

**INQUIRY INTO MATTERS RELATING TO THE
DEATH OF NEIL STONECHILD**

Before The Honourable Mr. Justice D. H. Wright, Commissioner

**Held at:
The Centennial Auditorium
Saskatoon, Saskatchewan**

Monday, October 20, 2003

APPEARANCES:

Joel Hesje, Esq. David Stack, Esq.	Commission Counsel
Donald Worme, Q.C. Gregory Curtis, Esq.	Ms. Stella Bignell and the Stonechild Family
Aaron Fox, Q.C. Christopher Boychuk, Esq	Constable Larry Hartwig
Jay Watson, Esq.	Constable Bradley Senger
Barry Rossmann, Q.C.	The Saskatoon Police Service
Drew Plaxton, Esq.	The Saskatoon City Police Association
Silas Halyk, Q.C. Ms. Catherine Knox	Federation of Saskatchewan Indian Nations
Bruce Gibson, Esq.	Royal Canadian Mounted Police
Kenneth Stevenson, Q.C.	Mr. Keith Jarvis

C.V. Reporting Services Ltd.
500 - 224 - 4th Avenue South
Saskatoon, Saskatchewan
S7K 5M5
(306) 242-3455
cvreporting@sasktel.net

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1 MONDAY, OCTOBER 20, 2003

2 THE COMMISSIONER: Good morning.

3 MR. HESJE: I'm sorry, Mr. Commissioner. We
4 are in cross-examination to continue of Joe
5 Penkala. There are a couple of preliminary
6 matters. The first matter is, you had released
7 Mr. P from his subpoena to attend this morning.
8 He is here this morning. He's not in the room,
9 but in the -- in the meantime, he had consulted
10 with legal counsel. I spoke with that counsel and
11 they are look -- had a number of questions. I
12 spoke with him on Friday in terms of
13 representation of GP.

14 I have agreed, in light of the
15 contact with counsel that it would only be fair to
16 have Mr. P set over to the week of November 24th
17 so that he can properly instruct counsel and they
18 can take such steps as they are advised, which
19 obviously could involve some request for standing
20 either as a witness or a party.

21 THE COMMISSIONER: Very well.

22 MR. HESJE: I'm told he is here, but I would
23 like to have it -- him released from his subpoena
24 to appear on November 24th.

25 THE COMMISSIONER: Do you want to take a moment to see
26 if you can locate him?

1 MR. HESJE: Mr. Commissioner, Mr. P is in
2 attendance. I had -- for Mr. P's benefit, I had
3 spoke with counsel that he had contacted. I
4 didn't get a chance to speak to Mr. P this
5 morning. And in order to allow him opportunity to
6 consult with counsel and to take such steps as
7 they deem is necessary, I would like to have --
8 again have his testimony set over to November
9 24th.

10 THE COMMISSIONER: Very well. Mr. P, you've heard
11 what Mr. Hesje has said, and he advises that you
12 have a desire to get legal advice and that's quite
13 appropriate. So I'm going to release you for
14 today, but direct that you return on November the
15 -- November the 24th at 9:30 a.m. Is that clear
16 to you?

17 MR. P: Yeah.

18 MR. HESJE: And that is at the Sheraton, Top of
19 the Inn.

20 THE COMMISSIONER: It's at -- Mr. P, it's at the Top
21 of the Inn of the Sheraton Centre, right on the
22 top of the hotel.

23 MR. P: Right.

24 THE COMMISSIONER: So you should inform your counsel
25 of that, and your counsel should be in touch with
26 Mr. Hesje in any event so we have a sense of what

1 you want to do. Is that clear to you? Thank you
2 for being here this morning.

3 MR. P: Thank you.

4 MR. HESJE: One other preliminary matter, Mr.
5 Commissioner, is, Mr. Penkala, on giving testimony
6 on Thursday was asked about his notebooks or
7 diaries. He did produce those to us, myself on
8 Thursday afternoon. They consist of -- I want to
9 emphasize, they are not police notebooks in the
10 sense that we have seen here. They are his
11 personal planners. He has one for 1990 and one
12 for 1991.

13 I reviewed -- Mr. Stack and I
14 reviewed the notebooks, found no reference
15 whatsoever to any matters relating to Neil
16 Stonechild and accordingly I have not disclosed
17 the notebooks. Now, I understand there may still
18 be requests to have them, but I wanted you to be
19 aware of what had happened and what position we
20 had taken on them.

21 MR. PLAXTON: Mr. Commissioner, if I may speak to
22 that issue at this point, or if you prefer
23 representations later please let me know, but our
24 position, I think a few other counsel join me in
25 this, is, we would ask to view the notebooks.
26 Without in any way questioning Mr. Hesje in his

1 forthrightness, it's his idea of what may be
2 relevant differ -- may well differ from ours.

3 If it says "Stonechild" it's
4 obviously relevant, but we have heard from Mr.
5 Penkala, who has said to us, basically, "I wasn't
6 in town, I wasn't at the station, I didn't know, I
7 didn't meet with anyone," words to that effect.
8 We suggest the -- his diaries will enlighten us as
9 to where he was and, if indeed, he was at the
10 station and so forth.

11 We appreciate the diaries may well
12 have some personal entries, and we in no way want
13 to make them public or anything similar. That
14 would be inappropriate. But I think if we could
15 first view them, and if there's anything that
16 comes out of it, then if there is an issue as to
17 whether or not we can examine the gentleman on the
18 notes, fine. But if not, you know, fine as well.
19 But we would suggest the most -- the most telling
20 may be if there is nothing relating to police work
21 during that period of time, that may well be an
22 indication as well.

23 THE COMMISSIONER: But I suppose the first question is
24 whether Mr. Penkala has any objection to them
25 being produced. He's been willing to produce them
26 to Commission counsel. I don't know whether

1 there's been any discussion about that.

2 Because if there are personal
3 matters that he's noted, and it sounded to me when
4 he last testified as if he had what we used to
5 call a daytimer, that is a, just an ongoing record
6 of appointments, memos to do things, aid to
7 memoir, things like that. So I think we would
8 first have to determine that.

9 The difficulty is that if this is
10 to be -- these notes are to be produced, and it's
11 your intention to examine on them, you're going to
12 have to see them before you examine on them,
13 before Mr. Penkala's excused in testifying.

14 I don't know how extensive the
15 notes are. Mr. Hesje, you've seen them.

16 MR. HESJE: In fact they are a daytimer, a
17 daily planner from the years 1990 and 1991.

18 THE COMMISSIONER: Right.

19 MR. HESJE: And they list appointments and
20 meetings and that sort of thing. They're not a
21 record in the sense of police recordings,
22 investigations, that sort of thing. They're
23 simply an organizer.

24 MR. PLAXTON: My guess would be it probably
25 wouldn't take that long, assuming the gentleman's
26 handwriting is legible, which is a great

1 assumption sometimes.

2 THE COMMISSIONER: Well, you have to take your chances
3 with that. But, well, it seems to me that we can
4 go at this in one of two ways. I don't want to
5 delay the completion of what's happening now, but
6 we're at the point now -- I frankly can't recall,
7 Mr. Penkala's finished his examination as far as
8 you're concerned.

9 MR. HESJE: Yes, we're well into cross-
10 examination.

11 THE COMMISSIONER: Cross-examination.

12 MR. HESJE: Ms. Knox was in cross-exam.

13 THE COMMISSIONER: So whether we want to take a few
14 minutes now, which will mean we'll lose some time,
15 but if you want to just sit with counsel and go
16 through the logs quickly, because I'm sure I'm
17 going to hear that they want to know about this
18 before they go on to their cross-examination. At
19 least I assume that's the case for everybody.

20 MR. PLAXTON: That, and one other issue, Mr.
21 Chairman, that we may be able to accommodate at
22 the same time is, Ms. Knox this morning has given
23 us a number of newspaper articles. This is the
24 first time I've seen them, and I think everyone
25 else. Although the rules I think say one day's
26 notice, if we had some time to read them now I

1 think that would probably --

2 THE COMMISSIONER: Well, I'd suggest we adjourn then,
3 and I won't suggest any time. I think you need to
4 take the time that's necessary in order to achieve
5 this, and I'll ask the clerk to let me know when
6 you're ready.

7 MR. PLAXTON: Thank you, sir.

8 (PROCEEDINGS ADJOURNED AT 9:43 A.M. & RECONVENED AT 10:17
9 A.M.)

10 MR. HESJE: Mr. Commissioner, we've resolved
11 that issue as well. Mr. Penkala has graciously
12 agreed to allow review of his notebooks which has
13 been done. I believe we're now ready to proceed
14 with his cross-examination.

15 THE COMMISSIONER: Thank you.

16 MR. HESJE: Mr. Penkala.

17 **JOE PENKALA, previously sworn, testifies:**

18 **MS. KNOX, examining, continuing:**

19 Q Good morning, Mr. Penkala. Just to continue, I
20 guess, with where we left off on Thursday, we had,
21 or you had assisted me in going through the police
22 report, or the report that we have from 1990 that
23 primarily was offered by Sergeant Jarvis. And I
24 just wanted to move on to, I guess, a couple of
25 other issues, apart from the concerns about the

1 way that work was done.

2 And I understand that in 1990, or
3 previous to 1990 there were written job
4 descriptions for the various levels of command
5 within Saskatoon Police Service that set out what
6 was expected of each ranking officer in a position
7 that he held?

8 A Yes.

9 Q And I understand, without having gone through all
10 of them, that those -- those were well-known
11 documents within the department. I'm going to
12 refer -- and I'm sorry, I forgot to have Mr. Stack
13 pull this for me, but just a position such as the
14 inspector in charge of investigative support,
15 there was a specific job description that was part
16 of the policy of the department?

17 A That sounds appropriate, yes.

18 Q Okay. Do you -- can you tell me whether there
19 were any management steps in place to ensure that
20 each individual who was promoted into a position,
21 as an example the inspector in charge of
22 investigative support, whether there were
23 management steps to ensure that he knew his duties
24 and complied with his duties?

25 A I don't recall any specifics, although that would

1 be a situation that would be within the -- within
2 the management of the immediate superior of that
3 particular position.

4 Q So the immediate superior of the position --

5 A Yes.

6 Q -- would be responsible for ensuring job
7 performance was up to scratch?

8 A That's correct.

9 Q Okay. And was there any involvement of the Chief
10 in ensuring that, as they went up the chain of
11 command, there was in fact compliance with job
12 expectation?

13 A Well, at some point the Chief was involved in --
14 and was informed on the approaches and the
15 policies that apply, yes.

16 Q Okay. And were there ongoing performance reviews
17 of the -- you know, of the members and how they
18 conducted, and in particular performance reviewed
19 as people shifted through the levels of
20 management, upper management?

21 A Yes.

22 Q And who was responsible for doing performance
23 review?

24 A It was usually the immediate superior above that
25 particular rank.

1 MS. KNOX: Mr. Commissioner, I'm referring --
2 Mr. Stack has kindly passed me the document that
3 bears the ID number 875, which contains the job
4 description for inspector in charge of
5 investigative support as an example, and I'm
6 wondering, I don't have -- actually I don't have
7 an additional copy other than my own, but I'm
8 wondering if I could, having advised counsel that
9 this is what I'm referring to, have the Chief take
10 a look at it and tell me if this is similar to
11 what was in the system.

12 THE COMMISSIONER: Very well.

13 MS. KNOX: For the benefit of counsel and the
14 Commissioner, this document was attached to a
15 letter to Inspector McFadyen on August 29th, 2000
16 from Superintendent Broste and is a one-page
17 document.

18 A Yes, that's familiar, and generally describes the
19 position as I recall.

20 Q So would you agree with me that that's a fairly
21 detailed listing of major responsibilities for the
22 inspector in charge of investigative support?

23 A Yes.

24 Q It's identified as a management position, which
25 involves the planning, organizing, controlling and

- 1 coordinating of all the activities of the
2 investigative support service?
- 3 A That's correct.
- 4 Q And major responsibilities are to provide
5 immediate supervision and direction of all
6 subordinate unit heads, and in particular the next
7 one, to maintain up-to-date knowledge of the major
8 investigations being handled, the progress made,
9 and problems encountered, and to advise the
10 superintendent operations division accordingly.
11 And I'll skip the next one. The fourth one
12 listed, to ensure that all personnel under his/her
13 command properly carry out their duties and
14 responsibility. That's one of the major
15 responsibilities, is it not?
- 16 A Are you wanting an answer on each one?
- 17 Q Yes.
- 18 A Yes. Yes, very much so.
- 19 Q And there are others that have to do with general
20 maintaining order in the unit, but it clearly
21 defines the operational responsibility?
- 22 A Yes.
- 23 Q And you're indicating to me that those existed for
24 all levels of command?
- 25 A Well, it depends on how specific -- they would not

1 necessarily apply in all job descriptions, but
2 somewhat along the same lines, yes.

3 Q I guess the basic point I'm trying to make, or I
4 wish to make and ask if you agree, is that
5 certainly job responsibilities were well defined
6 on November 29th, 1990, and the fact that the
7 investigation went awry in the way that it did was
8 contrary to departmental policy and expectation?

9 A Yes.

10 Q Okay. Then, sir, on Thursday, I believe it was,
11 the Commissioner directed a question to you with
12 respect to what I'll characterize as management-
13 staff relations within the department, and he
14 specifically addressed a question of tension
15 between the union and administration of the police
16 force. Do you recall him asking you those
17 questions?

18 A Yes.

19 Q And you indicated in a general way that there's
20 always tension to some extent, and that it
21 depended on the issues, what the issues were of
22 the day, but that it wasn't particularly unusual
23 during your tenure?

24 A Yes.

25 Q Okay. Now, sir, some of the indications in the

1 public at the time, would you not agree, was that
2 in fact things were very tense as between
3 management and the officers, the line officers at
4 the Saskatoon Police Service?

5 A Yes, there was considerable publicity. Much of it
6 was media hype.

7 Q Okay.

8 A These were issues that, in my opinion, where the
9 police union went to the media and got the media
10 involved, and these issues certainly didn't help
11 administration. But I guess these things are fair
12 in today's world.

13 Q Regardless of the propriety of media involvement,
14 would you not agree with me that in fact,
15 certainly the indications based on a review of the
16 media in the late '80s was that things got a
17 little ugly around 1987, and that it was an open
18 conflict being carried out or played out in the
19 press between yourself, to a large extent, and the
20 union head?

21 A Well, I would want to know what those were
22 specifically. I -- you know, there were so many
23 issues that had to be addressed, and, yes, I was
24 involved in -- in all of them.

25 Q I direct your attention to an article in *The*

1 *StarPhoenix* on September 12th, 1987, and ask if
2 you remember that article?

3 A Yes.

4 Q At that stage in time would you not agree with me
5 that there was a fairly open, and I'm going to use
6 the term "row" because I'm from Newfoundland, but
7 a fairly open row going on between management and
8 the association members with respect to jobs,
9 circumstances, and that basically you were
10 defending the Saskatoon Police Service management
11 in the public forum against some fairly nasty
12 allegations?

13 A I -- I'm not so sure that that is in the public
14 forum. This is the -- the police union has the
15 right to -- to make grievances. Management has
16 the right to give its opinions on grievances. The
17 process can go beyond that. It can go to
18 arbitration. I would suggest if it went to
19 arbitration it would be a public issue. I don't
20 think these were public. And this relates back to
21 the situation where I guess all is fair in war and
22 union negotiations.

23 Q Okay. And again, I'm not seeking to have, you
24 know, the argue to union versus management
25 position, but would you not agree that as of

1 September 12th, 1987, it became very public; it
2 was on the third page of the Saskatoon
3 *StarPhoenix*?

4 A Oh, of course.

5 Q And the allegations being made was that the morale
6 of the police department was extremely low, and
7 the article is there for you to see and it's been
8 filed with the Commissioner, but certainly it
9 indicated a huge amount of unrest within the
10 department?

11 A Yes.

12 Q Now at that stage in time, and the Commissioner
13 asked you last week, in your opinion was the level
14 of unrest such that it could have, or would have
15 affected job performance?

16 A Not in my opinion.

17 Q Now, sir, I've passed you a sort of a half-page of
18 a newspaper cover. And, Mr. Commissioner, for the
19 record it bears the handwritten date notation of
20 June 11th, 1988. I placed that notation there. I
21 do have the original of the newspaper page in fact
22 if anybody wants to look at the original, but it
23 is an article, or part of a full-page article on
24 police and stress affecting police work that was
25 published on June 8th, 1988 in *The StarPhoenix*.

1 And, Mr. Penkala, as well I should
2 indicate there are some handwritten notes on it.
3 The copy that was delivered to my office yesterday
4 came in this form, and because of the time
5 constraint I was unable to get a clean copy from
6 *The StarPhoenix* so they don't appear to directly
7 reflect, but again the original is available if
8 anybody wishes to take a look at it, and this is
9 the form that it came in.

10 Now, Mr. Penkala, I want to direct
11 your attention to the story on the right-hand
12 side, beside your photograph, that has the heading
13 "‘Poor’ cops blame system".

14 A Yes.

15 Q You see that story. And I take it you've seen
16 this before?

17 A I certainly have.

18 Q And would you agree with me that nine months later
19 from the September 1987 article that I just
20 referred you to, that this ongoing public airing
21 of the tension and battle within the Saskatoon
22 Police Service as between the Service and
23 management was still very much at what appears to
24 be a critical or crisis kind of state; again, you
25 were having to defend in the public forum the

1 Service, that you took the view that it was a
2 "poor cops" -- this was, you know, cops that
3 didn't want to do their job that were the problem,
4 and that the -- you agree that's the general tenor
5 of the story?

6 A Well, first of all, I was invited by the media to
7 comment --

8 Q M'hm.

9 A -- in response to -- in response to the question
10 of poor morale.

11 Q M'hm.

12 A And I did accommodate the media --

13 Q M'hm.

14 A -- on that issue, and I stand behind everything
15 that I said within the article. These were all
16 tactics that were used, and while there's a
17 suggestion that this somehow reflected on the
18 duties, I always felt confident that the police
19 officers that were on the street, that had to do
20 their job, did their job irrespective of what went
21 on between administration and the police union.

22 Q But I think you've answered what I was about to
23 ask you, and whether in light of Mr.

24 Commissioner's question to you last week, you were
25 still of the view -- are still of the view that

1 despite what appears to be a very ugly labour-
2 management relationship at that time, an
3 individual officer's performance might have been
4 affected by that, or it might have caused or
5 contributed to a situation such as happened in
6 November, December, 1990, with the Stonechild
7 investigation?

8 A I don't honestly believe that that would have
9 contributed to -- to the situation of the
10 Stonechild inquiry. I had faith in my -- in my
11 officers, that they were sworn to do a job, and
12 that this was a side issue, and I don't see how
13 that would affect the clear-thinking, professional
14 police officer.

15 Q Would you allow for the possibility that it could
16 have affected lines of communication, for example?

17 A Well, I had spoken earlier in my testimony about
18 resistance to change.

19 Q M'hm.

20 A It seems that whenever there was any change there
21 was a good deal of resistance, and I know for a
22 fact that this extends beyond the Police Service;
23 it occurs in every organization.

24 Q All right.

25 A And of course management has to deal with it in

1 one way or another, and I don't see this any
2 different than any other organization. We had
3 these differences within the -- between the union
4 and management, but as far as police work was
5 concerned everybody was obligated to do his
6 professional job, and if he didn't do his
7 professional job he would be taken to task for it,
8 and that was well understood.

9 Q Surely, though, Mr. Penkala, with this being
10 played out in the public forum over many months,
11 it must have created tensions within the working
12 relationship, and particularly as between
13 management and -- or union and non-union
14 positions?

15 A Well, I'm not sure how to answer that because, you
16 know, it's always a degree. It's always a degree.
17 I recall that when I retired, police officers used
18 to come to my house and ask me whether I'd buy
19 them a cup of coffee, and suggest that they had
20 missed my management.

21 Q And, Mr. Penkala, please don't hear me saying that
22 you were a bad police chief, that's not what I --
23 the reason why I brought these articles forward.
24 These were brought to my attention, I think in
25 part as a result of the question, or the issue

1 raised by the Commissioner last week. And I'm
2 asking you whether, when you said last week that
3 it was -- you know, sort of like to be expected
4 between union-management, whether in fact the
5 situation in the Saskatoon Police Service in the
6 late '80s, into the '90s, and I'm not even going
7 to go into the years after that, but during that
8 time that it may have been more difficult than
9 usual, and may have caused some breakdown in terms
10 of the communication, the lines of command, and
11 the responses of personnel?

12 A Well, my purpose to answer the way I did was --
13 was simply to show that these situations exist,
14 and that they are not as serious as I would
15 suggest you're suggesting. This is a usual
16 relationship that occurs within an organization
17 and it goes on, and while it's -- it has effects,
18 and I can't say how it affected; it may very well
19 have affected the very things that you have
20 listed, but at the same time, my immediate
21 subordinates would have been in a position to be
22 able to note these things and bring them to my
23 attention. And I -- I don't recall of an incident
24 where it actually affected the jobs that these
25 people were required to do.

- 1 Q Okay. Last week you responded at one point, and
2 I'm not sure who asked you the question, but you
3 responded that in your opinion the way the
4 Stonechild investigation was handled, you didn't
5 believe that somebody would have been deliberately
6 misleading, or deliberately doing that, but that
7 you thought that negligence might play a part?
- 8 A Yes, I recall saying that, yes.
- 9 Q Okay. So given that your -- you see that
10 negligence might possibly have played a part in
11 it, I wonder, and I ask whether it is in -- you
12 know, it is difficult, or impossible to believe
13 that tension within the workplace and the
14 breakdown in the relationship between management
15 and union might have contributed to the situation
16 that arose with the Stonechild investigation?
- 17 A Well, of course that's always a possibility. The
18 -- the -- I lost my train of thought, sorry.
- 19 Q That's okay. But you concede that it's a
20 possibility; you can't rule it out?
- 21 A Always a possibility.
- 22 Q Okay. Now I'm just going to refer you to another
23 Saskatoon *StarPhoenix* article that was provided to
24 me yesterday, and it doesn't have a date but I
25 suggest to you that if you look at it, it's

1 certainly within the time frame that we were
2 talking about, as it identifies police association
3 president to be Mr. Cox, and while it's not you
4 who did the interview, Deputy Chief Wagner, the
5 story indicates, was filling in for you while you
6 were away. But would you agree with me that this
7 is a further public airing, if I may use that
8 phrase, of the problems in the police station at
9 that time, and again indicative of a -- sorry -- a
10 serious level of dysfunction within the working
11 relationship of the officers and management?

12 A Again I suggest that it's not dysfunction. I
13 suggest that it's an avenue that the union chose
14 to address these issues. The question of morale,
15 which is the topic of this particular thing,
16 morale is like fighting a cloud. There's no way
17 you can really deal with it. I -- I had these
18 discussions with them whenever an issue came up,
19 morale seemed to pop out, and morale is in the
20 mind of the person that's making the allegation
21 and accusation. And as you know, within a
22 unionized structure, there is a union executive
23 that brings these matters forward, and I'm
24 convinced that that was not the feeling of the
25 entire Police Service.

- 1 Q But you will agree with me that this was certainly
2 the public face that was being placed on it?
- 3 A Well it was taken into the public forum through
4 the media, yes.
- 5 Q Yes. But taken in through the media, but given to
6 them by the police?
- 7 A Not by the administration.
- 8 Q No, but certainly by the union --
- 9 A Well --
- 10 Q -- would appear to be the source of --
- 11 A -- obviously, yes.
- 12 Q Yeah. So it wasn't something that the media
13 created. The media responded to what was
14 obviously a very difficult time within the
15 Saskatoon Police Service and labour relations
16 within the department?
- 17 A To be quite honest with you I didn't see it as a
18 particularly difficult time. I handled these
19 things from day one. Some of these issues had
20 persisted before I became the chief, and I know
21 that they persisted after I left there. So it's
22 not an unusual situation.
- 23 Q Sir, you'll be pleased to know that that's the
24 last of the newspaper stuff I intend to pass to
25 you, but I've just passed you an article that

1 bears the headline "Officers to fill own gas
2 tanks", and this one is a *StarPhoenix* story dated
3 September 24th, 1988. And while in the context of
4 what we're looking at here this is a pretty minor
5 matter, I ask if you would review this and whether
6 or not you would agree that it is perhaps a
7 further, in its own petty way, indication of how
8 bad things were at the time?

9 A It's not a minor matter. We fired a police
10 officer for theft of gas.

11 Q But would you agree that it got used in the public
12 forum as another way to smack management, to say
13 that these guys are being treated like children;
14 it's not fair; the working conditions are
15 terrible?

16 A Obviously.

17 Q Okay. And again would you agree with me that if,
18 it is indicative in its own small way of a pretty
19 significant level of dysfunction within the shop
20 at that time?

21 A Well, it would appear that way from the media, but
22 I still do not believe it's to the extent that is
23 being painted here today.

24 Q Now, in fairness, the last of these articles is
25 dated September, the one I just passed you is

1 September 1988. Did things get any better in your
2 opinion between 1988, September 1988 and the time
3 of this incident, being November of 1990?

4 A Yes, there was an improvement.

5 Q Okay.

6 A There was a change in the union head and there was
7 an improvement.

8 Q Okay. Did it improve the working relationships
9 within the department as between management and
10 union members?

11 A Well, I -- I never really saw the working
12 relationship being affected. These were issues of
13 somewhat negotiation and, while they're certainly
14 conflictive with administration, they were --
15 there were -- there were meetings, monthly
16 meetings available to the police union so that
17 they could bring their matters towards, to
18 management, and management had an opportunity to
19 air their projections to the union. And from time
20 to time these meetings would break down, never by
21 the management; the union would simply say, "We
22 don't want to come to any more of the meetings."
23 I said, "Well, I can't force you to come to
24 meetings." This is the nature of what happens
25 between a unionized approach to -- to labour

1 relations and -- and the administration of an
2 organization, and I don't think it's unique to the
3 police department.

4 MS. KNOX: Mr. Commissioner, at this stage I'm
5 going to ask if I could have this series of
6 articles marked as exhibits, and I'll provide --

7 THE COMMISSIONER: Very well.

8 MS. KNOX: The first one I ask to have marked
9 is the September 12th, 1987 article that's headed
10 "City police `morale low and sinking`".

11 CLERK: P-91, My Lord.

12 THE COMMISSIONER: P-91.

13 **EXHIBIT P-91: STARPHOENIX ARTICLE, SEPTEMBER 12, 1987,**
14 **HEADED "CITY POLICE `MORALE LOW AND SINKING`"**

15 MS. KNOX: The second will be the larger
16 series of articles on the page, but the one we
17 referred to is the one headed "`Poor' cops blame
18 system", a June 11th, 1988 article in the
19 *StarPhoenix*.

20 THE COMMISSIONER: P-92.

21 MS. KNOX: Thank you.

22 **EXHIBIT P-92: STARPHOENIX ARTICLE, JUNE 11, 1988, HEADED**
23 **"`POOR' COPS BLAME SYSTEM"**

24 MS. KNOX: The next there is an article
25 "Police `morale problem' said really resistance to

1 change". It's undated but it refers to Mr.
2 Penkala as being chief at the time.

3 THE COMMISSIONER: P-93.

4 **EXHIBIT P-93: STARPHOENIX ARTICLE, UNDATED, HEADED "POLICE**
5 **'MORALE PROBLEM' SAID REALLY RESISTANCE TO CHANGE"**

6 MS. KNOX: And the final one, *StarPhoenix*
7 article dated September 24th, 1988, "Officers to
8 fill own gas tanks".

9 **EXHIBIT P-94: STARPHOENIX ARTICLE, SEPTEMBER 24, 1988,**
10 **HEADED "OFFICERS TO FILL OWN GAS TANKS"**

11 Q MS. KNOX: Now, Mr. Penkala, just looking for
12 a moment at the article that is the June 11th
13 article, which is the full cover page, "'Poor'
14 cops blame system", I wonder for the moment if you
15 could just keep that in front of you because I'll
16 refer you to it shortly. I want to move on to the
17 area of your understanding of issues of racial
18 disharmony, or racial tension during your tenure
19 as police, and there's been some suggestion
20 brought before the Inquiry at certain points in
21 time that racism on the part of police officers
22 may have played a part in the outcome of the
23 Stonechild investigation. And I take it that
24 you're aware that that has been a suggestion
25 that's been put forward at times?

- 1 A Yes, I'm aware of that, yes.
- 2 Q Sir, during your tenure as the Chief of Police
3 between 1982 and 1991, was racism, to your
4 knowledge, an issue on an individual officer or a
5 collective basis within the Saskatoon Police
6 Service?
- 7 A I don't have a recollection of a specific
8 incident. I -- I'm not so naive as to believe
9 that there weren't people that may have had racist
10 attitudes.
- 11 Q M'hm.
- 12 A But I also am of the knowledge that if those
13 people were found out, they would be in jeopardy
14 as far as their employment was concerned.
- 15 Q Was there a specific policy in the Saskatoon
16 Police Service in nineteen -- the late '80s, early
17 '90s with respect to the proper conduct of
18 officers to those of a -- I'm sorry -- a racial
19 minority?
- 20 A I don't recall a specific policy. I do know that
21 these subjects were very much covered during all
22 training sessions that took place, particularly
23 with the recruit school, which is a 16-week
24 training course that is provided by the province
25 and was held at the University of Regina. I know

1 that these issues were constantly before the new
2 candidates that were brought into service. There
3 were also in-house training courses that dealt
4 with that. I don't have the specifics before me,
5 but I do know that these issues were addressed
6 from time to time. And as I said at the
7 beginning, I don't recall of a specific incident
8 where this was directly assessed to any particular
9 officer.

10 Q Okay. So you don't --

11 THE COMMISSIONER: Excuse me. Excuse me, Ms. Knox. I
12 just want to ask a question if I may.

13 MS. KNOX: Certainly.

14 THE COMMISSIONER: Pardon me for interrupting your
15 cross-examination. Mr. Penkala, was there a race
16 relations committee in existence in the late '80s,
17 early '90s?

18 THE WITNESS: There was, and I was a member of
19 that.

20 THE COMMISSIONER: When was that created?

21 THE WITNESS: Well, again, I don't have
22 specifics. The first -- the first race --

23 THE COMMISSIONER: Was it before 1990?

24 THE WITNESS: Oh, yes. I was on -- before I was
25 the Chief I was on a race relations committee that

1 was formed by the City of Saskatoon, by Council.

2 THE COMMISSIONER: And why was it created?

3 THE WITNESS: I guess there was a -- there was a
4 feeling within the community that issues relative
5 to race relations was important. Ms. Helen Hughes
6 was the first person that was involved from
7 Council that dealt with that. Later on, there was
8 a -- there was a -- there was a relaxation on the
9 committee aspect of it for some time, and then it
10 was reintroduced and I was then the Chief of
11 Police and I personally sat on those race
12 relations meetings.

13 THE COMMISSIONER: And were there issues at the race
14 relations committee that focused particularly on
15 the interaction between members of the Police
16 Service and, let us say, Aboriginal First Nations
17 persons?

18 THE WITNESS: There was not. And that always
19 surprised me because when you -- when you listened
20 to the general views of the public there was a
21 suggestion that there was racism practiced by the
22 police department, yet at these race relations
23 committee meetings that I attended there was not
24 one situation that pointed the fingers at the
25 police department.

- 1 THE COMMISSIONER: Excuse me for interrupting your
2 exam.
- 3 MS. KNOX: That's okay, and in fact I intended
4 to go somewhat into that area, so I will now.
- 5 Q So, Mr. Penkala, what I take it, what I understand
6 from what you've just told the Commissioner is
7 that there was a race relations committee, but
8 this was a City Hall committee?
- 9 A Yes.
- 10 Q It was, during your tenure and before your tenure
11 there was no development within the Saskatoon
12 Police Service of an avenue or a forum to address
13 the possibility of race -- of allegations or
14 situations of racism?
- 15 A Every -- every complaint of racism would have
16 certainly been attended. Is that the question
17 you're asking?
- 18 Q Well, was there a specific channel, or a specific
19 place, or a specific person designated within the
20 Saskatoon Police Service to address complaints of
21 racial discrimination if they came forward in any
22 manner, as against police?
- 23 A I don't remember, but I know that eventually there
24 was a -- an Aboriginal liaison officer appointed,
25 and I'm not -- I can't tell you offhand when that

1 happened, and I think he exists today.

2 Q Okay, I'm going to suggest to you that according
3 to some research I did on the history of Saskatoon
4 Police Service that the position of Aboriginal
5 liaison officer was not created until 1994, which
6 would have been three years, almost four years
7 after you had left your tenure as Chief.

8 A That could very well be the -- right, yes.

9 Q So it is not your evidence that you, within your
10 tenure as Chief of Police --

11 A No.

12 Q -- set up an Aboriginal liaison officer?

13 A No.

14 MS. KNOX: Okay. Mr. Commissioner, that
15 statistic, or that date comes from a history that
16 I found on the Internet, frankly; I didn't make
17 copies.

18 Q But you would agree with me that during your
19 tenure that wasn't a function that you set up
20 within the Police Service?

21 A Well, we dealt with issues surrounding the
22 involvement of Aboriginal people within the Police
23 Service. One of the -- one of the issues that
24 constantly came up during my time was the hiring
25 practices and that we weren't hiring Native

1 Aboriginal people. We -- we did address those
2 issues. We did whatever we could within our
3 resources to invite Aboriginal people to join the
4 police force. I personally recall speaking to the
5 Native government, I think it was probably
6 Saskatoon Tribal Council, and invited them at that
7 point to send their young people to the police
8 department for the possibility of becoming
9 candidates and serving on the police force. Now,
10 so while there may not have been a specific person
11 coordinating that issue, there was certainly
12 attention paid to that.

13 Q Sir, apart from issues of invitations or
14 solicitations of Aboriginal people to apply for
15 employment, was there any message delivered from
16 the Police Service in the Aboriginal community to
17 the effect of, you have a right to be treated
18 fairly; if you feel that you have been treated
19 unfairly because of your race then we welcome your
20 complaints, we would like you to come to the
21 Saskatoon Police Service and we will address those
22 complaints?

23 A I don't recall that it -- it being specific as you
24 have described it, but certainly that feeling was
25 within -- within the administrative aspects of the

1 Police Service within the area of personnel
2 services. That would certainly have been the --
3 the philosophy that would have been placed
4 forward.

5 Q But the reality of the '80s, and perhaps into the
6 '90s was that that message wasn't on the street,
7 was it?

8 A Well, I don't -- I don't really know. One of the
9 things that I did know is that we had very few, if
10 any, applications from the Aboriginal community.
11 And when -- when I personally got involved in some
12 of these issues I learnt very quickly that the
13 Aboriginal people did not want to be in the
14 profession of policing.

15 Q Aside from the issue of employment though, my
16 question to you was whether you took any steps, or
17 you participated in getting out a public message
18 to Aboriginal people of all levels that the
19 Saskatoon Police Service was an open, fair, even-
20 handed policing service, and if there were
21 concerns about the way any member of the community
22 was treated, that complaint would be welcomed and
23 dealt with objectively at the Saskatoon Police
24 Service?

25 A I don't have any personal knowledge. I think the

1 appropriate person would be to ask the person that
2 was in charge of personnel services at that time.
3 He would certainly have that information. I can't
4 really attest to that.

5 Q But, sir, personnel services is the hiring and
6 management of staff; it's not about community
7 relations, and personnel services was not
8 responsible for the profile of the Saskatoon
9 Police Service in the community, was it?

10 A Well, certainly in terms of bringing Aboriginal --
11 Aboriginal people on to the police force.

12 Q Yeah, but if I'm a street kid, I'm not looking for
13 a job, I'm 16 or 17 or 18 years old, and, just as
14 a hypothetical, I get knocked around by a police
15 officer. Was there any message out there that
16 would cause me to know, as a 16- or 17-year-old
17 that if I went down to the Saskatoon Police
18 Service somebody was going to listen, and somebody
19 was going to take action because what happened to
20 me was wrong?

21 A It's an impossible question to answer. We had
22 many, many details within the police force. We
23 have a school liaison program. The school liaison
24 officer attended to the high schools. He had
25 relationships with high school students, inviting

1 high school students and being there for the
2 purpose of showing those people, and I'm sure that
3 the Aboriginal community was involved in those --
4 in those audiences. And the whole purpose of the
5 school liaison program is to show the openness of
6 the police department and the opportunities that
7 exist there for employment, and also to show them
8 that the Police Service was a fair -- a fair
9 service that dealt fairly with matters, and was
10 necessary within our society.

11 Q Did the Police Service have a good working
12 relationship with the Aboriginal community during
13 your tenure?

14 A I -- again, I don't have any specifics because
15 these would have been relegated down to some of my
16 subordinates, and while I was always supportive of
17 these things, I really don't know what specific
18 avenues were taken.

19 Q But you'll agree with me that as Chief you didn't
20 initiate any programs, or create any specific
21 programs to address the issues of racial tension
22 or racial disharmony within the Saskatoon Police
23 Service?

24 A Well, the general philosophy was certainly
25 relayed.

1 Q I'd asked you to keep in front of you the
2 newspaper article that's the full page, or the
3 full half-page. It has three headlines on it, the
4 "`Poor' cops blame system" we've referred to, the
5 bottom one "Nagging fear for public [sic] safety
6 prevails", but if you would go to the last column
7 of the article that's headed "Henderson's
8 suspension spurred police morale". And I'll give
9 you a moment if you haven't read it to read it so
10 that --

11 A Again, which -- which article are you speaking of?
12 That one. Okay. And you're talking about,
13 "Nagging Fear For Safety Prevails"?

14 Q Well, the article above that.

15 A Oh, I see.

16 Q "Henderson's Suspension."

17 A Okay. Okay. Yes.

18 Q If you could take a quick minute to read that
19 through for me so that you're familiar with it in
20 its entirety. I want to direct your attention to
21 a single part of it. Okay. I want to direct your
22 attention to the last column, the third column of
23 that article and the second paragraph. And you'll
24 agree with me it's a story about a series of
25 unnamed police officers identifying some of the

1 frustrations in the job in Saskatoon Police
2 Service at this time which was 1988?

3 A You're talking about column two?

4 Q Column three.

5 A Column three.

6 Q The second full paragraph that begins with the
7 words, "Another said," and there's a quotation.
8 Would you agree with me that that officer on June
9 11th, 1998 [sic] identified racial prejudice as a
10 very real issue within Saskatoon policing and
11 Saskatoon Police Service?

12 A Well, I think it's a very unfair comment and I
13 don't believe it at all.

14 Q Okay. But you'd agree with me that an officer in
15 1988 --

16 A If you -- if you take the whole -- if you take the
17 whole article into account it's obvious again,
18 along the same lines as your -- as your previous
19 inquiries about the question of -- of morale and
20 things, it's -- it's all in the same field, and
21 there are those -- there are those members of the
22 force that wanted to use these things, and they
23 obviously did. I just don't understand and don't
24 see this as a -- as an issue, and -- and you don't
25 know what's in the minds of -- of people and their

- 1 hearts, but I didn't see this as a problem. I
2 never saw this as a problem within the department.
- 3 Q So I take it you didn't accept that it was a
4 problem then and you don't accept now, having had
5 13 years to dwell on it, that you might have been
6 wrong and that, in fact, it was a problem in the
7 late '80s, early '90s?
- 8 A No, I still don't. I still don't believe that
9 racism is a problem, if that's what you're
10 suggesting.
- 11 Q And you don't believe that racism could have been
12 a contributing factor in how the Stonechild file
13 got handled?
- 14 A Well, unless you can -- unless you can establish
15 that very specifically, I don't see how we can say
16 that.
- 17 Q Okay. Because as far as you're concerned, racism
18 wasn't an issue within the Saskatoon Police
19 Service, even though officers went publicly and
20 said that it was a big issue.
- 21 A Well, they say all kinds of things, you know.
- 22 Q Okay. So I take it you ascribe now, as you did
23 then, to the theory or the belief that this whole
24 public airing of dirty laundry that was happening
25 in the late '80s as between union and management

1 was engineered by a group of malcontents and
2 wasn't the state of mind of the great -- greater
3 majority of the Saskatoon Police Service.

4 A Absolutely.

5 Q Okay. So it's the malcontents that caused the
6 problem and this isn't really how it was back
7 then?

8 A Absolutely.

9 Q Okay. Now, sir, before I finish with you, I want
10 to go back, I want to raise with you some other
11 evidence that is before this commission and
12 evidence that's certainly in a public forum in the
13 last number of years, and that's the -- the
14 realization or the -- the evidence that says that
15 on a number of occasions, and I'm thinking of
16 three specifically that we know of, members of the
17 Saskatoon Police Service dropped people off in
18 places other than centres of detention where they
19 should have been taken. During your tenure, were
20 you ever made aware that police officers were
21 acting in this manner and that individual members
22 of the community were being dropped off in places
23 that potentially put them in jeopardy for their
24 personal safety?

25 A I was never aware and I certainly wouldn't have

1 tolerated it.

2 Q Okay. We have on the record here acknowledgements
3 by at least one officer, Sergeant Bolton, and an
4 awareness of an incident in 1976 where individuals
5 were actually dropped off and there's evidence
6 that those matters became known to management.

7 A I --I would like -- I'd be interested to know when
8 that happened because I don't recall that incident
9 happening during my term as the chief of police.

10 Q As I recall the evidence, and I wasn't here from
11 it, but in reading the transcripts, one incident
12 was in 1976 where an Aboriginal woman was dropped
13 off. I take it you never heard of that, you have
14 no familiarity with it?

15 A No, and I wasn't -- in 1976 I would have not been
16 in a -- in an assigned area where that would have
17 been brought to my attention.

18 Q But, sir, as a policing authority, if it was
19 brought to the attention of management in 1976
20 that a woman had been dropped off in potentially
21 dangerous circumstances by a member of the
22 service, would you not expect that there would
23 have been some sort of a notification that went to
24 the membership from a management level that says,
25 "Don't do this?"

- 1 A In 1976 I was assigned to coordinate the building
2 of the current police station and my entire time
3 was taken up with that and I was not associated
4 with any of the operational police matters.
- 5 Q But you don't remember getting a memo for anybody
6 that said, "This happened and it's horrible and
7 should never happen again and if does happen it
8 will be dealt with"?
- 9 A I -- I don't recall. I don't recall getting a
10 memo.
- 11 Q And you don't recall getting notification of the
12 incident involving Sergeant Bolton that said,
13 "This happened --"
- 14 A No.
- 15 Q "-- don't let it happen again, it will be dealt
16 with severely by this department?"
- 17 A No, I have no knowledge of that.
- 18 Q Okay. So, do you remember any discussions about
19 people being dropped off, any conversations about
20 people being dropped off during your career as a
21 police officer?
- 22 A No.
- 23 Q Okay. During your tenure as chief and up to your
24 retirement did you ever hear any discussion in
25 late 1990 into 1980 -- 1991 about possible police

- 1 involvement in dropping Neil Stonechild off in the
2 days previous to his death?
- 3 A None whatsoever, and as I said before, I would be
4 the last person that would be advised of that kind
5 of a practice.
- 6 Q You never -- nobody in the rumour mill or nobody
7 shocked came to you and said, "This is what's
8 going around here, do you realize this is being
9 suggested?"
- 10 A No knowledge of that.
- 11 Q Okay. And finally, sir, I had the opportunity
12 before the -- we started this morning to review
13 your -- your diaries for 1990 and '91, and I thank
14 you for providing them to me. And I'm going to
15 ask you if you had an opportunity or did you take
16 an opportunity to look at them and refresh your
17 memory about your scheduling prior to turning them
18 over to commission counsel?
- 19 A From the period of November 29th, I think --
- 20 Q M'hm.
- 21 A -- to basically the end of my term as -- as the
22 chief in August of '91, yes.
- 23 Q Okay. And would you agree with me that your diary
24 certainly appears to indicate that you were on
25 duty and working those last days of November into

- 1 about the 10th of December when you're reported as
2 being off sick for a couple of days?
- 3 A There -- my recollection is there's no notations
4 in the book.
- 5 Q Okay. But there are notations that said when you
6 took time off, you have notations --
- 7 A Yes.
- 8 Q -- around December 10th for about three days that
9 say sick?
- 10 A That's correct, yes.
- 11 Q And then around the 19th of December there's a
12 series of notations that say EDOs which I
13 understand to mean that you'd be off on earned
14 time off, earned days off?
- 15 A Yes.
- 16 Q And then up till about the 14th of January there
17 was a notation that you had some annual leave.
- 18 A That's correct.
- 19 Q Okay. So would it be safe for me to assume, as I
20 did, that on days that you don't show yourself
21 either on sick leave, EDOs or annual leave that we
22 can assume you were up working?
- 23 A That's the only conclusion that -- that I would
24 have to make at that, yes.
- 25 Q And would you agree with me then that the diary

- 1 would suggest that you were working December --
2 sorry, November 29th, November 30th, right through
3 until December 10th or thereabouts when you have
4 sick days?
- 5 A Well, my workday was Monday through --
- 6 Q Yeah.
- 7 A -- Friday but -- but I was available at any time
8 that anyone wanted to reach me.
- 9 Q And we will assume on duty --
- 10 A Yes.
- 11 Q -- given the absence of entries in your diary that
12 you were away or sick or anything of that nature.
13 And that again, except for those couple of sick
14 days which I think started on a Friday and went
15 Friday, Saturday, Sunday, you were back to work
16 until about December 19th when you went on EDOs
17 and appeared to have taken some time off over
18 Christmas?
- 19 A Somewhere about then, yes.
- 20 Q And would you agree with me that your diary
21 indicates that you came back to work for a few
22 days toward the end of the year?
- 23 A Yes.
- 24 Q And that you then went on annual leave for a
25 couple of weeks?

- 1 A Yes. I had indicated before that at that
2 particular time of the year there were many --
3 Q Functions and things.
4 A -- functions that were going on such as preparing
5 the budget proposal for the next year which
6 involved me almost fully, and -- and obviously I
7 was relegating the responsibilities to my
8 subordinates in those issues, so that would be
9 some of the issues; and yes, during that period of
10 time there were invitations to various functions
11 where the chief had an obligation to attend.
12 Q Okay. And I -- I take no issue with that. I'm
13 just simply wanting to clarify for the record that
14 primarily you were working during the time period
15 that's in issue here.
16 A Yes.
17 Q And similarly when we went and looked at your
18 entries around March, early March, 1991 when that
19 story was in the StarPhoenix, would you agree with
20 me that your records indicate or appear to
21 indicate that you were working in those times as
22 well?
23 A Yes.
24 Q Those weren't times that you were sick, on annual
25 leave or on earned days off.

1 A Yes, that -- that seems to be right, yes.

2 Q So despite the fact that you heard nothing or
3 nobody told you anything, in fact you were
4 apparently working.

5 A Yes.

6 MS. KNOX: I don't have any further questions.

7 THE COMMISSIONER: Other cross-examination?

8 **MR. STEVENSON, examining:**

9 MR. STEVENSON: Mr. Commissioner, I have just a
10 couple of questions if I may?

11 Q Mr. Penkala, you've told us that this -- the Neil
12 Stonechild investigation was not brought to your
13 attention by any of your senior officers and was
14 not discussed at the executive level.

15 A That's right.

16 Q And I believe that Ms. Knox this morning referred
17 you to the job description and one of the job
18 descriptions of the inspector would be to bring
19 major investigations or problem matters to the
20 attention of his superior which would be brought
21 to the executive level.

22 A That's right.

23 Q Would it be fair to say then in that time period,
24 December, 1990 into March, 1991 when the media
25 inquiry was taken, that within the Saskatoon

1 Police Service this was not considered to be a
2 problem file, that this file did not seem to have
3 been the problem in terms of its investigation,
4 otherwise it would have been brought to your
5 attention?

6 A Absolutely.

7 MR. STEVENSON: That's all. Thank you.

8 MR. PLAXTON, examining:

9 MR. PLAXTON: Mr. Commissioner, if I may, and I
10 will endeavour to restrict new items that came up
11 with Ms. Knox.

12 Q Mr. Penkala, I think we're -- now that you've had
13 an opportunity to refresh your memory, you were
14 present at the station and working during the time
15 the Stonechild articles were being published,
16 correct?

17 A Well, it's always the situation, as I had just
18 recently indicated, there were many responsibili-
19 ties that fell on me. Sometimes those responsib-
20 ilities took me out of my office but I was
21 certainly employed. I would be maybe at City Hall
22 dealing with -- with things like the budget
23 proposal, the likes of that.

24 Q Okay. Concerning news releases and so forth, the
25 then Sergeant Scott was your media relations

- 1 officer, correct?
- 2 A Yes.
- 3 Q He would discuss with you or other members of
4 senior management items that he was going to be
5 briefing the media on?
- 6 A As a rule, particularly issues that may be
7 controversial, those issues as a rule were -- were
8 made known to me and I certainly wanted that to
9 take place.
- 10 Q By the time the 3rd of March, 1991 -- I believe
11 it's 3rd or 4th of March -- newspaper article was
12 published, it was obvious the Stonechild
13 investigation was a matter of some controversy.
- 14 A It appears in the paper, yes.
- 15 Q Okay. And in the normal course of events then,
16 Sergeant Scott would have discussed that with
17 either you or other members of senior management.
- 18 A Or someone in my stead, yes. I would have thought
19 that would have happened.
- 20 Q You have no reason to believe Scott did not do
21 that?
- 22 A Well, I have no recollection that he -- that he
23 discussed that with me and Sergeant Scott or -- or
24 Chief Scott would probably be able to advise you
25 on that.

- 1 Q Okay. Concerning the issue of the community
2 policing, that was brought to your attention, as I
3 understand looking at these newspaper articles, as
4 early as 1990 -- or rather 1988? The union was
5 flagging that as an issue that was causing
6 officers concern?
- 7 A I'm not -- I'm not sure what your question is, to
8 be honest with you.
- 9 Q Okay. If you could look at exhibit P-92, that's
10 the article. I think it's 11 June, '88. It's
11 under the byline of -- or headline rather
12 "Henderson's Suspension --
- 13 A Okay.
- 14 Q -- Spurred Police Morale."
- 15 A I have it, yes.
- 16 Q And if we look at the fourth, fifth, sixth,
17 seventh, et cetera, paragraphs in the first
18 column, it goes on, it speaks of Deputy Henderson.
19 Then there's a quote, "There's no specialization
20 any longer." It goes on, "There's no Morality
21 Section, Break and Enter, Stolen Auto." Then it
22 says, "We used to be able to call one of the
23 specialized units for help. We can't do that
24 now." I assume you would have read this article at
25 that time.

1 A I recall -- I recall the article and I -- I only
2 can say that this was all accepted on the basis
3 that it was the union's approach to agitating and
4 irritating management. And when we talk about
5 community policing, I was the superintendent in
6 charge of the Uniform Division in 1978 and I
7 initiated principles of what is considered
8 community policing at that particular time with
9 the -- with the approval of the chief of police at
10 that time, Mr. Gibbon, and I had worked towards
11 employing that philosophy in police work, and I
12 believe in it today. I think that this is a very
13 necessary thing. The -- the object of my exercise
14 to deal with community policing is that it had to
15 be gradually introduced to avoid the conflict of
16 resistance to change, to avoid the -- the costs
17 and the depriving of resources for issues relative
18 to responses in the police department. It's -- I
19 could go on all afternoon in regards to this
20 matter, and I'm sure that's not what you want to
21 hear.

22 Q Okay.

23 A But I am a believer in community policing and,
24 yes, I was responsible for bringing it in. When I
25 came on as the chief of police I continued that

1 philosophy within the police department and
2 addressed these issues and, yes, we had a lot of
3 resistance from the police union regarding these
4 issues.

5 Q Okay. And the resistance was well-known to you
6 and the reasons for that resistance were also
7 known to you, correct?

8 A The resistance was known but there was never any
9 factual support or proof that that was the case.

10 Q Okay. Well, would it be fair to say that not all
11 police forces embrace community policing?

12 A Well, I -- I suppose that's right. I -- I don't
13 know. I -- it was -- community policing, you
14 know, started long before what we've accepted as
15 traditional policing. Community policing started
16 in 1829 by a British statesman who introduced it
17 at that particular time, and that's the basic
18 philosophy for community policing. And if you
19 review that you would find that it's still as
20 valid today as it was 160 some years ago.

21 Q Okay. So anyway, I don't want to get into a
22 debate with you as to which is the better form of
23 policing, but the union did state its objection
24 and told you the reasons. You didn't see any
25 validity to the reasons. Is that correct?

- 1 A That's right.
- 2 Q Okay. Now, you were shown a copy of the report
3 that I believe Officer Louttit photocopied at one
4 point in time, that's P-61. That's the original
5 -- or a portion of the -- or at least a photocopy
6 of --
- 7 A Yes, I know, I know what you're referring to, yes.
- 8 Q Okay. And you first saw that report as you were
9 testifying the other day. Is that correct?
- 10 A That's right.
- 11 Q Now, as I recall your testimony, prior to looking
12 at the report you proclaimed that well, there must
13 have been negligence in the investigation of the
14 file. Do you recall that?
- 15 A Yes.
- 16 Q How -- how could you say that without even looking
17 at the report?
- 18 A Well, I did -- I did look at this report.
- 19 Q No, I think you said that before you looked at the
20 report though.
- 21 A I don't recall specifically, but when I did look
22 at the report it certainly confirmed, and the --
23 the one other issue that I would -- I get the
24 impression that we don't know that this is a
25 complete report.

- 1 Q That's correct.
- 2 A So, you know, what are we talking about?
- 3 Q That's another question I have for you. If you
4 don't -- if that is not the complete report you
5 can't really comment on it fairly; is that
6 accurate?
- 7 A That's -- that's true. That's accurate, yes.
- 8 Q That report doesn't contain any Jetsets on it.
- 9 A Nothing.
- 10 Q It doesn't contain, say, a report concerning the
11 autopsy.
- 12 A That's right.
- 13 Q And all of those things would help you decide what
14 -- what, if anything, had gone wrong.
- 15 A The coroner's report is not on here.
- 16 Q Okay. There's an awful lot of things that aren't
17 there, right? Would that lead you to believe that
18 is not the complete file?
- 19 A Well, it certainly isn't complete in my opinion.
- 20 Q No, but also would it lead you to believe that
21 there must have been, regardless of how the file
22 was handled, there must have been other materials
23 on that file.
- 24 A Well, I would assume that but I have no way of
25 knowing.

- 1 Q Now, if we were to assume something had gone
2 wrong, say in either the original investigation of
3 this file or whether it should have been picked up
4 during those four days Jarvis was away, do you
5 recall he was on leave -- or his shift rotation?
- 6 A Yes.
- 7 Q Isn't it up to the system to be able to detect if
8 there are human failures from time to time?
- 9 A Yes, very much so.
- 10 Q And here, from what you have told us, is in your
11 view there was human failure on each step of the
12 ladder up to yourself; is that correct?
- 13 A I think in generalities, yes, that's true.
- 14 Q And you as the chief constable, are you not
15 responsible for the ultimate administration of the
16 police service?
- 17 A Of course.
- 18 Q And isn't part of that responsibility to ensure
19 that proper measures and safeguards are in effect
20 to ensure that if someone trips somewhere in the
21 ladder the system picks up on it?
- 22 A Well, that's true, except that the chief has to
23 know, and I did not know.
- 24 Q Okay. You may not have known but isn't it up to
25 the system to ensure that if someone does trip or

1 stumble that it is picked up on?

2 A Well, I would suggest that the system did have
3 that built in and, yes, it obviously failed. For
4 whatever reason, I don't know, but it certainly
5 failed.

6 Q Okay. The system did fail. We're --

7 A Yes.

8 MR. PLAXTON: Okay. Thank you, sir.

9 THE COMMISSIONER: Other questions?

10 **MR. CURTIS, examining:**

11 MR. CURTIS: If I might, Mr. Commissioner. Just
12 one -- one follow up to the question Mr. Stevenson
13 if you don't mind.

14 Q Mr. Penkala, I think, and correct me if I'm wrong
15 or Mr. Stevenson can as well, I believe you were
16 asked and agreed that because -- given the job
17 description of an inspector and the fact that an
18 inspector, I suppose, was -- had the
19 responsibility to bring you information about
20 areas of concern, and an inspector did not bring
21 you any information regarding the Neil Stonechild
22 file that that meant it wasn't a problem file. Is
23 that --

24 A Wasn't a problem?

25 Q It wasn't a problem file. It wasn't -- it wasn't

1 a hot issue. I believe that you agreed with Mr.
2 Stevenson that because an inspector didn't bring
3 you that information at an executive meeting or
4 otherwise that that meant it wasn't a problem
5 file.

6 A Well, when I -- when I didn't know about it I
7 couldn't -- if you're talking about my --

8 Q No.

9 A -- my opinion on it, I wasn't aware of it.

10 Q Okay.

11 A But certainly that's a problem. I mean, if -- if,
12 you know, by what is before us it certainly
13 doesn't appear that all the avenues were
14 investigated and covered and obviously that's a
15 problem and -- and it should have been, it should
16 have been dealt with.

17 Q Right. And just because an inspector -- I mean,
18 or another possible explanation for an inspector
19 not bringing this information to you is that that
20 information was not given to an inspector for one
21 reason or another.

22 THE COMMISSIONER: Excuse me. There's an objection.

23 MR. CURTIS: Sorry.

24 MR. WATSON: Mr. Curtis has had his chance.

25 THE COMMISSIONER: Yes.

- 1 MR. WATSON: If we're going to have questions
2 arising out of every single person that goes up
3 here, we'll never get the --
- 4 MR. CURTIS: I just wanted to clarify the
5 impression that was left by Mr. Stevenson's
6 question.
- 7 THE COMMISSIONER: I agree with this. And this is the
8 concern I have too, Mr. Watson, is that I'm not
9 going to allow everybody to revisit everything.
- 10 MR. CURTIS: No. I --
- 11 THE COMMISSIONER: That's fine.
- 12 MR. CURTIS: Okay.
- 13 THE WITNESS: Did you -- would you repeat your
14 question? I've kind of lost the -- lost the --
- 15 MR. CURTIS: Well, I'm not sure. We're done
16 with this -- this line of questioning.
- 17 THE COMMISSIONER: I don't think you need to answer
18 the question.
- 19 THE WITNESS: Oh, okay. Thank you.
- 20 MR. CURTIS: All right.
- 21 THE COMMISSIONER: Well, I gather there are no other
22 questions? Do you have anything further, Mr.
23 Hesje? You will not be sorry to hear that you're
24 excused, Mr. Penkala.
- 25 THE WITNESS: Thank you very much, Your Honour.

1 MR. HESJE: Mr. Commissioner, I have the next
2 witness ready to go. I believe this could take a
3 few minutes to set up, he has some electronics.
4 If you're considering taking another morning
5 break?

6 THE COMMISSIONER: Yes, it's appropriate we do that.
7 We'll take 15. Is 15 minutes going to give you
8 enough time? 15 minutes going to be enough time?

9 MR. HESJE: Oh, yes, absolutely.

10 (PROCEEDINGS ADJOURNED AT 11:24 A.M. & RECONVENED AT 11:46
11 A.M.)

12 MS. KNOX: Mr. Commissioner, before we
13 commence with the examination of Mr. Robertson
14 I've asked permission of commission counsel to
15 return to the -- to the microphone. During the
16 cross-examination of Mr. Penkala I referred him to
17 an example of a job description and I was
18 referring to the inspector in charge of support --
19 investigative support. I neglected to ask to have
20 that document marked as an exhibit and I wonder
21 now if we could have it marked as an exhibit from
22 his cross-examination.

23 THE COMMISSIONER: Very well. Is it P-95?

24 CLERK: Yes, it is, My Lord.

25 **EXHIBIT P-95: JOB DESCRIPTION FOR INSPECTOR IN CHARGE OF**
26 **INVESTIGATIVE SUPPORT**

1 MR. HESJE: Mr. Commissioner, the next witness
2 is Gary Robertson.

3 **GARY ROBERTSON, sworn, testifies:**

4 **MR. HESJE, examination-in-chief (qualifications):**

5 MR. HESJE: Mr. Robertson, I'm required to read
6 the following notice to each and every witness
7 that testifies at this inquiry. The rules of
8 practice and procedure established for this
9 inquiry provide that all witnesses must be advised
10 they have the protection of section 37 of *The*
11 *Saskatchewan Evidence Act* and section 5 of the
12 *Canada Evidence Act*. These statutory provisions
13 state the testimony that may tend to criminate
14 you, tend to establish liability to a civil
15 proceeding, and which testimony you would not be
16 compelled to provide at common law, shall not be
17 used or admissible in evidence against you in a
18 criminal trial or other criminal proceedings
19 against you, other than the prosecution for
20 perjury in the giving of evidence or for the
21 giving of contradictory evidence, and shall not be
22 used or receivable in evidence against you in any
23 other civil proceeding or any other proceeding
24 under an act of the Legislature of Saskatchewan.
25 You're hereby advised that such protection shall
26 apply without you expressly invoking such

1 protection.

2 Mr. Commissioner, Mr. Robertson is
3 -- has been called to provide what could be
4 characterized as expert evidence. He's going to
5 provide evidence as to his analysis through the
6 use of photogrammetry of certain imprints on the
7 body of -- sorry, analysis of photographs of the
8 body of Neil Stonechild. I propose to proceed
9 much along the lines that I would in a trial, and
10 that is to review with the -- the inquiry the
11 qualifications and background experience of Mr.
12 Robertson, then prior to him going into the
13 substance of his testimony it would be proposed
14 then to allow other counsel to cross-examine him
15 with respect to the qualifications.

16 THE COMMISSIONER: Very well.

17 Q MR. HESJE: Now, Mr. Robertson, I just want to
18 review with you your background, focussing on
19 photogrammetry. You received a certificate in
20 photogrammetry from the Algonquin Institute of
21 Photogrammetry in 1973?

22 A Yes, I did.

23 Q And you have worked as a photogrammetrist since
24 1973?

25 A Yes.

- 1 Q Now, you have provided a curriculum vitae which
2 has been provided, in turn, to counsel. I wanted
3 to review some of the highlights of that
4 curriculum vitae with you. In -- from 1971 to
5 1973 you conducted some research in analytical
6 close-range photogrammetry in connection with the
7 National Research Council in Ottawa?
- 8 A That's correct.
- 9 Q From 1974 to 1976 you worked on a contract for
10 practical research in close-range photogrammetry
11 again through the National Research Council?
- 12 A Yes. It was funded by another government agency,
13 but under the auspices of the National Research
14 Council.
- 15 Q Okay. And then from 1976 until 1980 you were
16 employed by the Government of Canada?
- 17 A Yes, I was.
- 18 Q And that was the Engineering and Architecture
19 Branch?
- 20 A Yes, that's correct.
- 21 Q And you're employed as a close-range
22 photogrammetrist.
- 23 A Yes, I was.
- 24 Q Can you just tell us briefly what your
25 responsibilities were in that job from 1976 to

1 1980?

2 A I was -- I was the team captain responsible for
3 photogrammetry team. Since it was the only team
4 in Canada doing close-range photogrammetry we
5 travelled from coast to coast doing close-range
6 photogrammetric projects, mainly related into
7 buildings and historic structures in Canada.

8 Q Okay. Now, in 1980 you formed your own company,
9 Gary Robertson and Associates?

10 A Yes.

11 Q And that's a consulting company?

12 A Yes, it is.

13 Q It consults in the area of photogrammetry.

14 A Yes, in close-range, yeah.

15 Q In 1981 you attained a designation of certified
16 photogrammetrist from the American Society for
17 Photogrammetry and Remote Sensing?

18 A That's correct.

19 Q Now, first of all, can you tell us what that --
20 the American Society for Photogrammetry and Remote
21 Sensing is?

22 A The American Society in Photogrammetry and Remote
23 Sensing is the governing body of -- for
24 photogrammetry in North America. They provide
25 certification standards for professional

1 photogrammetrists.

2 Q Okay. Now, to become a certified photogrammetrist
3 with the, I'll use the acronym ASPRS, what is
4 required?

5 A Well, it's -- originally it was ten years but I
6 understand now it's nine years. Only five years
7 can be credited to education. You have to --

8 Q Sorry, nine years of what?

9 A Of working in the field of photogrammetry. At
10 least five in an area of professional and
11 management level under project management level.
12 You're subject to a written and an oral exam and
13 you have to be sponsored by peers, at least four
14 peers, that know your work in the field of
15 photogrammetry.

16 Q Are there examinations as well?

17 A What happens is that once you attain the title of
18 certified photogrammetrist, you maintain it for
19 life, but you have to be recertified every five
20 years. If not you would have to put retired at
21 the end of the title. But every five years you
22 have to be recertified, and part of the
23 recertification process goes on points, so you
24 have X number of points for international
25 colloquiums and conferences, presenting papers,

1 teaching the subject, and -- and again what
2 happens within that five-year period you have to
3 get four peers have to prepare letters for the
4 American Society of Photogrammetry before you're
5 recertified.

6 Q Okay.

7 A So it's quite strict.

8 Q And when were you last recertified?

9 A August, 2000, and I'm certified through till
10 August, 2005.

11 Q Okay. Now, can you just explain I guess in basic
12 terms so a layperson can understand what -- what
13 is photogrammetry?

14 A Well, photogrammetry is the science and
15 engineering of taking measurements from imagining.
16 It can be any form of imagining, whether it's
17 electromagnetic media or actually photo images.

18 Q Now, in your work as a photogrammetrist have you
19 also been involved in image processing techniques
20 used?

21 A Yes.

22 Q Have you been involved in the use of high-
23 resolution scanners?

24 A Yes. Actually, I helped develop a high-resolution
25 scanning device.

1 Q So as part of your work as a photogrammetrist is
2 to analyze and interpret the photograph?

3 A That's correct.

4 Q Or an image. I understand you prefer the term
5 image?

6 A Yes, because we're getting -- eliminating slowly
7 the photographic media and handling strictly
8 electronic digital imaging.

9 Q Now, you've just touched briefly, I guess, on a
10 high-resolution scanner, but have you been
11 involved in the development of other hardware and
12 software for use in photogrammetry?

13 A Yes, several pieces of equipment. One was our --
14 we had several variants of our high-resolution
15 scanner but we developed -- actually it was the
16 first robotic scanner which -- for industry for
17 doing automated measurements without having an
18 operator that gave accuracies in the realm of
19 about 1 part in 300,000. That was mainly designed
20 and used in aerospace and structural deformation
21 projects. We're also involved in various document
22 scanners, for example custom-scanning devices that
23 we developed for the Transportation Safety Board
24 and the Royal Canadian Mounted Police back in late
25 '80s.

- 1 Q Okay. Now you use the term "we", were you
2 personally involved in the development of it?
- 3 A Yes.
- 4 Q You have provided me with a copy of a book
5 entitled *Non-Topographic Photogrammetry*. You're
6 familiar obviously with that book?
- 7 A Yes, I was a contributing author to the book.
- 8 Q And it's published by the American Society of
9 Photogrammetry and Remote Sensing?
- 10 A That's correct.
- 11 Q Do you know what use is made of this book?
- 12 A It was mainly used as a teaching book for
13 university and photogrammetry students.
- 14 Q And as indicated, you were a contributing author
15 to this book?
- 16 A Yes.
- 17 Q The chapter 18 indicates it's authored by a G.R.
18 Robertson. That's you?
- 19 A That's correct.
- 20 Q And that chapter is on ultra-sonic technology
21 systems and applications.
- 22 A Yes. That was one of the -- I failed to mention
23 that. One of the pieces of equipment that we did
24 develop was actually one of the first pieces of
25 equipment for 3-D ultrasound and it was subject to

- 1 quite a few papers and also the authoring of the
2 book, the co-authoring of the book.
- 3 Q You provided me with a second book. This one's
4 the *First Australian Photogrammetric Conference*.
5 I take it what this is is a publication of -- of
6 papers that were presented at this conference?
- 7 A Yes. And the other thing, because I did co-author
8 another book, contributing author through the
9 American Society of Photogrammetry, an earlier
10 publication called *Close-Range Photogrammetry:*
11 *State of the Art* and that was published through
12 the ASPRS as well, and that mainly concentrated in
13 mining and geotechnical engineering.
- 14 Q Okay. Then turning to this one though, this is a
15 publication of proceedings --
- 16 A Right.
- 17 Q -- at this conference in New South Wales, Sydney,
18 Australia -- sorry, University of New South Wales,
19 Sydney, Australia in November of 1991.
- 20 A That's correct.
- 21 Q And you have contributed a paper in this
22 publication called *Monitoring Static and Dynamic*
23 *Movements of Geotechnical Features by Close-Range*
24 *Photogrammetry?*
- 25 A Yes.

- 1 Q Now, I understand you have also presented papers
2 at proceedings of the International Society of --
3 I'm trying to get it right here -- Photogrammetry?
4 Yes.
- 5 Q Approximately how many papers have you presented?
6 A To the ISPRS? About approximately 30, 35 papers,
7 I believe.
- 8 Q And have you presented papers at other conferences
9 or proceedings?
10 A Yes. Actually you just had one there, several in
11 Australia. I also present and lecture at -- I've
12 been an invited speaker at the International
13 Association of Identification which is one of the
14 major institutes for forensics, study of forensic
15 sciences.
- 16 Q And when was that conference?
17 A Well, I just gave a lecture in July of 2003, this
18 year, and I've -- actually, I've been doing
19 presentations and workshops through the IAI since
20 I believe 1988, '89, '91, in various years, yes.
21 And then there's other mining symposiums, for
22 example, you know, the Canadian Mining Symposium
23 and, you know, I mean various other workshops and
24 committees.
- 25 Q I want to focus you, I guess, on the use of

1 photogrammetry in analyzing imprints and, in
2 particular, imprints on humans. I understand that
3 you published or presented a paper to the -- the
4 ISPRS which is the International Society of
5 Photogrammetry and Remote Sensing --

6 A Yes.

7 Q -- in Amsterdam in 2000?

8 A Yes.

9 Q And the proceedings again of that conference were
10 published?

11 A Yes.

12 Q Included in the published volume was a paper you
13 presented on forensic analysis of imprint marks on
14 skin utilizing digital photogrammetric techniques?

15 A That's correct.

16 Q You also presented a paper at the 2002 symposium
17 of the ISPRS in Corfu, Greece?

18 A Yes, I did.

19 Q Were these annual symposiums that's held by the
20 ISPRS?

21 A Well, the ISPRS has what they call a general
22 congress which the International Society of
23 Photogrammetry represents over 100 countries and
24 they have various commissions. So every four
25 years is what they call a general congress and

1 every year they have various commissioned
2 proceedings in locations throughout the world. So
3 at any given time, yes, every year there's --
4 there's, you know, general and annual meetings.

5 Q Now, the paper you presented at Corfu, Greece was
6 entitled *Automated Point Measurement of Dynamic*
7 *Skin Membrane Surfaces Utilizing a Dot Projection*
8 *Photogrammetric Technique*, a very simple title?

9 A Yes, I did.

10 Q Now, can you tell me the process, how one is
11 selected to present a paper at one of these
12 conferences?

13 A What you do is you submit your abstract to the --
14 to the -- to the Commission, and in this
15 particular case it would be Commission 5, and then
16 you have the working group presidents and their
17 assistants, and they review and they pass it --
18 they pass it around to see if you're going to, you
19 know, if they would publish it, or accept it in
20 the proceedings.

21 Q Now, we talked about Gary Robertson Associates,
22 the business which is consulting. Have you
23 consulted with police services?

24 A Yes, I've been involved consulting police agencies
25 probably I think for about 17, 18 years within

1 Canada and the United States. Primarily with the
2 Royal Canadian Mounted Police, I believe, since
3 1986.

4 Q And what sort of work have you done with the RCMP?

5 A A lot of training. I've done a lot of training
6 with police officers at Forensic Identification
7 Resources which has headquarters in Ottawa, and I
8 also provide training courses out in Regina with
9 identification officers. But mainly in systems
10 support because they also have photogrammetry
11 systems, and I review case files with them that
12 the officer will be working on and then I review
13 -- I do the same thing with the Transportation
14 Safety Board as well.

15 Q Now, I want to ask you, then, again about the
16 analysis and measurement of imprint marks, and I
17 understand that you have done work in the area of
18 imprint marks that's not restricted to imprints on
19 humans or skin imprints.

20 A Yes. I mean, we do studies with animals and, of
21 course, we use imprint analysis a lot in crash
22 investigation work.

23 Q In crash investigation work can you just explain
24 what that would involve?

25 A There's several. Like, for an example, if an

1 aircraft imprint -- or impacts the ground, we can
2 determine pitch roll or even power settings on the
3 aircraft from the imprint marks. Of course
4 someone can say well, why don't we do that with
5 flight data recorders? In a lot of instances in
6 the major crash that I have worked on including
7 the Dryden crash and the Swiss Air crash, we had
8 no flight data recorders. Subsequently
9 photogrammetry actually provides a more accurate
10 method because you're doing -- it's -- you're --
11 you're comparing an imprint on the ground rather
12 than doing an analog, you know, digital conversion
13 that you would have on a flight data recorder.

14 Q All right. Now in --

15 A So like that is one. For an example would be how
16 the aircraft would imprint on the ground. One of
17 the key areas would be tree strike analysis, and
18 that was introduced in the -- the famous or
19 infamous Gander, you know, crash analysis that we
20 did in Gander.

21 Q And, Mr. Robertson, I think we'll come back to
22 some of that when we start the Power Point
23 presentation. I just want to get an --

24 A Okay.

25 Q -- overview at this point in time. Now, what

- 1 about have you appeared as a witness, an expert
2 witness in court proceedings?
- 3 A Yes, I have, for the last 20 years.
- 4 Q I understand one of the first times you testified
5 was in Saskatchewan?
- 6 A The first -- my first trial was actually here in
7 Saskatoon at the Court House here in Saskatoon.
- 8 Q And that was in 1981?
- 9 A I believe it was '81, yes.
- 10 Q What was that case about?
- 11 A It was involving a fatality at a mine site, I
12 believe east of Saskatoon I think in Colonsay.
- 13 Q Right. And what was the nature of your evidence?
- 14 A We were analysing actually a cable reeler device
15 and one of the things we were doing was actually
16 to calculate sheer stress on the -- on the cable
17 reeler components actually in motion. What had
18 happened is the cable reeler device broke sending
19 30-millimetre steel cable down a shaft, I guess
20 severing an individual's head, so.
- 21 Q And was that analyzed using photogrammetry?
- 22 A Yes, actually it was one of the first times that
23 photogrammetry was used in a dynamic process.
- 24 Q Okay. Now, I want to ask you about several other
25 court appearances. It's my understanding that in

1 1995 you testified in U.S. Federal Court.

2 Actually there was two separate cases involving
3 where you testified on behalf of the U.S. Bureau
4 of Reclamation?

5 A Yes. In this particular case it was contract
6 claims, I think very large contract claims,
7 construction. One of the things we do is we
8 actually go back, and you'll see a lot of our
9 cases and examples later on, that we go back and
10 about ten years after the fact, sometimes 50 years
11 after the fact, and extract photo -- information
12 from photo images, and that was in these two
13 particular cases in two separate claims.

14 Q Now, you've also testified in a criminal case in
15 Ontario, the *Province of Ontario v. Lloyd* (ph),
16 Wendy Lloyd?

17 A Yes.

18 Q And what was your testimony in that case?

19 A Well, actually in that particular case it was a
20 combination of two items, one was on measurement
21 and the other one was part of image processing,
22 because it was involving a robbery in the subway
23 system in Toronto. And one of them would be to do
24 image processing to see if there was any cash in
25 the suspect's hand as they were leaving the booth.

- 1 Q And what images were you analyzing in that case?
- 2 A Those were the surveillance videotape cameras that
3 they have monitoring the cashier's booth.
- 4 Q So you testified both on the analysis of the
5 photograph working with the -- the image and also
6 making measurements from the image.
- 7 A Yes, that's correct.
- 8 Q Then you've appeared in several criminal cases in
9 the university more recently. *The State of*
10 *California v. Davis*, in 2000?
- 11 A Yes, *Davis*. That was -- it started out, I guess,
12 as a first-degree homicide case. It was a car
13 jacking and homicide and we analyzed the
14 videotape. I mean, it broke down into two
15 particular areas: one we were originally hired to
16 oversee what they call the 402 hearing which is we
17 worked for the prosecutor to find and review
18 professional witnesses or, you know, to see what
19 their -- if they would meet the criteria for
20 imaging; and then subsequently I analyzed the
21 videotape regarding -- in the trial.
- 22 Q And my understanding again was there was
23 surveillance photographs of a parking lot that
24 showed the suspect?
- 25 A Yes, the -- there was a suspect observed leaving

1 the -- the scene and they had a camera mounted on
2 the outside of the store over-viewing the parking
3 lot.

4 Q And through photogrammetric analysis of that
5 photograph, surveillance photograph, you provided
6 evidence as to the height of the suspect?

7 A Yes, I did.

8 Q The next case I'm going to ask you about is --
9 again it's the *State of California v. Mouser* in
10 1999?

11 A Yes.

12 Q That was again a capital or a murder trial?

13 A Not capital. It was -- it was dropped to second
14 degree murder.

15 Q Okay. And again you testified there on behalf of
16 the prosecution?

17 A Yes, I did.

18 Q And can you just tell us briefly what your
19 testimony there involved?

20 A The testimony involved an imprint on a -- the
21 murder victim was a 14-year-old girl. The nude
22 body was found dumped on the side of the road and
23 she -- they observed an imprint mark on her leg
24 and they photographed it and then sent me the
25 photographs.

1 Q And were you doing some measurements based on the
2 photographs?

3 A Right. The majority of our work was strictly on
4 the measurement phase. It was actually a part of
5 the measurements of the imprint, and then asked if
6 later on could we identify what would cause the
7 imprint.

8 Q Okay. And the next and last case I'm going to ask
9 you about was *Indiana v Hall*. You testified in
10 that case in 2001?

11 A Yes, I did.

12 Q And that case I believe you testified for the
13 defence.

14 A Yes.

15 Q And what did that case involve?

16 A It involved imprint marks on a -- on a dead
17 child's head, and one of the things that we were
18 doing again was obtaining measurements of the
19 imprint marks and location, and orientation of
20 those imprint marks on the boy's head.

21 Q And were you comparing the imprint marks to a
22 known object?

23 A Yes. There was a known object in this particular
24 case, I think it was a dog's cage, it was a door,
25 and then we compared the imprint marks from the

1 door to the child's head.

2 MR. HESJE: Now, Mr. Commissioner, at this
3 point Mr. Robertson has -- does have a number of
4 slides and a power point presentation. I still --
5 I would like to go through a number of those still
6 by way of the general background in terms -- it
7 will show some of the work that he's been doing
8 and some -- some explanation of photogrammetry and
9 again I will stop before he makes any comment on
10 the Stonechild case.

11 THE COMMISSIONER: Very well.

12 Q MR. HESJE: Could we then go to the -- I guess
13 I should also note a copy of this has been
14 provided to counsel. Now, you've got a fairly
15 detailed presentation, Mr. Robertson, and I don't
16 want to spend a great deal of time on it so maybe
17 -- you've now got on the screen a definition of
18 photogrammetry?

19 A M'hm.

20 Q And where does that come from?

21 A Actually, this is, I believe, from the *Manual of*
22 *Photogrammetry and Remote Sensing*.

23 Q All right. Go ahead.

24 A Photogrammetry is divided between the two main
25 areas. One is an aerial mapping, and close-range

1 photogrammetry. And, of course, aerial mapping we
2 all know, topographical maps, you know,
3 subdivision lay out, city planning, GIS, you know,
4 geographical information systems. All that
5 material is normally obtained through
6 photogrammetry. In the close-range
7 photogrammetric applications which -- that I work
8 with --

9 Q I'm sorry. I was going to ask you. But this
10 close-range is the area that you have specialized
11 in?

12 A Right. It's -- it's actually used in just about
13 every area of science and engineering including
14 aeronautical, forensic, mining, accident,
15 geotechnical, architecture and marine, archeology,
16 botanical, civil and medical science and, of
17 course, film animation. The -- there's a basic --
18 what I've done is just shown a graph of how we're
19 doing it. What you're looking at is you're taking
20 -- obtaining measurements from two or more photos
21 and there's a general equation that we would use
22 to -- to derive these coordinates, three-
23 dimensional coordinates.

24 Before we do any type of
25 measurement, of course, we always look at what is

1 a point or how are we measuring? Well, like,
2 we're measuring image rays, light rays and, of
3 course, as soon as it passes through any type of
4 optics you have a bending effect. So one of the
5 first things that we normally do before we do any
6 type of photogrammetric analysis is actually
7 calibrate the camera and calibrate the lense. So
8 this is explaining the procedure that we use for
9 doing calibration and determining focal length.

10 To calculate again the three-
11 dimensional coordinates, this is a very elementary
12 what we call a collinearity equation where we're
13 actually solving. To put it in a nutshell, you
14 have so many unknowns and then X number of knowns,
15 and then you're putting in the equation to do the
16 calculation. One, of course, is the focal length
17 any other type of parameters that you would have
18 of the image.

19 Another procedure is what we call a
20 relative orientation, and this is what we call --
21 it's based on a coplanary condition and in a lot
22 of aspects in photogrammetry we don't really need
23 to have any known dimensions of the physical
24 object because you're taking image rays and
25 forming them, so you can actually very, very

1 accurately solve an item and it's accurate within
2 shape, but then what you have to do then is put it
3 to scale. So I can actually measure a radar dish
4 or reflector and make it as -- as small as my hand
5 or I can make it as big as this building, and that
6 would -- would be this coplanary-type scenario.
7 And, of course, we use this quite a bit in
8 industrial precision measuring.

9 And somebody will ask, you know,
10 can we do it with a single image and the answer is
11 yes, we can. And from that we have to extract
12 known surfaces, and this is a diagram of what
13 we're doing. A lot of cases we're looking at
14 perpendicular and various other plane objects that
15 we're hoping to use in our -- into our equation.

16 In this particular aspect you can
17 see -- well this would be more like on the film
18 animation side, but this is actually a painting
19 and there was a movie released at Siggraph using
20 our software package, but what you're looking at
21 is a painting, a single photograph, and it's
22 creating a 3-D model. You can see the wire frame
23 and how we're animating it, adding the -- the
24 three-dimensional depth to it. This was a picture
25 that was just pulled off the internet, I believe

1 back in the early '80s was on the space shuttle
2 program, and what you're looking at here is the --
3 the nose of the external tank for the shuttle
4 craft. And what happens is during the
5 manufacturing process they're handled at different
6 places in the factory, so all these all have to be
7 brought together and assembled, and if you're
8 independently building things and you try to build
9 it -- they were out by 150, 200-thousandths of an
10 inch. By using photogrammetry during the process
11 you can put all these sections together and they
12 all match within one to two-thousandths of an
13 inch. And that's why we also used it in the
14 production on submarine bulkheads, for an example,
15 on the --

16 Q Mr. Robertson, I just want to stop you there for a
17 moment to make sure I understand you correctly.
18 You're saying that in checking the fit of
19 components such as in aeronautics where there's
20 very minimum tolerances allowed, you do the --
21 measurements are actually done using
22 photogrammetry as opposed to some physical measure
23 such as a caliper?

24 A That's right. In the early '80s when we first
25 introduced the system, Northrop was the first

1 system that went in and subsequently all the
2 aerospace companies -- in fact, it's part of a mil
3 spec now that they use photogrammetry.

4 Q Why would they use photogrammetry as opposed to a
5 physical measurement such as done with a tape
6 measure or a caliper or something like that?

7 A Well, the physical measurement is not very
8 accurate, it's not as accurate as the
9 photogrammetric process. The other thing too is
10 the photogrammetric process can be automated. So
11 one of the first systems we put in, what they
12 would do in 80-man-hours for an F18 wing tool
13 would be done in 8, and now we can do it in less
14 than a half an hour, so --

15 Q Now --

16 A -- in those areas. I guess one of the other major
17 things they do is because when you're starting
18 looking at large assemblies you have what they
19 call coefficient factors of metals. So as things
20 get heated and you start measuring at one end, the
21 temperature fluctuations can actually affect the
22 measurements. Photogrammetry is taken at that one
23 instant in time and adds to the accuracies as
24 well.

25 Q Okay. Now, again, just so we're clear, is it

1 possible then for a photogrammetrist to have
2 pictures of one component, pictures of another
3 component that may be 1000 miles apart, and
4 determine whether they're going to fit or not?

5 A Yeah, and actually that -- that's used on a lot of
6 cases. A good example because, for on the -- on
7 Los Angeles submarines, the bulkheads were made by
8 Brisco (ph) in -- in Montreal and they were
9 transported down to Newport News, Virginia and
10 used down there, so you have that quality
11 assurance situation. Same with aircraft carriers
12 or any other type of components --

13 Q Okay.

14 A -- in aerospace. It's another example of the
15 external tank. We also use them in aircraft
16 components. This was part of the Swiss Air
17 investigation that we worked on for nearly two
18 years. It's mainly used, as well, in accident
19 investigation. You can do large machines for
20 industrial accidents, certified 3-D models for
21 animation, pre-strike analysis, shear forces, and
22 mid-air crash analysis.

23 This was a higher profile case.
24 This was the mid-air collision over Niagara Falls
25 that was well-publicized. And what had happened

1 was Transportation Safety Board issued a report
2 where helicopter A hit helicopter B, and we went
3 back, reviewed it, and one of the victims in the
4 helicopter had been taking pictures up to the
5 point of impact, so we actually took the victim's
6 camera and calculated the position of the -- of
7 the helicopter, and the report was rescinded at
8 that point. It was the opposite. Helicopter B
9 hit A and they were at the wrong assigned
10 altitude.

11 Q So you were able to calculate the relative
12 positions of the two helicopters simply based on
13 the photographs?

14 A Yes, what we -- of course, what we had in here if
15 you look at these -- this image, when you're
16 looking at those point numbers, those are surveyed
17 control points that we have then, of course, we're
18 using photogrammetry mathematical resection where
19 we actually calculate the parameters of the camera
20 station, not only the parameters -- when we say
21 parameters we're basically talking about six main
22 parameters. We know the X, Y and Z position of
23 the aircraft, and also the orientation angles, the
24 primary, secondary and tertiary angle, rotation of
25 how that camera was in 3-D specs, and this is what

1 we did on the -- on the mid-air -- or not -- yeah,
2 the mid-air over Niagara Falls.

3 Another example of control laid
4 out. Now, the other thing too, this corresponded
5 to radar information that they had because they
6 have the radar information on tape. They didn't
7 have the precise altitude that we would be
8 obtaining from these images. Somebody had
9 photographed part of the helicopter coming apart.
10 And here we're using some high-resolution scanning
11 looking at details in here. It lost its tail
12 rotor.

13 In the civil engineering
14 applications we're looking at structural
15 deformation, studies of engineering structures:
16 earth walls, dams, rail lines, piles, radar
17 antennas, environmental studies, vibration
18 analysis, mapping structural members. And then,
19 of course, what's quite important is the
20 structural analysis of loaded and dynamic, because
21 with multiple high-speed frame cameras we can
22 actually do very, very precise measurement of
23 objects in a dynamic state as we see from our
24 first one here in Saskatoon.

25 I added this in here because this

1 was a very interesting project for us. This was
2 the Regina legislative building, and we've been
3 involved I guess probably over a 12 -- 12-, 14-
4 year period of doing the deformation analysis on
5 the leg building. What we have is we have
6 permanent -- we had permanent monumentation
7 mounted throughout the structure and we used
8 close-range photogrammetry to compute the
9 coordinate data on the leg building and we started
10 it, I believe, and I think it was in '82 or '83
11 and then monitored it again and all the way up to
12 '90 and I believe '92 and then we did one other
13 session afterwards. But what we're doing is we're
14 doing a comparison of points on the structure and
15 comparing it over the period of time. So in --
16 you can see if the building's going down or
17 actually up. The structures can go up. So this
18 is what we were doing. Now, what was happening is
19 the accuracy that we were obtaining on the leg
20 building was in around the 800 microns or .8 of a
21 millimetre.

22 Q The purpose there, then, is simply through
23 photographs taken over a period of time, is to
24 measure minute movement in the legislative
25 building.

1 A Right, and then also in one particular phase back
2 in the early '80s there was a restoration done on
3 the west wing of the leg building and it was
4 underpinned and then, of course, one of the things
5 that we're using photogrammetry was as they were
6 putting jack piles, we were using photogrammetry
7 to put the building back up by using photogram-
8 metry. And you can see reference points that we
9 have on the columns and pillars here at the leg
10 building. This here is basically all these
11 circles in here are -- are photographic stations
12 and from these stations are point locators that we
13 have on the leg building, so you can see the --
14 every one of these rays, it's called a bundle
15 solution and a tri-lateration process and that's
16 how we can achieve the accuracies. So you can see
17 how everything is all tied in and it's
18 simultaneously adjusted. Again, showing
19 differences over time periods. I think this was
20 '83, '89 and '83 and '92, and some of the
21 features.

22 These pictures here are part of
23 that -- one of the claims, court claims in
24 Federal Court where we had to go back ten years,
25 take the photographs, go back ten years in time,

1 and actually extract measurements. One of the
2 claims was that the layer of colleche (ph) they
3 were using in this process was in the wrong spot
4 and at different depth, and we actually calculated
5 and found it to be false and it was exactly where
6 it was supposed to be and the correct depth, so
7 the case was won on behalf of the government.

8 Q So again, it did involve, though, the making of
9 measurements from photographs --

10 A Right, and --

11 Q -- including historic photographs.

12 A Right. And, of course, we're using references in
13 photographs. For an example here we have suhaurao
14 cactus, and there was a fire that went in through
15 the area so you have to take growth rates and
16 patterns and use that in -- in the -- in your
17 numerical evaluation as well.

18 Architectural and archaeological
19 applications, this is basically how I got my start
20 in photogrammetry throughout. Kim actually was
21 doing projects here in Regina and Saskatoon by 25,
22 30 years ago but we're looking at architectural,
23 structural analysis, deformation studies, extant
24 records, close-range photogrammetry for
25 archeological sites. We've done a lot of that

1 including Newfoundland and L'Anse aux Bay where
2 the Viking area, and then right there Red Bay,
3 Labrador where that Spanish galleon had sank in
4 1560. So this is where we were doing a lot of
5 underwater photogrammetry.

6 In a nutshell, basically, you know,
7 from photographs we can actually create very
8 precise measurements of the structure and you can
9 see a wire frame and how we're doing texture
10 mapping.

11 Now, in the forensic applications
12 we're looking at 3-D models of crime scenes with
13 animations, camera and air surveillance systems
14 that's being used, we've done a lot of work in
15 those particular areas with several police forces,
16 and multi-data acquisition systems which can be --
17 it can be X-ray, it can be alternate light, it can
18 be different types of imaging. Document analysis,
19 high-resolution imaging, of course analysing
20 impact marks, measurement and mapping of crime
21 scenes, image enhancement, blood splatter
22 analysis, crime scene reconstruction and post-
23 blast analysis.

24 Q Mr. Robertson, I want to interrupt just for a
25 moment because we're approaching what is our

1 normal break. What slide number are we on now?

2 A I --

3 Q David?

4 MR. STACK: Number 40.

5 MR. HESJE: Forty? There's quite a ways to go
6 yet, Mr. Commissioner, if you wish to break for
7 lunch.

8 THE COMMISSIONER: Well, that makes sense. We'll
9 adjourn to 2:00.

10 (PROCEEDINGS ADJOURNED AT 12:31 P.M. & RECONVENED AT 2:02
11 P.M.)

12 THE COMMISSIONER: Mr. Hesje.

13 Q MR. HESJE: Mr. Robertson, before we continue
14 with the slides, I wanted to get you to identify
15 your curriculum vitae. That document I've
16 provided you is your current curriculum vitae
17 prepared by yourself?

18 A Yes.

19 MR. HESJE: Mr. Commissioner, I'd like to have
20 that marked as an exhibit.

21 THE COMMISSIONER: Ninety-seven.

22 THE CLERK: P-96, My Lord.

23 THE COMMISSIONER: Ninety-six?

24 **EXHIBIT P-96: CURRICULUM VITAE OF GARY ROBERTSON**

25 Q MR. HESJE: Mr. Robertson, can you back up one

1 slide?

2 A Okay. I'm sorry.

3 Q Well --

4 A Oh, I'm sorry, for some reason this is --

5 Q Going forward.

6 A Okay.

7 Q Yes, just to pick it up here, you were about to

8 review some of the forensic applications of

9 photogrammetry? I think we can go ahead then.

10 A Go -- start out with the next slide?

11 Q The next slide, yes.

12 A Okay. In this particular slide what we're doing

13 is doing a combination of photogrammetry and image

14 processing. What had happened was there was a

15 body found -- a decayed body was found in a field

16 and the victim was reported missing four or five

17 months previously. A vehicle was found in the

18 area and the police did a search of the area in a

19 grid fashion. This photograph was obtained by a -

20 - you know, a company, I guess, that goes, takes

21 aerial pictures of properties and sells them, you

22 know, to the individuals, and it was in the time

23 frame when the body went missing. So what we did

24 is on the location of the body we took the survey

25 coordinates and then applied it into the image.

1 Well, we do a back transformation, something
2 similar to what we showed on the mid air. And in
3 this particular case we did a high- resolution
4 scan and we actually detected where the body was
5 and showed the body was there during, you know,
6 the entire time. It doesn't show it very well
7 because of the slide, but there is an imprint in
8 here where we're bringing up the body on pixel
9 information.

10 This is another slide -- this was
11 on a print that was actually subject to a
12 presentation in Detroit, the International
13 Association of Identification. What had happened
14 was there was a latent print on a paper bag and
15 then they used a laser scan and, of course the
16 laser destroyed the print. So they had
17 photographed the bag and from that photograph we
18 put it through the high-resolution scanner and we
19 -- and you can see the -- you know, the print.

20 Q So this did not involve making measurements, this
21 would have involved processing the image to bring
22 out the --

23 A Doing a lot of image processing.

24 Q -- detail that would disclose a fingerprint on a
25 paper bag?

- 1 A Right.
- 2 Q Okay.
- 3 A This was the particular case we mentioned earlier
4 where we were doing all the measurements from the
5 videotape. This particular area in here he has
6 some paper in his hand when we're doing -- this
7 was the area that we were doing some image
8 processing to see if there was any bills, et
9 cetera, in his hand.
- 10 Q Sorry, that previous one, that was the Lloyd case?
- 11 A Yes, I believe it was, yeah.
- 12 Q Okay.
- 13 A In this particular case we were doing a blood
14 splatter analysis. We had an overall shot of the
15 -- or we had control points to get a point of
16 origin. So it's just another procedure, you know,
17 that -- where we can apply the photogrammetry
18 process. Here's where we -- in fact, this one we
19 talked earlier about, the --
- 20 Q It's the Davis case?
- 21 A -- the Davis case. And there was a camera mounted
22 on top of the store. The suspect basically went
23 to hijack a car, the woman panicked and went to
24 pull out and he fired through the window, striking
25 her through the heart. And then he proceeded to

1 run and, of course, we had him monitored
2 constantly on this videotape. And it shows him
3 stopping in here, shows part of our analysis where
4 we're taking reference points throughout the
5 scene, some more three dimensional measurements
6 and other scenes, and you can see, you know, the
7 pole in this -- you can -- this would illustrate
8 the individual's height.

9 In the medical applications, of
10 course, we use it in ultrasonic imagery, which
11 we've done quite a bit with, enhancement of x-rays
12 and other medical images, because photogrammetry
13 can be used on a CT, MRI and x-rays and other
14 types of scanning devices. We also use what we
15 call moire photography, rasterestereography, real-
16 time measurement and, of course, biostereometrics,
17 which we have done a lot in that, and body
18 surfaces, you know, with skin and even percentile
19 information.

20 For marine and engineering
21 applications you can use it for restoration of
22 ships and analyzing components. We've done quite
23 a bit of that over the years. Underwater
24 photogrammetry of ship hulls, which we did, went
25 from Spanish galleons right up to destroyer class

1 and submarine components. And, of course, these
2 are their measurement components and marine
3 structures, cavitation analysis of propulsion
4 systems.

5 Mechanical engineering applications
6 would cover the analysis of machinery using high-
7 speed cameras. A good example of that was the
8 case that we had here in Saskatoon. Vibration
9 analysis of equipment, large scale mechanic
10 testing, quality assurance of large turbine blades
11 and assemblies, quality assurance programs for
12 aeronautical and marine engineering or
13 applications, complex site mapping, deformation
14 analysis of large and small mechanical components,
15 and then analysis and static in dynamic processes.
16 I tried to keep a lot in this particular area, but
17 this is at -- this is in -- up in Fort McMurray
18 and we actually have done work in both sites. In
19 this particular case, what we're doing is we're
20 analyzing the machine components on this bucket
21 wheeler. One of the things we're looking at here
22 is determine areas of stress along the beam
23 structures. This was years ago when the price of
24 oil went really down. And it's more of a cost
25 analysis feature, how many pieces of equipment

1 they would have to have to be able to maintain
2 their production.

3 Mining and geotechnical
4 engineering we have done a lot of this, in
5 particular here in western Canada, slope stability
6 monitoring, pit design, modelling failure
7 geometry, stone distribution analysis, precision
8 volumes, geological mapping and measurement,
9 analysis of mining equipment and facilities, which
10 there was an example previously which would
11 compare quite -- into this area as well. Geo-
12 technical engineering, geological mapping and
13 geological design. Here's one feature. This
14 would be initially here in the west as well. This
15 is on the Montana border. This would be Hungry
16 Horse Dam. And this was designed in the late '40s
17 and what has happened is they found it was a
18 geological fault going through this area recently.

19 So one of the scenarios would --
20 they would have to strip all these -- tear all the
21 -- cut all the trees down and strip the soil to
22 bear the geological features. And one of the
23 things we were involved with, we went back and
24 looked at all the 1940 -- '47 through 1950 images
25 where everything was exposed and we were ale to

1 produce three-dimensional measurements quite
2 accurately, and this was used for the geological
3 mapping. And this was in, also, a published paper
4 in Hackodate, Japan. It was co-authored by the
5 Bureau of Reclamation. Interesting enough is that
6 some of these features are still visible. For an
7 example, there's drainage pipes here on this
8 concrete phase and there's other areas in here
9 that were visible and correspondingly checked,
10 about point one of a metre and less, so it was
11 actually quite accurate.

12 Q And how old were those photographs?

13 A Those photographs were over 50 years old. And
14 then, of course, the other thing, too, which we
15 used was the capability of doing image processing
16 to be able to measure cracks and line features,
17 which are seen right in here. We use automatic
18 image processing and we also have measuring
19 algorithms that will actually measure
20 intersections and features automatically, you see,
21 taking the human operator out of the loop. And
22 that's what we used in here and, of course, this
23 is what we use in a lot of our other skin and
24 forensic measurement.

25 What we're looking at here is

1 imprint marks, and this is part of an analysis we
2 -- the imprint impact marks yield very important
3 information in regard to matching size,
4 orientation, parameters, velocity and matching
5 object to imprint or impact marks. And the
6 imprint -- or impact marks are normally always
7 made, although it's not always visible to the
8 human eye. So they can still be viewed and they
9 can still be measured using image processing
10 techniques. In addition, determination can be
11 made as to time within a sequence. So, you know,
12 here is an example of an impact mark. An aircraft
13 ran out of fuel. This was in Mexico on the
14 US/Mexican border. And you can see at this
15 particular point where the imprint mark is here in
16 the soil to where the aircraft stopped, and it was
17 quite -- a very short area, so you had tremendous
18 amounts of stress. So from this imprint mark we
19 were able to calculate shear and stress, that the
20 actual seats ripped out of the aircraft, pinning
21 the passenger and the pilot into the cockpit,
22 killing them. So we could actually calculate the
23 shear and stress from that.

24 Here is -- going back to pre --
25 well Park Gander, an accident analyzing tree

1 strike, you know, analysis, because when an
2 aircraft or a vehicle strikes a tree it makes a
3 very nice, clean cut, to the point that you could
4 actually determine the orientation and pitch rate
5 from the severed limb of the tree. So from taking
6 this -- like this basically was just a model that
7 we took of the various heights of the trees and
8 from that you can see the pattern of the aircraft
9 as it's going into the tree.

10 Here's a site -- a crash that we
11 were involved with an investigation on. And this
12 was the Dryden crash that happened in Dryden,
13 Ontario where a Fokker 28 -- similar conditions to
14 the Gander crash. This is actually an infrared
15 false colour, the red being healthy, green -- this
16 was where the tanks of the wings started breaking
17 up, spraying fuel along by the trees. But we did
18 a tree strike analysis right to the point of
19 impact.

20 Now this was another crash site.
21 Actually, this was in British Columbia. As you
22 can see, what we're doing here is we very
23 precisely map -- I don't know if you can see all
24 the details in here, but -- you know, obviously
25 it's washed out. What you're looking at in here

1 is an outline, a plotted outline, and you actually
2 have topographical contours. So you're looking at
3 a mini contoured map. And as the aircraft is
4 striking the ground, you can see piece by piece
5 where it's going in and even to where the prop is
6 striking. And, of course, this is where we can
7 determine power settings on the propeller, if it
8 was in beta or various other settings on the
9 aircraft. I don't know if you can see some more
10 details in the plotted area right in here and how
11 everything is all being fit together on imprint.

12 This next slide is, actually,
13 another form of imprint. In this particular case
14 a young girl was murdered and the suspect had
15 bludgeoned her severely in the head, carried the
16 body over his shoulder. And he had a name tag and
17 this is the scan of the girl's sweater. And using
18 image processing you can see in here we're picking
19 up some letters. So this is another form, you
20 know, of imprint analysis.

21 And here's, you know, again another
22 point of imprint. Two people at a site, log
23 rolling over, striking and killing an individual.
24 And how did it happen, did the log roll off of the
25 truck or did the operator loading the truck

1 inadvertently drop the log by accident? And in
2 this particular case what we did is we measured
3 and three-dimensionally created a model of all
4 these logs here and all this space in here, and
5 also mapped the imprint mark on the ground. Now
6 what does that tell us? Well from -- it's hard to
7 describe for the record, because I'm going to have
8 visually show here. But how the log rolled on the
9 angular relationship, how it struck the hole would
10 determine if it rolled off the truck or actually
11 was pivoted and lost connection with the hooks and
12 hit the ground. So we determined in this
13 particular case that the -- it came off this
14 loading device. So this is another area of the
15 imprint.

16 So we can also look at the -- on
17 the imprint analysis for forensics we're looking
18 at antemortem imprint or postmortem and use of
19 alternate light and impart marks -- or imprint
20 marks that were not visible, and there's a time
21 line. So these are a review of actual homicide
22 cases. In this particular case -- this is
23 actually a case here in Saskatoon and it was
24 regarding --

25 Q Mr. Robertson, I think you're aware, I don't want

1 you to go into the details that would identify
2 this case, just what you dealt with?

3 A Okay. In this particular case we were -- we
4 looked at the images and found an imprint mark on
5 the -- on the breast area of the victim and we
6 started using image processing at that particular
7 point. And from that we extracted the three-
8 dimensional measurements of the imprint mark that
9 you're looking at in here and then more image
10 processing. Now what we're -- you'll notice that
11 the orientation on this image is different,
12 because what's happened is that we're looking at a
13 bite mark and before -- this evidence has now been
14 given to a forensic odontologist, so we're not
15 doing the interpretation, we're just creating and
16 enhancing the image and providing those
17 measurements to the odontologist. So he has to
18 look at something that's on a flat place, similar
19 to what he's looking at if he took a sample of a
20 bite mark. And that's what we're doing here, step
21 by step. And you can see here, this is the
22 rectified to plane and scale with light
23 orientation. And you can see the -- from --
24 obviously from the odontologist's comments, these
25 were actually teeth imprint marks.

1 Q Okay. Now I want to stop you there for a moment,
2 Mr. Robertson, because my understanding is -- and
3 this is one illustration of it. You may have a
4 photograph that's taken at, let's say, a 30 degree
5 angle to an known object and that -- taken at that
6 angle obviously is going to distort the size of
7 the object as shown in the photograph, am I
8 correct in that? Maybe distort isn't the proper
9 term, but it would be very difficult to measure --
10 I guess use something circular here. If you take
11 a photograph from this angle it's not going to
12 appear circular in the photograph, --

13 A No.

14 Q -- is that correct?

15 A That's right.

16 Q And are you able then to manipulate the image
17 through the three-dimensional use of
18 photogrammetry so that you can orientate it at --
19 perpendicular to the object?

20 A Right. It's actually called differential
21 rectification.

22 Q Okay. I'm sorry. And that is what -- part of
23 what your assignment here was to do, is to do that
24 differential orientation so that you basically
25 have an overhead view of the bite mark?

1 A Right. Because what has happened in this
2 particular case is the odontologist is taking an
3 imprint off the suspect and then he has to take
4 the overlay from the suspect and then overlay it
5 to this pattern.

6 Q All right. Okay.

7 A And that's the only way that he can do it.

8 Q So in this particular case you've really done
9 three things; you've image processed it to bring
10 out the detail --

11 A That's right. We're using --

12 Q -- you've done this differential orientation and
13 you've also done a measurement?

14 A Right. So as far as the imprints go, like this
15 was -- would be a fairly difficult case to do
16 because of the other procedures. And here's
17 another example of the imprint mark. Now
18 interestingly enough the odontologist came back
19 and said, well you did it and I really don't know
20 how you did it. So, he said, to rest my mind at
21 ease, let's do another test. So what he did was
22 he took a bite mark or an example, or whatever, of
23 a bite mark and shot it at a very, you know, you
24 can see an oblique angle here, and asked us to
25 correct it. It was easier to do than this other

1 case because, you know, we had some good scale
2 reference in here. And then we took that and he
3 did his overlay and matched. And I believe it was
4 two or -- well maybe three percent out in one
5 particular area, but it was a well enough match
6 that rested his mind at ease that he could use
7 this evidence. This is another case that -- there
8 was an imprint mark photographed on this girl's
9 leg. It was a postmortem mark.

10 Q Now this is the *Mouser* case that --

11 A This is the *Mouser* case.

12 Q All right.

13 A And you can see the imprint right in here. And
14 we're just doing general image processing just to,
15 you know, pick up any other features. And this is
16 actually a black and white image. But we're
17 looking at some definite imprint marks right in
18 here on the leg and a very definite angular
19 effect. Again further image processing. Now
20 there's other marks up here as well on her upper
21 thigh area. So what we're doing is now we're
22 going to extract some three-dimensional control
23 points or references. So what we're doing is
24 we're reading points along the indentation mark
25 and other marks that are visible on several

1 photographs. As you can see in here we have the
2 width and other information and then we're
3 computing in a three-dimensional control point
4 file of the image. So what's happening is our
5 analysis of this particular area, you can see that
6 it's .197, .344 and .43. The -- well, of course,
7 this is millimetres, so you're actually looking at
8 microns, right. Half a millimetre, point three of
9 a millimetre and point two of a millimetre.
10 Subsequently they sent us images of a rear portion
11 of a car and these were some of the images that we
12 analyzed. And in this one particular area we
13 analyzed an upturned carpet pattern right -- which
14 is right in here. And there's a distinct angular
15 effect in there. And what we did is we created a
16 3-D model of this portion of the rear seat of the
17 car. And you can see how the carpet was loose on
18 the rear seat of the car.

19 Q Now again, I want to just stop you just for a
20 moment to make -- get an overview of what you're
21 doing here. As I understand it, you -- you've got
22 a photograph of the victim with -- showing marks
23 on leg area or thigh area. You're then provided
24 with photographs of portions of an automobile and
25 you're asked essentially to see whether, through

1 your image processing and measurement, you can
2 match the imprint on the body, the thigh area,
3 with an object in the car?

4 A Right.

5 Q Okay.

6 A And what's interesting here is on our measurement
7 we actually detected a carpet -- on the carpet
8 fibre you can see a threaded bead, and this would
9 be -- probably compared to Braille. It's three-
10 dimensional, you can run your hand over it and
11 with a -- in some areas you had a double and a
12 triple thread count which created that three-
13 dimensional image, which would create an imprint.
14 And again, this is another shot. You can see this
15 quite distinct, angular factor. This is where we
16 laid a model across in the rear seat of the car.
17 Now this is different in some aspects. of course,
18 this is an antemortem mark, but you can see some
19 of the features in here and, you know, of course,
20 you're going to look at the distinct features in
21 here along the area where the carpet, overlaid it
22 on the model.

23 So what we're doing here is we're
24 doing some comparisons. An example, if we're
25 measuring this, this angle right in here is this

1 particular angle here and we're measuring -- this
2 is like 36.7 degrees. For measuring the model,
3 this is 37.16 degrees and this was another view of
4 the victim and it was 37.57, so very, very close.
5 We're talking minutes of arc on an angular effect
6 on this mark.

7 Again this is another view, again
8 you can see the angular factor. And we're also
9 measuring distances along the key prominent
10 indentation points here on the model's leg and
11 that was 24, this was 25, 11, 10.64, 14.73,
12 13.639. So interestingly enough, what we're doing
13 in this particular case is we're taking an overlay
14 -- and this is where the 35 percent opacity --
15 we're actually taking the overlay of the
16 antemortem mark over the postmortem mark and the
17 -- I don't know if -- how well you can see it, but
18 there's a white illuminated dot and that white
19 illuminated dot is the overlay. So you can see
20 that it matches quite precisely over the centre in
21 here, and you'll also see it -- how it's precisely
22 laid on the orientation.

23 So what we're saying here is that
24 that carpet fibre made the imprint on both the
25 victim and also the model. And there was other

1 particular areas that we're looking at in here and
2 we're bringing out this thread, this -- the key
3 area is where the thread made a larger indentation
4 and the 3-D plot of the beads. Again this is --
5 you can see where we used the same procedure on
6 the model that we -- we did on the victim. Again
7 we show an example of where we're taking the
8 measurements. And during this --

9 Q Just before you go on there, I do want to make
10 note here that there are -- initially when you
11 provided me this you were just dealing with the
12 homicide cases. You did have some slides in there
13 as well on the *Hall* case, which in my judgment
14 were somewhat too graphic to show in this hearing.
15 I just want that noted that it wasn't you that was
16 hiding those, I requested you -- that you take
17 them out. Carry on.

18 A Well in the review of the imprint studies that
19 we've done over the years, one of the things we
20 want to determine is the determination of skin
21 parameters of human versus pig and also do a
22 comparison of imprint characteristics for human
23 and pig. So somebody's going to say, well why a
24 pig? Well a pig has skin characteristics -- quite
25 a few other characteristics to a human and in the

1 areas -- they also use pigs for training in the
2 forensic community and especially entymology and
3 other types of procedures, so they do have common
4 characteristics.

5 What we're looking at in here, of
6 course, this pig that you see here is not dead,
7 he's sedated. And what we're doing is exactly --
8 the same procedure that we're using on the pigs,
9 we're using on humans so we're not doing anything
10 that's cruel or anything to this animal. What you
11 see here is an alternate light source and we have
12 the pig, as they're being sedated they're being
13 put under pressure of various objects like a
14 hammer, a rope, anything that's going to be
15 leaving an imprint or various signatures.

16 And what we've done is taken the
17 model of the same weight and the model, the human
18 model is subject to the exact same time frame that
19 we use for the imprint analysis on the pig and
20 we're using that to determine the coefficients
21 between the pig and the human and look at the
22 characteristics. So you can see how the rope is
23 leaving this indentation mark in here, this -- all
24 these points in here are controlled, by the way,
25 and again some in each process, and you bring out

1 some key features we're looking at. And again, a
2 closeup view of the indentation mark on the skin.

3 And what we're doing here is
4 basically creating a 3-D model of this imprint
5 area and what you're seeing in here are X, Y, Z
6 control, or coordinate references that we have on
7 this wire mesh that we've created over this --
8 over the slide. And, of course, with that we can
9 animate it just like we can on these other
10 features that you saw earlier of some of the other
11 capabilities.

12 If I can get out of this -- there
13 we go. And over a period of time the -- this
14 imprint mark on the model disappears. It's really
15 not visible to the human eye. But again, it
16 doesn't mean that it's not there, because we can
17 use image processing techniques to actually bring
18 it out. Again, the human versus pigs. Same time,
19 you know, same object time, same pressure. More
20 shots of the modelling.

21 Now one of the procedures that we
22 use to model it is we use an automated feature,
23 and this is what we use for measuring skin. And
24 this latest process was a procedure that we
25 developed from NASA using thin-skinned membranes.

1 And it works very, very well in an automated sense
2 for humans. And what we're doing is every one of
3 those dots has an X, Y, Z control point or a
4 reference, so we basically have thousands of
5 control points along the skin surface. And, of
6 course, we're taking it from several views to
7 create a stereoscopic view. From this we can
8 create the wire mesh, and you can see this is a
9 3-D surface plot of the skin imprint, so what
10 you're looking at by human eye and what's actually
11 being created mathematically are two distinct
12 areas, because you can't always rely on what
13 you're looking at visually. So you can see every
14 type of little undulation along the surface by
15 using the precise procedure. You can see here
16 this was another area and you can see how we're
17 doing the 3-D mapping. What we've done, this is
18 basically a wire mesh and we're rotating this in a
19 3-D space at any particular angular. So we have
20 view of this with a mouse to, you know, to
21 visualize it. And this is just a snapshot of that
22 one particular rope area.

23 And here's an example too of the
24 same procedure. What we have is a mould of the
25 face and we're projecting a pattern on it. You

1 can see the wire frame and then, of course, we can
2 texture map this area here. And it was done with
3 the same software, same procedure that we were
4 doing with the pig and the subjects. This is more
5 image processing that we were doing on the pig
6 skin. You can see this indentation in here. Now
7 this is using alternate light on the pig subject.
8 you can see how it's affecting, there's a little
9 bit of fluorescence in here.

10 So now what we're doing is
11 postmortem. Now on this particular subject we
12 have a much larger pig, but we're actually shaving
13 the hair off the pig and before being put down
14 he's been sedated. And we have our antemortem
15 marks, which are in here, and then he's getting
16 injected in the left ventricle of the heart so
17 death is near instantly. And this is your
18 postmortem. So there is -- you can see the
19 differences between the antemortem and the
20 postmortem. And this is 15 minutes prior and 15
21 minutes after death. Again with the rope, you can
22 see characteristics are quite opposite to looking
23 at the previous marks. Again you have this
24 redness area right in here. This is the
25 antemortem and again this is the postmortem.

1 This particular case we went back
2 24 hours later and started doing some analysis of
3 these points. Again you look at antemortem versus
4 postmortem marks. And you can see these are
5 actually control fields that we have on the
6 object, on the pig skin. And again this analysis,
7 this is all 24 hours afterwards. You can see the
8 characteristics, and the other imprint in here.
9 Now what we're doing here, and this was an
10 analysis of frozen skin. And again, we took a pig
11 and shaved the skin on the pig and we marked our
12 control field. Again in this particular case
13 we're using antemortem marks. You can see this
14 rope area, that's our standard rope. This here is
15 a mini what you call I-frame. It's like -- it's a
16 curtain rod, I guess, type thing, which is going
17 to create an area of equal pressure underneath.
18 It's, you know, on the edges so you can see some
19 swelling effect in here.

20 Basically what's happening after
21 sedating, after doing the ante mortem marks we --
22 he's injected in the heart -- left ventricle of
23 the heart. Again death is near instant, and then
24 we start monitoring the characteristics of these
25 imprints and immediately you see the difference

1 between an antemortem and a postmortem, and how
2 we're applying the objects to the indentation
3 analysis. Now, what's happened is we put the
4 carcass, it was 24 hours in minus-30 degree
5 temperatures and what we did here is used stereo
6 photogrammetry and we measured, you know, various
7 oblique views of the skin and again what we're
8 doing is monitoring these -- these imprints that
9 we made on the skin surface. You can see the
10 characteristics.

11 Now, we know the coordinates, we
12 know the circumference, we know all kinds of other
13 data on every one of these points. Then what we
14 did is we allowed the carcass to thaw out for 24
15 hours and then we did an analysis of our
16 antemortem mark. And again the characteristics
17 really haven't changed even after being thawed
18 out.

19 And, of course, we mentioned
20 several times here about alternate light and in
21 this particular case this was a task we were doing
22 at -- at the RCMP facility in the Forensic Ident.
23 Research Section and the subject had a screw he
24 picked up in his hand and he squeezed it for a
25 count of one second, 1001, then dropped it. We

1 waited for awhile, I guess it was about 45
2 minutes, then we started photographing it using
3 alternate light and using our various filtering
4 algorithms.

5 Now, you can see here on this
6 particular image we really can't pick anything up.
7 The screw thread is there but we're doing -- I
8 mean like this is under an alternate light and
9 this is with our various filtering and you can
10 start to pick up the pattern with the screw
11 thread. So even though this isn't visible by
12 human eye. Again, what you're looking at, you
13 know these aren't two different hands and this
14 isn't over two different points in time. This is
15 the exact same hand with the imprint, okay. This
16 is just using different types of filtering
17 algorithms so what you're looking at in here, you
18 can then see all kinds of features and details.
19 You can see a little bit of fluorescence up in
20 here. You've got great detail but you're not
21 picking up those details whereas in this one you
22 lose some features and details in here but you're
23 actually picking up the screw thread. And
24 interestingly enough, I took another view, did
25 some image processing and I picked up two and I

1 couldn't understand it, and I asked the individual
2 and he said, oh, he had picked it up previously
3 and then dropped it, so actually it did pick up,
4 you know, the first time that he actually picked
5 it up, so --

6 Q I'll stop you there for a moment just when you
7 talk alternate light use, that is photographing
8 the subject under different light conditions?

9 A If we go back to the first slide of the pig laying
10 on the concrete floor, there was a black box and
11 that black box is actually an alternate light
12 source and that's what we were using.

13 Q But there's a difference, then, between
14 photographing and alternate light and your image
15 processing. I take it what this slide is showing
16 is the same photograph --

17 A Right.

18 Q -- but through image processing not -- you haven't
19 changed the light, you've simply enhanced the
20 detail through image processing from the
21 photograph.

22 A Yeah, I mean somebody could say that, well, I used
23 alternate light but I couldn't see anything.
24 Because, you see, what's happening is in a lot of
25 cases in identification people are like looking at

1 something and just because you're looking --
2 because the human eye, if you're looking at
3 gradation the human eye theoretically is supposed
4 to pick up 256 gray levels and at any practical
5 time you're probably looking at really 100, maybe
6 112. So you really shouldn't base your judgment
7 on the eye, you want to use mathematical
8 algorithms to pick up various frequencies and you
9 can bring it out quite easily.

10 This is additional related
11 applications why we're doing it, because we did,
12 in the paper that you mentioned earlier that was
13 presented in Corfu, we did do a comparison with
14 these thin-skinned membranes versus human skin and
15 there is quite a few characteristics that are
16 similar. This here was actually a silver
17 concentrator. This is inside a vacuum chamber at
18 NASA Langley, and these are the new structures
19 that are going to go out in space. This actually
20 folds down into about eight-and-a-half-by-eleven
21 size, weighs about five pounds, and then once it's
22 in a vacuum it deploys. Now, because of the
23 thinness of this membrane it's being deployed in a
24 vacuum and it takes maybe 20 to 30 minutes to
25 actually deploy, so it deploys quite slowly. But

1 for weight and other types of characteristics it
2 has a lot of benefits.

3 This is another type of analysis
4 here of the membrane being stretched and you can
5 see the individual on the other side of the
6 membrane photographing it. This is back-projected
7 and what we're trying to look at here is modelling
8 wrinkles and indentation patterns on this, and you
9 can actually see with this type of lighting, you
10 can start seeing a little bit of indentation or
11 wrinkling patterns along the membrane. You can
12 see how it stretches right across and, of course,
13 this is exaggerated what we call five to one in
14 the vertical, but you can see these module areas
15 of compress -- or indentations along that surface
16 of the membrane, more odulations in here.

17 MR. HESJE: Okay, that's where we want you to
18 stop, Mr. Robertson.

19 Now, Mr. Commissioner, it's --
20 we've called Mr. Robertson to provide expert
21 evidence in the area of image processing, image
22 interpretation and application of photogrammetry,
23 that is to the making of measurements from an
24 image or photograph. The purpose of his evidence
25 is to provide -- the purpose of his testimony, I

1 should say, is to provide evidence as to
2 measurements of imprints on the body of Neil
3 Stonechild and a comparison of those measurements
4 to measurements of a known object.

5 THE COMMISSIONER: Well, I assume there will be one or
6 two questions about the qualifications of this
7 witness.

8 MR. WORME: I think I can advise for the
9 record that we are content with this witness's
10 qualifications.

11 THE COMMISSIONER: What's your position?

12 MR. HALYK: I'd indicate the same. From what
13 I can understand he's more than qualified. I'm
14 not saying I understand it all but --

15 MR. FOX: I'll take that endorsement with the
16 appropriate caveats. Mr. Commissioner, I do have
17 some questions and if everybody's agreeable I'll
18 approach the mike first.

19 **MR. FOX, examining:**

20 Q Mr. Robertson, my name is Aaron Fox. I just want
21 to ask you a few questions about your
22 qualifications and your expertise, and your area
23 of experience, including your education. Just
24 looking at your education, and I've got in front
25 of me your curriculum vitae which I think has been

- 1 marked as P-96. Do you have a copy of that with
2 you, sir?
- 3 A No, I don't.
- 4 Q First of all, there's reference to your primary
5 education would have been at the Algonquin
6 Institute of Technology?
- 7 A That's correct.
- 8 Q And you graduated in 1971. Is that a university,
9 sir?
- 10 A No.
- 11 Q What is that? What's the Algonquin Institute of
12 Technology?
- 13 A It's an institute of technology, three-year
14 technology program.
- 15 Q That would be, as I understand it, community
16 college?
- 17 A Yes. Well, it's -- they have community college
18 programs but it is an institute, it's a three-year
19 program.
- 20 Q It's not a degree program. It's not a university
21 program.
- 22 A No, it's not a degree program, no.
- 23 Q Okay, and you attended there, graduated in 1971,
24 Algonquin Institute of Technology and Electronics.
25 And I take it electronics, that's not

- 1 photogrammetry.
- 2 A No.
- 3 Q That's something different?
- 4 A Yes.
- 5 Q Okay, and then you indicate you graduated in 1973
- 6 Algonquin Institute of Technology in
- 7 photogrammetry. Did they have a course in -- a
- 8 certification course in photogrammetry in 1973?
- 9 A Yes, they did.
- 10 Q Do they have that now?
- 11 A No, they don't.
- 12 Q Do you know when they --
- 13 A Not that I know of.
- 14 Q Do you know when they discontinued that program?
- 15 A I have no idea.
- 16 Q So at least they did in 1973.
- 17 A Yes, they did.
- 18 Q And at that time did that -- did that course,
- 19 either one of those two courses that you took at
- 20 the Algonquin Institute of Technology, did that
- 21 involve any medical training?
- 22 A No.
- 23 Q Any work in the area of biology?
- 24 A No.
- 25 Q Anthropology?

- 1 A No.
- 2 Q Forensic pathology or pathology in general?
- 3 A No.
- 4 Q Your curriculum vitae also refers to you having
5 attended the University of Ontario -- or Ottawa,
6 sorry, Ottawa University?
- 7 A In 1976 through '77 the government paid for
8 courses that I would take in structural
9 engineering, because I was working for the
10 architecture branch of the government.
- 11 Q So is engineering part of photogrammetry?
- 12 A Not -- not structures, no.
- 13 Q Well, I didn't ask about structures --
- 14 A No.
- 15 Q -- I just asked about engineering.
- 16 A No, it's not.
- 17 Q It's not?
- 18 A No.
- 19 Q I notice when you defined photogrammetry today you
20 included the word "engineering" in the definition.
- 21 A Yeah, well, you see -- well, there's various
22 definitions. Some places can be the art, the
23 science. some people will refer to it as the
24 science in engineering, and it varies from -- from
25 definition to definition.

- 1 Q I can tell you I haven't seen anybody refer to it
2 as engineering until I heard you say that today.
- 3 A Well, actually if you look at the book, it's non-
4 topographical and you see it's the first of the
5 engineering series.
- 6 Q What book would you be referring to, sir?
- 7 A Well, the -- one of the books I co-authored. I
8 think it has engineering -- yeah, I think that's--
- 9 Q I was looking, for example, you're a member of the
10 ASPRS, that's what's been referred to?
- 11 A Yes.
- 12 Q Correct? That's a certification program that you
13 say you're involved in?
- 14 A Yes.
- 15 Q And I understand, just for clarification, that's a
16 certification as opposed to a registration
17 program? Do you know the difference, sir?
- 18 A Can you repeat that?
- 19 Q Sure. I understand this is a certification
20 program you're involved in as opposed to a
21 registration program?
- 22 A I don't know what the difference would be.
- 23 Q Are you familiar with the guidelines and bylaws of
24 the ASPRS?
- 25 A Pretty well, yes.

- 1 Q I'm just looking at it and I simply printed off
2 what's on the ASPRS website, and under general
3 information, second paragraph, they clarify that
4 there's a distinction between certification and
5 registration. They make the point that this is
6 simply certification, it's not required, for
7 example, where registration is required to
8 practise in a certain area. As a lawyer, for
9 example, I have to be registered in the province.
- 10 A Okay, no, it's a certification.
- 11 Q So do you understand the difference between the
12 two?
- 13 A Probably not but I can -- yeah, I understand it's
14 a certification, yes.
- 15 Q It's not a registration program, correct?
- 16 A Yeah, I can -- whatever.
- 17 Q Okay, and I've looked at the different sort of
18 registrations there and you indeed are registered.
19 I see you're registered as a certified
20 photogrammetrist. Would that be correct, sir?
- 21 A That's correct.
- 22 Q And do you know what the definition of that is?
- 23 A Yes.
- 24 Q What? What is it?
- 25 A That I've been certified and found acceptable to

- 1 -- to meet the criteria of certification as a
2 photogrammetrist. They have several areas.
3 There's remote sensing, photogrammetry and I think
4 GIS.
- 5 Q Right. You're not -- you're not certified in the
6 area of certified mapping scientist remote
7 sensing. You're not certified there?
- 8 A No.
- 9 Q And then the third area they have is certified
10 mapping scientist, you're not certified there
11 either?
- 12 A No, just as a certified photogrammetrist.
- 13 Q Your basic certification is what you've got which
14 is a certified photogrammetrist.
- 15 A That's right.
- 16 Q Is that correct? And again, you referred then to
17 sort of that registration and, as I understand,
18 that's the only sort of formal, official
19 certification you have. You don't -- there's no
20 place else you're registered as such?
- 21 A No, that's the only --
- 22 Q And I've looked through this and I don't see any
23 reference to engineering, so --
- 24 A Okay.
- 25 Q -- would that surprise you? Would that surprise

- 1 you, sir?
- 2 A I don't understand what you're meaning by --
- 3 Q Would it surprise you, sir, that there's no
- 4 reference in the ASPRS certification program
- 5 information that refers to engineering?
- 6 A Well, it's listed in photogrammetry. I mean I
- 7 don't know if there's a catalogue or a
- 8 categorization of photogrammetric engineer. I'm
- 9 not too sure.
- 10 Q Well, I'm just wondering why you referred to
- 11 engineering when my learned friend asked you to
- 12 give a definition of photogrammetrics because I
- 13 don't see engineering referred to anywhere in the
- 14 ASPRS material.
- 15 A Well, we -- we use in our presentation, if
- 16 somebody says what's photogrammetry we're saying
- 17 it's the science and it's the engineering of
- 18 applying precision measurement. So you can -- we
- 19 could add in art, whatever. I don't know.
- 20 Q You referred, sir, to the Mouser case?
- 21 A Yes.
- 22 Q That was a decision, *State of California vs Mouser*,
- 23 actually I think the court file number is 139818.
- 24 Do you recall that?
- 25 A Yes.

1 Q Do you remember being asked in that case to define
2 photogrammetrics?

3 A Yeah, I probably defined it as the science and
4 engineering or the art and science. I'm not too
5 sure.

6 MR. FOX: Sorry. I'm at, and I have -- this
7 was material that was disclosed by Mr. Rossman, My
8 Lord, to Commission counsel.

9 Q You were asked there at line 19 very specifically,
10 okay, and you recall testifying there. You
11 testified at that trial, Mr. Robertson?

12 A Yes.

13 Q And you were asked there, and I'm at page 3262 of
14 the transcript, "Okay. What I am trying to ask
15 you is what is your definition of photogrammetry,
16 close-range photogrammetry as a science?" And you
17 answered, "Okay. It's a science or procedure
18 where we can extract precision measurements from
19 images." That was your answer, sir?

20 A Yes.

21 Q Was that a correct answer?

22 A Yeah.

23 Q I didn't see where you referred to engineering and
24 I don't know that I saw where you referred to
25 engineering as being part of it at any point in

1 time.

2 MR. HESJE: Mr. Commissioner, it states that
3 about two lines above -- I'm not sure if he's
4 deliberately missing that, but it says, "You had
5 previously testified that photogrammetry was a
6 science. You said that under oath, both at the
7 preliminary hearing and here at this trial. That
8 is correct, is it not, sir?" Answer: "Yes,
9 science and engineering.

10 Q MR. FOX: And again I'm referring you, sir,
11 to the definition that you gave at that time.
12 When asked specifically about it, to define it and
13 were asked to give a definition, the definition
14 didn't refer to engineering.

15 A In what line?

16 Q Line 19 where the question was put to you in very
17 direct terms.

18 A Yeah, if I say here what we're saying -- "...what
19 is your definition of photogrammetry, close-range
20 photogrammetry as a science?"

21 Q "...or a procedure --

22 A Right.

23 Q -- where we can extract precision measurements
24 from images." And I ask you if that definition is
25 correct. You agree that that is correct.

- 1 A Well, it's a science and engineering, whatever,
2 yeah. It's what -- whatever procedure we want,
3 yeah.
- 4 Q So did the university classes you took at the
5 University of Ottawa in engineering then relate to
6 this photogrammetry?
- 7 A No.
- 8 Q They're referred to on your curriculum vitae
9 that's been filed as P-96.
- 10 A Right, I mean it was just -- it was courses that
11 the government sent me on.
- 12 Q You've -- if I can -- this is one of the
13 publications that you've referred November 7 to
14 9th, 1991, and at the back, Gary Robertson, and
15 "Gary Robertson graduated from Algonquin Institute
16 of Technology with diplomas in electronics and
17 later in photogrammetry. With additional studies
18 in civil engineering at Ottawa University."
- 19 A Right.
- 20 Q So, why did you put that in there if it doesn't
21 have anything to do with it?
- 22 A Which publication was that in? Was it the --
23 well, it's just explaining some other courses that
24 I had attended and taken, yeah. I mean it varies
25 from book to book. If you look at --

- 1 Q No, I'm just asking you, sir, about that book,
2 there is a publication that's been put forward
3 today that suggests that you -- in support of your
4 expertise and it refers to you having taken
5 engineering classes studies at the University of
6 Ottawa.
- 7 A Well, it says additional studies.
- 8 Q Please, sir. And, as I understand it you say
9 those studies don't have anything to do with your
10 area of expertise so I'm wondering why you put it
11 in there.
- 12 A Well, I don't know. I mean I have other courses
13 that I've taken that doesn't rely on my
14 photogrammetry as well, and they haven't been put
15 in, so --
- 16 Q Well then let's look at P-96, that's the C.V. that
17 you prepared, correct? P-96 that's in front of
18 you. It's your curriculum vitae, the one you
19 provided for the purposes of this proceeding.
- 20 A Right, the C.V. states that, yeah.
- 21 Q And it states, "1976 to '77 under government
22 sponsor attended University," sorry, "attended
23 Ottawa University to complete credits for
24 certification in civil engineering."
- 25 A Right.

- 1 Q That's what your C.V. says.
- 2 A Right.
- 3 Q Correct, but that didn't have anything to do with
4 photogrammetry.
- 5 A No.
- 6 Q You just decided to put that in there.
- 7 A Yes.
- 8 Q You made the choice, you decided what goes in
9 there so I'm just wondering --
- 10 A Well, it's been in there for a long time so --
11 because this is five pages. It actually goes back
12 to 1971 so it goes back 30 -- 30 plus years so I
13 can imagine it's --
- 14 Q Did you complete any of those courses at the
15 University of Ottawa?
- 16 A No.
- 17 Q No?
- 18 A I attended them. I wrote the exams on the
19 structural analysis class, but I didn't because I
20 didn't have the time at the other -- on that -- I
21 was going to go into fourth year and take some of
22 those courses but I was doing field projects at
23 the time.
- 24 Q So you didn't complete them?
- 25 A No, and I didn't say that I completed them.

1 Q Well, I'm reading it. It says, "Under government
2 sponsor attended Ottawa University to complete
3 credits for certification in civil engineering."

4 A I didn't complete all the civil engineering
5 credits, no.

6 Q In fact, sir, you were confronted on this very
7 issue, as I understand it, at the *Mouser* trial, am
8 I correct?

9 A That's right.

10 Q And I understand you testified at that hearing
11 that you, in fact, had taken and completed the
12 courses; is that right, sir?

13 A Like I said, I probably completed one of the
14 courses. There was a second-year course that I
15 started to take and then I didn't feel it was
16 pertinent so I opted out to take, you know,
17 another program or another course, but these were
18 third year.

19 Q I'm just -- I'm just -- I'm just going to read for
20 you, if I can -- and this is, Mr. Commissioner, at
21 pages 3220 to 21 of the transcript from the *Mouser*
22 trial. I'm looking at the bottom of page 3220,
23 question was asked, "Tell us about your experience
24 at Ottawa University." Answer: "It was a
25 government -- they sent me for my certification to

1 get a professional engineering certificate, and
2 they took the course criteria of the
3 photogrammetry plus the course criteria of the
4 Association of Professional Engineers for an
5 examination, and then I had to attend the
6 University of Ottawa, and at that point it was
7 full-time day classes in third and fourth year
8 structural analysis." Question: "So you did
9 that?" Answer: "Yeah." Question: "And if I were
10 to show you a fax from the University of Ottawa
11 that said you took only one course and didn't
12 finish it, would that be true?" Answer: "No,
13 that's not true."

14 Is that true, sir, that you didn't
15 complete any of the courses?

16 A Well, I just said, I mean the government sent me
17 on the classes.

18 Q But my question, sir, is really simple. You see--

19 A You know what --

20 Q Just let me finish, please.

21 A Okay.

22 Q Somebody says to me did I go to law school and
23 they ask me what classes I took generally I can
24 tell them. My question for you is really simple.

25 A I took --

- 1 Q Did you complete the courses that you took at the
2 University --
- 3 A I didn't complete the third and fourth year
4 engineering at civil -- I never said that I did
5 that. I said that I attended classes. I did
6 attend the classes and I remember writing an exam.
- 7 Q Did you pass the exam?
- 8 A I don't know. I don't think so. One of the --
9 one of the exams, no, I don't think I did.
- 10 Q So you didn't complete any courses --
- 11 A No.
- 12 Q -- at the University of Ottawa then, sir?
- 13 A This was the courses the government requested and
14 asked to take because I was working in the
15 Architectural Branch. It had nothing to do with
16 what I was doing in photogrammetry.
- 17 Q My question, sir, was, did you complete any
18 courses at the University of Ottawa?
- 19 A Well, yeah, I did. I attended them.
- 20 Q Did you pass any exams?
- 21 A No.
- 22 Q No. No, you didn't.
- 23 A Not that I know.
- 24 Q So that when this person says I've got a fax here
25 from the University of Ottawa that said you took

1 only one course and didn't finish it, would that
2 be true? You say that's -- you disagree?

3 A No, that's not true because I took more than one
4 course.

5 Q Took more than one course, you just didn't finish
6 any of them.

7 A No, because I was taking them and dropping them.
8 Not only that but when you said here, like this is
9 wrong when it says full time. I didn't go full
10 time. They were full-time classes.

11 Q The long and short of it, sir, is that you didn't
12 complete any courses; am I correct?

13 A No, I was working and I was taking time off work
14 to attend the classes because the campus was about
15 four or five miles away.

16 Q See, we got a -- we got a fellow back home, you
17 know. We ask him how far did you go to in school
18 and he says, well, I got half way through grade
19 12, I got my grade 6, you know. I guess you can
20 interpret it any way you want but I'm looking at
21 your curriculum vitae which says, "Under
22 government sponsorship attended Ottawa University
23 to complete credits for certification in civil
24 engineering." I'm looking at the publication
25 that's in front of you and it also refers to that.

1 I understand what you're saying now, sir, is that
2 you in fact didn't complete any courses at the
3 University of Ottawa.

4 A I didn't say. I said I attended the courses.

5 Q No, my question, sir, was that am I correct you
6 did not complete any courses at the University of
7 Ottawa? You didn't complete any.

8 A No, I didn't complete the third and fourth year
9 structural classes, no.

10 Q Well, which ones at the University of Ottawa did
11 you complete?

12 A Well, I thought I completed the third year
13 structural analysis which was 3140.

14 Q Thought you did but you're not sure?

15 A Yeah.

16 Q I suggest to you, sir, you didn't complete it. If
17 you wrote an exam you failed it, and if we assume
18 that the definition of "complete" means to pass
19 the exam and get a credit for the course, you
20 would agree you didn't complete any courses at
21 university?

22 A I don't know if I got a credit on it or not. I
23 can check.

24 Q Do you think that maybe before you put something
25 like that down in your C.V. it might be a good

- 1 idea to check?
- 2 A That's been in the C.V. like forever since --
- 3 since -- because this goes back to 1971.
- 4 Q You were confronted on this in the *Mouser* trial in
- 5 the late 1990's. Didn't it occur to you then when
- 6 it was raised with you in cross-examination that
- 7 you, in fact, hadn't completed these courses that
- 8 maybe you should check and see exactly what the
- 9 status was? Didn't it occur to you then that
- 10 maybe my C.V. isn't accurate?
- 11 A No, because I didn't think it was important. It
- 12 has nothing to do with what I'm doing in
- 13 photogrammetry, and I am certified.
- 14 Q See, here's the problem, sir. You're being
- 15 tendered to give an expert opinion and you sort of
- 16 gloss over whether you actually completed these
- 17 courses at the university. I get a little uneasy
- 18 that maybe you're going to gloss over some other
- 19 facts. You think that might be a legitimate
- 20 concern, sir?
- 21 A Not in photogrammetry.
- 22 Q Does the ASPRS have the ability to impose
- 23 discipline on you?
- 24 A Sure.
- 25 Q Have you ever been subject to discipline?

1 A No, I haven't.

2 Q Has anybody ever taken you to task over what is in
3 your C.V. about attending at the University of
4 Ottawa?

5 A Because it has nothing to do with what I'm doing
6 in photogrammetry.

7 Q It's on your C.V. that you've tendered today but
8 it doesn't have anything to do with it, that's
9 what you're telling us.

10 A Yeah. I mean I can put things --

11 MR. FOX: Mr. Commissioner, I would like to
12 mark that as an exhibit. The first one is page
13 3262, if I might.

14 THE COMMISSIONER: P-97.

15 **EXHIBIT P-97: PAGE 3262 OF TRANSCRIPT IN STATE OF CALIFORNIA**

16 **v. MOUSER**

17 MR. FOX: And, My Lord, attached to the
18 second set of documents I have included are also
19 pages 3276 through to 3280 from the *Mouser* trial
20 as well.

21 Q There, Mr. Robertson, you had been earlier asked
22 about attending the University of Ottawa and we've
23 already gone through that. The matter was then
24 raised again with you, and I believe it was Mr.
25 Herman questioning you, he questioned you at page

1 3276, line 12, "And the only other thing I would
2 like to do is I would like to just show you this
3 document that I received and ask you to comment on
4 it. Received it on teletype, University of Ottawa
5 info service. And at the bottom, would you just
6 read that and tell us your comments, please? Just
7 read the comment." You read it and it says, "Yes,
8 'Gary Robertson took a course at the university in
9 1976 in civil and he did not complete the course.
10 Or he did complete the course, but he did not pass
11 it. Thank you, Christine Brichon'."

12 First of all, Do you remember being
13 shown that?

14 A Yeah, probably. Obviously if I was on the stand,
15 yeah.

16 Q No, I'm not asking you for probably. I'm just
17 asking you, and believe me, we've had lots of
18 evidence about probably already, I'm asking you if
19 you recall being shown that when you were
20 testifying.

21 A Yeah, it's just basically what I've been -- what
22 I've been explaining here.

23 Q Yeah, that you didn't -- you didn't pass the
24 course or you didn't complete the course but you
25 certainly didn't get a credit for any civil

1 engineering course.

2 A I never said I had a credit. I never said I
3 graduated from it. My job entailed a lot of
4 travelling. I don't even know if I was around for
5 even that second course exam because I was out of
6 town. I mean like the government would send me
7 out of town, and then I probably wrote the exam on
8 this one. But at first he said that I never
9 attended and I always said yes, I did attend those
10 courses, because he made it out like I never
11 attended there.

12 Q So notwithstanding that you're not sure about the
13 status, you put it on the C.V. in any event.

14 A This was, like, yeah, it's like 25 - 30 years ago.

15 Q And notwithstanding that that was raised with you
16 on July 25th, and I believe that was -- Mr. Hesje,
17 you can help me if I'm wrong but I think that was
18 2000 or 1999? The *Mouser* trial?

19 MR. HESJE: 1999.

20 Q MR. FOX: 1999. Notwithstanding that it was
21 raised there, the reference to the University of
22 Ottawa remains on your C.V. which was tendered in
23 evidence today.

24 A Right, and it's never been on my radar scope
25 because it's really irrelevant to what I'm doing.

1 MR. FOX: Mr. Commissioner, if I could mark
2 that as an exhibit (inaudible).

3 THE CLERK: P-98, My Lord.

4 THE COMMISSIONER: P-98.

5 **EXHIBIT P-98 : PAGE 3276-3280 OF TRANSCRIPT IN STATE OF**
6 **CALIFORNIA v. MOUSER**

7 THE COMMISSIONER: Were you ultimately qualified at
8 that trial to give evidence on photogrammetry?

9 THE WITNESS: Yes, I was.

10 Q MR. FOX: Do you know a Mr. James Williamson
11 sir?

12 A Yes.

13 Q Would he be a recognized expert in the area of
14 photogrammetry?

15 A I don't know if he's a certified photogrammetrist
16 or not. I know that he -- I've known him for
17 quite some time. He has done work in close range.

18 Q Actually I understand he's got his engineering
19 degree, may even have a doctorate in engineering
20 and he's also been a member of the association for
21 a number of years.

22 A Yes, in fact, that's where I know him from, yes.

23 Q You certainly would recognize him as someone who
24 is well-experienced in the area of photogrammetry,
25 correct?

1 A Yeah. Yeah.

2 Q And were you aware of his opinion as to the
3 evidence that you gave and the opinion that you
4 provided at that trial?

5 A I'm not too sure of what his opinion -- I know
6 that he didn't do a photogrammetric analysis of
7 it.

8 Q Well, I'm looking -- I'll help you out with what
9 his opinion was. This is at page 4838 of the
10 transcript.

11 MR. HALYK: With respect, Mr. Commissioner, if
12 I might. It's my submission that it's improper to
13 put to this witness whatever somebody else's
14 opinion was in another trial with respect to this
15 witness. We're not going to get into an issue as
16 to who was right and who was wrong and whose
17 opinion, in my respectful submission. It's just
18 not relevant.

19 MR. FOX: It's very relevant to the question
20 that you asked, Mr. Commissioner, and this is a
21 comment that was made at the trial under oath in
22 relation to this gentleman's work. This isn't --
23 I'm not asking to have a comment on something
24 abstract. This is directly to a case which was
25 raised by my learned friend, Commission counsel,

1 when he tried to certify this man as an expert so
2 I think I'm entitled to pursue that.

3 THE COMMISSIONER: But this person was called as
4 an expert at the same trial?

5 MR. FOX: He was.

6 THE COMMISSIONER: Because if he wants to repudiate
7 what was said here it seems to me he'd be here.

8 MR. FOX: I'm asking for this witness's
9 answer to what this person said at the trial.
10 It's as simple as that and --

11 THE COMMISSIONER: Well, it doesn't seem to me that
12 I can pay a lot of attention to something like
13 that, if that person isn't present and there isn't
14 an opportunity to test his opinion. I'm sure
15 there are lots of lawyers who would say from a
16 distance in the course of another proceeding that
17 they disagreed with what a lawyer's done and --

18 MR. FOX: This isn't somebody saying anything
19 from a distance. This is someone who testified at
20 that proceeding. I didn't raise that proceeding,
21 it was raised by Commission counsel as -- and
22 being put forward as something that would qualify
23 this gentleman as an expert. I think I have
24 every right to pursue how his evidence was
25 challenged there, including the fact that a

1 recognized expert in the area simply said he was
2 wrong. But the witness can comment and I'm
3 putting it to him, I'm simply asking him to
4 comment on that.

5 THE COMMISSIONER: The problem --

6 MR. FOX: If he disagrees with it --

7 THE COMMISSIONER: Mr. Fox -- excuse me -- is that am
8 I bound to accept the opinion of a California
9 Judge or was it California or --

10 MR. FOX: No, you're not in any way, My Lord.

11 THE COMMISSIONER: And what's this person's name? Is
12 it Williamson?

13 MR. FOX: Williamson.

14 THE COMMISSIONER: Am I constrained to accept the
15 opinion of a California Judge that Williamson was
16 more right than this witness with respect to what
17 he was saying?

18 MR. FOX: No, you're not, but I am entitled
19 to point out to this witness that a recognized
20 expert in the area felt his opinion was wrong.
21 And I'm interested in knowing what this witness
22 has got to say about that. Now, he may disagree
23 with that or he may agree with it or he may try to
24 explain it, I don't know, but I think I've got the
25 right to ask him about it.

1 Certainly, My Lord, I don't put
2 this forward as any way that you can look at this
3 and say, well, Mr. Williamson said this so that's
4 a fact. That -- it's not being put forward for
5 that at all. It's being put forward to ask this
6 witness to comment on it and I raise the matter
7 because the case has been raised and I think I'm
8 entitled to pursue what did take place at that
9 trial.

10 THE COMMISSIONER: Well, I'm not --

11 MR. FOX: For that limited purpose.

12 THE COMMISSIONER: I'm not disputing that but my view,
13 quite frankly, is that kind of evidence is of
14 little or no value without having much more
15 available to me and, as I say, with all due
16 respect to the trial judge in that case, I might
17 have reached an entirely different conclusion and
18 found that Williamson's evidence was suspect. And
19 I'm not expressing any opinion here one way or the
20 other. I don't know.

21 MR. FOX: And --

22 THE COMMISSIONER: Well, let me just finish.

23 MR. FOX: -- I'm just -- sorry.

24 THE COMMISSIONER: Let me finish.

25 MR. FOX: Sorry, My Lord.

1 THE COMMISSIONER: Given the fact that I have more
2 latitude here than would be so in the case of a
3 trial and that we have been trying to address as
4 much of this evidence as we can, I am inclined to
5 allow you to ask the question, but I just want to
6 put you on notice that it doesn't seem to me, at
7 the moment at least, that it has any great value.
8 And at best I suppose you can ask him what he has
9 to say about it but that's about it.

10 MR. FOX: And I suppose the converse of that,
11 and it think perhaps that's the only point I'm
12 trying to make here, My Lord, is that the converse
13 is, for example, to put forward that this witness
14 has been qualified in a case in California and was
15 able to testify there, is of really limited
16 assistance to you as well in determining whether
17 you're going to qualify him as an expert here or
18 accept his evidence. And I think the point I'm
19 simply making is it was challenged there and
20 that's really the extent of it.

21 THE COMMISSIONER: And that's absolutely correct but I
22 wouldn't have asked the question as to whether he
23 was qualified if you hadn't asked the questions
24 you asked him.

25 MR. FOX: Oh, my learned friend, Commission

1 Counsel, was the one who's gone through the series
2 of cases that he was involved in and those can
3 only be of some significance because he's trying
4 to establish that he has testified.

5 THE COMMISSIONER: What I am referring to are the
6 number of questions you asked him about how he
7 represented his attendance at the University of
8 Ottawa and, with the greatest respect, the moment
9 you start to explore that, and I don't express any
10 opinion about that one way or the other, the
11 moment you started to explore that, that prompted
12 me to ask the question as to whether he was
13 accepted. If it hadn't been for that, the fact
14 that he was qualified in *Mouser*, or whatever,
15 makes no difference to me. I decide here whether
16 this witness is qualified or not. If he's not
17 qualified I'm not going to accept his evidence.
18 If he appears to be qualified, so be it. However,
19 I say again, I'll allow you to ask the question so
20 long as it's clear to you that it really isn't
21 much use.

22 MR. FOX: And I point out, Mr. Commissioner,
23 and it think I understand where I can go and the
24 limited purpose I can use it, but the C.V. that
25 was put forward by the witness as P-96 refers to

1 the University of Ottawa. That's been filed here
2 and that -- that's part of the C.V. that he's
3 tendered in these proceedings so that's why I went
4 down that road.

5 THE COMMISSIONER: But, to be fair to you, I want to
6 say that I appreciate what you're drawing to my
7 attention, and let me repeat it so you don't think
8 that I've been thickheaded about this.

9 MR. FOX: I would never express that, My
10 Lord.

11 THE COMMISSIONER: No, but heaven knows what thoughts
12 might cross counsel's mind at one time or another.
13 However, your point I understand quite clearly.
14 What you're saying to me is, look here, in his
15 C.V., whether he attached much importance to it
16 with respect to his real profession, he uses the
17 words he attended government-sponsored university
18 program, "to complete credits for certification in
19 civil engineering." I haven't missed that.

20 MR. FOX: Yeah. Thank you, My Lord.

21 Q MR. FOX: Mr. Robertson, you've probably
22 forgotten what we were talking about but I'm going
23 back simply -- and I understand that Mr. -- Mr.
24 Williams testified at the hearing, at the trial,
25 the *Mouser* trial that we've been referring to?

- 1 A Yes.
- 2 Q Would that be correct? And obviously you would --
- 3 I'm assuming would have been aware that he was
- 4 testifying and commenting on your evidence?
- 5 A My interpretation is that he commented on
- 6 procedure but he actually didn't to a
- 7 photogrammetric analysis.
- 8 Q Okay. And I'm looking at page 4838 of the
- 9 transcript and at that time the witness who was
- 10 questioning Mr. Williamson was Mr. Herman and the
- 11 question was, "Would it be fair to say that Gary
- 12 Robertson's work at minimal was incomplete and at
- 13 best was wrong?" And the answer was, "It was
- 14 wrong." First I'll ask you, were you aware that
- 15 that was the evidence Mr. Williamson gave?
- 16 A Well, I would be shocked to have an expert on the
- 17 opposite side agreeing with your work.
- 18 Q Why would that be? Why would that be?
- 19 A Well, I mean any time you're in a confrontation
- 20 basis like that you're going to have -- you know,
- 21 they're going to have their expert saying, you
- 22 know, that this is not particularly right. My
- 23 understanding is that in fact you can go through
- 24 the transcripts and you will see, even in the
- 25 prelim hearing, that he had never completed a

1 photogrammetric analysis. His was based on
2 opinion of the procedure and he had commented
3 about vibration, if you're -- you know, if you're
4 doing readings vibration could cause reading
5 errors and so forth. But it was more on method
6 and procedure rather than actually doing analysis
7 and he did not do the analysis of this.

8 Q So because he's on the opposite side of the case
9 you would expect he's going to give the opposite
10 opinion that you're going to give.

11 A Oh, yeah, I would -- I would be quite shocked if
12 it was any other way.

13 Q Have you never been in a situation where you've
14 agreed with the other side's expert?

15 A Actually in most cases they haven't had anybody on
16 and normally --

17 Q Then why would you be shocked?

18 A Normally what happens in the photogrammetric
19 procedure is because we're looking at precise
20 measurement so someone's not going to say that a
21 measurement was, you know, 50 point something and
22 another one's going to say no, it's 50.5. What
23 they normally attack you on would be the exact
24 procedure you used, more in that particular area.
25 But no one's going to go -- I've never have been

1 in court, and I've been in a few, over 20 some
2 years in the civil, federal and criminal side,
3 where you have someone one on one, you know,
4 arguing back and forth on the measurements. I
5 know for a fact that this individual did not do a
6 photogrammetric analysis, nor is it in the pre-
7 trial, nor was it in the court that he ever did a
8 photogrammetric analysis.

9 Q And it didn't shock you that he would have a
10 different opinion because in your experience the
11 other side always has a different opinion?

12 A In a lot of cases, yeah, I mean he would have --
13 he would present an argument.

14 Q I asked you a question sir, the question I asked
15 you, have you never had an expert that agreed with
16 you on the other side?

17 A I think in one case, yeah.

18 Q And after he gave this comment where he stated
19 that your work was wrong did you review that with
20 him? Did you go to the ASPRS and review that with
21 them and try to get that sorted out?

22 A Well, I didn't -- I wasn't aware that he said it
23 was wrong. I think what he was commenting was
24 procedure, but he never completed a
25 photogrammetric analysis.

1 Q I know, but to answer my question, though, sir,
2 did you ever get that sorted out with them?

3 A No, in fact I didn't even know he said that.

4 Q This is the first you'd heard of that?

5 A This was the first time where what you said, that
6 what he said was wrong, but --

7 Q First time you testified at that trial in
8 California, a murder trial. They called a witness
9 who was on the stand, looks like for an extended
10 period of time commenting on your work, concluding
11 by saying it was wrong, and this is the first
12 you've heard of it today.

13 A It's the first that I heard that he said that it
14 was wrong but that's -- but he didn't do any
15 photogrammetric analysis of it so how can he say
16 that it was wrong? Impossible.

17 Q I'm assuming you're going to get a hold of him
18 after today and find out why he said that, eh?

19 A I could probably, yeah, I could.

20 MR. HESJE: Mr. Commissioner, can I rise at
21 this point. This is bothering me somewhat. I
22 think you're already alive to the limited use of
23 that but it's not at all what probably he was
24 going to do either. I mean he simply read a
25 statement from supposedly another expert saying

1 you're wrong. I mean, if there's been a technical
2 point and he's looking for an explanation -- my
3 concern here, of course, is that Mr. Robertson has
4 a professional reputation and to simply say that
5 somebody in another proceeding said he was wrong
6 when that person's not here to be questioned and
7 so people can form their own basis as to who is
8 right and who is wrong, I think is entirely
9 unfair.

10 THE COMMISSIONER: Well, Mr. Hesje, I've already
11 indicated to Mr. Fox that from my viewpoint
12 questions of this sort have such a limited
13 purpose, are of so little assistance. I mean how
14 do I know that Williamson himself addressed the
15 question properly? I don't have any evidence
16 before me as to what technique he used. I have no
17 evidence before me as to what objections he took
18 to the procedure. I have no evidence before me as
19 to whether he quarrelled with the measurements or
20 the materials that were tested, or anything. And
21 to simply have -- and I'm not faulting Mr. Fox --
22 to simply have a blunt statement by another expert
23 that the opposing side's expert is wrong really
24 means virtually nothing and I'm sure that
25 Williamson wouldn't have been called by the other

1 side if he had agreed with this witness. What
2 would have been the purpose in calling him?
3 Inherent in calling him from the other side is the
4 proposition that that person says I disagree with
5 the opinion of the witness called by the
6 prosecution. Were you called by the State in that
7 case? Is that what you said? Were you called by
8 the State?

9 THE WITNESS: Yes.

10 THE COMMISSIONER: Right. No, I understand your
11 point but I've already --

12 MR. HESJE: I'm concerned more with reputation
13 than the probative value of the evidence.

14 THE COMMISSIONER: Well, but in any event --

15 MR. FOX: Well, I'm glad I brought it to his
16 attention so that he can try and do something with
17 his reputation because obviously he wasn't aware
18 that there was a transcript floating around out
19 there that made that comment about his testimony.

20 THE COMMISSIONER: Well, you'll have to decide that,
21 Mr. Fox. As we all know, there are persons who
22 make critical comments about the work of
23 professionals, including lawyers and judges, that
24 few people pay any attention to, given the source
25 of the comment and the lack of any sort of

1 explanation, rationalization and support for the
2 criticism. And I dare say that if I had to take
3 action to offset all the criticisms that have been
4 levelled against me as a judge I'd probably have
5 no time to be spending as a judge.

6 MR. FOX: I think that's true. On the other
7 hand, if I had someone testifying under oath about
8 what I had done wrong I might be concerned about
9 that but that's for another day to be debated.

10 THE COMMISSIONER: I understand.

11 MR. FOX: Thank you.

12 Q I'm looking at the text --

13 THE COMMISSIONER: I'm not sure if Mr. Fox didn't just
14 agree I'd be spending an awful lot of time
15 defending my reputation.

16 MR. FOX: I knew I should have got that next
17 question out.

18 Q MR. FOX: I'm referring to the text that you
19 referenced as contributing to its title, *Non*
20 *Topographic Photogrammetry*, that's the text?

21 A Right.

22 Q And I looked at it and I think it was published --
23 this is the second edition, 1989?

24 A Yeah, '89 or '90, yeah, in that time period.

25 Q And I looked at it. Just before we go I am going

1 to -- I don't necessarily want to tender this
2 whole document. We can, but I did want to tender
3 the page where it refers to (inaudible).

4 MR. HESJE: I'd prefer that this be made a
5 photocopy because the book does belong to the
6 witness and I notice this one actually has some
7 certificate in it that he may wish to retain it.

8 THE COMMISSIONER: Fine.

9 MR. FOX: If we could photocopy the
10 front page and the page underneath it (inaudible).

11 THE COMMISSIONER: What I'll do in any event, Mr.
12 Hesje, ultimately, when this is all over and the
13 report is published and it appears that there
14 won't be anything further flowing from that, make
15 an order that the exhibits be released to you so
16 you can see they get back to the original owners.
17 However that makes sense.

18 MR. FOX: Thanks.

19 Q That's the second edition that you're referring to
20 there?

21 A What, the *Science in Engineering* series?

22 Q Yes.

23 A Okay.

24 Q Is it? Am I correct that's the second edition
25 published in 1989?

- 1 A Yeah.
- 2 Q Has there been an edition published since then?
- 3 A No, I don't think so.
- 4 Q Have you been asked to contribute to a further
5 updated publication of it or to review your
6 article that's in there?
- 7 A Not -- no.
- 8 Q Okay, and what is the actual article that you co-
9 authored or authored that appears in that text?
10 What is it?
- 11 A Well, the chapter is on the ultrasonic technology
12 systems and applications.
- 13 Q And did that have anything to do with identifying
14 imprints on human beings?
- 15 A Yeah, somewhat, because the procedure we used -- I
16 worked on the development of a scanner and -- a
17 high-resolution scanner. We were taking the beam-
18 out and aim-out scans of ultrasound and then doing
19 the measurements from that, and spliced them
20 together in the computer to create 3-D models.
- 21 Q A high resolution scanner is simply I look at
22 something, it doesn't appear there's an imprint on
23 this document. If I put it through a high
24 resolution process of some kind I may find an
25 imprint that's on there and then be able to try

1 and identify it. That's a high resolution
2 process?

3 A Not exactly.

4 Q Well, tell me what it is then, sir?

5 A Well, like a high resolution scanner, I mean like
6 the scanners we're talking about were about
7 \$250,000 to \$300,000 scanners.

8 Q I don't care how much they cost, sir. I just want
9 to know what they do.

10 A No, what happens is, well, you see, it's a high-
11 fidelity scanner meaning that when it scans the
12 pixel information in the scan is very precisely
13 known, so you're using slabs of granite to rest it
14 on. It has glass scale, closed-loop, servo-
15 systems. I mean it's very, very precise. The
16 other thing, too, is what we call fidelity, and
17 the fidelity would fall very similar to what
18 you're looking at as a stereo system and how --
19 how good is the pixel information you're getting?
20 So you're actually looking at density range and so
21 forth. So there's a big difference between, you
22 know, a tabletop scanner that you're looking at,
23 you know, the \$69 versus the \$300,000 scanner.

24 Q You know what? I knew that, but tell me what
25 high-resolution scanning does, though. I mean,

1 what does it do? Why do you do high-resolution
2 scanning?

3 A To be able to pick up information in the higher
4 grey levels, like what we call 10, 12, 14, 16 bits
5 of data. You know, a human eye is looking at 8
6 bits, which is about 256 grey levels. As we go up
7 to 12 bits we're looking at about 4,096 -- 4,096
8 grey levels and then even upwards. So, for an
9 example, if I was doing nondestructive testing,
10 which you use ultrasound on to a composite
11 material, for example the wing, and I'm looking at
12 it visually by my eye, I could look at it all day,
13 all night and I'm still not going to be able to
14 see something, but if I sit there and I scan it
15 and I put it through a mathematical algorithm
16 that's picking up 4,096 grey levels, it's actually
17 going to pick up a crack that obviously you can't
18 see by your human eye. So this is one of the
19 things why you would need the high-resolution
20 scanner for, and this scanner was actually used
21 for the ultrasound as well because we would take
22 the ultrasound.

23 Q So I'm wondering, sir, how that differs from my
24 example that here's a piece of paper that when I
25 look at I can't see any imagery or imprints on it,

1 but if I put it through a high-resolution scanning
2 process I might be able to detect it. Tell me,
3 sir, how that is different from your example of
4 looking at an airplane wing where I might not be
5 able to detect a crack with the human eye and I do
6 a high-resolution scanning and I'm now able to
7 detect it. Tell me how that's different.

8 A Well, I'm not too sure exactly what you're -- I
9 mean, you're trying to compare a comparison. One
10 would be, for an example, if I did a high-
11 resolution scan, like you saw the paper bag, I can
12 actually penetrate the fibre material.

13 Q No, no, let's just talk about my two examples.
14 I'm just wondering what's the difference.

15 A Well, if you -- yeah, if you want to pick it up,
16 sure, you can use a -- you can use anywhere from a
17 --

18 Q Yeah.

19 A Well, what you could use, you can actually use a
20 digital camera and photograph the page, or you can
21 put it through a \$60 scanner and do image
22 processing and bring up an indentation mark. I
23 don't know if that's what you're trying to say.

24 Q And in that chapter in the book that you've
25 referred to, does it make reference there anywhere

1 to interpreting or detecting human imprints,
2 imprint marks on the human skin? Does that refer
3 to that anywhere in that chapter?

4 A No, it's --

5 Q No.

6 A -- dealing with high-resolution scanning and
7 ultrasound, yeah.

8 Q In this publication, the *First Australian*
9 *Photogrammetric Conference*, which is a series of
10 papers at a conference in 1991, is there anything
11 in there that you've published or printed in there
12 that deals with identifying marks on human skin,
13 imprints on human skin?

14 A Actually, yeah, it does, and that's why we use a
15 lot of these references. If you look at
16 procedures that we use for automated point
17 measurement, and that goes back into the early
18 '80s, and also when we were doing automated facial
19 features, a published paper that we presented in
20 Kyoto, Japan in 1986, they're using the same
21 procedures of projected dots and doing automated
22 reading on the points. In that particular chapter
23 in that paper we are doing automated measurements
24 of targeted points and, of course, this is one of
25 the reasons or the ways that we can attain such

- 1 high accuracies.
- 2 Q Would I see the word "skin" in here anywhere?
- 3 A No.
- 4 Q No.
- 5 A But it's the same procedure.
- 6 Q The same procedure. I just wouldn't see "skin"
- 7 anywhere in there or the word "skin" anywhere in
- 8 there.
- 9 A No.
- 10 Q Or imprints on skin anywhere. You referred to
- 11 some studies and we saw some slides that you did
- 12 with pigs. How many -- how many studies like that
- 13 have you been involved in, directly, personally
- 14 involved in?
- 15 A We've been doing the pig skin analysis I guess
- 16 maybe --
- 17 Q About, sir. Before you answer that, I don't want
- 18 to know we, I just want to know you. You, how
- 19 many studies have you been involved in where you
- 20 implanted a mark on a pig and then made an
- 21 interpretation of it? How many pigs have you
- 22 worked on?
- 23 A The first study was -- one was for burn victims on
- 24 human skin and that was back, I believe, in '85,
- 25 '84, '85, and then the work that we're doing on

1 the skin imprints using pigs I believe was 1995,
2 '96.

3 Q So how many pigs did you -- we saw three in the
4 slide.

5 A I think it was four. We did four.

6 Q Four?

7 A Yeah.

8 Q That's -- that's the extent of it, four pigs?

9 A Yeah, that's where --

10 Q Like over the years that's what you've worked on?

11 A Four pigs.

12 Q Is that what you're telling me? When you try and
13 determine whether or not injuries are antemortem
14 or postmortem, and maybe you can just tell us in
15 case anybody doesn't know what antemortem and
16 postmortem means.

17 A Antemortem is prior to death, postmortem is after
18 death.

19 Q Okay. When you make a comment or render an
20 opinion, "This is either antemortem or
21 postmortem", what expertise do you have to render
22 such an opinion?

23 MR. HESJE: Mr. Commissioner, I did not seek to
24 qualify him in this area and I did not -- I know
25 he did provide a report to the RCMP where he makes

1 comments on that, but I have not sought to qualify
2 him as an expert in distinguishing postmortem and
3 antemortem marks.

4 MR. FOX: It was part of his PowerPoint
5 presentation, it was referred to.

6 MR. HESJE: He does some work in the area, but
7 again we're talking about his qualifications and
8 what he's entitled to testify here to. I am not
9 asking him to testify as to postmortem versus
10 antemortem marks and provide an opinion in that
11 regard.

12 MR. FOX: Then my learned friend would have
13 been wise not to have had him review that area of
14 evidence with him when he gave his PowerPoint
15 presentation, but he did, he talked about the
16 testing he did with the pigs and he talked about
17 determining postmortem or antemortem and
18 identified that. I'm simply pursuing it.

19 THE COMMISSIONER: That seems to me correct. Didn't
20 you cover that?

21 MR. HESJE: Well, he went over that in terms of
22 a general background. If that's what he's
23 covering, that's fine. I simply want to emphasize
24 that this is not an area which I'm seeking to
25 elicit opinion from the witness.

- 1 THE COMMISSIONER: So what you're saying --
- 2 MR. HESJE: It was covered in his general
3 background.
- 4 THE COMMISSIONER: So are you saying that when his
5 evidence is finally presented, if it is to be
6 presented, on the actual -- his actual
7 investigation, he's no going to express any
8 opinion about whether the -- what he observed was
9 ante or postmortem?
- 10 MR. HESJE: I'm not seeking to elicit any
11 opinion on that. Now, to be clear, I'm not
12 objecting if Mr. Fox asks the question. I'm
13 simply clarifying that that's not one of the
14 areas. I tried to go through very precisely what
15 areas I want him qualified as, and that was not
16 one of them.
- 17 MR. FOX: Maybe to --
- 18 THE COMMISSIONER: Ask your question.
- 19 MR. FOX: Maybe just to -- maybe I can
20 circumvent the issue a little more quickly. Is my
21 learned friend suggesting that this witness does
22 have expertise in the area of identifying injuries
23 as being either -- or marks being antemortem or
24 postmortem?
- 25 THE WITNESS: Well, I'm not too sure if you're

1 talking about --

2 MR. FOX: Please, I'm not -- I'm directing
3 that to my learned friend, Commission counsel, Mr.
4 Robertson, sorry there.

5 THE WITNESS: Oh, I'm sorry.

6 MR. HESJE: The only expertise I'm
7 seeking to establish in this hearing is the
8 expertise to provide the opinions that I outlined,
9 which does not include antemortem and postmortem.
10 It's not for me to say that he has expertise
11 outside of those areas. What we're dealing with
12 here is qualification as an expert in the areas
13 I've indicated he was going to testify on. I'm
14 not -- and do not wish to comment on other areas
15 of expertise he may have.

16 MR. FOX: Perhaps I'll ask my questions then,
17 My Lord. Thanks.

18 Q MR. FOX: Sir, you have rendered opinions, at
19 least in this particular case, as to whether
20 certain marks are antemortem or postmortem. That
21 would be correct?

22 A Right.

23 Q And I'm asking you what would be your
24 qualifications? What would give you sort of the
25 expertise, if I can, to render those opinions?

1 A Well, in some of the examples, for an example, if
2 you're looking -- what I showed on the slide
3 presentation, when I --

4 Q No, no, I'm just -- I just want to know --

5 A No, what I'm --

6 Q -- what your -- what training, what experience you
7 have that would give you the ability --

8 A Just --

9 Q -- to render that --

10 A Just looking at a lot of homicide cases on a -- on
11 a recording basis, data basing a lot of homicide
12 cases, and in those particular applications that
13 were displayed here where we designated them to be
14 antemortem were actually substantiated by forensic
15 medical examiners and pathologists, especially in
16 the *Mouser* case. The *Mouser* case we testified and
17 said, "Well, to me it looked to be a postmortem
18 mark", and a forensic pathologist agreed with me
19 on that and said it was.

20 Q No, but you see we don't -- we don't have -- when
21 you give us opinion now, you're giving it based on
22 your expertise, at least that's what I understand
23 you're doing, and I'm wondering what training you
24 have to be able to say whether or not a mark is
25 antemortem or postmortem. What training do you

- 1 have to be able to give that opinion?
- 2 A From prior homicide cases. What we're doing is
- 3 going by experience that we've found in prior
- 4 homicide cases plus the research and development
- 5 that we're doing.
- 6 Q Okay.
- 7 A And in addition to that, everything we're doing
- 8 --
- 9 Q Let me -- let me stop you there and I'll -- I'll
- 10 let you carry on with the addition.
- 11 A Okay.
- 12 Q You've given us two basis: one, prior homicide
- 13 cases; and then, secondly, the experience that you
- 14 have in the testing. Now, in the experience you
- 15 have in the testing would be the four pigs that
- 16 you've referred to?
- 17 A Part of that, yes.
- 18 Q What other testing have you done?
- 19 A Well, what we're doing is on prior homicide cases,
- 20 because we had other examples that were not
- 21 displayed here, that we're doing on data basing,
- 22 because we go to forensic identification services
- 23 on an R and D program, we pull up previous cases.
- 24 Q No, no, see those are already done. I'm talking -
- 25 - when you're talking about testing, to me that

1 says here, I've got a body or here I've got a pig
2 or here I've got --

3 A Right.

4 Q -- something I'm testing. So what testing have
5 you done beyond the four pigs?

6 A Just on the controlled on the -- no, just those
7 four, and we're going through the protocol to be
8 able to, you know, to use those pigs, and we
9 haven't had any need because the primary, if
10 you've read the papers, the first phase of the
11 research was actually to measure coefficient of
12 pig skin versus human. So then we would know very
13 precisely what it would be to a -- later to do
14 some further indentation analysis with pigs. So
15 first we have to model it.

16 Q Yeah, so -- so if I've got it right then, in terms
17 of experience in testing to determine if a mark is
18 either postmortem or antemortem, the extent of the
19 testing would have been what you did with the four
20 pigs?

21 A Right.

22 Q Okay. And in terms of the prior homicides, these
23 would be cases where you would come in after the
24 fact?

25 A Yes. In a lot of cases, years after.

- 1 Q You wouldn't be involved in the autopsy, for
2 example?
- 3 A Most cases years after the fact.
- 4 Q Okay. And you'd be looking at photographs or
5 something like that.
- 6 A Yes.
- 7 Q How many prior homicide cases like that have you
8 been involved in?
- 9 A On the imprint analysis?
- 10 Q No, on determining antemortem or postmortem? .
- 11 A Just those four that we looked at, four or five.
- 12 Q Just -- just those four. So your ability to say
13 -- and you've told us you have no medical
14 training. You've told us that you have no medical
15 training, sir?
- 16 A No.
- 17 Q No biology, no pathology, no anthropology, nothing
18 like that.
- 19 A No.
- 20 Q So your ability to identify and say this is either
21 antemortem or postmortem would be based on the
22 testing you did with the four pigs and the four
23 homicides that you were called in where you looked
24 at pictures or whatever that were taken years --
25 that were for homicides that had taken place years

1 earlier?

2 A Right, and also presenting the data. If you look,
3 we presented the papers through the ASPRS, which
4 is, again, the papers, conferences, published in
5 100 countries, and also we presented the same data
6 to the International Association of Identification
7 which comprises 5,000 professionals in 70
8 countries, and it was the 85th educational
9 conference.

10 Q Okay. And did that paper, sir, deal with
11 identifying --

12 A Exactly.

13 Q -- whether it was postmortem or antemortem?

14 A In the presentation that we made at the lecture in
15 July, it was primarily -- the entire paper was on
16 antemortem and postmortem and dealing with the
17 imprint marks.

18 Q No, no, sir. My question was, did the paper deal
19 with your ability to look at an imprint and say
20 whether that was an antemortem or postmortem
21 imprint?

22 A The presentation that we made at that forensics
23 conference was a scaled-down version of what you
24 just saw in the cases and the procedures we're
25 doing with pig skins. So what we're doing is

1 introducing it, looking for other opinion in the
2 forensic community. So at least we're doing that,
3 we're trying to prepare a database and get as many
4 forensic pathologists that we have to contribute
5 to the database to aid in the research and
6 development on skin imprint analysis. This is why
7 it's always --

8 Q So to answer my question then, sir, and again it
9 was pretty simple, you went to this, you said
10 here's what we did with our four pigs, here's what
11 we did in the four homicide cases or what we saw,
12 but in terms of outlining criteria that would have
13 to be examined in looking at a fresh wound or
14 imprint and saying if that's postmortem or
15 antemortem, is there like a checklist that you
16 produced or here's what you look for, this
17 indicates antemortem, this indicates postmortem?
18 Did you provide that in your paper?

19 A Yeah. Yeah, and --

20 Q Which -- which paper was that, sir?

21 A Well, no, on the -- on the presentation that I
22 made on the --

23 Q So it's not in the paper?

24 A Well, it's in the paper because you have a very -

25 Q Then what paper is that, sir?

1 A There was two papers, the last two papers are
2 published, and you will see there is a big
3 difference between what we showed as an example of
4 an antemortem and a postmortem. So it was
5 described in the paper.

6 Q I just want to know the names of the papers.
7 Where do I find those?

8 A You were just presented with them today earlier.

9 Q So the two papers that we received earlier in
10 disclosure here, that will tell me how to identify
11 postmortem versus antemortem? That's what I'll
12 see in those papers? Is that what you're telling
13 me?

14 A I think the first paper, the one in Amsterdam
15 would, and it shows the explanation.

16 Q The one in Amsterdam would.

17 A Yeah.

18 MR. FOX: Okay. Perhaps, My Lord, it's 3:45,
19 this might be an appropriate time to take a break.

20 THE COMMISSIONER: Before we do, and if I may presume
21 to add one or two questions to what you've been
22 asking, I think what Mr. Fox is trying to
23 establish is, in part, what control group and what
24 technical data did you rely on in developing your
25 theory about whether a mark on a body, for

1 example, reflected something sustained before
2 death or after death?

3 THE WITNESS: Well, we used the examples that we
4 had --

5 THE COMMISSIONER: Well, before you answer, is that,
6 in part, what you're asking?

7 MR. FOX: I think that's correct.

8 THE COMMISSIONER: Because it seems to me that what
9 you're telling Mr. Fox at the moment, with
10 respect, is that the papers were developed which
11 presupposed certain things, and what he's saying
12 is before you get to that, if I understand your
13 question correctly --

14 MR. FOX: Yeah.

15 THE COMMISSIONER: -- I want to know what's the
16 controlled data? The four pigs? When you talk
17 about your assessment of homicides or prior
18 homicides, were you simply extracting from police
19 files or other sources information about deaths or
20 killings at various places? What's your -- what's
21 your control group? I mean, where does this
22 information come from? How big is the control
23 group? How many scientific experiments did you
24 carry out --

25 THE WITNESS: Right.

1 THE COMMISSIONER: -- in order to develop the theories
2 that you've mentioned? Don't answer it now, but
3 when we come back I'd be interested in hearing
4 your answer.

5 THE WITNESS: Okay.

6 THE COMMISSIONER: Because the sense I have is there's
7 a good deal of frustration here on your part about
8 not getting at that question.

9 MR. FOX: Yes. Yes, My Lord.

10 THE COMMISSIONER: We'll take --

11 MR. HESJE: Mr. Commissioner, (inaudible), I'm
12 a little unclear here of where we're going. I
13 mean, Mr. Robertson had provided a number of
14 opinions to the RCMP as part of their
15 investigation. Not all of those opinions I'm
16 choosing -- I'm seeking to elicit in this hearing.
17 The reason, I think, can be reasonably be
18 inferred, (a) I didn't believe that they were
19 terribly relevant or material; and (b) I had some
20 concerns about qualifying him as an expert in that
21 area. Having made those decisions, then I find
22 myself in a position where we're doing exactly
23 that anyway, that is, we're reviewing all of his
24 qualifications in an area in which he's not --
25 we're not seeking to elicit an opinion from.

1 THE COMMISSIONER: But let's not leave this, because
2 my understanding is that the questions now are
3 directed towards the possibility that Mr.
4 Robertson will be asked whether a particular
5 observation he made reflects in his opinion an
6 antemortem or postmortem injury.

7 MR. HESJE: And what I'm saying is I'm not
8 seeking to elicit that opinion from him. If we
9 were then, it's quite appropriate, but I
10 deliberately said I am not seeking to elicit
11 opinion from him as to whether it's postmortem or
12 antemortem, the impressions on Mr. Stonechild's
13 body. We're not going there. Why then are we
14 pursuing his qualifications to provide an opinion
15 that he's not going to give?

16 THE COMMISSIONER: Well, I haven't seen the document
17 you've provided to counsel, so I don't know what
18 you've told them you were going to elicit, but
19 what then are you hoping to elicit from Mr.
20 Robertson with respect to --

21 MR. HESJE: I outlined that very carefully, Mr.
22 Commissioner, evidence as to image processing,
23 interpretation of image, and photogrammetry, that
24 is, making measurements from images. He is going
25 to provide evidence as to the measurements he gave

1 of certain imprints on the body of Neil
2 Stonechild. I'm not seeking to ask him, and I
3 fully recognize that he did provide an opinion on
4 some of these issues to the RCMP, but I have no
5 control over that. I had to decide what evidence
6 I wanted to tender this person for to present an
7 opinion before the hearing. I've confined that.
8 I've said I only want him to testify to those
9 things, I don't want him to testify as to
10 postmortem and antemortem marks.

11 THE COMMISSIONER: So all he's going to provide
12 is measurements?

13 MR. HESJE: That's correct. He's going to
14 provide --

15 THE COMMISSIONER: And he's not going to be asked any
16 opinion as to the cause of the marks?

17 MR. HESJE: He's going to be asked to provide
18 evidence as to the imprints on the body and the
19 measurements of those imprints. It's going to be,
20 as I outlined in my examination of qualifications,
21 he's going to be asked to provide measurements of
22 the known object and to compare the two, and the
23 points of convergence between the known object and
24 the imprints. That's all. It doesn't entail was
25 it done postmortem, was it done antemortem.

1 THE COMMISSIONER: But what you're saying then is that
2 this, in part, is related to, and I recall you
3 dealing with this, whether a certain physical
4 object, in his opinion, created the indentation or
5 impression.

6 MR. HESJE: Again, he did provide that opinion
7 to the RCMP as part of an investigation. The
8 opinion I'm seeking to elicit from him is simply
9 to say it's along the lines of the evidence with
10 the slide show of the marks on the car and the
11 correspondence of those marks from the car frame
12 to the imprints on the body. That's what we're
13 asking him to say, is there a correspondence
14 between the imprint on the body and the known
15 object, and to describe what those points of
16 correspondence are. It's fairly -- and it's
17 deliberately very narrow evidence that I'm seeking
18 to get from him. I'm not seeking to elicit the
19 opinion that some is postmortem or antemortem. I
20 share some of Mr. Fox's concerns that that gets
21 into a medical area where I don't know whether
22 he's qualified to give it, that's the reason I'm
23 not eliciting it --

24 THE COMMISSIONER: He's not.

25 MR. HESJE: -- and yet I'm faced with the

1 cross-examination on his qualifications, or lack
2 of qualifications, to give an opinion that he's
3 not intending to give.

4 MR. FOX: Well, I wonder, Mr. Commissioner, I
5 mean here's the dilemma, and I'll illustrate the
6 dilemma I'm facing. First of all, let's not dance
7 around this. We're talking about whether a
8 handcuff made the mark on his nose, and there's
9 been a photograph with a part of a handcuff
10 superimposed over his nose that's been flashed
11 around throughout these proceedings. That's what
12 this is about. The opinion I've been given and
13 I'm sure this is what it's going to relate to,
14 states, "These measurements were to be used in the
15 determination of correct size and orientation of
16 the imprint marks found on Mr. Stonechild at the
17 time of the autopsy", the first part. The second
18 phase was to determine if the marks were
19 antemortem or postmortem. The third phase was to
20 determine the source of the injuries. That's his
21 opinion. Now, my learned -- no, my learned friend
22 rises, but he --

23 MR. HESJE: (inaudible), that's the problem,
24 it's not the opinion I'm seeking to --

25 MR. FOX: Well, he states, the second phase

1 of getting to the point where he's trying to
2 identify --

3 THE COMMISSIONER: Well, we can go on wrangling about
4 this for a long time. We're going to adjourn now
5 for fifteen minutes. What I suggest you do is
6 counsel get together here and let's see if we're
7 on -- or let's see if you're on the same page,
8 let's find that out firstly, because Mr. Hesje is
9 saying, "I'm not interested in the opinion given
10 or the width or scope of the opinion given by the
11 RCMP, my interest is far more limited." At least
12 I think that's what he's saying. So I'd suggest
13 in the interval you get together and other counsel
14 can eavesdrop if you want to so we determine
15 precisely what it is that is being asked here of
16 this witness at this juncture.

17 MR. FOX: Fair enough.

18 (PROCEEDINGS ADJOURNED AT 3:53 P.M. & RECONVENED AT 4:43
19 P.M.)

20 THE COMMISSIONER: Mr. Fox.

21 MR. FOX: Thank you, Mr. Commissioner.

22 Q Maybe, Mr. Robertson, what I'll try and do is kind
23 of cut right to the chase on this, the post
24 mortem, ante mortem question that I was asking
25 you. We have received a copy of the report that

1 you supplied to the RCMP. As I understand it, one
2 of the questions that they asked you in looking at
3 certain marks on Mr. Stonechild, one being the
4 marks on his nose and the other being a mark on
5 his wrist, was whether or not they were ante
6 mortem or post mortem. And you responded to that
7 with a fairly short answer, I think, stating that
8 -- I'll just try and make sure I've got it right
9 here -- "I determined that the injuries to his
10 nose and imprints on his wrist were ante mortem";
11 that would be the answer that you gave to the RCMP
12 when you supplied your response?

13 A That's right.

14 Q And I think what I was trying to get at was, you
15 have indicated you don't have any medical training
16 or pathological, forensic pathological training,
17 so I was trying to establish what expertise you
18 had to render that opinion. And I recognize, Mr.
19 Commissioner, and I have had a chance to speak
20 with Commission counsel, and I think I recognize
21 he is not putting this witness forward as an
22 expert in that area and I appreciate that, and
23 that's not my purpose for asking the question.

24 But to get back, sorry, Mr.

25 Robertson, what I was saying was, I asked you what

1 your expertise was in that area in terms of
2 training or background, and I understood that you
3 referred to the four pigs that you had examined
4 sometime in the mid '90s, and referred to the four
5 homicide cases that you were involved in.

6 A Well, yes, I mean, I actually -- and then at that
7 point I think there was an objection and I didn't
8 really complete my answer at that point.
9 Throughout the years of the homicide cases we've
10 been working on, we have looked at wounds. We
11 have looked at ante mortem and post mortem, and
12 there's always been the question, how do you
13 distinguish between a post mortem and ante mortem
14 and it's always a question that's floating around.

15 At forensic conferences the most of
16 the pathologists that I've met have stated there
17 is a distinct difference between an ante mortem
18 and post mortem. But what we did in this
19 particular case is, because I did testify in those
20 two previous cases, we wanted to use a pig in a
21 controlled experiment where we were actually
22 monitoring at a subpixel micron range, which is
23 actually going on to the skin at time of death.
24 Those are the experimentations that we were doing
25 with pigs.

1 Now, there's two phases here. One
2 was I contacted several pathologists, including
3 people at forensic conferences, and asked for
4 their input, including a digital database of
5 images that they have, of what they know of ante
6 mortem and post mortem so we can include it in our
7 database. I think I mentioned that earlier before
8 the objections arose.

9 Secondly, I have had a doctor
10 working with me, a colleague, for close to 17, 18
11 years. As a matter of fact he was one of the
12 contributing authors to my chapter on ultrasound,
13 Dr. Bill Miles, which is, he's listed in here in
14 the book on *Science and Engineering Series*, on the
15 *Non-Topographic Photogrammetry*. He has reviewed
16 the work that I've been doing. You know, I -- and
17 because what I do is, I have it reviewed
18 medically.

19 Just like when we were working on
20 the *Hall* case. Anything that's reviewing with
21 autopsy information, he goes and describes what's
22 going on medically, what's going -- with the
23 autopsy information. But he has also reviewed my
24 work because before I'm presenting, you know, and
25 giving courses and presenting this out to the

- 1 international community, I do have it checked, and
2 he gave an opinion of the characteristics between
3 an ante mortem and post mortem as well. So we --
- 4 Q Have you got that opinion?
- 5 A Yes, I have it right here, actually.
- 6 Q Could you produce that for me?
- 7 A Sure.
- 8 Q Have you produced this to anyone associated with
9 this inquiry prior to now?
- 10 A No, it's just in my files. It's in my pigskin
11 analysis files that we use for our research on
12 pig.
- 13 Q So you haven't shown this to Commission counsel
14 either?
- 15 A No.
- 16 Q No. This is -- I don't see a signature or a
17 letterhead or anything associated with this?
- 18 A Well --
- 19 Q So is that your sort of ante mortem/post mortem
20 file that you've got there?
- 21 A Actually it's from an email. It -- because he was
22 busy, he did send me an email and this is the --
23 his actual email. I just extracted from his
24 email.
- 25 Q My question was, is that your sort of ante mortem/

- 1 post mortem file that you've got there?
- 2 A No, it's just pictures of our pigskin items, what
3 we're using for pigs and letters --
- 4 Q Well, what is in there, then? Like, is that your
5 study? Is that the studies we've talked about?
- 6 A No, it's just some correspondence.
- 7 Q Well, would you mind if we took a look at that?
- 8 A Well, I don't know exactly what's in here.
- 9 Q I don't either, that's why I'm asking.
- 10 A Well, there's a copy of the paper that you have,
11 that's in here. One of the other things, too, is
12 that we put in for a publication of another paper,
13 this time in Istanbul regarding skin compression,
14 which we're doing research and development now on
15 human skin compression, and that paper hopefully
16 will be published in July in Istanbul. That's
17 about the only thing in here, and just general
18 notes.
- 19 Q When did you render your opinion in this matter,
20 Mr. Robertson? What's the date of your report?
21 Your report. The opinion that you gave.
- 22 A I don't know. I think it was, what, 2000 or
23 something. Or three years ago.
- 24 Q 2000?
- 25 A Yeah.

1 Q Yeah, okay. What you've produced for me is sort
2 of what you rely upon in determining if there's
3 ante mortem or post mortem is an email that was
4 received by you on July 10th, 2003?

5 A That's correct.

6 Q That would be correct? So you didn't have this
7 email when you rendered this opinion?

8 A No.

9 Q No. So when you rendered the opinion in 2003, Dr.
10 Miles hadn't looked at this thing and told you
11 these are ante mortem or post mortem; that was
12 your opinion?

13 A No, not really, because Bill has heavy --

14 Q Well, let me -- answer my question, sir.

15 A Yeah.

16 Q Did Dr. Miles look at this file? In 2000, when
17 you rendered your opinion saying these are post
18 mortem versus ante mortem, did Dr. Miles look at
19 the file and say, "Yeah, that's what you should
20 put down"?

21 A I contacted him and he was aware of the study that
22 we were doing and --

23 Q No, sir, answer my question.

24 THE COMMISSIONER: Mr. Fox, you've got to allow him to
25 answer the question.

1 MR. FOX: With respect, this is about the
2 third time I've asked --

3 THE COMMISSIONER: Well --

4 MR. FOX: -- the questions.

5 THE COMMISSIONER: -- I never get to hear the answer.

6 Q MR. FOX: I'll let you try again, sir.

7 A Okay. During the -- during the testing that we
8 were doing on the skin analysis, I contacted him
9 and told him and he said, well -- because I was
10 mentioning about the white area and so forth, and
11 he says, "Well, there's no circulation and so
12 forth."

13 In July, I was going before to
14 teach the -- give a lecture at the International
15 Association of Identification, which is peers in
16 the forensic side, and I said, "Can you give me a
17 written, detailed thing, based on the research
18 that we've done, and you put it in medical words
19 and how you can best describe these odulations and
20 what's going on with the skin?" And he's a very
21 busy individual, and he emailed me that response,
22 and that's the response.

23 What I'm just saying is that, yeah,
24 it has been reviewed; he has -- he actually looked
25 at the images of the pigskin, and he looked at

1 that obviously before he rendered that. And he
2 also looked at other indentations, for example on
3 the *Hall* case, and we talked about it.

4 But as far as written
5 correspondence going back and forth, no, just on
6 that last email. And I just wanted to verify
7 because I said, "If I'm sitting there talking to
8 some forensic pathologist, I want to look at it on
9 the medical terms, and show me what your analogy
10 and what your interpretation is what we're looking
11 at."

12 And he's done that in several
13 cases. Again, if you look at this thing on
14 ultrasound, we're talking about medical, and
15 medical imaging, he was reviewing what we're doing
16 medically. So, yeah, we do have expertise in
17 these particular areas reviewing what we're, you
18 know, presenting, because, you know, we're
19 presenting these to peers and people that are so-
20 called experts in their particular field. So we
21 have to have a, you know, a background of what
22 we're presenting here.

23 Q Should I ask the question again, Mr. Commissioner?
24 Thanks. The question I asked you, sir, was that
25 in your opinion which was rendered in

1 approximately 2000, you stated, "I also determined
2 that the injuries to his nose and the imprints on
3 his wrist were ante mortem."

4 A I --

5 Q That's what you said.

6 A And the --

7 Q And my question was, did Dr. Miles review the
8 material that you had --

9 A No.

10 Q -- to assist you in rendering that opinion?

11 A Not on the Stonechild. He was reviewing the
12 information that we had on our pigskin --

13 Q The only information you've got from Dr. Miles is
14 the general one-page email which you received on
15 July 10th, 2003?

16 A Right.

17 MR. FOX: I wonder if I could mark that as an
18 exhibit, Mr. Commissioner?

19 THE COMMISSIONER: Sure.

20 MR. FOX: And I'm not sure, this may be the
21 witness's only copy. If it is, I would suggest we
22 --

23 THE WITNESS: It is, actually.

24 MR. FOX: -- we obtain a copy of it and copy
25 it. I notice it's page one-of-four. Have you got

1 the other three pages that go with it?

2 A I didn't get four pages.

3 Q Well, it says page one-of-four at the top.

4 A No, that's coming off email. Like, we're --

5 Q I'm sure it is. I'm just wondering where the
6 other three pages are.

7 THE COMMISSIONER: You're saying there are no other
8 three pages?

9 THE WITNESS: No. No, it's just -- well, you
10 know what you're doing is probably email and
11 you're responding, keep responding back and forth
12 to each other.

13 Q MR. FOX: I don't know, I'm just wondering
14 where, it says page one-of-four --

15 A No, there's no other four.

16 Q -- and where are the other three pages?

17 A There's no other three pages. That's the only
18 page.

19 Q And you have no explanation why this says page
20 one-of-four?

21 A It's a Microsoft Outlook mail thing. I mean I can
22 pull up the email and view it.

23 MR. FOX: Maybe we can mark that as an
24 exhibit.

25 THE COMMISSIONER: P-97.

1 MR. FOX: And if a copy could be perhaps
2 given back to the witness.

3 CLERK: That will be P-99, My Lord.

4 THE COMMISSIONER: Sorry.

5 **EXHIBIT P-99: EMAIL FROM DR. MILES DATED JULY 10, 2003**

6 Q MR. FOX: Now, you referred to two articles
7 which you said we had received, and those would be
8 the two articles that you gave to Commission
9 counsel, and I understand he forwarded on, them on
10 to us. One was a paper that you gave in 2002 at
11 Corfu, Greece, and the other one was a paper that
12 you gave in July of 2000 in Amsterdam, is that
13 correct?

14 A That's correct.

15 Q Okay. And I think I have had a chance, I think
16 we've got those. Those would be something that
17 you drafted yourself? They're your papers?

18 A Right.

19 Q You would be familiar with them?

20 A Yes.

21 Q Certainly would. I've looked at the one that
22 related to Greece and it doesn't seem to have
23 anything in there about post mortem, ante mortem;
24 is that possible, sir?

25 A I think we were talking about -- let me just pull

1 that up. Actually I think my copy is -- I think I
2 gave away the only copy that I had here. Could
3 you refresh -- on the -- I think on the
4 conclusion, because we were talking about the skin
5 membrane analysis we were doing for NASA, and I
6 basically referenced the -- the similarities
7 between this capped on thin skin membrane to human
8 skin characteristics.

9 Q Well, I'm talking about ante mortem, post mortem.
10 Was that --

11 A No, I'm sorry, the post -- the ante mortem, post
12 mortem explanations I think were shown in -- in
13 the Amsterdam paper.

14 Q Okay. So the Greece paper then, the short answer
15 then is that it doesn't deal with post mortem,
16 ante mortem?

17 A No, that one of the models we had where the
18 handcuff image was in that paper that we were
19 using and, yeah.

20 Q Well, did the model with the handcuff thing deal
21 with post mortem, ante mortem?

22 A No.

23 Q No. Well, then why did you mention that, sir?

24 A Well, because I wasn't too sure --

25 Q What difference does it make if there's a handcuff

- 1 in there if it doesn't deal with --
- 2 A No --
- 3 Q -- ante mortem, post mortem?
- 4 A I wasn't sure.
- 5 Q No, okay. So then you think the paper that was
- 6 given in Amsterdam dealt with ante mortem, post
- 7 mortem?
- 8 A Yeah, I believe so. There was examples of the
- 9 ante mortem and post mortem.
- 10 Q And did it -- did it give an indication of what
- 11 you should do to try and identify whether it's
- 12 ante mortem or post mortem? Like, how do you
- 13 determine it, did the paper address that?
- 14 A I think it was visual. There might have been
- 15 explanation. I don't have the paper in front of
- 16 me. I just --
- 17 Q Well I've got the paper and it does address ante
- 18 mortem, post mortem, and I'm going to give you a
- 19 copy of it, and I'm not sure --
- 20 A Actually you know what, I think I might have it.
- 21 Is this the --
- 22 THE COMMISSIONER: It seems to me this might be an
- 23 appropriate time for us to break, Mr. Fox.
- 24 MR. FOX: Sure.
- 25 THE COMMISSIONER: You're starting into this area.

1 MR. FOX: I will have a few questions on that
2 document.

3 THE COMMISSIONER: All right.

4 (PROCEEDINGS ADJOURNED AT 5:00 P.M.)

**INQUIRY INTO MATTERS RELATING TO THE
DEATH OF NEIL STONECHILD**

Before The Honourable Mr. Justice D. H. Wright, Commissioner

**Held at:
The Centennial Auditorium
Saskatoon, Saskatchewan**

Tuesday, October 21, 2003

APPEARANCES:

**Joel Hesje, Esq.
David Stack, Esq.**

Commission Counsel

Donald Worme, Q.C.

Ms. Stella Bignell and the Stonechild Family

Aaron Fox, Q.C.

Constable Larry Hartwig

Jay Watson, Esq.

Constable Bradley Senger

Barry Rossmann, Q.C.

The Saskatoon Police Service

Drew Plaxton, Esq.

The Saskatoon City Police Association

Si Halyk, Q.C.

Federation of Saskatchewan Indian Nations

Bruce Gibson, Esq.

Royal Canadian Mounted Police

Kenneth Stevenson, Q.C.

Mr. Keith Jarvis

C.V. Reporting Services Ltd.
500 - 224 - 4th Avenue South
Saskatoon, Saskatchewan
S7K 5M5
(306) 242-3455
cvreporting@sasktel.net

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1 TUESDAY, OCTOBER 21, 2003

2 THE COMMISSIONER: Good morning. I trust everybody is
3 well rested this morning and comfortable. Mr.
4 Fox, before you begin I just wanted to review the
5 parameters that Mr. Hesje outlined when he
6 introduced this witness because -- and this, by
7 the way, you will find at page 4079 of the
8 transcript.

9 But I reviewed this again this
10 morning and I think it's useful to go over that
11 again to ensure that we all understand the limited
12 purpose of this witness's evidence. And I'm
13 quoting, Mr. Hesje says, "He," meaning Mr.
14 Robertson, "is going to be asked to provide
15 evidence as to the imprints on the body and the
16 measurements of those imprints." And then I'm
17 skipping down, and "to provide measurements of the
18 known object and to compare the two, and the
19 points of convergence between the known object and
20 the imprints. That's all. It doesn't entail," it
21 says, "was it done postmortem, was it done
22 antemortem."

23 Some of us lost sight of that
24 yesterday because Mr. Robertson talked about his
25 experience with the examination of human skin,

1 animal skin and the like. But as I say, some of
2 us lost sight of that, and that really what we're
3 talking about with respect to this witness is this
4 quite confined area of inquiry, and I just wanted
5 to remind us all of that before we begin today, in
6 the hope that we can be fairly focused in
7 addressing the question, firstly, of this
8 witness's qualifications, and then what we have to
9 make of what he has to say. Now, would you like
10 to proceed, Mr. Fox?

11 MR. FOX: Thank you, My Lord. And thank you
12 for -- for bringing that out. Actually you recall
13 yesterday afternoon at the break I did have a
14 chance to discuss it with Mr. Hesje and I think I
15 did get a good understanding from him, and I think
16 we're on common ground where he was going with it
17 and what the nature of his concern was, and I
18 think we're in agreement with that. And I
19 certainly understand that he was not putting this
20 witness forward as an expert to be able to
21 identify whether it was antemortem or postmortem.

22 THE COMMISSIONER: I'm not sure that all of us were as
23 clear at the end of the day as you were. I just
24 wanted to say that I -- I get it now, so --

25 MR. FOX: Okay. And I think, and I will

1 simply indicate that the extent, and again counsel
2 for the Commission and I discussed this, and I
3 think he appreciates where I was going with the
4 questions, that the limited purpose of those
5 questions would be has the witness expressed an
6 opinion on something, albeit not one that is being
7 sought in this matter, but was rendered in this
8 matter which perhaps he's not qualified to give.
9 And that's the limited purpose of that
10 questioning.

11 THE COMMISSIONER: Very well.

12 MR. FOX: Thank you.

13 **GARY ROBERTSON, previously sworn, testifies:**

14 **MR. FOX, examining (qualifications), continuing:**

15 Q Mr. Robertson, I've got a few more questions.
16 We've gone through the list of cases that you've
17 referred to where you've testified in the past,
18 and there are two decisions that I saw in that
19 list that involve Canadian courts; one was the
20 1981 decision in the court in Saskatchewan.

21 A Yes.

22 Q And do you remember if that was Provincial Court,
23 Court of Queen's Bench?

24 A I'm not too sure.

25 Q And would I be correct that that did not involve

- 1 identifying or interpreting marks on a human body?
- 2 A No, it was strictly photogrammetry measurement on
3 a machine device, cable reeler.
- 4 Q Okay. And then there was a second case, a
5 decision -- or a case that you were involved in,
6 that was in the Province of Ontario?
- 7 A Yes, that's correct.
- 8 Q That was the *Lloyd* decision?
- 9 A That's correct.
- 10 Q And that's where you were looking at some
11 videotape that had been taken of someone and
12 trying to determine if there was some cash in
13 hand; it was a surveillance tape that was being
14 analyzed?
- 15 A That's correct.
- 16 Q And again, that would not have involved
17 interpreting marks on a human body?
- 18 A No.
- 19 Q And that would be the extent of your testimony in
20 Canada?
- 21 A Yes.
- 22 Q And have -- the two cases that you referred to in
23 the U.S., one is the *Mouser* case, the other is the
24 *Hall* case?
- 25 A That's correct.

- 1 Q That involved looking at marks on a human body?
- 2 A Yes.
- 3 Q Did either of those decisions involve bodies that
4 had been frozen for a period of time?
- 5 A No.
- 6 Q Have you examined marks on human bodies, other
7 than the Neil Stonechild case, where people had
8 been frozen for a period of time? Have you ever
9 examined bodies like that?
- 10 A Are you talking about being in person or --
- 11 Q Yeah. I'm talking about --
- 12 A -- examining photographs of --
- 13 Q I'm talking about being in person.
- 14 A No.
- 15 Q No. And have you ever testified in a case that
16 involved interpreting marks that were found on a
17 frozen body?
- 18 A No.
- 19 Q And the extent of your actual examination of skin
20 that was frozen and the marks that might be left,
21 or resulting marks, that would have been on the
22 example with the pig testing that was done in the
23 1990s?
- 24 A That's correct.
- 25 Q Are you able to say, Mr. Robertson, as to whether

1 or not there is any significance to the fact that
2 the body may have been frozen?

3 A Well, from the studies that we did on the pigskin,
4 we found no difference in the measurements during
5 that time period. It was quite consistent with
6 all the other testing that we had done previously
7 with pigs and experimentation.

8 Q Okay. In this particular case, the photographs
9 that you looked at would have been what we've
10 referred to as the autopsy photographs?

11 A Yes, that's correct.

12 Q And we understand that Mr. Stonechild, Neil was
13 found frozen in a lot in between 57th and 58th
14 Street, he was then transported to the hospital.
15 The body was allowed to thaw. It was described as
16 being frozen stiff and was allowed to thaw, and
17 then the autopsy was performed and a series of
18 photographs taken. And the measurements that
19 you've done of, say, for example, the marks that
20 appear on the nose, those would be measurements
21 taken from those autopsy photos?

22 A That's correct.

23 Q And do you know how those autopsy photos reflect
24 the condition of the body as at the time of death?

25 A I don't know if I can answer that. From what I've

1 seen in the photos, because I -- I was given
2 photos of where the body was found, and there was
3 some differences. Obviously if he was frozen,
4 yes, it was -- there were some differences.

5 Q So the marks that you see in the photos that you
6 measured, do you know then if they reflect, for
7 example, size, dimension as at the time of death,
8 or do you know if they've been affected, for
9 example, by the freezing process? Do you know?

10 A Well --

11 MR. HALYK: My Lord, if I might rise. I'm not
12 sure that these are issues that go to the
13 qualification of the expert as opposed to maybe
14 cross-examination of the substance.

15 MR. FOX: I think they do.

16 MR. HALYK: I think they may cross the line.

17 MR. FOX: They do, because they're only
18 significant, his evidence is only of significance
19 if -- if it provides us with assistance in giving
20 the measurements of the injuries, not as they
21 might have been depicted in the photographs, but
22 as at the time of death, or at least whether or
23 not they have been distorted or otherwise. So I
24 think it is relevant as to whether or not,
25 frankly, the opinion can even be received. I

1 don't have very much further to go on this. I've
2 got a couple more questions; I think it will be
3 clear kind of where I'm going, if I might be
4 allowed to ask a couple more questions, but --

5 THE COMMISSIONER: Well, I'll let you renew your
6 objection, Mr. Halyk. Let's hear what Mr. Fox is
7 asking.

8 MR. FOX: Thank you.

9 Q And my questions was, Mr. Robertson, if we assume
10 that Neil Stonechild received some sort of marks
11 to his nose prior to death, and then was in a
12 field or in a lot and was frozen, and the body was
13 found, autopsy performed, body thawed, photos
14 taken. Do you know whether or not the freezing
15 process affected the appearance of those marks?

16 A Well, I can't really say because, first of all, I
17 didn't do an analysis on the frozen, or the
18 pictures of Mr. Stonechild at the scene, and of
19 course he had a jacket pulled up over his hands,
20 so I couldn't really visually see any marks. And
21 then the angles, the way the photographs were
22 taken, I couldn't, so I can't really comment --

23 Q Okay.

24 A -- because there was no analysis.

25 Q So -- and then would you know, by the same token,

1 if the thawing process would have had any impact
2 on those marks?

3 A From the testing that we had done, we haven't --
4 we didn't see any differences for imprint marks on
5 the skin.

6 Q Okay, so let's say the marks on his nose. Would
7 the thawing process have any impact on those
8 marks?

9 A Not that we have found in our testing, no.

10 Q Okay. So to that extent you're not sure if the
11 freezing process would have had an impact, but
12 you're, based on the testing you did, you're
13 satisfied the thawing process wouldn't have had an
14 impact on those marks on the nose?

15 A Yeah, and then I should point out, too, is that
16 our experimentation with the frozen flesh was
17 actually of an actual imprint, and which we were
18 concerned with was characteristics and how it was
19 actually changing in size, and there was no other
20 testing done other than that.

21 Q So it wasn't actually testing that involved
22 looking at, say, an abrasion of the skin to see
23 what effect --

24 A Yes, there was -- you can see in some of the
25 photographs where we had, like, a head of a hammer

1 and it scraped the scalp on the skin. It didn't
2 really affect it, and actually we actually
3 measured that area and took points on it. But I
4 was mainly concerned with how it will affect
5 dimensional information, because it would impact
6 in some of our work here.

7 Q Okay. In this case, it would be fair to say the
8 best you could say is that you've measured those
9 marks on the nose of the body based on the photos
10 taken at the autopsy?

11 A Yes, the only measurements were made were actually
12 the autopsy photos.

13 Q Whether those marks reflect the nature of the
14 injury he suffered, or how the dimensions, for
15 example, as at the date of death, or even at the
16 point when the body was frozen, you're not able to
17 say that?

18 A No.

19 Q And when you looked at the photos, you detected
20 what you thought was bruising and swelling on the
21 nose?

22 A Yes, I did.

23 MR. HALYK: Again, I renew the objection.

24 MR. HESJE: I agree, it's --

25 MR. HALYK: This is the substance, not the

1 qualifications.

2 MR. FOX: I have one more -- I have one more
3 question.

4 THE COMMISSIONER: Not if it's the sort of question
5 you've been asking, Mr. Fox, because this really
6 does go to the validity of his opinion, as opposed
7 to his qualifications.

8 MR. FOX: Oh, I think he's -- he's rendering
9 an opinion, and this area of the exercise is to
10 see whether or not he has the ability to render
11 that opinion. If he's made statements in his
12 report that cannot be substantiated, then the
13 question becomes whether or not he has the
14 expertise to render the opinion.

15 Now, he's already given us the
16 answers on his lack of testing or knowledge on
17 freezing and thawing of bodies. I wanted to put
18 one further question to him, and that --

19 THE COMMISSIONER: Well, before you do, what is the
20 question?

21 MR. FOX: I wanted to put to him what Dr.
22 Adolph had to say about the significance of the
23 thawing of the body and ask him if he has any
24 knowledge of that.

25 THE COMMISSIONER: But that goes to the question about

1 the validity of his opinion.

2 MR. FOX: It goes to the question of how
3 could he render the opinion if he doesn't have the
4 knowledge.

5 THE COMMISSIONER: Well, I don't think that's --
6 that's not an appropriate question.

7 MR. FOX: Thank you.

8 THE COMMISSIONER: Do you have any other questions?

9 MR. FOX: I do.

10 Q Exhibit P-99 was the email that you produced for
11 me that had been supplied to you by Bill Miles?

12 A Yes.

13 Q And that had been emailed to you July 10th, 2003?

14 A Yes.

15 Q And is -- would I be correct in my understanding
16 that some question had been raised as to whether
17 or not you could give an opinion as to whether
18 these marks were antemortem or postmortem, and as
19 a result you consulted with Mr. Miles, Dr. Miles?

20 A No, this is the -- he had observed the data of my
21 -- I mean my latest work in June, and I'd taken
22 some handwritten notes, and this is -- was his
23 comment. Because what we wanted to do was explain
24 medically of what we were observing, because there
25 was a difference almost between day and night, or

1 black and white among the antemortem and
2 postmortem. And he rendered -- he sent me this
3 email on his understanding of those differences.

4 Q What kind of doctor is Dr. Miles?

5 A He's a GP. He's practicing in the United States
6 and his specialty is emergency medicine.

7 Q Where does he practice at?

8 A Well, he's a -- he's a medical doctor at a
9 hospital in Scottsdale. He's been there for maybe
10 nine or ten years.

11 Q Medical doctor in Scottsdale. What hospital is he
12 at, sir?

13 A I'm not too sure which hospital he's at.

14 Q You've referred to him as a colleague, so --

15 A Yeah.

16 Q -- so where does your colleague practice at?

17 A Well, to be honest, I don't know what hospital
18 he's at. He was at one hospital in Phoenix and I
19 don't know if he's still there or not.

20 Q And he's a general practitioner?

21 A Yes.

22 Q He's not --

23 A He was --

24 Q -- a pathologist?

25 A No.

1 Q And when he says, in his email, "the cycle of
2 indentations", in parenthesis "as I understand
3 it", do you know on what basis he understands it;
4 do you know on what basis he's sending you this
5 email?

6 A Yes, because what has happened is that we're in
7 another phase of this research and development of
8 skin imprint analysis, and what we're looking at
9 is, for an example, indentation rates. One of the
10 things that we were concerned with, and one of the
11 things we tested is that we had to sedate the
12 pigs, for an example, to give an indentation mark
13 while they were still alive. How did that
14 sedation affect blood flow, and how would that
15 relate to the imprint? The other thing, too, is
16 that on the medical side what we're doing, and
17 this is a -- for another paper that's going to be
18 published in Istanbul on skin compression --

19 MR. FOX: Mr. Commissioner -- Mr.
20 Commissioner, I know I'm interrupting the answer,
21 but my question was, in the letter it says, "The
22 cycle of indentations (as I understand it)", being
23 Dr. Miles. My question was, does he know the
24 basis on which Dr. Miles says "as I understand
25 it"?

1 A That's what I'm getting around to. What we're --
2 what we're looking at right now is that --

3 THE COMMISSIONER: Let's look at it another way, Mr.
4 Robertson. Mr. Fox is always anxious about long
5 answers. If you can tell him in a few words
6 whether the answer to his question is yes or no,
7 or what the appropriate answer is --

8 A Yes, he's --

9 THE COMMISSIONER: -- I think that would be helpful to
10 him.

11 A Yes, like -- yeah, like, he's aware of the
12 parameters that we're doing, and also extending
13 the parameters on how health and other disease --
14 or, you know, diseases can affect circulation
15 patterns, which would actually affect imprint. So
16 this is the -- also addressed in this letter as
17 well, for the next phase of our research.

18 Q MR. FOX: So when he says his information, or
19 his knowledge as he understands it, that would be
20 the basis for that would be his knowledge of the
21 parameters of the studies that you're doing?

22 A Yes.

23 Q Okay. And the extent of the actual studies you've
24 done with any human body or animal body would be
25 the pigs in the 1990s, the four pigs; that's the

1 extent of the actual studies you've done?

2 A Yes, because we're actually killing the pigs and
3 monitoring at the instant of death.

4 Q I had asked you yesterday if I could find anywhere
5 where you list the criteria that you would look
6 for in examining a mark and trying to determine if
7 it's antemortem or postmortem, and you said that
8 you thought you did at the first paper that was
9 published in 2000, the one we were provided a copy
10 of. Do you remember giving me that answer, sir?

11 A Yes.

12 Q Okay. And have you looked at that paper?

13 A Yes, in the -- there's three papers. There was
14 one in Hackodate, Japan, Amsterdam, and then
15 Corfu, Greece.

16 Q Okay. Can you produce -- can you produce that
17 criteria then that you look at when you're trying
18 to determine if it's antemortem or postmortem?

19 A In these papers I'm addressing the antemortem and
20 postmortem. Are you looking at the physical
21 comparison of photo images and so forth?

22 Q I'm saying, when I look at a -- I look at a mark
23 on a body, and the body's of a deceased person,
24 whether it's a photograph or real, what -- where,
25 in your papers, does it say you look for this or

1 you look for that, or this will tell you it's
2 antemortem, or that will tell you it's postmortem;
3 is there anything in any of those papers that does
4 that?

5 A No, they're mainly in our presentation. The
6 presentation that we did at the International
7 Association of Investigation in July had that.
8 Also, the training course that we held for the
9 senior examiners at Regina for the RCMP had it.
10 And also a general paper that we -- or a lecture
11 we provided to a group of animal science and
12 veterinarians in Ottawa.

13 Q Have you -- do you have copies of those
14 presentations?

15 A Just power point slides. I don't think I have the
16 full presentation because we add -- put other
17 cases -- in fact a lot of evidence, or a lot of
18 the items were taken off because of the graphical
19 nature.

20 Q So the long and short of it is that you don't have
21 any presentations that you can produce for us, by
22 way of papers that you've presented, or the papers
23 that you referred to in which you say, if you're
24 trying to sort out whether this is an antemortem
25 or a postmortem mark, this is what you look for?

1 A The --

2 Q I won't find that in any of the papers that you've
3 --

4 A No, the training program at the Royal Canadian
5 Mounted Police, we very explicitly put up slides
6 and explained what those differences were,
7 including the forensic conference.

8 MR. FOX: Thanks a lot. Those are all the
9 questions I have.

10 THE COMMISSIONER: Other questions?

11 **MR. PLAXTON, examining (qualifications):**

12 Q Thank you, Mr. Commissioner. Mr. Robertson, my
13 name is Plaxton. I represent the police union. I
14 have a few questions concerning your
15 qualifications if I may. Throughout your evidence
16 you've referred to, in a number of occasions, "we"
17 did this, "we" did that, concerning experiments or
18 other projects that were undertaken. When you
19 were using the expression "we", I assume you were
20 referring to yourself and other members of Gary
21 Robertson and Associates?

22 A Well, there's myself, but if -- you know, in a lot
23 of cases, the research we have medical, you know,
24 veterinarians, you know assisting us and working
25 with us for an example on our -- on our study. If

1 we're doing other projects on ultrasound, I have
2 an associate again, a doctor. And if I'm doing
3 data readings, yeah, I would have someone -- some
4 people do, you know, drawings or 3-D models. But
5 in most of the cases, when it goes through the
6 administration side, I'm the one that's involved
7 with it.

8 Q Well, how large is Gary Robertson and Associates?

9 A The consulting company is quite small. We only
10 have four -- four people really working with us in
11 the -- in the consulting side.

12 Q And you have one office in Ontario and another
13 office in Arizona, is that correct?

14 A Yeah, we split that with our -- our software
15 company.

16 Q And what does that mean?

17 A Shape Quest.

18 Q Okay, but -- well, Shape Quest, is that Arizona or
19 is that Ontario?

20 A Both.

21 Q Okay. And so you're running two companies, then;
22 you have a software company and Gary Robertson and
23 Associates, which is into photogrammetrics?

24 A Yeah. What we have done is, the consulting side
25 is only handling, you know, just what we're doing

1 here, just on the consulting side, where Shape
2 Quest is handling soft, our software and other
3 application sales, and actually projects as well.

4 Q Okay, well, when you're testifying today as a
5 photogrammetrist, I assume it is in relationship
6 to your association with Gary Robertson and
7 Associates, is that correct?

8 A Yes.

9 Q How many people comprise Gary Robertson and
10 Associates?

11 A Directly and indirectly about four individuals.

12 Q How many directly?

13 A Well, it's just myself.

14 Q You are --

15 A Right.

16 Q -- Gary Robertson and Associates?

17 A That's how we split it, yeah.

18 Q Okay, and the indirect association, how does that
19 play out?

20 A I have various associates that have worked with me
21 over the past 20 years. Professional engineers,
22 medical doctors. I have a lot of personnel that
23 we have trained over the years that work part time
24 for us on a per-need basis.

25 Q Okay, so you're -- you comprise the permanent

1 staff of Gary Robertson and Associates, is that
2 correct?

3 A Yes.

4 Q Okay. Now, when -- you've shown us in your slide
5 presentation a number of projects. We have
6 everything from rocket ships, to mines, to
7 legislative buildings. Did you yourself work on
8 all of those projects?

9 A Yes.

10 Q Okay. With assistance or with not?

11 A No, it -- our company actually evolved, you know,
12 over the years, and those projects were handled by
13 a firm -- in fact we had four offices at one time,
14 and anywhere between 12 and 18 employees spread
15 out across the country.

16 Q Okay, and so does that mean, yes, I did work on
17 each of those projects --

18 A Yes, there'd be --

19 Q -- or are there --

20 A Actually what you see, there is a C.V.. Under the
21 C.V., if you look at every one of the applications
22 which are based on underwater, aeronautical
23 engineering, accident investigation, every one of
24 those projects have been undertaken by me as a
25 principal photogrammetrist over these past 30

1 years. So there's not actually one project, or
2 one instance of a project there, or on our web
3 site where we haven't actually done the work.

4 Q Okay, well, the "we" again, that's you?

5 A Or me, yes. Well -- well, it's spread out because
6 there was, you know, other employees on large
7 projects that were working with us. On the Leg
8 Building for an example, we had three or four
9 other employees working on the Leg Building.

10 Q The -- looking at your C.V. it speaks of research
11 and development of procedures for measuring human
12 skin, ante- and postmortem analysis, et cetera.
13 The research that you've done in relation to that,
14 that is the research concerning the four pigs?

15 A Yes.

16 Q Nothing else?

17 A No, this was the pig -- well, can I ask you the
18 question again? You're asking me if the only work
19 I've done on imprint analysis has been on those
20 four pigs?

21 Q No, I'm asking -- it's your C.V., sir, and I'm
22 asking what you're referring to when you speak of
23 the R and D of procedures for measurement of human
24 skin?

25 A Well, the -- I mean, human skin, which we

1 described yesterday, for an example, I have
2 published papers back in '86 in Kyoto, Japan. We
3 were involved in a -- in a contract. My company
4 at the time was involved in a contract for
5 monitoring facial features for helmets and face
6 masks, for an example, for a military application
7 to develop models, what they call percentile; you
8 know, various percentile models. And we developed
9 this projection system with the automated scanner
10 to do those body measurements, which was a
11 published paper. We also --

12 Q Is that the R and D, or is that -- what exactly
13 are you referring to when it comes to the R and D?
14 Okay, you did a project to design football helmets
15 and some military applications.

16 A No, we were hired -- you know, we were hired to do
17 a research and development project. A lot of our
18 work is R and D.

19 Q Well, what percentage of your work is R and D
20 concerning measurement of human skin?

21 A On human skin, I would -- I mean our pigskin is
22 strictly research and development because it's
23 assisting us in our -- in our work in relation to
24 human skin. The work that we're doing on, you
25 know, human skin is R and D, you know, where we're

1 -- we're paid by police agencies or law firms.

2 Q Okay, well, we've heard of the four pigs and two
3 or three cases involving humans.

4 THE COMMISSIONER: I think the question's not been
5 answered though.

6 THE WITNESS: That's true.

7 THE COMMISSIONER: The question you're being asked is,
8 what percentage of the work done by your company
9 relates to your analysis and your opinion as to
10 human skin? Wasn't that your question?

11 MR. PLAXTON: Yes.

12 THE COMMISSIONER: And I didn't hear that answered.
13 Five per cent, 50 per cent, what?

14 A It -- it'll vary from year to year. Like, you
15 know, it can be anywhere between 20, 25 per cent,
16 15 per cent, 5 per cent, based over the years.

17 Q MR. PLAXTON: Well, what is it now?

18 A I mean, you know, like some of these -- I mean,
19 these court cases and other work that we've done
20 is spread out since, I believe, nineteen, you
21 know, ninety-five.

22 Q Okay, well I'm talking about R and D, not just the
23 cases you've done.

24 A Our research and development right now is ongoing
25 and we're hoping -- hopefully we'll be finishing

1 this next phase of the research and development
2 project by March, because we want to present the
3 data in Istanbul. This is the one that's doing
4 skin compression analysis.

5 Q What's the percentage?

6 A For this year --

7 Q Yeah.

8 A -- it could be 20 per cent.

9 Q It could be, but what is it?

10 A I don't know. I'm just, I'm pulling that number.
11 I mean I have to look at hours and so forth.

12 Q Well, I don't need an exact figure, sir, but
13 you've spoken of three or four cases where you've
14 testified involving measurements of human skin.
15 And when I say "skin" I'm including tissue as
16 well, because I assume there's wounds and so
17 forth, right? Of the percentage of work you've
18 done in photogrammetry, what percentage would have
19 been in relation to human skin and/or tissue? One
20 per cent? Two per cent?

21 A Yeah, could be maybe 2 per cent. Two per cent.

22 Q Okay, 2 per cent of your work over the last what,
23 ten years?

24 A Yes, but what you're asking is actually quite --
25 like, it's -- it's quite vague in two aspects, and

1 one aspect is that our software is used right now
2 in I think about 26 countries, and there's users
3 of the software. So about a third of my time is
4 actually spent teaching photogrammetry and, you
5 know, so there are agencies, there are police
6 agencies that have our software where I'm training
7 or teaching a course at -- you know, in Toronto,
8 or there's a state police medical examiner's
9 office, and in there I'm actually showing
10 indentation levels, or where it can be applied at
11 a crime scene. So I don't know if we can factor
12 that in as a percentage of time as well.

13 Q Well, you gave me 2 per cent as the amount of work
14 you've done over the last few years involving --

15 A In -- about research and development, yes.

16 Q That's in research and development?

17 A Yeah, relating to skin. You know, I would have to
18 break it out. I don't have those numbers.

19 Q Okay, well, I don't need an exact number, sir, but
20 you're being put here today as an alleged expert
21 who's going to tell us that you measured human
22 tissue, and this is what I got. And what I am
23 asking you is, can you tell me what percentage of
24 your work is involved in such tasks? Two per cent
25 maximum?

- 1 A Overall, yes, probably, yeah, we can pull out a
2 number. Yeah, 2 per cent, 5 per cent.
- 3 Q Well, I know these are numbers, sir. I'm asking
4 you for something that, to the best of your
5 knowledge --
- 6 A Well --
- 7 Q -- is reasonably accurate.
- 8 A You know, over these years I would have to break
9 it out. How would you define "human skin"? I
10 mean I published papers on the radiotherapy
11 treatment for cancer patients. I've had a paper
12 on the analysis of mammograms, where we actually
13 scanned and enhanced mammograms. I published a
14 paper on that in 1986. So if you spread that out
15 over a whole period of time through a career of
16 whether it's mammograms, x-rays, burn victims,
17 transplants on skin and so forth, I, you know, I
18 really can't break that number out, I really
19 can't. So if you want to use a number of 2 per
20 cent or 5 per cent, fine, we can do that.
- 21 Q I want to use --
- 22 A I don't have a number.
- 23 Q -- a number that's accurate --
- 24 A Well, I -- I --
- 25 Q -- or is that your response?

1 A I can't give you an accurate number on that right
2 now. I would have to go through and -- all these
3 other projects.

4 Q The review of the pictures of Mr. Stonechild, was
5 that done by you personally?

6 A Yes, it was.

7 Q And the calculations, after you reviewed those
8 photographs, was that done by you personally?

9 A Yes.

10 Q Okay, all of them?

11 A Yes.

12 Q Okay. Now, as I understand, you will be asked, or
13 it's proposed that you be asked to draw a
14 comparison between certain markings on Mr.
15 Stonechild and a known object; is that your
16 understanding as to why you're here, one of the
17 reasons?

18 A I think one of the reasons I'm here is actually to
19 provide the measurements that were -- you know, of
20 the imprints on Neil Stonechild.

21 Q Okay.

22 A That's -- that's as far as I know.

23 Q And those imprints, they're just going to be as
24 you could interpret them from the scenes at the
25 postmortem examination, correct?

1 A Interpret? I mean the measurements were strictly
2 -- are only measured from the postmortem.

3 Q Okay. And if you were to do any comparison
4 between those measurements and any known object
5 would you agree with me that unless you can advise
6 us as to processes that may have changed those
7 measurements, from when those two objects came
8 into contact, your opinion doesn't help us any?

9 A I -- I -- I'm really not too sure what you're
10 trying to say. Are you trying to say that if --
11 the measurements would be different?

12 Q Yes.

13 A No, they're not.

14 Q Okay, you've -- let's say that we know, or have
15 evidence that would indicate that due to freezing
16 and/or thawing of human tissue, measurements may
17 change.

18 A Well, you would think that, but we haven't found
19 that. And --

20 Q Okay, let's pretend I had an opinion from a
21 pathologist who was going by his or her knowledge
22 of human tissue, as opposed to someone who froze
23 four pigs. Okay, let's pretend that's my source
24 of information. And let's say that information
25 was the thawing and freezing process will change

1 dimensions of human tissue. Would you agree with
2 me that any measurements you made after that
3 process, if indeed it did change the dimensions,
4 won't help us?

5 A Well, first of all I wouldn't agree with that
6 statement, because first of all a pathologist has
7 no way of measuring skin. So how could a
8 pathologist make a statement that there was no
9 difference in the dimensions of the skin --

10 Q Okay.

11 A -- if he hasn't provided any measurements of the
12 skin?

13 Q I think we're on common ground here, sir, that you
14 have no education or training in either the
15 biological sciences or the medical sciences, is
16 that correct?

17 A No.

18 Q Do you have any basis for the opinion you just
19 gave us as to what a pathologist may or may not
20 know?

21 A Only if a pathologist is trying to provide
22 information regarding measurements that they make,
23 yes, and I would be able to directly address that.

24 Q How would you address -- let's -- let's say we had
25 an opinion from a medical person that would say

1 due to physiological changes that occur in the
2 human body if it is frozen and then thawed, and
3 let's say that opinion was that it would cause
4 puffiness or some sort of swelling, how would you
5 address that with your knowledge base?

6 A Well, first of all --

7 MR. HALYK: If I could just -- if I could
8 object to this. Mr. Commissioner, again, I rise
9 to make a similar objection that I did when Mr.
10 Fox was examining. As I understand the process
11 that we are here simply dealing with his
12 qualifications to give an expert opinion. It's
13 not the question as to the weight that should be
14 attached to that opinion; that's something that
15 the Commissioner will decide in due course in
16 assessing all of the evidence.

17 But what my learned friend is doing
18 here is cross-examining this witness with respect
19 to the weight of the evidence that he might give,
20 not as to his expertise. Expertise is simply the
21 matter of deciding whether he can express an
22 opinion, and that isn't a high standard to meet as
23 My Lord knows; even lay people can be experts in
24 certain areas, on certain issues.

25 The weight to be attached to that

1 is another matter, and precisely what my learned
2 friend is doing here now is cross-examining him as
3 to the weight that should be attached to any
4 opinion, given other evidence that this witness
5 wasn't privy to, and is being summarized to him by
6 Mr. Plaxton. It's not appropriate at this stage
7 in my respectful submission.

8 THE COMMISSIONER: With respect, Mr. Halyk, that is
9 not my sense. I believe the question is directed
10 towards whether this witness is competent to give
11 an opinion about the process of measurements, and,
12 in that respect, whether he is aware of
13 physiological changes that may take place as a
14 consequence of freezing, and that those changes
15 may put in doubt the validity of his observations.

16 MR. HALYK: No, and I appreciate what you're
17 saying, My Lord, but here, this witness, as I
18 understand what he is here for, he says that he
19 took -- there are certain markings on a body,
20 albeit thawed or frozen it doesn't matter at this
21 point in time, he takes measurements. He tells us
22 what those measurements are. He then, if he's
23 asked to compare it to a known object, fair
24 enough; provide him with the known object and he
25 can take the measurements of the known object and

1 tell us whether those measurements of the known
2 object are consistent with the measurements that
3 he takes from the photograph.

4 Now that's expertise that I
5 understand he's here to bring. Now, in terms of
6 whether there are factors that change it, whether
7 there would be temperature changes that might
8 change it, whether the metal might expand if it's
9 a metal object that he's measuring, those are all
10 questions that he can be asked about in cross-
11 examination, I have no problem with that, in terms
12 of the weight to be given.

13 But he's simply here as a mechanic
14 who did measurements. Measurements -- I'm not
15 trying to diminish the witness's expertise; it's a
16 precious expertise, but that's all it is. And the
17 weight to be attached, which my learned friend is
18 going into now as to varying circumstances as to
19 how they may change the measurements, if at all,
20 that's the matter of the main issue.

21 THE COMMISSIONER: But he said a moment ago that
22 according to his studies there'd be no difference
23 in the measurements with respect to the effect of
24 freezing, as I understood.

25 MR. HALYK: Yeah.

1 THE COMMISSIONER: And I think that what Mr. Plaxton
2 is asking is that, or testing him, is on the
3 validity of that conclusion, given the fact that
4 he doesn't have a medical degree and he's not a
5 pathologist and so on.

6 MR. HALYK: And therein lies the point. We're
7 getting to his conclusions on evidence that hasn't
8 been tendered yet. We're simply at the stage of
9 determining whether he can give any opinion --

10 THE COMMISSIONER: Well --

11 MR. HALYK: -- and that's --

12 THE COMMISSIONER: -- I note -- I note your objection.

13 MR. HALYK: Thank you.

14 THE COMMISSIONER: I concede that the area is smudged,
15 but in the final analysis I'll have to look at all
16 of these considerations to decide whether I'll
17 accept the evidence proper and, if so, what use
18 I'll make of it, but --

19 MR. PLAXTON: Thank you, sir.

20 MR. HESJE: Mr. Commissioner, again, I just
21 want to -- there still seems to be a fair bit of
22 confusion of the purpose of Mr. Robertson's
23 evidence, and I suspect I have to accept
24 responsibility of that. I'm not sure why it isn't
25 understood, but all that he has been -- you know,

1 this line of questioning as to what's the reaction
2 to skin and so on, that is not again an opinion
3 I'm trying to elicit from him.

4 He simply was provided with
5 photographs. He, through the use of
6 photogrammetry, will say the measurements he made
7 of imprints on the skin. Whether they changed
8 postmortem, antemortem, whether they changed as a
9 result of freezing, whether they changed as a
10 result of swelling, whatever biological process is
11 going on is not part of the evidence I'm
12 attempting to elicit from this witness. It's
13 simply the measurement at the time the autopsy
14 photograph was taken. That's all he's here to
15 testify to.

16 An analogy would be the one he
17 testified to as to the fingerprint on the bag.
18 All he did -- that wasn't a measurement; that was
19 imaging. He enhanced the image so at some -- an
20 expert in the area of fingerprinting could comment
21 on the fingerprint.

22 Similar the tooth marks. Again,
23 the evidence was that he was able to make
24 measurements and to manipulate the image so that
25 an expert in dental and bite marks could testify.

1 What's being missed here is that
2 this is simply the -- that platform evidence.
3 This is simply saying, here's what the
4 measurements are. Now people are free to argue,
5 they're free to call additional evidence as to
6 what changes take place in the body as a result of
7 freezing and so on. The point is, he's simply
8 here to testify, based on the photographs, what
9 the measurements of imprints that he could discern
10 on the photographs are. Full stop.

11 Well, he is then also going to
12 provide measurements of a known object, but that's
13 it. It's not -- he's not here to say that I've
14 done extensive studies -- I know he's being cross-
15 examined in that area -- he's not here to say I've
16 done extensive studies on skin, this and that;
17 he's simply to say this is what the measurements
18 are.

19 THE COMMISSIONER: What you're saying is that he's not
20 saying that what he observed in the autopsy
21 photographs and says he measured reflected what
22 the condition, Mr. Stonechild's condition was
23 prior to him being frozen, for example?

24 MR. HESJE: I'm not asking him for that
25 opinion. You've heard --

1 THE COMMISSIONER: No, I'm just asking --

2 MR. HESJE: Exactly. But I mean you've heard

3 he's done some work in that area, but that's not

4 the opinion we're seeking. And again, it just

5 seems to be confused here. All he's been asked to

6 do is to say you got photographs, were you able to

7 -- imaging, were you able to bring out those

8 imprints, and were you able to make measurements

9 on them? What are the measurements? And what

10 are -- I'm sorry, not measurements but -- not

11 simply measurements, but what are the points of

12 concurrence with the known object, based on your

13 analysis of the images. You know, it's going

14 further to say that he's testifying as to the

15 reaction of skin and so on; that was never the

16 purpose.

17 THE COMMISSIONER: I agree there's a lot of confusion.

18 MR. PLAXTON: Well, Mr. Commissioner, the basic

19 problem with the tendering of this gentleman's

20 evidence is, it's not that I measured this

21 photograph and I determined X, Y and Z. The

22 problem we have is, the real purpose for his

23 evidence is for him to draw a comparison between a

24 certain object, which we all know is a pair of

25 handcuffs, and the person of Mr. Stonechild. The

1 conclusion then that one is indirectly asking this
2 expert to give us is, given X and given Y, the
3 logical conclusion is those two objects came into
4 contact at some period of time.

5 What I'm endeavouring to show is
6 that opinion is groundless unless this gentleman
7 can tell us, or has sufficient knowledge to say
8 that at the time when those two objects allegedly
9 came into contact, the object we're measuring now
10 will not have changed, or, if it did change, how
11 it changed and how that comparison is now valid.

12 THE COMMISSIONER: But that's a question to be asked
13 when he gets to the evidence proper. No, that's a
14 question to be asked when he gets to the evidence
15 proper, rather than anticipating now. I mean it
16 may well be that when he's asked questions as to
17 his opinion, that question is an appropriate one
18 to put to him. But I tend to agree that that's
19 something that lies ahead.

20 MR. PLAXTON: Fair enough, sir. Also, we would
21 submit though that credibility, too, is at issue.
22 Not often when it comes to qualifying an expert,
23 but I think it is this time.

24 THE COMMISSIONER: Well, I can consider that, but it
25 seems to me now that this is very -- very limited,

1 very confined, and the area you're canvassing
2 seems to me to lie ahead. Do you have any other
3 questions you want to ask him?

4 MR. PLAXTON: A couple more, if I may.

5 Q Also, sir, when it comes to measurements, say of a
6 -- an elastic object, and a mark on an elastic
7 object, such as human flesh, without knowledge as
8 to compression and so forth of the elastic object,
9 your measurement doesn't provide us that much if
10 you're trying to compare it to a plastic object,
11 is that correct?

12 THE COMMISSIONER: Mr. Plaxton, that goes -- that goes
13 to the question of his evidence proper. I mean
14 what conclusion he drew and whether his conclusion
15 is suspect because of a garment creating a similar
16 impression is a matter that lies with respect to
17 his opinion, not his qualifications.

18 Q MR. PLAXTON: The -- okay, the measurements that
19 were taken by yourself are contained in your
20 report, correct?

21 A That's correct.

22 Q Okay. And as part of your training, I assume --
23 now you train people in photogrammetry as well?

24 A Yes.

25 Q Okay. And as part of the training, the use and

1 value of lab notes or background data is well
2 known, is that correct?

3 A I'm not too sure what you mean by lab notes.

4 Q Well, let's say you're attempting to undertake a
5 project, measure me this object, and knowing that
6 you're going to have to justify your measurements,
7 your conclusions later. I assume any self-
8 respecting professional would have some lab notes
9 and some data that would back up their opinion?

10 A Yes.

11 Q Okay. That's part and parcel of what's expected
12 in the trade?

13 A Yes, of course, yeah.

14 MR. PLAXTON: Thank you, sir.

15 THE COMMISSIONER: Other questions?

16 **MR. ROSSMANN, examining (qualifications):**

17 Q Mr. Robertson, yesterday when you were trying to
18 explain to us photogrammetry, one of the things
19 you said is that "through any type of optics you
20 have a bending effect, so one of the first things
21 that we normally do before we do any type of
22 photogrammetric analysis is actually calibrate the
23 camera and calibrate the lens, so this is
24 explaining the procedure that we use for doing
25 calibration and determining focal length." Did

1 you calibrate the camera and the focal length that
2 took the pictures of Mr. Stonechild?

3 A In this particular case we did a determination of
4 the focal length used.

5 Q How did you do that, sir?

6 A Those -- what we do is we have known reference
7 points, for an example on the autopsy table, and
8 we can acquire other points, on the back of the
9 wall for an example, one would be the door, other
10 types of apparatus in the autopsy room, and what
11 you have now is 3-dimensional coordinates, and
12 from that we'll be able to calculate focal length.

13 And you know, maybe for the record
14 I should point out what a focal length is. A
15 focal length is a designation of a lens on a
16 camera. And basically what it is, it's the
17 distance from the focusing centre of the lens to
18 the back of the film, or if you're using a digital
19 camera to the sensor. So we -- like, we need to
20 determine that because if you had something like
21 an 18 millimetre lens versus a 50 millimetre lens
22 it would affect your -- you know, the data points.

23 Q So did you do that for each picture that you
24 examined?

25 A Just for the ones that we did to gather our

1 control areas for the nose. The nose area and for
2 the side of the body. Then the rest of them were
3 single shots and we applied those values in the
4 focal length, and then cross-checked with other
5 measurements. But again we're going into the
6 presentation of the data here, which I'll address
7 when I present it.

8 Q But just to understand, you never examined the
9 camera that took the picture, or the lens of the
10 camera that took the picture?

11 A No, and actually normally we -- we don't, because
12 in most cases it's not available. If you look at
13 some of those other cases from 50 years ago, in
14 fact those we didn't even have negatives, we
15 actually had to go through the prints, and that
16 was a really tremendous amount of work to be able
17 to determine, you know, focal length and
18 calibration from a set of photos.

19 Q So if I under -- I'm sorry to interrupt you.

20 A No, you don't need the camera, for the record;
21 like you don't need the camera, the specific
22 camera or the lens in hand to do a camera
23 calibration. We can do that from, you know, from
24 images, by taking a --

25 Q So -- but unless you tested each photograph, or

- 1 calibrated each -- the camera from each
2 photograph, you wouldn't know if the camera used a
3 telephoto -- variable telephoto lens of some sort,
4 would you?
- 5 A Like, that's tested in our data, in our data
6 reduction.
- 7 Q M'hm.
- 8 A So each set of measurements that we're doing is
9 actually cross-checked. Again, it's going to be
10 --
- 11 Q I thought you --
- 12 A -- in the presentation.
- 13 Q I'm sorry, I thought you said you only did it on
14 several photos?
- 15 A Right. And then I just said, well, all the photos
16 that we worked on, because when we're only
17 working, on this particular case, with two
18 principal photos, and the photos we were doing to
19 obtain control I believe were about four photos.
20 And again they're in my presentation; I'll point
21 out the ones that we did the -- but every one of
22 them have all been -- you know, they're all cross-
23 checked, focal-length-wise.
- 24 Q All right. Now, Mr. Fox asked you about cases
25 you've testified in, criminal cases that you've

- 1 testified in in Canada, and there was the *Hall* one
2 -- no, sorry, the one in -- which were the two
3 that you testified in in Canada?
- 4 A There was -- well, there was Toronto, *Borja* I
5 think it was.
- 6 Q Okay.
- 7 A Yeah.
- 8 Q That was the *Haight* [ph] one?
- 9 A The one -- well, there was one -- there was the
10 *Hall* -- not the *Hall* case, the --
- 11 Q One was the money at the teller machine.
- 12 A Oh, yeah, like that was *Borja* case, yes.
- 13 Q Okay. And there was one other one you testified
14 in, in Canada?
- 15 A Yeah, that was the *Borja* case, I think it was,
16 yes.
- 17 Q So you've only testified in one criminal case in
18 Canada?
- 19 A Yes, that was the one in Toronto, yes.
- 20 Q I'm confused. You talked about the bite mark
21 case, and Mr. Hesje referred to it again this
22 morning, and yesterday I thought you said that was
23 from Saskatoon?
- 24 A Yeah, oh -- well, you see what had happened was,
25 that was -- yeah, like, I mean, like that was a

- 1 Saskatoon case.
- 2 Q Did you testify in that case?
- 3 A No. I presented the data for the odontologist and
- 4 I had the *Mouser* trial at the same time that the
- 5 -- this case was going on.
- 6 Q So what did you do in the Saskatoon case?
- 7 A What did I do?
- 8 Q You showed us some prints of, where you raised, to
- 9 use a non-technical term --
- 10 A Yes, there was --
- 11 Q -- the bite marks of a --
- 12 A Well --
- 13 Q -- on a victim, but you didn't testify in that
- 14 case?
- 15 A No.
- 16 Q Well, how did -- how does -- so your testimony
- 17 wasn't tested in that case at all, or your work?
- 18 A Yes, it was actually. The -- the evidence was --
- 19 was presented by the forensic odontologist, so he
- 20 actually presented my data.
- 21 Q Okay. What case was that, sir?
- 22 A That was Gail -- the Gail Miller case. The
- 23 *Fisher*.
- 24 Q I see. But you didn't testify?
- 25 A I didn't testify on the *Fisher* case, no.

1 Q So the odontologist presented your evidence?

2 A Yes.

3 Q Now, you said you've done a number of
4 presentations, including one at Regina RCMP Depot,
5 is that right?

6 A Yes.

7 Q And did you use the Stonechild case in that
8 presentation? Did you show the pictures of the
9 handcuffs on the nose?

10 A There was two presentations. One was a general
11 workshop, and another one was actually meeting
12 members of the staff, the Major Crime Unit, and at
13 that case I showed the full set of work that we
14 were doing on Stonechild, yes.

15 Q So that was prior -- when was that?

16 A I believe about a year and a half ago maybe.

17 Q I see. So prior to any of us knowing about this,
18 you were showing these pictures in Regina to the
19 RCMP?

20 A To the Major Crime Unit, not to the RCMP. Any of
21 the other forensic conferences and everything, the
22 images of Neil Stonechild were never -- were never
23 shown. They were only shown at the Major Crime
24 Unit in Regina.

25 MR. ROSSMANN: Thank you.

1 THE COMMISSIONER: Other questions?

2 MR. GIBSON: Just one question.

3 **MR. GIBSON, examining (qualifications):**

4 Q Mr. Robertson, you spent a bit of time going
5 through your C.V., and I just wonder if you have
6 P-96 in front of you?

7 A No, I don't.

8 Q And if I could get you to just turn, I guess it's
9 a couple of pages in. Unfortunately it's not
10 numbered. The part dealing with your education.
11 You were asked some questions in relation to 1976,
12 1977, and I believe for the record it reads
13 exactly like this, "Under government sponsor,
14 attended Ottawa University to complete credits for
15 certification in civil engineering." Is that a
16 course that you were required to attend as a
17 result of being employed by the government?

18 A No, they were -- they just asked me to take these
19 courses because I was working in the architecture
20 branch.

21 Q And you were sponsored, in essence, by the
22 government and they paid for that course, is that
23 fair to say?

24 A Yeah, I had time to -- off to attend some of the
25 classes, yes.

1 Q Okay. And it says "to complete credits in civil
2 engineering"; it doesn't say that you completed
3 credits in civil engineering, does it?

4 A No, it was actually, it was to -- because we were
5 working with a lot of structure, so they wanted
6 me, and they asked if I had an interest in doing
7 that.

8 Q And would a degree in civil engineering, or
9 classes in civil engineering in any way assist you
10 in making photogrammetric measurements?

11 A No.

12 MR. GIBSON: Thank you.

13 THE COMMISSIONER: Other questions? Do you have
14 anything you want to ask arising out of this, Mr.
15 Hesje?

16 MR. HESJE: Not with respect to qualifications,
17 Mr. Commissioner.

18 THE COMMISSIONER: All right. Now I expect there will
19 be submissions on the question of qualifications.
20 Do you want to go first?

21 MR. HESJE: Thank you, Mr. Commissioner.
22 Again, in terms of my submissions on qualification
23 it's important to bear in mind what we're
24 attempting to qualify him to state. He has -- was
25 provided with photographs from the autopsy. He

1 did image processing on, and you'll hear his
2 testimony in terms of scanning in a -- the
3 negatives in a high resolution.

4 So he's done two things that we
5 wish to have him present the evidence on. One, he
6 has done that process of image processing to bring
7 out detail of imprints on the body of Neil
8 Stonechild.

9 The second thing that we're asking
10 him to do is, based on photogrammetry, to provide
11 measurements of the imprint marks on the body. He
12 will also provide measurements of a known object,
13 which is clearly handcuffs. That's all he's been
14 asked to do and provide an opinion.

15 I think we got sidetracked a lot in
16 terms of his medical qualifications, his
17 biological qualifications and these sort of
18 things. This is not uncommon to what -- it's open
19 to argument what can be drawn from the information
20 that he provides. If there's evidence that skin
21 reacts in one way or another, then it's open to
22 argument that those measurements are of limited
23 use.

24 But this is part of the evidence
25 that we're putting forward. There could be more

1 evidence, and people are free to suggest witnesses
2 if they want to argue that there's been material
3 changes in those measurements from some earlier
4 point. But, again, he's not being asked to
5 provide that.

6 Now, in terms of, I would submit
7 that in both those areas, that is the digital --
8 I'm sorry, image processing, the use of high-
9 resolution scanners and so on, through the
10 presentation, it's been established that he has
11 substantial experience and expertise in that area.
12 Similarly, in respect to photogrammetry, he has
13 substantial experience and expertise in the area
14 of photogrammetry; that is of analyzing images and
15 making measurements based on images.

16 It's largely, and he hasn't gone
17 into the details, it's a larger matter, as he's
18 talked about of doing mathematical calculations,
19 geometric calculations using the information he's
20 able to glean from the images themselves. So that
21 that's all that we're asking him to be qualified
22 as and we feel that his qualifications in that
23 area are excellent.

24 Now, considerable attention has
25 been paid to this issue of the resume and the

1 civil engineering courses. To the extent somebody
2 wishes to argue that that's an issue at
3 credibility, I don't care to comment on it.
4 Again, the Commissioner can -- but it's entirely
5 unnecessary to his qualification as a
6 photogrammetrist whether or not he completed any
7 civil engineering courses.

8 Finally I'd like simply to -- it is
9 certainly possible that the witness is somewhat
10 defensive about not having a university degree,
11 but that again is not a requirement to be accepted
12 as an expert testimony.

13 I wanted to read to you a statement
14 from Sopinka and Lederman and Bryant on *The Law of*
15 *Evidence in Canada*. This is from page 536, 537.
16 "The test of expertise" -- I'm sorry, "The test of
17 expertness so far as the law of evidence is
18 concerned is the skill in the field in which the
19 witness opinion is sought. The admissibility of
20 such evidence does not depend upon the means by
21 which that skill was acquired. As long as the
22 court is satisfied that the witness is
23 sufficiently experienced in the subject matter at
24 issue, the court will not be concerned with
25 whether his or her skill was derived from specific

1 studies or by practical training, although that
2 may affect the weight to be given to the
3 evidence."

4 And the authors go on to refer to a
5 decision in *Rice versus Socket*. It says, "The
6 derivation of the term `expert' implies that he is
7 one who, by experience, has acquired special and
8 peculiar knowledge of the subject of which he
9 undertakes to testify and it does not matter
10 whether such knowledge has been acquired by study
11 of scientific works or by practical observation."

12 The point again, in summary, is
13 that he's been -- we're seeking to qualify him to
14 present evidence as to measurements and image
15 processing or image analysis. That's all. And I
16 submit that he has extensive experience, he has
17 published in areas the papers that have been
18 subject of peer review.

19 Frankly the point that it doesn't
20 all relate to skin analysis misses the point,
21 because he is simply testifying what the
22 measurements on the skin, as depicted in the
23 autopsy photographs, are. Everything else goes
24 to, has there been any changes in them, and he's
25 not being asked to provide that evidence. Those

1 evidence he's given which suggests that he has
2 expertise far beyond that. The reference to the
3 University of Ottawa classes is troubling. It is
4 -- it is a concern when I see someone with the
5 experience that he has putting something like that
6 on a curriculum vitae, and you can interpret it
7 however you want but it certainly appears to be
8 there to indicate that there is some education at
9 the University of Ottawa.

10 If it has no relevance to his area
11 of expertise, then why is it there? And it's a
12 troubling concern, and I don't think there's much
13 more I can say about that; you will have to decide
14 the significance of it being put there. But it
15 does raise a concern about, is this then someone
16 that I'm prepared to accept as being able to give
17 an expert opinion?

18 The other area is the antemortem
19 and postmortem become a concern. A concern again
20 in the sense that the witness is opining in an
21 area where he clearly does not have experience or
22 training. And when challenged on that, he
23 responded initially, well, I covered it in a
24 paper. Well, acknowledge then today, well, that
25 the paper doesn't actually set out any criteria

1 for determining antemortem and postmortem.

2 When challenged on it yesterday he
3 said, well, I consulted with -- with a doctor, and
4 produces a blank piece of paper, no letterhead.
5 He's asked where the letterhead, where is this
6 information, where did you get this from? Well,
7 it's from Dr. Miles. Well, where is the letter?
8 Well, I have an email. Turns out the email was
9 sent July 10th, 2003. Dr. Miles, who's a GP,
10 practicing somewhere in Arizona, never ever did
11 look at this material, and it becomes a concern.

12 I think that's -- that's a bit of a
13 credibility issue and I leave it to you, Mr.
14 Commissioner, to decide that.

15 The second part of it though is --
16 is whether or not, even if we were to confine his
17 evidence, and I think at this point we have to,
18 and I will certainly be rising if someone tries to
19 take it beyond the parameters it's been put, and
20 if he is allowed to testify, but even if you are
21 going to confine his evidence to, as Mr. Halyk
22 described it, he's simply here as a mechanic that
23 did the measurements, the concern I have is that
24 it's only of assistance if we can look at those
25 photos and either accept that those photos are

1 reflective of the injuries that Neil Stonechild
2 suffered, or that appropriate adjustments are
3 made.

4 He's acknowledged he has no
5 training, virtually no experience -- he's dealt
6 with one frozen pig -- he has no training or
7 experience dealing with imprints on frozen bodies,
8 or the effect of freezing or thawing. I was
9 concerned about his evidence. When I asked him
10 about the effect of freezing, he said he wasn't
11 sure. When I asked him about the effect of
12 thawing, he said it wouldn't make any difference.

13 By the time Mr. Plaxton got to the
14 mike and asked him those questions, he said
15 freezing and thawing wouldn't make any difference.
16 And so the question becomes, if he can't tell us
17 whether or not the effects of freezing and thawing
18 has any bearing on those marks there, and we know,
19 we've got the testimony of Dr. Adolph already that
20 has addressed that, if he can't say that, then can
21 he really give an opinion as to what those
22 measurements are?

23 And so even if he's only going to
24 be confined to the mechanical exercise of saying
25 this is the measurements, does it advance the

1 cause at all if he can't tell us the significance
2 of the freezing and thawing on that? I don't
3 think -- I don't think it does advance it, and on
4 that basis, that second consideration, without
5 ever getting into the other issues, I don't know
6 that he can render an opinion in this case. Those
7 are my submissions, Mr. Chairman, thank you.

8 THE COMMISSIONER: That's a question though not of his
9 qualifications but of what effect should be given
10 to his evidence. Any other submissions?

11 MR. WATSON: Mr. Commissioner, if you decide
12 that the witness is qualified to provide the
13 Commission with measurements of the known object
14 and measurements based on the photographs he's
15 seen, the third thing that you mentioned, that you
16 raised at the start of the day, quoting from page
17 4079 of the transcript, in my view he ought not to
18 be given, or allowed to make opinion evidence with
19 respect to the comparison between the two.
20 Clearly that would not be appropriate based on
21 what we've heard.

22 If he wants to -- if the Commission
23 decides that he can give evidence with respect to
24 the measurements, in my view would not be
25 appropriate to make any comment with respect to

1 comparisons. That is for the Commission.

2 THE COMMISSIONER: But why would he not be allowed to
3 say that the indentation in a particular case is
4 consistent with the imprint of a certain object?

5 MR. WATSON: Well, what I understand is --

6 THE COMMISSIONER: Are you saying that --

7 MR. WATSON: -- he's being called as a -- he's
8 being called as a mechanic to make comparisons.
9 We've heard he has no medical training. We all
10 have the evidence of Dr. Adolph that said that
11 there are -- were changes with respect to the nose
12 because of the thawing process. And he's not
13 qualified to give that evidence.

14 If he can -- he can give the
15 measurements of the handcuffs, he can give the
16 measurements of how long the abrasions are on the
17 nose and the distance between them, and that's
18 fair enough. Anything after that, it seems to me
19 he's not qualified to make.

20 And my learned friend Mr. Hesje did
21 not, when he raised -- argues the point, he didn't
22 deal with that third point, and I assume that he
23 did that on purpose. I just wanted to make it
24 clear that those are the two things that he's
25 being sought to be qualified for is the imprints

1 on the body, the measurements of them, and
2 secondly the measurements of the known object.
3 But in my view he ought not to be qualified to
4 testify with respect to comparisons.

5 THE COMMISSIONER: Because I understand that's one of
6 the things that Mr. Hesje intends to ask about, as
7 he puts it, the points of convergence between the
8 known object to the imprints.

9 MR. WATSON: Well, perhaps he could clarify
10 that, because when I heard him argue I didn't
11 think that he was asking that in argument.

12 MR. HESJE: There's no question that is part of
13 the testimony and he's going to say -- again, I've
14 tried to emphasize that it's not just measurement.
15 There's two aspects to his evidence. There's the
16 photo imaging where he draws out detail, and then
17 he will indicate points of convergence of that
18 detail with a known object, a pair of handcuffs.

19 MR. WATSON: Well, with respect, Mr.
20 Commissioner, I don't see how this witness, with
21 his qualifications, can do that. He can -- he can
22 measure the handcuffs, fair enough. Based on --
23 based on his qualifications he can measure the
24 length and distance of the abrasions and the
25 distance between them.

1 But to do comparisons, because we
2 know there's changes that took place antemortem
3 and postmortem with respect to those marks, in my
4 view he can't give opinion evidence with respect
5 to that.

6 THE COMMISSIONER: But that lies ahead with respect to
7 the validity or invalidity of his opinion. In
8 other words, when you address it, is he able, is
9 he competent to equate these two aspects.

10 MR. WATSON: Oh, with respect, My Lord, I mean
11 his -- all his training is with respect to taking
12 photographs and doing mathematical calculations,
13 or using software to figure out distances and
14 measurements. He's not qualified, in my
15 respectful submission, and what we've heard, to
16 make comparisons about what might have made this
17 mark, or a comparison of this mark that mark. All
18 it is is measurements, and you or I, or anyone
19 else here can draw our own conclusions with
20 respect to the rest of it. And to give his -- his
21 weight the -- or testimony, the weight of expert
22 opinion is not warranted.

23 THE COMMISSIONER: What about his evidence that he was
24 able to identify as bite marks certain images or
25 impressions that he noted with respect to a murder

1 victim?

2 MR. WATSON: But he wasn't, My Lord. All he
3 could do, and all he did do was say that there was
4 an indentation, and this is the measurement of the
5 indentation; here's the orientation. It was the
6 orthodontist, or whoever the dental expert was
7 that gave opinion that this bite mark was
8 consistent with those indentations. All this
9 witness did was make measurements. There's an
10 indentation here and here and here, and here's
11 what it looks like, here's the orientation of it,
12 and here's how deep they are. And, with respect,
13 that's what we would have to have here.

14 He can testify, the mark on his
15 nose is this long, and the mark -- the distance
16 between them is this long; the handcuffs are --
17 have these measurements. There would have to be
18 another witness, and the -- and we've already had
19 that evidence, with respect to Dr. Adolph and Dr.
20 Dowling. This witness ought not to be -- to make
21 that.

22 THE COMMISSIONER: I understand.

23 MR. PLAXTON: Mr. Commissioner, I'll be very
24 brief. I echo the concerns of Messrs. Watson and
25 Fox. Our concern is the comparison. If we know

1 that comparison is without validity, why would it
2 be included as part of his, quote, "expertise"?

3 Thank you, sir.

4 THE COMMISSIONER: I gather there are no other
5 submissions. Very well.

6 MR. WORME: It's a very -- very interesting
7 arguments with respect to this person's
8 qualifications, but I think at the end of the day,
9 Mr. Commissioner, we're talking really about one
10 thing and that is common sense, and that's all
11 this witness is here to provide us with. He's
12 taken some measurements. He can take measurements
13 of another known object and tell us whether or not
14 it fits. If there's some other fancy arguments to
15 be made around that I'm sure we're going to hear
16 all about that, but I think for the purposes of
17 advancing this inquiry, this witness needs to be
18 heard.

19 THE COMMISSIONER: Well, we will adjourn for 15
20 minutes. I'd like to consider this.

21 (PROCEEDINGS ADJOURNED AT 10:56 A.M. & RECONVENED AT 11:13
22 A.M.)

23 THE COMMISSIONER: Well, I've had an opportunity to
24 consider this and I have three observations to
25 make about this proposed evidence. It is obvious

1 that photogrammetry is an area of investigation
2 and analysis that is evolving, and that concerns
3 have been expressed about the technical and
4 scientific competence of a witness to express an
5 opinion based upon that technique, and to express
6 other opinions as to what conclusion should be
7 drawn as a result of measurement observations and
8 analysis.

9 I have also had to consider Mr.
10 Robertson's professional history and whether that
11 supports the conclusion that he is competent to
12 express opinions in the areas Mr. Hesje has
13 outlined. And I say now that I have some
14 reservations with respect to that, but at the
15 moment they are not so significant that they
16 affect my final decision.

17 I note that this is an inquiry, not
18 a civil or criminal trial, and as I've observed
19 before in my rulings on other issues, I have a
20 good deal more latitude in determining what
21 evidence I will receive, and indeed the thrust of
22 the cases is that an inquiry should be as broad in
23 scope as possible given its mandate, and that one
24 need not have the same concern about rules of
25 evidence and the like as might be the case in a

1 civil or criminal case. Now, as I've said before,
2 that's not an invitation to cast aside the rules
3 of evidence. But there is no doubt in my mind
4 that an inquiry does have a good deal more freedom
5 and latitude. As I've said before, it is
6 important in a proceeding of this kind that there
7 be access to as much information as will be
8 helpful to me as Commissioner in reaching a
9 conclusion about the circumstances surrounding Mr.
10 Stonechild's death.

11 I may conclude after hearing Mr.
12 Robertson's evidence and the questions that have
13 been asked of him that he is not finally competent
14 to give his opinion with respect to either the
15 measurements or the comparison of the measurements
16 with physical objects; but that lies ahead. And
17 finally I might accept his evidence but decide
18 what weight, if any, I will give to that.

19 Having heard the questions asked of
20 him and the submissions that have been made by
21 counsel, I have concluded that within the scope of
22 the inquiry it is appropriate to hear his
23 testimony. I cannot say what use I will make of
24 it, if any, until I have heard all of his evidence
25 and the questions asked of him on cross-

1 examination. I note that counsel will have a full
2 opportunity to test that evidence in cross-
3 examination and there are a number of experienced
4 counsel here who can address their minds to that
5 issue, so I'm sure that it will be fully examined.
6 As a consequence of the questions they ask him,
7 they may finally be successful in discrediting him
8 as a witness. I don't know, that lies ahead.
9 However, I find for the purposes of the inquiry at
10 this juncture that Mr. Robertson is qualified to
11 testify on the limited questions outlined by Mr.
12 Hesje.

13 Mr. Hesje?

14 MR. HESJE: I can proceed?

15 **MR. HESJE, examination-in-chief:**

16 Q Mr. Robertson, can you tell us how you got
17 involved in the analysis of photographs of Neil
18 Stonechild? How were you -- who contacted you?

19 A I received a call from Jack Warner, Corporal Jack
20 Warner from the Major Crime Unit in Regina and he
21 asked me if - if I could look at some images that
22 they were going to send.

23 Q And then you were provided with some images?

24 A Yes, I was provided negatives and also a CD of
25 these images.

1 MR. HESJE: Mr. Commissioner, I want to stop at
2 this point. I did canvass some counsel during the
3 break. I'm not sure I had an opportunity to speak
4 to everybody. I would propose to tender some of
5 this background documentation as exhibits.
6 However, I do want it noted that in some of the
7 information, including the report he does, and
8 you've already heard some of this, but it provides
9 opinions beyond what we're -- have asked and which
10 you have qualified him to give. The counsel I did
11 speak to were content with that on the
12 understanding that you, as an experienced judge,
13 have no difficulty in accepting what is material
14 and what is not material from it, but before I
15 tender it I don't know if there are other
16 objections from counsel. As I said, I didn't
17 canvass everybody.

18 MR. PLAXTON: Mr. Commissioner, if I may briefly,
19 I wasn't canvassed and I have no doubt of the
20 Commissioner's ability to tell the difference
21 between what this gentleman can testify to or not.
22 My only concern would be the press or the public.
23 If they view the report all I would ask is they be
24 admonished that the report doesn't prove anything
25 much, it's what the gentleman testifies to here.

1 THE COMMISSIONER: Very well.

2 Q MR. HESJE: The first document I'm referring to
3 is document ID 975. Mr. Robertson, the document
4 I've put in front of you is a letter to yourself
5 -- or at least a copy of a letter from yourself to
6 -- from Sergeant Ken Lyons, Regina Major Crime
7 Unit of the RCMP. It's dated October 16th, 2000.
8 You did receive that letter?

9 A Yes, I did.

10 Q And the letter does indicate, as I believe you've
11 already indicated, it was enclosing one compact
12 disc with high-resolution photographs as well as
13 original negatives from the autopsy of Neil
14 Stonechild?

15 A That's correct.

16 Q And you received that information?

17 A Yes, I did.

18 MR. HESJE: Now, I'd like to have that letter
19 marked, please.

20 THE COMMISSIONER: P-100.

21 **EXHIBIT P-100: LETTER DATED OCTOBER 16, 2000 FROM SGT. KEN**
22 **LYONS TO GARY ROBERTSON**

23 Q Mr. Robertson, can you explain then what you did
24 with the negatives?

25 A Thank you. I reviewed the negatives and I

1 reviewed the images found on the -- on the CD ROM.
2 The images contained pictures that were taken
3 during autopsy or prior to autopsy and pictures of
4 where Mr. Stonechild was found.

5 Q Now, but my question, though, is you've got the
6 negatives. Did you scan them or perform any sort
7 of analysis on the negatives?

8 A Yes, the selected negatives I did a higher, you
9 know, a high-resolution scan, I scanned the
10 negatives into our system and then I started
11 looking at them, doing basic image processing and
12 starting to prepare, you know, data measurement
13 from those images.

14 Q Now, for that purpose was the images scanned in
15 from the negatives more useful than the images
16 contained on the CD ROM?

17 A Yes, the -- the images on the CD ROM were much
18 reduced in size, it looked like they were
19 compressed, and I just wanted to go with a little
20 higher resolution, you know, to look for more
21 pixel information.

22 Q And through the use of the high-resolution scan,
23 how much detail are you able -- were you able to
24 derive in terms of pixels or --

25 A In this case I think we scanned it about 12 bits

1 of data which puts us in around 4,000 plus grey
2 levels.

3 Q And was that more than was on the CD ROM?

4 A Yes. I believe the CD ROM was more around the
5 eight bits of data, 256 grey levels. I wasn't too
6 sure. It was -- the files were quite small.

7 Q And it was your understanding that these were the
8 original negatives --

9 A Yes.

10 Q -- you were provided with? Now, you have some
11 slides --

12 THE COMMISSIONER: Excuse me. Excuse me, Mr. Hesje.

13 I'm a slow study, Mr. Robertson, so I maybe need a
14 bit more information about what you were actually
15 doing. What did you actually do with a negative?
16 Would you project it in some way and examine it in
17 an enlarged condition or would you simply use the
18 scanner to make some sort of assessment of it?

19 THE WITNESS: Well, it's -- it's in two
20 processes. What we're doing is from the scan
21 we're looking at image processing to bring out
22 features that we'd be looking at to do the
23 measurement, and then from there we go into the
24 measurement phase. One would be to actually
25 acquire data to do a calibration of those images

1 we found on the negative; and secondly to extract
2 some measurements from those and, of course, to do
3 that requires us to put in our software, extract
4 what we call point image coordinates and then do
5 numerical calculations with those points.

6 THE COMMISSIONER: But do you look for reference
7 points on the negative, for example?

8 THE WITNESS: Yes. We look at known
9 reference points because we have to be able to do
10 a cross check on our data. In this particular
11 case we were looking at the autopsy table and
12 points surrounding the autopsy table.

13 Q MR. HESJE: Now, Mr. Commissioner has
14 anticipated one of my next questions. Did you
15 receive other information to assist you in
16 analysing and preparing measurements?

17 A Yes. After looking at the data I wanted to verify
18 some dimensions of the autopsy table. To my
19 surprise I was pointed out it was the same autopsy
20 table that was used in the Miller case, and I
21 already had the dimensions on that, that I used in
22 that particular case. But just to verify it
23 Sergeant Ken Bullock from Regina went to Saskatoon
24 and photographed, using a photogrammetric
25 procedure, the autopsy table in the actual room

1 and with a map, you know, or drawing of what his,
2 you know, his dimensions were. And that was used
3 as a cross check and validation of the original
4 dimensions I had on that autopsy table, and I just
5 wanted to verify it.

6 Q Okay. And I'll come back to some more detail I
7 think when we go through the slide presentations
8 but at this point I want to get a bit of an
9 overview of what you have done. Now, you -- what
10 I've put in front of you is document ID 1225.
11 This is a copy of a letter that you sent to Ken
12 Lyons on November 30th, 2000?

13 A Yes.

14 Q Now, and you set out in this letter some
15 measurements; is that correct?

16 A Yes.

17 Q And at that point in time, I'm referring you to
18 the third paragraph, you state, "That the width of
19 the imprints on the face and hand measured 9.3 to
20 10 millimetres. These measurements were provided
21 to Corporal Warner of the Major Crime Unit." That
22 -- you provided that information to Corporal
23 Warner and you set it out in this letter to
24 Sergeant Lyons.

25 A That's correct.

1 Q Okay. And at that point in time had you been
2 provided with handcuffs to compare to the
3 imprints?

4 A No. The first phase was on the measurement only,
5 if we could extract some measurements taken, you
6 know, of the images, but I was never given -- I
7 had no prior knowledge if it was a handcuff or
8 whatever object would -- would have made that
9 mark. It was only subsequently, after I provided
10 the measurements, that Peerless handcuffs were
11 sent to me.

12 Q So you were subsequently, then, provided with a
13 set of Peerless handcuffs.

14 A That's correct.

15 MR. HESJE: Now on -- I'm going to mark that
16 other --

17 THE COMMISSIONER: Did you want this transmittal and
18 letter marked?

19 MR. HESJE: Yes.

20 THE COMMISSIONER: P-101.

21 **EXHIBIT P-101: LETTER DATED NOVEMBER 30, 2000 TO SGT. LYONS**
22 **FROM GARY ROBERTSON**

23 Q Now, Mr. Robertson, I put in front of you document
24 ID 1382 which is a letter dated January 8th again
25 under your signature to Sergeant Ken Lyons,

1 January 8th, 2001, sorry. It indicates that
2 you're enclosing a report.

3 A Yes.

4 Q And that is a letter you sent on or about January
5 8th, 2001?

6 A That's correct.

7 MR. HESJE: I'll have that marked.

8 THE COMMISSIONER: P-102.

9 **EXHIBIT P-102: LETTER DATED JANUARY 8, 2001 TO SGT. LYONS**
10 **FROM GARY ROBERTSON**

11 Q Now, I've put in front of you document 1353 which
12 is a report. Is that a report you prepared?

13 A Yes, it was.

14 Q And that's the report that was sent to Sergeant
15 Lyons with your letter of January 8th, 2001?

16 A Yes, it was.

17 MR. HESJE: Can I get that marked?

18 THE COMMISSIONER: P-102.

19 THE CLERK: That would be P-103, My Lord.

20 THE COMMISSIONER: 103. I'm sorry.

21 **EXHIBIT P-103: REPORT PREPARED BY GARY ROBERTSON ENTITLED**
22 **PHOTOGRAMMETRIC ANALYSIS OF AN IMPRINT MARK RE: AUTOPSY**
23 **PHOTOS OF NEIL STONECHILD**

24 MR. HESJE: My Lord -- or Mr. Commissioner, for
25 the record I want it noted that part of P-103 is

1 four photographs. One of those photographs
2 identified as figure 2 is previous -- has
3 previously been marked as Exhibit P-33.

4 THE COMMISSIONER: Yes.

5 Q MR. HESJE: Now, Mr. Robertson, you have your
6 PowerPoint presentation. Can we pick it up where
7 the heading "Stonechild Measurement and Image
8 Analysis?" We can go to the next slide.

9 A I just don't have it on mine, so -- okay. Sorry.

10 Q All right. Now this is photographs -- it's best
11 you identify -- what are these photographs?

12 A These are photographs that were provided to me by,
13 you know, Sergeant Bullock, and these are the
14 pictures of the autopsy table and the room.

15 Q Okay. And can you explain, it's not too visible
16 on the projected one, but there's a bunch of
17 little, white marks on the photograph. What are
18 -- what are you doing with this photograph --
19 these photographs?

20 A These little white marks are actually locations
21 where we extracted three-dimensional measurements
22 to -- to help us obtain even more points along the
23 table that would be visible.

24 Q And did Sergeant Bullock also provide you with
25 some measurements of different points on the

1 autopsy table?

2 A Yes. Sergeant Bullock provided -- verified the
3 dimensions that we had previously on the table and
4 he also provided measurements, for an example
5 perhaps the next slide might be able to illustrate
6 a little better, but there are drain holes --

7 Q Yes, go ahead.

8 A -- and water jets along the table, so we have, you
9 know, known dimensions, we know widths of the
10 table, we now known dimensions between centre to
11 centre of these water jets, and also some
12 dimensions in here along the drain as well.

13 Q Now, what -- can you explain what use you're
14 making of those known dimensions?

15 THE COMMISSIONER: Excuse me, Mr. Hesje. Mr. Worme,
16 would you like to excuse --

17 MR. WORME: I've canvassed this with Mrs.
18 Bignell and she has elected to --

19 THE COMMISSIONER: Is she all right?

20 MR. WORME: -- remain present.

21 THE COMMISSIONER: Because I will excuse her if she'd
22 rather leave.

23 MR. WORME: Thank you very much.

24 Q MR. HESJE: Now, what use are you making of
25 these known measurements?

1 A What we're doing is, of course, we're using those
2 known dimensions to help us with, you know,
3 calibration of the optics but also to provide
4 cross checks in our measurements, so we can always
5 go back, we can extract the measurement and then
6 go back and cross check it with some known data
7 that we have in the particular images.

8 Q Okay. Now, what is this next slide various edge,
9 what is that?

10 A Well, to -- to aid in our, you know, measurements,
11 you know, measuring something by a human eye can
12 be subjective. Like how would we measure corners
13 and edges? Software allows us to do image
14 processing, to do auto measurement, to detect
15 edges, especially around rounded curves, and we
16 use that procedure to extract, you know,
17 measurements, because we have a distance from edge
18 to edge, for an example, on the autopsy table, so
19 you can see how we're doing like an edge detection
20 and a measurement to compute that point. What
21 we're looking at here is a series of three-
22 dimensional coordinates that you just saw
23 displayed earlier along the wall surfaces, so we
24 do have full three-dimensional control reference
25 in that room.

1 Q And what -- I take it this next slide is one of
2 the actual autopsy photographs?

3 A Yes, it is.

4 Q And what is depicted here?

5 A What this is is if you notice on the -- on the
6 autopsy table we have a scale or a ruler or a tape
7 going down the side of the table, and we used that
8 in our calculations to assist us to put our scale
9 and to, you know, like to calculate our three-
10 dimensional coordinates. And what happens is one
11 could ask ourselves and say well, okay, what kind
12 of tape is it? Is it a cloth tape, is it a metal
13 tape, could it have been stretched, you know,
14 shrunk or whatever? So what we did is we based
15 our calculations using this distance, extracted
16 three-dimensional information and, of course, what
17 we did is we measured centre to centre of these
18 drain holes which we have known prior information
19 from the photogrammetric data provided by Sergeant
20 Bullock. And using two separate systems -- now,
21 you have to look at two knowns. You're looking at
22 now two different sets of scale structure, one
23 provided previously on the table and then using
24 the scale that was actually applied to the table.
25 And we measured these and this here is a distance

1 comparison using two distinct epochs and the known
2 would be 52.8 millimetres and you can see what the
3 known is measured 51.79 53.68 and 51.96 which gave
4 us a difference of between 1.0 millimetre and 800
5 microns.

6 Q Now, just trying to understand this. The known is
7 the actual measurements that were taken, that
8 Sergeant Bullock took from the autopsy table?

9 A Yes.

10 Q And the measured is your -- your measurement
11 photogrammetrically of the same points in the
12 autopsy photographs?

13 A Of the autopsy photograph, yes, using that scale
14 that was applied on the side of the table.

15 Q Okay. So that really is simply a test on your
16 calculations that you've used photogrammetrically
17 to make measurements from the photograph.

18 A Right. It's a cross check, two independent
19 checks, yes.

20 Q All right. Now, the next slide is again autopsy
21 photographs, and what is being done here?

22 A What we're doing is we're taking that known
23 information and calculating 3-D control reference
24 on the face of Mr. Stonechild. You can see we
25 have reference points along the table and we also

1 have three-dimensional reference points along the
2 water jets that you would see here, so these are
3 known points that we have. And what we do at this
4 point is calculate three-dimensional control
5 reference for these key locations on the face and
6 that was actually part of the criteria to provide
7 control and calibration information for the single
8 shot which I believe is this shot here, 228 is in
9 our calculations of these dimensions.

10 Q Okay. Now, before we move on there, you've
11 designated "E" and "F" on this photograph, and
12 those are points are measurements that you made
13 from the photographs?

14 A Yes. From the photographs -- or, I'm sorry, the
15 dimensions that we came up on this photograph were
16 prior to the -- receiving the handcuffs, because
17 these measurements were made prior. This
18 indentation area in here was 2.3 and this was 2.4
19 millimetre width and the dimension across here, I
20 believe, was 4.36 millimetres which was provided
21 in the report.

22 Q Well, let's refer to your report. Do you still
23 have it in front of you?

24 A Actually, it was marked as a --

25 Q Under heading point 20 you set out results and you

1 talk about the nose. Do you see that in the
2 fourth paragraph?

3 A Yes. In my report I state, "The dimensions of the
4 imprint wound are 2.28, 4.67 and 2.37
5 millimetres."

6 Q Okay. And again, the 2.28 is which measurement?

7 A The -- I don't know if we can see it here with the
8 arrow projected. Yes. Okay. These are the --
9 the widths that you -- would appear, the
10 individual mark, like that's the mark from edge to
11 edge, edge to edge and, of course, from this point
12 in here being the 4.67.

13 Q Okay. So the gap between the two impressions is
14 4.67 millimetres.

15 A Right. And the narrow portions that you visualize
16 on either side of it are 2.3 and 2.4. I mean, I
17 rounded it up to one decimal place. It's showing
18 2.37, so for the record it would be 2.4.

19 Q All right. Now, next slide.

20 A Subsequently when we received the handcuffs and
21 extracted the -- and measured the handcuffs, we
22 took the same scale and actually applied it. Now,
23 this doesn't represent -- all it does is just
24 represent the scale factor of the item of the
25 handcuff versus the scale factor on the nose.

1 Q Now, you were also asked to look at some imprints
2 on the right wrist of Neil Stonechild?

3 A Yes. What we're doing here is we're doing basic
4 image processing, algorithms, which I, you know, I
5 showed quite a few samples of yesterday. This is,
6 you know, same techniques that we're using, and
7 what I wanted to do was to enhance the -- the edge
8 marks along the wrist and looking for transitions,
9 you know, various areas to do the measurements.
10 And you can see similar to what you saw yesterday
11 on other applications, very dark bringing out, you
12 know, features of the hand -- or of the -- of this
13 imprint mark on the wrist.

14 Q Now, on the imprint mark on the wrist as depicted
15 in that slide, are you able to identify twin
16 strands?

17 A Initially when I sent the report the -- the
18 information that we measured here was 9.3
19 millimetres and where the -- our identification
20 for this double area would be actually this
21 particular area right in here.

22 Q Okay. First of all, the 9.3 millimetres is which
23 dimension?

24 A In the report that we provided --

25 Q No, but on the slide here --

- 1 A Oh.
- 2 Q -- where were you measuring from?
- 3 A The 9.3 millimetre goes from this edge to this
4 edge.
- 5 Q The outside edge of --
- 6 A Outside edge to outside edge is 9.3.
- 7 Q Now, did you make measurements of -- further
8 measurements of the wrist?
- 9 A Yes. What we did is in this particular area in
10 here we measured it, 4.3 which was for "C", which
11 you're looking at in this particular area. This
12 -- from this edge to this edge is 4.3 millimetres.
13 "A" is showing in this, was 8 and, of course, 9.3
14 and "B" -- I'm sorry. "A" is the white area, I'm
15 sorry. It's the inside edge, okay? "A" is the
16 inside edge which is 8 millimetres, "B" is 8 and
17 "C" is 3.8. So this depth in here is 3.8
18 millimetres. And what happens here is this also
19 corresponds to the areas that we had compared on
20 the handcuff which was also labelled "A", "C" and
21 "B".
- 22 Q Now, are -- you were also then, you indicated
23 you'd been provided with a set of handcuffs,
24 Peerless handcuffs, and you've labelled points on
25 the handcuffs in that slide as well. What is "C"

1 depicting, "C" as it relates to the handcuffs?

2 A Yes, in "C" for an example, from the handcuffs
3 that were provided to us, "C" was 4 millimetres in
4 dimensions and "A" was, I believe, 8 millimetres.

5 Q Okay. And the imprint mark "C" again is? On the
6 imprint itself the measurement you made of "C"?

7 A Oh, yeah. And "C" on this imprint right in here
8 is -- I'm sorry -- 4.3 millimetres.

9 Q Okay. And then "A" on the handcuffs is the entire
10 width of the handcuffs, the two strands of the
11 handcuffs?

12 A Yes.

13 Q And you've indicated that was 8 millimetres --

14 A Eight.

15 Q -- on the ones that you were provided?

16 A Eight millimetres, and we measured 9.3.

17 Q And what is point "B"? You've indicated a "B"
18 both on the imprint and on the handcuffs.

19 A Oh, there's a rounded indentation transition, I
20 don't even know how we call those, a double rail
21 or -- on the handcuff. It's hard to show here for
22 the record. But I guess for the record, I'm
23 looking at the handcuff and there's a circular
24 pattern where this -- where the narrow portion of
25 the handcuff hinges to this double rail part of

1 the handcuff, and what this is, is this is the
2 indentation on the bottom of this -- on the bottom
3 of this indentation mark on the -- on this edge
4 point. And in that area we measured 3.8
5 millimetres.

6 Q Okay. Perhaps we can go to the next slide.

7 A Actually, like this would show us a little bit
8 better on the "D". You can see labelled "D" on
9 the handcuff and then the area "D" on the wrist.

10 Q Then your next slide?

11 A Okay. This is another point that we were looking
12 at, and it's labelled "E", and you can see that
13 there is a round -- well, appears to be round on
14 the image point in here and what this represents
15 on the handcuff -- probably the picture next to it
16 doesn't show, but what it is is it's this, the
17 narrow portion of the handcuff as it ratches
18 through the -- the double-rail portion.

19 Q Okay. And, Mr. Robertson, I want to caution you
20 here. I don't want you to indicate what it is. I
21 want you to indicate if you think there are points
22 of convergence --

23 A Okay. I'm sorry.

24 Q -- between --

25 A Yeah, the -- this area in here measurement-wise

1 corresponded to this portion in the measurement
2 phase. Now, subsequently what we did is we did
3 some model tests with the -- with the handcuffs
4 and looking at, you know, again a little bit of
5 image processing here and extracting some
6 measurements, you can see this characteristic
7 here, this is on a -- on a model, and you can see
8 this quite profound imprint here and also in this
9 imprint. Whoops, I'm sorry.

10 MR. PLAXTON: Mr. Commissioner, with respect,
11 this is beyond his expertise. He isn't qualified
12 to be doing tests on models. I think he was
13 simply to be telling us about measurements he made
14 photogrammetric.

15 THE COMMISSIONER: Well, it seems to me that it's
16 fairly straightforward.

17 THE WITNESS: But what we did is we actually --
18 what we're doing here is measuring the imprint on
19 the model and then comparing that dimension to the
20 imprint found on Mr. Stonechild.

21 Q MR. HESJE: And was there a correlation?

22 A Yes. They matched within .4 or .6 of a
23 millimetre. What we've done, as well, is we
24 wanted to extract three-dimensionally where this
25 position was on the wrist of the versus what -- of

1 these -- of this particular imprint found on Mr.
2 Stonechild. And in this particular case this
3 imprint that you saw previously and other images
4 on the model was 73.9 millimetres emanating from
5 the knuckle, and in the particular case on Mr.
6 Stonechild it was from his knuckle to the edge of
7 this imprint found on his wrist was 70.73
8 millimetres back. This is another view where we
9 extracted measurements of an imprint on a model
10 and extracted measurements from it as well. And
11 what you're seeing here are some of the images we
12 used in our evaluation of the -- to extract the
13 measurements of the handcuff.

14 Q Now, in terms of the handcuffs, you had
15 measurements made of the ones that were sent to
16 you. You've now received information that
17 apparently all handcuffs aren't the same size and
18 dimension; is that correct?

19 A That's correct. Like, I have a serial number and
20 the model number of the handcuffs that were
21 provided to me by the RCMP.

22 Q And they're set out in your report?

23 A Yes.

24 Q Okay. But you, frankly through my office, were
25 advised that there may be evidence to suggest that

1 the handcuffs -- some of the handcuffs in use by
2 the Saskatoon Police Service, the strands, as I
3 call them, are 2-and-a-half millimetres rather
4 than 2 millimetres.

5 A That's correct.

6 Q And -- well, actually I don't think I need to ask
7 you to comment on the -- your -- I'll then now ask
8 you this, what was the general margin of error in
9 your report? I think it's set out in page three
10 of your report.

11 A Yeah, the margin of error varied between .5 of a
12 millimetre to 1 millimetre.

13 Q Okay. And you had one more slide, I believe?

14 A Oh, I'm sorry. I think I -- yeah, this again was
15 just another shot of the -- of the imprint on a
16 model.

17 Q Okay.

18 A And another one as well from -- you -- you'll
19 notice on a lot of these shots were convergent in
20 we used convergent images to extract our 3-D
21 measurements from.

22 MR. HESJE: Now, Mr. Commissioner, I'd like to
23 -- I have a hard copy of the entire PowerPoint
24 presentation he's referred to. I'd like to have
25 that marked as an exhibit.

1 THE COMMISSIONER: Very well. What are we, 104 now?

2 **EXHIBIT P-104: HARD COPY OF POWERPOINT PRESENTATION ENTITLED**
3 **PHOTOGRAMMETRY -- SOLUTIONS FOR ACCURATE 3D MEASUREMENTS AND**
4 **MODELLING**

5 MR. HESJE: And, Mr. Robertson, those are all
6 my questions.

7 THE COMMISSIONER: The question I have for counsel is
8 if you're prepared to proceed now with the cross-
9 examination?

10 MR. PLAXTON: Mr. Commissioner, on behalf of
11 myself I would appreciate an opportunity of a
12 little time to prepare. We've also asked,
13 however, for the working papers of this gentleman.
14 We haven't received any. I think he has none.
15 I'm not sure if that's the case or not, and if
16 that is the case we'd like to know how on earth he
17 came to this conclusion. We've had no evidence
18 whatsoever as to his methodology.

19 THE COMMISSIONER: Well, that lies ahead. Mr. Hesje?

20 MR. HESJE: Well, I can -- it's my under-
21 standing I think just as you've (inaudible) my
22 understanding that the bulk of the work he does is
23 on a computer, it's not a pen and pad, but he can
24 certainly be asked to speak to that.

25 THE WITNESS: I can send the files, Your Honour.

1 I can give more raw data files, yeah.

2 THE COMMISSIONER: I'm sorry, I didn't hear? Well, I
3 think --

4 THE WITNESS: I can --

5 THE COMMISSIONER: But I think that that question
6 should be answered now before we adjourn so you
7 know what he will have to say about that.

8 MR. PLAXTON: Yes.

9 **MR. PLAXTON, examining:**

10 Q What was -- the question basically is, sir, what
11 documents do you have to back up your opinion?
12 Let's start with that.

13 A I have the photogrammetric data models here that I
14 can provide you on a CD or whatever other data
15 that we have, point coordinate data which is
16 showing focal length and so forth of the camera.
17 All the data that we used that was provided by
18 Sergeant Bullock, plus the calculations, can be
19 provided.

20 Q Okay. I -- you may or may not know this but we
21 did ask for a copy of your working papers or
22 background information. Is that what you're
23 referring to right now?

24 A Working papers. Are you talking about the work
25 that we used to evaluate and create these

1 measurements?

2 Q Yes.

3 A Yeah, that's what I'm -- that's what I'm talking
4 about. I was going to provide --

5 Q And where is that information?

6 A They're computer files, so it's -- you'll have
7 point image coordinates that we used in our
8 computation. So I can provide all that data if
9 you want.

10 Q Okay. Why haven't you provided this earlier?
11 Have you been asked for it?

12 A Yeah, I was asked for it when I arrived, but I was
13 going to talk about burning it onto a CD. I
14 wasn't too sure exactly how they wanted it.

15 Q Well you -- well, what we want is something in an
16 understandable form that will allow us to be able
17 to check your methodology, how you came to these
18 conclusions, what --

19 A Sure. I can provide you the computer files and
20 you can --

21 Q In what format are these, sir?

22 A Some of them are X or text files which has image
23 coordinates that we're using to extract some
24 measurements of the -- of the nose area, and the
25 other ones are our computer files that shows the

1 model -- the models being deployed and measured
2 inside the software.

3 Q Is that in a text form as well or what program do
4 I require to read this?

5 A Well, I mean -- well, part of it there's two
6 programs, one would be Shape Capture, the other is
7 another program called 3-D Builder, and the reason
8 we did that is because actually the RCMP had 3-D
9 Builder and we overlapped and did both so those
10 files could be presented to the RCMP as well.

11 MR. PLAXTON: Well, Mr. Commissioner, those files
12 don't help us much if we don't have the --

13 Q I think they're CAD programs of some variety or
14 3-D imaging programs; is that correct?

15 A Yeah, they're photogrammetric packages, yes.

16 Q Okay. Can you make those into a hard copy?

17 A I can -- I mean, we can produce slides of the
18 point by point measurements similar to what you
19 saw in there, but you would have to use the
20 program, I guess, if you wanted to use the raw
21 files on how we're extracting the measurements.
22 And those are commercially available programs.

23 Q I'm not sure if this information helps us
24 considerably. The -- can you give us what you
25 have in a hard copy? Maybe we start with that but

1 I --

2 A Yeah.

3 MR. PLAXTON: The thing is we did ask for the
4 background information and we've received nothing
5 is the problem.

6 THE COMMISSIONER: I think the answer you're getting
7 is that, unlike what many of us expect will take
8 the form of hard copy, there are areas of
9 scientific investigation with new technology where
10 that is not the case.

11 I'm reluctant to adjourn until this
12 afternoon unless I know that you two are on the
13 same page, and so I'm going to adjourn for a few
14 minutes now and ask you to meet with Mr. Hesje and
15 just see if we can identify what is available to
16 you and in what form, and what time or effort it
17 might take to get that for you. And I'm assuming
18 your colleagues will have a similar interest in
19 this as well. So if others of you have similar
20 questions, I suggest that you meet with Mr. Hesje
21 now and tell him what they are so he can speak to
22 Mr. Robertson and see if we can answer those
23 questions in some form, and you have that
24 information.

25 I don't want to hear this renewed

1 at two o'clock when we have a chance now to try to
2 find out what it is he has and what's available.
3 So I'm just going to adjourn for ten minutes or so
4 or you can come and get me or when you
5 (inaudible).

6 MR. PLAXTON: Thank you.

7 (PROCEEDINGS ADJOURNED AT 12:01 P.M. & RECONVENED AT 12:25
8 P.M.)

9 MR. PLAXTON: Mr. Commissioner, we've had an
10 opportunity to speak with Mr. Hesje briefly. I
11 think the witness has on his computer a large
12 number of files, some of which are in text format,
13 others I believe are GIF files which will be
14 picture files. Some are in whatever computer
15 language the 3-D computer program utilizes. The
16 text files and perhaps the GIF files are of
17 utility to us at present. I would like to have a
18 look at them, at least, before we cross-examine
19 the witness to see what we can glean from them
20 now. The problem we have, of course, is we're
21 getting these now in the middle of the inquiry.
22 As to whether we wanted to go further with the
23 files than what we have at present, I'm not sure.
24 What we are asking is perhaps once we've looked at
25 the CD and what it contains we can do our cross-

1 exam of the witness but leaving open our cross-
2 exam if we wanted to revisit it, after having had
3 an opportunity to look at the CDs in a little
4 greater depth.

5 Now, to burn the CD I'm told will
6 take towards an hour, and I assume it's likewise
7 to create copies of it. I don't know that as a
8 fact but I assume that is probably the timing
9 we're looking at. I'm not sure how to handle
10 this. I leave this in the Commissioner's hands.
11 If we could perhaps get one copy, get it marked so
12 we're able to look at it and know what we have,
13 that may assist us to know if extra copies are
14 necessary now or if we have a little bit of time
15 to do so.

16 THE COMMISSIONER: Well, I'm not sure what you can
17 accomplish, if anything, over the lunch hour.

18 MR. HESJE: Well, Mr. Robertson has indicated
19 that he can burn those files onto a CD over the
20 lunch hour but then (inaudible) still have to look
21 at them, I guess.

22 THE COMMISSIONER: Well, I suppose I can -- I suppose
23 I can allow counsel to come back and ask questions
24 arising out of that before Mr. Robertson steps
25 down. But it seems to me you should do that

1 within the lunch hour and with that caveat, then,
2 we go on from there, but if you have it available
3 within the next hour or so you could be looking at
4 it because the end result of this may be that this
5 is just -- there's nothing here that's of
6 significance and there's really nothing that --

7 MR. HESJE: With respect, what there's going to
8 be is that there's nothing here that's
9 intelligible to a layperson.

10 THE COMMISSIONER: Well, Mr. Plaxton says he wants to
11 look at it so we'll assume he's going to be able
12 to decipher all of this and decide what he wants.
13 Have other counsel said anything to you, Mr.
14 Hesje, about what their views are with respect to
15 this?

16 MR. FOX: The only thing I'd add, Mr.
17 Commissioner, is we had asked some time ago for
18 the working papers and -- and I know Mr. Hesje
19 made inquiries on our behalf and we were sort of
20 led to believe, and I think that there wasn't very
21 much that was intelligible there that we could
22 get. I'm not sure, and that may be the
23 circumstance, but there seems to be more there
24 than what we understood. And we are in the
25 difficult position we may get them and it might

1 not -- we may look and say well, that's not going
2 anywhere and it's not worth pursuing any further
3 and let's, you know, let's carry on. But at the
4 end of the day we might have to have them examined
5 by somebody else, or something, and it may be of
6 some significance. I'm certainly quite prepared
7 to go ahead with the cross-examination this
8 afternoon and if something else comes up after
9 looking at those materials or having someone else
10 look at them, well, we'll visit that issue, I
11 think, at that point in time. There may very well
12 not be but I'm -- I'm quite prepared to go ahead
13 this afternoon.

14 THE COMMISSIONER: Well, let's see if we can get --
15 get this organized over the lunch hour so you can
16 find out if there's anything to this and if there
17 isn't then we'll go on from there. But in any
18 event, I intended cross-examination continue.

19 MR. FOX: Thank you, My Lord.

20 THE COMMISSIONER: Or commence. Very well. We'll
21 adjourn then.

22 (PROCEEDINGS ADJOURNED AT 12:29 P.M. & RECONVENED AT 2:07
23 P.M.)

24 THE COMMISSIONER: Mr. Halyk.

25 MR. HALYK: Mr. Commissioner.

1 **MR. HALYK, examining:**

2 Q Mr. Robertson, Si Halyk is my name. I represent
3 the Federation of Saskatchewan Indian Nations,
4 FSIN. And that you for coming, sir, with the
5 evidence that you've given. Now just to recap in
6 a brief way, As I understand it, you did precise
7 measurements with respect to the injuries to the
8 nose of the deceased in this case?

9 A Yes, I did.

10 Q And you likewise did precise measurements with
11 respect to the circular mark injury on the body of
12 the deceased?

13 A Yes, I did.

14 Q So those were the two areas that you were
15 concentrating on?

16 A Yes.

17 Q And as I understand your evidence, when you
18 started this project you had no preformed opinion
19 that these markings would coincide with markings
20 that were consistent with markings that would be
21 made by Peerless handcuffs?

22 A No, I had no idea what it was from actually.

23 Q So that your measurements were independent of any
24 preconceived notions?

25 A Yes. The measurements were made prior to

1 receiving the handcuffs from the Major Crime Unit.

2 Q Thank you. And did you have information that
3 handcuffs may or may not be involved when you
4 started this project?

5 A No, I didn't.

6 Q Did you have any pre-information of any type of
7 object that could have caused markings to the body
8 of the deceased?

9 A No.

10 Q And as I understand your evidence the general
11 margin of error of these measurements is in the
12 region of .5 millimetres to 1.0 millimetres?

13 A That's correct.

14 Q And that's errors that you would not expect
15 even before starting on this particular piece of
16 work?

17 A You know, considering the photography and so forth
18 and the distances, yeah, that would be a pretty
19 good estimate and accuracies.

20 Q All right. And would that be a general margin of
21 error that you would have assigned in this
22 situation before you had knowledge of any
23 possibility of handcuffs being the possible cause
24 of the markings?

25 A Normally from ordinary 35 millimetre camera like

1 that I would assign a value. Like I'm not going
2 to assign a first-order value to it, but .5 to 1.0
3 millimetre is norm.

4 Q All right. And as I understand it, in order to
5 positively identify or individualize an impression
6 as having originated from a specific source one
7 must follow what's called the principle of
8 individualization?

9 A That's correct.

10 Q And can you confirm for me that this principle
11 states -- or do you know the principle without me
12 reading it to you and that you can advise us?

13 A I have a pretty good idea, but -- yes.

14 Q Okay. Well if I suggest to you the individual-
15 ization of an impression is establishing by
16 finding agreement of corresponding individual
17 characteristics of such number and significance as
18 to preclude the possibility or probability of
19 their having occurred by mere coincidence and
20 establishing that there are no differences that
21 cannot be accounted for? Is that --

22 A That's correct?

23 Q -- the principle?

24 A Yes.

25 Q And is that the principle that you apply in coming

1 to whatever conclusions you come to with respect
2 to this matter?

3 A Yes.

4 Q All right. And as I understand it, precise
5 measurement comparisons on skin versus physical
6 objects are seldom exact due to the elastic
7 properties of the skin?

8 A Yes.

9 Q And if that's so that the dimension attributes for
10 the skin will be larger than the physical object
11 because of the --

12 A Not always, because it depends on where you're
13 taking the measurement from.

14 Q All right.

15 A But it would have -- yeah.

16 Q Then would that be what you would ordinarily
17 expect, that the dimension attributes for the skin
18 will be larger than the physical object?

19 A It's not all the cases.

20 Q Okay. Would that be the general proposition or
21 not?

22 A Yeah, there's a possibility, yeah.

23 Q Okay. And so with the principle of
24 individualization you would have to account for
25 any differences before an impression can be

1 individualized?

2 A Yes.

3 Q That's in accordance with the principle? And in
4 this case, applying that principle and being an
5 expert as so qualified by this Commission, you
6 came to a conclusion that a positive
7 identification could be made in this case with
8 respect to what caused the impressions?

9 A Yes. There was five particular areas of the mark
10 on the wrists that I measured had corresponding
11 dimensions that would correspond to the handcuff
12 that would meet that criteria.

13 Q All right. So based on your analysis you came to
14 the conclusion that the marks found on Mr.
15 Stonechild are consistent with having been made by
16 Peerless handcuffs; is that not so?

17 A They -- yeah, the dimensions would match to the
18 handcuffs that I measured.

19 Q Well I'm going further than that. I'm saying that
20 you came to the conclusion -- you can correct me
21 if I'm wrong -- that the marks found on Mr.
22 Stonechild are consistent with being made by
23 Peerless handcuffs?

24 A That's correct, yes.

25 Q And that is your conclusion?

- 1 A Yes.
- 2 Q And based on the principle of individualization,
3 that would mean to me that you ruled out the
4 possibility of this having occurred by mere
5 coincidence?
- 6 A Yes, it would be based on the criteria of the five
7 key identifiers --
- 8 Q Right.
- 9 A -- which would be used to compare the measurements
10 to what the imprint was on the wrist, yes.
- 11 Q And do you do any statistical analysis? In other
12 words, if you were to look at this situation and
13 what you've identified here -- I mean what would
14 be the odds statistically that it could have been
15 caused by anything else?
- 16 A I couldn't comment on that. You would have to
17 approach the statistician or somebody that
18 specialized in statistics.
- 19 Q Okay. But in this case you precluded the
20 possibility or probability of this having
21 happened, that is, the factors that fit in were a
22 mere coincidence?
- 23 A Yes, I mean it wasn't -- if it was just two areas,
24 then I wouldn't be able to make that statement.
25 but if you have five consistent areas, that's the

1 -- how I based it on. But as far as statistical
2 information, I can't comment --

3 Q No, and I'm not --

4 A -- on that.

5 Q And I thank you for that, sir. I didn't think I
6 could qualify you as a statistician, but you've
7 disqualified yourself and that's good.

8 A Okay.

9 Q So the bottom line here is that it is your
10 concluded opinion that the marks on the deceased's
11 body were caused by Peerless handcuffs such as
12 those used, according to the information provided
13 to you, by the Saskatoon City Police at the time
14 of this person's death?

15 MR. PLAXTON: Mr. Chairman, I think his evidence
16 was "consistent with".

17 THE COMMISSIONER: Pardon? I'm sorry?

18 MR. PLAXTON: I think -- concerning this
19 witness's evidence, firstly, with respect -- with
20 respect, sir, I think we've gone well beyond his
21 expertise. He knows nothing about elasticity of
22 skin nor how marks on skin will compare to a fixed
23 object. Also, I think his opinion is, if
24 anything, this is consistent, not caused by. I
25 think in fairness to the witness, he didn't go

1 that extra yard to pretend his -- or his evidence
2 was this was caused by a handcuff.

3 THE COMMISSIONER: Is that a fair qualification?

4 THE WITNESS: Well, for an example, I wasn't too
5 sure exactly what I can comment on here. I mean
6 if I'm just speaking on the measurement side --
7 the initial report that I gave was based on the
8 individualization, which is in a text book on
9 criminalistics, and it was based on five
10 identifiers where the measurements and the
11 orientations matched the imprint on the wrist.
12 And that's the only basis that I made that
13 assumption.

14 THE COMMISSIONER: Because as I understand your
15 assignment, you were simply to measure these two
16 elements, the marks you saw, and to measure the
17 handcuffs and indicate what the points of
18 similarity were, or convergence, if you will?

19 THE WITNESS: Yes. And then I pointed out the
20 five -- there was five areas of similarities.

21 THE COMMISSIONER: But I don't understand you to be
22 saying categorically that these marks were caused
23 by handcuffs. You're saying, because of these two
24 things, those are consistent. That is it's --
25 there's a consistency between the design of the

1 handcuffs and --

2 A Right.

3 THE COMMISSIONER: -- the marks that were seen.

4 That's as far --

5 MR. HALYK: Well --

6 THE COMMISSIONER: That's as far as he really went.

7 MR. HALYK: Well, then I'll talk to him a

8 little longer than if I might, Mr. Commissioner.

9 Q As I understand the principle of individualization
10 that we've already talked about, that you brought
11 to bear here, and let's go through that again.
12 Finding agreement of corresponding individual
13 characteristics of such number and significance as
14 to preclude the possibility or probability of
15 their having occurred by mere coincidence and
16 establishing that there are no differences that
17 cannot be accounted for.

18 And you have applied the principle
19 of individualization, as I understand it and you
20 came to the conclusion, in your opinion, as an
21 expert, that the marks found on Mr. Stonechild are
22 consistent with Peerless handcuffs such as the
23 type that were used by the Saskatoon City Police
24 at the time of this deceased's death; is that
25 right?

1 A Yes, based on the criteria of individualization,
2 yes.

3 MR. HALYK: That's -- thank you.

4 THE COMMISSIONER: Other questions?

5 MR. FOX: I'm hoping this is going to be
6 shorter than I said.

7 THE COMMISSIONER: Take you longer to get set up than
8 it will to ask the questions.

9 MR. FOX: Let's hope that's the case.

10 **MR. FOX, examining:**

11 Q Mr. Robertson, I'm just going to ask you a couple
12 of questions on the last part, the questions that
13 were asked of you by Mr. Halyk. You indicated
14 that the error factor in this particular case was
15 .5 to 1.0 millimetre, correct?

16 A That's correct.

17 Q And you indicated that this was a 35 millimetre
18 camera that was used. You would usually assign an
19 error factor to that and you indicated .5 to 1.0
20 millimetre is the norm? That's what you told Mr.
21 Halyk?

22 A Yes, we're using single image, yes.

23 Q Okay. And so is the error factor that -- of .5 to
24 1.0 millimetre, is that attributable to the
25 camera, is that the reason why? What else -- is

1 there anything else that should be considered when
2 you're looking at the error factor?

3 A Well it's -- the error factor can be attributed to
4 -- or the accuracy is increased by multiple
5 images. So if you have very highly convergent
6 images, if you saw in the -- the images of -- for
7 example, the autopsy, taken, are very highly
8 convergent -- what happens is you have more
9 corresponding image rays. Mathematically it makes
10 it stronger and you get higher accuracies based on
11 that.

12 Q Sure.

13 A Single images are going to be the least accurate,
14 because you're assuming and measuring on a plane.
15 The other images we're actually looking in three
16 dimensions.

17 Q Sure, I understand that. But you've explained
18 that because this is a 35 millimetre, single-image
19 you use an error factor of .5 to 1.0 millimetre,
20 that's what you've told us. And I'm asking you,
21 is there anything else here that would suggest
22 there should be an error factor included in your
23 measurements?

24 A No, just on a general, you know, scanning, not
25 doing -- you know, depending on how full a

1 calibration that you're doing on the lens -- yeah,
2 so we just usually give it a value and that's
3 normally what it's coming out to be.

4 Q And what about when you're measuring marks on
5 skin, what is the error factor then as a result of
6 that?

7 A When we're measuring imprint marks, for example,
8 in our test cases, the accuracies there are about
9 50 to 100 microns in the object space. Very, very
10 precise. It's actual sub-pixel.

11 Q Once you've determined the edge?

12 A Yes. Well, of course, --

13 Q Yeah. You --

14 A -- it's all done by robotic vision.

15 Q No, no, but --

16 A Yeah.

17 Q I appreciate that. But you're determining the
18 edge, you're identifying as part of your process
19 where the edge of the imprint is, right?

20 A Right, and --

21 Q And what is the error factor when you do that with
22 skin imprints?

23 A Are you talking on the Stonechild case or on --
24 no, like we don't define the image.

25 Q No, I'm talking about human skin?

- 1 A No, on our human skin -- our human skin analysis
2 is done by machine vision, okay. So the human
3 operator is taken out of the link. That's why we
4 can get accuracies at sub-pixel. That's what
5 you're doing like on those --
- 6 Q And what is the error factor?
- 7 A The --
- 8 Q When you're doing images of human skin what is the
9 error factor?
- 10 A Well our factor that we're measuring on human skin
11 in our test cases were in the realm of about one
12 part in a hundred thousand.
- 13 Q Yeah. And --
- 14 A So it's actually quite --
- 15 Q And when you --
- 16 A -- very, very accurate.
- 17 Q When you say test cases, what test cases are you
18 referring to?
- 19 A Now if we're measuring skin membranes, for an
20 example, and we have all of the apparatus with our
21 precise digital cameras set up and with our
22 projector and system and everything, we're
23 measuring down at the sub-pixel and down into the
24 micron level in the skin. If I'm looking at
25 autopsy pictures form ten years previously that

1 have been sitting in a file folder and no, you
2 know, precision, that drops quite substantially.
3 So this is why we're applying a value of about .5
4 .1 [sic].

5 Q Well that's what you use for a 35 millimetre
6 camera. I'm asking about when you're looking at
7 indentations on skin?

8 A If I'm looking at indentation on skin -- and I can
9 verify this one more time. When we're using our
10 system, when we're doing our analysis is at a sub-
11 pixel and at the micron level in the skin, not the
12 millimetre, the micron level. So we're in the
13 accuracy realm of about one part in a hundred
14 thousand.

15 Q Yeah. And where would I --

16 A So we can go out to skin coefficients out to about
17 six decimal places. So we know those coefficients
18 quite accurately. But, of course, this is --

19 Q Yeah, here's -- I'm going to interrupt again
20 because -- and, Mr. Commissioner, we're going to
21 be here a long time if I can't get the witness to
22 answer the questions as put to him. I asked him
23 what studies you did. You've referred to studies
24 that you did to determine the accuracy of your
25 measurements of indentations of skin for your

1 plus/minus. I'm asking you what studies did you
2 do, what studies are you referring to, sir?

3 A On the --

4 Q Give me a year, give me a date, give me a place
5 and tell me where I can look it up and find it?

6 A No, it's our work that we're doing on skin
7 membranes and it's the same process which we sold
8 a system to NASA. And then that system has to
9 meet a certain criteria or they don't buy the
10 system --

11 Q Mr. --

12 A -- they won't pay for the system.

13 Q Sir, I'm going to ask you again. What studies did
14 you do? When did you do a study on --

15 A The pig skin --

16 Q -- when did you do a study on human skin?

17 A The pig skin testing that you saw in papers that
18 were published in Hackodate, Japan, Amsterdam --

19 Q That's the four pigs you're talking about?

20 A No, the four pigs and also a human. You saw the
21 lapse rates, the various techniques that we were
22 using on a human --

23 Q Where?

24 A -- and what we created through the --

25 Q Where did we see that?

1 A In the papers that were presented.

2 Q The ones on the Neil Stonechild case?

3 THE COMMISSIONER: No, no, --

4 A No, no --

5 THE COMMISSIONER: -- the ones he showed during his
6 qualifications.

7 Q MR. FOX: Yeah. And so where would I find
8 that -- where would I find, for example, the notes
9 that go with that, the test data that goes with
10 that?

11 A Oh, I can provide the test data, of course. I
12 mean that's not -- I mean like these are, you
13 know, cases that we're doing on our scanner
14 system. We know our scanner -- I mean that
15 software is used in 26 countries. We know what
16 the accuracy. It's the first order.

17 Q I don't care how many countries it's used in, I
18 just --

19 A Right. But what you're --

20 Q -- want to know when you did and where I can find
21 it?

22 A Well -- but you're asking me two different
23 questions here. You're asking me on the skin
24 imprints. I'm telling you from the examples that
25 you saw on the display board, whatever it is,

1 yesterday on those case notes, those are at the
2 sub-pixel, sub-micron level, okay. And we can
3 provide all that data, if you want it?

4 Q Sure. I do.

5 A The -- there's the differences when you're coming
6 along and looking at something on the -- you know,
7 from a set of autopsy photographs from images ten
8 years previously, but there's two different --

9 Q Sure.

10 A -- things here.

11 Q Mr. Robertson, I'm going to take you up on your
12 offer, okay. You provide me with all of that data
13 that explains how you determine the margin of
14 error when you're looking at skin indentations.
15 But I don't need it this minute, but I'll take you
16 up on that offer, okay?

17 A Sure.

18 Q And you'll provide that to Commission counsel.
19 I'm sure he'll forward that on to me, okay? Will
20 do?

21 A Sure.

22 Q Sure. Good. Now then you talked about -- Mr.
23 Halyk asked you some questions about your report
24 and he asked you if the skin was elastic and you
25 said that's not always -- you said, yeah, it was

1 elastic. And then he asked you if -- where you
2 had an injury to the skin, whether the attributes
3 of the mark would be larger than the physical
4 object and you said, well, no, not generally, or,
5 no, not necessarily. Then he asked you well if --
6 generally would the marks -- the attributes on the
7 skin be larger than the physical object and you
8 said, well that's a possibility?

9 A Yeah.

10 Q Okay. I'm looking at your report. Have you got
11 your report in front of you? This is P-103? If
12 you'd turn to 3.0, the conclusion page of the
13 report. I'm not sure, My Lord, do you have a copy
14 of that? It'd be the last page of the report,
15 second last paragraph, begins with the words,
16 "Precise measurement"? The second sentence in
17 that paragraph says, "The dimension attributes for
18 skin will be larger than the physical object, as
19 in this case"? It's on the very last page of the
20 report, My Lord.

21 A Yes.

22 Q I don't read that as sort of being sometimes or
23 possibly, I read that as being a pretty definite
24 statement, "The dimension attributes for skin will
25 be larger than the physical object, as in this

1 case"?

2 A No, but the question -- how I referred -- or how I
3 interpret the question was on skin itself. And
4 the skin varies. For an example, we keep bringing
5 up on the *Mouser* case and the indentation that has
6 been presented before the Court. Those photos of
7 Genna Gamble in the *Mouser* case was photographed
8 after she was embalmed, and even after embalming
9 the indentation mark on her leg matched the carpet
10 fibre and also matched with the model. So if
11 somebody said -- if somebody asked me before,
12 "Would embalming affect skin," I'd say, "Gee,
13 yes." I mean I would interpret that. But after
14 measuring, it didn't, so it is variable and it
15 would --

16 Q Yeah. Then why didn't you put that in here? Why
17 didn't you say --

18 A It was actually --

19 Q -- the dimension attributes for the skin will be
20 possibly larger than the physical object? Why
21 didn't you say "possibly"?

22 A Well in this case it is.

23 Q No, no, no, that's not the statement. The
24 dimension attributes -- and I'll leave it for My
25 Lord to read what your answers were to Mr. Halyk

1 and the statement that appears in there, but it's
2 a pretty definite statement. The dimension
3 attributes for the skin will be larger than the
4 physical object, as in this case?

5 A Yes.

6 Q That's a definite. There's no room for
7 possibility in that, that's a statement you've
8 made?

9 A Right. And I did that based --

10 Q You've contradicted yourself when you answered Mr.
11 Halyk?

12 A No. No, I --

13 Q You wouldn't agree with his proposition to begin
14 with, then finally you conceded that it was
15 possible, --

16 A I didn't do --

17 Q -- and I'm just wondering what the explanation is
18 for that?

19 A That's -- no, what I've just explained to you is
20 that it varies from case to case. In this
21 particular case I looked at the imprint on the
22 skin and it actually was larger. It was nine
23 point three versus nine, so it was actually
24 slightly larger than what the hand print -- or
25 what the handcuff was. So, yes, it was larger so

1 it corresponded to the report. But if somebody
2 asked me a general question and talked about skin
3 in general, yeah, I'm going to respond to it and
4 I'm going to say it would vary. Based on the work
5 that I have done and the precision measurement
6 I've done on the skin, it does vary. That's what
7 I've found.

8 Q You see, what this --

9 A And that's what I was answering.

10 Q You see, what this looks like, sir, it looks like,
11 in this particular case, because the measurement
12 did exceed the object, at least as you had it at
13 that time, that you made a statement, "The
14 dimension attributes for the skin will be larger
15 than the physical object." That supports my
16 opinion and that's what I'm saying. But you --

17 A But that's incorrect --

18 Q -- run into a problem now because we know the
19 dimensions are different, but it looks like, sir--

20 A Yeah, but, counsel, that's incorrect.

21 Q Just let me finish my question. It looks like,
22 sir, you've changed your position from what you
23 had in your report?

24 A That's absolutely incorrect, because the dimension
25 that I gave of 9.3 millimetres of the dimension on

1 the wrist was before I even knew it was a
2 handcuff, even before they sent me the Peerless
3 handcuffs. And that number had not changed in the
4 final report, so --

5 Q No, no, sir, but my point being, you gave that
6 measurement. Fine, you give the measurement.
7 This report is about comparing it to the cuffs.
8 So you get the cuffs, you measure the cuffs you've
9 got. This mark of 9.3 appears to be bigger than
10 the mark, you say --

11 A But it --

12 Q Let me finish -- that supports my proposition that
13 the cuffs made this because the attributes for the
14 skin will be larger than the physical object. Now
15 today you seem to have changed your position when
16 asked that same position by learned friend, Mr.
17 Halyk. And the record will speak for itself, but
18 that seemed to be what you were doing?

19 A Well let's -- no. I've never changed this because
20 the answer that I gave in the report hasn't
21 changed from what I've given here, it's exactly
22 the same, 9.3 millimetres, again, before I
23 received the handcuff. What I'm reporting to is
24 the dimensions for the handcuffs are smaller than
25 the 9.3. In fact, the Peerless handcuff from the

1 Saskatoon Police Services is 9.0. My measurement
2 is 9.3, so mine is larger, okay. In this report
3 it just says that the objects are very seldom
4 exact due to the elasticity properties of the
5 skin, so it's actually going to be larger, as in
6 this case. But I didn't change anything. Those
7 numbers are exactly the same --

8 Q No, no --

9 A -- as I provided before I even got the handcuffs.

10 Q And, Mr. Robertson, nobody suggested you changed
11 your numbers. I'm just saying, and I'll let the
12 record speak for itself, you made a statement in
13 an answer to Mr. Halyk. He pursued that with you,
14 and it appears to be directly contradictory to
15 what you've said in this -- in your report. And
16 I'll leave it at that. Someone else can read it
17 and decide whether or not that's credible or not.
18 You said that you look for five identifiers, sir,
19 in order to make the match and can you just tell
20 me what five identifiers you were looking at?

21 A The -- well they're not -- well they're
22 identifiers. There's five particular areas --

23 Q Why don't you crank up your PowerPoint there and
24 put it up on the screen and show me the five
25 identifiers you're talking about?

1 A Actually, we could probably pull it up on the --
2 I'm sorry, I had to -- you just want those -- that
3 particular area?

4 Q I just want to know what the five identifiers are
5 that you -- that you're relying upon?

6 A Okay. One is orientation --

7 Q Well if you could please put it up, sir, on the
8 screen?

9 A Oh, I'm sorry.

10 Q Sir, could you please just -- to this particular
11 file, the Neil Stonechild file?

12 A Yeah, what had happened is it automatically
13 started from the start.

14 Q Sure.

15 A I apologize.

16 Q Okay.

17 MR. FOX: Perhaps while he's looking at that,
18 Mr. Commissioner, there's a number of the slides
19 -- PowerPoint slides have been marked as Exhibit
20 104. Near the end, the last 24 begin with "Neil
21 Stonechild measurement and analysis." And so I
22 asked the clerk, and with the consent of Mr.
23 Hesje, to just number them 1 to 24 on the back
24 just for ease of reference so we know which ones
25 we're referring to.

1 THE COMMISSIONER: Very well.

2 Q MR. FOX: Sorry, Mr. Robertson, what are the
3 five identifiers you're looking at then?

4 A Area "C", --

5 Q Yeah.

6 A -- area "B", --

7 Q Right.

8 A -- area "A", --

9 Q Right.

10 A -- well it shows "D" in here again. The
11 orientation would be four.

12 Q No, no, the five identifiers. So there's four
13 marks you're looking at?

14 A Right.

15 Q So that's four locations on the wrist that you're
16 looking at?

17 A And "E" would be number five, this particular area
18 in here.

19 Q That's "D" you say?

20 A "E", like this would be the fifth --

21 Q "E"?

22 A -- identifier, --

23 Q "E"?

24 A -- yes.

25 Q I don't see an "E" in your report? Do you want to

1 look at your report? Oh, it's in front of your
2 there.

3 A Oh, the -- well in the report I basically put in
4 the --

5 Q I'm looking for "E" in the report?

6 A In the report I mentioned that it matched in the
7 dimensions and orientations, and that was
8 basically what I was referring to as orientations.

9 Q I know, but where is "E" in the report?

10 A It wasn't in the original report.

11 Q It isn't in the report?

12 A No. It was in the original report as
13 "orientations" and --

14 Q That doesn't help us very much in figuring out
15 where in the wrist I should be looking at --

16 A Well --

17 Q -- for that, should it -- does it?

18 A Yeah, I know. And unfortunately there was like
19 37 images that we sent on a CD and not all of
20 them --

21 Q Sure. I know you were busy.

22 A -- and not all of them were actually in the
23 report, so there's just --

24 Q Yeah. Sure. So --

25 A -- two images.

- 1 Q -- "E", which is, as you say, an area of
2 identification, because you need five areas of
3 identification to rely upon, it isn't in the
4 report? "E" isn't specified in the report?
- 5 A In the original report?
- 6 Q In the report --
- 7 A In the --
- 8 Q -- that's been marked as a --
- 9 A No, no.
- 10 Q No.
- 11 A And what it's referred to is "orientations".
- 12 Q What -- but there's no measurements for "E"?
- 13 A They were marked here as orientations. That's
14 what we referred as the orientation.
- 15 Q Well what are the measurements of the orientation?
- 16 A In that particular area there?
- 17 Q Yeah.
- 18 A It was about 11, 10.8 or 11 millimetres.
- 19 Q No, no, not about, sir. What was the measure --
- 20 A No, I would have to check the files. It's in
21 actually, it's probably in some of the coordinate
22 data you have on the CD.
- 23 Q But this is an identifier that you relied upon to
24 come to the conclusion you did and you didn't see
25 fit to put it in your report?

1 MR. HALYK: Well I -- you must have a different
2 report than I do, because I have one where "E" is
3 referenced on it.

4 THE COMMISSIONER: In what paragraph.

5 MR. FOX: And maybe I do then.

6 MR. HALYK: So I don't know, unless I'm
7 misreading it.

8 MR. PLAXTON: There's no measurement there.

9 Q MR. FOX: Can you find that and point it out
10 to me, sir?

11 A In the --

12 THE COMMISSIONER: There is a reference to "E" in the
13 results in the fourth paragraph.

14 MR. FOX: Right.

15 MR. HALYK: And there's a (inaudible).

16 Q MR. FOX: And so -- but I don't see "E"
17 marked up on these and I don't see any dimensions
18 attributed to "E". All it says here is, "Figure 1
19 one labelled "E" shows the area of bruising and
20 swelling."

21 A Yeah, because I -- well like I said, I mean I
22 included that as an orientation and when I said --

23 Q Well, no, no -- but you see here --

24 A -- the dimensions and orientations --

25 Q You talked about five identifiers -- you need five

1 identifiers and you pointed out the five
2 identifiers for me and you said that's where I
3 look at it, my measurements, matched them up to
4 the handcuffs, there's my match. Those are my
5 identifiers.

6 A Yes, and --

7 Q I don't see that "E" refers to any measurement at
8 all?

9 A Well there's -- like there's several -- well
10 there's other identifiers and orientation that --

11 Q No, let's just talk about "E", sir. Where are the
12 measurements for "E"?

13 A I --

14 Q Did you even make a measurement for "E"?

15 A Yes, I have those measurements. Now what has
16 happened is --

17 Q Then why aren't they in your report?

18 A Well I included those as orientations, so -- yeah.

19 Q Here's the only reference you have for "E". You
20 say, "Also found in Figure 1, labelled "E" shows
21 the area of bruising and swelling." It doesn't
22 mention that it's orientation or identifier or
23 anything?

24 A Right. And I didn't show all the images, I only
25 showed two images on the report. I had 17 or 18,

1 whatever it is -- or maybe more, that was attached
2 on the CD.

3 Q So here's this criminal text that you referred to
4 that says if I'm going to follow this theory of
5 identification that Mr. Halyk referred to, then I
6 have to find at least five identifiers. I asked
7 you to point out the five identifiers --

8 A No, no.

9 Q Let me finish.

10 A Okay.

11 Q You pointed them out. The record will speak for
12 itself what you told Mr. Halyk. One that you
13 pointed out was "E" and as I understand, all you
14 say in your report about "E" is "E" shows the area
15 of bruising and swelling, and you don't have any
16 information for us in terms of what the dimensions
17 of "E" are, correct?

18 A I don't know if it's in the report or not, but we
19 do have the dimensions for it.

20 Q Well go ahead and read the report. If you don't
21 know, read it? Take --

22 A Well it says here areas --

23 Q Take your time?

24 A It says, "... shows the area of bruising and
25 swelling," and I also mention about the

1 orientations.

2 Q Where does it say "E" has anything to do with
3 orientation?

4 A No, I was talking about the identifiers. Now what
5 I did is I -- I list it as an orientation.

6 Q Where did you --

7 A That is part of the --

8 Q Where did you list it as an orientation?

9 A Well it's not labelled as an orientation, that's
10 why I included that as an orientation.

11 Q Well then you didn't list it as an orientation?

12 A I didn't -- I didn't list "E" as an orientation.

13 Q No.

14 A Sorry.

15 Q Okay.

16 A It's probably overlooked.

17 Q Now "D" was the other identifier you referred to.
18 What are the dimensions of "D"? I'm looking in
19 your report, sir?

20 A I think "D" in that particular area was the depth.
21 If you include "D" that would be six identifiers.
22 I didn't -- I --

23 Q No, no, sir, let's -- well we'll talk about the
24 sixth one in a minute. But let's stick with "D".
25 My --

1 A Well, no, but you're asking me --

2 Q No, my question was simple.

3 A Yeah.

4 Q What are the dimensions of "D"?

5 A Which is "B" -- which is labelled "B", the same
6 area here is labelled in "B" and then it was just
7 isolated on the third slide. You'll see "B" as
8 pointing to this area right in here.

9 Q So "B" and "D" are the same?

10 A Yeah.

11 Q So I guess you only have four identifiers then?

12 A No, no, five. Five being the orientation --

13 Q Oh.

14 A -- of the left cuff --

15 Q Okay. So --

16 A -- coming on the wrist --

17 Q So we got -- so you identified for me when -- and
18 I asked you to go through this, it's your report.
19 You pointed out "A", "B", "C" -- do you want to
20 flip to the next line? There's "D", you said that
21 was the fourth one?

22 A Yeah, "D" is just a --

23 Q Sorry. Just hold on, sir. That's what you told
24 me, right? That's "D"?

25 A M'hm.

1 Q You told me that was the fourth one and then you
2 said "E" was the fifth one. That's what you told
3 me. Now you're telling me actually "B" and "D"
4 are the same?

5 A I think what we have here, "D" is the depth.
6 Maybe that's what it's appearing here is "D" and
7 the depth. I can check our records, because we've
8 probably extracted two dimensions here, one is
9 showing depth and one --

10 Q Does it say in your report?

11 A In the initial report probably not. Where we're
12 catering in the initial report was the overall
13 width of the -- of the imprint on the wrist and
14 also the imprint on his nose, Mr. Stonechild's
15 nose.

16 Q So you've gone from saying "B" and "D" are two
17 separate ones to saying "B" and "D" are the same,
18 to now saying maybe "D" is the depth of the
19 indentation.

20 A Yeah, if we do that, then there's six.

21 Q But you don't know.

22 A Yeah, we measured it. I mean I didn't -- but I
23 didn't --

24 Q No, no, you don't know if "D" is the depth of the
25 indentation.

- 1 A I didn't include that as an identifier.
- 2 Q What --
- 3 A Okay, if you want, I can identify it as an
4 identifier, but I didn't.
- 5 Q You told us. You told us five minutes ago, sir,
6 it was.
- 7 A Well, I'm just -- I know, but as I'm going through
8 the slides, I mean I'm looking at "B" and "D" and,
9 you know, there's two overlapping measurements.
10 "D" we measured the depth, but we never used it as
11 an identifier.
- 12 Q So I just want to get this straight then. You're
13 telling me now first "B" and "D" were two separate
14 ones, then they were the same. Now you're saying
15 one is width, one is depth.
- 16 A Right, I think that's what we were doing here.
- 17 Q You think that's what you were doing?
- 18 A Yeah, but we didn't -- we didn't include six
19 identifiers. We included --
- 20 Q So what's the depth of "D"?
- 21 A I'd have to go through my records, you know.
- 22 Q You didn't put it in your report.
- 23 A Well, I have to pull it up on the program, and you
24 have probably --
- 25 Q You didn't say whether "D" was width or depth, you

1 didn't say that in your report?

2 A No.

3 Q No? And those, sir, are the five identifiers
4 you've pointed out to me that you relied upon.

5 A Six.

6 Q Oh, yeah, six is orientation.

7 A Yeah, the six would be the orientation.

8 Q Yeah, six would be orientation. Well, we'll ask
9 you a few questions about that in a second. We've
10 gone through this already. You were asked in the
11 initial request from the RCMP to comment on
12 whether this was antemortem or postmortem marks,
13 and your short answer to that question, which
14 appears in the first page of your report is, "The
15 second phase was to determine if the marks were
16 anteportem (sic) or mostportem (sic)" -- sorry,
17 "postmortem."

18 I trust that the transcript will
19 reflect that I was trying to say "mortem", not
20 "portem".

21 And you get to that point on the
22 next page where you state, "I also determined that
23 the injuries to his nose and imprints on his wrist
24 were antemortem." Page 2 of your report --

25 A Yes.

- 1 Q -- second paragraph. That's the extent of your
2 analysis on whether they're antemortem or
3 postmortem, that would be correct?
- 4 A Right.
- 5 Q And in your report then after that you say, "In
6 addition, the imprint on his nose was made with
7 sufficient force so as to break the skin and cause
8 an indentation over 1.5 millimetres." Where is
9 there a 1.5 millimetre indentation?
- 10 A This is in the -- in the blood area.
- 11 Q Is it marked in your report? Does it tell us in
12 the report?
- 13 A No, we just -- all we did was give the dimensions
14 of the --
- 15 Q It's kind of hard -- sort of hard to get anybody
16 to check it out if you don't tell us where you're
17 getting that or where you're marking it. Correct?
- 18 A Right.
- 19 Q Yeah.
- 20 A But it was labelled --
- 21 Q Then you go on to say, "...can also be seen from
22 the images" -- sorry, "...on the nose with
23 sufficient force to break the skin, causing an
24 indentation of 1.5 millimetres." And then it
25 says, "Also, it can be seen from images, figure

1 1." And do you want to -- maybe we can put up
2 figure 1. Do you want to do that, Mr. Stack? Can
3 you put figure 1 up there or are we left with
4 this?

5 A Is this it? What happened on the --

6 MR. FOX: And that corresponds to the figure
7 1 in the photographs, My Lord, that we've been --
8 that have been earlier marked.

9 Q MR. FOX: Then you say, "As also can be seen
10 from the images, figure 1, there is bruising and
11 swelling near the bridge of the nose indicating a
12 possible fracture." That's what you put in your
13 report, sir?

14 A Yes.

15 Q Okay. And did you know what caused that bruising
16 and swelling?

17 A No.

18 Q Okay. Do you know if that was caused by the body
19 thawing?

20 A What, the indentation, the severe bruising?

21 Q No, no, the bruising and swelling. The bruising
22 and swelling.

23 A No.

24 Q Did you check that?

25 A How would I check that? I'm just checking with

1 the -- I mean all I'm doing is the measurement on
2 the photographs and there was --

3 Q Well, I'm just -- I'm looking at your report.
4 You're saying, "There was bruising and swelling
5 near the bridge of the nose indicating a possible
6 fracture."

7 A He had substantial swelling on his nose. We could
8 measure that. As far as the --

9 Q So -- so you, as a -- so you, in the capacity as a
10 photogrammetrist say he's got substantial bruising
11 and swelling, therefore, there's a possible
12 fracture there?

13 A It appeared to be a fracture, yeah. I would say
14 it was -- it was -- it looked like it was a severe
15 blow.

16 Q That was -- that's based on the bruising and
17 swelling.

18 A Right, but I never said what caused it. I don't
19 know what caused it. I just said it appears he
20 had severe swelling. That's --

21 Q And what training do you have in identifying
22 fractures, sir?

23 A None. None.

24 Q Just thought you'd gratuitously put that in the
25 report?

1 A Oh, I think the image might speak for itself.

2 Q Does it?

3 A As far as the swelling, yes. I mean it's just a
4 comment that I'm making to describe the swelling
5 on Mr. Stonechild's nose.

6 MR. FOX: My Lord, I'm referring to the
7 transcript and this is the evidence of Dr. Adolph
8 and I'm referring to pages 2013 through to 2015.

9 Q MR. FOX: Did you review the autopsy reports
10 here in this case, the Neil Stonechild case?

11 A Did I read the autopsy?

12 Q Yeah, did you ever read it?

13 A Oh, no, I never saw any of those records, no.

14 Q And I take it you're not aware of the autopsy or
15 pathological evidence we've heard up to this point
16 in time.

17 A No, I was never given any.

18 Q I'm just going to read -- this is an extract from
19 the testimony of Dr. Adolph. He was the
20 pathologist who performed the autopsy and I'm
21 starting at 2013. The question was asked, and the
22 question was being asked by Mr. Plaxton, "Okay.
23 Now with these scratches to the face, you had the
24 advantage of being present at the autopsy, which
25 none of us have, and I -- all we have is the

1 benefit of photographs. And I think there has
2 been an occasion or two where you've already
3 mentioned that the photographs aren't perfect,
4 either depicting colour or otherwise, I assume.
5 When a person does -- or when a body is frozen or
6 a person dies from exposure to cold, do you get a
7 certain puffiness that occurs as part of the
8 freezing process?" Answer: "No, but part of the
9 thawing process." Question: "Oh, okay. And what
10 I'm getting at, if -- perhaps I could have photo
11 38? Now there I think -- if one looks at the
12 scratches to the nose, and, again, this is just
13 looking at the photograph, it would appear that
14 between the two scratches there is some puffiness
15 or something similar?" Answer: "Yes." Question:
16 "Okay. And what I'm thinking is someone is going
17 to say, 'Oh, well look, that means those scratches
18 to the nose were actually deeper than what you
19 observed.' Can you explain what phenomena we see
20 there?" Answer: "Well, it's well known after
21 thawing that there is swelling of the looser
22 tissues, particularly I'm thinking of the face and
23 the hands and sometimes the feet, due to fluid
24 escaping during the thawing process. And there's
25 quite a wide range in colour changes frequently

1 and usually or often described as a purplish
2 discolouration of the skin. In this particular
3 case I didn't examine it in any detail,
4 particularly microscopically, but that has been
5 done in many cases and has established this is a
6 leakage of fluid due to the thawing process."
7 Question: "Would that -- okay, then that -- would
8 that explain the difference in the puffiness of
9 where the scratches were and where they were not?"
10 Answer: "It could, yes." "Okay. And we would
11 have fluids escaping through the scratches
12 perhaps?" Answer: "Perhaps, yes." Question:
13 "Okay. Could that also explain then -- photo 41,
14 please? Have you been able to find that plate,
15 sir? Okay." "Yeah." Question: "I think I've
16 finally figured out how to use this pointer, but
17 if we look at the two scratches to the nose, to
18 the untrained eye it may look like there's blood
19 or something similar near the scratches. Could
20 that just be fluid escaping during the thawing
21 period?" Answer: "It could be, yes." Question:
22 "Would the same apply also for this portion beside
23 the left nostril?" Answer: "Yes." Question:
24 "Okay, and again under the eye, the left eye?"
25 Answer: "Yes." Question: "Okay. So without that

1 interpretive aid, the photographs could be a
2 little misleading as to what they're really
3 depicting, is that correct?" Answer: "As to the
4 swelling, yes." I think you already indicated you
5 weren't aware of that information?

6 A No. I -- that's the first I've --

7 Q No. And having now been aware of that information
8 perhaps saying that the photos speak for
9 themselves, maybe you made that comment a little
10 hastily? Would you think you might change that in
11 light of hearing --

12 A Well --

13 Q -- in light of hearing the evidence of the
14 pathologist?

15 A Well, I don't know what you'd want me to change.
16 I mean if you're referring to the marks on Neil
17 Stonechild's face, the scratches, fine, during
18 autopsy by -- you know, or by another witness.
19 The only thing is, is those scratches have the
20 same -- or near same dimensions as the Peerless
21 handcuff and also the same dimensions as the one
22 that made the imprint on the wrist. That's all I
23 can say, so --

24 Q That's all you can say.

25 A Yeah, it's --

1 Q You've said an awful lot more than that because
2 when you say in your report, and this is where I
3 get concerned, "There is bruising and swelling
4 near the bridge of the nose indicating a possible
5 fracture", and you tell me the photos speak for
6 themselves, is it fair to say you're not able to
7 say if there's a fracture there at all or if that
8 swelling that you see there has anything to do
9 with a fracture.

10 A No.

11 Q You can't say that, can you, sir?

12 A No, and I'm looking at the swelling on the top
13 bridge of the nose, not actually at the mark on
14 the nose, but more in the bridge.

15 Q What did you see as bruising on his face?

16 A Well, not bruising, but it was that purple, the
17 area of the -- well, I guess you would -- I don't
18 know, I would call that a bruise. He has a
19 discolouration on the top part of the bridge of
20 his nose. That's the area that I -- that I was
21 questioning on the swelling.

22 Q There's a number of discoloured areas on his face.

23 A Yeah.

24 Q Do you attribute them --

25 A And one was on --

- 1 Q Do you attribute them to bruising?
- 2 A Well, we -- yeah, because we were taking some
3 measurement and it was an area of swelling.
4 That's all I'm reporting to what we're --
- 5 Q Well, no, no, you described it as bruising.
- 6 A Right.
- 7 Q And it would be the discolouration that would
8 cause you to lead to think that that's bruising?
- 9 A Yeah, and there was -- yeah, there was -- he had
10 swelling there, so that's -- that's what I'm
11 reporting.
- 12 Q Are you familiar with the lividity concept, what
13 happens when there's a dead body?
- 14 A I have -- I have a -- yeah, I have a somewhat
15 understanding of lividity.
- 16 Q What's your understanding of that?
- 17 A About blood settling.
- 18 Q Yeah, and is that a possible explanation for the
19 discolouration?
- 20 A The discolouration that I found on the nose again
21 is different than what we would attribute to the
22 antemortem and the postmortem.
- 23 Q Could you put that up there on the screen then and
24 show me what discolouration you're talking about?
- 25 A This area right in here. This is where the

1 swelling is, right on the bridge, not in this
2 particular area, but in here. And it was just a
3 comment that we made, is that there was
4 substantial swelling deviation on the surface
5 there, so --

6 Q You are aware that again the doctor who performed
7 the autopsy saw the body, both before and after it
8 thawed out.

9 A I never saw the autopsy report.

10 Q Described no swelling or bruising, described no
11 bruising in that area?

12 A I never saw the autopsy report.

13 Q You wouldn't dispute his comments, would you, sir?
14 He saw the body. Or would you dispute his
15 comments? Would you take issue with what he says?

16 A I mean there was quite a bit of article that you
17 were reading there. I mean I wasn't too -- I mean
18 it's --

19 Q No, I'm just asking you, he -- he -- he --

20 A I'd have to read -- no, I'd have to read it.

21 Q His evidence -- sir, his evidence was that, you
22 know, that there wasn't bruising and swelling, so
23 I'm -- any puffiness was attributable to the
24 thawing process. Now, he saw the body before it
25 thawed and saw it afterwards as well. Are you

1 suggesting you're in a better position to comment
2 on the condition of the face of Neil Stonechild
3 than the pathologist who performed the autopsy
4 was?

5 A Well, at this particular point, I mean it would be
6 argumentative because how would the pathologist
7 make his measurement? Was he just visualize --
8 looking at it? In our case we're actually --

9 Q I didn't ask you about any measurements, sir. I
10 didn't put any measurements to you. I talked
11 about bruising and swelling.

12 A Right.

13 Q That's all I've talked about.

14 A And the data that I'm -- you see, the data that
15 I'm providing on Neil Stonechild's nose and wrist
16 are totally based on measurement.

17 Q No, I know.

18 A So we have two dimensional measurements.

19 Q Sir, my question was not about measurements. I'm
20 talking about a portion of your report where
21 you're talking about bruising and swelling. I'm
22 just asking you, do you think you're in a better
23 position to comment on bruising and swelling in
24 the face of Neil Stonechild than the pathologist
25 was?

1 A It would be argumentative because our measurements
2 show the swelling.

3 THE COMMISSIONER: Mr. Robertson, let's just wait a
4 minute because I'm getting confused about this. I
5 thought I heard evidence that -- the suggestion
6 that there was puffiness between the two parallel
7 marks, if I can put it that way, there was a
8 question about that, but I understood you also to
9 be directing our attention to the bridge or top of
10 his nose.

11 THE WITNESS: Right, this area in here.

12 THE COMMISSIONER: Now, I don't see anything in the
13 evidence with respect to Dr. Adolph that touches
14 on that whatsoever. It just seems to be related
15 to --

16 MR. FOX: No, on that part I'm referring to
17 the evidence of Dr. Adolph, though, as to the
18 condition of this individual and the bruising and
19 swelling generally in terms of injuries or areas
20 of bruising.

21 THE COMMISSIONER: But you're not suggesting that
22 Adolph commented on what this witness identifies
23 as swelling at the top of the --

24 MR. FOX: I think if you look at the -- no,
25 not specifically on the bridge of the nose, but if

1 you look at his general evidence about -- about --

2 THE COMMISSIONER: Specifically --

3 MR. FOX: -- about the condition of the face
4 of the accused.

5 THE COMMISSIONER: Specifically at the bridge of the
6 nose, are you saying that Dr. Adolph comments on
7 that?

8 MR. FOX: No. He does comment on the lack
9 of bruising and swelling on this individual, on
10 the face of this individual, and all I'm asking is
11 whether or not this witness thinks he's in a
12 better position to comment than Dr. Adolph would
13 be.

14 A Now I'm getting confused. What I'm -- okay, my
15 interpretation of what you're asking me is this
16 area up in here on the bridge of the nose, right?
17 Is this what you're referring to, this area right
18 in here?

19 Q MR. FOX: No, it's your report, sir.

20 A Well, no, you were asking me if I agreed with the
21 swelling.

22 Q No, here's your report. Your report says that,
23 "There is bruising and swelling near the bridge of
24 the nose indicating a possible fracture."

25 A Right, and that -- that there is this particular

1 area on the top of the bridge of the nose. And it
2 was just going by the swelling, because we did
3 detect some swelling, and it was just a comment of
4 the -- of the bruising and the swelling.

5 Q Then why would you put in the comment that there's
6 a possible fracture there?

7 A Well, I just put it in. It looked -- it looked
8 like swelling. I played rugby for maybe 15 years,
9 I've seen some broken noses. I'm not an expert on
10 it, but --

11 Q Gee, you know, if you did that, people would look
12 at my nose and they'd say I walk around with it
13 broken 24 hours a day, but I'm just wondering here
14 why you would gratuitously put in the comment that
15 you thought it was a possible fracture?

16 A It was -- it was a comment that I made to address
17 marking on the nose and that's all I can --

18 Q And you've already agreed you don't have the
19 expertise to make a comment like that.

20 A No, I'm not a medical doctor. I wouldn't -- I
21 couldn't say for sure if it was broken.

22 Q Now, I wonder if you could just go back to your --
23 I refer to it as figure 1, and it's actually photo
24 -- maybe I'll just ask you if you can, there's a
25 photo -- what I've got as photo 10, it's the tenth

- 1 photo in the series dealing with Neil Stonechild.
2 You can remove that, and if I can just go back to
3 10, back to 10 there. Where -- do you have the 38
4 or 28 photos that you received from the autopsy?
5 Do you have all of those someplace?
- 6 A It should be on the CD. I think everything I had,
7 I mean that I used to work with is on this
8 directory and then everything I had previously was
9 burnt on a CD.
- 10 Q Was there 28 autopsy photos you looked at?
- 11 A Oh, gee, I don't know. I'm not too sure.
- 12 Q I don't know that we've seen that photo, maybe we
13 have, but --
- 14 A Well, you know what, there was --
- 15 Q Like it looks like --
- 16 A You know what, like there is -- you know what,
17 there's four photos taken around Neil Stonechild's
18 head area and those photos would be on the CD. We
19 used these to put our control in.
- 20 Q No, but what I was interested in more, sir -- and
21 this is more -- not so much relevant to you as
22 just to me generally, is how many photos from the
23 autopsy were you provided with? How many autopsy
24 photos were there?
- 25 A You know, I mean obviously I would have to -- I

1 would have to check the file. I mean it should be
2 on the directory whatever was presented.

3 Q You could check that at the break or something
4 like that. I'm sure you have that information,
5 right?

6 A Yeah, and in fact I could -- unless they have the
7 original CD as well here that they sent me with
8 the original negatives.

9 Q Okay. Now, if I can then go to photo -- the next
10 photo.

11 A I'm sorry, this one or --

12 Q No, the next one with the face. You're going --
13 yeah, there we are. Okay. Now, you measured some
14 dimensions and those dimensions appear in your
15 report and I've got those at 2.28 millimetres,
16 4.67 millimetres and 2.37 millimetres?

17 A Yes.

18 Q Okay. Where -- where does the -- where's the
19 measurement 2.28? Where was that measurement
20 taken? Can you show me on that photo?

21 A The 2.28 was taken at the top and then 2.37 was
22 taken here and then the 4.67 millimetre was taken
23 in the area in between.

24 Q Okay. So looking at here, do you have some
25 records someplace of where you actually took the

1 measurements?

2 A Yeah, it's on the -- it's in the image files that
3 I gave you. It's actually in the program file.
4 You would load it. You can see -- actually the
5 previous images, they're very close together.

6 Q Okay, you find it then. Do you have it there in
7 your presentation?

8 A Right in here you see there's actually two points,
9 one of the two points in here, and then we came on
10 to the full frontal area and we used these control
11 references to extract the dimensions off a
12 monocular image, one image.

13 Q Okay. So if you can go back to the one we were
14 just looking at.

15 A Okay, but in your -- like if I'm looking at these
16 pictures here, in the files that I presented to
17 you, if you load that in and you enlarge it in the
18 program, you will see that there's -- there's
19 several -- there's a couple of points right in
20 here.

21 Q Can you go back to the one I asked you to turn to,
22 sir?

23 A You mean this one?

24 Q There you are, thanks.

25 A Okay.

- 1 Q Okay, now -- so looking at this one, the width one
2 was somewhere in the middle here?
- 3 A Yes.
- 4 Q The top mark was measured a little bit further to
5 my right?
- 6 A Yes.
- 7 Q And the lower mark was measured a little bit to my
8 left?
- 9 A Right.
- 10 Q Did you do a measurement straight across? In
11 other words, if I'm going to superimpose the
12 handcuffs on there. In other words, if I'm going
13 to place the handcuffs right across here, did you
14 do a measurement of the width here versus here
15 versus here, straight across?
- 16 A Well, that's where the dimensions are from.
- 17 Q Sorry?
- 18 A That's where the dimensions are from.
- 19 Q No, no, no, I asked you about that and you said,
20 "I measured here and I measured a little bit
21 higher up on this one and a little bit lower
22 here."
- 23 A No, my -- it's actually on a line. That's what I
24 showed on the arrow here. I'm saying 2.28 was
25 here, 4.367 was here and the 2.37, so it's --

1 Q Okay. And where else did you measure dimensions
2 on -- on that nose?

3 A I have two other points, but, again, this is in
4 the program files that were given to you.

5 Q Where are those two other points?

6 A Those two other points were right in here at the
7 lower corner and they're also running 2.39, 2.4,
8 something in around that vicinity, and they're
9 actually in your file.

10 Q Did you make a note of what they were?

11 A Well, the points are recorded on the image.

12 Q So going down here then you've got a measurement
13 there at the lower end of the nostril, of the
14 first one, you say you think that's around 2.39.

15 A Right, that's what it was measured, yeah.

16 Q And what was the gap in between?

17 A I didn't measure the gap there. We just -- well,
18 I basically took a series of readings in here and
19 I got to the centre of the bridge of the nose and
20 I measured, like as a profile line going directly
21 across the nose as a profile.

22 Q Yeah, but I'm going to just ask you, though, did
23 you anywhere along there -- you see, because if
24 this was made by a pair of handcuffs where there's
25 two lines running parallel, they'll start

- 1 parallel, should continue parallel. Did you
2 measure anywhere else where you had the outside
3 edge, the middle gap and the bottom edge?
- 4 A Well --
- 5 Q Is there any place else where you conducted those
6 measurements?
- 7 A Right, and the first time I did this I didn't know
8 they were handcuffs, but as I explained to you
9 earlier, and I don't know if we can see it on
10 these prints right in here, I have measured points
11 on this portion of the nose and I also have a
12 measured point on this tip in here --
- 13 Q Okay.
- 14 A -- and then what I did is I measured across here.
15 Again, I didn't know they were handcuffs.
- 16 Q No, but let's say, okay, you measured there in the
17 middle. Let's go a half a millimetre up to the
18 right, did you make a measurement across of the
19 two lines and the gap in between?
- 20 A No.
- 21 Q Did you measure there?
- 22 A I measured the --
- 23 Q Let's go a millimetre to the left. Did you
24 measure there to see how those match?
- 25 A No.

1 Q No. The only spot and the only measurement you
2 did on the nose where you actually measured from
3 top to bottom would be the one spot that's
4 referred to in your report, correct?

5 A Not really. I explained to you that I took points
6 -- again, let's look at this image. I took some
7 three-dimensional points in here and here from
8 previous sets of images. Okay? Then what I've
9 done is now I've loaded up this as a monocular
10 image and now what I'm doing is I'm extracting the
11 dimensions off one particular image. Now what I'm
12 doing is I'm going back and I'm taking the width
13 here. I've already got a point in here. I
14 already have a point in here. And I just,
15 arbitrarily taking one on the centre, tried to get
16 it more on the flat spot of the -- of the nose.
17 So I took it in the centre and that's where that
18 dimension was from, and again --

19 Q So the only measurement you took there was on the
20 gap?

21 A Right in the centre, more on the flat spot of the
22 nose, yes.

23 Q Well, when I asked you where the top one was
24 measured you pointed out right there. I asked you
25 where you measured the top one. That's where you

1 indicated.

2 A Well, what I'm pointing out to you is this
3 indentation mark. That's why I'm going like this
4 with the arrow.

5 Q No, sir, sir, sir, I asked you -- I asked you very
6 specifically where was the measurement made of
7 that top mark and you pointed right there. You
8 didn't point --

9 A Yeah, we're more --

10 Q Just let me finish, sir. You didn't point over
11 here, you pointed right there. Now, are you
12 telling me you didn't measure that top mark there?

13 A Yeah, I measured that. That's what I'm telling
14 you where I got the measurements from. It's on
15 the flat in the centre portion of the nose.
16 That's where we -- almost directly centre on the
17 nose, that's where we took those three sets of
18 dimensions from.

19 Q So you took three sets of dimensions there,
20 another dimension up here to the right.

21 A And one down in here.

22 Q And where are the figures for the dimension up
23 here to the right and the one down here?

24 A You have it on your CD, sir.

25 Q We don't have it in the report. You didn't

1 provide us with that in the report.

2 A No, because I was just asked -- I didn't have the
3 handcuffs at the time. I was just asked to create
4 some dimensions and I measured dimensions.

5 Q Sure.

6 A I wasn't --

7 Q But you did get the handcuffs. You still had the
8 photos. You still had the ability to do the
9 measurements, right?

10 A Right, and it's --

11 Q There's nothing stopping you from doing that. You
12 got the handcuffs in November. You didn't file
13 your final report until January. Right?

14 A Yeah.

15 Q Yeah, so where else -- and so I'm asking you then,
16 sir, anywhere else on the nose here, did you
17 measure across the perpendicular of the top mark,
18 the middle mark and the bottom mark, other than
19 right at the centre?

20 A Well, first of all, what you're referring to as a
21 perpendicular, when I said to you I'm taking it as
22 a profile, that is perpendicular. So what we're
23 doing is we're taking it in the centre section.
24 Again, for the record, I'll be explicit. We're
25 taking it in the centre section of the nose toward

1 the flattest spot or the peak of the nose. We
2 took the dimensions of the first ridge, dimensions
3 in the middle and dimensions on the second ridge,
4 and that is about as approximation as we could to
5 get the centre of the nose.

6 Q And, sir --

7 A So if you're referring to --

8 Q -- did you make a measurement like that anywhere
9 else along that nose?

10 A No.

11 Q Now, you took some measurements of the autopsy
12 table. Do you have those measurements someplace?

13 A They were provided to you in the -- in the file.

14 Q And you received a diagram from the RCMP officer?

15 A Yeah, there would be a text file with dimensions -
16 - or I believe it's a drawing.

17 Q Where is the diagram?

18 A There's a -- there's a drawing on the file called
19 a .dwg, which I believe is an AutoCAD file, and in
20 that would have the dimensions and the layout in
21 the room, dimensions from the autopsy table to the
22 wall and the door and drains and so forth.

23 Q Now, when we're looking and measuring the width of
24 this mark here, this top mark you tell us is 2.8
25 millimetres wide? That's the measurement you

1 gave, 2.28.

2 A Did you say 2.8 or 2.28?

3 Q 2.28.

4 A Yes, that's correct.

5 Q 2.28. Do you have anything that's been high

6 resolution, anything that's clearer where you can

7 indicate where you're measuring the one edge to

8 the other edge? Do you have anything that you can

9 provide us? Like when I look at this photo

10 there's kind of a left mark there. I'm just

11 trying to --

12 A Yeah, it's --

13 Q I'm just trying to figure out where exactly along

14 there you measured the 2.28 and is there anything

15 that you can provide us that's clearer or more

16 defined, higher resolution of this that would

17 indicate where the one edge begins and where the

18 second edge ends that you can such say that this

19 is 2.28 millimetres?

20 A Actually, that would be on your copy. If you load

21 it in the software you can view a large degree of

22 magnification. If you want I could break it out

23 Q --

24 Q Do you think that might be important to provide

25 today?

- 1 A -- and then -- and produce the PowerPoint slide.
- 2 Yeah, I could do that.
- 3 Q You didn't think that would be important?
- 4 A No, in this particular case we were just looking
- 5 at overall dimensions.
- 6 Q Okay. Then the second measurement of 4.6
- 7 millimetres would be from, I guess, the lower edge
- 8 of this mark through to the upper edge of this
- 9 mark. That would be correct?
- 10 A Yeah. I'm sorry, I didn't -- I was looking at my
- 11 screen. I didn't see yours. If I go to the arrow
- 12 in here when I'm looking at it, the 4.6 would be
- 13 this -- well, inside or -- yeah, the inside, this
- 14 --
- 15 Q The lower edge.
- 16 A The lower edge.
- 17 Q Yeah.
- 18 A To this particular area.
- 19 Q To the upper edge.
- 20 A Right.
- 21 Q Okay. And then the 2.37 would be the upper edge
- 22 of this mark through to the bottom of that mark?
- 23 A Yes.
- 24 Q Okay.
- 25 A From this edge to this edge.

1 Q So the two marks, combined width of those, looks
2 to be about 2. -- 4.65? If my math is right,
3 2.28, 2.37, it amounts to 4.65?

4 A M'hm.

5 Q Correct? And so those two marks combined are
6 about the same width as this gap, that's according
7 to your measurements. Correct? The width of the
8 two marks is 2.28 and 2.37, that equals 4.65. You
9 measured the gap at 4.67.

10 A So we're looking at about 9 -- yeah, okay, about 9
11 -- 9.3, I believe, yeah.

12 Q 9.3?

13 A Well, I --

14 Q I'm just saying 4.65 is virtually identical to
15 4.67 millimetres.

16 A Yeah.

17 Q Yeah. Now, can we move to the photos dealing with
18 the cuffs?

19 A You want the pictures of the handcuffs?

20 Q Sure.

21 A Okay.

22 Q No, no, the wrists. The wrists, sir. Let's go to
23 the one with "A", "B" and "C" marked on it. Okay?
24 Photo "A" or mark "A", you say is 9 millimetres
25 wide?

1 A 9 or 9.3, I believe.

2 Q 9 or 9.3?

3 A Yeah, I think it's 9.3.

4 Q 9.3? Okay. And what part of the cuffs do you say

5 created that mark "A"?

6 A "A"?

7 Q Pardon?

8 A The area labelled "A".

9 Q Right there.

10 A Which would be across the entire width.

11 Q Okay. And then the mark "C" there, the

12 measurement there.

13 A Yes, the area that's labelled white on -- on this

14 area here, "C", would correspond to this dimension

15 here, "C" labelled in black on the -- on the

16 image.

17 Q Okay. So assuming the cuffs made this mark by the

18 area of "A", we would have the double strand. By

19 the time we get to "C" we would have the single

20 strand.

21 A Yes.

22 Q And then the indentation, that would be "B"?

23 A Yes.

24 Q That would be "B", okay. And then the dent that

25 you've -- I thought was "D", but I guess isn't

1 "D", is just referred to as the dent. Where is
2 that?

3 A Well, you see what is happening here is, as I said
4 earlier, there's -- that hinge area that's
5 labelled "B" here and "D", what the differences
6 are is "B" is the -- is the width, okay. Okay,
7 going across in here because there is a distinct
8 shape, a rounded shape for the indentation.

9 Q M'hm.

10 A And that's that particular measurement and --

11 Q But for "D" we don't have a measurement, though.

12 A "D" is the depth, yeah.

13 Q We don't have a measurement of that.

14 A And I have that on the --

15 Q So then the indentation in the lower part, that's
16 "E". Where is that? Maybe you want to turn to
17 the next --

18 A Oh, "E" is this area right in here at the bottom.

19 Q Okay. Okay. Can you just go back one, please?

20 So looking at that then, the indentation would be
21 there and that would be -- right?

22 A Yeah, the approximate area.

23 Q And you think that's that part of the handcuff
24 there?

25 A Yes.

- 1 Q Okay. And then the indentation where the strand
2 goes from double to single is this part here,
3 that's "D".
- 4 A Yes, in depth, yes.
- 5 Q Okay.
- 6 A I think I put "D" for depth, I --
- 7 Q So looking at the handcuffs then, this part of the
8 cuff from here, which you identified as "E",
9 through to "D", covers this area from here through
10 to "D" on the hand. That's what you're telling
11 us?
- 12 A Yes.
- 13 Q So then the cuff would have to -- the rest of the
14 cuff, if this was going to be on, and I guess it
15 would have to be latched in order to make a mark,
16 there would have to be some pressure, it would
17 have to be latched. Am I correct?
- 18 A Yes.
- 19 Q Yeah. That would cover the rest of the
20 circumference of the wrist. Right?
- 21 A I don't know if it would cover the whole
22 circumference of the wrist.
- 23 Q Well, how would you latch it if it didn't?
- 24 A Well, I mean -- okay, it's going around. I
25 thought you meant a mark, and that's, you know,

- 1 going right around the wrist.
- 2 Q It would have to cover the full circumference of
3 the wrist in order to latch.
- 4 A Sure, if it was going to be latching, obviously,
5 yes.
- 6 Q Well, it would have to be latched in order to
7 create the pressure to create the mark, correct?
- 8 A Yes.
- 9 Q You had a set of handcuffs when you did these
10 drawings, correct?
- 11 A M'hm.
- 12 Q And so looking at these cuffs, based on what
13 you've got in your photo there, this mark here is
14 "D" -- or "E", sorry, this mark up here is "E",
15 and the rest of this would cover the distance
16 around the wrist to get back. In other words,
17 from here through to here would cover there all
18 the way around and back to this mark here.
- 19 A Actually, I would have "E" being this particular
20 --
- 21 Q Oh, you're changing it?
- 22 A No, it's always been here. That's --
- 23 Q See, I showed you right there. That's where you
24 said "E" was.
- 25 A No, no, no.

- 1 Q Now you think it might be different?
- 2 A No, no, "E" is in exactly the same place I'm
3 talking about. What I'm referring to is where it
4 implies where it's on the handcuff, not on the
5 position on the wrist.
- 6 Q No, no. I asked you, sir, where "E" was and I
7 pointed to that spot and you said yeah, that's it.
- 8 A Yeah, it is.
- 9 Q It is.
- 10 A What it is, it's the tip of the -- of the single
11 rail going across in here. "E" -- we're talking
12 about this imprint and "E" is the tip of this. It
13 could be there --
- 14 Q "E" is the tip of the rail.
- 15 A Right, and it could -- it could move anywhere, you
16 know, traverse anywhere between the two on the
17 handcuff.
- 18 Q Okay. So then you're saying the distance from
19 here all the way around the wrist to here would be
20 covered by this portion here.
- 21 A Yes.
- 22 Q Did you measure the circumference of the wrist?
- 23 A No.
- 24 Q Did you try?
- 25 A Just -- well, all you'd get was part of it because

1 --

2 Q Just answer my question, did you try?

3 A No, I -- I didn't -- yes, I couldn't because we
4 didn't have the --

5 Q Did you try?

6 A Yes.

7 Q Okay. Have you got some notes where you tried to
8 measure the circumference of the wrist? Do you
9 have any record of that?

10 A On the images -- on the images that you have on
11 your CD you can --

12 Q No, I'm asking you, have you got any notes or
13 records where you tried to measure the
14 circumference of the wrist?

15 A Right, it's -- it's in the models that were
16 provided to you on the CD.

17 Q So if we look in that we'll find it.

18 A And you will, yes.

19 Q Okay. And here's the problem that I'm looking at,
20 is that this distance here to this distance here
21 represents about -- even if I latch the cuffs on
22 the very last -- very first latch, so that I make
23 them as large as possible, that's about half the
24 circumference of those handcuffs, yet you've got
25 them going from here to perhaps the top of the

1 hand and you're saying the other half is going to
2 go all the way around. Did you do any analysis,
3 sir, to see if that was in any way physically
4 possible?

5 A Yeah, you can see the pictures of the model that
6 we have with the handcuff going across and --

7 Q Sure, let's put up the picture of the model then,
8 okay? Okay, that's -- actually, I'll tell you
9 what, let's look because I think there's -- if we
10 go back -- no, back one. There you are. No, you
11 had it. Don't run away with it. There you are.

12 A This one?

13 Q Well, the picture of the model. There you are.
14 What hand is the model using there?

15 A In this particular one she's using the left hand.

16 Q Left hand. What hand is the handcuff mark you're
17 looking on?

18 A On the right hand.

19 Q Did it occur to you that maybe if you're going to
20 use a model you should at least use the same hand?

21 A Well, I do have imprints on the right hand. No,
22 yes, yeah.

23 Q I'm just asking you, sir, this is what you
24 presented.

25 A Yes.

- 1 Q Did it occur to you you should use the same hand?
2 I mean when you were doing your test, you were
3 doing your measurement, doing your experiments,
4 looking at all of this, did it occur to you, gee,
5 I've got the handcuff that I'm looking at on Mr.
6 Stonechild on the right hand, which would mean it
7 would extend out to the right -- to the left hand,
8 and the model has got -- has got a left hand. Did
9 that occur to you when you were doing that? No,
10 go back to the photo we're looking at. Don't --
- 11 A Yeah, but this is --
- 12 Q Sir, I'm going to ask you to go back to the photo.
13 I'll ask you to change, okay? I'm just asking
14 when you did this did it occur to you you're using
15 the wrong arm?
- 16 A We -- we did the test on both arms, the left and
17 the right.
- 18 Q Then why -- why are you producing this one as part
19 of your presentation if it's the wrong arm?
- 20 A We're using this one to show the dimensions of
21 where the imprint is in relation to the knuckle,
22 okay, if you're looking here --
- 23 Q So you're using the knuckle on the left hand for
24 one when you know that the knuckle you're
25 measuring it against on Mr. Stonechild was the

1 right hand, right? Put it back to the photo, sir.
2 Am I correct? That's what you've done here.
3 You've tried to say, "Look it, he could have the
4 cuffs up that high because I measured from his
5 knuckle back to the mark and it's not much
6 difference than the knuckle on this model back to
7 the mark, but it's not even the same hand, is it,
8 sir?

9 A I have no idea what you're trying to illustrate
10 here because what's happened --

11 Q No, sir, you -- you have a really good idea what
12 I'm trying to illustrate here. You used a left-
13 handed person to compare to a right-handed
14 measurement.

15 A No, if you let me finish, I can -- I can explain
16 this. What happened was, you have a situation
17 where somebody who was saying where on the wrist
18 is this handcuff mark. Okay? Well, subjective
19 where this handcuff -- or if it's a handcuff mark,
20 just where these marks are in relation to the
21 wrist, and I provided that it was 70.3. I have a
22 model that we have the handcuffs on the left and
23 we also have it on the right wrist. In this
24 particular case, which is on the other shots we
25 had the left wrist and all I did was show the

1 measurement from her knuckle to where the imprint,
2 but it has nothing to do with where the
3 interpretation is. The following slide is of the
4 right wrist, and, again, you have that -- or the
5 imprint. Like we have other shots of the left and
6 right wrist, so --

7 Q In Mr. Neil Stonechild's hand, what knuckle are
8 you measuring it to in relation to the thumb?

9 A To the -- to this edge line of the knuckle.

10 Q Which one is that?

11 A And again --

12 Q Just answer my question, sir. Really simple.

13 Which knuckle are you measuring it to in relation
14 to the thumb, the first knuckle or second knuckle?

15 A This is the second knuckle.

16 Q Second knuckle. In the case of the model you're
17 measuring from the imprint mark to a knuckle,
18 which knuckle are you measuring it to?

19 A The second knuckle --

20 Q No, you're not, sir, you're measuring it to the --
21 to the one --

22 A Well, the fourth on the opposite side of the hand,
23 the --

24 Q The fourth. So you didn't even measure it to the
25 same knuckle.

- 1 A No, it was just to illustrate what the difference
2 is. Hers was 73.9, Neil Stonechild's was 70.73 --
3 it was just an illustration to show general
4 locations where an imprint would fall. It has
5 nothing to do nor is it being used in the
6 interpretation of anything dealing with Neil, it
7 was just --
- 8 Q Then why is it here?
- 9 A Well, it was more of a presentation to show the
10 location --
- 11 Q It's here for one reason only, sir, I'll suggest
12 to you. It's here because one of the big problems
13 with saying that this was made by a handcuff is
14 that there's no way it's physically possible for a
15 set of handcuffs to be in that location on this
16 man's hand and to try, and substantiate that it
17 might have been you've created this measurement
18 with a wrong hand to a different knuckle to
19 suggest that that distance is somewhat similar.
- 20 A No, no.
- 21 Q Because I can't think of any other reason why you
22 would bother going through the exercise.
- 23 A No, it -- no, it's just to show how that imprint
24 mark appears in the -- in the hand, and it was
25 just purely --

- 1 Q Then why did you measure that distance and put it
2 on the slide and present it in a PowerPoint. If
3 it's just to show the imprint on the hand, why did
4 you do that measurement?
- 5 A It was just to show a random -- what the distance
6 would be because somebody could say, "Well, is it
7 70 -- you know, where would that be on the wrist?"
8 And I said, "Well, here's the model and this
9 particular distance was 73.9." Well, by the way,
10 if we do put that back into the software and we
11 measured it, it could be 74, it could be 72. We
12 could measure different locations along that
13 wrist, it still would be in the 70 millimetre plus
14 range.
- 15 Q We don't know because you didn't do it.
- 16 A Well, I can do it very quickly.
- 17 Q Yeah.
- 18 A And provide it. All it was, was more --
- 19 Q Who was your model, sir?
- 20 A A girl I know, yes.
- 21 Q A girl you know?
- 22 A Yes.
- 23 Q How tall is she?
- 24 A Five -- five two.
- 25 Q How much does she weigh?

1 A Oh, that would be -- she would be around 130, '35
2 pounds. It was the same model I used for the pig
3 study.

4 Q Do you know what the measurement of her arms are,
5 the length of her arms?

6 A Actually I have her complete wrist in three
7 dimensions so I could get it, yes.

8 Q Did you -- did you put that in your report? Have
9 we got that in your data? Like in other words,
10 sir, do you know if her hand is a similar length
11 to Mr. Stonechild's, if her fingers are a similar
12 length, if her forearm from her wrist to her elbow
13 are a similar length?

14 A I tried to approximate it as close as I could.

15 Q You tried to approximate it as close as you could
16 by getting a female who was five two, 135 pounds,
17 that was your best effort?

18 A No, I just look at somebody with a wrist --

19 Q No, sir, that was your best effort at trying to
20 get someone that was approximately the same?

21 A This is purely to show comparisons of where an
22 imprint falls, and I'm sure here in the Court
23 people have tried the handcuffs on many times
24 perhaps and observed them on various people. I
25 don't know.

1 Q And, actually, you know, that's a good point
2 because would you be surprised that the
3 pathologist did that, Dr. Dowling was brought in
4 and observed. He wondered how you would ever get
5 handcuff marks that high in the hand. Would that
6 surprise you that he did that?

7 A You're trying to tell me that a pathologist would
8 -- would make a comment that -- how an imprint
9 would be made 70 millimetres from -- from the edge
10 of the knuckle on to the wrist? I find that a
11 little bit -- a little odd.

12 Q I'm at page 1272 of the testimony, 1271, 1272 of
13 Dr. Dowling. It was pointed out to him -- here
14 he's being questioned by Mr. Rossmann, page 1271.
15 "You're welcome to use my hand, I think, doctor,
16 you've got the handcuff quite a bit lower on your
17 wrist than those marks appear, do you not?" And
18 he was looking at these marks here. His answer
19 was, "Yes, you're absolutely right. That was
20 something I was about to comment on. It does
21 appear...it would be an area that would be
22 compressed by the handcuff it was [sic] -- if it
23 was that high up. I think that's the most I can
24 say." He goes on then in questioning by -- by Mr.
25 Watson at 1272, "Doctor, my name's Jay Watson. I

1 act for one of the police officers. If we could
2 put that last photo back up, I'd appreciate it.
3 Now, just on -- where we -- where you last [sic]
4 left off with Mr. Rossmann. It appears, as you
5 say, that the handcuffs, if we assume for a minute
6 that the marks that we've been talking about were
7 caused by handcuffs, to make those marks they
8 would be fairly high up on the hand, correct, as
9 opposed to the wrist?" His answer is, "That's --
10 well interestingly enough, that's an observation
11 that I myself just made and if it interests Mr.
12 Commissioner at all, you can actually see the
13 impression of the cuff on my skin right now and it
14 is quite a bit lower down than we see in the
15 photograph." Are you sort of surprised to -- to
16 hear a pathologist make that comment that when he
17 put the --

18 A But -- but the comment --

19 Q -- when he placed the handcuffs on his hand, and
20 admittedly it's his hand, and we all saw him do
21 it, that frankly it was --

22 A Well, there's --

23 Q -- much lower on the hand than what's depicted in
24 that photograph? I'm just asking are you a little
25 bit surprised to hear that?

1 A No, I'm not because what you're looking at is
2 absolutely irrelevant because what he's doing is
3 he's observing from the photograph at a very steep
4 perspective angle which he can't -- you can't look
5 at a photograph and extract a measurement by
6 looking at it. Steve Austin, the old bionic man
7 series, couldn't do that. What we're doing is
8 we're actually extracting it three-dimensionally.
9 The dimension that we have from the knuckles
10 appearing from two photographs and it's 70.33,
11 which would well put it back onto the wrist where
12 it might --

13 Q Well, except -- except --

14 A -- it could appear from the photo image it could
15 appear -- it could appear up to the knuckle. I
16 could take a photograph shooting the other way and
17 make it look even halfway up the arm.

18 Q Sorry, sir -- sorry, sir --

19 A What it appears to be and what it measures to be
20 --

21 THE COMMISSIONER: Excuse me, Mr. Fox. Let's let him
22 finish his answer.

23 THE WITNESS: What appears to be in the photo
24 image and what it actually measures is two
25 different things. Our measurement where the

1 dimensions I'm giving to you is not -- I didn't
2 pull it out the top of my head, we actually
3 measured it and that's where it is, and if you
4 take the 70.3 off the wrist puts it in the realm
5 of the wrist, not high up.

6 Q MR. FOX: What was the distance from his
7 knuckle to, say, the wrist bone? What was that
8 distance? Did you measure it, sir?

9 A On this particular area back in here that's --
10 this is the area that we did was 70.3. We --

11 Q No, you -- you measured from the knuckle to the
12 mark. I'm just asking you did you measure, for
13 example, did you do a measurement of the bone here
14 to those knuckles? Did you do that?

15 A No, we're taking --

16 Q No.

17 A -- from the dimensions from the wrist back -- or
18 from the knuckle back.

19 Q So unless I know, for example, how far it is from
20 his knuckle back to where his wrist begins, that
21 70 millimetre measurement doesn't do me any good
22 at all, does it?

23 A But, no, you're getting it all wrong. You don't
24 know where the wrist is. What you're looking at
25 is you're looking at a photograph. The old

1 Chinese proverb a photograph is worth 1,000 words,
2 or whatever it is, it's actually false. If you
3 don't have any known dimensions in a photograph --
4 Q That's sort of what I've been trying to establish
5 here, sir.
6 A Right. And if you don't have any known
7 dimensions, I always say it's worth a million
8 lies. That's what we use in our training program.
9 But unless you have some form of very accurate and
10 precise three-dimensional coordinates, looking at
11 a photo image from any perspective, I mean, it's
12 -- like you can't do it.
13 Q Yeah, but do you know how big his hand was, this
14 man's hand was?
15 A Well, we have enough dimensions. I mean, I didn't
16 go -- I tried to go --
17 Q Did you measure it
18 A -- I tried to completely around because I --
19 Q Do you -- do you have the dimensions for his hand?
20 A No, just the dimensions that I could pick up off
21 two images. Now, what's happening is some of
22 these dimensions were picked up from the image
23 that alongside -- see, everything we're doing
24 we're double-checking, so we have a double set of
25 criteria. We have the measurements taken --

- 1 MR. FOX: Mr. -- Mr. Commissioner, I'm going
2 to interrupt. No, I -- no, please, because we're
3 going to be here forever. I asked him a real
4 simple question, do you have the dimensions for --
5 for the hand?
- 6 THE COMMISSIONER: He is telling you, I believe, that
7 in addition to measuring the reference points in
8 this picture he had another photograph of the body
9 lying on the table and a picture of the hand, and
10 he -- he verified what he saw in the first
11 instance by using the second as a reference point
12 and a check. Am I right?
- 13 THE WITNESS: That's exactly right and that's why
14 all --
- 15 MR. FOX: But --
- 16 THE WITNESS: -- the dimensions we're doing are
17 only areas where we can conclude --
- 18 Q MR. FOX: But my question --
19 A -- from several points for the several images.
20 Q My question is, sir, is if you determined the
21 dimensions of the hand?
22 A And I expressed earlier no, I didn't. I wasn't
23 able to do the full diameter, no.
24 Q And if I had got that answer at the beginning we'd
25 have been done five minutes ago.

1 A I mentioned it earlier on record, so.

2 MR. FOX: Mr. Commissioner, if this might be
3 an appropriate time to take a break and I'll
4 gather my notes and see if I can wrap this up.

5 THE COMMISSIONER: Do you have any other questions for
6 him?

7 MR. FOX: I will, but I think perhaps it will
8 be quicker if we took our break and I put it
9 together.

10 THE COMMISSIONER: Very well.

11 (PROCEEDINGS ADJOURNED AT 3:36 P.M. & RECONVENED AT 3:53
12 P.M.)

13 THE COMMISSIONER: Mr. Fox?

14 MR. FOX: Thank you for the break, Mr.
15 Commissioner.

16 Q Mr. Robertson, just a few more questions. In
17 terms of the tests you did with the model and the
18 slides that we saw here, were the handcuffs placed
19 in -- in front or behind the model?

20 A You know, I can't recall, I mean because if it was
21 -- if you're doing it on a table top thing it
22 would probably be in front rather than behind.
23 No, it was -- it was done on a table but I -- the
24 exact orientation I'm -- I'm not aware of.

25 Q So you don't remember whether she was handcuffed

- 1 behind her back or not?
- 2 A Oh, no, she wasn't handcuffed behind her back.
- 3 Q That's what I was getting at.
- 4 A No, I --
- 5 Q No.
- 6 A No, she wasn't.
- 7 Q Her hands are in front of her when she was
8 handcuffed.
- 9 A Yes.
- 10 Q And I think I saw someplace where the handcuffs
11 were on for 17 minutes or something like that. Do
12 I have that right? Does that sound right?
- 13 A Yeah, I think we were trying different times, 15,
14 17 minutes, you know, in -- in around that time
15 period, yeah.
- 16 Q Okay. And in the database that you gave us would
17 have the particulars of how long each time was,
18 that sort of thing?
- 19 A Are we talking the --
- 20 Q On your model, when you had your model handcuffed.
- 21 A No, but what I mean though is what -- what are you
22 referring to as in a time frame? Like this, what,
23 various epochs what's going on with the imprint
24 or --
- 25 Q Well, no, I'm just asking, you put the handcuffs

- 1 on the model. How long did the model wear the
2 handcuffs for?
- 3 A Well, it varied, 5 minutes, 15 minutes. I don't
4 think it was any more than 20 minutes. I would
5 have notes on that.
- 6 Q But what I'm saying on the database does it
7 indicate first time 5 minutes, second time 15
8 minutes? Like, did you have that -- is that
9 information recorded?
- 10 A Yes, it would be.
- 11 Q Okay. And when we see the -- the photos up here,
12 do we know whether we're dealing with a situation
13 where they've been on for 5 minutes or 15 minutes?
14 Do we know which one it is?
- 15 A I could pull it up and give you that information.
- 16 Q Okay. Maybe you could do that for us. Okay. And
17 I don't need it this -- but before you leave town
18 today maybe you could get that for us, okay?
- 19 A Sure, because we'd have the notes and, of course,
20 the other thing too is that these were with a -- I
21 believe -- well it was with a digital camera and
22 the digital camera has time sequence dates
23 embedded in the image, so.
- 24 Q I don't really care how you get it.
- 25 A Okay.

- 1 Q Just --
- 2 A I'll --
- 3 Q -- if you just get that information.
- 4 A I'll get it for you.
- 5 Q You said you made notes of it so I'm assuming
- 6 you've got --
- 7 A Yeah.
- 8 Q -- so you'll get that for me. And was your model
- 9 stationary, was she struggling, were you pulling
- 10 on the handcuffs?
- 11 A No.
- 12 Q Was she -- was she trying --
- 13 A She was just --
- 14 Q -- to get loose in any way?
- 15 A No. I -- I didn't -- I didn't want to make it any
- 16 more uncomfortable as it was.
- 17 Q No, I appreciate that. Just in terms of the error
- 18 factor, you indicated the error factor was .5 to
- 19 1.0 millimetre. Is that plus or minus?
- 20 A It could be plus or minus, yes, that's correct.
- 21 Q Plus or minus. Okay. So if we have a measurement
- 22 of 2.37 millimetres, that would be plus or minus
- 23 1.0 millimetre?
- 24 A .5 in those particular areas because the --
- 25 Q Well -- well --

- 1 A -- scale factor.
- 2 Q How do you know when it should be .5 and when it
3 should be 1.0?
- 4 A It's -- it was on the nose, it was a little bit
5 higher because we're that much closer, because the
6 accuracy is based on your subject distance, so we
7 were that much closer on the nose, so the points
8 on the nose were .1 -- or, I mean, sorry, .5 and
9 the areas on the wrist would be we were rounding
10 it out to 1.0 millimetre.
- 11 Q Is that -- does that appear anywhere in your
12 report?
- 13 A Not in the initial report, no.
- 14 Q On any report that you've given us does it say
15 that the error factor on the nose is .5 and on the
16 wrist is 1.0?
- 17 A No, in the report it just says the error is
18 between .5 and 1.0, and that's what I was
19 referring to it's --
- 20 Q You're just helping us out with that today now.
- 21 A Yes.
- 22 Q Okay. Then could you put up -- okay, this is the
23 last area I'm going to ask you some questions on.
24 Could you put your PowerPoint presentation up
25 again? This would be, I think, the twelfth last

1 one and it illustrates the handcuffs being
2 superimposed over the nose of Mr. Stonechild.
3 Okay.

4 A Oh, I'm sorry. Oh. I apologize. I -- when I'm
5 trying to view it on my screen here it actually
6 started the -- I still don't have it visual on my
7 end here, sorry. Okay. I believe it's this one
8 here.

9 Q Got it there? Okay. So based on the marks that
10 you detected and measured on the nose and measured
11 the dimensions of the handcuff, that's about how
12 the handcuff might fit over the nose to create
13 those marks.

14 A Not that I know of. I mean, the -- the handcuff
15 on display over the nose doesn't illustrate on how
16 it -- how it hit the nose. It basically just
17 shows the relationship between the rail and the
18 open area, but it doesn't depict actually impact
19 or -- because I wouldn't know that.

20 Q Okay. Okay. And what you've shown is just the --
21 what you referred to as the rail portion of the
22 handcuffs, that isn't a complete set of handcuffs,
23 obviously, that we see in that photograph.

24 A Yes, it's just a --

25 Q Did you take the handcuffs apart yourself to -- to

- 1 create this?
- 2 A Oh, no. What it is it's masked out in a, you
3 know, Adobe Photoshop and just use that one
4 portion --
- 5 Q Okay.
- 6 A -- for illustrative purposes.
- 7 Q So whether or not mechanically you could ever
8 create that mark by using handcuffs like that,
9 that's not something you could comment on?
- 10 A I had no idea. All I did was just to for
11 illustrative purposes just to show the
12 relationship with the measurement, but it has no
13 -- what you're seeing here is not a relationship
14 on how that was --
- 15 Q Sure.
- 16 A -- how that mark was made on the nose.
- 17 Q You haven't presented that to in any way sort of
18 produce the mechanics of this injury. That's not
19 the reason for that?
- 20 A No, we never did any analysis, just the basic
21 strict measurement --
- 22 Q Okay.
- 23 A -- of those two parameters.
- 24 Q And when you talk about orientation, what do you
25 mean by orientation?

1 A The orientation was mainly on the wrist area, not
2 the nose in that particular --

3 Q But when you talk about orientation, what -- what
4 do you mean?

5 A Well, orientation is that, you know, if the hand
6 -- the handcuffs were coming on behind the
7 person's back you have the right, you know, the
8 right handcuff versus the left handcuff type --
9 between the right and left hand. And what I was
10 looking at in orientation would be if the handcuff
11 was on the rear then that orientation would match,
12 you know, on the right wrist those imprints.
13 That's what I was referring to as orientation.

14 Q So there was no orientation in relation to the
15 nose.

16 A No, just showing the relationship on the
17 measurements on the nose. I -- the nose, all
18 we're doing here is showing an illustration of the
19 area that measured and corresponded, but there has
20 been no analysis of how that imprint was made.

21 Q Okay. But again, because your report refers to
22 orientation, that's why I ask you about that and
23 the orientation that you're referring to is in
24 relation to the marks on the wrist, not in
25 relation to the marks on the nose.

1 A Right. And I think probably the report when it's
2 mentioning orientation would be for the
3 orientation of the -- of the rail area versus the
4 single strand. I don't know how we're referring
5 to this, but I don't know, was it a double strand
6 or a single strand part, and I think -- I mean,
7 that's what I'm referring to as an orientation.

8 Q Okay.

9 A But nothing depicting any point of impact or
10 anything.

11 Q But again, I'm just going by the answer you gave
12 me a couple minutes ago.

13 A Okay.

14 Q The orientation you looked at was in relation to
15 the marks on the wrist versus the marks on the
16 nose.

17 A Right.

18 Q Okay. One last question. When you attended
19 Algonquin College was there an actual geometry
20 course at that time? Your area of expertise has
21 been stated as -- oh, sorry, photogrammetry.

22 A Right, there was a photogrammetric program, yes.

23 Q Did you receive a certificate in photogrammetry --

24 A Yes, I did.

25 Q -- from Algonquin College?

- 1 A Yes.
- 2 Q Would it have been a cartographer's technician's
3 course that you received the certificate in?
- 4 A It was cartography/photogrammetry. They had --
5 the last year you had an option between
6 cartography and photogrammetry and my specialty
7 was photogrammetry.
- 8 Q Okay. But does your certificate that you got from
9 there, does it say photogrammetry or does it say
10 cartography?
- 11 A I think it's cartography/photogrammetry. It was
12 the photogrammetry program.
- 13 Q Would you mind producing your certificate for us?
- 14 A Sure.
- 15 Q Do you have that with you?
- 16 A No, I don't.
- 17 Q Okay. You would -- you would -- you'll provide
18 that to Commission counsel, will you?
- 19 A Right. And I think what you need to do is contact
20 the Institute of Technology Algonquin and they
21 would probably be able to fill you in on the -- on
22 the photogrammetry program.
- 23 Q Yeah, well, actually we did and the sort of
24 somewhat general information we've got is that it
25 was a cartographer's technician's course that

1 there was some photogrammetric classes involved in
2 that but --

3 A Yeah, you had a major --

4 Q -- at least the person we talked to didn't
5 understand that you actually got a certificate in
6 photogrammetry, that you got a certificate as a
7 cartographer's technician.

8 A No, the certificate is actually -- your last year
9 you had an option to specialize. There was nine
10 people in the photogrammetry program and I believe
11 20 in the cartography.

12 Q And you -- you might be absolutely right, I don't
13 know. I'm just asking, sir.

14 A Right. I -- yeah, we can contact them.

15 Q So you'll -- you'll supply the -- the --

16 A Sure.

17 Q -- certificate to -- or at least the consent
18 perhaps to commission counsel that he could get
19 that certificate?

20 A Sure.

21 MR. FOX: Sure. Thanks. Those are all the
22 questions I have. Thank you.

23 THE COMMISSIONER: Other questions?

24 MR. PLAXTON, examining:

25 Q Mr. Robertson, perhaps -- well, I wonder if we

1 could just have that picture again. We might as
2 well deal with that while we're at it. Now, Mr.
3 Fox did ask you a couple of questions about the
4 superimposed picture of the handcuffs over Mr.
5 Stonechild's face. Now, through the magic of
6 computer manipulation you deleted a portion of the
7 handcuffs, i.e. the single-rail portion, correct?

8 A Yes, we took a portion of the handcuff, yes.

9 Q Okay. And if we look at the handcuffs, I think if
10 we use the magic of real life, looking at those
11 cuffs if the cuffs were open there's no way it can
12 be placed across your face without causing damage
13 to your cheek, either high on the cheek or low on
14 the cheek; is that correct?

15 A I have no idea. I mean, I haven't -- I didn't do
16 the analysis of the impact -- or the imprint mark
17 on the nose, just the measurements, so I really
18 can't comment on that.

19 Q Well --

20 A It would be quite hypothetical.

21 Q Correct me if I'm wrong but it seems you've taken
22 the liberty of commenting on a number of things.
23 If I can just take you back to the notion of
24 individualization, through that I think you were
25 pretending to this crowd that, or at least to your

1 principles in your report, that it's consistent
2 with Mr. Stonechild -- at least consistent with
3 the marks on Mr. Stonechild being caused by a pair
4 of Peerless handcuffs; is that correct?

5 A Yes.

6 Q And is not a part of that process, if you want to
7 be legitimate and honest intellectually, to take
8 the con side and say okay, I take as my premise --
9 and that's the result you were looking for, right,
10 is I want handcuffs to be consistent here. Am I
11 correct there?

12 A No.

13 Q Okay. You took an open mind. You said there's a
14 pair of handcuffs, I will superimpose them upon
15 the picture of Mr. Stonechild and using, what I
16 will refer to as the process of individualization
17 or the principle of individualization, I will come
18 to a conclusion and put in my report to, then, the
19 RCMP that this is consistent. You said that to
20 them, right?

21 A Yes, I said it was consistent, yes.

22 Q Now, as part of that process would you also not
23 look at factors that would lead to that being
24 inconsistent?

25 A I haven't really found any, I guess, where -- it

1 hasn't been inconsistent in regarding -- I mean,
2 for what we were doing with the measurements. And
3 again, I would need to really emphasize the
4 measurements we made were prior to the handcuffs
5 and those measurements haven't changed, so what
6 we're doing is comparing the -- the measurements
7 we made on Mr. Stonechild and also the handcuffs,
8 and that's --

9 Q Well, Mr. Robertson, when you wrote your report,
10 at that point you knew the RCMP were interested in
11 whether or not handcuffs may have caused these
12 marks, right?

13 A I wrote the report after the -- this particular
14 report was after I received the Peerless
15 handcuffs.

16 Q Yes. So --

17 A Because I had to have them for the comparison, but
18 my initial measurements again were not made
19 knowing anything about the handcuffs.

20 Q Oh, that could well be, but what I'm saying is
21 when you wrote this report and cited the principle
22 of individualization, at that point in time you
23 knew the RCMP were interested in whether or not
24 you could tell them if it was consistent or
25 probable, likely, inconsistent, that those marks

1 were caused by handcuffs, right?

2 A I gave them the -- the -- the areas that we
3 measured and how it relates to the handcuffs.

4 Q Well, answer the question. Do you understand the
5 question? The question is when you wrote this
6 report did you know the RCMP were interested in
7 whether the marks on Mr. Stonechild could be
8 caused by handcuffs?

9 A Yes, because I was sent the handcuffs. I couldn't
10 make the report unless I had the handcuffs, yes.

11 Q Okay. And you then in conclusion, 3.0 of your
12 report, state that according to the principle of
13 individualization you, in your opinion at least,
14 were saying that, "The above analysis supports my
15 opinion the marks found on Neil Stonechild are
16 consistent with the Peerless handcuffs." Right?
17 You stated that?

18 A Yes.

19 Q Okay. Now, in coming to that conclusion, is it
20 not part of the academic exercise you must undergo
21 to look at what would make it inconclusive or
22 incompatible?

23 A Yes.

24 Q Okay. And you didn't do that.

25 A If -- if -- if an imprint mark matches an object

1 in -- in, like I said, five -- five particular
2 areas, again I'm not doing statistics to find out
3 what those odds are, but it's -- it's a pretty
4 strong indication of what made the mark.

5 Q Okay. What if the sixth would make it totally
6 impossible?

7 A Well, then I would report the sixth but I don't --
8 I don't -- I'm not aware of any other information
9 that would -- which would change that opinion or
10 those measurements.

11 Q Okay. Let's take a little experiment here if you
12 will. Take those handcuffs, please. Open them
13 up, or close them, and show me how on earth those
14 handcuffs could make a mark similar to what we've
15 seen on Mr. Stonechild's face?

16 A I don't know. He could have -- I mean, again, it
17 would be all hypothetical. It could be -- I mean,
18 you could have crushed cartilage which would make
19 it flattened out. I mean, there's a whole bunch
20 of assumptions here that I can't make just by
21 looking at these handcuffs.

22 Q Pigs may fly, sir. But you had to make certain
23 assumptions before you made this opinion.?

24 A No, my opinion, and again for the record my
25 opinion is based on the measurements taken on the

1 single rail, the dimensions taken on the double
2 rail, the dimensions of each one of these single
3 rails and the space in between and how it related
4 to Mr. Stonechild's wounds. That's all I did,
5 nothing else. And that matched the -- the
6 handcuffs accordingly which is addressed in the
7 report but I'm --

8 Q That isn't your conclusion, sir.

9 A Well, I'm saying the conclusion -- I mean, that
10 was my opinion. My opinion at that time was those
11 dimensions that I measured and compared to Mr.
12 Stonechild matched the Peerless handcuffs.

13 Q Okay. Well, when you created this photograph you
14 had to erase part of the handcuffs to make it fit.

15 A No, that's not -- what I did in this particular
16 case was just to show the double-rail area. It
17 has no bearing. I mean, I'm not going to do this
18 because like this portion wasn't the cause of that
19 area, or those dimensions didn't match. This
20 dimension matched.

21 Q And there's the problem now, isn't it? You cut
22 out the particular chunk of the photograph that
23 didn't match the result you wanted to achieve. If
24 you look at those handcuffs, sir, if you --

25 A No, you're wrong. No, you're wrong because what

1 you're --

2 Q May I finish the question?

3 A Okay.

4 Q Look at those handcuffs, there's two ways they
5 could come into contact with someone's nose. One
6 is convex, the other is concave, right? It's a
7 basically round object. If it goes concave, the
8 edges are going to hit before the centre portion
9 will hit your nose, right?

10 A Right.

11 Q And if it goes convex, you have two round objects
12 meeting each other and there's no way you can get
13 a long line like we see on Neil's face, right?

14 A We don't know that and what I'm -- you know --

15 Q Well, I'm suggesting that's illogical, sir.

16 A You need to --

17 THE COMMISSIONER: Mr. Plaxton. Just wait.

18 THE WITNESS: I want to back up here because
19 basically what you've done is you've asked two
20 questions and didn't let me answer the first
21 question. The first question you're referring to
22 that there was identifier here that -- that didn't
23 match, and I made it match on here. Believe me,
24 if there was an imprint on Mr. Stonechild's nose
25 that had the same dimensions as the single rail I

1 would show it. The only dimensions on Mr.
2 Stonechild's nose were in here, and that matched
3 the handcuff. But there's no other visible marks
4 on Mr. Stonechild's nose that would illustrate
5 there would be any other portion of the handcuff.

6 Q MR. PLAXTON: Okay. So --

7 A So that's what I did, and so we're not -- we're
8 not changing something, so we should have that
9 corrected or looked at.

10 Q Well, no. If you look -- if you do it concave
11 there's no way he would not have extra injuries to
12 his face, right?

13 A We don't know that. I mean, he could have crushed
14 cartilage. There's a whole bunch of assumptions.
15 You would have to do a detailed analysis of this
16 imprint, on how this imprint was made. None was
17 done.

18 Q Okay. You -- okay then.

19 A So you're -- you're asking me to make an
20 assumption on something that I don't have the data
21 on. I can't answer that.

22 Q Well, would that be part of what you would look at
23 before you came to the conclusion that it was
24 consistent or not?

25 A Well, it was consistent with the dimensions --

1 Q That's not what your -- that's not what your
2 report says though, is it, sir?

3 A No, my report says that there was enough
4 identifiers on here to make it consistent with the
5 Peerless handcuffs. I stand by that. There is.

6 Q Okay. And you did not, however, do any research
7 as to whether physically it could be done.

8 A We didn't -- no, like we didn't match this to the
9 nose, didn't find our what angle, angular -- which
10 angle the wound would make or anything. There was
11 none of that done.

12 THE COMMISSIONER: But you weren't asked to do that?

13 THE WITNESS: I wasn't asked to do that, sir.

14 THE COMMISSIONER: You were not asked to do that.

15 THE WITNESS: No.

16 Q Would that -- well, if I can back up then a
17 second, dealing with the principle of
18 individualization, where did you get that from?

19 A It's from the -- from a book that -- on
20 criminalistics that I referenced.

21 Q And what is criminalistics?

22 A Are you asking me what the -- what the book is
23 or --

24 Q I'm asking you what the word means.

25 A Oh, it's the study of -- I don't know. I'm just

1 referring to it as the study of criminalistics,
2 applying forensics in -- into the field of -- I
3 mean, it's just a term of forensics.

4 Q Well, you don't know what it means? Is this what
5 you're telling us?

6 A No.

7 Q Okay. So you pick something out of a book that
8 you don't know what it means and you put it in as
9 part of your report. And why did you include that
10 particular citation? Is this something known to
11 people in your field or where does this come from?

12

13 A Actually this is coming from a -- from an FBI
14 report that analysed some other points on
15 individualization and it referred to that book
16 which I referenced.

17 Q Okay. So this comes out of an FBI report; why are
18 you putting it in here?

19 A Well, because it falls under that criteria of
20 under the -- under the -- if you -- if you look at
21 the clause in there which defines how you can
22 preclude and exclude items, this falls into that
23 category so that's why I added it in there.

24 Q Okay.

25 A I mean --

- 1 Q It's saying --
- 2 A -- it had two points I wouldn't have done it. If
- 3 you had four or five points, yeah.
- 4 Q Okay. But what -- what it is saying is there are
- 5 no differences that cannot be accounted for,
- 6 correct? Do you have your report in front of you,
- 7 sir?
- 8 A It is, "Finding an agreement of corresponding
- 9 individual characteristics of such number and
- 10 significance as to preclude the possibility (or
- 11 probability) of their having occurred by mere
- 12 coincidence..."
- 13 Q And finish the sentence.
- 14 A "...and establishing that there's no difference
- 15 that cannot be accounted for."
- 16 Q And in this matter if you had gone the extra yard
- 17 to actually look at the handcuffs, there may have
- 18 been some differences, correct?
- 19 A In what regard?
- 20 Q Well, we've gone -- we've gone around the bush a
- 21 few times here.
- 22 A On the wrist.
- 23 Q No, I'm not talking about the wrist now, I'm just
- 24 talking about the face. The wrist is another
- 25 matter, we've already discussed that. At least

1 you have with Mr. Fox to a certain extent.

2 A Well, like I said, there was five identifiers on
3 the wrist and I guess three on the nose.

4 MR. PLAXTON: Okay. Dealing with -- and just
5 move on for a second. There's a couple of
6 exhibits that we could mark, Mr. Commissioner.
7 This gentleman has been good enough to give us a
8 CD of the hard drive version of his background
9 documents. If we could mark that.

10 THE COMMISSIONER: 105.

11 **EXHIBIT P-105: CD COPY OF GARY ROBERTSON'S BACKGROUND**
12 **DOCUMENTS**

13 MR. PLAXTON: Also Mr. Hesje in examining the
14 witness did reference information passed on by the
15 Saskatoon City Police Service concerning the
16 actual handcuffs of Constables Hartwig and Senger.
17 I'm asking if that report could be entered into
18 evidence, and we are asking if it could be entered
19 as to the proof of its contents. I don't think
20 anything in there is contentious. If there is
21 maybe we could address it.

22 MR. HALYK: I wouldn't accept it as being
23 entered as truth of the contents without some
24 evidence to support it.

25 MR. PLAXTON: Okay. Could we have Commission

1 counsel's advice as to whether he intends to call
2 Constable Ballard?

3 MR. HESJE: He's not on my witness list,
4 I'll certainly consider a request to call him.

5 MR. PLAXTON: Well, I'd like an undertaking now
6 or if I could apply to the Commissioner now.

7 MR. HESJE: ...(inaudible) an undertaking, I
8 will review the evidence and receive a request.

9 MR. PLAXTON: Well, Mr. Commissioner, with
10 respect, we know the evidence that Constable
11 Ballard would offer is the handcuffs that were
12 actually used by the two constables that have come
13 under scrutiny are of different dimensions than
14 those viewed by Mr. Robertson. This document's
15 been around for a long time. We would suggest it
16 is incumbent upon Commission counsel to call that
17 evidence. It was even referenced in the
18 examination-in-chief, if you will, of the witness.

19 THE COMMISSIONER: You're suggesting that Commission
20 counsel should call the witness, you should
21 provide Commission counsel with the information
22 and he'll determine whether he's prepared to
23 undertake to do that. If he isn't then you have
24 the right to apply to me to call a witness as --
25 call him as your witness.

1 MR. PLAXTON: Fine, thank you, sir, I'll do that.

2 Q Mr. Robertson, I have to confess maybe I'm a
3 little perplexed as to the process you have
4 described to us. You have described
5 photogrammetry -- is that the proper
6 pronunciation, we all have difficulty with it?

7 A Yes.

8 Q Okay. And you've described the fact that you
9 received certain information from various sources
10 and photographs, and you then told us that
11 something happened and you came out at the end
12 with things like 4.2, 6.1, plus or minus .5 or 1.0
13 millimetre.

14 A M'hm.

15 Q Please explain to me the process here. I -- as I
16 understand what you're trying to do is take
17 photographs -- and if we just deal with the
18 photograph model here since that's all we have --
19 and you're taking photographs of unknown origin
20 basically and reconstructing the reality they
21 portrayed. Is that basically what -- what it's
22 about?

23 A Yes.

24 Q Okay. Now, the photographic plates we have at
25 hand, the ones you received from the autopsy, they

1 were 35-millimetre negatives?

2 A That's correct.

3 Q Okay. And as I understand, as part of the process
4 you undergo or entertain, is the first thing you
5 do is you determine the focal length of the lense
6 employed in the camera used; is that right?

7 A One of them. Not only that but you're actually
8 looking for areas that have overlapping views
9 because what you want to do is the more overlap
10 that you have, the more views that you have, the
11 image rays basically gives you a much stronger
12 mathematical solution. So those are the key
13 things, looking for the number of photographs,
14 where the orientations are, and also information
15 -- 3-D information that we can use to establish
16 focal length and also provide reference and
17 control reference in the images so we can cross
18 check our measurements.

19 Q Okay. Well, I was looking at your photo
20 presentation earlier. I too problem -- have the
21 same problem you do. Whenever I start it up I
22 start the PowerPoint presentation, but if I recall
23 correctly in the presentation you did give, one of
24 the first things and one of the essential things
25 is to determine focal length. Is that right?

- 1 A Yes. Basic camera calibration information.
- 2 Q Why do you determine focal length?
- 3 A Well, focal length is used to determine our three-
- 4 dimensional information and we also use it in hand
- 5 calculations if we're running a monocular image.
- 6 I'll to try to make this as simple as possible,
- 7 but for an example, if I took a ruler and I had a
- 8 scale and I mounted the scale on the front of this
- 9 table and I stood directly in front of it
- 10 perpendicular and I photographed that and I took a
- 11 print and I wanted to measure that, well, one of
- 12 the things I can do is I can index along that
- 13 ruler the scale and that would give me, you know,
- 14 a form of measurement, but it would only enable me
- 15 to measure an item that would be in the exact same
- 16 plane, you know, for an example would be at the
- 17 front of this table.
- 18 Q Okay. Is the word you're trying to use
- 19 distortion?
- 20 A No, that's -- it's not distortion. Well, there's
- 21 two things. There's distortion and what we call
- 22 perspective.
- 23 Q Yes.
- 24 A And then what happens is I'm talking about
- 25 perspective and now, of course, orthogonal --

1 orthogonal or perpendicular to the plane. Now
2 what happens if I have an object that's flat and
3 it's back here? For the record I'm going back two
4 feet off in front of the table, and I want to
5 measure here from here and I index the scale at
6 the front of the table. If I make a measurement
7 back here, even though I'm orthogonal or
8 perpendicular to the plane, that -- that that
9 measurement would be in error.

10 So one of the things that we can do
11 is we can take the focal length, and we know what
12 the scale factor is and we can, you know, you have
13 a very -- I mean, we'll go to a very minimum
14 formula which would be scale is equal focal length
15 over distance. So if we have a scale factor to
16 the front and we know what the focal length is, we
17 can actually compute this distance, you see, and
18 then apply that to a set of calculations.

19 Q Okay.

20 A Now, this is to a point -- now let's introduce
21 perspective. What happens now if we take the
22 table and it's on an angular rotation or I have a
23 scale in the front flat and now I have a point
24 here. If I take any dimensions in here it's going
25 to be in error. So what I have to do is I have to

1 calculate the orientation angle this -- it's hard
2 to do for the record if anybody's keeping track --
3 but I'm rotating this piece of paper to illustrate
4 in orientation and degrees. It would be very
5 difficult to measure but I -- I would have to
6 solve and -- and know that.

7 So if you look at some of those
8 examples we're doing in Mr. Stonechild, what we're
9 doing is measuring the camera position information
10 in the tertiary, primary and secondary rotation
11 angles which would be illustrated -- let me, for
12 the record, I'm holding a flat piece of paper up
13 -- like a camera rotation would be, you know,
14 going up to the ceiling type thing
15 (unintelligible) would be tilting down toward the
16 floor and capa would be a rotation angle which
17 would represent a convergent angle.

18 Q Okay.

19 A So we know these angles, and all those are applied
20 into the computations to make sure that we -- that
21 we know these areas.

22 Q Okay. What was the focal length of the camera
23 here?

24 A It's in the file. In that particular one that we
25 were using -- or the sets of data we were using

- 1 was it was a 50-millimetre.
- 2 Q Okay. Do you know that?
- 3 A Yes, that's what it --
- 4 Q And how do you know that?
- 5 A We computed it from the references that we had on
- 6 that back wall plane, okay.
- 7 Q On the which?
- 8 A On the back wall that we established from the
- 9 other side of images.
- 10 Q Okay. The other side of images, is that the set
- 11 you received from the RCMP?
- 12 A Yes. And if you look at the -- at the slide
- 13 you'll see that we had reference points on the --
- 14 on the wall and so forth and what that does is it
- 15 gives us depth.
- 16 Q Okay. Just back up if you can then. You
- 17 establish the focal length of the camera from
- 18 photographs that were given to you by the RCMP
- 19 that were taken 13 years later with a different
- 20 camera; am I correct?
- 21 A Yes, actually we do that.
- 22 Q Okay. And that is the whole basis of your
- 23 calculations, is the focal length established on a
- 24 different camera.
- 25 A No, what you need to do is -- I think if you

1 looked at the -- the exhibits or the -- the area
2 we were looking at before if you look at another
3 court case, we had images --

4 Q I -- no, I wonder if you can answer --

5 A Well, no but you --

6 Q -- dealing with the Stonechild matter here?

7 A No, you haven't let me finish. What you're --

8 Q Okay.

9 A -- saying though is you seem to be, you know --
10 you know, demonstrative on this one point that
11 it's actually ten years. We use images that are
12 50 years or even 25 years. If you look at the
13 imprints that we had on Gail Miller they were,
14 what, probably 20 some years on 35-millimetre
15 images.

16 Q Okay. I wonder if you can just -- I don't want to
17 interrupt your -- your -- your explanation, sir,
18 but what I -- I think the point we were at is we
19 had agreed that it is essential for you to make
20 your calculations that you know the focal length
21 of the camera that took the photographs you were
22 endeavouring to interpret; is that right?

23 A One of the criterias. It's -- it's -- it's one of
24 the criterias. There's -- like I said, there's
25 several.

- 1 Q It's an essential criteria, is it not?
- 2 A Well, we can solve for the focal length. For
3 example, if we -- if you look at --
- 4 Q No, is it an essential criteria?
- 5 A If you don't have the other information it is. If
6 you have the other information, of course, this is
7 how we solve the focal length. If you look at the
8 formula even --
- 9 Q Yes.
- 10 A -- the most basic elementary formula, scale is
11 equal focal length over distance; I know the
12 scale, I know the distance, so I can compute focal
13 length.
- 14 Q Okay. But --
- 15 A But if I don't know the scale I can -- and I know
16 the focal length, and you can interpolate that
17 formula but it's -- it's -- it's --
- 18 Q Okay. But if you can just hang on for a second,
19 sir. What I'm getting at is I think you made that
20 initial determination from photographs taken by a
21 different camera than photographs that were taken
22 at Mr. Stonechild's autopsy; am I correct in that?
- 23 A Right, but it doesn't make any difference. It has
24 -- it absolutely has no relevance.
- 25 Q Okay, if you are calibrating the whole thing and I

1 walk into the morgue at St. Paul's Hospital, I
2 have a 35 millimetre lens on my camera, I take a
3 few photographs to send to you.

4 A Right.

5 Q You then calibrate off of that set of photographs,
6 and let's say the photographs taken at the
7 Stonechild autopsy were taken with a 35 ml camera,
8 and let's say a 60 millimetre focal length lens on
9 it, you're going to get totally wrong results,
10 right?

11 A No.

12 Q Because?

13 A No, because you're using the data from the other
14 camera. It has no -- there is no relevancism
15 [sic] what camera you use, or it could be that
16 suppose you didn't have a camera. Suppose I sent
17 out a survey crew with a digital laser theodolite
18 and they surveyed 3-dimensional control points
19 along the wall of the autopsy room and gave --

20 THE COMMISSIONER: Or suppose somebody drew a diagram?

21 THE WITNESS: Yeah, or a diagram, in that
22 particular case --

23 THE COMMISSIONER: Just drew a diagram.

24 THE WITNESS: -- Sergeant Bullock actually
25 produced a drawing and he actually measured the

- 1 distance from the edge of the table to the wall.
- 2 Now, from my understanding, that room had not
- 3 changed since Gail Miller. The only change they
- 4 made apparently --
- 5 Q MR. PLAXTON: We have no evidence to that effect.
- 6 We have no evidence that this is the same table.
- 7 A No, well it is the same table. That's what the --
- 8 Q How do you know that?
- 9 A Well, I was told that, but then --
- 10 Q Well, that's not evidence here, sir.
- 11 A No, okay. I was told that it was the same table,
- 12 and then I said to Sergeant Bullock, "Please go
- 13 and verify it." And that's why he went to the
- 14 site, photographed it, and then took all the
- 15 dimensions and produced an AutoCAD drawing with
- 16 probably 15 or 20 dimensions on it.
- 17 Q Okay.
- 18 A And then we used those. So, like, this was, yeah,
- 19 it's supposed to be, but let's -- let's verify it,
- 20 and that's what we did.
- 21 Q Okay, so what you're telling me is, you can
- 22 determine the focal length of a totally different
- 23 camera, and that will help you interpret the
- 24 Stonechild autopsy pictures?
- 25 A No, you see, you're getting -- what you're doing

1 is, you're mixing up what the focal length is.
2 What you're doing is you're using 3-dimensional
3 control points, X, Y, Z, or known scale distances
4 in the object, and using that to compute the focal
5 length. So it's irrelevant if it was taken with a
6 camera or something from a hundred years ago, you
7 know on a glass plate and negative. It has -- it
8 has no relevance. It's just whatever you're using
9 to create that scale and the 3-dimensional
10 coordinates. So cameras -- in fact, our software,
11 you can run multiple cameras, different -- you can
12 run a film camera on one, the right image could be
13 a digital sensor camera, and they could have
14 totally -- they could be 3, 400 millimetre
15 difference in focal lengths, and still use it in
16 the 3-dimensional equations.

17 Q Okay, but focal length is or is not relevant to
18 your calculations; what's your opinion of that?

19 A You're saying focal length is not relevant?

20 Q I'm asking if it is or is not.

21 A No, focal length is relevant, yes.

22 Q Okay.

23 A I mean, just like, you know, scale distances are
24 and other -- yeah.

25 Q Okay, and the focal length of the camera used at

- 1 the Stonechild autopsy was what?
- 2 A In the -- in the images that we were using was 50
3 millimetre.
- 4 Q Well, those were taken by the RCMP with a
5 different camera.
- 6 A I don't know who took the photographs of the -- at
7 the, what, the autopsy?
- 8 Q No, no, I'm asking, did you interpret the photos
9 from the autopsy in an effort to determine focal
10 length?
- 11 A Yeah, we -- yeah, well, we -- yeah, we used our
12 scale reference point to calculate it, yeah.
- 13 Q Oh, okay, that's -- maybe we misunderstood each
14 other then. Okay, so once you determined focal
15 length, what other information do you put into
16 your calculations and how do you make the
17 calculations?
- 18 A Well, we -- we have to put a scale to it. You
19 know, in one way you don't even need a scale
20 'cause you can assume a scale, but if you want to
21 be able to compare it to real world coordinates
22 you need to apply a scale factor.
- 23 Q Okay, what was the scale factor here?
- 24 A In this particular case, on that overall shot we
25 had a scale or a ruler going along the side of the

1 autopsy table.

2 Q What was the scale factor?

3 A We took the scale. We measured a distance along
4 that scale and entered that as a scale, just to
5 scale the data. And that's what we tested between
6 the previous data and the ruler that was marked on
7 to the table, and then compared our distances from
8 it.

9 Q Okay, well maybe if we can get a real live
10 example. If we -- maybe if you can put up the
11 picture of Mr. Stonechild without the handcuffs.
12 Yeah, that'll work. Oh, yeah, that other one --
13 that's good enough, sure. That's fine. How is it
14 you can tell me the distance between those two
15 marks on his nose is X?

16 A In this particular case?

17 Q Yeah.

18 A Okay, what we have is, we have 3-dimensional
19 coordinates that we use from the other set of
20 images, from multi-images. We have the focal
21 length. And what you see in the file, you have
22 image coordinates. So we apply those values,
23 that's why when I talked to, it was, I believe,
24 Mr. Fox, when we were talking about where we took
25 the points on the nose, we took it on a flat

1 portion of the nose because what we're doing is
2 applying a scale factor for that particular area.

3 And those calculations are done
4 from image coordinates. So the image coordinates
5 are extracted from what we call the principal
6 point through the centre axis of the film plane,
7 okay.

8 Q How do you allow for perspective aberration? Like
9 in this -- this picture, of course, Mr.
10 Stonechild's nose is much closer to the lens than,
11 say, his ears, correct?

12 A Well, yes, for an example, if I use that criteria,
13 now suppose -- that's a good question because if
14 I'm sitting here and I'm measuring the nose here,
15 if I set up a scale factor here, and came up with
16 a dimension, and, you know, say there was an
17 officer standing over my corner -- over my
18 shoulder and says, "Okay, now could you give me a
19 measurement here," and I did it using the same
20 settings on the nose, it would be wrong, okay.
21 What I need to do, this is why we have the
22 reference points, if you saw previous points, we
23 had points -- this is probably not for the record,
24 excuse me, but I'm pointing to the top of my nose,
25 and you'll see areas that we have those little

- 1 white dots that we have on the nose. What
2 happens, we have 3-dimensional coordinates from
3 that, and from that we get spacial distances, so I
4 know how far it is from the top of the nose to the
5 cheek and to the eye, and those other references.
6 So those measurements, and the measurement data is
7 adjusted accordingly to, you know to fit those
8 points.
- 9 Q What's --
- 10 A So we're actually using that as a control network.
- 11 Q What's the calculation for that?
- 12 A What's the calculation?
- 13 Q Yeah.
- 14 A If you're looking -- the calculations that we're
15 doing to obtain that is based on that collineary
16 equation that we showed previously yesterday.
- 17 Q Okay, and how does that work? I'm not much of a
18 mathematician, as has been pointed out from time
19 to time in this inquiry. We see the formula, and
20 do you know how it works?
- 21 A Yeah. What you're doing is you're solving --
- 22 Q No, let's look at the formula. I don't want to
23 interrupt you. I think if you go into your hard
24 drive.
- 25 A I'm sorry?

- 1 Q Partition of the disk you gave us, we copied over
2 the lunch hour. Please go to file Comp,
3 underscore 3, JPEG.
- 4 A M'hm. I don't think that's the file.
- 5 Q Oh. It will be a copy of the formula --
- 6 A Okay.
- 7 Q Yeah, it's not part of the presentation.
- 8 A It was part of the presentation? Yeah.
- 9 Q Well, it may have been earlier but --
- 10 A Yeah, I think it -- yeah, it was the --
- 11 Q Let's see if I can run this pointer again. Might
12 be -- no. Go further, I believe. Yeah. How does
13 that work?
- 14 MR. HALYK: Didn't understand it the first
15 time?
- 16 Q MR. PLAXTON: NO, I need a wee refresher, if I
17 might. X sub-p, what is that? What does that
18 mean, the "p"?
- 19 A Okay, what happens is, you have -- we call them
20 conjugate rays, okay. So for an example if I had
21 a -- say we had two photographs and we were
22 shooting --
- 23 Q What's "X"?
- 24 A Well, that's what I'm getting to.
- 25 THE COMMISSIONER: Okay, Mr. Plaxton, I would

1 respectfully suggest that you wait and let Mr.
2 Robertson go through this and explain it, and then
3 by all means ask your questions. Mr. Robertson,
4 you need to go slowly and make sure that you
5 explain each part of this clearly.

6 THE WITNESS: Okay, let's -- I'm going back here
7 and then I'll go over to the other one, and this
8 will describe. For an example, suppose you stood
9 in front of this table and you photographed this
10 table from two locations. And you took the image
11 from the left image and you measured it, and say
12 you measured the glass, okay, in the centre of the
13 table. And then I went to the right table, or the
14 right image -- or, I'm sorry, I've got this
15 backwards. Left and right, and I measured it.
16 Those are conjugate rays. So what you would have,
17 X prime minus X double prime, and this is what
18 you're coming up with this particular value; these
19 are the two conjugate rays.

20 You're now applying it into a
21 calculation. This is your ΔX , okay, and then
22 here would be focal length. And then, of course,
23 what you're doing --

24 Q MR. PLAXTON: What's ΔX ?

25 A The ΔX is the, like, difference between the

1 conjugate, that's X-p minus Y-p. This is the
2 difference in the conjugate ray point. What
3 you're doing at this particular time, there's
4 another equation that you're using.

5 Q Okay, I'm sorry, you're losing me already. Delta
6 X is X-p minus Y-p? That's not it at all, is it?

7 A No. Well, I'm going into the equation here where
8 we're talking about M-11. These are basically
9 rotation matrices. Like these are, you know, a
10 matrix notation.

11 Q Do you know how to run this formula, sir?

12 A Yes. And that's what I --

13 Q And that's what you're telling us; you do this by
14 hand, or how do you do it?

15 A No, like, this is done in the computer.

16 Q Have you ever done this by hand?

17 A Yeah, four-by-four and stuff like that. I mean
18 all this is inputting by -- yeah, if you were
19 doing it by hand there's a lot of calculations
20 here, and you don't really want to do it in
21 calculations. What we're doing on these images to
22 obtain this control is actually run on the
23 computer, and then the measurements that we're
24 running for an example on the -- on the individual
25 of the face, like for example the nose, is treated

1 as a single -- a single image model.

2 And what we're looking at is
3 perpendicular and parallel planes. From that,
4 we're taking the coordinate difference. Because,
5 okay, let me just step back here for an example.
6 If I know a series of points in the background,
7 and I know where they are in 3-dimensions, like I
8 would know that a point on this wall would be,
9 say, 10 feet, and I have an X, Y, Z coordinate
10 value of it, basically what happens, those image
11 rays then come to the front nodule point which is
12 conjugate ray. All image rays pass through the
13 centre of the lens.

14 So you could envisualize thousands
15 of image rays coming through the centre of the
16 lens, being projected back onto the film plane or
17 the sensor plane, okay. So this is how you get a
18 ray bundle.

19 You have what we call an exterior
20 orientation procedure. The exterior orientation
21 procedure, what it's doing is to solve six
22 parameters. It's to solve where was the camera
23 taken -- where was this picture taken in 3-D
24 specs? Was it taken 10 feet away, 3 feet away,
25 whatever? And what it does is, it goes through a

1 series of iterations with these rays, fitting the
2 rotation, and solving it.

3 So then what it does, it says,
4 okay, at this particular point the camera, this is
5 the X, Y, Z or zed, coordinate of the camera
6 station, and here is the orientations. The camera
7 was pointed 22 degrees this way, it was pointed 14
8 degrees down, and that it had a slight capa
9 rotation, say of 8 degrees.

10 Q Does --

11 A So all those parameters are known and applied into
12 these equation, and of course it's doing it
13 simultaneously for all the measurements.

14 Q You're going to require a separate equation for
15 each point you want to measure, right?

16 A No, in our set -- like, for an example, if you saw
17 some of the other inputs where you look at a
18 projected pattern, we can measure 3-dimensional
19 coordinates on four or five thousand points
20 simultaneously in under a second. This is where
21 the robotic vision comes in. We -- what you're
22 doing there is another process called automated
23 stereo matching. And it's -- but the equations
24 are quite similar. Everything is going to be
25 based on solving this 3-dimensional information,

- 1 resection back in space.
- 2 Q Okay, but if I'm looking at any particular
3 photograph, I'm going to have to correct any point
4 on it to get a real space reading --
- 5 A Right.
- 6 Q -- am I not? Okay. And does this -- this would
7 have to be done for every point that you want to
8 calculate?
- 9 A On the -- on the nose, if you were doing it with a
10 monocular -- yeah, it would have to be adjusted
11 that way, yes.
- 12 Q Okay. And the tests you did to determine accuracy
13 were done on one point on the table, is that
14 accurate? You -- where you got your plus or minus
15 five?
- 16 A I think there was three or four points on the
17 table.
- 18 Q Yeah, but it was all just on the table?
- 19 A Yeah.
- 20 Q Right. And there's going to be different
21 inaccuracies at any particular point?
- 22 A Again, you know what, that's dependent on the
23 convergence of the images. If you have very
24 highly convergent images you get better
25 accuracies. And really, to explain that, you can

1 envisualize it, if you had -- and it's really hard
2 to do this on the record, but if I'm holding my
3 finger up and forming a slight triangle, if I had
4 image rays or cameras taken very close together,
5 an image ray could really intersect at any point
6 along the line in 3-D space. So if you have
7 something very convergent then you're having a
8 better image geometry; the interior angles are
9 much stronger.

10 So accuracy is -- like, that's one
11 of the criteria, you know, for the accuracies,
12 which would be the angle between the, like, two
13 cameras. And of course the accuracy of your
14 control, if -- if somebody measured -- if somebody
15 gave me a distance on the autopsy room and it was
16 out a half an inch, that means the error -- the
17 measurements could be out a half an inch, if you
18 were using that as a scale factor. So everything
19 is all accordingly interrelated.

20 Q Okay, if we can go back to the photo of Mr.
21 Stonechild again. It appears the nose is out of
22 focus. I don't know if you can tell that from
23 your computer image there, but I think if you look
24 at the plate it is. How does that affect the
25 accuracy of what you're doing?

1 A It's not going to make a difference. I mean, it
2 -- where it would make a difference, like for an
3 example if you had a 50 millimetre lens, and if
4 you had a 50 millimetre lens versus a 25
5 millimetre lens, or a 30 millimetre lens, it would
6 make a big difference. If I took a 50 millimetre
7 lens and I focused it right up quite close, what
8 would happen is, it could be -- well, it varies.
9 It could be 52, 53, depending on the size of the
10 lens. That really doesn't affect the
11 measurements.

12 Q I'm talking about the nose being out of focus.

13 A No.

14 Q You're saying the picture -- how sharp the picture
15 is doesn't affect the accuracy of your
16 measurements?

17 A It would if I was doing it from about 800 metres
18 or a hundred metres away, but if I'm looking at it
19 quite close like I am doing in this, it wouldn't
20 -- it would be at the micron level. And we're
21 looking at accuracies in this particular case a
22 half a millimetre. So, no, it wouldn't make any
23 difference at all.

24 As a matter of fact that's a good
25 question because that was brought up on the -- on

1 the mid-air collision over Niagara Falls. Because
2 we had a victim's camera and we did the
3 calibration, and of course rule of thumb we always
4 teach people is that always believe what your
5 software is outputting, and what had happened is,
6 the focal length that we provided in our analysis
7 didn't match the focal length of the -- of the
8 camera manufactured by the manufacturer. They
9 said, "Well, you're wrong." I'd say, "No, our
10 calculations are quite correct because we have a
11 series of residuals that shows mathematically this
12 is what the focal length." It was a huge argument
13 that the focal length was totally different than
14 what Canon made.

15 But what had happened was, the
16 photograph was shot through the plexiglass and the
17 plexiglass of the helicopter canopy actually
18 changed the focal length, so it proved to be
19 correct. But it is an interesting point. It's a
20 -- that you have to go with what your calculations
21 are telling you.

22 Q Okay. You were wholly dependent on a computer
23 program in putting this information together, I
24 assume?

25 A Yes.

- 1 Q Okay. Have you had any input into that program,
2 or is it a third party program?
- 3 A Some are third party, and other programs are
4 personal programs that I have written, yes, over
5 the years.
- 6 Q Okay, well what program did you use to generate
7 the results you gave us today?
- 8 Q Shape Capture, 3D Builder, RTIP, SPAD, there's a
9 -- yeah, there was probably eight or nine
10 different programs that we used in the
11 calculations here.
- 12 Q You did all the work for this on your own?
- 13 A Yes.
- 14 Q Okay. Who's Ken? There seems to be someone Ken
15 involved in all of this.
- 16 A I'm sorry?
- 17 Q I -- going through your disk I found a memo to
18 Ken, I believe it was. Something about using a
19 wide-angle lens.
- 20 A Oh, that's Sergeant Bullock. He's the one that
21 did the photographs of the autopsy room and sent
22 the data to me. That's Sergeant Bullock.
- 23 Q Okay, and that would be the memo we speak of?
- 24 A Yes.
- 25 Q And he was using a wide-angle lens for what, do

1 you recall?

2 A He used the wide-angle lens for the -- in the
3 autopsy room, with his camera.

4 Q Okay. When you were doing these photos, I note it
5 seems you only -- or these calculations, you only
6 did calculations of, say, the two marks on Mr.
7 Stonechild's nose, or the mark on his wrist; you
8 didn't make any other calculations. Why is that?

9 A I explained earlier, a lot of the calculations
10 that we're doing, we're trying to do it from
11 several points, so we have a verifiable reference
12 between two sets of images to check our
13 accuracies.

14 Q Well, wouldn't it help us if you'd give us, say, a
15 dimension of bridge of his nose to the tip of his
16 chin so we had any idea if you were accurate or
17 not?

18 A I can give it, if you -- yeah, it was never asked,
19 no.

20 Q No, but why wouldn't you -- you know, you're --

21 THE COMMISSIONER: Would you need that information in
22 order to make the calculation?

23 A No, I don't, no.

24 Q MR. PLAXTON: But would you not agree that it
25 would be good second-check information if you

1 provided the basic dimensions of the individual?

2 A Well, I already have several points on his face.

3 I had points on his cheek. I can give you points

4 on the cheek rather than the chin. I mean it's --

5 Q Oh, sure.

6 A Somebody could ask me why we do it, I mean I can

7 do a thousand points or we can do, you know, two

8 or three. I mean, what we're doing is just the

9 basic measurement here. I mean no one asked us to

10 measure from the bridge to -- you know, the bridge

11 of the nose to the chin, no.

12 Q No. Well, you knew the RCMP were trying to

13 establish a similarity between these apparent

14 injuries and a pair of handcuffs, right?

15 A Right, but how would -- how would the chin be

16 involved?

17 Q Well, that's the information they want, but you as

18 a professional, wouldn't you feel that you should

19 provide all relevant information that may assist

20 in the quest as to what is accurate?

21 A Well, but is a -- is a point on the chin relevant?

22 I don't know. I mean, it's not relevant for what

23 I'm doing because there's no imprint on the chin.

24 There's an imprint on the nose and that's what I'm

25 measuring.

- 1 Q Okay.
- 2 THE COMMISSIONER: But you're saying that you didn't
3 need a measurement to the chin as a reference
4 point; you had all the reference points you
5 needed.
- 6 THE WITNESS: Yeah. I had the reference points
7 around -- around the nose, including the nose
8 itself.
- 9 Q MR. PLAXTON: Okay, scroll a few slides
10 further, if you would, please, sir?
- 11 A Forward or backwards?
- 12 Q That's the one I'm looking for.
- 13 A Okay.
- 14 Q Now would you agree with me that there's a certain
15 similarity, if not an identity, or an identical
16 consequence, between the marks on Mr. Stonechild's
17 right hand and the marks on his chest? They look
18 like the same sort of marks, don't they?
- 19 A No.
- 20 Q Okay. Perhaps if we show you the plate. I think
21 that's photo 16, does that -- it does not have the
22 insert or the highlight you have, but is that the
23 origin, the source photograph for that?
- 24 A Yes, I believe so.
- 25 Q Okay. In looking at it, you're telling me there's

- 1 no similarity, some similarity, between the mark
2 that you are saying may be caused by handcuffs and
3 the marks all over Mr. Stonechild's chest and
4 abdomen?
- 5 A No.
- 6 Q You didn't perceive that to be anything --
- 7 A No.
- 8 Q Okay. Someone who was there may help us a little
9 better with that?
- 10 A I'm sorry, I didn't catch the --
- 11 Q Okay, someone who was at the autopsy may help us?
- 12 A Yeah, actually if -- well, the other thing, too,
13 is that if they would have taken more photographs,
14 but, no, like this is -- no, I can't base any
15 relationship, no.
- 16 Q Were you asked to do any other measurements or
17 comparisons other than Mr. Stonechild's nose and
18 the mark on his right hand?
- 19 A I don't even believe I was asked to do the
20 measurements of his nose and his hand.
- 21 Q What, someone just sent you a bunch of pictures
22 and said --
- 23 A Yeah, I --
- 24 Q -- "Mr. Robertson, go for it?"
- 25 A Yeah, like I believe at the time, if I remember,

1 in the initial correspondence they sent me -- I
2 think it was entered in evidence, we might want to
3 review that from the initial letter from Sergeant
4 Lyon to me, but I don't remember.

5 THE COMMISSIONER: It's P-100.

6 A I don't know if the particulars, you know,
7 specified what it was. Okay, face area and wrist
8 area of Mr. Stonechild.

9 Q MR. PLAXTON: That correspondence references your
10 correspondence -- or your conversation with
11 Constable Yuel, is that correct?

12 A Constable Yuel?

13 Q Or who, is it Lyons?

14 A That's interesting because I thought I was mainly
15 -- the only person I really talked to was Jack --
16 or Corporal Jack Warner, but I don't remember
17 talking to Corporal Yuel, I'm not too sure, at the
18 time. But I think it was Corporal Warner.
19 Actually, it says here, "As per your conversation
20 with Corporal Warner, please examine the
21 photographs and attempt." Yeah, so it was, it was
22 Corporal Warner. I don't remember talking with
23 the other constable.

24 Q Okay. Well, let's back up. You obviously didn't
25 receive this information cold, you knew what the

- 1 RCMP were looking for?
- 2 A I was given no information regarding the
3 handcuffs, no.
- 4 Q No, you knew what they were looking for, though.
5 What did Corporal Warner tell you?
- 6 A They were asking me if I can provide a set of
7 measurements, obtain some -- "source of injuries
8 to the face area and wrist area, and whether the
9 injuries were inflicted antemortem or postmortem
10 and the measurement of the injuries".
- 11 Q Okay. Now I'm not asking what the letter says.
- 12 A Oh.
- 13 Q I'm asking what he said in your conversation with
14 him.
- 15 A They asked if I could obtain measurements from
16 these images, and I said send them along, I'd have
17 to take a look at them.
- 18 Q Well, you must have had more guidance.
- 19 A No.
- 20 Q I'm sorry, go ahead?
- 21 A No, none of the images that I have regarding
22 forensic cases, I have no a priori knowledge and -
23 - regarding even up and coming cases that I'm
24 working on and also prior cases. If you want to -
25 - I mean there was -- if you look back at *Mouser*,

1 it was six months after the fact when they sent me
2 the interior of the automobile. So I had no
3 information at all in either of these cases.

4 Q Okay. Well, what measurements did you make of the
5 face other than the two abrasions to the nose?

6 A I'm sorry?

7 Q What measurements of the face did you make, other
8 than the two abrasions on the nose?

9 A I think that's been asked and answered. If you
10 look at the images that you have, that we have of
11 the -- showing the convergent views of Mr.
12 Stonechild, where we took measurements of his
13 cheek and areas on the nose to do the depth, those
14 measurements, and just the imprint, which I
15 explained to the other colleague there, was of
16 those points that were in the centre of the nose.

17 Q Okay. But there appear to be some other markings,
18 did you measure them as well?

19 A No.

20 Q Why not?

21 A Well, the wound that appeared on the nose seemed
22 to be quite prominent and that's the one I
23 concentrated on.

24 Q Without knowing what they were looking for?

25 A No. They were pretty identifiable, and -- you

- 1 know, for measurement. You see, the whole idea
2 here was to do the measurement, which we did.
- 3 Q Okay. When it came to the wrists, beyond that one
4 band across the back of Mr. Stonechild's hand,
5 what other areas did you do an in-depth analysis
6 as to measurements of?
- 7 A Again, if you looked at the last slide, we took
8 several points.
- 9 Q No, I'm talking about, rather than points of
10 reference, a measurement so as to enable someone
11 to perhaps determine if it was a wound or
12 something similar. Or was the only analysis done
13 of that one band?
- 14 A Well, there was -- no, the only analysis done was
15 the view that would show -- best show the wound on
16 Mr. Stonechild's wrist.
- 17 Q Well, what about -- there's a tattoo there and
18 there appears to be some sort of an injury where
19 the tattoo is.
- 20 A You're saying there's -- it looks to be an injury
21 where the tattoo is?
- 22 Q Some sort of a mark, as I recall, that's a poor
23 picture we have on the screen, but --
- 24 A Like this one?
- 25 Q Yes. What analysis did you do of that mark?

- 1 A I didn't do any analysis of that.
- 2 Q Why not?
- 3 A Of a tattoo?
- 4 Q No, of the mark over the tattoo.
- 5 A I don't know if it's even a mark. I mean I don't
6 know what that is. I'm looking at this
7 indentation mark in here and that's what I looked
8 at.
- 9 Q What I'm getting at, sir, is it seems awfully
10 curious that you're only looking at two marks on
11 an entire face and both wrists of this gentleman
12 --
- 13 A Right, and what I'm --
- 14 Q -- and there would appear to be other markings
15 that one may or may not interpret to be some sort
16 of an injury. Why are you just looking at those
17 two without any guidance from the RCMP or anything
18 else?
- 19 A No, the -- if I'm looking at their reference here
20 on the face and the wrist, the most prominent
21 imprint or the most prominent wound is the wrist
22 and the nose area. So, yeah, like those are the
23 areas that I'm going to provide the measurement
24 of.
- 25 Q Well, about, say, his blackened lips, did you not

1 think that might be some sort of an injury?

2 A I'm sorry?

3 Q If you look at the picture, if you can go back to
4 Mr. Stonechild's face, did you perceive his
5 blackened lips may have been an injury?

6 THE COMMISSIONER: Were you asked to do anything
7 about the lips?

8 THE WITNESS: No, I -- no.

9 Q MR. PLAXTON: What I'm getting at, though, sir,
10 is you just said you were asked to look at his
11 face. His lips are part of his face, his nose is
12 his face, he has other markings on his face, and
13 why did you only provide detailed measurements for
14 those two abrasions on the nose?

15 A I was asked to look at injuries, and to me looking
16 at the area of the nose, and I'm not a doctor, but
17 it's pretty well self-explanatory that he does
18 have a wound on the nose and he does have an
19 imprint on the wrist. So those are the areas that
20 I concentrated on.

21 Q Before you provided the measurements, did you have
22 any other conversations with the RCMP or anyone
23 else that in any way gave you guidance as to what
24 the RCMP were seeking from you?

25 A No.

1 Q None?

2 A Not that I know of, no.

3 MR. PLAXTON: Okay. Thank you, sir.

4 THE COMMISSIONER: I assume that there are other

5 counsel that will want to cross-examine Mr.

6 Robertson, is that correct?

7 MR. ROSSMANN: Yes.

8 THE COMMISSIONER: We'll adjourn then until tomorrow.

9 (PROCEEDINGS ADJOURNED AT 5:03 P.M.)

10

**INQUIRY INTO MATTERS RELATING TO THE
DEATH OF NEIL STONECHILD**

Before The Honourable Mr. Justice D. H. Wright, Commissioner

**Held at:
The Centennial Auditorium
Saskatoon, Saskatchewan**

Wednesday, October 22, 2003

APPEARANCES:

Joel Hesje, Esq. David Stack, Esq.	Commission Counsel
Donald Worme, Q.C. Gregory Curtis, Esq.	Ms. Stella Bignell and the Stonechild Family
Aaron Fox, Q.C.	Constable Larry Hartwig
Jay Watson, Esq.	Constable Bradley Senger
Barry Rossmann, Q.C.	The Saskatoon Police Service
Drew Plaxton, Esq.	The Saskatoon City Police Association
Silas Halyk, Q.C. Ms. Catherine Knox	Federation of Saskatchewan Indian Nations
Bruce Gibson, Esq.	Royal Canadian Mounted Police
Kenneth Stevenson, Q.C.	Mr. Keith Jarvis

C.V. Reporting Services Ltd.
500 - 224 - 4th Avenue South
Saskatoon, Saskatchewan
S7K 5M5
(306) 242-3455
cvreporting@sasktel.net

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1 WEDNESDAY, OCTOBER 22, 2003

2 THE COMMISSIONER: Good morning. Well, you can hardly
3 believe your good luck, Mr. Robertson, that you're
4 back here again this morning.

5 MR. ROBERTSON: Yes.

6 GARY ROBERTSON, previously sworn, testifies:

7 MR. ROSSMANN, examining, continuing:

8 Q Good morning, Mr. Robertson.

9 A Good morning.

10 Q Mr. Robertson, I'm looking at your report which is
11 marked P-103, I believe. Do you have that in
12 front of you?

13 A No, I don't, but I have a pretty good indication
14 what's on it and -- thank you.

15 Q I think it might be handy if you were to have that
16 every now and then. At the first page you
17 indicate that 28 images were viewed and analyzed,
18 and I take it those were not all autopsy photos,
19 because we only have nine autopsy photos. How
20 many did you have?

21 A There could be nine. I'm not too sure. I think
22 that count -- well, of course, that obviously, the
23 count was the -- all the pictures that were sent
24 to me.

25 Q So you would be including in that number pictures

- 1 of the autopsy table and pictures of your model
2 and whatnot?
- 3 A No, that -- no, pictures that were sent to me.
4 There was pictures of Mr. Stonechild found at the
5 scene, and the autopsy photos. And as far as the
6 actual number, I'm not too sure.
- 7 Q Okay, well your report says 28, that's 28.
- 8 A Well, yes. Well, if it says 28, there should have
9 been 28 pictures.
- 10 Q Okay, but our total picture package of the scene
11 and the autopsy is 44. I'm just wondering what
12 you didn't get, and maybe I'll give you the
13 autopsy photos, I think those are the ones that
14 are more pertinent to your testimony, just to see
15 if you've seen all of those.
- 16 A Okay. Yes, I'd like to see that.
- 17 Q What I've given you is P-28, and the photos are
18 all numbered on the back.
- 19 A All the pictures that are shown here are pictures
20 that I have seen except for P-28 looks --
- 21 Q What's the number on the back? They're all P-28.
- 22 A Oh, I'm sorry.
- 23 Q That's the exhibit number.
- 24 A Oh, in the corner here, number 40.
- 25 Q Sorry?

1 A I think it's number 40, marked in blue. Or four
2 -- forty, I believe. Yes, it is number 40.

3 Q You have not seen that one before?

4 A No, because I have, like, three or four --

5 Q Some of them are quite a bit similar but --

6 A Actually, you know what, I did -- I do have that,
7 yes --

8 Q Okay.

9 A -- I'm sorry.

10 Q All right, thank you. Now, Mr. Robertson, can you
11 put your display up on the screen, your power
12 point presentation?

13 A Okay.

14 Q And photo number 184 in your series.

15 A Oh, are you talking about the --

16 Q The power point presentation, I think, in my
17 version it's marked as photo number, or slide
18 number, whatever you call it, 184.

19 A This is it here. Or --

20 Q One eight four?

21 A Could be 184. Let me just -- okay.

22 Q So that's the one. Now I don't want to go over in
23 any detail, any more than I have to, about things
24 you've already testified to, but as I understand
25 it, marked "D" was one of the five indicator marks

1 that you used to attempt to say that the handcuff
2 caused the mark on Mr. Stonechild's wrist, is that
3 correct?

4 A Yes, and that also corresponded with the area that
5 was labelled "B" on the previous image as well.
6 This was more for the depth of the indentation.

7 Q This was for the depth?

8 A Yes.

9 Q And did you tell us what the depth was?

10 A I think in the report we were looking at
11 indentation of about 1.5, but I think that was on
12 the nose area. No, I didn't give the depth in
13 that.

14 Q Well, how -- how do you -- how does depth give us
15 anything, because would that not depend upon how
16 tightly the handcuff is and how much the arm may
17 or may not have swollen?

18 A There is a possibility, but what you would have is
19 like a little odulation, like for the shape of
20 where that mark would be, and there would be a
21 little -- it would be more of an indentation
22 because you would have unequal pressure, you know,
23 on the skin as an imprint. So it would be
24 slightly different.

25 Q But you didn't measure the depth?

- 1 A I did measure the depth on that particular, just
2 that one spot, yes.
- 3 Q It's not in the report?
- 4 A No, it's not in the report.
- 5 Q So you can't tell us what it is?
- 6 A No, I -- in fact I think it was just under 1.0
7 millimetre, or .8 millimetres.
- 8 Q You think it was?
- 9 A I believe it was, and it was used in another
10 evaluation, which again I'm not going to be -- in
11 regarding to another area that we were looking at
12 on lapsray (ph.).
- 13 Q Now another mark that you used I think appears on
14 the next slide as "D".
- 15 A "E" or --
- 16 Q Sorry, "E".
- 17 A Okay.
- 18 Q Did you tell us, and I apologize if this has been
19 asked, but did you tell us the size of what you
20 measured "E" as?
- 21 A It wasn't in the report. We talked about that
22 yesterday. The only areas that I included in the
23 report were the initial measurements versus the
24 handcuffs. The other areas, we didn't provide
25 those, but we do have them.

1 Q Well, what is the length, width and depth of "E"?

2 A The depth we didn't measure in "E", but I would
3 believe it was 11.9, 11.99 millimetres across.

4 Q That's the width. What about the depth? You said
5 you didn't measure the depth?

6 A I don't think we measured the depth on "E". At
7 the time, I was only measuring the depth on the
8 upper mark.

9 Q So if you didn't do all the measurements, are
10 those safe to use as reference points, or
11 indicator points?

12 A No, what we're doing is looking at size and
13 orientation, and then comparing it to what was on
14 the handcuff and what was compared on the model,
15 and it was used as an identifier point.

16 Q Okay, but that could have been caused by something
17 else; it could have been a button?

18 A You know what, I mean, one could assume that the
19 marks on the wrist could be, you know, caused by
20 anything, as everybody would be attesting to.
21 It's just that you have "X" number of marks, "X"
22 number of dimensions comparing to a known object,
23 so --

24 Q Except you didn't measure "E".

25 A I didn't say that, I said --

- 1 Q You didn't measure the depth of "E".
- 2 A Well, I didn't measure the depth of "D" [sic] but
- 3 I actually measured the width of "D" and the
- 4 surrounding area around "D", or "E", similar --
- 5 Q Sorry, "E", I meant --
- 6 A -- to what I did on "D" --
- 7 Q -- you and I are both meaning "E" here.
- 8 A Sorry. On the double strand and the single
- 9 strand, so, yes, we -- yeah, like, I did measure
- 10 that, yes.
- 11 Q But not the depth?
- 12 A Not the depth.
- 13 Q Now with respect to the marks on the nose, just my
- 14 understanding is that you only had three points of
- 15 -- or three indicator points, is that correct?
- 16 A Yes.
- 17 Q So by the test that you were using, that's not
- 18 enough to say that that item did cause that mark,
- 19 is that fair?
- 20 A That's right, I was emphasizing more for the
- 21 wrist.
- 22 Q Could you put up your slide 183?
- 23 A Is that -- I have to go back to the -- is this the
- 24 slide you're referring to or -- I'm sorry, here it
- 25 is. I have it.

- 1 Q They're numbered in my directory here, but --
2 right, that's the one. Now, I'm curious. If I
3 understood your evidence correctly -- I'll see how
4 steady my hand is -- but if I understood your
5 evidence correctly, from mark "A" here, down
6 towards the bottom side of the hand, that's where
7 the double strand of the handcuff would have been
8 in your opinion?
- 9 A Yes.
- 10 Q But there's no double-stranded mark here; there's
11 a deep impression here, and there's a single mark
12 there; there's no mark there, is there?
- 13 A No.
- 14 Q So why would that be?
- 15 A Would be the shape of the wrist. If you look at
16 --
- 17 Q Or the shape of a handcuff?
- 18 A No, well, it -- I mean it depends on individual
19 wrist. If you look at a model, and I'm sure if we
20 all tried the handcuffs on and put pressure on,
21 there will be gaps that where the -- where the
22 double strand didn't make it. It could appear
23 somewhere else on the wrist. It just depends on
24 the shape of the wrist.
- 25 Q Could you put up your slide 191? It's the -- one

- 1 of the pictures of the model's wrist.
- 2 A Okay. Right.
- 3 Q I notice that at the top of the model's wrist
4 clearly shows two marks with a bulge in the
5 middle, and that's where the double strand was, is
6 it not?
- 7 A Yes.
- 8 Q But we don't see that on Mr. Stonechild's wrist,
9 we don't --
- 10 A Where --
- 11 Q -- see that rise, do we?
- 12 A No, that's because it's an antemortem mark versus
13 a postmortem mark.
- 14 Q Well, but, I'm sorry, you weren't qualified to
15 give pathological evidence.
- 16 A Okay.
- 17 Q So your evidence is, though, that you agree with
18 me this mark does not appear on Mr. Stonechild?
- 19 A No.
- 20 Q I take it this model was alive?
- 21 A Yes.
- 22 Q Yes. And here, on the outside of her hand, that's
23 where the single strand was?
- 24 A Yes, it was.
- 25 Q And would you agree with me that the outside of

- 1 the hand, in this area, is certainly a lot
2 fleshier, for lack of better words, than the
3 opposite side of the wrist or the hand?
- 4 A Fleshier?
- 5 Q Yeah.
- 6 A I -- I can't tell that.
- 7 Q You can't, okay. Mr. Robertson, are you familiar
8 with the concept of class and accidental
9 characteristics in identification procedures?
- 10 A I was introduced to it a couple of years ago, but,
11 no, I haven't really studied it that --
- 12 Q Well, to the extent that you were introduced to
13 it, would you understand that class
14 characteristics is the overall class of injury,
15 for example a knife wound, a bullet wound, or
16 fingerprints, those are classes of items?
- 17 A Yes.
- 18 Q And accidental characteristics are what you use to
19 try and determine whether a particular injury of a
20 certain class was caused by a specific item, a
21 specific knife, a specific bullet, or the
22 fingerprint belongs to a specific person?
- 23 A Right, and some of the research that we're doing
24 with pigskin and so forth --
- 25 Q Yeah.

- 1 A -- falls into that category.
- 2 Q Yeah. And you're trying to look at, in
3 fingerprints for example, you look at the grooves
4 and valleys, or the valleys and ridges in the
5 fingerprints? And I'm not sure if that's the
6 technical -- technically correct language, but the
7 patterning of the grooves and ridges is what --
- 8 A Right.
- 9 Q -- people look at, that kind of thing. So that's
10 the process, though. First of all you figure out,
11 do I have a bullet wound, or a knife wound, or a
12 fingerprint, and then can I look at individual
13 accidental characteristics, maybe a scar or
14 whatever, or striations on a bullet, or notches in
15 a knife blade to see if that knife matches that
16 wound; is that generally the process?
- 17 A Yes.
- 18 Q But isn't it the case that in your case, you
19 started with a mark that we don't know, you've
20 made some measurements which are the accidental
21 characteristics, and used logic backwards to
22 assume that if it had those measurements it must
23 be handcuffs?
- 24 A Actually, you're -- I mean, like, that question is
25 very good, because if you look back at, you know,

1 for an example, what you were just talking about
2 in classifications, and this is where it gets
3 very, very important. You have to do measurements
4 on a wound, and compare it to an object. Now, for
5 an example, some of the studies, people have been
6 charged and convicted for an example of knife
7 wounds.

8 What they do is they actually take
9 pig carcasses and leave the carcass outside for an
10 example, and in some particular cases they have,
11 like, magpies biting into the -- and of course
12 this is like, you know, primo training programs
13 for the police agencies -- and then they would
14 take that into the clinical, you know, for the
15 training courses in pathology. And a lot of cases
16 people identify a magpie beak mark as a knife
17 wound, you see, because you're visualizing and
18 you're looking at it.

19 And there was a -- the prime case
20 in Ontario where a woman served five years
21 imprisonment where a pathologist basically looked
22 at imprint marks on the skull, looked at it and
23 said those were from -- from a pair of scissors.
24 But no measurements were made. Subsequently it
25 was overturned. Ended up it was a dog attacked

1 her child. And so --

2 Q What case was that, sir?

3 A I believe it was -- I think her last name was
4 Shepherd. It was in Kingston, Ontario, where she
5 served five years. And it's a fairly well-known
6 case, talking about indentation and
7 misidentification on imprints. So, yes, on these
8 classifications it's very, very important.

9 But where the importance is here,
10 is looking at something and visualizing it, and
11 then actually measuring something and comparing
12 it, because there's two different things.
13 Somebody can interpret something from the photo
14 images, and somebody actually measured. If you
15 measured a magpie beak and matched it to the
16 wound, and it's very difficult, like you can't
17 measure everything and anything, but at that point
18 it can be very subjective.

19 Q M'hm.

20 A So in this particular case what we were doing, we
21 were very careful to only measure the strand area
22 on the handcuff to the areas that are visible.
23 Like I said yesterday, we can measure all kinds of
24 portions down in here, but we wanted to stick to
25 areas that we had known data of references.

- 1 That's why, as we come down the other end, I
2 didn't do depth or anything like that. We're only
3 sticking to the areas that we know and we can --
4 and provide some pretty good measurements on.
- 5 Q Well, if you didn't measure depth, and -- how can
6 you use it?
- 7 A Well, I measured depth in the top location where
8 we had all the identifier marks -- for the record,
9 I'm pointing to the top of my wrist -- but, you
10 know, in the other area, down below, I didn't, I
11 measured the --
- 12 Q So you assume --
- 13 A -- the area --
- 14 Q -- because of the accidental characteristics,
15 which is the actual size of the wounds or marks as
16 you've measured, that you extrapolate back and
17 assume that it's that class of object that caused
18 the mark?
- 19 A Right, because you're -- you know, like, the --
- 20 Q So it couldn't have been a shoe string of the same
21 width as the handcuff?
- 22 A Right, and it could be very subjective coming --
23 you know, someone could say that, can you rule out
24 all the possibilities, and that's when you have to
25 look at statistics; you know, how many -- what

1 would be the odds and so forth. But all I'm
2 reporting is that the dimensions that I found on
3 the skin, and versus what the handcuff, here it
4 is.

5 Q Well, except, sir, you did go beyond that. You
6 did say that in your opinion this wound is caused
7 by, or consistent with handcuffs?

8 A Right.

9 Q And so you didn't do any statistical analysis you
10 said, so you don't know if that's valid, isn't
11 that fair?

12 A No, but you see what happens is, in any time -- if
13 you look at the previous cases, like those mid-air
14 collisions and so forth, and evidence that we have
15 presented in court, photogrammetric evidence is a
16 matter of the fact. So if you have vehicle "A"
17 hit vehicle "B", you know, you can give the exact
18 dimension to within plus or minus a millimetre,
19 and give a trajectory, so there's really no
20 argument. And somebody said, "Well, what are
21 those dimensions?" What I'm providing is fact.
22 Anything else -- like you say, well, could the
23 driver see that, or maybe the sun was in his eyes,
24 of course then everything would be based on an
25 opinion.

1 If you ask someone to look at an
2 image, and all this other -- for an example, if
3 you look at other areas of evidence on this, it
4 would be subjective and it would be based on
5 opinion, not on fact, whereas what I'm looking at
6 in here, and the dimensions I'm giving you is
7 fact. The -- we have an RMS value, statistically
8 we can say that this is what the accuracies are,
9 and that's put to a side.

10 Then if you ask me what I believe,
11 and after looking at about a hundred and some
12 homicide, or, you know, victims over these years,
13 in my opinion, I'm not a doctor but I'm just, you
14 know, saying that, yeah, it looks to be a --

15 Q Sorry, how many homicide victims?

16 A About a hundred cases over the last twenty some
17 years.

18 Q But how many have you testified in? I thought it
19 was four?

20 A Probably four, yeah. But if -- what I'm doing is
21 I'm just using that, and that's an opinion. So
22 the opinion is based on what I've observed
23 previously, but the dimensions that I'm obtaining
24 on that is a matter of fact, okay, so --

25 Q Well, if it's a matter of fact, sir, how come

- 1 there's a plus or minus .5 to 1.0 millimetre
2 difference? Because on a 2 millimetre
3 measurement, if you're out a millimetre, that's a
4 50 per cent error, isn't it?
- 5 A Right, on an overall, and what we're doing is --
- 6 Q So aren't you, in fact, providing an estimate of
7 the mark and not stating as a fact it is 2.28 or
8 whatever?
- 9 A No. If you're doing, like, quality assurance and
10 you're building an aircraft, and the military
11 specked it out to being plus or minus five
12 thousandths of an inch, it has a specification,
13 you have to meet that specification. So 100 per
14 cent is impossible, as we all know; it's an
15 infinite number in a negative and positive.
- 16 Q A 50 per cent error is a pretty much range, isn't
17 it?
- 18 A I'm sorry?
- 19 Q But a 50 per cent error is pretty much of a range
20 -- pretty huge range of error, isn't it?
- 21 A We're talking about the overall measurement, so if
22 you can -- you can go anywhere in that room and we
23 can extract a measurement taken from those
24 dimensions, the autopsy table, and then -- and get
25 it within 1.0 millimetre. That's what we were

- 1 talking about overall accuracies.
- 2 Q So you're telling us the marks on the wrist were
3 exactly two point -- or, sorry, the -- getting
4 back to the nose, I think that's where you gave
5 some pretty specific evidence. You said the top
6 mark was 2.28 millimetres wide?
- 7 A Right, yes.
- 8 Q So you're telling us it was 2.28 millimetres wide,
9 period?
- 10 A Plus or minus about .5 of a millimetre.
- 11 Q So that's, what, a 25 per cent error almost?
12 Twenty-five per cent error range?
- 13 A Yeah --
- 14 Q Or is that a 50 per cent error range?
- 15 A -- it could be if you were assigning a value.
16 Like, you have to assign a value. If I told you
17 that our measurements -- like anything that's
18 perfect and you say that you're getting accuracies
19 of a half a millimetre, or, you know, or .2 of a
20 millimetre and so forth, yeah, that would be --
- 21 Q But we're not talking an aircraft wing that might
22 be 10 feet long, or 20 feet, or 100 feet long, and
23 a thousandths of an inch or whatever you said.
24 We're talking about a 2 millimetre measurement,
25 which it's plus or minus half a millimetre.

- 1 That's a huge margin of error compared to the
2 airplane wing example you gave.
- 3 A The RMS value we're looking at, when we're putting
4 in a value, that would be a worst case over the
5 entire area at .5 of a millimetre. If we were
6 doing a test here, yeah, you could -- you could
7 even -- you could get half a millimetre, you could
8 get .2 of a millimetre, you could get .1 of a
9 millimetre.
- 10 Q But you said you didn't do any statistical
11 analysis on this; that's what you told us
12 yesterday.
- 13 A The statistical analysis on the -- on the overall
14 shots that were taken of the autopsy table in the
15 room, yeah, we have the statistical, that's what I
16 use.
- 17 Q Sorry, I thought you told my friend that you
18 didn't do any statistical analysis on the mark you
19 measured on the nose?
- 20 A No.
- 21 Q Did I misunderstand you?
- 22 A No, like, first of all that's wrong because what
23 happens is, when you -- when you run the solution
24 in the software, the software gives you the
25 precision and the accuracies of you're looking at,

1 and basically what we're doing in here, and for
2 the record let's just emphasize this, what you're
3 looking at is two distinct areas. You're looking
4 at the particular analysis on -- on Neil
5 Stonechild, which is his nose, and where we took
6 the measurement parallel or along on the autopsy
7 table. That was .5 and .1. Then we come into a
8 totally different realm, and we were taking the
9 shots of the overall shots of the autopsy.

10 Now what we're talking now is
11 highly convergent images. We're looking at a
12 camera that provided calibration information, we
13 know the exact pixel count of that camera, as you
14 can see from that report, so we have all that
15 information. That information is quite precise,
16 okay, and we're using that as a cross-check to
17 compare the measurements on Mr. Stonechild, which
18 is totally independent.

19 And that's when you look up, and
20 you compare, for an example, measurements that we
21 made on the table versus what we did, which is a
22 totally different independent measurement. See,
23 the two are quite separate. And those compared to
24 within .8, .8 and 1.0 millimetre. So two of those
25 were actually under a millimetre. And that was

- 1 using the scale --
- 2 Q Except in your report you tell us that all of your
3 measurements, the general margin of error of these
4 measurements is in the range of .5 to 1.0
5 millimetre?
- 6 A Right, but in the report --
- 7 Q And when I asked you what the measurement of the
8 top mark on the nose was, you tell me 2.2
9 millimetres, plus or minus half a millimetre?
- 10 A Right.
- 11 Q So you can -- how -- it's still a 25 per cent
12 error. There's a range of at least 25 per cent,
13 or --
- 14 A Right. Those are the numbers that we -- that we
15 expressed, yes. Those are the numbers that we
16 expressed yesterday, but you were mentioning
17 yesterday, or right in the -- we were talking
18 about yesterday is the totally separate distinct
19 measurement we were using as a cross-check, okay.
20 So the cross-check dimensions were .8, .8 and 1.0.
21 What we do is round it out at 1.0, 1.0 millimetre,
22 plus or minus.
- 23 Q The cross-check measurements were, on an average,
24 just under a millimetre of error, is that right?
- 25 A On a cross-check --

1 Q Point 8, .8 and 1.0?

2 A -- that we did between the two independent
3 measurements.

4 Q M'hm. So there as a -- just about a 1.0
5 millimetre error there?

6 A Right.

7 Q Okay. And when you go to extrapolate the
8 measurement on the nose, there's a half a
9 millimetre error, plus, minus? So it's closer,
10 but still half a millimetre, plus, minus?

11 A You could -- you could say that, yeah, that would
12 be a worst case, sure.

13 Q Well, but it's your report. I mean that's the way
14 I read it, but --

15 A No, which -- well, if you were to --

16 Q Anyway, I --

17 A I know. What happens is, the whole thing is
18 understanding metrology. If -- if I report a
19 standard deviation, one example, if -- if I took
20 -- it would be a really good example here, and we
21 can use -- and we use this in training programs.
22 If I gave -- if I selected 10 or 15 people in this
23 room and I gave them a ruler, and that ruler was
24 only gradated to, say, a half inch, or to an inch,
25 and I asked you to measure this table ten times, I

1 would have ten exactly the same answers.

2 Q And if you applied photogrammetry would you get
3 ten different answers, or would you get one answer
4 with plus or minus .5 error?

5 A Well, this is what I'm getting at. If I told you
6 at that point, I said, okay, now what I'm going to
7 do is I'm going to give the ruler to 10
8 individuals in this room, and now I want to
9 measure this table, and I want you to give me the
10 accuracies, say to a sixteenth or an eighth of an
11 inch. Well, the answers then, you would have ten
12 separate answers. If you had ten the same, then
13 there is something seriously wrong. I mean, all
14 ten would be different. So that's when you do a
15 standard deviation. That's where we go through a
16 standard -- it's not just adding 10 and dividing
17 it by the number of 10, and come up with an
18 average measurement. That's when you go and, in
19 the root mean, you know, square on standard
20 deviation.

21 So when we're talking about these
22 numbers of .5, .1, this is like a standard
23 deviation. So a number could be higher, could be
24 lower, but this is what we would refer to as a
25 standard deviation of .5 to 1.0 millimetre.

- 1 Q So a result --
- 2 A So you can't say that if I measured something on
3 this table, and I measured it here, then it could
4 be plus or minus 1.0 millimetre. I mean I could
5 measure some other location, I could be within 100
6 microns.
- 7 Q But in the end result --
- 8 A But the standard deviation over the entire area
9 we're looking at --
- 10 Q But in the end result is it -- is it not your
11 evidence then that the mark -- top mark on the
12 nose, as an example, was 2.28 millimetres, plus or
13 minus --
- 14 A Right.
- 15 Q -- half a millimetre?
- 16 A Right.
- 17 Q Now, would you agree that viewing the actual body
18 would be an advantage for anyone doing any
19 measurements?
- 20 A Very much so. Because if we did that, we could
21 actually -- would be able to measure the body to
22 extremely high accuracies.
- 23 Q Now, are you aware that Dr. Adolph, the
24 pathologist, did do measurements, and his
25 measurements, according to the transcript, he

1 measured the distance between the two marks on the
2 nose at .6 of a centimetre?

3 A Well, how did he do the measurements? I mean, was
4 he doing it with a ruler, looking at it by eye? I
5 -- I have no idea what he would use. You see,
6 here's the difference. If --

7 Q So however he did it, and he's a pathologist with
8 some 40 years experience, you say that your method
9 is more accurate?

10 A Am I saying the photogrammetric method is more
11 accurate?

12 Q Yeah.

13 A Of course. I mean, it doesn't matter if he's a
14 pathologist or -- he's not a photogrammetrist. He
15 doesn't make his living out of -- you know, it's
16 still nine years, ten years to become a certified
17 photogrammetrist. I mean you have a specialty in
18 the areas of measurement. My specialty is not in
19 pathology. So if you're -- if you're going to go
20 with a measurement, you know, giving somebody a
21 ruler -- I mean, first of all, we don't measure
22 with a ruler. You know, putting that up against
23 an object, no, we don't do that. We extract it
24 3-dimensionally in our software where we have an
25 RMS value and it's very precise. So it's a whole

1 different procedure.

2 Q So you don't -- what you're telling us is you
3 don't trust the pathologist's measurement, even
4 though he was on scene and saw the body?

5 A Well, you would have to see what type of ruler he
6 had, and how he measured it. I'm telling you
7 that, for an example, if -- the Legislative
8 Building in Regina here had cracks in it, okay.
9 If -- if I walked up as a party and I look at
10 those cracks, everybody here in the room could
11 look at those cracks and say, yep, the building's
12 moving.

13 But then what you have to do is,
14 you have to say, how much is the building moving,
15 when is the building moving, is it consistent
16 moving, and what's the vector on it, is there
17 twists, is there a certain direction and torque
18 and so forth. The only way that you're going to
19 be able to do that is doing very precise
20 measurement down less than one millimetre, and
21 having it very, very accurate.

22 But I mean, I could look at
23 something all day. I could walk up to the Leg
24 Building and put my ruler right on the crack and
25 say it's 4 millimetres. To say the building move

- 1 is 4 millimetres would be ridiculous. I mean, you
2 can't say that.
- 3 Q Well, with respect, sir, isn't that different? I
4 mean measuring the width of the crack is one
5 thing, measuring whether the building is moving is
6 totally another.
- 7 A Right. But --
- 8 Q So I can measure the width of the crack with a
9 ruler. I may not be able to tell if the
10 building's moving with a ruler.
- 11 A And -- and that's, that's a very, very good
12 question, because, you see, it's the same thing as
13 on mining. If you're looking at -- there will be
14 testing on a slope, there's all kinds of very,
15 very precise gauges that can actually give you
16 measurements in a thousandths of an inch called a
17 tensiometer devices and so forth.
- 18 Q Except that's --
- 19 A But it only gives you a vector and magnitude in
20 one direction. The photogrammetric process is
21 giving you precise measurements in three, so --
- 22 Q I'm not suggesting, sir, that photogrammetry
23 doesn't have its place. But I'm suggesting here
24 that you're looking at a static image, Mr.
25 Stonechild is not moving, and you're telling me

- 1 that, if I understand you correctly, that your
2 method of measurements is more accurate than Dr.
3 Adolph's measurements?
- 4 A The measurements that we took from the dual images
5 of Neil Stonechild would be more accurate than
6 using a ruler, yes.
- 7 Q Plus or minus half a millimetre?
- 8 A Yes.
- 9 Q Now, you talked a little bit about perspective
10 yesterday, and if I understand perspective in the
11 photograph, photograph sense, or in the real world
12 sense, that's where you look at something and,
13 when it's nearer it looks bigger, if you move it
14 further away it looks smaller, that's an example
15 of perspective, a simplistic --
- 16 A That's -- yeah, one, one example, sure.
- 17 Q Or like looking at -- looking down a set of
18 railroad tracks, they seem to converge in the
19 distance?
- 20 A Right.
- 21 Q Or looking at a highway, it looks smaller in the
22 distance? In reality, we know it's the same, but
23 it looks smaller; it's --
- 24 A Right, and --
- 25 Q It's called perspective?

- 1 A Yeah, and, like, there's two forms of perspective.
2 There's what you're looking at in your human eye
3 perspective in distance, then of course you're
4 looking at a perspective that would be created by
5 optics. So for an example if you had a wide-angle
6 lens --
- 7 Q M'hm.
- 8 A -- that's why you don't do wide-angle lenses for
9 portrait photography because people's noses would
10 appear right across -- their face would be very
11 unflattering and very -- so you have to be very
12 careful if you're, especially presenting data in
13 court, because I mean I could go back to the case
14 I had here 20 years ago. There was a picture of a
15 keyway on a shaft that was taken with a wide-angle
16 lens, and rather than being 90 degrees or vertical
17 -- my fingers are pointing in a vertical fashion
18 -- if it was --
- 19 Q M'hm.
- 20 A -- two 45 degrees. So you know with perspective
21 angle, you really can't rely what you see on a
22 photograph. You have to basically extract the
23 angular and all the 3-dimensional information from
24 it.
- 25 Q On the other hand, if the photograph is taken

1 relatively straight on, with a normal lens, which
2 I understand is the -- what's generally called a
3 50 millimetre lens, in that area, it's not a --
4 there is no such thing as a normal lens, but
5 that's what's commonly called a normal lens is
6 about a 50 millimetre?

7 A Yes.

8 Q And if I understood your testimony, the lens used
9 in the Stonechild photos was about a 50 millimetre
10 lens?

11 A Yes.

12 Q So that should minimize the wide-angle or the
13 fisheye effect?

14 A Yes.

15 Q Now, Mr. Stack, I wonder if you could put up
16 photograph 41 from Exhibit 28. And Exhibit 28 are
17 the photographs that you have. I'm not sure if
18 you have them in that order, but you have
19 photographs, the photographs in front of you, Mr.
20 Robertson, from the exhibit.

21 A Oh, I'm sorry.

22 Q We're talking about our, using our computer now
23 and not yours. Okay, that's a full frontal view
24 of the face and that's the main photograph that
25 you used, and it should be in that package there.

- 1 A Okay, I was just wondering, did you say 48? I
2 might have.
- 3 Q Forty.
- 4 A Oh, 40, I'm sorry.
- 5 Q Sorry, 41.
- 6 A Forty-one. Forty-one, okay.
- 7 Q All right, we see the marks on Mr. Stonechild's
8 nose relatively straight down; not necessarily
9 exact, but pretty close to straight down, fair
10 enough?
- 11 A Yes.
- 12 Q And, Mr. Stack, could you put up photograph 38?
13 There, on photograph 38, you can see those same
14 marks from, I guess it would be his left side,
15 correct?
- 16 A M'hm. Yes, that's correct.
- 17 Q Okay. Mr. Stack, could you put up photograph 39?
18 And that's similar to the previous one, just a
19 slightly different angle, would you agree with
20 that?
- 21 A Yes.
- 22 Q And the marks are visible again from approximately
23 the left side?
- 24 A Yes.
- 25 Q And photograph 40, Mr. Stack, please.

- 1 A I'm sorry, which photo are you --
- 2 Q Forty.
- 3 A Okay, back to 40, okay.
- 4 Q Now that's, again, from a different angle, and I
- 5 think you see more of the wounds there, from --
- 6 again from a sort of an upper left-side view?
- 7 A Yes, actually photo number 40 is what we were
- 8 using in our analysis.
- 9 Q And you used -- you used 40 and you also used 41,
- 10 which is the straight-on one?
- 11 A Well, we actually used -- we used actually, for
- 12 the test we were using, I believe, the three --
- 13 three or four.
- 14 Q M'hm.
- 15 A We actually discounted one because of the overlap.
- 16 We couldn't find enough identifiers on it --
- 17 Q M'hm.
- 18 A -- because of the cropness. So we didn't use it.
- 19 So it was actually three we used. Can I have
- 20 permission to pull up the slide to show you the
- 21 actual pictures or --
- 22 Q Just bear with me for --
- 23 A Okay.
- 24 Q -- for a moment, and then you can explain later.
- 25 I'm not talking about that, per se. But on

- 1 photograph 40, which is the one up, you can see
2 the distance between the nose -- between the marks
3 on the nose, and you can see sort of the width of
4 the marks themselves to some extent?
- 5 A Yes.
- 6 Q And, Mr. Stack, if you could put up 40 -- sorry,
7 41. And on photograph 41, again, you can see
8 something of the distance between the two marks,
9 and you can see something of the distance, or the
10 width of the marks themselves, correct?
- 11 A Yes.
- 12 Q Now, it's my understanding, and correct me if I'm
13 wrong, when you were testifying with -- or when
14 Mr. Fox was asking you questions, you measured the
15 marks, the width of the marks at about the centre
16 line of the nose?
- 17 A Yes.
- 18 Q So you measured at the top mark there about, and
19 the bottom mark about there?
- 20 A Yes.
- 21 Q And then you measured the distance between there,
22 correct? The distance between the two marks you
23 measured in the same area?
- 24 A Right.
- 25 Q Right. And did I understand that you measured the

1 bottom mark in the area near the nostril as well?

2 A That's correct, and actually -- yeah, we did

3 actually two points in there of the width. And

4 dimension width is there as well.

5 Q Okay. And what did you say the measurement was at

6 the end of the nostril?

7 A I believe it was -- well, we have -- okay, we have

8 the 3-dimensional coordinates which were provided

9 in your report. That width there is about 2.39,

10 two point --

11 Q Okay.

12 A -- 2.4, somewhere in there.

13 Q Right.

14 A They're all quite similar.

15 Q Now, did I understand that you measured in -- the

16 top mark sort of towards the back as well?

17 A Yes, I did.

18 Q Towards the eye?

19 A Yeah, I got a point -- yeah, just actually just

20 where you have your little, your pointer there.

21 Q Right there?

22 A You have a point somewhere in the back there.

23 Q And do you recall that measurement?

24 A No, we were using that as a 3-D reference point,

25 which is displayed on the -- in your set.

1 Q All right. Now, would you agree that this mark
2 does not appear to be constant width?

3 A The mark -- oh, yes, yeah, but it would -- yeah,
4 it would be --

5 Q It varies somewhat?

6 A Yeah.

7 Q Indeed, you're looking down here, so the top of
8 the nose is closer, so the bottom of the nose, if
9 it was the same, should look narrower, but it in
10 fact looks wider?

11 A Right, that's why we did the 3-dimensional --

12 Q Right.

13 A -- point in there, to be able to, you know, to
14 compute where the offset was on the nose.

15 Q And likewise, the distance between appears by this
16 photo to be narrower at the bridge where you
17 measured it, and wider at the bottom, near the --
18 closer to the, I guess it would be left eye?

19 A But that's just -- yeah, like, that would be
20 interpretation on perspective, yeah, I mean, but
21 we can assume that. I mean what you're looking at
22 in the photograph, what you're saying is that it
23 appears to be, but --

24 Q M'hm. Now, if you go back to photograph 40, Mr.
25 Stack. Now, in photograph 40 you get another view

- 1 of that -- of those marks, and again from a
2 totally different angle, you get the same
3 appearance, do you not? That the mark, the
4 distance between the two marks appears to be wider
5 towards the left eye than it is at the top of the
6 nose? Not much, but it's wider, isn't it?
7 Doesn't it look that way?
- 8 A Yeah, what you're looking though, like you're
9 looking at a point that would be in a -- in a
10 different elevation.
- 11 Q I appreciate that.
- 12 A So -- yeah, so it's what it appears, but what the
13 actual measurement would be would be quite
14 different.
- 15 Q But you didn't measure it there?
- 16 A No, I have a point -- yeah, like, I have a
17 3-dimensional point in the back, but, yeah, I mean
18 what you're looking at perspectively though, like
19 you can't say that.
- 20 Q What we know, all we know then is that the mark
21 was, I think 4.67 millimetres wide, according to
22 your measurements, is it? Was that right? Four
23 -- no.
- 24 A 4.67, yes.
- 25 Q Okay. At about the bridge of the nose, but you

- 1 didn't measure anywhere else, so you can't tell us
2 if it was the same; you assumed that the distance
3 was constant?
- 4 A I could measure it, but I do have 3-dimensional
5 points there, so, yeah, we could measure it.
- 6 Q But you didn't?
- 7 A No.
- 8 Q You superimposed the handcuffs without knowing if
9 the distance between was constant?
- 10 A You know, I mentioned this several times yesterday
11 on the record that the superimposing of the
12 handcuffs was strictly to show the relationship of
13 the dimensions that were on the nose. It has no
14 way whatsoever how the angle, or how he was
15 struck, whatever; it was just to explain the
16 comparisons and the measurement.
- 17 Q Okay, so that picture has no validity then, other
18 than --
- 19 A It --
- 20 Q -- for possible orientation?
- 21 A Well, I don't even know about that. I'm just
22 saying it's more of a -- you know, just as a
23 display, you know, like to show the comparison,
24 some of the measurements, that's it. But it had
25 no way of knowing what -- what the impact was.

- 1 Q Okay. And likewise you can't tell us if the
2 distance between the two marks was exactly the
3 same, because you didn't measure it?
- 4 A I did measure it further up on the nose, but we do
5 have control there; we do have reference.
- 6 Q Now, Mr. Stack, could you put up photograph 42?
7 Now, photograph 42 is a photograph that you've
8 used extensively in your presentation as well, and
9 I think this one projects a little better than the
10 one that you used, because your slides were
11 smaller somehow. But I'm curious about this area
12 of the thumb from the right side of what appears
13 to be the mark to the knuckle of the thumb -- or
14 the, not the knuckle but the next join of the
15 thumb; do you understand the area I'm referring
16 to? This area in here?
- 17 A Right.
- 18 Q Now, you've testified that this spot, or this area
19 just above the thumb there, or the end of the
20 thumb was, I think, "E"?
- 21 A That's correct.
- 22 Q And you said there was an indent there, but you
23 didn't measure it; you didn't measure the depth?
- 24 A Didn't measure the depth.
- 25 Q Okay. Now, if I look at below that, there seems

- 1 to be some sort of an indent below that as well,
2 does there not?
- 3 A Yes.
- 4 Q When I look at the thumb itself, and you have the
5 photographs which are more accurate than this,
6 there doesn't appear to be any mark on that line,
7 does there?
- 8 A I'm sorry, do this -- I'm --
- 9 Q Between -- between area "E" --
- 10 A M'hm.
- 11 Q -- and the indentation below area "E", there's an
12 area, a ridge of the thumb, thumb part of the hand
13 where there is no mark, is that fair?
- 14 A It does appear to be, no.
- 15 Q Okay. Now, the pathologists and the doctor
16 testified, or pathologist Dowling testified that
17 this area has a bone under it. Are you aware of
18 that?
- 19 A I didn't read the autopsy report, no.
- 20 Q Well, Dr. Dowling testified to that, so -- you
21 weren't here for that, but in the transcript, and
22 he's quite clear --
- 23 A Is Dr. Dowling the -- the pathologist that
24 actually did the autopsy?
- 25 Q He's the forensic pathologist, and Dr. Fern, who

- 1 was the coroner, who also saw the body, testified
2 likewise that there's a bone in here, and even
3 named the bone.
- 4 A Okay, but how would -- okay, but Dr. Dowling was
5 not the pathologist that actually did the -- the
6 autopsy?
- 7 Q Dr. Dowling did the second autopsy. But for the
8 moment, just bear with me.
- 9 A All right.
- 10 Q The doctors -- you're aware that doctors don't
11 have photogrammetry to rely on, so when they
12 examine people they palpate, they use various
13 landmarks to figure out where bones are and where
14 organs are, et cetera; you're aware of that?
- 15 A Well, I imagine, but what I was just more curious
16 on is how, if he looked at the photographs and
17 came up with these conclusions, versus looking at
18 the physical body, that would be two different
19 things.
- 20 Q Well, Dr. Fern certainly looked at the body.
- 21 A Okay.
- 22 Q Because he was the coroner.
- 23 A Yes, that's why I was asking, yes.
- 24 Q Bear with me. There's a bone here. We have two
25 doctors testifying to that. We have an

- 1 indentation on one side of the bone, an
2 indentation on the other side of the bone with no
3 mark on where the bone is. How do you explain
4 that?
- 5 A I don't know. I mean I don't even know if there's
6 a bone there.
- 7 Q Well, you -- do you have any reason to quarrel
8 with the doctors who give an opinion that there is
9 a bone there?
- 10 A Well, but -- okay, what I'm asking back, and
11 before I can answer that, is, in what relation is
12 this bone in to the imprint on the wrist? Now, I
13 mean, are they obtaining this from looking at
14 these images? Are they basing their conclusion or
15 opinion based on looking at these photos, or are
16 they basing their opinion on actual physical
17 examination, that's what I'm trying to ascertain
18 here.
- 19 Q Well, sir, you didn't -- did you ascertain whether
20 that is a bone or not? And I'm indicating the
21 area between the -- one of the joins of the thumb
22 and past the mark.
- 23 A No.
- 24 Q Okay. So you accept --
- 25 A I didn't examine it.

1 Q You can't quarrel with the doctor saying there is
2 a bone in there; you're not trained in anatomy --

3 A No.

4 Q -- and pathology and --

5 A Definitely not, no.

6 Q -- and certainly Dr. Dowling, who's the chief
7 medical examiner for the Province of Alberta
8 should know where the thumb bone is?

9 A Yeah, but that's not what my -- what my, you know,
10 my questions was, or reference was that the
11 imprint that you're referring to at the start,
12 which is below "E", you -- I'm not too sure about
13 because that's why I'm getting back, because now
14 you -- you're pointing to an area along the wrist
15 that I didn't do the analysis, but you did make a
16 reference of that imprint, that appears to be an
17 imprint below where "E" was.

18 Q And you didn't do an analysis on that one?

19 A No. No, but -- no, and that's why I'm asking you,
20 is part of what you're, in your first part of the
21 question, is that the area that you're talking
22 about, because I have to put a --

23 Q I'm talking about the area between the two
24 indents, the indent "E" and the indent below "E",
25 on the other side of what the doctors tell us is a

1 bone.

2 A Okay.

3 Q How do you get an imprint on each side of the bone
4 and no mark on the bone with a steel handcuff
5 which has a curved shape?

6 A Well, I don't know.

7 THE COMMISSIONER: Excuse me. Is he competent to
8 answer this question? I mean he's been -- there
9 have been a number of criticisms of his competency
10 and questions asked about physiology, and whether
11 he has any training. Are you inviting him to give
12 an opinion that others have suggested he is not
13 competent to give?

14 MR. ROSSMANN: I think, Mr. Commissioner, the
15 suggestion is he has given that opinion, and I'm
16 trying to point out that the opinion is contrary
17 to that given by the pathologist and Dr. Fern,
18 because they looked at those same marks, they know
19 anatomy, they know there's a bone there, this
20 gentleman doesn't, so accepting that the
21 pathologists know where bones are and aren't,
22 seems to me that this gentleman is testifying to a
23 mark that couldn't reasonably be made, given the
24 pathologists' statements.

25 MR. HESJE: Mr. Commissioner, if I may. The

1 first point is, I think Mr. Rossmann has somewhat
2 misrepresented the evidence. My recollection of
3 what Dowling said he could not rule out those
4 marks were caused by handcuffs.

5 MR. ROSSMANN: I don't -- I don't quarrel with
6 that. But Dr. Dowling also did indicate --

7 MR. HESJE: I do agree with the point that
8 you've made, and it's been a frustration
9 throughout here, the first attempts were made to
10 severely restrict the scope of what the witness
11 could testify to, and then they proceed to cross-
12 examine him on all the points that --

13 THE COMMISSIONER: Because what's happening here is
14 gradually you're qualifying Mr. Robertson in
15 physiology.

16 MR. ROSSMANN: Well, I think we're qualifying --
17 we're doing the opposite, sir, but --

18 THE COMMISSIONER: Well, if you ask him -- if you ask
19 his opinion about the characteristics of the human
20 body and the bony structure, and what that should
21 reflect or not reflect, given an imprint from any
22 object, it seems to me with respect that you're
23 inviting him into the area of physiology and to
24 give an opinion about a medical matter which, by
25 his own admission, he's not competent to give.

1 But if you want to ask the
2 question, and he answers it, I'm bound then to
3 take that evidence, and evidence that you perceive
4 he's competent to give. Because you wouldn't be
5 asking him the question if you didn't think he was
6 capable of giving it.

7 MR. ROSSMANN: Well --

8 THE COMMISSIONER: Do you follow what I'm saying, Mr.
9 Rossmann?

10 MR. ROSSMANN: I follow that, but I can tell you
11 that was not the way I looked at it.

12 THE COMMISSIONER: Well, you proceed as you see fit,
13 but -- and this is not directed to you; this is
14 not a criticism of you, but there are an enormous
15 number of questions that have been asked in this
16 inquiry that seem to be cumulative. They have the
17 effect of enhancing what Mr. Robertson is saying,
18 not depreciating it.

19 Now, I'm not prejudging what I'll
20 finally decide about his evidence, and ultimately
21 I may not be convinced by it, but I just have to
22 say that the last day or two has been very
23 interesting for me. Anyway, please proceed.

24 Q MR. ROSSMANN: All right, with respect to the
25 marks on the wrist, all three of the doctors

1 testified, I believe, and I stand to be corrected,
2 at least two of them did, that the marks that you
3 are looking at, you were looking at and say are
4 handcuff marks are, in Dr. Dowling's words,
5 perfectly consistent with clothing marks on a
6 deceased person --

7 A But --

8 Q -- can you rule that out?

9 MR. HESJE: Again, Mr. Commissioner, I guess
10 it's technically correct, but it's certainly
11 misleading because he also testified they weren't
12 inconsistent with handcuff marks.

13 MR. ROSSMANN: I asked -- I'm not disputing that.

14 THE COMMISSIONER: But the complaint is that you're
15 not giving him an accurate read as to the
16 possibilities.

17 MR. ROSSMANN: Well, that's part of -- that's part
18 of the next scenario.

19 Q I accept, Mr. Robertson, that the doctors couldn't
20 say that they weren't handcuff marks, but they
21 also said those marks are perfectly consistent
22 with clothing marks that they see on freezing
23 victims, or even victims in hospitals. Can -- can
24 you accept that those marks on Mr. Stonechild's
25 wrist could have been caused by something other

1 than handcuffs, or are you saying that in your
2 opinion the doctors are wrong and they could not
3 have been caused by anything but handcuffs?
4 A Before I could answer that I need to have my first
5 question asked several minutes ago. What I asked,
6 for the record, was --
7 Q Well, I'm sorry --
8 A -- how --
9 Q -- if you have an answer, give it, but --
10 A Well, no, because my answer is based on that, and
11 I -- and because before I can make an opinion on
12 that, obviously I would have to know. And that's
13 why it's very -- quite explicitly asked, how did
14 the pathologist obtain that information? If they
15 were the attending pathologist and they actually
16 physically picked up Mr. Stonechild's wrists and
17 measured items on his wrist with a ruler, that's
18 one particular item. But if you presented these
19 photographs to a pathologist and he's looking at
20 them and, you know, and he says, well, it appears
21 might be back of a bone, everything, that is
22 totally subjective and it's not based on any fact;
23 it's not based on any scientific fact. So that's
24 why it's very, very important that I would know
25 before I come up with the question [sic].

1 If I knew that the pathologist
2 actually took a physical ruler and measured these
3 dimensions, I'd say, yeah, you could have a valid
4 point. But if he's just looking at a photograph
5 and basing it, you know, well, gee, it looks like
6 the bone is back in here, or this looks pretty
7 high to be, it's totally subjective, it's not
8 based on fact. So I really can't comment on it.

9 Q So you discount their evidence because they didn't
10 use photogrammetry, but your photogrammetry gives
11 a plus or minus half a millimetre?

12 A I would discount any evidence that anybody would
13 present, looking at a photograph perspectively,
14 and looking at it and rotating it by their eye and
15 saying that's the measurement. You would have to
16 do some type of physical science to tell me what
17 that measurement is. I mean somebody could look
18 at that and say that's 25 millimetres, you know.

19 Q But you also discounted Dr. Adolph's evidence,
20 even though he did the actual measurement?

21 A Well, I didn't read that report and I'd be
22 interested in looking and comparing the actual
23 area that he did measure, yeah, and that would be
24 valid.

25 Q Now, you also said, sir, did you not, that all of

1 your measurements depended upon other
2 measurements; for example the measurements that
3 Mr. Bullock did of the operating table -- or of
4 the autopsy table?

5 MR. HALYK: Mr. Commissioner, I don't know if
6 my friend realizes that the witness never answered
7 his question about the imprints being made by an
8 item of clothing. I just wanted to give him an
9 opportunity.

10 MR. ROSSMANN: Well, I got the impression he did
11 answer it in the negative, that he couldn't tell,
12 or wouldn't say.

13 THE COMMISSIONER: Is that so?

14 THE WITNESS: Yes.

15 Q MR. ROSSMANN: Yeah. You can't say it wasn't
16 caused by clothing? Or perhaps let's straighten
17 that out.

18 A Well, yeah, because let's go back to what was on
19 the record yesterday.

20 Q Can you exclude that possibility?

21 A Well, you would have to look at mathematically,
22 statistically what would be the odds of a sleeve
23 matching in those five specific areas that would
24 have those dimensions. So something could -- you
25 know, you can say anything, but statistically you

1 would have to look at that. And again I'm not
2 qualified, you know, to give somebody an odd, it's
3 at a million to one, or a hundred thousand to one,
4 I can't do that. All I can say is that here's the
5 dimensions, this is what the handcuff was, this is
6 the dimensions on Mr. Stonechild's wrist.
7 Anything else, I -- I can't. I placed an opinion
8 on a report, but that was just my opinion at that
9 particular time to the police officers.

10 Q The --

11 THE COMMISSIONER: Excuse me.

12 Q MR. ROSSMANN: The last area I want to --

13 THE COMMISSIONER: Excuse me, Mr. Rossmann. Excuse
14 me.

15 MR. ROSSMANN: I'm sorry.

16 THE COMMISSIONER: I appreciate that you're trying
17 always to be precise, and drawing to our attention
18 the qualifiers that apply, but indulge us for a
19 moment, please. What is your sense, just globally
20 speaking, as to whether those marks would be
21 caused by clothing, without going through all the
22 qualifiers and the precise sort of conditions you
23 might attach to it?

24 THE WITNESS: I think it would be very difficult,
25 Your Honour, because if you look at even previous

1 cases that I worked on, and there were several
2 cases that were quite graphical. There wasn't --
3 there was some where we actually were, you know,
4 looking at, for an example a victim was dragged
5 into a grave site, and we have imprints of the
6 clothing, and imprint marks. And in the *Mouser*
7 case, one of the prime arguments were that --

8 THE COMMISSIONER: But now -- but now you're pointing
9 to give me some background.

10 THE WITNESS: Oh, no, but what I'm just looking
11 at is -- what I'm just referring to is the --

12 THE COMMISSIONER: I'd gather you're saying that it
13 would be a remote possibility.

14 THE WITNESS: It would be very remote in my
15 opinion.

16 THE COMMISSIONER: Thank you. I promise I won't
17 distract you from your qualifiers. Go ahead, Mr.
18 Rossmann.

19 Q MR. ROSSMANN: That's based upon your examination
20 of the photographs, and again you discount the
21 evidence of the pathologist who saw the marks?

22 A I have no idea what the -- I haven't looked at the
23 pathologist's report, no.

24 Q Now, the measurements that you gave for Mr.
25 Stonechild's nose, again for the top mark I think

1 was 2.28 millimetres, and the bottom mark was 2.37
2 millimetres, plus or minus?

3 A Yes.

4 Q And the handcuffs you had, the double strands were
5 2 millimetres wide each, correct?

6 A Yes.

7 Q And you concluded in order to rationalize the
8 principle of individualization that that made
9 sense, because the wounds necessarily have to be
10 wider than the object that caused the wound,
11 correct?

12 A Yes.

13 Q But we now know from Mr. Hesje's questioning, and
14 some other questioning, that the handcuffs that
15 these officers may have had may have been -- had
16 strands of two and a half millimetres?

17 A Yes, actually that's -- I was actually quite
18 surprised to hear that because, I mean, it doesn't
19 really bode well. I mean, if you look at my
20 overall dimensions that I obtained prior to
21 looking at the handcuff was 9.3, they give me a
22 handcuff that was, overall dimension is an 8, and
23 someone comes back and says, no, no, the width was
24 actually 9 millimetres across. So you can even
25 put the inferences, you know, you know just by

- 1 what I'm saying is what the --
- 2 Q But you're the one, sir, that on the marks on the
3 nose said that they're 2.28 and 2.37, and that
4 makes sense because the strands were 2
5 millimetres, so if the strands are 2 millimetres
6 -- 2.5 millimetres in fact --
- 7 A No --
- 8 Q -- then they've made marks on the nose that are
9 less than the width of the implement, so --
- 10 A Well, you can --
- 11 Q -- your theory of individualization doesn't work
12 then when your rationalization of the difference?
- 13 A Well, you can infer basically that's what I'm
14 using as a comparison between the print, but
15 subsequently, by introducing that different
16 dimension, it's actually -- well, just take it
17 from there. I mean, it actually puts the
18 dimensions closer to what we're measuring, so I
19 don't know if you want to really go there. I mean
20 --
- 21 Q Page 3 of your report, "The dimension attributes
22 for the skin will be larger than the physical
23 objects, as in this case." So when we go to the
24 marks on the nose, it doesn't work --
- 25 A No, it --

- 1 Q -- if the handcuff strands are 2.5 millimetres,
2 does it?
- 3 A Well, no, because what you're doing is that the
4 strands that the Saskatoon Services are using,
5 from my understanding, is 4 millimetres wide
6 between the strands, and I'm coming up with 3.6.
- 7 Q No, I'm talking about the actual strand, the two
8 marks on the handcuffs are not --
- 9 A They're 2.5.
- 10 Q They're 2.5.
- 11 A And I measured 2.4, and then what you were arguing
12 before --
- 13 Q You measured 2.28, sir.
- 14 A -- were 2.2, plus or minus .5.
- 15 Q You measured 2.28.
- 16 A See like -- yeah, I know, but you opened it when
17 you said that the measurements are plus or minus a
18 half a millimetre, and I'm saying that I measured,
19 what I actually measured was 2.28 and 2.4. Now
20 you're coming back and saying, no, no, the
21 handcuff strands were two and a half millimetres,
22 so that's putting it closer. And then you have to
23 look at the plus or minus half millimetre
24 accuracies were placed on the photo, it doesn't --
- 25 Q What's 2.28 minus half a millimetre?

- 1 A I'm sorry?
- 2 Q What's 2.28 minus half a millimetre?
- 3 A But what way -- and for the record again, what I
4 explained to you is, half a millimetre, if you say
5 half a millimetre it doesn't mean that every
6 measurement that you're making on that image is
7 going to be within half a millimetre. It would
8 vary, on your RMS. I mean this is, you know,
9 basic, you know, measurement metrology.
- 10 THE COMMISSIONER: But are you saying, Mr. Robertson,
11 that if there's evidence forthcoming that the
12 handcuffs were wider, or larger if I may put it
13 that way, which is what's being suggested to you
14 now, that is even more consistent with what you
15 observed and what you recorded; is that what
16 you're saying?
- 17 THE WITNESS: Yeah, well --
- 18 Q MR. ROSSMANN: On the nose?
- 19 A No, the overall, on the wrist. Like, that's why I
20 was quite surprised, because when I --
- 21 Q What about on the nose, sir?
- 22 A Well, the nose, okay, the strand -- the handcuff
23 model 500N13308 from Peerless that was sent to us,
24 the strands were 2 millimetres apart, 4
25 millimetres, I believe, in the middle, or four and

1 a half, whatever, I believe to a -- it had an
2 overall dimension of 8 millimetres. Then, just
3 prior to coming to the inquiry they pointed out to
4 me that, oh, no, this was incorrect; the handcuffs
5 were actually four and a half millimetres on the
6 strands, with an overall dimension of 9
7 millimetres, and we're saying the overall handcuff
8 was 8, our indentation is 9.3; now you're saying
9 that the handcuffs are 9 and our measurements were
10 9.3.

11 Q No, I'm not saying that, sir.

12 A So it's actually closer to our measurements than
13 what we had before, that's why I was surprised.

14 Q I'm saying, sir, that you measured the marks on
15 the nose at 2.28 millimetres. You said in your
16 report that makes sense because a 2.28 millimetre
17 mark can only be made by something smaller. But
18 if that strand is actually 2.5 millimetres, then
19 your logic doesn't work, sir, does it, on the
20 marks on the nose?

21 A No, because if you're looking at the plus or
22 minus, if you take in the difference -- if you
23 look --

24 Q Sir, it seems to me you're using the plus and
25 minus when you like it, but not when you don't.

1 A Well, no, because you introduced it, you see. I
2 didn't introduce it, so you're the one that
3 introduced it.

4 Q It's in your report, sir.

5 A Well, yeah, and I gave you the overall, but since
6 you keep bringing it up, that's why I'm -- I'm
7 going to keep addressing it because --

8 Q M'hm.

9 A -- if I look at the centre portion between the two
10 strands, and you're saying --

11 Q Look at the strands, sir, that's the question;
12 look at the strands.

13 A No, you brought it up. We have three dimensions
14 on the nose. We have the two strands, we have the
15 centre portion. The centre portion is 4
16 millimetres, okay. And our report says it's 4.67,
17 so that measurement is larger because we have more
18 of a view of it. Where the centre on those other
19 strands are quite small, we're coming up with 2.4,
20 and you're saying the handcuffs are 2.5, okay.
21 And we all argue here that we're on the edge that
22 we could have taken this. It could have been 100
23 microns here, could have been 100 microns there on
24 the edge. But actually if you look at it, that
25 previous, or this new introduction of this

- 1 handcuff actually fits this other data even more
2 accurate, so I --
- 3 Q So -- so if I understand what you just said,
4 you're saying that the mark between the nose --
5 sorry, the distance between the marks on the nose
6 was 4.67 millimetres?
- 7 A That was in the report.
- 8 Q Right.
- 9 A Or --
- 10 Q I believe it was.
- 11 A Yes, 4.67, yeah.
- 12 Q But the actual distance between the strands is 4
13 millimetres?
- 14 A Yeah.
- 15 Q Shouldn't that match?
- 16 A At .67 of a millimetre? I'm just going by with
17 what we measured. I --
- 18 Q What's the percentage of error on that?
- 19 A Well, you have an area of swelling as well. You
20 have the skin bulging, the swelling. I can't --
21 we're not changing our dimensions to match, you
22 know, a handcuff. What we're doing is what the
23 dimensions I'm reporting are actual physical
24 dimensions --
- 25 Q M'hm.

- 1 A -- that we measured. So if it's 4.67, the
2 handcuff is 4, or it's 2.8 or 2.4 and the actual
3 handcuff is 2.5, it's getting pretty close.
4 Especially in the overall dimension. See, the
5 overall dimension of the double strand on the
6 wrist, we reported at 9.3, and the physical
7 handcuff --
- 8 Q Stick with the nose.
- 9 A But you see what is happening is all the key
10 identifiers -- see, the key identifiers we're
11 looking at were on the wrist; for one reason we'd
12 kind of be overlooking the wrist area. The wrist
13 area is 9.3 --
- 14 Q But did you not also --
- 15 A -- the Services' handcuffs are 9.
- 16 Q But did you not also testify that the margin of
17 error on the wrist was larger?
- 18 A Yeah.
- 19 Q It's 1.0 millimetre there, I think you said?
- 20 A Right, but again -- I mean what you're looking at
21 is the RMS value and those, they are all
22 inconsistent on those particular areas, and that
23 would be the worst case. So you have to --
- 24 Q No, what I'm looking at, sir, is your unequivocal
25 statement that the marks are necessarily wider

1 than the object that caused them, and you still
2 haven't explained to me how a 2.5 millimetre
3 handcuff could make a 2.28 millimetre mark if
4 that's your evidence, and I think it is from your
5 report, and it's unequivocal?

6 A Right, and that point --

7 Q Indeed, that's how you -- that's how you
8 rationalized the difference.

9 A But you see --

10 Q That's how you rationalized how the principle of
11 individuality was met, because some of the
12 measurements didn't match; you said, well, the
13 wounds are always bigger than the object that
14 caused them.

15 A No, because you opened the door --

16 Q That's what it says.

17 A You opened the door when you --

18 Q "The dimension attributes for the skin will be
19 larger than the physical objects, as in this
20 case."

21 A No, but you see you opened the door. What
22 happened here is, you mentioned earlier that the
23 .5 of a millimetre, okay. Now, because what
24 you're doing is that you're looking at the worst
25 case on one side, but yet on another particular

- 1 area you -- you want to overlook it. If I look at
2 2.28, and I add .5 on that, it could be plus .5.
3 That would put that dimension to be 2.8, which is
4 larger than the 2.5.
- 5 Q And what if it's minus .5?
- 6 A Then that's it, you see.
- 7 Q Then it doesn't fit at all.
- 8 A Right, but you seem to want to overlook that. I
9 mean, I just want to have it on the record --
- 10 Q No, I didn't want to overlook it; it's the first
11 time I've been able to get you to address it.
- 12 A No, I -- no, because it actually bodes the other
13 way.
- 14 Q That measurement, half a -- minus half a
15 millimetre, you said plus or minus .5 to 1.0
16 millimetre, and at minus .5 that mark is less than
17 2 millimetres wide --
- 18 A Right.
- 19 Q -- and the strand is two and a half.
- 20 A But what we're doing is, you're keyholing on that
21 one dimension, 2.8, but you're not even looking at
22 the centre portion. You see, when I mentioned
23 earlier, I keep mentioning this, is that RMS is an
24 overall value. Just like I said if we asked 20
25 people to measure, you got 20 different answers.

1 Worst case RMS would be .5. Those are consistent.
2 So if you look at the one in the middle is 4.67,
3 one's 2.28, one's 2.4, yeah, then you start seeing
4 -- well, the centre point would be more
5 consistent.

6 Q Isn't it a fact --

7 A So you have to be careful on your argument there.

8 Q Isn't it a fact that, at best, what you have here
9 is a range of measurements that you've
10 extrapolated from somebody sticking dots on a
11 picture to computer programs, to measurements of a
12 room, and in all of those human aspects there's
13 possibilities of error, and at the very least it's
14 plus or minus .5 to 1.0 millimetre; so the best
15 you can do, sir, is it not, is to provide a range,
16 and at some parts of the range your evidence fits,
17 and at some parts of the range it doesn't; isn't
18 that fair?

19 A Yes, the worst case would be .5.

20 Q Thank you.

21 A That areas would be higher, yes.

22 MR. ROSSMANN: Thank you.

23 **MR. WORME, examining:**

24 Q First of all, Mr. Robertson, my name is Donald
25 Worme. I represent the Stonechild family. And I

1 guess first of all we want to thank you for the
2 efforts that you've put in here, for your
3 analysis, and for the work that you're providing
4 to this Commission. Just incidentally, you were
5 asked yesterday about criminalistics. It's a word
6 that you had raised, and I had occasion to examine
7 the Oxford English Dictionary which gives a basic
8 definition as "the application of physical
9 sciences to the detection of crime." Would you
10 agree with that?

11 A Yes.

12 Q Yeah, sorry.

13 A Well, I was going to say my ideas on, you know,
14 forensics in general could be -- you know, 'cause
15 I was asked once if I could identify what
16 forensics is, and I said, well, gee, there's no
17 discipline, you know, in photogrammetry that's
18 actually called forensic photogrammetry. So I --
19 I immediately say I can't answer that. The
20 newspapers the next day said, "Forensic expert
21 doesn't know what forensics is." So I'm a little
22 leery when, you know, answering any questions
23 regarding criminalistics or forensics.

24 Q All right, fair enough. And I just wanted to
25 raise that with you because I think you were

1 suggesting that you had referred to a book on
2 criminalistics --

3 A Yes.

4 Q -- which I gathered from the context of your
5 answer it had to do with the physical application
6 of science to the detection of crime, which I
7 understand to be kind of a general explanation of
8 forensics, although forensics related more
9 particularly towards courtroom evidence?

10 A Yes. Yeah.

11 Q Okay. I've put in front of you a copy of what has
12 been marked in these proceedings as P-27, and that
13 is Dr. Adolph's autopsy report. It has been
14 raised with you on a number of occasions, sir.
15 And I want to draw your attention in particular to
16 the third paragraph on the second page, and it
17 reads essentially that "There are two parallel
18 superficial abrasions across the midpoint of the
19 nose, directed obliquely downward to the right.
20 the upper was 2 centimetres, the lower was 2.5
21 centimetres in length, and they were separated by
22 a bridge of skin 2.6 centimetres in width." Do
23 you follow me there?

24 A Yes.

25 Q You see where that's written?

1 A Yes.

2 Q And from your examination, sir, of the autopsy
3 photographs and the application of photogrammetry
4 --

5 MR. ROSSMANN: (Inaudible) about that.

6 THE COMMISSIONER: That was corrected, I thought;
7 isn't that so?

8 MR. ROSSMANN: Yes.

9 THE COMMISSIONER: I had thought that that dimension
10 was corrected, but --

11 MR. ROSSMANN: It was corrected in Dr. Adolph's
12 testimony where he said it was .6.

13 THE COMMISSIONER: Right.

14 MR. HESJE: With respect, I don't think that's
15 what he said. I'll read it in. He said, "I can't
16 tell, obviously that's a mistake."

17 THE COMMISSIONER: All right.

18 MR. HESJE: It was in -- I was intending to
19 deal with it. It was in Mr. Rossmann's
20 examination, and let's not speculate on it. Mr.
21 Rossmann asked --

22 MR. ROSSMANN: At page 1259.

23 MR. HESJE: Let me read from what your exam --
24 Mr. Rossmann: "Doctor, I don't have Dr. Adolph's
25 report in a hard form, but I think you have a

1 copy. It's my understanding and my recollection
2 that in his report he provides a measurement of
3 the length of the two cuts to the nose." Answer:
4 "The two abrasions on the nose." Question:
5 "Sorry, I'm using the term very loosely. Please
6 don't read anything into it." Answer: "You're
7 right. And I apologize when I was guesstimating
8 earlier. I had forgotten that -- just to quote,
9 if I might, Mr. Commissioner, it mentions the
10 upper, the longer of the two --" "It wouldn't be
11 upper --" Answer: "Oh --" Question: "- would
12 it?" "Well, I'm quoting directly from his report
13 --" "Okay." Answer: "-- but it's -- when -- now
14 that I look at it, it doesn't seem to jibe with
15 the photographs, so I'll read directly. The upper
16 was 2.0 centimetres, which in language everyone
17 understands, is about three-quarters of an inch,
18 which is, I think, what I said. And the lower it
19 says 2.5 centimetres, which is one inch. I have
20 to apologize, that doesn't seem to fit with the
21 photograph. But, again, Dr. Adolph was there, I
22 was not." And that's Mr. Rossmann, so that was a
23 question. Now that was Dr. Adolph. I'm sorry,
24 this is Dr. Dowling.

25 MR. ROSSMANN:

Mr. Commissioner if you look at

1 page 1966. It's where Mr. Hesje questioned Dr.
2 Adolph in-chief and it says, "You go on to say --
3 that is two centimetres and two and a half
4 centimetres in length, and then you say they're
5 separated by a bridge of skin of 2.6 centimetres.
6 Does that strike you as correct, that that's 2.6
7 centimetres?" Answer: "No, it doesn't strike me.
8 After reviewing these photographs I would say more
9 like .6, in other words, they were closer together
10 than they were long." "So that may be a
11 typographical error there?" "Yes, I think it is."

12 MR. HESJE: Mr. Commissioner, I accept that. I
13 was mistaken, I thought that was Adolph's
14 testimony. The portion I was reading, Dowling
15 does go on to say that they can't tell from the
16 reports what the measurements are, but I --

17 THE COMMISSIONER: That's a different matter though.

18 MR. HESJE: And I had understood that to be
19 Adolph's testimony.

20 Q MR. WORME: I guess the point simply is, Mr.
21 Robertson, those measurements cannot possibly be
22 right?

23 A Not the dimension, or the width of the imprint on
24 the bridge, no, it would be impossible.

25 Q Right. And as my friend Mr. Rossmann has just

- 1 pointed out, Dr. Adolph, examining the photographs
2 some 13 years later, after having the opportunity
3 to examine the body, makes some correction to his
4 initial assessment; that's, I think, what my
5 friend Mr. Rossmann has just pointed out for us.
6 Now, you took an exact measurement, as I
7 understood, through the use of the science that
8 you have employed, photogrammetry, and you found
9 quite a different measurement?
- 10 A Yes.
- 11 Q Yeah, okay. The report goes on to indicate that
12 there were abrasions on the border of each kneecap
13 approximately 1.5 by 1.0 centimetre; you see where
14 that's indicated in that Exhibit P-27, in Dr.
15 Adolph's report?
- 16 A Yes. Yeah.
- 17 Q Did you have occasion to examine those at all, or
18 indeed were you asked to examine those abrasions?
- 19 A Actually I don't even know if there's an image of
20 -- of the kneecap.
- 21 Q Unfortunately there are not, but we'll come to
22 that in a moment.
- 23 A Okay.
- 24 Q It goes on to say that there are circular
25 abrasions on the left side of the chest on -- one

1 at the iliac crest, one in line with the anterior
2 axillary fold at the nipple level, and each of
3 these is 1.0 centimetre in diameter; did you have
4 occasion, sir, to examine those, or were you asked
5 to do the same?

6 A No, but I'm -- I'm a little confused here. Are
7 you looking at what the -- the folds on the skin
8 on the chest area or --

9 Q No, I'm just looking at Dr. Adolph's report which
10 is marked as P-27, and he's indicated that those
11 are items that he has examined, and he has made
12 comment on. And I'm simply asking you whether or
13 not, in the course of your photogrammetric
14 examination, whether or not you were asked to look
15 at those particular abrasions, and in the instance
16 of the circular abrasions on the left side of the
17 chest whether or not you were asked to look at
18 those?

19 A No, I was never asked to look at anything like
20 that.

21 Q Thank you. And I gather as well, sir, that you
22 aren't aware -- and this is reported at task 605
23 in the materials that have been provided to all
24 counsel -- that in an interview with Constable
25 Mayrs, March 9th of 2000, Dr. Adolph had

1 commented on the fact that there was a small flat
2 stone in the one shoe that this boy was wearing,
3 and he made a comment on that in order to indicate
4 the thoroughness of his report, and yet he didn't
5 mention the facial injury on the right side of the
6 face of the victim in photograph 41. I wonder,
7 Mr. Stack, if we can just have a look at
8 photograph 41. You can see that particular injury
9 now; it's displayed up on the big screen. It's on
10 the left side of the screen. Sort of a yellowish
11 colouring by this view.

12 A You mean on the bridge of the nose or -- oh.

13 Q On the left side of the cheek.

14 A I'm just --

15 Q That would appear to be an obvious injury, and yet
16 Dr. Adolph, in his examination, and in his autopsy
17 report did not comment on that at all. It's
18 unusual, that's all I'm getting at.

19 A Yeah, I -- yeah, in some aspects some wounds are
20 overlooked during autopsy, that's the only thing I
21 can explain.

22 Q Sure. People miss things. People make errors.
23 We're fallible, correct?

24 A I can relate to the other instance here in
25 Saskatoon where a wound was overlooked for twenty

1 some years in -- at autopsy as far as I'm -- and
2 that's where we opened up to do that bite mark,
3 so, yeah, you know, things could be overlooked,
4 yes.

5 Q Thank you. And it's already been raised with you
6 and I just want to reiterate that, I believe it
7 was Dr. Fern who advised us that there was no
8 anatomical cause of death, and Dr. Adolph who
9 testified that there was no trauma to the body
10 sufficient to cause death. And you'll probably
11 agree that those marks, regardless of how they
12 look and appear, they're probably not sufficient
13 to cause death, and I'm not suggesting that you're
14 in any way, shape or form qualified to comment on
15 that, other than from a common sense perspective?

16 THE COMMISSIONER: No, you're not. And really, Mr.
17 Worme, I appreciate your point.

18 MR. WORME: Thank you. Thank you, My Lord.

19 THE COMMISSIONER: That's something obviously that
20 I'll be hearing about in argument, I'm sure.

21 MR. WORME: I'll move along.

22 Q I believe the suggestion was made to you by my
23 friend Mr. Plaxton that the handcuffs could not,
24 on the concave side of it, that is on the inside
25 rounded edge, make those marks; I believe you

1 would agree with that? That is, without causing
2 other damage, perhaps to the side of the face. I
3 believe you had some qualifications on that, i.e.
4 crushed cartilage or some --

5 A Yeah, that one of the areas I -- but, again, it
6 was an opinion that --

7 Q And it's more likely -- if we could look, Mr.
8 Stack, at Mr. Robertson's figure 2. And as I look
9 at this particular photograph, Mr. Robertson, I
10 would -- it seems to me that that is the bottom
11 round, is it -- I'm not sure how to explain this,
12 but would the part that would appear to be
13 superimposed against the wound, would that be the
14 bottom rounded edge of the handcuff?

15 A Good question. To be honest with you, I'm not too
16 sure, because again it was more the illustrative,
17 you know, to show how the -- you know, the
18 dimensions matched.

19 Q Thank you. If we can look at figure 3. Thank
20 you, Mr. Stack. I believe it was suggested to
21 you, Mr. Robertson, that given that particular
22 image the cuffs could not go around the wrist. I
23 think that was the suggestion. I believe you had
24 some explanation for that?

25 A Oh, what you're is there was a slight void, I

1 think one on the corner. With permission I'll
2 pull up and maybe I can look. Can I overwrite
3 that one there with another -- with another image?
4 Okay. I think what -- I believe what the question
5 was, is that you have showing these strands or
6 areas of what we're calling strands here, and I
7 think what he was talking about there was an area
8 right in here that strand mark wasn't shown. I
9 think that's -- I believe what his -- what his
10 comment was. And -- and, of course, my response
11 to that was that it would -- it would vary on the
12 shape of the wrist. If you looked at the model
13 image you'll see it quite pronounced, is that it
14 shows strands on the left, it shows strands on the
15 right, and there's an area on the top of her wrist
16 that there is no prints. So it's based on one
17 shape of the wrist and how the handcuffs -- so by
18 not having a perfectly 100 and, you know, 80
19 degree or 360 degree going across on -- on the
20 strand has no way to say that it wasn't a
21 handcuff.

22 Q All right. But I think the suggestion as well,
23 Mr. Robertson, may have been that given the
24 location of "B" and "B" on the handcuff being if I
25 can call that the knuckle of the handcuff --

1 A Yes.

2 Q -- that -- and the location of your "E" that it
3 would be impossible for the handcuff to go all the
4 way around the wrist. I think that was the
5 suggestion that was made?

6 A Yes, because if you look at "E", "E" is quite
7 prominent even on the models that we showed, so
8 obviously it was a signature showing that the
9 handcuffs did go completely around the subject.

10 Q All right. And again, I'm not sure whether you're
11 qualified to answer this, but would it assist in
12 terms of that handcuff going around the wrist if
13 the thumb were collapsed in?

14 A I'm -- I'm not too sure.

15 Q All right. Thank you. Now, I don't have Mr.
16 Plaxton's enormous mathematical abilities, so I'm
17 going to try to reduce this into something I've
18 seen on TV the other night. I was watching David
19 Caruso on Crime Scene Investigations and there was
20 apparently a fingerprint that was located on a
21 round bottle, and I believe it was a tequila
22 bottle or something, and -- and through the what
23 they had called photogrammetry -- which I found to
24 be rather coincidental -- that they took that
25 fingerprint and flattened it out so that they

1 could compare it against the database of all the
2 fingerprints that would be in I guess two
3 dimension?

4 A Right.

5 Q And I believe you've given us some explanation of
6 that and I'm not going to try to -- try to re-
7 explain it, but I believe you've -- you've used
8 triangulation and convergent views on that --

9 A Yeah, for example --

10 Q -- in explaining that?

11 A Well, like if you looked at the -- the -- like the
12 other case here in Saskatoon with Gail Miller,
13 actually like that was quite a difficult process.
14 I mean, if you compare the two in difficulties,
15 that was quite difficult. But what you need to do
16 is you're taking an image, and you even go in
17 Adobe Photoshop or whatever these other commercial
18 packages and rotate an image and flatten it, but
19 what you're doing is actually changing the shape
20 when you're doing that. So mathematically what we
21 need to do is mathematically create that surface,
22 and as it's being rectified and, of course,
23 there's a term differential rectification, as
24 we're rectifying it, we have to ensure that the
25 scale is not altered in any way, because what you

1 could do is stretch something and make something
2 appear bigger or -- and whatever. So it was
3 actually a quite difficult process, very time-
4 consuming doing that, and that's what we did in --
5 in the -- on the Gail Miller case.

6 Q Okay. And when Dr. Dowling told us that in
7 looking at a similar -- or that particular
8 photograph that's up on the screen now that it
9 appeared to him -- and I stand to be corrected on
10 this -- that that handcuff appeared to be fairly
11 high on the wrist to the extent that one might
12 readily slip out of it. And I believe you've
13 explained that to us, that that is not necessarily
14 an accurate image given the angle of the
15 photograph?

16 A That's correct. Like, you can't look at a
17 photograph and determine a position from that
18 photograph.

19 Q You've also indicated to us, and I believe Mr.
20 Rossmann has taken you through this, that the
21 margin of error in your measurements being .5 to
22 1.0 millimetre as a margin of error?

23 A Yes.

24 Q And -- and I believe the suggestion was is that's
25 a rather minuscule margin of error given the

1 overall measurements?

2 A Of the nose area or -- yeah, I -- you know, like
3 considering everything, you know, 12-year-old
4 photographs and, you know, because film is not as
5 accurate as digital devices, things like that,
6 yes, 1.0 millimetre to .5 in those scales are more
7 than generous.

8 Q All right. And I gather that that margin of error
9 would have been reduced had you been supplied with
10 further photographs?

11 A Oh, yes. Oh, yes, we, in -- you know, in
12 something like this if you were trained to do
13 photogrammetric photography, we could obtain
14 measurements in the realm of about .1, you know, a
15 millimetre, 100 microns type range.

16 Q And I guess it would surprise you to know that we
17 have information that there had been many more
18 autopsy photographs taken but it would appear that
19 given the absence of certain consecutively
20 numbered negatives that they're simply not
21 available, and therefore your margin of error is
22 such that it is?

23 MR. ROSSMANN: Mr. Commissioner, I don't think
24 there's any evidence of that at this point.

25 THE COMMISSIONER: It's not something he can comment

1 on, anyway.

2 MR. WORME: I didn't --

3 THE COMMISSIONER: He's given -- he's given the
4 answer, Mr. Worme, that if he had had more
5 photographs they might have been helpful, and I
6 think that's as much as he can say.

7 MR. WORME: Yeah. Well, my only point, My
8 Lord, is that I think we had also had evidence
9 that there would be something coming down the road
10 that somebody or other had different handcuffs
11 than what they had. I didn't hear that evidence
12 yet but, I mean, that's -- yeah, it's the same
13 thing is all I'm getting at.

14 THE COMMISSIONER: Well, I think he's answered the
15 question.

16 MR. WORME: Thank you. Those are all my
17 questions.

18 THE COMMISSIONER: I expect there will be other cross-
19 examination, will there? Mr. Watson is nodding
20 his head enthusiastically. So we'll take our
21 break now then.

22 (PROCEEDINGS ADJOURNED AT 11:06 A.M. & RECONVENED AT 11:23
23 A.M.)

24 THE COMMISSIONER: Mr. Watson?

25 MR. WATSON, examining:

1 Q Thank you, Mr. Commissioner. Mr. Robertson, my
2 name is Jay Watson. I just have a few questions
3 for you. If we could have number 41, Mr. Stack,
4 please? Mr. Robertson, as I understand it, much
5 of the work that is done to come up with a
6 measurement is done by the computer programs. Is
7 that correct?

8 A In most -- yes, in most cases. If we're
9 extracting information from singular photographs
10 then we -- we do some hand calculations, you know,
11 based on the -- what I've explained earlier, known
12 scale versus focal length, things like that.

13 Q But the -- the points that you chose to start and
14 finish the measurements from, those are picked by
15 yourself; is that correct?

16 A Yes.

17 Q The computer program doesn't pick where to start
18 the measurement, where to end the measurement?

19 A Yeah, actually. It depends on what mode because
20 the software enables us to do edge and line
21 determination which was shown earlier on the slide
22 where we --

23 Q On the corner of the --

24 A Corner tables.

25 Q -- table.

- 1 A Yeah, yeah, because it does edge and corner and,
2 you know, so if it's really difficult to see
3 especially rounded objects, because you could
4 read, you know, as you can imagine on a rounded
5 curve in one videotape I could read it here and
6 then from another viewpoint I could read it and,
7 of course, that would create huge errors, so
8 that's why we have algorithms to do that.
- 9 Q Now, specifically with respect to the measurements
10 of the abrasions on Mr. Stonechild's face, the
11 points there were chosen by yourself, not by a
12 computer; is that correct?
- 13 A That's correct. They were -- they were measured
14 by -- by just by an observation.
- 15 Q All right. So and as I understand it, you only --
16 you took one measurement approximately here?
- 17 A Yes.
- 18 Q Okay. And you took one up here?
- 19 A Yes.
- 20 Q One down here?
- 21 A Yes.
- 22 Q And did you take one here as well?
- 23 A No.
- 24 Q All right.
- 25 A And then in the middle.

- 1 Q And --
- 2 A Two in the middle there.
- 3 Q Sorry?
- 4 A Two in the middle.
- 5 Q You took one on the top, one on the bottom?
- 6 A Right, and then obviously I had to -- I had to
- 7 measure the space in between, yes.
- 8 Q Right. And you chose the points where the
- 9 abrasions started and where the abrasion ended?
- 10 A Yes.
- 11 Q On all of those measurements?
- 12 A See there was -- there's -- there's two sets of,
- 13 you know, three photos that we're measuring. Are
- 14 you talking on this photograph here or --
- 15 Q Well, to measure the abrasion, let's take this top
- 16 one here that you measured -- you picked some
- 17 point to measure the width of that abrasion,
- 18 correct?
- 19 A Right.
- 20 Q Okay.
- 21 A I'm selecting what I assume to be the edge of --
- 22 of the wound or the imprint, yes.
- 23 Q Right. And you chose those, the starting point
- 24 and the ending point?
- 25 A Yes.

1 Q And you chose where along the abrasion to measure;
2 correct?

3 A You're asking me if I measured along?

4 Q No, sorry. You chose which point. This abrasion
5 has some length to it?

6 A Right. I explained earlier, it was explained
7 yesterday when I was -- I believe what I was
8 looking at was I said that I wanted to extract the
9 measurement on the -- on the very peak of the nose
10 and there was several reasons why I'm doing that.
11 Because of the -- if you're looking at a curved
12 surface, remember I was mentioning earlier I could
13 set up the scale and measure something but if I'm
14 taking points along that scale surface it would,
15 you know, your scale or your measurement is going
16 to be offset, so what I specifically did was used
17 the three-dimensional analysis and come back on
18 the flat, so the dimensions that I'm taking, I'm
19 not taking one point in here. It's hard for the
20 record to describe but I'm pointing at various
21 places on the nose, but if I'm taking one on the
22 very bridge of my nose, I'm taking one on the
23 side, of course, that's going to have a slightly
24 different measurement. So what I wanted to do was
25 took that little narrow portion of the nose to

1 make sure it was on the same plane.

2 Q Right.

3 A And that's why I didn't do --- like I was asked I
4 think yesterday and also this morning why didn't I
5 do some of these other points on the nose and
6 that's the primary reason. I only did the one to,
7 you know, on that ---

8 Q Right.

9 A --- centre portion.

10 Q Now, as I understand it, the margin for error that
11 you spoke of is the margin for error that's
12 systemic with respect to the computer programs and
13 the ability to look at these photographs and the
14 points that you picked; correct?

15 A Right.

16 Q Now, is there also some error involved when you
17 chose -- when you actually plot these points?
18 Because I do -- I take it you do that by hand.

19 A Yeah. You could be, you know, edge to edge, you
20 could -- yeah, I mean, you could be 100 microns
21 either way. You know, it just depends. Now what
22 we're not doing and I should emphasize is that
23 what I'm not doing is I'm not measuring it off a
24 ruler for an example. We're inside a computer
25 program and --

- 1 Q Correct.
- 2 A -- actually looking at the pixels.
- 3 Q Right. When you press -- I assume you press a
4 mouse button and then a point is determined and --
5 and that's the part -- point the computer measures
6 from.
- 7 A Right, and it's so -- yeah, it's so blown up it's
8 just -- it's all pixelated. I mean, you're
9 actually just looking at that very, you know, line
10 in a pixel so, yeah, you could be one pixel over
11 or one, you know, pixel on either side, yeah.
- 12 Q All right. And now when you say that -- I thought
13 the words you used were that 6 millimetres was
14 impossible for this -- for the measurement of the
15 gap between the two abrasions.
- 16 A No.
- 17 Q Or did I get that wrong?
- 18 A No, I think you got it wrong. It was 2.6
19 centimetres which is an inch.
- 20 Q Oh, okay. So about .6 is possible you're saying.
- 21 A No, our measurement is showing 4.67 so you could
22 say 5 --
- 23 Q No, I -- I appreciate that.
- 24 A -- 5 millimetres. Yeah, I'd say 5, yeah.
- 25 Q Okay. But you'll agree with me that you only

1 measured in one space or you only measured one
2 spot across the bridge, correct?

3 A Right, but you see here's, you know, again we're
4 going back into the sort of the science and
5 technology of it. Like, if I asked you -- okay
6 let's for an example for the record I'm going to
7 hold up this report for an example, and I'm
8 measuring something flat, okay, and if I'm taking
9 the dimension off this and I'm going to -- I'm
10 pointing from corner to corner on the flat top
11 surface -- I'm going to get a distance, and in
12 this case it could be -- I'm sure this is an 8-and
13 -a-half-by-11 piece of paper. For the record if I
14 say oh, I take to the top left corner of the paper
15 and now I want to measure a point along this
16 paper, but rather than measuring to the very top
17 of the right-hand side, I'm measuring something
18 slightly below, then the dimension that I'm going
19 to be taking from that corner to that corner is
20 going to be larger.

21 Q Right.

22 A So using that criteria you could get 5, you could
23 get 6, you could get 7, you could get 8
24 millimetres.

25 Q Well, I understand that but if --

1 A But --

2 Q -- I'm talking about a person who's actually there

3 and has --

4 A But you see like this is where you run into a --

5 Q Well, let me finish the question, okay?

6 A Okay.

7 Q Now, in that example you're giving a piece of

8 paper. If I want to measure between those two

9 spaces and I'm there, I don't have a perspective

10 problem, I can lay my ruler right up against the

11 two points and I'm going to get a measurement;

12 correct?

13 A But how do you know that you're over on the two

14 points? You see, this is where the question is.

15 What you're doing is you're taking -- see, again,

16 this is what you don't want to do. One of the

17 things you don't want to do is take a -- you know,

18 I always joke about taking a ruler and a picture

19 and try to, you know, to measure it because what

20 happens is you don't know. I mean, you could be

21 on this corner, you could be on this corner and

22 you could be this corner. I mean, it's very

23 subjective. You could have three, four or five

24 different readings. And when you're eye-balling

25 it you don't know if you're exactly perpendicular

1 point.

2 Q Well, sir, if I've got a flat edge and I lay that
3 paper down on the desk and I take my ruler and
4 butt it up against that piece of paper, there's no
5 perspective problem?

6 A Okay.

7 Q There may be a measurement problem when I line up
8 the edge of the paper with a zero mark, there's
9 going to be some error there.

10 A Right but, you see, you could -- one way that you
11 could overcome this, and one of this could be
12 addressed in say cross-examination to the person
13 who actually, physically measured it. In the
14 field you could measure it if I had a square which
15 is an A and O series forensic ruler and it was
16 square. So if I took that and I measured it along
17 the wound in here and then I took the measurement
18 on that and made sure I was perpendicular, then
19 extracted the measurement, and then you would say
20 well, okay, this is how I did it. But if I just
21 took it and I measured it, then you're basically
22 all an assumption of where it went. So that could
23 be argumentative. But getting back to your first
24 question when you said it could be six, it very
25 well could be based on where you would be reading

1 along that curve.

2 Q Yes.

3 A So the -- so that answer is yes.

4 Q All right. So when you say it was impossible,
5 it's not impossible. It could be that the actual
6 gap, if you had a micrometer and -- or you were
7 there personally, could do some further testing,
8 it may well be that, for instance, there the gap
9 is 6 millimetres. You can't say that it isn't,
10 correct?

11 A But, you see, okay, I can say that as exactly you
12 -- you can measure any distance that you want but
13 you could not -- you could say that that distance
14 is 6 millimetres but you couldn't say and match it
15 to an object because you're taking it -- it's just
16 like then I could say to you that I -- I took the
17 -- the handcuffs, so I could pull the handcuffs up
18 and rather than taking a measure directly across,
19 I have the ruler going across in here and I say I
20 measured the width of the strands to be 6
21 millimetres. You see? You have to -- like I say,
22 you can -- you can measure -- I mean, I can go
23 from the top to the bottom and measure across and
24 get 8 -- 8 millimetres, but you have to put it in
25 context that you want it perpendicular on that

1 point, okay, to be able to assume. So that's what
2 all our measurements are from. So our measure-
3 ments are not based on, you know, points laterally
4 across the wound. It's taken perpendicular.

5 Q Well, I understand that, but there's all -- this
6 plane is -- I'm assuming Mr. Stonechild's nose was
7 curved like everybody else's and you can -- I
8 agree with you, there's a -- there's plane there
9 you could take, there's a plane there you could
10 take, there's a plane -- there's a whole bunch of
11 planes you could take there.

12 A Sure, yeah. And -- and all those dimensions would
13 be different. It could be, you know, it could be
14 5, 6, 7, 8, 9 millimetres. Well, I wouldn't say 9
15 but, I mean, you can get the idea that it would
16 vary.

17 Q And you could have measured those other spaces but
18 you didn't.

19 A Yeah, because it's -- yeah, there's some work
20 involved. I mean we have to assume -- like I
21 said, our measurements are on that plane, so.

22 Q All right. Now, the same would be true for the
23 pictures of the -- of the hand as well, correct?
24 You picked the point -- the pixels or the -- you
25 pressed the mouse button to say this is where the

1 mark starts and this is where the mark finishes,
2 correct, and the computer program comes up with a
3 measurement once everything is set up?

4 A Yes.

5 Q All right. Now, the working disk that you gave
6 us, does that have all of your work with respect
7 to this case on it? In other words, if we were to
8 give that to another photogrammetrist and they
9 took a look at it, they -- they would have
10 everything they need to do to reproduce your work?

11 A It should have, yes.

12 Q Now, you have in front of you the autopsy
13 pictures. I -- we don't need to put this one up
14 on the screen. If I can just have you take a look
15 at number 37, it may be the one that's on top of
16 the stack there. Do you have 37?

17 A Okay. Yes.

18 Q Did you try to do any high-resolution analysis of
19 that photograph, looking for marks on the hands or
20 wrist?

21 A On his hands or his wrist?

22 Q Yes.

23 A No.

24 Q And the reason for that was?

25 A Well, we weren't using that. We were just using

1 that for a measurement.

2 Q No, I just wondered, is there a reason why you
3 didn't use that photograph to take a look at
4 potential marks?

5 A No.

6 Q There's no reason?

7 A I mean we -- the only -- no, the only thing that
8 we used this photograph was to extract some
9 positional points.

10 Q No, I appreciate that's all you did use it for.

11 A Right, no, there was no particular reason. What
12 we wanted to do is because the other views that we
13 -- we have, I don't know, let's look at number 42
14 shows a much closer view of the -- of the hand in
15 question where as this one here it's -- it's
16 angled and from a greater distance. That's --
17 that's -- that's one of the reasons.

18 MR. WATSON: All right. Thank you, sir.

19 THE COMMISSIONER: Any other questions? No? Do you
20 have anything further, Mr. Hesje?

21 MR. HESJE: No, I don't.

22 THE COMMISSIONER: You will be pleased to hear you're
23 excused.

24 THE WITNESS: Yes. Thank you.

25 MR. HESJE: He will likely need a minute there

1 to get his computer.

2 THE COMMISSIONER: Go ahead.

3 MR. HESJE: If we can wait. Mr. Commissioner.

4 The next witness is Keith Jarvis.

5 **KEITH DOUGLAS JARVIS, sworn, testifies:**

6 MR. HESJE: Mr. Jarvis, the rules of practice
7 and procedure established for this inquiry provide
8 that all witnesses must be advised they have the
9 protection of section 37 of *The Saskatchewan*
10 *Evidence Act* and section 5 of the *Canada Evidence*
11 *Act*. These statutory provisions state the
12 testimony that may tend to criminate you, tend to
13 establish liability to a civil proceeding, and
14 which testimony you would not be compelled to
15 provide at common law, shall not be used or
16 admissible in evidence against you in a criminal
17 trial or other criminal proceedings against you,
18 other than the prosecution for perjury in the
19 giving of evidence or for the giving of
20 contradictory evidence, and shall not be used or
21 receivable in evidence against you in any other
22 civil proceeding or any other proceeding under an
23 act of the Legislature of Saskatchewan. You're
24 hereby advised that such protection shall apply
25 without you expressly invoking such protection.
26 Mr. Commissioner, before I commence my

1 questioning, Mr. Stevenson wanted to address the
2 Commission.

3 MR. STEVENSON: Mr. Commissioner, just for -- as a
4 point of interest I want to draw it to the
5 attention of yourself and other counsel that Mr.
6 Jarvis does have a heart condition, he's under
7 medication for it, and I want that to be kept in
8 mind throughout this at -- during the questioning.
9 There was some by Mr. Martell, and there will be
10 evidence of that. He experienced some heart
11 matters that required medical attention after, so
12 I simply want to make the Commissioner aware of
13 that.

14 THE COMMISSIONER: Thank you. Mr. Jarvis, if at any
15 juncture you're feeling unwell, please indicate
16 that and we'll take an adjournment so that you
17 have a chance to rest for a few minutes.

18 THE WITNESS: Thank you, My Lord.

19 THE COMMISSIONER: Okay.

20 **MR. HESJE, examination-in-chief:**

21 Q Mr. Jarvis, you're a former member of the
22 Saskatoon Police Service?

23 A Yes, sir.

24 Q It's my understanding you joined the Saskatoon
25 Police Service in February of 1966?

- 1 A That's correct.
- 2 Q And you retired in August of 1993.
- 3 A That's correct.
- 4 Q During your service with Saskatoon Police Service
5 you worked in a number of sections including
6 General Patrol, Beat District, Car,
7 Communications, Detention, Youth and Plain
8 Clothes; that's correct?
- 9 A That is correct, yes.
- 10 Q And for the period from approximately 1988 until
11 early 1991 you were assigned to the Morality Unit?
- 12 A I'm not sure the exactly dates but that sounds
13 reasonable, yes.
- 14 Q Okay. We can agree that in November of 1990 you
15 were assigned to the Morality Unit.
- 16 A Yes, sir.
- 17 Q Can you tell us what were the responsibilities, or
18 what your responsibilities were as an officer
19 assigned to the Morality Unit?
- 20 A Basically, sir, the Morality Section dealt with
21 all offences against people, it involved liquor
22 licensing laws, prostitution, sudden deaths,
23 suicides, accidental deaths, industrial deaths,
24 harassing phone calls, family disputes, unified
25 family court. It was quite a gamut, actually.

- 1 Q Okay. And who -- at the time you were in the
2 Morality you held the rank of sergeant?
- 3 A Yes, sir.
- 4 Q And who would you have reported to as a sergeant
5 in the Morality Unit?
- 6 A That would have been the duty staff sergeant in
7 charge of Morality which would have been Staff
8 Sergeant Bud Johnson.
- 9 Q And that was in the period November, 1990?
- 10 A Yes, sir.
- 11 Q All right. To the best of your recollection how
12 many members were assigned to the Morality Unit at
13 that time period?
- 14 A To the best of my recollection, sir, I believe
15 there were eight.
- 16 Q And members of the unit, as with other members in
17 1990, worked 12-hour shifts?
- 18 A Yes, sir.
- 19 Q I know at least with the platoons there was four
20 platoons in order to cover every shift. Was that
21 similar with the members of the Morality Unit?
- 22 A Yes, sir.
- 23 Q So there would, on any given shift then, there
24 would only be, what, two or three members?
- 25 A Depending on earned days off, vacations, sick.

- 1 There could possibly be four people working.
- 2 There would be an overlap.
- 3 Q Okay.
- 4 A Like the day shift and the evening shift crossing
- 5 paths momentarily.
- 6 Q Now, in that time period November, 1990 there was
- 7 also a Morality Unit in the Saskatoon Police
- 8 Service?
- 9 A Yes, sir, that's where I was working.
- 10 Q I'm sorry. I was going to say it's been a long
- 11 day but I can't even blame it on that. It's been
- 12 a short day. There was also a Major Crime Unit.
- 13 A Major Crimes or Detectives, yes. I don't think it
- 14 was actually called Major Crimes specifically
- 15 around that time. Major Crimes did become named
- 16 at some point --
- 17 Q Okay.
- 18 A -- shortly thereafter possibly.
- 19 Q But there were some officers or detectives that
- 20 were assigned to deal with Major Crimes.
- 21 A Yes, sir.
- 22 Q And one of the -- now, one of the responsibilities
- 23 of Morality was sudden deaths?
- 24 A That is correct, sir, yes.
- 25 Q And what was treated as a sudden death in your

- 1 experience?
- 2 A My understanding of it, sir, was any non-
- 3 suspicious death outside of a hospital.
- 4 Q And what -- and I'm just talking in general terms
- 5 now. If there were suspicious circumstances
- 6 surrounding a death would it -- would a file
- 7 remain with Morality or would it go to one of the
- 8 Major Crime detectives?
- 9 A You would expect it would go to the Major Crimes
- 10 or Detective Division.
- 11 Q That was the general -- your understanding the
- 12 general practice at that time?
- 13 A I think the general rule of thumb, sir, from even
- 14 when I started on the police station was that any
- 15 death required that a detective sergeant or
- 16 detective staff sergeant or morality sergeant
- 17 attend at the scene, a determination was made
- 18 whether or not the death was suspicious or non-
- 19 suspicious. If it was deemed suspicious, usually
- 20 the detectives took over the -- the file.
- 21 Q Now, I should have asked with respect the 12-hour
- 22 shifts, did the officers in Morality then, as with
- 23 other officers, work on a four-day rotation?
- 24 A Yes, sir.
- 25 Q So it would be four days on, four days off?

1 A That's correct.

2 Q Now, you were the sergeant assigned to the
3 Stonechild investigation?

4 A Yes, sir.

5 Q And you have seen a copy of your notebook from
6 that period of time?

7 A Yes, sir, I have a copy right in front of me here.
8 Yeah, I have a copy.

9 Q Can you tell us what period of time that notebook
10 covers?

11 A It's marked on the very front of the photocopy I
12 have, sir, from July 17th, 1990 until December the
13 7th, 1990.

14 MR. HESJE: Mr. Commissioner, I'd like to have
15 a copy of those notes marked as an exhibit.

16 THE COMMISSIONER: Is it P-106?

17 MR. HESJE: Sorry, it was 106?

18 THE COMMISSIONER: Correct.

19 **EXHIBIT P-106: COPY OF NOTES OF KEITH JARVIS FOR THE PERIOD**
20 **JULY 17, 1990 TO DECEMBER 7, 1990**

21 THE WITNESS: A copy of the report? Yeah, I've
22 got -- this is what I got from you.

23 Q Yeah. This is what's been marked. You may want
24 to refer to it. I'm sure it's the same, but.
25 Now, Mr. Jarvis, I've also placed in front of you

1 Exhibit P-61 that has been marked at this inquiry
2 and there's evidence that suggests -- or to
3 indicate that that's a photocopy of various
4 reports and statements from the Saskatoon Police
5 Service files. Now, you've had an opportunity to
6 review that file as well?

7 A Yes, sir.

8 Q Now, let's start then with your notebook. Can you
9 turn to the entries for November 29th, 1990?

10 A Yes, sir.

11 Q You have that?

12 A Yes, sir.

13 Q First of all, at the top under the date you've
14 indicated, it looks like evenings?

15 A That's correct, sir.

16 Q And you started reported at 1500 which would be
17 3:00 p.m.?

18 A Yes, sir.

19 Q So that would have been the start of your shift on
20 that, November 29th?

21 A That's correct, sir.

22 Q It says Morality, which is the unit you were
23 assigned to at the time.

24 A Yes.

25 Q Then there's -- it says -- I believe it's an

- 1 abbreviation for inspector?
- 2 A That is correct, sir.
- 3 Q And who was the inspector?
- 4 A The inspector was Inspector Schultz. He was the
5 duty officer in Patrol Division for the department
6 on that particular evening.
- 7 Q All right. And then at -- I believe there's an
8 abbreviation for staff sergeant?
- 9 A That is correct, sir.
- 10 Q And who was the staff sergeant?
- 11 A Staff Sergeant Johnson.
- 12 Q What is the next entry?
- 13 A The next entry, sir, is the car, car 53 that I was
14 using that particular day followed by radio number
15 332, and the next entry would be pager, which I
16 didn't have, there weren't any available, and then
17 the weather conditions on that particular day.
- 18 Q Okay. As an officer assigned to plainclothes at
19 that time, I take it car 53 was an unmarked car?
- 20 A That is correct, sir.
- 21 Q And it's my understanding that they did not have
22 radios in them?
- 23 A They did not have the -- if you're referring to
24 the mobile data terminals, no.
- 25 Q Oh, I'm sorry.

- 1 A We carried portable radios.
- 2 Q And when you put radio 332, that's a portable
3 radio?
- 4 A That is, yes, that's correct.
- 5 Q Okay. You've also got a notation a little further
6 down that says, "Off duty 0300." That would have
7 been 3:00 a.m., I guess, on November 30th you
8 finished your shift.
- 9 A That is correct, sir.
- 10 Q All right. Now, what is it -- can you read what
11 it says there under occurrences?
- 12 A Yes, sir. That's simply indicating, "Check new
13 files for immediate follow-up."
- 14 Q Okay. I also note just above that, I take it
15 that's your signature?
- 16 A Yes, sir.
- 17 Q And the 125 is your badge number?
- 18 A That's correct.
- 19 Q All right. Now, there then is an entry, it starts
20 at 1710 but I take it that's unrelated to the
21 Stonechild matter?
- 22 A That is correct, sir.
- 23 Q Then if we turn on the right-hand column there's
24 the words, "File concluded," and I take it that's
25 in reference to that unrelated matter?

- 1 A That is correct.
- 2 Q And then we have a name that appears there,
3 Lucille Neetz, and what does it say following
4 that?
- 5 A "Lucille Neetz, a friend." It shows, "Person of
6 deceased, Confederation Drive." It was a notation
7 that I had obtained from I guess it would be P-61
8 from information that was received from the Ident
9 officers and left in their reports.
- 10 Q Okay. But now below that you've got an entry, a
11 time entry of 1920 which would be 7:20?
- 12 A That is correct, sir.
- 13 Q There's no entry on the reference there to Lucille
14 Neetz in terms of time?
- 15 A No, sir.
- 16 Q But I take it from the chronology of your notes,
17 it would have been prior to 1920?
- 18 A Yes, sir.
- 19 Q Now, you -- you do have P-61 in front of you and I
20 guess this is one of the things I want to ask you
21 about is what time -- let me step back. Did you
22 recall what was the first information you received
23 after you were assigned to the Stonechild
24 investigation?
- 25 A When I looked at P-61, sir, and I reviewed my --

1 refreshed my memory from it and my notes, the
2 report was not received by me until after 1920.

3 Q Right.

4 A If I recall correctly, I believe I had a
5 conversation or it was brought to my attention
6 that this file was coming through, that the
7 deceased had been located and we were waiting for
8 the file to be typed up.

9 Q Okay. And typically how was it assigned to you?
10 Would that have been done verbally by the staff
11 sergeant or --

12 A No, sir, the -- the file would be typed up in
13 Central Records, it would go through the staff
14 sergeant reader who would peruse the file, make
15 sure that it made sense, then be sent onto the
16 appropriate division, be it Morality or
17 Detectives. It would go to the morality staff
18 sergeant who would, in turn, look at the file,
19 decide who should investigate it, who was
20 available to investigate it. It would be assigned
21 to a member of the Morality Section. The file
22 itself would also be entered into a log book that
23 was maintained by the morality staff sergeant. A
24 control copy of that file would also be maintained
25 or kept by the staff sergeant in charge and filed

- 1 in his filing cabinet. The file would also be
2 diary dated in his log.
- 3 Q All right. But now dealing with this matter, and
4 as you've said you've had an opportunity to review
5 P-61, the first report in there is the report from
6 Constable Lagimodiere.
- 7 A Yes, sir.
- 8 Q Did you know Constable Lagimodiere?
- 9 A Yes, sir.
- 10 Q And you would agree, based on the report at least,
11 that he was the first officer in attendance at the
12 scene?
- 13 A Yes, sir.
- 14 Q As I read it in the first page his report was
15 typed at 1745 on the 29th; is that correct? I'm
16 sorry, 1945.
- 17 A Yes, that would be a notation made by a steno in
18 Central Records.
- 19 Q But that's what it's indicating, is it not? It's
20 -- above it, it says, "Typed by," and there's
21 initials and a time.
- 22 A That is correct.
- 23 Q Okay. So when you make the entries at 1920 in
24 your notebook you -- you don't have this report
25 yet.

- 1 A No.
- 2 Q So what would you be making those notes based on?
- 3 A As I just previously stated, sir, it would be
4 information that I had received from the
5 Identification Section that this report was coming
6 through and where they had been in regards to the
7 file.
- 8 Q But that would have been verbal information then.
- 9 A It was verbal information, sir.
- 10 Q All right. And having reviewed your notes and P-
11 61, is there any indication of where the name
12 Lucille Neetz came from?
- 13 A I believe that came after I had reviewed the --
14 part of the file. I'm not sure, sir.
- 15 Q Then it would be out of order in time on your
16 notebook, would it not?
- 17 A Yes.
- 18 Q And was that your practice, to go back and fill
19 things into your notebook out of sequence?
- 20 A No, sir.
- 21 Q Now, there's a number of phone numbers shown there
22 by the entry for Lucille Neetz. Do you have any
23 recollection of what those phone numbers are?
- 24 A Initially I did not, sir. I could not recall
25 where the phone numbers came from. However, when

- 1 I read through the file I believe they showed up
2 in a report that was left by Ident. Sergeant
3 Morton who was the identification officer that
4 attended at the scene.
- 5 Q Okay. And -- right, and that's on page three of
6 Sergeant Morton's report?
- 7 A That's correct, sir.
- 8 Q And that indicated that there was some piece of
9 paper in the deceased's pocket that had those
10 phone numbers on it.
- 11 A Yes, sir, that was in the report.
- 12 Q Okay. But again, that -- the Morton report was
13 not -- if you look at it, can you tell me what --
14 when it was received? On page 3 there's an entry
15 it says, "Report received at 2055."
- 16 A That's correct, sir.
- 17 Q So now, did you attend the scene where the body
18 was located?
- 19 A No, sir.
- 20 Q Was that unusual on a sudden --
- 21 A No, sir.
- 22 Q Sorry?
- 23 A No, sir, I wasn't working. I hadn't reported for
24 duty yet.
- 25 Q Sorry, let -- let me rephrase the question though

- 1 because we'll come to that. But in general terms,
2 would you -- would it be normal for the morality
3 sergeant to attend the scene of a sudden death?
- 4 A That was the normal procedure, sir, providing
5 there was a morality sergeant or a detective
6 sergeant available to attend.
- 7 Q Right. And I do understand your point. In
8 fairness, you came to work at 3:00 p.m. that day,
9 the body had been found some couple hours at least
10 before that.
- 11 A That's correct.
- 12 Q Now under -- at 1920 then, you have notes there.
13 Perhaps you could just read the notes that you've
14 entered at 1920.
- 15 A "The deceased, possibly Neil Stonechild, NFA,"
16 being no fixed address. "17 years, 73-8-24," which
17 would be the date of birth. "Unlawfully at large,
18 Kilburn Hall as of the 90-11-14," which would be
19 the 14th of November of 1990. "Body located in
20 field behind 57th Street East, Hitachi plant.
21 Body frozen solid. No apparent signs of foul
22 play. Missing running shoe from right foot.
23 Appears he had fallen in small ditch, pulled
24 himself onto level area where he was found."
- 25 Q Okay. And your best recollection is, or surmise

- 1 is that that's information that the Ident people
2 would have provided you.
- 3 A That I got from the Ident and/or the initial
4 report left by Constable Lagimodiere.
- 5 Q Yes, except I think we're in agree that that
6 report wasn't typed until after that time.
- 7 A That's correct, sir.
- 8 Q Now, the next notation you have on the 29th is
9 2010 which would be 8:10 p.m.?
- 10 A That's correct, sir.
- 11 Q Which indicates that you attended the morgue at
12 St. Paul's Hospital?
- 13 A Yes, sir.
- 14 Q And what does it say below that?
- 15 A "Sergeant Morton 44 ID -"
- 16 Q No, I'm sorry, above -- oh, after St. Paul's
17 Hospital I can't quite read that. It says re:
18 something.
- 19 A "Re: print the deceased."
- 20 Q Okay. And from that note I take it you attended
21 the St. Paul's Hospital with Sergeant Morton?
- 22 A Yes, sir.
- 23 Q For the purpose of obtaining fingerprints.
- 24 A That is correct.
- 25 Q Was any inspection made of the body at that point

- 1 in time?
- 2 A By me, sir?
- 3 Q Yes.
- 4 A No.
- 5 Q By Sergeant Morton?
- 6 A Not to my knowledge, sir. I believe he was there
7 just strictly for the purpose of obtaining a
8 fingerprint.
- 9 Q Okay. Now, as officer assigned, was there some
10 reason why you would not have looked at the body?
- 11 A No, sir. But the deceased had already been
12 checked by a coroner, by the identification
13 officer, by officers attending the scene. I have
14 no expertise in -- in any medical background
15 whatsoever.
- 16 Q Okay. And you say it had already been checked by
17 these people, how were you aware of that?
- 18 A It had been observed at the scene, sir.
- 19 Q You then, below that it states, "Neil Stonechild,"
20 and a birth date again, "73-8-24." Does that --
21 any reason or explanation as to why you wrote the
22 name and birth date in again?
- 23 A The reason for that, sir, is identity had been, I
24 believe, confirmed by Officer Morton.
- 25 Q Okay. Now, I want to stop for a moment now to ask

- 1 you the -- it's now been confirmed that you had a
2 17 year old youth that was the deceased, you had a
3 name; correct?
- 4 A That is correct.
- 5 Q You didn't attend the scene, but I presume you
6 knew where the body had been found?
- 7 A I was aware of the general area, yes, sir.
- 8 Q Okay. What -- and you've been assigned it
9 investigate?
- 10 A Yes, sir.
- 11 Q What is the purpose of your investigation at this
12 point in time? What are you, as investigating
13 officer, what are you going to try and establish?
- 14 A At this point in time, sir, you're trying to
15 determine first of all who the deceased is.
- 16 Q Right.
- 17 A Once you've achieved that there's a matter of
18 notifying next of kin and trying to determine who,
19 if anyone, may have last had contact with the
20 deceased prior to him being found, and trying to
21 narrow the time down as to when he was last seen
22 alive and by whom.
- 23 Q Anything else?
- 24 A And gather any other information that you can
25 along the way as to how he may have come to be

1 where he was or what the cause of death was.

2 Q Okay. Now, carrying on, then, with your notes,
3 you have an address there, it says, "338 Montreal
4 Avenue North" and then "NFA". Any recollection of
5 what that is?

6 A I believe, sir, that that would have come from his
7 local record within the Saskatoon Police Service
8 and the address of Montreal Avenue North, if you
9 note there's an arrow indicating a date just below
10 that --

11 Q Right.

12 A -- that would be 27-10-90. So as of October the
13 27th, that was the last address we had at 338
14 Montreal Avenue North.

15 Q Okay.

16 A And at the current time, this date, which was
17 November the 29th, he was at no fixed address to
18 our -- to my understanding.

19 Q Right. Now there's some -- some numbers below
20 that. Can you tell me what that is?

21 A The one number is FPS 250314C. That would have
22 been his fingerprint classification number
23 obtained from the identification records.

24 Q Okay.

25 A The other number SPD 40312 would have been his

- 1 local record with the Saskatoon Police Service.
- 2 Q Okay. Would that -- we've had some evidence about
3 a person hardcopy. Are you familiar with that
4 term?
- 5 A I'm sorry, sir?
- 6 Q There's been some evidence presented about a
7 document in use by the Saskatoon Police Service
8 known as a person hardcopy. Are you familiar with
9 that term?
- 10 A No, I have -- I don't recollect that, sir.
- 11 Q Okay. Now there's a name, it looks like a nurse
12 or nursing administrator below that?
- 13 A That's correct, sir, Ann Korchinski.
- 14 Q Yeah, and can you read -- again, I have some
15 trouble making out your writing. It says, "Open
16 morgue," and?
- 17 A Yes, "Ann Korchinski, nursing administrator,
18 opened morgue and secured."
- 19 Q Okay.
- 20 A In other words, she opened the morgue for when
21 Officer Morton and I attended and when the
22 fingerprints had been obtained she then secured
23 the morgue.
- 24 Q Okay. Your next entry then is at 2040. It
25 indicates, "Contacted Dr. Fern."

- 1 A That is correct, sir.
- 2 Q And the note indicates you contacted Dr. Fern to
3 advise of the identity of the deceased?
- 4 A Yes.
- 5 Q You then have below that entry for mother of
6 deceased and the name Stella Stonechild, and three
7 different addresses there. Do you have any idea
8 what source that information was?
- 9 A I believe that came from the deceased's local
10 record with the police service, sir.
- 11 Q Okay. Then at 2130 it indicates, "Notified Velma
12 Blackey at 2405 Richardson," and there's a phone
13 number. What was the source of that information?
- 14 A Again, from his local records, sir. I believe it
15 was a contact person for -- as a juvenile, if you
16 will, you have various contact people --
- 17 Q Okay.
- 18 A -- that they may give at any time.
- 19 Q And did you contact Velma Blackey?
- 20 A Yes, I did, sir. I had no specific address for
21 Mrs. Stonechild at the time, I had three
22 variables. I had a definite address for Mrs.
23 Blackey and as a result that's the address that I
24 went to first, and informed her of the passing of
25 her nephew and she provided me with the current

- 1 address for Mrs. Stonechild.
- 2 Q And it appears a phone number as well.
- 3 A Yes, sir.
- 4 Q So then at 2145 you've got an entry, "Stella
5 Stonechild, mother of deceased, and brother Marcel
6 advised?" Am I reading that correct?
- 7 A "Marcel notified," yes, sir.
- 8 Q Oh, notified. I'm sorry. So that indicates that
9 -- can you tell from your note whether you phoned
10 or whether you attended in person for that?
- 11 A No. I would have attended in person, sir. I
12 don't deliver death notices by phone.
- 13 Q Okay. And then it says -- actually again, maybe
14 it's best you read it. It starts with, "Mother,"
15 I believe.
- 16 A Yes, sir. This was after having notified Mrs.
17 Stonechild. Marcel, I believe, is the individual
18 that answered the door to the residence to begin
19 with and I asked if Stella was home. He allowed
20 me in, I informed her of the passing of her son.
21 At that time I also asked her, knowing full well
22 how difficult it was, but I needed to ask her a
23 couple of questions if she felt up to it, and that
24 was to determine when she last saw her son and
25 with whom he may have been with. And she

1 indicated to me that she had last seen her son on
2 November the 24th, 1990 at approximately 2100
3 hours or 9:00 p.m. and at that time that he was in
4 the company of one Jason Roy and going to see
5 Eddie Rushton.

6 Q All right. Then you have another entry at 2230.
7 Can you explain what took place at 2230 based on
8 your notes?

9 A Yes, sir. As a result of the contact with Mrs.
10 Stonechild, she also informed me that her son was
11 in open custody in a community group home located
12 in Sutherland on 109th Street. It was a community
13 group home run by Pat Pickard, and as a result of
14 that I went to that residence to notify them that
15 he had been located, and I believe it was at
16 approximately 10:00 p.m. -- let me back up for a
17 second. 10:30 was -- in the evening was when I
18 attended at that residence.

19 Q At the Pickard residence.

20 A At the Pickard residence, that's correct, sir.

21 Q Did you know Pat Pickard?

22 A No, I did not.

23 Q All right. And you've -- you apparently received
24 some information from Pat Pickard?

25 A Yes. She informed me that she had last seen Mr.

1 Stonechild on or about November the 24th at
2 approximately 10:00 p.m. or she had -- had contact
3 with him, I should say, and he indicated at that
4 time that he was wanting to turn himself in,
5 however he needed time to think. When questioned
6 about his clothing that he was wearing she
7 indicated and confirmed the clothing that he was
8 wearing as being his except for the jacket that
9 has "Boys Town" written on it. She indicated to
10 me that that was not his jacket. Mrs. Pickard
11 also provided me with other possible associates
12 names and/or contacts that Mr. Stonechild may have
13 been with, those names being Eddie Rushton, Jason
14 Roy, Shawn Draper, Dennis McCallum, Shannon
15 Nowaselski, and those names were marked in my
16 book. And due to the late hour at that time, sir,
17 no further interviews were conducted, no further
18 residences were visited. In fact, I believe I
19 went to -- back to the station and compiled my
20 investigation report directly from my notes.

21 Q All right. Now, your investigation report, if you
22 have P-61 in front of you, which as I indicated
23 before it consists of a number of reports, but
24 there is an investigation report indicating it's
25 by yourself or submitted by yourself. It says

1 time of report 2400 which I take it would be
2 midnight.

3 A That is correct, sir.

4 Q So that's after attending at the Pickard
5 residence, then it appears you returned to the
6 station and at midnight you prepared your report.
7 Was it your practice to dictate these reports?

8 A On occasion, sir. Most of the time it was.
9 However, depending on, some reports if I wanted to
10 have the report back on my desk in a very short
11 order I would type it up myself, and that's what I
12 did in this instance, I typed up my own report.

13 Q Now, and the report, I must observe, mirrors quite
14 closely your notes. I take it that was the
15 practice, you went back and based on your notes
16 you typed up the report.

17 A Definitely, sir. The notes were taken at the time
18 and the report is a direct reflection of what is
19 in the notes.

20 Q Right. Now, turn to page three of the report. At
21 the top of that page you make -- you state in your
22 report, "Further follow up is required by day
23 shift in order that the persons mentioned can be
24 interviewed as soon as possible to determine what
25 information they can give regarding their

1 activities over the past seven days." You were on
2 the -- the shift from 3:00 p.m. to 3:00 a.m. was
3 considered the night shift?

4 A Yes, sir, night shift, evening shift.

5 Q Now, what did you mean when further follow up is
6 required by day -- by the day shift?

7 A Basically, sir, there were -- there were five
8 names of potential people who had possible
9 information that may be of value to this file as
10 to when the deceased was last seen or who had had
11 contact with the deceased at some point. My
12 objective there was to get that information as
13 quickly as possible and get it attached to the
14 file so we could determine when, in fact, he was
15 last seen alive and by whom.

16 Q And based on your experience, how was that
17 supposed to happen?

18 A Again, sir, the report that I left in P-61 would
19 have gone through the staff sergeant reader, he
20 would have gone through the report, read it,
21 ensured that it made sense, directed it to the
22 appropriate section being Morality Section, where
23 I worked. It would have gone to my staff sergeant
24 in Morality who would again read through the
25 report along with all other reports that he

1 received that day, and make a decision at that
2 point whether or not he was going to pass it on to
3 -- or not necessarily pass the file on but have
4 other members assist in going out and trying to
5 locate these people.

6 Q So that was the staff sergeant's decision.

7 A Yes, sir.

8 Q When you made a statement like that in a report,
9 was it your expectation that somebody else would
10 pick it up the next morning?

11 A It was a hope that that would happen, that
12 somebody would -- would do something. It wasn't
13 guaranteed that that would happen. It would all
14 depend on manpower availabilities.

15 Q And I take it from that comment that it wasn't
16 uncommon that nothing would happen, that it would
17 be back on your desk when you returned the next
18 day.

19 A That's correct. Yes, sir.

20 Q And indeed that appears what happened in this
21 case.

22 A Yes, sir.

23 Q Now, you go on in that report to say, "Any
24 information which may narrow the time of death
25 should be passed on to the coroner, Dr. Fern." I

- 1 take it what you're -- when you talk about
2 information which may narrow the time of death,
3 you're not talking about medical information.
- 4 A No, sir.
- 5 Q You're talking about information as to who had
6 last seen the deceased or when he was last seen?
- 7 A That is correct, sir.
- 8 Q And that, again, was part of the purpose of your
9 investigation.
- 10 A Yes, sir.
- 11 Q And finally it states that in reference to Dr.
12 Fern that he apparently advised you that an
13 autopsy would likely not be performed until
14 December 2nd, 1990 after the body was thawed out?
- 15 A That is correct, sir.
- 16 Q I didn't see that in your notes. Did I miss it?
- 17 A Those exact words aren't in my notes, sir, but I
18 believe where I indicated I had contacted Dr.
19 Fern, notified him of the identity of the
20 deceased --
- 21 Q Right.
- 22 A -- at that time that information would have been
23 received.
- 24 Q Okay. Now, you returned to work the following
25 day, that is Friday, November 30th?

- 1 A That is correct, sir.
- 2 Q And you report again at 1500 hours or 3:00 p.m.
- 3 A Yes, sir.
- 4 Q The same shift that you'd worked the preceding
5 day.
- 6 A Yes, sir.
- 7 Q And again, you show the inspector as Schultz?
- 8 A That is correct.
- 9 Q You show the staff sergeant as Johnson?
- 10 A Yes, sir.
- 11 Q And then you've listed a car number and radio and
12 pager number.
- 13 A Yes, sir.
- 14 Q And again, you indicate that you're off duty at
15 0300 which would be 3:00 a.m., I take it, on -- it
16 would be December 1st, I guess.
- 17 A Yes, sir.
- 18 Q The pause there was trying to remember whether
19 there's 30 days in November or not. I believe
20 there are. And again, you've signed it and have
21 your badge number.
- 22 A Yes.
- 23 Q Now, and again you'll forgive me for a bit of an
24 aside, but this -- how did you come into
25 possession of this notebook that we're -- a copy

1 of which we're reviewing?

2 A It was eventually supplied to me, sir, by members
3 of the RCMP when they were conducting their
4 investigation.

5 Q Okay.

6 A The inquiry.

7 Q And did you maintain your notebooks after you
8 retired from the police station?

9 A What was required, sir, when -- when I joined the
10 service and to my recollection it continued on
11 throughout my term in the service, was that all
12 notebooks belonged to the Saskatoon Police
13 Service. Upon leaving the -- the police service
14 or whether it be through retirement or whatever
15 means, the last ten years of your notebooks were
16 required to be turned in upon leaving the
17 department or leaving the police service. Any
18 other notebooks prior to that if you wanted to
19 keep them for memoirs or if you chose to destroy
20 them, that was your decision to make, but the last
21 ten years, to my recollection, were to be turned
22 in to the police station.

23 Q And did you follow that practice?

24 A Yes, sir.

25 Q So the last ten years of your service you left

- 1 them with the Saskatoon Police Service when you
2 retired.
- 3 A Yes, sir. They were turned into Inspector Wilton.
- 4 Q Wilton?
- 5 A That is correct, sir.
- 6 Q And why Inspector Wilton, was there any reason
7 that he took charge of them?
- 8 A No, sir. I believe he happened to be the duty
9 inspector that was working that -- the day that I
10 left the force.
- 11 Q And have you ever seen any of those notebooks
12 since other than the copy that we're now dealing
13 with?
- 14 A This is the only copy I've seen, sir.
- 15 Q Have you ever requested copies of your notebooks
16 from the Saskatoon Police Service?
- 17 A No, sir. I have never had any need to. I retired
18 in '93 and I moved to B.C.
- 19 Q Okay. Now, going back to the notebook then and --
20 and in particular the entries from November 30th,
21 1990, again you have a reference it looks to be
22 "Occurrences" and it says, "Follow up on the
23 Stonechild death."
- 24 A Yes, sir.
- 25 Q So from your notebooks and your report, can you

- 1 tell us whether anything was done between the time
2 you filed your report at midnight on the 29th and
3 you returned to work on 3:00 p.m. on the 30th?
- 4 A Looking at my notebook, sir, and the report, I
5 would say no. Had anything else been done I would
6 have probably made a notation in my notes.
- 7 Q Right. And the main thing that required to be
8 done when you left the report was to follow up
9 with those witnesses or potential witnesses that
10 you had listed in your notes and in your report.?
- 11 A That was the intention, sir, yes.
- 12 Q Yeah. And from your notes it appears that that's
13 the -- what you've started to do when you returned
14 was to follow up with those witnesses?
- 15 A Yes, sir.
- 16 Q So it certainly doesn't appear that anybody else
17 had done that?
- 18 A No, sir.
- 19 Q Now, your first entry then is at 1550. It says,
20 "Spoke to Shawna [sic] Nowaselski." I'm not sure
21 if I'm pronouncing that correct.
- 22 A Nowaselski, yes.
- 23 Q Yes. And there's an address and a phone number.
- 24 A That is correct, sir.
- 25 Q Would you have contacted her in person or by

- 1 telephone?
- 2 A I'm not sure, sir. I don't -- I don't recall
3 which way that was.
- 4 Q Okay. And then you have -- what did she advise
5 you?
- 6 A She had not seen the deceased for approximately
7 two weeks.
- 8 Q Okay. Then at 1600 it indicates you spoke to
9 Trevor Nowaselski, and again there's both an
10 address and a phone number?
- 11 A That is correct, sir.
- 12 Q And again, do you recall whether you would have
13 spoke to him by telephone or in person?
- 14 A I believe I spoke to him in person, sir.
- 15 Q Okay. And is that indicated in your notes?
- 16 A It's not indicated in my notes that I spoke to him
17 in person. It's indicated that I did make contact
18 with him.
- 19 Q Right. But your belief was that that was personal
20 contact?
- 21 A Yes, sir.
- 22 Q And then he provided you with some information.
23 Can you read what you've recorded?
- 24 A It states, "He saw the deceased on or about
25 November the 26th, 1990 at approximately 1500

1 hours," which would have been 3:00 p.m. in the
2 afternoon. "At that time he was with a friend,"
3 he did not give me the name. "Stated, "Had to
4 catch a bus for someplace," and location was not
5 given.

6 Q Okay. Now, below that you -- you've wrote in a
7 name Petrina Starblanket, and a date of birth.
8 What does that relate to?

9 A If my memory serves me correctly, sir, after
10 reading through the file I believe that name came
11 from a Crime Stoppers tip which is referred to at
12 1642 hours directly below that notation.

13 Q Okay. So, correct, that at 1642 you record in
14 your notebook a Crime Stoppers tip. There's a
15 number 711 below that. Do you know what that
16 would indicate?

17 A If my memory serves me correctly, sir, that would
18 be the number assigned to the Crime Stoppers tip.

19 Q Okay. Can you read then what you recorded there
20 at 1642?

21 A "Crime Stoppers tip number 711, that deceased was
22 taken to area of 57th Street and beaten up by D
23 and GP and left there. The caller apparently got
24 this information from a girlfriend of D or GP.
25 Alleged reason was the deceased was fooling around

1 with P's girl and she wanted the police notified."

2 Q Now, it continues, "Other info," is that still
3 part of the same Crime Stoppers tip?

4 A No, sir. This would be information that I
5 received from Constable Wylie.

6 Q Okay. And is there any time indicated when you
7 received the information from Constable Wylie?

8 A No, sir.

9 Q Would you then continue and read what you've
10 recorded there as to information you received from
11 Constable Wylie?

12 A "Other info is that deceased was a witness with
13 Eddie Rushton at a trial of GP, charge robbery
14 with violence. Rushton never showed up and
15 deceased did not need to testify. Word out that
16 Ps had it in for the deceased. Constable Wylie
17 indicated deceased provided info re charges
18 against Ps in --" and there's occurrence number
19 here, sir, I can barely make it out, but it deals
20 with -- I believe it's 64509-90.

21 Q Yeah. And indeed, if we turn to the report, which
22 we'll come to, but the report that you filed for
23 November 30th, there is an occurrence report on
24 page -- occurrence number on page -- the first
25 page, I believe, about halfway down. Do you see

- 1 that?
- 2 A On the third page?
- 3 Q The first page of the November 30th report that
- 4 you submitted.
- 5 A That's correct, sir.
- 6 Q And indeed, it's occurrence 64509/90. Did you
- 7 look at that occurrence report?
- 8 A No, sir.
- 9 Q What was the purpose in noting the occurrence
- 10 number?
- 11 A It was just a reference that was given to me, sir,
- 12 by Officer Wylie that that was a file that it
- 13 referred to, the robbery file, I believe.
- 14 Q Okay. Would you not have been interested in the
- 15 details of that occurrence in light of the
- 16 information Constable Wylie provided you?
- 17 A No, sir. This was something that had happened
- 18 some time before. It was already before the
- 19 courts.
- 20 Q But I gather what he's indicated to you is that
- 21 there had been some dispute or potential dispute
- 22 between GP and the deceased.
- 23 A That's correct.
- 24 Q And you're saying that wasn't of interest, the
- 25 details of that situation?

1 A At that time it didn't seem to be, I guess, sir.

2 MR. HESJE: Now, that occurrence report has
3 been marked as an exhibit. I've got the number
4 somewhere if you bear with me.

5 THE COMMISSIONER: Is this an appropriate time for us
6 to break?

7 MR. HESJE: Perhaps it is.

8 (PROCEEDINGS ADJOURNED AT 12:29 P.M.& RECONVENED AT 2:01
9 P.M.)

10 **MR. HESJE, continuing:**

11 Q Mr. Jarvis, when we broke we had just -- a point
12 in your notebook where you had referenced some
13 information that you had received from Constable
14 Wylie and an occurrence number. It's a little
15 obscure in your notebook, but we identified from
16 the report, I believe, it was occurrence 64509 of
17 '90.

18 A That's correct, sir.

19 Q Now I have a copy of that occurrence report, which
20 was marked as P-73 in these proceedings. I don't
21 expect you've reviewed that. What I would like to
22 do, though, is draw your attention to one portion
23 of that occurrence report and if you'll page
24 through it with me there's -- there's a number of
25 reports and you -- about midway through that

- 1 you'll see there's some handwritten statements?
- 2 A Yes, sir.
- 3 Q Okay. Now if you flip through those handwritten
4 statements there's a report dated -- that's
5 submitted by Nagy, badge 294?
- 6 A Yes, sir.
- 7 Q And you'll note at the top it says, "This file's
8 been assigned to Sergeant Jarvis, Major Crimes,
9 D Platoon." I take it that would have been you?
- 10 A That's my name, sir, but I was never assigned to
11 Major Crimes, to my knowledge, sir.
- 12 Q Sorry?
- 13 A That's my name, but I was not assigned Major
14 Crimes, to my knowledge, sir.
- 15 Q Now let's go back to your notebook. And I want to
16 refer you to -- or to the entries for August 10th,
17 1990.
- 18 MR. PLAXTON: Can you give us the page on that?
- 19 MR. HESJE: Of his notebook?
- 20 MR. PLAXTON: Yeah.
- 21 MR. HESJE: They're not -- well I don't have
22 the numbers on --
- 23 MR. PLAXTON: There's a number at the bottom.
- 24 MR. HESJE: Well some pages there are, some --
25 it looks like page 11.

- 1 A Yes, sir.
- 2 Q MR. HESJE: You'd agree with me that that's
3 your notes from August 11th -- or August 10th,
4 1990?
- 5 A Yes, sir.
- 6 Q And you've noted in there that same occurrence
7 number, 64509 of 1990?
- 8 A Yes, sir.
- 9 Q And can you read what it says under that entry?
- 10 A "Beige Roadrunner, black fender, door, GP, Ray
11 Lafond, arrest for robbery with violence on Eddie
12 Rushton, 1106 K North."
- 13 Q Okay. Do you agree with me that you must have had
14 some involvement in that occurrence?
- 15 A There's notes in my book, sir. What they relate
16 to I don't know. I have no recollection of it.
- 17 Q All right. But you -- the fact that you put a
18 note in your book would indicate you had some
19 involvement in that matter?
- 20 A There would have had some significance, yes, sir.
- 21 Q I'm not asking you to the extent of that
22 involvement, but you do -- you would acknowledge,
23 based on that occurrence -- or to report that in
24 your notes that you must have had some contact
25 with that event?

- 1 A Yes, sir, otherwise it wouldn't have been in my
2 notes.
- 3 Q Right. Now return then, again, to November 30th
4 in your notebook? Now if -- just immediately
5 below the portion that we discussed where there's
6 -- you recorded some discussion with Constable
7 Wylie there's an entry, I believe it reads, "On
8 November 24th, 1990, 2351 hours."
- 9 A That's correct, sir.
- 10 Q Do you know what that entry relates to?
- 11 A I believe this entry relates to information that I
12 became aware of. I don't recall from where or how
13 I became aware of it. However, it's information
14 regarding the deceased, who was apparently at a
15 party where a complaint was received to Snowberry
16 Downs on 33rd Street West in Saskatoon.
- 17 Q Referring to the document marked P-67, particular
18 page 6 of that document. It's something called a
19 complaint hardcopy. Are you familiar with that
20 form of document?
- 21 A Yes, sir.
- 22 Q Now that document indicates that a complaint was
23 received from a Trent Ewart on November 24th,
24 1990?
- 25 A That's correct, sir.

- 1 Q And it also indicates that officers were
2 dispatched to that complaint at 2351
- 3 A That's correct.
- 4 Q And the officers dispatched were Lawrence Hartwig
5 and Bradley Senger?
- 6 A That's correct.
- 7 Q In that entry, I suggest, on November 24th you
8 make reference to 2351 and then go on to state,
9 "Comp. Trent Ewart." That indicated -- it's an
10 abbreviation for complainant Trent Ewart?
- 11 A Yes, sir.
- 12 Q Would it be fair to say that somehow that dispatch
13 had been brought to your attention at that time?
- 14 A I -- like I said, sir, I don't know when I -- this
15 was brought to my attention, but it would have
16 been obviously around this time, after the Crime
17 Stoppers tip and before the next time entry.
- 18 Q Do you have any explanation on how you would have
19 the reference to that 2351 and the complainant
20 Trent Ewart?
- 21 A Yes, sir. That would have come from the dispatch
22 cards in Communications. I recall going to
23 Communications when I became aware of this
24 information, requesting the dispatch cards for the
25 time in question, which would have been around

- 1 midnight of the 24th.
- 2 Q Okay. And do you recall how you learned that a
3 car had been dispatched?
- 4 A That would have been from the dispatch card, sir.
5 But the --
- 6 Q But --
- 7 A -- complaint I have in my notes in my book, that's
8 what drew my attention to it.
- 9 Q I'm sorry, I'm -- what -- I understand you went to
10 dispatch records. My question really though is
11 what prompted you to go to the dispatch records,
12 what information had you received at that point in
13 time that prompted you to search the dispatch
14 records to see -- in relation to the investigation
15 of Neil Stonechild?
- 16 A That I became aware that a car had been sent to
17 Snowberry Downs, sir, to remove Neil Stonechild
18 for intoxication.
- 19 Q Now I understand that too, but how did you become
20 aware? Can you tell --
- 21 A That I don't know, sir. I don't recall --
- 22 Q All right.
- 23 A -- how I got that information.
- 24 Q Then below that it says -- actually again I think
25 I best ask you to read it. After the -- it says

1 complainant Trent Ewart -- actually just above
2 that it's got an address, 306-3308-33rd Street
3 West, deceased at party." Now below that what
4 does it say?

5 A "Wanted deceased removed due to intoxicated.
6 Constable Hartwig and Senger attended at 2356 and
7 cleared at 0017 hours on November 25th, '90."

8 Q Now I've left Exhibit P-67 in front of you. Is
9 that in fact the times that are indicated in that
10 dispatch record, that they attended at 2356 and
11 cleared at 1700 [sic] hours?

12 A Yes, sir.

13 Q Now there's no time attached to those entries in
14 your book; am I correct?

15 A The -- in reference to --

16 Q This --

17 A -- November 24th?

18 Q Yes, the entry that's -- we just discussed about
19 the November 24th, 1990, 2351 hours?

20 A That's correct, sir.

21 Q If we take your book chronologically, the
22 preceding time recorded was 1642?

23 A That's correct.

24 Q And that was the time you recorded the Crime
25 Stoppers tip?

- 1 A Yes.
- 2 Q And the following time recorded is 1852?
- 3 A That is correct.
- 4 Q Is it safe then to assume that that took place
5 between 1642 and 1852?
- 6 A It would be a reasonable assumption, but I
7 couldn't say specifically, sir.
- 8 Q Okay. But normally you would write things in your
9 notebook chronologically and --
- 10 A Yes.
- 11 Q -- in the sequence that they happened?
- 12 A Yes, sir.
- 13 Q Can you think of any situations when, in fact, you
14 wouldn't do that?
- 15 A Unless some information came at a later time,
16 possibly would put it out of sequence.
- 17 Q But then you would have had to leave space in your
18 book to go back and write it in, I presume?
- 19 A No, they don't leave spaces in notes, sir.
- 20 Q Right.
- 21 A It would have been entered in at -- further on in
22 the notebook, at the time that you received it.
- 23 Q Yeah, but -- but that's my point, that generally
24 everything recorded in your notebook is recorded
25 in the sequence in which you received the

- 1 information?
- 2 A That's correct.
- 3 Q And indeed there is some policy or restriction
4 against leaving blank places in your notebook that
5 you -- so that you could go back later and fill in
6 something?
- 7 A Correct.
- 8 Q And that was not your practice?
- 9 A No, sir.
- 10 Q The next entry there -- it looks like it says,
11 "Constable McLean advised deceased in a fight"?
- 12 A That's correct.
- 13 Q Do you have any recollection of that?
- 14 A No, sir. It obviously had some significance at
15 the time, but --
- 16 Q Yeah.
- 17 A -- I can't --
- 18 Q Did you know a Constable McLean?
- 19 A Yes, sir.
- 20 Q Do you know who that would have been -- like what
21 the first name of the officer was?
- 22 A Bernie.
- 23 Q Okay. Was he a patrolman at that time?
- 24 A I don't know where he was working, sir, at that
25 time.

- 1 Q All right. Now you've got an entry at 1852?
- 2 A Yes, sir.
- 3 Q At 1852 you record, "Jason Roy called, advised he
4 was with deceased" -- maybe you can read the rest
5 of it again?
- 6 A Most of the day and evening of the 24th.
- 7 Q Okay.
- 8 A And that's correct, yeah.
- 9 Q And I take it what you record there is you
10 received a phone call from Jason Roy?
- 11 A Yes, sir.
- 12 Q Was he known to you at the time?
- 13 A No, sir.
- 14 Q Then at 2030, which would be 8:30 p.m. -- and
15 we're still dealing with November 20th, correct?
- 16 A Yes, sir.
- 17 Q You've got a notation, "Meet Roy for statement at
18 1121-P-South"?
- 19 A That is correct, sir.
- 20 Q Now that -- there's an entry after that which is
21 1940 which seems to be out of order. Am I missing
22 something there?
- 23 A Yes, sir.
- 24 Q Can you explain it?
- 25 A What is being missed, sir, is the notation of 2030

- 1 hours was the time that I was going to meet Mr.
2 Roy.
- 3 Q Right. So that isn't the time that you received
4 the call, that's the time you set up to meet with
5 him?
- 6 A Correct.
- 7 Q All right. Then below that you've made a note,
8 "Possible girlfriend, Julie Binning, 3269 Milton
9 Street"?
- 10 A Yes, sir.
- 11 Q And then you've got a note, "Third cousin, Lucille
12 Neetz"?
- 13 A Yes, sir.
- 14 Q And an address and phone number?
- 15 A Yes, sir.
- 16 Q And I guess in both cases you've got birth dates
17 as well?
- 18 A Yes, sir.
- 19 Q Do you know where you received that information,
20 those names and birth dates?
- 21 A I believe the information on Lucille Neetz came as
22 a result of a piece of paper and photograph that
23 was removed from the deceased by Ident officers --
- 24 Q Okay.
- 25 A -- in the original reports.

- 1 Q And what about Julie Binning?
- 2 A I'm not sure where that information came from,
3 sir.
- 4 Q Okay. Then 1940, or 7:40 p.m. you make a -- you
5 have a note, "Spoke to Claudine Neetz at 306-33 --
6 is that 08 -- 33rd Street?
- 7 A Yes, sir.
- 8 Q And maybe just read into the record what you
9 recorded there?
- 10 A "I spoke to Claudine Neetz, 306 3308-33rd Street
11 West. She is common-law of Trent Ewart. States
12 that she was out on the 24-11-90. Ewart was baby-
13 sitting and had friends over, being Lucille Neetz
14 and Gary Horse." And below that is 2200, "Meet
15 Trent Ewart at station re statement."
- 16 Q Okay. Now there's -- maybe I'm missing it, but
17 there's nothing noted there that's significant in
18 terms of Neil Stonechild that I can see or -- she
19 doesn't say anything about Neil Stonechild?
- 20 A Claudine Neetz?
- 21 Q Yes.
- 22 A No, she didn't sir. She wasn't at home that
23 evening.
- 24 Q She wasn't home when?
- 25 A That she was out on November 24th, indicated in

- 1 the notes, sir.
- 2 Q Okay.
- 3 A She was out and Mr. Ewart was babysitting.
- 4 Q All right. And I'm sorry, not intentionally, but
- 5 I may not have been fair here. At that -- you
- 6 were aware that that was the address that the
- 7 dispatch had been to, I take it?
- 8 A Yes, sir.
- 9 Q All right. And presumably that's what you
- 10 contacted her about then, to -- the fact that you
- 11 were -- had information that the police had been
- 12 dispatched to that address, looking for Neil
- 13 Stonechild?
- 14 A Actually, sir, I was attempting to contact Mr.
- 15 Ewart at that point and inadvertently --
- 16 Q I see.
- 17 A -- spoke to Claudine Neetz.
- 18 Q Yeah. And Ewart was identified as the complainant
- 19 on the dispatch record?
- 20 A That's correct, sir.
- 21 Q Okay. So Ewart wasn't there, but it sounds like
- 22 you made an arrangement to meet with him at the
- 23 station?
- 24 A I'm not sure if he was there at that time, sir,
- 25 but, yes, I did make arrangements to meet him at

- 1 10 o'clock at the police station.
- 2 Q Okay. Now again that -- when it says 2200 meet
- 3 Trent Ewart, I take it again that's a reference to
- 4 an appointment time as to --
- 5 A That's correct, sir.
- 6 Q All right. Then 2045, which would be 8:45, it --
- 7 your notes indicate you attended 1121 Avenue P
- 8 South re witness statement from Jason Roy?
- 9 A That is correct, sir.
- 10 Q Okay. And then you make an entry at 2140
- 11 "Statement concluded"?
- 12 A That is correct.
- 13 Q So that is 55 minutes?
- 14 A Yes, sir.
- 15 Q Now you still have P-61 in front of you?
- 16 A Yes, sir.
- 17 Q If you -- there is a statement in there from Jason
- 18 Roy? Have you got that, a handwritten statement?
- 19 A Yes, sir.
- 20 Q Now first of all, in your notes you don't record
- 21 anything with respect to the interview where the
- 22 -- well the interview with Jason Roy?
- 23 A In so far as the content of the statement? No,
- 24 sir.
- 25 Q Right, yeah. Precisely. You do record the fact

- 1 that you met with him but not what was said?
- 2 A That is correct. That would be in the statement,
3 sir.
- 4 Q Yeah. Now this statement that forms part of P-61,
5 it has a signature at the bottom left corner.
6 That's your signature?
- 7 A Yes, sir.
- 8 Q And 125 being your badge number?
- 9 A Yes, sir.
- 10 Q And similarly on the second page?
- 11 A Yes, sir.
- 12 Q Now is this statement in your handwriting?
- 13 A No, sir.
- 14 Q On the second page there is some different
15 handwriting; is some of that your handwriting?
- 16 A Yes, sir, from approximately halfway down the
17 second page to the bottom would be my handwriting.
- 18 Q Okay. And that's a series of questions that you
19 wrote out?
- 20 A Questions and answers, yes.
- 21 Q Yes, questions and answers. Now carrying on with
22 your notebook. You have an entry 2145?
- 23 A Yes, sir.
- 24 Q "Spoke to on phone" -- it sounds like you spoke to
25 Lucille Neetz on the phone at that time?

- 1 A Yes, sir.
- 2 Q And can you read again into the record what was
3 recorded there?
- 4 A "Lucille Neetz, who advised she saw Stonechild and
5 Jason Roy on a bus at approximately 2000" -- which
6 would have been 8:00 p.m. -- "on November the
7 24th, 1990. They got off on Milton Street and
8 Neetz saw them go to Julie Binning's and 3269
9 Milton Street. She later heard him at the door of
10 the apartment where she was babysitting at 306-
11 3308-33rd Street. This was around 12:00 midnight
12 on November the 24, 1990, but she did not
13 physically see Stonechild and has had no contact
14 since that time."
- 15 Q Okay. So now in the course of your investigation
16 at this point you're attempting to establish who
17 last had contact with Neil Stonechild and where he
18 was when he was last seen. I think that's a fair
19 summary of what you'd indicated?
- 20 A Yes, sir.
- 21 Q So at this point in time you've got information
22 that he was seen at Snowberry Downs around
23 midnight on November 24th, in that area?
- 24 A Yes, sir.
- 25 Q Now 2145 you've got an entry there, Trent Ewart,

- 1 an address, a birth date and a phone number. I
2 take it that's in reference to a meeting with
3 Trent Ewart?
- 4 A That's correct, sir.
- 5 Q And your earlier note would indicate that that was
6 a meeting at the police station?
- 7 A Yes, sir.
- 8 Q Can you then read in what you've recorded with
9 respect to that meeting with Trent Ewart?
- 10 A It shows Trent Ewart with his address, date of
11 birth and phone number, then continues on to say
12 attended station and gave witness statement
13 regarding November 24th, '90 when Stonechild was
14 at Snowberry Downs.
- 15 Q Okay. Now if you return to P-61 again you'll see
16 a handwritten statement in there, just after the
17 one we previously looked at?
- 18 A Yes, sir.
- 19 Q This is a one-page statement?
- 20 A That is correct.
- 21 Q It indicates it's a statement of Trent Ewart?
- 22 A Yes, sir.
- 23 Q And there's a signature in the bottom left-hand
24 corner. I take it that's your signature?
- 25 A Yes, sir.

- 1 Q And again, you're badge number 125?
- 2 A Yes.
- 3 Q And again there -- this time it's about three-
- 4 quarters or a little more down the page there's
- 5 some different handwriting. I take it that's your
- 6 handwriting?
- 7 A Yes, sir. It was a question and answer at the end
- 8 of the statement.
- 9 Q Right. And the handwriting above that is not your
- 10 handwriting?
- 11 A No, sir.
- 12 Q Now you've got a couple of more entries with
- 13 respect to November 30th, but they -- am I right,
- 14 they don't appear to relate to the Stonechild
- 15 matter?
- 16 A That's correct, sir.
- 17 Q So it's some other matter you're also looking
- 18 into?
- 19 A Yes, sir.
- 20 Q All right. So now you've met at the station with
- 21 Trent Ewart at 2145. There's nothing else in your
- 22 notebooks with respect to any attendances or
- 23 investigation on the Stonechild matter, is that
- 24 correct?
- 25 A Yes.

- 1 Q For November 30th?
- 2 A That's correct.
- 3 Q Then you file a report on November 30th?
- 4 A Yes, sir.
- 5 Q Just bear with me. And it indicates the time of
6 the report to be 2245?
- 7 A Yes, sir.
- 8 Q On the -- sorry, the 30th day of November?
- 9 A That's correct.
- 10 Q Now -- and again the report contains much of the
11 information that was in the notebooks, but I want
12 to take you to the third paragraph of your report
13 which forms part of P-61. You state, "1642 hours
14 a Crime Stoppers tip was received at the station
15 that the deceased was beaten up by G and DP and
16 taken to the north end and left there. This is
17 believed to be info as a result of the deceased
18 and Eddie Rushton being witnesses in a court case
19 against GP." Then you say, "The main player in
20 occurrence 64509/90 was the deceased" -- I'll
21 complete it, but I want to stop there. Why were
22 you identifying the deceased as the main player in
23 that occurrence?
- 24 A I don't know.
- 25 Q You go on to say, "was the deceased who rolled

- 1 over on the Ps." What did you mean by the term
2 "rolled over on the Ps"?
- 3 A Basically giving witness, if you will, that the Ps
4 were involved in.
- 5 Q Testifying against the Ps?
- 6 A Yes.
- 7 Q I've often heard the term, "rolled over on the
8 Ps," as somebody that's sort of turned them in,
9 gone against them?
- 10 A That too. You could have various interpretations,
11 on that, I think, sir.
- 12 Q Well -- and I guess the only -- it's your term. I
13 guess the important thing is what your
14 interpretation -- what are you interpreting --
- 15 A If you roll --
- 16 Q -- when --
- 17 A If you roll over on somebody, I think you're
18 passing information on, you're turning them in, if
19 you will.
- 20 Q Now you go on to say, "Caller also stated the
21 deceased was fooling around with the girlfriend of
22 one of the Ps and her name is Patrina
23 Starblanket," and then there's a birth date,
24 "address unknown, believed to live in Regina."
- 25 A That's correct.

- 1 Q The next sentence though is, "None of this
2 information can be verified at this time and it's
3 felt that this info is result of persons trying to
4 get back at the Ps"?
- 5 A That's correct.
- 6 Q First of all, what -- when you made that
7 statement, what did you do to attempt to verify
8 that information?
- 9 A I don't recall, sir.
- 10 Q The deceased's involvement in occurrence 64509/90
11 could be verified by reviewing that occurrence
12 report and related investigative reports, I
13 assume?
- 14 A It could have been, yes, sir.
- 15 Q But you have no recollection of doing that?
- 16 A No, I don't.
- 17 Q And when you say this info is a result of persons
18 trying to get back at the Ps, what was the basis
19 for that opinion?
- 20 A I believe I was looking at the entire picture, the
21 information that I had to date from the coroner,
22 from officers that attended at the scene, from
23 officers that had seen the deceased, that there
24 was no indications whatsoever that had been
25 brought to light that he had even been beaten up.

- 1 The allegations were that he had been beaten and
2 dropped, but there was nothing to support that.
- 3 Q Now if you turn the page, I guess in fairness, you
4 then comment on the fact that you've identified
5 that the deceased showed up at the Snowberry Down
6 apartments, the home of Claudine Neetz?
- 7 A That is correct.
- 8 Q You go on and indicate that you spoke with both
9 Claudine Neetz, her sister Lucille Neetz and Trent
10 Ewart?
- 11 A Yes, sir.
- 12 Q Then you go on to say, "On checking the calls
13 dispatched I learned that Constable Hartwig had
14 attended at this residence at approximately 2356
15 hours and cleared at 1700 [sic] hours on November
16 25th, 1990 being unable to locate the deceased"?
- 17 A Yes, sir.
- 18 Q Now in your notes you have a reference to that
19 dispatch and you made reference to both Constable
20 Hartwig and Senger attended?
- 21 A Yes, sir.
- 22 Q Why was Senger's name omitted in your report?
- 23 A I don't know.
- 24 Q You agree with me that you were aware that they
25 were both dispatched to that call?

- 1 A Yes, sir, I have made note of that in my notes
2 earlier.
- 3 Q Now you make reference and at the bottom of page 2
4 the fact, "Trent Ewart confirmed that the deceased
5 was at Snowberry Downs but he did not see Roy with
6 him"?
- 7 A That's correct, sir.
- 8 Q And that was based on the statement that
9 you took from Mr. Ewart?
- 10 A Yes, sir.
- 11 Q You go on to say, "Ewart also confirmed that
12 deceased was wearing the jacket with the name
13 "Chris" in the front of it at the time he was at
14 the Ewart's door. Ewart states the last time he
15 saw deceased was approximately 2400 hours,
16 November 24th," I believe that has to be 1990
17 there?
- 18 A Yes, sir.
- 19 Q Now what did you know about the clothing -- I
20 guess you'd been to the morgue. Was -- did you
21 know what clothing the deceased was wearing?
- 22 A No, sir, I didn't make any notation of it, other
23 than what was in the original reports from the
24 officers that attended at the scene.
- 25 Q Was there any significance in your report, then,

1 you refer to the fact that he was wearing a jacket
2 with the name "Chris" on the front of it?

3 A No, sir, that was information provided by Mr.
4 Ewart.

5 Q And at that point in time you didn't know whether
6 the deceased was wearing a jacket with the name
7 "Chris" on it?

8 A I don't recollect, sir.

9 Q Now halfway down that report you write, "At this
10 time there is no evidence to support foul play,
11 but the information about Ps cannot be ruled out."
12 And that was your view at the time?

13 A Yes, sir.

14 Q And then you state, "A clearer picture will show
15 following the autopsy and its findings." You
16 continue, "It is possible that deceased was, in
17 fact, going to turn himself in, as indicated by
18 the witness, and was possibly heading for the
19 Correctional Centre on 60th Street to do so when
20 due to his alleged intoxicated state he stumbled,
21 fell asleep and froze to death."

22 A Yes, sir.

23 Q At that point in time is that what you believed
24 happened?

25 A Yes, sir. I was thinking out loud, if you will,

1 at that point in time and looking at the various
2 possibilities.

3 Q Okay. So it was simply one possibility you were
4 considering at that time?

5 A Yes, sir.

6 Q And I take it at that point in time you hadn't
7 ruled out other possibilities?

8 A No, I was open to any possibility, sir, that the
9 information that I had at that point in time was
10 from the Pickards that had earlier testified that
11 he was wanting to turn himself in, he needed time
12 to think. As far as the "no evidence to support
13 foul play," was the fact that there was no visible
14 signs, to my knowledge, and nobody had reported
15 any visible signs of him being beaten.

16 Q Now you were aware of his age, he was 17 years old
17 when he died?

18 A Yes.

19 Q And you were aware that that made him a young
20 offender?

21 A Yes, sir.

22 Q Did you think that it made any sense for the -- a
23 young offender to be turning himself in at the
24 Correctional Centre?

25 A No, sir, but being in the area that he was, where

1 he was found, he was in close proximity to the
2 Correctional Centre. With the weather conditions
3 at the time it was very feasible for any
4 individual to walk up to a Correctional Centre,
5 knowing full well that he's not going to be held
6 there, but they would certainly contact the local
7 police service to have him picked up and either
8 transported to, say, Kilburn Hall or a community
9 group home, whatever the case may be. But it was
10 an avenue for him to take.

11 Q All right. So you consider that at least to be
12 one possibility?

13 A Yes, sir.

14 Q Now you state then at the bottom of that page,
15 "More investigation required."

16 A Yes, sir.

17 Q What -- at that point in time what further
18 investigation did you think should be carried out?

19 A I felt that there was still a need to try and
20 locate the Ps and follow up on the allegations
21 that were being made against them.

22 Q Okay. Now you then state on the next page, page
23 4, I guess it is, "Sergeant Brooks is now off on
24 -- sorry. I'm not sure if I'm missing something
25 here. Now at the top of page it states, "Sergeant

1 Brooks is now off on sick leave and will be off
2 for approximately the next six days." And then
3 further down you say, "The file is presently
4 assigned to Sergeant Brooks, 78." Can you explain
5 that, what -- was it assigned to you or was it
6 assigned to Brooks?

7 A I'm not sure, sir. By putting that in the report,
8 the file may very well have been originally
9 assigned to Brooks; however, because of him being
10 off sick, it may have been passed on to me for
11 follow-up, and as such my name would then appear
12 on all the subsequent investigations.

13 Q Okay. And you report at that time, on the 30th,
14 that you were, in fact, on weekly leave for the
15 next four days?

16 A That is correct, sir.

17 Q And you also note that Sergeant Brooks is also off
18 for approximately the next six days?

19 A Yes, sir.

20 Q Which, obviously, would mean it's expected that
21 you would be back to work before Brooks?

22 A Yes, sir.

23 Q Then you go on to say, "It is suggested that with
24 the possibility of foul play, this file be turned
25 over to Major Crimes for immediate follow-up."

- 1 A Yes, sir.
- 2 Q What was the possibility of foul play you're
3 referring to?
- 4 A There was still the allegations against the Ps of
5 the deceased having been beaten up and dropped off
6 that had not been clarified one way or the other
7 at that point in time.
- 8 Q Okay. And at this point in time again that was --
9 so that was another possibility that you felt
10 required some investigation?
- 11 A Yes, sir.
- 12 Q And other than that, had -- did you have any other
13 explanation as to how the deceased got to the
14 location between 57th and 58th Street?
- 15 A No, sir.
- 16 Q Was that a matter of concern to you, how he got
17 there?
- 18 A To some extent, but it wasn't uncommon to find
19 individuals walking around the North Industrial
20 area in the early hours of the morning and late
21 evenings. There was a tremendous amount of
22 activity that went on in the North Industrial
23 area, both warehouse employees, truckers, cars,
24 there were individuals that were out there to
25 commit offences.

- 1 Q Now is that based --
- 2 A So --
- 3 Q -- is that based on your personal experience?
- 4 A Yes, sir.
- 5 Q Now what did you expect to happen to the file on
- 6 your four days off? You've indicated -- suggested
- 7 that the file should be turned over to Major
- 8 Crimes for immediate follow-up?
- 9 A That's what I expected to be done, sir.
- 10 Q And like -- this may be a little repetitious, but
- 11 what was the process, how did you expect that to
- 12 happen?
- 13 A The investigation report, as we're looking at in
- 14 P-61, was left by me, typed up. Again it would
- 15 have gone through the -- staff sergeant reader, he
- 16 would have addressed the file, looked at it,
- 17 signed it, if you will, put his badge number. It
- 18 would have then gone back to my immediate
- 19 supervisor, which was the staff sergeant in charge
- 20 of Morality. With the request being made, he
- 21 would have hopefully perused the report and passed
- 22 it on to Major Crimes with the hopes that they
- 23 would be able to pursue it further.
- 24 Q Okay. Now I'd asked you earlier about, when you
- 25 made the reference to the day shift doing some

1 follow-up, about whether you expected that might
2 happen or whether it was unusual that it didn't
3 happen. Had you made these types of requests
4 before, that it be turned over to Major Crime, a
5 file you were involved in be turned over to Major
6 Crime?

7 A I believe I had, sir, but I don't have any
8 recollection of when.

9 Q But -- and did that happen from time to time?

10 A To the best of my recollection, sir. I don't
11 think it happened too often, but it has happened.

12 Q To your recollection were there instances, though,
13 where you recommended a file be turned over to
14 Major Crimes and it remained with you?

15 A I'm sorry, sir, if you could --

16 Q Can you recall any situations, other than
17 Stonechild, where you recommended a file be turned
18 over to Major Crimes, but it remained with you in
19 Morality?

20 A Not to my recollection, no, sir.

21 Q So your expectation again was that when you
22 indicated that, that it would go, in fact, to
23 Major Crime and your involvement would be -- with
24 this file would be done?

25 A That was a possibility. It wasn't my goal to have

- 1 that occur, but --
- 2 Q Was it your --
- 3 A -- I was expecting follow-up to take place by
- 4 Major Crimes.
- 5 Q I agree, but was it your expectation that that's
- 6 what would happen?
- 7 A That was my intention, sir, for it to go there,
- 8 otherwise I wouldn't have requested it.
- 9 Q Yeah. But did you think that was likely to
- 10 happen, is my point?
- 11 A At the time, yes.
- 12 Q All right. Now you returned to work on, according
- 13 to your notebook, on December 5th?
- 14 A That's correct, sir.
- 15 Q And what shift were you working?
- 16 A Day shift, sir.
- 17 Q You started at 8:00 a.m?
- 18 A That's correct, sir.
- 19 Q And this time you indicate the staff sergeant was
- 20 Bolton?
- 21 A That is correct, sir.
- 22 Q The previous days you -- it showed Johnson. Were
- 23 they -- who was in charge of Morality at the time?
- 24 A I believe, because of the notation indicating
- 25 Staff Sergeant Bolton, he may very well have been

1 the patrol staff sergeant or filling in on the
2 patrol staff sergeant's duties and my own staff
3 sergeant may very well have been on sick leave,
4 days off, I'm not sure, sir.

5 Q Your recollection though is that the regular staff
6 sergeant for Morality at that time was Johnson?

7 A Yes.

8 Q Now the first entry you have then on that day is
9 at ten -- the first time entry, at least, is at
10 ten twenty?

11 A That's correct, sir.

12 Q And you've got an occurrence 97411. I believe
13 that is the Stonechild investigation?

14 A Yes, sir.

15 Q So at 1020 it indicates you spoke to Shawn Draper?

16 A Yes, sir.

17 Q And there's an address and phone number?

18 A That's correct.

19 Q And can you read what you've recorded with respect
20 to your contact with Shawn Draper?

21 A "He advised that he last saw the deceased on
22 approximately" -- and this is probably a mis-entry
23 of the months on my part -- "on approximately the
24 19th of December" -- that should be 19th of
25 November -- "and spoke to him on the phone on" --

- 1 should be, again should be November the 23rd, not
2 December the 23rd, --
- 3 Q Right.
- 4 A "But has not seen him since." I believe I
5 clarified the date, sir, in the investigation
6 report that follows.
- 7 Q Yes. Yeah. I'm not suggesting anything turned on
8 that. Now the next entry you'd have though is at
9 1035 and thee's a different occurrence number. I
10 take it that's unrelated to the Stonechild matter?
- 11 A That's correct, sir.
- 12 Q Then we have an entry at 1330?
- 13 A Yes, sir.
- 14 Q Which would be 1:30 p.m, --
- 15 A Yes.
- 16 Q -- again referencing occurrence number 97411 of
17 '90, which was the Stonechild matter?
- 18 A Yes, sir.
- 19 Q And the copy I've got is cut off a little bit. It
20 says, "Attended at 3269 Milton Street"?
- 21 A Yes, sir.
- 22 Q Is yours cut off? Can you read what's below that?
- 23 A No, sir. The next line is, "Sharon Night" --
- 24 Q Yes, okay. And that indicates that you went to
25 3269 Milton Street and met with Sharon Night?

- 1 A Yes, sir.
- 2 Q Now -- and then you -- your next page of your
3 notebook you've got what appears to be a report of
4 what she had to say?
- 5 A Yes, sir.
- 6 Q Can you read that into the record?
- 7 A "She was able to confirm that the deceased
8 attended at 3269 Milton Street at approximately
9 2000" -- which would be 8:00 p.m -- "to 2030
10 hours" -- which would be 8:30 hours -- "on the
11 24th of November 1990 and he was with Jason Roy at
12 the time." Also stated -- or, "Also, that the
13 deceased and Roy were drinking a bottle of Silent
14 Sam. Night states she and Julie Binning left the
15 home at approximately 2030 hours" -- that being
16 8:30 p.m. -- "to go for coffee and that Roy and
17 the deceased left also, heading for the 7-Eleven
18 store at 33rd Street and Confederation Drive."
- 19 Q Now was that information consistent with the
20 statement you had received from Jason Roy?
- 21 A Yes, sir.
- 22 Q Now, at 14 -- was it -- just let me back up. You
23 come to work at 8 o'clock on December 5th and by
24 10:20 you have picked up again the Stonechild
25 file, obviously.

- 1 A Yes, sir.
- 2 Q Do you recall any discussion or speaking to
3 anybody as to why it was still your file?
- 4 A No, sir, I don't recall.
- 5 Q You will agree with me, though, based on your
6 notebooks, it appears it was still your file on
7 December 5th.
- 8 A That's correct, sir.
- 9 Q And was there any indication that anything had
10 been done on the file since you left your report
11 on November 30th?
- 12 A Not to my recollection, sir. Had there been
13 anything done there would have been a notation
14 made in my notebook.
- 15 Q All right. So the fact that there is no notation
16 in your notebook then is evidence indeed that
17 indicates that nothing had been done?
- 18 A That's correct.
- 19 Q So at 10:20 you interviewed Shawn Draper. Can you
20 tell from your note whether that was by telephone
21 or in person?
- 22 A I'm not sure, sir.
- 23 Q Then based on your notes it doesn't appear
24 anything further was done on the Stonechild file
25 until 1:30?

- 1 A That is correct, sir.
- 2 Q And that is when you attended and received some
3 information from Sharon Night.
- 4 A Yes, sir.
- 5 Q Then you've got an entry at 1400, which would be
6 2:00 p.m.
- 7 A Yes, sir.
- 8 Q "Attended at 104 - 208 Sask. Crescent East. GP
9 unable to locate."
- 10 A That's correct.
- 11 Q And what is that indicating?
- 12 A It indicates I was trying to locate the Ps but
13 wasn't able to do so.
- 14 Q Okay. And why were you attempting to locate the
15 Ps?
- 16 A To interview them in regards to the allegations
17 that had been made against them, sir.
- 18 Q All right. And then it indicates at 2:45 you
19 attended at Avenue K North and you made a
20 notation, "Nobody around past few days", and
21 there's the name, Eddie Rushton.
- 22 A That's correct, sir.
- 23 Q And what does that indicate to you?
- 24 A Again I was attempting to locate Eddie Rushton. I
25 had not had the opportunity to speak with him at

- 1 all and I was attempting to locate him to see what
2 information he may or may not have had. The
3 weather conditions, I believe, at that time were
4 snow on the ground and I'd been past the residence
5 on several occasions. There was no tracks coming
6 into the house or going out of the house, there
7 had obviously been no one around for several days.
- 8 Q Okay. Then you've got a notation at 1535, "Spoke
9 to Dr. Adolph."
- 10 A That is correct, sir.
- 11 Q "...at St. Paul's." Is that -- does that indicate
12 whether that was a telephone conversation or --
- 13 A That would have been a telephone conversation,
14 sir.
- 15 Q Okay. And again for the record then could you
16 please read in what you've reported in your
17 notebook with respect to that conversation?
- 18 A "Spoke to Dr. Adolph at St. Paul's. Advised that
19 it was possible that the deceased was dead from
20 the 25th of November, 1990, and that in his
21 opinion the deceased had been dead for a minimum
22 of 48 hours, which would lead back to November
23 27th, 1990 and Adolph feels another one and a half
24 days would not be unusual. Also, there was no
25 evidence of any trauma to the body whatsoever.

1 And if the deceased consumed alcohol as indicated
2 by witnesses, then it would have contributed to
3 hypothermia and eventual freezing to death. File
4 was concluded at this point pending toxicology
5 report from Regina Crime Lab."

6 Q Okay. Now, I expect you've had the opportunity to
7 review the balance of your notebook which, in
8 fairness, only goes up to December 9th. There is
9 one entry on December 6th with reference to Stella
10 Stonechild?

11 A That is correct, sir.

12 Q It says, "Called Stella Stonechild", and that is
13 indeed on December 6th?

14 A Yes, sir.

15 Q And again there's an occurrence number, 97411 of
16 '90.

17 A Yes, sir.

18 Q I don't believe there's a time there, is there?

19 A No, there isn't, sir.

20 Q Nor does it indicate why you were calling her at
21 that time?

22 A It doesn't indicate, no, sir.

23 Q Do you know why you would be calling her at that
24 time?

25 A I believe I was calling her to advise her that at

1 that time the file was -- I was requesting that
2 the file be concluded temporarily unless some
3 other information came to light.

4 Q Okay. Now, there's nothing further in your
5 notebook, you'll agree with me, with respect to
6 Neil Stonechild?

7 A Not that I know of, sir.

8 Q And do you have any recollection of taking any
9 further steps with respect to the investigation
10 into the death of Neil Stonechild?

11 A Yes, sir.

12 Q And what is that?

13 A Earlier in the investigation when I received the
14 information that officers had attended at
15 Snowberry Downs.

16 Q Okay. And I don't want to stop you there, but I
17 want to clarify, what I'm asking, though, is in
18 time, is there something that happened after
19 December 5th?

20 A No, sir.

21 Q Okay. Let's just deal one at a time then. My
22 question is, after December 5th where you make the
23 entry in your notebook that it's concluded at this
24 time, do you have any recollection of taking
25 further steps with respect to the investigation,

- 1 that is, after December 5th?
- 2 A No, sir.
- 3 Q Now, I didn't mean to cut you off. You were
4 explaining something further. Please go ahead.
- 5 A After receiving the information that cars had been
6 dispatched to Snowberry Downs on the evening of
7 the 24th I did make a request to the officers who
8 attended for a report to indicate what actions
9 they took at the residence at Snowberry Downs and
10 to include what, if any, contact they had with
11 Neil Stonechild.
- 12 Q Okay. Now, there's no reference in your notes to
13 having made that request.
- 14 A No, sir.
- 15 Q Any explanation for that?
- 16 A No, sir.
- 17 Q And what -- did you get a response to that
18 request?
- 19 A I don't know, sir. It's not in my notes and I
20 don't see it attached to this portion of the file.
- 21 Q Would you have concluded the file without getting
22 a response from them?
- 23 A No, sir.
- 24 Q Would that indicate to you then that you did get a
25 response from them?

- 1 A Yes, sir.
- 2 Q You believe you got a response from them?
- 3 A I believe I probably did, sir, otherwise the file
4 wouldn't have been concluded.
- 5 Q But you don't know what the response was?
- 6 A No, sir.
- 7 Q Now, you've already testified that you were not at
8 the scene where the body was found?
- 9 A That's correct, sir.
- 10 Q Do you have any recollection or know whether you
11 drove by the scene even after the body was removed
12 to see where it had been found?
- 13 A No, sir.
- 14 Q You did attend the morgue for the purpose of
15 obtaining fingerprints.
- 16 A That is correct.
- 17 Q But you indicated you did not inspect the body at
18 that time?
- 19 A No, sir.
- 20 Q And I'm not sure if I asked you, but do you have
21 any recollection of whether you attended the
22 autopsy?
- 23 A No, I did not, sir.
- 24 Q You did not attend the autopsy?
- 25 A No, sir.

1 Q Did you review photographs of the scene taken by
2 the Identification officers?

3 A No, sir.

4 Q Did you review photographs of the body taken at
5 the autopsy by the Identification officers?

6 A I'm not sure if the photographs that I was shown
7 -- I was shown two photographs, sir, during an
8 interview with --

9 Q I'm sorry, I'll come to that, but I'm talking
10 about the time period of 1990 when you were
11 conducting this investigation.

12 A No, sir.

13 Q Now, let's deal with that then. You do recall
14 being shown at some point some pictures of the
15 autopsy photographs.

16 A I'm not sure if they're the autopsy photographs,
17 sir, but I was shown a couple of pictures on a
18 laptop computer by Sergeant Ken Lyons of the RCMP.

19 Q And they identified it to you as photographs of
20 Neil Stonechild?

21 A Yes, sir.

22 Q I'm showing you a series of -- I think it's nine
23 photographs that have been marked P-28. Can you
24 take a moment to look through those and tell me if
25 any of those look like the photographs you saw?

- 1 A It would appear possibly numbers 40 and 42, sir.
- 2 Q Okay. These are the two you think it was?
- 3 A Yeah.
- 4 Q Forty and 42?
- 5 A That's correct.
- 6 Q The photo that's now projected as photo 40, you
7 believe that's one of the photos that you were
8 shown?
- 9 A I don't see it on the screen, sir, but yes, it was
10 number 40.
- 11 Q That's right, I don't see it either. You'll be
12 pleased to know if your eyesight is failing, mine
13 is as well. I can continue and hopefully we'll
14 get that up there. It's not absolutely
15 essential. What I've placed in front of you, Mr.
16 Jarvis, is copies of some summaries of interviews
17 and one is a transcript of an interview between
18 yourself and the RCMP. Now, I want you to turn to
19 the fourth page.
- 20 A Yes, sir.
- 21 Q And it states, "Transcript of a taped interview on
22 October 12, 2000 between Corporal Jack Warner,
23 Sergeant Ken Lyons and Keith Jarvis, 5885" --
24 well, there's an address there. I'm not sure it's
25 necessary to read it into the record. Do you

1 recall being interviewed by Sergeant Lyons and
2 Corporal Warner around that time, October 12th,
3 2000.

4 A Yes, sir, I believe we had about five or six
5 contacts in total, both personal and by phone
6 call.

7 Q Right, and you had occasion to review this
8 transcript?

9 A Briefly, yes, sir.

10 Q Now, I want to refer you to the bottom of page 3
11 of that transcript. Sorry, it's page 4. Sorry,
12 it's page -- further in than I thought. Bear with
13 me. Page 7. And unfortunately they're not
14 numbered, you have to -- the page I'm looking at
15 starts right at the top, says, "Corporal Warner:
16 Okay, is there any indication." I think it's the
17 seventh page. It's the seventh page of the
18 transcript, not of the entire document. I stand
19 corrected, I believe it is page 8. Now, at the
20 bottom of that page -- sorry, it's -- I want you
21 to turn one more page and again I apologize, which
22 would be page 9. At the top of that page it says
23 -- the second line it says, "Corporal Warner:
24 Okay." Are you on that page?

25 A Yes, sir.

1 Q All right. Now, if you go to the bottom of that
2 page, Corporal Warner has asked you about what
3 information you received from Dr. Adolph.

4 A That's correct, sir.

5 Q And then pick it up, the second line from the
6 bottom, you state, it's a continuation where you
7 say, "...out of the question but there was -- so -
8 - but there was no evidence of trauma." And then
9 Corporal Warner says to you, "And would you agree
10 with that statement, no evidence of trauma?" And
11 then you respond, "Not having looked at the ah...
12 having seen the photographs now I mean there...
13 obviously is... you got two lacerations to the
14 nose and some minor lacerations on the wrist and
15 on the hands there so I didn't go", and then it's
16 an unintelligible word, "... go over the body
17 which basically wasn't my job, if you will, at
18 that time ah...but ah... had he been in a fight
19 that would have been explanatory but that would
20 also still be some sign of -- would be looked upon
21 as some -- some sign of trauma." First of all, do
22 you agree that you said that to Corporal Warner?

23 A Yes, sir.

24 Q And do you agree that that was as a result of
25 reviewing the photograph 40 that you have

1 indicated there was some sign of trauma?

2 A Yes, sir.

3 Q And you've acknowledged that that was inconsistent
4 with what Dr. Adolph had said to you, reported to
5 you.

6 A I don't believe it was inconsistent, sir. The
7 word "trauma" was probably a word of my choice. I
8 believe Dr. Adolph referred to it and in all the
9 previous investigations and reports referred to
10 this injury as "a minor abrasion to the nose."

11 Q Okay. Now, would -- had you reviewed that
12 photograph would it have had any impact on how you
13 conducted the investigation?

14 A I don't know, sir.

15 THE COMMISSIONER: I'm not sure I understand that
16 answer. Are you saying that you can't express any
17 opinion as to whether, having observed what you
18 have in the photographs, you would have taken any
19 further action? Are you saying that you can't
20 say whether you would have or not?

21 THE WITNESS: I'm not sure what I would have
22 done, My Lord. Obviously --

23 THE COMMISSIONER: Well, it appears to me that those
24 are fairly significant injuries. Would this not
25 have suggested to you that you now had some fairly

1 solid information to suggest that this young man
2 may have died from some sort of assault or trauma?

3 THE WITNESS: At the time, My Lord, I hadn't
4 even seen any of the photos of the deceased of any
5 injuries. I simply had reports that were
6 indicating minor abrasions. There was no
7 indication from anyone at that time in 1990 that
8 there was anything serious.

9 THE COMMISSIONER: I understand that. I understood
10 the question that was asked of you is, if you had
11 observed those, what I will call injuries,
12 whatever they were, is your answer that you can't
13 say whether you would have done anything further?

14 THE WITNESS: No, had I observed them I certainly
15 would have had to look at it much, much further.

16 THE COMMISSIONER: So you would have felt compelled to
17 go on then?

18 THE WITNESS: Yes, sir.

19 THE COMMISSIONER: So, while I've interrupted you,
20 Mr. Hesje, I'll ask another question so that I
21 don't keep on doing so. If you don't mind, Mr.
22 Jarvis, let me go back to the question of you
23 having spoken to Constables Hartwig and Senger and
24 having some discussion about them. I'm a little
25 unclear about that because I gather what you're

1 saying, and it seemed to me, with respect, you
2 were being a diligent police officer. You got
3 hold of the two people who may well have been the
4 last persons to see this young man alive.

5 THE WITNESS: Yes, sir, they're --

6 THE COMMISSIONER: I'm not saying they were, but I'm
7 saying given what you knew about dispatch, about
8 them being sent to the location where people were
9 complaining about Mr. Stonechild's activities and
10 so on, would you agree that it was possible that
11 they were the last persons to see Mr. Stonechild
12 alive?

13 THE WITNESS: Yes, sir.

14 THE COMMISSIONER: That would be a significant factor.

15 THE WITNESS: Yes, sir.

16 THE COMMISSIONER: You've told us earlier that one of
17 the things you want to find out is who saw the
18 deceased alive last, if I can put it that way.

19 THE WITNESS: That's correct, sir.

20 THE COMMISSIONER: And you tell us that you spoke to
21 both of them and as a -- at least I gather that?

22 THE WITNESS: I contacted or requested, I
23 believe -- it was one of two ways, My Lord. I
24 don't recall exactly how I contacted them, either
25 by a Jet Set, which was an interoffice memo, or I

1 may have spoken to them personally. Which one, I
2 don't recall, but I did request an investigation
3 report from them as to their activities and
4 dealings at that time.

5 THE COMMISSIONER: And having apparently concluded
6 that they had -- they were not able to assist you,
7 you didn't record that fact and close that avenue
8 so that it was apparent that they were not the
9 last people to see him alive?

10 THE WITNESS: I didn't include it in my notebook,
11 no, sir.

12 THE COMMISSIONER: Wouldn't that be a fairly
13 significant thing to enter in your notebook?

14 THE WITNESS: It would have been covered by a
15 separate investigation report left by them, My
16 Lord.

17 THE COMMISSIONER: All right. Thank you.

18 Q MR. HESJE: Now, Mr. Lyon -- or I'm sorry,
19 Mr. Jarvis, while we're on the transcript from
20 that interview with the RCMP, could you turn
21 another four pages. There's a page, the first
22 entry is, "K. Jarvis: No, no." Do you see that
23 right at the very top of the page?

24 A Yes, sir.

25 Q And again I do apologize. Would you turn one more

1 page? The top line here it says, "Corporal
2 Warner: Uhm-hmmm." Do you have that now?
3 A Yes, sir.
4 Q Okay. Now, and you may want to just go back a
5 bit, but there's a question there by Sergeant
6 Lyons. It says, "Is it safe to assume though that
7 he would have approached them in some in...
8 in...." It says "unintelligible". And if we go
9 back you see he's talking about Hartwig and
10 Senger, if you turn back to the page earlier, in
11 fact go up about four questions. "Corporal
12 Warner: Okay, that's fair. Do you have any
13 specific recollection of conversations with
14 Hartwig or Senger about it, Keith?" And you
15 answered, "No, I don't."
16 A That's correct, sir.
17 Q Now, I guess in fairness I should let you read and
18 not try to skip to another answer, but you said,
19 "No, I don't." Then there's a question from
20 Corporal Warner, "And I guess that's really at the
21 heart of the issue... that's ... that's the one
22 area that ah... I guess begs a lot of answers.
23 But... an'...an' I... I guess when you say that
24 you... you would've... you would've talked to
25 them." And your response, "Yah I think my concern

1 an... if I talk to them personally I... I think my
2 concern would have been number one, where was he
3 checked, if in fact they did check ah...
4 Stonechild and Jason Roy, where did they check
5 them and where were they going to, what was the
6 disposition when they left ahm... that's... was my
7 concern as to where they were headed for, an'
8 hopefully to give me the next step to... to find
9 out... hopefully a... a trail." Then in the next
10 page Sergeant Lyons asks the question, "Is it safe
11 to assume though that you would have approached
12 them in some in.. in..." and then it says,
13 "unintelligible - both speaking at the same time."
14 It picks up your answer as being, "I'm... I'm sure
15 I would have approached them either personally or
16 by virtue of a memo I... I think I approached them
17 personally."

18 A Yes, sir.

19 Q That's what you indicated to the RCMP at the time,
20 just as you've said today, that you approached
21 them either through a memo or personally but you
22 did say, "I think I approached them personally."

23 A Yes, sir, that's in the --

24 Q And is that still your belief, that you likely
25 approached them personally?

1 A I don't recall, sir, which way I actually
2 approached the two officers.

3 Q At that time it seems that you're saying it was
4 more likely I approached them personally. Am I
5 misinterpreting that?

6 A Sorry, sir?

7 Q Am I misinterpreting that?

8 A No, you're not misinterpreting it, sir.

9 Q Now, finally I want you to turn to the second last
10 page of that transcript. About midway down
11 there's a question by Sergeant Lyons that
12 unfortunately beings "unintelligible," but then it
13 continues, "You mentioned the circular marks that
14 you saw on ah... on the wrist the other day...
15 yesterday, Keith, ah... is... in your view are you
16 able to offer an opinion as... you certainly", and
17 then there's a notation by the transcriber,
18 "sounds like 'aren't' going to be qualified as any
19 experts that's for sure." You then state, "Well
20 I... I... I could only speculate, I mean these...
21 these were photographs that were seen on... on
22 your lap top Ken that ah... were from the original
23 ah... I-dent photographs I wo... I surmised ah...
24 I could only offer up an opinion ah... the
25 marks... I have seen marks very similar to that

1 myself over the years as a police officer. It can
2 be the result from someone being placed in
3 handcuffs who has been detained. It could be
4 from", and then there's an unintelligible word,
5 "... many things." Sergeant Lyons says, "Yeah."
6 And you continue, "Ah... often times you don't
7 even have to put handcuffs on tight an' people
8 move their hands around an' can get marks."
9 Sergeant Lyons says, "That's right." And you
10 state, "It could be from anything really, looking
11 at it, looking at the marks in the photographs
12 ah... I'm not an expert but I would say it would
13 probably be consistent with handcuffs." And
14 that's a statement that you made again to the
15 RCMP?

16 A Yes, sir.

17 Q And can we, Mr. Stack, now put up the other
18 photograph you'd identify? What was the number of
19 that?

20 A It would be 42.

21 Q Is that what he's referring to, the marks on the
22 wrists that you would have saw the day before? Is
23 that the photograph that you would have been
24 shown?

25 A I believe that's the photograph, sir.

1 Q And the comments you make are based on your review
2 of that photograph?

3 A Yes, sir.

4 Q And had you seen that photograph in 1990 when you
5 were conducting the investigation, would it have
6 had any impact on how you conducted the
7 investigation?

8 A Certainly.

9 Q In what way?

10 A I would had to have looked closer to see if this
11 individual was actually in custody at any given
12 time.

13 MR. HESJE: You can take it down, Mr. Stack.

14 Q MR. HESJE: Now, was there some impediment to
15 you getting these photographs, reviewing the
16 photographs?

17 A No, sir, they were the responsibility of the
18 Identification officer that took the photographs.
19 They would remain in his possession.

20 Q But they were available for your review if you
21 wished to look at them?

22 A Yes, sir.

23 Q But you didn't look at them?

24 A No, sir.

25 MR. HESJE: Mr. Commissioner, I'd like to mark

1 investigator and say, "Take a look at these
2 pictures, there's something that's not right."

3 THE COMMISSIONER: So it was ID's responsibility to
4 alert somebody that there might be something
5 unusual?

6 THE WITNESS: In my estimation, yes, sir.

7 THE COMMISSIONER: Thank you.

8 Q MR. HESJE: Now, Mr. Jarvis, we've reviewed
9 your notebook and indeed the -- the reports that
10 were filed by yourself. There has been testimony
11 before this Inquiry by a Constable Geoff Brand
12 that he had received information from an informant
13 in Detention about the possible involvement again
14 of the -- I shouldn't speculate, but one or other
15 or both P brothers in the disappearance of Neil
16 Stonechild. Did you record anything in your notes
17 about that or do you have any recollection of
18 receiving that information through Constable
19 Brand?

20 A I have no recollection of that, sir.

21 Q And is there anything -- do you recall anything in
22 your notes to indicate you received information
23 even secondhand from an informant?

24 A Not that I have seen, sir.

25 Q Now, there's also been testimony provided to this

1 Inquiry that a Constable Louttit met with you in
2 January of 1991 to express concerns about the
3 manner in which the investigation had been
4 conducted. Do you have any recollection of
5 meeting with Constable Louttit?

6 A No, sir.

7 Q Are you saying it didn't happen or you don't
8 recall?

9 A I have no recollection of a meeting with him, sir.

10 Q All right. Now, there's also been evidence
11 before the Inquiry that -- from Eli Tarasoff. Did
12 you know Eli Tarasoff?

13 A Yes, sir.

14 Q The evidence was that he was a sergeant as well at
15 the time?

16 A I believe so, sir.

17 Q And he also testified that he had contacted you
18 and expressed some concerns about the
19 investigation.

20 A I have no recollection of that at all, sir.

21 Q All right. I didn't ask you in respect to
22 Constable Louttit, did you know him at the time?

23 A Very briefly, sir. I knew him as a member of the
24 Police Service. He was on a totally different
25 platoon and shift to me. We never worked

- 1 together. We never socialized together.
- 2 Q Now, did you have -- sorry, in -- there's also
3 evidence before the Inquiry that in March, I
4 believe March 4th of 2001, there was an article
5 published in the *StarPhoenix*, I think it's P-1,
6 and maybe I should --. Mr. Stack has corrected
7 me. I believe I said March 4th, 2001. Indeed I
8 meant March 4th, 1991. Do you recall having seen
9 that article?
- 10 A No, sir.
- 11 Q If you wish, you can take a moment and read it, it
12 -- I think we better give you a moment to read it
13 before I ask you.
- 14 A Yes, sir.
- 15 Q I take it you have no recollection of seeing that
16 report in the newspaper?
- 17 A No, sir.
- 18 Q You were still in Saskatoon in March of 2001? You
19 were still living in Saskatoon. I'm not --
- 20 A In '91?
- 21 Q Yes.
- 22 A Yes, sir.
- 23 Q Now, do you have any recollection of anybody in
24 the Saskatoon Police Service coming to you and
25 asking you about the investigation and indicating

- 1 that they were responding to some concerns that
2 had been raised publicly?
- 3 A No, sir.
- 4 Q It's my understanding at that time the media
5 relations officer was Sergeant -- at that time is
6 Sergeant Dave Scott.
- 7 A It could have been, sir.
- 8 Q Any recollection of speaking with Sergeant Dave
9 Scott about the matters raised in that newspaper
10 article?
- 11 A No, sir.
- 12 Q Now, you retired in '93?
- 13 A 1993, sir.
- 14 Q Ninety-three. And I take it prior to your
15 retirement then you don't recall any further
16 involvement with respect to this matter involving
17 Neil Stonechild.
- 18 A No, sir.
- 19 Q You were contacted in -- early in 2000 by members
20 of the RCMP?
- 21 A I believe that's approximately the time, yes, sir.
- 22 Q Okay. And was that -- can you set the stage of
23 that for me, how that contact came about and what
24 they were wanting to talk to you about?
- 25 A I believe it was a phone call from -- I may have

1 the rank wrong here, but I believe it was
2 Constable Jack Warner, it may have been Corporal
3 Jack Warner of the RCMP. He informed me that they
4 were investigating this file and that if I had any
5 recollection, if the name Neil Stonechild meant
6 anything to me, and I believe my response to him
7 was no, it did not at that time. I had no
8 recollection at all.

9 Q Okay. Now, I have left in front of you, there's a
10 summary of a telephone conversation from March 3rd
11 with Constable Warner. Do you have that?

12 A Yes, sir.

13 Q I want you to take a moment and review that and
14 tell me if it accurately reflects the telephone
15 conversation you had with Constable Warner.

16 A That's probably relatively accurate, sir, yes.
17 The last paragraph -- correction, the second last
18 paragraph about the notebooks being destroyed by
19 me, whether that is a misinterpretation of
20 notebooks that prior to the last ten years of my
21 service were destroyed.

22 Q Okay. But with that correction, it otherwise is
23 reasonably accurate?

24 A I believe so, sir.

25 MR. HESJE: Can we have that marked, please?

1 THE COMMISSIONER: Is that 107?

2 CLERK: 108, My Lord.

3 THE COMMISSIONER: 108.

4 **EXHIBIT P-108 - TELEPHONE INTERVIEW OF KEITH JARVIS BY CST.**

5 **WARNER ON MARCH 3, 2000**

6 Q Now, do you recall the next contact you had with
7 the RCMP?

8 A Looking at this, the --

9 Q Yeah, and it's likely a little unfair.

10 A -- the form, sir, yes, there were several contacts
11 that were set up by phone calls with Officer Lyons
12 and Officer Warner.

13 Q Right. Okay, now let's just -- you have one in
14 front of you then dated -- I believe that would be
15 April 3rd -- or is it March 4th? I never know.

16 A I don't know, sir, I think it was probably April.

17 Q April 3rd it appears. In any event, would you --
18 again it indicates that Corporal Warner spoke with
19 you on that date. Was that in person or was it
20 another telephone call, do you remember?

21 A This would have been in person, sir, at my
22 residence.

23 Q So Corporal Warner came out to see you some time
24 around April of 2000.

25 A Yes, sir.

1 Q Okay. And I think I've provided you with that --
2 a copy of that, but do you want to take a moment
3 and review it and again indicate if there's
4 anything in there that you disagree with in terms
5 of what was discussed?

6 A That would be appropriate, sir, yes.

7 Q Yes. And, again, I want to be fair to you because
8 at this point in time when you met with Corporal
9 Warner I take it you did not have either your
10 notebook or any copy of the police reports we've
11 now marked as P-61?

12 A That is correct, sir.

13 MR. HESJE: I'd have that marked.

14 THE COMMISSIONER: P-108.

15 CLERK: 109, My Lord.

16 THE COMMISSIONER: P-109, I'm sorry.

17 **EXHIBIT P-109 - INTERVIEW OF KEITH JARVIS BY CORPORAL WARNER**

18 **APRIL 3, 2000**

19 THE COMMISSIONER: Is this an appropriate time for us
20 to take a break?

21 MR. HESJE: It might well be. We've identified
22 a potential problem on a document here.

23 (PROCEEDINGS ADJOURNED & 3:27 P.M. & RECONVENED AT 3:49
24 P.M.)

25 Q Mr. Jarvis, just prior to the break we had marked

1 Exhibit P-109 which was a summary of a meeting on
2 April 3rd, 2000 and it -- at the top it indicates
3 it was Corporal Warner spoke with Keith Jarvis. I
4 am now advised that that's an error, that in fact
5 it was Sergeant Lyons. Indeed, the body of that
6 document makes reference to Lyons. Do you have
7 any recollection whether it was Lyons or Warner?

8 A Not offhand, sir, no. Both of those gentleman
9 were -- came out and interviewed me, both together
10 and individually so it -- it was not a problem for
11 me.

12 MR. HESJE: Okay. Now, just for the record,
13 Commissioner, I'd like it noted that P-109 where
14 it does refer to Corporal Warner on the first line
15 that is an error, it should refer to Sergeant
16 Lyons spoke with Keith Jarvis.

17 Q Now, the next attendance that I'm aware of between
18 yourself and members of the RCMP was on June 21st
19 when both Sergeant Lyons and Corporal Warner met
20 with you, the summary I have is at your place of
21 business in Burnaby. And you have a summary of
22 that in front of you?

23 A Yes, I do, sir.

24 Q Would you take a moment and review that summary
25 and advise me if there's anything that's

1 inaccurate in that summary?

2 A I believe this would be an accurate account of
3 conversations that took place, sir, although some
4 of the information may not be from my actual
5 memory, it may have been through the officers
6 attempting to assist me in recollection.

7 Q Okay. Now, and I'm not suggesting to you it's --
8 it's everything. I'm just saying what's there is
9 more or less -- is a fair summary of the points
10 that were discussed.

11 A Yes, sir.

12 MR. HESJE: Can I have that marked, please?

13 THE COMMISSIONER: P-110.

14 **EXHIBIT P-110: INTERVIEW OF KEITH JARVIS, JUNE 21ST, 2000**

15 Q The clerk is going to give that back to me, but
16 one of the things it states it says, "The
17 interview is summarized as follows." Then it
18 says, "He recalls ..." -- I believe it should be,
19 Erica, it says "Erice" with an E instead of an A,
20 "... and Stella Stonechild (Bignell) coming into
21 his office on more than two occasions." Is that
22 the case that you recall Erica and Stella
23 Stonechild coming into your office?

24 A Not total recollection, sir. It may have been
25 discussed in this interview but I don't -- as I

1 say, it may have come from suggestions from the
2 officers, that did I remember this or do I recall
3 having a meeting with -- with so and so.

4 Q So are you saying today you have no recollection
5 of them coming in to speak to you?

6 A Not at this moment, no, sir, I don't. Not that it
7 -- it may have happened, sir, I just don't have
8 any recollection.

9 Q Very good. Now, I'm aware of one additional
10 interview, at least I'm advised there was one
11 additional interview that was in May 23rd of 2001
12 and to back up a bit on that last -- the interview
13 we just discussed on June 21 then in sequence
14 there is an interview October 16th, 2000. That
15 was the one that there's a transcript -- actual
16 recording made of the interview, and that was the
17 first one we referred to?

18 A Okay. What -- it was the recorded interview with
19 Officers Lyons and Warner?

20 Q Yes.

21 A Yes.

22 Q And I think the transcript indicated that was in
23 October 16th of 2000.

24 A If we're referring to the transcript of the
25 recording, sir, it indicates October 12th, 2000.

1 Q Okay. I stand corrected, but it was October of
2 2000?

3 A That's correct, sir.

4 Q So we've now -- that was, in fact, the fourth
5 contact then, at least that we have here, with the
6 RCMP.

7 A I -- yes, I believe it was the fourth personal
8 contact. There may or may not have been phone
9 calls --

10 Q No.

11 A -- setting up appointments in the interim.

12 Q Yes, fair enough, but in terms of interviews it
13 was the fourth one.

14 A That's correct.

15 Q Now, I'm advised there is a further one -- first
16 of all, I'm sorry, on October 16th I'm advised
17 that that was an interview that was held with you
18 after they had located your notebook.

19 A That's correct, sir.

20 Q Then there was a further interview, verbal
21 interview -- by that I mean it wasn't recorded --
22 in May 23rd, 2001, and that was after they had
23 located your -- I'm sorry, not your, the Saskatoon
24 Police Service file.

25 MR. STEVENSON: Mr. Commissioner, I'm afraid I

- 1 don't have any record of that disclosure.
- 2 THE COMMISSIONER: Have you seen this before, Mr.
- 3 Stevenson?
- 4 MR. STEVENSON: I don't recall having seen anything
- 5 of that date.
- 6 THE COMMISSIONER: You're saying the date of this is
- 7 October 16th?
- 8 MR. HESJE: Yeah. It has been disclosed. It's
- 9 part of the investigative summary.
- 10 THE COMMISSIONER: But it's not in this package we're
- 11 talking about here.
- 12 MR. HESJE: Sorry?
- 13 THE COMMISSIONER: It's not in the package --
- 14 MR. HESJE: Oh, no, it's not in that package,
- 15 no.
- 16 MR. STEVENSON: And you're talking May of 2001 you
- 17 said?
- 18 MR. HESJE: Yes.
- 19 THE COMMISSIONER: Do you want to take a few minutes
- 20 and sort this out or have you satisfied your
- 21 concern?
- 22 MR. STEVENSON: I just haven't had a chance to
- 23 discuss it.
- 24 MR. HESJE: There is -- and I can understand --
- 25 it has been disclosed, I want to assure you, but I

1 can understand possibly some confusion on -- on
2 Mr. Stevenson's part because it's -- it's simply
3 listed in the investigative summary which is at
4 the beginning of the disclosure. It wasn't, like
5 the other ones referred to, listed as a specific
6 task or action, but the details of it were
7 disclosed. Now, I understand he's not had a
8 chance to review it with his client so I don't
9 know whether he's objecting to proceeding or not.

10 THE COMMISSIONER: Do you want to take a few minutes
11 to look at this?

12 MR. STEVENSON: No.

13 THE COMMISSIONER: Very well.

14 Q MR. HESJE: I've put in front of you a summary
15 prepared by the RCMP and it -- it talks -- you'll
16 see that it -- if we go to the first page it says,
17 "Interviews police witnesses." It sets out
18 various dates that we've already been through,
19 March 3rd, April 3rd, June 21st, October 16th, 2000,
20 and then it's got an entry for May 23rd, 2001.
21 You see that on the third page?

22 A Yes, sir.

23 Q It states, "Corporal Warner and Sergeant Lyons
24 interviewed Jarvis at his home. The purpose of
25 the interview was to provide him with a copy of

- 1 the report located by Constable Louttit."
- 2 A That's correct, sir.
- 3 Q And you recall that, that they brought you a copy
4 of the report that had been located by Constable
5 Louttit?
- 6 A I believe so, sir. I'm not -- I'm not sure.
- 7 Q Okay.
- 8 A I recall getting my copy of my notebook.
- 9 Q Now, and again, I want to be fair to you, this is
10 their note, you don't have to adopt it, but I'm --
11 the next statement that they make in this report
12 says, "Having reviewed it, Jarvis confirmed Roy
13 had disclosed seeing Stonechild in the back of the
14 police car." And is that the case?
- 15 A No, sir. That, I believe, was a comment made in
16 error on my part.
- 17 Q Well, before we get into whether it's in error or
18 not, did you, in fact, make a statement like that
19 to the police?
- 20 A I may very well have, yes, sir.
- 21 Q Okay. And if you did you believe it was in error?
- 22 A Yes, sir.
- 23 Q All right. And believe me, Mr. Jarvis, I'm going
24 to give you an opportunity to explain that error
25 but I'd like to carry through first. You were

1 then interviewed in 2003 by Robert Martell?

2 A That is correct, sir.

3 Q You recall that as well? And in the course of
4 that interview you again advised Mr. Martell that
5 Jason Roy told you that he had seen Neil
6 Stonechild in the back of the police car?

7 MR. STEVENSON: Mr. Chairman, I -- I hate to rise
8 and object to the manner in which this is going
9 in. I appreciate Mr. Hesje has control over the
10 evidence and its flow. It seems to me that one
11 material part of the evidence was not touched upon
12 in-chief so far and we're jumping ten years ahead.
13 It seems to me that the time of the taking of the
14 statement and the details of the statement on
15 November 30 ought to be explored by this
16 Commission so we see it in a timely and orderly
17 fashion, before we start to jump back and forth to
18 ten years later.

19 THE COMMISSIONER: What are you saying is missing from
20 it? What is it that you think needs to be
21 canvassed?

22 MR. STEVENSON: Well, what I -- what I see is
23 missing is we've made a reference to a statement
24 taken from Jason Roy, we've not had the statement
25 referred to this witness or the circumstances of

1 taking the statement or whose statement it was, or
2 any of the other details. It seems to me that
3 we're in an illogical fashion, and I think it
4 would be more appropriate if we had that evidence
5 before the Commission before we start to jump
6 ahead ten years and talk about other things that
7 may have occurred and what might have been said.
8 That's my only observation.

9 MR. HESJE: With respect to that, first of all,
10 we've made reference to the fact that he's given
11 the statement. Mr. Stevenson, no doubt, will have
12 opportunity to question him at length. And the
13 final point I wish to make is that I offered to
14 allow Mr. Stevenson to lead this witness, he
15 declined to do so, so I'm not sure how he can then
16 object to how I do it.

17 THE COMMISSIONER: You can proceed.

18 Q MR. HESJE: Now, you were interviewed by Bob
19 Martell again at your home in Burnaby?

20 A Yes, sir.

21 Q And my understanding it was August 11th, 2003?

22 A Yes, sir.

23 Q In the course of that interview you did advise Mr.
24 Martell that Jason Roy had informed you that he
25 had seen Neil Stonechild in the back of a police

1 car on November 24th, 1990.

2 A Again, yes, sir, a comment made in error.

3 MR. HESJE: Okay. Now, and again, I assure you
4 you'll have your opportunity to explain that, but
5 I would like at this point, Mr. Commissioner, to
6 play that portion of the interview because I think
7 in light of the explanation coming up it's
8 important not only to know what was said but to
9 get the context and the tone of it.

10 THE COMMISSIONER: Right.

11 MR. PLAXTON: Mr. Commissioner, with respect, we
12 have been around discussions concerning the
13 Martell interview before. We know what we have
14 available to the Commission is an incomplete
15 document. We know it is not the entire interview.
16 We know it does not accurately portray what
17 transpired the day Mr. Martell interviewed this
18 particular gentleman. We know it was stopped and
19 started a number of times. The circumstances
20 surrounding the interview we may get him to in due
21 course, but we would suggest to take a portion of
22 a document that we know is inaccurate to begin
23 with and not have the whole document admissible is
24 quite improper and quite unfair to the witness.

25 THE COMMISSIONER: I don't follow that. Why can't you

1 explore that in -- by the way, I don't hear Mr.
2 Stevenson making any objection to this.

3 MR. PLAXTON: I'm sure he joins me, sir.

4 THE COMMISSIONER: You're -- you're not representing
5 Mr. Jarvis, Mr. Stevenson is, and I'm not sure why
6 you're the one that's raising this objection.

7 MR. PLAXTON: Well, with respect, Mr.
8 Commissioner, the Association does represent its
9 past and present members. However, I mean, in
10 fairness to the witness, I mean, he has not --
11 yes, he is Mr. Stevenson's client but he's also a
12 witness at the inquiry.

13 THE COMMISSIONER: Well --

14 MR. PLAXTON: If you care to hear from Mr.
15 Stevenson I'll step aside and have him take the
16 mike.

17 THE COMMISSIONER: If there's an objection to be made
18 it seems to me it's to be made by Mr. Stevenson.

19 MR. FOX: Well, yeah, I would -- I would join
20 in the objection if there's a suggestion of Mr.
21 Stonechild being in the back of a police car and
22 somehow by inference that's going to reflect on my
23 client, Mr. Hartwig, I think I have a basis to --
24 to voice that objection, and -- and I do -- I do
25 join in with what Mr. Plaxton says.

1 The concern is, simply put, is that
2 there's a tape recording that was made of a
3 portion of the interview between Mr. Martell and
4 this particular witness, and the difficulty is
5 that now my learned friend wishes to put in a
6 portion of that interview and play it and suggest
7 here it is. The difficulty we have that, for
8 whatever reason Mr. Martell chose not to tape the
9 full interview, it was turned off and on a number
10 of times during the course of the interview, and
11 so can we -- is it appropriate to say to the
12 witness, "Well, here's a portion of it, we want
13 you to listen to this and is this what you said?"
14 when, in fact, we don't have the full record of
15 what was discussed between Mr. Martell and this
16 particular witness.

17 THE COMMISSIONER: Well --

18 MR. FOX: I appreciate -- sorry.

19 THE COMMISSIONER: Go ahead.

20 MR. FOX: I appreciate it's something that
21 can be pursued in cross-examination, I understand
22 that, but at the same time it -- I voice the
23 concern that it really is, I think, unfair, but
24 also misleading to sort of say here it is, but we
25 don't have it all. And that was the person who

1 took this statement's decision to turn the tape
2 recorder off and on. Because even in cross-
3 examination we are restricted to what we can do
4 with it in cross-examination because it wasn't all
5 recorded.

6 So if you want to discuss what was
7 said by the witness, fair enough, but to put
8 forward this record and somehow suggest this is a
9 record of the discussion when we know it's not the
10 complete record and I'm restricted in being able
11 to pursue it, puts me in a very difficult spot.

12 THE COMMISSIONER: I'm not sure, Mr. Hesje, what's the
13 purpose of playing the tape if, in fact, you have
14 the transcription of the interview and so on?

15 MR. HESJE: Well, the -- we can do it either
16 way. I can tell you my purpose was because of the
17 concerns that had been raised to me about the
18 manner that they felt the interview was conducted
19 and, frankly, in light of the explanation that I
20 believe Mr. Jarvis is going to give, I think it's
21 the best evidence. You're ultimately going to
22 have to decide on those -- that evidence and those
23 objections. The best evidence is the actual
24 recording. You don't catch everything through a
25 transcription of it. You know, in terms of -- of

1 -- I mean, I'm not opposed to playing the whole
2 thing if that's the objection, I'm not sure that
3 it is, but first of all there's no evidentiary
4 basis that -- I will readily acknowledge that it's
5 been turned off at times, but whether -- we can
6 ask this witness what's been left out, if
7 necessary we can call Martell. That's not even
8 been established.

9 THE COMMISSIONER: But I haven't heard a suggestion so
10 far, well other than the statements made by Mr.
11 Plaxton, that the transcript is not an accurate
12 reflection of what -- what was said, and one can't
13 say that without -- without hearing the tape, but
14 at the moment I gather that the witness is
15 adopting what he said.

16 MR. HESJE: Well, he's certainly going to have
17 the opportunity to do that. I will play the tape
18 and ask him if that is, in fact, what took place.
19 I frankly don't understand the objection at this
20 point. I'm not saying look, it's not the whole
21 thing. There's repeatedly been references to
22 summaries and so on. I mean, the issue is did he
23 say these things? Whether he said other things,
24 that's a matter they can deal with in cross-
25 examination.

1 THE COMMISSIONER: Are you suggesting then Mr. Jarvis
2 that the transcription is not a -- doesn't
3 accurately reflect your interview with these
4 officers?

5 THE WITNESS: What I'm suggesting, My Lord, is
6 that the transcript that was provided by Mr.
7 Martell may not be accurate, based on the fact
8 that the tape was constantly turned on and off
9 throughout the interview and that it was -- the
10 possibility would exist that words may or may not
11 have been erased or taped over which would, in
12 fact, change the context of the interview.

13 THE COMMISSIONER: But we won't know that without
14 playing the tape, will we?

15 THE WITNESS: We won't know if anything's been --
16 been missed, My Lord.

17 THE COMMISSIONER: Yeah, we will because I assume you
18 will say that there's a gap here or I made these
19 comments or whatever, but let's -- let's begin
20 with the first question which was about the --
21 whether you made the comments you did of Mr. --
22 about what Mr. Roy had told you he had seen, and
23 you indicated that that was in error.

24 THE WITNESS: That is correct, sir.

25 THE COMMISSIONER: But did I understand you to agree

1 that -- that, in fact, you did make that statement
2 to the RCMP?

3 THE WITNESS: That is correct, sir.

4 THE COMMISSIONER: Yeah, and similarly you made -- you
5 made a similar statement to Mr. Martell. Whether
6 it was correct or not you made that statement to
7 him?

8 THE WITNESS: Yes, sir.

9 THE COMMISSIONER: Okay. That's what I thought.
10 Well, it seems to me that in the final analysis if
11 it appears that there's going to be some serious
12 questions raised about the accuracy of the Martell
13 interview, I'll use that as an example, then the
14 tape will ultimately have to be played, but it
15 seems to me that that lies ahead. I'm not
16 disposed at the moment to play the tape without
17 hearing something more. So far what Mr. Jarvis
18 has said is I made both those statements.

19 MR. HESJE: Yeah.

20 THE COMMISSIONER: I was wrong, but I made them.

21 MR. HESJE: And I can put the transcript to him
22 if that's the preference at this point in time. I
23 can tell you again that I -- it was because of the
24 concerns that were raised I felt the transcript --
25 the tape recording is the best evidence. I'm not

1 -- don't have a strong view on whether the tape is
2 played or the transcript is read in, but one or
3 the other.

4 THE COMMISSIONER: But if he doesn't disavow the
5 transcript, so far at least, Mr. Hesje, there's no
6 point to it. Yes, Mr. Winegarden?

7 MR. WINEGARDEN: Just, Mr. Commissioner, I just had
8 a couple words in that regard, and I would just
9 note that with respect to Mr. Roy these are the
10 same sorts of circumstances that arose with regard
11 to the tape recording that was made of his
12 interview, but we did not stand in objection to
13 the admission of -- of that transcript at that
14 time, and so I will just say that fairness should
15 dictate there. But in a document that was
16 provided to us in the form of anticipated summary
17 of evidence, it's suggested that there is some
18 confusion and misinformation that transpired from
19 this interview that Mr. Jarvis was a subject of,
20 some sort of confusion, and I think to hear his
21 voice, to hear the tone of the discussion in the
22 interview would be much more informative to our
23 process than to just simply read those words in a
24 transcript or have those words read out, and so I
25 think to find out what the nature of what the

1 environment, what the feeling was of the interview
2 is very important for us to hear.

3 THE COMMISSIONER: I understand.

4 MR. STEVENSON: Mr. Commissioner, I'm in a
5 difficult position because I don't want to be seen
6 to try to interfere in any way with the flow of
7 the evidence, but it seems to me if -- if we are
8 going down a road of playing tapes, then I think
9 rather than jumping to one in 2003, we should also
10 be having some hearing of the tapes of the RCMP.
11 Because this is not the RCMP recording we're
12 talking about, it's the Martell interview, and
13 this very issue first arose in 2000 during the
14 context and course of an interview which was tape
15 recorded by the RCMP. So if we want to talk about
16 fairness, I think that in fairness when this
17 matter first arose is also important to be before
18 this commission by way of being played on a tape.

19 THE COMMISSIONER: So what you're saying is that if
20 this tape is to be played then the other tapes
21 should be played also.

22 MR. STEVENSON: I certainly think so, sir, and I
23 think they ought to be played in a chronological
24 fashion, once again. I mean, I appreciate Mr.
25 Hesje has the opportunity to call the evidence as

1 he sees fit, but I'm quite distressed that we're
2 now jumping to 10 years after when the statement
3 was taken and the facts and the circumstances so
4 Mr. Jarvis can deal with the issue of what
5 statement was given to him by Jason Roy, when was
6 it given, how was it given, and what was it said.
7 Because it seems to me that's the fashion in which
8 it ought to unfold before this inquiry.

9 THE COMMISSIONER: You see, the difficulty I'm having
10 with this is that Mr. Jarvis has not repudiated or
11 denied what he said in those two statements, so
12 I'm not sure that the playing of the tapes
13 themselves is going to add some dimension to his
14 evidence, given his frank admissions here about
15 what he said on those two occasions.

16 MR. STEVENSON: Well, I think the -- the context of
17 the RCMP one being played and seeing what he says,
18 and as I -- I don't have the exact words in front
19 of me, but as I recall it -- Mr. Jarvis will have
20 to testify -- but he says in the transcript, yes,
21 but I'm not sure whether that comes from what
22 you've told me or from my memory. And then he
23 goes on to say if it had been said it would be in
24 the statement. And the statement we're talking
25 about is the statement of November 30. So it's in

1 that context that I rise, and I don't want to
2 interfere, but it just seems to me that fairness
3 dictates that he be treated fairly in this inquiry
4 to present the evidence in an orderly fashion.

5 MR. HESJE: If I may, we may have achieved
6 common ground because I don't disagree with that.
7 I'm quite prepared to play the entire RCMP
8 interview and then play the entire Martell
9 interview.

10 THE COMMISSIONER: Well --

11 MR. HESJE: I think there -- I mean, there are
12 serious issues surrounding them and I think the
13 only way it's going to be dealt with is to play
14 them.

15 THE COMMISSIONER: This has come full circle, Mr.
16 Hesje, because from the initial objections that
17 were raised by Mr. Plaxton, I am now hearing Mr.
18 Stevenson say that it would be helpful to have
19 them both played.

20 MR. HESJE: That's what I'm hearing as well.

21 THE COMMISSIONER: And that's your position so --

22 MR. HESJE: I was only playing a portion in --
23 in interests of time, but it's clear there's going
24 to be issues about them. I don't object to
25 playing both of them.

1 THE COMMISSIONER: Well, now that you have an ally in
2 Mr. Stevenson so it seems to me that --

3 MR. WATSON: I feel I have to put my two cents
4 in, My Lord. Surely the best evidence that we
5 have here is from the witnesses that come forward.
6 As you say, this witness has adopted that yes, he
7 said that. What's the purpose of playing the
8 tape? The witness is here, everyone's free to
9 examine him, all my friends can do that, and if
10 they want to for some reason or particular point
11 raise this statement because he's saying something
12 inconsistent, fair enough, but I don't think we
13 need to do that at this time. He's admitted --
14 Did you make these statements? Yes, I did. Like,
15 why at this point would we be playing tapes if
16 it's only going to lengthen this inquiry
17 unnecessarily, in my view.

18 THE COMMISSIONER: You know what? I agree with you.

19 MR. PLAXTON: I agree with Mr. Watson.

20 MR. HESJE: Well, the point that's missed there
21 though is he does, he admits he's made the
22 statements, but then he goes on to say, But I
23 didn't mean what I said, and my way of explanation
24 is to say you got to look at the context in which
25 I said it. And that, I believe, is what Mr.

1 Stevenson is saying, as well, and what I'm
2 agreeing with.

3 THE COMMISSIONER: Well, I'm not pursuing it but --

4 MR. STEVENSON: And the context, of course, is in
5 the statement and the -- the transcription is --
6 is there for whatever the transcription is. I
7 mean, I don't know whether there's any value in
8 playing it. All I'm saying is if you're going to
9 isolate and play in one, then it seems to me you
10 have to isolate in fairness and play in the other.

11 THE COMMISSIONER: With respect, I think Mr. Watson
12 has got it right. If somebody later wants to have
13 the statements played, one or both of them, fine.
14 But for present purposes, Mr. Hesje, I'd suggest
15 we go on without playing the tape.

16 MR. HESJE: Okay. Now, I didn't understand
17 your ruling to mean I can't refer him to the
18 transcript then?

19 THE COMMISSIONER: No, no, I didn't say that. I said
20 I'm not -- I'm not suggesting that you play the
21 tape though. You spoke of playing the tape.

22 MR. HESJE: Yes. No, I understand.

23 THE COMMISSIONER: Right.

24 Q MR. HESJE: Now, Mr. Jarvis, you do recall
25 being interviewed by Mr. Martell?

- 1 A Yes, sir.
- 2 Q And you've been provided with a copy of the
3 transcript of that interview?
- 4 A Yes, sir.
- 5 Q I believe that was sent to you on September 12th?
- 6 A Yes, sir.
- 7 Q And -- and you have a copy of it in front of you?
- 8 A That is correct.
- 9 Q Now, I want you to turn to page 50 of that
10 transcript.
- 11 A Yes, sir.
- 12 Q Now, at the bottom of page 50, the question is put
13 as follows: "But at 1852, Jason Roy called and
14 advised that he was with the deceased for most of
15 the day and the evening of November the 24th.
16 1852 that is [sic] 7 o'clock roughly?" And your
17 answer: Almost 7 o'clock.
- 18 A Are we reading the transcript from Mr. Martell,
19 sir, or --
- 20 THE COMMISSIONER: What page are you on?
- 21 MR. HESJE: Fifty-one.
- 22 THE COMMISSIONER: I thought you said 50.
- 23 MR. HESJE: I was on 50, I'm now on 51.
- 24 Q I'm now at the top of page 51, do you have it
25 there?

- 1 A Yes.
- 2 MR. PLAXTON: I think we're looking at different
3 transcripts.
- 4 (UNIDENTIFIED) I believe that's about two-thirds
5 of the way down the page, My Lord.
- 6 THE COMMISSIONER: Well, I intend to give my copy
7 back until somebody satisfies me that I've got the
8 right thing.
- 9 MR. HESJE: Well, I think what's happened is
10 they were printed off and the printers may have
11 not got the pages all exactly the same number.
- 12 MR. PLAXTON: I think, Mr. Commissioner, what has
13 happened is that these were circulated by Email,
14 and you print it on your printer, I think we've
15 all (inaudible).
- 16 THE COMMISSIONER: But I'm a slow study, Mr. Plaxton,
17 I need some reference.
- 18 MR. PLAXTON: Oh, as do we all, Sir, I'm not
19 suggesting anything else.
- 20 MR. HESJE: Well, let's do this, because from
21 the copy I have here, I think the one in front of
22 you, if you turn to page 53 it says, "End of tape
23 #1." Now it might be a slightly different page
24 but can everybody locate where it says, "End of
25 tape #1"? Problems with technology. We were so

1 sophisticated that we circulated these through
2 Email and never anticipated that the page number
3 would be different.

4 Q So you have yours, is it page 53, as well, on
5 yours, Mr. Jarvis, where it says "End of Tape #1"?

6 A That's correct.

7 Q Now I want you to go down to the question that
8 says: "But at 1852, Jason Roy called..."

9 THE COMMISSIONER: Which is that page?

10 (UNIDENTIFIED) It's on the next page, again.

11 MR. HESJE: That's fine, I don't need the
12 page numbers, we'll just have to follow along with
13 the questions, unfortunately the questions aren't
14 numbered either.

15 Q And I already read that question:

16 "Q But at 1852, Jason Roy called and advised
17 that he was with the deceased for most of the day
18 and the evening of November the 24th. 1852 is
19 what, 7 o'clock roughly?"

20 A Almost 7 o'clock.

21 Q Almost 7 o'clock at night?"

22 A M'hm.

23 Now that -- he's talking about the
24 report and we already went through, you had a
25 notation -- I'm sorry, in your notebook, that

1 you'd received a call from Jason Roy at that time
2 and you set up an appointment; correct?

3 A Correct.

4 Q Okay. Now continuing on, the question is:

5 "Q And he's calling, as opposed to you having
6 any report of contacting him, is that correct?

7 A That's correct.

8 Q And then you attended at 2045 and spoke with

9 --

10 A Jason.

11 Q -- with Jason?

12 A That's correct.

13 Q I think we have a copy of the statement that
14 he provided at the time, and you refer to that, I
15 think, as a pure version statement, is that
16 correct?

17 A Yes.

18 And I want to pause there because I
19 presume that's the statement that we saw in P-61,
20 the two-page statement, handwritten statement?

21 A That's correct.

22 Q All right. The question is:

23 "Q Okay. What -- what's he telling you in your
24 pure version statement as to the whereabouts of,
25 or their activities on the night of the 24th?

1 Actually, I guess the question is, what's he tell
2 you as to Neil's whereabouts when he last saw him
3 on the night?

4 A Basically that he and Neil were at Julie
5 Binning's on 3269 Milton Street.

6 Q Yeah, no I think the last -- we'll just deal
7 with where he last saw him.

8 A That they last saw each other, they were at
9 Snowberry Downs, or in that general area. They
10 had been to the 7-Eleven Store.

11 Q Right.

12 A How they got there he's not sure. They were
13 walking along basically in the general area,
14 arguing. He doesn't recall what they were arguing
15 about. But they'd been to Snowberry Downs looking
16 for Claudine Neitz's sister. They checked other
17 apartments for the last name of Neitz. Couldn't
18 find any. They were about to check one apartment,
19 and he indicates that they stopped, stood there
20 and argued; for what, again he doesn't know.
21 Turned around and basically swore, and looked
22 around, blacked out, and woke up at Julie
23 Binning's later.

24 Q You asked questions: "What time approximately
25 did you last see Neil Stonechild alive on November

1 24th?"

2 A Yeah. He indicated that was about 11:30 p.m.
3 I also asked him --

4 Q Did you not have any knowledge of that prior
5 to asking that question?

6 A No, I don't believe so.

7 Q Okay.

8 A I also asked him, when he refers to the name
9 Trevor, is that -- if he was referring to Trevor
10 Nowaselski. He indicated that was correct.

11 Q Were you aware of the fact that Jason, at
12 that time Jason Roy was checked by the police?

13 A I don't believe so.

14 Q You weren't aware that -- in reference to a
15 warrant that was out for him?

16 A No, and I'm -- don't believe that came in the
17 statement. I think that came during general
18 conversation, and maybe I neglected to put it in
19 the statement but --

20 Q Okay.

21 A -- I did ask --

22 Q During the general conversation, did Neil ask
23 you -- or did Jason Roy tell you that he had seen
24 Neil in the back of a police car?

25 A Yes. Jason and Neil, apparently, when they

1 left Snowberry Downs, had their disagreement, went
2 their separate ways according to Jason.

3 Q Right.

4 A Jason indicated, I believe, that he was on
5 Confederation Drive walking when the police car
6 pulled up and approached him and basically did a
7 check on him.

8 Q All right.

9 A He indicated that first of all he gave a
10 false name.

11 Q Right.

12 A Because he was quite, actually quite happy
13 about it --

14 Q Right.

15 A -- the fact that he'd deceived the police,
16 because there was a warrant out for his arrest --

17 Q Right.

18 A -- for being unlawfully at large. He also
19 indicated that Neil was in the back seat of the
20 patrol car at that time.

21 Q Right.

22 A However he informed the police that he didn't
23 know him because he also knew that Neil was
24 unlawfully at large from the community, or group
25 home in Sutherland.

- 1 Q Right.
- 2 A So he declined any knowledge of who Neil was.
3 And that was the last he saw of him.
- 4 Q Okay. So we're talking about the interview
5 that was done at what time again on the 30th?
- 6 A This would have been starting at 2145 hours.
- 7 Q 2145 on the 30th, which is what, 8:45,
8 right?
- 9 A 9:45.
- 10 Q 2045, I see.
- 11 A Time started -- the statement was 2145.
- 12 Q Time started, yeah.
- 13 A 2140 -- sorry, first page, 2045, yeah.
- 14 Q 2045, yeah. And then --
- 15 A And concluded at 2150.
- 16 Q 2140 it's finished.
- 17 A Approximately one hour.
- 18 Q Yeah. And the -- and you indicated earlier
19 your style of interviewing and investigation when
20 you're meeting with a witness is sit down and talk
21 with them generally?
- 22 A (Inaudible)
- 23 Q Is that correct?
- 24 A Yeah.
- 25 Q In other words, and so -- and then you have

1 them do a pure version statement?

2 A Yes.

3 Q And then you ask the questions of him?

4 A Yes.

5 Q So what you're telling me then is that when
6 you -- your preliminary investigation with Jason,
7 he tells you about being checked by the police?

8 A It could have come out in the preliminary.
9 I'm not sure when it actually came out.

10 Q But it was sometime during your -- this
11 meeting with him?

12 A My conversation with -- it could have been
13 during that meeting with him.

14 Q Yeah, okay. And he was telling you he was
15 checked by the police, and what's he telling you
16 about what he saw of Neil in the back of the
17 police car?

18 A I believe he was supposedly in handcuffs.

19 Q Right.

20 A In the back seat. They were both under the
21 influence and they were allowed -- he was allowed
22 to go on his way. He doesn't know what happened
23 to Neil after that.

24 Q Okay. Did he say he was bleeding?

25 A No. He didn't indicate that he was bleeding.

1 Q He just said he saw him in the back of the
2 police car?

3 A He said he saw him in the back of the car.

4 Q Did he say he was in handcuffs?

5 A He said he was in handcuffs.

6 Q Did he tell you that he was -- what did he
7 tell you about what the police did?

8 A They just checked him, asked who he was. He
9 lied, gave them a phony address. Basically he was
10 allowed to continue on his way.

11 Q Did he mention what type of check that they
12 did?

13 A No.

14 Q Okay.

15 A Not that I can remember anyway.

16 Q Did he mention that they checked him in the
17 system though?

18 A Not that I'm aware of.

19 Q Yeah, okay. Yeah, and I -- all right, so I
20 just want to confirm then that you met with Jason
21 at -- what time did you meet -- what time do your
22 notes show that you met with Jason? You indicate
23 in your notes that you met with him at 2045.

24 A Right

25 Q And that's the time that you --

1 A Started taking his statement.

2 Q He started his statement. But would that be
3 the time that you -- I mean if --

4 A 2045, 1121 P South, witness statement taken
5 from him.

6 Q Okay. Okay. So in spite of 2045 being on
7 that document, is that time put in by yourself?

8 A Yes.

9 Q Is that put in after he does the statement?

10 A No, Start time is put in before we start.

11 Q Start time you put in. All right, what about
12 the conversation you had before he started this?

13 A That would have just been general
14 conversation.

15 Q No, no, but like how do you account for the
16 time if -- are you saying this time that you
17 started the meeting with him, or are you saying
18 that time is when you started writing?

19 A That's the time we started writing the
20 statement.

21 Q Okay. Okay.

22 A You know, it could have been -- it could be
23 the combination of the two because we're only
24 talking about a page and a half statement.

25 Q Yeah

1 A And we're talking an hour.

2 Q Yeah.

3 A So it may have been conversation in there,
4 then followed by him writing it down.

5 Q All right. Okay. We're talking the 30th,
6 and on the 29th you had gone to Communications and
7 saw some record of interaction with the police and
8 the call in relation to Neil Stonechild, and
9 related C-PIC activity to Neil Stonechild, is that
10 correct?

11 A Yes.

12 Q Yes. And now you're -- 20 or so hours later
13 you're meeting with Jason Roy and he tells you
14 that Jason, or pardon me, that he saw Neil in the
15 back of the police car. You ask him questions at
16 the end of the statement, you ask, "What time
17 approximately did you last see Neil Stonechild
18 alive on November the 24th, 1990?" and he says,
19 "About 11:30." And the other question of
20 relevance, "What condition was he in?" But you
21 don't ask him where he was when he last saw him.
22 Is there some reason for that?

23 A No, I think -- no reason for it.

24 Q Do you -- do you know why you wouldn't make
25 notes of that in your notebook at least, if it

1 wasn't as part of the statement?

2 A No.

3 Q Do you have any -- can you offer any reason
4 as to why you wouldn't --

5 A No, it may --

6 Q -- include that in your report?

7 A It may have been in the report.

8 Q I'm sorry?

9 A It may have been in the report that we don't
10 have.

11 Q In the report we don't have?

12 A Yeah. This is not a full copy of the report,
13 I don't believe. I mean this is what came from
14 Louttit, whatever he had of a report.

15 Q All right, but --

16 A You know, I don't know.

17 Q No, and I mean I'm not --

18 A Unless I --

19 Q We can discuss that aspect of it later on,
20 but the evidence that you've presented so far is
21 that whatever is in your notes in regard to your
22 investigation you committed to a report, is that
23 correct?

24 A As much as I can recall, yes.

25 Q Well --

1 A What's in my notes is --

2 Q -- you didn't say earlier that it was "as
3 much as I can recall"; it was a matter of saying--

4 A What's in my notes is basically what I did.

5 Q Is what you did. And you were reporting, in
6 your reports, information that was taken from your
7 notes as to your activities, right?

8 A Right."

9 Then the interview carries on to
10 deal with the meeting with Trent Ewart. So first
11 of all, Mr. Jarvis, do you recall those questions
12 and answers at your interview with Mr. Martell?

13 A Yes, sir.

14 Q And I take it your evidence today is that that is
15 not accurate, what you told Mr. Martell?

16 A That is correct, sir.

17 Q And can you explain why you told him that if it's
18 not accurate?

19 A As I indicated in the meeting with you, sir, along
20 with Mr. Stevenson, and I believe Mr. Rossmann was
21 present, at your office, that comment was made in
22 error as a result of interviews that I had had
23 with Officers Lyons and Warner over a period of
24 time three years earlier, where scenarios were put
25 to me as having possibly occurred, and at that

1 point in time I indicated to them that I had
2 little or no recollection whatsoever regarding the
3 file. I informed them at the time that I did not
4 know whether or not what was being recalled was
5 actually from my own memory or as a result of what
6 they had suggested to me.

7 Q Okay.

8 A And this, in turn, continued on with Mr. Martell,
9 who, I might add, was not basically conducting an
10 interview in my opinion at this time but more of
11 an interrogation.

12 Q Okay, I guess that's why I wish to play the tape
13 so we get the tone of it. Your evidence, you're
14 saying that at that point in time you felt it was
15 an interrogation?

16 A Certainly, sir.

17 Q And what is the difference in your mind, interview
18 and interrogation?

19 A I really felt at the time, sir, that the tone of
20 the interview, shall we say, was taking more of an
21 adversarial role rather than an interview.

22 Q Did you feel that you were under some compulsion
23 to meet with Mr. Martell?

24 A No, I was not under any compulsion. I had been
25 requested by, I believe your office, indicating

1 that Mr. Martell would probably be contacting me.
2 I had also been contacted by the Saskatoon Police
3 Service in written correspondence, advising that
4 someone from the Commission would possibly be
5 contacting me, and suggesting that I offer all
6 cooperation that I possibly could.

7 Q Yeah. But you had been cooperative, am I not
8 correct?

9 A That is correct, I made that very clear from the
10 onset, sir.

11 Q You met four or five times with the RCMP, and
12 again you weren't compelled to do so?

13 A No, that's right, sir.

14 Q You were cooperating with them?

15 A Very much so.

16 Q It was also voluntary?

17 A That is correct.

18 Q You could have shut down the interview at any time
19 if you wished?

20 A That is correct.

21 Q You were an experienced police officer?

22 A Yes, sir.

23 Q You conducted, I suspect, hundreds, if not
24 thousands of interviews yourself?

25 A That is correct.

1 Q So what, can we be any more specific then, what is
2 it that -- first of all, start with the RCMP, what
3 is it they did to create this false memory on your
4 part?

5 A I believe it was in the course of their interview,
6 sir. They were trying to assist me and prompting
7 and jogging my memory, and suggestions were made,
8 do you recall so-and-so saying this, do you recall
9 so-and-so saying that. I don't know if I recalled
10 it or not for sure; whether it was my own active
11 memory, or it was the suggestion that was made
12 enough times that after a while you start to
13 believe that maybe that is your memory.

14 Q Well, let's then be clear on what we're saying
15 about the portions I just read. Are you saying
16 you're not sure whether that's your memory or not,
17 or are you saying it is not your memory?

18 A I'm saying that is a comment made in error, sir.
19 Had the -- that information been, in fact,
20 correct, it would have been in my report, it would
21 have been in Mr. Roy's statement, and it would
22 have been in my notebook.

23 Q Now, you were interviewed on August 11th by Mr.
24 Martell?

25 A Yes, sir.

1 Q Who did you discuss your evidence with after you
2 met with Mr. Martell?

3 A I didn't discuss my evidence with anyone, sir. I
4 -- when I got home the following day, after
5 returning from my doctor's office as a result of
6 the interview with Mr. Martell, there was a phone
7 message on my answering machine at home to contact
8 the Saskatoon Police Association office, which I
9 did, and it was in regards to my being eligible
10 for legal counsel and standing at this inquiry.

11 Q Okay. Do you recall who you spoke to at the
12 Association?

13 A I believe I spoke to the vice-president of the
14 Police Association at that time, sir.

15 Q And did you discuss the interview you'd had with
16 Mr. Martell at that time?

17 A I believe I informed him that I had had four
18 visits from the investigation people from the
19 Commission and that I had provided statements.

20 Q Did you discuss what you had said in those
21 statements?

22 A No, sir.

23 Q Did you have further contact with any member from
24 the Association?

25 A In regards to legal counsel, yes, sir. It was

1 confirmation on my part to determine who, in fact,
2 was going to be looking after my interests at this
3 inquiry, and it was my understanding Mr. Plaxton
4 was representing the Police Association and, as
5 such, would have been looking after my interests.

6 However, I believe I spoke with you
7 on September the 12th in regards to a package that
8 you had sent out to me. At that time, sir, you
9 raised the question with me that you had sent the
10 package out and you suggested, I believe, at that
11 time, that possibly I may wish to consult with
12 legal counsel. I believe in that conversation I
13 informed you that it was my understanding that Mr.
14 Plaxton was taking care of my interests, and your
15 response to that, sir, was, quote, "That's your
16 call," unquote.

17 It was left at that. After the
18 conversation with yourself regarding the package
19 and documentation that was coming out, I discussed
20 briefly with my wife, who suggested maybe we
21 should phone Saskatoon to find out in fact if Mr.
22 Plaxton is looking after your interests. I made
23 another call to Saskatoon to find out, ten minutes
24 after I had finished speaking with you, sir, that
25 Mr. Plaxton was not in a position to look after my

1 interests and, as such, I had been referred to the
2 law firm of Priel Stevenson Thornton.

3 Q Okay, and I want to caution you, I don't want to
4 hear anything about what you've discussed with Mr.
5 Stevenson. That would be subject to solicitor and
6 client privilege. Was there anybody else that,
7 leaving aside any dealings you've had with Mr.
8 Stevenson, then, that you discussed your evidence
9 with?

10 A No, sir.

11 Q Now, what did you feel that, in the RCMP
12 interviews you've indicated with Sergeant Lyons or
13 Corporal Warner, did you feel that they were
14 unfair to you in those interviews?

15 A Not at all, sir.

16 Q But you did feel that they were suggesting things
17 to you?

18 A Yes, sir, they were attempting to help me recall
19 the events regarding this file.

20 Q And it's your evidence then that they helped you
21 so well that you started recalling things that you
22 now don't think were -- happened?

23 A It was ten years after the fact, sir, and I
24 indicated to them from the very start I had no
25 recollection; the name Stonechild didn't even mean

1 anything to me at the time, sir. And for many of
2 the interviews that I had with Officers Lyons and
3 Warner, I didn't have my notes or a copy of the
4 file to refer to. It was -- there was no
5 recollection whatsoever.

6 Q Now, let's talk a minute about the interview with
7 Mr. Martell. Was he unfair to you?

8 A I wouldn't say he was unfair, sir. It was the
9 manner in which he conducted the interview,
10 towards the latter part of the interview.

11 Q And he had with him a copy of the police report
12 and your notebook?

13 A I'm not sure if he had that or not, sir. He had a
14 binder with tabbed pages sticking out of it. From
15 looking across my dining room table, I could read
16 upside down and there was areas that were marked
17 "probe" and another area was marked "extensive".
18 What that related to, I don't know.

19 Q But you had at that time access to -- you had seen
20 your reports, the reports, and you had seen your
21 notebook. Did the RCMP not provide you with
22 copies of those to review?

23 A I had copies of my notebook, sir. I'm not sure
24 when I got a copy of the police report.

25 Q Okay. Now, you heard suggested that the tape

1 recorder was turned off at times, is that correct?

2 A It was quite consistent, sir.

3 Q Okay. Were -- were you aware when it was turned
4 off, when it was turned on?

5 A Yes, sir, Mr. Martell was sitting across my dining
6 room table turning it on and off right in front of
7 me.

8 Q I understand. And did he turn it off, to your
9 knowledge, when you were giving evidence that you
10 felt was material?

11 A I couldn't be specific as to whether the evidence
12 was material or at what specific times he was
13 turning it off. He was turning it on and off to
14 either collect his thoughts and come up with
15 another question.

16 Q Yeah. I understand that. Now --

17 THE COMMISSIONER: But that's not your question, is
18 it? I think the question is, was there any
19 occasion at all when you were providing
20 information that he turned it off, or didn't turn
21 it on? Isn't that your question?

22 MR. HESJE: That was my question, yes.

23 THE WITNESS: It was turned off during responses,
24 I believe, or he said, "Just a moment," it would
25 be turned off and then turned back on again.

1 THE COMMISSIONER: So you gave answers which he did
2 not -- he didn't record?

3 THE WITNESS: I don't recall specifically, My
4 Lord, but it may very well have occurred.

5 THE COMMISSIONER: But I'm asking you concretely: did
6 that happen?

7 THE WITNESS: I don't know, sir.

8 Q MR. HESJE: I believe you just said he had
9 said, "Just a moment," and he shut it off.

10 A That was mentioned on occasion, yes, sir.

11 Q Okay. Now, let's approach this another way. You
12 have read the transcript from that interview?

13 A Yes, sir.

14 Q What did you tell Mr. Martell that is not
15 contained in that transcript?

16 A I didn't, sir; I didn't speak to Mr. Martell since
17 that interview.

18 Q No, no, no. At the interview, the interview
19 purports to be a transcript of what was said at
20 the -- when he interviewed you. It's a record of
21 what he said to you, and I accept that at times
22 the tape recorder was turned off, but you've read
23 the transcript, tell me what's left out.

24 A I don't know, sir.

25 Q Do you know if anything is left out?

1 A Not to my recollection, no, sir. I don't know if
2 anything's missing or not.

3 MR. HESJE: Okay. Mr. Commissioner, I don't
4 have any further questions.

5 THE COMMISSIONER: Well, before you sit down, did I
6 understand you to say, Mr. Jarvis, that with
7 respect to the account of -- Mr. Roy's account of
8 seeing Mr. Stonechild and so forth, which appears
9 in those two transcripts, do I understand you to
10 say that the RCMP were saying to you, "Now, is
11 this what happened, that Roy told you this and
12 then that Roy told you that, and then Roy told you
13 something else", is that what you're saying?

14 THE WITNESS: In partial context to that, My
15 Lord, it was a suggestion of, "Do you recall
16 having a conversation with Jason Roy where he told
17 you this or where he told you that?"

18 THE COMMISSIONER: So what you're saying is that
19 they were suggesting to you the answers to all of
20 these questions about what was seen and Roy's
21 account of what transpired and being stopped and
22 so on?

23 THE WITNESS: I believe so, sir.

24 THE COMMISSIONER: I see. It seems to me, Mr. Hesje,
25 that the transcript will answer that question

1 right away, you know, the transcripts will show
2 what happened there.

3 MR. HESJE: The RCMP transcripts?

4 THE COMMISSIONER: Yes.

5 MR. HESJE: There's only the one interview
6 that's transcribed --

7 THE COMMISSIONER: Right.

8 MR. HESJE: -- but, yes, I agree.

9 THE COMMISSIONER: Well, in light of the answers that
10 have been given here, it seems to me I have to
11 reconsider my thought that maybe they shouldn't be
12 played at this juncture.

13 MR. STEVENSON: The difficulty, Mr. Commissioner,
14 is that there were four or five contacts with the
15 RCMP prior to the recorded statement. Those were
16 not transcribed, they're not recorded in any way
17 to reflect what occurred in those. The other was
18 simply a conversation which was recorded

19 THE COMMISSIONER: The best we can do is with the
20 recordings we have available.

21 MR. STEVENSON: Sure, but I point that limitation
22 because I think what the witness has been saying
23 is this occurred over all of those periods, he's
24 not saying in the course of the recorded statement
25 that this refreshing was being done, but it was

1 done before the recorded statement was taken.

2 THE COMMISSIONER: Because it seems to me what Mr.
3 Jarvis is saying is that, in effect, the police
4 concocted this whole interview, that they put
5 together the interview and they made a series of
6 suggestions to him and, in effect, to encourage
7 him, to induce him to make statements about things
8 that he says he had no recollection, and that's a
9 very serious accusation.

10 MR. STEVENSON: I know.

11 MR. HALYK: May I speak to this, Mr.
12 Commissioner?

13 THE COMMISSIONER: Yes.

14 MR. HALYK: Mr. Commissioner, I have listened
15 to this with great interest and I mean this is
16 calling into credibility the whole inquiry process
17 and the whole task force process, with the
18 greatest of respect, and it cannot remain thus,
19 and it is my respectful suggestion that we should
20 consider a voir dire type proceeding, wherein
21 before -- certainly I'm going to want to hear from
22 the police officers who did this investigation
23 before I conclude cross-examination of this
24 witness. And it seems to me the only meaningful
25 way that might be done is to have a voir dire and

1 have these people come forward, including Martell,
2 to describe what happened in each of these
3 meetings, in each of these interviews. And at
4 that point in time I think it will form a basis
5 upon which you, as Commissioner, can make an
6 assessment. But even for cross-examination
7 purposes it is my respectful submission that we
8 need to have this and we need to hear these tapes.
9 This is a most serious allegation and it calls
10 into question the integrity of the whole process,
11 and, accordingly, I think it has to be treated
12 with that kind of respect.

13 THE COMMISSIONER: Well, and one of the concerns I
14 have is it calls into question the conduct and the
15 integrity of the RCMP.

16 MR. HALYK: As well as the Commission
17 investigator, absolutely. Thank you.

18 MR. GIBSON: I certainly agree with what Mr.
19 Halyk has said. I mean clearly when the revised
20 cansay was provided to us, to say that we were a
21 little taken aback is a bit of an understatement.
22 I think in fairness to Mr. Jarvis, what he has
23 said here, and if I do recall his evidence
24 correctly, is he doesn't feel that the RCMP did
25 anything wrong, he didn't feel that he was treated

1 unfairly. I think what he says is that when he
2 was first contacted, he had no recollection and
3 that there were some pieces of information given
4 to him, and then through a period of time covering
5 from 2000 to 2003 he, himself, became confused as
6 to what he could recall directly and what he
7 couldn't recall. I don't think Mr. Jarvis,
8 himself, is saying that the RCMP, quote, unquote,
9 "brainwashed" him or something to that extent, or
10 forced some version upon him. I think he admits
11 readily that he was confused, but I think we have
12 to clear this up, regardless.

13 THE COMMISSIONER: I agree that it has to be cleared
14 up. I think that what he's saying goes further
15 than just what you're suggesting, but, however, it
16 does need to be cleared up.

17 MR. GIBSON: Either way it has to be addressed.

18 THE COMMISSIONER: Correct.

19 MR. STEVENSON: Mr. Commissioner, I think it's
20 important that we look at the statement recorded
21 by the RCMP as to when this first arose with Mr.
22 Jarvis, and that's filed as Exhibit P-107, and if
23 we go to page 8 of that document and we read at
24 the bottom as the interview is being recorded,
25 this issue arises, and this is when it first

1 arises, and that's in October of 2000. And
2 Corporal Warner is asking a question at the
3 bottom:

4 "Cpl. Warner: Yah.. wha.. during the course of
5 ah... the original question where I... I asked you
6 if you could summarize or... or articulate what
7 you recall of the investigation, your involvement
8 in it, you mentioned ah... talking to Roy and Roy
9 mentioned being, him being checked by the police
10 what... what more can you tell us about that,
11 Keith?"

12 Jarvis: Ah... the only thing I, ya'know
13 I... I can't recall exactly what happened but from
14 my understanding from... from having talked
15 with... with yourselves and, ya'know, refreshing
16 memories an' so forth, he was checked by the
17 police, he was unlawfully at large apparently at
18 the time and gave a phony name..."

19 And then he goes on to say:

20 Cpl. Warner: "Uhm-hmmm.

21 "Jarvis: ... so he wouldn't get picked up
22 ah... and from that stand point I'm not sure if he
23 told me that Stonechild was in the back of a
24 police car or if I learned that from the result of
25 our conversations an'...

1 Cpl. Warner: Okay.

2 Jarvis: ... throughout this... this whole
3 time frame.

4 Cpl. Warner: Uhm-hmmm [affirmative].

5 Jarvis: ... it's not something I... I don't
6 remember him saying that h... he may very well
7 have...

8 Cpl. Warner: Uhm-hmmm.

9 Jarvis: ... and if he did it would be in
10 this statement and that's...

11 Cpl. Warner: Uhm-hmmm. Okay.

12 Jarvis: ... in his written statement."
13 And, you see, that's the context
14 which I felt should be before you as we look at
15 this whole thing to see where it went, because I
16 happen to support what Mr. Gibson is saying, that
17 that's what transpired. We're not saying it's
18 planting or suggesting, it's simply the course of
19 asking questions, and leading questions can lead,
20 and that's -- that's what I understand Mr. Jarvis
21 to be saying. And that's the first recorded
22 conversation with the RCMP in which -- and that's
23 the point at which it first arose, and that's
24 three years prior to the Martell interview.
25 That's the only point I wish to make on it.

1 MR. WORME: My Lord, I've had a brief
2 conversation with Mrs. Bignell. This is a woman
3 with infinite patience, she has waited a very long
4 time to hopefully get some responses, to get some
5 answers. She tells me that she is quite prepared
6 to endure whatever time that it takes in order to
7 resolve this issue. She understands, I think, the
8 seriousness of it, and I believe that my learned
9 friend, Mr. Halyk, has put it quite fairly, and I
10 thank him for his suggestion. We wholeheartedly
11 agree to that.

12 THE COMMISSIONER: Thank you. It seems to me, Mr.
13 Hesje, that before we adjourn we should try to
14 resolve this so that counsel know with respect to
15 tomorrow what is going to happen or not happen, as
16 the case may be. And so what I'm going to do is
17 ask your indulgence and we'll take a few minutes
18 so I can consider this, and I'll need to involve
19 you in this, because there's some planning in this
20 as well, Mr. Hesje.

21 So maybe just come and check with
22 me in ten minutes or so, if you would, please,
23 Irene?

24 (PROCEEDINGS ADJOURNED AT 4:51 P.M. & RECONVENED AT 5:10
25 P.M.)

1 THE COMMISSIONER: What I propose to do is have
2 Commission counsel play the two transcript
3 recordings tomorrow morning. I'm told that there
4 are three short witnesses that we can deal with in
5 the afternoon. So my intention is to have Mr.
6 Jarvis stand down so you can hear the tapes.

7 When we return in November, my
8 expectation is that we will continue with Mr.
9 Jarvis's evidence, but that I've also instructed
10 Commission counsel to have the RCMP officers and
11 Mr. Martell available at that time so that if
12 counsel wish to ask them questions they can do so.
13 The order of the cross-examination of the police
14 officers is something that you can discuss amongst
15 yourselves and you can speak to Mr. Hesje about
16 that. If there's any controversy about that, I'll
17 settle that question, also. But in light of what
18 has happened and in light of Mr. Jarvis's
19 comments, I think that's the appropriate process
20 to follow now.

21 And I appreciate it's going to add
22 a good deal more time to the Inquiry, but I think
23 I've become resigned to that, reluctantly, since I
24 no longer seem to control my own life, and we'll
25 just have to proceed the best way we can. But

1 it's important that all evidence that is relevant
2 to the issues here be addressed and that the
3 parties have an opportunity to canvass that and
4 know what the situation is.

5 Very well. Well, I guess we can
6 adjourn until tomorrow.

7 MR. GIBSON: My Lord, if I could just try and
8 make my police officers' lives a little bit better
9 over the next month. Do you anticipate all of
10 their evidence then being heard on that return
11 date or only available with respect to the issue
12 related to Mr. Jarvis? Is that what you would
13 want to hear evidence from them and they should
14 prepare to give you evidence if that is necessary
15 at that point?

16 THE COMMISSIONER: Well, we're only interested in
17 their contact with Mr. Jarvis. Oh, you're talking
18 about all the other interviews? Oh, no, no, no,
19 no.

20 MR. GIBSON: Very good.

21 THE COMMISSIONER: No, I'm -- I appreciate your
22 question. No, I just want them to have thought
23 about and reviewed their notes and so on with
24 respect to their discussions with Mr. Jarvis.

25 MR. GIBSON: And you're speaking about Officer

- 1 Lyons and Officer Warner?
- 2 THE COMMISSIONER: Right. And I suppose it's possible
3 that nobody will want to ask them any questions,
4 but given the history of this Inquiry, somebody
5 will ask them a question, no matter what.
- 6 MR. GIBSON: And you would anticipate that that
7 would unfold in a voir dire?
- 8 THE COMMISSIONER: No, there's --
- 9 MR. GIBSON: Or is that going to be open then?
- 10 THE COMMISSIONER: No, there's no need for a voir
11 dire.
- 12 MR. GIBSON: Very good.
- 13 THE COMMISSIONER: A voir dire doesn't need to be --
- 14 MR. GIBSON: And that would be my preference.
- 15 THE COMMISSIONER: No, it doesn't resolve anything. I
16 mean this is all part of the Inquiry, it's all
17 part of the public disclosure --
- 18 MR. GIBSON: Yes, absolutely.
- 19 THE COMMISSIONER: -- of what's happening and so it
20 should be.
- 21 MR. GIBSON: And I would want it no other way.
- 22 THE COMMISSIONER: No, that's right.
- 23 MR. GIBSON: Thank you.
- 24 THE COMMISSIONER: Very well. We'll adjourn until
25 tomorrow then.

1 MR. PLAXTON: Excuse me, Mr. Commissioner, just
2 one point. If we are just discussing Mr. Jarvis's
3 contact with the police, the RCMP, I think it may
4 come up, though, that -- to suggest, "Well, did
5 you not suggest something similar to another
6 witness?" And I think that is the evidence we
7 have heard, of scenarios being painted for other
8 witnesses, and I would want to go into that, if it
9 was relevant. That is, I didn't want to catch
10 anyone by surprise.

11 THE COMMISSIONER: Well, I suppose you can alert
12 Mr. Gibson, can't you, as to the areas that you
13 might want them to review as well so they're
14 prepared for that as well? That would be helpful
15 to him.

16 MR. PLAXTON: Fair enough. Thank you, sir.

17 MR. HESJE: It would be useful if I was
18 advised, I think, of that as well --

19 THE COMMISSIONER: Pardon?

20 MR. HESJE: I said it would be useful if I was
21 advised of that as well.

22 THE COMMISSIONER: Yes. Well, you're the last one
23 that knows sometimes, aren't you, Mr. Hesje? Very
24 well.

25 (PROCEEDINGS ADJOURNED AT 5:14 P.M.)