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Vancouver, BC

April 10, 2012

(PROCEEDINGS COMMENCED AT 1:07 P.M.)

THE REGISTRAR: Order. This hearing is now resumed.

MR. VERTLIEB: Thank you, Mr. Commissioner. I believe Mr. Ward has a couple of comments he wishes to make and he asked me if he could and I said absolutely.

MR. WARD: Thank you. Cameron Ward, counsel for the families of 25 murdered and missing women, Mr. Commissioner. Last day when we concluded with the examinations of Detective Constable Shenher I neglected to ask that the two binders comprising a copy of her book which we've been cross-examining her on be marked. You will recall that I had earlier initially requested that it be marked as an exhibit. I wish to reiterate that request. In my respectful submission the document ought to be marked and received as an exhibit with a number. It can be marked in NR fashion. To receive it at this juncture in that fashion would be entirely consistent with the practice this commission has followed throughout these hearing.

I'd like to pass up a document I prepared

1 summarizing the other statements of previous
2 witnesses that had been either made in writing or
3 reduced to writing that in my submission fall
4 into exactly the same category of documentary
5 evidence. I have some extra copies of the
6 summary here available for counsel, not many but
7 some.

8 THE REGISTRAR: Mr. Ward, is that the document for
9 identification BB, the transcript?

10 MR. WARD: The document I passed up --

11 THE REGISTRAR: The one you want marked, that's already marked
12 for identification BB.

13 MR. WARD: Thank you. I'm seeking to have it marked as an
14 exhibit. Mr. Commissioner, you said I could
15 revisit that issue. We have throughout these
16 hearings marked by my count 26 written statements
17 from witnesses as exhibits and the list of
18 witnesses, the exhibit number and the date the
19 statement was created is set out in this summary.
20 In my respectful submission, given that the rules
21 of evidence are relaxed for a commission of
22 inquiry, as you pointed out many, many times this
23 is not a trial and the strict rules of evidence
24 do not apply, it would only be consistent to mark
25 the document as we have marked others in this

1 same class, so I seek to have that done. I would
2 also ask that this aide memoire summary be marked
3 with a letter so that it is sufficiently
4 identified. Those are my submissions on that
5 issue.

6 THE COMMISSIONER: Thank you.

7 THE REGISTRAR: Mr. Commissioner, I have nothing to work with
8 here. I'm not clear on what needs to be marked
9 here.

10 THE COMMISSIONER: That's the manuscript, the Shenher
11 manuscript.

12 MR. WARD: The two volume manuscript, I believe it's Exhibit
13 BB.

14 THE REGISTRAR: I have one document here as BB, that's the
15 manuscript.

16 MR. WARD: Pardon me. My error then. Yes.

17 THE REGISTRAR: So BB will become --

18 MR. WARD: I'm seeking to have it marked with a number
19 followed by an NR but there may be, because this
20 was objected to once before at the beginning of
21 my cross-examination of the witness, there may be
22 similar objections being advanced at this time so
23 I'd ask that Mr. Registrar wait until any such
24 objections are heard.

25 THE COMMISSIONER: Mr. Gratl.

1 MR. GRATL: Mr. Commissioner, I join on behalf of Downtown
2 Eastside perspectives and interests Mr. Ward in
3 his application to have the Shenher manuscript
4 marked into evidence. The overriding concern for
5 you, Mr. Commissioner, in my submission ought to
6 be the public perception and the public interest
7 in ensuring that a fulsome body of evidence is
8 available to the public for review, and while
9 documents like Inspector LePard's report might be
10 useful on some levels, they're not readable and
11 the Shenher document, although some might take
12 such stylistic objections, is certainly readable
13 and easy to follow. I appreciate that a document
14 of that type might even take away ultimately from
15 your report in some respects, that it could even
16 be more readable than a standard commission of
17 inquiry report, but it contains a tone and
18 flavour of the experience of a young officer who
19 is confronted with powerful institutional forces,
20 records her observations at a time when she feels
21 as though she has something to gain by putting
22 forward her perceptions accurately, and in that
23 respect it differs from the type of document you
24 have in evidence before you to date, documents
25 that were prepared by police-officers within

1 their official roles as police officers which
 2 changes the language selection, changes the
 3 perspective, and changes the overall flavour of
 4 the information given. To simply have on the
 5 record certain poignant excerpts doesn't do
 6 justice to the entirety of the Shenher manuscript
 7 and in my submission for that reason it's of
 8 interest to all members of the public, including
 9 the public on the Downtown Eastside and also
 10 families and children of the missing women who
 11 might be using the manuscript as the closest
 12 thing available to a candid human explanation of
 13 what it was like to be on the inside of that
 14 investigation and how the women might have been
 15 forgotten, sidelined, insufficient resources
 16 devoted to them. It's a candid document. It's
 17 not necessarily written from the policing
 18 perspective and in that sense it's a more human
 19 document, less institutional, less clinical, a
 20 less politically correct document than the other
 21 documents that are currently in the evidentiary
 22 record, and for that reason it's in my submission
 23 in the public interests for that document to form
 24 part of the record.

25 THE COMMISSIONER: Thank you.

1 MS. HUNT: Mr. Commissioner, Elizabeth Hunt, co-counsel with
 2 Suzette Narbonne representing the aboriginal
 3 interests of the missing and murdered women. We
 4 would like to concur also with our colleagues on
 5 the submissions that have been made to have this
 6 entered in as an exhibit. In addition to the
 7 submissions that were made we also feel that this
 8 is important from a public policy point of view
 9 and study of a minority and a police force that
 10 is predominantly, let's say, white men
 11 predominantly, she's a minority and she has
 12 stated her orientation as a lesbian. She
 13 identifies with the minority people of which
 14 she's serving and she said that in her
 15 manuscript, so from a public policy point of view
 16 it's of great interest for all institutions to
 17 understand even what she said in her evidence
 18 when she said "at that time" so it speaks to a
 19 time when she was early in the academy moving
 20 into the police force. Also from the aboriginal
 21 point of view it speaks to her experiences with
 22 these individual people and we've heard over and
 23 over again why adoptions have become open
 24 adoptions, why we have policies now where there's
 25 greater disclosure, and many of the children left

1 from the murdered women are going to be out there
 2 without knowing what happened to their mothers
 3 and in the context of very complicated systems
 4 where they would have a difficult time understand
 5 the events leading up to their mother being
 6 missing or murdered, this manuscript does contain
 7 information that would say there is someone there
 8 who cared, who identified, and maybe it's not the
 9 exact facts but it definitely contextualized the
 10 events leading up to the person that was missing
 11 or murdered. We would definitely want to see
 12 this entered as an exhibit. We would like this
 13 to help inform the families out there. We know
 14 the aboriginal communities have lower than
 15 average educational level. This is a document
 16 that is easy to read. It would aid in the
 17 communities to understand. It may not be the
 18 exact facts but it is -- Ms. Shenher's evidence
 19 is that at the time it was what she believed
 20 happened and I think that it's not too far
 21 reaching from what this inquiry is about. Thank
 22 you.

23 THE COMMISSIONER: I have your points, but she resiled from a
 24 lot of what she said in the document. Does that
 25 not make a difference? There are a lot of

1 personal comments about her opinions, gossipy
2 comments about certain senior police officers and
3 I don't know whether that assists me, whether
4 Deputy Chief McGuinness had a purple face or not
5 and those types of asides are in there and I
6 don't know how that helps me, but in any event, I
7 have your point and I have to consider it.

8 MS. HUNT: Also, another point is she is still working for the
9 Vancouver Police Department so that puts her in a
10 very difficult position when she's giving
11 evidence here today. The fact that she is a
12 woman, she is a lesbian and she has identified
13 with these minority other interests is really
14 critical to the story that needs to be told in
15 our opinion.

16 THE COMMISSIONER: Thank you. I note Mr. Crossin is not here
17 and he acts for Detective Constable Shenher. In
18 any event, I'll hear from Mr. Dickson.

19 MR. DICKSON: Yes, Mr. Commissioner, Tim Dickson for the
20 Vancouver Police Department. You're quite right,
21 Mr. Crossin is not here. He, as you know,
22 represents Detective Constable Shenher. He needs
23 to be here if there's going to be further debate
24 on this topic. He was the one who led the
25 objections to the manuscript going in and there

1 was no notice provided at all that this topic
 2 would be raised again today. It appeared to be
 3 dealt with last week and, indeed, the
 4 cross-examinations of Detective Constable went on
 5 the basis that the manuscript was not going to go
 6 in. We have no idea what Detective Constable
 7 Shenher says about the passages that she was not
 8 taken to. We know she was taken to certain
 9 passages and, as you say, she resiled from much
 10 of it. Her manuscript is not evidence. There's
 11 no solidity whatsoever to that evidence and she
 12 testified under oath for many days.

13 MS. CHRISTIE: Good afternoon, Mr. Commissioner. Vanessa
 14 Christie on behalf of Terry Blythe and John
 15 Unger. I would just add to those comments, Mr.
 16 Commissioner, that you're well aware and it was
 17 raised the other day with respect to prior
 18 consistent and inconsistent statements and how
 19 those don't become evidence. Everyone had a full
 20 opportunity to put passages to the witness. She
 21 has given evidence for many days as Mr. Dickson
 22 has pointed out and has spoken to all of the
 23 things my friends have pointed to for wanting the
 24 manuscript in. Her connection to this community,
 25 her concerns about the department and how it was

1 being run at the time, all of that is part of her
2 evidence over many, many days and she talked
3 about it again when you had given us the
4 opportunity to go back into the manuscript.

5 One further point, besides resiling from the
6 manuscript, Detective Constable Shenher has said
7 this was not the manuscript she would have
8 published. She said many times this was draft,
9 this was not legaled, it was not edited and I
10 think all of those comments are very important in
11 your consideration of whether this becomes
12 publicly disseminated, because this was a
13 manuscript not meant in its current form, the
14 form we have it here, for publication and she
15 made that quite clear when I was cross-examining
16 her as well as when other people cross-examined
17 her. I would just add those comments as well.
18 Thank you, Mr. Commissioner.

19 THE COMMISSIONER: The ultimate test of the admissibility of
20 any document is whether or not it assists the
21 trier of fact, so I have to consider that. I
22 think it's agreed that the document has many,
23 many shortcomings. The question is whether the
24 issues regarding public interest outweigh the
25 weaknesses, if you will, of the document.

1 In any event, I'm not going to make any
2 decision until Mr. Crossin has an opportunity to
3 respond to the arguments that have been raised
4 here.

5 MR. WARD: Yes. Thank you. I didn't appreciate that no one
6 from his office was here when I sought that the
7 document be marked and certainly he should have
8 every right to address these issues.

9 The next point, Mr. Commissioner, is just to
10 make the observation that yesterday, Easter
11 Monday, we received 830 pages of documents that
12 were delivered to us by commission counsel and
13 said to be CJB documents. I am only going to say
14 that I find that very disappointing especially in
15 light of the ongoing efforts my clients have made
16 to try to obtain timely and adequate disclosure
17 of documents throughout this matter which have
18 been well documented.

19 The third matter is that this morning I
20 received in electronic form an expert opinion
21 that we had commissioned. I earlier advised I
22 think all counsel that we were commissioning an
23 expert opinion in respect of what I'll call the
24 CJB issue identified in paragraph 4(b) of the
25 terms of reference. I've now received that. For

1 reasons that are completely inexplicable to me I
2 don't have the facility right now to circulate it
3 with my e-mail program but I can tell counsel
4 that I will do that as soon as I am able. It is
5 an expert opinion authored by Dennis Murray, QC,
6 in which that member of the bar sets out in I
7 think 25 or 26 pages his opinion with respect to
8 the way that the file was handled by Crown and
9 that will be delivered just as soon as it can be.

10 THE COMMISSIONER: All right. Mr. Vertlieb, I'm sympathetic
11 to Mr. Ward's last comment, that is, why was
12 disclosure of that volume, why was it made so
13 late in the day?

14 MS. BROOKS: Mr. Commissioner, I did send an e-mail out to all
15 counsel explaining the circumstances of that
16 disclosure yesterday but I'm happy to inform you
17 of that. After the CJB provided us with all the
18 documents that they considered relevant, your
19 staff went and reviewed further documents, made
20 requests for documents they considered also
21 relevant. We received those documents in mid
22 March, there was some issues in terms of vetting
23 that needed to be done and that took a bit of
24 time and so we were able to provide the documents
25 yesterday and in the e-mail that I circulated

1 yesterday to counsel I did say that if it turns
2 out something in those documents requires a
3 witness to be recalled then we can consider that.

4 THE COMMISSIONER: All right. Thank you. Anything else? All
5 right, Mr. Vertlieb.

6 MR. VERTLIEB: Mr. Commissioner, you'll see in the witness box
7 Randi Connor and I'm going to ask Mr. Giles
8 before you swear her to just bear with me. I do
9 want to outline for you, Mr. Commissioner, this
10 next section of our work. Ms. Connor is here
11 because term of reference 4(b) is as follows, and
12 I'll read it for you. I know you've seen it many
13 times and everyone else has. 4(b) is as follows:

14 The terms of reference of the inquiry are to
15 be conducted as follows:

16 (b) consistent with the British Columbia
17 (Attorney General) v. Davies, 2009 BCCA 337,
18 to inquire into and make findings of fact
19 respecting the decision of the Criminal
20 Justice Branch on January 27, 1998, to enter
21 a stay of proceedings on charges against
22 Robert William Pickton of attempted murder,
23 assault with a weapon, forcible confinement
24 and aggravated assault.

25 What we now wish to do is deal with that term of

1 reference. As you know and is well known to all,
 2 this is a fact finding process to determine --
 3 for you to determine factually what was done and
 4 of course what was not done. But in doing that
 5 by law you cannot second guess the Crown decision
 6 nor ask Crown to justify the decision. As well,
 7 you cannot interfere with the exercise of the
 8 prosecutorial discretion which is well known to
 9 our system of law. To emphasize, it is strictly
 10 a fact finding event.

11 In that connection there are two main
 12 witnesses. One witness who is with us today is
 13 Randi Connor, and I'll take you through her
 14 background. The second is Richard Romano, now
 15 His Honour Judge Romano, and he was the person in
 16 an administrative capacity to Ms. Connor when the
 17 stay was entered. Those are the two main
 18 witnesses dealing with the decision of the Crown
 19 and to help you get at the facts around that.

20 Now, I want to say something about Ms.
 21 Anderson who we've heard so much about. As
 22 everyone would know, there was a very strong
 23 publication ban pronounced by Mr. Justice
 24 Williams on August 25, 2010. Mr. Justice
 25 Williams, of course, as we all know, was the

1 presiding trial judge at the Pickton trial. He
 2 made this order before your inquiry was
 3 established. Ms. Anderson had counsel and there
 4 was counsel for the respondents on the
 5 application. It was her application. In other
 6 words, Ms. Anderson through counsel was very
 7 concerned about these events and went to the
 8 extraordinary length of seeking a publication ban
 9 even after the trial was concluded and all the
 10 appeals were concluded. This is an indication of
 11 how important this was to Ms. Anderson.

12 In that application that was argued in New
 13 Westminster on August 13, counsel Rob Anderson,
 14 QC, appeared for the *Vancouver Sun*, *Province*,
 15 Global TV, CBC, Canadian Press, CKNW, *Globe and*
 16 *Mail*, CTV, Associated Press, and Jeremy
 17 Hainsworth. Crown counsel, Mr. Petrie who was
 18 the lead Crown counsel at the Pickton trial was
 19 there also there for the Crown. So it was an
 20 event of some considerable significance and the
 21 decision was handed down the 25th of August, as
 22 I've said. That decision focused on the concerns
 23 of privacy that Ms. Anderson had and they're well
 24 set out in the decision. Ms. Anderson has for
 25 many, many months and as I said to you before

1 your inquiry started, has consistently been
 2 concerned about her privacy, the privacy of her
 3 husband, the privacy of her three children,
 4 parents and her family.

5 Now, we have interviewed Ms. Anderson more
 6 than once. It's clear that she's turned her life
 7 around admirably, she's been living a very clean
 8 life, well involved in our community. She's
 9 proud of what she's accomplished, as well she
 10 should be. She has a good relationship as we
 11 understand it with her family and her husband and
 12 her parents and she very much wants to keep it
 13 that way. She has suffered an horrific event and
 14 I would suggest that no one in this courtroom
 15 would truly imagine or understand the enormity
 16 and gravity of the event she went through. Being
 17 knifed multiple times the way she was, facing
 18 certain death, is something that few of us could
 19 ever truly understand or imagine.

20 There is no doubt that she is still very
 21 traumatized by these events. She suffers from
 22 nightmares, she still fears for her well-being,
 23 she fears for her privacy, as I mentioned, and
 24 all of this brings me to say to you that she does
 25 not wish to give evidence. She wishes very much

1 to put this behind her. We respect that
 2 decision. We are of the view that she and she
 3 alone is entitled to make that decision and we
 4 don't wish in any way to add to her burden.
 5 We've met with her enough times to understand how
 6 traumatic and problematic this is for her and so
 7 I wanted to tell you that. I also want to say of
 8 course should Ms. Anderson change her mind, we
 9 would welcome her coming here. But in the
 10 circumstances we do want to be clear to you it's
 11 our view as counsel that we do not need to hear
 12 from Ms. Anderson to do the job that you've been
 13 asked to do by the government in this inquiry.
 14 It is really about what the Crown did, what are
 15 the facts of what the Crown did, and it's clearly
 16 incumbent on the Crown, Ms. Connor and Mr.
 17 Romano, His Honour Judge Romano to tell you what
 18 they did and to have you determine the facts
 19 surrounding that. I wanted to give you that and
 20 outline about where we're going.

21 She did suffer, as you've heard, serious
 22 injuries, the description of the embedding and
 23 the fight and we've all heard she basically died
 24 in hospital and was revived, and the horror, as I
 25 said earlier, probably no one in this room could

1 ever truly understand. It's not our desire or
2 intention in any way to add to this woman's
3 burden. She's entitled to be respected and her
4 concerns are totally borne out by everything that
5 we've learned. I just wanted to tell you that in
6 terms of where we plan to go with the evidence.

7 THE COMMISSIONER: Is there any possibility she might change
8 her mind?

9 MR. VERTLIEB: There's always that possibility. We've left it
10 with Ms. Anderson that we respect her decision
11 and if she changes her mind we would welcome her
12 coming, but we are taking no steps to force her
13 in any way. We just respect her wishes. Yes,
14 there's always that possibility but we're
15 planning to proceed without that evidence before
16 you.

17 THE COMMISSIONER: Thank you.

18 MR. VERTLIEB: If I may then just proceed with --

19 THE COMMISSIONER: Mr. Ward.

20 MR. WARD: Thank you, Mr. Commissioner. Cameron Ward, counsel
21 for 25 missing and murdered women. I had been
22 operating under the belief until late yesterday
23 that Ms. Anderson would be testifying this
24 morning and late yesterday was the first I heard
25 to the contrary. On behalf of my clients who may

1 well be those in the room who are closest to
 2 appreciating the trauma and distress that Ms.
 3 Anderson must have been felt as a result of her
 4 interactions with Robert William Pickton, I think
 5 I can safely say we respect her decision, we
 6 appreciate the difficult circumstances she must
 7 find herself in. However, in light of my friend
 8 Mr. Vertlieb's comments, let me add this: My
 9 clients consider issue 4(b) of the terms of
 10 reference to be very important indeed, very
 11 significant, because 19 or perhaps 20 of their
 12 loved ones were killed after Mr. Pickton
 13 attempted to murder Ms. Anderson, and of course
 14 had he been prosecuted, convicted and sentenced,
 15 many of my clients' loved ones might be alive
 16 today and might be productive members of the
 17 community like Ms. Anderson reportedly is.

18 Our position is that the Crown lawyers alone
 19 will not be enough in terms of the evidentiary
 20 basis for you to make the findings of fact that
 21 paragraph 4(b) require you to make. I earlier
 22 applied to have Mr. Ritchie, defence counsel for
 23 Pickton at the relevant times, called as a
 24 witness. No ruling has been made as I understand
 25 it with respect to that application, but in my

1 respectful submission he is critical as well.
 2 But in light of Ms. Anderson's absence it is my
 3 submission and strong suggestion to my friend Mr.
 4 Vertlieb and his colleagues that Ms. Anderson's
 5 mother be called to testify with protections to
 6 ensure her and her daughter's anonymity because
 7 the documents, and I expect the testimony of this
 8 witness will reveal, I think, that the
 9 communications between Crown counsel and Anderson
 10 passed through Ms. Anderson's mother as the
 11 conduit of that information, and for you to make
 12 findings of fact as required by 4(b) you will
 13 have to in my respectful submission understand
 14 all of the facts, all of the evidence related to
 15 the dealings between Crown and the complainant,
 16 and if as I believe the documents reveal, Ms.
 17 Anderson's mother, a businesswomen, was the
 18 conduit or liaison between the complainant and
 19 Crown, her evidence becomes necessary.

20 I would also urge my friends Mr. Vertlieb
 21 and his colleagues to consider calling the
 22 Victims Services assistance worker or workers who
 23 handled Ms. Anderson throughout that period of
 24 time from March 23, 1997 to the date the charges
 25 of attempted murder, et cetera were stayed in

1 January of 1998 because they too have relevant
2 and important evidence to offer on the issue of
3 -- I expect they will anyway -- on the basis of
4 documents on the issue of why the Crown did not
5 prosecute this man to trial. Those are my
6 submissions in response to what Mr. Vertlieb has
7 said.

8 THE COMMISSIONER: Thank you.

9 MR. VERTLIEB: Thank you, Mr. Ward. Mr. Ward's points are
10 good ones so what I think we should do --

11 THE COMMISSIONER: Mr. Doust.

12 MR. VERTLIEB: Sorry.

13 MR. DOUST: Mr. Commissioner, my name is Doust, initials L.T.,
14 and I appear to the Criminal Justice Branch.
15 Just in response to the suggestion of Mr. Ward
16 that Ms. Anderson's mother be called, I would
17 like to just reserve my right to make some
18 comments on that until after you have had the
19 benefit of the evidence of Ms. Connor because I
20 think it will put it into better context in my
21 submission.

22 THE COMMISSIONER: Thank you. Mr. Vertlieb.

23 MR. VERTLIEB: I was going to say after we hear from
24 Ms. Connor and Mr. Romano we have the breadth of
25 their evidence --

1 THE COMMISSIONER: We may be in a better position at that
2 stage to determine whether the evidence of Ms.
3 Anderson is essential. Obviously everybody here
4 like to see her here. The question is whether or
5 not this term 4(b) can be dealt with
6 comprehensively and fairly having regard to her
7 absence. Go ahead.

8 MR. VERTLIEB: Thank you, Mr. Commissioner. Mr. Giles,
9 please.

10 **RANDI MARGARET CONNOR:** Affirmed

11 THE REGISTRAR: Would you state your name, please.

12 THE WITNESS: Randi Margaret Connor, C-O-N-N-O-R.

13 **EXAMINATION IN CHIEF BY MR. VERTLIEB:**

14 Q Ms. Connor, I want to pass to the commissioner a
15 copy of your curriculum vitae that you gave to us
16 and I know you've seen this before and it's three
17 pages. I'd like to pass that up to you, Mr.
18 Commissioner. We have three copies and this has
19 been circulated to all participants.

20 Briefly by way of background, Ms. Connor,
21 you were called to the British Columbia Bar
22 January 10, 1980?

23 A That's correct.

24 Q You've been working in the Crown counsel regime
25 since 1982?

1 A That's correct.

2 Q You've served as senior trial Crown in Port
3 Coquitlam, New Westminister and Surrey?

4 A That's correct.

5 Q You've served as administrative Crown for three
6 years from 1989 to 1992?

7 A In New Westminister Provincial Court, and that's
8 approximately.

9 Q Tell us what the admin Crown duties involve,
10 please.

11 A As administrative Crown you're basically running
12 the office. You're overseeing the staff and the
13 lawyers, you're making sure that the trial
14 schedules are updated. That means you make sure
15 that the files are assigned and that you have a
16 prosecutor for each file that is opened. You're
17 assisting junior Crown and even senior Crown with
18 problems that they have on various files, dealing
19 with staffing procedures. Basically just in a
20 sense an office manager.

21 Q So it would be, amongst other things, a
22 supervisory position where Crown whether junior
23 or senior had problems on a file they would go to
24 administrative Crown for discussion and
25 ultimately decision in some cases?

1 A Yes, particularly more in a smaller office. New
2 Westminster was a small, provincial court office
3 when I was admin Crown. Another thing is you're
4 dealing with courthouse issues and attending
5 meetings.

6 Q Thank you. Let's talk about your work on the
7 1997 Pickton charges arising out of the March
8 1997 incident. You were not initially the Crown
9 assigned to that file?

10 A No. Richard Romano did the charge assessments
11 and the file from what I can tell was sent
12 through disclosure court and the file did not
13 come into my hands until after October 22 of
14 1997. I know that because I've been shown a
15 letter in the booklet of documents from defence
16 counsel Mr. Ritchie to Mr. Romano indicating that
17 he understood that Jacinta Lawton who was a Crown
18 in Port Coquitlam was no longer assigned to the
19 file. From that I can tell that my assignment to
20 the file was after that.

21 Also, from the file cover sheet I would have
22 known that the matter had gone through disclosure
23 court and also there had been pre-trial
24 conferences. I know that from two sources. One
25 would have been from the file cover, and also

1 there's a letter from Mr. Ritchie indicating that
2 Judge Holmes had conduct of the pre-trial
3 conferences and was suggesting to counsel or
4 telling them that they should get admissions on
5 the parts of the evidence that weren't
6 contentious.

7 Q Just on that point, Mr. Giles has copies of a
8 binder of the documents that we'd like to deal
9 with. Mr. Giles, thank you for giving that to
10 Mr. Commissioner and if you'd give that to the
11 witness, please.

12 Ms. Connor, this is a brief put together by
13 commission people to take into account documents
14 that we think you might be questioned about here
15 today to help the commissioner do his fact
16 finding process. This isn't exhaustive of
17 everything but it's a summary of documents.
18 There may be others. I'm going to ask you to
19 turn to tab 14, please. If you turn in that
20 material, you were just referring to this,
21 there's a letter dated October 22, 1997, and I
22 regret, Mr. Commissioner, and my colleagues here,
23 that these pages are not numbered in a way that
24 is going to assist and I'm sorry about that. If
25 you go through that you'll find a letter from Mr.

1 Ritchie's office dated October 22, 1997.

2 A Yes, I have it.

3 Q This is a letter to Crown counsel Port Coquitlam,
4 attention Richard Romano, Esq., and this is re
5 Regina v. Robert William Pickton, an appearance
6 dated April 27, 1997. This is the letter you
7 were mentioning a moment ago?

8 A Yes. That's my reference for how I know I didn't
9 have the file before then.

10 Q You said to the commissioner that you had the
11 file after October 22, 1997 and it's by reference
12 to this letter that you fix that date?

13 A Yes.

14 Q Can you help us with more certainty though when
15 you actually were assigned the file? We know
16 it's after October 22. Does it mean sometime in
17 November or December or January? Can you help
18 us?

19 A I don't think I can assist with when I was
20 actually assigned the file unless we have
21 documentation and I know we do later in January.

22 Q We've seen that you have documents from January
23 of 1998. Do you have any independent memory of
24 when you were assigned the file?

25 A No.

1 Q The second paragraph of this letter, I'll just
2 read it: "We've had a series of pre-trial
3 conferences and Your Honour Judge Holmes wished
4 admissions to be dealt with in advance of this
5 case." That would be Her Honour Judge Dolores
6 Holmes who retired a few years ago?

7 A Yes.

8 Q She would from time to time sit in Port
9 Coquitlam?

10 A Either that, or I know when we had our disclosure
11 set up in 1997, 1998, it may be that the
12 appearances were in Burnaby. I can't be 100 per
13 cent positive, but in any event, she would have
14 been the judge presiding if that's what the
15 letter says.

16 Q We all know what a pre-trial conference would be
17 in a criminal matter. The comment that the judge
18 wished admissions to be dealt with in advance of
19 the case, would that be a normal request from a
20 judge?

21 A Yes, because at a pretrial conference you're
22 trying to determine how much court time should be
23 set aside and narrow the issues if you can.

24 Q You would want to get admissions that would save
25 trial time?

1 A Yes.

2 Q Over issues that would not be contentious?

3 A Yes.

4 Q While we're in this tab, just look at the next
5 letter dated January 13, 1998. This is written
6 to you from Mr. Ritchie's office?

7 A Yes, I see it.

8 Q Would it be fair for the commissioner to conclude
9 that sometime after October 22 and prior to
10 January 13, 1998, you were assigned this file?

11 A I think even prior to January 9, 1998 because the
12 first paragraph indicates I had sent him a fax
13 containing a lab report and I sent it on January
14 9, so it would have been prior to that time.

15 Q Do you have any independent memory of this fax?

16 A No.

17 Q You accept that as being accurate?

18 A I have no reason not to.

19 Q Mr. Ritchie asked for some further disclosure
20 requests?

21 A Yes.

22 Q These would be normal requests as far as you
23 would be concerned knowing the file and knowing
24 the requests that were being made?

25 A Yes.

1 Q Nothing unusual about those requests?

2 A No.

3 Q The last paragraph of that letter while we're on
4 it just to save us coming back to it, the last
5 paragraph he says to you: "I look forward to
6 your draft admissions in this case. I do not
7 anticipate that factually we are far apart and
8 hope we can move the matter with some dispatch."
9 Do you see that?

10 A Yes, I do.

11 Q That would be a normal comment you would
12 routinely see in your work as Crown counsel with
13 defence counsel?

14 A Yes.

15 Q And experienced defence lawyers like Mr. Ritchie
16 and others would make a comment like that and
17 you'd expect that to be made and typically the
18 Crown and the defence would work together to deal
19 with admissions that could be made to save time?

20 A Yes.

21 Q When you were assigned the file, this 1997
22 attempt murder charge -- and you would agree
23 attempt murder is a very serious charge?

24 A Yes, I would agree.

25 Q It carries a maximum life in prison?

1 A Yes.

2 Q It's not a charge that's commonly seen in courts?

3 A No. I'm sorry, no, it's not common but it's not
4 unheard of.

5 Q Yes, of course. Had you prosecuted an attempt
6 murder case prior to this time?

7 A I would have to say yes, because at that point in
8 1998 I had been working with the Crown since 1982
9 and I had prosecuted a large number of cases. I
10 can't specifically give you a file or tell you
11 when it was, but I'm quite sure I would have.

12 Q It wouldn't be something that you had done so
13 many of that you could not tell Mr. Commissioner
14 you had done many in your career and you knew the
15 areas of law intimately?

16 A No, I wouldn't have done many.

17 Q An attempt murder case can be difficult because
18 it is always difficult proving the intent?

19 A Yes.

20 Q Is it your evidence that you believe you've done
21 another attempt murder case but you can't be
22 certain as to what it was about or when it was
23 done?

24 A That's correct.

25 Q When you were assigned the file did you have any

1 discussion with an administrative Crown in charge
2 of the office about this assignment to you?

3 A Not that I can recall.

4 Q So it just came to you without someone asking you
5 if you would be interested in doing it or would
6 be prepared to do it, there was no advance
7 discussion?

8 A I can't say there was none. There are a few ways
9 that a file like this could come to a prosecutor.
10 Because it was a serious case it was assigned as
11 a red file which means it's a file you should pay
12 attention to and look at sooner rather than
13 later. There are a few things that could have
14 happened. One is Mr. Romano was in charge of
15 scheduling and assigning the files. He could
16 have put the red file on a schedule and I could
17 have looked at that and been aware that I had
18 better pull the file right away because it's a
19 serious one and I would have know when the trial
20 date was set. The other way would be him just
21 coming by the office and discussing the file.
22 That may have happened. I really have no
23 recollection of whether talked to me about it or
24 whether I just picked it up off the schedule.

25 Q In preparing to give evidence to the commissioner

1 today did you inquire as to how the file was
2 assigned to you?

3 A No.

4 Q I want to just discuss the charge approval
5 process. You were not party to the charge
6 approval, we understand that from looking at the
7 file?

8 A That's correct; Mr. Romano did that.

9 Q Just to save going through all the documents, can
10 you confirm that the original recommendation from
11 the police was that three charges should be laid
12 against Pickton?

13 A I know this is in the binder if you could direct
14 me to the tab.

15 Q What I have is tab 3 and it's the first page of
16 what is a 35-page document entitled Report to
17 Crown Counsel. Do you see that?

18 A Yes. What I see --

19 MR. VERTLIEB: One second. I want to make sure the
20 commissioner has that.

21 THE COMMISSIONER: What page?

22 MR. VERTLIEB: Tab 3, Mr. Commissioner, it's the first page of
23 the report to Crown.

24 THE COMMISSIONER: All right.

25 MR. VERTLIEB:

1 Q If you look at the charges approved and comments
2 section; you see that, Ms. Connor?

3 A Yes.

4 Q So in handwriting, tell us what that says please
5 under charges approved and comments. Read that
6 to us.

7 A First, just above that, Mr. Vertlieb, you can see
8 that this would have been typed on the report
9 when it came in to Mr. Romano. It says: Attempt
10 murder, assault with a weapon and forcible
11 confinement, which indicates to me those were the
12 three charges proposed by the police. What Mr.
13 Romano has written underneath is: Counts 1, 2, 3
14 as on proposed charge, add count 4. So he added
15 an additional charge of aggravated assault to the
16 three charges the police proposed.

17 Q Mr. Romano, then administrative Crown, added the
18 fourth charge in handwriting March, 23, 1997,
19 Coquitlam, BC, did endanger the life of, and
20 you'll see her name there. You see that?

21 A I see it's covered with Ms. Anderson's name.

22 Q Thereby committing an aggravated assault, Section
23 268 of the *Criminal Code*.

24 A Yes.

25 Q So this tells you that not only was the file

1 reviewed by Crown but it was actually considered
2 in some detail, enough so that we know that an
3 additional count was added to the charges?

4 A That's correct.

5 Q Just in the charges, the most serious still was
6 the attempt murder?

7 A That's correct.

8 Q Aggravated assault is a serious charge?

9 A They are all -- assault with a weapon, forcible
10 confinement, they're all serious charges but
11 attempt murder I would agree is the most serious.

12 Q So that's the charge approval process with the
13 input from the police with the Crown then making
14 the final decision?

15 A That's correct.

16 Q That's how we do it in British Columbia, the
17 police recommend but the Crown is in charge of
18 making the decision of what charges are to be
19 laid and whether they should be proceeded with or
20 not?

21 A That's correct.

22 Q At the time -- I trust you've reviewed this
23 report to Crown prior to coming to give evidence
24 to Commissioner Oppal?

25 A Yes, I have.

1 Q So you would be aware that there were some
2 inconsistencies in the statements of the two
3 people involved, that is, Ms. Anderson and
4 Pickton?

5 A That's correct. But really it came down to how
6 the incident started. Their statements were
7 pretty similar apart from the key issue in this
8 case which was how did it start, how did the
9 incident start.

10 Q The point is whatever inconsistencies there were
11 between these two people, Pickton and Ms.
12 Anderson, charges had been approved because all
13 of that had been considered by the Crown?

14 A Yes. What I can say is Mr. Romano would have
15 seen that.

16 Q Of course, he was a well-respected Crown counsel?

17 A Very much so.

18 Q And very experienced in his work?

19 A Yes.

20 Q You would have complete confidence if he
21 recommended the addition of a count, you would be
22 totally comfortable knowing how he did his work
23 and your working relationship with him?

24 A Yes, although you always read the file yourself.
25 I always had complete confidence in Mr. Romano.

1 Q Let's talk about charge approval. Tab 23 will
2 help us with some documents that probably aren't
3 needed for you because you know the charge
4 approval process well; is that correct?

5 A Yes.

6 Q We have documents provided by the Criminal
7 Justice Branch; you see them at tab 23?

8 A Yes, I do.

9 Q These documents for the benefit of those who
10 don't have this manual in front of them, this is
11 the Criminal Justice Branch, Ministry of Attorney
12 General, Crown Counsel Policy Manual, and the
13 date of this is March 11, 1996, and the subject
14 is Charge Approval Guidelines. Are you familiar
15 with these guidelines?

16 A Yes.

17 Q Now, let's just look at page 2 which discusses
18 the charge approval standard.

19 A Yes, I see it.

20 Q There are two components to the charge approval
21 standard: The evidence available must be
22 examined to determine, 1, whether there is a
23 substantial likelihood of conviction, and if so,
24 2, whether a prosecution is required in the
25 public interest.

1 A That's correct.

2 Q You accept that as the charge approval standard
3 in place at the time you were working on this
4 file?

5 A Yes.

6 Q Has that been the charge approval standard in
7 place for sometime in your work as a Crown?

8 A As far as I can remember, yes.

9 Q You would say you're fully conversant in this
10 standard and you believe you have a good
11 understanding of it?

12 A Yes.

13 Q I wanted to take you to the next paragraph. Do
14 you want to read that to us please?

15 A The one that starts, "During the charge approval
16 process"?

17 Q Please.

18 A "During the charge approval process Crown counsel
19 does not have the benefit of hearing the
20 testimony of Crown witnesses, either in direct or
21 cross-examination, nor the defence evidence, if
22 any, during the course of a preliminary hearing
23 or when preparing for trial the crown's case may
24 be materially different than counsel's initial
25 assessment at the earlier charge approval stage.

1 Therefore, the requirement to meet the charging
2 standard continues throughout the prosecution."

3 Q So this is a recognition that once evidence is
4 under oath and people are in the witness box in a
5 courtroom there may be differences of evidence
6 from what was expected and just a reminder to
7 tell you as a Crown you must always make sure the
8 charge standard is met throughout?

9 A That's correct. Always you're looking out for
10 the likelihood of conviction at all stages.

11 Q Read the next paragraph, please.

12 A "Exceptional circumstances may require that a
13 prosecution proceed even though the usual
14 evidential threshold may not be satisfied at the
15 charge approval stage. Such circumstances will
16 most often arise in cases of high risk, violent
17 or dangerous offenders or where public safety
18 concerns are of paramount consideration. Such
19 cases must be discussed with regional Crown
20 counsel or designate prior to making the charging
21 decision."

22 Q Thank you. Then the next evidential test,
23 please.

24 A "A substantial likelihood of conviction exists
25 where Crown counsel is satisfied there is a

1 strong, solid case of substance to present to the
2 court. In determining whether this standard is
3 satisfied, Crown counsel must determine: 1. What
4 material evidence is to be admissible; 2. The
5 weight to be attached to admissible evidence; and
6 3. Viable not speculative defences."

7 Q So these would have been considerations that you
8 would have expected -- and we'll hear from Judge
9 Romano, Mr. Romano -- to have in his mind when he
10 approved the charges and the file ended up on
11 your desk?

12 A Yes, and I would have expected that.

13 Q Now, there are factors regarding the public
14 interest that are set out at page 3?

15 A Yes.

16 Q These are the factors in favour of a prosecution
17 and factors against a prosecution?

18 A Yes. That's dealing, I think, with just public
19 interest.

20 Q Yes, because we understand that it's a
21 two-pronged test as it were. One, does the
22 evidence support a substantial likelihood of
23 conviction?

24 A Yes.

25 Q And is it in the public interest to proceed?

1 A Yes.

2 Q That means, as you've read to us, that even if
3 the evidence may not be quite what you would
4 prefer there would be exceptional cases where you
5 would proceed in the public interest, we've
6 covered that just a moment ago?

7 A Yes.

8 Q And you accept all that and that's the way you
9 conducted yourself as Crown?

10 A Yes.

11 Q The factors in favour of the public interest are
12 outlined there and you're familiar with them?

13 A Yes.

14 Q Some, for example, that might apply to Mr.
15 Pickton's case, just to highlight some of them,
16 first 1(a), the allegations are serious in
17 nature?

18 A That's correct.

19 Q Certainly attempt murder we've already covered
20 that is serious; correct, Ms. Connor?

21 A Yes, that's correct.

22 Q A conviction is likely to result in a significant
23 sentence?

24 A Correct.

25 Q And attempt murder would certainly draw a

1 significant sentence?

2 A Yes.

3 Q c) considerable harm is caused to a victim. We
4 know Ms. Anderson suffered very serious injuries;
5 you're aware of that and you knew that at the
6 time?

7 A Yes.

8 Q The use or threatened use of a weapon, we know
9 that's the case here?

10 A Yes.

11 Q e) the victim was a vulnerable person. You knew
12 that from her background?

13 A Yes.

14 Q And when it comes to the public interest
15 militating against a prosecution, just to
16 highlight the contrast, if you look at 2(a), this
17 is prefaced by the comment it may not be in the
18 public interest to proceed with the prosecution
19 where the following factors exist: a) the
20 conviction is likely to result in a very small or
21 insignificant penalty. You understand that?

22 A Yes.

23 Q So we can all understand the import of that. In
24 other words, we don't want to be using court
25 resources for something that may not ultimately

1 proportionally justify it; is that a fair way of
2 putting it?

3 A Yes.

4 Q b) the comment is there's a likelihood of
5 achieving the desired result without a court
6 proceeding. So that could be a diversion of some
7 sort?

8 A Yes.

9 Q c) if there was a genuine mistake or
10 misunderstanding which would be balanced against
11 the seriousness of the offence?

12 A Yes.

13 Q The point is there are factors outlined in your
14 manual that speak to when the public interest
15 should make a prosecution proceed and when a
16 prosecution in the discretion of the Crown may
17 not proceed?

18 A Yes.

19 Q Thank you. Now, I want to discuss the subject of
20 bail for a moment. It would appear from the
21 documents that there was an agreement between
22 Crown and defence that Pickton be granted bail by
23 posting \$2,000 cash. Can you just confirm that
24 is your understanding of the file as well?

25 A Yes, but I think that needs a little bit of

1 elaboration.

2 Q Yes. There were conditions?

3 A Well, if we flip to the investigator's comments
4 in the Report to Crown Counsel dealing with bail,
5 this was an unusual case in the way that things
6 unfolded right from the beginning. I'm sorry,
7 I'll try and find the tab than has the Report to
8 Crown Counsel. It looks like it's tab 3. Under
9 investigator's comments, what appears to have
10 happened in this case is that the offence date
11 was March 23 of 1997, the accused was
12 hospitalized, he was then released from the
13 hospital possibly March 27 or March 28, and the
14 comments that Corporal Connor wrote was with
15 respect to -- this is under investigator's
16 comments, it shows as page 21 at the top of the
17 page.

18 Q Just one second so the commissioner can find it.
19 There's pages at the bottom, Mr. Commissioner,
20 and also at the top.

21 A It's showing as 33 of 36 on the bottom.

22 Q Do you have that, Mr. Commissioner? For the
23 record, it's CJB002000047.

24 A Under investigator's comments on the last
25 paragraph, what Corporal Connor wrote is: "With

1 respect to the accused, it is our information
2 that he had been released from Royal Columbian
3 Hospital on the 28th of March of 1997. Given his
4 medical condition, this investigator has decided
5 not to arrest him and have him incarcerated over
6 the long weekend as the same creates a hardship
7 for the staff at this point. Should criminal
8 charges be approved in this matter, the writer
9 requests an arrest warrant be issued. If Crown
10 counsel decides that a warrant can be held with
11 the expectation the subject will turn himself in
12 through his lawyer Paul Janzen then so be it."
13 So what happened in this case is that it appears
14 that the accused was released from the hospital
15 and the day of the bail hearing, which I
16 understand was April 8 of 1997, he turned himself
17 in at the courthouse and at that point Mr. Romano
18 conducted the bail hearing. So he was basically
19 out of custody from the time of his release from
20 the hospital until he basically turned himself
21 in. What I found interesting is there is on the
22 next page of these investigator's comments,
23 Corporal Connor indicates a little bit about his
24 background, says he has no criminal record, but
25 when he goes to list what he suggests the Crown

1 consider in terms of what should be asked for in
2 terms of bail, a pretty standard condition would
3 be no firearms or no weapons and it's not there.
4 So the conclusion that I take from that is he was
5 not considered by Corporal Connor to be someone
6 that couldn't be out on bail in terms of the risk
7 factors that were being considered here.

8 THE COMMISSIONER: You're telling us that the police did not
9 consider him to be dangerous?

10 A I can't speak for them. I can only say that the
11 investigator's comments and the way that he was
12 released to turn himself in seems a bit casual in
13 terms of how these things are done in serious
14 cases. You would normally expect the person to
15 be brought in to custody.

16 THE COMMISSIONER: This is a serious assault with a weapon?

17 A Yes.

18 THE COMMISSIONER: Are you telling us it's unusual to not have
19 that type of a condition attached to a release?

20 A Yes. I would have expected based on my
21 experience that it would be requested that there
22 be no weapons and no firearms but it's not there
23 on that page.

24 MR. VERTLIEB:

25 Q Having said that though, there would be times

1 when the police might give you recommendations
2 and if you had concerns when you were doing the
3 bail case you could phone the police officer and
4 say: Have you considered this? Was it a
5 mistake? Did you forget to put that in?

6 A No, I probably wouldn't even go that far. What I
7 would do is I would review it and based on what
8 the officer said and my own personal opinion is
9 that I would simply ask for that if I felt it was
10 appropriate without necessarily calling the
11 police officer.

12 Q Fair enough. Ultimately the bail issue is for
13 the Crown to decide?

14 A Yes, it is.

15 Q It was noted in there, Mr. Commissioner, since
16 we've had this discussion, that: The accused and
17 brother do associate with members of the Hells
18 Angels motorcycle gang. It says: For the above
19 reasons Corporal Connor would not have objections
20 to him being released from custody with warrants
21 executed but under conditions.

22 A Yes, that's what I see as well.

23 Q You had no part in that bail?

24 A No.

25 Q From your review does it appear to you that the

1 Crown had agreed with the defence that there
2 would be bail granted and it was a matter of
3 working out terms?

4 A I would have to re-read -- and I did see a
5 transcript of Mr. Romano's submissions at the
6 bail hearing. I'm not sure whether it appears in
7 this book of documents.

8 Q Maybe at the break you could refresh your memory.
9 Subject to bail is not a major point here?

10 A No, but he might have said something in court to
11 the judge about whether it was a joint submission
12 or whether he was agreeing.

13 Q All right. Let's move then to a discussion about
14 the Report to Crown Counsel. We've already
15 discussed some of the content of that report, and
16 you can confirm for us you've read it?

17 A That's correct.

18 Q Can you tell us that this document is a routine
19 document in almost every criminal case in our
20 province?

21 A Yes. That's normally the way they come to Crown.

22 Q The purpose of the report to Crown is to in part
23 to inform the Crown who will be on the case about
24 what happened?

25 A That's right.

1 Q But it's also to inform the accused and the
2 accused's lawyer about the circumstances?

3 A Yes. There's a lot more to it than that but
4 those statements are true.

5 Q So in the normal course though, not only would
6 the Crown see this report but the defence would
7 see it?

8 A Yes, unless it was a situation where there were
9 things that couldn't be disclosed.

10 Q Of course.

11 A It would have to be vetted.

12 Q Of course, if there was informant evidence, where
13 there's privilege, confidentiality, matters of
14 that nature, which the commissioner fully would
15 understand?

16 A Yes, but in a case where there were no concerns
17 along those lines, in most cases, routine cases
18 the defence would get a copy of what the Crown
19 had.

20 Q The report to Crown is generally written by the
21 lead investigator?

22 A I would agree with that. Not always but
23 generally.

24 Q When you as a Crown are assigned a file would it
25 be fair to conclude that probably in most cases

1 the first thing you would do would be to read the
2 Report to Crown Counsel to get a sense of what
3 the case was about?

4 A Yes.

5 Q Once you read the report to Crown there would a
6 number of considerations that would run through
7 your mind as a normal Crown, in your career?

8 A Yes.

9 Q One of them, for example, you'd ask yourself how
10 long do we need to have for trial or preliminary
11 hearing?

12 A This particular case, no, because the trial date
13 was set before I got the file.

14 Q I'm talking in general.

15 A In general, yes. That's one of the things right
16 on the front page -- this is an old form but
17 length of the Crown's case was written in this
18 particular case by Mr. Romano and he put two to
19 three days, yes.

20 Q Just confirm for us, the documents do it for us
21 if you're in any doubt, but the case was set for
22 trial not preliminary hearing?

23 A My understanding is it was going to be a trial.
24 When we looked through the court documents it
25 looks like the election had not been taken.

1 That's not particularly troubling because if
2 defence counsel tells you that it's going to be
3 for trial back in those days it was all right to
4 leave the election until the first day, that was
5 fine. So even though it says for trial I didn't
6 see anywhere in those documents that the election
7 had been taken. My understanding is it was for
8 trial.

9 Q And the election is simply the formality of an
10 accused who has the option of having a jury trial
11 or supreme court judge do the trial or provincial
12 court trial?

13 A Yes. These days that's done in advance of the
14 trial date, it's done at the arraignment.

15 Q It's done in advance so the counsel knows what to
16 expect and would treat the file differently. If
17 you're doing the trial as a trial matter versus a
18 preliminary hearing you might conduct it in a
19 different way; is that a fair comment?

20 A Yes. Especially these days if it's a prelim
21 there has to be a focus hearing, different things
22 happen.

23 Q When it came to you and you looked at the file it
24 was marked as being FT, meaning for trial?

25 A Yes, that was my understanding, it was for trial.

1 Q We're of course interested in what your
2 understanding was and what you did or did not do
3 based on the facts of the case.

4 A Yes.

5 Q So it was set for five days as well; do you
6 remember that?

7 A From documents that I've seen, it looks like it
8 was February 2nd through the 6th, so that would
9 be right.

10 Q When you first looked at the case and read the
11 Report to Crown Counsel, did you at that time
12 contemplate entering any stay of proceedings
13 based on what you read?

14 A No. I was troubled by certain aspects of it but
15 I didn't contemplate a stay of proceedings.

16 Q When you read the Report to Crown Counsel did you
17 upon your finishing your reading of it go talk to
18 anybody in your office about the case?

19 A I probably did, not in terms of getting advice on
20 it, but I'm sure -- it was a small office back
21 then and we talked about our cases. If what
22 you're asking, if I've understood the question
23 correctly, did I go get some advice whether I
24 should stay it then, no.

25 Q Let's just talk about what you did factually

1 after you read this report to Crown. It's a
2 number of pages. It would appear to be a
3 thorough report; do you agree with that?

4 A Yes, although in the investigator's comments I
5 believe there was additional information coming
6 that may not have been with the file. I can see
7 from correspondence with Mr. Ritchie that there
8 was additional things that still had to be
9 disclosed.

10 Q Of course there was some blood samples -- lab
11 analysis that needed to be conducted?

12 A Well, it says in the investigator's comments --
13 somewhere I've read that -- I stand to be
14 corrected -- it may be -- you're quite right,
15 that was an outstanding matter, but it may be
16 that a decision was made somewhere along the line
17 that given the nature of the case, given that the
18 complainant and the accused were both saying they
19 were there and both saying there was stabbing
20 back and forth that the blood samples weren't
21 that important. I can't say 100 percent that
22 that was something the police intended to do or
23 they may have decided once they reviewed it
24 all -- wait a minute, do we really need this, is
25 it going to add to the case?

1 Q After you finished reading the report to Crown,
2 did you look for other evidence? For example,
3 did you say: I want to factually go and see what
4 CPIC searches might be available in this case?

5 A No. The reason being, this was a little bit
6 unusual for that time. I knew that the accused
7 had no criminal record, the police tell me that
8 on the first page, and they also mention that in
9 the investigator's comments. They also took the
10 additional step of forwarding the criminal record
11 for the complainant. I know that would have come
12 in with the report because in the investigator's
13 comments he does say that the criminal record is
14 attached here so it would have come in.

15 Q Did you look for any indication of previous
16 events with Pickton -- you've already covered
17 there was no record and we read that, but there's
18 a reference in this material to some serious
19 sexual issue that happened seven years before.
20 Did you investigate that as part of your fact
21 finding preparation?

22 A No, because there was nothing about a problem
23 with him in the Report to Crown Counsel, and of
24 course that's all I had at the time. There's
25 mention of him and his brother having some

1 association with the Hells Angels but I don't
2 recall anything in the Report to Crown Counsel
3 about him being involved in anything prior.

4 Q There is reference in the materials we've seen
5 referencing a previous sexual assault by Pickton
6 some years before, but you're not familiar with
7 that?

8 A No. If it's not in the report to Crown -- that
9 was all I had, my only knowledge of him came from
10 that.

11 Q In the report to Crown we learn about a handcuff
12 that was on Ms. Anderson?

13 A That's right.

14 Q And the key to that handcuff was in the
15 possession of Pickton?

16 A Yes.

17 Q At that point did you decide to look at factually
18 what had happened around this issue of the
19 handcuff on her and the key in his pocket -- or
20 in his possession?

21 A The Report to Crown Counsel covered his statement
22 and her statement. His statement was that she
23 had become out of control and he put the handcuff
24 on her to control her. That was contained in the
25 report.

1 Q We read that, but factually did you say jeez --
2 did you say to yourself: Factually I've read
3 that but I want to talk to the police to see if
4 that fits common sense, as it were, about that
5 could happen, waving an arm around in a knife
6 fight? Did you go to the police and say can we
7 discuss this business about the handcuff and the
8 key?

9 A I'm not quite sure I understand your question.
10 It was explained in the Report to Crown Counsel
11 in the statements.

12 Q In Pickton's statement?

13 A Yes.

14 Q But in her statement she didn't confirm that at
15 all?

16 A No. That was the whole issue with the case, it
17 was all -- their evidence dovetailed except for
18 how the incident started.

19 Q When you read that did you say in your own mind,
20 I want to phone the police and find out more
21 about the fact there was a handcuff on one person
22 and a key in the possession of another? Did you
23 do that?

24 A No.

25 Q At the point you read the report to Crown, from a

1 factual standpoint did you interview the non-
2 police people who found Ms. Anderson bleeding in
3 the area where the attack occurred?

4 A I don't think I had got that far. When I got the
5 report I knew that Ms. Anderson's evidence was
6 absolutely essential. She was the case. I
7 obviously would have called the two people that
8 picked her up on the road but I wasn't worried
9 about her evidence. It was good evidence to call
10 but it didn't really help decide that issue.

11 Q Did you ever interview those two people, the man
12 and woman who picked her up?

13 A I don't believe I did. I tried to concentrate on
14 Ms. Anderson, that was key.

15 Q So you never spoke to them at all?

16 A No. I read their statements but I wasn't worried
17 about their evidence.

18 Q Did you make a note to ask them about how
19 Anderson appeared in terms of what had just
20 happened as an indication of perhaps putting
21 together the facts of the case?

22 A I would have certainly asked them that when I sat
23 down to interview them.

24 Q You could see how that would be important?

25 A Yes.

1 Q Did you do any legal research at the time, given
2 what we've discussed about your experience with
3 attempt murder cases, did you do any legal brief
4 in terms of what the elements of the offence were
5 that needed to be proven?

6 A Before I interviewed Anderson?

7 Q At any time.

8 A I don't think so. We didn't get that far. At
9 some point that would have been absolutely
10 essential to make submissions to the court.

11 Q That would be something you would do to
12 understand the law, to know what facts you need
13 to elicit from the witness?

14 A Well, no, I don't think that would have been
15 necessary because the facts I would have elicited
16 from the witnesses would have been to tell me
17 what happened and go into all the details.

18 Q I want to ask you moving on to Anderson's
19 statement that you had, there's a reference at
20 tab 2, page 1 to a statement taken at 10:00 a.m.
21 at the Royal Columbian Hospital. Do you see
22 that?

23 A Yes, by Constable Casson and Constable Strachan.

24 Q Look at the very first comment from Constable
25 Casson, he said: "Okay," and there's a blackout

1 so probably that's the name of Ms. Anderson?

2 A All right.

3 Q "Now I've got a tape recorder here if you can
4 just keep your voice up for me as best you can."
5 That would suggest to anyone reading it that this
6 statement was recorded?

7 A Yes.

8 Q The question is, did you ever ask or ever listen
9 to that statement just to hear how it sounded?

10 A No, not that I can remember. I read the
11 statement.

12 Q I understand. But you did not listen to it?

13 A No. I don't see why I would have needed to,
14 because I knew what she said and my plan was to
15 interview her and find out in person how she
16 sounded, how she expressed herself.

17 Q You would have been interviewing her some months
18 later?

19 A No. You've got to remember, I didn't get the
20 file until after October 22, so it wasn't a
21 matter of some months.

22 Q I understand. But if you had listened to the
23 statement that was taken many months before you
24 would have had a sense of how she sounded when
25 she described the event?

1 A I suppose so but, again, when you have a
2 transcript -- normally when you listen to
3 statements or if there's a video you watch the
4 video. I have quite often done that in the past
5 where I've had, for example, a child witness and
6 either at the charge assessment stage or later
7 you want to have a look and see how mature the
8 child is. Here we were dealing with an adult --
9 and I was making an assumption the transcript was
10 transcribed correctly. Sometimes it's important
11 in trials, and I've done this myself, to listen
12 to the tape and compare it just to make sure the
13 tape is accurate, but at that point I hadn't got
14 to the point I had concerns about whether it was
15 transcribed properly.

16 Q Let's move then to a discussion about admissions
17 that we referenced earlier in your evidence.
18 We've already read to the commissioner about the
19 letter referencing Judge Holmes and her request
20 to see if counsel could work out admissions;
21 correct?

22 A Yes.

23 Q I wanted to ask you this question: Did you do
24 this?

25 A I can't recall drafting the admissions. I may

1 have started to. I have no recollection of that.
2 Like I say, my concern was dealing with Ms.
3 Anderson because she was the whole case. The
4 rest of the police evidence was really not as
5 important as that. We can tell that because Mr.
6 Ritchie is saying in his letter there shouldn't
7 be any problem with this, the continuity of
8 exhibits and that kind of thing shouldn't have
9 been a problem. It's not -- what I have done in
10 the past is if I'm not concerned with how
11 important the extra evidence is I will draft the
12 admissions during the course of the trial and
13 make sure they get filed before the close of the
14 crown's case.

15 Q Of course admissions could deal with matters
16 other than continuity of evidence?

17 A But not the central issue.

18 Q I understand. But there would be medical
19 evidence that would need to be filed in the court
20 to show the extent of the injury?

21 A Yes, although that wasn't really hugely important
22 because the complainant could certainly testify
23 about how severely injured she was. It wasn't an
24 issue and I can't imagine defence counsel arguing
25 that what she suffered wasn't bodily harm because

1 clearly it was. We would have had, I would
2 assume, the doctor that we could have called if
3 we had to.

4 Q I was just going to ask you that. Of course it
5 wasn't a bodily harm case, it was an attempt
6 murder case?

7 A Aggravated assault, I believe. I don't think
8 there would be much issue on that.

9 Q You would want medical evidence to show the
10 gravity?

11 A Yes, but I wasn't anticipating a problem with
12 that with Mr. Ritchie.

13 Q I understand that. I just want to ask you if you
14 can tell the commissioner yes, we did sit down
15 and attempt to work out admissions as requested
16 by Judge Holmes? I'm just asking if you have an
17 independent memory of doing that.

18 A No, I can't rule it out in terms of whether I had
19 conversations on the phone with Mr. Ritchie but I
20 can't tell you I have specific memory of that.

21 Q I want to ask you in the course of doing the
22 admissions part of the case did you ever talk to
23 Corporal Mike Connor about what admissions you
24 could make?

25 A There's correspondence that I've seen between

1 Corporal Connor and myself requesting additional
2 disclosure but I don't think admissions would be
3 something that I would discuss with him unless --
4 sometimes what defence counsel will do is they'll
5 want a written statement or they'll want to talk
6 to a police officer before they make the
7 admissions but I don't recall there being a
8 problem with admissions where I'd have to get
9 additional information from Corporal Connor, I
10 can't recall that being an issue.

11 Q But you can't recall ever talking to him about
12 admissions such as the key in the possession of
13 Pickton and other events around weapons that were
14 used?

15 A Normally discussions about admissions wouldn't
16 take place with the police officers; that's more
17 with the Crown and the defence.

18 Q Let's then move on. I think we've covered the
19 question of admissions. Is there anything else
20 you want to say to the commissioner about what
21 you did factually concerning getting admissions?

22 A No, except I didn't consider the admissions to be
23 a particular problem. There was no indication
24 that there was going to be any difficulty in
25 obtaining what I needed and if I couldn't get

1 them I would just call the witnesses.

2 Q Let's discuss the issue of subpoenas or notifiers
3 to police. In the police/Crown world, police
4 customarily are not formally served with
5 subpoenas?

6 A No, they're served with a document called a LEN.
7 It's an acronym for I think -- I can't remember
8 what it's an acronym for -- it used to be a
9 triplicate form that would get sent over to the
10 police station and there's a space for the police
11 officer to sign and acknowledge he would attend
12 for trial. Not a subpoena, but a copy would come
13 back to the Crown indicating yes, this officer
14 has signed indicating he will be there on that
15 date and time.

16 Q You called it a LEN which means Law Enforcement
17 Notification?

18 A Yes.

19 Q Commonly called a notifier?

20 A Yes.

21 Q What the Crown would do, commonly done then, '97,
22 '98, the document would be prepared to tell the
23 police that the Crown wanted them to come to give
24 evidence?

25 A Yes. Just by way of background, when Mr. Romano

1 did the charge assessment he would tick off on
2 the witness list which witnesses he wanted to be
3 notified should the matter be set for trial. The
4 file, once it is set for trial, then goes to a
5 support staff person and they generate the
6 subpoenas and the LENSs and send them out.

7 Q In the file -- the commission has already seen
8 this I understand -- if there's any mix-up we can
9 deal with it later -- there are a number of
10 notifiers to police and they're all in the RCMP
11 disclosure which came from the RCMP, but there
12 were a number of police notified and they were
13 notified for trial to show February 2, 1998, 9:00
14 a.m. Do you recall that from your review of the
15 trial?

16 A Yes. That's pretty standard. The way our files
17 work is once the matter is set for trial the
18 support staff automatically send out the
19 notifications to the police and they do that
20 pretty quickly because the difficulty is if you
21 don't send out the LENSs to the police right away
22 they might be on courses, might be on holidays.
23 When the case is set with the judicial case
24 manager they're checking the availability of
25 officers but it's important to get people

1 notified quickly. It's very standard for all the
2 witnesses to be notified for the first day of the
3 trial because the support staff of course doesn't
4 know at that point months in advance what days
5 those people will actually be needed. What the
6 practice is, when you get a file like this, the
7 prosecutor will have a look at it, try and work
8 out some idea of what order the witnesses are
9 going to be called in, and then contact the
10 police and say you don't need to show up on
11 Wednesday but we will need you on the Thursday or
12 we will need you on Friday, or we've got
13 admission of your evidence so we don't need you
14 at all. For administrative convenience from a
15 practical standpoint it's best to have everybody
16 notified for the first day of the trial. On less
17 important cases, on routine cases, what happens
18 in provincial court is that there might be three
19 or four cases set and everybody shows up and the
20 prosecutors do all the interviews. But on a
21 serious case like this you wouldn't leave it for
22 the morning of the trial. So the police should
23 know that even though everybody is notified for
24 that one time, obviously the prosecutor isn't
25 going to interview ten police-officers and throw

1 them on the stand that day, it will be spread
2 out.

3 Q Thank you. Just while we're dealing with this,
4 there were 16 notifiers sent out to police. I'll
5 read the names and then I'll ask you if you can
6 confirm those names. This comes from the RCMP
7 file.

8 A Right. There should be a witness list -- I'm
9 sorry, I'm just going to check. At this point I
10 wouldn't be able to tell you who I actually
11 intended on calling and who I could have got
12 admissions on. The only thing I can do is check
13 the witness list that you've been supplied with
14 and if these are all people on the witness list.
15 I am assuming where this came from, it was
16 generated by Mr. Romano when he did the charge
17 assessment, he would have ticked off all these
18 people.

19 Q One of the problems, as you know, is the Crown
20 file was destroyed in the year 2000?

21 A I've been advised of that.

22 Q Not through any action on your part is the advice
23 we have, nor on Mr. Romano's part?

24 A That's correct.

25 Q That will be another part of the fact finding,

1 Mr. Commissioner, but I just wanted you to hear
2 that. Let me give you the 16 names so they will
3 be on the record.

4 A I'm really sorry, but I'm having a problem with
5 this because the witness list I have on these
6 pages the names are blanked out and rather than a
7 police officer it just says Witness 13.
8 Unfortunately unless I had access to the witness
9 sheets that I was provided with earlier that
10 actually has the names of the police-officers, I
11 wouldn't be able to tell you whether they were on
12 the witness list or not.

13 Q We understand. That's why we've taken the time
14 to look at the RCMP file and we have names for
15 you?

16 A Can you tell me these people were all on the
17 witness sheets? I don't have names, I just have
18 numbers.

19 Q I understand that. Just listen to the names and
20 then we can deal with it. There's 16 police
21 officers and let me go through them for you.
22 Constable Sarra, Constable Burke, Staff Sergeant
23 Giffin, Constable Seward, Constable Casson --
24 Casson is the one who took the report, then
25 statement -- Constable Paradis, Constable

1 Rutherford, Constable Arsenault, Constable Slade,
2 Kent, Corporal White, Corporal Connor -- and we
3 know Connor was the leader investigator; right?

4 A That's correct.

5 Q Constable Chan, Constable Petrovich, Constable
6 Packer. These are all notifiers we've found in
7 the RCMP file. Do some of those or all of those
8 names sound familiar to you as part of this
9 Pickton case?

10 A Not all of them. Like I say, I can't check them
11 against the witness list because this copy just
12 has numbers.

13 Q You're right that the notifiers were returnable
14 February 2, the first day of the trial at 9:00
15 a.m., and you've explained that to the
16 commissioner. The question is, did you actually
17 interview in your office any of those police
18 prior to dealing with Ms. Anderson?

19 A I don't think so. I think, as I've stated, my
20 primary concern was speaking with her first.

21 Q I asked you if you had interviewed any of the
22 civilian witnesses, I had in particular mind the
23 two people, a man and a woman who helped her when
24 she was in distress and bleeding profusely and we
25 covered that. Did you interview any of the

1 hospital people to determine the extent of the
2 injuries and inquire about the fact that she
3 essentially died in the hospital?

4 A No. I knew from the file the injuries were
5 serious.

6 Q Dealing with interviewing the witnesses, we've
7 covered off the area, just for the commissioner's
8 benefit, if there's a preliminary hearing it's a
9 different legal test than a trial?

10 A That's correct.

11 Q Just so we all understand the test you understood
12 it to be, if you're dealing in a preliminary
13 hearing all you need is some evidence that a
14 trier of fact properly instructed could convict?

15 A That's my understanding of the test.

16 Q It's a long standing test and often cited in the
17 *USA vs. Shepard*?

18 A Yes.

19 Q For that reason as a Crown if you're doing a
20 preliminary hearing it's a much less burdensome
21 case to prove because the standard is so much
22 lower than the standard of proof beyond a
23 reasonable doubt?

24 A That's correct.

25 Q If you're doing a preliminary you might not see

1 the need to call all the evidence that you might
2 normally call?

3 A That's right, or depending on the trial and how
4 relevant the evidence was, you might get
5 admissions or not call it.

6 Q But in the case because you were of the view it
7 was a trial, you knew you had to meet the higher
8 standard of proof beyond a reasonable doubt?

9 A Yes. You're giving the impression, and I really
10 want to correct it, that had this proceeded to
11 trial that I wouldn't have interviewed these
12 witnesses, and of course I would have, but those
13 interviews -- what I've done in the past is some
14 of them can be done on less important witnesses
15 while the trial is going on or before the trial
16 commenced as well, if there was time to set up
17 interviews certainly with the police.

18 Q Just on this discussion that you've just
19 introduced for us, let me pursue that for a
20 moment. We understand the stay was entered on
21 the 27th of January 1998?

22 A I thought it was the 26th. Am I wrong on that?

23 Q I wasn't -- I've seen differing views but it was
24 the 26th we know you spoke to Connor because Mike
25 Connor has come here and spoken to the

1 commissioner.

2 A There is actually a document, and I'll see if
3 it's in the booklet, of the court record that
4 indicates the exact day of the stay. Let me see
5 if it's included. Unfortunately this booklet is
6 different than the one I was provided with
7 originally.

8 Q During the break you can just confirm that for
9 us.

10 A Tab 19 -- sorry, tab 16, there's a copy of the
11 information and on the bottom of it is written:
12 "January 26, 1998, all charges stayed," and on
13 the page behind it the record of proceedings also
14 indicates that as well. So it's the 26th
15 according to the court records.

16 Q That's consistent with Mike Connor who said you
17 phoned him to tell him he had stayed the charge
18 and he told us that was the 26th of January 1998?

19 A The 26th of January was the date it was stayed so
20 if I talked to him -- if he says it was the 26th
21 it was the same day.

22 Q Yes, he does. Did you have plans to interview
23 these witnesses that were in place when you met
24 Ms. Anderson?

25 A Yes. What I can tell you is that I had been

1 practicing I think 14 years at the time this took
2 place and I would never -- I can't even think of
3 exceptional circumstances -- just put someone on
4 the stand without interviewing them at all.

5 Interviews take different amounts of time
6 depending on what the witnesses have to say.
7 Sometimes you can interview witnesses fairly
8 quickly before court if it's a minor matter,
9 something that isn't contentious or isn't
10 complicated. For example, the Ms. Anderson
11 witness, you want to talk to the person well in
12 advance and you want to have a chance to take
13 your time to interview them. So I don't really
14 quite understand where this is going in the sense
15 that if you're suggesting that I would have
16 started the trial and not interviewed any of
17 these people that's not correct, I would have.

18 Q I'm not suggesting anything. I'm just asking
19 your for the facts you can assist us with. Let
20 me ask you this question. It would appear that
21 police interviews have not yet been conducted as
22 at the date you entered the stay of proceedings?

23 A That's correct. It's possible, and I can't
24 confirm this completely, that they were in the
25 process of being set or were set up for a later

1 time. That's a possibility and I base that on
2 fairly common practice. You could say to a
3 secretary I'm available on Monday, could you
4 please set up these interviews for Monday. That
5 may have happened.

6 Q I understand. This is the question -- and I
7 think we can anticipate the answer -- there's
8 nothing then that you learned from the police to
9 make you review the substantial likelihood of
10 conviction?

11 A From the police, no.

12 Q Now, there was indication in the file that
13 Victims Services were involved in this case. Do
14 you have a memory of that?

15 A Both sets. The police-based Victims Services and
16 our Crown-based Victims Services as well.

17 Q That would be to assist Ms. Anderson who was
18 known to be a vulnerable witness?

19 A Yes.

20 Q I want to then move to a discussion about your
21 own attempts to make contact with Ms. Anderson.

22 A Yes.

23 Q The file suggests that you spoke to Ms.
24 Anderson's mother about this case and about
25 getting in touch with Ms. Anderson?

1 A Yes. The reason for that was if you look at the
2 witness list under Ms. Anderson's will-say, there
3 was no phone number or address for her. What the
4 Report to Crown Counsel said was that she could
5 be contacted through Corporal Connor. My
6 recollection is when I wanted to contact her that
7 I spoke with Corporal Connor and was told to
8 contact her through her mother, which I did.

9 Q Would you turn please to tab 15. These are
10 references that I understand came from Ms.
11 Anderson's mother.

12 A All right.

13 Q You've seen these in the last little while prior
14 to coming here?

15 A I was shown them this morning; that was the first
16 I had seen them.

17 Q It would appear the first date that relates to
18 your contact is January 9, 1998, and then the
19 dates January 20, January 21, 22 and 23. Do you
20 see that?

21 A Yes.

22 Q Do you have the recall that by you contacting the
23 mother you ultimately were able to be in contact
24 with Ms. Anderson, the complainant and victim?

25 A Yes. That was my understanding, was that the

1 mother was in contact with her and could pass
2 messages along.

3 Q Not only is that your understanding, that in fact
4 occurred?

5 A Yes, I would agree with that.

6 Q So you ultimately got a number for the mother?

7 A Yes.

8 Q And you think that came from Mike Connor who was
9 the lead investigator?

10 A I think so. I'm basing that on the fact that
11 where you would normally expect to see a
12 telephone number for the witness it said, "Care
13 of Mike Connor". That was all I had. I didn't
14 have any way of contacting her without finding
15 out how to do that.

16 Q Just on that point because you've raised it, and
17 it's a fair point to make, the lifestyle Ms.
18 Anderson was living at the time was one that
19 might not have a regular address and phone number
20 attached to it?

21 A That was my understanding, yes, and that's why I
22 was calling the mother.

23 Q You were a very experienced Crown at this time in
24 1998 and you're wise in the ways of our community
25 and some people have lifestyles that don't have

1 fixed addresses and phone numbers and you have
2 had to deal with people like that?

3 A Yes.

4 Q I do want to ask you this, when spoke to the
5 mother on the phone did she seem responsive to
6 your requests and know what it was about?

7 A To the best of my recollection, yes. I don't
8 recall any resistance from the mother or her not
9 knowing what it was about.

10 Q She seemed cooperative with you?

11 A Yes.

12 Q The mother was very pleasant with you?

13 A I don't recall her ever being unpleasant.

14 Q That's a way of saying she was pleasant?

15 A Yes. As far as I remember, yes.

16 Q When you look at the mother's notes, we
17 understand this is the mom's handwriting, are you
18 able to accept the dates and times as set out in
19 that record?

20 A I can't dispute them because I don't have any
21 independent recollection and there are things in
22 here that lead me to believe that the -- that
23 there are things I would have done. For example,
24 on the January 9th date it says: 24 hour
25 voicemail. I know in the past what I will

1 sometimes tell people when I call if I'm waiting
2 for a call back is you can call my office number,
3 it has 24 hour voicemail and you can call at any
4 time and leave a message.

5 Q When you read that that has a ring of accuracy to
6 it because that's factually correct, you do have
7 a 24 hour voicemail?

8 A Yes, I can't confirm the date but I have no
9 reason to believe it's not correct.

10 Q Just look at the date, January 9, 3:30, Randi
11 Connor, that's the spelling of your name,
12 R-A-N-D-I?

13 A Yes.

14 Q And your last name is spelled correctly?

15 A Yes.

16 Q Then looking at the 20th it seems there was
17 another reference to you in this 24 hour line.
18 You understand that this book is a book that her
19 mother kept at the business and that's why
20 there's other entries in there totally unrelated
21 to the case?

22 A Okay, I see.

23 THE COMMISSIONER: Mr. Vertlieb, maybe we'll stop there for
24 the break.

25 MR. VERTLIEB: Certainly.

1 THE REGISTRAR: The hearing will now recess for 15 minutes.

2 **(PROCEEDINGS ADJOURNED AT 2:48 P.M.)**

3 **(PROCEEDINGS RESUMED AT 3:10 P.M.)**

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

5 MR. VERTLIEB: Thank you. Mr. Giles, can you please just mark
6 the CV as an exhibit. I forgot to ask you to do
7 that.

8 THE REGISTRAR: I was going to ask you if you wished to do
9 that. That will be marked as Exhibit 132.

10 **(EXHIBIT 132: Curriculum Vitae of Randi Connor)**

11 MR. VERTLIEB: Also, Mr. Giles, there's tab 8 in that binder
12 that we haven't yet marked that should come out.
13 We need to remove that.

14 Q I wanted to just go back, Ms. Connor, to tab 3
15 and this is the report to Crown and I know that
16 when you were looking at those pages there was no
17 names in there. I'm looking at the pages, for
18 example, 4, 5, 6, where there's witness numbers,
19 for example, witness 5, 6, 7. Do you remember
20 that you were talking to the commissioner about
21 that?

22 A Yes.

23 Q Look at page 8. When you get in the RCMP there's
24 been no redaction of their names?

25 A All right. I see Sergeant Burke, Constable

1 Paradis, Constable Rutherford, Constable Kent.

2 Q I just wanted to point that out to you.

3 A Thank you.

4 Q You were correct, there were some redactions and
5 that is to protect civilian witness names.
6 You're comfortable with that?

7 A Yes.

8 Q Let's move to the date that Ms. Anderson came to
9 see you at your Port Coquitlam Crown counsel
10 office. There's a reference in the notes at the
11 bottom, tab 15, to a January 23, 1998. You see
12 the first note there: 9:20 Randi Connor?

13 A Yes.

14 Q Just help us with this understanding. On the day
15 that Ms. Anderson was supposed to come to see
16 you, which we believe was January 23, '98, she
17 was supposed to come in the morning but she
18 didn't show up and she came in the afternoon. Do
19 you accept that as fact of how this came to
20 develop?

21 A I wouldn't have any reason to dispute it but I
22 don't remember the days.

23 Q She came to see you on January 23, 1998. Are you
24 prepared to accept that?

25 A It would make sense based on what you're showing

1 me. I see a note: 9:20, Randi Connor. We can
2 presume from that that possibly I'm calling to
3 find out where she is or what the plans are.

4 Q Again, we covered that earlier before the break,
5 but you would communicate that with the mother
6 and it seemed to be effective because you would
7 then be in contact with Ms. Anderson?

8 A Yes.

9 Q January 23, 1998 was a Friday, we've checked
10 that, and you're prepared to accept that?

11 A Yes.

12 Q We understand that the meeting took place at the
13 Port Coquitlam Crown counsel office on the
14 afternoon of January 23, 1998. Are you prepared
15 to accept that as a correct fact?

16 A I don't have any reason to dispute it. I'm a
17 little bit concerned -- based on this, it would
18 appear that's when it was. It might also
19 possibly have been on the 26th.

20 Q The --

21 A The 26th which was the Monday. I can't rule that
22 out. I can't say either way. But it would look
23 like certainly a possibility that it was the
24 Friday.

25 Q So the dates that she came to see you -- she only

1 came to see you one time at your Crown counsel
2 office?

3 A That's correct.

4 Q So you would accept it either as January 23, 1998
5 or January 26, 1998?

6 A It would appear that way, yes.

7 Q And tell us about that meeting with her at your
8 office. How long was that?

9 A Well, the meeting would have been arranged
10 through the mother. Normally what we would do
11 with witnesses who didn't have their own
12 transportation is we would arrange with the staff
13 to bring the person in by taxi-cab. We had an
14 account with a cab company and our staff would
15 contact the cab company, give them our invoice
16 number and then let them know where the person
17 was to be picked up and where they were to be
18 brought to. So it's possible to the best of what
19 I can recall that she came in by cab. I didn't
20 drive to get her and I don't recall anyone else
21 driving to get her.

22 Q That's our understanding as well. There's a cab
23 company that has an account with the Crown?

24 A At that time, yes.

25 Q And brought her to your office?

1 A Yes.

2 Q Can the commissioner assume she showed up at your
3 office voluntarily?

4 A Yes.

5 Q Under no escort?

6 A Not that I'm aware of, no. I don't believe the
7 police escorted her or Victims Services, she
8 showed up in the cab.

9 Q She was in your office altogether for how long?

10 A At this point I can't tell you. I know it
11 wouldn't have been brief. My best estimate would
12 be possibly an hour, maybe longer, but I can't be
13 100 percent certain.

14 Q And during that meeting with her did you give her
15 any of your own contact information? For
16 example, a cellphone or a residence phone?

17 A It's possible. I think -- and I'm seeing this
18 from these notes -- and this was not an uncommon
19 practice for me -- that I gave my home phone
20 number to the mom. If you can give me a moment
21 here -- I just looked at the documents this
22 morning and there is something about -- yes, the
23 third page in, Randi Connor, home number, and
24 it's blanked out.

25 Q Which page are you showing us?

1 A Tab 15, page 3, of the mom's notes at the top is
2 written Randi Connor, home number. So from that
3 I gather the mom had it. Whether I wrote it out
4 again and gave it to Ms. Anderson I can't recall,
5 but she certainly would have had access to my
6 home number.

7 Q And who was present during the meeting for all or
8 part of that meeting other than yourself and Ms.
9 Anderson?

10 A Victims Service worker, Roxanna Smith.

11 Q How well did you know Roxanna Smith?

12 A Pretty well. She had been a Victims Service
13 worker for a while before this interview. She
14 worked with, I believe, a fellow by the name of
15 Jack Carriou out of New Westminster. I could dig
16 back through the correspondence but I think she
17 was not new in the office.

18 Q Roxanna Smith, she was in the office prior to Ms.
19 Anderson arriving?

20 A I can't tell you that. I know she was there for
21 the meeting. She may have been.

22 Q Would she often have been in the Crown counsel
23 offices and be available to you as Crown or other
24 Crown?

25 A Yes. She was a good Victims Service worker.

1 Q Let me read a comment she made and see if this
2 rings any memory of yours. She made a comment
3 when she was interviewed, she said: "I remember
4 on meeting her," meaning Ms. Anderson, "I hadn't
5 met anyone who had worked on the streets before
6 and she looked like a regular person to me. That
7 stuck in my mind." Do you remember Roxanna Smith
8 saying to you at any time: "I've never met
9 anyone who worked on the streets before"?

10 A No. I'm surprised about that. I think Roxanna
11 Smith had been a Victims Service worker for a
12 while.

13 Q That is in her interview at page 16. But that
14 wasn't discussed between you and Ms. Smith?

15 A No, not that I recall.

16 Q Tell us about that meeting. Tell us everything
17 that you remember discussing with Ms. Anderson.
18 Take as much time as you need.

19 A This is difficult because of the passage of time
20 and the fact that I don't have the benefit of the
21 file and my notes. To the best of my
22 recollection, my impression was that she was
23 under the influence of drugs. I recall that she
24 was nodding off and I recall that she was not
25 able to articulate the evidence. She was in bad

1 shape. I concluded as a result of this that I
2 could not conduct a proper interview with her. I
3 couldn't get the details from her and I just
4 didn't get anywhere with her. The only thing
5 that I can remember specifically is her going to
6 the washroom and Roxanna Smith either going with
7 her or going in shortly thereafter and saying,
8 "I'm concerned that she's going to be using drugs
9 in the bathroom."

10 In terms of a normal interview, normally I
11 would provide a witness with a copy of their
12 statement, have them sit in the waiting room and
13 read it over to refresh their memory and then go
14 over the statement in detail and I just wasn't
15 able to do that with her. She just wasn't
16 responsive to me in any meaningful way. That was
17 a terrible problem because that interview was
18 important. I needed to hear from her what had
19 happened. I needed to get a sense of how she was
20 going to respond to cross-examination, and what
21 was really important in this case because it
22 really -- the whole case as I saw it turned on
23 that moment when the altercation began, so I had
24 to be very careful in my interview with her --
25 the other factor that has to come into it, when

1 you're interviewing with a witness and if they
2 provide anything different than what is in their
3 statement or they're adding to it you have to
4 make sure you take very careful notes and provide
5 those to defence counsel as disclosure. So I
6 really was just not able to conduct the interview
7 that I needed to do with her.

8 Q I wanted to give you as much time as you needed
9 to tell us everything you discussed with her. Is
10 there anything else you want to tell us?

11 A Without the benefit of my notes I can't give you
12 verbatim what was discussed. What I can tell you
13 is the condition that she was in and it was bad.

14 Q You've discussed the condition as she appeared to
15 you?

16 A Yes.

17 Q Can you tell us though what she said about the
18 event? Do you have any memory of what she said?

19 A I can tell you not much. In a normal interview
20 you're asking questions and getting responsive
21 answers and getting a picture and being able to
22 go through the statement and I just wasn't able
23 to do that.

24 Q Can you tell us -- you said not much was said.
25 What was said?

1 A I can't give you a verbatim of what was said.

2 Q No memory?

3 A No.

4 Q I want to ask you about this reference you said
5 to nodding off.

6 A Yes.

7 Q What do you mean by that?

8 A Falling asleep. Her head coming down.

9 Q Did you ask her how much sleep she had had the
10 night before?

11 A Possibly.

12 Q What if she said, "None, I was up all night"? We
13 don't know. I'm just asking you factually what
14 you did with her.

15 A This is speculation in terms of what I would have
16 done, given an answer that I don't know I
17 received. I didn't ask the question that I can
18 recall and you're asking me to speculate on what
19 would have happened.

20 Q No, not at all. I'm just asking if you asked
21 her, how much sleep did you have the night
22 before?

23 A I don't know. My impression was it wasn't a lack
24 of sleep, it was more serious than that. In my
25 observations it was drugs.

1 Q But you did not ask her, or did you ask her?

2 A I don't know.

3 Q Did you ask her when she had last had a meal?

4 A Probably not. That strikes me as an odd question
5 to ask somebody.

6 Q I'm just asking you what you did ask her. Prior
7 to dealing with Ms. Anderson you covered earlier
8 with the commissioner that you knew she was
9 vulnerable?

10 A Yes.

11 Q And you knew that she was a woman suffering from
12 a severe drug addiction problem?

13 A Yes. I knew that, again, referring to the Report
14 to Crown Counsel, under her will-say in the
15 witness precis, on the witness sheets, it said
16 that she was addicted to heroin. There was also
17 the comment by one of the nurses at the hospital
18 she was taken to that said there were track marks
19 on the inside of one of her thighs, and also
20 Corporal Connor had attached the criminal record
21 of the complainant to the file, and looking at
22 that criminal record, back in 1985 there was a
23 conviction for possession of narcotics for the
24 purpose of trafficking and also possession of a
25 narcotic, and also followed by I believe eight

1 theft under or theft convictions which led me to
2 conclude that this was a long-standing problem.
3 It wasn't something that had just happened that
4 day. It was a long-standing issue.

5 Q You seem to remember the details of her record
6 better than other comments. Is that something
7 you reviewed?

8 A Yes, only because I reviewed it. Believe me, if
9 I hadn't seen that document I would not be able
10 to tell you the number of theft under.

11 Q In the work you do as a Crown prosecutor, no
12 doubt you would deal with people from all walks
13 of life as witnesses for the Crown and defence?

14 A Yes.

15 Q And to meet someone who is drug addicted to
16 heroin or cocaine or any other drug is not new to
17 you as a Crown prosecutor?

18 A No, and I know that particularly from the defence
19 side a lot of presentence reports will-say a
20 person is addicted to drugs or it will come out
21 in the file they were doing drugs before the
22 incident occurred. That's fairly common I would
23 say.

24 Q In the course of your dealings as a Crown were
25 you ever sent to any training on how to deal with

1 people who were actively under the influence of
2 narcotic drugs?

3 A I know that every year we have Crown conferences
4 and I've been to a lot of courses. I can't
5 specifically recall if I did -- if there was a
6 course on drug recognition. I may have attended
7 something like that when the police started
8 bringing in drug recognition experts. So in
9 terms of formal training, no, but in terms of
10 have I ever been to courses where that was
11 covered, it's possible. I'm not an expert on
12 drugs. It's only really through my work that
13 I've encountered it.

14 Q Of course. But you having to deal with someone
15 on heroin, that was not new?

16 A No.

17 Q You couldn't be a Crown for all those years and
18 suddenly be seeing for the first time someone
19 using heroin?

20 A No. That in and of itself is not a problem. The
21 problem arises if amounts are being ingested to
22 the point where the person isn't coherent and
23 can't communicate with you.

24 Q I understand that. You've made that clear. Let
25 me ask you this: Did you talk to Ms. Anderson

1 about going home and getting some sleep and
2 coming back another day because you still had
3 time to do deal with her?

4 A I don't recall asking her to come back another
5 day. My reasons for that were that this in my
6 opinion was not a new situation for her. I had
7 been attempting to get a hold of her for a while.
8 The file indicated that there was a drug problem
9 with this person from way, way back. If I felt
10 that it was a temporary condition and we could
11 fix it by having her come back I would have done
12 that. My opinion based on what I saw and my
13 review of the file was that it wasn't a temporary
14 condition.

15 Q But at the time you met with her, the way you've
16 described that she was nodding off so you
17 couldn't really talk to her in much detail about
18 what had happened to her?

19 A I am aware of people who are tired. I've done a
20 lot of interviews with police officers who have
21 worked a night shift and they come in and you can
22 tell they're tired and sleepy and exhausted, but
23 there was a difference between that and what I
24 saw with Ms. Anderson. It wasn't just tired in
25 my opinion.

1 Q I hear what you're saying, we all do. This is
2 not the first person that you were interviewing
3 as a potential witness in a case who was a drug
4 user?

5 A No, not the first person.

6 Q And doing the work that you do, there are times
7 you would deal with informants in criminal cases
8 who sometimes had unsavoury backgrounds?

9 A I deal with all sorts of people. You can tell
10 from my resume, the most difficult and
11 challenging was back in 1985 I was appointed to
12 be a child sexual abuse specialist and
13 prosecutor, so I dealt with that a lot, in the
14 years I was doing that, sexually abused kids. In
15 terms of damaged witnesses, witnesses who have
16 trouble communicating, witnesses scared out of
17 their minds, I was really familiar with that.
18 I'd done a lot of that.

19 Q You talked about the interview and you've given
20 us your exhaustive memory on it?

21 A Unless there's something else that jars my
22 memory, I think that's probably all I can say.

23 Q So what happened after you finished the
24 interview? Please tell us how it ended and then
25 what you did.

1 A It's been suggested to me through other
2 information that I walked Ms. Anderson out to a
3 cab. That may have been how it ended. I can't
4 say that I did or I didn't.

5 Q Did you tell her what you were planning to do or
6 what you were thinking about the case?

7 A I certainly wouldn't have told her that at that
8 point the case was in peril and I was thinking
9 seriously I was going to have to direct a stay of
10 proceedings because I needed to talk to Richard
11 Romano before I made that decision.

12 Q Let me ask you the question: Have you ever when
13 you've entered stays of proceedings as a Crown
14 all those years spoken to the victim about your
15 plan before you actually entered the stay?

16 A Yes, but that would be in a circumstance again --
17 again, we're getting into the public interest.
18 For example, dealing with a child witness and
19 dealing with, for example, their parent and them
20 saying please, please, please, you shouldn't be
21 doing this, it shouldn't be going ahead, this is
22 damaging to my child, in a situation like that I
23 would be discussing what the options were, but
24 that's a situation I can think of I would discuss
25 it with the victim and their family.

1 Q Did you think of discussing this with Ms.
2 Anderson's mother? Did you discuss it with Ms.
3 Anderson's mother?

4 A My recollection is I advised her of the stay of
5 proceedings but it would have been after the
6 discussion with Richard Romano, that would have
7 had to have taken place first.

8 Q So you advised the mother that the stay had been
9 entered?

10 A I believe so. It's a vague memory but that's my
11 recollection.

12 Q So then do we conclude that you did not speak to
13 Ms. Anderson about your concerns about her
14 condition prior to entering the stay?

15 A I may have said it's possible that I said to her
16 that I wouldn't be calling her on the 2nd. But
17 in terms of taking it further and saying, "Look,
18 I'm going to be directing a stay of proceedings,"
19 I hadn't -- I knew that's where this was heading
20 but I really needed to talk to Richard Romano
21 before I did anything formal.

22 Q We understand that. Did you say to Ms. Anderson,
23 "This is heading towards a stay of proceedings
24 based on what I'm hearing"?

25 A No, I wouldn't have said that.

1 Q Did you ask Ms. Anderson if there were any
2 services that could assist her, any assist
3 services, knowing the assistance services offered
4 by the Crown for vulnerable witnesses?

5 A I know that as part of the Victims Service
6 mandate they would advise her about what was
7 available in terms of counselling, that type of
8 thing, but I'm not sure what you mean by "assist
9 services".

10 Q Did you say to Ms. Anderson: "We have services
11 that can assist you given your condition you're
12 showing us today"?

13 A Like a rehab centre?

14 Q Like anything. Did you offer any assistance to
15 her given what you were observing that would help
16 her be a better witness in your view?

17 A It was beyond that by the time I did the
18 interview. In terms of trying to get her into
19 rehab or me trying to get her in, no. I'm not
20 sure what would have been available at that point
21 anyway. I'm not quite sure what that means.

22 Q Let me ask you another question. You could
23 conclude, just reading the file, that this was an
24 horrific event?

25 A Yes, absolutely.

1 Q And there was reference in the file to the fact
2 that she was feeling afraid of Pickton? Do you
3 remember reading anything to that effect?

4 A I would have to go through it but I wouldn't
5 disagree with that.

6 Q Let me ask you this question, whether it's in the
7 file or not. When you saw her condition, did you
8 ask Ms. Anderson whether she was feeling
9 intimidated by Pickton and that was why she was
10 taking drugs?

11 A I can't recall asking that question. I don't
12 think I would have.

13 Q Why do you say that?

14 A Well, because her drug problem from what I could
15 see in the file started in 1985 and it was an
16 ongoing issue. It wasn't something new that had
17 started after she received her injuries. It
18 wouldn't have been appropriate, I don't think.

19 Q You had never met her before?

20 A No, but I had read about her background.

21 Q You hadn't met her so you didn't really know the
22 way she had been over the last months or weeks
23 since this event with Pickton?

24 A I knew that there was a drug problem that existed
25 before the incident, I knew that.

1 Q Let me ask you another question. Did you ask Ms.
2 Anderson about adjourning the trial to give her
3 time to deal with this drug problem?

4 A No, and the reason that I didn't do that was,
5 again, based on what was in the file, based on
6 the fact that her drug issues had existed since
7 1985, I was not in a position to appear in front
8 of a judge and offer assurances that she would be
9 able to testify on any particular date in the
10 future. There was nothing to indicate that she
11 would be ready in a month, a year, two years,
12 there was nothing -- there was no information
13 that I had that I could put properly before a
14 judge.

15 Q I understand your statement but I'm just wanting
16 you to give us the basis for that statement you
17 just made. You did not ask her about whether her
18 drug use had suddenly escalated since the Pickton
19 attempt?

20 A No.

21 Q Did you have any medical evidence on that point
22 that she might be a candidate for some form of
23 rehabilitation?

24 A No, but it's my understanding that people -- if
25 rehab is going to work the person has to want to

1 go into the rehab. She had taken no steps that I
2 was aware of to go into rehab and present herself
3 for this trial in a condition where she could
4 testify.

5 Q Can you tell us you remember asking her about her
6 steps toward rehab?

7 A No, but it seemed obvious to me she was not clean
8 and sober.

9 Q Did you consider even -- did you discuss with her
10 the taking of methadone on a temporary basis so
11 she would not be as unclear?

12 A No.

13 Q Did you discuss with Mr. Romano that she could
14 perhaps take methadone so she would be a better
15 witness?

16 A No.

17 Q And you discussed nothing about rehab with a
18 doctor?

19 A No. I didn't talk to a doctor.

20 Q Did you discuss rehab with the mother?

21 A Not that I recall, no.

22 Q So tell us about when and how you formed the
23 decision, came to the decision, to enter a stay
24 of proceedings.

25 A Well, I knew from reading the file to begin with

1 that it was an extremely difficult file but I was
2 prepared to continue on with it. When I did the
3 interview with her and I wasn't able to have her
4 articulate the evidence and I had been trying to
5 get in touch with her for a while, I thought at
6 this point that the charge approval standard of
7 substantial likelihood of conviction no longer
8 existed. I didn't have that anymore. What I did
9 do was I went to see Mr. Romano to discuss the
10 issue with him, and I can't give you the
11 specifics of the conversation, but he agreed that
12 the charge approval standard was no longer met
13 and there was no option but to direct a stay of
14 proceedings. We covered off -- I wasn't in a
15 position to ask for an adjournment because I
16 couldn't assure a court that she would be ready
17 at a later time. What I did do, and I'm sure
18 you're coming to it, is the stay of proceedings
19 was not -- did not have to necessarily be a final
20 determination. The door was left open. I talked
21 to Richard Romano, and after that I can see from
22 the documents in the file on it looks like it's
23 January 26th I signed the stay of proceedings,
24 probably at the registry because the notice out
25 of court and sometime in that day -- if Corporal

1 Connor says it was the 26th that's fine -- I
2 would have discussed it with him and my
3 recollection was advising the mother as well.

4 Q Now, tell us about Mr. Romano's meeting. Where
5 did it take place, when and how long was it.

6 A It took place in his office. I can't tell you
7 precisely how long it took but it would make
8 sense to me that it wouldn't have been a terribly
9 lengthy meeting because I didn't have to get Mr.
10 Romano up to speed on the file. There are some
11 times when you have meetings with an admin and
12 you have to have them read the file or go over
13 what it's about. Because he did the charge
14 assessment he would already know what the file
15 was about.

16 Q You say not terribly lengthy. Can you help the
17 commissioner with any estimate, because that
18 would be almost nothing perhaps. You're talking
19 a matter of seconds, a matter of minutes?

20 A Oh, no, not seconds. I don't think to explain
21 the situation and the difficulty would have taken
22 more than -- I'm sorry, I'm just estimating here
23 -- half an hour maybe, if that.

24 Q At the most?

25 A I would think, but I have no specific

1 recollection of how long that meeting took.

2 Q Did you do it the same day as you met Ms.
3 Anderson?

4 A I could only say that I did it -- and we've been
5 through this -- if the meeting was on the 26th it
6 would be the same day. If the meeting was on the
7 23rd then we know the stay was signed on the
8 Monday. So I might have talked to -- I might
9 have talked to Richard, if it was on the Friday I
10 might have talked to him on the Friday but not
11 signed it til the Monday or if it was on the
12 Monday I might have talked to him then.

13 Q You either talked to him on the Friday or Monday?

14 A It would have had to have been. If the interview
15 was the Friday or the Monday, obviously it would
16 have been after the interview.

17 Q Did you talk to anybody else about the stay? I
18 want to make sure we're clear on your memory.
19 We've covered Ms. Anderson, we've covered the
20 mother, we've covered Connor. Did you talk to
21 anybody else before you entered the stay?

22 A I know at some point it's likely I talked to
23 somebody else in the office. It's a small office
24 and we did that. We would go for lunch and we'd
25 talk about cases that we had. So it's possible I

1 had discussions with some of my colleagues but I
2 have no specific recollection of that. I can't
3 rule it out.

4 Q I understand that, but there's no one that comes
5 to mind that you spoke to?

6 A No, I have no specific memory.

7 Q Let me just ask you if you agree with Mike
8 Connor's evidence about these events. He's told
9 the commissioner, and this is when he gave
10 evidence sometime ago, February 2012, February
11 6th, he said: So the question is when did you
12 first become aware there may have been problems
13 in dealing with Ms. Anderson by the Criminal
14 Justice Branch? He said: That date.

15 A I would disagree with that and I'll tell you why.
16 I read Lisa Casson's statement and in that she
17 said that she was aware, and she was one of the
18 co-investigators, that there was a problem with
19 locating Ms. Anderson and she describes going
20 down to downtown Vancouver on a night -- if I
21 have this right -- it was a slow night to look
22 for Ms. Anderson. So if they were working on
23 this file together and Constable Casson was aware
24 there was a problem, then you would think that
25 Corporal Connor would be aware there was a

1 problem, too.

2 Q Let me ask you this question. You're surmising,
3 and that's fine, you're answering as best you
4 can. I asked Corporal Connor this question: Was
5 there any consultation between you and the
6 Criminal Justice Branch About the decision to
7 enter the stay of proceedings? He said: No,
8 there wasn't. Do you agree with that evidence?

9 A All right. Just before I answer that, back in
10 2002 I was asked by the RCMP, Mark Kingsbury, to
11 provide a quick statement to them as to the
12 reasons for that stay and I believe in that memo
13 I used the words "discussed with Corporal
14 Connor". So in terms of consulting, I don't know
15 if I would describe it as consulting but I used
16 the word "discussed" in the memo.

17 Q Yes, I know. My question is this: We've heard
18 from Mike Connor -- I want to ask you if you
19 agree or disagree. The questions was this: Was
20 there any consultation between you and the CJB
21 about the decision to enter the stay of
22 proceedings? And he says: No, there wasn't. Do
23 you disagree or agree with him?

24 A I used the word "discuss" but in term of what was
25 said, I'm at a disadvantage in that -- I know

1 that he was advised of the stay, I know there was
2 a conversation about it, but I have no
3 recollection exactly what I said.

4 Q I understand. He was advised of the stay,
5 meaning the stay had been entered?

6 A If it had been, it's possible that if I talked to
7 him January 26 that it occurred, depending what
8 time I signed the stay, but it would have been
9 the same day for sure.

10 Q Now, we also heard from Mr. Connor that normally
11 he would get a memo on why the charges were
12 stayed. Do you remember doing a memo to him?

13 A What I can tell you is I know that he was aware
14 of it from at the very least a phone
15 conversation. I also know that when I was
16 requested by Mark Kingsbury to provide reasons
17 for the stay I did so immediately. Had I been
18 requested to provide him with a written memo I
19 would have done it, but I don't think that's the
20 policy. If that's question, was I required to
21 provide one, no.

22 Q No. The question is did you provide one to him
23 at the time?

24 A No.

25 Q I wanted to ask you about when you spoke with Mr.

1 Romano about the stay, whether you and he had any
2 discussion about the subjects we covered a few
3 moments ago about getting her help, having her
4 use methadone. Was there any discussion about
5 any of those things with Mr. Romano in terms of
6 what could be done to help her so that she would
7 be in a different condition even to the extent of
8 seeking an adjournment? Did you have any
9 discussion with Romano about keeping the case
10 alive, as it were?

11 A The case was kept alive in the sense that it was
12 stayed rather than no evidence called and being
13 dismissed. So the door was left open. But in
14 terms of discussions about getting her methadone,
15 no, I don't recall any discussions about that.

16 Q You're talking about the fact that in the
17 *Criminal Code* if a stay is entered the case can
18 be revived within a certain time period?

19 A On the same information, yes.

20 Q Is that a one-year period?

21 A For proceeding on the same information, yes.

22 Q Help the commissioner with this. How many times
23 in your career had you done that?

24 A I can recall doing it at least once. It's not a
25 common thing.

1 Q You mean reviving a stay?

2 A Yes, by providing a written notice to the clerk
3 and then it gets put in the court file. It would
4 not be a common thing but I have done it.

5 Q Would you agree it might be considered highly
6 unusual?

7 A It's not a common thing but if you have a good
8 basis for it and you're making a principled
9 decision you could do that.

10 Q Did you diarize the file to bring it back to your
11 attention to see if there had been any change in
12 Ms. Anderson's condition?

13 A No, but the police were aware of the file and
14 they didn't come back to me and say, look, you
15 should revive this.

16 Q Did you ask Mike Connor to do that?

17 A I shouldn't have had to. The police are aware of
18 what stay means; the door is open.

19 Q The memo you're talking about is at tab 20.

20 A Okay.

21 Q Do you want to just read that for the record,
22 please. It's dated February 7th, 2002, it
23 appears to be 11:25 a.m. This is after the first
24 search of Pickton's farm; is that correct?

25 A I don't know when the search was. What I can

1 tell you by way of background --

2 Q It's to Jeff Gaul, he was the media spokesman?

3 A Yes, and Peter Gulbransen was the regional at
4 that time.

5 Q So obviously something had triggered an interest
6 in why you had done what you had done?

7 A Right. I would imagine the press would have been
8 dealing with Mr. Gaul and he wanted something
9 from me.

10 Q This is your memo, just read it for us.

11 A "This case was stayed because the complainant was
12 using drugs around the time of the trial and was
13 in no shape to testify. I did interview her in
14 advance of the trial date in the presence of a
15 Victims Service worker Roxanna Smith and I
16 determined that I could not put her on the stand.
17 As she had stabbed the accused, credibility was
18 going to be an issue in the trial. I am told by
19 Kim Sund of our office that the Crown file cannot
20 be located. This is probably because if the file
21 was not archived it would likely have been
22 destroyed by now. The problems with the
23 complainant and the stay of proceedings were
24 discussed with the investigating officer,
25 Corporal Mike Connor, at the time and my

1 recollection is that the admin Crown Richard
2 Romano was also aware of it." That is just a
3 very brief synopsis of what happened.

4 Q What I wanted to ask you flows from this. Your
5 language back ten years ago now is that Richard
6 Romano was aware of it as opposed to saying
7 Richard Romano and I discussed it together and he
8 agreed.

9 A I didn't go into detail about the meeting or the
10 discussion, no. What you have to remember is at
11 the time that I prepared this and also the time
12 that I sent the communication to Mark Kingsbury,
13 things were developing with that case very
14 quickly and it wasn't like I sat down and wrote a
15 four-page memo on it. It was just okay, this is
16 what I remember, and this would have been four
17 years after the matter was stayed.

18 Q Let me ask you something that flows from this
19 memo. You said credibility is going to be an
20 issue in the trial. Do you see that comment?

21 A Yes, as she had stabbed the accused.

22 Q And you said: "I determined that I could not put
23 her on the stand." Correct?

24 A Yes.

25 Q I want to ask you this question. Did you discuss

1 with Mr. Romano factually proceeding with the
2 case without Ms. Anderson?

3 A It may have been discussed but it wasn't
4 possible. I'll explain why. In this particular
5 instance we had an accused with a slash across
6 his throat. There are cases where you can
7 proceed without a complainant if you have
8 independent evidence, if you have something else,
9 but in the circumstances of this case she had to
10 testify. We couldn't proceed without her.

11 Q The question though really is did you discuss it
12 with Mr. Romano?

13 A I can't recall specifically discussing it or
14 whether it was just so obvious that we couldn't
15 go without her. He was familiar with the file.

16 Q Did you discuss it with Corporal Connor before
17 entering the stay because he was the lead
18 investigator?

19 A Well, I use the word "discuss" so in terms of
20 proceeding without her, no, it wasn't a
21 possibility. Again, from reading Lisa Casson's
22 statement she said she knew that Ms. Anderson was
23 an essential witness. She was the case. I think
24 the police would have realized that.

25 Q Aside from what they would have realized, I'm

1 wanting to know factually if you had that
2 discussion with Corporal Connor?

3 A I can't recall having a discussion about that.

4 Q And none of that is in your memo?

5 A No, but the memo is short.

6 Q I wanted to ask you -- you recall that I asked
7 earlier about the issue around public interest
8 and Pickton's history? Do you remember that
9 discussion we had about public interest and the
10 history of the people?

11 A All right.

12 Q So if you turn to tab 1. I'm on page 21 of 66
13 and this is an RCMP report. You see tab 1, page
14 21 of 66? Do you see that?

15 A I'm not -- these are police documents that I
16 might not have had access to at the time. If you
17 can put it in context for me, please.

18 Q This is the RCMP continuation report. Often when
19 you're on cases with the police they would show
20 you their file?

21 A Well, not always, no. What are you directing my
22 attention to?

23 Q Look at the reference March 26, '97, the bottom
24 paragraph: "Additionally, Constable Strand
25 advised that this subject Pickton was

1 investigated by Surrey detachment approximately
2 seven years ago for a rape and stabbing."

3 A I'm not seeing this.

4 Q March 26, '97, the last paragraph.

5 A "Sergeant Field to determine -- "

6 Q You must have a different page.

7 A I'm sorry.

8 Q Tab 1, page 21 of 66.

9 A It starts with: "Corporal Connor called Mr.
10 Janzen."

11 Q Exactly.

12 A Where am I looking at?

13 Q Look at the date, March 26, 1997. Do you see
14 that?

15 A Okay.

16 Q Look at the third paragraph.

17 A That might have been something that I never saw
18 and was never advised about, but I don't see that
19 in the Report to Crown Counsel that was forwarded
20 to us.

21 Q Did you know that?

22 A No.

23 Q So then you would not have discussed it with Mr.
24 Romano?

25 A No. What we had was what was in the Report to

1 Crown Counsel. The continuation report was not
2 something that would routinely come over with the
3 file as part of the RTCC.

4 Q I wanted to ask you this because Connor was the
5 lead investigator and we've heard evidence that
6 from a factual standpoint the police viewed her
7 as being credible, certainly we've heard that.
8 Did you discuss this issue as you outlined in
9 your memo that credibility was going to be an
10 issue? Did you discuss that with any of the
11 police, particularly Mr. Connor who was the lead
12 investigator?

13 A What I meant by credibility in issue is there are
14 cases where if a person's evidence can be
15 supported by another witness then their
16 credibility isn't as important. So I don't think
17 that's something I would have discussed with
18 Corporal Connor. It was more a legal decision
19 that really she was the case and without her we
20 didn't have anything.

21 Q Did you tell Mr. Romano when you met with him the
22 police view of her credibility?

23 A I shouldn't have had to because if they felt she
24 was not a credible witness I can't imagine why
25 they would forward the file. She's described in

1 the investigator's comments as intelligent and
2 well meaning. I didn't see anything in the
3 report -- apart from the obvious problems and the
4 discrepancies, some of the things she was telling
5 people, that they had a problem particularly with
6 her credibility. It didn't come down to that so
7 much as that I didn't have a witness to
8 articulate the evidence at all and she was
9 important. When I use the word "credibility" I
10 mean by that that she was the case. It wasn't a
11 question of credibility in the sense of not
12 believing her. We didn't get that far.

13 MR. VERTLIEB: Mr. Commissioner, I see it's four o'clock. I
14 have covered a lot of ground. I have very little
15 to cover but I want to deal with a couple other
16 points but perhaps this would be a good time to
17 take the break and start at 9:30 tomorrow.

18 THE COMMISSIONER: All right.

19 THE REGISTRAR: This hearing is now adjourned for the day and
20 will resume at 9:30 tomorrow morning.

21 (PROCEEDINGS ADJOURNED AT 4:05 P.M.)

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