

1 November 10, 2010

2 Vancouver, BC

3 (PROCEEDINGS COMMENCED AT 10:00 A.M.)

4 THE REGISTRAR: Order. The hearing is now resumed,

5 Mr. Commissioner.

6 THE COMMISSIONER: Mr. Cowper.

7 MR. COWPER: Thank you, Mr. Commissioner. Before we resume

8 this morning with the cross-examination of

9 Mr. Gillen I have a matter briefly, and then

10 Mr. Kelliher wishes to address you on something.

11 I'd like to take this opportunity so we don't miss

12 it out of order a little bit to mark a will say

13 statement of Peter Ewert, I have an original and

14 copy, and the will say statement of Roger Cutler

15 which again we have in the signed form. If those

16 could be the next two exhibits.

17 THE COMMISSIONER: Numbers then, please, Mr. Registrar.

18 Mr. Ewert's?

19 THE REGISTRAR: I have that as CJB number 15.

20 THE COMMISSIONER: 15. Thank you. And the other?

21 THE REGISTRAR: Number 16.

22 (EXHIBIT CJB 15: Will Say Statement of Peter

23 Ewert)

24 (EXHIBIT CJB 16: Will Say Statement of Roger

25 Cutler)

1 THE COMMISSIONER: Mr. Kelliher.

2 MR. KELLIHER: Yes, thank you, Mr. Commissioner. I'm asking
 3 for a direction in respect to your ruling covering
 4 the constraints on counsel in examining the
 5 various witnesses. The substance of the direction
 6 is clear. I ask for direction in respect to its
 7 application to this witness. You will have heard
 8 I think the last answer during the
 9 cross-examination was that he had not done a
 10 charge approval, and in my view that would put him
 11 outside the parameters of the constraints because
 12 the exercise of judgment that he performed was not
 13 the kind of core area that's protected by the
 14 constitution and restricted in the questioning by
 15 our Court of Appeal. I -- absent a direction from
 16 you to the contrary I would approach the
 17 cross-examination -- the cross-examination as if
 18 he were an ordinary witness and not subject to
 19 those constraints, but I'd like to know before I
 20 get underway and avoiding the difficulty.

21 THE COMMISSIONER: Well, my understanding on that,
 22 Mr. Kelliher, is that he was the final authority
 23 and the final approval that he passed on -- true
 24 he didn't write an opinion or a decision, but I
 25 understood that the final decision left with him

1 that he was in charge and so he would make the
 2 decision whether there would or would not be any
 3 charge. Mr. Cowper, do you have anything to say
 4 to that?

5 MR. COWPER: Well, I think it's twofold. I think actually that
 6 you made a ruling on this, and of course you can
 7 reconsider it, but I just thought my friend made
 8 the submission in the course of the
 9 cross-examination, I think you found -- you made a
 10 ruling on the fly, if you will, that Mr. Gillen's
 11 role included the final decision. I don't know
 12 how you want to proceed this morning and whether
 13 you're satisfied you've ruled on that basis. In
 14 my view it would be artificial at the highest
 15 level to suggest that Mr. Gillen as the person
 16 responsible for overseeing this and deciding
 17 finally whether to concur or not concur is not
 18 involved in the exercise of discretion by the
 19 branch, especially when the policy is contemplated
 20 going to the Assistant Deputy Attorney in the
 21 circumstances. So I'm not attracted to the
 22 distinction drawn by my friend, and I think it
 23 would be confusing at the utmost to have the
 24 senior questioned on the basis of no restraints
 25 when he's in effect responsible for the decisions

1 of the branch, and in effect would be undermining
2 the decision of the Court of Appeal I think in a
3 very direct way.

4 THE COMMISSIONER: Thank you. That's my understanding,
5 Mr. Kelliher. I understand you bringing it up,
6 but I did consider that point I believe a day or
7 two ago when you were cross-examining as to what
8 his position would be. From what he told me I
9 understood his to be the final approval in the
10 final and --

11 MR. KELLIHER: Thank you, Mr. Commissioner.

12 THE COMMISSIONER: -- so it would be covered under my
13 direction. Can we call Mr. Gillen.

14 MR. COWPER: I think Mr. Ward wanted to raise something.

15 THE COMMISSIONER: Okay. Mr. Ward.

16 MR. WARD: Just on the preceding issue, Mr. Commissioner, of
17 the marking of those two will say statements.

18 THE COMMISSIONER: Yes.

19 MR. WARD: I did not object, nor do I have an objection to them
20 being marked and considered, but I just wanted to
21 state my position for the record with respect to
22 Mr. Ewert's. I had sought the opportunity to ask
23 questions of that witness either in an interview
24 context or in the context of these hearings. I
25 understand that circumstances did not permit that,

1 so I may make a submission that the will say alone
2 should be accorded less weight than perhaps the
3 testimony of witnesses who have come before you.

4 THE COMMISSIONER: Certainly that would be open to you to do
5 that. Mr. Cowper.

6 MR. COWPER: Let me say two things, and this is a bit out of
7 order, we have a witness in cross, but let me say
8 this. Firstly, for my part I accept the principle
9 that a written statement that's not been subject
10 to testing under cross-examination should receive
11 less weight. So to that extent that's not a
12 controversial issue. Secondly, I have recently
13 received notice of requests for additional
14 witnesses otherwise, and I will say that we will
15 consider that and communicate with counsel. And
16 it may that be that there are other methods of
17 obtaining any further answers from Mr. Ewert that
18 were not thought to be needed prior to the conduct
19 of these hearings, and it may be that there are
20 means of obtaining those answers that don't
21 require a full hearing, and it may be that an
22 interview is possible or written questions can be
23 submitted. So I'll communicate directly with
24 counsel for the participants with respect to both
25 what other matters may arise in respect of his

1 evidence as well as any other potential witnesses.

2 THE COMMISSIONER: Thank you, Mr. Cowper. Are you satisfied
3 with that, Mr. Ward?

4 MR. WARD: Yes, certainly.

5 THE COMMISSIONER: All right. Thank you.

6 MR. COWPER: And then I'll ask, Mr. Gillen is being obtained to
7 complete his cross-examination.

8 THE COMMISSIONER: Mr. Gillen.

9 THE WITNESS: Sir.

10 THE REGISTRAR: The witness is reminded he's still under oath.

11 THE WITNESS: Thank you.

12 ROBERT GILLEN, Resumed:

13 THE COMMISSIONER: Mr. Kelliher.

14 EXAMINATION BY MR. KELLIHER CONTINUED:

15 Q Sir, last day you indicated that on receiving for
16 the final time the file from the office -- well,
17 actually from the Attorney General's office, from
18 the office of the Police Complaint Commissioner to
19 the Attorney General's office and then to you that
20 you --

21 MR. CROSSIN: Mr. Kelliher?

22 MR. KELLIHER: Yes?

23 MR. CROSSIN: Could you bring that mike closer to you. We
24 can't hear. Thanks. I can't stand not hearing.

25

1 MR. KELLIHER:

2 Q That you requested Mr. Hicks to produce an
3 opinion, a review of the file to determine if
4 charges should go. Upon receipt of that opinion
5 you invited Mr. Ewert to do the same thing;
6 correct?

7 A Yes.

8 Q And when you received Hicks' file you reviewed it?

9 A Yes, I would have.

10 Q And you were satisfied that it was a good report?

11 A Yes.

12 Q You were happy with his conclusions and his legal
13 reasoning underpinning the conclusions?

14 A I don't know about the happy, but I was satisfied
15 that he'd examined the issues, yes.

16 Q All right. Why then would you send it on to
17 Mr. Ewert?

18 A I think probably out of an abundance of caution.
19 Mr. Ewert was a person that when I'd worked with
20 him within the branch I had respected his opinion.
21 I had worked with him extensively. When I was a
22 Regional Crown beginning in 1988 he was on the
23 branch management committee, very much assisted me
24 in terms of approaches to issues, had kind of an
25 open phone call easy to reach easy to consult. I

1 found it very helpful as a young Regional Crown
2 starting out, so.

3 Q All right. And when you received Mr. Ewert's
4 assessment you reviewed that assessment?

5 A I did.

6 Q And I think you testified last day that that
7 assessment was flawed?

8 A It had errors in it, yes.

9 Q And that you relied primarily in making your final
10 determination here on Mr. Hicks' opinion over
11 Mr. Ewert's?

12 A Well, I don't think I put one over the other. I
13 think I didn't give as much weight to Mr. Ewert's.
14 And I didn't rely only on Mr. Hicks' opinion, I
15 did rely on the others as well.

16 Q All right. Now, can I take you to Mr. Hicks'
17 opinion, principally to the conclusion area. We
18 can see -- do you have that? That's at tab 9 of
19 Exhibit 1. If you'll just flip through with me
20 you can see how he has structured --

21 THE COMMISSIONER: Sorry, could you give that again?

22 MR. KELLIHER: Yes, that's Exhibit 1, tab 9.

23 THE COMMISSIONER: Thank you.

24 MR. KELLIHER:

25 Q He's reporting to you April 20th, 2004.

1 A Yes, I have a copy of that.

2 Q All right. Sir, if you could just flip through
3 and you can see how he has structured this review.
4 He has the introduction, he gives the history of
5 the file, he has at page 3 he says his conclusion,
6 and he speaks of the office of the Police
7 Complaints Commissioner and the new evidence that
8 has been provided to the Criminal Justice Branch.
9 And you'll see at the bottom of page 3 he begins
10 to review the new evidence, particularly
11 Firlotte's recantation. And then at page 7
12 Michelle Renville, he discusses some follow-up at
13 page 8, and then at the bottom of page 9 under the
14 heading Further Considerations he begins his
15 conclusions -- he begins his conclusion of his
16 consideration of the law on the facts in this
17 case, and he says:

18 I am satisfied that a criminal prosecution
19 could not succeed.

20 Are you with me there, Mr. Gillen?

21 A This is at page --

22 Q Page 9 about --

23 A Yes, I have it.

24 Q I am satisfied that a criminal prosecution
25 could not succeed.

1 A Yes.

2 Q And then he gives his legal reason:

3 The Crown is not in a position to prove a
4 wanton and reckless disregard for the safety
5 of Mr. Paul based on the evidence available
6 and for the reasons earlier stated by members
7 of this branch.

8 You saw that, and did you accept that as an
9 accurate and complete analysis in this case?

10 A That was his view of it, yes.

11 Q Did you accept that, sir?

12 A Yes, I accepted that.

13 Q All right. Do you see that he has failed to
14 consider the lower threshold of a marked departure
15 from what a reasonable person in a position of the
16 accused might do with objective foresight of the
17 harm to Mr. Paul?

18 A Yes.

19 MR. PECK: I object to that question, Mr. Commissioner. The
20 question is essentially misleading. If you read
21 that paragraph carefully Mr. Hicks says:

22 The Crown is not in a position to prove a
23 wanton and reckless disregard...

24 Et cetera:

25 ... and for the reasons earlier stated by

1 members of the branch all of which considered
2 the lesser standard.

3 MR. KELLIHER: Well, Mr. Commissioner, are you --

4 THE COMMISSIONER: I'm thinking about the question. Can you
5 ask the question again, please.

6 MR. KELLIHER: All right. Perhaps I'll ask it this way.

7 Q You had indicated that you accepted that as an
8 accurate and complete legal analysis here. Now,
9 that analysis applies to criminal negligence
10 causing death; correct?

11 A The wanton and reckless disregard, that's correct.

12 Q That analysis does not apply to failure to provide
13 necessaries of life, does it?

14 A Correct.

15 Q And so in that sense would you agree with me that
16 this analysis is incomplete?

17 A Well, I read the conclusion as being that's one
18 aspect of it, and for the reasons that he's
19 provided and for the reasons earlier stated by
20 members of this branch, the reasons of the various
21 people included an analysis of manslaughter and
22 also failing to provide necessaries. So I'm
23 assuming that he was doing that. But you're
24 right, he did set out the wanton and reckless
25 disregard separately. I'm not in a position to

1 explain why he would have done that.

2 THE COMMISSIONER: He didn't particularize the others then?

3 THE WITNESS: No.

4 MR. KELLIHER:

5 Q All right. Did you think that -- when you read
6 that did it occur to you that he may not have put
7 his mind to the issues of the lower threshold?

8 A I would very much doubt that. I wouldn't have
9 thought so.

10 Q Did you question him on that?

11 A No, I did not.

12 Q All right.

13 A Or if I did I certainly don't recall doing so.

14 Q Sir, would you agree with me that insofar as he
15 did not in writing as a foundation for his
16 decision not to prosecute, that he failed in
17 writing to include an analysis of failing to
18 provide the necessaries of life, that it was
19 incomplete and flawed?

20 A Well, it depends on whether or not he included
21 that in the latter reference. He had the other
22 materials, all of the other materials. If he read
23 them he would have obviously, and he says he
24 agreed with them, he would have agreed with the
25 failing to provide necessaries, he would have

1 agreed with the conclusion on manslaughter, and he
2 was stating that he also agreed apparently on
3 criminal negligence causing death.

4 Q I see. When you read this I gather that you just
5 assumed that he had considered the lower
6 threshold?

7 A Well, it says that he agreed with the opinions
8 that had gone before him, so I assumed that, yes.

9 Q Right. Okay. I'll leave that, sir. What steps,
10 sir, did you take, if any, in notifying any party
11 in respect to the decision that the branch was
12 making?

13 A In terms of outside parties no one. I may have
14 spoken to the police, but in terms of the victim
15 or -- or the victim's family rather, I did not do
16 that. Ordinarily that would be done by the
17 Regional Crown, and I can't say that it was done
18 in this case or not.

19 Q Sir, did you make a telephone call to the Police
20 Complaints Commissioner Mr. Dirk Ryneveld and ask
21 him what Peggy Clement's telephone number was?

22 A No, I'm sure I didn't. I would probably recall
23 that, because the name Clement does not ring
24 familiar to me.

25 Q Are you sure that you didn't make such a call?

1 A I can't be positive, but I don't think that I did.

2 Q Do you recall calling my office?

3 A Do I recall calling your office? No, I don't.

4 Q Do you recall getting a phone call from me?

5 A I do not.

6 Q All right. Now, sir, in the media release itself
7 there's mention of the coroner's report, the
8 coroner's autopsy, and contained in that report
9 was a conclusion that Frank Paul's death was an
10 accident.

11 THE COMMISSIONER: Where was that, Mr. Kelliher, please? In
12 the media --

13 MR. KELLIHER: Yes, in tab 22 in the larger binder.

14 THE WITNESS: Yes, I see that. Page 1, second to last
15 paragraph.

16 MR. KELLIHER:

17 Q Sir, do you know why that was included in the
18 media statement?

19 A I do not.

20 Q Were you of the view at the time you signed off on
21 that statement that it might convey to the public
22 that Frank Paul's death was an accident?

23 A It may have, yes.

24 Q And combined with the statement that there was
25 insufficient evidence to found criminal charges do

1 you think that might have conveyed to the public
2 two things; one, the investigation was complete
3 and thorough, and two, the police had done no
4 wrong?

5 A No, I'm not sure that it would or wouldn't. What
6 was being conveyed was the fact that we didn't
7 view the facts against the individuals as being
8 sufficient to warrant a charge. That's as I
9 understand it.

10 Q But if you link that with the coroner's finding
11 that it was an accident, is it reasonable -- do
12 you think it might reasonably be assumed by the
13 public that the Criminal Justice Branch was
14 advancing the death of Frank Paul as being an
15 accident?

16 A No, I think that setting it out I think is just
17 simply a factual kind of foundation, I don't see
18 it as being -- I don't see the purpose of the
19 communication as being one to protect the police
20 in any fashion. As I understand it it was simply
21 as it's supposed to be, a factual underpinning
22 explaining why we've come to a decision and what
23 the background information is.

24 Q All right. By this time the media release had
25 occurred Mr. Ryneveld, the Police Complaint

1 Commissioner, had released a report on the Paul
2 matter including the investigation; correct?

3 A That could be.

4 Q And he, you may recall, concluded in that lengthy
5 report that he sent to the Attorney General's
6 office that the investigation was flawed and
7 incomplete. Do you recall being aware of that at
8 the time you signed off on the media statement?

9 A I'm not certain.

10 Q All right. But you did have the report?

11 A I assume that I did. I don't know whether or not
12 I took the materials and simply passed it on to
13 Mr. Hicks or whether I did a review of the package
14 before it went to Mr. Hicks. I'm not certain.

15 Q Right. See, the question is why would the
16 Criminal Justice Branch include the coroner's
17 finding that it was an accident and not include
18 the Police Complaints Commissioner's finding that
19 the investigation was flawed and incomplete?

20 A I'm working on the assumption that we had
21 completed the task with the materials that we had,
22 and we had concluded that we couldn't proceed with
23 a criminal prosecution based on what we had.

24 Q Right. So it's neither here nor there that the
25 Criminal Justice Branch chose to include what the

1 coroner's view was and not what the Police
2 Complaints Commissioner's view was of the
3 investigation?

4 A I suppose you could have included both. I don't
5 know. You could have excluded, I suppose, the
6 coroner's report as well.

7 Q All right. Sir, did you consider when you signed
8 off on this media release that by advising the
9 public that on the basis of the evidence that you
10 had before you there was an inadequate basis to
11 find criminal culpability that it would leave open
12 in the public mind that the investigation was
13 complete and thorough and therefore these police
14 officers, it couldn't be proven that they had done
15 anything wrong?

16 A No, I don't think the media statement addressed
17 the adequacy or inadequacy of the investigation.

18 Q Right. Do you think it would have been more
19 representative of the facts if the Criminal
20 Justice Branch would have said in its media
21 statement that the criminal investigation was
22 flawed and incomplete and we are therefore unable
23 to have evidence before us that would permit us to
24 bring the matter to a substantial likelihood of
25 conviction?

1 A I suppose that could have been included or a
2 statement to that effect.

3 MR. KELLIHER: All right. Thank you, very much, sir. Those my
4 questions, Mr. Commissioner.

5 THE COMMISSIONER: Thank you, Mr. Kelliher. Just give me a
6 moment, Mr. Ward, will you please. All right
7 Mr. Ward. Thank you.

8 MR. WARD: Thank you.

9 EXAMINATION BY MR. WARD:

10 Q Sir, there's a document in evidence, you don't
11 need to turn to it necessarily, but it's Exhibit
12 number 7 which indicates that there are about 460
13 Crown counsel now employed by the Criminal Justice
14 Branch. Does that sound about right?

15 A It's in the neighbourhood, yes.

16 Q And can you tell us how many of them are of First
17 Nations heritage?

18 A People who have self-identified as First Nations
19 there are seven. At least that's what I'm
20 advised.

21 Q Are you able to say what the numbers may have been
22 during the time frame that the Frank Paul matter
23 was under consideration, which was essentially
24 1999 to 2004?

25 A I don't know that there would be any difference.

1 THE COMMISSIONER: There would be seven then?

2 THE WITNESS: I would guess probably. In terms of the total
3 First Nations people with the branch there are 15.
4 That includes the administrative support staff as
5 well. So that apparently works out, I am told, to
6 about 1.8 percent of the Crown population, both
7 administrative support and lawyers.

8 MR. WARD: Thank you.

9 Q And does the branch endeavour in its hiring
10 practices to try to make its personnel
11 representative of the population of the province
12 as a whole?

13 A We've actually got a project that we're working on
14 with the Crown Counsel Association, a diversity
15 project to address in a more active way that very
16 issue.

17 Q And diversity I take it would include gender
18 diversity as well as a person's heritage and
19 cultural backgrounds?

20 A Yes. In actual fact in terms of gender the branch
21 probably in terms of lawyers has I would think
22 probably very close to 50 percent.

23 Q Now, sir, from your perspective as, and I'm going
24 to say ADAG if that's all right. Is that the
25 common acronym?

1 A It is.

2 Q From your perspective as ADAG in dealing with the
3 Frank Paul file can you pinpoint for me when the
4 no charge decisions were made and by whom with as
5 much precision as possible? And it may assist you
6 to have perhaps Exhibit 5 and Exhibit 1, which are
7 the chronology and the binder of opinions
8 respectively.

9 A I think I have Mr. Fitch's chronology.

10 MR. PECK: With respect, Mr. Commissioner, this seems to me to
11 be utterly repetitious. We've heard this
12 repeatedly.

13 THE COMMISSIONER: Yes, we have.

14 MR. PECK: We've got the chronology. I don't know why we're
15 doing it again.

16 THE COMMISSIONER: We've had this before, Mr. Ward, but perhaps
17 you could explain why you wish to deal with it
18 now.

19 MR. WARD: Because I want to refer to the policies. And it may
20 be that I'm slow, but it's not clear to me who
21 made the decisions and when. It may be clear to
22 others.

23 THE COMMISSIONER: Well, we did hear that the other day, and I
24 think from several sources, if I remember
25 correctly.

1 MR. WARD: All right. I'll move on.

2 Q Do you have a policy volume, Volume 4 before you?

3 A I do.

4 Q And I don't want to be repetitive, but the
5 policies found at tab B make it very clear that
6 whenever there's a police involved death the
7 Regional Crown Counsel must forward a memorandum
8 in the form prescribed in paragraph 3 of the
9 policy to the Director of Legal Services for that
10 person's review and decision. I'm looking at, for
11 example, B2, the policy in effect as of October 1,
12 1999.

13 A Yes.

14 Q And a copy of that must go from the Director of
15 Legal Services to the ADAG?

16 A Correct.

17 Q Now, it's clear from your review of the Frank Paul
18 file that the part of the policy that required a
19 memorandum in the form prescribed in paragraph 3
20 was not followed; correct?

21 A I haven't seen one. I haven't seen all the
22 material so I don't know, but I don't know that I
23 -- let me put it this way, I haven't seen one.

24 Q And if there isn't one then that part of the
25 policy was not followed?

1 A May well have been.

2 Q And the policy makes it clear that the ultimate
3 decision on whether to approve or lay a charge
4 rests with the Director of Legal Services, at
5 least after the first day of October 1999 to the
6 present?

7 A That's correct.

8 Q And who were, sir, the holders of that office in
9 the period under consideration?

10 THE COMMISSIONER: That's 1999?

11 MR. WARD: Yes, to present.

12 THE WITNESS: I believe that Peter Ewert was at an earlier
13 stage and then Greg Fitch succeeded him.

14 THE COMMISSIONER: Peter Ewert was the regional --

15 THE WITNESS: The Director of --

16 THE COMMISSIONER: Legal Services?

17 THE WITNESS: Yes.

18 MR. WARD:

19 Q Do you know from when to when?

20 A No, but he would have ended his stint somewhere
21 around '99, he would have retired about then, and
22 Greg Fitch went in for a period of time and then
23 Geoff Gaul and then Brian Rendell.

24 Q Can you say anything about the time periods that
25 those persons occupied that office?

1 A I couldn't give you the length of time. Peter
2 Ewert was there for a considerable period of time
3 and then he retired. Greg Fitch was there for a
4 period of time here, because the correspondence
5 clearly shows it was directed to him in that
6 capacity, but it meant a lot of travel for Greg
7 coming over to Victoria and then as a result of
8 that he moved on to the Court of Appeal and
9 Special Prosecutions Unit.

10 Q Now, sir, the last decision not to lay charges in
11 respect of the Frank Paul matter was made sometime
12 in 2004; correct?

13 A Yes. I believe that's correct, yes.

14 Q And specifically sometime between April and June?

15 A Yes.

16 Q And Geoff Gaul was the Director of Legal Services
17 at that time; correct?

18 A Correct.

19 Q So according to the policy of the branch he was
20 the decision maker charged with the responsibility
21 of making a decision on whether or not to approve
22 or lay charges in this case; correct?

23 A Yes, he ought to have been.

24 Q And no one else according to the policy; correct?

25 A No, that's correct.

1 Q And he was the author of the media statement?

2 A That's correct.

3 Q So it's a reasonable inference given the policy
4 and the media statement that Mr. Gaul made the
5 decision not to approve charges?

6 A No, I don't think that's accurate. I think that
7 he was left out of the loop, if you will. That
8 position, Director of Legal Services, is one which
9 people perpetually get swamped in. We have the
10 same situation going on right now where Brian
11 Rendell is completely buried with domestic
12 violence issues. If I were to give him a file to
13 review afresh it may not happen for a long period
14 of time. Geoff Gaul at that time was having some
15 of the same issues. I would give him something
16 and I would have to go down and collect it back
17 and do it myself. Simply put it's a question of
18 in some cases just simply being able to get to the
19 work. And Peter Ewert had previously been in that
20 position. Peter Ewert had the experience of that
21 position, he had reviewed it and so that would be
22 part of the reason that I would have sent it to
23 him.

24 Q But he wasn't a special or an ad hoc prosecutor?

25 A He was an ad hoc prosecutor.

1 Q Oh, he was?

2 A 'Cause he was not with the branch when it was sent
3 it to him. He retired probably in about 1999 and
4 I sent it to him in 2004 or something like that.

5 Q So did you consider him to be making the final
6 decision on the Frank Paul matter in the capacity
7 of an ad hoc prosecutor?

8 A Yes.

9 Q I see. What is the rationale for this special
10 policy applicable to police officers and
11 specifically allegations that they may have caused
12 deaths, what is the rationale for these policies,
13 do you know?

14 THE COMMISSIONER: Which policy are you looking at?

15 MR. WARD: They're all of the ones at tab B.

16 THE COMMISSIONER: Tab B, yes. Okay.

17 MR. WARD: Yes.

18 THE WITNESS: It's a practice that the branch has had in place
19 for as long as I've been prosecuting there's been
20 a process to deal with police officer death files
21 in a way that's central. I believe probably there
22 was a belief that there was a need at some point
23 in time for consistency. David Winkler for many
24 years was the senior prosecutor who would make
25 decisions on these cases so that you had one point

1 of entry. When he left the resources then became
2 a greater challenge. You'll note that as the
3 policies go it used to go to basically one person
4 and then the Assistant Deputy Attorney General
5 would render that decision. It's simply these
6 days it's not possible that I could possibly do
7 that. And you see the push down going so that
8 basically now these cases are decided at the
9 regional level unless there's some reason that it
10 can't be done there. It's simply policies driven
11 by resources, if you will.

12 Q Well, that's not what the policy says though, the
13 current one, does it?

14 A M'hm.

15 Q And I'm speaking specifically of death cases.

16 A Yes. The current policy at --

17 Q Oh, as of 2005 it has changed; is that right?

18 A Yeah.

19 Q Okay.

20 A It only comes to headquarters if there's a
21 conflict of interest or some perception that the
22 public would feel more comforted by the fact that
23 it was dealt with out of headquarters as opposed
24 to out of the region, but otherwise it's dealt
25 with in the region.

1 THE COMMISSIONER: In the case of Paul you dealt with this
2 directly?

3 THE WITNESS: I dealt with it but not by way of decision.
4 Basically I sent it out to Peter Ewert as the
5 former individual who'd had the capacity as
6 director, and then I reviewed basically prior to
7 that happening all of the opinions to satisfy
8 myself that the decisions were within the
9 parameters that would be acceptable. In legal
10 decisions like this, as you know, there isn't
11 always just one way to look at the issue or one
12 decision that can be made, it's a question of
13 whether or not they're in the same ballpark.

14 THE COMMISSIONER: I see, but you had looked at it and then
15 sent it out?

16 THE WITNESS: That's correct.

17 MR. WARD:

18 Q Sir, I'm going to move to something else. In your
19 will say statement marked as Exhibit 11 you said
20 towards the bottom of the first page, I'll quote
21 it:

22 The file arising out of Mr. Paul's death was
23 reviewed by a number of senior Crown counsel
24 over the course of time. It is unusual for a
25 file to get this kind of concentrated

1 attention by so many senior Crown lawyers.

2 A Yes.

3 Q Can you explain why this unusual level of
4 attention was afforded this particular file?

5 A On several occasions the Police Complaints
6 Commission, firstly in 2000, asked us to review
7 the matter a second time. Matt Adie contacted
8 Austin Cullen. In some cases where that kind of
9 request would be made the Crown would say no,
10 we've reviewed the matter and we've made our
11 decision. In this case it was reviewed yet again.
12 Austin Cullen asked Mr. Fitch to review it.
13 Mr. Fitch asked for an opinion from Joyce
14 DeWitt-Van Oosten. She passed that on to him.
15 Mr. Fitch met with Mr. Hicks and saw that there
16 was a consensus as between them in terms of that
17 outcome. And then in 2004 Dirk Ryneveld forwarded
18 it to the Attorney General. Once again because of
19 Mr. Ryneveld's status and my knowing who he was,
20 and the confidence in his usual good judgment, we
21 again reviewed it. So it's not usual that you
22 would get that kind of review. And certainly the
23 people who were looking at it were certainly the
24 senior people within the branch in terms of
25 Mr. Fitch. Ms. Van Oosten had only joined

1 headquarters for a short time, but I can say
2 without any hesitation she's probably one of the
3 brightest lawyers within the branch.

4 Q Thank you for that. So the level of attention was
5 triggered by the OPPC's correspondences with the
6 branch?

7 A Yeah, or the ministry.

8 Q Did the public attention, and perhaps controversy
9 that the media coverage was generating with
10 respect to the Frank Paul case play a role in
11 forwarding or providing this level of attention to
12 the file?

13 A No.

14 Q And why is that?

15 A Not infrequently when you make difficult decisions
16 there will be 50 percent of the people who will
17 understand it and 50 percent of the people who
18 won't. Difficult decisions on difficult files
19 bring controversy. The commission hearing here is
20 bringing tremendous press coverage, but that's
21 what happens when you have a difficult decision
22 being taken and people having a strong public
23 interest in it.

24 Q Was the concentrated attention by so many senior
25 Crown lawyers afforded this file unique in your

1 ministry's handling of police involved death
2 cases?

3 A Oh, I couldn't say unique. I just -- we've had
4 other high profile cases in the past. I can't
5 tell you how many individuals would have reviewed
6 those cases, but this is certainly unusual.

7 Q Well, police involved death cases are a class of
8 cases, I suggest, that pose difficulty for the
9 branch and attract concentrated attention by
10 senior Crown lawyers. Is that fair?

11 A I'm not sure why you say it poses difficulties for
12 the branch. Our job is to dispassionately,
13 objectively review files and make decisions
14 whether or not it be a police officer or any other
15 citizen.

16 Q Well, let me ask you about that. In your tenure
17 you've -- you referred a moment ago to high
18 profile cases?

19 A Yes.

20 Q So profile that a case receives in the public eye
21 is a factor, is it?

22 A No. It's a factor that attracts the public
23 attention the fact that it's high profile. That's
24 what the -- when a case has some public interest
25 in it then you wind up with a significant media

1 coverage.

2 Q And you wind up, I suggest, within the branch
3 giving it concentrated attention by numerous
4 senior Crown lawyers.

5 A No, I don't think that's correct at all.

6 Q Well, are you sure?

7 A Yeah, I'm fairly confident that we would deal with
8 it as appropriately as we ought to.

9 Q Well, after 2005 your policy was changed because
10 of resource issues --

11 A Yes.

12 Q -- such that Regional Crown Counsel would make the
13 final decisions --

14 A That's correct.

15 Q -- in death cases; right?

16 A And I get copies of them and sometimes I review
17 them.

18 Q And you have to be familiar with the case, the
19 incident that occurred after 2005 where a young
20 man in Houston, Ian Bush, was shot in the back of
21 the head by a police officer and --

22 A I'm familiar with that case, yes.

23 Q When he and the officer were alone in a room with
24 no witnesses?

25 A Yes.

1 Q That received concentrated attention by senior
2 Crown lawyers, didn't it?

3 A There was -- you know, I'd have to look at the
4 number of lawyers, but maybe you can assist me.
5 I'm familiar with the fact that it was reviewed by
6 lawyers within the branch and the no charge
7 decision was made. There was a case called
8 Sheremetta, the same sort of scenario. There is
9 the Dziekanski case as well that was looked at by
10 the Deputy Regional Crown with a decision.

11 Q In each of those cases the decision of Crown was
12 that no charges would be laid; correct?

13 A Yes, that's correct.

14 Q Each of those cases attracted public controversy;
15 correct?

16 A Yes.

17 Q And in fact in Dziekanski a public inquiry like
18 this one was held and then after that the case was
19 referred to a special prosecutor for
20 reconsideration of the charge?

21 A That's correct.

22 Q All right. And I suggest that given those
23 examples these types of cases are difficult
24 decisions for the branch; agreed?

25 A I don't think they're difficult ones for the

1 branch. I mean they're always difficult cases,
2 but if you're saying that somehow the branch is
3 not capable of managing those cases in the same
4 way they do others I wouldn't agree. So I'm not
5 sure the word difficult helps me.

6 Q All right. Well, let me endeavour to test that
7 statement. The Ian Bush shooting, sir.

8 A Yes.

9 Q You had two men alone in a room, one armed and one
10 unarmed; correct?

11 A Yes.

12 Q And the armed man shot the unarmed man in the back
13 of his head; correct?

14 A Yes, I guess that's right.

15 Q And there were no witnesses to the shooting?

16 A None that I know of.

17 Q Now, the branch had the armed man not been a
18 police officer wouldn't have had any difficulty
19 with that case; correct?

20 MR. PECK: I'm not sure that's an appropriate question,
21 Mr. Commissioner.

22 THE COMMISSIONER: Perhaps you could rephrase that. I don't
23 know --

24 MR. WARD: All right. Let me rephrase it.

25 Q Had the one fact been changed in the Bush shooting

1 case, the holder of the gun was not a police
2 officer, the investigation by the police of the
3 incident would have followed a course that you're
4 well familiar with as an experienced prosecutor, I
5 suggest. The person with the gun would have been
6 taken into custody, Charter warned and questioned,
7 and then a report to Crown counsel would have been
8 delivered; right?

9 A I guess. I can't speculate on that.

10 Q You can't invoke your years of prosecutorial
11 experience?

12 THE COMMISSIONER: Well, you're asking -- this is outside of
13 his world. It's police procedure, and I don't
14 think it has any real bearing.

15 MR. WARD: All right.

16 MR. COWPER: My concern on your behalf, Mr. Commissioner, is
17 going into other cases which are outside of the
18 terms of reference is an independent concern that
19 I have. I think it's fair for Mr. Ward, and I
20 hear him testing the witness with respect to the
21 influence of media attention on the branch's
22 procedures, and certainly this case, the case
23 we're inquiring into gives him ample ammunition to
24 test the witness on that. But particularly given
25 the fact that we are dealing with other cases on

1 which we have no notice of the facts and we have
2 no licence to inquire into them, I think we have
3 to be cautious about asking questions about what
4 was or was not done. In addition, I think my
5 friend's actually trespassing on the exercise of
6 prosecutorial discretion in those cases in
7 suggesting that there was any wrong decision made
8 in those cases in the entire absence of any
9 factual record or any licence to test that.

10 THE COMMISSIONER: Thank you. Well, I think Mr. Ward knows
11 from my remarks that this line is of no value to
12 me really.

13 MR. WARD: Thank you. I'll move on.

14 Q Sir, you occupied the office of ADAG starting in
15 2001; correct?

16 A March the 23rd, 2001, that's correct.

17 Q And according to a document in evidence, which is
18 the appendix to the Owen report, there were 127
19 police involved deaths between 2001 and October of
20 2007. That's what the document says. According
21 to the Crown policies you would have received the
22 file materials on all of those, many or all of
23 those?

24 A I expect so.

25 THE COMMISSIONER: Between, I'm sorry, what years?

1 MR. WARD: 2001 and October 2007, 127 police involved deaths.

2 THE COMMISSIONER: Thank you.

3 MR. WARD:

4 Q And the policy says what it says, the file
5 materials would come to you?

6 A Yes.

7 Q All right. To your knowledge did any of those
8 files result in the approval of charges of
9 culpable homicide or criminal negligence causing
10 death or failing to supply the necessaries of life
11 against any of the police officers involved?

12 A I can't say for sure. It certainly wouldn't be
13 very many if any. There was a case involving a
14 death in a driving case in the valley, and I don't
15 know what the nature of the charge is offhand, so
16 I couldn't tell you whether or not that charge
17 resulted in the criminal negligence causing death
18 type charge, I just don't know. But it's
19 certainly not common.

20 Q All right. You yourself, sir, have had prosecuted
21 since what, 1979?

22 A That's correct.

23 Q Surrey, New Westminster and Vancouver?

24 A One case probably in Vancouver and a few in the
25 Court of Appeal, but mostly in the valley.

1 Q And therefore it's been what, some 32 years that
2 you have been employed by the Criminal Justice
3 Branch in various capacities?

4 A Thirty-one anyway.

5 Q Thirty-one?

6 A It feels like it.

7 Q In your prosecutorial career you must have
8 prosecuted hundreds of cases, I suggest.

9 A You get a lot of cases.

10 Q And approved many, many charges?

11 A Yes.

12 Q Before you considered the Frank Paul case in your
13 capacity as ADAG had you ever prosecuted a police
14 officer who is charged with either manslaughter,
15 criminal negligence causing death or failing to
16 provide the necessaries of life in a case that
17 arose from his death of an aboriginal person?

18 A You're not suggesting that I'm prosecuting as an
19 ADAG.

20 Q No, prior to.

21 A Prior to that I have prosecuted some police
22 officers, but never for death as I recall.

23 Q Never for the death of anyone let alone an
24 aboriginal person?

25 A Oh, no, I've prosecuted murder cases.

1 Q No, I'm sorry. You've never prosecuted a police
2 officer --

3 A For a murder case.

4 Q -- for a culpable homicide or criminal negligence?

5 A No, not that I can recall. I have prosecuted
6 police officers though.

7 Q I understand. Had you ever in your prosecutorial
8 career approved a charge of manslaughter, criminal
9 negligence causing death or failing to provide the
10 necessaries of life in a case where the potential
11 accused was a police officer?

12 A Not that I recall.

13 Q Yesterday, sir, as I recall Judge Hicks's
14 testimony he said that police investigators should
15 address cases involving police officers, should
16 approach those types of cases as they would in a
17 case involving any member of the community. Do
18 you agree with that sentiment?

19 A I can't think of any reason why I wouldn't.

20 Q Does that principle apply to the Crown as well?

21 A How do you mean it?

22 Q Crown prosecutors, should they approach every case
23 whether it involves a police officer who killed
24 someone or an ordinary citizen who killed someone
25 the same way?

1 A Yes.

2 Q But you concede there is a very different charge
3 approval process in writing for people who hold
4 the occupation of peace officer than for everybody
5 else in society?

6 A That's correct.

7 Q Your will say says at the very end, page 5:

8 The fact that Mr. Paul was an aboriginal
9 person did not play any part in the charge
10 approval process that I saw, nor did the fact
11 that the potential accused were police
12 officers.

13 Do you see that?

14 A Yes.

15 Q Is that your sworn testimony, sir?

16 A Yes.

17 Q So the fact that the potential accused in the
18 Frank Paul matter were police officers played no
19 part in the charge approval process in this case?

20 A That's correct.

21 MR. WARD: Thank you, sir, those are my questions.

22 THE COMMISSIONER: Any questions, Mr. Hern?

23 MR. HERN: I probably have five minutes of questions,
24 Mr. Commissioner.

25 THE COMMISSIONER: Yes.

1 EXAMINATION BY MR. HERN:

2 Q Mr. Gillen, I'm counsel for the Vancouver Police
3 Department. You testified in response to a
4 question from Mr. Kelliher that you supposed a
5 statement could have been included in the press
6 release that the reason there were no charges was
7 because of a flawed and inadequate investigation,
8 but that wasn't the finding of any of the people
9 in the Criminal Justice Branch who reviewed the
10 investigative report?

11 A There were no opinions that stated that that I can
12 recall, that's correct.

13 Q Right. And, in fact, you testified on Monday that
14 the Criminal Justice Branch had, as I noted it,
15 "absolutely no ability to know if a report to
16 Crown counsel was substandard." Do you recall
17 that?

18 A That's correct.

19 Q And in the last section of your --

20 A I did state, however, that if there was obvious
21 omissions that you could see we could do
22 follow-up.

23 Q Right. You could request further investigation
24 such as requesting an interview be conducted or
25 something?

1 A Yes.

2 Q And in the last part of your will say statement
3 you reiterate that. On page 5 you state:

4 I relied on the completeness of the file in
5 an evidentiary sense based on what the police
6 provided as CJB has no independent
7 investigatory authority.

8 A Correct.

9 Q And so isn't it that what you were meaning in your
10 response to Mr. Kelliher was that when -- that the
11 media statement could have said that the reason
12 charges were approved -- sorry, that the reason
13 that charges weren't approved was because of a
14 flawed investigation, what you meant by that, sir,
15 is that if that were true the media statement
16 could have said that, but that wasn't your
17 opinion, and it wasn't the opinion of any of the
18 people in your branch?

19 A I don't know what their opinions were, and all I
20 had was the opinions of those people, and there
21 was no indication in them of the incompleteness of
22 the investigation. It was obvious from the
23 opinions that follow-up had been done by both
24 Austin Cullen and by Michael Hicks.

25 Q So the suggestion that such a statement as

1 Mr. Kelliher put to you could have been included
2 in the press release is just speculation?

3 A Yes.

4 MR. HERN: Thank you.

5 THE COMMISSIONER: Any further questions? Mr. Peck.

6 MR. PECK: Thank you.

7 EXAMINATION BY MR. PECK:

8 Q Just one area flowing from Mr. Kelliher's
9 examination of you, and would you please pull up
10 the green binder, CJB binder Volume 1.

11 A I have it.

12 Q And turn to Mr. Hicks' letter of tab 9.

13 A Yes.

14 Q Starting at page 9.

15 A Yes.

16 Q The paragraph Mr. Kelliher drew your attention to
17 at the bottom of the page:

18 The Crown is not in a position to prove a
19 wanton and reckless disregard for the safety
20 of Mr. Paul on the evidence available and for
21 the reasons earlier stated by members of this
22 branch.

23 The latter phrase, what did you take that to mean?

24 A The other opinions that had been expressed before
25 him.

1 Q Incorporated by reference?

2 A Correct.

3 Q The next page, please, page 10, middle of the
4 page. The paragraph reads:

5 In these circumstances, whether or not
6 Sergeant Sanderson might be found to have
7 been civilly liable in negligence, his
8 conduct could not be proven beyond a
9 reasonable doubt to have reached the level of
10 criminal culpability.

11 A Yes.

12 Q What do you take that to say? What did you take
13 that to mean?

14 A I took it to mean that while the sergeant may well
15 be civilly liable for his actions or conduct that
16 you could not prove on the criminal standard a
17 prosecution.

18 Q Finally, on Monday Mr. Kelliher, and I'm asking
19 him through you, Mr. Commissioner, to correct me
20 if I'm wrong, put to you this proposition that
21 both Urban and Ryneveld had different views of
22 whether or not a prosecution could flow. Before
23 you answer that give Mr. Kelliher a chance to
24 object.

25 MR. KELLIHER: I make no objection, Mr. Commissioner.

1 THE COMMISSIONER: Thank you.

2 MR. PECK:

3 Q Do you recall that?

4 A Yes.

5 Q All right. Did Mr. Ryneveld in fact ever
6 communicate to you his view about the
7 prosecutorial manner in which this case should
8 proceed?

9 A We may have had discussions, but I have no
10 recollection of him having one position or
11 another.

12 MR. PECK: Thank you, those are my questions.

13 THE COMMISSIONER: Mr. Cowper?

14 MR. COWPER: I have no questions arising. I think the witness
15 can be excused.

16 THE COMMISSIONER: Thank you, Mr. Gillen, you're excused.

17 THE WITNESS: Thank you, Mr. Commissioner.

18 (WITNESS EXCUSED)

19 MR. COWPER: That completes the evidence, Mr. Commissioner. I
20 have no notice of any other witnesses at this
21 stage and so we've completed, subject to the
22 comments I made earlier, the evidentiary portion
23 of the hearings. And just for the purpose of the
24 record we will be conducting a policy hearing on
25 November 23rd, Tuesday, November 23rd, and that

1 will be published on --

2 THE COMMISSIONER: Starting on Tuesday the 23rd?

3 MR. COWPER: Starting on the 23rd. At this point we do not
4 have notice of any request for a second day. If a
5 second day is required we reserved the 22nd day of
6 November, which is less convenient to people's
7 calendars, and we'll add a day of hearings if
8 that's required. And I should also say that --

9 THE COMMISSIONER: I don't quite follow that. You said we're
10 going to start on the 23rd, but if that doesn't
11 work we're going to start on the 22nd?

12 MR. COWPER: Well, it may be that you didn't follow it because
13 it was difficult to follow. So on the 23rd we'll
14 have a panel on the policies by the Criminal
15 Justice Branch. We'll also have the evidence of
16 David Layton who has provided us with an opinion
17 on the ethics and other dimensions of the division
18 between investigation and criminal prosecution.
19 They are scheduled for the 23rd of November come
20 what may. We have no other presentations
21 scheduled. If anybody else wishes to schedule a
22 witness, then we will schedule them for the 22nd.
23 So the 22nd is still open. I have had some
24 suggestions of additional witnesses that we're
25 still following up on, and we'll announce any

1 additions to the schedule.

2 THE COMMISSIONER: All right. I understand then. Thank you.

3 MR. COWPER: So the first is second and the second is first,
4 and that there's some support for that in ancient
5 literature, I think.

6 THE COMMISSIONER: I had to think about that for a minute, but
7 I think I have it now. Thank you. Mr. Ward?

8 MR. WARD: Yes, I'm troubled in two respects by what I've just
9 heard, Mr. Commissioner. I believe I notified my
10 friend that I was unavailable on the 23rd. I'm in
11 a -- actually giving a conference or giving a talk
12 at a policing conference that day and I --
13 however, the 22nd was open to me. The second
14 difficulty I have with what I've heard is that I
15 had some time ago suggested some panel members
16 that I certainly don't have the ability or the
17 resources to bring, but who I felt would be useful
18 to make a contribution to this part of the
19 hearings, and I've heard no mention of whether
20 that might be happening. So I can take this up
21 with my friend Mr. Cowper, but I just wanted to
22 record my difficulties.

23 THE COMMISSIONER: You can't come on the 23rd?

24 MR. WARD: I can't come on the 23rd because I have prior
25 commitments to speak at a conference on policing,

1 which is in Vancouver, and I can perhaps find out
 2 exactly what time I'm required, but it is a
 3 two-day conference on the 23rd, 24th. And it's
 4 been in my calendar for quite some time, and when
 5 dates were canvassed I alerted counsel to that. I
 6 would like to participate obviously in the panel
 7 discussion because my clients are very interested
 8 in it, but that's the problem. Maybe we can speak
 9 about it and try to resolve it.

10 THE COMMISSIONER: All right. Mr. Cowper?

11 MR. COWPER: Well, I'll just say I don't think we can resolve
 12 the scheduling problem. No one is available for
 13 all the two possible dates, so we're having
 14 trouble. BC Civil Liberties is not available the
 15 23rd either. I'm not available the 22nd and other
 16 counsel are not available the 22nd. So we'll
 17 review it and do the best we can, and I'll speak
 18 to Mr. Ward directly. I will say this, and that
 19 is we are making further inquiries as I said, I
 20 hope he heard me, about people who have been
 21 suggested to be additional witnesses and we'll let
 22 everybody know what our view of that is, and the
 23 resourcing issue shouldn't be a problem. Thank
 24 you.

25 THE COMMISSIONER: Well, once you have it resolved as well as

1 you can have it resolved you'll put that on the
2 website?

3 MR. COWPER: Yes.

4 THE COMMISSIONER: And notify counsel directly by e-mail. All
5 right. Well, I'm sure you'll strive to get as
6 many of counsel as you can there, and I understand
7 that it may not be possible to have everyone
8 attend on a day because there are quite a number,
9 but I'll leave that in your capable hands and you
10 can let me know in due course. My understanding
11 is that we have a facility booked for the 22nd and
12 23rd if needed, and if that isn't going to work
13 we'll have to make other arrangements I guess.
14 Thank you. Mr. Peck?

15 MR. PECK: Mr. Commissioner, either day will work for the
16 Criminal Justice Branch. The 23rd is preferable.
17 We have three senior members of the branch coming
18 to make a presentation and to respond to
19 questions. I'm asking through you now, or I'm
20 asking to notify counsel through you, I've already
21 spoken to Mr. Ward and I believe Mr. Kelliher, but
22 in any event if any counsel representing any party
23 in these proceedings has specific areas of policy
24 they wish addressed or specific questions, if they
25 could get them to us, to me, Mr. Willms. Now,

1 Mr. Cowper has already done that so we know what
2 areas he wants addressed, but I'm making the same
3 request of everyone else so that our people can do
4 their work and be prepared to answer from an
5 informed and knowledgeable position.

6 THE COMMISSIONER: Yes, and I think it might speed up the
7 process as well. Mr. Kelliher, if you could
8 please keep that in mind if you do have some
9 specific areas you want the branch to deal with
10 you could communicate with Mr. Peck.

11 MR. KELLIHER: Certainly. Thank you.

12 THE COMMISSIONER: Thank you. And, Mr. Ward, would you do the
13 same then?

14 MR. WARD: Yes. Thank you.

15 THE COMMISSIONER: I know what your problem is, Mr. Ward, and I
16 certainly would like to have you there, but you
17 said it was a two-day conference. Is there any
18 way that they could move you to the 24th and you
19 could be available on the 23rd, or do you know?

20 MR. WARD: I've seen the schedule and it's -- it's several
21 panels and I'm one of them on the 23rd. I'll make
22 inquiries.

23 THE COMMISSIONER: It looks like it's cast in stone then.

24 MR. WARD: We'll do our best.

25 THE COMMISSIONER: All right. I'll leave it in your hands and

1 you can communicate with Mr. Cowper and see if you
2 can't work that out then. So at this time we'll
3 adjourn then until the 23rd unless we hear
4 differently. Is that correct?

5 MR. COWPER: That's correct.

6 THE REGISTRAR: Order.

7 (PROCEEDINGS ADJOURNED AT 11:11 A.M.)

8 I hereby certify the foregoing to be a
9 true and accurate transcript of the
10 proceedings herein transcribed to the
11 best of my skill and ability.

12

13

14 Peri McHale

15 Official Reporter

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