have trouble with it?

16  A    Well, I have trouble with it because it varies  
17          on the case. It varies on how much information  
18          you have on a given case. There may be a  
19          situation, and I'm not even sure how it would  
20          arise, but there may be a situation where you  
21          can obtain more information from the  
22          mitochondrial DNA than you could in a given  
23          nuclear DNA. I don't know.

24  Q    Surely you can say, sir, in your profession, it  
25          is known that mtDNA results tend to be less

1 discriminating than nuclear results? I'm  
2 flabbergasted that you can't answer a simple  
3 question like that.

4 A If you're saying to me, is it theoretical, the  
5 amount of information present is less than the  
6 mitochondrial DNA?

7 Q I'm talking practical, I am not even talking  
8 theoretical?

9 A That's exactly my problem. I don't have the  
10 practical experience. If you're asking me if  
11 there's a theoretical difference, absolutely.  
12 Practically, I've never done it.

13 Q Let's talk exclusion, that's a little more  
14 important in this case. Would you agree, sir,  
15 that mitochondrial DNA results, when they  
16 exclude someone as being the donor of a sample  
17 are as absolute, or are able to be as absolute  
18 in their exclusions as nuclear DNA?

19 MR. GATES: Mr. Commissionaire.

20 THE COMMISSIONER: Yes, Mr. Gates.

21 MR. GATES: I think I can help on Mr. Lockyer's  
22 line of questioning, sir.

23 THE COMMISSIONER: Yes, certainly, Mr. Gates.

24 MR. GATES: My position, sir, is fairly simple,  
25 and that is that Mr. Christianson, in 1991, as

1 an employee of the crime lab, undertook some  
2 microscopic hair comparison in the prosecution  
3 of Mr. Driskell. He gave evidence before the  
4 Court of Queen's Bench relative to that  
5 evidence. And we have, I believe, sir, fully  
6 disclosed the results of that analysis,  
7 including his case file, the report that he  
8 prepared. And you have before you, sir, and all  
9 of my friends have before you the evidence that  
10 he gave before the Manitoba Court of Queen's  
11 Bench at Mr. Driskell's trial.

12 He is not an expert in mitochondrial DNA.  
13 He has, in my submission, made that point very  
14 clearly to the Commission this morning. And I  
15 am troubled by my friend's insistence on getting  
16 him to comment on a report prepared in 2003 by a  
17 private lab in the United Kingdom that is  
18 clearly a critical piece of information and  
19 evidence before this Commission.

20 My position is that this witness is not  
21 qualified, and his employer, the RCMP, does not  
22 hold him out to be an expert in mitochondrial  
23 DNA.

24 I would go further and say, sir, that  
25 contemplated, I anticipated that this problem

1 would arise. And on the 14th of August, I wrote  
2 to Mr. Code and expressed concern about how the  
3 whole issue of DNA was going to be presented  
4 before the Commission, and urged upon him once  
5 again to consider whether or not the Commission  
6 required expert evidence from someone who is  
7 qualified to provide you, sir, and with all of  
8 the parties before the Commission, with a proper  
9 understanding of the principles of mitochondrial  
10 DNA.

11 Mr. Code, in his wisdom, declined my  
12 request. And I am concerned, sir, that here we  
13 are in exactly the kind of situation that I  
14 anticipated would arise and which, with all due  
15 respect, I think we want to avoid.  
16 The report that's part of the book of materials  
17 that's before you for Mr. Christianson's  
18 evidence speaks for itself. My client doesn't  
19 quibble with the results of that report. But to  
20 ask Mr. Christianson, who performed an entirely  
21 different scientific test, to comment in an area  
22 where he is not an expert, in my submission, is  
23 not fair and not proper and I object to it.

24 THE COMMISSIONER: Thank you, Mr. Gates.

25 Mr. Lockyer.

1 MR. LOCKYER: Mr. Commissioner, this is a  
2 cultural problem that I didn't expect to run  
3 into. The RCMP lab through Mr. Gates and also  
4 this witness through Mr. Gates is challenging  
5 the mitochondrial DNA results and suggesting  
6 they could be wrong.

7 Now, this is rather extraordinary I guess  
8 is one way one might put it. It's something  
9 that happened south of the border all too  
10 frequently in wrongful conviction cases. And  
11 it's something that we have run into at a  
12 somewhat different level than the Morin Inquiry,  
13 for example, when the DNA results were  
14 challenged as well by police officers, for  
15 example, who suggested that they were prepared  
16 to discount the DNA results because of their  
17 belief that Mr. Morin was guilty.

18 So as well, interestingly enough, we have  
19 I'm not sure, we have Mr. Bowen here both today  
20 and yesterday, who is the head of the lab who is  
21 certainly a DNA expert, as I understand it, who  
22 is presumably countenancing and supporting this  
23 position, that the DNA results were wrong, that  
24 somehow the hair microscopy work of this witness  
25 trumps the DNA results.

1           Now, leaving aside that --

2           THE COMMISSIONER: Mr. Lockyer, I wondered if  
3           you will allow me just to interrupt you for a  
4           moment. Because I must say what you have just  
5           said I thought was inconsistent with what  
6           Mr. Gates said in his comments to me.

7           Mr. Gates, would you come up, and I realize  
8           this is irregular for me to be interfering with  
9           your submission. I just want to hear your  
10          comment, Mr. Gates. I thought you said that the  
11          Birmingham Laboratory report was not being  
12          challenged?

13          MR. GATES: That's correct. With great respect,  
14          my friend's statement of the RCMP's position on  
15          this issue is not correct. We are not saying  
16          that the microscopic hair evidence trumps the  
17          mitochondrial DNA evidence. Our position is  
18          that there are inconsistent results from these  
19          two scientific processes. And my position with  
20          Mr. Code from the very beginning has been that  
21          the inconsistency requires explanation,  
22          particularly for the non scientists who are the  
23          participants in this hearing, including with  
24          great respect to you, sir, your own role as the  
25          Commissioner. We are not scientists, we are

1 lawyers. And my position with Mr. Code is that  
2 we need help with this.

3 THE COMMISSIONER: Grade 13 was my last science  
4 class.

5 MR. GATES: Well, that's one more year than me,  
6 sir.

7 THE COMMISSIONER: I'm still not sure exactly,  
8 because I thought you said in your submissions  
9 that you were not challenging the tab 9 in  
10 exhibit 38A, that is the Birmingham report?

11 MR. GATES: That's correct. We have some  
12 questions about it. We don't challenge the  
13 results. But the results are, on their face,  
14 inconsistent with the evidence, which are the  
15 results of Mr. Christianson's microscopic hair  
16 analysis work in 1991. And we say that  
17 inconsistency requires some further examination,  
18 because we say it would be overly simplistic to  
19 take a position that one of those tests is right  
20 and the other one is wrong, that this is  
21 necessarily a situation of black and white.

22 I draw some comfort in making that  
23 submission to you, sir, having had the great  
24 benefit of reviewing Mr. Lucas' report to the  
25 Commission in which he attempts to assist the

1 Commission on this very point. And it's no more  
2 complicated than that, sir.

3 The position of the RCMP is that there's an  
4 inconsistency, and we need to have a better  
5 understanding of what that inconsistency is. I  
6 want to assure my friend, Mr. Lockyer, we are in  
7 no way saying that the work that  
8 Mr. Christianson did in 1991 is right and the  
9 mitochondrial DNA evidence is wrong. We're not  
10 saying that at all. That has never been our  
11 position.

12 THE COMMISSIONER: All right. Thank you,  
13 Mr. Gates.

14 MR. LOCKYER: Could Mr. Gates answer this one  
15 really simple question? Is Mr. Gates prepared  
16 to acknowledge, on behalf of Mr. Christianson,  
17 that the three hairs that were seized from  
18 Mr. Driskell's van and said to microscopically  
19 match those of the deceased, in fact, most  
20 definitely, without qualification, did not come  
21 from the deceased. Is he prepared to agree with  
22 that proposition? If he is, then that  
23 changes --

24 MR. GATES: Just one moment, sir.

25 MR. LOCKYER: Because I'm going to read from a

1 letter he wrote which says otherwise.

2 MR. GATES: No, sir, I'm not prepared to say  
3 that.

4 THE COMMISSIONER: Okay, thank you, Mr. Gates.

5 Mr. Lockyer, excuse me for interrupting,  
6 but I wanted to try and have a clear  
7 understanding of Mr. Gate's position. And I  
8 don't know if you remember where you were when I  
9 interrupted you, but if you could continue?

10 MR. LOCKYER: Yes, I began by saying,  
11 Mr. Commissioner, this is being presented as a  
12 remarkable cultural problem in the RCMP lab.  
13 Mr. Gates wrote a letter, as he said to  
14 Commission Counsel, on August 14, 2006, which  
15 first put this into the limelight, so to speak.  
16 And I quote,

17 "My client..."

18 and I'm not quite sure who he meant when he said  
19 my client, but he does refer to Mr. Christianson  
20 directly in the previous paragraph. And he also  
21 refers at another point in the previous  
22 paragraph to my client generally, which would  
23 presumably include the lab itself. I think from  
24 the consultation with the head of the lab he  
25 just had, it's clearly an indication we're

1 talking the lab as well as the witness.

2 "My client has asked me to write to you to  
3 urge you to reconsider your apparent  
4 decision in this regard.

5 And I interpolate, namely, your refusal to call  
6 a DNA expert.

7 "Specifically, my client has asked me to  
8 convey to you the concern the Commissioner  
9 and other parties appearing before the  
10 Commission may, in the absence of  
11 explanatory expert evidence, confuse mtDNA  
12 with nuclear DNA and associate the high  
13 power of discrimination of nuclear DNA  
14 analysis with the mtDNA results obtained in  
15 this case. The issues of contamination  
16 prevention and proper removal of the  
17 mounting media from the hair prior to mtDNA  
18 analysis should, we suggest, be fully  
19 explored in order to ensure that there is  
20 full and proper consideration of both  
21 scientific techniques. My client is  
22 concerned that, absent of proper scientific  
23 explanation, the Commissioner will be left  
24 with no option but to conclude that the  
25 mtDNA evidence is "right" and the

1           microscopic hair evidence is "wrong."

2           And then the culminating sentence of the  
3           paragraph,

4           "We are of the view that this possible  
5           result would be a disservice to the  
6           Commission."

7           Now, that translates certainly to me as meaning  
8           that if you, Mr. Commissioner, were to conclude  
9           that the mtDNA results were decisive of whether  
10          the hairs in the van did or did not come from  
11          Mr. Harder, you would be doing "a disservice to  
12          the Commission," because the microscopic hair  
13          comparison results of this witness may be right.

14          Now, that is not -- that is a quite  
15          extraordinary attack on the DNA results. And as  
16          a consequence, I commissioned a report in the  
17          form of a letter from the lab in Pennsylvania,  
18          which the Manitoba Government agreed to use when  
19          it did the post-conviction mtDNA examinations in  
20          the cases of Kyle Unger and Robert Sanderson.  
21          And in both those cases, the lab in  
22          Pennsylvania, it is called Mitotyping  
23          Technologies, concluded that yet again they got  
24          it wrong, the hair microscopy was utterly 100  
25          per cent wrong. And Dr. Melton, who runs that

1 lab, has provided a report, a letter, which I  
2 guess is not before you yet, Mr. Commissioner.  
3 Have you seen this letter?  
4 THE COMMISSIONER: I have seen --  
5 MR. LOCKYER: Sorry, it's in the materials.  
6 THE COMMISSIONER: It is exhibit 39.  
7 MR. LOCKYER: Okay. Exhibit?  
8 THE COMMISSIONER: Thirty-nine.  
9 MR. LOCKYER: Yes, it's number 3 then of exhibit  
10 39, in which she is kind enough to provide her  
11 analysis of the FSS results, and advise that  
12 they resulted in an absolute exclusion, not --  
13 no qualification there, as is the won't in DNA.  
14 If you have a DNA exclusion, as in the case of  
15 Guy Paul Morin, that means he couldn't have done  
16 the crime.  
17 THE COMMISSIONER: Let's stick to this.  
18 MR. LOCKYER: Sorry, but it shows how systemic  
19 this issue is, that this arises again and again  
20 in the cases of wrongful conviction with  
21 post-conviction DNA results, is that you always  
22 find someone there who will question the DNA  
23 results. They did it in Morin, they did it in  
24 Milgaard, and now they are doing it in Driskell.  
25 And that's a systemic cultural issue, in my

1 submission, and a huge one. And one that must  
2 surely, certainly it will be my submission in  
3 the strongest possible terms, reflect on a  
4 culture in the RCMP lab across the country which  
5 is a reason, arguably in itself, that there  
6 shouldn't be such a thing as RCMP lab in this  
7 country, that the lab should be taken out from  
8 under the rubric of the RCMP and made, as my  
9 friend calls the FSS in the U.K., a private lab,  
10 in a rather disparaging sense. It's actually a  
11 non-profit lab, that is the lab for the whole  
12 country of the United Kingdom.

13 In my submission, this questioning that's  
14 going on now is highly relevant to many issues  
15 in this hearing.

16 THE COMMISSIONER: Which issues?

17 MR. LOCKYER: Well, first of all, it reflects on  
18 this witness himself, but more than that, from  
19 the interest point of view, Commission interest  
20 point of view, it reflects on the culture issues  
21 involved in the RCMP lab.

22 And as well, it reflects on Mr. Driskell  
23 himself. Here we are four years after the DNA  
24 results, or three and a half years after the DNA  
25 results, and for the first time, in Mr. Gates'

1 letter of August 14th of this year, for the  
2 first time we hear that there's suddenly a  
3 challenge to the results that lead to  
4 Mr. Driskell's release, and ultimately lead to  
5 his conviction being quashed by the Minister and  
6 to the stay of proceedings entered by the  
7 Government of Manitoba. And here we are now for  
8 the first time hearing this rather remarkable  
9 challenge to the DNA results, it is certainly  
10 one of my submissions, it is a rather remarkable  
11 challenge.

12 And in my submission, Commission Counsel's  
13 refusal to do what Mr. Gates requests is a very  
14 understandable refusal on the part of Commission  
15 Counsel. I can't think of anything more  
16 pointless to call an expert on DNA to say DNA,  
17 when it excludes is decisive.

18 THE COMMISSIONER: Mr. Lockyer, let's just go  
19 back to what the objection was. The objection  
20 was that this witness is not an expert in  
21 mitochondrial DNA, he has never been held out to  
22 be an expert in mitochondrial DNA and he is not  
23 and cannot be, and therefore you ought not to be  
24 questioning him on that any more than you would  
25 question any other witness who is not an expert

1 in the area on that area of expertise. That's  
2 what the objection was.

3 MR. LOCKYER: With respect, Mr. Commissioner,  
4 that's not the issue here, with respect. The  
5 issue here is that you don't need to be an  
6 expert. You probably don't even need to be a  
7 forensic scientist now, because it's a matter of  
8 common knowledge and it is reflected as such in  
9 case law throughout this continent and elsewhere  
10 that DNA is an admissible item of evidence, and  
11 the reason it's admissible is because it can  
12 absolutely exclude and, indeed, in the case of  
13 nuclear DNA, can absolutely include. And as a  
14 consequence, this type of evidence is being  
15 heard day after day in the courts both in this  
16 country and south of the border and elsewhere as  
17 well.

18 This witness is a forensic scientist. His  
19 results in a homicide trial have been proven  
20 false by the DNA, post-conviction DNA testing.  
21 The witness is a forensic scientist. At a  
22 minimum you might think, especially given his  
23 expertise in nuclear DNA, he might at a minimum  
24 make some inquiries if he really doesn't know  
25 anything about mitochondrial DNA, and I have a

1 lot of trouble believing that, frankly. And  
2 besides which he's got the whole lab behind him.  
3 Surely, he can talk to Mr. Bowen, for example.  
4 But of course Mr. Bowen would tell him that  
5 these results aren't reliable.

6 THE COMMISSIONER: Mr. Lockyer, I'm going to  
7 permit your questions, not for most of the  
8 reasons that you've given, but I'm going to  
9 permit it. But you have to recognize this  
10 witness is expressing himself very well, very  
11 articulate, he is not an expert in this area.

12 MR. LOCKYER: I understand.

13 THE COMMISSIONER: Carry on. But don't think  
14 that he can give you expert evidence in this  
15 area of mitochondrial DNA.

16 MR. LOCKYER: Fair enough. I hope I haven't up  
17 to this point.

18 BY MR. LOCKYER:

19 Q So, tell me, sir, would you agree -- the  
20 question I think that was objected to was  
21 something like this -- would you agree, sir,  
22 that mitochondrial DNA results can exclude an  
23 individual as being the potential donor of the  
24 item against which his DNA is being compared?

25 A I do not know.

1 Q You don't know?

2 A No.

3 Q I see. And have you sort of -- has it troubled  
4 you, sir, that maybe it might be helpful to you  
5 to know?

6 A Absolutely.

7 Q Have you made inquiries of anyone who is an  
8 expert in mitochondrial DNA to ask them?

9 A I have not made any direct inquiries with a  
10 person that I know would be an expert in  
11 mitochondrial DNA.

12 Q Why not?

13 A There isn't one at my disposal. We don't have  
14 one in the RCMP.

15 Q Well, you can get on the phone and talk to a  
16 mitochondrial lab, right, easy enough?

17 A I could.

18 Q But you didn't do that?

19 A I have not done that.

20 Q And have you read Dr. Melton's report, sir, from  
21 Mitotyping Technologies?

22 A I browsed it, I did not read it in detail. I  
23 was not capable of it.

24 Q It's only a page and a half. I am not sure how  
25 you browse a page and a half without actually

1 reading it, frankly?

2 A I looked to see if there was anything about it  
3 that I would be able to formulate an opinion of.  
4 But, clearly, it's strictly her review of a  
5 mitochondrial DNA report which I am really not  
6 capable of critiquing. The means of analysis is  
7 completely different, Mr. Lockyer.

8 Q I'm sorry, sir, we all kind of go through life,  
9 you know, sometimes relying on the opinion of  
10 other people who know more about something than  
11 we do. And I don't understand why you wouldn't  
12 just read what Dr. Melton says and in the  
13 absence of anyone giving you information to the  
14 contrary, you wouldn't just accept it as true.  
15 I don't understand why you wouldn't do that?

16 A I perused the document, I don't recall the  
17 details exactly. I saw that she was critiquing  
18 the report. It was not, it was not as though  
19 she was giving a presentation on the nature of  
20 the mitochondrial DNA evidence as a critique of  
21 that report.

22 Q We had that from the FSS in their report  
23 presentation. And Dr. Melton was just sort of  
24 trying to comment on the actual findings. Can  
25 we go to it? It's tab 3 of the exhibit 39.

1 THE COMMISSIONER: It's the small one.

2 BY MR. LOCKYER:

3 Q She doesn't just sort of mix her words. It's  
4 dated September 8th of 2006, so just a week and  
5 a bit ago, all right. And she says in the third  
6 paragraph,

7 "By perusing the final report of  
8 Mr. Bark..."

9 that's of the FSS,

10 "...I can conclude that, based on the data  
11 I have access to, the contributor of the  
12 grave hairs and his maternal relatives is  
13 clearly excluded with 100 per cent  
14 certainty as the donor of the three  
15 questioned hairs."

16 Do you see that?

17 A Yes.

18 Q Presumably you read that when you perused the  
19 letter, sir?

20 A Yes.

21 Q Do you accept that, sir?

22 A Well, as I perused the letter, this table and  
23 this information that she's talking about, I'm  
24 not capable of critiquing it. We never used  
25 those type of tables. I can't interpret what

1           they mean.

2   Q    I don't understand why you want to critique it,  
3       sir. You have an expert in the field making a  
4       statement of fact, 100 per cent certainty. I  
5       don't know why you want to critique that. What  
6       is the problem? Why would you think she might  
7       be wrong? Based on what? Your microscope?

8   A    No, I guess based on my experience as a forensic  
9       scientist. When you see expressions of 100 per  
10      cent certainty, you become alerted to the  
11      possibility that perhaps they are overextending  
12      their conclusion.

13   Q    I'm sorry, let's go to nuclear DNA, which you  
14      can't get away from because you have been  
15      trained.

16   A    I'm not trying to get away, Mr. Lockyer.

17   Q    All right. DNA exclusion, when nuclear DNA  
18      comparison is used --

19   A    Yes.

20   Q    -- you can exclude invariably really with 100  
21      per cent certainty, can't you?

22   A    I can assess the evidence in that case and I can  
23      look at the techniques employed.

24   Q    Would you answer the question, is it yes or no?

25   THE COMMISSIONER: No, no, let him answer. And

1 if you don't think he did, then wait until he  
2 finished.

3 MR. LOCKYER: All right.

4 THE WITNESS: I can assess the nuclear DNA  
5 report, I can look at it and assign credibility  
6 to it and understand what they did. And this  
7 report -- and in that case I may form an opinion  
8 about whether I believe that this is a result or  
9 not. I can assure you that we would not word a  
10 report in this way, the RCMP. Like we would be  
11 much more -- we would attempt to be much more  
12 circumspect and correct in the way that we  
13 worded it. So for me, I just have some  
14 difficulties with it.

15 BY MR. LOCKYER:

16 Q I'm sorry, I want to go back to the question,  
17 all right. Are you saying, sir, that if you  
18 take a known DNA sample and compare it to an  
19 unknown DNA sample using nuclear technology --

20 A Yes.

21 Q -- and the known sample and the unknown sample  
22 have different alveoles --

23 A Yes.

24 Q -- you cannot state as a fact that the person  
25 whose DNA you have examined could not possibly

1 be the donor of the known sample?

2 A Exactly. We would state it in the way where we  
3 said the DNA typing profiles obtained from the  
4 known sample do not match those obtained from  
5 the questioned sample. That's how we would word  
6 it.

7 Q And therefore the individual is excluded as  
8 being the source of the sample?

9 A We don't actually use that terminology.

10 Q But that's true, isn't it?

11 A It's what you are inferring, yes.

12 Q It's what we know is true. If they've got  
13 different alveoles, they have to be different  
14 people, right?

15 A All it has to be, all that we know that is true  
16 is that the profiles do not match and that's  
17 what we state.

18 Q I'm sorry, I don't know why you're having  
19 problems with it. If two samples have different  
20 profiles, sir, they have to come from two  
21 different people, correct?

22 A Well, let's say that some time had elapsed  
23 between the two and the person took some type of  
24 chemotherapy, or there was some other event,  
25 there could be changes in the DNA, there could

1 be mutations. Therefore, we don't even go  
2 there. We simply address the issue of whether  
3 the DNA profiles match. And that's where we  
4 start to diverge with these different labs, and  
5 see a different style and a different approach.  
6 And I'm just trying to avoid that. They wrote  
7 the report, it's their style. If you want to  
8 have questions about that, ask them. I'm not  
9 here to be your expert on mitochondrial DNA.

10 Q I don't have questions, sir. You're the one  
11 with the questions. You're just sitting there  
12 and saying, I don't accept what Dr. Melton said.  
13 I don't have questions about it. I don't need  
14 to ask Dr. Melton what she means by "is clearly  
15 excluded with 100 per cent certainty." I kind  
16 of understand what she's saying. You're the one  
17 who is challenging what she is saying, not me.  
18 So don't throw it on me, please.

19 A You have your expert's report. I'm not an  
20 expert in the area. Why am I trying to defend  
21 that or critique it? I can't.

22 Q No, you are trying to critique it. You're the  
23 one saying I don't accept it as a fact. She  
24 says it's a fact and I don't accept it as a  
25 fact.

1 A I pointed out that there's elements of the style  
2 of this report that make me uneasy about  
3 critiquing about their report. I'm pointing out  
4 to you the very reason why I am loath to get  
5 into this discussion.

6 Q I suggest to you very simply, Mr. Christianson,  
7 it's just simple arrogance on your part that you  
8 won't accept that your hair microscopy  
9 comparison that you did in Mr. Driskell's case  
10 is wrong?

11 THE COMMISSIONER: Mr. Gates is objecting. I  
12 wish you would leave out some of adjectives and  
13 hyperbole. I'm not sure this witness has at the  
14 least in his evidence indicated arrogance. I  
15 think that's a bit unfair.

16 MR. LOCKYER: No, no, the arrogant suggestion,  
17 Mr. Commissioner, is based on what he's saying,  
18 not on how he's presenting it.

19 THE COMMISSIONER: For what it's worth, I don't  
20 agree with you, but carry on.

21 BY MR. LOCKYER:

22 Q Let's talk about hair comparison now for a bit,  
23 Mr. Christianson. Would you agree, sir, that  
24 first of all this work that you used to do is a  
25 highly subjective process? Would you agree with

1           that?

2   A    I agree that it's subjective.  I'm not sure --  
3       we would have to perhaps come to an agreement  
4       what we mean by highly or moderately, but I  
5       agree that it's subjective, because an  
6       individual person does the analysis and they  
7       make the conclusions.

8   Q    Interestingly enough, "highly" is a word that  
9       you used in your evidence in Mr. Driskell's case  
10      to try and explain the significance of your hair  
11      microscopy results.  Do you remember that?

12  A    Exactly, because I know what I mean by that  
13      word.  And I am not disagreeing with you, I'm  
14      just saying that we have to come to an  
15      agreement.

16  MR. LOCKYER:  Could I file, Mr. Commissioner, a  
17      book of documents that is contained within  
18      covers and also some loose documents as the next  
19      exhibit?

20  THE COMMISSIONER:  Yes.

21  MR. LOCKYER:  And perhaps the witness can be  
22      given a copy as well?

23  THE COMMISSIONER:  This is something that hasn't  
24      been filed?

25  MR. LOCKYER:  No, it's a witness book.

1 THE COMMISSIONER: Carry on.

2 MR. LOCKYER: There are one or two documents in  
3 there that haven't been filed but that's sort of  
4 a matter of notorious record.

5 THE COMMISSIONER: So it will be exhibit 40 --  
6 40 A, B, C.

7 MR. LOCKYER: There's actually three loose  
8 documents.

9 THE COMMISSIONER: 40 A will be the book with  
10 five tabs; 40 B can be the letter of  
11 August 14th, Mr. Gates to Mr. Lockyer, I'm  
12 sorry, to Michael Code; and 40 C will be an  
13 excerpt of a transcript in Regina versus  
14 Zurowski; and 40 D is an excerpt from the Morin  
15 Inquiry.

16 MR. LOCKYER: Sorry, there's actually one more.

17 THE COMMISSIONER: And 40 E is an article by in  
18 the Journal of Forensic Science by Mr. Gaudette,  
19 40 E.

20 (EXHIBIT 40A: Book of documents for Mr.  
21 Driskell's counsel, 5 tabs)

22 (EXHIBIT 40B: Letter of August 14th, Mr.  
23 Gates to Michael Code)

24 (EXHIBIT 40C: Excerpt of a transcript in  
25 Regina versus Zurowski)

1 (EXHIBIT 40D: Excerpt from the Morin  
2 Inquiry)

3 (EXHIBIT 40E: Article in the Journal of  
4 Forensic Science by Mr. Gaudette)

5 BY MR. LOCKYER:

6 Q Mr. Christianson, if we can turn to the blue  
7 book you are about to get?

8 THE COMMISSIONER: 40 A.

9 THE WITNESS: I have some of the papers loose  
10 here.

11 BY MR. LOCKYER:

12 Q Go to tab 5 of the blue book, sir?

13 THE COMMISSIONER: Exhibit 40 A.

14 BY MR. LOCKYER:

15 Q It's a decision of the Oklahoma Appeals Court in  
16 a case called Williamson. Have you ever read  
17 this decision?

18 A Absolutely not.

19 Q Turn to page 32, sir, paragraph 19, four lines  
20 down, this is what the court said. Five lines  
21 down, sort of starting in mid sentence. What  
22 the court was doing here was considering whether  
23 or not hair microscopy comparison evidence  
24 should be used in a criminal court. The court  
25 said,

1            "...this court has found an apparent  
2            scarcity of scientific studies regarding  
3            the reliability of hair comparison  
4            testing."

5        A        Sorry, I don't have it yet.

6        Q        Page 32, paragraph 19.

7            THE COMMISSIONER: You have to go down on the  
8            right-hand side, and about six lines down on  
9            paragraph 19, just after the word "Daubert."

10          THE WITNESS: I found it, thank you.

11          BY MR. LOCKYER:

12        Q        "This court has found an apparent scarcity  
13                of scientific studies regarding the  
14                reliability of hair comparison testing."

15          THE COMMISSIONER: Mr. Lockyer, don't forget the  
16          court reporter.

17          MR. LOCKYER: Yes, you don't have to say it.

18                "The few available studies reviewed by this  
19                court tend to point to the methods'  
20                unreliability. Although probability  
21                standards for fingerprint and serology  
22                evidence have been established and  
23                recognized by the courts, no such standards  
24                exist for human hair identification. Since  
25                the evaluation of hair evidence remains

1           subjective, the weight the examiner gives  
2           to the presence or absence of a peculiar  
3           characteristic depends upon the examiner's  
4           subjective opinion. Consequently, any  
5           conclusion regarding whether a particular  
6           hair sample comes from a certain individual  
7           depends upon the value judgment and  
8           expertise of the examiner."

9           Do you agree with that statement in general,  
10          sir?

11          THE WITNESS: In general, yes.

12          BY MR. LOCKYER:

13          Q       Yes. Mr. Gaudette, sir, is a former head of  
14                your section, am I right, in the RCMP, or head  
15                of the hair and fibre section in the RCMP lab?

16          A       He was referred to as the chief scientist in the  
17                hair and fibre section, yes.

18          Q       And he's commented in this regard, too, sir.  
19                I'm going to talk a little more about him  
20                shortly. But one of the things that he said,  
21                and I'm sorry, I don't think I actually have  
22                this document to put before you, but you are  
23                aware of his original study, sir, in which he  
24                purported to be able to put some kind of figures  
25                on probabilities where there was a hair

1           microscopy comparison resulting in a conclusion  
2           of similarity? You are aware of that?

3   A       Yes.

4   Q       And I'm sorry, this is before the Commission as  
5           a whole but isn't filed in the materials,  
6           Mr. Commissioner. You're familiar with the  
7           article by Gaudette and Keeping called "An  
8           Attempt to Determine Probabilities in Human  
9           Skull Hair Comparison"?

10   A       Yes.

11   Q       And just reading from page 605, sir, he was  
12           commenting on an attempt to reproduce his  
13           results through having another hair, having  
14           other hair examiners do the same as he had done?

15   A       Correct.

16   Q       Do you follow me?

17   A       Yes.

18   Q       And he says, I'm just reading from page 605 of  
19           his article in this regard,

20                    "However, due to the fact that so many of  
21                    the characteristics coded..."

22           and that would be the characteristics of a hair  
23           comparison analysis,

24                    "...coded are subjected (for example,  
25                    colour, texture) it was not possible to get

1           complete reproducibility between two or  
2           more examiners coding the same hair. The  
3           method must be confined to the same  
4           examiner as in this research."

5           Do you agree with that statement, sir?

6   A       I agree that that's the statement, yes.

7   Q       Do you agree, would you agree with the content  
8           of that statement, the very fact that two  
9           examiners aren't going to come up with the same  
10          results demonstrates how it's a subjective  
11          exercise?

12   A       All right.

13   Q       Do you see what I mean?

14   A       Yes.

15   Q       And you agree with that?

16   A       Yes.

17   Q       Yes. And then he says, sir, and this is one of  
18           the loose documents, and I'm sorry, it's a bit  
19           disorganized, that I've just filed?

20           THE COMMISSIONER: Exhibit 40 E.

21           MR. LOCKYER: Yes, that's correct. Which  
22           everyone has got except me now.

23           BY MR. LOCKYER:

24   Q       And this is again another article by the same  
25           Mr. Gaudette, sir, called "Some Further Thought

1 on Probabilities on Human Hair Comparisons" at  
2 page 759. He again says, if you look at the  
3 bottom there

4 "...since everyone's eyes and observation  
5 powers are different, hair comparison is  
6 still somewhat objective."

7 Do you see that, bottom of 759? I have taken  
8 out first words because it is referring back to  
9 the previous paragraph. Do you see that?

10 THE COMMISSIONER: The very last paragraph.

11 THE WITNESS: Yes, I saw that.

12 BY MR. LOCKYER:

13 Q Do you agree with that, sir?

14 A Yes.

15 Q All right. Just looking at your own guidelines,  
16 sir, that are set out in your statement at tab 1  
17 of Commission Counsel's book, could you look at  
18 page 11 of your statement, where the guidelines  
19 by which you had to work, or the standards I  
20 think they are called at the bottom of page 10  
21 of your statement, it is tab 1 of Commission  
22 Counsel's book. You'll see right at the bottom  
23 about the applicable standards. Do you see  
24 that?

25 A Yes.

1 Q From the Hair and Fibre Section Methods Manual?

2 A Yes.

3 Q And if you look over the page, sir, you'll see  
4 under G,

5 "Where questioned hairs are found to be  
6 consistent with having originated from the  
7 same person as the known sample, based on  
8 the examiner's experience and judgment, an  
9 evaluation is made of the relative  
10 significance of this finding."

11 And that demonstrates really quite clearly how  
12 there is a subjective element involved in hair  
13 microscopy comparison. Do you agree?

14 A Yes, I do.

15 Q Because if you were looking at applicable  
16 standards for a DNA expert, and we'll talk  
17 nuclear DNA expert, you wouldn't have a  
18 statement like that sitting in the standards for  
19 a DNA expert by which to testify, would you?  
20 You wouldn't have, where a questioned DNA sample  
21 is found to be consistent with having originated  
22 from the known sample, then based on the  
23 examiner's experience and judgment, an  
24 evaluation is made of the relative significance  
25 of this finding, you wouldn't find that in the

1 DNA standards manual, would you?

2 A I don't imagine you would, no.

3 THE COMMISSIONER: Could you please move closer  
4 to microphone?

5 BY MR. LOCKYER:

6 Q Which demonstrates perhaps as well as anything  
7 the difference between the two disciplines, the  
8 one subjective, the other not subjective?

9 A I agree that the hair evidence is more  
10 subjective than the nuclear DNA evidence, yes.

11 Q I don't understand how nuclear DNA evidence is  
12 subjective, sir, at all. You've got your  
13 result, you took your statistics, and that's  
14 what you presented. Am I wrong?

15 A Well, the profile, interpreting the profile in  
16 nuclear DNA is not subjective. Interpreting a  
17 hair comparison is subjective. Interpreting a  
18 DNA profile is not.

19 Q And the states are based on empirical evidence  
20 in DNA testing?

21 A Stats are based on a population.

22 Q Empirical evidence?

23 A Yes.

24 Q Yes. And the idea that the subjectivity of what  
25 you used to do, sir, is perhaps demonstrated by

1 the fact that you have, even in the context of  
2 the standards that are listed on that page 11,  
3 you have your own view of the standards and, in  
4 fact, have presented it as such at page 11 of  
5 your statement to Commission Counsel. You said  
6 immediately underneath the listing of those  
7 standards, you said, or it says,

8 "Christianson departed from this standard  
9 in that he did not distinguish between  
10 major and minor characteristics of the  
11 hairs; in his view, it's the various  
12 combination of characteristics that is  
13 important."

14 And that's you with your subjective opinion as  
15 to what is and isn't important in hair  
16 microscopy comparison, which happens to differ  
17 with the standards that are presented to you by  
18 the manual. Am I right?

19 A I don't think it differs, I think it extends it,  
20 yes.

21 Q All right. And in your discipline, sir, that  
22 you used to engage in, there is no consensus, as  
23 I understand it, even within hair microscopy  
24 analysts -- I'm not sure there's many engaged in  
25 this business anymore, so perhaps we'll take our

1 minds back to the early '90s and late '80's,  
2 there was no consensus back then as to the  
3 number of relevant characteristics that one  
4 should look for in trying to compare one hair to  
5 another. Am I right? You couldn't even agree  
6 on what was important or what wasn't important,  
7 as a group of people?

8 A Well, as I said, it's a complex biological  
9 pattern. So if we go back to my analogy of the  
10 face, it would be like me saying to you, let's  
11 agree on a number of facial features we will use  
12 to identify somebody. There is a subjective  
13 element to that, but it doesn't mean it is  
14 lacking discriminating ability.

15 Q I mean, if we look at your evidence in  
16 Mr. Driskell's case, sir, tab 5 of my friend's  
17 book, 147, line 11, you said at Mr. Driskell's  
18 trial --

19 THE COMMISSIONER: Just pause for a moment.

20 Okay. Go ahead.

21 BY MR. LOCKYER:

22 Q You said,  
23 "Some people..."  
24 presumably meaning some analysts who do hair  
25 microscopy work is I think what you meant by

1           that,  
2                 "...some people would say there's up to 20  
3                 characteristics that you can look at and  
4                 use to differentiate hairs under a  
5                 microscope."

6           Do you see that?

7   A    Yes.

8   Q    Obviously then that means some people wouldn't,  
9           right?  It is the way you say it.  Some people  
10           would say there were more, some people would say  
11           there are less; am I right?

12   A    I would say that that would apply to the  
13           categories, yes.

14   Q    And when you as a hair microscopist used to  
15           testify, sir, you were never able to say that  
16           one hair was identical to another hair, you  
17           would say that the one hair fell within a normal  
18           variation of the hairs of the known party,  
19           right?

20   A    Words to that effect, I would say that.

21   Q    So, in other words, even under the hair  
22           microscopy comparison, you are not saying this  
23           hair looks identical to that hair, you're saying  
24           this hair looks in such a way that it fits  
25           within the variation of the hairs of the known

1 individual, correct?

2 A Yes.

3 Q It's actually what you said in your statement to  
4 Commission Counsel as well?

5 A Yes.

6 Q The way you put it, it is at page 13 of your  
7 statement to Commission Counsel, you said,  
8 "The three hairs...."  
9 this is at page 13, tab 1, halfway down, second  
10 paragraph. Do you see where I am, "the three  
11 hairs"?

12 A I'm at the spot.

13 Q "The three hairs Christianson found to be  
14 'consistent' with the known hairs were not  
15 identical to the three known hairs referred  
16 to in his notes. The differences between  
17 their various features all fell within what  
18 he considered to be normal range of  
19 variation."

20 Right?

21 A Yes.

22 Q Yes. And as I understand it, sir, in this case,  
23 you, insofar as you purported to find the three  
24 hairs from the van to fall within the normal  
25 variation of Mr. Harder's hairs, you said that

1 in the context of there being nothing  
2 particularly distinctive about any of the hairs.  
3 Is that right, sir?

4 A Well, I don't remember putting it quite that  
5 way. Is there a reference to that?

6 Q Well, can you remember that?

7 A No, I can't remember.

8 Q You can't. Well, that's what you told  
9 Commission Counsel, sir, page 15?

10 A Okay.

11 Q Top paragraph, three lines down.

12 "There was nothing particularly distinctive  
13 about the known hairs in this case, and  
14 Christianson considered the three  
15 comparisons referred to in his report to be  
16 'positive' comparisons but not 'strong  
17 positive' comparisons...",  
18 within the meaning of the guidelines. Is that  
19 true, sir?

20 A Yes.

21 Q You didn't tell the jury that in Mr. Driskell's  
22 case, did you?

23 A I don't recall exactly what --

24 Q I can assure you that you didn't. Why not?

25 A Well, the hairs are still a match, and it's like

1 a threshold, and the match, or the consistent  
2 conclusion does not rely on there being some  
3 kind of distinctive individualizing features.

4 Q Don't you think, sir, that the jury trying  
5 Mr. Driskell for first degree murder was  
6 entitled to know that there was nothing  
7 particularly distinctive about the three hairs  
8 in the van, so the three comparisons were only  
9 positive, rather than strong positive, in your  
10 own discipline. Don't you think they were  
11 entitled to know that?

12 A Well, I worded my conclusion in a way, in this  
13 term, or this guideline, I worded my conclusion  
14 as a positive. So I did indicate that to them.

15 Q You worded your conclusion in terms of "exactly"  
16 is a word you used, do you remember that? I'm  
17 going to take you through these words?

18 A Yes, I understand.

19 Q Those kind of words. There is a very small  
20 chance that it wasn't Mr. Harder's hairs. Do  
21 you remember that?

22 A Yes.

23 Q You never said to the jury, though, that unlike  
24 some cases, all I have here is positive  
25 comparison because there's nothing particularly

1           distinctive about the hairs?

2   A       No, I didn't say that.

3   Q       You never gave a hint of that in your evidence,  
4           did you, sir?

5   A       No.

6   Q       Why not? You're the expert. The jury needs to  
7           know that, don't they, sir?

8   A       Because I declared the hairs a match, they are  
9           consistent, and my conclusion stands whether I  
10          use that terminology or not.

11   Q       Don't you think as a forensic scientist, sir,  
12          you are obliged to give the jury all the  
13          information, not just the information that helps  
14          the prosecution, but also the information that  
15          might assist the defence?

16   A       I go to a trial to present my evidence and tell  
17          the truth. I can't always control the  
18          information that comes out in the trial.

19   Q       You swear you're going to tell the whole truth,  
20          sir?

21   A       Yes, and I answered the questions.

22   Q       Well, the questions that were asked of you, sir,  
23          were to give your assessment of the hairs that  
24          were found in the van and compare them to those  
25          of Mr. Harder. And you did, but you failed to

1 tell the jury what you told Commission Counsel  
2 15 years later. And I simply can't imagine why  
3 you'd do that?

4 A I'm conducting an interview 15 years later with  
5 a couple of lawyers and we are discussing the  
6 nature of the evidence. I am happy with the way  
7 the evidence was presented in Driskell. I think  
8 it was as good as I really could have done it,  
9 and I don't see how I can be taken to task on  
10 the fact that my statement, 15 years, is not  
11 quite identical to what I said in court  
12 previously.

13 THE COMMISSIONER: Mr. Dawe.

14 MR. DAWE: Yes, in fairness to Mr. Christianson,  
15 I should just point out that, unlike the other  
16 interview summaries that have been filed, this  
17 one is a little unusual in that it's actually  
18 composite of an interview that Mr. Code and I  
19 conducted with Mr. Christianson, and a  
20 subsequent interview that Dr. Lucas conducted  
21 with Mr. Christianson. So this particular  
22 passage, to my recollection, is something that,  
23 as I recall is something that arose out of  
24 Dr. Lucas' interview with Mr. Christianson. As  
25 I recall, when we conducted the interview, we

1 didn't have at that point appendix III-1 of the  
2 methods manual. So, in fairness, Mr. Lockyer is  
3 reminding Mr. Christianson what he said to the  
4 interviewer, most likely it was Dr. Lucas in  
5 this case rather than Commission Counsel.

6 THE COMMISSIONER: Thank you, Mr. Dawe.

7 MR. LOCKYER: I don't understand what that has  
8 to do with the point I am making. Whoever he  
9 told it to, Mr. Lucas or Commission Counsel, he  
10 should have told it to the jury. That is my  
11 submission

12 BY MR. LOCKYER:

13 Q There really are no reliable statistical figures  
14 that can be provided in your old profession,  
15 sir, for the reliability of what you're calling  
16 a match. Am I right?

17 A Well, it's an interesting point. I mean, even  
18 in this section you read to me about the  
19 scientific studies regarding the reliability,  
20 Mr. Gaudette did several studies, there have  
21 been many studies done. We also do the hundred  
22 hair exercise as part of our understudy  
23 training. I often wonder what it would take in  
24 order for people to conclude that enough studies  
25 have been done. It's not as though they weren't

1 done, and we did do them, and I was certainly  
2 satisfied that hair evidence was discriminating  
3 and good evidence, based on what I read, and my  
4 personal experience, and my having conducted the  
5 hundred hair exercise. So I also had to do  
6 proficiency tests. So I think it's reliable,  
7 other people may not. That's fine.

8 Q Mr. Gaudette tried it, sir, and came up with a  
9 figure of a degree of discrimination of 1 in  
10 4,500, correct?

11 A Based on his experiment, yes.

12 Q And it's interesting, just from a cultural bias  
13 point of view, if I can put it that way, to look  
14 at how Mr. Gaudette, I forget, the chief  
15 scientist of your section I think is the term  
16 you used?

17 A Yes.

18 Q How he came to that conclusion without going  
19 into all its details. His thesis, sir, was  
20 based on comparing hairs with each other that he  
21 knew had come from different individuals and  
22 deciding whether or not it was his view that, in  
23 fact, those hairs could not be distinguished one  
24 from the other, despite the fact that he knew  
25 they came from different individuals. Am I

1 right?

2 A I have to admit, I think you lost me on that  
3 one. It was kind of convoluted.

4 Q He took the hairs of different individuals,  
5 sir --

6 A Yes.

7 Q -- and knew he was looking at the hairs of one  
8 person and comparing them to the hairs of  
9 another person. Do you follow me? He knew, in  
10 other words, he wasn't looking at the hairs that  
11 came from the same head, he was looking at hairs  
12 that came from two different heads?

13 A Oh, okay, I see, okay.

14 Q And then examined them to determine whether in  
15 his subjective opinion there was, in fact, no  
16 distinction between the hairs he was looking at,  
17 even though he knew that the hairs he was  
18 looking at came from two different heads. Do  
19 you follow me?

20 A Right.

21 Q That's the basis for his thesis, isn't it?  
22 That's how he came to 1 in 4,500, that's what he  
23 did?

24 A Well, that's part of what he did, yes.

25 Q Yes. And have you read -- at tab 1, sir, of the

1 blue book that I provided you this morning, is  
2 what I tend to refer to as the snake oil  
3 article. Have you read it?

4 A Yes.

5 Q It's called "Forensic Hair Comparison Analysis,  
6 19th Century Snake or 20th Century Snake Oil."

7 Oh, sorry, I don't know why I did that.

8 A Mr. Commissioner, can we possibly have a break?

9 THE COMMISSIONER: Absolutely, we're going to  
10 take a 15 minute break.

11 THE CLERK: All rise. This Commission of  
12 Inquiry is adjourned for a 15 minute recess.

13 (Proceedings adjourned at 10:56 a.m and  
14 reconvened at 11:13 a.m.)

15 THE CLERK: This Commission of Inquiry is back  
16 in session

17 BY MR. LOCKYER:

18 Q Yes, sir, I just referred you to the snake oil  
19 article and I managed to misread the title which  
20 is, "Forensic Hair Comparison Analysis, 19th  
21 Century Science or 20th Century Snake Oil."

22 It's at tab 1 of the blue book. Do you have it  
23 open, sir?

24 A Yes.

25 Q And I think it's fair to say that in its

1 conclusion, this article essentially says that  
2 your former profession should not be playing any  
3 role in any court of law; is that fair? Go to  
4 the last paragraph if there's any doubt about  
5 that, page 290, under the heading conclusion.  
6 Are you there?

7 A Yes.

8 Q Yes.

9 "No effort has been made in the United  
10 States to empirically prove anything in  
11 this field...",  
12 meaning the hair microscopy field,  
13 "...at any time, yet men and women lose  
14 life and liberty on the basis of this  
15 untested evidence. If the state wants to  
16 use the evidence, the state needs to make  
17 convincing efforts to show its scientific  
18 validity. Furthermore, even if hair  
19 analysis evidence is admitted, we must  
20 exclude evidence concerning any multiplier  
21 effect where more than one hair matches or  
22 any other pseudo-statistical evidence which  
23 the hair technician puts before the jury as  
24 empirical fact, unless empirical study  
25 establishes the true significance of such

1 factors. Until and unless empirical  
2 evidence supports the use of hair analysis,  
3 is considerably improved, forensic hair  
4 comparison analysis results must be kept  
5 from the jury."

6 It's a pretty definitive conclusion, right,  
7 about your profession?

8 A Yes, it's certainly a definitive conclusion.

9 Q Yes. And at 242, sir, in a very simple  
10 paragraph, the authors of this article  
11 summarize -- they spend a lot of time  
12 critiquing, criticizing is perhaps a better  
13 word, criticizing what Mr. Gaudette did, but  
14 they do summarize in a paragraph the essence of  
15 what he did. It's at page 242, second  
16 paragraph. They say,

17 "First, how reliable is Gaudette's actual  
18 assessment of whether a hair matches?  
19 Perhaps the greatest methodological flaw of  
20 the study is its lack of blindness -- a  
21 factor which severely damages any study's  
22 reliability. Gaudette knew a priori that  
23 he was comparing hairs which came from  
24 different people. Therefore, the  
25 researcher was aware that each match made

1           was a false one. The experiment should be  
2           replicated using examiners who were not  
3           told that any matches found will be false."  
4       And I already put that to you, that that's what  
5       Gaudette did to come up with this one in 4,500  
6       figure?

7   A    I have to admit, I don't routinely read law  
8       journals. I've read a few by some authors such  
9       as Tribe and Finklestein and Farley. This is,  
10      to me, not something that I would take up and  
11      read. It's a screed, it's a polemic against  
12      hair evidence. And I don't really think that  
13      particular paragraph you just read to me is  
14      quite correct. I don't think they really  
15      understand what he was doing, and I take  
16      exception to having my science characterized as  
17      snake oil. I just don't find anything redeeming  
18      in this article. I think we should possibly  
19      just set it aside. It doesn't add anything to  
20      this debate, other than some political posturing  
21      from someone in the States. We don't do hair  
22      evidence anything, or we didn't do hair evidence  
23      anything like these people. So I don't see it  
24      as relevant.

25   Q    Sorry, you only read the stuff by Finklestein

1           you said?

2   A    No, I have read other -- you know, I'm used to  
3       reading certain, let's say legal commentators,  
4       and I find some of their writing very  
5       informative and useful. This one, I just  
6       find --

7   Q    Just coincidentally, sir, footnote 1, the  
8       authors wish to thank Professor Michael O.  
9       Finklestein, coincidentally?

10   A    Yes.

11   Q    Leaving that aside, sir, I'm not really asking  
12       you to comment on the article itself. I just  
13       read to you a paragraph, sir, and it essentially  
14       repeats perhaps a little more clearly what I put  
15       to you before we broke, it puts it in different  
16       words, but ultimately describes what Gaudette  
17       did to come to that figure of 1 in 4,500, right?

18   A    Well, for example, they use a lack of  
19       "blindedness," and the actual data was encoded  
20       on cards, and the cards, the comparisons were  
21       done using cards to do the initial sifting of  
22       the data. How could it be more blind? I  
23       mean --

24   Q    Sorry, I thought you had agreed that the person  
25       doing the comparing knew that every single

1 comparison he made, he knew as he made it that  
2 in fact he was looking at hairs that came from  
3 two different people. And he then had to say,  
4 do they, however, look the same?

5 A What they did was they took a known sample and  
6 they selected hairs which they believed to be  
7 mutually exclusive in that known sample. And  
8 then they used, they encoded the information on  
9 all of those mutually exclusive hairs, and then  
10 they used the card sorting system to compare  
11 them. They didn't conduct an examination as to  
12 whether they were similar or not when they were  
13 doing that examination. That's not how they did  
14 it. They reviewed them after they had gone  
15 through all of that sorting procedure. So  
16 really the objective of the whole exercise was  
17 to get an indication of the amount of  
18 information and the discriminating ability of  
19 the evidence. So it's not appropriate to  
20 compare it to what we did when we did the hair  
21 comparison of the case. Certainly, I'm not sure  
22 that these authors were looking at this from a  
23 balanced scientific point of view.

24 Q Certainly not, I'm not sure that we're arguing  
25 about what was done. What wasn't done, perhaps

1           it might be easier to say what wasn't done, sir.  
2           Gaudette didn't take some known hairs and then  
3           get 100,000, the kind of numbers that he was  
4           talking about in his study, 100,000 unknown  
5           hairs, at least unknown to him, which he then  
6           tried to determine which hairs matched the known  
7           hairs. He didn't do anything like that; right,  
8           sir?

9           A     No, not like that, no.

10          Q     Which might be considered a blind study, to use  
11           the terminology used in the snake oil article.  
12           He knew, as he looked, that each hair in fact  
13           came from different heads, but he was trying to  
14           then say to himself, do they look so similar  
15           that I wouldn't have known that but for the fact  
16           that I do know that, in a way. That's one way  
17           of putting it; is that right?

18          A     No, that's not right.

19          Q     Well, I thought you had agreed it was before  
20           recess. I don't want to get too tied up on  
21           this.

22                     I am going to suggest to you, sir, that  
23           what Gaudette of course was trying to do there  
24           was to provide an assessment of the need for and  
25           the utility of his profession at the time. Is

1           that fair?

2   A       Absolutely, yes.

3   Q       And indeed, your profession, and I'm going to  
4           suggest to you, sir, just looking at how he did  
5           what he did, and it is certainly examined at  
6           length in the snake oil article, but what he did  
7           demonstrates a cultural problem in itself that  
8           he is trying to justify the use of his own  
9           profession. Do you see the problem? He has a  
10          vested interest, of course, in justifying his  
11          own profession when he did his work?

12   A       Being quite frank, I see one vested interest. I  
13          see this terminology coming at me all the time  
14          about a culture, which I'm not aware of.

15   Q       I see.

16   A       This is a culture of science.

17   Q       You don't think it was anything to do with a  
18          culture, sir, that you failed to advise the  
19          jury, for example, that there was nothing  
20          distinctive about the hairs you were looking at,  
21          so it was at best, within your own discipline, a  
22          positive as opposed to a strong positive. That  
23          wasn't anything to do with culture?

24   A       I am happy with the evidence that I gave to the  
25          jury in this trial.

1 Q I see. But it turns out, sir, that you don't  
2 seem to have a whole lot of confidence in  
3 Gaudette's conclusions of 1 in 4,500, because I  
4 think you told us yesterday that you rated hair  
5 analysis somewhere between 1 in a hundred and 1  
6 in a thousand. Do you remember saying that  
7 yesterday on a couple of occasions?

8 A Yes, I indicated that I considered the  
9 discriminating ability of hair comparison to be  
10 of the order of magnitude you just described.

11 Q Between 1 in a hundred and 1 in a thousand?

12 A Yes.

13 Q Was that always the case, sir, throughout your  
14 career?

15 A That was my belief, that is how I felt about it,  
16 yes.

17 Q It was. Okay. When you testified, sir, at  
18 Mr. Starr's trial, could you go to tab 7 of my  
19 friend's book? This is when you testified at  
20 1995, sir, page 69, line 15. Question -- are  
21 you with me?

22 A Yes.

23 Q "Are you able to say...",  
24 and this is defence counsel, Mr. Brodsky, asking  
25 the question in Mr. Starr's trial in 1995.

1 "Are you able to say -- can you give us a  
2 percentage when you say -- I think you told  
3 Mr. Dangerfield that there was a very small  
4 likelihood that two separate people  
5 deposited those hairs?"

6 And do you remember this case where you were  
7 doing the hair comparison?

8 A I remember the case.

9 Q Yes.

10 "A Yes.

11 Q I'm not sure what 'very small' means.  
12 A proportion of say 10 per cent of the  
13 population or 15 per cent of the population  
14 or 8 per cent of the population? Are you  
15 able to say?

16 A Well, I would express it is an opinion  
17 and it would be a numerical opinion. Based  
18 on my experience, it would be less than .1  
19 per cent."

20 Do you remember being asked those questions and  
21 giving those answers?

22 A Well, I don't particularly remember, but the  
23 transcript is here, yes.

24 Q Yes. What you're saying there, sir, in 1995, is  
25 quite contrary to what you're saying now, is

1           that you would make it less than 1 in a  
2           thousand. In other words, something beyond 1 in  
3           a thousand, right?

4    A       Yes. I often would use this number or I would  
5           say on the order of magnitude.

6    Q       But now you're saying you always thought 1 in a  
7           hundred to 1 in a thousand. How do you explain  
8           what you are saying now with what you said then?

9    A       I don't find that they are significantly  
10          different.

11   Q       You don't?

12   A       No.

13   Q       You don't find that only referring to the one  
14          thousand figure demonstrates, if I may, a  
15          cultural bias on your part?

16   A       No.

17   Q       You don't think the jury might have been better  
18          informed when you testified in Mr. Starr's case  
19          if they had known, in fact, you placed it  
20          somewhere between 1 in a hundred and 1 in a  
21          thousand, as opposed to the way you expressed it  
22          here?

23   A       I'm happy with the way I expressed it here, yes.

24   Q       And however you expressed it, sir, whether the  
25          way you're doing it now or the way you did it in

1 Mr. Starr's case, you clearly don't agree with  
2 Mr. Gaudette's figures. Am I right?

3 A I think Mr. Gaudette's research was just that,  
4 it was an attempt to establish the  
5 discriminating ability of the hair. I don't  
6 think the actual number, 1 in 4,500, is  
7 something that he even advocated that we  
8 necessarily adhere to. But it's a very useful  
9 experiment, it was good science, and I think the  
10 RCMP can be justifiably proud of the work he  
11 did. I think he was a world leader in that  
12 field.

13 Q Let's use it -- can we look at some of the terms  
14 that you used, sir, when you gave your evidence  
15 in this regard. We have two transcripts to work  
16 with in that regard. If we go to tab 5 of  
17 Driskell, first of all, we have you using, and I  
18 think you have already commented on this, the  
19 word exactly. 148, line 17, tab 5, you said,  
20 "So it falls exactly within the range of  
21 variation of the known sample with no  
22 unaccounted for differences whatsoever."

23 A Yes.

24 Q Do you remember that, sir? So that's pretty  
25 emphatic language you're using, am I right?

1 A It is emphatic, yes.

2 Q Yes, to the jury. And Starr, sir, at tab 7,  
3 keep your finger on tab 5, at page 62, line 10,  
4 you use the word exactly again. You said at  
5 page 62, line 6,

6 "...all of the features on the hair from  
7 the questioned hairs have to fall within  
8 the range of the features present in the  
9 known sample and there has to be a hair in  
10 the known sample through which the features  
11 vary in exactly the same way."

12 Do you remember that, sir?

13 A Yes.

14 Q Yes. You use the word again in Driskell, sir,  
15 go back to 149 in Driskell, top line.

16 "So if the hair is consistent, that means  
17 it either came from the same person as that  
18 known sample or from someone else who has  
19 hair exactly like that."

20 Right?

21 A Yes.

22 Q Another word you used, sir, or phrase I suppose  
23 is a better way of putting it, is "very small."  
24 Go back to 148, line 24 of Driskell.

25 "But I can tell you...",

1           and you say,  
2                 "...based on my experience...",  
3           and I'm going to come back to that aspect of  
4           your evidence,  
5                 "...that the chances of just accidentally  
6           picking up a hair and having it matched to  
7           a known sample are very small."

8           Right?

9           A     Yes.

10          Q     In Starr, sir, at 62, line 20, you used the same  
11          phrase, line 16, page 62.

12                 "In my opinion, the likelihood of a  
13           coincidental match to some other person is  
14           very small."

15          A     Yes.

16          Q     Right. In Driskell, sir, at 149, line 15, you  
17          say at line 14, mid sentence,

18                 "...just like sometimes you accidentally  
19           mistake one person for another...",

20          I guess I have to read the sentence, line 12.

21                 "That's not to say you can't accidentally  
22           meet somebody or two people on the street  
23           that have exactly the same kind of hair,  
24           just like sometimes you accidentally  
25           mistake one person for another, but the

1 chances are not very high."

2 Another expression you use, is that right?

3 A Yes.

4 Q You use as well, both in Driskell, the same page  
5 at the top, we already read this sentence,

6 "So if the hair is consistent..."

7 you used the word "consistent," is that right?

8 A I use that word, yes.

9 Q Another word you use again in Starr, sir, page  
10 61 of Starr, you say at line 24,

11 "I found two scalp hairs consistent with  
12 having originated from the same  
13 individual."

14 Do you see that?

15 A Yes.

16 Q And you were actually asked about this word  
17 "consistent," sir, in your interview with  
18 Commission Counsel and/or Mr. Lucas; is that  
19 right?

20 A I believe so.

21 Q Page 16, sir, of your statement, tab 1 of my  
22 friend's material, in the last paragraph, four  
23 lines down, it says the following:

24 Christianson -- are you there?

25 A Yes.

1 Q "...has read the criticism that has been  
2 directed at the term 'consistent' in recent  
3 years, but would still use this term today  
4 since, in his view, no better term has been  
5 suggested. Since the RCMP no longer  
6 performs microscopic hair analysis, the  
7 appropriate manner of presenting  
8 microscopic hair comparison results is no  
9 longer an issue for RCMP scientists.  
10 However, in Christianson's view, the term  
11 'consistent' remains a good word that can  
12 be usefully employed in other areas,  
13 although the exact sense in which it is  
14 used is somewhat different in different  
15 disciplines.  
16 If asked to define what it means for an  
17 unknown hair to be microscopically  
18 consistent with a known hair, Christianson  
19 would say it means the hair comes from the  
20 known individual or someone whose hair is  
21 identical to his and the chances of it  
22 coming from someone else are remote."  
23 Now, have you read Justice Kaufman's report in  
24 the Morin inquiry, sir, in this regard?  
25 A I have read it previously. I haven't prepared

1 for that today, I haven't read it for today.

2 Q Because you say there, just to go back to where  
3 I started reading from, that you have read the  
4 criticism that's been directed at the term  
5 consistent in recent years, but would still use  
6 this term today since, in his view, no better  
7 term has been suggested. So presumably you've  
8 read Justice Kaufman and the various authors  
9 that he cites in his report at some time in the  
10 past, where this word is severely criticized and  
11 substitutes are proposed for it?

12 A Yes.

13 Q Right. And obviously you're not impressed by  
14 either the criticisms or by the substitutes  
15 proposed. Am I right?

16 A I don't recall. As I said, I didn't read that  
17 report to prepare for today so I don't recall  
18 the proposed substitutions. When we were  
19 discussing this point, the use of that word came  
20 up, and I do think it's a useful word in the  
21 forensic context.

22 Q You certainly had no difficulty it seems in your  
23 interview saying that you'd still use this term  
24 today because, in your view, no better term has  
25 been suggested. And if you read other

1 proposals, obviously you haven't approved them.  
2 Am I right?

3 A I didn't -- I think the deference I would give  
4 to the current state of affairs, I think I was  
5 talking about whether I would word the  
6 conclusion the same way. I would. I think the  
7 tendency is today, if you're going to use that  
8 word, then you'd have to be prepared to discuss  
9 what you mean by it. But we were discussing  
10 whether I'd use that word today. Well, yes, I  
11 would.

12 Q You should have before you, sir, in loose form,  
13 an extract from Justice Kaufman's report of the  
14 Morin Inquiry. I'll take you to page 342. Can  
15 you find that?

16 THE COMMISSIONER: That's exhibit 40 D.

17 BY MR. LOCKYER:

18 Q And this is the whole section on this word. And  
19 Justice Kaufman, having quoted various people  
20 both from within and without your profession,  
21 says at 342 at the bottom,

22 "There was also agreement among the  
23 systemic witnesses before the Commission  
24 that the use of the terms 'match' and  
25 'consistent with' are inappropriate when

1           describing hair and fibre comparisons.  
2           Dr. Tilstone...",  
3           who incidentally will be here later this week at  
4           this inquiry too,  
5           "...testified that different people ascribe  
6           different meaning to the terms.  
7           Dr. Blake...",  
8           who is a DNA scientist,  
9           "...thought that the terms are misleading  
10          and confusing, explaining that even DNA  
11          analysis does not prove that two things are  
12          identical."  
13          He is saying this, I might add, in 1997 before  
14          STR developments or 1996.  
15          "Dr. Tilstone felt that if a scientist  
16          doesn't have a data base which allows him  
17          to express quantitative information, he  
18          should avoid language which implies some  
19          quantitative rarity."  
20          In his written submissions the Centre said this,  
21          "It's acknowledged that the use of the  
22          terms 'match' and 'consistent with'..."  
23          THE COMMISSIONER: Mr. Lockyer, I think the  
24          witness and some of us don't have a 343.  
25          MR. LOCKYER: Okay. We're actually missing two

1 pages. Can I just read then --

2 THE COMMISSIONER: Yes, you may.

3 MR. LOCKYER: -- and assume I'm getting it  
4 right. I apologize.

5 "In its written submissions, the Centre  
6 said this. It is further acknowledged that  
7 the use of the terms 'match' and  
8 'consistent with' by the Centre's  
9 scientists may have been confusing. With  
10 respect to the word 'match,' this has never  
11 been used in CFS trace evidence reports  
12 because it is scientifically invalid. For  
13 the same reason, it should also be avoided  
14 in a court of law. With respect to the  
15 term 'consistent with,' although it does  
16 have a distinct scientific meaning in hair  
17 and fibre analysis and is regularly used  
18 among scientists, repeated use of the term  
19 among non scientists may create a mistaken  
20 impression if the meaning of the term is  
21 not adequately emphasized. Dr. Young...",  
22 who is the director, who was then the director,  
23 then the Deputy Minister of the Solicitor  
24 General's office, which was responsible for the  
25 Centre of Forensic Science,

1            "...testified that both terms have been  
2            eliminated from CFS vocabulary and the  
3            context of subjective examinations like  
4            hair and fibre comparisons. This, says  
5            Justice Kaufman, is a commendable  
6            development."

7            He then gives a recommendation and he says,

8            "Recommendation 10, that specific language  
9            be adopted."

10          And he says,

11          "The previous recommendation that address  
12          the avoidance of specific language is  
13          potentially misleading."

14          And one of those is he said, in the  
15          recommendation 9, the terms 'match' and  
16          'consistent with' are examples of potentially  
17          misleading language, he says, and then  
18          recommends,

19          "Certain language enhances understanding  
20          and more clearly reflects the limitations  
21          on scientific findings. For example, some  
22          scientists state an item may or may not  
23          have originated from a particular person or  
24          object. This language is preferable to a  
25          statement that an item could have

1           originated from that person or object, not  
2           because the limitations are clearer, but  
3           also because the same conclusion is  
4           expressed in more neutral terms."

5           You don't agree with much of that; is that  
6           right, sir?

7           THE WITNESS: I did say that I agree that there  
8           was more of an onus on us to describe what we  
9           meant by consistent. I think he made that very  
10          clear.

11          I don't necessarily agree with all the  
12          comments that were made there, no. I think the  
13          word is a good word, it's a matter of defining  
14          it and using it appropriately. In fact, I would  
15          not consider using a phrase such as that -- the  
16          phrase, I don't know the exact wording.

17          BY MR. LOCKYER:

18          Q       May or may not?

19          A       I don't think that would be appropriate in my  
20          opinion. For the hair evidence that I gave, I  
21          don't think that would be appropriate. However,  
22          there are some people who might.

23          Q       Well, it's quite clear there are some people who  
24          might, sir?

25          A       Yes.

1 Q Justice Kaufman being one of them?

2 A Yes.

3 Q And bearing in mind, sir, or remembering the  
4 work that you did to try and get your lab  
5 certified, or I forget the term?

6 A Accredited.

7 Q Accredited, thank you. Presumably then you are  
8 able to tell us whether or not Justice Kaufman's  
9 recommendations in terms of use of language were  
10 codified, so to speak, in the RCMP laboratory  
11 manuals. Presumably, I can assume that they  
12 were not; is that right?

13 A Well, I don't do that particular work. For  
14 example, like it's a moot point for the hair  
15 comparison because we don't do it anymore.

16 Q All right.

17 A But I would say we have, in fact, made a  
18 concerted effort to adopt Justice Kaufman's  
19 recommendations.

20 Q But you personally certainly haven't adopted  
21 that recommendation, and as far as you know,  
22 you're not obliged to?

23 A I indicated that if I was to give that  
24 conclusion in court again today, I would use  
25 that word, yes.

1 Q And the RCMP manual would not prevent you from  
2 doing so? Just so you know, sir, the CFS, an  
3 employee of the CFS now who used those words  
4 would be in serious trouble because he'd be  
5 violating their procedures and practices.

6 A I don't think the RCMP would dictate to me  
7 exactly how I would give my evidence in court.  
8 But there would be, if there was an issue that  
9 arose because of the nature of my evidence, then  
10 it could be reviewed.

11 Q Do you see that as a cultural problem, sir, that  
12 the RCMP doesn't seem to have paid at least  
13 entire attention when it comes to the use of  
14 language, according to what Justice Kaufman said  
15 in Morin?

16 A I'm sorry?

17 Q Do you see that as a cultural problem within the  
18 RCMP lab, that they seem to have not paid the  
19 kind of attention to Justice Kaufman's  
20 recommendations that perhaps other labs have?

21 A I believe that I said that the RCMP has made a  
22 concerted effort to adopt his recommendations.  
23 I don't think there's any culture to disregard  
24 what he said. I was talking about my own use of  
25 this word in this case. And the issue of

1 culture, as you seem to be returning to it, I  
2 think is addressed by our accreditation  
3 guidelines.

4 Q In tab 6, sir, we have Mr. Cadieux's evidence in  
5 the Unger case. Mr. Cadieux, back in 1992,  
6 would have been your supervisor; is that right?

7 A Yes.

8 Q And he as well, if you turn to page 6 of tab 6,  
9 could you do that? You'll see at line 8 he  
10 says,

11 "It's my opinion and it's supported in the  
12 literature that while coincidental matches  
13 can occur in forensic hair comparison, they  
14 are a relatively rare event. The  
15 explanation that the two hairs actually did  
16 come from the same source is by far the  
17 more likely of the two explanations."

18 Do you see that?

19 A I see it, yes.

20 Q And that would be something back then, and I  
21 sort of sense even today, you would not disagree  
22 with; am I right?

23 A I have to admit, Mr. Lockyer, I'm not really  
24 comfortable in referring to a coworker's  
25 transcript. I would prefer, if you had

1 questions related to it, that you direct it to  
2 him personally.

3 Q Well, let me ask you this, sir, it comes to the  
4 same thing. Would coincidental matches, in your  
5 view, be a relatively rare event?

6 A Yes.

7 Q If you have a hair that you discover may or may  
8 not have come from the known source, would you  
9 be of the view that it was far more likely that  
10 those two hairs came from the same source than  
11 they came from two different sources?

12 A I'm sorry, are you actually referring to a text  
13 somewhere?

14 Q I'm just asking you a question?

15 A Could you repeat it, please?

16 Q Yes. If you have a questioned hair, sir, that  
17 you conclude, and I'm going to use Justice  
18 Kaufman's term, may or may not have come from a  
19 known source, or to use your term, consistent  
20 with having come from a known source, would your  
21 conclusion be, sir, that it's far more likely  
22 that the questioned hair came from the same  
23 source as the known hair, or that it came from a  
24 different person?

25 A I got a little bit lost in the aside there. I

1 mean, could you simply restate the question?

2 Q Do you think when you find a -- dare I use the  
3 term 'match,' sir --

4 A Okay.

5 Q -- that it's far more likely in your opinion  
6 that the unknown matching hair came from the  
7 same source as the known hair than it came from  
8 a completely different source?

9 A I guess so, yes, I agree with that.

10 Q Yes, all right. So if we then go back to what  
11 Mr. Cadieux said, you seem to agree completely  
12 with what's said?

13 A Does that surprise you?

14 Q No, it doesn't surprise me in the slightest,  
15 since you asked me.

16 Page 33, sir, of the same transcript,  
17 Mr. Cadieux has asked bottom of 33, not unlike  
18 the way you were asked in the Starr transcript,  
19 line 20. Could you read along, sir?

20 A Yes, I'm listening.

21 Q Thank you.

22 "Q But you've also told us that the  
23 possibility of a coincidental match is  
24 relatively rare?

25 A Correct.

1 Q Are you able to give us a probability  
2 that the source is, in fact, the sample  
3 that was provided to you as opposed to the  
4 coincidental match?

5 A There is a study published with a  
6 list of probabilities, yes.

7 Q Can you assist us on what that  
8 probability might be?

9 A I could tell the court what the  
10 probability is.

11 Q Yes, would you?

12 A The probabilities so given for known  
13 questioned scalp hair matching a known  
14 sample, the chance that it did not  
15 originate from the same source, based on  
16 this study, is listed as 1 in 4,500.

17 Q 1 in 4,500?

18 A Yes.

19 Q So by far, the greater probability is  
20 that it came from the questioned source?

21 A That was my testimony, yes."

22 Did you know, sir, that Cadieux was prepared to  
23 give out the Gaudette figures in testimony  
24 before a jury?

25 A That he was prepared to do it?

1 Q Yes, he did it right here?

2 A Yes, he obviously did.

3 Q Did you know he was prepared to do that, sir?

4 A I think we're all prepared to discuss it. How  
5 he chooses to relate that evidence is up to him.

6 Q Did you ever think, sir, as a forensic  
7 scientist, the word forensic meaning a scientist  
8 in a legal context, presumably is a scientist --  
9 sorry, I've sort of changed the question around  
10 a bit. Presumably a scientist in a forensic  
11 context is well aware of the burden of proof in  
12 a criminal trial, proof beyond a reasonable  
13 doubt?

14 A Well, I think we are aware of it, yes.

15 Q Yes. And therefore, you are aware, you are also  
16 presumably aware that in many of these cases  
17 when you testify, if you can show a forensic  
18 link between the accused and the deceased, and  
19 if the jury is satisfied beyond a reasonable  
20 doubt that such a link exists, that in effect,  
21 you are proving the Crown's case. You'd be  
22 aware of that as a forensic scientist, correct?

23 A Well, I'm aware that our evidence is important  
24 and that it is not to be taken lightly, but I  
25 don't think that I -- I don't consider the

1 impact on the case one way or another. I try to  
2 simply present the evidence as objectively as I  
3 can.

4 Q Don't you think, sir, telling a jury that the  
5 chances are very small, that the matching is  
6 exact, that the hairs are consistent with each  
7 other, that coincidental matches are relatively  
8 rare, to take Cadieux, 1 in 4,500 established  
9 by, he didn't say it, but by Gaudette at his  
10 very lab, don't you think, sir, that that kind  
11 of evidence would have an enormous impact  
12 potentially on a jury in a case where your  
13 evidence is designed to establish a link between  
14 the accused and the deceased?

15 A Well, I agree with the wording that you just  
16 employed.

17 Q It's your words.

18 A Exactly, I don't have an issue with that.

19 Q So you realized that, when you gave your  
20 evidence in this field, that potentially your  
21 evidence could have an enormous impact on  
22 whether, to take Mr. Driskell, he was going to  
23 be convicted of the murder of Mr. Harder or not?

24 A I'm aware that that possibility exists, but when  
25 I'm presenting the evidence, I focus on the

1 evidence.

2 Q And for you to give these kinds of figures, and  
3 I use the word not in an exact sense of you  
4 saying 1 in -- although in one case you said  
5 0.1, in one case you did it, for Starr -- but  
6 the kinds of the words you were using to  
7 describe strength of the evidence that you were  
8 giving, you were in essence giving the jury a  
9 case that went well beyond proven beyond a  
10 reasonable doubt, weren't you?

11 A No, I think I was presenting the evidence in a  
12 reasonable light. As to how the jury  
13 interpreted it and it integrated with the rest  
14 of the case, I have no idea.

15 Q But in so many of these cases that you are  
16 testifying, sir, if you can establish that link  
17 in the jury's mind to meet that burden of proof,  
18 nothing more is needed, is it?

19 A Well, you're raising an interesting point.  
20 You're talking about, you are using the language  
21 of a lawyer presenting a case. A forensic  
22 scientist goes to court to present the evidence.  
23 They don't worry about the burden of proof, they  
24 don't worry about making the case, they worry  
25 about presenting the evidence.

1 Q I suggest to you, sir, that the kinds of terms  
2 that you and your colleagues and the supervisor  
3 were using, and the way you phrased the strength  
4 of your evidence, that's exactly what you were  
5 doing. You were giving the Crown's case the  
6 maximum boost you could because that was RCMP  
7 lab culture?

8 A Well, I completely disagree with that comment.

9 Q That's why --

10 A I say that I am not a witness for the Crown, I  
11 am a witness for the evidence. I simply present  
12 the evidence in the most fair and objective way  
13 I can. How it is interpreted by the jury and  
14 how it is presented by the Crown is out of my  
15 control.

16 Q That's why, even within your own terms of  
17 reference, sir, hair microscopy comparison and  
18 your views of it, that you talk of one in a  
19 hundred to one in a thousand, and why you talk  
20 of a comparison without pointing out to the jury  
21 that there are no distinctive features in the  
22 comparison. That's just reflective of the  
23 culture is what I am suggesting?

24 A I'm not sure I understand what you mean, sir.

25 Q I'm suggesting to you, sir, that your particular

1 evidence in Starr, 0.1, in Mr. Driskell's case,  
2 the failure to point out an absence of  
3 distinguishing, distinctive features is  
4 reflective of approved culture coming from the  
5 RCMP lab, whether explicit or implicit?

6 A Well, I just disagree with that statement.

7 Q You said yesterday, sir, that DNA is a billion  
8 times more powerful than hair microscopy. Do  
9 you remember saying that?

10 A I believe I used the term discriminating.

11 Q Fair enough. Do you think, sir, on reflection,  
12 that the jury in Mr. Driskell's case and the  
13 jury in Mr. Starr's case would have appreciated  
14 that what you were telling it could be more  
15 reliable, to the billions, than what they were  
16 hearing from you? Do you think they would have  
17 got that message?

18 A I didn't understand that question at all.

19 Q You didn't. In December of 2002, sir, the DNA  
20 results came in, right?

21 A Are you talking about the mitochondrial DNA  
22 report?

23 Q I am, for Mr. Driskell. What did you do when  
24 you got the results?

25 A I did not get the results.

1 Q Well, when you heard about them, what did you  
2 do?

3 A Nothing, there was nothing for me to do.

4 Q Nothing?

5 A No.

6 Q What did anyone do in the lab, what did the RCMP  
7 lab do?

8 A I was not aware of anything. The DNA analysis  
9 was conducted outside of the lab. The report  
10 was made public and that's it. I didn't see the  
11 report until I think Mr. Gates gave me a copy  
12 this spring.

13 Q Did you have enough interest in December 2002,  
14 sir, to say to someone, could I see the report,  
15 please, which says I gave incorrect evidence in  
16 a murder trial? Did you? Did you have any  
17 interest in seeing the report?

18 A I don't think the report said that. I think the  
19 report said there was mitochondrial DNA results,  
20 whatever they were. I mean, from my  
21 perspective, Mr. Lockyer, this report  
22 constitutes different evidence from mine.

23 Q For sure.

24 A And I don't have a problem with that. I think  
25 that's science and it's simply a matter of

1           putting it before the trier of fact and they can  
2           weigh the hair evidence against the  
3           mitochondrial DNA evidence and decide. But I  
4           can't change my evidence, and I can't interpret  
5           the mitochondrial DNA evidence, so what am I to  
6           do?

7       Q     Well, I don't know, I suppose one might have  
8           thought that you would at least want to see the  
9           report, that you are reading in the media,  
10          suggests or indeed states as a fact that your  
11          conclusions that you have presented to a jury  
12          back in 1991, which could well have lead the  
13          jury to believe that Mr. Harder must have been  
14          in Mr. Driskell's van, was a wrong conclusion.  
15          It just seems to me that you might want to find  
16          out about it?

17       A     What I do is I try not to pay too much attention  
18           to the media and I try to focus on the evidence.  
19           And I have no problem with presenting the  
20           evidence and defending what I did, and having  
21           someone decide whether they agree with it or  
22           not. But I cannot do the mitochondrial DNA  
23           analysis so, therefore, I can't even comment on  
24           that.

25       Q     Well, you didn't even want to see it?

1 A Well, I understood what the results were. What  
2 could I interpret? I mean, if it was in our  
3 lab, if it was something that we had done that I  
4 could go through and work through it, that would  
5 be different, but it was completely outside of  
6 our lab.

7 Q Let's look at it from the lab point of views?

8 A Yes.

9 Q Did anyone in the lab approach you to discuss  
10 the problem with you, that just maybe your  
11 evidence had played a role in putting a man in  
12 prison for, at that point in time, 11 or 12  
13 years, for a crime that he may not have  
14 committed. Did anyone come to you and say,  
15 we're a bit worried about this, maybe we should  
16 think about it? Did anyone come to you at all?  
17 I'm trying to get an idea of the culture of the  
18 lab. Did your supervisor, the chap who runs the  
19 place, someone from Ottawa, did anyone get in  
20 touch with you and talk to you about it, discuss  
21 it with you?

22 A Well, I know that my files are reviewed, I am  
23 not exactly sure at what point in time, but  
24 obviously there are internal reviews done and I  
25 know they were reviewed.

1 Q The question is, did anyone come and talk to you  
2 about it? Can you focus on that?

3 A In an official capacity?

4 Q In any capacity?

5 A No.

6 Q No.

7 A Well, other than professional dialogue, yes, I  
8 discussed it many times with people. However,  
9 officially, we did the analysis to the best of  
10 our ability at the time. Those are the results.  
11 And now that there's contrary evidence, we  
12 either present it at trial or we move on.

13 Q Usually, and I think we're going to hear from  
14 Mr. Neufeld about this later this week, but  
15 usually when there's a suggestion that something  
16 may have gone wrong in an institution, of the  
17 magnitude that we're talking here, namely  
18 someone being in prison for that length of time  
19 for something they may not have done, the  
20 institution might decide to review its files, to  
21 review its procedures, to review how this sort  
22 of thing might have happened. Do you think  
23 that's fair?

24 A Yes.

25 Q Yes. In other words, if there's a suggestion

1           that an institution might have broken down in a  
2           very serious regard, as I think potentially the  
3           conviction for murder, or somebody being  
4           committed could be considered, that there would  
5           be some kind of reaction within the institution.  
6           Are you aware, sir, of any reaction at the  
7           management level within the RCMP lab to the  
8           Driskell results?

9           A     Well, yes, there was a review of my file.

10          Q     There was a review of your Driskell --

11          A     An internal review, yes.

12          Q     It wasn't conducted by talking to you. Of  
13                course your file, so to speak, had already been  
14                provided to the Crown, indeed to Mr. Driskell's  
15                counsel, and indeed to the lab in the U.K., the  
16                FSS. You forwarded it to the Crown a year  
17                before the testing, am I right?

18          A     I personally didn't forward it, I am aware that  
19                it was forwarded, yes.

20          Q     Is that what you are talking about, that you  
21                forwarded your file to the Manitoba justice --

22          A     No, there was a separate internal review.

23          Q     -- six months before. This is before the  
24                testing, right, that you forwarded your file?

25          A     To whom?

1 Q When it was forwarded to the Crown's office, I  
2 actually thought there was a letter of you  
3 actually doing it, but maybe I'm wrong. I seem  
4 to recall you --

5 A I believe it was my coworker that forwarded the  
6 file.

7 Q -- sending a memo to the Crown saying here is my  
8 stuff, in effect, or it was a coworker?

9 A Yes, yes.

10 Q I don't have the letter in front of me, I just  
11 remember I read it once. So is that what you're  
12 referring to, sir, the so-called internal review  
13 was that your file, the contents of your file  
14 was forwarded to Manitoba Justice back in, as I  
15 recall, the spring of 2002?

16 A No, there was a separate review before that.

17 Q Before that?

18 A Yes, internally.

19 Q But there wasn't a review after the results came  
20 in? They had already done it. There was  
21 nothing to review after that.

22 A I'm sorry, I misunderstood. There was a review  
23 after the mitochondrial results came in, yes.

24 Q By whom?

25 A The program manager, we now call them the

1 program manager of biology section, reviewed the  
2 file, to my knowledge.

3 Q Did he speak to you about it?

4 A She did not speak to me.

5 Q She did not, I see. I think it was you who  
6 forwarded the file, sir, at least according to  
7 the type it was, and indeed, I think you've  
8 handwritten -- look at tab two of my friend's  
9 materials. He just brought this to my  
10 attention. I knew this document existed, I just  
11 couldn't locate it quickly. Tab 2, third to the  
12 last page, sir. You'll see on March 4th -- I  
13 suggest to you it had been in the spring of  
14 2002 -- March 4, 2002, you forwarded your notes,  
15 your file in essence, in fact your file to Mr.  
16 Schille?

17 A Are you referring to the page with the big  
18 number 14 on it?

19 Q No, I'm not, third to last page of tab 2, sir,  
20 go to the end of tab 2 and go back one, two,  
21 three pages?

22 THE COMMISSIONER: The bottom right is 985.

23 BY MR. LOCKYER:

24 Q Yes, I didn't see that number, 985 at the  
25 bottom. I don't think it's a big deal, sir, it

1           seems your memory is not quite right?

2   A    A point of correctness, I think this was  
3       separate -- the file has moved around more than  
4       on this one occasion. I think we're getting  
5       confused over that. This was me talking to  
6       Mr. Schille, that was after the fact.

7   Q    No, it's not, it's nine months before the fact.  
8       I'm sorry, sir, it's March 2002. This was  
9       before the testing. The testing was in -- or  
10      the results came out December '02?

11   A    All right.

12   Q    Let's leave it, it's not a big deal.

13   A    Okay.

14   Q    I'm just trying to correct the record, nothing  
15      evolved from that.

16   A    Yes.

17   Q    Now, you presumably came to realize, sir, in  
18      December '02, or maybe early '03, that not only  
19      had the mitochondrial results determined that  
20      the hairs hadn't come from Mr. Harder, but it  
21      actually determined they had come from three  
22      completely different individuals.

23   A    I understand that was the result, yes.

24   Q    Which means, in effect, the hairs subjected to  
25      the testing by the FSS had revealed four

1 different donors of the four hairs that they  
2 were testing. Do you follow me? One was  
3 Harder?

4 A I wasn't sure -- did they use Harder's hair?

5 Q That's what they were comparing it to,  
6 obviously. I thought you had read the report.  
7 I mean, what else were they doing? They were  
8 doing what you did, in a sense, but they were  
9 doing it through DNA, not through microscopic  
10 comparison?

11 A Okay. Mitochondrial DNA, yes.

12 Q So you've really got four people, all with their  
13 own hairs, giving their different mitochondrial  
14 results, correct?

15 A Okay, yes.

16 Q I'm not telling you something that you didn't  
17 know?

18 A No, I understand.

19 Q And I asked this question of Mr. Gates, sir,  
20 earlier this morning, I'm going to ask it of  
21 you. First of all, do you accept those results  
22 from the FSS?

23 A Personally, I mean, it is irrelevant to me as  
24 the person that did a separate test. I  
25 conducted a test on the hair. You have another

1 test that has been performed, and you have other  
2 results.

3 Q Make yourself a juror for a minute, would you,  
4 Mr. Christianson, you are a juror now.

5 Mr. Driskell is on trial again. And we hear the  
6 evidence from a hair microscopist who repeats  
7 what you said, and a mitochondrial chap who  
8 repeats what he said in his report, would you  
9 come to an absolute conclusion that the hairs in  
10 the van were not from Mr. Harder's head?

11 A I don't know what I would come to.

12 Q You don't know?

13 A But I agree with you that that's how I feel it  
14 should go. I mean, I think to present the  
15 evidence and let them decide, yes.

16 Q So, in other words, you think, you see it as a  
17 dilemma to conclude whether your results were  
18 right or whether the mitochondrial results were  
19 right?

20 A It is a dilemma for me because I don't know how  
21 the mitochondrial results were obtained.

22 Q And Mr. Gates' letter, sir, that I've read part  
23 of into the record already, the August 14th  
24 letter, he refers on several occasions to you in  
25 the letter. Did you help him draft it, sir?

1 Did you approve it before it went out?

2 A I did not see that letter.

3 Q You've never seen it?

4 A Well, I saw it just recently, he sent me a copy  
5 by e-mail. I did not see that letter until  
6 about I'm sure two or three weeks ago.

7 Q Well, insofar as he's used your name, sir, in  
8 the letter, has he done it accurately?

9 A I think I noticed that there was one point in  
10 the letter --

11 THE COMMISSIONER: It's exhibit 40B, is that the  
12 one you're referring to?

13 MR. LOCKYER: I'm not sure what number. 40B,  
14 thank you.

15 BY MR. LOCKYER:

16 Q For example --

17 A I noticed in the last paragraph, for example, he  
18 said,

19 "I would simply add that Mr. Christianson  
20 is not an expert in DNA. While he has had  
21 some training in nuclear DNA...",

22 I think specifically I would have asked him to  
23 clarify that and say mitochondrial DNA, but I  
24 did not see this letter.

25 Q For example, sir, the end of paragraph 2 of the

1 letter, I will read paragraph 2.

2 "As a result of my recent discussions with  
3 you and Mr. Dawe, it is now apparent you do  
4 not intend to call an expert in mtDNA at  
5 the inquiry. Rather, my understanding is  
6 that you propose to enter a copy of the  
7 1993 report of the Birmingham laboratory  
8 relative to the mtDNA results and then call  
9 Mr. Christianson to give evidence relative  
10 to the results of his microscopic hair  
11 examination. As you know from the  
12 interview conducted with Mr. Christianson  
13 in May of this year, Mr. Christianson and  
14 my client generally stand by the results of  
15 the microscopic hair examination conducted  
16 in 1990-1991."

17 Is that true, sir? It's not in your statement,  
18 interestingly enough. I didn't know this until  
19 I read this letter. You are not quoted as  
20 saying anything like that in your statement, for  
21 what it's worth. Is that true?

22 A That we stand by -- like the work was well and  
23 truly done and I stand by the conclusion, yes.

24 Q You do?

25 A Yes.

1 Q Because to me, I would interpret that as you  
2 saying you are right and they are wrong. Am I  
3 right?

4 MR. GATES: Well, Mr. Commissioner, with  
5 respect, I think we've allowed this to go on  
6 long enough. This is not Mr. Christianson's  
7 letter, this is my letter, and ascribing to  
8 Mr. Christianson what the words of the letter  
9 mean, with respect, is not fair. It's not fair  
10 to the witness.

11 MR. LOCKYER: The letter says what it says.

12 THE COMMISSIONER: Well, I agree completely,  
13 Mr. Gates, that they are not the words of the  
14 witness, but the witness can be asked if he  
15 agrees with the words, or he can be asked just  
16 in the abstract, would you say that -- do you  
17 still stand by the results of your microscopic  
18 hair examination? But it's true that this is  
19 not his letter. But you wouldn't disagree with  
20 me that he can be asked the words that are in  
21 there, it's just that he can't be confronted by  
22 them as having been his words.

23 MR. GATES: My difficulty, my Lord --

24 THE COMMISSIONER: It's not my Lord.

25 MR. GATES: -- is that the witness was asked

1           whether or not he stood by the results. Can he  
2           agree with the content of the letter, and he  
3           agreed that he does stand by it. It's  
4           Mr. Lockyer's attempt to then try to add his own  
5           interpretation as to how he interprets the words  
6           and ascribe those to the witness, that I have  
7           the objection to.

8           THE COMMISSIONER: What Mr. Lockyer can't do is  
9           cross-examine him on this, and then say this was  
10          a previous inconsistent answer or statement if  
11          he gave a different answer here. However, he  
12          can ask the question. You may go ahead.

13          BY MR. LOCKYER:

14          Q     Mr. Gates, sir, says here that you stand by the  
15          results of the microscopic hair examination  
16          conducted in 1990 to 1991?

17          THE COMMISSIONER: Even that part is a little  
18          unfair. Mr. Christianson says he wasn't  
19          consulted or wasn't given a draft of this. Why  
20          don't you ask him a question and see what he  
21          says?

22          MR. LOCKYER: Fair enough, that's what he wrote,  
23          I sort of assumed that what he was saying was  
24          right. Leaving that aside, is that true, sir?  
25          You stand by the results of your microscopic

1 hair examination?

2 THE WITNESS: Yes. And I believe in my  
3 interview with Commission Counsel, they  
4 concluded the interview with that very question.  
5 They asked, would I give the same evidence  
6 today? And I said yes.

7 BY MR. LOCKYER:

8 Q That's a little different, sir. Would you give  
9 the same evidence today? More importantly, do  
10 you stand by the results, sir, that your results  
11 are "correct" and that the DNA results are  
12 wrong. That's what I'm trying to find out.

13 A I mean, the premise of your question is that one  
14 has to be right and the other is wrong. And  
15 that's a problem that forensic scientists have  
16 to deal with. We're dealing with an  
17 uncertainty, we're dealing with many issues, and  
18 I am not prepared to get into that argument.  
19 All I want to say is that I conducted a hair  
20 comparison. I found the hair to be consistent.  
21 I will defend that and describe it to a jury. I  
22 stand by what I did. And if you have other  
23 evidence and you want to put that before a jury,  
24 I welcome that. I think that's the process.

25 Q Well, fortunately, sir, we're not going to be

1 back in front of a jury on this case. But you  
2 did testify about this once before, sir, in the  
3 Zurowski case. Do you remember that?

4 A I did not testify in the Zurowski case.

5 Q I have the transcript to verify.

6 A Zurowski? I think you mean Starr.

7 Q No. Mr. Zurowski's case, sir, you testified in  
8 March of 2005, not very long ago.

9 MR. DAWE: Exhibit 40 C.

10 BY MR. LOCKYER:

11 Q Exhibit 40 C, could you pick it up. It's an  
12 excerpt from your evidence, sir. I actually  
13 have all of your evidence but I didn't want to  
14 produce it. It went on over two days and about  
15 200 pages of transcript.

16 A Oh okay, I'm sorry, I was confusing it with  
17 another. My apologies.

18 Q And if you could go to page 26, sir, of your  
19 cross-examination, you are asked at line 13 by  
20 Mr. Simmons, defence counsel, testifying on a  
21 voir dire, sir, just a year and a bit ago.

22 "Q You are now in a position which the  
23 vials are out, and just so -- before we go  
24 on this whole issue of morphology, et  
25 cetera, in fairness to you, you have now

1 found out that some of your work, at least  
2 with respect to hair comparisons, did not  
3 turn out to be correct?

4 A I have discovered that there have been  
5 other technologies that have contradicted  
6 the results of my hair comparisons.

7 Q And just so that we're clear, one of  
8 those cases we're talking about is the  
9 Driskell case, correct?

10 A Yes.

11 Q And in the Driskell case you made a  
12 determination with respect to consistency.  
13 DNA later proved that your consistency  
14 findings were completely wrong, correct?

15 A The mitochondrial DNA results were --  
16 contradicted the hair results."

17 Turn over to page 28, sir, line 9.

18 "Q So in addition to your knowledge  
19 about contamination with respect to DNA,  
20 you also know that your morphology..."

21 THE COMMISSIONER: I'm sorry?

22 MR. LOCKYER: Sorry, page 28, line 9.

23 THE COMMISSIONER: I'm sorry.

24 MR. LOCKYER: The intervening part is to do with  
25 a somewhat different issue.

1 THE COMMISSIONER: That's fine.

2 MR. LOCKYER: "So in addition to your knowledge  
3 about contamination with respect to DNA,  
4 you also know that your morphology, or just  
5 looking at gross morphology, does not  
6 necessarily give you consistency from hair  
7 to hair, you can't tell if they came from  
8 the same source, correct?"

9 A I think the correct way to say it is  
10 that the morphology of the hair can only  
11 take us so far, and then the DNA analysis  
12 can extend that."

13 Do you remember being asked those questions and  
14 giving those answers?

15 A I don't specifically recall those questions, but  
16 I see that they are here, yes.

17 Q And were those answers true, sir?

18 A I think so, yes.

19 Q No suggestion there on your part, is there, that  
20 you are right and they are wrong?

21 A I don't think so.

22 Q You don't seem to challenge the DNA results at  
23 all in that transcript, do you? In fact, you  
24 seem to accept them. Am I right?

25 A I accept the fact that there is contrary

1 results, yes.

2 Q You are not protesting there that you don't know  
3 anything about mtDNA or anything like that, are  
4 you? You're just answering the questions you  
5 are being asked?

6 A Yes.

7 Q A year and a half ago. Did something happen in  
8 the meantime, sir?

9 A I don't understand what you mean, how am I not  
10 answering your question here?

11 Q I'll leave it, sir. I think probably everyone  
12 else understands it.

13 A Okay.

14 Q The problem is, sir, of course, that if you are  
15 wrong, and I have to say "if" because of your  
16 position, if your hair microscopy results were  
17 wrong, and what I mean by wrong is that in fact  
18 the three questioned hairs did not come from  
19 Mr. Harder and each came from an entirely  
20 different source, then we have statistically a  
21 rather remarkable result. Would you agree?

22 A It would be quite unexpected yes.

23 Q I mean, if we take your 0.1 figure that you  
24 testified to in Starr?

25 A Yes.

1 Q Then there's a 1 in 8 billion chance --

2 A Yes.

3 Q -- that that could be the case?

4 A That's right.

5 Q If we take the 4,500-dollar -- sorry, if we take

6 the 4,500, 1 in 4,500 number, sir, out of

7 Mr. Gaudette's work, we have got -- believe me,

8 I've done the math and I'm not bad at math --

9 we've got a 1 in 91 billion likelihood that this

10 could happen, if we take your .1 per cent

11 figure, right?

12 A Yes.

13 Q If we, sir, look at the four cases that have now

14 been DNA'd post hair microscopy comparison, you

15 know there's four cases that have now happened

16 in this province?

17 A I'm aware that there are -- I know mine

18 specifically, I'm not sure about the others.

19 Q The four cases are Mr. Driskell's case, three

20 hairs, right, were said to match?

21 A Okay.

22 Q And I do use that term advisedly. And

23 Mr. Starr's case, which was your case --

24 A Yes.

25 Q -- you said two matched. In Mr. Sanderson's

1 case, Mr. Cadieux said that one matched?

2 A Okay.

3 Q In Mr. Unger's case, Mr. Cadieux said that one  
4 matched?

5 A Okay.

6 Q And all seven of those hairs, sir, have now been  
7 subjected to either mitochondrial or nuclear DNA  
8 testing?

9 A Okay.

10 Q Starr was nuclear, as I understand?

11 A Yes.

12 Q Driskell was mitochondrial. Sanderson, done by  
13 Dr. Melton, was mitochondrial. And Unger, done  
14 by Dr. Melton, was mitochondrial. And in each  
15 case of each hair, sir, DNA testing eliminated  
16 them as in fact being matches. Did you know  
17 that, seven out of seven?

18 A In fact, in the Starr case, I did the nuclear  
19 DNA analysis on that, and the hairs were  
20 combined in order to ensure that we had enough  
21 DNA. So that's a single result comparing the  
22 two hairs.

23 Q Well, you only got one profile, you didn't get  
24 two profiles?

25 A That's right.

1 Q So you got one profile?

2 A That's right.

3 Q So seven layers matching seven, if you accept

4 the DNA results, am I right?

5 A I'm sorry?

6 Q Seven hairs said to match --

7 A Yes.

8 Q -- in four different cases, and seven didn't

9 according to the subsequent DNA result?

10 A Six, because I combined them. You can't say

11 more than six.

12 Q You said two hairs matched in Starr in your hair

13 comparison?

14 A And I combined them for the analysis, so they

15 were effectively one.

16 Q They both came from the same person is what

17 you're saying, but it wasn't the person?

18 A No, no, I don't know that. All I know is that

19 the hairs are microscopically consistent, so I

20 had reasonable reason to combine them to analyze

21 them, so I did. But I'm not, I don't know if

22 the DNA came from one hair or the other or both.

23 So it's safe to say that at least one of them.

24 Q Let's assume, can we for the purposes of

25 argument, because that's the assumption I've

1           gone on, that we got seven hairs. You certainly  
2           have no evidence, from a DNA perspective, that  
3           either of the Starr hairs actually came from the  
4           person that you said they did on the microscopy  
5           analysis?

6       A     That's fair enough.

7       Q     Am I right?

8       A     Yes.

9       Q     Now, it seems to me, sir, that those  
10           conclusions, really, if we assume they are  
11           accurate, and I know you won't assume that, but  
12           let's assume that they were accurate, means  
13           there's one of two things wrong here, don't you  
14           think? Either Gaudette is completely wrong, and  
15           any attempt to give any high degree of  
16           discrimination to hair microscopy comparisons is  
17           wrong, or you and Cadieux between you made an  
18           awful lot of mistakes in your hair comparison  
19           work. Don't you agree, it has to be one or the  
20           other?

21      A     Well, I think that it is possible for us to have  
22           made the appropriate conclusion of the hair  
23           comparisons. You are talking about -- you are  
24           confusing this state of reality with our ability  
25           to discriminate hairs.

1 Q Yes, I am.

2 A And there is a difference.

3 Q Couldn't put it better. It's a state of  
4 reality, DNA, with something that is not a  
5 reality, hair microscopy?

6 A You are equating the DNA with the actual state  
7 of reality.

8 Q I am.

9 A Okay. Well, that's fine.

10 Q So if you take, you see what I've done is I've  
11 taken Gaudette's figures, 1 in 4,500 --

12 A Yes.

13 Q -- from your lab, and we're interested in your  
14 lab ultimately --

15 A Okay.

16 Q -- in this inquiry. So if we assume it's all  
17 seven, and I appreciate the point about Starr,  
18 but I just happened to have done the figures  
19 with all seven.

20 A Yes.

21 Q If we assume that all seven hairs in fact did  
22 not come from the known sample, in other words,  
23 from the person they were believed to have come  
24 from on the hair microscopy, then we end up with  
25 the likelihood of that happening, sir, as

1           being -- and believe me, I've worked it out --  
2           3.7 multiplied by 10 to the 25th. Does that  
3           surprise you, sir? In other words, it's 37 with  
4           24 zeros after it is the likelihood that that  
5           could have happened by chance.

6   A       I'm certain that it's a large number.

7   Q       It's to try and get a grip on that number, sir,  
8           because it's way beyond trillions and I'm not  
9           sure that anything comes after trillion, so I  
10          tried to get a grip on the number, and I got a  
11          couple of examples as to what that number means  
12          in reality. It's a number which amounts to 50  
13          times the diameter of our galaxy in millimeters.  
14          That's the size of that number. That's huge.  
15          It amounts, sir, to two trillion times the  
16          number of centimetres from the earth to the sun.  
17          And finally, sir, in a hair context, that number  
18          amounts to a hundred billion times more than the  
19          total number of hairs on the head of every  
20          person on this planet at this moment. That  
21          gives you the enormity of the figure. Do you  
22          understand that?

23   A       Yes.

24   Q       And it's that, sir, that causes me to suggest to  
25          you that either hair microscopy does not

1           successfully distinguish one hair from another  
2           in the manner that your people say it does, your  
3           profession, former profession says it does, or  
4           that you and Mr. Cadieux, since it's you two who  
5           have made up these figures, so to speak, were  
6           completely incompetent at your work, or a  
7           combination of both. Doesn't it inevitably take  
8           us there? Those figures are just too  
9           astronomical to be accepted, though, aren't  
10          they? Have you ever thought this through?

11        A     Oh, yes.

12        Q     You have. Have you come up with those figures  
13              yourself and sort of realized that's what we're  
14              talking about?

15        A     Yes, I have considered that.

16        Q     4,500 to the seventh is what we're talking  
17              about?

18            THE COMMISSIONER: I take it if you're using six  
19              hairs, it would be the square root of that?

20            MR. LOCKYER: No, it would be 4,500 to the sixth  
21              instead of to the seventh, so you would divide  
22              my figures by 4,500.

23            MR. DAWE: It's actually somewhat more  
24              complicated than that.

25            MR. LOCKYER: I mean, I can divide my figures by

1 4,500 to take into account your Starr point, but  
2 I'm not sure. That might mean the 50 billion  
3 times more than the number of hairs on the heads  
4 of the people on the earth, I don't know. It  
5 wouldn't make much difference, would it, sir?

6 MR. PROBER: Does Mr. Lockyer include his own  
7 hair?

8 MR. LOCKYER: Well, actually that is a good  
9 question. You know, I found out that they  
10 reckon that the average person, they base their  
11 statistics on how many hairs there are on  
12 everyone's head in the world on the basis that  
13 everyone has a hundred thousand hairs on their  
14 head on average. I was thinking, you know, that  
15 someone like Mr. Prober, you know, he and I  
16 between us might get to that average, but I  
17 think I know who was over it.

18 THE WITNESS: I think your point is well taken,  
19 Mr. Lockyer.

20 BY MR. LOCKYER:

21 Q Yes.

22 A It comes back to the concept where you are  
23 seeing the world is black and white, and in  
24 science, and particularly in forensic science,  
25 you're talking about probabilities. And there

1 are other possible explanations for some of this  
2 information. All your manipulation of numbers  
3 points out is that there is -- there is  
4 something unusual about these results, and it's  
5 worth delving into deeper from a scientific  
6 point of view. And I agree with that 100 per  
7 cent.

8 Q But you see, sir --

9 A But it's not a proof.

10 Q The way you turn it back on me, my playing  
11 around with numbers, the point is that it's your  
12 profession that played around with numbers, and  
13 I'm merely using the numbers presented by your  
14 profession to demonstrate the problem with your  
15 former profession. I'm not playing around with  
16 them at all, I am using the number you used.

17 THE COMMISSIONER: He didn't say playing around,  
18 he said manipulate.

19 MR. LOCKYER: Manipulate, I am sorry.

20 THE COMMISSIONER: And well manipulate, I don't  
21 see manipulate necessarily as pejorative.

22 MR. LOCKYER: I am sorry, I just forgot the  
23 word, Mr. Commissioner. I was trying to make a  
24 point, I was saying playing around instead of  
25 manipulating. I'll just repeat the question,

1           sir.

2           THE WITNESS: Yes.

3           BY MR. LOCKYER:

4           Q    The numbers that you accused me of manipulating  
5                are the numbers that came out of your  
6                profession. I didn't invent Gaudette's figures,  
7                Gaudette from your lab. I didn't invent 0.1  
8                that you testified to in Mr. Starr's case. I  
9                didn't invent 100 to 1,000 that you came up with  
10              yesterday. I'm merely using your numbers, I'm  
11              not manipulating them at all.

12          A    Yes, but you are not using them appropriately.  
13                And I understand that you're doing it for  
14                dramatic flare, however, it's -- unfortunately,  
15                in fact, there is some grounds for the way  
16                you're doing it, but you're not doing it  
17                correctly. And I agree with you, though. I  
18                think the numbers that would result, regardless  
19                of whether you do them properly or not, are a  
20                concern. I mean, that's why I have concerns  
21                about this mitochondrial DNA analysis. I don't  
22                know the technology behind it. However, the  
23                fact that there are, in this case, and I am  
24                talking specifically about this case, that there  
25                are three such matches, that is a concern to me,

1 absolutely it is.

2 Q Why wouldn't you, instead of worrying about the  
3 DNA results, sir, I can't understand why you  
4 wouldn't worry about your former profession.  
5 That's, I would have thought, the vast majority  
6 of people, how they might react to the DNA?

7 A Well, it's because, and I've said it over and  
8 over again, it's because I can't do the  
9 mitochondrial analysis. All I know is what I  
10 can do. I did my hair analysis and I'm  
11 confident in it, and there's now this other  
12 technology that's saying it's wrong with this  
13 particular error, and I have concerns. That's  
14 all there is to it.

15 Q Have you ever heard of the notion, sir, of  
16 evidence-based forensic science?

17 A I don't believe --

18 Q Have you ever heard the term evidence-based?

19 A I haven't.

20 Q You haven't read the literature where that's  
21 become the new norm in forensic science?

22 A No.

23 Q To explain it to you, sir, essentially, it's a  
24 concept which says that conclusions should be  
25 drawn based on empirical observations, which are

1 in turn drawn from and grounded in the research  
2 and in peer-reviewed literature. Makes sense,  
3 doesn't it?

4 A Yes, I think it describes what we do.

5 Q Yeah. And I am going to suggest to you, sir,  
6 that if there's one thing you're not doing, it's  
7 applying evidence-based forensic science.  
8 Because you're given the evidence, and when you  
9 don't like what it says, you suggest it must be  
10 wrong. Isn't that what you're doing?

11 A No, I'm not suggesting it's wrong. I'm  
12 suggesting that I don't understand it. And if I  
13 had my -- I would prefer to be able to analyze  
14 it myself. But it's not -- I don't think it's  
15 wrong necessarily. I have stated on the record  
16 numerous times that hair evidence is not a  
17 positive means of comparison, and coincidental  
18 matches are possible but they are not common,  
19 they are very unlikely. And for these three  
20 hairs to come from different people in this  
21 case, yes, that's a concern to me. I can't  
22 explain it.

23 Q But you said yesterday, sir, that despite the  
24 evidence, evidence-based forensic science, that  
25 despite the evidence, you would still give your

1 evidence the same way today as you did back in  
2 1991. Do you remember saying that?

3 A Yes, and I just said that I think we do, we  
4 follow the exact procedure that you described  
5 when you described evidence-based forensic  
6 science. I think that's what we do. I think  
7 that's what I did.

8 Q I'm suggesting to you, sir, that in 2006 you  
9 most certainly are not doing that. In 2006, you  
10 are purposely ignoring reality, a term that you  
11 used a few minutes ago, and trying to continue  
12 to live in an old world that we now know is  
13 completely and utterly wrong?

14 A I disagree with that statement.

15 Q That the snake oil people, sir, for who you have  
16 so little respect, had it right before they had  
17 had the benefit of this kind of post hair  
18 comparison of DNA results. They were way ahead  
19 of the game.

20 A In what respect, what conclusion did they have?

21 Q Your profession was essentially snake oil.

22 A I disagree with that statement --

23 Q Were you aware, sir, of -- I think you told us  
24 yesterday you knew about the Max Houck paper in  
25 which he concluded that on the basis of the

1 mitochondrial work that he had done, that  
2 approximately 10 per cent of so-called positive  
3 hair microscopy comparisons have been shown to  
4 be wrong?

5 A Houck and Bedowle, that paper, yes.

6 Q You are aware of that paper?

7 A Yes.

8 Q Are you aware, sir, of the FBI -- there is an  
9 FBI project referred to in the Williamson case.  
10 Can I take you back to that? That's tab 5 of  
11 the blue book. Do you remember the case out of  
12 Oklahoma that I referred you to? Look at page  
13 33, would you? It's a page from where I've read  
14 before, top of the page there. The court says,  
15 "In response to studies indicating a high  
16 percentage of error in forensic  
17 analysis..."

18 Do you see where I am?

19 A Yes.

20 Q "...the law enforcement assistance  
21 administration sponsored its own laboratory  
22 proficiency testing program. Between 235  
23 and 240 crime labs throughout the United  
24 States participated in the program which  
25 compared police laboratories' reports with

1            analytical laboratories' findings on  
2            different types of evidence, including  
3            hair. Overall, police laboratories'  
4            performance was weakest in the area of hair  
5            analysis. The error rates on hair analysis  
6            were as high as 67 per cent on individual  
7            samples, and the majority of the police  
8            laboratories were incorrect on 4 out of 5  
9            hair samples analyzed. Such an accuracy  
10           level was below chance."

11           And this was written, sir, by the courts in  
12           1995, and reflects a review that I am afraid I  
13           couldn't get my hands on, which you'll see in  
14           footnote 16, which if you go back, you can see  
15           was written, I think I'm right in saying but I  
16           can correct -- yes, I can see it. If you look  
17           at page 31 it is referred to again at footnote  
18           13, do you see that, the same article? It was  
19           written in 1982, nine years before you were to  
20           testify in Mr. Driskell's case.

21           Were you aware of that study which said  
22           that results obtained by your profession south  
23           of the border gave up an accuracy level of below  
24           chance?

25           A    Yes, I think I was aware of that study.

1 Q It's referred to by Mr. Justice Kaufman in the  
2 Kaufman report as well?

3 A Right. And all I can say is that I can't speak  
4 to the level of training and the quality control  
5 that went into those laboratories in the States,  
6 but I know from our internal testing and  
7 external proficiency tests that our forensic  
8 laboratory results in Canada were consistently  
9 better.

10 Q Dr. Melton, sir, wrote an article, it's at tab 2  
11 of the blue book. Could I take you to that?

12 A Yes.

13 Q She wrote it with co-authors in 2004, December  
14 2004 it was published, "Forensic Mitochondrial  
15 DNA Analysis of 691 Casework Hairs." Do you see  
16 that?

17 A Yes.

18 Q Page 80, sir, which is the last page of the tab,  
19 of the article in other words, second paragraph  
20 down she says,

21 "Since a recently published report on hair  
22 microscopy showed that hair microscopic  
23 evaluations and mitochondrial DNA  
24 examinations are inconsistent approximately  
25 ten per cent of the time..."

1 and for that she cites the Max Houck article  
2 which you've read, right?

3 A Yes.

4 Q Have you read this article by the way?

5 A Yes.

6 Q She goes on to say,

7 "...the need to perform mtDNA analysis in  
8 conjunction with microscopic hair analysis  
9 has never been greater. We have observed  
10 cases with the microscopic evaluation was  
11 discordant with respect to the DNA  
12 analysis, however, we have observed many  
13 cases in which the microscopic evaluation  
14 was concordant with respect to the  
15 analysis. In these cases the microscopic  
16 evaluation performed by a hair examiner was  
17 extremely useful in limiting the number of  
18 hairs which were then recommended for DNA  
19 testing. Therefore, we advocated hair  
20 microscopy is an adjunct to DNA testing, if  
21 the examiner is experienced and understands  
22 the limitation of this largely descriptive  
23 science. Because of the high cost of mtDNA  
24 analysis, it is likely hair microscopy will  
25 long be a useful tool for screening of

1           large number of hairs prior to submission  
2           and we urge the continued training and  
3           availability of hair examiners to aid the  
4           DNA testing community."

5           So, insofar as she's suggesting that's a  
6           remaining slot for hair microscopy examiners,  
7           would you agree with that, sir?

8   A       Well, I absolutely agree that you can extend the  
9           usefulness of microscopic analysis of hair by  
10          using techniques like mitochondrial DNA and  
11          nuclear DNA.

12   Q       I don't think she said --

13   A       When I say extend, I think I'm --

14   Q       I think she said limited.

15   A       -- I'm using it in a term of adjunct as  
16          complementary procedures, yes.

17   Q       I think Dr. Melton is saying, sir, it should be  
18          limited to that, not extended to that. That's  
19          all it should be and nothing more?

20   A       I --

21   Q       So you wouldn't agree with that?

22   A       I agree that -- I mean, I don't have an issue  
23          with what she said there.

24           MR. LOCKYER: Is this a good time now,  
25           Mr. Commissioner?

1 THE COMMISSIONER: Sure.

2 THE CLERK: All rise.

3 (Proceedings recessed at 12:41 p.m.  
4 and reconvened at 2:00 p.m.)

5 THE CLERK: All rise. This Commission of  
6 Inquiry is back in session.

7 MR. DAWE: Before we get back to Mr. Lockyer's  
8 cross-examination, there is just one point that  
9 I would like to address. And that's, you will  
10 recall there was a reference in the course of  
11 Mr. Gates' objection to the discussions he has  
12 had with Mr. Code and myself about the  
13 possibility of calling an expert in  
14 mitochondrial DNA. His letter to us of  
15 August 14th was then filed as an exhibit. For  
16 completeness now, that's part of the record.  
17 Our response dated September 12th, setting out  
18 our reasons for not favouring calling a  
19 mitochondrial DNA expert should also be tendered  
20 as an exhibit. So I would ask that that be  
21 tendered as the next exhibit.

22 THE COMMISSIONER: That will be Exhibit 41.

23 (EXHIBIT 41: Response Letter, September  
24 12)

25 MR. DAWE: I could say something further about

1 the nature of our decision if necessary, but it  
2 is my sense that it is not necessary at this  
3 point.

4 THE COMMISSIONER: Thank you.

5 BY MR. LOCKYER:

6 Q Mr. Christianson, just to put us back to where I  
7 think we were before lunch, I had put to you  
8 the, I guess one could call them the  
9 astronomical figures that would be, or that were  
10 associated with the DNA results in those four  
11 cases, and suggested to you that it was one of  
12 two things that could have led to this; either  
13 that the science was unreliable, as suggested,  
14 for example, in the Oklahoma Appeals Court  
15 decision or, alternatively, you and Mr. Cadieux  
16 were not up to par in your professions or that  
17 there was something wrong with your abilities,  
18 and I wanted to -- or both, I suppose. And I  
19 wanted to deal with the latter, not from a  
20 professionally insulting point of view, that's  
21 not what I'm trying to do here, but more from a  
22 systemic culture perspective. And suggest to  
23 you, sir, that -- perhaps I am telling you in  
24 advance what I'm doing here -- I am going to be  
25 suggesting to you, sir, that really the

1           subjectivity that plays such an important role  
2           in hair comparison microscopy was, in your case,  
3           multiplied to an unquantifiable degree. And I  
4           am going to put it this way. First of all, sir,  
5           you, of course, came to this case in your  
6           employment as a member of the RCMP; is that  
7           right?

8       A     I came to this case as a member of the RCMP,  
9           yes.

10      Q     You came to this case having been trained within  
11           the RCMP?

12      A     Yes.

13      Q     And you made some comment on some proficiency  
14           testing you undertook during the time that you  
15           were a hair microscopist, or during the time  
16           that you were actively doing this kind of work,  
17           sir. And if I could take you to your statement  
18           to Commission Counsel, may I do that, at page 2?  
19           You referred to two of the tests. You said in  
20           the second paragraph, about three lines down:

21                    "Analysts had to take periodic proficiency  
22                    tests and Christianson believes he did at  
23                    least three before he stopped doing hair  
24                    comparison work. The results of two of  
25                    them from '94 and '96 are still available.

1           The '94 test involved comparing ten unknown  
2           hairs and two known hairs. Christianson  
3           had no type II errors, incorrect  
4           associations, and two type I errors,  
5           incorrect eliminations. In the 1996 test  
6           which involved five unknown hairs and two  
7           known hairs, he made no errors."

8           So those two tests, sir, that was the limit of  
9           them, was it? You got two known hairs to  
10          compare to ten unknown hairs, and presumably you  
11          would know within that test that at least one of  
12          each -- sorry, at least two of the unknown  
13          hairs, you would presumably have known would  
14          almost certainly match the two known hairs;  
15          fair?

16        A     No.

17        Q     Well, did you ever do a test, sir, where there  
18          weren't matches?

19        A     It was a proficiency test where you were given a  
20          known sample and questioned hairs and you just  
21          had to conduct the comparison. You had no  
22          preconceived expectation of a match or  
23          non-match.

24        Q     Would I be right, sir, in saying that in each of  
25          these tests there were always known -- sorry,

1           there were always questioned hairs that were  
2           supposed to match the known hairs?

3   A       No, that's not true.

4   Q       That's not true of these two tests?

5   A       Well, in the tests there were some in there --

6   Q       Yes.

7   A       -- by design, but I didn't know that.

8   Q       And in the '96 test, sir, that's the extent of  
9           the proficiency tests, two known hairs were  
10          produced to you and five unknown hairs? That  
11          was it?

12   A       I believe so, yes.

13   Q       Right. So your training is within the RCMP,  
14          sir. You are actually working for the RCMP?

15   A       Yes, I was a civilian member.

16   Q       Yes. You knew, when you came to do the work in  
17          Mr. Driskell's case, that Mr. Driskell was  
18          already charged; right?

19   A       No, I did not.

20   Q       All right. The way, certainly what I infer from  
21          your statement to the Commission Counsel, sir,  
22          if you look at page 6, the last four lines of  
23          the top paragraph read:

24                       "Christianson knew the Crown theory was  
25                       that the accused had transported Harder's

1           body in his van and that finding a match  
2           between hairs from the van and from the  
3           grave site would support this theory. When  
4           he conducted his analysis, he would not  
5           have known the specific identity of the  
6           accused, i.e. that it was Driskell."

7           That suggests to me you knew the police had made  
8           an arrest?

9   A       I knew that there was a suspect, but I did not  
10       know his name.

11   Q       Oh, I see, okay, fair enough. But you knew that  
12       the police had made an arrest, that's the point,  
13       by the time you came to do this?

14   A       I would prefer to just say that I knew there was  
15       a suspect. I can't recall whether I knew he had  
16       been arrested.

17   Q       You knew what the police "wanted"?

18   A       I knew that there was a theory that the deceased  
19       had been transported in the accused's vehicle.

20   Q       And so you knew that the police were hoping that  
21       you would find a match between some of the hairs  
22       from Mr. Driskell, associated with  
23       Mr. Driskell's van and the deceased's hair?

24   A       Well, the theory was to examine the vehicle for  
25       a possible transfer of the deceased's hair.

1 Q Sorry, I don't know if you had a problem with  
2 the way I worded it. You knew that that was the  
3 police theory and what they were hoping to get  
4 from him?

5 A Yes. I had trouble with you saying that that's  
6 what they were hoping to get from it. I think  
7 it's simply evidence that I analyzed. I don't  
8 think it's a question of hoping or not hoping.

9 Q Well, it's interesting the way that you put it  
10 in your evidence at Mr. Driskell's trial, sir,  
11 tab 5 of my friend's book, page 155, line 15 or  
12 line 11. You see how you worded it. No one  
13 forced it out of you, you just volunteered it.

14 "And so the idea was to try and establish  
15 some associations between the deceased and  
16 the accused's vehicle, which I believe was  
17 a van."

18 Do you remember that, sir, saying that?

19 A Yes.

20 Q So you set out to try to establish a proposition  
21 that had been presented to you as the police  
22 theory, that's what you're saying there?

23 A Well, there is always a theory of -- yes, the  
24 theory was that he had been transported in the  
25 van and I analyzed the evidence.

1 Q You don't think, sir, that that approach, first  
2 of all, is completely opposite to the scientific  
3 method? The scientific method is you try and  
4 disprove the theory that is being presented to  
5 you, not that you try and prove it; right?

6 A No.

7 Q You don't know that?

8 A I disagree with that statement.

9 Q Okay. Well, Justice Kaufman set it out for us  
10 in a nice summary in the Morin report that's  
11 at -- I don't have it in front of me -- it's  
12 amongst those pages that I have already  
13 provided, Mr. Commissioner. I'm sure I can -- I  
14 didn't know I was going to be arguing the  
15 scientific method.

16 THE COMMISSIONER: Yes, exhibit 40A.

17 BY MR. LOCKYER:

18 Q I think it's in there. It's certainly around  
19 that area of the report. Actually, it's page  
20 345, a couple of pages after, where Justice  
21 Kaufman defines it in recommendation 11. And it  
22 reads as follows, if I can just read it, the  
23 scientific method, under recommendation 11,  
24 "The scientific method means that  
25 scientists are to work to vigorously

1 challenge or disprove a hypothesis rather  
2 than to prove one. Forensic scientists at  
3 the centre should be instructed to adopt  
4 this approach, particularly in connection  
5 with a hypothesis that a suspect or accused  
6 is forensically linked to the crime."

7 I mean, that's bang on with what I'm talking to  
8 you about at the moment, sir, correct? You  
9 don't agree with that?

10 A I think it's a too narrow definition of the  
11 scientific method.

12 Q Is it the scientific --

13 A I disagree with it. I don't know whether this  
14 is the place for me to debate that point with  
15 you, or what Mr. Kaufman said.

16 Q Yes. You would be debating with Justice  
17 Kaufman.

18 A That's right. And I mean, is it sufficient for  
19 me to say that I don't think that that's an  
20 accurate statement.

21 Q You don't think so, just as a matter of common  
22 sense, that to know what is wanted from you, to  
23 know what it is you are being asked to prove, is  
24 almost bound to magnify the subjectivity of your  
25 work by an unquantifiable amount?

1 A I don't agree with that statement.

2 Q All right. So in an ideal world then, sir, that  
3 wouldn't have been the way you were assigned  
4 this task, am I fair? Is that fair?

5 A No. I think in a forensic context you are  
6 presented with evidence that you analyze and try  
7 and find the best explanation for. And to do  
8 that you have to have hypotheses and theories,  
9 that's the scientific method.

10 Q But, you see, once you acknowledge that knowing  
11 the answer that's being looked for would have an  
12 unquantifiable impact on the subjectivity of  
13 your results, you can see, perhaps, how  
14 important it is what Justice Kaufman says that  
15 the scientific method in those circumstances  
16 must be to try and prove that there isn't a  
17 connection, rather than to try and prove that  
18 there is. Do you see the point?

19 A Yes, I understand the point. I don't think you  
20 appreciate the perspective of the forensic  
21 scientist. You must have a theory to work from,  
22 and you must acknowledge the fact that it is a  
23 theory. And the subjectivity that you allude  
24 to, you try to minimize it. You don't deny it,  
25 and you never eliminate it, but you try to deal

1 with it and minimize it.

2 Q Well, sir, you know, sir, at the Centre of  
3 Forensic Science now, that is a dictate, so to  
4 speak, to all of their sciences to operate in  
5 that way that Justice Kaufman recommends.

6 A Clearly he made a suggestion to them.

7 Q You've never heard it?

8 A I don't work in the Centre of Forensic Science.

9 Q You've never heard it discussed, the idea that's  
10 expressed in that recommendation, recommendation  
11 of Justice Kaufman, hasn't been discussed, at  
12 least around you, at the RCMP lab?

13 A No. I don't think that specific recommendation  
14 has been discussed.

15 Q One of the things, Mr. Christianson, that your  
16 counsel raised in his letter of August 6th, that  
17 we haven't covered at all -- August 14th, my  
18 mistake, sorry, of 2006, and I'm now back to  
19 exhibit -- someone help me.

20 THE COMMISSIONER: 40B.

21 BY MR. LOCKYER:

22 Q Thank you very much. 40B, sir, in the last  
23 paragraph on the first page, your counsel raises  
24 issues, if you look at the last two lines,

25 "The issues of contamination prevention and

1 proper removal of the mounting media from  
2 the hair prior to mtDNA analysis should, we  
3 suggest, be fully explored in order to  
4 ensure there is full and proper  
5 consideration of both scientific  
6 techniques."

7 Now, presumably, sir, to understand potential  
8 issues of contamination, you don't have to be an  
9 expert in mitochondrial DNA?

10 A No. I would be raising that concern from the  
11 point of view of a person who had done nuclear  
12 DNA analysis.

13 Q As well?

14 A Yes.

15 Q Exactly. That's the point I am making, you  
16 don't have to be an expert in mitochondrial to  
17 talk about issues of contamination; am I right?

18 A Correct.

19 Q And are you the one who raised this concern with  
20 Mr. Gates, sir, or not?

21 A I have raised that concern with Mr. Gates, yes.

22 Q Right. Before he wrote this letter?

23 A Yes.

24 Q And is that because of the case that I had  
25 mentioned earlier this morning, sir, the

1 Zurowski case?

2 A In part.

3 Q Because in that case it was discovered that you  
4 had, in fact, contaminated a hair and your DNA  
5 came up as a secondary DNA profile. Am I right?

6 A That's correct, yes.

7 Q So that's sort of where it came from, in part at  
8 least?

9 A In part, yes.

10 Q And let me ask you this, sir, that issue has  
11 been addressed now by Dr. Melton, as well as the  
12 FSS in their report. Can we at least lay that  
13 one to rest so far as you're concerned, sir,  
14 your contamination concerns?

15 A I know they addressed it. I'm not -- I guess  
16 I'm not convinced. I choose, in analyzing the  
17 DNA profiles, to be somewhat more circumspect  
18 about my conclusions than they are, because of  
19 issues such as contamination.

20 Q So you're still maintaining that it may be that  
21 the DNA results produced by the FSS in England  
22 are, in fact, nothing more than contamination  
23 results obtained, for example, as a result of  
24 maybe you handling them back in 1991?

25 A Yes. That's a concern that I have.

1 Q Okay. Or actually it wouldn't just be you, it  
2 would have to be three of you, it had to be you  
3 and two others according to their results,  
4 because they have absolutely excluded everyone  
5 from each hair except -- if you see what I mean;  
6 right?

7 A I am not sure exactly. I know their results  
8 were exclusions. I am not exactly sure how it  
9 was worded.

10 Q Well, the results were, each originator of each  
11 hair was excluded as a matter of fact from each  
12 other hair. I thought we had been through that  
13 earlier this morning. So you would need three  
14 different contaminators for each of the hairs,  
15 given that they are all different -- they all  
16 come up as having different originators, do you  
17 follow?

18 A One different contaminator for each hair, if  
19 that's what you mean.

20 Q Yes. You would have three different  
21 contaminators. And somehow the FSS doesn't  
22 catch it. It is not a difficult thing to catch,  
23 is it, contamination?

24 A I don't know. I don't do that examination.

25 Q Well, you are aware that the FSS have noted

1           contamination on one of the deceased's hairs,  
2           Mr. Harder, in their report. You are aware of  
3           that?

4   A       No, I am not aware of it.

5   Q       It is in the report, sir.

6   A       Yes.

7   Q       You don't remember that?

8   A       I didn't read the report in detail. I am not  
9           capable of interpreting the results of a  
10          mitochondrial DNA report.

11   Q       I thought where contamination was concerned, you  
12          have already told us that that was one concept  
13          you could talk about. Now you are saying you  
14          can't?

15   A       I am talking about it in the concept of nuclear  
16          DNA, I think we made that clear also.

17   Q       But contamination, sir, is just a finding of the  
18          DNA of someone other than the actual originator  
19          of the hair, right, that's what you mean by  
20          that? Like you handling it --

21   A       Yes.

22   Q       -- in 1991?

23   A       Yes.

24   Q       And you don't remember what the FSS said in that  
25          regards?

1 A Well, not specifically.

2 Q Do you remember what Dr. Melton said in that  
3 regard, sir?

4 A Not specifically, no.

5 Q And yet you raise it as a reason why you won't  
6 necessarily accept the DNA results?

7 A It's a concern, yes, for me.

8 Q Do you want me to take you to it, sir?

9 A I'm sorry?

10 Q The FSS report and Dr. Melton's report?

11 A I mean, we can go over them. As I said, I don't  
12 know their procedures, I don't know what, if  
13 they describe what they are doing, what that  
14 means. I haven't physically done it. I haven't  
15 observed it.

16 Q Well, you are not going to know much if you  
17 don't even bother to read their reports on  
18 issues of contamination and comprehended them  
19 and understand them, are you?

20 A Well, I know that unless I see their procedures  
21 and I have done their testing that I am not  
22 going to be able to understand it. I understand  
23 that they take some steps to prevent it.

24 Q Well, why don't we just look at it, just for a  
25 moment, sir? Look at the FSS report first, it's

1 at tab 9 of Commission Counsel's book. I am  
2 just trying to find it. Look at the bottom of  
3 page 3, "hair from grave site", it is directly  
4 addressed by the FSS in regards to one, or in  
5 two of the hairs, in one of the tests on two of  
6 the hairs. Do you see that at the bottom there?

7 A Yes.

8 Q "In one of the tests on two hairs,  
9 contaminating DNA was observed in a  
10 negative sample used to detect  
11 contamination. So although the DNA was  
12 different to that found in the hairs, the  
13 results of the hairs was given less weight  
14 and the further two hairs were tested."

15 Do you see that? So they clearly address the  
16 very issue that you purport to be the reason  
17 that you don't necessarily accept the results,  
18 am I right, sir?

19 A Yes.

20 Q And Dr. Melton, sir, addresses it as well in  
21 light of Mr. Gates' letter. If you look at --  
22 if you go to the blue book, and look at tab 3,  
23 sir, the bottom of page 1, she addresses the  
24 issue.

25 "I next address Mr. Gates' request to

1           examine the issues of contamination,  
2           prevention, and proper removal of mounting  
3           medium prior to mtDNA analysis. For a  
4           single known hair sample, Mr. Bark reported  
5           the presence of minimal contamination in a  
6           negative control that did not affect the  
7           final result on that sample. Based on this  
8           observation, it is only reasonable to  
9           conclude that other instances of  
10          contamination would also have been  
11          documented in the report if present.  
12          Because there was none, there is no further  
13          evidence of contamination would cause doubt  
14          as to the conclusions reached in the  
15          report."

16          Did you read that before, sir?

17    A       I believe I have read it, yes.

18    Q       I also notice her last paragraph, sir, which  
19           follows on to my question of you before lunch,  
20           she says:

21                "I also call your attention to a recent FBI  
22                manuscript showing the hair microscopy was  
23                observed to be erroneous in about  
24                10 percent of cases when this examination  
25                was followed up by mtDNA analysis. While

1 hair microscopy can be quite useful in  
2 determining what hairs are subjected to DNA  
3 analysis, by screening for similarities or  
4 differences, it should always be followed  
5 up by confirmatory DNA testing. I have  
6 enclosed a copy of the FBI's paper for your  
7 information."

8 That's the one we talked about and you've read,  
9 "In our experience as a mitochondrial DNA  
10 testing lab we have observed hair  
11 microscopy to be erroneous in a significant  
12 number of cases, although we still  
13 recommend it as a good pre-DNA screening  
14 tool."

15 So having read that paragraph, sir, it is pretty  
16 clear when you go back to her article that she  
17 is suggesting that the utility of hair  
18 microscopy comparison should not be extended to  
19 include providing assistance for mtDNA  
20 examiners, but rather should be limited; do you  
21 see that? Remember we talked about that before  
22 lunch?

23 A Yes.

24 Q Yes. Tell me, sir, I don't know if you can  
25 remember this, but before you testified in

1 Mr. Driskell's case, first of all, there is  
2 something that happened at the trial when you  
3 testified that certainly one might view as, at  
4 least I would view as unusual, it is certainly  
5 unusual where I come from, and that is that the  
6 Crown who called you as a witness was not the  
7 Crown who re-examined you. Do you remember  
8 that?

9 A Actually, I don't remember it specifically, but  
10 I was surprised to see that in the transcript  
11 also.

12 Q Yes. Mr. Lawlor called you as a witness and  
13 Mr. Dangerfield re-examined you?

14 A That's right, yes.

15 Q But that is something that you hadn't  
16 remembered?

17 A I didn't recall that. I didn't recall any  
18 interaction with Mr. Dangerfield at all, but  
19 clearly that's what occurred.

20 Q Did you talk to Mr. Lawlor before you gave your  
21 evidence, sir?

22 A No, I don't recall speaking to him.

23 Q Or Mr. Dangerfield?

24 A No.

25 Q They just put you up there?

1 A Yes.

2 Q Christianson, go for it, so to speak?

3 A Yes.

4 Q And is that true, sir, as best you can remember  
5 of the Starr case? I think Mr. Dangerfield  
6 examined you in that case.

7 A As best I recall.

8 Q You didn't talk to him before?

9 A As best I recall, yes.

10 Q Because maybe, sir, if you had talked to the  
11 Crown beforehand, maybe they would have elicited  
12 from you what Commission Counsel or Dr. Lucas  
13 elicited from you, which is that you found no  
14 striking -- I have forgotten the right word --  
15 no distinctive characteristics in the three  
16 hairs from the van? In other words, the  
17 point --

18 A That wouldn't be a typical question.

19 Q Well, if they spoke to you beforehand they might  
20 have found that out, you might have told them  
21 that.

22 A I don't know.

23 Q And then they could have elicited it in front of  
24 the jury. It leaves open a suggestion, sir,  
25 that it might be a good idea when a Crown

1 attorney is calling a forensic scientist that  
2 they discuss the case with that forensic  
3 scientist before they testify, instead of just  
4 putting them on the stand.

5 A Well, I absolutely agree with that, but that's  
6 not the case in many instances, Mr. Lockyer.

7 Q And after all of these, I mean, obviously, you  
8 must have heard, if only through the media, sir,  
9 that the four cases that were examined -- well,  
10 the three -- let's do that again. You knew  
11 about Starr because you did it yourself, the DNA  
12 work. You knew about Driskell, obviously,  
13 through the media. Undoubtedly, you came to  
14 know about the Sanderson and Unger cases  
15 through, if not through knowledge in the lab,  
16 through media. Am I right?

17 A Yes.

18 Q Yes. And I want to know, sir, and it's a bit  
19 repetitive of a question that I asked in a  
20 smaller context before lunch, whether there has  
21 ever been, to your knowledge, any discussion of  
22 these cases as a whole and of the systemic  
23 problems that they meet reveal since all of  
24 those DNA results have come up?

25 A Well, I know that all of our work has been

1 reviewed and we have discussed it. Am I aware  
2 of a formal internal --

3 Q Investigation, yes.

4 A I know that our files are reviewed. I don't  
5 know --

6 Q Who by?

7 A Well, it would have been forwarded to Ottawa and  
8 reviewed by the program manager, possibly the  
9 chief scientist.

10 Q And do you know, sir, if the results of these  
11 cases have been reported to the ASCLD  
12 equivalent, for example? Do you have any  
13 idea -- that it might affect your certification,  
14 the lab certification that is?

15 A It hasn't been reported to them, I don't  
16 believe.

17 Q It hasn't?

18 A I also don't believe that it would affect your  
19 accreditation.

20 Q That tells us a lot about accreditation. The  
21 fact that the labs have got it wrong and  
22 potentially several people have spent numerous  
23 years in prison, in part or in whole because of  
24 evidence coming out of the lab, doesn't affect  
25 accreditation?

1 A Well, no, accreditation is not about any  
2 particular results. It's about creating a  
3 reliable system.

4 Q Right.

5 A So as long as the system is robust, then that's  
6 the objective of a quality system.

7 Q Which is, I guess, that takes us straight back  
8 in a circle to, as far as you know, there has  
9 been no managerial investigation of the system  
10 that has generated these cases which have now  
11 been reviewed through post-conviction DNA tests?

12 A Well, I am aware that the files have been  
13 reviewed by senior management. I am not sure  
14 what --

15 Q Well, I think reviewing individual files by  
16 someone in Ottawa, without even talking to the  
17 people who did the work, at least as far as you  
18 are concerned, they didn't talk to you, isn't  
19 necessarily a systemic review of a problem that  
20 may have arisen within a lab, do you? It  
21 doesn't sound that much of an investigation to  
22 me.

23 A Well, it depends on what their processes are, I  
24 suppose.

25 Q I mean, do you think, as a member of the lab,

1           sir, you still are a member of the lab, do you  
2           not think that the lab should say to itself,  
3           holy smoke, have we got some problems here.  
4           Four cases looked at in Manitoba, wrong in every  
5           single one of them, what's the problem? We  
6           should look into this. Don't you think as a  
7           member of the lab that that might be, we maybe  
8           have a culture problem here, a systemic problem  
9           here, we may be sending people to jail for  
10          crimes they didn't commit? Isn't that the kind  
11          of thing that you might think a lab would say to  
12          itself?

13        A    I think it would be -- there are four cases here  
14            where we have received contrary evidence, and we  
15            review our procedures and find that they were  
16            acceptable in the day and move on.

17        Q    That's it, that's the best people like  
18            Mr. Driskell get?

19        A    Well, that's a summary of what we would do.

20        Q    Did Mr. Cadieux ever discuss with you, sir, both  
21            the cases where he seems to have got it wrong,  
22            as well as discuss with you the cases where you  
23            seem to have got it wrong?

24        A    Well, I'm sure we have discussed it over time,  
25            yes.

1 Q Are we talking over a cup of coffee, or are we  
2 talking about serious discussion about how could  
3 this have happened, given Cadieux's figures and  
4 given our expertise?

5 A Well, I think we discussed it seriously as  
6 professionals, and once again we determined that  
7 it is possible, it always was possible to have  
8 coincidental matches with hair comparison. And  
9 then, of course, we reach the point where we  
10 started talking about the mitochondrial DNA, and  
11 we just don't know about it.

12 Q And you didn't -- you haven't taken the trouble  
13 to find out about it either?

14 A We have discussed that already. I have done  
15 some background in it, but I am not an expert in  
16 it.

17 Q Mr. Bowen is here, sir, he is the -- I'm sorry,  
18 I don't know his title again. He is the  
19 director of the RCMP lab system?

20 A Yes, director of the forensic lab system.

21 Q And he is very much a DNA man, isn't he?

22 A Yes.

23 Q Yes. Well, I mean, he is here now, has he  
24 discussed this with you and whether there are  
25 systemic problems in his lab that need to be

1 addressed?

2 A I believe we have discussed it, yes.

3 Q You have discussed whether there are systemic  
4 problems --

5 A Yes.

6 Q -- that need to be addressed?

7 A Yes.

8 Q And the answer being?

9 A I think specifically he said that he felt that  
10 we had followed the procedures of the day. We  
11 did the best we could with the technology of the  
12 day and that's it.

13 Q And do you know what he did to determine this,  
14 sir? Just talk to the chap who looked at your  
15 files and Cadieux's files? Did he do anything  
16 more than that?

17 A I am not sure exactly what he did. I know the  
18 files were down in Ottawa so he could have  
19 reviewed them, too.

20 Q Does Mr. Bowen, sir, in your conversation with  
21 him, does he, like you, question the  
22 mitochondrial results in Mr. Driskell's case  
23 and, indeed, the other cases? It would seem he  
24 does after his counsel's consultation with him  
25 this morning?

1 A I'm sorry, I didn't hear you?

2 Q I say it would seem he does after his counsel's  
3 consultation with him this morning.

4 A I suppose I've never specifically heard him say  
5 that to me. I don't recall him saying that to  
6 me.

7 Q I am going to suggest to you, sir, and I know  
8 you are just an employee as opposed to senior  
9 management -- you are not senior management, are  
10 you?

11 A Not yet.

12 Q Not yet. I am going to suggest to you, sir,  
13 that this demonstrates -- this whole, the whole  
14 reaction or lack of reaction of the RCMP lab to  
15 a series of potential miscarriages of justice in  
16 murder cases, it demonstrates an extraordinary  
17 institutional complacency?

18 A I do not think we have a complacent institution.

19 Q But you can't really tell me, sir, what the  
20 institution has done to demonstrate that it is  
21 not complacent about these results, can you?

22 A Oh, we have spent an enormous amount of time and  
23 energy on our quality system, and we are an  
24 accredited organization, and that follows out of  
25 the Kaufman report also.

1 Q But if the accreditor doesn't even know about  
2 the cases in which your lab may have been  
3 involved in serious miscarriages of justice, it  
4 doesn't seem they are really providing an awful  
5 lot of help, does it?

6 A As I said, the quality system is about making  
7 sure you have a system in place. It is not  
8 about a specific result.

9 Q Let's talk for a minute, sir, about the hair and  
10 fiber committee that was set up in this  
11 province. Were you consulted by them at all?

12 A No.

13 Q You weren't?

14 A No.

15 Q And do you know if the lab tried to provide any  
16 input into the policy behind that committee, in  
17 the creation of the committee?

18 A I was not party to any information related to  
19 that committee.

20 Q You testified in 26 cases in which you gave  
21 evidence as to hair microscopy comparison; is  
22 that right, sir?

23 A I believe I forwarded that number. It sounds  
24 approximately correct.

25 Q Page 2 of your statement to Commission Counsel,

1 sir.

2 A Okay.

3 Q At the bottom of the page, you say in the last  
4 three lines, or four:

5 "Prior to of the Driskell trial...",

6 or actually, sir, I didn't notice that,

7 "Prior to the Driskell trial, Christianson  
8 testified in court 32 times. In 26 of  
9 these cases he had given evidence about  
10 hair comparisons, sometimes in addition to  
11 evidence about textiles or fibres. "

12 So I think we can then presume that that number,  
13 presumably, increased significantly after the  
14 Driskell trial; is that right?

15 A I believe I've testified in total approximately  
16 80 times.

17 Q I am talking about hair comparison?

18 A Yeah, not very many more would have been hair  
19 comparison, most of them would have been DNA.

20 Q And I understand, sir, from the transcript in  
21 the Zurowski case, that you prepared a list of  
22 those cases at some point through, I think the  
23 Freedom of Information Act; is that right?

24 A I had a list of the cases and I forwarded them,  
25 yes.

1 Q And yet, sir, the committee, which is  
2 post-Mr. Driskell's case DNA results, in other  
3 words, post-December 2002, only had occasion to  
4 look at one of your other cases, is that your  
5 understanding? Mainly the -- no, it didn't  
6 actually look at any of your other cases, did  
7 it?

8 A I am not sure that any of my other cases fell  
9 within the guidelines that they had developed.

10 Q And do you know why not, sir, of all of those  
11 cases?

12 A Well, they didn't fall in the guidelines.

13 Q You don't know why not? Because the guidelines  
14 were essentially homicides in which your  
15 evidence might have played a material role, is  
16 that right?

17 A I believe so, yes.

18 Q Yes. Is that list still available to you, sir,  
19 the hair cases in which you testified?

20 A Yes.

21 Q Would you have any objection to providing it?

22 A No.

23 Q Could you do that in the next -- later this week  
24 at some point?

25 A Yes.

1 Q Thank you. Now, presumably, sir, just as a  
2 human being, you have thought to yourself about  
3 the evidence that you gave in Mr. Driskell's  
4 trial in the last two, three, four years?

5 A Yes.

6 Q And in preparation for this?

7 A Yes.

8 Q You thought about the fact, sir, that your  
9 evidence may have played a significant or,  
10 indeed, crucial role in the jury's verdict? We  
11 will never know, but it could have?

12 A Yes.

13 Q And you are aware, sir, that Mr. Driskell, as a  
14 result of the verdict of the jury, spent many,  
15 many years in jail, until his release in 2003?

16 A Yes.

17 Q Sorry, 2004, my mistake -- no, 2003, end of  
18 2003. So I want to ask you, sir, as I have  
19 asked some of the other witnesses, in there  
20 anything in these circumstances that you would  
21 like to say to Mr. Driskell? He is in the room,  
22 you can take your chances.

23 A Well, I would say that I undertook this analysis  
24 to the best of my ability. It was as objective  
25 as I could make it. I had no knowledge of who

1 Mr. Driskell was. And I think I would come to  
2 the same conclusion about the hairs. If it ends  
3 up in the reality that the evidence was used in  
4 a way that was inappropriate, I regret that.  
5 However, I was as completely objective in my  
6 analysis, as I could be. And I can say that to  
7 Mr. Driskell and I can say that to Mr. Harder's  
8 family if they were here.

9 Q It's a fairly cold comfort for Mr. Driskell,  
10 what you're saying?

11 A I'm sorry if that's cold comfort.

12 MR. LOCKYER: That's all. Thank you.

13 THE COMMISSIONER: Thank you, Mr. Lockyer.

14 BY MR. KENNEDY:

15 Q Good afternoon, Mr. Christianson. My name is  
16 Jerome Kennedy. I am counsel for the  
17 Association in Defence of the Wrongly Convicted.  
18 I have a number of questions for you, sir. I  
19 won't be that long.

20 Sir, Mr. Lockyer has discussed with you, or  
21 has used the term a number of time cultural  
22 issues. Do you remember that?

23 A Yes.

24 Q I am going to give you a number of examples of  
25 what I consider to be cultural or could possibly

1 be cultural issues, and ask you whether or not  
2 the same existed in your lab.

3 One cultural issue, Mr. Christianson, could  
4 be a form of institutional bias in favour of the  
5 police, or that the scientists could see him or  
6 herself as a part of the police team. Did  
7 anything like that exist in your lab, either at  
8 the time of the Driskell trial or today?

9 A I do not believe so.

10 Q Secondly, sir, a cultural issue interrelated to  
11 the first would be a belief that the duty of the  
12 forensic scientist is to help the Crown obtain a  
13 conviction. Did that exist either at the time  
14 of Mr. Driskell's trial or today?

15 A The duty of a forensic scientist is to be a  
16 witness for the evidence.

17 Q A third type of cultural issue,  
18 Mr. Christianson, would be where a pattern of  
19 mistakes have been shown to occur and  
20 identified, but there has been a failure to  
21 address the same. Has that occurred at the time  
22 of the Driskell trial or today?

23 A No.

24 Q Another issue, sir, which I would refer to as a  
25 cultural issue would be an attitude that we are

1 right -- we, I am not talking about you  
2 individually, sir --

3 A Yes.

4 Q -- but as an organization, your lab, we are  
5 right no matter what other literature or  
6 scientists may say. Did that type of issue ever  
7 exist, that type of attitude, excuse me?

8 A I don't think so, no.

9 Q Finally, sir, the fifth type of cultural issue I  
10 would refer to you would be an inability to  
11 admit or accept -- to admit mistakes and accept  
12 responsibility. Has that attitude, in your  
13 experience, existed in the RCMP labs, either at  
14 the time of the Driskell trial or today?

15 A I don't believe so, no.

16 Q Sir, at the time that you were doing the hair  
17 comparison in the Driskell trial, do you feel  
18 that there was a lack of training or experience  
19 or resources in relation to yourself?

20 A No.

21 Q If the type of cultural issues I have referred  
22 you to, and Mr. Lockyer has talked about, were  
23 found to exist, would you agree, sir, that an  
24 independent lab system, in other words a  
25 forensic lab being separate from the RCMP, would

1 be a good idea?

2 A If they occurred, would it be a good idea?

3 Q If they occurred and existed today -- that's  
4 obviously hypothetical.

5 A Yes. I mean, it's perhaps a little too  
6 hypothetical for me.

7 Q Sir, do you see any impediment or reason why a  
8 forensic lab should not be separate from the  
9 RCMP, in other words, be an independent lab  
10 system?

11 A In principle it's possible.

12 Q Okay. In principle -- in practice, what would  
13 be the impediments or what would stand in the  
14 way?

15 A Well, I am not sure I would see the necessity.  
16 The structure is in place and it's a good  
17 quality product, and I don't see the need for  
18 it, actually.

19 Q In other words, you see no problems within the  
20 RCMP lab system or the fact that it is an RCMP  
21 lab system; is that correct?

22 A There is no problems with respect to the quality  
23 of the analysis and product.

24 Q Or the other issues that we're talking about,  
25 being cultural or institutional?

1 A Yes, none of those.

2 Q Finally, sir, after Commissioner Kaufman's  
3 report, which I think was 1998, it was delivered  
4 in 1998, was there training or seminars or  
5 whatever you fellas would do in terms of the  
6 contents of that report as it related to  
7 forensic science?

8 A It was circulated. There was no specific  
9 training and no -- I'm sure, I know there are  
10 policies that have come out of it, but there was  
11 no formal workshop or anything like that.

12 Q Okay, a workshop is a good idea. So to the best  
13 of your -- you didn't attend any formal  
14 workshop?

15 A No.

16 Q Finally, is there any workshops, seminars or  
17 training within the RCMP lab system in relation  
18 to necessity of objectivity for the forensic  
19 scientist?

20 A I think those are terms of how we work.

21 Q So has the issue, sir, or a have you ever heard  
22 the issue of tunnel vision, or the possibility  
23 of tunnel vision within, you know, the lab  
24 system raised?

25 A Certainly, I have heard of it.

1 Q That would be, I guess, the sixth, I should put  
2 in as the sixth issue in the cultural issues,  
3 does that -- did it exist at the time of the  
4 Driskell trial or does it exist today?

5 A I don't believe so, no, with respect to the  
6 technical issues.

7 Q Finally, sir, are there any issues that you see  
8 in terms of these cultural or institutional  
9 issues that need to be addressed?

10 A I think recently, and perhaps from some of the  
11 discussion with Mr. Lockyer today, I am reminded  
12 of how critical it is to communicate more  
13 effectively with the courts and the lawyers, and  
14 perhaps we should be spending more time trying  
15 to educate them about our perspective. And one  
16 of the common issues today is something called  
17 the CSI effect, where people have an  
18 unreasonable expectation of forensic science due  
19 to the popularity of the television show and  
20 things like that. So I think one of the things  
21 that I would be looking at more and more is the  
22 getting out there and trying to educate about  
23 our perspective.

24 Q So that would relate to an issue that  
25 Mr. Lockyer spoke to earlier today and was

1 specifically addressed in the Kaufman report, or  
2 the Morin report, would be the issue of specific  
3 language to be avoided and specific language to  
4 be used?

5 A Yes, language and expectations, both from my  
6 perspective and those of the court, yes.

7 Q Especially it's it relates to juries; correct?

8 A Yes, communication with juries is a constant  
9 challenge.

10 MR. KENNEDY: I have no further questions,  
11 Commissioner. Thank you very much.

12 THE COMMISSIONER: Just before you go, I was  
13 just wondering who it was, or who you would  
14 include in the better dialogue when you are  
15 referring to -- I am not sure if you are  
16 referring to lawyers or to Crowns, or Crown and  
17 defence, and then you used the "better educate."  
18 Who is it that you would better educate?

19 THE WITNESS: Well, I think one of the things  
20 that we've let go is we're not actively  
21 educating the public as much as we should. But,  
22 yes, I think, I have really noticed myself a  
23 distinct perspective amongst law professionals,  
24 the lawyers and the judges, that I realize that  
25 there is a gap between how we think and how we

1 look at these issues, and what constitutes a  
2 scientific process. There is definitely some  
3 gaps that we can try and bridge with some better  
4 communication on those topics.

5 THE COMMISSIONER: Do you have anything more?

6 MR. KENNEDY: No, thank you. Thank you.

7 THE COMMISSIONER: Thank you, Mr. Kennedy.

8 BY MR. KING:

9 Q Good afternoon, Mr. Christianson. My name is  
10 Brad King, I am assistant counsel for  
11 Mr. Dangerfield. I just have a few questions  
12 for you this afternoon.

13 I will take you back to the 1991 trial of  
14 Mr. Driskell. Did defence counsel, Mr. Brodsky,  
15 challenge at all your qualifications with  
16 respect to your background?

17 A I would have to review the transcript. I don't  
18 believe there was substantial --

19 Q It's at tab 5, page number 143, right at the  
20 bottom of the page.

21 A Sorry, 140?

22 Q 143.

23 A Clearly not -- and I mean, I testified that  
24 Mr. Brodsky on numerous occasions.

25 Q Thank you.

1 A He was usually fairly direct about that.

2 Q Yes. And in this instance he didn't challenge  
3 your qualifications?

4 A No.

5 Q And so in this instance, the Driskell trial, you  
6 were qualified to give evidence as an expert in  
7 forensic hair comparison analysis; correct?

8 A Yes.

9 Q And you were called on to give opinion evidence,  
10 and you did that?

11 A That's right.

12 Q To the best of your ability?

13 A Correct.

14 Q And prior to 1991 you had been qualified as an  
15 expert in cases at the Provincial Court level  
16 and the Court of Queen's Bench, correct?

17 A Yes.

18 Q And after the Driskell trial, and into the  
19 nineties, you continued to conduct microscopic  
20 hair comparison analysis as requested by the  
21 police agencies; correct?

22 A Yes, I did.

23 MR. KING: Thank you.

24 THE COMMISSIONER: Mr. Gates.

25 MR. GATES: Good afternoon, Mr. Commissioner.

1 THE COMMISSIONER: Mr. Gates, good afternoon.

2 BY MR. GATES:

3 Q I only have a very few questions, sir, you will  
4 no doubt be happy to know.

5 Mr. Christianson, I am not sure that this  
6 came up either during your examination by  
7 Commission Counsel or Mr. Lockyer today, but can  
8 you tell us whether or not the crime lab  
9 continues to conduct microscopic hair  
10 comparison?

11 A At the forensic lab in Winnipeg we stopped  
12 around 1999, and I think overall in our system  
13 it was about 2002.

14 Q Why did you stop?

15 A It's a difficult -- I mean, the juggernaut of  
16 the DNA technology has basically made it  
17 virtually obsolete. Anything that you can do  
18 with the microscopic hair comparison, you can  
19 almost always do with nuclear DNA with greater  
20 discrimination. It's difficult to train and  
21 maintain qualified hair examiners. And by  
22 attrition, as they left, we could no longer  
23 support them. Part of our quality system at  
24 that point was that you had to have two  
25 examiners present in a given location because

1           you had to have a review done of your work. So  
2           once we started to drop below two people at a  
3           given location, it was only a matter of time  
4           before we simply could not support it.

5    Q       To what extent, and you've made brief reference  
6           to this, did the evolution of science lead the  
7           RCMP to move to newer and better technology?

8    A       Well, I mean, that's what it is. The newer  
9           development of science, it's a form of evolution  
10           and it builds upon the prior technology and  
11           moves ahead.

12   Q       I also believe that you told us a little bit  
13           about a reorganization of the lab in Winnipeg  
14           and the labs, the RCMP crime labs across the  
15           country generally, in and around 2002?

16   A       Yes.

17   Q       Can you, in a nutshell, tell us what that  
18           reorganization was about?

19   A       Well, it was an attempt to increase our  
20           productivity and our efficiency by centralizing  
21           certain services. The equipment that -- because  
22           as things have become more high tech, the  
23           support for the equipment that you need becomes  
24           more demanding, so certain high tech equipment  
25           is now centered in certain locations, and

1 certain analyses are conducted predominantly in  
2 certain locations. So what we developed are  
3 what we call centres of specialization. And so,  
4 therefore, certain laboratories would have a  
5 certain discipline or disciplines present, and  
6 they would be conducting examinations for a  
7 larger portion of the country. So, for example,  
8 the lab here in Winnipeg is the centre of  
9 specialization for toxicology services. The  
10 laboratory in Regina is the centre of  
11 specialization for firearms and tool marks  
12 examination.

13 Q As a result of the reorganization, did the lab  
14 in Winnipeg retain specialization in anything  
15 other than toxicology?

16 A No.

17 Q What was the impact on you of the Winnipeg lab,  
18 or the reorganization of the labs and the  
19 changes that occurred?

20 A Well, part of the reorganization was the  
21 creation of a case receipt unit, because with  
22 the centres of specialization there was a  
23 requirement for coordinating the movement of  
24 exhibits to these centres. Also, it was  
25 recognized that we would have to have people

1           that would pre-authorize the cases and help  
2           reduce the number of extraneous exhibits coming  
3           in. So that unit was created, the case receipt  
4           unit, and there is one in each laboratory. And  
5           I transferred into that unit as the manager of  
6           the unit.

7    Q       Prior to the reorganization, as I understand  
8           your evidence, you were employed as, if I might  
9           describe it as a line scientist in Winnipeg lab?

10   A       Yes, I was a biology specialist.

11   Q       As a result of reorganization, did your  
12           specialty area continue to exist in the Winnipeg  
13           lab?

14   A       No.

15   Q       To have continued on as a line biologist for the  
16           crime lab, would you have been required to move?

17   A       Yes.

18   Q       And was the decision yours or the organization's  
19           as to you moving into the case management role?

20   A       I had to apply for a competition for the  
21           position, so I made the decision to move to it.

22   Q       Sorry?

23   A       I made the decision to apply for that position.

24   Q       Is it fair to say that you decided you were  
25           going to stay in Winnipeg?

1 A Yes.

2 Q Okay. Thank you. We spoke a bit during your  
3 examination, or you spoke a bit during your  
4 examination with Mr. Dawe yesterday, and more  
5 recently with Mr. Lockyer today, about your  
6 background and experience. I wonder if I can  
7 just ask you a couple of questions about the  
8 nature of your ongoing training and efforts to  
9 remain current with your science during your  
10 years as a line scientist with the forensic lab,  
11 generally.

12 A Yes. Well, in terms of the DNA training, I  
13 mean, in a period of about five years I had two  
14 major training sessions. One was for the RFLP  
15 technology and the other was for the PCR  
16 technology. I attended at least four  
17 conferences, perhaps three, one international  
18 conference. I also took some additional  
19 training in blood stain pattern recognition.  
20 And I also took training in administration of  
21 the National DNA Databank Network.

22 Q Can you tell us the extent to which ongoing  
23 training or continuing education is a factor, or  
24 has been a factor in your career with the crime  
25 lab?

1 A I would estimate -- I would estimate almost one  
2 in four years of my career has been spent  
3 training.

4 Q 25 percent of your time?

5 A Yes, of one form or another.

6 Q In your experience, is that a representative or  
7 typical breakdown for your colleagues?

8 A I think it would be -- I think it would be a  
9 little bit on the high side because of getting  
10 swept up into the transition with the DNA, there  
11 was a lot of technology change.

12 Q Okay. Mr. Christianson, this is a point that  
13 was raised with you by my friend, Mr. Lockyer,  
14 this morning. I wonder if you could have a look  
15 at the book of documents that was put together  
16 for you, the big white book?

17 A Yes.

18 Q And specifically I direct your attention to the  
19 summary of the interview that you gave  
20 collectively to Commission Counsel and  
21 Mr. Lucas, and direct your attention to page 15,  
22 please? Around the middle of the page, the  
23 first full paragraph on page 15, there is a  
24 reference to the methods manual and the  
25 descriptors positive comparisons and strong

1 positive comparisons. Do you see where I'm  
2 referring to, Mr. Christianson?

3 A Yes.

4 Q What was your practice with respect to the use  
5 of that terminology?

6 A Well, I only gave one conclusion, either it was  
7 a match or a non-match. So I didn't use  
8 those -- I didn't use those layers of positive,  
9 strong positive, strong negative.

10 Q Can you tell us why you didn't use those layers,  
11 as you describe them?

12 A Well, by the time I was doing, I mean, this was  
13 in the manuals, but by the time I was doing the  
14 hair comparison, the trend was to move away from  
15 doing that. The trend was to simply determine  
16 whether hairs were consistent or not. And I  
17 agree with that concept.

18 Q You agree with?

19 A The concept of doing it that way.

20 Q Again, on page 15 of the summary of your  
21 interview with the Commission Counsel and  
22 Mr. Lucas, just above the portion that I have  
23 referred you to, there is the statement, and I  
24 quote:

25 "There was nothing particularly distinctive

1                   about the known hairs in this case."

2                   And then you go to on to say -- you then go on  
3                   to describe the three, the use of positive and  
4                   non-positive. When you told Commission Counsel  
5                   and/or Mr. Lucas that there was nothing  
6                   particularly distinctive about the known hairs  
7                   in this case, what does that mean?

8                   A       Well, I think it means to me that it was a  
9                   typical known hair sample. There was nothing  
10                  unusual about it.

11                 Q       What, for example, might have qualified it as  
12                  being something that was unusual?

13                 A       Well, let's say that there was either some  
14                  unusual characteristics, or they were unusually  
15                  damaged, or there was something -- there was a  
16                  problem, for example, if they had been burned or  
17                  degraded in some way. It was fairly, a typical  
18                  hair sample. I think I was trying to indicate  
19                  that this was a typical case rather than -- a  
20                  typical, or nothing distinctive about the hair,  
21                  I think I was trying to indicate that it was a  
22                  typical case from the point of view of the hair  
23                  samples involved.

24                 Q       Did your conclusion, or did your observations in  
25                  that regard give rise, in your view, to the need

1 to offer any special explanation to the jury  
2 about the overall quality of the exhibits that  
3 you dealt with?

4 A Well, the question that I had was, with respect  
5 to the hairs, was the fact that they were  
6 recovered from a grave site. I was concerned  
7 about the quality of the known hair sample,  
8 because obviously they could have been degraded.  
9 But upon examining them, they were fine, they  
10 looked like a typical known hair sample.

11 Q Thank you. Earlier this afternoon my  
12 colleagues, Mr. Lockyer and Mr. Kennedy, spoke  
13 to you about culture. And I wonder if you can  
14 perhaps, very briefly, tell us a bit about the  
15 status of your employment as a civilian member  
16 with the RCMP. Let me be specific. Where do  
17 you physically work?

18 A I work at the laboratory on Academy Road, 621  
19 Academy Road.

20 Q Are there any other tenants in the building  
21 other than the crime lab, the forensic lab?

22 A Yes. There is a group of investigators called  
23 the Integrated Child Exploitation Unit, and  
24 there is also several identification unit  
25 members. They are special members that do the

1 blood stain pattern recognition.

2 Q There is, as I understand it, an RCMP division  
3 headquarters here in the City of Winnipeg?

4 A Yes.

5 Q Sorry, before I go there, during the time that  
6 you were employed by the forensic lab here in  
7 Winnipeg, were you always in the building on  
8 Academy Road?

9 A No. There was a rented space that we occupied  
10 on St. James Avenue prior to this.

11 Q Do you know approximately when you would have  
12 moved to Academy Road?

13 A 20 years ago.

14 Q So at the time of your involvement in this  
15 particular matter, the prosecution of  
16 Mr. Driskell, you were on Academy Road?

17 A Yes.

18 Q Returning to the existence of division  
19 headquarters, there is an RCMP division  
20 headquarters in Winnipeg?

21 A Yes.

22 Q This is D division, as I understand it?

23 A Yes.

24 Q Are there other RCMP offices or premises where  
25 uniformed members are involved in investigative

1 type responsibilities in other locations in  
2 Winnipeg?

3 A Not that I'm aware of.

4 Q Can you tell us, in a general way, what the  
5 nature and/or extent of your connection to D  
6 division headquarters would be?

7 A I have almost no connection with them. I very  
8 seldom go there. I think I've been there three  
9 times in the last year. And with the advent of  
10 this new service delivery system, the regular  
11 members visit the lab much less frequently  
12 because the exhibits are generally being sent to  
13 another location for analysis, so they don't  
14 come to the lab to bring in any exhibits.

15 Q Who do you report to, Mr. Christianson?

16 A Right now I report to the manager of the  
17 forensic lab in Winnipeg and his name is Wayne  
18 Greenley.

19 Q Is Mr. Greenley also a civilian member of the  
20 RCMP?

21 A Yes.

22 Q Who does Mr. Greenley report to?

23 A He reports to Mr. Bowen.

24 Q Is Mr. Bowen a civilian member of the RCMP?

25 A Yes.

1 Q Do you know who Mr. Bowen reports to?

2 A Mr. Buckle.

3 Q I see. And what's the status of Mr. Buckle?

4 A He's an assistant commissioner.

5 Q Is he a scientist?

6 A He was, yes.

7 Q Thank you. My last question, Mr. Christianson,  
8 and it goes to the nub of your evidence, I would  
9 suggest, and I just want to be really clear on  
10 this. Are you saying to the Commissioner that,  
11 I'm right, my microscopic hair results are  
12 correct, and the mitochondrial DNA results that  
13 were obtained on the same hair exhibits, that  
14 they are wrong?

15 A I am not -- I am not making a conclusion about  
16 the mitochondrial DNA. I am not an expert in  
17 that area. And the hair evidence was never  
18 portrayed as a question of being right or wrong,  
19 it was a question of being consistent. And  
20 consistent means it either came from that person  
21 or someone else with hair identical to the known  
22 sample, and there is a possibility of a  
23 coincidental match. So that's really all I'm  
24 trying to say.

25 MR. GATES: Thank you very much,

1 Mr. Christianson. Those are all of my  
2 questions. Thank you, Mr. Commissioner.  
3 THE COMMISSIONER: Thank you, Mr. Gates.  
4 MR. DAWE: I have no re-examination.  
5 THE COMMISSIONER: Ms. Carswell, I take it you  
6 had no questions?  
7 MS. CARSWELL: No, I didn't, or I would have  
8 pushed Mr. Gates aside.  
9 MR. DAWE: That's what I assumed.  
10 THE COMMISSIONER: Thank you, Mr. Christianson.  
11 THE WITNESS: Thank you, Mr. Commissioner.  
12 MS. CARSWELL: I did go outside,  
13 Mr. Commissioner, and the Chief is here, but  
14 perhaps we could just take 10 minutes to get  
15 people set up.  
16 THE COMMISSIONER: It's about the time we would  
17 have our afternoon break anyways, so why don't  
18 we take our 15-minute afternoon break.  
19 MS. CARSWELL: Thank you.  
20 THE COMMISSIONER: Be back at 3:23.  
21 THE CLERK: All rise. This Commission of  
22 Inquiry is adjourned for a 15-minute recess.  
23 (Proceedings adjourned at 3:08 and  
24 reconvened at 3:23)  
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THE CLERK: All rise. This Commission of Inquiry is back in session.

THE COMMISSIONER: Nice to have you back, Chief.

THE WITNESS: Happy to be here, Mr. Commissioner.

JACK JOSEPH EWATSKI, continued

THE COMMISSIONER: Mr. Olson.

BY MR. OLSON:

Q Thank you, Mr. Commissioner. Chief Ewatski, Bill Olson, I am acting for the Attorney General and several Crown Attorneys. We have had the pleasant task of being in similar positions on more than one occasion previously.

A Many times, Mr. Olson.

Q Chief Ewatski, I wanted to ask you a series of questions, many of them relating to a police procedure, practice, and recording in notebooks, just so that you know where I'm headed. I understand, sir, that historically, at least on one occasion, if not more, you participated in the lecture of a recruit class, I understand in 1990 specifically, with respect to the use of notebooks?

A That would be correct, sir.

1 Q And is it fair to say, if you can recall, sir,  
2 that recruits are taught and have for a number  
3 of years been taught to write the reports  
4 exactly, that is to be precise, so that others  
5 know what they did and what they heard?

6 A That would be a fair statement.

7 Q All right. As well, Chief, recruits have been  
8 taught for many years that the rationale, or one  
9 of the principal rationales for focusing on and  
10 taking detailed notes is because an accurate  
11 precise memory recall, without assistance later  
12 on, is problematic or unlikely?

13 A It could be problematic, sir.

14 Q Yes. And so they are taught that notebooks  
15 facilitate their memory recall and, in fact,  
16 notebooks and their recording skills in a  
17 notebook reflect an officer's habits; is that  
18 fair?

19 A Sorry, could you repeat the question?

20 Q Yes. Notebooks facilitate memory recall and  
21 notebook recording skills reflect an officer's  
22 habits and are directly related to the quality  
23 of testimony given in court?

24 A I don't know what you're getting at in terms of  
25 reflecting their habits but, certainly,

1 obviously, the notes certainly assist to help an  
2 officer recall things that occurred and that  
3 could assist, obviously, in a court of law.

4 Q Fair enough. We are probably on the same wave  
5 length. I am, in fact, reading from part of the  
6 materials that you may well have lectured from  
7 in 1991 to the recruit class, sir, a statement  
8 by the professor and former Police Officer Gino  
9 Arcaro? You don't recall that?

10 If you want to look at it, your own  
11 counsel, Ms. Carswell, will be marking  
12 specifically a book of documents that have a lot  
13 of these materials in them called "Further  
14 Disclosures from the Winnipeg Police Service,"  
15 sir. And, again, if you wanted to look at it, I  
16 don't have to take you specifically, but it is  
17 tab 3, at the bottom is page 5/17, it is about  
18 halfway through that tab.

19 A I have no reason to not believe you that that's  
20 included in that lesson plan, sir.

21 Q Fair enough. Now, on some specific issues, I  
22 understand, Chief Ewatski, that when assistance  
23 is requested of the Winnipeg Police Service by  
24 an outside agency, there is now, in your  
25 protocols and in your procedure manuals, a

1 requirement to forward a memorandum to the  
2 Deputy Chief containing a series of pieces of  
3 information, including who made the request,  
4 when, various contact information, and give it  
5 some priority; is that all fair?

6 A There is a process set out in the policy, yes,  
7 sir.

8 Q Right. Has that been in for a number of years,  
9 sir, or is that fairly recent?

10 A I would have to check exactly when the policy  
11 came into effect, sir.

12 Q It is hard to tell because these are excerpts  
13 and it doesn't indicate on the pages that we  
14 have. And I only raise that, sir, in the  
15 context of the Driskell case, because we know  
16 that in July of 1990 a request was made of the  
17 Winnipeg Police Service from the Saskatchewan  
18 RCMP for some assistance. And I don't know if  
19 you recall whether or not there was a  
20 requirement to record that request in some way  
21 and memorialize it through a memo to a Deputy  
22 Chief or some senior officer?

23 A I couldn't say with certainty if that policy was  
24 in effect back in 1990, sir.

25 Q All right. Thank you. And, for the record,

1 that will be in Ms. Carswell's book at tab 4,  
2 that document or procedure can be found entitled  
3 "Assistance to Outside Police Agencies."

4 There is also now, sir, in the Winnipeg  
5 Procedure Manual under the heading "Witness  
6 Protection Program" a provision that indicates a  
7 person can be eligible for protection by the  
8 Winnipeg Police Service with written approval  
9 from the Province of Manitoba Criminal Justice  
10 Division.

11 Again, do you know, sir, whether that has  
12 been in the procedure manual for a number of  
13 years?

14 MS. CARSWELL: That one, Mr. Olson, I can help  
15 you with. That indicates, if you turn to, it is  
16 at tab 7 in the book?

17 MR. OLSON: Indeed, it is.

18 MS. CARSWELL: And it has a date, an effective  
19 date right under the title. That's a new topic  
20 that comes in, in 2001.

21 BY MR. OLSON:

22 Q All right. Can we assume, then, as a result of  
23 Ms. Carswell's assistance, that prior to that  
24 time there was not such a provision?

25 A I couldn't say with certainty whether or not

1           there was any type of policy relative to witness  
2           protection.

3       Q     So there might have been a prior one, but this  
4           one replaced it at that point and made some  
5           changes; is that your point, sir?

6       A     Well, based on the way it is characterized here  
7           as a new topic, I would assume that this is a  
8           brand new topic for this procedure.  But, again,  
9           I can't say with certainty whether or not the  
10          Winnipeg Police Service had a previous policy on  
11          witness protection.

12      Q     Fair enough.  I understand, sir, that there have  
13          been, for a number of years, provisions in your  
14          procedure manuals requiring a supervisor to  
15          review a police officer's reports and to ensure  
16          that they are complete and consistent; is that  
17          correct?

18      A     That policy has been in place for, well, I could  
19          go back 33 years.

20      Q     Right.  Thank you.  And, again, you will see the  
21          most common version, for the sake of the record,  
22          at tab 9 of Ms. Carswell's materials when you  
23          get there, partway through.

24                    There is also, in the current procedural  
25          manuals routine orders relating to disclosure,

1 and that's at tab 10. There has always been  
2 some protocol relating to disclosure, has there  
3 not?

4 A Always been?

5 Q In terms of what was to be disclosed to the  
6 Crown?

7 A Again, I couldn't say with certainty in terms of  
8 what type of policies that we had in place in  
9 1990 relative to disclosure to the Crown, other  
10 than to what I testified I think earlier,  
11 basically saying the actual copies of the police  
12 report would be the files that would be sent to  
13 the Crown.

14 Q Right. The protocol in tab 10 that resulted, I  
15 gather, from a joint disclosure protocol  
16 involving Manitoba Justice, Federal Prosecution  
17 Service, the RCMP D division, yourselves, and  
18 Brandon Police Service appears to have been  
19 developed in January of 2005, a formal protocol,  
20 if I can put it that way. Is that fair, sir?  
21 That's the last four or five pages of -- four  
22 pages of tab 10?

23 A Oh, I see.

24 Q Yes.

25 A That appears to be the case, sir.

1 Q Prior to this formal protocol, and what I was  
2 driving at, sir, you will see after the five  
3 parties that I have just indicated, there is the  
4 heading "Protocol" between the various parties,  
5 and number 1,

6 "What information should the police provide  
7 to prosecutions?"

8 And the first entry there is,

9 "All information relating to the  
10 investigation that is within the possession  
11 or control of the police, whether relevant  
12 or not."

13 And then it goes on and says "this includes,"  
14 and we don't have to go through that. My point  
15 is simply that has always been the case, isn't  
16 it? You've understood that the police were to  
17 provide all information relating to the  
18 investigation that's within your possession and  
19 control?

20 A I would have to say, again, sir, I can't say  
21 with certainty in terms of policies that were in  
22 place prior to this specifically, but certainly  
23 the practice was that information that was  
24 gathered in the course of an investigation that  
25 would be a police report, a copy of that police

1 report would go to the Crown, as well as, you  
2 know, copies of other reports, relevant reports  
3 relative to forensic examinations and such would  
4 go. This protocol certainly is much more  
5 comprehensive --

6 Q I appreciate --

7 A -- than --

8 Q I am trying to do it at a higher level. I am  
9 trying to do it at a higher level. It has  
10 always been the case that whatever is in a  
11 police officer's notebook should be contained  
12 within a report that. That report gets vetted  
13 by the supervisor and those reports get to the  
14 Crown?

15 A When you say "always," sir, I think I need to  
16 have a time frame. I can't talk about from  
17 going back 50 years.

18 Q Fair enough. 1990 on, Chief, you and I are time  
19 limited in certain ways.

20 A Well, in terms of the practices and the  
21 policies, you know, our policies certainly, you  
22 know, dictated the fact that police officers  
23 should take comprehensive notes and that their  
24 reports should be comprehensive. And,  
25 obviously, we realize that police reports often

1 would contain much more information than would  
2 be in police officers' notes. You know, the  
3 notes are used to gather the pertinent facts, to  
4 document the pertinent facts, to help a police  
5 officer recall their involvement, their  
6 activities during the course of investigation.  
7 The report itself would many, many times capture  
8 much more information than would be in a police  
9 officer's notes. That would not be unusual.

10 Q No. I accept everything you've said, Chief  
11 Ewatski. I was more concerned with the reverse,  
12 that the practice has always been to at least  
13 put in the report what's in the police officer's  
14 notebook?

15 A Well, sir, I don't think I would want to make a  
16 general statement that that would be accurate.  
17 There are things that police officers will put  
18 into their notebooks that they would perhaps  
19 determine that were not appropriate to go into a  
20 police report.

21 Q Well, in this particular case, Chief Ewatski,  
22 and I won't belabour the point, we know that  
23 there are certain pieces of information taken  
24 down by Anderson and Paul in their notebooks  
25 that were not put into this supp. report, the

1 police reports, but were sent through to the  
2 Crown?

3 A That's my understanding, yes, sir.

4 Q And we know that the practice was to do so, that  
5 is to put it in. And there is no excuse for not  
6 putting it in?

7 A Well, again, I think that's a question that  
8 would have to be asked to the author of the  
9 notes and the report, relative to why certain  
10 information was not put into a report.

11 Q Did you ever ask Anderson and Paul why they  
12 didn't put it in theirs?

13 A No, sir.

14 Q No.

15 A Sir, we did not have access to those notes  
16 during the course of our review.

17 Q Well, let's deal with that, Chief Ewatski. You  
18 have testified that those notebooks are the  
19 property of the Winnipeg Police Service?

20 A That's correct, sir.

21 Q If they are the property of the Winnipeg Police  
22 Service, why don't you have access to them?

23 A The decision was made that we would not have  
24 access to have formal interviews with the  
25 officers involved, other than a couple of

1 officers who we did interview. And the  
2 strategy, relative to our review, would be when  
3 the officers would come in to be interviewed by  
4 us that they would produce their notes for us.  
5 But that never took place.

6 Q But you had informal discussions with certainly  
7 Anderson and Paul?

8 A I believe so, sir, yes.

9 Q Yes. And did you ask them for your property,  
10 the notes, at that informal interview?

11 A I don't recall, sir, if I did or not.

12 Q You don't recall. And you made no note of  
13 whether you asked them for their notes?

14 A Sir, I would have to go back to all of my notes  
15 to determine whether or not a request was made  
16 for their notes. But, again, I wouldn't want to  
17 say with certainty that we did or we did not. I  
18 don't recall asking specifically, during the  
19 course of those informal discussions that we had  
20 with these officers, for their notes.

21 Q One of the reasons why you chatted with Anderson  
22 and Paul informally, as I understand it, in  
23 performing along with Inspector Hall the  
24 homicide review, Chief Ewatski, was because they  
25 were the two officers who were handling

1           Zanidean?

2   A       They were identified as two of the officers that  
3           were involved in this investigation that we felt  
4           that we should interview and have discussions  
5           with, yes, sir.

6   Q       Yes. And it is true that they were responsible,  
7           ultimately, for handling Zanidean through to the  
8           trial; isn't that fair?

9   A       It is my understanding that their prime role in  
10          this investigation was to deal with  
11          Mr. Zanidean.

12   Q       Thank you. And the purpose of your review,  
13          you've already testified that it was imperative  
14          you conduct a comprehensive review of all  
15          aspects of the matter?

16   A       That certainly was our goal, sir.

17   Q       Right. And your concern, again you've  
18          testified, was with the course of investigation  
19          and the proper actions that were taken by the  
20          police relative to gathering the evidence and  
21          providing it to the Crown?

22   A       That certainly played into our mandate, yes,  
23          sir.

24   Q       And you don't now either have recollection of  
25          asking Anderson and Paul about their notes, or

1 to produce them?

2 A I don't have a recollection at this point, sir,  
3 but I could certainly go through my notes and  
4 our logbook to see if there is a notation in  
5 there.

6 Q We also know of Osborne and Williams who handled  
7 Gumieny, I believe.

8 A John Gumieny, yes, sir.

9 Q John Gumieny, yes. And you determined at some  
10 point in your review that there was no value to  
11 interviewing, even informally, either Osborne or  
12 Williams?

13 A No value in it? I don't know, were those my  
14 words, sir?

15 Q They were. I can help with you that, sir. It  
16 is tab 3 of exhibit 28A, which is your  
17 documents.

18 A What page, sir?

19 Q At page 125.

20 THE COMMISSIONER: I'm sorry, the page number  
21 again?

22 MR. OLSON: 125, Mr. Commissioner.

23 THE COMMISSIONER: Okay.

24 BY MR. OLSON:

25 Q Do you have that, Chief?

1 A Yes, I do. And it says they primarily dealt  
2 with John Gumieny and the committee could see no  
3 value in interviewing them at this time. So  
4 that's accurate, sir.

5 Q Right. Why would you see no value in  
6 interviewing them when one of the specific  
7 purposes you were undertaking was to determine  
8 whether or not the investigation and the actions  
9 taken by the police relative to gathering  
10 evidence and providing it to the Crown was one  
11 of the key points of the whole review?

12 A I believe at that point, when we wrote this  
13 report, that we felt that the information  
14 relative to Mr. Gumieny was clearly documented  
15 in the reports submitted by those officers, as  
16 well as the fact that we had interviewed  
17 Mr. Gumieny, as well as reviewing the transcript  
18 of his evidence at the trial. So I would  
19 imagine that would have been the rationale for  
20 making that statement in the report. There  
21 didn't seem to be a need to do it, sir.

22 Q All right. Well, we will come back to that  
23 perhaps in another context in a few minutes,  
24 Chief.

25 When you and Inspector Hall completed your

1 review, it's known that you did not send a copy  
2 of that review to the Crown, and that was  
3 because you were instructed to treat it as an  
4 internal document only; is that fair?

5 A Maybe just to clarify that, sir, our reporting  
6 relationship was to the Chief of Police through  
7 the Deputy Chief. The report was submitted to  
8 the Chief. We had no authority to do anything  
9 further with that report, sir.

10 Q Fair enough, and I accept that. That wasn't  
11 your decision to make is your point?

12 A That's correct, sir, at that point in time.

13 Q Later on it does become your decision to make,  
14 but at the time you complete the review --

15 A At that time it wasn't my decision, no, sir.

16 Q It was not. Fair enough. When it does become  
17 your responsibility, that is when you become  
18 Chief you have the responsibility to make that  
19 decision. And remind me, sir, what year did you  
20 become Chief?

21 A November of 1998, sir.

22 Q Right. So some five years after, I guess, the  
23 review was complete, something like that; right?  
24 Fair enough?

25 A That's correct, sir.

1 Q If you were of the view that the Crown may have  
2 all that information already, why wouldn't you  
3 send it to the Crown? Like, what's the harm?  
4 You're not breaching anything. It's not new  
5 evidence to them, you think. So why wouldn't  
6 you send it to the Crown?

7 A I think if I could remember my mindset back in  
8 1998, sir, it would best be described by the  
9 fact that this report, this review, was done for  
10 a specific purpose. It was done under a certain  
11 mandate. The actions that we took in conducting  
12 this review and writing the report was based on  
13 the goal, it was based on the fact that this was  
14 advice that we were giving, this was information  
15 we were giving to the Chief of Police of the  
16 day. And it was written in that manner, as an  
17 internal document. And we stood by that  
18 conclusion that the information that we had  
19 observed during the course of our review was  
20 information that was known to Manitoba Justice,  
21 and that certainly formed part of the decision  
22 that I made in maintaining the report as an  
23 internal police document.

24 Q Well, we will deal with that in some depth  
25 shortly, Chief, but you'll appreciate that there

1 is no document anywhere that lists the pieces of  
2 evidence that you say appear to have been known  
3 to the Justice Department and, therefore, didn't  
4 constitute new evidence, even though your report  
5 refers to learning a number of things for the  
6 first time when you did your review?

7 A Our assessment of all of the information that we  
8 gathered, and all of the observations we made,  
9 put in the context of all of the dealings that  
10 we had with Manitoba Justice, clearly left us  
11 with the position and the impression that this  
12 information was known to Manitoba Justice. That  
13 certainly was confirmed in our discussions with  
14 Mr. Dangerfield and Mr. Lawlor. It certainly  
15 was our impression based on our discussions with  
16 Mr. Miller.

17 Q I'm coming to those two discussions very  
18 shortly, sir. But there is no question from  
19 your point of view from day one, that is when  
20 you conducted the review, that you never felt  
21 that that report would go outside the Winnipeg  
22 Police Service; correct?

23 A When we were asked to be involved in this review  
24 and submit the report, that was my  
25 understanding, that this was a document that

1 would be -- that would be made, the review and  
2 the document would be given to the Chief of  
3 Police of the day, as an internal document. It  
4 was -- that is the strategy we took in terms of  
5 the review itself, and that certainly was the  
6 manner in which we wrote the report, with that  
7 in our forefront of our minds.

8 Q Right. And after you became chief, Chief  
9 Ewatski, you told your senior officers that you  
10 were not going to give that report to anyone;  
11 correct?

12 A I don't recall telling my senior officers that I  
13 would not give that report to anyone. I don't  
14 know where that would come from, sir.

15 Q Certainly not to Mr. Lockyer, certainly not to  
16 anyone from Mr. Driskell's camp such as Janie  
17 Duncan or Mr. Lockyer or Mr. Libman, certainly  
18 not to Justice. You told them that you were not  
19 releasing it?

20 A Well, when you say I told senior officers, I  
21 have many senior officers that work for the  
22 Police Service. Could you be more specific?

23 Q Did you tell anyone in your senior management,  
24 sir?

25 A I think I certainly shared the position that I

1 maintained, that was initiated by Chief Henry,  
2 is that that report was an internal document and  
3 it would not be released.

4 Q Yes. And you expected them to follow that in  
5 their dealings with Justice and others, didn't  
6 you?

7 A Who were "they," sir, I'm trying to --

8 Q Your senior officers, that you made it clear to  
9 them that it would not be released?

10 A I think my position was made known, and I can  
11 say that all of my senior officers knew that  
12 position. This was a matter that, you know,  
13 that was being dealt with at the highest level  
14 within the Police Service. So when you say  
15 senior officers, sir, at that time there was  
16 approximately 35 senior officers. And I cannot  
17 recall passing that information on to every  
18 single one of them. So I couldn't say that  
19 every officer would have known that position.

20 Q Let's try any of them? Can you remember passing  
21 it on to any of them?

22 A Passing it on to anyone? We had discussions,  
23 I'm sure, had discussions with my Deputy Chiefs  
24 at some point in time.

25 Q Inspector Blair McCorrister?

1 A Inspector McCorrister, I may have, sir.

2 Q Detective Sergeant John Burchill?

3 A He is not a senior officer, but I am sure I have  
4 had discussions with Detective Sergeant Burchill  
5 about this issue.

6 Q Is it fair to say that you recall that the two  
7 of them at the very least would have known your  
8 position that it was not to be released?

9 A I think that would probably be a fair statement,  
10 sir.

11 Q Yes. And when you were asked in these  
12 proceedings whether you were ever asked by the  
13 Minister of Justice for a copy, you said, I  
14 can't recall ever being asked. But you are  
15 aware that Burchill and McCorrister were asked,  
16 aren't you?

17 A I am aware of certainly one request that came to  
18 Winnipeg Police Service from Manitoba Justice  
19 relative to information including the report.

20 Q And they were told that a copy of that report  
21 would not be released to them?

22 A In the context of the request coming from  
23 Manitoba Justice, I believe it was from  
24 Mr. Schille from Mr. Manitoba Justice who was  
25 acting as a facilitator of obtaining reports and

1 information for Mr. Lockyer. And part of that  
2 information would be a copy of this report, but  
3 as to be a facilitator. And certainly, in my  
4 recollection of that request, sir, it certainly  
5 wasn't a request coming from Manitoba Justice  
6 asking specifically for a copy of that report  
7 for their purposes.

8 Q You also testified, Chief, that if Manitoba  
9 Justice was of the view that the Winnipeg Police  
10 Service had information in that homicide report  
11 that they, that is Manitoba Justice did not  
12 have, you would have complied with a request for  
13 the information?

14 A I believe I said that I would probably would  
15 look at that and comply with the request.

16 Q And by comply you meant, I think, and correct me  
17 if I'm wrong, you meant that we wouldn't  
18 necessarily give them a copy of the report in  
19 that original form, but we would carve out the  
20 information that they said they didn't have and  
21 give it to them?

22 A Yes. The position that we took, obviously, that  
23 if there was new information that we believed  
24 that Manitoba Justice did not have, then it  
25 should be provided in the proper forum. The

1 review report was not the proper forum to pass  
2 on that information.

3 Q Do you accept, Chief Ewatski, that if you were  
4 wrong and Manitoba Justice didn't have some of  
5 this information, they could hardly ask you for  
6 the information if they didn't know it existed?

7 A Again, you know, Mr. Olson, I will go back to  
8 the conclusion that we drew at the end of our  
9 review is that we felt that Manitoba Justice had  
10 all of the information.

11 Q Well, you did have a press conference at one  
12 point in which you indicated the conclusions of  
13 the review indicated there was no new evidence  
14 uncovered?

15 A No new evidence? I believe that, I can't  
16 remember exact words, but certainly the gist of  
17 my comments were the fact that the information  
18 that we had uncovered and reserved during the  
19 course of our review was known by Manitoba  
20 Justice.

21 Q Well, it is Exhibit 29D, tab 12 and 13, and I  
22 had it open in front of the registrar. I don't  
23 know, I will show it to you if you need it, sir.

24 MS. CARSWELL: Sorry, the tab, Mr. Olson?

25 MR. OLSON: 12 and 13.

1 MS. CARSWELL: Thank you.

2 BY MR. OLSON:

3 Q And the statement apparently made, and I can  
4 bring it to you, Mr. Ewatski, is all evidence  
5 was supplied to Manitoba Justice --

6 THE COMMISSIONER: Sorry, I am a little bit  
7 behind you.

8 MR. OLSON: The second paragraph of the  
9 statement of Chief Jack Ewatski at tab 12 of  
10 Exhibit 29D.

11 THE COMMISSIONER: Okay. Yes.

12 BY MR. OLSON:

13 Q And this was the conclusion, apparently, of the  
14 review committee, sir.

15 "We have further concluded there was no new  
16 evidence that would lead us to believe that  
17 James Driskell was not involved in the  
18 death..."

19 Just before that,

20 "It fulfilled our obligation that all  
21 evidence was supplied to Manitoba Justice."

22 A If those were my written words, sir, then that's  
23 what I said.

24 Q Yes.

25 A Thanks for reminding me.

1 Q You are perfectly welcome to see it if you like.

2 A No, I believe what you are reading, sir.

3 Q And that was November of '03. And within an  
4 hour or two, as I recall it, sir, there was a  
5 statement issued by Manitoba Justice saying that  
6 was inconsistent with the information in the  
7 Crown's file?

8 A That's correct, sir.

9 Q So you knew at that point, sir, that there was a  
10 difference between you, and that Justice was  
11 saying that we don't have that information?

12 A That's certainly how I interpreted  
13 Mr. MacFarlane's comments.

14 Q And we know that in terms of the requests for  
15 copies and so on, there should be in front of  
16 the registrar two documents, document books.  
17 One entitled Documents for the Cross-examination  
18 of Chief Ewatski and the other one is further  
19 documents, both of them having four tabs. If we  
20 could have those marked 42A and B or some  
21 similar system?

22 THE COMMISSIONER: Okay. Let me just see where  
23 we are here.

24 THE CLERK: Exhibit 42.

25 THE COMMISSIONER: Yes, Exhibit 42A and B?

1 THE CLERK: Yes, Mr. Commissioner.

2 THE COMMISSIONER: Let's just identify them.

3 MR. OLSON: The only difference between the face  
4 page, Mr. Commissioner, is further. One is  
5 documents and the other one is further.

6 THE COMMISSIONER: All right. Documents will be  
7 42A and further will be 42B.

8 (EXHIBIT 42A: Documents for  
9 cross-examination of Chief Ewatski)

10 (EXHIBIT 42B: Further documents for  
11 cross-examination of Chief Ewatski)

12 THE WITNESS: I have them in front of me, sir.

13 BY MR. OLSON:

14 Q Okay. In that first one, tab 3 of that letter  
15 to Mr. Lockyer April 7, 2003 from Mr. Schille,  
16 you see from page 2 it is copied to Inspector  
17 McCorrister, Chief?

18 A That's correct, sir.

19 Q And on page 1 of that, you will see in the last  
20 four lines of the third paragraph reads:

21 "The police have indicated to both Crown  
22 and Defence previously that post-conviction  
23 materials will not be provided at this  
24 time. Manitoba Justice is not in  
25 possession of post-conviction disclosure

1           that has been requested, nor has the  
2           department had access to the materials."

3     A     That's what it says here, yes, sir.

4     Q     And you don't quarrel with that?

5     A     Pardon me, sir?

6     Q     You don't quarrel with that?

7     A     That's what's written here, sir.

8     Q     And they hadn't had disclosure?

9     A     If Mr. Schille is referring when he says  
10           post-conviction materials to the review report,  
11           that would be accurate, sir.

12    Q     Yes, thank you. That's all I'm concerned with  
13           in these questions.

14    A     Okay, sir, thank you.

15    Q     In tab 4 in that same volume, sir, five days  
16           later Inspector McCorrister sends a memo back to  
17           Mr. Schille, April 22, 2003. Do you see that?

18    A     Yes, sir.

19    Q     Page 3 of that document, it has the numbers 5,  
20           6, 7, 8 in the right-hand corner?

21           THE COMMISSIONER: Could you bear with me?

22           MR. OLSON: Yes.

23           THE COMMISSIONER: Yes.

24           BY MR. OLSON:

25    Q     The bottom right-hand corner 5, 6, 7, 8, and the

1 last paragraph on that page from Inspector  
2 McCorrister,

3 "With respect to the post-conviction review  
4 of the case conducted by the service in  
5 1993, Chief Jack Ewatski has stated he is  
6 not willing to release all of the material  
7 in the review."

8 A It says that, yes, sir.

9 Q And that's what you made clear to him?

10 A That was the position that I had maintained,  
11 that the Winnipeg Police Service was not going  
12 to release it.

13 Q Right. Including to Manitoba Justice, correct?

14 A Well, sir, Manitoba Justice had not asked for  
15 the report, sir. This memo is in response,  
16 again, like I said, it's my understanding from  
17 Mr. Schille to facilitate the movement of  
18 documents, the movement of information between  
19 the Police Service and Mr. Lockyer. And we took  
20 this as them asking, on behalf of Mr. Lockyer,  
21 for a copy of that review.

22 Q Are you suggesting, Chief Ewatski, that if  
23 somebody else other than Schille from the  
24 Department of Justice had called you, you would  
25 have said, sure, you can have a copy?

1 A Sir, that never happened.

2 Q Are you suggesting that would have been your  
3 answer, Chief Ewatski?

4 A Sir, we were not asked by Manitoba Justice  
5 specifically for a copy of the review report for  
6 their purposes.

7 Q And were you prepared to give them a copy had  
8 somebody other than Schille asked for it, Chief  
9 Ewatski?

10 A I don't know, sir.

11 Q You don't know?

12 A I don't know how to answer that question.

13 Q What we do know is you didn't give them a copy?

14 A That's correct, because it was not asked for  
15 from Manitoba Justice, and we took the position  
16 right from the time the report was submitted  
17 that that would be an internal document, that it  
18 would not be shared outside of the Police  
19 Service. That decision was made by Chief Henry  
20 and it was maintained by Chief Cassels and  
21 myself.

22 Q Exhibit 42B, the book of documents, further  
23 documents, tab 1 of that, sir? In May 2, 2003,  
24 a letter again from Schille to Mr. Libman here  
25 to my immediate right, far right, I am sorry.

1 MR. LOCKYER: Yes, please.

2 BY MR. OLSON:

3 Q Again, on page 3 of that you will see it is  
4 copied to Blair McCorrister?

5 A That's correct, sir.

6 Q The last paragraph of that letter, sir, page 3,  
7 "The police have advised me that materials  
8 relating to the post-conviction  
9 investigation will not be provided to the  
10 Crown."

11 A That's what it says, sir.

12 Q And was your position somewhat different than  
13 that, sir, because that's apparently what  
14 Mr. Schille was told?

15 A In the context of Mr. Schille requesting that  
16 information, along with other documents from us,  
17 to facilitate the movement to Mr. Lockyer of  
18 those documents, that was our position.

19 Q At this time you had already responded to a  
20 FIPPA request, filed on behalf of Mr. Driskell,  
21 for a copy of the report and an edited version  
22 had been provided to them. Is that fair?

23 A An edited version had been provided under the  
24 Freedom of Information Act, I believe it was by  
25 Ms. Duncan.

1 Q Yes. So in this letter Mr. Schille goes on to  
2 say to Mr. Libman:  
3 "Police did indicate they would furnish the  
4 Crown with an edited copy of Chief  
5 Ewatski's report if requested by the Crown  
6 and I will be making the request."

7 A That's what it says, sir.

8 THE COMMISSIONER: I'm sorry, Mr. Olson?

9 MR. OLSON: That's tab 1, still in 42B.

10 THE COMMISSIONER: You do move fairly quickly.

11 MR. OLSON: Sorry.

12 THE COMMISSIONER: And whereabouts in tab 1?

13 MR. OLSON: That's the same paragraph in 42B.

14 THE COMMISSIONER: Okay. Sorry. Of course, of  
15 course. Okay.

16 BY MR. OLSON:

17 Q So two thoughts, one, Schille says the report is  
18 not going to be given to us, we have been told  
19 that, but they have told us that if we request  
20 the edited one, they will send it, and I'm going  
21 to make that request?

22 A That is what he says, sir. But, again, in the  
23 context of the requests coming from Mr. Schille,  
24 this was a request to facilitate the movement of  
25 documents to Mr. Lockyer. So I think we have to

1 put our response in that context, sir, or at  
2 least I would like to put my response in that  
3 context, sir.

4 Q Why wouldn't you have sent them a copy of the  
5 edited one when you responded to the FIPPA  
6 request? You knew they had an interest in it.  
7 Why did they have to ask for it?

8 A If Manitoba had an interest in it, sir, like you  
9 put it, they would have asked for it, but they  
10 did not ask for it at that point of time.

11 Q Mr. Schille works for the Department of Justice,  
12 Manitoba, he asked for it, Chief Ewatski.

13 A He said he would ask for it. And I'm trying  
14 to -- I guess we will have to see whether or not  
15 that request was made and if they were provided  
16 a copy of the edited one.

17 Q Tab 2 in that same volume, sir. Some 11 days  
18 later you will see that Mr. Schille sends it  
19 through to Mr. Finlayson under cover of a memo  
20 of May 13th. And you will see the receipt stamp  
21 from the Department of Justice. Attached,  
22 apparently, there is a copy of the review?

23 A Sir, then obviously --

24 Q An edited review?

25 A Then, obviously, we had sent it to him.

1 Q Obviously, he had requested it and obviously --

2 A And we sent it to them.

3 Q No. Obviously, he requested it and then he  
4 received it, Chief Ewatski. Because he has told  
5 Libman that he has to first request it before  
6 they get it.

7 A That would be obvious, sir, yes, sir, that he  
8 had requested it if we had supplied it.

9 Q Sure. And then at tab 3 of that same volume,  
10 sir, this time a memo from Mr. Schille to  
11 Mr. Finlayson, November 26th, 2003, there is --  
12 just so that you understand what you're looking  
13 at in this, it's a memo, sir, but there are two  
14 copies of page 2. One has got a sticky on it  
15 and you can just ignore that. It has got the  
16 word "outline," but the next page is a complete  
17 copy of page 2. It is only a three-page memo.

18 A I see it, sir.

19 Q Four-page memo, sorry, yes. So if you go to the  
20 top of the next page, which is 1121 in the  
21 bottom right-hand corner?

22 A Yes, sir.

23 Q You will see Mr. Schille is advising  
24 Mr. Finlayson that,

25 "The police were not willing to provide the

1 document to the Crown."

2 And they are talking there about the homicide  
3 review.

4 "I attempted to mediate so the process  
5 could proceed, and eventually it was agreed  
6 that once the accused filed a formal 696  
7 application, the report would be supplied  
8 to the Federal Justice Department...",  
9 et cetera.

10 A I see that, sir. And, again, that would  
11 reinforce the opinion that we had relative to  
12 the request made by Mr. Schille that was  
13 facilitating the transfer of documents between  
14 the Police Service and Mr. Lockyer.

15 Q Well, I don't understand the reluctance to send  
16 it to Manitoba Justice in any capacity, sir.  
17 You knew it was of interest to them. You knew  
18 there was media reports. You knew there was a  
19 potential 696 coming up. Why wouldn't you send  
20 some version with the material facts in it to  
21 Justice?

22 A Sir, you made a comment saying that I knew that  
23 it was of interest to them. If it was of  
24 interest to them, they would have requested it.  
25 And to my recollection and my knowledge, they

1 did not request a copy of that review report at  
2 any time, whether it be from Chief Henry, Chief  
3 Cassels, or myself.

4 Q All they did was ask McCorrister and Burchill  
5 and they were told they couldn't have a copy?

6 A Mr. Schille was facilitating the movement of  
7 documents, and Inspector McCorrister and  
8 Detective Burchill were taking that action on  
9 behalf of the Police Service to move those  
10 documents from the Police Service to Mr. Lockyer  
11 through the Crown's office.

12 Q Let's deal, Chief Ewatski, with your belief  
13 that, or understanding that there wasn't any  
14 evidence that was new to the Crown in your  
15 homicide review, all right?

16 A Yes, sir.

17 Q First of all, we know from your own evidence  
18 that you have no independent recollection of  
19 these matters, other than the notes which were  
20 taken either by Inspector Hall or yourself, or  
21 the report itself?

22 A I have a recollection --

23 Q Oh, do you?

24 A -- of this matter beyond the notes, yes, sir. I  
25 have never said that I didn't have total, no

1           recollection on other matters. There are some  
2           things -- my memory is, I cannot recall all of  
3           the facts.

4    Q       Well, I was speaking specifically of your  
5           discussions with Miller, Dangerfield and Lawlor,  
6           sir?

7    A       Yes, sir.

8    Q       I understood your evidence was you had no  
9           specific recollection of what was said to any of  
10          them or what they said to you, other than what's  
11          in the notes?

12   A       I certainly attempted to provide the  
13          Commissioner with my recollection of the  
14          interaction and the dialogue that we had between  
15          Mr. Miller, and then between Mr. Lawlor and  
16          Mr. Dangerfield, as best as I could remember,  
17          and tried to utilize my notes to remember the  
18          details and, again, not being able to say with  
19          certainty whether certain questions were asked  
20          or not asked. I certainly admitted to the fact  
21          that I could not remember.

22   Q       Tab 1 of your document book, sir, 28A, if you  
23          can put that in front of you?

24   A       Yes, sir.

25   Q       On page 7 of your summary of interview, Chief

1           Ewatski, from there carrying forward there is a  
2           number of references at pages 7 through 11 to  
3           what's called new evidence. Do you see that?

4   A       I have it in front of me, sir.

5   Q       Yes. And others have asked you questions in  
6           detail, and I will try not to duplicate that,  
7           sir. But all of these items, 1 through 6, that  
8           are listed in pages 7 through 11, are under the  
9           heading "New Information Discovered in Review"?

10   A       That's the way it is written in this report,  
11           sir, yes.

12   Q       And you've, obviously, accepted that because you  
13           had an opportunity to review and approve this  
14           summary?

15   A       I certainly accepted, for the most part, this  
16           being an accurate summary of the interview that  
17           I had with Mr. Code. I also mentioned at the  
18           time that there were some concerns that I had  
19           relative to some of this information. And I  
20           believe Mr. Code and I went through some of  
21           those concerns.

22   Q       Yes. For instance, we know at page 8, after  
23           talking about the Crime Stoppers payment, the  
24           sixth and seventh line,

25                        "As far as Ewatski was aware, the police,

1           with the possible exception of Sergeant  
2           Williams, and the Crown had not previously  
3           known about the Crime Stoppers payment to  
4           Gumieny."

5   A    That's correct, sir.

6   Q    Right. So that's a piece of new evidence that  
7        you uncovered?

8   A    That was a piece of evidence that we uncovered  
9        at the time of the review that -- and I believe  
10       I testified to this earlier -- that we believed  
11       that was not applicable to disclosure to the  
12       Crown. Obviously, I now realize that that  
13       information should have been passed on to the  
14       Crown at the time when it occurred, and I  
15       believe I testified to that, that that is the  
16       case. But our opinion at the time of writing  
17       that report was that information was not the  
18       type of information that would be passed on to  
19       the Crown.

20   Q    Right. And in respect of number 2, the apparent  
21        perjury, you can conclude that one at page 9:

22                "Ewatski agrees Miller may not have known  
23                all of the details of the Swift Current  
24                arson investigation that they learned from  
25                their perusal of the RCMP file."

1 A Absolutely, that statement is correct in the  
2 context of the fact that we were privy to the  
3 entire file. And for me to say otherwise, for  
4 me to say that Mr. Miller was aware of every  
5 single detail in that file would certainly be  
6 inaccurate. But certainly Mr. Miller was aware  
7 of the general terms of that file, and to a  
8 point where we drew the conclusion that he was  
9 well aware of it. And I even believe that that  
10 was brought out during the course of our  
11 interview with Mr. Miller, that it appeared to  
12 us that he certainly was well aware of all of  
13 the aspects of the Swift Current arson.

14 Q I don't think you will find that anywhere in the  
15 notes, sir. But we will leave that for  
16 argument.

17 What it does say is that you agree that  
18 Miller may not have known all of the details of  
19 the Swift Current arson investigation, and  
20 that's because you spoke to Miller and then went  
21 to Swift Current?

22 A That is correct, sir. But, again, I think to  
23 put it in the proper context, it was obvious  
24 that Mr. Miller would not have all of the  
25 details, all of the details that were contained

1 in that file, but certainly it was -- we drew  
2 the conclusion that he certainly was aware of  
3 the gist of that and the salient and important  
4 points of that file.

5 Q By the way, the Crime Stoppers' payment that we  
6 just dealt with, sir, you didn't ask the police  
7 officers that you talked to, either informally  
8 or otherwise, about the Crime Stoppers?

9 A I don't believe we did, sir.

10 Q Why not?

11 A At that point I don't think there was a reason  
12 to, sir.

13 Q And you didn't pass the information with respect  
14 to Crime Stoppers on to the Crown, I think you  
15 acknowledged that?

16 A Well, sir, we took the position back in 1993  
17 that that information would not be information  
18 that would be shared with the Crown.

19 Q Right.

20 A So that was a decision why nothing was done with  
21 that information, that's all.

22 Q Now, with respect to the immunity that's at page  
23 9, sir --

24 A Yes, sir.

25 Q -- on the fifth line you say,

1           "The existence of this dispute between the  
2           RCMP on the one hand...",

3           I am at page 9, the middle of that page. Are  
4           you there, Chief Ewatski, under the heading  
5           Immunity?

6           "The existence of this dispute between the  
7           RCMP, on the one hand, and the WPS and  
8           Manitoba Justice, on the other, appeared to  
9           be a new piece of information."

10          A     That's correct, sir.

11          Q     And you knew that that was something different  
12                than what Miller had told you, which was that  
13                there was no immunity deal?

14          A     I also believe that Mr. Miller was very aware of  
15                the confusion that existed around the  
16                interactions between the Winnipeg Police Service  
17                and the Swift Current RCMP surrounding this  
18                matter.

19          Q     Whether that's so or not, sir, you talked to him  
20                before you went out and reviewed the entire  
21                file, which he, you knew, had never done?

22          A     That is correct, sir.

23          Q     And you did not share your information after  
24                reviewing that Saskatchewan file with  
25                Mr. Miller, Mr. Dangerfield or Mr. Lawlor, after

1           having reviewed that Saskatchewan file?

2   A       Well, sir, you know, I think we took the opinion  
3           that there was nothing that would contradict the  
4           discussions that we had with Mr. Miller or  
5           Mr. Dangerfield relative to what we had  
6           discovered in Swift Current. We were talking,  
7           you know, about the same information. Now,  
8           perhaps the level of detail that we were able to  
9           observe and uncover during the course of the  
10          examination of the Swift Current file, obviously  
11          there was much more information in there than  
12          any of those gentlemen would have at their  
13          fingerprints. But, certainly, in the general  
14          sense of this information, they certainly  
15          appeared to be very aware of all those aspects.

16   Q       Well, in fact, Chief, you and Inspector Hall  
17          were sufficiently persuaded, following your  
18          review of the Saskatchewan file, that you made  
19          the statement in your report that a strong case  
20          can be made for the Saskatchewan position;  
21          right?

22   A       It was an observation that we made during the  
23          course of the review, sir.

24   Q       Right. And you never shared that with Miller,  
25          Dangerfield or Lawlor?

1 A Well, sir, we certainly had the sense from all  
2 three of those gentlemen that they knew that  
3 there was confusion surrounding this matter  
4 relative to the immunity aspect of it. And all  
5 we were doing was identifying what we had done,  
6 the information that we were privy to, in terms  
7 of say, laying it out and saying this is what it  
8 is. And a case could be made that, yes,  
9 whatever was said or whatever was contained in  
10 the Swift Current file could be accurate. Just  
11 as similar as whatever was documented by the  
12 Winnipeg Police Officers could be accurate. We  
13 weren't coming to any conclusions on it, sir.  
14 That wasn't our role.

15 Q But knowing that Miller believed there was no  
16 immunity, and then there is a dispute, and you  
17 reviewed the Saskatchewan file, and you formed  
18 some tentative conclusions that that's pretty  
19 persuasive, didn't you realize that might be of  
20 assistance to the Crown in Manitoba?

21 A I don't believe we took the opinion that that  
22 information in the Swift Current file was any  
23 more persuasive than the reports and the  
24 evidence given by the members of the Winnipeg  
25 Police Service relative to this matter.

1 Q Zanidean's telephone call, this is at page 9 of  
2 your summary, sir, to Brodsky on June 20, '91?

3 A That's correct, sir.

4 Q Do you see that?

5 A Yes.

6 Q In that regard, as I understand your evidence,  
7 it was Sergeant Paul led you to believe that he  
8 had passed this on, that is the information  
9 about this, to his inspector, who in turn, Paul  
10 believed, was going to pass it on to Miller?

11 A I believe that was the understanding, sir.

12 Q You never checked with the inspector?

13 A No, sir.

14 Q And you never checked with Miller as to whether  
15 it was passed on?

16 A I don't recall. I don't believe we did, sir,  
17 no.

18 Q Why not?

19 A I don't know if I could answer that at this  
20 point in time, sir. I don't know.

21 Q Well, on the basis --

22 A We had no reason to disbelieve what Sergeant  
23 Paul had told us.

24 Q No. But the point is, Chief Ewatski, you're  
25 saying you assumed and you believed and you

1 understood that Dangerfield, Lawlor, Miller, the  
2 Crown had all of this information, they had all  
3 of these particulars. And on this particular  
4 point you're relying on double hearsay, without  
5 checking any of the sources as to whether it  
6 ever occurred, nor raising it specifically with  
7 Miller, Dangerfield or Lawlor?

8 A Well, sir, you know, I'm trying to recall our  
9 mindset during the course of our conversations  
10 with him, but I would certainly think that if  
11 Mr. Miller, or Mr. Dangerfield, or Mr. Lawlor  
12 had a concern about any of this information, if  
13 they felt that there was any disconnect or  
14 things that they did not know, they would have  
15 brought that to our attention. They wouldn't  
16 have told us that they were completely satisfied  
17 with the involvement they had with our  
18 investigators.

19 Q Chief Ewatski, we are going full circle. How  
20 did they know to bring that to your attention  
21 that they have a concern when they are not told?

22 A Not told what, sir?

23 Q Anything about the call on June 20, '91?

24 A Well, sir, they were certainly aware of the fact  
25 that a call had been made. That was public

1 knowledge out there. And whether or not that  
2 was actually discussed specifically with  
3 Mr. Dangerfield and Mr. Lawlor, I can't recall.  
4 But, again, you know, we're trying to -- I guess  
5 I'm trying to articulate a sense that we got  
6 during the course of these conversations. And  
7 the sense that we took, as to what I believe  
8 were experienced investigators, to believe that  
9 there was nothing that contradicted what we had  
10 uncovered compared to what they had known. And  
11 if some of that was assumptions, then they were  
12 assumptions.

13 Q Well, we know that in terms of the telephone  
14 call to Brodsky, Inspector Hall, who was with  
15 you throughout the conduct of this homicide  
16 review, indicated in his evidence that it can be  
17 inferred that senior WPS officers and the Crown  
18 may not have known about it. That's what his  
19 evidence was.

20 A Well, that's Inspector Hall's opinion on that,  
21 sir.

22 Q Well, let me get this straight then. You had  
23 certain understandings and beliefs, but they  
24 weren't necessarily shared by your co-author of  
25 the report?

1 A Sir, relative to that fact, we were aware of the  
2 fact that when we found out that Sergeant Paul  
3 had actually performed certain activities  
4 relative to that phone call, we had him submit a  
5 report -- a report, a proper police report  
6 relative to that information.

7 Q And do you recall specifically raising the  
8 Zanidean telephone call to Brodsky when you met  
9 with Dangerfield and Lawlor in August of '93?

10 A I can't recall, sir. We may have.

11 Q Well, Hall says that he never raised it.

12 A Well, that's Inspector Hall's recollection. I  
13 can't recall if it was raised or not, sir. I am  
14 not saying we did, I am not saying we didn't.

15 Q Page 12 of his interview, but that's his  
16 recollection, sir.

17 A Well, sir, I am not going to argue with what he  
18 said to Commission Counsel, but my recollection  
19 is I can't recall.

20 Q In respect to John Gumieny's recantation  
21 threats, again in your summary, sir, that's  
22 something that from today's perspective should  
23 have been disclosed?

24 A I believe when I had the interview with  
25 Mr. Code, I wasn't aware of the fact that

1 Inspector Hall had actually passed on  
2 information to Mr. Miller relative to this issue  
3 itself.

4 Q Sorry, are you saying Hall did pass on  
5 information to Miller?

6 A That's my understanding, sir.

7 Q I see.

8 A Both in writing and during a telephone  
9 conversation.

10 Q In fact, Hall's evidence at page 13 of his  
11 summary, sir, is that Miller did not  
12 specifically state that he was aware that  
13 Gumieny had threatened to recant his trial  
14 testimony, and Hall did not specifically tell  
15 him that?

16 A Well, sir, I recall having an exhibit put forth  
17 to me earlier on in my testimony that shows that  
18 there was a memo that was sent from Inspector  
19 Hall to Mr. Miller that talked about this issue.

20 Q So you can't help us with that?

21 A Well, I am trying to help you, sir. I believe  
22 that is the case that --

23 Q I am talking about your memory, Chief Ewatski?

24 A To go back to your question, sir, on this fact  
25 alone, when I was interviewed by Mr. Code, I

1           wasn't aware of that. I could not recall  
2           whether or not Inspector Hall had either had a  
3           verbal conversation with Mr. Miller on this, or  
4           had written communication. But now I've learned  
5           that there had been contact by Inspector Hall  
6           with Mr. Miller on this.

7        Q     What we know, Chief Ewatski, is that you have  
8           testified in these proceedings at page 3587 of  
9           your previous evidence -- let me get it to make  
10          sure I don't misquote you, sir. Mr. Code I  
11          think was asking you, at page 3587, whether  
12          there was any explanation as to why factual  
13          information was not reported to the Crown in an  
14          appropriate form like a supplemental report. Do  
15          you recall you had that discussion with  
16          Mr. Code, well, if you are not sending the  
17          actual report, why don't you put the facts that  
18          you've learned into a supplemental report,  
19          that's the appropriate form, and send it in that  
20          form? Do you recall that line of questioning?

21        A     I believe so.

22        Q     Yes. And your answer at line 9 was,  
23                        "I think, just as Inspector Hall indicates  
24                        too, that we were of the opinion this  
25                        factual information was already known by

1                   the Crown."

2   A     In a sense, yes, it was known by the Crown.  
3           That was our position, sir.

4   Q     But that isn't what Inspector Hall said.  
5           Inspector Hall said some of this new  
6           information, which included the items I've just  
7           gone through, was already known by Manitoba  
8           Justice, not all of it.

9   A     Sir, you are asking me to comment on Inspector  
10          Hall's interview. I don't know what -- I don't  
11          know what you expect as an answer for that.  
12          Those are his words.

13   Q     So let me get to your meeting, your specific  
14          meeting, sir, with Dangerfield and Lawlor. I  
15          think that, you can look at your own notes if  
16          you like, I think the more complete version,  
17          sir, is at tab 4 of exhibit 28B, which I think  
18          are Inspector Hall's notes. At 810, if you can  
19          read the bottom right-hand corner?

20   A     810, sir?

21   Q     Yes.

22   A     I have it in front of me.

23   Q                "Meet with Crown Attorneys George  
24                    Dangerfield and Gregg Lawlor. Discuss  
25                    case. They are happy with the information

1                   supplied by the police."

2                   And it's your evidence that in the two words  
3                   "discuss case," you went through all of this  
4                   evidence that you've told us about, which you've  
5                   discovered in your homicide review, and you were  
6                   satisfied and got the understanding and belief  
7                   from them that they already knew all of that.  
8                   Is that your evidence?

9                   A    Mr. Olson, Inspector Hall's notes and my notes  
10                   relative to our meeting with Mr. Dangerfield and  
11                   Mr. Lawlor are certainly a summary of that  
12                   interview.  These are not verbatim notes.  There  
13                   was significant discussion that took place  
14                   between the four of us.  This is a summary of  
15                   it.  And that is certainly the opinion that we  
16                   came up with, that they had been provided with  
17                   all of the information that was relevant to this  
18                   case by the police.

19                  Q    Well, Chief Ewatski, you're a person who has a  
20                   long and quite storied career in the Winnipeg  
21                   Police Service.  You taught notebook taking and  
22                   the importance of recording back in 1990.  You  
23                   have been Chief since 1997, sorry --

24                  A    '98.

25                  Q    -- 1998, and it never occurred to you to record

1 the types of things that, the types of evidence  
2 that led you to the belief that Justice knew  
3 everything that you and Hall knew in your  
4 homicide review?

5 A Sir, this was not a criminal investigation where  
6 I would make notes much more comprehensive,  
7 Inspector Hall probably would have made notes  
8 much more comprehensive. This is a review. I  
9 can tell you, though, this, sir, that if there  
10 was any concern relative to anything that would  
11 have been identified by Mr. Lawlor or  
12 Mr. Dangerfield, that would contradict what we  
13 had, what we had observed during the course of  
14 our review, during the course of our discussion  
15 that would cause us concern to say, do you know  
16 what, something doesn't make sense here, we  
17 would have certainly noted that and acted upon  
18 that. But that wasn't the case. This review  
19 was done, not like a homicide investigation, it  
20 was not done like a major crime investigation,  
21 it was done in this manner where, I guess in  
22 hindsight, in retrospect, maybe it would have  
23 been better that we would have recorded every  
24 interview that we took, had with everybody, to  
25 have a complete record. We did not think that

1 that was necessary for the mandate that we were  
2 given. But I can certainly tell you, though, if  
3 there were concerns that anything would have  
4 been said by Mr. Lawlor or Mr. Dangerfield that  
5 would have concerned us, saying that there is  
6 contradiction here, we certainly would have made  
7 a note of that, sir.

8 Q Well, you keep saying that, Chief Ewatski, and I  
9 accept what you say, except that it puts the  
10 cart before the horse. They can't express  
11 concern unless they know what information you  
12 have.

13 A I will go back to the fact that it was even in  
14 Inspector's Hall notes saying that we discussed  
15 this, and we discussed this in great length and  
16 had a significant discussion with both the  
17 prosecutors. What exactly was said, I can't  
18 recall, but we certainly did not have a  
19 five-minute conversation with them and drew that  
20 conclusion in a short period of time.

21 Q You see, the difficulty this Commissioner is  
22 faced with on all of the evidence, Chief  
23 Ewatski, is that we end up with this position  
24 with respect to the Winnipeg Police Service, we  
25 have you saying, I believe that the Crown knew

1 everything that I knew, but never recording what  
2 you discussed with them. And we have  
3 Vandergraaf come in and saying, a couple of days  
4 before trial, I went over, sat down with George  
5 Dangerfield, told him everything I knew, and  
6 there are no notes of that and no recording of  
7 that. And we have Anderson and Paul coming in  
8 and saying, we met with Miller and Miller told  
9 us something, and we have no notes of that. And  
10 yet I thought notebook taking, accuracy,  
11 precision, recording, was part of police  
12 practice, good police practice. And yet all of  
13 the WPS position in these proceedings is hinged  
14 on poor police practice. Can you help me with  
15 that?

16 A Well, sir, first of all, I will agree that the  
17 Commissioner certainly has a challenge in front  
18 of him relative to that issue itself. But I can  
19 tell you that we conducted this review  
20 thoroughly, completely, based on the mandate  
21 that we had. We did not see a reason to take  
22 verbatim notes when discussing this issue with  
23 the prosecutors. I think that perhaps some  
24 credit has to be given relative to our level of  
25 experience, knowing that if there was something

1 that was discussed during the course of the  
2 interview with Mr. Dangerfield and Mr. Lawlor,  
3 that we would certainly note it and act on it.  
4 I believe I testified that we conducted this  
5 review in an objective manner. And I think  
6 that's evidenced in the way the -- we  
7 communicated that to Chief Henry in the form of  
8 that review report. We laid out everything as  
9 we saw it, based on our examination of this  
10 investigation. And if we have left anybody in a  
11 difficult position to try to understand all of  
12 the details of all of these conversations, then  
13 I don't know what I can say about that, other  
14 than the fact that that is the way we conducted  
15 it, that is the way we documented it. But I  
16 certainly have no problem with the manner in  
17 which we conducted this review in terms of how  
18 we documented our results.

19 Q Well, others may not share that view. Thank  
20 you, those are my questions, sir.

21 A You're very welcome.

22 THE COMMISSIONER: Thank you, Mr. Olson.

23 MR. WOLSON: I'm always racing against the  
24 clock, it seems.

25 THE COMMISSIONER: Oh, no, the clock will run

1 tomorrow as well, but you've got 13 minutes and  
2 28 seconds.

3 MR. WOLSON: For the purposes of my  
4 cross-examination, I'll be referring to exhibits  
5 28A and B, which are the Commission Counsel's  
6 books for Chief Ewatski. I will also be  
7 referring to Exhibit 6B, in particular tabs 11  
8 and -- I'm sorry, 10 and 11, and Exhibit 30B and  
9 C.

10 THE COMMISSIONER: Okay.

11 BY MR. WOLSON:

12 Q Chief Ewatski, you and I go back a long, long  
13 way. We have often been on opposite sides of an  
14 issue, disagreed on some occasions, but always  
15 respectfully so, so we know each other quite  
16 well.

17 A I would agree that would be accurate, but we  
18 have agreed on some occasions, Mr. Wolson.

19 Q Some occasions.

20 A I wouldn't want to leave the wrong impression,  
21 Mr. Commissioner.

22 Q Now, on March 31, 1993, you were directed by  
23 Chief Henry and Deputy Klippenstein to initiate  
24 a review of the police investigation in this  
25 matter?

1 A That is correct, sir.

2 Q The media had produced a series of articles  
3 alleging, one, that the police did not disclose  
4 information to the Crown?

5 A That is correct, sir.

6 Q And, secondly, that there had been an  
7 arrangement made with one of the Chief Crown  
8 witnesses, Zanidean, which may have compromised  
9 his evidence. So you were -- when you conducted  
10 your interviews with people, the issue of a deal  
11 was in your mind?

12 A The allegation of that, yes, sir.

13 Q Yes. Your mandate was to review the file in a  
14 purely analytical way that comes from the report  
15 itself?

16 A That is correct, sir.

17 Q And the review was to be objective, not  
18 protecting any police officer, but thinking of  
19 the department as a whole?

20 A That is correct, sir.

21 Q Now, you have been a high-ranking police officer  
22 as an inspector and now the Chief for many  
23 years. And your policy, and we have often been  
24 on opposite sides in this regard, your policy  
25 has always been that if an officer steps beyond

1 the proper guidelines, as a police officer, that  
2 he or she would be held accountable?

3 A I believe, and I wouldn't call it my policy, but  
4 certainly my position --

5 Q Yes.

6 A -- on accountability is that if members act  
7 outside of their training and act outside of the  
8 service policy, that they would certainly be  
9 held accountable for those actions.

10 Q And that was your mind set when you conducted  
11 this review?

12 A That's correct, sir.

13 Q And that's your mind set today?

14 A That's correct, sir.

15 Q You were responsible for directing a  
16 re-investigation in the Thomas Sophonow matter  
17 where Mr. Sophonow had been convicted of a  
18 murder, wrongfully so, and your investigation  
19 conducted by members of your service, in effect,  
20 exonerated him?

21 A That is correct, sir.

22 Q And in doing so there was criticism of some of  
23 the officers from the Winnipeg Police Service?

24 A That is correct, sir.

25 Q So that you've been prepared, and were in this

1 review itself, to make tough calls and hold your  
2 officers responsible?

3 A That is correct, sir.

4 Q And accountable?

5 A That is correct, sir.

6 Q Mr. Prober, my good friend made a suggestion to  
7 you, the transcript, for the record, it's at  
8 volume 16, page 3787. He said to you at one  
9 point:

10 "You sat on this report to protect your  
11 police officers?"

12 That's totally untrue, one, I take it?

13 A That's totally untrue, yes, sir.

14 Q And totally inconsistent with your mind set and  
15 practice over the years?

16 A That is correct, sir.

17 Q He said,

18 "Your interviews with the Crowns were  
19 lacking in terms of your notetaking of the  
20 contents of those interviews to protect  
21 your officers."

22 That's totally inconsistent with you, is it not,  
23 sir?

24 A That is correct, sir.

25 Q And untrue?

1 A That is correct, sir.

2 Q Now, when you went to the Crowns and you  
3 interviewed Bruce Miller, and ultimately, or  
4 then some months later Mr. Dangerfield and  
5 Mr. Lawlor, you did so with a certain focus in  
6 mind, was there information that the police had  
7 gathered, that you became aware of, that failed  
8 to make its way to the Crown's office?

9 A That certainly was central in our thought  
10 process, sir.

11 Q You didn't go there in a vacuum. You were going  
12 there with your mandate uppermost in your mind?

13 A That is correct, sir.

14 Q You wanted to find that out and you wanted to  
15 find out if there had been some kind of a deal  
16 made with Zanidean? These are questions that  
17 you were going to ask all of the Crowns  
18 involved?

19 A They were some of the questions we would ask  
20 them, sir.

21 Q At tab 28, or exhibit 28B, tab 7, the bottom of  
22 the page 197 -- so it's the thinner book of your  
23 second book for Commission Counsel. Do you have  
24 that with you?

25 THE COMMISSIONER: It's the one with your name

1 on the front, the thinner one, volume 2.

2 THE WITNESS: This one here?

3 BY MR. WOLSON:

4 Q Tab 7.

5 A Would that be questions for Director of Winnipeg  
6 Prosecutions, Bruce Miller?

7 Q That is so.

8 A I have it in front of me.

9 Q If you look halfway down the page, and you,  
10 prior to meeting with Miller, you prepared a  
11 number of questions and then, of course, in your  
12 meeting with him, you would go beyond those  
13 questions, I'm assuming, wherever the  
14 conversation took you?

15 A My recollection was that we compiled the  
16 questions for each one of the individuals that  
17 we would want to interview.

18 Q Right.

19 A As we reviewed the material, as we went through  
20 the written material, we would have questions in  
21 our mind and say this would be an appropriate  
22 question to ask that person.

23 Q Sure. So if you go halfway down the page, one  
24 of the questions you were going to ask  
25 Mr. Miller was:

1 "What did the police tell the Justice  
2 Department about Swift Current aspect prior  
3 to Zanidean taking the stand?"

4 A That's there, yes, sir.

5 Q "Was there a discussion between Manitoba  
6 and Saskatchewan Justice over the arson  
7 charges (Quinney) and what was the contents  
8 of their discussions?"

9 A Yes, sir.

10 Q "Does he know who authorized the closing  
11 That's the next bullet?"

12 A That's correct, sir.

13 Q Now, you had certain aids, one of them was found  
14 at tab 6B, or I should say Exhibit 6B, and  
15 that's the memo that was written by Tom  
16 Anderson. So if you would --

17 THE COMMISSIONER: That's the big book with  
18 Vandergraaf, Anderson and Paul's name on the  
19 front, volume 2.

20 THE WITNESS: I have it here. Tab 10?

21 THE COMMISSIONER: Tab 10, is it?

22 BY MR. WOLSON:

23 Q It is, Mr. Commissioner. That's a document that  
24 you were referred to previously when you  
25 testified, and that's a document that you had

1 available to you which assisted you in carrying  
2 out your review?

3 A That's correct, sir.

4 Q And that document was prepared October 8,  
5 1991 --

6 A That's correct.

7 Q -- you will see at the top?

8 A Yes, sir.

9 Q And if you look, if you keep that open and go  
10 back to exhibit 28B, the thin book that you just  
11 had out, your book?

12 A Yes, sir.

13 Q And you go to tab 7 and then turn the page to  
14 page 204, the bottom right?

15 A Yes, sir.

16 Q This was, in effect, your dissecting of that  
17 letter or memo of Tom Anderson's so you had the  
18 salient features that were of interest to you  
19 noted in your materials?

20 A That appears to be correct, sir.

21 Q Included in that --

22 THE COMMISSIONER: I wonder if you would just --

23 MR. WOLSON: Tab 7.

24 THE COMMISSIONER: No, I have it here.

25 MR. WOLSON: Page 204.

1 THE COMMISSIONER: I have it, and my only  
2 question is, is this a continuation of page 197  
3 or is this in addition? In other words, the  
4 questions for Mr. Miller, do they conclude at  
5 the bottom of 197, and then we go into the  
6 report generally -- or not the report, but the  
7 notes?

8 THE WITNESS: If I could be of assistance,  
9 Mr. Commissioner.

10 THE COMMISSIONER: Yes.

11 THE WITNESS: These typewritten pages were  
12 produced as we went over various aspects of the  
13 investigation, and they were used basically as  
14 our working notes or our templates, in terms of  
15 either doing a summary of the salient points of  
16 a file, of a report, or in preparation to ask  
17 questions of an individual. So really they are  
18 not in any type of order, I would suggest. They  
19 were just produced as we conducted those  
20 activities.

21 THE COMMISSIONER: Okay.

22 BY MR. WOLSON:

23 Q What they did is they assisted you in briefing  
24 what you had learned from various sources, and  
25 then assisted you in formulating questions to

1 various people?

2 MR. DAWE: If it's of any assistance as well, I  
3 should just add the numbers in the bottom of the  
4 page in bold were added by Commission staff when  
5 the disclosure was received, so they simply  
6 reflect the order of the documents when we  
7 received them.

8 THE COMMISSIONER: All right. Okay.

9 BY MR. WOLSON:

10 Q You will see page 204, for instance, if you look  
11 at the first bullet, this is per report  
12 submitted by Anderson and Paul dated 91/10/08.  
13 So you are clearly taking that report and you're  
14 breaking it down?

15 A That's what it would appear actually, the two  
16 pages, both pages 204 and 205 --

17 Q Thank you.

18 A -- are sort of a summary of Anderson's report to  
19 Inspector Johns on October 8th, '91.

20 Q For instance, halfway down the page you note.

21 "Burton offers to delay pursuit of  
22 Zanidean until after he testifies at the  
23 murder trial."

24 A That's correct.

25 Q You see that halfway down the page there?

1 A That's what it says, sir.

2 Q And then later on, about three or four bullets  
3 down,

4 "Anderson speaks to Burton and immediately  
5 offers to give up pursuit of Zanidean  
6 entirely."

7 A That's correct, sir.

8 Q So you had available to you -- one of the  
9 problems that you had is that there weren't  
10 supps. which had been prepared regarding  
11 Zanidean, there weren't many supplementals. So  
12 what you had, you were learning about certain  
13 things through Anderson's memo to Johns, you  
14 were learning things from Sergeant Orr because  
15 you went to see Orr as well, which we will deal  
16 with in a minute. So you were learning things  
17 as you went along?

18 A That's correct, sir.

19 Q And what you wanted to do was you wanted to find  
20 out whether these things that weren't in supps,  
21 or at least that you could find, were orally  
22 briefed to the Crown, or briefed in some fashion  
23 to the Crown. That's what you wanted to know?

24 A Well, it was certainly to align with our mandate  
25 of ensuring that all information that our

1 officers had during the course of the  
2 investigation was passed on. That certainly  
3 would be in our mind.

4 MR. WOLSON: Sure. It's 4:45:59, and I could go  
5 on for another hour --

6 THE COMMISSIONER: All right.

7 MR. WOLSON: -- but we have our times.

8 THE COMMISSIONER: I think it's our time, and we  
9 will have you back once more, but only one more  
10 day.

11 THE WITNESS: Thank you, Mr. Commissioner.

12 THE COMMISSIONER: Thank you.

13 MR. WOLSON: And are we 9:30?

14 THE COMMISSIONER: 9:30 tomorrow morning. Thank  
15 you.

16 THE CLERK: All rise.

17 (Proceedings adjourned at 4:46)

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COURT REPORTER'S CERTIFICATE

DEBRA KOT and LISA REID, duly appointed Official  
Examiners in the Province of Manitoba, do hereby  
certify the foregoing pages are a true and  
correct transcript of our Stenotype notes as  
taken by us at the time and place hereinbefore  
stated.

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Debra Kot

COURT REPORTER

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Lisa Reid

COURT REPORTER

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