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Vancouver, B.C.

January 15, 2008

THE REGISTRAR: Commissioner Davies, the hearing is now resumed.

THE COMMISSIONER: Doctor, firstly let me introduce myself. My name is Bill Davies, and I am the Commissioner appointed to conduct this inquiry, and I thank you, sir, for the inconvenience I know you've been subject to today to have to travel to be with us in this video conference, and I thank you for that. I want to also ask you if at any time you are unable to hear a question asked of you or to understand it or need clarification, please let me know, and I will do what I can to try and rectify that. And now I am going to ask the associate counsel of this Commission to lead off with some questions. Mr. Martland.

MR. MARTLAND: Dr. Ferris, my name is Brock Martland. I am the associate Commission counsel. I don't know if I missed, but has the witness been sworn?

THE COMMISSIONER: Not yet.

MR. MARTLAND: Indeed, perhaps before we do that I can simply speak by way of assistance to all with respect to the sequence and timing of cross-examination. I've conferred with, I believe, all

1 counsel with respect to the time that's been
2 sought for asking questions of this witness. We
3 face a situation where we have a limited time to
4 conclude this evidence today and seek to do that
5 before 4:30. We're looking to proceed without
6 taking a break today, so if people want or need
7 to leave and come back, that's understood. I
8 expect to be in the neighbourhood of 20 minutes,
9 Mr. Commissioner.

10 THE COMMISSIONER: Yes.

11 MR. MARTLAND: Mr. Kelliher will be after me and has
12 estimated 10 minutes. Mr. Eby will ask questions
13 next and is estimated at 10 to 15 minutes. Mr.
14 Tammen next would be at 10 minutes. Mr. Arvay
15 has estimated 15 to 20 minutes. Mr. Hern has
16 estimated 10 to 15 minutes. We would then have
17 Mr. Woodall, who's estimated an hour, and Mr.
18 Shirreff, or Shirreff, sorry, from Mr. Crossin's
19 office, who expects after Mr. Woodall's questions
20 won't have any questions of his own.

21 THE COMMISSIONER: Very well. Will you please swear or
22 affirm the witness, please.

23 THE REGISTRAR: Mr. Ferris, I understand you wish to be
24 sworn.

25 **DR. JAMES ALEXANDER JOHNSTON FERRIS, SWORN:**

1 THE REGISTRAR: Would you state your full name, please.

2 A James Alexander Johnston Ferris.

3 THE REGISTRAR: Thank you.

4 **EXAMINATION BY MR. MARTLAND:**

5 Q Dr. Ferris, I plan to move at some speed with
6 respect to a number of areas, including not only
7 your curriculum vitae but also your report, so if
8 I do so at a clip that you deem is too fast or
9 you feel you need to provide further information,
10 please do that. First of all, in the context of
11 your involvement with the Frank Paul matter, I
12 understand that in late 2000 you were contacted
13 by the B.C. Police Complaint Commissioner with
14 respect to the Frank Paul matter and that you
15 were requested to prepare a report for that
16 office?

17 A That's correct.

18 Q Is it accurate to say that you were commissioned
19 to prepare that report for them?

20 A Yes, I was.

21 Q And they retained you and then provided you with
22 information in order to prepare that report?

23 A That's correct.

24 Q Was it your understanding that the Police
25 Complaint Commissioner was concerned about the

1 adequacy of the investigation of the Frank Paul
2 matter?

3 A I'm not sure that that was my understanding at
4 the time. My understanding was that I was simply
5 being asked on behalf of the Commission to
6 conduct an independent review of the materials
7 and correlate them with Dr. Laurel Gray's post-
8 mortem report. The issue, I think, simply was
9 whether or not the additional information that
10 was provided to me would be consistent with Dr.
11 Gray's findings. I was not at that stage aware
12 of any issues other than the usual issues that
13 relate to the investigation of a police
14 complaint.

15 Q And I take it those usual issues would include a
16 determination as to whether some other, whether
17 it's a hearing, an inquiry or other steps may be
18 necessary?

19 A That really was not an issue for me at all. I
20 was not concerned with the -- how the Police
21 Complaint Commission would deal with these
22 issues. That was not my job.

23 Q Okay.

24 A I was simply giving an opinion as I would do to
25 anyone, any legal authority that asked me to do

1 so.

2 Q Now, in terms of the information that you were
3 provided with, I take it that you were provided
4 and you've listed indeed in that report a series
5 of different documents and materials that you
6 were given primarily consisting of police
7 statements and other witness statements; is that
8 right?

9 A Yes.

10 Q And --

11 A That is correct.

12 Q And I take it you also saw photographs that
13 depicted the Vancouver jail with Frank Paul being
14 moved around that building, dragged around?

15 A As I recall, yes.

16 Q And Dr. Gray's post-mortem report as well?

17 A That's correct.

18 Q You didn't undertake your own independent
19 investigation but relied on those facts as
20 provided?

21 A Yes.

22 Q Dr. Ferris, the questions I'll be covering today
23 are from the perspective of Commission counsel,
24 and it may be that some of those questions are
25 exploratory and some are testing in some

1 respects. I can advise you that we will be
2 obtaining views from others involved in forensic
3 pathology, and so the questions I'm looking to
4 ask you are from the perspective of looking to
5 understand your involvement and what views you
6 have on these materials and on this case.

7 Now, in terms of your background, you've
8 provided our office with a copy of your
9 curriculum vitae, and, sir, it's difficult by way
10 of the technology to have -- make reference to
11 something that you are going to see as about a
12 two-inch appearance on a screen, I imagine, if I
13 hold it up, but if you trust me to say this is
14 your curriculum vitae, and it documents an
15 extensive career in forensics pathology,
16 including --

17 A Yes. If you actually check -- sorry. If you
18 would look at the last page and tell me what is
19 the date on the last page --

20 Q Yes.

21 A -- I will be able to confirm that it is what it
22 says it is.

23 Q Yes. June 2007.

24 A Yes, that is correct. In fact, there is an
25 updated version of that, but it has not changed

1 significantly.

2 Q Thank you, Doctor. Now, this curriculum vitae
3 describes your involvement in pathology,
4 including, of significance to us here, as a
5 professor of forensic pathology at UBC from 1983
6 to 1999?

7 A Yes.

8 Q And you've testified in numerous proceedings as
9 an expert in the field of forensic pathology?

10 A In many jurisdictions, yes.

11 MR. MARTLAND: I'd ask this exhibit please become the
12 next -- or, sorry, that this CV please become the
13 next exhibit. It is an independent document, Mr.
14 Commissioner, so I'll provide copies.

15 THE COMMISSIONER: Number?

16 THE REGISTRAR: That will be Exhibit 81.

17 **(EXHIBIT 81: Curriculum Vitae of Dr. Ferris)**

18 MR. MARTLAND:

19 Q Dr. Ferris, the report that I was referring to,
20 do you have that before you?

21 A Yes, I have a report dated November 27th, 2000,
22 and addressed to Dana Urban.

23 Q And that's a document that in the last two pages,
24 after summarizing the materials you reviewed, it
25 contains your discussion, commentary and

1 conclusions with respect to the Frank Paul
2 matter?

3 A Yes, it does.

4 MR. MARTLAND: And now, in terms of this document, Mr.
5 Commissioner, the view of Commission counsel is
6 that this document should become an exhibit. Mr.
7 Woodall has raised with me a concern that perhaps
8 it should be marked as an exhibit for
9 identification. It is already Exhibit G for
10 Identification in these proceedings. My
11 respectful suggestion, and I'm hoping Mr. Woodall
12 may accede to this, would be that it may become a
13 private exhibit and on the understanding that
14 counsel may certainly make submissions with
15 respect to how that document is treated at a
16 future date but that we're not doing it today.

17 THE COMMISSIONER: Mr. Woodall.

18 MR. WOODALL: Yes, Mr. Commissioner. Given the brief
19 period of time we have in Dr. Ferris's attendance
20 I wonder if it might be more appropriate simply
21 to mark or, rather, leave it as an exhibit now
22 and when Dr. Ferris is not on the line we can
23 discuss how it should be marked in a different
24 way than it's presently marked.

25 THE COMMISSIONER: It's now marked, as I understand it,

1 Exhibit G for Identification. Can we not leave
2 it as that and mark it then as a private exhibit?

3 MR. WOODALL: As Exhibit G but a private exhibit? The
4 private part isn't what concerns me, Mr.
5 Commissioner. It's whether it should be marked
6 as a full exhibit at some point, and that's what
7 I would like to make submissions on.

8 THE COMMISSIONER: Very well. We'll take it on that
9 understanding.

10 MR. MARTLAND: And just to be clear, it remains then
11 Exhibit G for Identification?

12 THE COMMISSIONER: It does.

13 MR. MARTLAND: And we'll address that at a future date.

14 Q Dr. Ferris, I don't propose to reread what you've
15 set out in this report. We've all read it. But
16 if I might take you to a few different points,
17 and on the second to last page where you begin
18 the commentary, the second sentence you described
19 that Frank Paul's heart was enlarged and there
20 was evidence of early scarring in his liver.
21 What can you say about those observations?

22 A Well, those are the observations of Dr. Gray, and
23 they would be consistent with a possible history
24 of alcohol abuse.

25 Q In the next paragraph you write:

1 The clinical signs and symptoms of
2 hypothermia may be difficult to distinguish
3 from those of severe alcohol intoxication,
4 and you go on to describe some of those symptoms.
5 Could you describe from the point of view of
6 someone trying to determine whether the person in
7 front of them is hypothermic, significantly
8 intoxicated or both what sorts of observations
9 would the person be making and what sorts of
10 symptoms or signs would overlap between those two
11 conditions?

12 A Well, bearing in mind I am a pathologist and not
13 a clinician, the most important distinguishing
14 feature is body temperature, and, therefore,
15 without measuring body temperature it might be
16 difficult to make the distinction. Obviously
17 measuring blood alcohol would also help, but body
18 temperature is the easiest and simplest clinical
19 method of identifying hypothermia.

20 Q When you describe taking someone's body
21 temperature, is that as straightforward a process
22 as I imagine it to be, which is to say a
23 thermometer under the tongue or the armpit, or is
24 there more to it in this sense?

25 A Well, today we do it with a digital thermometer

1 usually applied to the ear. I'm not sure what
2 was available in those days, but certainly a
3 thermometer is the standard method, either a
4 digital one or the standard clinical thermometer.

5 Q And I presume that taking someone's temperature
6 might take one or two minutes, but it's a quick
7 process?

8 A A digital thermometer will make an accurate
9 recording within a few seconds. The standard
10 clinical thermometer may require about a minute
11 to a minute and a half to take the temperature.

12 Q Can you describe what the -- someone who is found
13 dead of hypothermia, can you describe, if I can
14 try and frame the question this way, at its
15 quickest how quickly could the hypothermia
16 commence to the time that it kills the person,
17 and on the other extreme, at its longest over how
18 many hours could someone be suffering from
19 hypothermia before they die?

20 A Well, there really is no answer to that. It
21 depends on how quickly the temperature drops. If
22 the body temperature drops very quickly, as when
23 an individual is exposed to very low
24 temperatures, then death might be quite rapid.
25 If, on the other hand, the body temperature falls

1 relatively slowly, then death may not be as
2 quick. Part of the problem in a case such as
3 this is that the presence of alcohol
4 significantly potentiates the dangers of lowering
5 the body temperature. Now, what the -- how one
6 affects the other is really impossible to assess
7 on any particular case. At least, that's my
8 understanding.

9 Q And is that the case, sir, because it's a very
10 idiosyncratic process; it really depends on that
11 individual and how they tolerate the alcohol and
12 also how they respond to extreme cold?

13 A To some extent that is correct. The dangers
14 arise when the body temperature falls below 35
15 degrees Celsius, and once the temperature drops
16 to about 32 degrees Celsius there is a risk of
17 cardiac arrest or a fatal dysrhythmia of the
18 heart occurring at almost any time.

19 Q To follow up on my question about the possible
20 speed of the hypothermia in a fatal situation, am
21 I right to speculate, if you will, that a person
22 who falls into an almost frozen river could be
23 dead of hypothermia within an hour, as an
24 example?

25 A Well, it can be very much faster than that

1 depending on their physical activities. I mean,
2 if an individual tries to, say, swim ashore a
3 distance of perhaps a few hundred yards when the
4 water temperature is almost at freezing, then
5 they may not make it to shore. They may die
6 before that. Not only does the cold water affect
7 the heart, but it also affects one's ability to
8 breathe, and there are really quite famous and
9 well-documented experiments conducted by both the
10 British and the American military on the effects
11 of cold water on military personnel who have been
12 dumped into the water, and they do die quite
13 quickly.

14 Q At the other -- to take the other extreme, if you
15 will, I presume that there are cases where people
16 are out in the cold, so to speak, for many hours
17 before ultimately hypothermia takes their life?

18 A That is correct, and the best example of those
19 will be people who are out in the back country in
20 the winter perhaps without proper protective
21 clothing, and they may become hypothermic over
22 the course of perhaps several hours and
23 ultimately collapse and go to sleep and die.

24 Q From the point of view of an autopsy, which is to
25 say, obviously, looking at the dead body, if you

1 will, and then trying to go back in time and
2 assess to make a distinction as to whether this
3 was, on the one hand, hypothermia that killed
4 within minutes and, on the other hand,
5 hypothermia that killed over many hours, is there
6 anything at the stage of the autopsy or examining
7 the body that allows you to draw that
8 distinction?

9 A Not necessarily. In the relatively slow
10 hypothermic deaths there may be some changes that
11 we can identify. The post-mortem lividity is
12 often blotchy and poorly developed, and sometimes
13 you will see evidence of acute ulceration in the
14 stomach, but the -- one of the key things that
15 the pathologist will be looking for is the
16 absence of any other cause for death in
17 circumstances where we can reasonably expect
18 hypothermia to have been a factor.

19 Q Can you comment with respect to the Frank Paul
20 matter whether some of these observations that
21 you just described or changes, the post-mortem
22 lividity and I think you said acute ulceration in
23 the stomach, whether any of those factors were
24 noted to be present?

25 A You will need to ask Dr. Gray those questions. I

1 don't know that they were, but I can't answer
2 that.

3 Q Sure. Is there any medically recognized or
4 accepted time line for hypothermia in fatal
5 cases?

6 A Not that I am aware. I think each case is case
7 specific.

8 Q And surely anecdotally, I suppose, but it seems
9 to me we can think of friends who get colder
10 faster than others, sometimes people with very
11 low body heat or very athletic people may not
12 fare very well in cold weather. I presume it's
13 the case that, to state perhaps the common sense
14 point, different people respond to cold in very
15 different ways?

16 A That is certainly correct, but I don't think that
17 even you can predict how any one particular
18 individual is going to react.

19 Q Is there -- do you -- is there such a phenomenon
20 as the body adapting to exposure to cold over
21 years? And let me just expand on that. If we
22 take as an example a person who is living on the
23 streets of Vancouver over many winters, who is
24 exposed, it seems, to cold weather at some
25 length, is there -- would that person's body

1 adapt to the cold weather and would they fare
2 better over time and become better at coping with
3 the cold conditions?

4 A I don't think I have any expertise in that area.
5 It might make sense to say that that is probably
6 the case. On the other hand, we do know that
7 individuals who are apparently well adapted to
8 living on the street can die suddenly. I really
9 can't claim any expertise in that area.

10 Q In terms of observations of -- let's say a person
11 is -- well, let's use Mr. Frank Paul's case. He
12 is -- at the autopsy -- there's an autopsy that's
13 conducted, and you've reviewed the post-mortem
14 report that concludes that he died of hypothermia
15 coupled with acute alcohol intoxication. In his
16 case, and I don't -- I just want to see if I can
17 frame this question accurately. I take -- would
18 there -- let me ask you the question slightly
19 differently. In that sort of a case would there
20 typically be an assessment of body temperature
21 that you'd expect to take place when the body is
22 found?

23 A I wouldn't have thought that would occur in most
24 cases. Unless the pathologist went to the actual
25 scene of death, I think it would be very unlikely

1 that body temperature would have been taken at
2 the scene, and in those -- the purpose of taking
3 the temperature at that time would be to
4 determine time of death rather than the actual
5 body temperature at the time of death. I just
6 don't think that that's a reasonable possibility.

7 Q Sure. And when you say unless a pathologist
8 attended, I take you to mean that a pathologist
9 attending may think of that very issue and look
10 to ascertain the temperature for that reason?

11 A To determine time of death usually, but unless
12 you know how long the individual has lain there,
13 then determination of time of death based on
14 environmental temperature and body temperature is
15 very difficult because all of the calculations
16 are usually based on a normal body temperature at
17 the time of death, so that when you have
18 hypothermia, then the -- any accurate back
19 projection to determine time of death becomes
20 really grossly inaccurate.

21 Q From your review of the materials in this matter,
22 was there a time of death ascribed?

23 A Not in the materials that I recall seeing.

24 Q And I take it from your answer that there
25 would -- it would be a very imprecise

1 determination, even if someone were at the scene
2 looking at the body temperature when Frank Paul's
3 body is found, it would be very difficult to say
4 what the time of death was?

5 A Yes.

6 Q In your report, Dr. Ferris, you've outlined that
7 you feel -- you suggest that it's likely that in
8 the case of Frank Paul hypothermia developed over
9 many hours and was in effect when he was at the
10 jail at about 8:30 the night before. His body is
11 found about six hours after that. First, do I
12 have that point right?

13 A Yes, that was my opinion, and it was based on the
14 video that I saw and the information that I had
15 been provided with, and the reason that I
16 concluded that was that his ability to move and
17 his general appearance couldn't be explained just
18 on the basis of alcoholic intoxication or, for
19 that matter, his old head injury.

20 Q So just to see if I have your point correctly
21 then, when you look at a video that shows a man
22 who's being dragged across a floor, your
23 conclusion is that that -- and, please, I may
24 have this wrong, tell me if I do -- but that that
25 level of immobility could not be chalked up to

1 simply being exceedingly drunk, there had to be
2 some further explanation, and that's why you can
3 offer the conclusion that he would have been
4 hypothermic at that point?

5 A Yes, and that -- remember, that conclusion is
6 based in retrospect on the post-mortem
7 examination and the fact that Dr. Gray had
8 excluded other causes for such a condition.

9 Q All right. So, in other words, knowing, as Dr.
10 Gray concludes and you agree with, knowing that
11 this man died of hypothermia, reasoning backwards
12 your conclusion is he must have been hypothermic
13 at the time?

14 A Yes, I think that is basically the way we argued
15 it or the way I processed it in my own mind, yes.

16 Q And you used an interesting word. You said "the
17 way we argued it", and what I'd like to ask you
18 about is whether there is some element of, if you
19 will, interpretation of the facts? Let me take
20 that a step further and just ask you this. Is it
21 possible that the man who's immobilized is
22 acutely intoxicated and yet the hypothermia is
23 something that has not commenced at that point in
24 time? I appreciate that's not your view, but is
25 that a possibility?

1 A Yes, that's a possibility. Let me first of all
2 explain that when I say "we" I mean that's the
3 royal we. It's me. Because, as I recall, I did
4 not actually discuss this case with Dr. Gray
5 prior to me writing this opinion. That's my
6 recollection, anyway. But, yes, I think the
7 opinion that I have given is the best opinion
8 that I can give on the information provided. I
9 cannot say that this is an absolute, firm
10 conclusion, but I think it is a reasonable
11 conclusion based on all of the information, and
12 it is difficult to come to any other conclusion.
13 In fact, I can't think of any other obvious
14 conclusion.

15 Q Dr. Ferris, can you comment with respect to
16 seizures that a chronic alcoholic may suffer
17 from? Is that something that's commonly seen?

18 A It is, and, again, it's not my area of expertise.
19 I mean, these are neurological and clinical
20 issues for which I have no personal experience
21 other than before conducting a post-mortem
22 examination in somebody who is a known alcoholic
23 I may be told that this individual had seizures,
24 but what type of seizures would not be something
25 that I would know about.

1 having heard a few dozen witnesses on the events
2 in question, but if I were to say to you that we
3 now have heard from some independent witnesses
4 who say that that's not the case, that he was
5 alive near the end of his time in the wagon or
6 after being in the wagon, I take it that your --
7 that that speculation would have to submit to the
8 evidence?

9 A Oh, absolutely. I mean, I -- if I made that
10 comment during that meeting, it was certainly not
11 said with sufficient conviction for me to commit
12 it to writing.

13 Q I take --

14 A It may have been one of those sort of throw-away
15 comments indicating the severity of his condition
16 prior to his being left in the alleyway, but I
17 can't say that -- I mean, in fact, I don't recall
18 saying that he could have been dead, but, you
19 know, I don't have any real foundation for making
20 that comment other than the fact that all of the
21 evidence at that time indicated to me that his
22 condition was probably extremely serious prior to
23 his being dumped in the back alley.

24 Q Dr. Ferris, can you describe vasodilation and how
25 that process would become relevant in the context

1 of someone who is both intoxicated and
2 hypothermic?

3 A I will try to. When an individual is
4 hypothermic, the body's initial response is to
5 shut down all of the tiny blood vessels that
6 supply the skin and the peripheral parts of the
7 body, and then as a response to that they may
8 start shivering, which will try and generate heat
9 in the body, and then as that system fails the
10 blood vessels will relax and there may be a time
11 when, in fact, the peripheral blood vessels
12 dilate or enlarge, and that's vasodilatation.
13 It's a reflex reaction, and the hypothermic
14 person may feel extremely warm, and that
15 sometimes precipitates the hypothermic person
16 taking off clothes, which, of course, makes the
17 hypothermia worse, but that's a well-recognized
18 phenomenon. Part of the problem in individuals
19 who are drunk is that alcohol limits the body's
20 ability to control peripheral blood vessels, and
21 that can compound the vasodilatation phase. I
22 really can go no further other than explain those
23 general terms and the general features of
24 hypothermia. This is not an area that I have any
25 particular clinical or physiological experience

1 in.

2 Q I appreciate that. If I might simply just ask
3 this as a further last question on that point.
4 Setting aside hypothermia, would alcohol
5 typically cause vasodilatation, which is to say
6 the blood vessels opening?

7 A It often does, and it's recognized -- probably
8 most of the people present will have recognized
9 the fleshing of the skin that occurs in people
10 who are intoxicated. That's vasodilatation.

11 Q Thank you, sir. If I might just have one moment.
12 Dr. Ferris, I just have one last question. In
13 this case can you say whether there's any
14 forensic evidence that excludes a history of
15 acute intoxication at the jail with hypothermia
16 which is occurring after this man is left in the
17 alleyway with death ensuing over the next several
18 hours as a result of exposure?

19 A Well, that's a complex question. Let me --

20 Q It's Mr. Cowper's.

21 A -- try and deal with a couple of the issues. I'm
22 sorry. First of all, the forensic evidence is
23 that his blood alcohol at the time that he was
24 found is such that he must have been intoxicated
25 while in the jail. I think that's the only

1 reasonable conclusion based on the forensic
2 alcohol analysis. Secondly, my experience of
3 temperatures in Vancouver, and I don't have a
4 record of the environmental temperature on that
5 particular occasion, but generally speaking the
6 temperatures are rarely significantly below zero,
7 and, therefore, hypothermia in Vancouver tends to
8 be a relatively slow process. We're not talking
9 about temperatures of minus 40, as you would get
10 in Whitehorse. We're talking about temperatures
11 generally that in Vancouver don't go much below
12 minus 5 to perhaps minus 10. So hypothermia
13 tends to be relatively slow in Vancouver. So
14 given the time frames, I think it's reasonable to
15 say that he would have been hypothermic when in
16 the police cell and he would have been
17 intoxicated.

18 MR. MARTLAND: Dr. Ferris, I have no further questions.

19 Other counsel will. And, Mr. Commissioner, I've
20 gone some ways over my --

21 THE COMMISSIONER: Yes, you have.

22 MR. MARTLAND: -- self-imposed target, so I apologize. I
23 hope others do not follow that example.

24 THE COMMISSIONER: I hope not. Mr. Kelliher.

25

1 **EXAMINATION BY MR. KELLIHER:**

2 Q Sir, I'm looking at page 4 of your report that
3 begins Commentary in bold in the upper left-hand
4 corner. Could you turn to that, please?

5 A I have it in front of me.

6 Q Sir, the last paragraph you will see says:

7 The video photographs show that Mr. Paul was
8 unable to stand...

9 Now, sir, the point in my directing you to these
10 words is in reference to your earlier testimony
11 that you saw the video of Frank Paul during his
12 stay at the jail, and my question to you is this,
13 sir: Is it possible that you did not see a video
14 but that you were shown a sequence of still
15 photographs that were taken from a video
16 apparently at the jail?

17 A I know that I saw a series of still photographs
18 that were taken from the video. I cannot recall
19 whether I saw the video at the time that I wrote
20 this report or later, but I am almost certain
21 that I did see a video at some stage, but I know
22 that I did see still photographs from the video.

23 Q All right. Sir, can you say at what stage you
24 might have seen that video?

25 A No, I cannot do that.

1 Q Can you say whether you saw it in New Zealand or
2 in Canada?

3 A I certainly have not seen it since I left Canada.

4 MR. KELLIHER: All right. Thank you very much, sir.

5 THE COMMISSIONER: Thank you, Mr. Kelliher. Mr. Eby.

6 MR. EBY: Thank you, Mr. Commissioner.

7 **EXAMINATION BY MR. EBY:**

8 Q Dr. Ferris, my name is David Eby. I am a lawyer
9 for the United Native Nations Society. Dr.
10 Ferris, assuming the same person, the same
11 outside temperature in three different
12 situations, I'm wondering if you could answer a
13 hypothetical question for me. One person is dry,
14 wearing dry clothing, one person is wearing damp
15 clothing, and one person is wearing soaking wet
16 clothing. Can you say anything about the rate in
17 which the onset of hypothermia would take place
18 in those three situations, again assuming the
19 same person and the same temperature?

20 A The simple answer is no because I am not an
21 expert in that. I can offer some possible
22 suggestions. Wet or damp clothing will
23 facilitate cooling of the body if the environment
24 allows the water to evaporate because evaporation
25 of water accelerates cooling, but if the

1 temperature is very cold, then probably the
2 difference between wet, damp, and dry clothing is
3 not particularly significant. I mean, we know,
4 for example, that the body is well protected if
5 wearing a wet suit, which is literally saturated
6 with water, but it all depends on how quickly the
7 water evaporates from the body. People who wear
8 wet suits will know that when they come out of
9 the water and the wet suit begins to dry that
10 they will feel cold. Now, I have no particular
11 expertise in terms of how the physiology of the
12 body would be affected by the three scenarios
13 that you present.

14 Q Dr. Ferris, I am going to move you to another
15 area. You wrote in your report -- and I'm
16 referring to page 5 of your report. If you could
17 turn it -- have it in front of you. It's the
18 second paragraph from the top. Actually, it's
19 the first paragraph.

20 I do not believe that at the time he was
21 left in this alley that Mr. Paul was capable
22 of being walked to the side of the lane.

23 Do you have that in front of you?

24 A Yes, I do.

25 Q And your basis for saying that was that at this

1 stage of hypothermia and intoxication there was
2 little or no voluntary movement that Mr. Paul
3 could have been making at this time; is that
4 correct?

5 A That was my understanding.

6 Q And even the limited movement of walking with his
7 arm around someone, someone assisting him, in
8 your opinion wouldn't be possible; is that
9 correct?

10 A I suppose it depends really on what you mean by
11 movement. I mean, if somebody -- let's say an
12 unconscious person is being supported and held
13 upright by an arm around them, then I suppose
14 their feet and legs can be dragged and they may
15 appear to be, I suppose, moving. It's very
16 difficult because we're talking about perhaps
17 subtle nuances in different movements that I
18 can't really know what happened. All I can say
19 is that the indications from the evidence I saw
20 was that I didn't think this man was capable of
21 making cognitive voluntary movements. I could be
22 wrong, but the evidence that I looked at allowed
23 me to make that conclusion.

24 Q In your report, Dr. Ferris, you say that it's
25 "likely that he was dragged to the wall and then

1 position," probably positioned, "on the ground
2 with his back against the wall"; is that right?
3 That's the most likely scenario?

4 A That's what I wrote. I'm sorry. I'm sorry, I
5 interrupted you. Yes, that's what I wrote.

6 Q Given that conclusion, we've heard evidence from
7 other witnesses that Mr. Paul wasn't actually
8 found against the wall, he was found in a gravel
9 area probably five or ten feet from the wall.
10 Given your conclusions in this report, do you
11 think it possible in Mr. Paul's state that he was
12 able to either get up or crawl or somehow
13 manoeuvre himself from the wall approximately
14 five or ten feet away to where his body was found
15 or do you think it more likely that wherever he
16 was placed was -- when he was taken out of the
17 wagon was where he was found ultimately the next
18 morning?

19 A First of all, I have not heard that evidence.
20 Remember, I have not been present during any of
21 the other witness evidence. Secondly, my
22 understanding at the time that I wrote this
23 report was that he had been positioned against
24 the wall by the police officer or driver of the
25 police van. I'm not aware of anything else in

1 terms of other evidence, and clearly I would have
2 to look at that other evidence before I could
3 comment on it.

4 Q I can simplify the question, Dr. Ferris. Do you
5 think it likely that wherever Frank Paul was
6 found the morning that his body was located was
7 most likely where he was set that evening by the
8 wagon driver?

9 A It certainly appeared to be so from the evidence
10 that I reviewed.

11 Q Thank you. Dr. Ferris, Dr. Gray provided us with
12 a blood alcohol level for Mr. Paul. For counsel,
13 it's binder 1, tab 25. And do you have Dr.
14 Gray's report in front of you, Dr. Ferris?

15 A Yes, I do.

16 Q It's at page 6 of that report. Under Toxicology
17 Dr. Gray gives the blood alcohol concentrations
18 in Frank Paul's blood, and you can read them.
19 They're 63 millimols per litre, 89 millimols per
20 litre and 85 millimols per litre, or .29, .41 and
21 .39, in the blood, urine, and vitreous fluid
22 respectively. Do you see that?

23 A Yes, I do.

24 Q If those were the concentrations of blood alcohol
25 in Frank Paul at the time of his death, can you

1 say anything to this Commission about what the
2 likely blood alcohol level was in Frank Paul at
3 the time that he was at the jail, which would
4 have been -- which would have been hours before
5 his death, possibly?

6 A Well, I would need more specific information.
7 How many hours?

8 Q Well, if this was his blood alcohol concentration
9 in his body, could we assume that that was his
10 blood alcohol concentration at the time of his
11 death, or does it change after death?

12 A It does not significantly change after his death.
13 Let me just -- I'm not a toxicologist. I'm a
14 pathologist, and although I have experience in
15 analyzing or sort of understanding alcohol
16 levels, you may prefer an opinion from a
17 toxicologist rather than mine, but let me give
18 you my opinion as best I can. Let us assume that
19 he did not drink alcohol after leaving the police
20 cell. Then if we look at his urine alcohol
21 level, which is 41 milligrams per cent, that
22 is -- that's a level which indicates a maximum
23 blood alcohol level of something in the order of
24 .34, .35 grams per cent. When he was found dead,
25 his blood alcohol was .29, which is about 40

1 or point -- sorry, .04 or .05 grams per cent
2 lower than it should have been. If you
3 metabolize alcohol, and the figures vary from one
4 person to another, at between .01 and .02
5 milligrams per hour, this would suggest that he
6 had not been drinking for somewhere between two
7 and perhaps five hours. Of course, he needn't
8 necessarily have been drinking immediately before
9 he was picked up by the police. So we don't know
10 when he last had his last drink, but it would
11 suggest that he had probably died within probably
12 about two hours or so after being taken from
13 police custody allowing perhaps for one to --
14 maybe one to two hours to include his time in
15 custody and a time when he had his last drink.
16 But those are very approximate figures, and I
17 would need to take some time to be -- do a more
18 careful analysis, and you really would be better
19 getting an alcohol expert to do that for you.
20 But I would certainly suggest that he probably
21 had been in the alley for at least one to two
22 hours before he died.

23 Q Dr. Ferris, one final question. I am going to
24 take you back to your report, which is Exhibit G,
25 and your conclusions about how Mr. Paul's death

1 could have been prevented at page 5. And your
2 conclusion (a) is:

3 In my opinion Mr. Paul's death could have
4 been prevented if:

5 his condition had been medically
6 assessed including recording of his
7 body temperature when he was brought in
8 to the Police Jail.

9 And I understood your evidence today was that
10 digital thermometers are such that that could be
11 done in a matter of seconds. Would it be safe to
12 say that a recommendation that you would make to
13 this inquiry would be that every prisoner that
14 comes into Vancouver jail in a state of
15 intoxication or supposed to be in a state of
16 intoxication in cold and wet weather have their
17 temperature assessed by a nurse?

18 A Well, remember, I don't know whether digital
19 thermometers were available at that time, but
20 certainly it would be such an easy thing to do
21 today that it would not be a problem making that
22 recommendation. The other issue that must always
23 be considered with people who are apparently
24 intoxicated is the possibility of a head injury,
25 and again my view is that any individual who is

1 drunk or apparently confused and appears
2 intoxicated should be medically assessed, but
3 that's my view, and, remember, I don't make the
4 rules.

5 MR. EBY: Thank you, Dr. Ferris.

6 THE COMMISSIONER: Mr. Tammen.

7 **EXAMINATION BY MR. TAMMEN:**

8 Q Dr. Ferris, I want to take you through the
9 chronology of your retainer by the Police
10 Complaint Commissioner with a view to trying to
11 clear up when you saw the videotape of Mr. Paul
12 being dragged from the police station. It
13 appears that Mr. Morrison wrote to you on
14 September 19, 2000, requesting your assistance on
15 the Paul matter and one other matter, correct?
16 Do you have a copy of Mr. Morrison's original
17 letter?

18 A That's my understanding.

19 Q Sorry?

20 A No, I don't. I don't have a copy of that, but
21 that's my understanding.

22 Q Okay. And then your report is dated November 27,
23 2000, correct?

24 A Yes.

25 Q And I don't have all of your notes necessarily

1 here, but what I do have is a letter that you
2 wrote to Mr. Morrison sometime later, April 17,
3 2002. Do you have a copy of that letter or do
4 you recall writing that letter to him?

5 A I have a copy of that letter.

6 Q Okay. And if you look at that letter, in the --
7 the first page -- the first paragraph you make
8 reference to a meeting which you had at the
9 Office of the Police Complaint Commissioner on
10 November 8, 2000. Do you see that?

11 A Yes.

12 Q Okay. And you note that that meeting was
13 attended by you, Mr. Morrison, Mr. Dana Urban,
14 and one of the staff investigators, correct?

15 A Yes.

16 Q And then in the third paragraph you make
17 reference to your recollection being that Mr.
18 Morrison was in attendance during that meeting
19 when the whole group reviewed the videotape of
20 what you referred to as the Paul incident,
21 correct?

22 A Yes, that's correct.

23 Q Okay. So does that refresh your memory that it
24 was on November 8th, 2000, prior to writing your
25 report at the offices of the Police Complaint

1 Commissioner that you viewed the actual video
2 footage?

3 A Yes, I -- my problem is that I cannot remember
4 whether I viewed the video before that meeting
5 and I saw it again for a second time.

6 Q Right.

7 A Because I've written in that report, I've used
8 the word "we reviewed the videotape", and that
9 would suggest to me that I had already seen it,
10 but I can't remember when.

11 Q Okay. But certainly by --

12 A And I'm sorry I can't help you.

13 Q No, that's fine. I just want to make this point.
14 Certainly by --

15 A Certainly at --

16 Q Go ahead.

17 A No, no. I think what you are going to say is
18 certainly by the time that I wrote the report I
19 had seen the video, and that is correct, but I
20 can't remember exactly when I saw the video for
21 the first time, and I'm sorry about that.

22 Q No, that's fine. You've anticipated the exact
23 question I was going to ask you. Thank you,
24 Doctor.

25 A I'm sorry. It's a function of age. I'm afraid I

1 don't have quite the memory I used to.

2 Q None of us does. I just want to ask you then one
3 other question or a couple of other questions
4 about the conclusion at the top of page 5 of your
5 report, and Mr. Eby asked you about that, where
6 you say:

7 I do not believe that at the time he was
8 left in this alley that Mr. Paul was capable
9 of being walked to the side of the lane. I
10 think it is likely that he was dragged to
11 the wall and then positioned on the ground
12 with his back against the wall.

13 You've got that?

14 A Yes, I have.

15 Q In part, those opinions were informed by the fact
16 that from your viewing of the video footage it
17 appeared that approximately 20 minutes earlier
18 Mr. Paul was incapable of walking, correct?

19 A Yes, I -- you know, this is a relatively long
20 time ago, but my recollection, and please bear
21 with me if I'm wrong, was that at some point in
22 the video that was taken in the police station he
23 was lying on the ground.

24 Q Yes.

25 A And I think that at that time that he was on the

1 ground my recollection is that he was largely
2 unresponsive, although there may have been some
3 movement. I don't recall.

4 Q Okay. Let me tell you what we all agree we do
5 see on the videotape. We see Mr. Paul being
6 dragged from the elevator through the loading bay
7 to the area of the police wagon, and it's two
8 adult males that are dragging him along. Okay.
9 We've all seen that on the videotape. You can
10 take that as a fact, all right?

11 A Right.

12 Q So if that's the case, that he is incapable of
13 walking and he is required to be dragged along
14 the ground, your opinion would be that he's
15 incapable of walking because of the combined
16 effects of his intoxication and hypothermia,
17 correct?

18 A Yes.

19 Q And if that's the case, then it seems likely that
20 approximately 20 minutes later he would equally
21 be incapable of walking because of the effects of
22 intoxication and hypothermia; do I have that
23 right?

24 A Yes.

25 Q All right. Thank you, Doctor. And I'm sorry

1 that we couldn't get you to sunny Vancouver, but
2 I think it's probably nicer weather where you are
3 now than it is here.

4 A Well, I have to say that I was enjoying
5 temperatures of 30 degrees and in the sun
6 yesterday.

7 THE COMMISSIONER: Mr. Arvay.

8 **EXAMINATION BY MR. ARVAY:**

9 Q Dr. Ferris, you may not be able to see me. I'm
10 sitting down. I'm in a wheelchair. I am going
11 to put my hand up so that you do.

12 A Yes, I can see you.

13 Q Thank you. Dr. Ferris, I act for Mr. Don
14 Morrison, the former Police Complaint
15 Commissioner, and my questions relate to the
16 correspondence and meetings that you had with Mr.
17 Morrison in this matter. Just give me a second.

18 THE COMMISSIONER: Can you hear Mr. Arvay all right,
19 Doctor?

20 A Yes, I can.

21 THE COMMISSIONER: Thank you.

22 MR. ARVAY: Thank you.

23 Q Now, Dr. Morrison -- or, sorry, Dr. Ferris, I
24 understand that Mr. Morrison first contacted you
25 by telephone sometime prior to September 19th,

1 2000, to ask you if you would assist him and his
2 office in two matters, and one of which was the
3 matter of Mr. Frank Paul; is that correct?

4 A That's my recollection, yes.

5 Q And he indicated that he would send you a letter
6 together with a number of enclosures, being
7 documents and photographs, and you gave him the
8 address where to send it. At that time you were
9 living in Gibsons; is that correct?

10 A Yes, that's correct. I don't have that
11 documentation, but I'm sure that is correct.

12 Q I noticed that your mailing address on your
13 report is a post-office box, Gibsons Landing.
14 Can I ask you whether the address on Bayview
15 Heights might be the address of Purolator, the
16 Purolator service in Gibsons, or would that be
17 your address, Bayview Heights?

18 A Bayview Heights would be my home address. In
19 Gibsons there was no home delivery. Everything
20 was done through a post box in the post office.

21 Q I see.

22 A So my home address would have been for the
23 courier.

24 Q And that would have been 794 Bayview Heights
25 Road?

1 A I think that's correct. I -- I'm sure that is
2 correct.

3 Q Okay. Now, you have provided to the Commission
4 in this case a letter that you wrote to Mr.
5 Morrison dated April 17th, 2002. Do you have
6 that letter with you, sir?

7 A Yes, I do.

8 Q And you sent this letter to Commission counsel of
9 your -- on your own initiative, I understand?

10 A Yes, I did.

11 Q And in this letter you refer to an article in the
12 Vancouver Province newspaper, which you say:

13 I have read today with considerable distress
14 relating to our meeting concerning the above
15 cases.

16 Do you have a copy of the newspaper article in
17 question, sir?

18 A I have a copy out of The Province. I don't know
19 whether you can see that. And it's dated April
20 17th, 2002.

21 Q And you obtained that -- I take it that's the
22 copy you had from April 17th, 2002, that you have
23 kept in your records; is that correct?

24 A Yes. This is my complete file, and that's in my
25 file.

1 Q Okay. Now, Dr. Ferris, I don't have what you
2 have, which is the original copy of the newspaper
3 article. All I have and which I've shared with
4 counsel here is what I pulled off the Internet
5 just a few days ago and which I believe is the
6 same newspaper article that you're referring to,
7 but I think it's necessary that I cross-check
8 with you, if I could. Can I ask you to read --
9 just to take the article and let me read a bit to
10 you and ask you if it seems like the same
11 article. Does it start off with this sentence:

12 A devastating indictment of B.C. Police
13 Complaint Commissioner Don Morrison has been
14 delivered by a 25-year lawyer who said he
15 fears his testimony may wreck his career.

16 A Yes, that is the first paragraph.

17 Q Okay. And I -- and just to -- without reading
18 the whole thing, can I ask you to go to the last
19 paragraph, and does the last paragraph say:

20 The committee will continue its hearing
21 today, and its report of recommendations to
22 the legislature should be complete by the
23 end of August?

24 A That's correct, yes.

25 Q Okay. Now, you said in this letter to Mr.

1 Morrison dated April 17th, 2002 -- by the way, I
2 take it that that letter was written by you on
3 your own initiative and with no prompting from
4 Mr. Morrison?

5 A That's my recollection, yes.

6 Q And --

7 A I have to say that -- sorry. At that time,
8 remember, I knew Mr. Morrison and Mr. Urban and
9 had known them for several years in their role as
10 prosecutors in Victoria.

11 Q Yes. Now, you said that -- in the first
12 paragraph of your letter that this newspaper
13 article caused you considerable distress. Do you
14 see that?

15 A Yes.

16 Q And I take it that's because you considered that
17 the article was inaccurate and unfair insofar as
18 it described your dealings with Mr. Morrison; is
19 that right?

20 A Yes, I think so.

21 Q And I wonder if I can ask you to -- I'm sorry.

22 A I haven't -- I'd need to read the article myself
23 very quickly, but perhaps if I tell you what I
24 recall about the article, and that was it was
25 suggested that at our meeting on that occasion

1 that Mr. Morrison had left the meeting and that
2 this was, I think, insulting to me. I think that
3 was what concerned me, because that, in my
4 opinion, was not the case. I remember as far as
5 I was concerned I was dealing directly with Mr.
6 Urban in connection with my opinion. I was not
7 dealing with Mr. Morrison. He had initiated the
8 request, but all of my subsequent dealings were
9 with Mr. Urban, and when I was at the meeting,
10 Mr. Urban was present, and as far as I was
11 concerned, he and the investigator were the
12 people that I was talking to. The fact that Mr.
13 Morrison was there was to some extent incidental.
14 He was there as the Police Complaint Commissioner
15 but not someone that I had been giving an opinion
16 to directly, so it was no particular concern to
17 me that he left the meeting. And I know he left
18 the meeting during the meeting, but, quite
19 honestly, I didn't even think about it at the
20 time, and, therefore, I was surprised and
21 concerned that the interpretation that the
22 article seemed to indicate had been put on his
23 departure from the meeting, and that was what I
24 wanted to correct.

25 Q So let me take you to the actual article. I

1 appreciate it seems like you haven't read it in a
2 while, but let me take you to certain paragraphs
3 of the article and ask you if these are the
4 paragraphs that caused you the considerable
5 distress. I am going -- I am going to ask you to
6 read down to approximately 10 paragraphs, at
7 least in my copy it would be 10 paragraphs, and
8 it starts off, "Urban said he did persuade
9 Morrison..."

10 A Yes, I've got that.

11 Q Okay. So I am going to read a bit of this into
12 the record, Dr. Ferris, if I can. The article
13 says this:

14 Urban said he did persuade Morrison to
15 retain the services of Dr. Rex Ferris, a
16 world-renowned forensic pathologist, to
17 investigate the case and come to Vancouver
18 to present his findings.

19 On this point, I take it you have no idea whether
20 it was Mr. Urban who persuaded Mr. Morrison or
21 Mr. Morrison who made the decision without any
22 persuasion?

23 A Precisely, and I still don't know.

24 Q Correct. And then the next sentence and
25 paragraph is:

1 "It didn't go well," said Urban, "because
2 Ferris determined that police were to blame,
3 and Morrison was not pleased. The bottom
4 line in his, Ferris's view was that the
5 police were not telling the truth," Urban
6 testified. "The moment that Dr. Ferris cut
7 to the chase the Commissioner got up and
8 rudely walked out of that boardroom into his
9 office and shut the door. I was displeased
10 by that rudeness, and I immediately went
11 into the Commissioner's office. My memory
12 is that he was doing something that he often
13 did in that office, and that was to sit at
14 his computer and play computer solitaire. I
15 tried to speak to him about the import of
16 the Paul case, and he was totally
17 disinterested and snorted and grunted and
18 with his hand waved me out of there."

19 I take it that was the paragraph that caused you
20 considerable distress?

21 A Yes.

22 Q All right. And what you've told us today is that
23 one reason it caused you considerable distress is
24 that if Mr. Morrison did not stay for the whole
25 meeting and left and went to his office at some

1 point, it wasn't an act of rudeness as you saw
2 it, in any event; is that correct?

3 A Well, that -- yes. I mean, that's -- I mean, I
4 meet with lawyers and investigators very
5 regularly, and often the head of the department
6 or the senior police officer or the head of
7 chambers or whatever it is will sit in on a
8 meeting and then leave, but that doesn't affect
9 what I'm doing. For me that was quite normal
10 practice, and maybe I'm just very thick-skinned,
11 but I was not aware of any change in atmosphere
12 or anything untoward, certainly nothing that I
13 can recall, and I think if I had been upset I
14 would certainly recall it.

15 Q And the suggestion that Mr. Urban leaves in
16 this -- if this newspaper article is accurate in
17 attributing to him these words, the suggestion
18 that he is leaving is that somehow Mr. Morrison
19 was very displeased with your report because he
20 did not want to hear that the police officers
21 were to blame. Do you agree that that's how you
22 read the insinuation or innuendo that comes from
23 this report, from this newspaper article?

24 A That's how I read the -- that's how I interpreted
25 the press report.

1 Q Right.

2 A But that's certainly -- if that happened at the
3 meeting, I'm afraid it went clean over my head.

4 Q And so I put this to you directly then, Dr.
5 Ferris. Was there anything said by Mr. Morrison
6 or by anyone or was anything observed by you in
7 that meeting to support any suggestion that Mr.
8 Morrison was dismissive of you or your report
9 because you were of the view that the police were
10 to blame?

11 A I can't believe that's the case. I mean, there
12 may be issues that I am not aware of, but
13 certainly I was not given to feel that I had
14 been -- my opinion had been set aside or had been
15 reduced in any importance. And, I mean, I think
16 since Mr. Morrison left the Commission office I
17 think he may have contacted me about other cases,
18 and there has never been any understanding of
19 friction or difficulty in my communicating with
20 him, nor has there been any subsequent reference
21 to this particular case. There was nothing in
22 this incident that affected me at all.

23 Q And, Dr. Ferris, did Mr. Morrison ever say or
24 suggest or do anything that would suggest to you
25 that he would not hold a public hearing because

1 of the race of Mr. Paul?

2 A Not as I recall. I can't remember whether it was
3 in connection with this or another case, but I do
4 remember at some stage suggesting that one of the
5 methods of investigating these cases certainly at
6 an early stage is through the coroner's office by
7 coroner's inquest, but I don't know whether it
8 was this case or not.

9 Q And did Mr. Morrison do or say anything to you to
10 suggest that he might not hold a public hearing
11 in this case because he wanted to be protective
12 of police officers?

13 A Certainly not, no.

14 Q All right. And is it the case, Dr. Ferris, that
15 prior to the in-person meeting that you had on
16 November 8th, 2000, your report was done either
17 in draft or in some skeletal form? Is that
18 correct?

19 A Probably. I normally keep draft copies in my
20 file, but I don't have one, so it may have been
21 discarded. When I left Vancouver, I did have to
22 thin out some of my files, and I may have
23 discarded that draft, but generally speaking
24 before I would go to a meeting such as this I
25 would have prepared a draft opinion.

1 Q And in your letter of April 17th, 2002, you talk
2 about to the best of your recollection the
3 meeting was attended by yourself, Mr. Urban,
4 another staff investigator, and there was
5 discussion of various matters. Is that accurate
6 as far as you can remember sitting here today?

7 A Yes. Remember, we were discussing another case
8 as well.

9 Q Right. And you mentioned that Mr. Morrison may
10 have gone to his office while you were there.
11 Was there anything -- was it suggested to you
12 that he might do so because he thought that as
13 the Police Complaint Commissioner it might not be
14 appropriate for him to be too involved in the
15 details of your discussion with his counsel and
16 his investigator? Do you recall anything to that
17 effect?

18 A I don't recall that, although if that had been
19 said that would not have surprised me.

20 Q Okay. Now, the meeting was on November 8, 2000.
21 Your report was November 27th, 2000. Do you
22 recall whether there was a second meeting at
23 which you attended and delivered your report or
24 was there only one meeting?

25 A I don't recall, and I don't have a record of any

1 other meeting.

2 Q Okay. Now, other than the uncertainty you have
3 about when you saw the actual videotape, having
4 reviewed your letter of April 17th, 2002, do you
5 today stand by its contents?

6 A Yes, I do. Remember, it's based on the
7 information that I was provided with, and I
8 have -- I have reviewed that opinion, I have
9 reviewed the documentation that I have in my file
10 and some additional documents that I received in
11 the last two days, and I think I would probably
12 write the same opinion today.

13 Q Dr. Ferris, I think I may have mis -- I don't
14 think I misled you, but you may have misheard me.
15 I'm referring to your letter of April 17th, 2002,
16 not your --

17 A Oh, I'm sorry.

18 Q -- forensic opinion.

19 A I was referring to --

20 Q Yes.

21 A Sorry. I was referring to the forensic.

22 Q And if I could just back up again, I appreciate
23 in your letter of April 17th, 2002, you indicate
24 that to the best of your recollection you
25 reviewed the videotape at that meeting, and as a

1 result of some questioning here today it seems
2 that you're not absolutely certain whether you
3 reviewed the videotape at that meeting or some
4 subsequent time, correct? You're just not sure?

5 A No, I certainly saw it at that meeting, but I
6 can't recall whether I had already seen it at --
7 on an earlier occasion. I simply can't recall.
8 I don't recall going to another meeting, but I
9 can't tell you. What concerns me is that in my
10 letter of April 17 I wrote the word "reviewed",
11 which would seem to imply that I had previously
12 seen the tape.

13 Q Oh, then I may have misheard or misunderstood
14 your testimony today, so let's just try to be
15 really clear. Is it your evidence then, Dr.
16 Ferris, that you saw the videotape at least on
17 November 8th, 2000, if not earlier?

18 A That is correct. I know I saw it on November
19 8th, but I -- the word "reviewed" would suggest
20 that I had previously seen it as well, but I
21 don't recall that.

22 Q And in your letter of April 17th you say:
23 To the best of my recollection, you were in
24 attendance when we reviewed the videotape of
25 the Paul incident, and we even discussed how

1 the black and white prints from the tape
2 were not truly representative of the tape as
3 a whole.

4 Is that still your recollection, sir?

5 A Yes.

6 THE COMMISSIONER: Any further questions, Mr. Arvay?

7 MR. ARVAY: Just one or two more, Mr. Commissioner.

8 Q And you've indicated that you'd dealt with Mr.
9 Morrison subsequent to the Frank Paul Inquiry. I
10 understand one involvement was when Mr. Morrison
11 as a lawyer in private practice retained you on a
12 case involving a boy who was shot to death by a
13 police officer, and he was acting for the boy's
14 family and asked you for your expert opinion in
15 that case. Do you recall that? Approximately
16 2003.

17 A Yes. I don't recall the details of the case, but
18 I know that he has subsequently contacted me
19 about cases.

20 MR. ARVAY: Thank you. Those are my questions, Dr. Ferris.

21 Thank you, Mr. Commissioner.

22 THE COMMISSIONER: Mr. Hern.

23 **EXAMINATION BY MR. HERN:**

24 Q Dr. Ferris, my name is Sean Hern. I'm
25 representing the Vancouver Police Department and

1 Police Board in this matter. As a forensic
2 pathologist, in order to prepare the report that
3 you prepared in this case you relied on
4 statements of various witnesses and police
5 officers; that's correct?

6 A Yes. All of the documents that I relied on are
7 listed in that report dated November 27th, 2000.

8 Q And so evidence from those witness statements of
9 Frank Paul's movements on December 5, 1998, were
10 relevant to your consideration as to his state of
11 health and ability or potential intoxication or
12 hypothermia, they were relevant to your opinion
13 as expressed in the report?

14 A Well, they were considered. I am not sure how
15 necessarily relevant they all were.

16 Q All right. Now, today are you aware of the
17 position of Frank Paul's body in relation to the
18 laneway in which he was found?

19 A Well, I thought I was, but I have subsequently
20 heard this morning that his position may not have
21 been what I was given to understand.

22 Q All right. So do you recall what you were given
23 to understand at the time you prepared your
24 report, November 27, 2000?

25 A I was given to understand that he was left with

1 his back against a wall.

2 Q And that's reflected on page 5 of your report at
3 the top where you say:

4 I think it is likely he was dragged to the
5 wall and then positioned on the ground with
6 his back against the wall?

7 A Correct.

8 Q And did I understand correctly in response to Mr.
9 Eby's question that it was your view that it was
10 likely Mr. Paul died where he was left by the
11 officer?

12 A Yes, that's what I understand.

13 Q So unless Mr. Paul's body was moved, he -- his
14 body would have been found with his back up
15 against the wall, as you understood the
16 circumstances?

17 A As I understood the circumstances, correct, yes.

18 Q Did I understand your evidence correctly that you
19 said Mr. Paul on December -- on the evening of
20 December 5, 1998, was probably not capable of
21 voluntary movement, but if held upright, he could
22 have given the impression of being walked to the
23 wall? Is that a correct understanding?

24 A In -- I think today I used the word "cognitive
25 movement", which means that it would be a knowing

1 and willing movement. I really can't comment on
2 what his abilities would be. I can only talk in
3 very general terms based on the autopsy findings
4 of Dr. Gray and the information that I was
5 provided with, including that video.

6 Q All right. But I heard you earlier to say, and
7 I'm sorry if I've replaced the word "voluntary"
8 with -- or "cognitive" with "voluntary", but I
9 heard you earlier that -- you to say that if Mr.
10 Paul in the state that he was in as you believe
11 he was in on the evening of December 5, '98, was
12 held upright with support he could -- it would
13 give the impression of him being walked to the
14 wall?

15 A Well, you know, these are interpretations that --
16 you're asking me to interpret what somebody else
17 might have thought, and I can't do that. I can
18 only say to you based on what I have seen and
19 read that I think it's unlikely he would have
20 been able to walk to the wall. If somebody else
21 thinks that he was, that's fine, but that -- I
22 can't say or comment on that other than to say
23 what I've already said, that I think that's
24 unlikely.

25 Q And just to be clear, the issue is not whether he

1 walked to the wall on his own, but if someone
2 were to provide him with significant assistance,
3 perhaps, could you -- could that movement be
4 described as being walked to the wall, and I
5 believe your earlier testimony was yes. Am I
6 wrong?

7 A Well, he might appear to have been walking, but
8 not in terms of walking as I would normally
9 understand it.

10 Q All right. And I heard your evidence to be that
11 you don't recall saying it but you might have
12 said or you could have said in a meeting with Mr.
13 Urban that Frank Paul could have died in the
14 police wagon before being placed by -- in the
15 alley by the police officer. That's correct?

16 A Yeah, and that -- yes, and I have commented on
17 that and qualified it, that's correct.

18 Q All right. And then the last reference I want to
19 just point you to before I ask you a couple more
20 questions is that in your report on page 5 -- do
21 you have that in front of you?

22 A Yes, I do.

23 Q On page 5, the second paragraph, the last
24 statement, it says:

25 There is no evidence that at any time he,

1 being Mr. Paul,
2 was wearing the red jacket found beside his
3 body.

4 Do you see that?

5 A Yes.

6 Q All right.

7 A Yes.

8 Q Now, in your -- page 2 of your report at item 31
9 you note that you've had the opportunity to
10 review, among many other documents, the statement
11 of Patrick Lewis. Do you see that?

12 A Yes.

13 Q And I understand that Commission counsel will
14 have e-mailed you, and perhaps it was already in
15 your file, you can confirm for us, a document
16 dated at the top December 20, 1998, and it says
17 from Patrick Lewis, and there's a numeric stamp.

18 A Yes, I received it.

19 Q Have you seen that document before?

20 A Yes, I -- yeah, I received this yesterday. I
21 don't recall seeing it before, but it is probably
22 the document that I referred to in my report.

23 Q All right. And prior to this moment have you had
24 an opportunity since you received it from
25 Commission counsel to review it?

1 A Yes, I have.

2 Q So I'd ask you to turn to the second page of
3 that, which is numerically stamped 57 at the top.

4 A Yes.

5 Q And in the second paragraph on that page Mr.
6 Lewis states, at least in this document:

7 The cab route was along 2nd Avenue to Main,
8 across Main, then left (north) on the street
9 that lies immediately to the west of 336
10 East 1st.

11 Do you see that?

12 A Yes, I do.

13 Q And in the second sentence he says:

14 I was looking out of the right-hand side of
15 the cab, and as we passed the alleyway
16 between 1st and 2nd I saw a man lying in the
17 middle of the lane about 10 to 15 yards back
18 from the mouth of the lane.

19 Do you see that?

20 A Yes.

21 Q And then he goes on:

22 I recollect it as a wide lane entrance, and
23 the man was clearly up on one elbow looking
24 toward the cab and Scotia Street. This must
25 have been close to 10:00 (I'm very

1 punctual).

2 A Yes.

3 Q And then the last part of this I want to refer
4 you to is the next line. It says:

5 The man was ragged looking, a lot of hair,
6 and was dressed in a grey or brown jacket.

7 I could not see his face clearly.

8 Do you see that part?

9 A Yes.

10 Q Now, I'd ask that -- for you to assume that this
11 is, in fact -- that Mr. -- that Mr. Lewis's
12 statement is correct and that the man that he's
13 referring to in the middle of the alleyway is
14 Frank Paul. Will you assume that for the
15 purposes of my next questions?

16 A Yes.

17 Q So if Mr. Lewis is correct and the man he saw was
18 Frank Paul, that would change your view, I take
19 it, as to whether Mr. Paul died propped up
20 against the wall of the alley?

21 A I mean, that -- in essence, that is correct.
22 However, my recollection is that that is not
23 consistent with some of the other statements that
24 I read. And, remember, this is the recollection
25 of someone who was driving past in a cab.

1 Q I understand, but I've asked you to assume that
2 he's --

3 A Maybe quite -- I was going to say maybe it is an
4 accurate description, but the problem that I have
5 is if I assume that this is correct then I
6 presume you are going to put to me evidence of
7 other people that, in fact, is incorrect.

8 Q I'm asking you to assume that it's correct for
9 the purposes of my question.

10 A And your question was does that change my
11 opinion, and the answer is not really, and I've
12 tried to explain why, but if I -- if this is
13 correct, then his position is not what I was
14 given to understand.

15 Q I see. And so similarly I take it then that your
16 evidence would be -- will be that if Mr. Lewis's
17 statement is correct, that Mr. Paul was capable
18 of some voluntary movement given that he
19 apparently made his way into the alley and was up
20 on one elbow?

21 A That would seem to be the only reasonable
22 conclusion, yes.

23 Q And similarly, if Mr. Lewis was correct and he
24 was -- Mr. Paul was up on one elbow looking at a
25 person passing by in a taxi at 10:00 p.m. that

1 night, it was -- it's impossible that Mr. Paul
2 died in the police wagon?

3 A Oh, absolutely, but then remember I don't think
4 I've said he died in the police wagon.

5 Q I understand.

6 A I'm sorry if I've given that impression.

7 Q And if Mr. Lewis's evidence was correct in that
8 Mr. Paul in the middle of the laneway at 10:00
9 p.m. on December 5 was wearing a grey or brown
10 jacket, in his words, you would agree with me
11 that it's possible that Mr. Paul removed his
12 jacket at some point that evening?

13 A If the evidence is that he wasn't wearing a
14 jacket and that the jacket was red, presumably
15 that's correct. Again, there clearly seems to be
16 some conflict there between some of the evidence.
17 I mean, was the jacket red or was it not?

18 Q All right. And if, in fact, it was the same
19 jacket that Mr. Paul had on when Mr. Lewis saw
20 him and that that jacket was later off, it would
21 change your view as to whether he was capable of,
22 I think you called it reciprocal undressing?

23 A Paradoxical dressing. It might well do. On the
24 other hand, it might suggest that the
25 recollections of Mr. Lewis were perhaps not as

1 accurate as he thought and that he had got at
2 least the colours of the jacket mixed up and
3 perhaps even, going past in a cab, its precise
4 relationship to Mr. Paul. But these are issues
5 that I can't comment on. These are issues
6 presumably which the Commission is going to look
7 at, not me.

8 Q Well, sir, I have one further question, which is
9 I took you to -- I made note of you saying in
10 answer to Commission counsel's questions that
11 your opinion as to -- that your opinion as to Mr.
12 Paul's ability to move on the evening of December
13 5, 1998, that it couldn't be explained by simply
14 alcohol intoxication or his prior head injury,
15 that it could only -- that it had to also be
16 explained by hypothermia, and my question is what
17 was it about Mr. Paul's movement or lack thereof
18 that couldn't be explained by alcohol
19 intoxication?

20 A Well, although he was extremely intoxicated, in a
21 chronic alcoholic that level of blood alcohol is
22 not all that unusual, and my understanding is
23 that some of the statements made by some of the
24 people who saw him was that his condition was
25 really much the same as they previously

1 associated with Mr. Paul when he was drunk, and
2 yet what we see in the video is somebody who is
3 in my view, perhaps wrongly, but in my view
4 clearly much more than just drunk.

5 Q And that's because your assumption is that as a
6 chronic alcoholic a man like Mr. Paul would be
7 able to carry the level of alcohol that he was
8 found to carry in his blood later that evening
9 and be capable of -- be capable of voluntary
10 movement?

11 A No, I think that's what you're saying. You're
12 saying that, in fact -- remember his blood
13 alcohol when he was found dead was extremely
14 high, and you're saying that he must have been
15 capable of voluntary movement.

16 Q I'm sorry.

17 A And yet when we see him on the video it doesn't
18 look as if he is. And you're saying that he must
19 have been able to move and recognize somebody
20 passing in a cab or acknowledging somebody
21 passing in a cab, and I'm saying to you that
22 given this combination of blood alcohol and
23 hypothermia I don't think that's likely, but, I
24 mean, there clearly is some problem with the
25 hypotheticals that you are putting to me.

1 Q No, I am not intending to put to you a
2 hypothetical, sir, in this particular question.
3 I was just asking you to clarify why it is that
4 hypothermia was a necessary element in your
5 assessment of Mr. Paul that evening as opposed to
6 simply being intoxicated by alcohol?

7 A Well, my assessment was based on the opinion of
8 Dr. Gray, who did the autopsy and saw the body
9 and saw the findings, and I agree with her
10 interpretation, and I see no reason based on the
11 information that I have been provided with to
12 change that interpretation, but clearly there
13 seems to be some disagreement between the
14 observations of witnesses, and I can't comment on
15 that.

16 MR. HERN: I see. Thank you. Those are my questions.

17 THE COMMISSIONER: Just a moment, Mr. Woodall.

18 A Mr. Commissioner, sir, I should say that I have
19 got -- I still have 45 minutes available to me,
20 and you may want to consider that in terms of the
21 likely cross-examination.

22 THE COMMISSIONER: Thank you, Doctor. I am giving the
23 reporter, that you, I think, can see is at the
24 table, a bit of a break now, but I am going to
25 ask Mr. Woodall to go ahead. He's estimated his

1 period of time to be close to an hour.

2 MR. WOODALL: Actually, I think it was a bit more than
3 that, Mr. Commissioner.

4 THE COMMISSIONER: I have an hour down here.

5 MR. WOODALL: Well, that wasn't the estimate that I gave
6 Mr. Martland, in any event.

7 THE COMMISSIONER: Well, the doctor says he's got -- how
8 much time do you have, Doctor?

9 A Well, I really need to be away from here in about
10 45 minutes.

11 THE COMMISSIONER: All right, Mr. Woodall. Please --

12 A Unless you'd like me to come back again.

13 MR. WOODALL: Mr. Commissioner, I spoke --

14 A I can make arrangements to come back again.

15 THE COMMISSIONER: Thank you, Doctor. I don't think that
16 will be necessary, but we'll see what happens.

17 Please go ahead, Mr. Woodall.

18 **EXAMINATION BY MR. WOODALL:**

19 Q Now, Dr. Ferris, I'd like to begin by discussing
20 with you different types of reports that you
21 might be asked to prepare as a forensic
22 pathologist and the different approach you might
23 take to those kinds of reports, and the first
24 type of report I'd like to refer to are reports
25 that when you produce them you realize they are

1 going to be tendered in court as definitive
2 evidence of a medical cause of death, and one
3 example would be, for example, a report of a
4 post-mortem examination, and the second category
5 of documents I'd like to discuss with you are
6 those where you're asked to give a more wide-
7 ranging perspective on facts and circumstances
8 surrounding death, but in the second hypothetical
9 the report is not necessarily intended on its own
10 to constitute judicial proof. Do you understand
11 the two categories I'm referring to?

12 A Not really, because I've always assumed that
13 every time I put pen to paper as a forensic
14 pathologist it's potentially a document to be
15 disclosed in court.

16 Q But is it the case that when you prepare -- go
17 ahead.

18 A I -- clearly I understand that there's a
19 difference in the level of proof say between a
20 civil hearing and a criminal hearing, but my
21 opinion is always based on the information
22 available to me, and my understanding is that it
23 may be used in court. What weight is applied to
24 that is not an issue for me.

25 Q But when I've examined some forensic

1 pathologists' reports, the pathologists in those
2 reports seem very careful to confine themselves
3 within the narrow limits of what can be deduced
4 according to the rigorous analysis of forensic
5 medicine, while in other reports the pathologists
6 may be invited and indeed encouraged to give a
7 broader perspective of an issue than simply the
8 questions that can be answered through medical
9 forensic pathology. Is that your experience as
10 well?

11 A I'm not sure that I really quite understand where
12 you're coming from. As I said, anything that I
13 write and any opinions that I give in connection
14 with any specific case I understand can be used
15 in evidence.

16 Q What I'm getting at --

17 A I --

18 Q Sorry, I didn't mean to interrupt you.

19 A No, no, I -- sorry, I'm just -- I don't quite
20 understand what you're getting at.

21 Q Well, perhaps I'll jump ahead a little bit and
22 tell you where I'm getting at. As I read your
23 report to Dana Urban in the context of other
24 materials, the impression I received is that you
25 were being asked to consult on a broader issue

1 than simply those findings that might be provable
2 by medical science and you were being invited to
3 give opinions, for example, based on reading
4 statements of people and applying your general
5 understanding as an educated person living in the
6 world and not just those facts which are confined
7 to the area of medical pathology.

8 A No, that's not correct. That's -- I hope that's
9 wrong. Any opinions that I express will be given
10 by me as a forensic pathologist. They may
11 include my 40, 45 years of experience as a
12 forensic pathologist and my understanding of
13 medical literature and information as a forensic
14 pathologist, and on a day-to-day basis, even
15 though I'm semi-retired, I still give opinions
16 based on a wide variety of information, but I can
17 only interpret those as a forensic pathologist.
18 If I give an opinion that I -- that does not
19 include my expertise, I will say so, and I will
20 qualify that, as I have done today, by saying I
21 am not an expert in alcohol analysis. I am not a
22 toxicologist. I would point out that it is not
23 my job to interpret the truth or validity or even
24 the weight that the Commission will apply to
25 particular statements. That's not my job.

1 Q Okay. Well, one of the statements you gave in
2 your report, for example, is this. It's on page
3 5, second paragraph.

4 The position of Mr. Paul's clothing at the
5 time he was found dead is inconsistent with
6 his body being dragged and it is unlikely
7 that Mr. Paul was capable --

8 A That's not -- I'm sorry. I'm sorry. That is not
9 what I said.

10 Q I'm sorry, did I read that improperly?

11 MR. MARTLAND: Yes, you did.

12 A I said "consistent with".

13 MR. WOODALL:

14 Q Okay. I'm sorry, I'll read that again. The
15 "consistent" or "inconsistent" doesn't affect the
16 question I am going to ask you. I'll read that
17 again.

18 The position of Mr. Paul's clothing at the
19 time he was found dead is consistent with
20 his body being dragged and it is unlikely
21 that Mr. Paul was capable of any significant
22 voluntary movement after he was left in the
23 alley.

24 Did I read that correctly this time?

25 A Yes.

1 Q All right. And I am going to suggest to you that
2 the science of forensic pathology does not allow
3 you to offer any opinion about whether Mr. Paul
4 was dragged or not dragged on the basis of his
5 clothing from a photograph?

6 A Well, that may be your opinion. It's not mine.
7 I have over the course of all of my career
8 attended many crime scenes, and it is important
9 as a forensic pathologist to assess all of the
10 circumstances surrounding the location and
11 position of a body as they may or may not relate
12 to injuries, and I am concerned with the
13 interpretation of the activities of an individual
14 shortly before they died and what they may be
15 capable of during that period of time, and to
16 suggest to me that as a forensic pathologist that
17 is not my job is certainly not what I would have
18 thought the majority of trained and qualified
19 forensic pathologists would say.

20 Q All right. Well --

21 A I don't know who you've been talking to, but that
22 is not what I would say, and what I have said
23 here I think is a reasonable conclusion based on
24 my experience as a trained and qualified forensic
25 pathologist.

1 Q Well, you asked who I've been speaking to. I've
2 been speaking with Dr. John Butt. Do you
3 recognize that name?

4 A Yes, I do.

5 Q And he's an eminent pathologist?

6 A He is a forensic pathologist with a lot of
7 experience and training, yes.

8 Q And --

9 A And I would doubt that he would say that he has
10 never taken into account the circumstances or
11 position of a body at the scene. I mean, that's
12 just patent nonsense.

13 Q Well, Dr. Ferris, what you have said here is not
14 taking into account the position of the body at
15 the scene, which I acknowledge is a relevant
16 consideration. What you said is something quite
17 different. What you've said is:

18 The position of Mr. Paul's clothing at the
19 time he was found dead is consistent with
20 his body being dragged,
21 correct?

22 A Yes.

23 Q You're asking whoever reads this report to assume
24 that you can from the perspective of medical
25 science make a determination about whether Mr.

1 Paul was dragged from the position of his
2 clothing, and I suggest to you that's far beyond
3 the scope of medical science?

4 A Well, I can only disagree.

5 Q Now, if you could turn to the letter that you --
6 sorry. Before I turn to the letter that you
7 wrote to Mr. Morrison on April 17th, in your
8 evidence in chief you said that the principal
9 task you were given in preparation for writing
10 your report of November 27th, and I am quoting as
11 best I can here:

12 I was simply being asked on behalf of the
13 Office of the Police Complaint Commission to
14 prepare an independent review and correlate
15 with them Dr. -- with them Dr. Gray's
16 post-mortem report and other findings.

17 Is that more or less what your task was intended
18 to be?

19 A I believe so, yes.

20 Q And Dr. Gray's report didn't say anything like,
21 for example, whether by looking at the position
22 of his clothing in photographs you would be able
23 to draw a conclusion about whether he had been
24 dragged or not dragged to that position, did it?

25 A No, and I'm sure you've asked Dr. Gray if she saw

1 the photographs and saw the position of his
2 clothing.

3 Q But the question I asked -- the question I am
4 posing is in this report you've obviously gone
5 well beyond simply confirming Dr. Gray's
6 findings, haven't you?

7 A Yes. As I explained to you, I was provided with
8 additional information. Surely you've seen the
9 list of documents that I saw and that Dr. Gray at
10 the time that she did her autopsy had not seen.
11 I'm not quite sure why I would be reasonably
12 expected to limit myself just to a review of her
13 autopsy report. I mean, why was I provided with
14 these other documents if I was not expected to
15 try and correlate these with the autopsy
16 findings?

17 Q Well, we'll get to what you did and why you did
18 it and whether it was reasonable in a moment.
19 The simple point I am trying to make at this
20 stage is that the task you undertook for yourself
21 was not, in fact, simply confined to confirming
22 Dr. Gray's post-mortem report, but you went
23 further than that?

24 A Well, I was asked to go further than that. I
25 never said it was confined to that.

1 Q Now, let's deal with what it was confined to and
2 what the terms of reference were. We've been
3 provided a copy of a letter from Mr. Morrison, a
4 letter from Mr. Morrison to yourself dated 19th
5 of September, 2000. Do you have that letter?

6 A No, I don't.

7 Q It was a letter that we were given by Commission
8 counsel. Here, it's a letter to you from Don
9 Morrison, and it says -- it's very, very brief.
10 It says:

11 I am requesting your assistance on two
12 files,
13 and then it has one of the files named. And then
14 it says "PC File 0406". And this is the totality
15 of what this letter says, and I'll read it slowly
16 in view of the fact that you don't have it in
17 front of you. "The circumstances surrounding the
18 use of force" -- sorry, I'm reading the wrong
19 one. Paul.

20 The unloading of a native male into an alley
21 in winter where he was found dead several
22 hours later would also benefit from a review
23 of the medical and photographic evidence in
24 relation to the police wagon driver's
25 statement.

1 The wagon driver's description of walking
2 Mr. Paul to the spot in the alley at
3 approximately 20:51 hours appears
4 inconsistent with jail video taken only 20
5 minutes earlier where he is seen dragging
6 Mr. Paul along the ground and requiring
7 assistance to return him to the police
8 wagon.

9 The body of Mr. Paul was found in the alley
10 at approximately 02:41 hours. Time of death
11 was simply established as p.m. hours.

12 Then the summary of both the files is as follows:
13 I trust that the enclosed reports and
14 photographs will be adequate. Should you
15 require further information, do not hesitate
16 to contact PCC Investigator William
17 MacDonald or legal counsel to the
18 Commission, Dana Urban.

19 Now, does that letter refresh your recollection
20 of the -- sorry.

21 A No, I don't remember that.

22 Q Okay. So I am going to suggest to you that you
23 must have received --

24 A I don't remember the letter.

25 Q Sorry for interrupting. The time delay has got

1 me a bit confused. Go ahead.

2 A I don't recall the letter, but that's a standard
3 letter. I receive letters like that requesting
4 opinions on a regular basis and have done so both
5 before and after this. I have no reason to
6 believe that that letter was not what it purports
7 to be.

8 Q All right. Now, it seems to me that you must
9 have had other instructions given orally at some
10 point because from what I have read it's pretty
11 much -- it's pretty difficult to discern what
12 your task is supposed to be?

13 A I can't obviously comment on your thinkings about
14 the case. I know exactly what my task was, and
15 it was to review the materials and answer the
16 questions that I had been asked, which I did.

17 Q Okay. Well, let me phrase the question a
18 slightly different way. Did you receive other
19 direction other than that letter?

20 A Not that I recall nor that I have a record of.

21 Q Have you reviewed your file before coming to
22 testify this afternoon?

23 A Yes, I have my entire file with me.

24 Q And are there any notes or letters in that file
25 with further instructions other than what is in

1 the letter I just read to you?

2 A As I have stated several times, no.

3 Q So what then -- what then did you consider to be
4 your terms of reference?

5 A My terms of reference was to look at the post-
6 mortem report of Dr. Gray, look at all of the
7 documents that I was asked to look at and to come
8 to an opinion as to whether or not the movements
9 of Mr. Paul were consistent with that information
10 and that the cause of death was consistent with
11 Dr. Gray's conclusions.

12 Q Okay. All right. Now, where --

13 A Isn't that exactly what I've done?

14 Q Where from -- I don't see any -- from what I've
15 read or from the post-mortem examination of Dr.
16 Gray did I see anything asking you to comment on
17 Mr. Paul's movements.

18 A Can you read those instructions again from Mr.
19 Morrison?

20 Q Yes. I'll read them slowly if you want to take
21 note. There's three paragraphs. The first
22 paragraph is as follows:

23 The unloading of a native male into an alley
24 in winter where he was found dead several
25 hours later would also benefit from your

1 review of the medical and photographic
2 evidence in relation to the police wagon
3 driver's statement.

4 Second paragraph is --

5 A Fine. That -- just -- you can stop there --

6 Q Yes.

7 A -- because that to me means would you look at all
8 of the information and tell us whether or not
9 medically it would be possible to assess what his
10 condition was and what he was capable of doing.

11 Q All right.

12 A That was my interpretation.

13 Q All right. And you read -- you read that from
14 that one paragraph I've just read just now?

15 A Yes. Remember, I've been doing this job for now,
16 what, 47 years, and I have to read -- I mean, I'm
17 receiving these requests from people who have no
18 experience in forensic pathology, and I apply my
19 experience, rightly or wrongly, to my
20 interpretation of what they're asking, and if
21 they don't like what I've said or they feel I've
22 overstepped my mark, that's fine, because when
23 the evidence is ultimately presented in court or
24 at an inquiry or at an inquest, weight is applied
25 to that by the legal authorities there, and that

1 evaluation is done on my information and my
2 opinion, not by me.

3 Q And in your report you've listed 57 pieces of
4 evidence that you considered; is that correct?

5 A Yes.

6 Q And --

7 A Yes.

8 Q I think you already testified that within that
9 body of evidence there were a considerable number
10 of inconsistencies?

11 A I think there appear to be some inconsistencies
12 based on the information that I have been
13 provided with today, and my problem is that I am
14 looking at something that I reviewed seven and a
15 half years ago, and I don't have all the
16 documents, and I can only give you the best of my
17 recollection, and I've tried to do that. I think
18 you're asking me questions that I really cannot
19 reasonably be expected to answer.

20 Q The only question I asked you, Dr. Ferris, that
21 gave rise to the answer you've just given is were
22 there inconsistencies in the body of evidence
23 that you had reviewed, and the answer shortly is
24 yes; is that not correct?

25 THE COMMISSIONER: I don't --

1 A My recollection is yes.

2 THE COMMISSIONER: Pardon me?

3 A But don't ask me what those inconsistencies were.

4 I'm sorry.

5 MR. WOODALL: I'm sorry, Mr. Commissioner missed an answer

6 there. Perhaps you could --

7 THE COMMISSIONER: Well, I understood you to say --

8 A I'm sorry. I said --

9 THE COMMISSIONER: Doctor, I understood you to say that on

10 the basis of the evidence that you've heard today

11 there are some inconsistencies from what you had

12 looked at before. Is that not correct? In other

13 words --

14 A Yes, that is correct, but my -- sorry.

15 THE COMMISSIONER: That's all right. Go ahead.

16 A Sorry. My recollection is that at the time there

17 were some inconsistencies.

18 THE COMMISSIONER: As well?

19 A But, I mean, on a daily basis I read statements

20 and reports, and it's not unusual to find

21 inconsistencies.

22 MR. WOODALL:

23 Q And so in this case how did you go about

24 resolving the inconsistencies?

25 A Well, I don't think I have gone about resolving

1 the inconsistencies. My opinion is really very
2 restricted. I've only listed two conclusions. I
3 haven't attempted to talk about the validity of
4 the various statements because that's not my job.

5 Q What are the two conclusions that you say we
6 should take from your report?

7 A Well, if you read page 5 of my original report,
8 you will see two conclusions, (a) and (b).

9 Q Okay. So those are the conclusions that you --
10 that you expect -- or, sorry, those are the
11 conclusions that you would ask a reader to
12 conclude are based on the application of medical
13 science and your review of the evidence?

14 A Well, it's not a question of medical science.
15 It's a question of my opinion as a trained
16 forensic pathologist, which is only one part of
17 medical science, and it would not necessarily be
18 the opinions of people who've had different
19 training, but those are my opinions as best as I
20 could give them based on the information that was
21 available to me and my interpretation of that
22 information.

23 Q So those two conclusions under (a) and (b) on
24 page 5 are the ones that you -- you said a moment
25 ago you've only made two conclusions, and are

1 those the only two conclusions that you say we
2 should take from your report?

3 A Well, I suppose the final conclusion is the final
4 statement, that in my opinion at the time of
5 Mr. -- that Mr. Paul was brought to the police
6 jail at approximately 20:20 on December 5th he
7 was incapable of taking care of his own safety
8 and was both intoxicated and suffering from
9 hypothermia. I suppose really there are three
10 conclusions, although the final paragraph is to
11 some extent the summary of the first two.

12 Q So would you then say that we should not take as
13 a conclusion from your report that the position
14 of Mr. Paul's clothing at the time he was found
15 dead is consistent with his body being dragged?

16 A That is a part of the process from which I
17 developed the final conclusions. In my
18 opinion -- I mean, the position of his
19 clothing -- I can't recall what the position of
20 his clothing is now, but I wrote at the time that
21 that was consistent with his body being dragged,
22 and I would not make that statement unless that
23 was my opinion at that time. I mean, if you
24 like, there is other evidence that I haven't
25 referred to that is present in Dr. Gray's report

1 that might support the fact that his body had
2 been dragged. He has abrasions on the lower part
3 of his body, which are normally caused by
4 friction movement of the body against a rough
5 surface.

6 Q But that has nothing to do with the position of
7 his clothing?

8 A But I haven't commented on those. No, but it's
9 to do with how he got to that position.

10 Q So when you say that the position of his body at
11 the time he was found is consistent with his body
12 being dragged, is that a fact that leads --

13 A Perhaps I --

14 Q Is that a fact that led to or formed part of your
15 conclusion that he was incapable of taking care
16 of his own safety or was that a conclusion, in
17 other words, was the reasoning the other way
18 around, since he was incapable of taking care of
19 his own safety he must have been dragged to the
20 position where he was found?

21 A When Mr. Paul was videoed in the police station,
22 he did not appear to me to be capable of engaging
23 in much in the way of voluntary and cognitive
24 movement. He was found, and now there seems to
25 be some dispute about where exactly he was found,

1 but he was found in an alleyway, and the position
2 of his clothing indicated to me that he may have
3 been dragged, and that would be consistent with
4 my interpretation of his condition before he left
5 the police station.

6 Q Okay. So is the chain of --

7 A Now, I can't go any further than that.

8 Q Was the chain of your reasoning, did it start
9 with your interpretation of the video, video
10 photographs to be more precise, as set out in the
11 bottom of page 4 of your report, and then having
12 concluded that he was totally incapable of taking
13 care of himself at the jail you then figured that
14 fact into your analysis and further concluded,
15 further made your statement about the position of
16 his clothing?

17 A Normally I would have looked at the clothing and
18 the position of the clothing quite independently
19 of those other features, but the difficulty is
20 that I now have no -- nothing in front of me
21 which tells me what the position of the clothing
22 was.

23 Q Now, can you tell the Commission all of the facts
24 that led to your opinion as expressed on page 4
25 and reiterated on page 5, and I'll read the

1 version on page 4, the last paragraph, second
2 sentence:

3 It is my opinion that at the time of his
4 discharge from the Police Jail, Mr. Paul was
5 totally incapable of taking care of himself.
6 Could you tell me all the facts that led to that
7 opinion?

8 A Well, I can't possibly now go over all of the
9 information that I was provided with in a few
10 minutes. I mean, I have explained to you that
11 when Mr. Paul was videoed you have seen his
12 condition at that time. I can tell you based on
13 Dr. Gray's observations that the -- when he was
14 found dead he had a high blood alcohol. In her
15 opinion he was hypothermic, and the alcohol did
16 not account for those -- his clinical appearance,
17 in my opinion, and, therefore, I agree with her,
18 so that when you add the combination of alcohol
19 and probable hypothermia, this would suggest to
20 me that the video that we saw in the police
21 station reasonably reflected his medical and
22 clinical state, and in that medical and clinical
23 state, as you can see, he does not appear to be
24 capable of looking after himself.

25 Q Well, I don't agree with you, your last

1 statement.

2 A That video may be mis -- well, I'm sorry, that's
3 fine, but that's your choice, and it's the
4 Commission's choice to agree with me, but I'm
5 telling you what I thought.

6 Q Fair enough, but your last statement assumed that
7 I was agreeing with you about your opinion of the
8 video, and I just want you to know that I don't
9 agree with you on that. Now, to clarify, so
10 you've said that there are three -- you've
11 identified three factors in support of your
12 opinion that he was totally incapable of taking
13 care of himself. One was the high blood alcohol,
14 one was the hypothermia, and one was the video --
15 the jail video; is that correct?

16 A Yes.

17 Q All right. Let's deal with the last one first.
18 I am going to suggest to you that you did not, in
19 fact, have available to you the videotape before
20 you wrote your report. Do you agree with that or
21 disagree or are you unsure?

22 A Well, if, as I understand, my report was written
23 after my meeting with the Commissioner -- at the
24 Commissioner's office, then that report has been
25 written after I've seen the video.

1 Q So is that belief then based on your inference
2 from the sequence you just described?

3 A Well, it's based on the documents that I have in
4 front of me.

5 Q Okay. One of the documents --

6 A I'm sorry, I --

7 Q One of the --

8 A I just don't recall accurately everything.

9 Q I'm suggesting to you that you might be in error
10 on that point, you might have only had still
11 photographs and not a video at that stage.

12 A Well, then when did I see the video? I mean, I
13 stated in my letter of the 17th that I have seen
14 the video at the Commissioner's office, and I
15 know that I did see a video at the Commissioner's
16 office. If you are suggesting that, in fact, the
17 date that I saw that video was not the 8th of
18 November, that's fine, but I -- because I have no
19 record of that date.

20 Q Your recollection of having seen the video is
21 based -- sorry -- at the meeting of the 8th of
22 November is, I suggest, based solely on your
23 review of your letter dated April 17th, 2000, to
24 Don Morrison; is that fair?

25 A No, because I do recall seeing the video in the

1 Commissioner's office.

2 Q Okay. But the sequence of events is that you
3 were at -- you had a meeting at the
4 Commissioner's office on the 8th of November,
5 2000; is that correct?

6 A Yes.

7 Q And then you --

8 A That's my understanding.

9 Q Right. And you concluded your report on the 27th
10 of November, 2000?

11 A Yes.

12 Q And you've -- in that report you've identified 57
13 items of information that you consulted?

14 A Yes.

15 Q And in that list there are a number of
16 photographs, and indeed they're described as, if
17 you look at item 53, a series of 24 black and
18 white photographs apparently printed from a video
19 film. Does that --

20 A Yes.

21 Q Does that refresh your recollection as to what
22 you saw when you -- before preparing the report?

23 A Well, it doesn't clarify the issue that you are
24 trying to address, and the obvious solution to
25 this apparent conundrum is that this report,

1 which was dated 27th of November, is a final
2 report of a draft that I would have gone to the
3 meeting on the 8th of November with and that when
4 I saw the video I did not add that to the list of
5 documents.

6 Q All right.

7 A That's the most likely explanation.

8 Q Well, look on page 4.

9 A And if I failed to put that --

10 Q Go ahead. I'm sorry, I'm interrupting.

11 A If by failing to put that on the list -- I'm
12 sorry. I'm sorry about the delay. But if I
13 failed to add that video to the list of documents
14 and information that I was provided with and it's
15 caused this confusion, I'm terribly sorry, but I
16 did see the video in the Police Complaints
17 Commission office.

18 Q Now, if you look on page 4 of your report, the
19 last paragraph, it states:

20 The video photographs show that Mr. Paul was
21 unable to stand,
22 and so on. Do you see that?

23 A Yes.

24 Q And again you've referred to photographs, but
25 you've not referred to the videotape, the live

1 action videotape?

2 A Correct.

3 Q So does that refresh your memory that what you
4 had in front of you was the photographs but not
5 the videotape?

6 A No. I keep telling you -- I'm sorry, but -- I'm
7 trying not to get irritated about this, but how
8 many times do I have to say to you I saw the
9 video in the Commissioner's office, and you keep
10 trying to tell me that I didn't, and that's not
11 correct. I may well have not modified my draft
12 report to take into account that video, and I
13 have apologized to the Commission about that,
14 and, I'm sorry, but I did see the video, and I
15 recall seeing the video.

16 Q I am going to suggest to you that Mr. Dana Urban
17 on 15th of April, 2002, testified before a
18 special committee of the legislature, and at
19 pages 337 to 338 he testified under oath that you
20 did not have the videotape at that meeting. Does
21 that refresh your recollection as to whether you
22 had the videotape at that meeting?

23 A No, my recollection is that I did have that
24 video. I didn't have it, but it was shown.

25 Q And we've been disclosed a letter from Mr.

1 Ryneveld dated -- a new Police Complaint
2 Commissioner -- dated the 10th of February, 2004,
3 where he says that one of the reasons that he was
4 suggesting that this Commission be called was
5 because that videotape was not available for Mr.
6 Morrison to review during Mr. Morrison's time.
7 Does that refresh your recollection as to whether
8 you had the videotape shown to you at that
9 meeting?

10 A No. You would have to explain to me then how I
11 saw the video in the light of those statements
12 because I did see the video.

13 Q Now, going back to the purpose of your
14 discussions and meeting with Mr. Morrison and Mr.
15 Urban on that date, November 8th, 2000, do you
16 have in front of you your letter dated April
17 17th, 2002, to Mr. Morrison?

18 A Yes, I do.

19 Q And this letter refers to a meeting that occurred
20 before you finalized your report; is that
21 correct?

22 A Yes.

23 Q And you've said that there may have been a draft
24 report, but, in fact, you don't have a copy of a
25 draft report to confirm that this is not only the

1 draft but, in fact, also the final; is that
2 correct?

3 A Well, it won't be the final because it's dated on
4 a much later date.

5 Q Well, what I'm saying is there may have been one
6 report, which is this report, you re-dated it and
7 submitted it, or you may have had a draft, you
8 just can't recall which of those is correct?

9 A Well, there will have been a draft. I always do
10 a draft. Even today I do drafts. And it may be
11 that I had to change the date, and I cannot tell
12 you what else was changed. I simply can't do
13 that. I don't have a copy of any draft on my
14 file.

15 Q Now, one of the things that you discussed with
16 Mr. Urban and possibly with Mr. Morrison in
17 attendance is described in the second paragraph
18 of that letter, and you say as follows:

19 We discussed these cases in some detail, and
20 I remember there was considerable discussion
21 as to the way --

22 sorry --

23 as to the best way to further the
24 investigation. As I recall, there was some
25 concern expressed by yourself,

1 meaning Mr. Morrison,
2 as to the difficulties of persuading Crown
3 counsel's office to open --
4 sorry --
5 to reopen an investigation that they had
6 already reviewed and decided that no further
7 action was required.

8 That's what you wrote to Mr. Morrison on April
9 17th, 2002, correct?

10 A Yes.

11 Q And so you were part of a discussion --

12 A Yes.

13 Q You were part of a discussion that was not
14 confined to determining how Mr. Paul died but on
15 the best way to further the investigation as
16 well?

17 A Yes. I -- I don't recall the details of the
18 discussion. I know it would not be my job nor,
19 for that matter, really, my knowledge to discuss
20 the role of the Crown's office. My knowledge
21 relates more to the coroner's role and how the
22 coroner investigates cases, so that that's
23 probably why I suggested that an appropriate step
24 might be to involve the coroner. It certainly
25 would not be for me to comment on the role of the

1 Crown office, and I wouldn't do that.

2 Q But the nature of the discussion, I am going to
3 suggest to you, was essentially this. Mr. Urban
4 had a theory about how Mr. Paul died, and he was
5 frustrated that no public body was taking up his
6 theory and undertaking an investigation; is that
7 correct?

8 A Well, I can't comment on that. I mean, how can I
9 comment on Mr. Urban's theories that I don't know
10 about?

11 Q Well, he -- because he --

12 A Mr. Commissioner, I am concerned about -- I'm
13 sorry. Mr. Commissioner, I am concerned about
14 the time frame that this is taking because I
15 really am limited in my time availability today,
16 and I'm more than willing to make myself
17 available on another occasion, but some of this
18 questioning is really not appropriately addressed
19 to me and my knowledge involved in this case.

20 THE COMMISSIONER: Certainly the last question --

21 A I'm sorry that it's taking so long.

22 THE COMMISSIONER: The last question would fit within your
23 description, I agree. Now, you'll have to tell
24 me, Doctor, when it is that you have to leave,
25 and what I will do --

1 A I need to leave within about five minutes.

2 THE COMMISSIONER: All right. We'll carry on then for five
3 minutes, and at the end of that time then we will
4 adjourn and you may be on your way, and I will
5 make a determination as to whether or not it's
6 necessary to bring you back, sir. Thank you.

7 A I certainly am willing to come back, and that
8 represents no problem. We can find some mutual
9 time. I'm happy to do that. And I'm terribly
10 sorry that perhaps I've diverted the attention of
11 the Commission and the reason that it's gone on
12 so long is my fault, and I apologize.

13 THE COMMISSIONER: No, it's not your fault. Thank you. Go
14 ahead, Mr. Woodall.

15 MR. WOODALL: Yes. Mr. Commissioner, with view to your
16 comment about the last question I asked, I do
17 want to pursue that area, and perhaps my next
18 question will make it clear why it's relevant.

19 THE COMMISSIONER: All right. That's fine. The other
20 question would have been confused, and the doctor
21 was quite right in taking objection to it, so go
22 ahead.

23 MR. WOODALL:

24 Q At the meeting with Mr. Urban and where Mr.
25 Morrison was attendant for some period of time

1 there was discussion in your presence about Mr.
2 Urban's theory of the case; is that not true?

3 A I don't -- I don't recall that. That may be
4 correct, but I don't recall it.

5 Q And was there also discussion in your presence
6 about Mr. Urban's frustration that no other body
7 would take up what he thought to be a necessary
8 further investigation of the matter?

9 A My comment in my letter might actually imply
10 that. I don't recall that. But I do recall my
11 comment about the potential role of the coroner
12 in this case because a coroner at that time, and
13 I believe it's still the same, has the ability to
14 inquire without necessarily attaching legal
15 responsibility for a death, and I think that's a
16 useful process, and I would have probably
17 suggested that.

18 Q So while your recollection is understandably a
19 bit foggy given the passage of time, it's at
20 least possible and indeed likely that there was
21 discussion at that meeting about Mr. Urban's
22 frustration with the fact that in his view at
23 least this wasn't being investigated or pursued
24 properly?

25 A I think what I would prefer, the way I'd prefer

1 to interpret these comments of mine, sort of my
2 documented recollection, is that the best method
3 of pursuing this inquiry was discussed. I don't
4 recall comments on, you know, which was the best
5 method, and that may even have gone on after I
6 left. I simply don't know.

7 MR. WOODALL: Given Dr. Ferris's comment that he needed to
8 leave in five minutes, this may be an appropriate
9 place to break, Mr. Commissioner.

10 THE COMMISSIONER: Thank you, Mr. Woodall. Doctor -- yes.

11 MR. MARTLAND: And I wonder, Mr. Commissioner, very
12 briefly, if we might ask to have two documents
13 that this witness did refer to made exhibits.
14 First, Dr. Ferris's letter to Mr. Morrison, April
15 17th, of 2002, if that could become the next
16 exhibit.

17 THE COMMISSIONER: Mr. Morrison's letter.

18 MR. MARTLAND: Sorry, Dr. Ferris's letter addressed to Don
19 Morrison April 17th, 2002.

20 THE COMMISSIONER: Yes, certainly. It's been referred to.
21 That should be marked.

22 THE REGISTRAR: 82.

23 **(EXHIBIT 82: Letter to Don Morrison from Dr.**
24 **Ferris dated April 17, 2002)**

25 MR. MARTLAND: And next the newspaper report that the

1 witness was referred to. And we have only an
2 e-mail that has the text of the same article that
3 Mr. Arvay referred to from exactly the same date.
4 If that could become the next exhibit, please.

5 THE COMMISSIONER: Yes, it can, because it was identified
6 and referred to.

7 THE REGISTRAR: 83.

8 (EXHIBIT 83: Newspaper article dated April 17,
9 2002)

10 THE COMMISSIONER: 83. Doctor, thank you very much for
11 your time today. We appreciate your effort in
12 having to travel some distance to be with us. I
13 will ask Commission counsel to be in touch with
14 you with regard to whether or not you're required
15 further, sir, and thank you once again. We'll
16 adjourn.

17 A Mr. Commissioner, can I say that we started this
18 morning at I believe 1:30 your time.

19 THE COMMISSIONER: We did.

20 A My travel arrangements would allow us to start at
21 one o'clock your time if we have to start again.

22 THE COMMISSIONER: That's useful. Thank you very much.

23 THE REGISTRAR: We will now adjourn.

24 THE COMMISSIONER: We'll adjourn.

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

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