

Commission of Inquiry
Into the Wrongful
Conviction of David Milgaard
before
THE HONOURABLE MR. JUSTICE
EDWARD P. MacCALLUM

Transcript of Proceedings
and
Testimony before the Commission
sitting at the
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Volume 27

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 10:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

Good morning, Mr. Lockyer.

MR. LOCKYER: Mr. Commissioner, Mr. Hodson has been kind enough to look into the issue of which way around the various statements were and he and I talked about it this morning and I think our provisional opinion is this, and it's subject to correction if people, other people don't think it's right, and it does explain everything pretty nicely. You remember yesterday I produced a March 2nd police report referring to a statement from Wilson which predated the statement that we know about by day. There now seems to be good reason to believe that Wilson first spoke to the police sometime on the evening of March 2nd, that would explain the March 2nd report.

COMMISSIONER MacCALLUM: Right.

MR. LOCKYER: But that's not, though, the statement that he gave the next day, that he also then gave the statement the next day --

COMMISSIONER MacCALLUM: Right.

MR. LOCKYER: -- that David Milgaard was interviewed at 9:30 in the morning on the 3rd and



1 then after that Wilson was interviewed again and
2 then that helps explain some of the way the
3 questions were put to David by Karst when he was
4 questioning him in that he seems to have
10:02 5 information already from another source that it
6 would only make sense was Wilson, because it was
7 information that Cadrain wouldn't have had
8 because it was about the trip, if you remember.

9 COMMISSIONER MacCALLUM: Yes.

10:02 10 MR. LOCKYER: Before they even bumped into
11 him, before they found Cadrain, so subject to
12 correction, that's sort of the way it appears it
13 may have happened.

14 COMMISSIONER MacCALLUM: Thank you.

15 **NICHOL JOHN, continued:**

16 **BY MR. LOCKYER:**

17 **Q** So if I can then proceed. Now, Ms. John, you
18 remember that yesterday afternoon we were -- you
19 and I were examining your, how your memory could
10:03 20 have been what it was on March 11th and how it was
21 you could have signed the document that you did
22 which said something very different on May the
23 24th. Do you remember that?

24 **A** Yes.

10:03 25 **Q** That 10 week period in other words, the sort of



1 interregnum there we were looking at, and really
2 the focus for all these 36 years, and indeed to
3 some extent as well at this hearing, has been on
4 your memory failure, if it can be called as such,
10:03 5 insofar as it applies to January, the events of
6 January 31st; right? That's really been the focus
7 for all this time?

8 A Right.

9 Q When I suppose equally the focus could have been
10:03 10 on your memory failure as to those three days, of
11 May the 22nd, the 23rd and the 24th in particular,
12 when suddenly by some extraordinary feat you came
13 to sign the document that you did on May the 24th.

14 A Okay.

10:04 15 Q That's really, that's another memory failure
16 that's worth looking at isn't it?

17 A Correct.

18 Q And that's what we were trying to do yesterday
19 afternoon. So the focus then is not what did you
10:04 20 see on January 31st, but what happened to you
21 between March 11th and May 24th.

22 A Okay.

23 Q All right. And I know that yesterday several of
24 the other counsel questioned you about whether the
10:04 25 police treated you properly and whether they were



1 pleasant to you and nice to you and so on and so
2 forth. Do you remember that?

3 A Yes.

4 Q I wasn't actually here for it, but I was told that
10:04 5 those were the kinds of questions that they were
6 asking you yesterday morning, and I suppose if we
7 look at this from the perspective of your memory
8 failure for this period of time, your answers
9 don't really mean a whole lot. Is that fair to
10:05 10 say? I mean, if you can't remember what happened
11 in that period of time, the fact that you say the
12 police, you don't remember the police mistreating
13 you doesn't really mean anything does it, it
14 doesn't mean a lot?

10:05 15 A Correct.

16 Q Right?

17 A Correct.

18 Q I mean, I could equally well say to you do you
19 remember that the police treated you really badly
10:05 20 and you would say no, I don't remember; is that
21 right?

22 A Correct.

23 Q Just as they say to you do you remember the police
24 treated you really well.

10:05 25 A That's right.



1 Q Sort of the same thing?

2 A Yeah.

3 Q So your answers in that regard really have to be
4 taken with a bit of a grain of salt; wouldn't you
10:05 5 agree?

6 A Correct.

7 Q And perhaps the better way of doing this is to
8 examine the little that we can glean from police
9 documents and police evidence for that period
10:05 10 March 11th to May 24th; right?

11 A Okay.

12 Q Because you are no help to us, are you?

13 A No.

14 Q And what we do know, I mean, just looking at it
10:06 15 from a very -- just give me a second to find the
16 document. Sorry, excuse me. Yes, if we could
17 just look at it from -- just look at these days in
18 the May 22nd, 23rd, 24th period, insofar as
19 there's any officers that were aware of, were
10:06 20 dealing with you, it's worth perhaps noting that
21 they were all, as best we can tell, seasoned male
22 detectives; is that right?

23 A I don't know.

24 Q Do you remember dealing with any female officers
10:07 25 at any time?



1 A No.

2 Q No. And just looking, for example, at -- and I
3 don't know how many of these officers you may have
4 dealt with and I don't suppose you'll be able to
10:07 5 tell us as well, but if we look at the occurrence
6 of Karst for May the 25th, '69, page 009264, just
7 to look at this. Wilson -- the day before the
8 police found you on May the 22nd, Wilson is
9 interviewed in Regina, and look at the people who
10:07 10 interview him, he's interviewed at the Regina City
11 Police station by five officers, all males,
12 Detective Sergeant Mackie, Constable Waters --
13 sorry, four, my mistake -- Constable Dike and
14 Karst himself. Do you remember if you had that
10:08 15 kind of treatment as well from time to time?

16 A I don't recall.

17 Q You don't remember. And you remember yesterday we
18 brought up how you were, I think perhaps the best
19 way to put it, best word to use is you were
10:08 20 uprooted from Regina, you, the 16-year-old girl,
21 and taken to Saskatoon?

22 A According to this, yes.

23 Q Yes. It doesn't seem, I don't suppose you have
24 any memory of this, but there's certainly no
10:08 25 reason to believe from any of the police



1 documentation that you were told, by the way, you
2 may not be back here for two or three days?

3 A I don't know.

4 Q I mean, do you remember if they said, you know,
5 maybe you should pack some change of clothes?

6 A I don't recall.

7 Q There doesn't seem to be any suggestion that they
8 did, which would mean that January 22nd, 23rd,
9 24th you are still wearing the same underwear?

10 A Is that in January or May?

11 Q May, sorry, my mistake. May 22nd, 23rd, 24th, not
12 to put too fine a point on it, still wearing the
13 same underwear it seems?

14 A Obviously.

15 Q Sleeping, as we've heard, in a cell in the police
16 station. We heard that during your
17 examination-in-chief; do you remember?

18 A (Nods head).

19 Q Yes. So it doesn't seem, at least from what we
20 can glean from the materials that we have, that
21 you were told, in the vernacular, to bring a
22 toothbrush?

23 A It sounds like it.

24 Q Right. So where we got to yesterday, is we've
25 seen how you gave, you said what you said on March



1 11th, which jibed so well with what David had said
2 and Ron Wilson had said; do you remember that?

3 A Uh-huh, yes.

4 Q And yet you had stuck to your guns or March 18th
10:10 5 when you spoke to the police a second time. Do
6 you remember that? That's in the Regina jail. Do
7 you remember that?

8 A Yeah.

9 Q Yes. That you stuck to your guns on April 14th;
10:10 10 remember?

11 A Yes.

12 Q That you stuck to your guns on May the 22nd in
13 this taped conversation where we don't have the
14 tape any more?

10:10 15 A Was that the last thing we discussed yesterday?

16 Q Yeah, that's when, you remember, we heard how
17 Mackie had conducted a taped interview of you, at
18 least his evidence was he thinks it was him and
19 probably at least one other officer as well on May
10:10 20 22nd, but unfortunately he didn't retain the tape
21 for posterity. Do you remember that?

22 A Yes.

23 Q And he said, in essence, not his words, but you
24 stuck to your guns?

10:10 25 A Uh-huh.



1 Q In other words, what you had said on March 11th,
2 but we're starting to get very close to the
3 document that you signed on May the 24th now,
4 we're less than 48 hours from now, and then we
10:11 5 heard how you were taken for this ride that took
6 you right to the scene of where Gail Miller was
7 killed. Do you remember that?

8 A Yes.

9 Q Yes. And in fact I've taken you through a couple
10:11 10 of references to that where you had sort of
11 incorporated that information into the -- well,
12 you hadn't. I'll put it this way, where the
13 information that you had been shown was
14 incorporated into the document that you signed on
10:11 15 May the 24th; right?

16 A Okay.

17 Q And one reference to that is if you look at
18 065356, please, and in fact the following page,
19 57, and this is the document that you signed on
10:11 20 May the 24th, if you look at the top two lines,
21 they actually have you saying in this document
22 that you signed:

23 "I recall Dave going back in the
24 direction we had spoke to the girl. Ron
10:11 25 went the other way past the funeral



1 home."

2 Now, with respect, Ms. John, there's pretty good
3 reason to believe, if not with certainty, that
4 the first time you had ever seen the funeral home
10:12 5 was on the 22nd of May.

6 A Okay.

7 Q When you were driven there by the police officer.
8 I don't know if anyone is going to suggest that
9 you actually saw it on January 31st, but it seems
10:12 10 a fairly unlikely scenario at this point in time.

11 A Okay.

12 Q Given the DNA results. So do you see how in
13 signing this document you've incorporated
14 information that you had learned just two days
10:12 15 earlier? The funeral home has suddenly become a
16 part of your supposed memory if you did read this
17 document before you signed it, and if you didn't,
18 a part of a document that you signed in any event.
19 Do you see that?

10:12 20 A Yes.

21 Q And as the years have gone by, this funeral home
22 has sort of wafted in and out of your memory; has
23 it not?

24 A I don't know. I wouldn't say it has. I'm not
10:13 25 sure.



1 Q You still sort of vaguely have a memory of it do
2 you?

3 A Well --

4 Q You did at the -- certainly you did I think in
5 your evidence in the Supreme Court of Canada and
6 your evidence at David's trial.

7 A Yeah.

8 Q You referred to it?

9 A A vague building.

10 Q Yes. So it would look like the power of
11 suggestion may have had something of an impact on
12 your memory?

13 A Possibly so.

14 Q Yes. And your evidence at trial was, although I
15 don't know if we really have a record of this in
16 the police documents, but it's interesting, this
17 is what you said at trial, is that you were
18 driven, in your words, I think I'm right in
19 saying, quite a few times to the area by the
20 police. If we look at your trial evidence, at
21 David's trial in 1970, 119115, looking at 119250,
22 and the area referred to in the question put to
23 you by counsel for David back in 1970 is the area
24 of where Gail was murdered. All right?

25 A Okay.



1 Q Here, question -- this is in January of '70:

2 "Q And I take it that you have been driven
3 over that area quite a number of times?

4 A Yes.

10:15 5 Q How many times have you been driven over
6 that area by the police?

7 A It's quite a few, I don't know how
8 many."

9 Do you see what you said at the trial?

10:15 10 A Yes.

11 Q I won't bother to ask you if you remember being
12 asked that question and giving those answers. It
13 seems a bit pointless at this point. So you can
14 see your memory back in January of '70 was you had
10:15 15 been taken to that area not just on January 22nd
16 after you had been driven from Regina to Saskatoon
17 by Mackie, but several other times as well?

18 A Uh-huh.

19 Q And the police documentation -- again, subject to
10:16 20 correction on this, it's such a massive record --
21 is we don't have any other record, through police
22 documents, of the other times that you were taken
23 to the scene?

24 A Okay.

10:16 25 Q But there is no doubt that you were questioned



1 many times, both not just in Court but also out of
2 Court, about what happened on January 31st; right?

3 A Uh-huh.

4 Q Both before and after David's trial; correct?

10:16 5 A Sounds like it, yes.

6 Q I mean we heard, for example, that the prosecutor
7 himself spoke to you on three separate occasions
8 before he called you at the preliminary hearing;
9 right?

10:16 10 A I don't --

11 Q You don't remember that?

12 A No.

13 Q And that's pretty interesting, that three
14 different times the prosecutor interviewed you
10:16 15 before the preliminary hearing. And if we also
16 look at some of the other evidence you gave at the
17 trial, 119275, you said -- and this just really
18 clarifies what you were shown by the police -- you
19 were shown, you are describing Mackie, the trip
10:17 20 with Mackie, here, on the 22nd, you are asked:

21 "... Now, I would assume that you had
22 been driven out in that area ...",
23 again 'area':

24 "... before any statement was obtained?

10:17 25 A Yes.



1 Q Is that correct?

2 A Yes.

3 Q And were there any other policemen there
4 in the car?

10:17 5 A No.

6 Q I see; now, were you shown the
7 approximate spot where it was alleged
8 that the girl's body was found?

9 A Yes, I was.

10:17 10 Q I see; from the car or walking down the
11 lane?

12 A From the car."

13 So you see how you were shown the actual spot
14 where her body was found; right?

10:18 15 A Yes.

16 Q Yeah. It's a bit odd, because it's a couple of
17 days later that you are purporting to say you saw
18 her killed at the spot where the body was found;
19 do you follow, --

10:18 20 A Yes.

21 Q -- if we were to take the contents of the document
22 that you signed on that day; right?

23 A Correct.

24 Q As well, again at trial -- sorry, 119238 -- sorry,
10:18 25 could we go back to 237, my mistake, starting from



1 here:

2 "Q And then I take it that my learned
3 friend ...",

4 this is defence counsel questioning you at the
10:19 5 trial in January of '70:

6 "Q I take it that my learned friend talked
7 about this statement and you had a look
8 at the statement; and I think he read to
9 you something about a funeral home in
10:19 10 that statement?

11 A Yes."

12 You remember, I just read, in fact, that part to
13 you as well?

14 A Yes.

10:19 15 Q "Q And is it fair to say that you of your
16 own knowledge did not remember a funeral
17 home?

18 A Could you repeat that, please?

19 THE COURT: As of when?

10:19 20 MR. TALLIS:

21 Q Well, let me put it to you this way -
22 were you not told by somebody that this
23 building was a funeral home?

24 A Yes.

10:19 25 Q And you didn't realize that it was a



1 funeral home?

2 A No.

3 Q Who told you that it was funeral home?

4 A I don't know; I can't remember.

10:19 5 Q Well, was it a policeman that told you
6 it was a funeral home?

7 A Yes it was.

8 Q I see; so that you wouldn't have been
9 able to describe the building as a
10:19 10 funeral home unless someone had told you
11 that it was a funeral home?

12 A No."

13 So you see now how, if we take your memory in
14 January of '70 as being an accurate one when you
10:20 15 said those words, all right, you see how, slowly
16 but surely, you are being given information about
17 an event that you told the police nothing about
18 whatsoever up to this point in time; all right?

19 A Yes.

10:20 20 Q You were given other information, as well,
21 according to your evidence. 119273, not only are
22 we going to see -- we've already seen you were
23 shown where it was she was killed, Gail Miller,
24 but you were also told how it was that she was
10:20 25 killed to really fill in all the information. And



1 this wasn't read to you last week, this passage,
2 it's at 119273, starting here where counsel says
3 to you:

4 "Q But I suggest to you that you were told
10:20 5 that she had been stabbed in the back?

6 A Yes.

7 Q The coat was held up?

8 A Yes.

9 Q And I suggest to you that reference was
10:20 10 also made that she had been stabbed in
11 the frontal area?

12 A Yes.

13 THE COURT:

14 Q I beg your pardon?

10:21 15 A Yes, I was told that."

16 So you see how not just the where but, also, the
17 how is given to you by the police?

18 A Uh-huh, yes.

19 Q And the how, the stabbed in the back, is
10:21 20 miraculously appearing in the statement or the
21 document that you signed two days later on May the
22 24th; right?

23 A Okay.

24 Q Now that's the extent of the information that I
10:21 25 can suggest directly through the evidence of



1 either yourself or the officers themselves as to
2 the information that was given to you, since they
3 decided not to use tape recorders, whether it was
4 for acoustics or other reasons, that's all I can
10:21 5 give you.

6 But I want to now move you on to
7 the next stage of the process, of the May 22nd to
8 24th, those two or three really crucial days to
9 David Milgaard's future. All right?

10:22 10 A Okay.

11 Q Because we do know that that night, and indeed on
12 the following night as well, you were given -- or
13 you were -- you slept, I'll just put it like that,
14 you slept in the police station, and we heard
10:22 15 something about that during Commission Counsel's
16 examination of you last week; do you remember
17 that?

18 A Yes.

19 Q So I don't want to take you to the passages that
10:22 20 Commission Counsel took you to because it would be
21 kind of repetitive, but you do remember that you
22 were put in the cells and, particularly on the
23 night of August 22nd, and that's where you slept;
24 do you remember that?

10:22 25 A Yes.



1 COMMISSIONER MacCALLUM: August?

2 MR. LOCKYER: What did I say?

3 COMMISSIONER MacCALLUM: August 22nd.

4 MR. LOCKYER: Is that what I said? I'm

10:23 5 sorry, I'm sorry, May 22nd, Sorry.

6 A I knew what you meant.

7 COMMISSIONER MacCALLUM: And you remember
8 that, ma'am?

9 A Yes.

10:23 10 COMMISSIONER MacCALLUM: Thank you.

11 MR. LOCKYER: It's age, Mr. Commissioner,
12 if I can use that as my excuse.

13 COMMISSIONER MacCALLUM: I thought perhaps
14 it was your loss of footing this morning.

10:23 15 MR. LOCKYER: Did you see that?

16 COMMISSIONER MacCALLUM: I didn't see it
17 but --

18 MR. LOCKYER: Yes, it was a bit dramatic, I
19 brought snow all over the place in here.

10:23 20 Anyway --

21 BY MR. LOCKYER:

22 Q I just want to take you to a couple of passages
23 that My Friend didn't take you to as to what
24 happened on that. It's hard to tell, because I'm
10:23 25 not sure that there is any real delineation



1 between the first night you were in the cells and
2 the second night you were in the cells, but one or
3 the other, it was either the night of May 22nd or
4 the night of May 23rd that we're talking about.
10:23 5 If we can go to the trial evidence, 119115, and
6 move to 119283, please.

7 MR. LOCKYER: We call it going for a Burton
8 where I come from, Mr. Commissioner, that's the
9 expression.

10:24 10 COMMISSIONER MacCALLUM: Going for a what?

11 MR. LOCKYER: Going for a Burton.

12 COMMISSIONER MacCALLUM: How do you spell
13 that?

14 MR. LOCKYER: B-U-R-T-O-N, and don't ask me
15 where it comes from, I don't know. It's an
16 English expression, 'going for a Burton', I don't
17 think it's Richard Burton.

18 COMMISSIONER MacCALLUM: I wondered.

19 BY MR. LOCKYER:

10:24 20 Q In any event, starting up here, so as I say, I'm
21 not sure which night we're talking about, whether
22 it's the 22nd or the 23rd, one or the other, it
23 reads as if it is the 22nd but I'm not entirely
24 convinced that it necessarily was:

10:24 25 "Q And it was as a result of something



1 happening in there ...",
2 "in there" being in the cell, you remember you
3 will see at the top:

4 "Q You were pretty unhappy about it?

5 A Yes."

6 Remember that? I think Commission Counsel read
7 you that.

8 "Q And it was as a result of something
9 happening in there that the matron had
10:25 10 to be called to attend to you?

11 A Yes.

12 Q And was a doctor called?

13 A No.

14 Q Just the matron?

10:25 15 A Yes.

16 Q And how were you able to attract the
17 attention of people so as to get a
18 matron there?

19 A I banged on the door.

10:25 20 Q You banged on the door?

21 A Mmhm.

22 Q And was it some little time before a
23 matron got there?

24 A Yes.

10:25 25 Q I see; and was that matron



1 Mrs. Tetreault?

2 A I don't know what her name was.

3 Q You don't know her name; in any event a
4 matron came and you then had her there
10:25 5 for the balance of night?

6 A Yes.

7 Q And did you stay up all night with her?

8 A Most of the night.

9 Q Most of the night; was there a bed in
10:25 10 the cell block separate and apart from
11 in the cells?

12 A Yes.

13 Q I see; and did she stay in the cell
14 block part with you most of the night?

15 A No.

16 Q I see; were you alone?

17 A I was taken out of there.

18 Q You were taken out of there - by the
19 matron?

10:25 20 A Yes.

21 Q And where were you taken to?

22 A Into the matron's room.

23 Q Into the matron's room; and did she then
24 sit up with you most of the night in
10:26 25 there?



1 A No.

2 Q I see; well, where with you taken from
3 there? Did you stay in the matron's
4 room?

10:26 5 A At night?

6 Q Yes.

7 A During the night, yes I did.

8 Q Well, in the bed there?

9 A Well, we brought a mattress in from
10:26 10 the cell block.

11 Q You brought a mattress in from the cell
12 block so that you could lay down in her
13 room?

14 A Right.

10:26 15 Q Did she have a cot to lay on in her
16 room?

17 A Yes she did.

18 Q She did; so that she would be readily
19 available if anything happened again?

10:26 20 A Yes.

21 Q And so I take it that it's fair to say
22 that you were not happy about having to
23 stay even in that room?

24 A No.

10:26 25 Q Is that right?



1 A That's right."

2 So, you see, that's a bit more of a description
3 of the events of that night, madam. And then at
4 119285, the next page, please, this is at line
10:26 5 20:

6 "Q Well I mean, did you want to get out in
7 the morning?

8 A Well, I wasn't locked in at that time.

9 Q No but I mean were you wanting to get
10:27 10 away from the station?

11 A Oh yes.

12 Q You weren't keen on staying there?

13 A No.

14 Q And then in the morning food was brought
10:27 15 up, I take it?

16 A Yes.

17 Q And did the matron take you anywhere in
18 the morning?

19 A I don't know; I can't remember."

10:27 20 Is that your -- are you starting to get an image
21 of this, Ms. John, memory or no memory, of what's
22 happening to you on May 22nd?

23 A No memory whatsoever.

24 Q No, are you starting to get an image now, memory
10:27 25 or no memory, of the events?



1 A Right.

2 Q You are getting an image of what's happening to
3 you?

4 A Right.

10:27 5 Q A 16-year-old?

6 A Yes.

7 Q Right. And when you testified in the Supreme
8 Court of Canada, 013811 is where it starts, and
9 013856 please.

10:28 10 MS. BOSWELL (Document Manager): Could we
11 have the doc. ID, please?

12 MR. LOCKYER: Sorry, yes, 013811. Is that
13 registering? It's the first page of her evidence
14 in the Supreme Court of Canada, if someone has a
10:28 15 -- right, so then go 013856, thank you.

16 BY MR. LOCKYER:

17 Q Right there. You were asked:

18 "Q Did you go ...",

19 this is in the Supreme Court of Canada, so we
10:29 20 have moved to 1992, all right, so we've moved on
21 22 years:

22 "Q Did you go back to the police station?

23 A I don't know.

24 Q Do you recall spending the night in the
10:29 25 cells at the Saskatoon City Police



1 Station?

2 A I don't. The only thing I remember is
3 being really upset, but I don't really
4 remember where I was.

10:29 5 Q You don't have any recollection of where
6 you got upset?

7 A No.

8 Q Do you recall what upset you?

9 A I just have to go on what other people
10:29 10 tell me where I was and -- I just
11 remember being really upset.

12 Q No recollection of what upset you?

13 A No.

14 Q Do you recall how it was resolved, what
10:29 15 was done?

16 A I remember someone bringing me a glass
17 of water and -- it must have been an
18 aspirin or something.

19 Q Who was the someone; a man, woman?

10:30 20 A I'm not sure, sir.

21 Q You don't recall?

22 A I don't remember any more.

23 Q You don't recall where you were when
24 this happened?

10:30 25 A No. "



1 So you say you don't remember, today, being
2 really upset; is that right?

3 A Correct.

4 Q But accepting your memory back in '92, that little
10:30 5 extract there just helps give us a picture of the
6 condition that you were in on the night of May
7 22nd and/or May 23rd, right, --

8 A Right.

9 Q -- of '69. And in the same -- at the same
10:30 10 hearing, madam, at 013894, you are brought back to
11 this, I think it's by Mr. Wolch:

12 "Q Would I be correct in assuming you are a
13 person who has some difficulty, like
14 many others, under stress?

10:31 15 A Yes.

16 Q And that would have been even more so
17 when you were 16?

18 A I would say so, yes.

19 Q And you have memories of being really
10:31 20 upset when you were with the police?

21 A Right."

22 So, again, that just reinforces the image of you
23 during that period of time leading up to the
24 document that you signed on May 24th; all right?

10:31 25 A Correct.



1 Q Now it's interesting that -- to see Detective
2 Mackie's perspective on, particularly on why you
3 slept where you did those two days in the police
4 station, the night of May 22nd and May 23rd,
10:31 5 presumably in the clothes that you had been
6 wearing when you had been picked up in Regina on
7 May 22nd; right?

8 A Correct.

9 Q I mean you didn't just have the same underwear on,
10:32 10 you had worn it both nights, presumably, as well?
11 Right?

12 A One would think so.

13 Q Yes. So let's see what Mackie has to say about
14 this, and this is Mackie testifying at the trial
10:32 15 of Mr. Fisher, and he gives a series of -- we're
16 going to see -- varying reasons as to why it was
17 that that's where you slept. And the first one
18 might even, you might even find rather amusing,
19 just because it seems somewhat unlikely.

10:32 20 If we could go 310021 and move
21 to 310045, starting here, this is Mackie
22 testifying, you understand?

23 A Yes.

24 Q And this is in 1999:

10:33 25 "Q I wanted to ask you then, Detective



1 Mackie, you've said in your police
2 report and have testified today, that
3 you brought her up to Saskatoon on the
4 22nd.

10:33 5 A Yes.

6 Q Where did she stay that night?

7 A As I recall it was in the police
8 station

9 Q What part of the police station?

10:33 10 A Be in the womens' cell block unit.

11 Q Do you have a specific recollection of
12 how she came to be there?

13 A In the womens' cell block unit?

14 Q Yes.

10:33 15 A Not because of any offence. You mean
16 --

17 Q Yes. She wasn't charged with anything?

18 A No. No, ...",

19 by the way, these are the questions being asked
20 by the prosecutor of Mr. Fisher, just so we know
21 who's doing the asking:

22 "No. No, the womens' cell block unit is
23 like -- was like an open dormitory.

24 Q A dormitory?

10:33 25 A More like that. There was two cell



1 units within the unit itself that were
2 used when necessary.

3 Q Had Nichol John brought any luggage up
4 with her?

10:34 5 A I don't remember.

6 Q Did you tell her that she would be up in
7 Saskatoon for several days when you
8 brought her up?

9 A I don't know.

10:34 10 Q Do you remember her age, Detective
11 Mackie?

12 A I believe it's about 16, 17.

13 Q So then she was in fact kept in the city
14 cells during the time she was in
10:34 15 Saskatoon?

16 A If I remember right this is what she
17 wanted to do rather than stay at a
18 hotel."

19 I thought it might bring a smile to your face.

10:34 20 A Sorry.

21 Q Can you think of anything more unlikely?

22 A Yup.

23 Q "I would rather stay in the women's cells than in
24 a hotel"; do you think that's very likely, madam?

10:34 25 A I don't think so.



1 Q Nor me.

2 "Q How do you recall that, ...",
3 and Detective Mackie doesn't really stick with
4 that, we're going to see, he starts giving other
10:34 5 reasons:

6 "Q How do you recall that, Detective
7 Mackie? What of that do you recall, I
8 mean?

9 A I believe there was some discussion
10:35 10 about lodging her in a hotel and
11 keeping her in the cells if she would,
12 and she agreed to stay in cells. It
13 provided her security and she didn't
14 leave, this sort of thing."

10:35 15 So you can see, now, we're starting to get the
16 glimmers of another reason, right, that you
17 wouldn't leave.

18 A Right.

19 Q You see that? I can't think why you might have
10:35 20 needed security on May 22nd, frankly, but he gives
21 that as a reason as well.

22 "Q But -- I'm sorry?

23 A Then she perhaps wouldn't leave the
24 city and go back to Regina, or get
10:35 25 involved with other people."



1 So, you see, it's in Mackie's mind that you may
2 not have been too keen to stick around in
3 Saskatoon with the police, now it may just be
4 because you didn't like being in Saskatoon, maybe
10:35 5 because you didn't like being around police, or
6 it may be that you didn't like what the police
7 were doing to you; could have been any of those
8 three things, couldn't it?

9 A Correct.

10:36 10 Q Yeah, or a combination of all three?

11 A Yup.

12 Q Right? But Mackie, going to his evidence, seems
13 to have got the impression that you weren't too
14 keen on sticking around, and he seemed to be
10:36 15 worried that you might leave Saskatoon even though
16 you had no means of transport, that you might
17 literally, you were so keen to get out of there,
18 you would just walk out the door and look after
19 yourself and somehow find a way back to Regina.
10:36 20 That seems to be a concern of his; right?

21 A Correct.

22 Q Which is why you got locked in the cells at the
23 police station; right? That's what he's saying.

24 A It would look like that.

10:36 25 Q I'm sorry?



1 A It would look like that.

2 Q It's what he is saying. And he goes on. He is
3 also worried about you getting involved with
4 others, whatever that means.

10:36 5 "Q So, if she was kept in the cells you
6 mean she wouldn't be able to go back to
7 Regina?

8 A Regina, or get involved with others in
9 Saskatoon that she knew.

10:37 10 Q Are you aware, Detective Mackie, that
11 Nichol John testified at the preliminary
12 hearing that she had some trouble ...",
13 I think it was actually the trial but I think it
14 was the prelim:

10:37 15 "... that she had some trouble in the
16 cells and had to bang on the door to get
17 anybody to come and attend to her?

18 A No, I didn't.

19 Q Or, were you aware ...",
20 this is the Crown Prosecutor asking the
21 questions.

22 "Q ... that a matron had to come and sit
23 with her during the course of the night?

24 A No, I didn't."

10:37 25 It all helps acquire an understanding of the



1 image of what's happening to you in these, this
2 48-hour or 72-hour period; right, ma'am?

3 A Correct.

4 Q Yes. If we then look at the same, in the same
10:37 5 transcript, 310187, and this is where, you are
6 going to see, Detective Mackie backs off the
7 reason that you preferred to stay in the cells
8 than a hotel, perhaps not a surprising concession,
9 because he is asked, again, to explain why you
10:38 10 were kept in the cells. Starting here, and again
11 by the Crown:

12 "Q And I think you have already told us,
13 Detective Mackie, you housed her there
14 for two reasons."

10:38 15 Sorry, perhaps I'll go back, and going back to
16 the -- a few lines:

17 "Q And what did you do with her after you
18 interviewed her about her LSD trips?

19 A She would have been housed in the
10:38 20 ladies' cell block in the police
21 station, as I recall.

22 Q And I think you've already told us,
23 Detective Mackie, you housed her there
24 for two reasons. What were your
10:38 25 reasons?



1 A For her safety and security, so it
2 would be convenient for the department
3 to deal with her."

4 Do you see that?

10:39 5 A Yes.

6 Q The hotel reason seems to have vanished, now it's
7 for your safety, that's a new reason; for your
8 security, which he had alluded to in passing
9 earlier; and so it would be convenient for the
10:39 10 department to deal with you. So those are the
11 reasons that a 16-year-old is kept in the cells;
12 right?

13 A Correct.

14 Q Who, I hasten to add, is not under arrest for
10:39 15 anything; correct?

16 A Correct.

17 Q Okay.

18 "... And for any other reasons?"

19 And this is interesting:

10:39 20 "A It was also for Mr. Roberts to
21 interview."

22 That's the lie detector man who arrives the
23 following day, all right?

24 A Okay.

10:39 25 Q "Q And any other reasons?"



1 A Perhaps they didn't want her to leave
2 as well."

3 We're going to see who 'they' is in a moment,
4 because Mackie talks about -- gives us a clue to
10:40 5 who 'they' is elsewhere in his evidence, I'm
6 going to take you to it. But that's an
7 interesting word, don't you think, 'they'? It's
8 not as if Mackie is making the decision here,
9 it's this mysterious 'they'; right?

10:40 10 A Correct.

11 Q Right.

12 "I'm not sure."

13 he said.

14 "Q You told us yesterday, Detective Mackie,
10:40 15 that one of the reasons you kept her in
16 the cells was that you didn't want her
17 to go home.

18 A Right.

19 Q And you didn't want her to be mixing
10:40 20 with any of her friends in Saskatoon?

21 A Right."

22 In fact, did you have any friends in Saskatoon?

23 A I don't think so.

24 Q No. Something else that was asked of you by the
10:40 25 prosecutor on the next page, 310189, is a very



1 interesting question that he asked, starting here.
2 Again, this is in 1999 at the Fisher trial -- just
3 excuse me for a minute:

4 "Q In fact, Detective Mackie, Nichol John
10:41 5 was placed in the Saskatoon City Police
6 cells and as far as you know, locked in
7 for the two nights that she was in
8 Saskatoon?

9 A She would have been, to my knowledge."
10:41 10 That does call into question what you said at the
11 trial as to whether you stayed in the cells or
12 actually got into the matron's room; all right?

13 A Uh-huh.

14 Q In any event:

10:41 15 "Q And are you aware that she had
16 difficulty one night and had to bang on
17 the door so that a matron could come and
18 help her out?

19 A No.

10:41 20 Q Do you know where Ron Wilson was held
21 when he was in Saskatoon?

22 A No, I don't.

23 Q If I suggested to you that he spent one
24 night in the cells and then after he
10:41 25 spoke to the police was put up in a



1 hotel, would you disagree with me?

2 A That could be right.

3 Q Do you know why that happened?"

4 he is asked.

10:41 5 "A Pardon.

6 Q Do you know why that would happen,

7 Detective Mackie?

8 A No, I don't."

9 Doesn't take a very vivid imagination, does it

10:42 10 madam, to think why that might have happened; do

11 you agree?

12 A Yeah, I'm not sure what he was getting at, so --

13 Q Well, if Wilson gives a statement, he is now in

14 their good books --

10:42 15 A Oh, okay.

16 Q -- so why would they keep him in the cell for

17 another night.

18 A Okay.

19 Q Now it's hotel time; right?

10:42 20 A Yeah.

21 Q Right. But you didn't give, or you didn't sign

22 that document that you signed until after the

23 second night in the cells?

24 A Okay.

10:42 25 Q Do you see, on the 24th?



1 A Okay.

2 Q After the nights of the 22nd and the 23rd; do you
3 follow?

4 A Correct.

10:42 5 Q And then, you remember, we saw the answer where
6 Mackie said 'they' wanted you to stay in the
7 cells?

8 A Yes.

9 Q Let's just see if we can find out what they meant
10:42 10 by 'they', 310150 of the same transcript:

11 "Q After driving around the Pleasant Hill
12 area, sir ...",
13 so we're on the 22nd, now, all right.

14 A Okay.

10:43 15 Q "Q ... what did you do, or what happened
16 with the witness Ms. John, please?"
17 And this is Mr. Beresh asking you these
18 questions:

19 "A She was taken back to the police
10:43 20 station, she was housed at the police
21 station."

22 'housed' being an interesting word.

23 "Q Why was that, please?

24 A I think partially because the
10:43 25 department wished it, ...",



1 so this doesn't seem to be just Mackie's
2 decision, but the decision of the department,
3 which gives an image of senior police officers at
4 this station deciding that that's a good place
10:43 5 for her to stay tonight, and presumably the
6 following night as well. In other words, it
7 looks like it was a decision of the higher-ups,
8 right; do you see that?

9 A Looks like it, yes.

10:44 10 Q Which seems really interesting that the higher-ups
11 would really care two hoots where a 16-year-old
12 girl witness is going to stay the night, but a
13 decision seems to have been made that you are
14 going to stay in the police cells, do you see
10:44 15 that?

16 A Yes.

17 Q That's the 'they', in other words, that Mackie
18 talked about.

19 A Oh, okay.

10:44 20 Q And the answer then finishes, when he is back to
21 you wanting this:

22 "... and partially because she was
23 agreeable to stay there for security and
24 her own wellbeing or whatever."

10:44 25 Perhaps the words "or whatever" are a good



1 indication of what he was really trying to say.

2 So if we now think about the
3 22nd you have been uprooted from Regina, taken to
4 Saskatoon, no reason to think that you are told
10:45 5 that you are going to be there for a couple of
6 days let alone even one night so you carry
7 nothing with you we would imagine, no tooth brush
8 so to speak, you get taken to the scene of the
9 homicide, a rape homicide, you are told how she
10:45 10 is killed, you are shown where she is killed, you
11 are shown all the surrounding areas, we also
12 heard yesterday that everybody seems to be making
13 it pretty clear to you that they don't believe a
14 word you are saying, and now you have a night in
10:45 15 the cells, and that takes us into the 23rd of
16 May. All right?

17 A Okay.

18 Q Right. Which brings us to this chap Roberts, the
19 lie detector man from Calgary, as I recall --
10:45 20 Alberta, Edmonton, I can't remember which.

21 MR. HODSON: Calgary.

22 BY MR. LOCKYER:

23 Q Calgary? Thank you. And what's interesting about
24 this chap is these -- do you -- these lie detector
10:46 25 guys are really trained interrogators; did you



1 know that, madam?

2 A No.

3 Q It's basically what they do for a living, right,
4 and in fact most -- or not most but, for your
10:46 5 information, a lot of our case law about whether
6 statements should be admitted or not has come as a
7 result of the kind of things that these lie
8 detector chaps have done with people when they
9 have questioned them, it's been -- the Supreme
10:46 10 Court of Canada has dealt with the issue on
11 several occasions in recent years.

12 A Okay.

13 Q One of the things that we see when we look at
14 those cases is that the lie detector chaps always
10:46 15 seem to tape record, if not video record, what
16 they do in their dealings with the person that
17 they are interviewing, but this chap doesn't seem
18 to have done that with you at all. Did you know
19 that?

10:46 20 A No.

21 Q So we don't have a record, because of your lack of
22 memory we have no record from you, so the only
23 record we have is of this chap Roberts when he
24 testified in the Supreme Court of Canada in 1992
10:47 25 really without fear of contradiction I suppose;



1 right?

2 A Sounds like it.

3 Q Yes. But even then he gave some kind of
4 interesting answers, and I'm going to take you to
10:47 5 a few of them, and I think Commission Counsel took
6 you to some of them as well. First of all,
7 Roberts' perspective on who you were and the
8 information that you had supplied to date before
9 he embarked on dealing with you is of some
10:47 10 interest. 121847, moving to 121904, this chap
11 Roberts -- I'm sorry, I forget his ranking at the
12 time, he's a mister when he testifies, so why
13 don't we just call him Mr. Roberts. This is in
14 1992 at the same hearing you testified in 1992.
15 Question of Mr. Wolch:

16 "Q Now, when you got there -- "
17 And "there" would mean to Saskatoon; right?

18 A Okay.

19 Q "-- you were, I take it, advised that the
10:48 20 two people you were going to attempt to
21 polygraph had really given the police
22 nothing to assist them in prosecuting
23 David Milgaard?

24 A Yes. I think I was told that they had
10:49 25 given several stories, none of which



1 was going to help them."

2 So that's his perspective, that you and Wilson
3 aren't giving the police anything that helps them
4 in their prosecution of David Milgaard, so
10:49 5 clearly if Roberts' memory is accurate, it's
6 conveyed to him that these guys, Wilson and John,
7 have information that can enable us to prosecute
8 Milgaard, but they haven't given it to us yet.
9 Do you understand that?

10:49 10 A Yes.

11 Q That's effectively what he's saying there isn't
12 it, so your job, Roberts, is to get it out of them
13 one way or the other; right?

14 A Okay.

10:49 15 Q That's his assignment you might say. That's why
16 he's brought all the way from Calgary. Saskatoon
17 police don't seem to be able to break you, so they
18 have to go out of province to find someone else.
19 That's a way of looking at it isn't it?

10:50 20 A Using his interview techniques is what you are
21 saying?

22 Q Yes, using his lie detector techniques.

23 A Okay.

24 Q So -- and notice he's told, he seems to be given
10:50 25 some misinformation here, that they had given



1 several stories. I mean, if we go through "the
2 stories" that you've told to date, you've given
3 the same story; right?

4 A Uh-huh.

10:50 5 Q You haven't given several. So Roberts, if that's
6 what he's told, is given really quite a misleading
7 impression of what you said to date and there's
8 every reason then to think that he was never shown
9 what you said March 11th, what you said March
10:50 10 18th, what you said April 14th and what you said
11 April 22nd; right?

12 A (Nods head).

13 Q May 22nd, my mistake. And then Roberts says at
14 121930, please, and I think this was read to you
10:51 15 by Commission Counsel, where Roberts makes it
16 quite clear to Justice Sopinka, one of the judges
17 that you testified in front of, that he hadn't
18 believed you, that he didn't believe that what you
19 were saying to the police up to that time was
10:51 20 true, so he had a perspective on you that
21 everything you had said before he came into the
22 picture, not everything, but the essence of what
23 you said before he came into the picture, you had
24 been lying. You understand?

10:51 25 A Yup.



1 Q Let's read it, Justice Sopinka says:

2 "SOPINKA, J.: Now, you say you showed her
3 the dress --"

4 That would be Gail Miller's dress,

10:51 5 "-- in order to refresh her memory.

6 WITNESS: Yes, sir.

7 SOPINKA, J.: How would telling her "how
8 would you like this to be your sister"
9 help in refreshing her memory?

10:51 10 WITNESS: Because I felt she did not
11 appreciate the seriousness of the case."

12 Now, that's a little difficult to comprehend. I
13 mean, you may have only been 16, but I think at
14 16 you could appreciate the seriousness of a
10:52 15 murder; don't you?

16 A One would think so, yes.

17 Q You would, yes.

18 "I reiterated to her that this was a
19 young girl who had been killed in the
10:52 20 lane and it could be your sister, it
21 could be my daughter, it could be
22 anybody. That was when I said to her
23 words to the effect of, "What if it were
24 your sister."

10:52 25 And then the Chief Justice said:



1 "LAMER, J.: You didn't believe that she
2 didn't remember?

3 WITNESS: No, sir, I didn't."

4 And that's really the thrust of what I wanted to
10:52 5 point out to you, that this man was acting under
6 an assumption that you were lying when he
7 interrogated you, police word in the reports that
8 we seen, interrogate, on the 23rd of May. Do you
9 see that?

10:52 10 A Yes.

11 Q If we also look at, sorry, the previous page,
12 121929, he elaborates on that answer that he
13 thought you were lying, he had already elaborated
14 on it. I should have started here. Question of
10:53 15 Sopinka, Justice Sopinka:

16 "SOPINKA, J.: Why would you do that in her
17 case and not in the case of Wilson?

18 WITNESS: Sir, I'm sorry if I've misled this
19 court because I had no intention of
10:53 20 doing so. From the previous evidence
21 that I had received from the Saskatoon
22 City Police, or shall I say information,
23 I felt that both would try to lie.

24 As I say, from taking a reading
10:53 25 on Wilson, I presumed that he was lying.



1 That's why I phrased the questions.

2 In talking to the Nichol girl,
3 it seemed to me that she was very
4 hesitant and didn't want to say anything
10:54 5 at that specific time. That is why I
6 took this package out, the dress, and
7 handed it to her and said, "How would
8 you like to see your sister in this?"

9 So again that shows us how he thought, through
10:54 10 the Saskatoon police, that both of you were
11 lying, although in your case he was a little more
12 moderate about it, saying that you weren't giving
13 us the whole story. In essence, if we take March
14 11th and compare it to the document that you sign
10:54 15 on May 24th, you weren't really telling him any
16 of the story that mattered, were you, as far as
17 they were concerned; right?

18 A No.

19 Q Could you speak?

10:54 20 A Yes.

21 Q And then we hear from Roberts that you sort of
22 burst out with the statement that you saw the
23 stabbing when you are shown Gail Miller's dress,
24 so just to look at where this first happened, at
10:55 25 121887, this is how Roberts claims it happened in



1 his evidence at the Supreme Court of Canada, "Now,
2 during this --" that is when he's showing you --
3 sorry, can we go back? My mistake. Go back a
4 paragraph. This brings into mind something else
10:55 5 that happened that we had talked about yesterday.

6 "A They were given to me --"
7 And that's Gail Miller's clothing is the they,
8 right, items of her clothing?

9 A Uh-huh.

10:55 10 Q " -- were given to me, I imagine, by
11 Superintendent John Wood, or one of the
12 detectives that had picked up the
13 articles. But I know I had the white
14 uniform -- and, I take it, it was a
10:56 15 nurse's uniform -- in a plastic bag in
16 the room. I think I had a cape; a
17 nurse's cape. I don't, honestly, recall
18 anything else of the clothing."

19 Remember how we saw at the trial, and indeed at
10:56 20 the preliminary hearing, you are suddenly
21 describing the clothing that this woman was
22 wearing that you saw David stabbing?

23 A Yes.

24 Q That kind of helps explain how you could describe
10:56 25 that clothing; does it not? It's shown to you on



1 the 23rd of May; right?

2 A Correct.

3 Q It carries on, Roberts says:

4 "Now, during this she kept saying, "No,
10:56 5 I don't remember. I don't remember." I
6 said, "Well, I think you do remember,
7 but for some reason or other you don't
8 want to tell me." I took the white -- I
9 can recall a white uniform being there,
10:56 10 and it was in a plastic bag, and I gave
11 it to her. I said, "What if this had
12 been your sister," and she burst out,
13 she said, "My God, I do remember. I do
14 remember. I saw him fighting with her
10:56 15 down the lane. I saw him stab her."

16 Now, as you read that and try and think of that,
17 madam, do you think that all sounds just a little
18 unlikely, just a little too Hollywoodesk to be
19 true?

10:57 20 A I would agree with you.

21 Q That's certainly how it struck me, that he showed
22 you the uniform and you suddenly say, "Well now I
23 remember, yes, I remember, I saw him stab her"?

24 A Uh-huh.

10:57 25 Q It really does sound like a three-penny novel as



1 we say where I come from; doesn't it?

2 A Correct.

3 Q And interestingly enough, it's after this,

4 according to Roberts, after you suddenly

10:57 5 remembered this scene many weeks -- indeed we're

6 now several months after the event -- that you are

7 placed in the hotel room, you did get into a hotel

8 room at this point, but fortunately you didn't

9 stay there, but you get into a hotel room with

10:58 10 Wilson for a while.

11 A Okay.

12 Q Do you remember that was put to you last week?

13 A Yes.

14 Q And the question then arises, well, what happened

10:58 15 between you and Wilson in that hotel room, which,

16 as I recall, according to Roberts, was in Roberts'

17 presence, and you remember it was put to you that

18 you -- that Wilson said something to you, like,

19 why don't we just give them what they want so we

10:58 20 can go home. That's not a quote, but words to

21 that effect?

22 A Yes.

23 Q And you told Commission Counsel you couldn't

24 remember what was said?

10:58 25 A Correct.



1 Q By Wilson?

2 A Correct.

3 Q You were asked about that at the Supreme Court of
4 Canada, 013811 moving to 013866. This is your
10:58 5 evidence in 1992. You were asked, starting here:

6 "Q You can't think of anything that would
7 motivate you to do that?"

8 Namely, to lie.

9 "A No, sir.

10:59 10 Q Do you recall anyone suggesting to you
11 that you should sink David Milgaard?

12 A No, sir.

13 Q Do you remember specifically talking
14 with Ron Wilson and agreeing with him to
10:59 15 convict David Milgaard of murder?

16 A I remember a conversation something
17 along those lines, but I don't know
18 what the words were.

19 Q Did it include an indication that you
10:59 20 were to lie?"

21 That's an odd question given the previous
22 question.

23 "A I don't know.

24 Q You don't recall that?

11:00 25 A No. "



1 So there you go, in the Supreme Court of Canada
2 in 1992, madam, whatever your memory may be now,
3 you seemed to have a memory of it back then;
4 right?

11:00 5 A Correct.

6 Q Uh-huh. When you testified at Fisher's trial you
7 were asked the same thing by the prosecutor,
8 296663 moving to 296703. The starting number is
9 296663 moving to 296703, start up here, and this
11:02 10 is the Crown cross-examining you at Larry Fisher's
11 trial, all right?

12 A Okay.

13 "Q But on May 22, 1969 I suggest to you
14 that when you were brought to Saskatoon
11:02 15 you were kept in Saskatoon cells the
16 night of May 22, 1969, and the night of
17 May 23, 1969. Do you disagree with me?

18 A I wouldn't disagree with you.

19 Q I suggest to you that during that time
11:02 20 you were in the cells -- and I'm getting
21 this from your testimony at the trial,
22 Ms. John -- that you had some
23 difficulties in the cells and you had to
24 holler and pound on the door to get
11:02 25 somebody to come and help you. Do you



1 recall that?

2 A No, I don't recall that.

3 Q And I'm suggesting thereafter a matron
4 had to stay with you in the cell?

11:02 5 A I don't recall that.

6 Q I'm suggesting as well, Ms. John, that
7 on May 23, 1969 you were questioned
8 extensively by an officer from the
9 Calgary city police force. Do you
11:02 10 remember that?

11 A No, I don't.

12 Q And I suggest to you that during that
13 day that that officer took Gail Miller's
14 dress and showed it to you and said,
11:03 15 "What if this had been your sister". Do
16 you recall that incident?

17 A No, not at all.

18 Q And if I suggested to you, Ms. John,
19 that you were allowed on May 23, 1969,
11:03 20 the day before you gave this statement
21 to the police to speak to Ron Wilson for
22 a lengthy period of time would you agree
23 with me?

24 A I would have to agree with you.

11:03 25 Q And at that time Wilson suggested to



1 you, "Let's give them what they want".

2 A Are you asking me a question, I'm
3 sorry?

4 Q Yes. Yes. Do you remember that?

11:03 5 A No.

6 Q Would you disagree with me if I
7 suggested that to you?

8 A I have no reason to disagree with
9 you."

11:03 10 Do you remember those questions and answers just
11 four or five years ago, ma'am?

12 A Not really.

13 Q And then Mr. Roberts did testify at the Supreme
14 Court of Canada, interesting enough, that he was
11:04 15 sort of hopping backwards and forwards between you
16 and Wilson during the course of the day of May
17 23rd. If we go to his evidence again starting at
18 121847 and move to 121920, please.

19 MR. HODSON: Do you have a document ID for
11:04 20 that?

21 MR. LOCKYER: Yes, 121847.

22 MR. HODSON: I think your set of documents
23 is different than the ones that I had put in
24 through the witness, so maybe at the break we can
11:05 25 co-ordinate those numbers. That's why this is



1 taking a moment.

2 COMMISSIONER MacCALLUM: Okay.

3 MR. LOCKYER: You mean they have Roberts
4 starting somewhere else?

11:05 5 MR. HODSON: No, no, we had a different
6 version of the transcript with a different
7 document ID was the one that we put in. That's
8 fine, it just takes them a minute. That's why
9 it's not coming up readily.

11:05 10 BY MR. LOCKYER:

11 Q So 121920, please. Mr. Wolch is questioning you
12 here. "So, in the course of time --" sorry, not
13 questioning you, I meant to say Roberts, not you.
14 Sorry, my mistake.

11:06 15 "Q So, in the course of time with these
16 kids --"

17 That would be you and Wilson,

18 "-- you would say to one of them well, I
19 suggest to you the following happened
11:06 20 and the suggestion you were putting came
21 from what the other one had told you?

22 A Would you just repeat that, please,
23 Mr. Wolch.

24 Q Well, you talked to one of the kids and
11:06 25 you would say to them I suggest to you



1 the following happened, whatever the
2 fact was, and that fact being suggested
3 was a fact the other kid had told you
4 already?

11:06 5 A That technique has been used in
6 interrogation, but I do not recall it
7 being used on this occasion. I could
8 possibly have mentioned to her what
9 Wilson had said."

11:06 10 You see there's sort of a vague acknowledgement
11 that that's maybe what he was doing; right?

12 A Correct.

13 Q He was using what one of you said to them, get the
14 other to see if he or she would adopt what the
11:07 15 other had said?

16 A Uh-huh.

17 Q Do you follow?

18 A Yes.

19 Q Yes. And he said Roberts claimed in this
11:07 20 evidence, and this is at 121907, please, that he
21 was with the two of you -- if you just look
22 here -- he was with the two of you from about 10
23 o'clock in the morning to about 2:30 in the
24 afternoon he claims in his evidence in the Supreme
11:07 25 Court of Canada; right?



1 A Yes.

2 Q That is, with you and Wilson. And then he
3 tells -- then he says, and this is at 121891, that
4 he then proceeds to brief the Saskatoon police on
11:07 5 what you and Wilson had told him. It's right
6 here. He says, Roberts:

7 "A I returned back to the Saskatoon City
8 Police. I think I went for supper and
9 then returned to Calgary the next
11:08 10 morning.

11 Q With respect to Nichol John, did you
12 also take her in front of the police
13 officers and say, "She's told me certain
14 things --"

11:08 15 And this, interestingly enough, is counsel for
16 Saskatchewan asking you these questions, all
17 right, it's worthy of note.

18 "Q With respect to Nichol John, did you
19 also take her in front of the police
11:08 20 officers and say, "She's told me certain
21 things"; and --

22 A Yes, yes.

23 Q Okay, and then leave them to deal with
24 it?

11:08 25 A That's right. Now, I don't recall who



1 the police officer was that came. I
2 know it was a detective. It is my
3 usual practice, or was my usual
4 practice at that time, whenever I
11:08 5 received an admission from anybody and
6 it was somebody else's case, I would
7 repeat what the person told me in
8 front of the detective."

9 So Roberts' claim is that when he's finished with
11:09 10 you, presumably at 2:30 if we're to believe his
11 timing that he testified to in the Supreme Court
12 of Canada, he had no notes, no records, nothing,
13 this is just he's purporting to remember events
14 of 23 years earlier; right --

11:09 15 A Uh-huh.

16 Q -- for the first time? He's never testified until
17 1992.

18 A Okay.

19 Q But anyway, that's his memory and he has a memory
11:09 20 of taking you, as is his usual practice, in front
21 of the Saskatoon officers who, remember, for weeks
22 now, have been wishing to happen what's happened
23 according to Roberts; right?

24 A I'm following you, yeah.

11:09 25 Q You had suddenly said you seen it; do you follow?



1 A Yes.

2 Q Takes you in front of them and says, right in
3 front of you, she did see it, she saw the
4 stabbing, right, that's what Roberts is saying he
11:10 5 said to the Saskatoon police in your presence;
6 right. Do you follow?

7 A Yes.

8 Q On May the 23rd. You know what, madam, there
9 isn't a single record of that in any Saskatoon
11:10 10 police document as ever having happened.
11 Remarkable. After all these weeks of wanting you
12 to do what you've now done, according to Roberts,
13 no one puts it down anywhere. The only evidence
14 we have of it is Roberts 23 years later in the
11:10 15 Supreme Court of Canada. Do you think that's a
16 little strange, to say the least?

17 A Unusual.

18 Q Yes, you would think. Is this a good time to
19 break, Mr. Commissioner?

11:10 20 COMMISSIONER MacCALLUM: 15 minutes.

21 *(Adjourned at 11:10 a.m.)*

22 *(Reconvened at 11:32 a.m.)*

23 BY MR. LOCKYER:

24 Q Yes, ma'am, just before we broke I had pointed out
11:33 25 to you that there's not a single piece of paper



1 anywhere, at least that I know of, to support
2 Roberts' claim that you told him that you had seen
3 David stabbing Gail Miller. And I'm actually
4 going to take you to a series of -- put to you a
11:33 5 series of things that suggests that that simply
6 likely didn't happen at all, and that Roberts'
7 evidence in the Supreme Court of Canada was, at
8 best, in error, if we can put it that way. All
9 right?

11:34 10 First of all, it is interesting,
11 if you look at the Saskatchewan police occurrence
12 reports -- you won't know this -- but they are
13 being drafted primarily by Mackie and Karst, all
14 right, and Mackie of course is focusing on you
11:34 15 more than Wilson, and Karst is focusing more on
16 Wilson than you, which makes some sense; does it
17 not?

18 A Right.

19 Q Karst is the one questioning Wilson, Mackie is the
11:34 20 one who says he is dealing with you. And if we
21 look at Mackie's report for this period when
22 Roberts claims that, for the first time, you
23 finally give the information the police have been
24 seeking for so long, it's kind of interesting how
11:34 25 he deals with May the 23rd.



1 If we could go to 0 -- sorry --
2 106676, which is Mackie's report of May the 29th,
3 '69, which summarizes the events from his
4 perspective, beginning on May 22nd, and the day
11:35 5 you are picked up to use the police words, in
6 Saskatoon, until the -- it actually goes as far as
7 May 27th in this report, but if you look down at
8 the bottom, here, of the first page of the report,
9 he says or he writes:

11:35 10 "At approximate 10 p.m., ...",
11 so this would be on the 22nd of May, all right,
12 the day before you encounter Roberts:

13 "... I proceeded to the Cavalier Hotel
14 where ...",
11:36 15 presumably at this point you are in the cells by
16 now; right?

17 A Okay.

18 Q You follow?

19 A Yes.

11:36 20 Q Yes, so there you are in the police cells, but at
21 10:00 p.m. Mackie proceeds to the Cavalier Hotel:

22 "... where Superintendent Wood,
23 Lieutenant Penkala and I ...",
24 so three of them:

11:36 25 "... interviewed Inspector Roberts of



1 Calgary Police, in regards to this file,
2 so that he would be able to interrogate
3 Ronald Wilson and Nichol John for us on
4 the 23rd."

11:36 5 So that's the briefing where Roberts, according
6 to his evidence at the Supreme Court of Canada,
7 hears from the Saskatoon Police that they
8 basically don't believe a word you are saying;
9 right?

11:36 10 A Okay.

11 Q And then the next entry, just turn the page:

12 "On May 24th, I returned to Regina with
13 Ron Wilson and Nichol John ...",
14 so that May 23rd didn't exist for the purposes of
11:37 15 Mackie's report.

16 A Okay.

17 Q And yet this is the day, according to Roberts,
18 when Mackie finds out for the first time they have
19 got what they want from you.

11:37 20 A Okay.

21 Q All right? But he omits to even mention it. And,
22 as I think you have heard, Roberts didn't write
23 anything down either about it, Karst didn't write
24 anything down about it. And then the other thing,
11:37 25 madam, that might be of some interest is if



1 Roberts was telling the truth when he testified in
2 the Supreme Court of Canada that he finished with
3 you at 2:30 in the afternoon, all right, the
4 question then arises what did you do the rest of
11:37 5 the day? Because there's nothing in any document
6 that gives us any idea of what you did, or what
7 was done with you might be a better way of putting
8 it, for the balance of the day of May 23rd except
9 we know you ended up back in the cells for the
11:38 10 night.

11 A Okay.

12 Q In particular, there is no suggestion that Mackie,
13 having heard what he has been wanting to hear for
14 so long, doesn't seem to take the opportunity to
11:38 15 sit down, question you, and take a statement from
16 you. He doesn't do it until the next day for some
17 reason. All right? Do you have any idea what you
18 did from 2:30 until you ended up in cells on the
19 night of the 23rd?

11:38 20 A No idea.

21 Q From what we know there's every reason to believe
22 you were available to whoever wanted to take a
23 statement from you; right?

24 A Yeah, seems to be some lost time there, doesn't
11:38 25 there.



1 Q Yes, there certainly is. Maybe, madam -- and I
2 put this to you as a suggestion -- maybe Roberts
3 hadn't got out of you what he wanted, or what the
4 Saskatoon Police wanted as well, and they just
11:39 5 kept working on you and then said "I guess you are
6 going to have to spend another night in the
7 cells", because you still weren't giving them what
8 they wanted. Is that possible?

9 A Possible. I don't know.

11:39 10 Q Especially when you consider -- and you remember I
11 read this to you earlier this morning -- that
12 Wilson didn't spend the night of May 23rd in the
13 cells. But, there again, the difference now
14 between Wilson and you was that at 3:00 p.m. on
11:39 15 May the 23rd Wilson starts to give a new
16 statement, or we might say he signed his
17 equivalent of your May the 24th document on May
18 the 23rd in the afternoon, so maybe that's the
19 difference between his status and your status as
11:40 20 to where the two of you sleep. Do you follow?

21 A Yes.

22 Q And I think the prosecutor, at least implicitly,
23 made that suggestion, if you remember I read it to
24 you earlier this morning, to Mackie when he
11:40 25 questioned him at Larry Fisher's trial; remember



1 that?

2 A Uh-huh, yes.

3 Q Now Mackie, himself, may have given it away that
4 what Roberts told the Supreme Court of Canada was
11:40 5 untrue when he testified at Fisher's trial,
6 because remember, Roberts' position is that by the
7 time Mackie comes to take a statement from you,
8 according to him on May the 24th, the document
9 that you signed of May 24th, --

11:40 10 A Uh-huh.

11 Q -- according to Roberts you had already told
12 Roberts, and Roberts has already passed it on to
13 the Saskatoon Police in your presence, that you
14 now, quote, "remember", unquote, seeing David
11:41 15 stabbing Gail Miller. Remember that?

16 A Yes.

17 Q Listen to what Mackie had to say about this when
18 he testified at Larry Fisher's trial, starting at
19 310021, and going to 310204. Quite an interesting
11:42 20 question put by the Crown at Fisher's trial to
21 Mackie, or at least the answer is interesting:

22 "Q I just want to clarify one final thing
23 with you, Detective Mackie, so that it's
24 clear for the benefit of the jury. To
11:42 25 the best of your knowledge, there was



1 never one occasion prior to May 24, 1969
2 that Nichol John indicated to any police
3 officer that she or Milgaard or Wilson
4 were involved in Gail Miller's death.

11:42 5 Is that not true?

6 A Not that I am aware of."

7 Which, of course, is completely contrary to what
8 Roberts said in the Supreme Court of Canada; all
9 right?

11:42 10 A Yes.

11 Q So Mackie is saying, when you signed that
12 statement or that document of May 24th, that was a
13 first for you; Roberts is saying "no, it wasn't,
14 she had done it 24 hours earlier with me when I
11:43 15 showed her Gail Miller's nurse's uniform or
16 dress". Remember that?

17 A Yes.

18 Q Yes. And, interestingly, the prosecutor was
19 satisfied with that answer because he put what
11:43 20 Mackie said there to you when he cross-examined
21 you at Larry Fisher's trial. Let's have a look at
22 that, starting at 296663, moving to 296700.
23 Question by the prosecutor of you at Larry
24 Fisher's trial, 1999:

11:44 25 "Q And Detective Mackie has already told us



1 that when he spoke to you verbally, that
2 is when he drove you up to Saskatoon on
3 May 22, 1969, that you told him nothing
4 that would implicate you or your friends
11:44 5 in Gail Miller's murder; would you
6 disagree with that?

7 A I wouldn't disagree, no."
8 And I have read you those passages already today;
9 all right?

11:44 10 A Yes.

11 Q "Q Now, Detective Mackie told us as well,
12 Ms. John or Ms. Demyen, my apologies,
13 Nichol John was your maiden name?

14 A Yes. I answer to both names.

11:44 15 Q Okay. Thank you. Perhaps I'll stick to
16 John then, and I'll try to be
17 consistent.

18 A Whichever you prefer, sir.

19 Q But the Detective also told us that he
11:45 20 took you to the Saskatoon City Police
21 station and interviewed you with respect
22 to your use of LSD in the months leading
23 up to May 22. Would you disagree with
24 me if I suggested that he spoke to you
11:45 25 about that?



1 A I wouldn't disagree with you.

2 Q I suggest to you, Ms. John, that you
3 testified at David Milgaard's trial that
4 in the months commencing in February of
11:45 5 1969 through the summer you were taking
6 LSD approximately once every three days.

7 A I would agree with you.

8 Q Now, Ms. John, in the statement that's
9 dated May 24, 1969 that Detective Mackie
11:45 10 told us he took from you on that date,
11 you say in that statement, Ms. John,
12 that you saw David Milgaard stab a
13 woman, is that correct?

14 A The statement says that, yes.

11:45 15 Q The statement says that. Would you
16 agree with me that to the best of your
17 knowledge, never once prior to that date
18 have you made that -- had you made that
19 allegation to anyone?

11:45 20 A I have no recall.

21 Q So you would agree with me if I
22 suggested to you that never once prior
23 to May 24, 1969, did you make such an
24 allegation?

11:46 25 A I don't believe I have."



1 So, taking those questions and answers, the
2 prosecutor at Larry Fisher's trial seems to, in a
3 sense, have beaten me to the punch. It would
4 seem, from those questions put by the prosecutor,
11:46 5 that he also is, in essence, suggesting by
6 necessary inference that Roberts' evidence in the
7 Supreme Court of Canada is false; do you follow
8 that?

9 A Yes.

11:46 10 Q And that you stuck to your guns through May 23rd,
11 and it was only after yet another night in the
12 cells, or in the matron's room, wherever it may
13 have been, but in the police station, in those
14 same clothes, that you finally gave them what they
11:47 15 wanted, your signature on the May 24th document;
16 right?

17 A Pardon me? I'm sorry.

18 Q It was only after yet another night in the cells,
19 May 23rd, that you finally gave them what they
11:47 20 wanted when you put your signature on the document
21 of May 24th?

22 A I obviously signed the document, yes.

23 Q Yes. But you hadn't given them it before then?

24 A I --

11:47 25 Q In particular, to Roberts on May 23rd?



1 A Yeah, according to what I have read here, yeah,
2 exactly.

3 Q And then it's after that, that you have done, you
4 have given them what they had been looking for,
11:47 5 that Mackie drove you and Wilson, who had also
6 given them what they had been looking for, back to
7 Regina; correct?

8 A Yeah, looks like it, yes.

9 Q Yes. Well I think Mackie tells us in that report
11:47 10 that I referred you to that, just a moment ago,
11 that -- his May 29th report, that he is the one
12 who drove you and Wilson back to Regina. So
13 Wilson has had his three nights in Saskatoon, you
14 have had your two nights in Saskatoon, and with
11:48 15 the accompanying days, four days and three days
16 respectively, and now they take you home; all
17 right?

18 A Uh-huh.

19 Q Now, madam, I just want to ask you some more
11:48 20 generalized questions for a little while, because
21 I'm sort of interested in your attitude to this
22 Inquiry, because I understand that you refused to
23 be interviewed by Commission Counsel in
24 preparation for your evidence here; is that right?

11:48 25 A Yes.



1 Q Why?

2 A Umm, as I told Mr. Hodson, I have been asked so
3 many questions already that I -- I didn't believe
4 that there could be another question to ask.

11:48 5 Q You are aware of what this Commission of Inquiry
6 is all about; right?

7 A Umm, not really.

8 Q I'm sorry, I have a little trouble believing that,
9 that's -- you don't understand why this Commission
11:49 10 of Inquiry is being held, what it's inquiring
11 into?

12 A Umm, something about the Milgaard issue, but I
13 don't know specifically what.

14 Q Well you are aware that David Milgaard has been
11:49 15 acknowledged by everyone, or everyone with some
16 degree of common sense anyway, that he had
17 absolutely nothing to do with Gail Miller's
18 murder; right?

19 A Okay.

11:49 20 Q You know that, don't you?

21 A Umm, I'm not aware of that, but I'll believe what
22 you are saying.

23 Q Well even Larry Fisher has had the good grace to
24 acknowledge that David Milgaard didn't kill Gail
11:49 25 Miller.



1 A Okay.

2 Q Just so you know.

3 A Okay.

4 Q So, and I think everyone in this room -- and I'm

11:49 5 subject to contradiction -- acknowledges that,

6 whether they represent Detective Karst, Detective

7 Mackie, the Prosecutors at David's trial, the

8 people who dealt with you, the Crown Attorneys'

9 Association as a whole, the police, Saskatoon

11:50 10 Police as a whole, they all acknowledge that David

11 didn't kill Gail Miller, had nothing to do with

12 it.

13 A Okay.

14 Q Right? So your, the claim in that document that

11:50 15 you signed on May the 24th that you saw David

16 killing Gail Miller is, therefore, just so much

17 nonsense; you understand that?

18 A Yeah, I see what you are saying.

19 Q That's -- everyone, I think I'm safe in saying,

11:50 20 acknowledges that, with the possible exception of

21 people who believe the earth is flat rather than

22 round. Do you follow me?

23 A Yes.

24 Q Yes, all right. And that this Inquiry is about

11:50 25 how on earth is it that David Milgaard spent so



1 many years of his life in prison for something he
2 didn't do; you didn't understand that that's the
3 purpose of this inquiry?

4 A No, I didn't, I'm sorry.

11:51 5 Q It's a little hard to believe, madam, you -- I
6 know you did speak to Commission Counsel; did he
7 at least get that across to you?

8 A Umm, no, I don't believe so.

9 Q Yeah, uh-huh. Well does that give you a, does
11:51 10 that give you some kind of perspective on your
11 role here, on why it's important?

12 A I'm not sure what you are asking me.

13 Q Well, it's that document that you signed on May
14 the 24th which is as responsible as anything for
11:51 15 David Milgaard having spent all those years in
16 jail.

17 A Okay.

18 Q Right? So that's why I find it kind of surprising
19 that you weren't at least prepared to go to the
11:51 20 effort of co-operating with Commission Counsel
21 before you came here. I must say I have
22 difficulty with that. It just seems an
23 extraordinary conduct on your part?

24 A What do you believe I should have done?

11:52 25 Q Spoken to him, answered his questions, simple



1 enough. But you decided not to; right?

2 A Correct.

3 Q Yes. And it's interesting, as I look back over
4 the last 36 years you were very offended, it
11:52 5 seems, by the fact that Mrs. Milgaard didn't ring
6 the outside doorbell but somehow got in the
7 building and came and knocked on your door of your
8 apartment; right?

9 A Correct.

11:52 10 Q Yes. Of course, if she had rung your outside
11 doorbell and told you who she was and asked if she
12 could come in, you would have told her "no";
13 wouldn't you?

14 A Possibly.

11:52 15 Q Yes, I suspect so. So maybe Mrs. Milgaard, given
16 that she is fighting to get her son out of prison,
17 did something that was both wise and
18 understandable, don't you think, on reflection?

19 A That was the choice that she made at that time.

11:52 20 Q And a pretty wise and understandable choice, don't
21 you think, ma'am? She has got a son in jail for
22 something he didn't do, he had been in 10 years by
23 this time, or 12 years by this time.

24 A Okay.

11:53 25 Q How many more years do you think she ought to have



1 waited before she comes to you? A bit of a
2 rhetorical question.

3 A Am I to answer that, I'm sorry?

4 Q Not really.

11:53 5 A Okay.

6 Q But I do notice that in the ensuing years, every
7 time the authorities asked you to help, you always
8 did; Eugene Williams, quite happy to talk to him;
9 quite happy to go to this hypnotist, quite happy
11:53 10 to go to that hypnotist, quite happy to cross the
11 border to be hypnotized, and I'm wondering where
12 this sort of attitude of yours came from.

13 Mrs. Milgaard, how dare she; the authorities,
14 sure, whatever they want, I'll do it. Now how did
11:53 15 this all happen? What was going through your mind
16 when you did -- when you acted in these ways over
17 those years? I would like to know.

18 A Normally, when it's an authority figure asking me
19 to do something, I do it.

11:54 20 Q Uh-huh.

21 A I can't explain it any other way.

22 Q I see. I mean you expressed to Williams, the man
23 from the Department of Justice Eugene Williams,
24 you expressed to him your concerns that maybe --
11:54 25 this was back in 1990, '90 I think, I'm not quite



1 sure, but certainly -- I'm sure I have the date,
2 here, it is -- sorry, November 7th, 1989, all
3 right.

4 So David has now been in jail 20
11:54 5 years, all right, we're 20 years down the road for
6 David, and you said to him, you expressed to him
7 your concerns -- and I'll go to the page if anyone
8 wants me to but perhaps I could just remind you of
9 what you said -- that you expressed to him your
11:55 10 concern that "it's always bothered me, supposing
11 David is innocent, supposing he didn't commit this
12 crime". Do you remember saying that?

13 A No.

14 Q All right. Well, you did, it's in the transcript
11:55 15 of the interview.

16 A Okay.

17 Q And did you have that concern?

18 A I don't know.

19 Q You don't know?

11:55 20 A No.

21 Q I see. I won't take you to the page but I'll read
22 to you exactly what you said to him. Just for the
23 record, Mr. Commissioner, this is at page 125219,
24 but I don't see any need to put it up. This is
11:55 25 what you said:



1 "There's been so many times that I
2 thought, okay, maybe he isn't guilty,
3 maybe what I said I picked out of the
4 air but, ... I don't know if you can
11:55 5 understand, but there's time missing in
6 my life, I don't know where it went to."

7 Do you remember saying that --

8 A No.

9 Q -- to Mr. Williams? No? So now you have had some
11:56 10 time to reflect, madam, and you have had time to
11 think about it; where do you think this invention
12 of an event that you claimed to have seen, that
13 everyone now acknowledges you couldn't possibly
14 have seen, come from?

11:56 15 MR. FOX: With respect, Mr. Commissioner,
16 --

17 COMMISSIONER MacCALLUM: Yes?

18 MR. FOX: -- I think we've sat back for
19 quite a while, but questions like "everyone
11:56 20 acknowledges", "everybody in the room takes this
21 position", "everybody states this is the fact and
22 circumstance", and then to put the question to
23 the witness essentially to say "this great big
24 world out here all says it's black, what have you
11:57 25 got to say", is a really grossly unfair question.



1 First of all, there is no
2 evidence what everybody in this room takes as a
3 position.

4 COMMISSIONER MacCALLUM: That's so, yes.

11:57 5 MR. FOX: So I think, if you want to ask
6 the witness' position, clearly you can.

7 COMMISSIONER MacCALLUM: Well I interpreted
8 his question as being a suggestion that that was
9 the case. If the suggestion is incorrect then,
11:57 10 of course, the witness can disagree with it.

11 MR. FOX: Well it's -- it isn't framed as a
12 suggestion, though, it's framed as a statement of
13 fact to the witness, and then it puts her in the
14 uncomfortable position of being told "the whole
11:57 15 world says this, what have you now got to say".
16 But that's my concern.

17 COMMISSIONER MacCALLUM: Yes, thank you Mr.
18 Fox, I understand that.

19 MR. LOCKYER: Well, I stand corrected, if
11:57 20 my client thinks that this witness did see David
21 Milgaard killing Gail Miller then so be it. I
22 thought it was a predicate of this Commission
23 that that's not so, but I am certainly prepared
24 to exclude Mr. Fox from what I put to you.

11:57 25 Everyone in this room except



1 Mr. Fox believes that you, or indeed know this,

2 --

3 COMMISSIONER MacCALLUM: Well, --

4 MR. LOCKYER: -- that you did not see David
11:58 5 Milgaard killing Gail Miller.

6 COMMISSIONER MacCALLUM: -- surely, you are
7 being unfair to Mr. Fox.

8 MR. LOCKYER: I assume he wouldn't object
9 unless he believes otherwise. I put to her that
11:58 10 everyone in this room, Mr. Commissioner, believes
11 that David Milgaard didn't kill Gail Miller.

12 My --

13 COMMISSIONER MacCALLUM: And his objection
14 to that is that how could you possibly know that.

11:58 15 MR. LOCKYER: Well I said "unless someone
16 says otherwise", I usually say that.

17 COMMISSIONER MacCALLUM: Well --

18 MR. LOCKYER: I'll say that this time,
19 unless anyone says otherwise, Mr. Fox has so I'll
11:58 20 exclude him. But apart from Mr. Fox, unless
21 anyone says otherwise, I think it's fair to say
22 that all the counsel in this room are of the
23 opinion, which I might say even includes Larry
24 Fisher's counsel --

11:58 25 COMMISSIONER MacCALLUM: I don't think



1 that's fair either. Somebody else is getting up
2 here.

3 MR. LOCKYER: Well then let's hear it. We
4 should surely hear the positions of counsel. If
11:58 5 counsel believes that David, that David Milgaard,
6 stabbed Gail Miller to death, then let's hear it
7 now. It's time to hear it. We've been at this
8 for three months.

9 MR. KENNEDY: The problem, My Lord, is that
11:59 10 my opinion, Mr. Fox's opinion, the opinion of any
11 other counsel in this room, is completely
12 irrelevant to what this Commission's job is all
13 about. I mean the question, the way it is
14 imposed, is -- has been posed, is inflammatory,
11:59 15 it's not fair to the witness.

16 If what My Friend wants to find
17 out is this witness' attitude on a specific
18 question, issue, or fact, then why doesn't he
19 just simply put it to her rather than, in a very
11:59 20 theatrical manner, effectively going over the top
21 in terms of doing the description as to why he is
22 asking the question and making this witness, I
23 would suggest, be put in the uncomfortable
24 position of either acknowledging what My Friend
11:59 25 says the entire world thinks, or else there is



1 something wrong with the way she thinks, and
2 that, with respect, is a very unfair way of
3 handling this cross-examination.

4 COMMISSIONER MacCALLUM: Thank you.

12:00 5 MR. LOCKYER: If I may address that as
6 well, Mr. Commissioner, with respect, this is
7 pure sophistry that counsel are engaged in.

8 We have a Commission set up
9 where you, Mr. Commissioner, have interpreted the
12:00 10 Terms of Reference to mean that David Milgaard
11 was factually innocent of the murder of Gail
12 Miller. I have put to the witness that that's
13 the position of all counsel here.

14 COMMISSIONER MacCALLUM: I have interpreted
12:00 15 the Terms of Reference to be that way?

16 MR. LOCKYER: Yes.

17 COMMISSIONER MacCALLUM: The Saskatchewan
18 Government has made a declaration to that effect.

19 MR. LOCKYER: Fine. You have interpreted
12:00 20 the Saskatchewan Government as making that --
21 taking that position.

22 COMMISSIONER MacCALLUM: Yes, the
23 Saskatchewan Government has said that.

24 MR. LOCKYER: Sorry. But I kind of
12:00 25 assume -- and perhaps I'm, I think it's a fair



1 assumption -- that you, Mr. Commissioner, agree
2 with that assessment?

3 COMMISSIONER MacCALLUM: I have -- it is no
4 part of my function, as I see it at this moment,
12:00 5 without having heard all of the evidence, to make
6 any such determination.

7 MR. LOCKYER: Oh.

8 COMMISSIONER MacCALLUM: I came here with
9 an open mind and I shall remain open-minded until
12:01 10 I have heard all the evidence plus all the --

11 MR. LOCKYER: I'm sorry, that's a very
12 important issue. Are you saying -- if I may with
13 respect, Mr. Commissioner, ask you -- is it your
14 position Mr. Commissioner, then, that a part of
12:01 15 this Commission is to decide whether or not David
16 Milgaard killed Gail Miller?

17 COMMISSIONER MacCALLUM: How could you
18 possibly suggest that in view of what I have just
19 said to you?

12:01 20 MR. LOCKYER: Well, what you just said to
21 me made me think that, and I'm a bit worried
22 about it.

23 I'm acting -- and I think I
24 speak for Mr. Wolch I hope -- I am acting on the
12:01 25 assumption that this Inquiry, Mr. Commissioner,



1 would never have directed any questions to the
2 issue of whether or not David Milgaard killed
3 Gail Miller. I have acted on the assumption that
4 you, Mr. Commissioner, assumed that he didn't,
12:01 5 that Commission Counsel assumes that he didn't,
6 just as the Saskatchewan Government and indeed
7 the Federal Government assumes that he didn't,
8 but if we're wrong in that regard then I think
9 our approach to the evidence in this Commission
12:02 10 has to be very different and I think it's
11 important that we clarify this.

12 COMMISSIONER MacCALLUM: Mr. Lockyer, I
13 don't know how you have managed to turn an
14 objection to your question into an interrogation
12:02 15 of my attitude towards this issue.

16 MR. LOCKYER: I'm not. It's just something
17 that you said, Mr. Commissioner, that alerted me
18 to this as being a --

19 COMMISSIONER MacCALLUM: I have said more
12:02 20 than once, sir, that we will go where the
21 evidence leads us.

22 MR. LOCKYER: I understand.

23 COMMISSIONER MacCALLUM: You know what the
24 Terms of Reference say and so do I.

12:02 25 MR. LOCKYER: But if -- certainly --



1 COMMISSIONER MacCALLUM: And, now, I don't
2 wish to carry on this discussion any more,
3 Mr. Lockyer.

4 You have -- the simple
12:02 5 objection to the question was easy to comprehend,
6 you -- they are saying that you are being
7 inflammatory, that you are being argumentative in
8 a question to this witness, who says, after all,
9 that she can't remember anything.

12:02 10 But, to get back to the
11 question itself, you described her statement of
12 May the 24th as an invention, and I think you are
13 entitled to put that to her.

14 MR. LOCKYER: Yes.

12:03 15 COMMISSIONER MacCALLUM: You wanted,
16 therefore, to know where she thought the
17 invention might have come from if it didn't come
18 from suggestions through the police, or through
19 something improper they did, and that's all.

12:03 20 MR. LOCKYER: Well, if I may
21 Mr. Commissioner, I don't -- this, I just feel I
22 have run into, quite unexpectedly into an issue
23 that, certainly, I would see as --

24 COMMISSIONER MacCALLUM: Well, Mr. Lockyer,
12:03 25 I'm not here to make any declaration of David



1 Milgaard's innocence. Somebody has already done
2 that. If you are not satisfied with it wait
3 until you hear from me at the end of the Inquiry.

4 MR. LOCKYER: Well, that's all very well.

12:03 5 The trouble is when one is doing an inquiry, you
6 act on certain assumptions and presumptions that
7 enable you to avoid going into some issues that
8 you otherwise might feel a need to.

9 COMMISSIONER MacCALLUM: What is the
12:03 10 problem then?

11 MR. LOCKYER: And certainly, if you recall
12 the lengthy written submission that I made before
13 the evidence began at this inquiry, it included
14 reference to the fact, for example, that at the
12:03 15 outset of the Guy Paul Morin Inquiry,
16 Commissioner Kaufman declared his position, and
17 indeed the Commission's position, that Guy Paul
18 Morin was innocent, factually innocent of the
19 murder of Christine Jessop. Now, I had
12:04 20 understood from the way that brief was responded
21 to, that that was the position of you,
22 Mr. Commissioner, although I must confess, you
23 are right, you hadn't made that statement at the
24 outset of these hearings, but if indeed that's an
12:04 25 open question as to whether or not David Milgaard



1 killed Gail Miller, if that's an open question at
2 this Commission, then that really is a task that
3 we should know we have to meet because it opens
4 up the whole consideration of how we approach
12:04 5 this inquiry, of our involvement in this inquiry
6 and, I must say, I'm finding it extremely
7 troubling that the question I've asked this
8 witness has opened up this Pandora's Box.

9 COMMISSIONER MacCALLUM: Well, it's not a
12:05 10 Pandora's Box. How could it be an open question.
11 I'm forbidden by the terms of reference to make
12 any findings of civil or criminal liability. I
13 couldn't possibly make a finding that David
14 Milgaard killed Gail Miller.

12:05 15 MR. LOCKYER: It just gets sort of worse, I
16 just get more and more troubled by it. All I'm
17 looking for is a statement from you,
18 Mr. Commission --

19 COMMISSIONER MacCALLUM: No, you are not
12:05 20 going to get a statement from me.

21 MR. LOCKYER: Well, so it seems.

22 COMMISSIONER MacCALLUM: No.

23 MR. LOCKYER: So it seems.

24 COMMISSIONER MacCALLUM: It's not part of
12:05 25 my function, and Mr. Beckman --



1 MR. LOCKYER: Well, with respect,
2 Commissioner Kaufman found it was part of his
3 function.

4 COMMISSIONER MacCALLUM: Well, yes, I quite
12:05 5 realize that. I think Mr. Wolch pointed me, some
6 time ago, to the work of other commissions and I
7 told him, perhaps not as eloquently as I might
8 have, that although I very much respected the
9 precedential value of their work, I was not bound
12:05 10 by it. Yes, Mr. Beckman?

11 MR. BECKMAN: I'm sorry to interrupt, My
12 Lord, my Learned Friend. I rise, I'm on my feet
13 to put our position on this discussion.

14 COMMISSIONER MacCALLUM: Yes, sure.

12:06 15 MR. BECKMAN: And I think the objection,
16 like many objections in many hearings and many
17 trials, is to the form of the question and the
18 form of the evidence.

19 COMMISSIONER MacCALLUM: Yes.

12:06 20 MR. BECKMAN: I don't think, and again
21 Mr. Lockyer will do what he does and he's an able
22 and experienced counsel, but I think that we're
23 getting a little off track and that's what I
24 stood up to say, in the sense of saying I'm here
12:06 25 standing on my feet to talk about the conduct of



1 the course of the evidence and it's my position
2 that the rules of evidence are there to assist
3 the Commission and the trier of fact by allowing
4 them to weigh the evidence as it goes in, and
12:06 5 there's been a great deal of latitude given, I
6 understand to all counsel, with respect to
7 cross-examination.

8 COMMISSIONER MacCALLUM: Yes, uh-huh.

9 MR. BECKMAN: But that having been said, I
12:07 10 think that at a bare minimum occasionally we have
11 to restrain ourselves as lawyers from expanding
12 that, from putting a proposition to the witness.
13 The witness can say yes, no, I can't remember,
14 but other than that, I don't think it assists the
12:07 15 process to go into argument at this point. Thank
16 you, My Lord.

17 COMMISSIONER MacCALLUM: I don't either,
18 Mr. Beckman. Mr. Lockyer of course, in the
19 course of his examination of this witness, has
12:07 20 engaged in a good deal of what might be termed
21 argument. I have not stopped him because, after
22 all, the subject that he has been addressing is
23 really very close to the centre of this whole
24 matter and the difficulty with arguing at this
12:07 25 point, of course, and in speaking with a witness



1 who can't remember anything, is that it invites
2 applications to recross and, in effect, rebut
3 argument, which simply means hearing more
4 argument. It wouldn't be advisable to allow this
12:08 5 to continue were it not at such a critical stage
6 of the inquiry. The witness is clearly central
7 to the whole matter and irrespective of the fact
8 she can't remember very much, counsel has a
9 legitimate right to delve into the question of
12:08 10 why she can't remember in view of all that has
11 gone by, but, Mr. Lockyer, you may continue in
12 that vein if you wish.

13 MR. LOCKYER: I will.

14 COMMISSIONER MacCALLUM: Please don't
12:08 15 involve me further in your discussion or my views
16 on the terms of reference which --

17 MR. LOCKYER: I didn't expect to go in that
18 direction.

19 COMMISSIONER MacCALLUM: -- is a question
12:08 20 in the past.

21 BY MR. LOCKYER:

22 Q So, madam, to go back to the question, all right,
23 that I asked you --

24 A Could you please repeat it?

12:08 25 Q Perhaps I'll just lead you into it because the



1 flow has gone a bit. If we go back to some of the
2 things we've determined in the course of your
3 evidence, you see -- we've heard how you describe,
4 or you describe, the statement that you signed on
12:09 5 May the 24th describes a knife that wasn't stolen;
6 right. Do you remember that?

7 A Correct.

8 Q We've seen how you described in the contents of
9 that document that you signed a murder that you
12:09 10 didn't see; right?

11 A I don't know that, sir.

12 Q Well, it's a murder that David Milgaard didn't
13 commit, put it that way. You describe David
14 Milgaard doing something you didn't see; right?

12:09 15 A That's correct, I'll agree with you.

16 Q And it seems just a little unlikely, madam, you
17 might think, that some third party, Larry Fisher,
18 who did kill Gail Miller, sort of did it while you
19 were sitting in a car watching him; don't you
12:10 20 think?

21 A I'm sorry, I lost -- could you repeat that?

22 Q The only alternative is if we now know that Larry
23 Fisher committed the crime --

24 A Okay.

12:10 25 Q -- it seems just a little unlikely that you are



1 sitting in a car and he's committing the crime
2 while you are sitting in a car watching him, don't
3 you think, a matter of feet away?

4 A I don't recall the time or anything, okay, I can't
12:10 5 answer that question for you.

6 Q You describe a compact in the car, an ID in it,
7 which we know wasn't missing; right?

8 A Correct.

9 Q You talk of hearing bells, and I don't think we've
12:10 10 come to this before, from the church. You
11 remember that?

12 A Yes.

13 Q The bells were removed from that church in 1959,
14 madam.

12:10 15 A Okay.

16 Q Ten years before you are claiming to hear them, or
17 -- yes, 10 years before you claim to have heard
18 them.

19 COMMISSIONER MacCALLUM: Are you giving
12:11 20 evidence now, Mr. Lockyer?

21 MR. LOCKYER: It's a fact and it's
22 something that we can present to the Commission
23 at some point.

24 COMMISSIONER MacCALLUM: Well, if you
12:11 25 undertake to do so, that's fine.



1 BY MR. LOCKYER:

2 Q Yes. So you understand that, you are hearing
3 bells that haven't been around for 10 years?

4 A I still hear the bells.

12:11 5 Q You still hear the bells?

6 A I'm sorry, I can't change that.

7 Q Yes. So do you think that this is a reasonable
8 scenario, madam, that on March 11th you told the
9 police the truth; right?

12:11 10 A Correct.

11 Q That on May the 24th you signed a document that
12 contained a large number of untruths after the
13 pressure you had been put forward since March
14 11th?

12:11 15 A I don't know that.

16 Q It's a reasonable scenario do you think?

17 A Reasonable maybe, but I don't know that.

18 Q And that when it came to you having to testify
19 under oath, and I sort of put this to you
12:12 20 yesterday and I'm going to do it again, that you
21 sort of worked out in your mind a means of
22 satisfying the authorities on the one hand by
23 giving them some of what they wanted and appeasing
24 your own conscience on the other hand by not
12:12 25 giving evidence which, if true, would directly



1 establish that David had killed Gail Miller. Do
2 you follow me?

3 A Yes, I follow you.

4 Q It's a pretty reasonable scenario don't you think,
12:12 5 ma'am?

6 A Yes.

7 Q Being a third party looking at this?

8 A I wasn't sure if you were asking me a question.
9 That's why I was just sitting here.

12:12 10 Q Your answer?

11 A Pardon me? I'm sorry.

12 Q I say that's a pretty reasonable scenario, isn't
13 it, for any third person looking at this; don't
14 you think?

12:12 15 A Possibly.

16 Q I want to look now at what happened with Ronald
17 Wilson and compare it to what you signed on May
18 the 24th and see how -- remember how the March
19 11th statement of yours jibed so nicely with what
12:13 20 David said on March 3rd and what Ronald Wilson
21 said on March 3rd and it may well be on March 2nd
22 as well?

23 A Okay.

24 Q All right? So let's see how -- you remember
12:13 25 Ronald Wilson going through the same kind of deal



1 that you are in those fateful days in May of 1969,
2 although in his cases he's had an extra day of it
3 because they found him on May 21st and they only
4 found you on May 22nd. All right?

12:13 5 A Okay.

6 Q Okay. And for this I'm going to refer to Karst's
7 report, as to his dealings with Wilson. It begins
8 at 009264. And we're going to see how what Wilson
9 said over a series of days commencing, according
12:14 10 to this report, commencing May 21st running
11 through to May 24th, the day you signed your
12 document, how we see how his new version as it
13 develops marries the version that you signed on
14 May the 24th.

12:14 15 A Okay.

16 Q You follow me?

17 A Okay.

18 Q And you'll see a really quite extraordinary
19 concomitance of memories, if we can call them
12:14 20 that, just for the sake of argument anyway as we
21 go through this report of Karst. We start with
22 May 21st where we have, right here, Wilson being
23 interviewed at the Regina City Police station and
24 then if we go to the next paragraph:

12:15 25 "During this conversation with Ronald



1 Wilson, he admitted attending in
2 Saskatoon with Milgaard and Nickey on
3 the early morning of January 31st and in
4 contradiction to his original and other
12:15 5 interviews, he admitted that Milgaard
6 had left the car when they became stuck
7 at approximately 6:45 that morning,
8 while looking for the Cadrain
9 residence."

12:15 10 Which of course fits, and we're going to see even
11 that develops further, but that fits the document
12 that you sign on May the 24th.

13 A Okay.

14 Q Right. You follow?

12:15 15 A Yeah, I follow you.

16 Q You agree with that?

17 A I follow you.

18 Q Yes. All right. If we then go to the next page
19 of the document, and Karst is now describing the
12:16 20 times he drives Wilson to Saskatoon from Regina on
21 May the 21st, right here, and he says in his
22 report:

23 "En route to Saskatoon, Wilson divulged
24 to me that on that trip on January 31st
12:16 25 with Milgaard and Nickey, the two boys



1 had discussed B & E's, along with
2 rolling someone and purse snatching as a
3 source of money, as their financial
4 position at this time was not one with
12:16 5 which they could do any amount of
6 travelling, as they anticipated going to
7 Edmonton and Vancouver."

8 So there's the first glimmer of what is to appear
9 in the document that you signed on May the 24th,
12:16 10 the purse snatching idea, which ultimately became
11 the supposed motive for David killing Gail
12 Miller.

13 A Okay.

14 Q Do you see how slowly but surely we're moving into
12:17 15 that document that you signed on May the 24th;
16 right?

17 A Uh-huh.

18 Q And if we move to the bottom of this page, we
19 have:

12:17 20 "Wilson pointed out the area of Avenue P
21 and Avenue M and N around 22nd Street
22 West -- "

23 He's been taken just as you were the next day to
24 the, to where Gail's body was found,

12:17 25 "-- as an area which was similar to the



1 location where the girl was seen walking
2 on the street that early morning when
3 they approached her to ask directions,
4 however, he was unsure of the exact
12:17 5 block. Nor could he point out the exact
6 location where the car had become
7 stalled, where Milgaard had left the
8 vehicle to go for help."

9 So that's just like yours. Do you remember?

12:17 10 A Yes.

11 Q Suddenly we've got this girl that they approached
12 for directions, that you approached supposedly for
13 directions, and you remember the only previous
14 mention of this is David himself on March 3rd had
12:18 15 told the police that they stopped an old woman on
16 the street and asked for directions.

17 A Okay.

18 Q But for the first time we've now got Wilson
19 talking about this woman and making her into a
12:18 20 girl, according to the Karst report, which is what
21 was then to appear in the document you signed on
22 May 24th.

23 A Okay.

24 Q Right. You see that?

12:18 25 A Uh-huh, I'm following you.



1 Q And interesting enough, we still have -- rather,
2 we have Wilson saying the same as apparently, as
3 the police claim you did, that neither of you
4 could quite pinpoint where it was you had stopped
12:18 5 and asked her for directions. Do you remember
6 that was supposedly your position as well?

7 A Okay.

8 Q According to the police. So we have an
9 extraordinary marriage of "memories" going on
12:19 10 here; do we not?

11 A Can I ask one question?

12 Q Of course.

13 A What was the date of this one?

14 Q This is May the 21st.

15 A Okay.

16 Q This is the day before you are found and brought
17 from Regina to Saskatoon.

18 A Okay.

19 Q Wilson is found the day earlier and he's now been
12:19 20 driven to Saskatoon.

21 A Okay.

22 Q Remember, Wilson is here a day before you are.

23 A Right.

24 Q All right. Then we move to May the 22nd -- go to
12:19 25 the next page of the document, please -- we then



1 move to May 22nd in the morning, you see that, on
2 the morning of May 22nd, so you are still in
3 Regina, you are being found by Mackie in Regina, I
4 think it's later that morning --

12:19 5 A Okay.

6 Q -- but Wilson is already in Saskatoon giving the
7 police, supposedly giving them information, all
8 right, and if we then go down that page to --
9 starting here -- according to this report on May
10 the 22nd Wilson is now giving them more
11 information and different information than from
12 what he's given them on March 3rd.

13 A Okay.

14 Q "Wilson's account of what transpired that
15 morning is roughly as follows. The
16 three of them drove into the city and
17 drove around for a short while when they
18 met a girl in the area described above,
19 asked directions for Peace Hill. The
20 asking done by Milgaard who was on the
21 passengers side of the vehicle where the
22 pedestrian was. The girl stated she
23 didn't know and was unable to assist
24 them, however, Milgaard had asked
25 whether she would like a lift or a ride



1 to where she was going, to which she
2 declined. Upon driving away, Milgaard
3 made the remark to the effect, "The
4 stupid bitch".

12:20 5 Three words identical to the words that appear in
6 the document that you signed on May the 24th.

7 A Okay.

8 Q Right?

9 A Uh-huh, correct.

12:21 10 Q It's as if you and Wilson sort of have the same
11 brains in your head, so to speak; isn't it?

12 A Yeah.

13 Q As you move, the two of you from saying the same
14 thing March 3rd, March 11th, to, as we watch
12:21 15 Wilson develop into your, into the document that
16 you signed on May the 24th. You see that?

17 A Yeah.

18 Q Even the same words, "the stupid bitch," which,
19 incidentally, I think I may have suggested
12:21 20 yesterday you adopted at trial, "the stupid bitch"
21 remark, and if I did, you didn't adopt that at
22 trial.

23 A Okay.

24 Q Is that right? Yes, I've got it right, you did
12:21 25 not adopt it at trial.



1 A Okay.

2 Q Just in case I suggested, or may have implied to
3 you you did yesterday. Then -- and obviously the
4 stupid bitch, that remark sort of fits the idea
12:22 5 that David already had a certain scorn for this
6 woman which would help one understand why he might
7 then go and attack her and kill her; right?

8 A Okay.

9 Q You follow?

12:22 10 A Yes, I follow you.

11 Q Yes. Carrying on from where I stopped, the stupid
12 bitch, which is the next new piece of information
13 that the police record Wilson as giving them:

14 "They drove a short distance further and
12:22 15 while making a turn, the vehicle became
16 stuck, as they had no reverse gear. At
17 this time Milgaard left for help,
18 returning approximately 15 minutes later
19 puffing and running."

12:22 20 So you see how what Wilson had said on the
21 previous day that I had read to you, that
22 Milgaard had left the car when they became stuck
23 at about 6:45 that morning, has now developed
24 into something much more sinister in the context
12:23 25 of Gail Miller's murder. Do you see that?



1 A Yes.

2 Q And much more sinister and also like an echo of
3 what's in the document that you signed on May the
4 24th.

12:23 5 A Okay.

6 Q Right? See how it's -- it's as if the document of
7 May 24th is getting written over a period of days
8 as Wilson is developing, according to Karst, his
9 story. Do you see that?

12:23 10 A So in other words, what you are suggesting is the
11 words in my statement were not my words, that they
12 were someone else's; is that what you are
13 suggesting?

14 Q Oh, I've been suggesting that from the first
12:23 15 moment I started questioning you, madam, yes.

16 A Okay.

17 Q So it's as if, to repeat, the document that you
18 signed -- and that's why I keep calling it that,
19 on May the 24th, rather than your statement -- the
12:23 20 document that you signed on May 24th, it's as if
21 it's being written by Wilson, or at least by
22 Karst's version of what Wilson is saying to him
23 over these days. Do you see that?

24 A Yeah, I'm following you.

12:24 25 Q All right. Then we then move into May the 23rd,



1 next page, please, of the same document, see
2 there, "On Friday, May 23rd," so we're now into
3 the day where you and Wilson meet Roberts.

4 A Okay.

12:24 5 Q The lie detector man.

6 A Okay.

7 Q Right. And it's now three o'clock in the
8 afternoon which, according to Roberts, is he
9 finished, he said, with both of you at 2:30.

12:24 10 Remember we had a bit of a vacuum as to what
11 happened to you after 2:30?

12 A Correct.

13 Q And this is what Short wrote in the report:

14 "On Friday, May 23rd, I attended at 608
12:25 15 Cavalier Motel in the company with
16 Inspector Wood, Lieutenant Short,
17 Detective Sergeant Mackie, Sergeant
18 Chartier and Morrison --"

19 So now we get a good idea of all the officers
12:25 20 that you may have been dealing with, all male,
21 experienced officers.

22 A Okay.

23 Q You see that? You've got one, two, three, four,
24 five and add Karst, you've got six at the Cavalier
12:25 25 Motel. Do you see that?



1 A Okay.

2 Q And I might say, if you add in Roberts, you've got
3 seven. You see?

4 A I'm following you.

12:25 5 Q Wood, Short, Mackie, Chartier, Morrison, Karst and
6 Roberts, it sounds like a poem, and:

7 "At 3:00 p.m., I called --"

8 Says Karst,

9 "-- at room 610 of the Cavalier where
12:25 10 Wilson picked out a knife which was out
11 of a group of five, which Inspector
12 Roberts had shown him as being similar
13 to the one he states he had seen en
14 route from Regina to Saskatoon on the
12:25 15 morning of January 31st, this being a
16 reddish brown colored bone handled type
17 paring knife."

18 All right?

19 A Okay.

12:26 20 Q And if we go to your statement -- I shouldn't call
21 it that -- the document that you signed on May the
22 24th, 065356, look what we see, the knife you say
23 was taken from the elevator, and then you say:

24 "This knife was a kitchen knife used to
12:26 25 peel potatoes and things like that. It



1 had a maroon handle. This knife was the
2 same as one of a group of knives that I
3 was shown by Mr. Roberts."

4 A Okay.

12:26 5 Q See how you can, you could imagine what Wilson is
6 saying is being transposed a day later, in this
7 case, into the document that you signed the next
8 day. Do you see that?

9 A Yeah, I follow you.

12:26 10 Q Yes. If we can go back to the Wilson -- the Karst
11 report, it's 009264 to 267. Carrying on where I
12 left off:

13 "Wilson was then brought to the police
14 station and at 3:30 p.m., a statement
12:27 15 was taken from him with regards to the
16 above described incident adding to the
17 original that he had seen this knife in
18 the car during the trip, which he
19 previously denied. Also added in his
12:27 20 statement was that when Milgaard
21 returned to the car after being
22 stuck -- "

23 That would be the 15 minutes,

24 "-- the first time, he stated something
12:27 25 to the effect that, "I fixed her", and



1 when Wilson questioned him on this
2 Milgaard declined to make any further
3 comment."

4 Now that is clearly a statement which would be
12:27 5 taken as a reference to him having killed Gail
6 Miller; right?

7 A Okay.

8 Q But of course the document that you signed on May
9 24th had Wilson going in a different direction
12:28 10 from Milgaard when this supposed breakdown
11 occurred; remember?

12 A Correct.

13 Q So Wilson on that theory wouldn't have seen what
14 you are supposed to have seen in that document you
12:28 15 signed on May 24th. You follow?

16 A Yes, I follow.

17 Q Because he's gone in a different direction.

18 A Right.

19 Q But by saying Wilson, or having Wilson say that on
12:28 20 his return to the car David said "I fixed her," in
21 effect Wilson has corroborated the information
22 that appears in the document you signed on May
23 24th. Do you see that?

24 A Okay.

12:28 25 Q You follow?



1 A Yes.

2 Q Yes. And I might add that in the meantime, and
3 this overall point is an important one, Mr. Wilson
4 has now, for the first time, created the,
12:29 5 according to Karst, the second breakdown, which is
6 in fact the first breakdown, this first breakdown
7 that's supposed to have happened before the later
8 one behind Danchuks' to which none of the three of
9 you had made any reference in your original
12:29 10 statements of March 3rd and March 11th. Do you
11 follow me?

12 A Yes, I follow you.

13 Q So this new breakdown that's supposed to have
14 occurred has appeared now for the first time in
12:29 15 the course of what Karst is recording Wilson as
16 telling you, right, which you then adopt, or is
17 adopted in this document that you signed on May
18 the 24th?

19 A Okay.

12:29 20 Q You follow?

21 A Yes, I follow you.

22 Q Let's move on with --

23 COMMISSIONER MacCALLUM: It's time for
24 lunch.

12:30 25 MR. LOCKYER: Oh, sure, yes. I'll be



1 another, just for your information,
2 Mr. Commissioner, I'll be about another 20, 25
3 minutes with this witness and I'll be finished.

4 COMMISSIONER MacCALLUM: All right.

02:04 5 *(Adjourned at 12:30 p.m.)*

6 *(Reconvened at 2:00 p.m.)*

7 MR. HODSON: Afternoon, Mr. Commissioner.

8 COMMISSIONER MacCALLUM: Mr. Hodson?

9 MR. HODSON: Before Mr. Lockyer resumes
02:04 10 with his examination, I am just wondering if I
11 could address a couple of matters that arose this
12 morning regarding the Commission's mandate.

13 COMMISSIONER MacCALLUM: Yes.

14 MR. HODSON: Of course, as I said in my
02:04 15 opening remarks, what this Commission does is
16 guided entirely by the Commission's Terms of
17 Reference which have been prescribed by the
18 Government of Saskatchewan.

19 The Commission circulated a
02:04 20 position paper last year, got the input of
21 counsel and revised it and sent it out in
22 December of 2004, and I believe at that time, the
23 parties that existed then, there was consensus.
24 And I just wish to read a portion of what is in
02:04 25 that position paper, and it states -- and this is



1 the Commission's words:

2 "The Government of Saskatchewan has
3 acknowledged that David Milgaard is
4 factually innocent of the charge that he
5 murdered Gail Miller and that he was
6 wrongfully convicted of a crime he did
7 not commit. In the view of the
8 Commission the term "wrongfully
9 convicted" as used in the Terms of
10 Reference means that David Milgaard was
11 found guilty of a crime which he did not
12 commit. In the Terms of Reference the
13 Government of Saskatchewan has directed
14 the Commission to inquire into both the
15 conduct of the investigation and the
16 subsequent criminal proceedings to
17 determine why David Milgaard was
18 wrongfully convicted."

19 That's taken straight from the position paper.

20 The Government of Saskatchewan
21 has acknowledged David Milgaard's factual
22 innocence and, therefore, this Commission has not
23 been asked to, nor will it, inquire into his
24 guilt or innocence. The Government of
25 Saskatchewan has already acknowledged his factual



1 innocence.

2 If there are any issues or
3 concerns with what I have stated, or with the
4 issue that was raised today, I would ask counsel
02:05 5 to approach me later today and, if necessary, we
6 can schedule a time to address any issues any
7 counsel may have on this or any other issue.
8 However, I think it would be inappropriate to do
9 it now with this witness on the stand, and so
02:06 10 again, if counsel have concerns, please raise it
11 with me.

12 Secondly, while I'm up here, I
13 wish to address another matter with respect to
14 cross-examination. As I have advised counsel on
02:06 15 a number of occasions, in my role as Commission
16 Counsel I have been instructed by you,
17 Mr. Commissioner, not to take the role of
18 objecting to questions put by other counsel, that
19 has been left to the Commissioner's discretion
02:06 20 and, as well, to counsel for any witnesses. And
21 counsel for the parties have been told, if they
22 object to any question put by any other
23 counsel -- including me but so far I'm safe --
24 they may get up and object and the Commissioner
02:06 25 will rule on it. However, we have seen, from



1 time to time some, issues arise with respect to
2 scope and manner of cross-examination.

3 And I wish to say this at the
4 outset, Mr. Lockyer, I'm raising this now, and
02:07 5 this is not directed at you, this is to all
6 counsel, it happens to be that I am dealing with
7 this matter now, so please don't take it that
8 it's any reflection on your cross-examination,
9 it's a general comment.

02:07 10 One of the challenges we have
11 in this Commission of Inquiry is that so much has
12 happened and there's such an extensive record, if
13 I can call it that, not a formal record but a set
14 of documents, over 300,000 pages spanning 35
02:07 15 years, there is a an awful lot there. Unlike a
16 civil proceeding or a criminal proceeding where
17 there is two things; one, a formal record where
18 parties can say "this is in evidence", we don't
19 have that, we have a work in progress. At the
02:07 20 end of the piece we will have a formal record so
21 we don't have that now.

22 Secondly, we don't have, at
23 least in a formal sense, pleadings or positions
24 of parties. So we're not able to say, for
02:08 25 example, that "everybody acknowledges that they



1 departed Regina at 1:00 a.m. on January 30th,
2 that's an admitted fact". It may be 12:00, it
3 may be 1:30, it may be that it's a fact that is
4 in dispute or isn't in dispute, so we don't have
02:08 5 that mechanism.

6 And as a result that, I think,
7 presents a bit of a challenge to counsel
8 cross-examining who might wish to put to a
9 witness a certain fact, and if I may just offer a
02:08 10 suggestion to all of us, myself included, to
11 assist the process, to allow us to be as
12 efficient as possible but at the same time
13 allowing all counsel to vigorously and
14 effectively represent their clients; that where
02:08 15 there is a particular fact that you think may be
16 in issue -- and I'm addressing this to counsel --
17 you may have a very strong position that it's a
18 fact that something happened on a particular day,
19 but if you know that that may be an issue,
02:09 20 perhaps if the question is put in words such as
21 "it is my position", or "I believe the evidence
22 will prove", or "I believe there is no evidence
23 to the contrary", etcetera -- and I don't wish to
24 tell counsel how to cross-examine, these are
02:09 25 simply my suggestions to assist the process --



1 that will avoid, then, counsel who may wish to
2 object saying "well I don't think that's a fact
3 yet". Because the problem is, as I said earlier,
4 there is no formal pleadings and there is no
02:09 5 formal record.

6 Having said that, there are
7 obviously a lot of facts which are
8 non-controversial and not in dispute, our
9 challenge is to determine which ones those are.

02:09 10 So I just offer that. And
11 again, Mr. Lockyer, please do not take these
12 comments as being directed to you, I simply raise
13 them at this point because I'm addressing the
14 other matter. And hopefully we can find a way to
02:09 15 allow everybody to put forward their position
16 without having objections which, notwithstanding
17 what I have said, I'm sure will happen from time
18 to time. So thank you, Mr. Commissioner.

19 COMMISSIONER MacCALLUM: Thanks,
02:10 20 Mr. Hodson.

21 Mr. Lockyer, you may now resume
22 your cross-examination.

23 MR. LOCKYER: Yes, Mr. Commissioner.

24 BY MR. LOCKYER:

02:10 25 Q Now, madam, you will recall before lunch I was



1 going through Detective Karst's report of May the
2 25th which deals primarily with his, well, his
3 representation of his dealings with Mr. Wilson
4 over the days May 21, 22, 23, and indeed, as we'll
02:10 5 see, 24. And, if you recall, at lunch we were in
6 the middle of May 23rd, and the last point that I
7 had covered with you was Detective Karst's claim
8 that Mr. Wilson had told him that, when he
9 returned to the car, David said "I fixed her", and
02:11 10 we then compared that to how part of your -- part
11 of the document that you signed on May 24th had
12 dealt with that; do you remember that?

13 A Correct.

14 Q And I wanted to move on. We're now at, if you
02:11 15 still have the page 009267 that's where I was when
16 we broke at lunch, I want to get back to that
17 page. Thank you. And we're now here.

18 And Detective Karst wrote, and
19 this is with reference to what he says Wilson told
02:12 20 him sometime after 3:00 p.m. on August 23rd, after
21 Roberts in other words, all right:

22 "Also in this statement Wilson states he
23 had seen blood on Milgaard's trousers
24 when changing his clothes at the Cadrain
02:12 25 residence at 334 Avenue O South on the



1 morning of January 31st, 1969. This he
2 had previously denied."

3 Now that's, that's one area, if you recall,
4 madam, where you said at the outset on March
02:12 5 11th, if you remember in your statement, that you
6 had not seen blood on David's clothing; do you
7 remember that?

8 A Yes.

9 Q And you stuck to that right through your dealings
02:12 10 with the police and, indeed, even in the document
11 that you signed on May 24th, that had you
12 maintaining that position; do you remember that?

13 A I'll agree with you.

14 Q That you didn't see blood on his trousers. And if
02:13 15 we take all of the -- I don't know quite what to
16 call them -- the additions, if you will, that
17 Wilson supposedly adds or changes, whichever way
18 you want to look at it, from his March 3rd
19 statement, this is the one addition that you don't
02:13 20 adopt --

21 A Correct.

22 Q -- in that document you signed on May 24th. And
23 perhaps that's because, if you had, it would have
24 amounted to a direct contradiction of what you
02:13 25 said on March 11th; do you think that may be



1 right?

2 A I'm not sure what you are asking me.

3 Q Well, if you had signed a document on May 24th in
4 which you had said that you had seen blood --

02:13 5 A Uh-huh.

6 Q -- on David's trousers, then that would, like it
7 or not, have been a direct contradiction of what
8 you had said to the police on March 11th?

9 A Yes.

02:14 10 Q Right? And the way that you were sort of
11 suggesting it could be categorized, or one way it
12 could be categorized in your evidence yesterday,
13 what was in the statement of -- or the document of
14 May 24th, as opposed to what you had said on March
02:14 15 11th, was that the document of May 24th added to,
16 but didn't contradict, what you had said on March
17 11th; do you remember that?

18 A Yes.

19 Q Yeah. And I pointed out to you one regard, "well,
02:14 20 that's questionable, because you had said on March
21 11th that David and Wilson had never been, or Ron
22 Wilson had never been out of your sight for more
23 than one or two minutes"; do you remember that?

24 A Yes.

02:14 25 Q And it's pretty hard to let that jive with what



1 was in the May 24th document which you signed;
2 right?

3 A Correct.

4 Q But, apart from that, you could say that there's
02:15 5 nothing in May 24th that directly contradicts
6 anything you had said in March 11th?

7 A Are you looking for an answer? I'm sorry.

8 Q Yeah. There is nothing?

9 A Yeah, I see that, yeah, okay.

02:15 10 Q And the blood on the trousers would be just
11 that --

12 A Okay.

13 Q -- if you had suddenly signed something that said
14 you had seen blood on the trousers. Do you
02:15 15 follow?

16 A Yes.

17 Q All right. If we move on, then, to what -- in the
18 same report to what Wilson is reported or recorded
19 as saying to Karst -- and, remember, this is all
02:15 20 happening over a period of three days, May 21, May
21 22, we're now in the midst of May 23. He says at
22 the next page, 009268, 'he' being Karst that is:

23 "Wilson also recalls Nicky finding a
24 ladies compact in the vehicle when
02:16 25 leaving Saskatoon and when inquiring



1 whose it was Milgaard grabbed it out of
2 her hands and threw it out of the
3 window."

02:16 4 Which is really, then, echoed the next day in the
5 document that you signed?

6 A Okay.

7 Q Right? Agreed?

8 A I agree.

02:16 9 Q Yeah. So here is another echo from what Wilson
10 has been saying in the preceding three days in
11 that document of May 24th; right?

12 A Okay.

02:16 13 Q Carrying on, the next paragraph, there is two new
14 items of information, so to speak, in the next
15 paragraph that Karst has recorded:

16 "This statement goes on to relate that
17 in Calgary Milgaard and himself had gone
18 to the Bus Depot to make a phone call
19 where Milgaard told him about a girl in
02:16 20 Saskatoon that he had grabbed and had
21 tried to take her purse, however, she
22 fought, and he had jabbed her with a
23 knife and he had put her purse in a
24 trash can and he had thought she would
02:17 25 be alright. Later, when Wilson was



1 telling Nicky about this incident, she
2 had stated to him that she already
3 knew."

4 So the two things there are the claimed
02:17 5 confession from David to Ron Wilson in Calgary,
6 and your response to that claimed confession when
7 Wilson says he told you about it, or when Karst
8 records Wilson as telling you about it, to which
9 you respond that you already knew.

02:17 10 And if we go to your statement
11 of May 24th we have yet another echo -- sorry, I
12 have got to find where it is, at 065358 -- they
13 are one step ahead of me now, I see here
14 Mr. Commissioner, they got the page before I said
02:18 15 it. Don't know why I bother sometimes.

16 If we go to the bottom of this
17 page, what we have you saying according to this
18 document that you signed, we have you:

19 "The second time in Calgary we got some
02:18 20 Marijuana which we all smoked. We all
21 got high. Later in the night of the
22 same day Ron, Albert and Dave smoked
23 grass again and got high again. Ron was
24 driving crazy with the car and I told
02:18 25 him to pull over. He did and I took the



1 keys and ran about a block and then
2 walked a block. As I stopped I saw Ron
3 following me. We sat on the steps
4 inside an apartment block. Here Ron
02:18 5 told me Dave had killed a girl in
6 Saskatoon. I told him "I know.". I do
7 not recall anything further being said
8 about the murder."

9 So you can see how Wilson is a day ahead of you;
10 correct?

11 A Correct.

12 Q Right? It just keeps happening, doesn't it, again
13 and again and again?

14 A Right.

02:19 15 Q On both scores, both what he says he knows and
16 what he says your reaction to that information
17 was, we come back to it again a day later in this
18 document you signed; right?

19 A Correct.

02:19 20 Q Now go back to Karst's report, if we would,
21 009268, the page we were on before, and move into
22 the next paragraph:

23 "The morning of May 24th, 1969, further
24 interviews were again held with Wilson
02:19 25 ...",



1 so now we have moved into the fourth day of
2 Wilson, so we've moved into things he was saying
3 January 21 -- sorry -- May 21, 22, 23, and now
4 we've moved into the fourth day, May 24, which is
02:20 5 the day that you signed the document. All right?

6 "... further interviews were again held
7 with Wilson where he stated he would
8 like to change and add to various parts
9 of his statement given the previous day.
02:20 10 This was to the effect that when they
11 originally got to Saskatoon, and had
12 become stuck, Wilson had said to
13 Milgaard, "you go one way for help, I'll
14 go the other" ..."

02:20 15 And we go to what you were to sign, and I think
16 the police version is that this was said at
17 9:30 --

18 A Okay.

19 Q -- by Wilson in the morning of May 24th, the
02:20 20 document that you came to sign they say, according
21 to Mackie, went from 10:00 to 11:55?

22 A Okay.

23 Q You follow?

24 A Okay.

02:20 25 Q This is minutes, then, before it is said that the



1 document that you came to sign came to be
2 constructed between 10:00 and 11:55; do you follow
3 me?

4 A Yes.

02:21 5 Q So between 9:30 and 10:00, shall we say, Wilson is
6 saying, according to Karst, what I just read to
7 you there; and if we go to your statement, the
8 document of May 24th, you say -- you talk about
9 the pushing of the car, and then at 065357 the
02:21 10 document reads:

11 "I recall Dave ...",

12 top of the page, sorry:

13 "I recall Dave going back in the
14 direction we had spoke to the girl. Ron
02:21 15 went the other way past the funeral
16 home."

17 Which is another way of saying the two of them
18 went in opposite directions; all right?

19 A It sounds like it, yes.

02:22 20 Q So we're back to another echo of what Wilson is
21 saying in the preceding half hour.

22 A Okay.

23 Q Correct?

24 A Correct.

02:22 25 Q Okay. Go back to Wilson, 009268, where we were.



1 I just read to you from here:

2 "... Wilson had said ...",
3 right there:

4 "... Wilson had said to Milgaard, "you
02:22 5 go one way for help, I'll go the other",
6 and that when he returned 10-15 minutes
7 later Milgaard had not returned,
8 however, Nicky was still in the car but
9 in a hysterical condition."

02:22 10 Well that would, of course, match what's in the
11 document that you signed in the following two
12 hours because that would come -- that would match
13 what you were recorded and what you signed as
14 saying that you had just seen David stabbing a
02:23 15 girl to death; right?

16 A Okay.

17 Q Which would certainly jive with you being
18 hysterical; would it not?

19 A I would think so, yes.

02:23 20 Q Yes. Going back, or carrying on, same paragraph:

21 "She had told Wilson that she saw
22 Milgaard dragg a girl down the lane and
23 stab her with a knife, shortly after
24 that Milgaard returned to the vehicle
02:23 25 and sat beside Nicky, ...",



1 which is, of course, consistent with the document
2 that you signed in the next two hours?

3 A All right.

4 Q Right? Okay:

02:23 5 "... however ...",

6 the Karst report goes on:

7 "... she shrugged away as she was afraid
8 of the youth, understandably, at that
9 time."

02:24 10 Do you see that?

11 A Yes.

12 Q And it's really quite remarkable how the document
13 that you signed in the next two hours just copies
14 what's coming supposedly from Wilson, because if
02:24 15 you go back to the document that you signed within
16 the next two hours, 065357, look at this:

17 "I remember Dave coming back and getting
18 into the front seat of the car. I
19 remember moving over toward the drivers
02:24 20 side because I didn't want to be near
21 him."

22 So the memories of you and Wilson, like I said to
23 you before, it was as if you had the same brains
24 on the same pair of shoulders, and you see how it
02:24 25 just keeps going; do you see that?



1 A Yes.

2 Q Yes. And there's one reference, I apologize, I
3 missed out -- oh, I didn't miss it out, I just
4 didn't refer to it when I read it. If you could
02:25 5 just keep the same page here and take out the
6 highlight, please, thank you. Oh, sorry, wrong
7 document. Could you go to 009268, it's the Karst
8 occurrence.

9 I read this to you but I failed
02:25 10 to point out the significance of it and I just
11 want to do that. In this paragraph:

12 "This statement goes on to relate that
13 in Calgary Milgaard and himself had gone
14 to the Bus Depot to make a phone call
02:26 15 where Milgaard told him about a girl in
16 Saskatoon that he had grabbed and had
17 tried to take her purse, however, she
18 fought, and he had jabbed her with a
19 knife and he had put her purse in a
02:26 20 trash can ...",

21 and do you remember, madam, that that's exactly
22 what you were recorded as saying in the document
23 that you signed on the next -- this would be the
24 next day, because this is being said on May 23rd?

02:26 25 A Yes.



1 Q Right. So it all just matches almost to
2 perfection; does it not?

3 A I would think so, yeah.

4 Q Yes. Bearing in mind that you are purporting,
02:26 5 according to the May 24th document, to have
6 actually seen the homicide, and in the case of
7 Wilson he is only purporting to have been away and
8 out of David's company during the time that he had
9 the opportunity to commit the homicide, --

10 A Uh-huh.

11 Q -- those being the two differences or the
12 difference, should I say, between what he is
13 allegedly saying, 21 through 24 of May and what --
14 the document that you sign on May 24; do you
02:27 15 understand?

16 A Yes.

17 Q Now we heard earlier this morning that, if you
18 will recall, that Roberts, when he testified in
19 the Supreme Court of Canada, said that he may well
02:27 20 have gone back and forth between you and Wilson
21 while he was talking to the two of you, and indeed
22 at one point we know he put you together; remember
23 that?

24 A Yes.

02:27 25 Q Yeah. And it's interesting as to whether the



1 Saskatoon Police, as opposed to Roberts who is
2 Calgary Police, acknowledge doing the same thing.
3 And, in fact, in a document wherein Mr. Karst was
4 interviewed by I don't know who -- perhaps someone
02:28 5 can help me with this -- the document begins at
6 169870, and I'm asking you to go -- perhaps we
7 could start there, someone may be able to identify
8 what it is, it's side B of a -- I don't know who
9 he is talking to. Is it Dan Lad (ph) of the
02:28 10 Winnipeg Free Press? I thought it might be, but I
11 don't know. You don't know? In any event perhaps
12 that can be found out, I mean I'm prepared to find
13 out myself, Mr. Commissioner, but at the moment I
14 just don't know. I assume that, when it's
02:28 15 recorded as an interview of Detective Karst,
16 that's what it is.

17 If we go to 18 -- or sorry --
18 169872 of the document, please, and read this.
19 Now the 'he', the third word, the 'he' there is
02:29 20 Cadrain, all right, in context, so I'm going to
21 read it as if it was Cadrain:

22 "I felt Cadrain was a credible witness.
23 Everytime he said something we would
24 check it out and verify it. I would go
02:29 25 to Nichol and say, could this have



1 happened? Yes. Did he go a hundred
2 miles an hour going to Calgary. Yes he
3 did. We checked every little detail to
4 see if this guy was putting me on. You
02:29 5 know, is he exaggerating. Did he think
6 this guy was speeding just because he
7 was nervous? And the other two
8 witnesses, yes he did speed. He did go
9 down back roads. Even little details
02:29 10 like that. And then I can remember
11 Nichol mentioning that he threw out a
12 girl's compact. And I went back and
13 asked Cadrain. He said, ya, ya, I
14 remember that now. In fact Wilson did,
02:30 15 we had a statement, said he recalled
16 that and nothing more was said about
17 it."

18 Do you see that?

19 A Uh-huh.

02:30 20 Q So there does seem to be, at least to some extent
21 on Detective Karst, an admission of going
22 backwards and forwards between you as he talks to
23 one and then the other; you see that?

24 A Yes.

02:29 25 Q And by way of conclusion as to Karst's report that



1 I've been referring to a lot, if we go back to
2 that, 009264, and go to the last page of it,
3 009269, after he's been through all these things
4 that Wilson has said on May 21, 22, 23 and 24,
02:30 5 there's a little addendum right at the end of it
6 which reads:

7 "Statement obtained from Nickey by
8 Detective Sergeant Mackie which
9 coincides with above story related by
02:30 10 Wilson."

11 And the word, from what you've heard,
12 "coincides," would seem to be well chosen;
13 wouldn't you agree?

14 A Yes.

02:30 15 Q Yes. Did you know -- I don't suppose you did, but
16 I'll ask it, did you know, madam, that the jury
17 that tried David never heard anything of your
18 March 11th statement?

19 A No.

02:31 20 Q Did you know that the jury that heard David's
21 trial heard just a few bits and pieces only of Ron
22 Wilson's March 3rd statement?

23 A No.

24 Q Did you know that the jury heard none of David's
02:31 25 March 3rd statement?



1 A No.

2 Q Meaning of course they never had any idea as to
3 how it was that the three of you had given
4 statements that married one with the other before
02:31 5 the events that transpired between March 11th,
6 March 3rd, if you like -- March 11th we'll say,
7 and May 24th; right?

8 A Okay.

9 MR. LOCKYER: All right, that's all. Thank
02:32 10 you.

11 A Thank you.

12 COMMISSIONER MacCALLUM: Mr. Wolch, I
13 wonder if we could just have five minutes,
14 please, before you start, please.

02:32 15 *(Adjourned at 2:32 p.m.)*

16 *(Reconvened at 2:40 p.m.)*

17 COMMISSIONER MacCALLUM: Thanks. In case
18 an explanation was needed, Mr. Wolch, for the
19 adjournment, I did it for the benefit of all the
02:39 20 other people that went to the bathroom.

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

22 COMMISSIONER MacCALLUM: Thank you.

23 **BY MR. WOLCH:**

24 Q It's appreciated. Ms. John, I'm Hersh Wolch, I'm
02:40 25 David Milgaard's lawyer, and I think you and I met



1 in our youth back in the Supreme Court do you
2 recall? Maybe you don't.

3 A No.

4 Q Okay. Over the years David Milgaard and Larry
5 Fisher have attracted a lot of publicity in the
6 newspapers and TV media, etcetera. Have you
7 followed it as it went along?

8 A No.

9 Q That is, when it came on the news, did you
10 deliberately ignore it or not pay attention?

11 A Over the years I was working I wasn't ready to --

12 Q Sorry, could you get the mike closer to you
13 somehow? I can't -- is the mike on?

14 A From the hours that I worked, I didn't really get
15 a chance to watch the news and I didn't really
16 read newspapers.

17 Q How about television, documentaries, there was so
18 many of them on various --

19 A I think I may have seen one, maybe.

20 Q There was a movie made that somehow won best movie
21 of the year in Canada. Did you watch that one?

22 A No.

23 Q You don't even know who played you or --

24 A No, I have no idea. I didn't really realize that
25 there was a movie.



1 Q So you never heard about it?

2 A No.

3 Q Okay. Now, having read what I've read and seen
4 you in Ottawa and seen you here, I'm going to make
02:41 5 some observations which I don't know if you will
6 agree with or not, and I would like you not to let
7 me put words in your mouth.

8 A Okay.

9 Q But it strikes me that basically you are a fairly
02:42 10 normal person.

11 A I should hope so.

12 Q What I mean is that while some people have some
13 quirks about them, possibly even psychiatric
14 problems or temper problems or gosh knows what,
02:42 15 I'm suggesting that you are basically normal.

16 A Yeah, I think I am now.

17 Q And that if you take out the May crucial days of
18 '69 from your life, the rest of your life is
19 basically a normal life?

02:42 20 A No.

21 Q Not normal?

22 A No.

23 Q You've had some stresses?

24 A Yeah, I had quite a few.

02:42 25 Q But, I mean -- sorry, I shouldn't say normal life,



1 but you behaved in a normal way throughout your
2 life?

3 A Yes.

4 Q I'm sorry, that's what I meant to get at.

02:42 5 A Yeah.

6 Q Your behaviour has been normal?

7 A Okay, yes.

8 Q Throughout your life?

9 A Yes.

02:42 10 Q You've encountered different things, but you
11 haven't behaved in a way to cause people to look
12 at you with, that you are acting bizarre or you
13 are strange or you are different or anything like
14 that?

02:43 15 A No.

16 Q I mean, I'm sure if we went to where you work and
17 ask the people you work with, they would refer to
18 you as a nice, normal person?

19 A Uh-huh.

02:43 20 Q Would you agree with that?

21 A Yes, I agree with that.

22 Q And if we look back to you at 16, you were a bit
23 rebellious?

24 A I agree.

02:43 25 Q You were pretty well on your own at 16?



1 A Umm -- probably, yeah.

2 Q You didn't get along very well with your folks?

3 A No.

4 Q You did a little bit of marijuana and other
02:43 5 things?

6 A Yup.

7 Q But now with the benefit of getting older, you
8 realize that very many 16 year olds behave in
9 acting-out ways for a short period of time and
02:43 10 then got on with their lives?

11 A Usually that's what happens, yes.

12 Q It's not shocking that a 16 year old doesn't get
13 along with their parents, is in trouble with their
14 parents or may experiment with marijuana or even
02:44 15 learn about sex?

16 A Of course.

17 Q Okay. And back in '69 you were pretty well
18 depending on yourself; were you not?

19 A I was the oldest, so I guess I was probably the
02:44 20 most independent.

21 Q And I don't mean to upset you, but your parents
22 were not very appreciative of your behaviour and
23 didn't want too much to do with you, or vice
24 versa?

02:44 25 A I don't know. You kind of have to probably ask



1 them that, you know.

2 **Q** Now, over the years, and coming up to today, you
3 appreciate that David has been exonerated, you are
4 aware of that?

02:44 5 **A** Yes.

6 **Q** And you are aware that Larry Fisher has been found
7 guilty of the crime?

8 **A** Yes.

9 **Q** You are aware of that. Now, at the Milgaard trial
02:45 10 you testified as a Crown witness; correct?

11 **A** I guess so, yes.

12 **Q** And at the Fisher trial you testified as a defence
13 witness?

14 **A** Umm, I believe so.

02:45 15 **Q** And basically your testimony, and virtually
16 everything that has happened to date, has, at its
17 core, what you said in May of '69, that's the
18 heart of why you've been called to testify or
19 being asked to be hypnotized or whatever, that's
02:45 20 the core of it?

21 **A** Okay, I see what you are getting at, yes.

22 **Q** Has it crossed your mind that you could be in some
23 difficulty for what you said at that time?

24 **A** Umm, not really.

02:46 25 **Q** I mean, you appreciate to falsely accuse somebody



1 of a crime is a crime itself?

2 A Yeah, I guess so, yeah.

3 Q Has it crossed your mind that you could be in
4 difficulty if you were to admit that for whatever
02:46 5 reason?

6 A No.

7 Q It's never crossed your mind that that could be a
8 problem for you in a legal sense?

9 A I believed that what I said was true, so I never
02:46 10 really thought about it.

11 Q Okay. But you never adopted it in any courtroom
12 or any -- in any under-oath situation did you?

13 A I've been told I haven't, no.

14 Q Now, you have probably been interviewed or under
02:46 15 oath as many times as probably anybody in this
16 country by now and I take it you have some
17 knowledge of the different approaches that
18 interviewers take?

19 A I don't know. Everybody has got their little ways
02:47 20 about them, so --

21 Q That's what I mean.

22 A Yeah.

23 Q And I take it you might agree with me that a tape
24 recording or a video of a person being interviewed
02:47 25 is the best way for somebody later on to find out



1 what happened?

2 A Of course.

3 Q And I suppose if we haven't got a recording, the
4 next best thing might be to record the questions
02:47 5 and the answers verbatim throughout?

6 A Yes.

7 Q Right? And the next way might be a narrative
8 where the questions aren't recorded, but the
9 answers are recorded to come out as a narrative as
02:48 10 in the original statements?

11 A Okay.

12 Q Right?

13 A Correct.

14 Q But when you have a narrative, you don't know what
02:48 15 the questions were.

16 A I'm sorry, pardon me?

17 Q When you look at a narrative, like your first
18 statement, we don't know what the questions are?

19 A That's correct.

02:48 20 Q And questions obviously can have an effect and
21 guide the answer?

22 A Uh-huh.

23 Q Right?

24 A I follow you.

02:48 25 Q For example, if the questioner says to you, "Did



1 you see anything unusual about David's clothes?"
2 you might just put into your narrative, "I didn't
3 see anything unusual about David's clothes."
4 Right?

02:48 5 A Correct.

6 Q If the questioner says, "Do you recall seeing
7 blood on the right knee of the clothes?" your
8 statement might be, your narrative might say, "I
9 don't recall seeing blood on the right knee of
02:49 10 David's clothes."

11 A Uh-huh.

12 Q See how the question will slant what goes into the
13 narrative?

14 A Uh-huh.

02:49 15 Q But if the question is posed about the blood on
16 the knee, the next time you are questioned, that
17 question from the first time is still in your
18 mind?

19 A Okay.

02:49 20 Q And quite often one of the guides as to the manner
21 of the questioning is the use of your words such
22 as whether you are saying I recall, I remember, I
23 recall, I remember as opposed to a free-flowing
24 without those words.

02:49 25 A Uh-huh.



1 Q You see the difference?

2 A Yes.

3 Q Right. Now, because Mr. Lockyer has gone over a
4 lot with you, I'll be much briefer than I might
02:50 5 have been, and I don't want to take you over
6 everything obviously that he did, and I'll have to
7 touch on certain things but for a limited purpose
8 and I'll be quite a bit shorter.

9 A Okay.

02:50 10 Q David and Ron were interviewed on March the 3rd of
11 '69 and you were on March the 11th. Do you know
12 why the difference in time?

13 A No.

14 Q If we could turn to 042086. Now, this is Ron's
02:50 15 statement on March the 3rd that Mr. Lockyer went
16 over with you. If you can turn to 042089, you'll
17 see his statement is taken by Inspector Riddell
18 who I'm told would have been an experienced RCMP
19 officer, and if we can go to the next page, you'll
02:51 20 see there's another page that follows his
21 statement that says, "Additional facts obtained
22 concerning this statement." You'll see at the
23 beginning, a check with the license office in
24 Regina reveals that Wilson obtained the plates for
02:51 25 his car on January 30th, which would be in keeping



1 with the fact that he was in Saskatoon on the
2 31st. Do you see that?

3 A Yes.

4 Q If we can go to the next paragraph, Wilson's
5 vehicle -- and I'm going to read faster than what
6 it says -- with a grey hood, presently being held
7 in the Regina compound, was searched and nothing
8 of interest was located. One pair of grey
9 trousers were located under the front seat - no
10 blood stains noted. Do you see that?

11 A Yes.

12 Q If we can go to the next paragraph, a check with
13 Mrs. Wilson revealed the brown jacket mentioned in
14 his statement into the garbage some time ago. It
15 had acid burns in it and didn't notice any blood
16 stains. Now, paragraph 4 is of interest in
17 particular:

18 "A check with the parents of Nichol John
19 in Regina reveals that they have not
20 seen her for sometime. This girl, who
21 has more or less been disowned by her
22 parents, hangs out at the various hippie
23 joints but we have been unable to locate
24 her to date."

25 So that may explain why your statement was a bit



1 later, that they couldn't find you at that time.

2 A Okay.

3 Q It also might show that you were basically on your
4 own without parental help at that time.

02:52 5 A Okay.

6 Q Okay? And then it goes on, during the interview
7 with Wilson he appeared straightforward with
8 nothing to hide. He was not sure of the exact
9 times mentioned, but felt that between the hours
02:53 10 of 6:30 a.m. and 8:30 (sic) a.m. they were driving
11 around Saskatoon looking for Cadrain and stalled
12 in the alley behind the Danchuks'. So that's
13 basically what's there. And the next paragraph I
14 won't go through, but it talks about the plans to
02:53 15 leave. So that may explain why there is a bit of
16 a delay before you were spoken to and how things
17 were in your life at that time.

18 Now I want to turn then to your
19 first statement, 002124 I believe it is. Now,
02:53 20 there are just a few things here I want to go over
21 with you, and I know you've been through it, so
22 I'm not going to repeat, we'll pretend we've gone
23 through all that now, I'll skip it. I've read
24 this statement over a few times. I can't see at
02:54 25 any time you using the word "I recall" or "I



1 remember".

2 A Okay.

3 Q If you see it there you can let me know, but I
4 don't see it there. It may be there, but I don't
02:54 5 see it. I also don't see any reference to
6 stopping and asking a woman nurse for any kind of
7 directions. You are satisfied it's not there, you
8 went through that with Mr. Lockyer?

9 A Yes.

02:54 10 Q I don't see anything in there about David behaving
11 abnormally at all.

12 A Uh-huh.

13 Q And do you agree with that?

14 A I would agree with you.

02:54 15 Q Okay. And basically I think the word that was
16 used as an alibi, I'm not sure it was meant to be
17 that, but whatever it is, you account for
18 basically all of David's time.

19 A Okay.

02:54 20 Q So you see that out of there?

21 A Uh-huh.

22 Q And I know you've been through the various
23 sequences, that's why I'm going through it pretty
24 quick, but I have to for something that's going to
02:55 25 come later.



1 A Yes.

2 Q Now, the next occurrence, March 22nd, which is
3 106640 I believe -- now, you've also been through
4 this, so I don't intend to belabour it, but you'll
02:55 5 see --

6 COMMISSIONER MacCALLUM: Is that the one
7 you wanted, 43?

8 MR. WOLCH: I want 40, I apologize. Thank
9 you, Mr. Commissioner.

02:56 10 COMMISSIONER MacCALLUM: Okay.

11 BY MR. WOLCH:

12 Q Now, this is March, it's dated March 22nd, but in
13 any event, starting there, also female Nichol John
14 was located in a hippie house and after
02:56 15 considerable persuasion brought to Regina,
16 interviewed and placed in a room with Cadrain,
17 allowed to discuss, and it was learned from her
18 after this discussion that she thought Cadrain was
19 telling -- next page -- the truth, and then we go
02:56 20 onto David. So I'm only putting this in so you
21 can see the context of what will come.

22 A Uh-huh.

23 Q Now if we can go then to 009254, and I emphasize
24 I'm going through this quickly because you've been
02:57 25 through it. Now, this is the April 14th -- sorry,



1 if we can go back to this portion here, with the
2 assistance of Ken Walters, interviewed at length,
3 further investigation of this girl gave one the
4 feeling she was telling the truth and she
02:57 5 emphatically stated she could not recall any time
6 they were in the City of Saskatoon at which time
7 Wilson or Milgaard left the vehicle long enough to
8 commit the offence. She denied that Milgaard had
9 left their vehicle at any time to go to a bathroom
02:58 10 or for a cup of coffee, and then a little more
11 derogatory remarks about David. If I can get back
12 to the full page and if you can turn to the next
13 page, please, and that portion, many unanswered
14 questions with regard to Milgaard's activities.

02:58 15 "If one is to believe the girl, and it
16 appears that she is very convincing with
17 her story, then there's no way in which
18 Milgaard can be connected to this
19 crime."

02:58 20 Now, you see that?

21 A Yes.

22 Q Now, we've gone through this before with other
23 counsel on a number of occasions and Mr. Lockyer
24 took you into what happened between April and May
02:59 25 that changed --



1 A Uh-huh.

2 Q -- and I hope to take you through a document that
3 might be of some assistance to the Commission and
4 to yourself to see what did happen. Now, you will
02:59 5 recall when Mr. Lockyer was questioning you and he
6 asked you about Inspector Mackie and the use of
7 the term "the department" or "they"?

8 A Uh-huh.

9 Q Correct?

03:00 10 A Correct.

11 Q You heard that?

12 A Yes.

13 Q Suggesting that there was somebody or some group
14 of people in charge of what was going on?

03:00 15 A Uh-huh.

16 Q And that would come as no surprise in a case like
17 this, that there has to be somebody or some group
18 in charge of the overall investigation. That
19 makes sense I suppose?

03:00 20 A Yes.

21 Q Now, into the month of May there have been
22 observations by police officers that the three
23 kids, that's you, John (sic), and Milgaard, are
24 either convincing or appear to be telling the
03:00 25 truth or tell their stories in a truthful way or



1 words to that effect, we've all seen that as we've
2 gone along.

3 A Uh-huh.

4 Q And the suggestion that, from any officer that
5 it's untruthful, does not seem to appear somewhere
6 at this point in time.

7 A Uh-huh.

8 Q But I want to take you to a document that we
9 haven't looked at and I want to go into this with
10 you, and this will be a document which I suggest I
11 will be able to show was prepared sometime between
12 May the 7th and May the 21st. If we can go to
13 001499. Now, I'll take you through the beginning
14 part quite quickly because it wouldn't be of any
15 help to you, but it starts off at the beginning,
16 this portion here refers to a party who will
17 likely come to this court, to the Commission
18 later, it's one of Larry Fisher's victims.

19 A Okay.

20 Q I'll skip over that. Enlarge the page, please.
21 Okay. That's that portion there. And this
22 portion here, and you don't have to enlarge it,
23 this portion here talks about items that were
24 found, things that were looked at. In fact, as we
25 go along you will probably see this is sort of a



1 compilation of what's been going on in the
2 investigation and I expect we will later find out
3 that this was prepared by someone senior in the
4 department.

03:02 5 A Okay.

6 Q We then go, statement 9, Marie Indyh, which is
7 what you were questioned about by counsel for the
8 Saskatoon police yesterday?

9 A Uh-huh.

03:02 10 Q You recall him reading to you from the transcript
11 as to what she had to say?

12 A Yes.

13 Q I'll skip the next two people's names who appear
14 there, we know about them ourselves, they don't
03:03 15 affect you, but if we can just turn the page, now
16 we get to you, you see your name at the top there?

17 A Yes.

18 Q Okay. And it refers to your statement of March
19 the 11th. You know the statement we're talking
03:03 20 about there, your first statement where we've gone
21 over in great detail?

22 A Uh-huh.

23 Q It says you came to Saskatoon January 31st with
24 Wilson, Milgaard in Wilson's auto. Next
03:03 25 paragraph, the part there is what Milgaard wore.



1 Then you got, admits Milgaard acted strange. Do
2 you see that?

3 A Uh-huh.

4 Q Now, I don't see that anywhere in that statement,
03:03 5 but that may be what you said in one of the later
6 interviews perhaps.

7 A Uh-huh, okay.

8 Q But here's what I would suggest to you is crucial,
9 if we can just zero in on that right there --
03:04 10 sorry for the mess I'm making --

11 "Admits seeing nurse (looked like nurse)
12 near funeral home. Asked directions."
13 You see that?

14 A Yes.

03:04 15 Q You had never said that.

16 A What date was this, I'm sorry?

17 Q Between May the 7th and May 21st.

18 A Okay. So --

19 Q So whoever was supervising this -- or directing
03:04 20 this investigation, and I believe Commission
21 Counsel is making efforts to identify the party
22 who did this -- has you seeing a nurse and asking
23 for directions before you ever said it.

24 A Uh-huh.

03:04 25 Q You see that?



1 A Yeah.

2 Q So even though you appear to be truthful, and you
3 were --

4 A Uh-huh.

03:04 5 Q -- and you were giving everything that happened,
6 senior people have you admitting that you saw a
7 nurse and asked for directions when that had never
8 been said.

9 A Uh-huh. In the first statement you are talking
03:05 10 about?

11 Q Yes, or in the -- that's why I took you quickly
12 through the next two interviews.

13 A Yeah, yeah.

14 Q To make sure it was never said there.

03:05 15 A Uh-huh.

16 Q In no interview did you ever say that.

17 A Uh-huh.

18 Q Do you see that?

19 A Uh-huh.

03:05 20 Q Okay. If we can go down a little more here, it's
21 got what you wore, and you can see there is a bit
22 of a slant:

23 "- Saw no blood on Milgaard's trousers
24 but admits that he changed at ..."

03:05 25 Cadrain's house.



1 "- Wilson and Milgaard changed at
2 Wilson's home in Regina because of acid
3 on cloths when putting battery in
4 Wilson's car - information of
03:06 5 Mrs. Wilson",

6 we saw that before?

7 A Uh-huh:

8 "- Says friend Barb Berard was told by
9 Milgaard that he was going to be picked
03:06 10 up for murder."

11 That's the last paragraph in your March 11th,
12 statement, do you recall that's there?

13 A Yes.

14 Q So there's what you are purported to have said, --

03:06 15 A Uh-huh.

16 Q -- asking a nurse for directions, totally out of
17 thin air, you have never said that. Do you see
18 that?

19 A Yes.

03:06 20 Q It then goes on as to what Albert Cadrain says,
21 you see.

22 A Uh-huh.

23 Q As to what he says, and I won't go into that, I'm
24 just pointing out the continuity, --

03:06 25 A Uh-huh.



1 Q -- it goes through what he does. Now if we could
2 turn the page:

3 "- On way to Calgary, John and Cadrain
4 in rear seat, Wilson front and Milgaard
03:07 5 driving.

6 - Everyone alleged afraid of Milgaard.

7 - Bought paring knife in Rosetown on way
8 to Alberta.

9 - Karst and Lieutenant Short told by

03:07 10 Cadrain that Milgaard had wanted to get
11 a gun & if he would help him get rid of
12 (murder) John and Wilson. This was on
13 January 31st."

14 Did anybody ever suggest to you that David was
03:07 15 going to kill you?

16 A Not that I am aware of.

17 Q Okay. It then goes on to Aline Cadrain and no
18 respect for women, we heard about that; Sharon
19 Williams, I'll skip over that; the Danchuks, we
03:07 20 know all about that; Lieutenant Penkala as to what
21 he had done. Let's check the next page where it
22 gets particularly interesting.

23 "- Milgaard alleges he could not find
24 Cadrain's house even though he lived
03:08 25 there a few days.



1 - On his travels he seems to have no
2 problem finding any particular address
3 to obtain drugs or other things he
4 wants."

03:08 5 And if we can just highlight that paragraph
6 there:

7 "- From where some articles were found
8 it would appear that possibly no lights
9 on at Cadrains house when the three
03:08 10 first arrived from Regina or shortly
11 after, therefore, they did not call at
12 the house."

13 So, in other words, a possibility that you went
14 to the house, nobody was there, then drove around
03:08 15 some more; that -- this is not coming from
16 anybody, it's just a suggestion. Okay?

17 "- All were out of funds and may have
18 gone driving with a view to getting
19 money."

03:08 20 You see that? And if we can get to the next
21 paragraph:

22 "- On seeing nurse (Miller) she was
23 approached on pretence of getting
24 directions with a view to stealing her
03:09 25 purse.



1 - This would be around funeral home
2 which would coincide with statements of
3 Nichol John - Diewold ...",
4 and Doell. Now you had never made that
03:09 5 statement; do you see that?

6 A Yeah, I see that.

7 Q It would coincide with a statement you had never
8 made?

9 A Uh-huh.

03:09 10 Q If we just keep scrolling down, next paragraph:

11 "- Wilson appears to be driver of car,
12 therefore, Milgaard would leave car to
13 get purse - having seen Miller closer
14 his sex drive takes over and he forces
03:09 15 her down alley to where she is found."

16 Here is where you come in again:

17 "- Nichol John knows or suspects results
18 and leaves car. Runs west on 20th
19 Street in 1400 Block and is girl seen by
03:10 20 Indyk at the St. Mary Church."

21 The very suggestion that was placed to you
22 yesterday was in there --

23 A Uh-huh.

24 Q -- way, way back.

03:10 25 A Uh-huh.



1 Q "At this point she changes her mind
2 about saying anything and goes north on
3 Avenue O where she meets car again."

4 If we can just go farther:

03:10 5 "- Milgaard after murder returns to car
6 with boot and sweater (car possibly
7 followed down lane) to which Wilson
8 objects to and as a result are buried in
9 the snow.

03:10 10 - Purse thrown in garbage on the way
11 through alley from Avenue N to Avenue O
12 - possibly when Nichol John returns to
13 car and is picked up.

14 - Wallet and toque are in car and when
03:10 15 Milgaard gets keys from Wilson at
16 Cadrains to put suitcase in car, he
17 disposes of toque and wallet at this
18 time.

19 - Nichol John says Milgaard wore a dark
03:11 20 toque which she has not seen since
21 January 31st.

22 - Milgaard has removed wallet from purse
23 at scene and retains it without Wilson
24 or Nichol John knowing he obtained it."

03:11 25 Now that's curious. Just stop there for a



1 minute.

2 "Milgaard has removed wallet from purse
3 ... and retains it without Wilson or
4 Nichol John knowing he obtained it."

03:11 5 Now it makes you wonder why somebody is believing
6 that out of thin air.

7 A Uh-huh.

8 Q But I'm going to suggest to you, that may be the
9 identification you think you may have seen later,
03:11 10 planted in your head?

11 A Okay.

12 Q You see how that could lead to something being
13 found later?

14 A I see what you are saying, okay.

03:11 15 Q Just go farther:

16 "- He may have been intent on keeping
17 the purse and it is put in garbage after
18 Wilson looks for money in it, and at
19 time Nichol John returns to car.

03:12 20 - Or did Wilson and Milgaard both become
21 involved in theft of purse and Milgaard
22 intent on rape assaults and murders Gail
23 Miller.

24 Wilson has purse, goes through it and
03:12 25 puts it in the garbage can while waiting



1 on Milgaard who he is aware is raping
2 Miller."

3 So you see how this whole thing that evolves into
4 you and Wilson is actually being written down
03:12 5 before you even say it?

6 A Uh-huh.

7 Q You see that?

8 A Yes.

9 Q And here is the key, if we can just bold-face
03:12 10 that, and here's what happened to you:

11 "- Nichol John, Wilson and Cadrain ...,"
12 It's a suggestion, --

13 A Uh-huh.

14 Q -- and I would suppose from a higher-up that might
03:12 15 be more than just a suggestion because it
16 happened:

17 "... be brought to Saskatoon where with
18 all present the true story can be
19 obtained even if hypnosis or polygraph
03:13 20 are necessary."

21 Do you see that?

22 A Uh-huh.

23 Q And that's obviously why I can say with confidence
24 that was done or typed up before you were brought
03:13 25 to Saskatoon.



1 A Uh-huh, okay.

2 Q So it has to be. And then, and the last report in
3 this document is dated May the 7th, so --

4 A Uh-huh.

03:13 5 Q -- so it has to be after May the 7th and before
6 you were brought to Saskatoon?

7 A Okay.

8 Q But you see this, though, the 'true story'?

9 A Uh-huh.

03:13 10 Q And that would obviously be not the story you had
11 been telling up 'til then?

12 A Uh-huh.

13 Q Correct?

14 A Correct.

03:13 15 Q Hypnosis was suggested way back then.

16 A Hmm.

17 Q That somehow hypnosis would get the truth out of
18 you.

19 A Hmm.

03:13 20 Q And this is based on a premise that you had asked
21 a nurse for directions.

22 A Uh-huh.

23 Q Which you had never said.

24 A Uh-huh.

03:13 25 Q You see that?



1 A Yes.

2 Q Just for sake of completeness, there is another
3 page, I don't intend to refer to it, but there is
4 one more page that follows this which has a May
03:14 5 5th report on it, but it doesn't add anything,
6 really, to what I have been asking you about.

7 So now do you see that the
8 police have a complete theory as to exactly what
9 happened and, eventually, you and Ron gave them
03:14 10 what they wanted?

11 A Yeah, it looks like it.

12 Q And if you go to your May 24th statement, which is
13 018589, if you look at the first page, "I recall",
14 "I recall"?

03:15 15 A Uh-huh.

16 Q Could we turn the page; "I recall", "I recall", "I
17 recall", "I seem to recall", "I recall", "I
18 remember", "I don't remember", "I remember", "I
19 don't remember", "I do not recall", "I recall", "I
03:15 20 do not recall", "I don't recall". See now this
21 next paragraph, it's interesting, there is no
22 "recalls" or "remember", but we know that
23 happened.

24 A Uh-huh.

03:16 25 Q Okay? Do you want to turn the page. You see,



1 we've left the "recalls" and the "remembers" here
2 as we're going through what actually did happen.
3 See, now we get down to Calgary, we're getting
4 into the recalling again; "I didn't recall". Now
03:16 5 you might agree with me that that makes no sense
6 at all, that you can remember a murder in Calgary
7 with Ron and not remember it in Saskatoon a little
8 bit later; that's kind of ridiculous, isn't it?

9 A Correct.

03:17 10 Q And, somehow, a coat reminded you of something
11 when you wouldn't have seen one?

12 A Uh-huh.

13 MR. LOCKYER: There is two "recalls" there.

14 MR. WOLCH: My Friend points out I missed a
03:17 15 few more "recalls".

16 MR. LOCKYER: There's some in the last two
17 lines.

18 MR. WOLCH: Okay, now we get to the
19 cosmetic case, and now we're back to recalling;
03:17 20 do you see that?

21 MR. LOCKYER: There's one two lines after,
22 "this coat as I recall".

23 BY MR. WOLCH:

24 Q Yes, a couple of "recalls". So your first
03:17 25 statement, which was truthful, there is none of



1 this "recalling", "remembering", "recalling",
2 "remembering", and here it's just, whenever we get
3 to a part that's really dicey, it's all "recall"
4 and "remember"; do you see that?

03:17 5 A Uh-huh.

6 Q Yes?

7 A Yes.

8 Q So I'm suggesting to you that it's very simple.

9 Up until May you were telling the truth, telling
03:18 10 the truth, and telling the truth, and whatever you
11 did seemed to be able to convince the people you
12 were talking to correctly, but then somebody or
13 some people in the higher-ups in the police force
14 decided there was a true story invented that you
03:18 15 would ask somebody for directions, a nurse, and
16 sent their officers out to get that story from you
17 kids?

18 A Uh-huh.

19 Q And they took you all the way, and put you in a
03:18 20 jail setting, and questioned you until you gave
21 them what they wanted. Don't you see that?

22 A It would be nice to be able to remember what
23 happened back then.

24 Q But do you not see that as being quite logical?

03:18 25 A Oh, I see it as being logical.



1 Q And they would put to you what they got out of
2 Wilson and you would say "yeah, I recall", or "I
3 don't recall", and go -- that's what's going back
4 and forth?

03:19 5 A Uh-huh.

6 Q And it's totally created, "get the true story even
7 in it takes hypnosis", and you were a 16-year-old
8 kid --

9 A Uh-huh.

03:19 10 Q -- with no parental guidance, no lawyer to give
11 you advice, locked away for a couple days, and
12 quite simply you decided to give them the story
13 they had made up for you?

14 A It doesn't even sound like something I would even
03:19 15 say, you know.

16 Q And it's had a terrible effect on your life.

17 COMMISSIONER MacCALLUM: What do you mean
18 by that?

19 A The words.

03:19 20 COMMISSIONER MacCALLUM: Of the May 24th
21 statement?

22 A Of this statement, yeah, you know.

23 COMMISSIONER MacCALLUM: In case that got
24 mixed up, reporters, she said that the words of
03:19 25 the May 24th statement didn't sound like her



1 words.

2 BY MR. WOLCH:

3 Q But now that you see -- and I don't mean to sound
4 patronizing, but you work in a law office, --

03:19 5 A Uh-huh.

6 Q -- you are an intelligent woman now with more
7 years, you are a smart woman; it's clear as a bell
8 to you now, isn't it?

9 A Uh-huh, it certainly is.

03:20 10 Q Thank you.

11 A I would have to agree with you.

12 Q Thank you.

13 COMMISSIONER MacCALLUM: Ms. Krogan and
14 Mr. Wilson indicated their wish before not to ask
03:20 15 questions; do you want to change your mind about
16 that?

17 MS. KROGAN: No.

18 COMMISSIONER MacCALLUM: Mr. Wilson? No?
19 Questions, Mr. Wilson? Okay. Redirect by the
03:20 20 Crown -- or by Commission Counsel.

21 MR. HODSON: I understand,
22 Mr. Commissioner, that there may be some counsel
23 who may wish to seek permission to re-cross. I'm
24 not sure if my re-exam ought to be before their
03:21 25 request or after. I only have one question.



1 COMMISSIONER MacCALLUM: It's up to you.

2 Put your question now if you wish, sir.

3 MR. HODSON: Sure.

4 BY MR. HODSON:

03:21 5 Q And I'm not doing this out of my own
6 self-interest, Ms. John, but Mr. Lockyer asked you
7 a question about whether I had told you about what
8 this inquiry was about?

9 A Uh-huh.

03:21 10 Q And I'm putting up on the screen a letter dated
11 November 29th, 2004 which I sent to you -- and
12 again Mr. Commissioner, I do not want to find
13 myself sitting at that table giving evidence so I
14 will be careful. Did you not receive a letter
03:21 15 from me, Ms. John, this letter where I advised
16 that --

17 A I received several letters from you, I probably
18 did, yeah.

19 Q Did you open them?

03:21 20 A Umm, a couple of them I didn't, I'm sorry.

21 Q It's all right. This letter here, though, is a
22 letter that says:

23 "In February, 2004 the Government of
24 Saskatchewan appointed a commission to
03:22 25 inquire into the wrongful conviction of



1 David Milgaard. A copy of the
2 Commission's Terms of Reference is
3 enclosed."

03:22 4 And do you remember getting this letter or
5 looking at this letter?

6 A No. I think this is one of the ones I didn't
7 open.

8 Q Okay. The next page if you could put up, please,
9 of this letter, which is the enclosure, and this
03:22 10 Terms of Reference -- and, again, I don't want to
11 go through it -- but you will see in number 1 this
12 is the official document that tells us what the
13 Commission is doing; do you remember getting this
14 letter from me?

03:22 15 A No.

16 Q You --

17 A I --

18 Q You would -- I'm sorry?

19 A I sort of remember the letters that I did look at,
03:22 20 and I can't recall if this would have been an
21 attachment to one of the later letters or not.

22 Q Okay. Do you remember reading this?

23 A Yeah, I -- umm, no, I didn't read it, I just kind
24 of skimmed through it and --

03:22 25 Q So you would acknowledge that --



1 A I'm, I guess maybe I should clarify my earlier
2 statement, I wasn't saying that -- like I was
3 aware of this Commission --

4 Q Yeah?

03:22 5 A -- but I really didn't know what their mandate
6 was. Okay? Does that clarify it for you?

7 Q I understand that.

8 A Okay.

9 Q And I'm just saying that the Terms of Reference in
03:23 10 paragraph 1 set out what the mandate is, --

11 A Yeah.

12 Q -- which is in a letter I sent to you in November?

13 A Yeah.

14 Q And you are saying that you may have skimmed it?

03:23 15 A Yeah, I might have, yeah. I'm not sure.

16 Q Maybe just read paragraph 1 and see if that's
17 familiar.

18 A Is this on the computer?

19 Q It's also on the web site, yes.

03:23 20 A Yeah, I kind of skimmed over it there too, I
21 believe.

22 Q So you may have looked at that document?

23 A Yeah, but never really -- yeah.

24 Q So you would --

03:23 25 A I'm not trying to say that you were trying to pull



1 anything over my eyes, of course you were not.

2 Q Would you agree with this; that I made an effort
3 to inform you about what this Commission of
4 Inquiry was about?

03:23 5 A You certainly did.

6 Q Thank you.

7 A Yes.

8 MR. HODSON: Those are all my redirect
9 questions.

03:23 10 COMMISSIONER MacCALLUM: Thanks,
11 Mr. Hodson.

12 On the subject of some
13 re-cross, I see one counsel rising already, and
14 what was done, of course, by the Milgaards'
03:24 15 counsel was to focus upon the interval between
16 March the 3rd and May the 24th and the
17 interaction between the police and this witness
18 as well as Wilson. There was some reference made
19 to that before in cross-examination, I remember
03:24 20 by you Mr. Fox, who put questions to the witness
21 about what she perceived her treatment was, or
22 might have been, from the police, what she could
23 remember of it, and from what I recall she
24 couldn't remember anything but offered the
03:24 25 opinion that she probably wasn't treated badly.



1 So that's about as far as that went.

2 Now if there are requests for
3 re-cross please, for goodness sakes, confine
4 yourself to the new material which was raised by
03:25 5 Mr. Lockyer and by Mr. Wolch and let's not go
6 over old ground again.

7 Now Mr. -- we took that
8 unannounced break, it is now past the time of our
9 regular break, I'll ask the reporters if they
03:25 10 would like a break before 4:30?

11 They say they are all right to
12 go; is everybody else? We'll continue then.
13 Mr. Fox?

14 MR. FOX: Thank you, Mr. Commissioner.
03:25 15 I'll try and heed your direction on my cross --
16 on the cross-examination.

17 COMMISSIONER MacCALLUM: All right.

18 MR. FOX: I was going to, I didn't know
19 whether I should state my opinion for the record,
03:26 20 but I'll will make it clear I accept that the
21 earth isn't flat, and I'll carry own from there.
22 Thank you, Mr. Commissioner.

23 BY MR. FOX:

24 Q The last document that was referred to -- and, Ms.
03:26 25 John, I'm Aaron Fox, I represent Eddie Karst, so



1 this is my second go-round, I'll try not to cover
2 the same ground that we talked about previously.

3 A Yes.

4 Q The last document that was shown you was a
5 document, and it's document number 001499, and I
6 won't invite you to do it but I think it's fairly
7 common ground that there is no signature or author
8 on that document or any date on that document.

9 Fair to say the questions that were put to you
10 about this information sort of being new and not
11 in your March 11th statement, and that being
12 significant, is really totally dependent upon when
13 this document was prepared?

14 A Okay.

15 Q You would agree with that?

16 A Yes.

17 Q And, if this document was prepared after you had
18 conveyed the information you did to the police on
19 May 22nd, 23rd, 24th, then of course this document
20 would have a far different significance; fair to
21 say?

22 A Yes.

23 Q And so, on that point, we'll wait and see how the
24 evidence plays out as to when it was prepared
25 because, obviously, you can't help us on that



1 point?

2 A No.

3 Q Okay. Thanks. Now Mr. Lockyer suggested to you
4 that the police, the Crown, and the government
03:27 5 have all been trying to get you to say, or to
6 repeat that your May 24th, 1969 statement was
7 true; you will recall that suggestion being put to
8 you?

9 A Yes.

03:27 10 Q Fair to say that in the time period since 1969-'70
11 others, as well, have tried to convince you that
12 that statement was not true?

13 A Umm, I'm not sure. Could you clarify that,
14 please?

03:27 15 Q Sure. I'm -- for example, your interview with
16 Mrs. Milgaard in 1980-'81, which you heard the
17 tape played of that interview?

18 A Correct.

19 Q Fair to say, on a listening of that, --

03:28 20 A Uh-huh.

21 Q -- it was suggested to you that "well, that
22 statement, maybe it didn't accurately reflect what
23 actually took place".

24 A Uh-huh.

03:28 25 Q Would you agree with that?



1 A I would agree.

2 Q I'm not suggesting anything sinister about that --

3 A Uh-huh.

4 Q -- but you have been -- your memory has been
03:28 5 probed and prodded both ways?

6 A Yeah, I guess so.

7 Q Okay. I was going to ask you about this, though.

8 In regard to the police, I'm not aware -- I
9 shouldn't say that -- there was one occasion when

03:28 10 the Saskatoon Police Service, or members of the

11 Saskatoon Police Service, had some contact with

12 you, at least that you referred to, after

13 1969-'70, and that was when you were contacted and

14 advised that Mrs. Milgaard was making some

03:28 15 inquiries and you might be contacted by her; you

16 remember referring to that?

17 A Yes.

18 Q And I think you indicated it's referred to in the
19 taped interview you had with the RCMP, and I won't

03:29 20 go into it in detail, but at that time the officer

21 who may have contacted you -- and there was some

22 reference to Mr. Karst, to whether it was or not

23 we'll hear further, --

24 A Uh-huh.

03:29 25 Q -- but didn't say anything to you, at least as you



1 recall, about "is your statement true" or "make
2 sure you say it's true" or anything like that?

3 A From what I can remember, it was just to say that
4 she was doing some investigations, if I remember
03:29 5 correctly.

6 Q And --

7 A And that was all.

8 Q And you weren't advised not to speak to her, it
9 was left --

03:29 10 A No, I don't believe so, no.

11 Q You indicated in the RCMP report it was left up to
12 you?

13 A Yeah, I guess so.

14 Q Do you have any recollection, or are you aware of
03:29 15 any record of any contact by the Saskatoon Police
16 Service beyond that, after that time period,
17 1969-'70?

18 A No, I can't, I can't recall, sorry.

19 Q Okay. Now Mr. Lockyer referred, and he reviewed
03:30 20 those two statements and he referred to a number
21 of items that he identified as not being in the
22 first statement -- and by "the first statement"
23 you will recognize I'm referring to that March
24 11th, 1969 statement?

03:30 25 A Yes.



1 Q And by "the second statement" I'm referring to the
2 May 24th, 1969 statement?

3 A Yes.

4 Q Okay. And one of them he referred to as the
03:30 5 cosmetic bag and identification, and I'm not sure
6 if I have to bring it up for you, but as I
7 understand when I read that second statement I
8 don't see any reference to identification in that
9 second statement; do you recall if that's the case
03:30 10 or not?

11 A I don't think there was.

12 Q And Mr. Commissioner, I just leave that, I invite
13 you to take a look at that because I don't believe
14 there is reference to identification in that.

03:30 15 But I want to go on and discuss
16 this with you a bit, because Mr. Lockyer put the
17 proposition to you -- and this is at page 5026 of
18 the transcript of yesterday's proceedings, if it's
19 possible to get that put up.

03:31 20 MR. HODSON: It's coming.

21 MR. FOX: Okay. Yeah, if you can go about
22 line 17, Mr. Lockyer said, in referring to the
23 statement:

24 "Q Leads us to one of two possible
25 conclusions I suggest to you, madam;



1 either what you said on March 11th was
2 the truth, the whole truth, and nothing
3 but the truth; or when you spoke to the
4 police on March 11th, you purposely
5 didn't tell them the truth. One or the
6 other. Isn't that what it is? Isn't
7 that what you have to come down to?

8 A Umm, I'm not sure what you are -- you
9 are talking about this statement.

10 Q There is no other reasonable explanation
11 for what you said on March 11th?

12 A Okay."

13 So his proposition is that your March 11th
14 statement is either the whole truth and nothing
03:32 15 but the truth, or else it was false, that's the
16 proposition. And he then went on to review your
17 statement of March 11th, the first statement, --

18 A Uh-huh.

19 Q -- along with the initial statements of David
03:32 20 Milgaard and the initial statements of Ron Wilson,
21 the argument being that if you looked at those
22 statements any reasonable person, other than
23 perhaps a cynic, --

24 A Uh-huh.

03:33 25 Q -- would have to say they are consistent, they are



1 true, and, essentially, they should be accepted?

2 A Right.

3 Q And I think if you turn to pages 5 -- and I'm not
4 going to read it but the references are pages 5054
03:33 5 to 57 of yesterday's transcript proceedings -- any
6 reasonable person looking at those three
7 statements would see that they are consistent,
8 they are true, essentially they should be
9 accepted, only a cynic could dispute that; you
03:33 10 recall that?

11 A Yes.

12 Q I'll play the role of the cynic for a little bit,
13 if I could.

14 A Okay.

03:33 15 Q Okay. He then went through, and I'm just going to
16 refer to a couple of things, the compact. And
17 we've heard lots about the compact, but he
18 referred you to the fact -- and you will recall
19 this -- that in the second statement you said that
03:33 20 you found a compact in the glove box, you asked
21 whose it was, David Milgaard took it, threw it out
22 without explanation; that's what you essentially
23 said in your second statement?

24 A Okay.

03:34 25 Q Mr. Lockyer says that's not in your first



1 statement, neither Ron Wilson nor David Milgaard
2 referred to that in their first statements, so
3 therefore that rings true that that didn't happen.

4 A Uh-huh.

03:34 5 Q I was -- I wonder, Ms. John, if you are aware,
6 first of all, that -- whether Mr. Milgaard
7 testified at his trial or not?

8 A I don't know.

9 Q Okay. You were asked the concluding questions,
03:34 10 did you know if the jury saw this statement or
11 that statement or if the jury saw David Milgaard's
12 statement, do you have any knowledge of that --

13 A No knowledge.

14 Q -- or that David Milgaard testified or not?

03:34 15 A That's correct.

16 Q Okay. Just talking about the compact, we do have
17 the benefit of some evidence that we've heard, and
18 Mr. Milgaard, as I understand, continues to deny
19 the compact and did so when he testified before
03:34 20 the Supreme Court --

21 A Uh-huh.

22 Q -- but his trial counsel, Mr. Tallis, this was his
23 lawyer in 1969 at the trial and 1970, and he
24 testified. I'm going to refer to, it's actually
03:35 25 volume 10 of the Supreme Court report or Supreme



1 Court Reference, page 1817, and the doc. number, I
2 believe it's going to come up if I have this
3 correct is 326548. This is Mr. Tallis at page
4 1817, page 014902, talking about his discussions
03:35 5 with David Milgaard in 1969 and '70. He answers a
6 question:

7 "I recall asking about that. During the
8 course of one of our discussions he
9 confirmed that he had thrown out a
10 compact. The general area, I think it
11 was on the trip to Rosetown. I think
12 there was a reference to Rosetown, or
13 something like that. I am not saying
14 that he used the term "Rosetown".

15 I asked about that in a fair
16 amount of detail. I certainly asked
17 where it came from. He said: "I don't
18 know. It was just there." I asked:
19 "Why did you throw it out" or "Why did
20 you do that?", and he said: "Well, I
21 don't know. I just threw it out. That
22 is all there was to it."

23 That's a bit of an echo that you said in your
24 second statement but that's coming, apparently,
03:36 25 from the mouth of David Milgaard?



1 A Yeah.

2 Q So for whatever reason, you didn't tell the police
3 about that contact in your first statement; it
4 doesn't appear as though Mr. Milgaard did either
03:36 5 would it be fair to say?

6 A Correct.

7 Q It would certainly appear as though there was a
8 compact that got thrown out?

9 A (Nods head).

03:36 10 Q Reading that?

11 A Yup.

12 Q Any idea -- do you have any knowledge as to why
13 Mr. Milgaard wouldn't have told the police about
14 throwing the compact out?

03:36 15 A No.

16 Q Okay. Now, Mr. Lockyer then referred to David
17 Milgaard intending to snatch a purse or rob
18 someone and the suggestion is that, in statement
19 number 2, your statement number 2, but it's not in
03:36 20 statement number 1, Ron Wilson, David Milgaard
21 didn't refer to that, but the police had to get
22 that from you, the police had to get that from you
23 because essentially that was the cornerstone of
24 their theory. If we look at the transcript of
03:37 25 yesterday's proceedings, pages 5001 to 5002,



1 starting about halfway through, this is
2 Mr. Lockyer, okay:

3 "Q Just a page of it. 030692 moving to
4 030697. And look just there, Madam.
5 This is the preliminary hearing:

6 "And on the way to Saskatoon --"

7 This is the Crown questioning you in 1969,
8 "-- was there any discussion on what
9 would or might take place in Saskatoon,
10 among the three of you?

11 A Yes.

12 Q Where - how did this arise?

13 A Just by normal talking.

14 Q And what was said?

15 A A few things were said about
16 purse snatching and another things.

17 COURT: About which?

18 A Purse snatching."

19 Do you remember that, ma'am.

20 A I'm reading it here, yes.

21 Q And just so you know, Madam, really for
22 your information, this then became, this
23 notion of a purse snatch and that David
24 talked about the idea became the basis
25 upon which the police theory revolved as



1 to why David attacked Gail Miller. Do
2 you understand that?

3 A Okay."

4 And he goes on:

5 "Q They said their whole theory then became
6 that David attacked Gail -- I say then,
7 it may have been before this, but Mr.
8 Wolch will ask you about that -- but
9 certainly subsequent to what you said,
10 if not before as well, but subsequent to
11 it the police then developed a theory
12 that the reason David attacked Gail
13 Miller in the first place was to snatch
14 her purse and then while doing it raped
15 her and stabbed her to death. Did you
16 know that?

17 A No."

03:39 18 Now, your statement number 2 refers to some plan

19 or thought to rob somebody, perhaps steal a
20 purse, that sort of thing?

21 A Uh-huh.

03:39 22 Q Mr. Ron Wilson, as I understand, and we'll hear

23 from Mr. Wilson in his various pieces of evidence,
24 but Mr. Wilson, and I'm referring to his Supreme
25 Court testimony, and this is I believe doc



1 120748 -- if you can go to what would be page 352
2 of the transcript -- thank you -- and about line
3 16, being questioned is Mr. Wilson:

4 "Q But I understand, sir -- and correct me
5 if I'm wrong -- that you and Mr.
6 Milgaard discussed basically stealing,
7 breaking in, purse-snatching, whatever,
8 that would be required along the way to
9 raise the money.

03:40 10 A Yes."

11 That's what Mr. Wilson said. So it looks like
12 Mr. Wilson sort of saying yeah, we did talk about
13 that; would that be correct?

14 A Correct.

03:40 15 Q If we look at the further evidence at page 453, I
16 think he repeats --

17 MR. LOCKYER: Excuse me, I think Mr. Wilson
18 said it, according to Karst in the occurrence, I
19 think I brought that out, so I'm not quite sure
03:40 20 where my friend is taking us. It's not like I
21 ever tried to suggest Wilson didn't say it, in
22 fact I think I suggested that that was a part of
23 what Karst recorded Wilson as saying in the May
24 21 to 24 period which then made its way into the
03:41 25 document the witness signed on May 24th, so I'm



1 not -- I don't really understand the point my
2 friend is making.

3 MR. FOX: The clear suggestion was, to this
4 witness, there are a number of items and this is
03:41 5 one of them, appeared in your statement number 2,
6 it was planted by the police, they needed it for
7 their information and it originated with the
8 police, and all I'm trying to establish,
9 Mr. Commissioner, is that these ideas did not
03:41 10 originate with the police, there's evidence quite
11 separate and apart which establishes that these
12 particular facts existed, and so as my Learned
13 Friend went through and listed the seven points
14 which he suggests suddenly appear in her number 2
03:41 15 statement with the conclusion that therefore they
16 are planted, compare these other statements and
17 March 11th must be the truthful one, by showing
18 that there's extraneous evidence coming from Mr.
19 Milgaard directly and from Ron Wilson that
03:41 20 establishes those facts, it frankly flies in the
21 face of the suggestion that there was a planting
22 by the police. That's the purpose of it solely,
23 that's all.

24 COMMISSIONER MacCALLUM: That's fine.
03:42 25 Continue.



1 BY MR. FOX:

2 Q And as I understand Mr. Milgaard when he testified
3 before the Supreme Court of Canada, he similarly
4 confirmed that that was their plan. If I can
03:42 5 refer to again Mr. Milgaard's testimony before the
6 Supreme Court, and I think that's doc number
7 013327, which is Volume 2 -- thank you -- and it
8 starts at page 234 about line 14, this is Mr.
9 Milgaard testifying:

03:42 10 "Q There was some discussion with Ron
11 Wilson in the car en route from Regina
12 to Saskatoon with respect to how you
13 would get some money. I believe you
14 said yesterday there was some talk about
03:43 15 some break-ins.

16 A I think the talk was kind of centred
17 around stealing and stuff like that.
18 It was in a restaurant, in Smitty's
19 Pancake House. It was basically maybe
03:43 20 more talk than, you know....

21 Q So it was --"
22 And if you carry on to the next page to about
23 line 10 if you could. Sorry, going from line 1
24 to line 10, sorry:

03:43 25 "-- talk about stealing things.



1 A Yes. Like, I was agreeing and stuff,
2 but I was kind of just saying "Oh,
3 yeah, that's a good idea. Yeah,
4 that's a good idea."

03:43 5 Q Was there any discussion of possibly
6 rolling someone or purse-snatching?

7 A I believe there was talk about
8 purse-snatching."

9 That's Mr. Milgaard's testimony. Mr. Milgaard's
03:43 10 counsel, Mr. Tallis, who testified at the Supreme
11 Court of Canada, confirmed that, if you refer to
12 his evidence at -- this again is doc number
13 014685 which is Volume 10 of the Supreme Court
14 transcript. Actually, Mr. Tallis' doc number I
03:44 15 think that we were using, My Lord, is 326548, and
16 this would be pages 1803 and 1804 of the
17 transcript itself. So this is starting at 014888
18 about line 11, this is Mr. Tallis testifying:

19 "They either stopped -- let me put it
03:44 20 this way: they pulled up alongside.
21 Whether he said he got out or whether he
22 just spoke to her from the window, or
23 sort of opened the door, I cannot
24 recall. But there was an incident where
03:44 25 he was in the car on the passenger side



1 and came upon a lady. I wasn't able to
2 ascertain, as I say, precisely the
3 streets or anything like that.

4 I guess the best way for me to
03:44 5 put it is this way: I asked him what
6 was the purpose -- and here again these
7 are my words. "What was the purpose?"
8 Why did you stop by this lady?" He said
9 something -- "

03:45 10 If you could scroll up, please:

11 "He said something like this: "I guess
12 to ask directions" or "To ask
13 directions, I guess." I know that I at
14 some stage I asked for further details.
03:45 15 Once again, I can't say during which
16 interview because it was an ongoing
17 process, from time to time meeting and
18 so on.

19 In any event, I said: "What do
03:45 20 you mean by 'I guess'?" And during the
21 course of our discussion, he said:
22 "Well, I have to admit that I was
23 looking her over with a view to possibly
24 robbing her." Whether he used the term
03:45 25 "snatching her purse" as distinct from



1 "robbing", I am unable to recollect at
2 this stage."

3 That would be the evidence of Mr. Milgaard (sic).
4 So certainly you would agree, Ms. John, that --

03:45 5 MR. WOLCH: Mr. Tallis.

6 BY MR. FOX:

7 Q Sorry, that was the evidence of Mr. Tallis. You
8 would agree that over and above any recollection
9 you might have had or any information that would
03:46 10 have been conveyed to you by the police, Mr.
11 Milgaard appears to be confirming that the plan
12 was if we saw somebody, we might rob them or
13 snatch their purse, and in fact the lady they
14 talked to was eyed up as a victim by him and
03:46 15 Mr. Wilson confirms that as well. You would agree
16 with that?

17 A Yes.

18 Q Mr. Lockyer asked you about a knife, your
19 recollection in the statement was that it had
03:46 20 been, perhaps came from the elevator break-in that
21 had occurred at Aylesbury. Mr. Wilson, again in
22 the Supreme Court of Canada, this is Volume 2, and
23 I believe this would be doc number 120748 at page
24 354 of the transcript --

03:47 25 COMMISSIONER MacCALLUM: Is this the



1 Supreme Court of Canada?

2 BY MR. FOX:

3 Q This is the Supreme Court of Canada, My Lord, yes.
4 He's talking, asking him about what did he return
03:47 5 with, that's referring to at the very top,
6 referring to Mr. Milgaard after he came from the
7 break-in at the elevator:

8 "A A flashlight.

9 Q Anything else?

03:47 10 A This I'm not sure of, but I think the
11 bone-handled hunting knife came out of
12 there also."

13 Scroll up:

14 "Q The bone-handled hunting knife came out
03:47 15 of there. When did you first see this
16 bone-handled hunting knife, sir?

17 A A little while after we left
18 Aylesbury.

19 Q In whose possession did you see it.

03:47 20 A In David's."

21 That would be Mr. Wilson's evidence before the
22 Supreme Court, again suggesting that your
23 reference to seeing a knife is basically
24 consistent with what Mr. Wilson is still
03:47 25 testifying in the Supreme Court when he was there



1 under reference.

2 A Okay.

3 Q Were you aware that by the time Mr. Wilson
4 testified in the Supreme Court he apparently had
03:47 5 recanted or changed part of his story?

6 A No.

7 Q There is an interview he apparently had with Paul
8 Henderson. You are not aware of that?

9 A No.

03:48 10 Q I don't have the tape of that, it looks like it
11 has fallen off the face of the earth, but we'll
12 see if we can find it.

13 A It's always someplace.

14 Q Yeah. There was a reference to discussing or
03:48 15 stopping and speaking to a woman and the
16 suggestion that you've now got this in your first
17 statement and it isn't in your -- or sorry, in
18 your second statement, but it wasn't in your first
19 statement.

03:48 20 A Uh-huh.

21 Q I'm not trying to mix you up on that. I think
22 I've got that right. You know what I'm referring
23 to, Ms. John?

24 A Yes.

03:48 25 Q Now, in fairness, Mr. Milgaard in his first



1 statement says that he talked to an older lady.
2 He didn't quite give the detail that he gave to
3 his lawyer that he was eyeing her up to possibly
4 rob her or steal her purse, but that's fine, but
03:48 5 I'm referring to Mr. Wilson's testimony and in his
6 first statement he doesn't refer to talking to a
7 lady either, but again, before the Supreme Court
8 of Canada, and this would be doc 120748 at pages
9 360 to 62, he's asked, about line 10:

03:49 10 "Q Can you describe the whole incident for
11 me, please; the location, as you recall
12 it, where you were going, where the lady
13 was, what she looked like, those things.

14 A The location, even to this day, I'm
03:49 15 not sure where it was.

16 Q I understood from some of your previous
17 testimony that -- did your vehicle get
18 stuck there? Is that what happened?

19 A It got stuck after we talked to the
03:49 20 lady, yes.

21 Q So, you see this lady. What do you do
22 with your car?

23 A I pulled over and we asked her
24 directions.

03:49 25 Q Where is she in relation to you? You



1 are in the driver's seat, I gather."

2 This is Mr. Wilson giving his answers:

3 "A She's on the passenger's side.

4 Q Who is on the passenger's side in the
03:50 5 car?

6 A David is.

7 Q What happens when you pull over?

8 A David rolls down the window and asks
9 her for directions.

03:50 10 Q And what does he say to her?

11 A I believe he wanted to know where the
12 Peace Hill district was.

13 Q The Peace Hill district?

14 A Yes.

03:50 15 Q Those were his words, as you recollect
16 them?

17 A That I recollect, yes.

18 Q Did he use -- "

19 Going to the next page,

03:50 20 "-- the words "Pleasant Hill" at all?

21 A That I'm not sure. Pleasant Hill and
22 the one I just said I get kind of
23 mixed up because I don't know
24 Saskatoon.

03:50 25 Q That has always been your problem with



1 those two names.

2 A Yes."

3 If you could turn then to page 365, he was asked
4 what happens next at the very top:

03:51 5 "A We leave the lady. I believe we go up
6 three-quarters of a block to make a
7 U-turn and my car got stuck.

8 Q I am sorry...?

9 A My car got stuck.

03:51 10 Q Tell me how that happened.

11 A By making the U-turn. There was a
12 bunch of snow there and ruts and my
13 car stopped in the ruts. My car had
14 summer tires on it, so I wasn't going
03:51 15 anywhere.

16 Q So, it wasn't that the snow was deep or
17 anything else, it was just basically an
18 ice base and your smooth tires just
19 wouldn't go?"

03:51 20 COMMISSIONER MacCALLUM: Not so fast.

21 BY MR. FOX:

22 Q Sorry. So again if I'm looking at -- can you just
23 scroll back to 364, please. Sorry, go to 365.

24 Thanks. So again an indication from Mr. Wilson,
03:52 25 quite independent of you, that he still maintains



1 when he's testified in the Supreme Court after
2 recanting that they stopped and spoke to a lady,
3 asked for directions and got stuck within
4 three-quarters of a block. You would accept
03:52 5 that's what he's saying?

6 A Yes.

7 Q Mr. Lockyer referred to your statement number --
8 your second statement, referring to the fact that
9 the car was stuck and then Ron Wilson and David
03:52 10 Milgaard got out and left in different directions
11 as being something new?

12 A Uh-huh.

13 Q That wasn't in Mr. Wilson's first statement, it
14 wasn't in Mr. Milgaard's first statement, it
03:52 15 wasn't in your first statement, but it's in the
16 second statement.

17 A Uh-huh.

18 Q I refer to Ron Wilson's testimony, again this is
19 before the Supreme Court, and I believe this would
03:52 20 be document 120748, and that will be pages -- I've
21 got down 370 to 71. Thank you.

22 COMMISSIONER MacCALLUM: Line 21.

23 BY MR. FOX:

24 Q Thank you, My Lord. I'll start with the question
03:53 25 at 17, this is testimony again of Mr. Wilson:



1 "Q You try to push the car. Walk me
2 through what happens next, please.

3 A Then, David and I decide to go look
4 for some help, to see if we could find
03:53 5 anybody to help push us out, and we
6 both leave the vehicle.

7 Q Tell us where you go.

8 A I go in one direction and David went
9 in the other.

03:54 10 Q In relation to where you had left the
11 lady, who went which way?

12 A We both went in opposite directions
13 from the lady. One went in one
14 direction and one went the other.

03:54 15 Like our car was pointing towards
16 where the lady -- the direction where
17 we came from."

18 Page -- Volume 6 of Mr. Wilson's testimony,
19 document 121298, page 863 of the transcript, this
03:54 20 is Mr. Neufeld questioning Mr. Wilson, line 10:

21 "Q The things that you told Mr. Wolch, or
22 agreed with Mr. Wolch, were not true, is
23 that correct?"

24 And that's a different matter that we're talking
03:54 25 about.



1 "A That's right, sir.

2 Q All right. Therefore, the truthful part
3 of your evidence includes getting stuck,
4 is that correct?

03:55 5 A Yes.

6 Q It includes Mr. Milgaard and yourself
7 being separated from the car for a
8 period of time?

9 A Yes, it does."

03:55 10 Again, if I can then refer to Mr. Tallis'
11 evidence, which would be doc 326548, Volume 10,
12 page 1809 of that particular transcript, it's
13 about line 5, Mr. Tallis states:

14 "A But when they got stuck on that
03:55 15 particular occasion, they did get out of
16 the car, the two boys, and one went one
17 way and one went the other way."

18 No question David denies that he had any
19 involvement in the death of Gail Miller, he has
03:55 20 been consistent in that and there's no suggestion
21 he suggested otherwise, but he acknowledged that
22 when they got stuck, they went separate ways. So
23 I guess what I'm getting at again, when I look at
24 all of these references I've referred to, the
03:56 25 compact, the knife, the being stuck, the talking



1 to the lady, all of those things, none of them
2 appear in your first statement, they appear in
3 your second one, but they don't appear in Ron
4 Wilson's first statement either, yet we know they
03:56 5 appear to be factually correct.

6 A Uh-huh.

7 Q And you agree they appear to be confirmed by David
8 Milgaard in large part as well?

9 A Yes.

03:56 10 Q And I guess if we look for some explanation for
11 that, the one explanation put forward by
12 Mr. Lockyer is that while the first statement is
13 the whole truth and nothing but the truth, but
14 perhaps one explanation is that when you gave your
03:56 15 first statement and Mr. Wilson gave his first
16 statement and Mr. Milgaard gave his first
17 statement, not everything got included; would that
18 be fair to say?

19 A That would be fair to say, yes.

03:56 20 Q And to some extent, if I suggest to you that that
21 has already been acknowledged by Mr. Wilson, if
22 you can refer to Mr. Wilson's testimony at the
23 Supreme Court, this would be Volume 2, document
24 120748, and I believe it's at page 426 of the
03:57 25 transcript, he was asked by Mr. Neufeld the



1 question at line 3:

2 "Q You had given the RCMP a statement
3 earlier on, I believe in the first part
4 of March, March 3rd or thereabouts of
03:57 5 1969?

6 A Yes, I had.

7 Q In that statement you had given them
8 your recollection, but there were some
9 things you had left out.

03:57 10 A A couple, yes."

11 If you could then move to pages 520 to 22 of the
12 transcript, line 11, this is again Mr. Neufeld
13 questioning Mr. Wilson:

14 "Q And it was clear to you when the police
03:58 15 kept coming back that they thought you
16 knew more than you were letting on.

17 A I imagine so, sir.

18 Q And you did know more than you were
19 letting on.

03:58 20 A A little bit, sir.

21 Q Because you still tell us that you were
22 stuck in this place after you talked to
23 the girl and you and Mr. Milgaard left
24 the car in different directions. That
03:58 25 really happened, didn't it.



1 A Yes, sir.

2 Q That wasn't in your first statement.

3 A No, it wasn't, sir.

4 Q So, the police were right. You were
03:59 5 holding back on them.

6 A Yes."

7 Mr. Milgaard was asked similar questions when he
8 was before the Supreme Court -- My Lord, I don't
9 have a watch up here, so if we're getting close
03:59 10 to a break time --

11 COMMISSIONER MacCALLUM: You have half an
12 hour.

13 MR. FOX: Thank you.

14 COMMISSIONER MacCALLUM: Not to say that
03:59 15 you should use it all.

16 BY MR. FOX:

17 Q I appreciate that. I'm sure everybody would
18 appreciate that.

19 Again, Mr. Milgaard testified at
03:59 20 the Supreme Court and this would be his testimony
21 and it would be, I believe it's document 232580,
22 Volume 1 of the Supreme Court transcript, and I
23 believe it would be at page 138 of the transcript
24 itself starting at line 13:

04:00 25 "Q At that time you didn't know whether you



1 were in Saskatoon that year?"

2 This was in relation to a question that he had
3 been asked in his first statement about whether
4 he had been to Saskatoon, indicating some
04:00 5 uncertainty. And he answers:

6 "A I might have been just hesitating to see
7 what he -- "

8 And that's referring to Detective Karst who was
9 questioning him,

04:00 10 "-- was trying to say to me or where he
11 was going because I didn't know what he
12 was up to or something. I don't know.

13 Q Were you playing games with him?

14 A It's possible.

04:00 15 Q Why would you be playing games with him?

16 A I don't know. I am just trying to
17 guess at it like you. I don't know
18 for sure. "Maybe"; why would I say
19 "Maybe"?

04:00 20 Q Well, that is what I am asking you. The
21 next question says: "When would you
22 have been in Saskatoon", and your answer
23 is: "I'm not sure." Do you see that?

24 A There you go: "I'm not sure." Why
04:01 25 would I have said that?



1 Q You don't know why you would have said
2 that?

3 A No.

4 Q Was that true?

04:01 5 A No, I was in Saskatoon."

6 Page 152, same transcript, line 17 to 21, and
7 again this is questioning of Mr. Milgaard:

8 "Q But you didn't tell them the whole
9 truth, did you? That is what you are
04:01 10 telling us now.

11 A That's what it says, yes."

12 So we've got Mr. Wilson, Mr. Milgaard both
13 acknowledging they frankly didn't tell the whole
14 truth and nothing but the truth in their first or
04:01 15 second statement.

16 A Okay.

17 Q Correct? So would it be a reasonable -- and I
18 appreciate we're putting propositions to you here
19 all the time about things you don't remember and I
04:02 20 recognize that isn't very fair, but is it
21 possible, Ms. John, that when you spoke to the
22 police the first time, you didn't tell them
23 everything you knew?

24 A I would think so because you don't -- when you sit
04:02 25 and talk about a scenario, you always -- don't



1 always cover everything, you know. Sometime later
2 you might think, "Ah, gees, I should have said
3 that too," you know.

4 Q There could be any number of reasons why you might
04:02 5 not tell them all the first time.

6 A That's right.

7 Q Maybe you didn't think it was important.

8 A Who knows.

9 Q Maybe it didn't come up.

04:02 10 A Yeah.

11 Q Maybe like Mr. Wilson and Mr. Milgaard, you were
12 just a little bit hesitant about what I should be
13 saying to the police right now.

14 A Uh-huh.

04:02 15 Q Those are all possibilities?

16 A Possibilities, exactly.

17 Q But would it be fair to say as well that knowing
18 that there's information that you didn't disclose
19 and knowing Mr. Wilson didn't disclose some
04:03 20 information and admits it and Mr. Milgaard didn't
21 disclose some information and admits it in those
22 first statements, would you agree it would be a
23 pretty reasonable proposition for the police to
24 want to find out in fact what you do know?

04:03 25 A Oh, yeah.



1 Q Sure. Sure. There was a young lady murdered?

2 A Uh-huh.

3 Q And so when Mr. Lockyer quotes at page 5077, which
4 I don't need to bring it up, when he quotes the
04:03 5 transcript and questioning Mr. Karst -- and 5077
6 is the transcript yesterday where he refers to
7 that -- when he states that Mr. Karst had you
8 taken to Saskatoon to find out what you knew, that
9 was kind of a pretty reasonable --

04:04 10 A Yes.

11 Q -- reasonable idea; you would agree?

12 A You know, maybe the choice of going to Saskatoon
13 was not the best but, you know, it happened, what
14 do you do, you know.

04:04 15 Q The offence occurred in Saskatoon; correct?

16 A Yes.

17 Q Yeah?

18 A Yeah.

19 Q The idea of trying to find out what you knew made
04:04 20 sense?

21 A Yes.

22 Q Now Mr. Lockyer then reviewed your statement of
23 May 24th, that would be your second statement, --

24 A Uh-huh.

04:04 25 Q -- and the second statement that Mr. Wilson gave



1 on May 23rd, and then I think augmented on May
2 24th or 22nd, 23rd, in there, his second statement
3 anyway.

4 A Uh-huh.

04:04 5 Q You will recall he went through that and
6 identified "well here is something you said in
7 your second statement and here is something Mr.
8 Wilson said in his second statement, that suggests
9 maybe you are repeating something that the police
04:05 10 planted with you", you recall that sort of -- that
11 line of questioning?

12 A Yes.

13 Q Okay. Would it be fair to say, if there is a
14 common issue in your two statements, another
04:05 15 possible explanation would be that you both are,
16 in fact, recalling something and referring to it
17 truthfully? That's another explanation why there
18 might be a similarity between the two statements?

19 A Uh-huh.

04:05 20 Q You would agree with that?

21 A Yes.

22 Q So, for example, we've talked about the knife in
23 the car, people saying -- Mr. Wilson saying even
24 in the Supreme Court there was a knife in the car;
04:05 25 we talked about the compact?



1 A Uh-huh.

2 Q Mr. Wilson saying his evidence, Mr. Milgaard
3 acknowledging to his counsel that he threw out a
4 compact, the fact that Mr. Milgaard and Mr. Wilson
04:05 5 got out of the car and separated, the discussion
6 about the purse snatching, the talking to a girl,
7 all of those things appear to be correct, and one
8 explanation for why they appear in both of your
9 statements is just that they, in fact, did happen;
04:06 10 would that be correct?

11 A Correct.

12 Q And when he refers to your statement saying "I
13 heard Mr. Milgaard refer to the lady that they --
14 you had stopped to talk to as a stupid bitch", and
04:06 15 Mr. Wilson saying "I heard Mr. Milgaard refer to
16 the lady as a stupid bitch", --

17 A Uh-huh.

18 Q -- again an explanation for that might be that
19 Mr. Milgaard did. In fact refer to that lady as a
04:06 20 stupid bitch; correct?

21 A Correct.

22 Q And so, when Mr. Wolch refers to that second
23 statement as being totally created, in fact you
24 would agree with me that there is a lot of
04:06 25 evidence beyond your statement which confirms what



1 is contained therein, evidence that I have just
2 referred to; correct?

3 A Correct.

4 Q I have got a few more things I'm going to cover,
04:07 5 try and cover fairly quickly here, but in your --
6 there were a number of questions asked about where
7 you were living and so on?

8 A Uh-huh.

9 Q And I think it's in Mr. Mackie's report -- and
04:07 10 this is document 106676, I hope I have got this
11 right, I think it also appears in Mr. Karst's
12 report as well, the very first paragraph -- this
13 is a report that was prepared by Mr. -- by
14 Sergeant Mackie:

04:07 15 "In regards to further investigations
16 that have been carried in regards to
17 this matter, on May 22nd, while in
18 Regina, Sask. Nichol John was picked up
19 at her home 817 Victoria Avenue ... and
04:07 20 taken to the Regina City Police Station
21 ...",

22 Does that address ring a bell, 817 Victoria
23 Avenue?

24 A I think that was Art Berard's house.

04:08 25 Q Okay. And so --



1 A I know Regina a bit.

2 Q So that's where you would have been picked up?

3 A I think so, yes.

4 Q Okay. So you kind of weren't found around,

04:08 5 wandering on the street so to speak, they would

6 have picked you up where it looks like --

7 A No, I think that's where Barbara lived.

8 Q Okay.

9 A Because my grandparents lived just a few blocks

04:08 10 from there.

11 Q Okay. And you were asked a lot of questions about

12 those couple days in Saskatoon and the

13 accommodations. Would I be correct that you don't

14 know whether you brought any change of clothes

04:08 15 with you, or a toothbrush, or whatever?

16 A I have no idea.

17 Q That question was put to you if you knew, and you

18 said you didn't know, and it became that you

19 didn't, weren't able to change your underwear for

04:08 20 two days; and whether you could or not you don't

21 know?

22 A No, that's correct.

23 Q Okay. Okay. And, similarly, it's been repeatedly

24 referred to you having been locked in these cells

04:08 25 in Saskatoon, but when we reviewed the evidence



1 that you gave at the trial -- and you were
2 cross-examined about that, Mr. Hodson went over
3 that -- the evidence was that you were actually in
4 the cell block of the ladies' area for a couple of
04:09 5 minutes, not locked in a cell area, and didn't
6 like that and were then -- actually stayed in the
7 matron's room. Am I correct you have no
8 recollection beyond that?

9 A No.

04:09 10 Q Any reason, though, to believe why your evidence
11 given under oath in 1970 would be incorrect?

12 A No.

13 Q I haven't seen anywhere --

14 MR. LOCKYER: The couple of minutes aren't
04:09 15 quite accurate.

16 COMMISSIONER MacCALLUM: I recollect --

17 MR. LOCKYER: That seems like a bit of a
18 stretch and it does ignore Mackie's evidence, as
19 well, which is she was in the cell.

04:09 20 COMMISSIONER MacCALLUM: Well he is
21 referring to, he referred the witness to her
22 evidence in --

23 MR. LOCKYER: Maybe I'm wrong.

24 MR. FOX: I am going to try find it, and if
25 I'm correct, I certainly would like to put it to



1 her to have it accurately.

2 MR. LOCKYER: That was Mackie's evidence
3 that she was in the cell two nights in a row.

4 MR. FOX: Yeah. Can we just turn to that?
04:09 5 I'm not sure which -- the trial transcript
6 document I have got is 003049, I'm not sure if
7 that's -- that matches up with what you have got
8 there. And oh, sorry, my reference is to pages
9 214 to 26, and I'm not sure if that's the page
04:10 10 number in the transcripts or the doc. number,
11 sorry. Actually, I think the doc. number I have
12 got is 03 -- sorry. Well can you just try, maybe
13 we'll just try those transcript pages.

14 MS. BOSWELL (Document Manager): Which
04:10 15 ones?

16 MR. FOX: 214 of the transcript. If that's
17 not it, it's a different doc. number, I think the
18 page number I'm looking for is 302155 if I have
19 got that right.

04:11 20 MR. HODSON: 003215.

21 COMMISSIONER MacCALLUM: Thank you.
22 Half-way down:

23 "Q And how long were you in the cells?

24 A Only about two minutes."

04:12 25 MR. FOX: That's about line 12.



1 BY MR. FOX:

2 Q And the question was:

3 "Q Oh, you were then in the room where oh,
4 you were there in the room - but they
04:13 5 put you in the cells first?

6 A Yes.

7 Q And how long were you in the cells?

8 A Only about two minutes.

9 Q I see; and you complained about that?

04:13 10 A Yes.

11 Q And then you were in the room where you
12 understood the matron stays?

13 A Yes."

14 And I think if you read on further, Mr. Lord,
15 and, again, this will refer to this actually
16 being a, not a cell, but a sort of a block area.

17 Any reason why that wouldn't
18 have been accurate in 1970?

19 A No.

04:13 20 Q And is it fair to say that you don't have any
21 different recollection at this point in time?

22 A No.

23 Q You were asked about, when you came to Saskatoon
24 in May of '69 and had your interviews and gave
04:14 25 your statements, if you had any friends in



1 Saskatoon at that time, and you said you didn't.
2 Now one obvious person that jumps out would have
3 been Albert Cadrain; you would have been aware
4 that he resided in Saskatoon?

04:14 5 A Yes.

6 Q Okay. And you would have been aware, at that
7 time, that he was involved in this investigation
8 as well?

9 A Umm, I'm not sure.

04:14 10 Q Were --

11 A At that time.

12 Q Okay. Let me put it this way; obviously, he
13 accompanied you on the trip?

14 A Yes.

04:14 15 Q And you had gone to his residence early that
16 morning?

17 A Okay.

18 Q Do you recall that? Maybe you don't, I can't
19 remember, you might not have recalled that?

04:14 20 A Not really.

21 Q Okay. So that Albert Cadrain was involved. In
22 terms of -- so that would be somebody who would be
23 in Saskatoon here?

24 A Could -- yeah.

04:14 25 Q Did you have any idea where David Milgaard was at



1 that point in time?

2 A No.

3 Q Okay. Ron Wilson you knew, or at least the police
4 would have known, he was brought up here to
04:15 5 Saskatoon; you became aware of that?

6 A I guess so.

7 Q In terms of what their thinking was about how
8 these people, or the presence of those people
9 might have affected you, I take it you would have
04:15 10 no knowledge of that?

11 A No.

12 Q Umm, reference was made to the questioning of
13 Mr. Roberts, this is the fellow who dealt with the
14 polygraph, the Calgary Police officer, and
04:15 15 Mr. Lockyer quoted his evidence and suggested to
16 you that Roberts was saying that you were lying in
17 your first statement. I read that more as
18 referring to a suggestion that you were holding
19 back some information. At this point in time, and
04:15 20 you are not sure why you might not have given all
21 the details in your first statement, but it would
22 be fair to say there was some information that was
23 held back? It may have been done for very
24 innocent reasons, but there was some information
04:15 25 that didn't come out in the first statement?



1 A Well, obviously, there's a difference between the
2 first and second statement.

3 Q And is it possible, are you -- is it possible that
4 you told Mr. Roberts -- and the written statement
04:16 5 was May 24th, 1969, that's when it was written out
6 and signed by yourself.

7 A Uh-huh.

8 Q Is it possible that on May 23rd, 1969, you told
9 Mr. Roberts that you had seen something involving
04:16 10 the death of Gail Miller; is it possible you told
11 him that?

12 A That's -- anything is possible.

13 Q Sure. If we can just take a look at your
14 statement, at 0, I think the one we've got is
04:16 15 018589, I hope that's the right one. And if we
16 could go to page 591 and highlight that paragraph
17 there, the paragraph reads:

18 "I have not told anyone about witnessing
19 this murder. I didn't recall actually
04:17 20 witnessing a murder until yesterday when
21 I talked with Mr. Roberts. I was aware
22 that however that I was somehow
23 involved."

24 Would you agree that seems to indicate --

04:17 25 A That's --



1 Q -- that you made some sort of disclosure to Mr.
2 Roberts the day before?

3 A Yes.

4 Q That would be a pretty good record of what took
5 place?

6 A Uh-huh.

7 Q You would agree with that?

8 A Yes. Well it says there "yesterday", so --

9 Q And if we can turn to the last page of that
04:18 10 statement, the actual drafted statement which I
11 think is 603, that's your signature that appears
12 about half-way down that page?

13 A Uh-huh.

14 Q That would be correct?

04:18 15 A Yes.

16 Q It states:

17 "Sworn before me this 24th day of May
18 A.D. 1969 at Saskatoon, Saskatchewan,"
19 I think that's:

04:18 20 "R.R. Taylor, Justice of the Peace in
21 and for Saskatchewan".

22 Obviously, you don't recall signing this
23 statement, so I take it you wouldn't recall that?

24 A No, no.

04:18 25 Q Okay. We may hear some evidence of that, I don't



1 know, but it would appear as though there was some
2 oath taken by you when you signed this statement
3 on May 24th, 1969?

4 A Uh-huh.

04:18 5 Q You would agree with that?

6 A Yes.

7 Q Mr. Lockyer states, referred to Mr. Wilson's
8 number 2 statement where he described you as being
9 hysterical that morning and suggests that that's
04:18 10 consistent with what appears in your second
11 statement, that statement, if we could just put
12 that up there, I don't know if you need to go
13 through it or not but I have gone through that. I
14 don't see, in your second statement, where you
04:19 15 describe yourself as being hysterical or words to
16 that effect; are you aware of that?

17 A No.

18 Q Okay. So if that was an observation Mr. Wilson
19 made in his second statement, it doesn't appear
04:19 20 it's in your second statement?

21 A Uh-huh.

22 MR. LOCKYER: Just to help, sir, I asked
23 her in terms of what she had seen according to
24 what she had signed. In order to be consistent,
04:19 25 that's what I had put to her.



1 MR. FOX: Do you want to -- can you find
2 anything in that statement, do you want to have a
3 look at that statement?

4 MR. LOCKYER: You misunderstand. I'm
04:19 5 putting it -- I better get to a microphone. I
6 put to her that would be consistent with what her
7 condition might have been given the contents of
8 the document that she had signed that day in
9 which it was purported she had seen David
04:20 10 Milgaard stabbing Gail Miller.

11 COMMISSIONER MacCALLUM: Okay.

12 MR. LOCKYER: That was the point. I never
13 put to her that she, that in that document she
14 had signed it said she was hysterical, that's not
15 what I said.

16 BY MR. FOX:

17 Q No, no you didn't, but you suggested it was
18 consistent with her saying she was hysterical, and
19 all I'm suggesting to you, ma'am, Ms. John, I look
04:20 20 at your second statement, there is no reference by
21 you to being hysterical, or words to that effect?

22 A I don't believe so.

23 COMMISSIONER MacCALLUM: At the risk of
24 further muddying the waters, I think Mr. Lockyer
04:20 25 is saying that he has suggested to the witness



1 that hysterical, an hysterical statement is
2 consistent with having seen someone stabbed.

3 MR. LOCKYER: That's right.

4 BY MR. FOX:

04:20 5 Q And Mr. Wilson, or at least we see the words in
6 Mr. Wilson's statement, or Mr. Milgaard used words
7 to the effect "I fixed her", but am I correct you
8 had no recollection of that, at least it doesn't
9 appear in your second statement?

04:20 10 A No.

11 Q And Mr. Wilson used the words that he had seen
12 blood on David Milgaard; you didn't, you said you
13 didn't see blood on David Milgaard your second
14 statement?

04:21 15 A According to that, yes.

16 Q So, if the police were trying to plant something
17 in your mind, they were kind of failing on what
18 would seem to be a pretty significant item; you
19 would agree?

04:21 20 A Yeah, I would think so, yeah.

21 Q Okay. Thanks. Those are all the questions I have
22 for you. Thanks.

23 COMMISSIONER MacCALLUM: Do we have any
24 further applications for re-cross?

04:21 25 MR. BECKMAN: Just one question, My Lord.



1 BY MR. BECKMAN:

2 Q If I may, can we pull up 001502, that's part of
3 document 001499 which Mr. Wolch put to the
4 witness. If we could just go to the bottom
04:22 5 paragraph of this and bring that out. And
6 Mr. Wolch, in his cross-examination of you, I
7 think, asked you to conclude that the police, on
8 this document, were attempting to put your
9 evidence into a preconceived notion of Mr.
04:22 10 Milgaard's guilt; is that fair?

11 A Yes.

12 Q Do you recall that? And just reading the
13 suggestion there:

14 "- Nichol John, Wilson and Cadrain be
04:22 15 brought to Saskatoon where with all
16 present the true story can be obtained
17,"

18 and I think it's "even", or maybe it's:

19 "... even if hypnosis or polygraph are
04:22 20 necessary."

21 And I just ask you -- and, again, I'm not sure
22 this is useful cross-examination, but since
23 Mr. Wolch put it to you -- is that statement
24 equally consistent with a search for the true
04:22 25 story?



1 A I'm not sure what you are getting at, sir, could
2 you --

3 Q Well that statement from the police --

4 A Uh-huh.

04:23 5 Q -- say they want you here so the true story can be
6 obtained; would you agree with me that that's
7 consistent with them looking for the truth?

8 A Yes.

9 Q Thank you. No more questions.

04:23 10 COMMISSIONER MacCALLUM: Thanks.

11 MR. HODSON: I think we are done, and if I
12 might thank you, Ms. John, for attending.

13 A You are welcome.

14 COMMISSIONER MacCALLUM: So this witness is
04:23 15 finished then?

16 MR. HODSON: I see no one rising, so I
17 think we are done.

18 The next witness is Mr. Ron
19 Wilson who I can -- can be here tomorrow morning.

04:23 20 COMMISSIONER MacCALLUM: Thank you very
21 much, Ms. John, for coming, and you are excused.

22 A Thank you.

23 *(Adjourned at 4:23 p.m.)*

24

25



OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of our knowledge, skill,
and ability.

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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