

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
Radisson Hotel at
Saskatoon, Saskatchewan

On Wednesday, June 1st, 2005

Volume 46

Inquiry Proceedings



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Mr. Bruce Gibson and Ms. Rochelle Wempe, **for** the RCMP
Mr. Eamon O'Keefe, Esq., **for** Mr. Larry Fisher
Mr. David Frayer, Q.C. and Ms. Jennifer Cox, **for** Minister
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 Irwin Cotler
Mr. Alexander Pringle, Q.C., **for** Justice Calvin Tallis
 (Retired)



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JOSEPH PENKALA

- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Morning.

09:06 5 COMMISSIONER MacCALLUM: Morning, sir.

6 MR. HODSON: Morning. The next witness is
7 Mr. Joe Penkala.

8 JOSEPH PENKALA, sworn:

9 MR. HODSON: Before we start, Mr.

09:07 10 Commissioner, I should advise that Mr. Penkala
11 told us some time ago that he had a dentist
12 appointment arranged for today at 11:00, I can't
13 imagine him wanting to spend time with the
14 dentist instead of with me, but we agreed to
09:07 15 break at 10:30 until 1:30 to allow Mr. Penkala to
16 go to that. And in fairness, he had told us some
17 time ago and we were aware of it, so I have
18 advised counsel of that. So we will go until
19 10:30, break, and start back at 1:30.

09:07 20 COMMISSIONER MacCALLUM: Very good.

21 BY MR. HODSON:

22 Q And your name -- or pardon me. Mr. Penkala, you
23 reside in Saskatoon, is that correct?

24 A I do, yes.

09:07 25 Q And what is your current age?



1 A I'm 73 years old.

2 Q And you are a former member of the Saskatoon
3 Police Service; is that correct?

4 A That's correct.

09:08 5 Q And I believe you served from 1954 to 1991; is
6 that correct?

7 A As a matter of fact, 51 years ago today I started
8 on the Saskatoon Police force.

9 Q Okay. And retired, then, in --

09:08 10 A '91, the end of August 1991.

11 Q And at the time of the Gail Miller murder
12 investigation you were the lieutenant in charge of
13 identification; is that correct?

14 A That's right.

09:08 15 Q And, as well, you served as chief of police for
16 the Saskatoon Police Service from January 1982
17 until September of 1991?

18 A That's correct.

19 Q I'm just going to go through your service record,
09:08 20 sir, and have you confirm it. If we could call up
21 325560. And we see 51 years ago, June 1, 1954,
22 you started with the service, progressed through
23 the classes of constable, and became an
24 identification officer in December of 1961; is
09:09 25 that correct?



1 A Yes.

2 Q And then would have moved up the ranks to become
3 the lieutenant, on January 1968, of
4 identification?

09:09 5 A Yes.

6 Q And then moved to patrol in November of 1971, up
7 to administration inspector, is that correct?

8 A Yes.

9 Q And in 1978 you were superintendent, was that of a
09:09 10 specific division, superintendent; what were you
11 superintendent of?

12 A I was the superintendent in charge of the patrol
13 division.

14 Q Patrol division. And then we see chief of police
09:09 15 in 1982 until your retirement; is that correct?

16 A That's correct.

17 Q And who was the chief of police immediately prior
18 to you?

19 A John Gibbon.

09:09 20 Q John Gibbon?

21 A Yes.

22 Q And who followed you as chief of police?

23 A Owen Maguire.

24 Q And I think we heard yesterday in a question to
09:10 25 Mr. Chartier, and I just wanted to clarify this, I



1 believe Mr. Lockyer had asked Mr. Chartier, or
2 suggested that at the time that Mr. Milgaard was
3 released in April of 1992 you were the chief of
4 police, but I understand you had retired by that
09:10 5 time; is that correct?

6 A That's correct.

7 Q And, as well, if I could call up document 325553,
8 please. And I understand that this is a record
9 prepared by you, or on your behalf, reflecting
09:10 10 some of your training, education, and service; is
11 that correct?

12 A That's the copy of the service record, yes.

13 Q And if we could just look at the record of
14 promotions there, please. And, again, I think
09:11 15 this just reflects what was in the earlier
16 document, correct, as far as dates of promotion?

17 A Yes it does.

18 Q Go back to the main document, please, under
19 Special Training. And, again, I take it that
09:11 20 there were some ident. training courses that you
21 took during your tenure with the police?

22 A Yes, that's correct.

23 Q And in fact there's, 1964 there was a crime
24 investigation and ident. course through the
09:11 25 Institute of Applied Science in Chicago, is that



1 correct?

2 A Yes, that was a home-study training course that I
3 took on, yes.

4 Q And down here, Homicide Investigation School,
09:11 5 Edmonton, January 22 to 26, 1968; what was that
6 about?

7 A It was a four-day training course held in Edmonton
8 mostly for Prairie police officers dealing with
9 the aspects of a homicide.

09:12 10 Q And who instructed at that course; was it an RCMP?

11 A There were many instructors and I don't remember
12 them by name. The chief coroner of Alberta was
13 one of the proponents, I think, of the homicide
14 school.

09:12 15 Q And just go back to the issue of training. When
16 you started with the force in 1954, did you take
17 any training prior to starting with the course --
18 or with the force, pardon me?

19 A No. The methods in those days were, if you were a
09:12 20 suitable candidate, you joined the police force
21 and they provided the training for you. It
22 started out with probationary recruit training,
23 you spent, my recollection is, about six weeks of
24 classroom, and then you were put with a trainee
09:13 25 and your career continued from that point on.



1 Additional courses were made available to you as
2 required and you took advantage of those. We also
3 had the availability of adult training with the
4 university in Saskatoon, and I did, I took
09:13 5 advantage of those issues and helped myself in
6 that regard.

7 Q If I could just maybe get you to focus on the time
8 frame prior to, or at the time and prior to the
9 Gail Miller murder, January of 1969 and the time
09:13 10 period prior. And please correct me if I'm wrong,
11 but the training, then, that officers on the force
12 would receive would be, on the one hand, in-house
13 training by other officers; is that fair?

14 A Yes.

09:14 15 Q And that would be after they start they would
16 have, I think you said, classroom training; is
17 that correct?

18 A Yeah, you usually started with classroom -- pardon
19 me -- with classroom training by one of the senior
09:14 20 executive officers of the police force, and taught
21 you the basic requirements of a police officer,
22 his powers, etcetera.

23 Q And then you also talked about some external
24 courses that would become available from time to
09:14 25 time; is that right?



1 A Yes.

2 Q And would some officers, then -- was there any
3 system in place to ensure that officers that
4 required training or education or upgrades got
09:14 5 that training or education or upgrading?

6 A In the early days it was quite routine that you
7 would receive certain types of training. In later
8 years there was a greater effort on, on training
9 police officers. There was the institution of the
09:15 10 Canadian Police College in Ottawa, and each
11 municipal police force was allowed spaces in those
12 training courses, and the chief of the day was
13 very much in favour of training and he would take
14 advantage of those spaces and send the available
09:15 15 or the appropriate people to those training
16 courses.

17 Q And the chief of the day was James Kettles; is
18 that correct?

19 A James Kettles, yes.

09:15 20 Q And would those training courses include training
21 on investigation techniques?

22 A Yes.

23 Q On interviewing witnesses and techniques?

24 A Yes.

09:15 25 Q Again, just looking back at your training, we



1 talked about the -- actually, if we go to the next
2 page, please. And, again, I think this is a
3 listing of special training. I see that there was
4 communication course U of S February of 1970; is
09:16 5 that correct?

6 A That's right.

7 Q And what did that relate to, just briefly?

8 A That was a non-credit course, and I took it at my
9 own initiative, as I recall.

09:16 10 Q And was that to deal with communication to the
11 public, to the media, within the force, or are you
12 able to --

13 A Basically, the principles of communication from A
14 to Z.

09:16 15 Q And I see in 1983 you took a Media Relations
16 Training as well; is that correct?

17 A That's right, yes. That was, that was, I think
18 that was a one-day one-on-one that I had with a
19 person that was specifically appointed to help me
09:16 20 since I had just recently been appointed to chief
21 of police.

22 Q Okay. Now, Mr. Penkala, I think it's evident from
23 the documents and some of the previous evidence
24 that you were involved in both the Gail Miller
09:17 25 murder investigation and subsequent actions -- and



1 subsequent dealings with the David Milgaard file
2 at a number of different times and in a number of
3 different respects; is that fair?

4 A Yes.

09:17 5 Q And what I have done is just prepared an outline,
6 document 325572, and I will be following this not
7 religiously but closely. I thought I would just
8 go through this with you so that you and counsel
9 and the Commissioner understand the order I'm
09:17 10 going to go through, because there's a fair bit of
11 information and evidence that I wish to take you
12 through from various time frames and on different
13 subject matters. But firstly, just to go through
14 your history with the force, which I think I have
09:18 15 done; I will then get into the organization of the
16 police force in 1969; next, the role of
17 identification division and your role; fourth,
18 about the document flow, the paperwork in 1969; I
19 have listed some items in the Gail Miller
09:18 20 investigation, this is not exhaustive, but I
21 intend to take you through your visit to the crime
22 scene, the autopsy, handling of exhibits and lab
23 testing, the finding the frozen lumps in the snow
24 on February 4, '69, the sexual assault files, the
09:18 25 knife and other physical evidence, I will be



1 asking you about a meeting in mid-May of 1969 with
2 other senior officers, the overall direction of
3 the investigation, the May 22nd-24th with Mr.
4 Roberts, the secretor issue, your involvement in
09:19 5 the preliminary hearing and trial and your dealing
6 with prosecutors, I will be asking you about your
7 knowledge about Mr. Fisher's convictions in
8 Winnipeg and in Regina; item 6, I believe in the
9 early -- late 1980 or early 1981 you were involved
09:19 10 in dealing with requests for information from the
11 Milgaards to the police force, and again in 1990
12 you were involved in four items that I see -- or
13 three, pardon me, one is the creation of the
14 police binders that we now have before the
09:19 15 Commission, secondly the missing police files,
16 there was an investigation at that time, thirdly,
17 you had some dealings with Eugene Williams and
18 Federal Justice on the Section 690; and then I
19 have got here slotted your document binders, and
09:19 20 those were the two binders you provided to us I
21 think a month or so ago, and I will go through
22 those with you and have some questions on that; 8
23 is your comments and dealings with the media; and
24 9, your involvement in the Larry Fisher trial. So
09:20 25 that, Mr. Penkala, gives an outline of the areas I



1 intend to cover. It may not be in that exact
2 order but, by the time you and I are done, I'll --
3 I'm sure we'll get through it all.

4 If we could start with the
09:20 5 organizational chart back in 1969, and if we could
6 call up 325569, please. And this is a page we
7 took straight out of the annual report, Mr.
8 Penkala, and this is -- you acknowledge that this
9 would have been the organizational chart in place
09:20 10 at the time?

11 A Yes it is.

12 Q We've gone ahead and filled in some of the names.
13 If you could call up 325571, please. And again I
14 think you've told us James Kettles was the chief
09:19 15 of police at that time; correct?

16 A That's correct.

17 Q And James Forbes was the deputy chief. There's
18 not much in the documents or what we've heard
19 about his role in this matter. What -- do you
09:20 20 have any recollection of James Forbes being
21 involved in the Gail Miller murder investigation?

22 A Not really. If he were involved in the Miller
23 murder, it would have been in relation with direct
24 communications with the AG's department.

09:20 25 Q Okay. What would be the role, and again I'm



1 talking about 1969, what was the role or
2 responsibility of the deputy chief of police?

3 A Basically he was second to the chief and his
4 general responsibilities, as I recall, were that
09:20 5 he would handle the administrative aspects of
6 policing, the dealing with the AG's department in
7 relation to issues relative to charges being laid
8 and particularly the waiving of charges. In the
9 early days many people were seeking jurisdictional
09:21 10 change on their charges and under the
11 circumstances that all funneled through the deputy
12 chief's office. He would make the request of the
13 Attorney General, the permission would be granted
14 by the Attorney General and then the matter would
09:21 15 be turned over to the new jurisdiction.

16 Q When you are talking jurisdiction, are you talking
17 different provinces or different territories
18 within a province?

19 A Within province and outside the province.

09:21 20 Q So if someone was, was charged in Saskatoon and
21 wanted it dealt with in Calgary, the deputy chief
22 would be responsible to waive those charges or
23 deal with them; is that it?

24 A That's correct.

09:22 25 Q And at the time, based on your observations and



1 involvement, Mr. Penkala, was the deputy chief,
2 James Forbes, was he involved in the day-to-day
3 decision making with respect to the investigation
4 of the Gail Miller murder?

09:22 5 A He would be if matters needed his attention, you
6 know. It's up the chain of command and if it
7 can't be resolved at one level, usually you go to
8 the next level, and he would have played a role in
9 that at some point.

09:22 10 Q Would his position have been more of an
11 administrative position than others?

12 A Oh, yes, very definitely.

13 Q And what about the Chief of Police James Kettles
14 at the time, and I'm talking 1969 and involvement
09:22 15 in the Gail Miller murder investigation, what is
16 your recollection of his involvement?

17 A His involvement was strictly administrative and
18 while I recall him being very much interested in
19 what was going on, he certainly -- he certainly
09:23 20 did not involve himself in the day-to-day aspects
21 of investigations.

22 Q So would he receive information about what's going
23 on?

24 A Yes. My recollection in those days throughout the
09:23 25 week, Monday through Friday, each morning the



1 different representatives of the various divisions
2 would meet and exchange the information of the
3 previous 24 hours.

4 Q So Monday to Friday. So who would be at these
09:23 5 morning meetings then?

6 A You would have the various heads of the divisions
7 that are noted on our chart. It would also
8 involve some of the working people, for example,
9 from the detective division, you would have a
09:24 10 detective sergeant would come up because he would
11 be more acquainted with the reporting that came
12 across his desk, he would be present.

13 Q So if we could -- so just back up. At this time,
14 so Lieutenant Short, Inspector Nordstrom and you
09:24 15 as lieutenant in the identification division would
16 be regular attendees at these morning meetings?

17 A Yes. It usually coincided with a coffee break in
18 the morning.

19 Q And so usually. What about Jack Wood, would he be
09:24 20 in attendance?

21 A Oh, yes.

22 Q And would the chief and deputy chief be in
23 attendance?

24 A The chief, if he was there, he was there.

09:24 25 Q And the deputy chief?



1 A Yes.

2 Q And then I think you said -- would there always be
3 a detective sergeant on duty at all times?

4 A I don't know if it would be correct to say there
09:24 5 was always one there, but there certainly was one
6 made available if there was a specific case of
7 interest that came to light.

8 Q So would one of these detective sergeants then
9 usually be at the morning meeting?

09:25 10 A Yes.

11 Q And then as well in morality, would one of the
12 morality sergeants usually be at the morning
13 meeting?

14 A I should identify the fact that it would be on the
09:25 15 basis of those executive officers to call in the
16 appropriate person that would be knowledgeable on
17 whatever had occurred that needed to be thoroughly
18 explained.

19 Q Would it be fair to say, or can you answer this,
09:25 20 would someone on these morning meetings, would
21 someone from detectives always be there, whether
22 it be Lieutenant Short or a detective sergeant,
23 that someone would be there from detectives?

24 A Yes.

09:25 25 Q And would someone from morality division always be



1 there?

2 A Yes.

3 Q And would someone from identification division
4 always be there?

09:25 5 A Yes.

6 Q And on occasion --

7 A And also from across the other side, there's the
8 traffic division and the patrol division.

9 Q I'll go there in a moment. So on some occasions
09:26 10 would there be more than one representative from
11 the detective division there?

12 A Yes.

13 Q And traffic division, I think you said there would
14 be someone from that division present as well?

09:26 15 A Yes.

16 Q And patrol?

17 A Yes.

18 Q And headquarters division, was that more the
19 administration?

09:26 20 A Yes, it's -- yes.

21 Q Now, if we could just go back to just some general
22 questions. At the time of the Gail Miller murder
23 investigation, I take it you would have been
24 present at a number of these morning meetings?

09:26 25 A I would have been, yes.



1 Q And did the Gail Miller murder investigation get
2 discussed at those morning meetings?

3 A I do not have any recollection of that.

4 Q Would it be -- I think you said that it would be
09:26 5 the practice to discuss what went on in the
6 previous 24 hours; is that correct?

7 A That's correct. I could maybe enlighten by
8 suggesting that when the Miller murder occurred,
9 there was so much activity and so much dedication
09:27 10 to the actual investigation that the morning
11 meeting would be secondary.

12 Q Okay. Would there be a Gail Miller murder
13 investigation meeting on a regular basis?

14 A Not on a regular basis, but as the investigation
09:27 15 continued, there were meetings that took place, I
16 would suggest, on an as-need basis sharing
17 information and comparing the known facts.

18 Q And on those meetings do you recall who would have
19 been at the meetings?

09:27 20 A Generally anybody that had something to contribute
21 and those that were obviously in charge of
22 overseeing the investigation. In the case of the
23 Miller murder, it would have been Superintendent
24 Jack Wood who was overseeing the CID division. I
09:28 25 would have obviously been there on every occasion



1 that I could be there and in all likelihood you
2 would have Charlie Short, Lieutenant Short and
3 probably detective sergeants.

4 Q And who do you recall was there, was there
09:28 5 detective sergeants in charge of the Miller file?

6 A I was not in a position to know specifically who
7 had made the assignments, but from my knowledge, I
8 would suggest that Detective Sergeant Reid and
9 Detective Sergeant Mackie were the working
09:28 10 coordinators of that investigation.

11 Q And when you say working coordinators, what would
12 their responsibilities have been as working
13 coordinators?

14 A To review the information that was coming in,
09:29 15 provide direction to the field investigators, call
16 for assistance in areas that were necessary and of
17 course inform their superiors as to what had taken
18 place.

19 Q So would they have been the quarterbacks of the
09:29 20 investigation, if I can call it that?

21 A I'm not a football -- I don't know what a
22 quarterback does, but --

23 Q In Saskatchewan sometimes not very much, but let
24 me try another way of putting this. Would the
09:29 25 people deciding who should do what, would that



1 have been Reid and Mackie?

2 A Yes.

3 Q And what about Short and Wood, what role would
4 they play in the decision making?

09:29 5 A It would have been a joint type of thing. For
6 example, if a detective sergeant felt that he
7 needed confirmation, he would go to the lieutenant
8 or to the superintendent and get that permission
9 and it was something that followed a natural
09:30 10 process.

11 Q Let me give you an example and we will be hearing
12 about this from a number of people. We know that
13 there was a door-to-door canvass done in the days
14 of and the days after the murder where officers
09:30 15 went and checked houses. Presumably someone would
16 have said here's the houses to check and here's
17 the officers that should do it?

18 A Yes.

19 Q So that there's not duplication and there's not
09:30 20 houses missed. Who would make that decision?

21 A I would suggest it would be the coordinating
22 detective sergeants, yes.

23 Q So that would be Mackie and Reid, that would be
24 part of their job?

09:30 25 A Yes.



1 Q Now, these meetings that you talked about I think
2 you said on an as-needed basis on the Gail Miller
3 murder investigation, would I take it that
4 Detective Sergeants Mackie and Reid would be at
09:31 5 most of those or all of those meetings; is that --

6 A Well, it varied, but they were certainly at some
7 of those meetings, yes.

8 Q What about officers in the morality division, do
9 you know if any of those people were at those Gail
09:31 10 Miller investigation meetings?

11 A Well, I don't see why they wouldn't be. I don't
12 have a specific recollection of that, but
13 obviously they would have had an interest in what
14 the morality people would have known.

09:31 15 Q And can you expand on that, what do you mean by
16 that?

17 A Well, in my own area of responsibility when I
18 dealt with the information that I was
19 knowledgeable on, I conferred with the morality
09:32 20 people who had outstanding files relative to
21 alleged rapes that had occurred prior to the
22 Miller murder and I would seek that information
23 from the morality division and there was always
24 co-operation in that regard.

09:32 25 Q Mr. Penkala, the fact that there was a sexual



1 nature to the attack on Gail Miller, did that --
2 and I think you said that caused you to go to
3 morality, is that correct, or to consult with
4 morality?

09:33 5 A Well, I think these were joint approaches to the
6 thing knowing that we had had these murders, we
7 looked at the cases, we looked for similarities.
8 My recollection is that there were similarities
9 and we attempted to find suspects that would fit
09:33 10 into that category and my recollection is that we
11 didn't find any, we didn't find anybody that -- we
12 didn't have a suspect for the alleged rapes, or
13 for the rapes that had occurred, and of course the
14 interest at that particular time was the murder of
09:33 15 Gail Miller.

16 Q And I'll go through some of the reports with you a
17 bit later on that. So just again back on these
18 meetings, from morality, who were the key morality
19 players at the time then who would have been
09:34 20 involved?

21 A I really don't know at this stage of the game.

22 Q Inspector Nordstrom, was he --

23 A He was in charge of the morality division or
24 section.

09:34 25 Q And did he do much investigation work in the field



1 or was he more of an administrative person?

2 A No, he was an administrator.

3 Q And now if we go and take a look at the detectives
4 that are listed there, and I take it, Mr. Penkala,
09:34 5 can you tell us your recollection of any of the
6 key detectives that were involved at least from
7 your personal knowledge in the investigation?

8 A I recognize them all. The extent to which they
9 were involved, I'm not -- I couldn't be certain.

09:35 10 I know that Detective Jack Parker and Detective
11 Sergeant Reid were at the scene when I was
12 dispatched to the scene to do the scene
13 examination. The other people, they were involved
14 in various aspects of the investigation as it went
09:35 15 on. Some of them provided exhibits to our
16 section, to the identification section for
17 forwarding to the Crime Detection Laboratory. The
18 main people would have been Detective Jack Parker,
19 Detective Karst, Detective Sergeant George Reid
09:35 20 and Detective Sergeant Ray Mackie and he's not on
21 this list.

22 Q Mackie is just one level up. If we can go back to
23 the main, they are listed, the detective sergeants
24 there.

09:36 25 A Oh, yes, he's a supervisonal category, that's



1 right.

2 Q Now, we also have listed here the National
3 Criminal Investigation Unit or NCIU with Constable
4 Chartier, Constable Morrison, and I want to
09:36 5 address your mind to 1969, January to June, 1969,
6 in that time frame, what was your understanding of
7 what this NCI unit was doing?

8 A As I recall, it was in its infancy and it was a
9 national, an effort to set up a national
09:36 10 intelligence on criminal activity and each
11 municipality, each RCMP division had
12 representatives in this unit and they would share
13 information.

14 Q And did these people, Chartier and Morrison of
09:37 15 this NCIU unit, assist identification in any of
16 its work at the time?

17 A Basically I had -- I have no knowledge of their
18 activities whatsoever. I was here yesterday when
19 I heard part of Chartier's evidence and Morrison's
09:37 20 evidence and I was not aware of that until I heard
21 it here.

22 Q Okay. Aware of what, what part of that?

23 A The part that they played in the Miller murder
24 investigation.

09:37 25 Q And you are referring to the taping or the bugging



1 of the interview room of Art Roberts?

2 A Yes.

3 Q And I was going to ask you that later, but I'll
4 ask you that right now. Were you aware of that at
09:37 5 the time?

6 A I was not aware of that.

7 Q Were you aware that this unit was doing things of
8 that nature?

9 A Yes, I guess I was aware that that would be within
09:38 10 their mandate, to deal with issues of that nature.

11 Q Do you recall, and again I'm talking about 1969,
12 do you recall there being any secrecy within the
13 police force with respect to the work that the
14 NCIU was doing?

09:38 15 A Well, I'm not sure that secrecy is the appropriate
16 description. Obviously the information that they
17 were gathering was not information that could
18 substantiate guilt of criminal activities, so it
19 had to be protected to a degree and that was the
09:38 20 concerns within that unit, and of course within an
21 organization of some 200 police officers, it's not
22 hard for some people to immediately suggest that
23 they are a secret unit. That's really not the way
24 I would have ever interpreted it.

09:39 25 Q So you are saying -- you didn't see the NCIU as a



1 secret unit?

2 A No.

3 Q I had used the word, asked you the question about
4 whether their activities were kept secret in the
09:39 5 force and I think you said that's not the right
6 word. Let me try it this way. Would it be
7 correct to say that some of the activities and
8 information generated by the NCIU would be kept
9 more confidential within the police force than
09:39 10 other investigation work?

11 A Well, it certainly would have been kept
12 confidential, but I think it would be available if
13 needed, if somebody within the police force or any
14 other police force needed that information, it
09:39 15 would be made available, but certainly it wouldn't
16 be general knowledge.

17 Q Within the police force?

18 A Within the police force.

19 Q Yeah. And let's compare it to an officer who
09:40 20 prepares an investigation report that contains
21 information on investigation, that would normally
22 get sent up and put on the file and be available
23 to anybody who wishes to take a look at it in the
24 police force?

09:40 25 A My recollection is that activities of the



1 intelligence unit was kept separate, separate from
2 the rest of the central record system.

3 Q And do you know why that was?

4 A I think for the very reason that we had just
09:40 5 discussed, and that is that it was of a
6 confidential nature and for the protection of the
7 investigators and the police department because it
8 was maybe information that couldn't be proven, it
9 had to be kept confidential.

09:40 10 Q Okay. If we can now just turn our attention to
11 the identification division. Can you tell us
12 what, and again I'm referring to the time frame
13 1969, what was the responsibility, the role and
14 responsibility of the identification division?

09:41 15 A The identification system within our police force
16 was to attend scenes of crime, to deal with the
17 fingerprinting and the indexing of fingerprints,
18 photography, sketching scenes, the acceptance of
19 exhibits, the forwarding of exhibits to the Crime
09:41 20 Detection Laboratory and provide assistance to any
21 of the other operational divisions or sections
22 within the police force.

23 Q And at that time in 1969 I understand that the
24 Saskatoon Police Service did not have its own
09:42 25 forensic lab or any lab to do testing work; is



1 that correct?

2 A That's correct.

3 Q And did you rely upon the RCMP lab to provide
4 those services?

09:42 5 A Yes. Under the national police service, the lab
6 was provided, the RCMP ran the labs and all police
7 services within Canada were, could make available
8 the support of the crime detection laboratories.

9 Q And so it was called the Crime Detection
09:42 10 Laboratory?

11 A Yes.

12 Q CDL?

13 A Yes.

14 Q And again in 1969, what services did that lab
09:42 15 offer to you or to the ident division or the
16 police force?

17 A There was a variety of things. There was physical
18 comparison and matching, there was the -- they
19 would involve themselves in fingerprinting as
09:43 20 well, they would involve themselves in serology,
21 that's the dealing with blood. There was fibre --

22 Q Hair and fibre comparisons?

23 A Firearms, yes.

24 Q You mentioned fingerprinting. Did you or the
09:43 25 ident division have the capability to do



1 fingerprinting in house in 1969?

2 A To a limit, yes.

3 Q And what was that limit?

4 A The limit was strictly powder application or

09:44 5 chemical application to surfaces to reveal

6 fingerprints, but in some cases, for example,

7 there was a method using x-ray.

8 Q Yes?

9 A We didn't have that capability and that was, that

09:45 10 was available through the Crime Detection

11 Laboratory.

12 Q And when you used powder, for example, were you

13 able to actually not only detect the prints but

14 actually lift and preserve the prints, or did you

09:45 15 have to send them away?

16 A Oh yes, yeah.

17 Q You could?

18 A Yes, we could.

19 Q And then, as far as your role as lieutenant of the

09:45 20 identification division, could you tell us what

21 were your -- what was your role or responsibility

22 in that capacity?

23 A Well, basically, I was somewhat the administrator

24 but I was also very much involved because there

09:45 25 was a limited number of us within that section,



1 and it would depend on the workload that was
2 facing us, and I did involve myself in actual
3 involvement at scenes.

4 Q And we will see that in the Gail Miller murder,
09:46 5 that you did have direct involvement in some of
6 the ident. investigation work, correct?

7 A Yes.

8 Q And was that usual for you to become involved to
9 that extent in the field?

09:46 10 A Well it was at that time, simply because there was
11 a limited number of trained identification
12 officers, and while I was the administrator and in
13 charge of the unit I was also available to help in
14 the field.

09:46 15 Q And would it be fair to say that, given the nature
16 of this crime, that you being -- and I take it you
17 were the most senior identification officer?

18 A At that time, yes.

19 Q Yeah. Would it be fair to say that your expertise
09:46 20 and experience would be called upon and that's one
21 reason why you may have been involved?

22 A Well that could be, yes.

23 Q If we look down at the list the officers, and I
24 believe Thor Kleiv, it's got I/O; that's
09:47 25 identification officer, is that right?



1 A Yes.

2 Q And I believe Thor Kleiv was involved in this
3 investigation to a fair bit?

4 A He was. Him and I attended, attended the scene
09:47 5 that morning, yes.

6 Q And would he have been the individual -- and we'll
7 see this a bit later about exhibits and
8 continuity -- would he be, was he the officer in
9 charge of continuity and gathering exhibits?

09:47 10 A Yes. If I can explain?

11 Q Yes, I was going to ask you, please do?

12 A When two identification officers attend the scene
13 there is usually a decision made as to who would
14 control the exhibits that were necessary to be
09:47 15 taken, the reason being that continuity is so
16 important, that it's important and to avoid
17 duplication of manpower and resources one person
18 would accept all the exhibits and would then be
19 accountable and responsible for the continuity of
09:48 20 those exhibits.

21 Q And in the Gail Miller investigation was that Thor
22 Kleiv?

23 A In, in this, in the Gail Miller murder, yes.

24 Q And so his responsibilities would be to oversee
09:48 25 and be the person in charge of preserving --



1 collecting and preserving continuity of exhibits;
2 is that fair?

3 A Well it was somewhat of a joint effort as, you
4 know, it was a -- there would be an agreement that
09:48 5 we would need this, we would need that, we would
6 need this, and it was a joint effort, but the
7 physical possession was taken by, in this case,
8 Identification Officer Kleiv.

9 Q And, again in 1969, do you recall how much
09:48 10 experience Mr. Kleiv had had in the ident.
11 section?

12 A I don't know for sure, but a considerable amount,
13 he was one of the senior -- I think he was
14 probably the most senior after myself.

09:49 15 Q We'll make -- yeah, okay. And did you have any
16 concerns, at that time, about his capabilities?

17 A No.

18 Q Now who did you, as lieutenant, who did you report
19 to?

09:49 20 A I would report to Superintendent Wood.

21 Q And would that be an administrative reporting,
22 operational reporting, or can you give us some
23 idea of how -- of how much reporting you had to do
24 and how much you did do?

09:49 25 A Because of the nature of identification duty there



1 was an awful lot of communications with any
2 division or any operation within the police force,
3 because if we were asked to attend it might be the
4 traffic division for a fatal accident or it might
09:49 5 be the detective division regarding a murder, so
6 we would have that communications going at all
7 times with people involved in those areas, but at
8 the same time the accountability would be to the
9 superintendent in charge of CID.

09:50 10 Q For example, in the Gail Miller investigation, did
11 you report to Jack Wood about what you were doing
12 on a daily basis?

13 A I'm not sure if I can suggest on a daily basis,
14 but yes, generally you would report to Jack Wood
09:50 15 in addition to reporting by writing out reports.

16 Q Right.

17 A And when you wrote a report the report, a copy
18 went directly to central records to the master
19 file, and then there was a distributing system
09:50 20 within those reports. I think there was probably
21 four different copies --

22 Q Yeah?

23 A -- of the report.

24 Q And I'll touch on that in a moment, the reporting.

09:50 25 A Okay.



1 Q What about, did you need to get approval from Jack
2 Wood to take any steps that you felt were
3 necessary to discharge your duties in
4 identification?

09:51 5 A Of course I could do that if I thought it was
6 necessary, but in most cases it was a situation,
7 common sense prevailed and you did what you had to
8 do.

9 Q So, and I don't want to put words in your mouth,
09:51 10 but would it be fair to characterize the
11 relationship you had with Jack Wood, or with his
12 office as superintendent in 1969, that you would
13 keep him informed of what you were doing but you
14 wouldn't seek his approval before you took steps;
09:51 15 is that a fair summary?

16 A Yes.

17 Q Was there anything that you couldn't do without
18 getting his approval?

19 A Oh, I couldn't, I couldn't make approaches to
09:51 20 other jurisdictions without him knowing about it.
21 That type of a situation would very obviously have
22 to seek his approval or the chief's approval.

23 Q Okay. Can you think of anything else?

24 A Not offhand.

09:52 25 Q Yeah, okay. Just going back to this, and let's --



1 and maybe I shouldn't exclude patrol and
2 traffic -- what was the level of communication
3 between these divisions, as we see them in 1969,
4 based on what you observed?

09:52 5 A I'm not certain what --

6 Q Okay. Let -- yeah, I'm just, I'm trying to get a
7 sense from your observations and experiences at
8 the time. What was the nature and level of
9 communication between let's take identification,
09:52 10 for example, and morality?

11 A Oh, okay. The communications, as far as I was
12 concerned, were always excellent. There was never
13 any, there was never any constraints or
14 resistance, wherever we had to go and deal we
09:52 15 always got co-operation. That was my experience.

16 Q And I take it ident. would provide, maybe
17 'service' is the wrong word, but you would help
18 out or work with morality on some of their cases
19 and provide ident. services to them; is that
09:53 20 correct?

21 A Absolutely, yes.

22 Q And did you do the same with detective divisions?

23 A Yes.

24 Q And what was the level of co-operation and
09:53 25 communication between detectives and ident.,



1 identification division?

2 A Umm, actually probably the most prevalent was
3 between the detectives and the identification
4 section because of the nature of detective
09:53 5 responsibilities. An example would be break and
6 enters, that was -- seemed to be a very common,
7 common, and although serious a common offence, and
8 we would always be summonsed to attend break and
9 enters to examine the scene, to establish and find
09:54 10 physical evidence or evidence that might find the
11 suspect or the perpetrator.

12 Q And what about, did you have cases where you would
13 provide services to morality and detectives
14 jointly, in other words officers from both of
09:54 15 those divisions working on a particular case?

16 A I can't think of a specific, a specific area, but
17 we dealt with the morality people. I -- sudden
18 deaths were always attributed to morality, and a
19 sudden death is where someone is found deceased
09:54 20 and the circumstances aren't known, ident. would
21 be called as well to assist in that area.

22 Q And again back in the time frame let's say
23 1968-1969, did you -- were you able to observe how
24 the morality and detective divisions worked
09:54 25 together or didn't work together or communicated



1 or didn't communicate?

2 A I was not aware of any difficulties. I think it
3 was a question if you asked, you would get, you
4 would get the help that you required. That's the
09:55 5 way I viewed it constantly --

6 Q Did you --

7 A -- and I'm not aware of any difficulty.

8 Q What about with patrol division and traffic
9 division and their relationship with, if we can
09:55 10 talk at the criminal investigation divisions, did
11 you observe any problems back at that time,
12 '68-'69?

13 A Well my general, my general perception of the
14 whole police force was that everybody was -- any
09:55 15 serious crime was a challenge to every police
16 officer, every responsible, respectable police
17 officer would have an interest and he would or she
18 would be in a position to want to know and want to
19 help. That was my experience.

09:55 20 Q Did you ever observe any disputes between
21 detectives and morality at this time, between
22 officers in the divisions, over sharing
23 information or working on files or anything of
24 that nature?

09:56 25 A I was never aware of any.



1 Q Now we talked a bit about the RCMP lab. I take it
2 the RCMP lab was involved in assisting you in the
3 Gail Miller murder investigation; is that correct?

4 A Yes.

09:56 5 Q And we will see a little bit later where you sent
6 exhibits and information to them and asked them to
7 do some tests; correct?

8 A That's correct.

9 Q In addition to that role, do you recall the RCMP
09:56 10 playing any other role in the investigation of
11 Gail Miller's death?

12 A Often, and specifically with the Gail Miller
13 murder, the RCMP were providing us assistance.
14 Staff Sergeant Edmundson and, I think, Corporal
09:57 15 Rasmussen were two officers that I have some
16 recollection that were involved in, in the initial
17 investigation after the murder was discovered.
18 And then there was an inspector, an RCMP
19 inspector, that was involved at --

09:57 20 Q Was that Riddell?

21 A Yes, James Riddell, and he was at some of the
22 meetings that were randomly called and -- to
23 discuss and review what evidence we had.

24 Q And why would the RCMP be assisting the Saskatoon
09:57 25 City Police force in this investigation?



1 A I can only imagine that probably the chief of
2 police requested the assistance from the RCMP and,
3 of course, that assistance was always available.

4 Q And we've heard, or maybe even it was your
09:58 5 evidence that in some cases when you go outside
6 the jurisdiction you need to go to the RCMP to
7 assist, is that -- was that the case at the time?

8 A Well in, in that time period, yes, a police
9 officer was only a police officer within the
09:58 10 jurisdiction. I think that's changed and now the
11 municipal police officers are police officers
12 within the entire province.

13 Q And so, in addition to assisting the Saskatoon
14 Police officers outside its boundaries, I
09:58 15 understand you are saying that the RCMP also
16 provided you assistance within your boundaries,
17 general help in the investigation; is that
18 correct?

19 A That's correct.

09:58 20 Q And was that unusual, to have them called in to
21 help on an investigation?

22 A No, no, not unusual, that happened many times.

23 Q And would it be because you needed more people
24 involved, or would it be their expertise, or what
09:59 25 would be the factors that would cause the police



1 force to call them in?

2 A I think one of the main reasons would be the
3 availability of the RCMP for national networking
4 because, you know, criminals, criminals move
09:59 5 around, and when you are limited to a specific
6 jurisdiction it makes it a lot easier when you
7 have the national police force involved and they
8 can find information right across the nation, --

9 Q And --

09:59 10 A -- and internationally too. I'm sorry.

11 Q What is your recollection of the role the RCMP
12 played in two things, the first is the
13 investigation, and secondly the organization and
14 the decision-making and the direction of the
09:59 15 investigation?

16 A My recollection is that their involvement in the
17 Miller murder was generally to assist us. I did
18 not recall them taking the lead on any issues, I
19 don't think they wanted to do that and they
10:00 20 didn't, but they certainly offered input and
21 available information that they would have, and
22 that assistance was only provided for several
23 months at the beginning of the investigation.

24 Q Okay.

10:00 25 A But that's my recollection of it.



1 Q And do you know -- and I will be dealing in a
2 moment with the Saskatoon City Police Service
3 central records and the preparation of
4 investigation reports -- were you aware as to
10:00 5 whether or not the RCMP officers who assisted you
6 prepared their own reports, written reports?

7 A I'm sure they did.

8 Q Did they?

9 A I'm sure they did. I -- I don't recall ever
10:00 10 seeing an investigational report, and when I say
11 'an investigational report', dealing with the
12 specifics of a -- of some operational things ever
13 being attached to our file.

14 Q And do you know why that would be?

10:01 15 A Umm, I don't know why that would be. I think
16 basically we were there so it would be probably
17 our responsibility to report any incident that,
18 jointly, were established there.

19 Q Okay. We have, and I will show a couple of them
10:01 20 to you later, reports where I believe it was
21 Corporal Rasmussen reported up the line to his
22 superiors in the RCMP about what he was doing in
23 the investigation, and I don't believe -- well,
24 they were not in the Saskatoon City Police
10:01 25 documents that we received, that the Commission



1 received, and it appears that they may not have
2 been on the files at any time, I'm -- they will
3 be -- we'll hear from a number of people on that.
4 But, if that is the case, can you offer any
10:02 5 explanation as to why the RCMP written reports
6 would not have been provided to the Saskatoon City
7 Police if, in fact, that turns out to be the
8 evidence?

9 A I, you know, I would not -- I was not aware of
10:02 10 that and I don't have a clue as to why, although
11 there may be reasons why it went that way.

12 Q Well, fair enough. Was there -- and you had
13 talked about a relationship with the RCMP lab, and
14 I think you called it the criminal detection
10:02 15 laboratory, is that right?

16 A Crime detection.

17 Q Or crime detection, sorry. Was there a written
18 protocol in place as to how you were to deal with
19 them on matters?

10:02 20 A Yes, very much so. We received some basic
21 training from the lab authorities as to how to
22 deal with these issues and how to package and how
23 to preserve continuity, how to transport them to
24 the Crime Detection Laboratory, usually it was
10:03 25 physically taken to the Crime Detection Laboratory



1 and turned person to person but there was other
2 methods that were used. The covering request for
3 the examination had to be provided, that was one
4 of my responsibilities when I was in charge of the
10:03 5 identification section, I would have to prepare
6 these reports. I never, I didn't necessarily have
7 to be involved in the operation, but I would be
8 asked to provide the written request on behalf of
9 an investigator which was sent on to the crime
10:03 10 laboratory.

11 Q And would the role of the RCMP lab be playing,
12 then, just generally would it be more of a
13 technical execution of your request; is that --

14 A Yes.

10:04 15 Q And so let me give you an example. If there was a
16 piece of clothing, one scenario is you send it to
17 the RCMP lab and say 'lookit, you people look at
18 this and see if you can find out anything that
19 will help me'; another scenario is 'here is
10:04 20 clothing, I want you to look at this fibre, I want
21 you to check it for blood, check it for semen',
22 etcetera, etcetera. I'm wondering if you can help
23 us out as to which -- who was responsible for
24 making the decision as to what to send them and
10:04 25 what to ask for?



1 A Well generally the submitting, the submitting
2 service would have to seek a specific type of
3 examination, but that didn't prohibit you from
4 seeking their expertise on something that,
10:04 5 obviously, you weren't able to specifically
6 identify. You could ask the general question 'is
7 there anything of evidential value in this
8 particular exhibit' and they would assist us in
9 that.

10:05 10 Q And you said you received training from them; did
11 you?

12 A Yes.

13 Q And would that be related to protocol or handling
14 and the details, or would it be training as to
10:05 15 what to look for and what, what forensic value may
16 be in certain pieces of evidence?

17 A There was a combination of those issues, because
18 most police officers weren't, weren't necessarily
19 knowledgeable on issues relative to say blood
10:05 20 work, that sort of thing, so we also had the
21 availability of telephoning directly to the
22 technicians and asking for their assistance and
23 they would guide us as to how to deal with it.

24 Q And the issue of DNA was not on the radar screen
10:06 25 in 1969; was it?



1 A It wasn't, no.

2 Q I would like to now turn a bit to the -- to get
3 your assistance in explaining the paper reporting
4 process at the time in 1969, and I'm assuming that
10:06 5 there was a -- some system in place that would
6 have applied to the Gail Miller murder
7 investigation that was used in other
8 investigations; is that fair?

9 A I don't follow? Sorry.

10:06 10 Q Okay. Well I'm interested in knowing how the
11 police prepared reports, distributed reports, and
12 preserved reports on investigations, and I guess
13 maybe specifically in the Gail Miller murder
14 investigation. And the question you didn't
10:07 15 understand was to say well was it the same, if
16 what you did in Gail Miller, would it have been
17 the same as you did in other investigations?

18 A Yes.

19 Q Okay.

10:07 20 A Yes, generally it would be the same approach.

21 Q Okay. So let's talk about the Gail Miller murder
22 investigation and start off with, if you could
23 tell us, investigation reports, and we have seen
24 lots of those; what was your understanding of who
10:07 25 was to prepare those and what was to go in them?



1 A The investigation report was provided by the
2 actual individual investigator, that was made up
3 in quadruple form, as that's my recollection. One
4 copy went to the master at central records, which
10:07 5 was a separate storage area for records, and the
6 other three copies would be distributed to the
7 operational units that were -- that had a need for
8 them. For example, if it was a detective file,
9 there would be an operational, a copy would go to
10:08 10 the Detective Sergeant that was assigned that
11 investigation, another copy would go to the actual
12 investigator in the field that would be involved
13 or had been involved in that situation.

14 Q Okay. So let's just back up for a moment. What
10:08 15 was supposed to -- was there any practice as to
16 what officers were supposed to put in the -- I
17 mean what was the purpose of the investigation
18 report?

19 A To gather all the facts relative to the
10:08 20 investigation, so that you could approach that
21 particular file or case, and all the activity that
22 had occurred on it would be concentrated within
23 that file.

24 Q So one, one purpose would be to capture what the
10:09 25 officer who authored the report, what that officer



1 learned or did?

2 A Or officers, because there would be --

3 Q Yeah, or officers?

4 A Yeah.

10:09 5 Q So what they learned and did, they would capture
6 it in writing?

7 A Yes.

8 Q So one purpose for that would be to communicate
9 what they did, what they observed, what they
10:09 10 found, to others in the organization?

11 A That's right.

12 Q And would they also use it to communicate what
13 further follow-up ought to be done?

14 A Well that would be the responsibility of the
10:09 15 coordinating, the coordinating investigator or
16 the -- in this case the Detective Sergeant would
17 have access to these and he would look at the
18 whole picture, and if he felt that there was an
19 area that needed to be further examined, he would
10:09 20 provide the direction and assign somebody to deal
21 with that issue.

22 Q But let me give you an example. Let's say a
23 Detective Sergeant says to a detective 'go out and
24 check John Smith, I want you to find out whether
10:10 25 he was at work on this date', and the officer goes



1 out and finds John Smith and gets the name of John
2 Smith's employer but can't get ahold of the
3 employer, okay, and the officer is going on a week
4 off; would that be something that the officer
10:10 5 would put in the report saying 'lookit, I found
6 John Smith's employer --'

7 A Oh sure.

8 Q '-- but I didn't reach him, someone should follow
9 up'?

10:10 10 A Yeah.

11 Q Is that the type of thing that would go in?

12 A Absolutely.

13 Q Yeah, because that officer might not be the one
14 that -- might not be the one who is assigned to
10:10 15 follow up; is that correct?

16 A That's correct.

17 Q So the purpose of the report is to put in what's
18 been done, what's been observed, and maybe what's
19 not been done yet or what ought to be done?

10:10 20 A That's correct.

21 Q And we've also seen, in some of the reports, where
22 an officer will say words to the effect like
23 'someone should follow up with X' or 'someone
24 should think about doing Y', things of that
10:11 25 nature. So it was basically an officer's, a piece



1 of paper to allow the officer to communicate
2 everything that might be helpful to the
3 investigation, is that a fair --

4 A Absolutely, yes.

10:11 5 Q So what about notebooks, officers' notebooks, what
6 was the practice at the time of what, A, what
7 should have gone in the notebooks, and B, what
8 should have been done with them?

9 A Well notebooks, there is a -- there was always,
10:11 10 from the very beginning of your service, emphasis
11 were on the fact that you were to provide yourself
12 with understandable notes, and of course every
13 officer would do it in his own thing because the
14 information is for that officer, and the brevity
10:11 15 of the notes or the extent of the notes would be
16 the choice of the person that's making the notes.
17 And, of course, the notes are made on the basis,
18 well, it's immediate, it's today, I can still
19 recollect and fill in the blanks that are
10:12 20 necessary. So notes, even though they are taken
21 at the time, sometimes are lacking. For example,
22 with the time frame that we have in this
23 particular case, the Miller murder case, the notes
24 that were made, at least I'm using my own example,
10:12 25 I don't think I can go beyond what I have got



1 written in my notes because I don't recall. That
2 was 35 years ago.

3 Q Yes. So what about the practice of retaining
4 notebooks; was there one in place at the time?

10:12 5 A Umm, there was a system in place for the entire
6 department, my understanding is that there were
7 some difficulties in that system. In the
8 identification section we had the privilege of
9 keeping our notes simply because there was a
10:13 10 reliance on us, we were involved in all these
11 different activities and usually we were required
12 to attend Court more than other officers, so we
13 had the special privilege of keeping our own notes
14 without turning them into a central, a central
10:13 15 storage area.

16 Q So these would be your own file notes, if I can
17 call it that?

18 A That's correct.

19 Q So we've talked about investigation reports, which
10:13 20 are a unique document and I will be showing you
21 some of those, and we've talked about officers'
22 notebooks, which are the pads which --

23 A Yeah.

24 Q -- that officers take notes, and you are now
10:13 25 saying in ident. you had your own separate file of



1 your own notes?

2 A Oh, I have to clear that up. There was a, there
3 was an investigative file that was an ongoing
4 file, and that would be, that would be left with
10:14 5 the ident. section, and some of the material that
6 I have, that I presented to you, are copies of
7 investigation reports.

8 Q Okay.

9 A The originals, I call them 'originals', would have
10:14 10 gone to the master file in central records but the
11 balance would have been left in our specific file.
12 Now this file doesn't necessarily contain all of
13 the activity that happened on that case, only
14 those that the identification officer was involved
10:14 15 in, and possibly material brought in that, for one
16 reason or another, the ident. officer was required
17 to acquaint himself with.

18 Q Let's just go back to the notebooks for a moment.
19 Just on the officers' notebooks, was there some
10:14 20 policy or practice as to what, whether those were
21 to be preserved or not, or placed on a file, or
22 kept by the officer?

23 A The notebooks were kept by the officer, and in my
24 own, in my own case I kept all my notebooks right
10:15 25 from the day I started on the police force, and I



1 was fortunate and able to, to retain those
2 notebooks.

3 Q And why do you say you were fortunate?

4 A Because I know of cases where the notebooks,
10:15 5 through some kind of a mismanagement of the
6 system, were destroyed and notebooks weren't
7 available when they were --

8 Q In some cases were officers required to give their
9 notebooks back to the police service?

10:15 10 A They were always required, other than the
11 identification section, they were required to turn
12 them in at -- when the book was completed it would
13 be turned in for central storage.

14 Q So back in 1969, when an officer was done with his
10:15 15 notebook, he was to give that in to the service to
16 be put in central --

17 A Storage.

18 Q -- storage. Did that happen?

19 A Pardon me?

10:16 20 Q Did that happen?

21 A The storage?

22 Q No, did the officers' notebooks get into central
23 storage?

24 A Oh yes, I think, I think it -- I think they were
10:16 25 all turned in. I mean there might be exceptions



1 but I think, generally, --

2 Q Okay.

3 A -- they were turned in.

4 Q If we could just, now, go back to the

10:16 5 investigation reports, and maybe I can just call

6 up one here to give an example. Let's call up

7 106130, and I will be dealing with the contents of

8 this report in a moment, it's a report dated

9 February 1, 1969, it's got the Gail Miller file.

10:16 10 If we can go to the next page, please, and it's

11 got Lieutenant Ident. Penkala, so this is your

12 report of February 1, the day after the murder?

13 A That's correct.

14 Q And I see initials here. Does that indicate that

10:15 15 this would have been dictated and typed by someone

16 else?

17 A In this case, and I recall this, I hand wrote my

18 report and then I turned it over to the clerk

19 steno and she typed it up for me and that's her

10:16 20 initials.

21 Q And at the time would there be a couple of options

22 then for the typing of these reports, they could

23 be dictated, there were some people who dictated;

24 is that correct?

10:16 25 A There was a Dictaphone system and you could



1 dictate your report directly into the Dictaphone
2 system and there was a bank of typists in central
3 registry that would type up the reports and then
4 the distribution would occur from that point on.

10:16 5 Q And you could write the report as you've done;
6 correct?

7 A Yes.

8 Q And third, did any officers to your knowledge type
9 their own reports?

10:17 10 A I'm sure there were some that would do that, yes.

11 Q So if we can go back to the first page here, and I
12 don't think you can see it very well, but I think
13 it says Detective Sergeant J. Ward, there's a
14 stamp on there. Maybe we can just zoom in on
10:17 15 that. I'll find a better copy later. I think
16 that's Ward. Do you recall whether Jack Ward,
17 what his involvement was in the record keeping or
18 the reports?

19 A I don't know. Of course I knew Jack Ward, he had
10:17 20 become ill and chances are that he was probably
21 assigned a responsibility of coordinating files or
22 something. I have no knowledge other than that.

23 Q Let's take this report. So you would hand write
24 it, it would go to a typist, it would be typed in
10:17 25 quadruplicate, four copies; is that correct?



1 A That was the usual process, yes.

2 Q And I understand in 1969 there was no photocopier,
3 there was no mechanism to make copies of a
4 document once it was prepared; is that right? You
10:18 5 could make it with the carbon, but there wasn't a
6 method to --

7 A Well, carbon was certainly used. I don't remember
8 whether Xerox was popular in those days or not.

9 Q We'll hear from others and I think at the time
10:18 10 there wasn't the ability to make a copy once the
11 document was done, but if you don't recall, that's
12 fine. So the four copies would be made. What
13 would happen to them? Tell me what this report,
14 what would happen with it?

10:18 15 A Well, in the first instance, the initial copy
16 would be attached to the main file in central
17 records, the master file, we all called it the
18 master file.

19 Q And who looked after that at the time?

10:18 20 A I think a person by the name of Gerry Keelan was
21 in charge of central records.

22 Q So would the typist actually deliver one copy --
23 or I take it there was a process in place so that
24 one copy automatically went there?

10:19 25 A Yeah.



1 Q And in central records they were put on a file,
2 and what was the purpose of that, having a central
3 registry or central record?

4 A Well, the sole purpose of a master file is to
10:19 5 ensure that the entirety of the file was intact
6 and they were very specific about -- not that you
7 couldn't access the master file, but if you went
8 down there to access the master file, they stood
9 right there and you could take your information
10:19 10 off the file, or in later years I guess when
11 photocopying was available, you would photocopy
12 those particular aspects that were of interest to
13 you, but the master file generally never left
14 central records.

10:19 15 Q And so someone would be responsible in this system
16 to do the delivery of the documents. That
17 wouldn't be you in this case would it?

18 A Well, in this case it would have been my
19 responsibility to ensure that this, that the
10:20 20 original went to central records because it was
21 done in my area of operation, but, I mean, this
22 was a standard process and if I did my own, if I
23 typed my own report -- I didn't because I'm not a
24 typist -- but if a person typed his own reports,
10:20 25 it would be his responsibility or her



1 responsibility to ensure that the original and the
2 appropriate copies went downstairs.

3 Q And that was the standard procedure at the time
4 was it?

10:20 5 A Yes.

6 Q So one copy would go to central records. Where
7 would the other three go?

8 A Well, it would depend on --

9 Q No, this report, I'm talking this report right
10:20 10 here.

11 A This one?

12 Q Yes.

13 A In this particular case a copy, probably two
14 copies would go to the detective division and of
10:20 15 course I retained one copy.

16 Q So whoever authors the report gets one copy; is
17 that correct?

18 A Pardon me?

19 Q The author of the report always gets one copy
10:21 20 back?

21 A Well, not necessarily, but I always chose to have
22 one simply because of the nature of our duties in
23 ident, we would ask for a copy of it so that we
24 had it there, particularly major crimes.

10:21 25 Q So in this case you said to the detectives



1 division. Would this then go to Ray Mackie and
2 George Reid; is that --

3 A Two copies would have gone. I don't know this,
4 but, I mean, I would suspect that two copies would
10:21 5 have gone to the detective division, one copy
6 stayed with ident section and the original went
7 down to central records.

8 Q Would anything go up to Wood or the chief?

9 A Other than by means of these meetings where the
10:21 10 detective sergeant or the detective officer or
11 even I could have taken my report there.

12 Q Do you know, and again I'm talking specifically
13 about the Gail Miller murder, I think you said one
14 of the purposes of this would be to allow, I think
10:22 15 you said, the coordinators to read what was in
16 here in the reports. Do you know how the
17 detective sergeants or the detectives handled the
18 flow of paperwork on the Gail Miller file, did
19 they have one common file in the detectives' area
10:22 20 that had everything there?

21 A You know, I don't really know how they managed
22 that, although I would be very surprised if they
23 didn't have a system of some sort there, yes.

24 Q What about generally at the time, were you aware,
10:22 25 was there a system in place where pages were



1 numbered or the files were kept in some type of
2 order?

3 A The majority of the occurrences that the police
4 deal with are not that lengthy and I don't think
10:23 5 that there is an accumulation of the file as there
6 would be in major crime cases such as this one.

7 Q So do you know who would have read this or who was
8 your audience when you prepared this report, who
9 were you communicating to in this investigation?

10:23 10 A To anybody that was involved in the investigation
11 of this particular crime.

12 Q So who in this investigation was responsible to
13 read your report and to absorb it and identify
14 whether anything further should be done?

10:23 15 A The detective division would have had the first
16 interest in this and they would have read my
17 report and they would have acted on issues within
18 the report that they need clarification on. They
19 could have come back to me, and they would on
10:23 20 certain occasions, and ask for clarifications if
21 it wasn't clear.

22 Q Who in detectives would have done that; do you
23 know?

24 A It would be the assigned detective sergeant
10:24 25 co-ordinator and I'm not sure who that was and I



1 don't see any indication.

2 Q I believe we've heard evidence, and we'll hear
3 more, that it was Ray Mackie and George Reid?

4 A Yeah, I would suspect that they were the two, yes.

10:24 5 Q Now, you I think told us, you kept your own file
6 on this Gail Miller matter, is that correct,
7 within ident?

8 A Yeah. My involvement, I would keep copies of my
9 reporting in a file, yes, and it was generally
10:24 10 available to all the identification personnel that
11 was there.

12 Q And I'll deal with this a bit later, but was that
13 the source of some of the documents that you
14 provided to the Commission a month or so ago?

10:24 15 A Yes.

16 Q And so that was your -- let me ask you this. What
17 was in your file, were copies or originals of what
18 was in that file in other files within the police
19 service?

10:25 20 A All the copies of the binder that I presented to
21 your office would have been in the central records
22 master file.

23 Q So if you, for example, made a page of notes on
24 something and you located them in your ident file
10:25 25 in your office, would a copy of that been either



1 put on the master file or the investigator's file
2 or somewhere else in the system?

3 A Yes.

4 Q Now, what happened when an investigation was
10:25 5 concluded with the files?

6 A When the investigation is concluded, it's usually
7 concluded by someone being found responsible and
8 criminally charged or in some cases there are no
9 bases for a charge. When that occurs, some
10:26 10 individual has to make that decision and he would
11 indicate on the file that that file is concluded
12 on the basis of his interpretation of what took
13 place.

14 Q Now --

10:26 15 A In the case where there was a charge, a criminal
16 charge, that would be kind of, it would be
17 self-propelling in the sense that it would
18 continue on. In the case of a murder case, it
19 would go to the Attorney General for verification.
10:26 20 If it supported charges, then we had a case
21 preparations section and it would be fine groomed
22 by the case preparation section who worked closely
23 with the prosecutor and the case would be put
24 together and eventually there would be a
10:27 25 disposition on the charge which goes over a number



1 of years and that disposition has to be filed with
2 central crime index.

3 Q And where is that?

4 A It's Ottawa. It's the central depository.

10:27 5 Q Just on the investigation reports, and let's talk
6 about the Gail Miller investigation, prior to a
7 charge being laid then, are you saying that some
8 or all of the investigation reports are provided
9 to the prosecutor to review?

10:27 10 A Well, it would be available to the prosecutor. I
11 maybe didn't make myself very clear. What would
12 happen is that at some point someone would
13 approach the prosecutor and seek assistance in
14 whether there is enough evidence to support a
10:28 15 charge and if the prosecutor indicated that there
16 was sufficient grounds to support a charge, then
17 it would be turned over to our case preparations
18 person for, I call it fine grooming. What would
19 happen is it would be organized very appropriately
10:28 20 and specifically organized for the prosecutor to
21 be able to follow and there was close relationship
22 between the prosecutor and the case preparations
23 person.

24 Q What versions of the document would the case
10:28 25 preparation officer get, would it be the master



1 copy in central records?

2 A No, I don't think he would get the master copy, he
3 would get a specially prepared copy which would
4 include all the pertinent aspects of the file.

10:29 5 Q So in this case, the report that I showed you that
6 went to detectives, would it be one of those two
7 copies that would end up going to the prosecutor?

8 A That copy would be in the hands of the prosecutor,
9 yes.

10:29 10 Q So somewhere in detectives division there would be
11 all the reports that would end up going to the
12 case preparation officer; is that right?

13 A Yes.

14 Q And did -- was there a practice as to what police
10:29 15 reports were given to the prosecutor?

16 A I think it was the situation where whatever his
17 demand was, that's what he would receive. He had
18 availability to the entire file. Once you've
19 sought his involvement, he would have access to
10:29 20 any portion of that file.

21 Q When you say he, you are referring to the
22 prosecutor?

23 A Yeah, I'm using the --

24 Q And so in this case what my question is, what
10:30 25 would the police at first instance give the



1 prosecutor, would it be the entire file or would
2 it be a groomed file?

3 A It would be probably the entire file. I think
4 basically a lot of that would be a verbal, a
10:30 5 verbal -- somebody that has a good appreciation of
6 the file would meet with the prosecutor and say
7 this is what we have. Obviously they would
8 highlight those issues that would support a
9 criminal charge or issues that doubtful about
10:30 10 supporting a criminal charge, those would be
11 reviewed with the prosecutor and then they would
12 depend on the prosecutor's advice on these issues.

13 Q If there was an investigation report on the Gail
14 Miller file that the case preparation officer
10:30 15 looked at and said look, I don't think this is
16 relevant for anything, would that get on the file,
17 off the file, was there a practice that you are
18 aware of at the time as to --

19 A I would suggest that what would have happened in a
10:31 20 situation like that is the case preparation
21 officer would have contacted the prosecutor and
22 said that I have this information, are you
23 interested in this.

24 MR. HODSON: It's 10:30, Mr. Commissioner.

10:31 25 It's probably appropriate to break here until



1 1:30.

2 COMMISSIONER MacCALLUM: Yes.

3 (Adjourned at 10:30 a.m.)

4 (Reconvened at 1:32 p.m.)

5 BY MR. HODSON:

6 Q Good afternoon, Mr. Penkala. When we finished off
7 before the adjournment we were talking about
8 documents, I just wanted to finish up on that
9 point. It's my understanding that you kept, back
01:32 10 in 1969, both a notebook and a date journal, is
11 that correct, a calendar journal?

12 A Yes.

13 Q And maybe if we could just call up a couple of
14 documents and I'll have you identify them for the
01:33 15 record. The first is 325043, please, and it's a
16 photocopy there but it's a Daily Journal 1969; is
17 that correct?

18 A That's correct.

19 Q And I believe this is a document that you provided
01:33 20 to the Commission in the last couple of months; is
21 that right?

22 A That's correct.

23 Q And maybe we'll just go to the next page, we can
24 take a look at a couple of the pages. This would
01:33 25 be Friday, January 31, the date of the murder, and



1 it appears, sir, that you had put in the times
2 that your identification officers were working; is
3 that correct?

4 A That's correct.

01:33 5 Q And what would -- that was just to keep track of
6 who was on duty?

7 A Umm, yes.

8 Q And then you have got '9:10 a.m. Kleiv Winter
9 scene murder 200 block south lane Avenue N and O',
01:34 10 which is presumably the Gail Miller murder?

11 A That's correct.

12 Q And then as well '2:30 p.m., St. Paul's hospital,
13 re autopsy (Miller case)', so what would be the
14 difference between what you have put in this
01:34 15 journal and what you have put in your police
16 officer's notebook?

17 A The notebook would be more detailed and would have
18 been presented or produced at the -- basically
19 around the time of your examination.

01:34 20 Q And was the daily journal, then, something that
21 you kept on your desk?

22 A Yes.

23 Q Now, as well, your notebooks -- and first if I
24 could call up 325062, please, and we'll see here
01:34 25 'J. Penkala, December 18th', I believe, '1968',



1 and this is a copy of your officer's notebook that
2 you prepared back in '68-'69; is that correct?

3 A That's right.

4 Q And I believe this is a copy of a document that
01:35 5 you provided to the Commission in the last couple
6 of months; is that correct?

7 A That's correct.

8 Q If we could maybe just go to the next page on that
9 and we'll just see what -- and I think this was
01:35 10 done in pencil; is that correct?

11 A Yes, it was done in pencil. Because of the
12 extreme cold on that particular morning, and a pen
13 would simply not work, so I resorted to a pencil.

14 Q And so we'll touch on some of this a bit later,
01:35 15 but here is the entry for the date of the murder,
16 and it appears to have -- maybe we could just
17 have, zoom in on the top part, please. It appears
18 to have some measurements of house, body, left
19 glove, etcetera; these would have been your notes
01:35 20 of that day?

21 A That's, that's right.

22 Q Okay. And I believe, in this document, you
23 provided us with a complete copy of that notebook;
24 is that correct?

01:36 25 A Yes.



1 Q And I would also like to call up, just for the
2 record, 249855A. And this is similar to the page,
3 well it's identical, I think, to the page we just
4 looked at, and I believe, Mr. Penkala, you
01:36 5 provided copies of your notebook or parts of your
6 notebook to the RCMP in 1993; is that correct?

7 A I have no recollection, but I could have, yes.

8 Q So this, a copy of this document, I believe it was
9 obtained by the Commission from the RCMP; are you
01:36 10 able -- you don't recall, but would it be
11 reasonable to assume that you would have provided
12 copies of your notebook to the RCMP at some point?

13 A I would suggest that possibly this was as a result
14 of the trial concerning Larry Fisher.

01:37 15 Q Okay. So it may have been produced in the Larry
16 Fisher proceedings?

17 A Right.

18 Q And, as well, if we could call up document 071025,
19 please, and these -- this is your handwriting,
01:37 20 sir, is it?

21 A It's my handwriting, yes.

22 Q And can you tell us what this document is?

23 A This would be my handwritten report, which I later
24 turned over to our clerk -steno, and she typed
01:37 25 from this report.



1 Q Okay. And if we could just call up 324807, and I
2 believe that's the typed-up version, is that
3 correct?

4 A I think that -- I think this is a summarization.
01:38 5 This is a different, I think this is a different
6 one, I think this is a summarization that I
7 prepared for Court attendance kind of setting my
8 -- setting the examples out.

9 Q Okay. Maybe we could just call up the previous
01:38 10 document side by side, here, and we'll take a look
11 at them. I believe they are the same but we'll
12 just maybe -- the other document is 071025.

13 A I'm sorry, that is, that is the same document,
14 yeah.

01:38 15 Q Okay, I think this is calling up, we'll just --

16 A Yeah.

17 Q -- take -- have them both up there. And I
18 believe, if you look at them, that they are -- are
19 the same; would you agree?

01:39 20 A Pardon me?

21 Q They are the same document, one is just a typed
22 version of the other?

23 A That's correct, yes.

24 Q And what was this, what was the purpose of this
01:39 25 document and when did you create it?



1 A Well eventually, eventually I was to be called for
2 the preliminary hearing and for the trial of David
3 Milgaard, and I had prepared myself with my notes
4 and my recollections and put it together as a
01:39 5 preparation thing for myself. Now I don't know
6 whether I also provided that to the prosecutor or
7 not. It was basically done for my own purpose.

8 Q And would it have been prepared prior to you
9 testifying at the preliminary hearing?

01:39 10 A Yes.

11 Q And would it have been prepared after Mr. Milgaard
12 had been charged and arrested?

13 A Yes.

14 Q Okay. If we could now turn our attention to
01:40 15 January 31, 1969, the day of the murder, and I'll
16 go through some documents with you in a moment,
17 Mr. Penkala, but I wonder if you could just tell
18 us your recollection of what you did that day and
19 what you observed? And if you would like me to go
01:40 20 through the documents to assist you, I can do
21 that, but I'm wondering if, just before we do
22 that, you could give an outline of your
23 recollection?

24 A If I could refer to my memo book?

01:40 25 Q I can have the memo book called up if that's



1 helpful.

2 A If I can use my own memo book, it would be
3 similar, if you want to call it up, that's fine,
4 and I'll just give you from my own notes.

01:40 5 Q And Mr. Commissioner, just for the record, a copy
6 of that is the document I just referred to,
7 325062.

8 A I arrived at the scene at about 9:10 a.m.
9 according to my record, and this is the 200 block
01:41 10 lane between Avenue N and O, southeast side of the
11 lane. I was in the company of Thor Kleiv,
12 Identification Officer Kleiv, and Constable Winter
13 and Detective Sergeant Reid and Detective Parker
14 were at the scene, eventually Dr. Fogel attended
01:41 15 the scene.

16 Q If you could just pause there, what would be the
17 role -- Dr. Fogel was the Coroner; is that
18 correct?

19 A Yes.

01:41 20 Q What was his role or function?

21 A Well, it was customary to have the Coroner come to
22 the scene of a death, and he would do his
23 examination and then he would clear us to continue
24 with our investigation.

01:42 25 Q And do you know what he was looking for?



1 A I would think more or less, in general, to view
2 the body and whatever needs he had for the
3 possibility of having to call a Coroner's inquest.

4 Q Okay. Carry on?

01:42 5 A I also sketched out a drawing, and that was
6 cooperatively done with my colleagues at the
7 scene.

8 Q If you could just maybe, at the top, call it back
9 up. Is it, the document on the screen, is that
01:42 10 what you are referring to?

11 A That's the correct one, yes.

12 Q And tell us what that is?

13 A That's a rough drawing and indicating the head of
14 the victim, female, was approximately 50 feet
01:42 15 north of the T intersection, the prolongation of
16 the north boundaries of the T intersection running
17 east and west. Additionally, the body was -- the
18 head was 6 feet 10 inches from the property line
19 on the east side, and the feet were 8.9 inches and
01:43 20 8 feet from the property line on the east-side
21 property.

22 Q So, I'm sorry, this -- that would be your job,
23 then, to measure and identify exactly where the
24 body was found for later use by investigators; is
01:43 25 that --



1 A Yes, yes.

2 Q And so you -- this would be your handwriting?

3 A Yes. And, additionally, there was gloves that
4 were found, and those were identified as the left
01:44 5 glove was -- was 10 feet, 10 feet from the head
6 and 8.4 feet from the property line; the right
7 glove was 9.6 feet -- 9 feet 6 inches from the
8 head and 5 feet 10 inches from the property line.

9 Q Okay. Maybe what I'll do, Mr. Penkala, is just go
01:44 10 back and go through a couple of the occurrence and
11 investigation reports with some specific questions
12 and we'll come back to these notes. Maybe the
13 first document I'll refer you to is the occurrence
14 report 006255, please. And you will see at the
01:44 15 top General Occurrence Report and I take it or I
16 understand, Mr. Penkala, that this is the document
17 that sort of initiates an occurrence or a file; is
18 that correct?

19 A Yes. It starts out with an occurrence, they
01:45 20 called it an occurrence report, followed
21 thereafter with investigation reports, if it's
22 relative to the same issue.

23 Q Would it -- an occurrence report be the same thing
24 as an investigation report except the first one?

01:45 25 A It's the initiating report, yes.



1 Q Okay. And this one, you will see Reid and Parker
2 are the officers, and I believe this is Detective
3 Parker who prepared that, and I believe you told
4 us you thought Reid and Parker were the first on
01:45 5 the scene; is that correct?

6 A They were at the scene when I arrived, yes.

7 Q If you could just go to the next page, please, and
8 you will see, if we can just call out those
9 paragraphs, it does describe you arriving at
01:46 10 approximately 9:00 a.m., Fogel arriving, and it
11 says here:

12 "Dr. Fogel's opinion was that she could
13 have died at approx. 6:00 AM this date."

14 Do you recall any discussions with Dr. Fogel
01:46 15 about when she may have died?

16 A No I don't.

17 Q And then just scrolling down, it says at 10:00
18 a.m. Reid and Parker left the scene to accompany
19 the body with Kleiv to St. Paul's Hospital.
01:45 20 Penkala and Winter remained at the scene. Does
21 that accord with your recollection?

22 A You are looking at the first marked paragraph?

23 Q Yeah. Right here it says at 10 o'clock Parker and
24 Reid went with the body with Kleiv to the hospital
01:45 25 and that you and Winter stayed at the scene.



1 A Yes, yes, that's correct. To be quite honest with
2 you, I don't remember Winter remaining at the
3 scene with me, but that's possible.

4 Q Do you have a recollection of what you did at the
01:46 5 scene and what you observed at the scene that
6 morning?

7 A Yes.

8 Q And what is that recollection?

9 A My recollection would be in writing. I would
01:46 10 prefer to simply --

11 Q Sure, that's fine.

12 A The difficulty that I have with trying to recall
13 is that because I was involved in reading the file
14 many times over again, I would prefer to refer to
01:46 15 my notes as opposed to suggesting that I recall
16 something when in fact I might have been
17 influenced by what I read.

18 Q Certainly, fair enough. If we could call up
19 106130, please, and you'll see this is a report
01:46 20 dated February 1, '69. If we could just
21 go to the next page, please, and I touched on this
22 earlier. This is your report; is that correct,
23 Mr. Penkala?

24 A That's right, yes, and it would basically cover
01:47 25 the notes that I have in my notebook.



1 Q So if we look at this investigation report, that
2 will assist you in telling us what you recalled
3 seeing and doing that morning?

4 A That is it, yes.

01:47 5 Q If we could go back to the first page of that,
6 please, and although this is dated February 1, it
7 talks about your activities on January 31st, 1969;
8 is that correct?

9 A That's correct.

01:47 10 Q And just a general question, Mr. Penkala. In
11 preparation for this Commission hearing you had an
12 opportunity to review all of the investigation
13 reports that the Commission had that you authored;
14 is that fair?

01:47 15 A Yes.

16 Q And are you able to tell us and confirm that what
17 you recorded and wrote is accurate in those
18 reports?

19 A Yes.

01:47 20 Q So if we go, scroll down here, I think this
21 describes, and we won't go through all of this,
22 just go back up to the top of that paragraph, I
23 think you described the scene, and maybe just take
24 it from there, it says:

01:48 25 "The body was clad in a black cloth coat



1 with flack fur trimmed collar and cuffs.
2 The front of the coat was not buttoned
3 and the centre button had been pulled
4 off and was not found at the scene."

01:48 5 Do you recall, Mr. Penkala, the condition of Gail
6 Miller's dress, the fact that her dress was down
7 and her arms out of her dress sleeves and her
8 arms in the coat?

9 A Yes.

01:48 10 Q What do you remember about that?

11 A Well, I remember that she was clad in a black
12 overcoat, that she was lying on her left side
13 generally and her hair was mussed up, there was
14 snow in her hair, she had snow clenched in both of
01:49 15 her hands. When the body was rolled back off of
16 its left side, her clothing under her coat were
17 basically around her waist, her stockings and her
18 panties and her girdle were around her leg, left
19 leg. There was a snow boot on the left leg, there
01:49 20 was no snow boot on her right leg and that's the
21 general condition which I found the victim in.

22 Q You had mentioned that she had snow clutched in
23 her hands?

24 A Yes.

01:50 25 Q Were you able to, in your capacity as an



1 identification officer, to reach any conclusions
2 about that?

3 A Well, my first conclusion, and I'm not an
4 authority on that, is that whatever happened there
01:50 5 was very vicious and very stressful and the snow
6 had been clenched in her hands. That's the first
7 thing that crossed my mind. The second issue was
8 that her face was distorted in that her cheeks
9 were sunk and frozen and her lips were protruding
01:50 10 which suggested to me that someone was trying to
11 suppress her by putting a hand over the mouth. I
12 mean, that's the conclusion I came to.

13 Q What observations and/or conclusions did you reach
14 about whether there was activity in the area of
01:51 15 the body?

16 A The area where the body was was trampled in a
17 diameter of approximately 10 feet and it was
18 obvious from the trampling in the snow that it was
19 again a very severe struggle.

01:51 20 Q And the observations you made were when you
21 arrived at the scene; is that correct?

22 A Yes.

23 Q Did you make any inquiries from Reid or Parker or
24 anybody who was there as to whether anybody else
01:51 25 had been walking around the body and caused that



1 trampling?

2 A Not at that particular time.

3 Q Did you subsequently?

4 A I'm sure that I dealt with that eventually, but
01:51 5 it -- the condition was such that it was obvious
6 that everything that was at the scene was as a
7 result of what had taken place there.

8 Q And what about blood, how much blood?

9 A There was some blood. Not heavy bleeding, but
01:52 10 there was some blood, and in view of all the stabs
11 that were in the body, I was surprised at the lack
12 of blood.

13 Q And so did you reach a conclusion, sir, based on
14 your experience and your observations as to where,
01:52 15 again in your view, the murder would have taken
16 place?

17 A I'm convinced that it happened right there at that
18 particular scene.

19 Q And are there any other factors that you haven't
01:52 20 already told us that caused you to reach that
21 conclusion?

22 A Well, other than the fact that there was a
23 trampled area there. I eventually found a blade
24 of a knife beneath the area where the body was
01:52 25 found and this knife had blood on it and the



1 handle had been broken off of the knife blade.

2 Everything pointed to the attack and the murder

3 having occurred right there.

4 Q Did you check the alley way to see if there were
01:53 5 any trails of blood?

6 A I'm sure I did, but I don't have a recollection.

7 One of the things that was obvious that morning,

8 it was so cold that I recall looking for tracks,

9 footprints, whatever, it was so cold that the sand

01:53 10 was almost like -- or the snow was almost like

11 sand, it just wouldn't impress anything, and

12 that's due to the extreme cold that particular

13 morning.

14 Q Do you recall seeing any signs that would indicate

01:53 15 that the attack may have taken place elsewhere,

16 even within the vicinity, and either the body

17 dragged there or her dragged there?

18 A There was no indication of that at all.

19 Q Did you look to see if there was any signs of a
01:54 20 vehicle being in the area?

21 A Well, there was a road path very close to where
22 the body was found.

23 Q Right.

24 A So that's a possibility that obviously could be
01:54 25 raised, but I just, I couldn't believe that that



1 happened there. I don't believe there was a
2 vehicle involved.

3 Q Okay. Just -- and again you mentioned that the,
4 and we've heard evidence from this before from
01:54 5 Dr. Emson and saw some other documents, that the
6 nurse's uniform that Gail Miller was wearing, that
7 her arms were out of the sleeves but back in the
8 coat and some have suggested that her dress, at
9 least the top of her dress must have been, or her
01:54 10 coat removed, her dress removed and her coat put
11 back on without her dress being put back on, at
12 least on the top. Do you understand what I'm
13 saying?

14 A Yes, and that was the same conclusion that I came
01:55 15 to, that at some point the coat would have had to
16 have been removed. There's no way that the victim
17 would have had the arms taken out of the dress
18 without having taken the arms out of the coat.

19 Q Right.

01:55 20 A When I saw the body, the arms were back in the
21 coat, the uniform dress was wrapped around the mid
22 waist, around the waist, the brassier was, one
23 strap was ripped and partially off of her breast.

24 Q And did you reach -- or sorry, did you also check
01:55 25 the coat, at some point check the coat and the



1 nurse's uniform to see whether there was stab
2 marks between either of them?

3 A Yes, we did make examinations and there were stab
4 marks in the coat.

01:56 5 Q Did they match up with any stab marks in the
6 uniform?

7 A Well, I don't recall seeing any stab marks in the
8 uniform dress.

9 Q So did you reach any conclusions at or around that
01:56 10 time, Mr. Penkala, about -- and again asking you
11 with respect to your expertise and experience as
12 an ident officer at the time, what did you think
13 may have happened? Let me ask you this question
14 first. Did you think it was a bit unusual to find
01:56 15 the victim with the dress off and the arms back in
16 the coat on a morning that the temperature was 40
17 below?

18 A Yes.

19 Q And did you reach any conclusions as to what may
01:56 20 have happened to cause the victim to end up like
21 that?

22 A Well, because of the way the clothing was removed
23 from the body, it was apparent that there must
24 have been a sexual assault.

01:57 25 Q And what else?



1 A Well, obviously a murder, a death had occurred.

2 Q But, I'm sorry, any explanation as to why her
3 dress would be off and her coat, her arms back in
4 her coat?

01:57 5 A The only thing that I know is in having examined
6 other rape cases, that that practice was
7 displayed. As a matter of fact, dealing with the
8 issue of the rape cases which later were charged
9 to Mr. Fisher, the MO there was quite similar.

01:57 10 Q So at the time of the discovery of the body, or
11 back in January of 1969 or thereabouts, at some
12 point after did you in your mind say, reach the
13 conclusion that maybe the assailant had Gail
14 Miller take her coat off, he then raped her,
01:58 15 allowed her to put her coat back on and then
16 stabbed her?

17 A Well, the sequence, I think there's all kinds of
18 possibilities for the sequence. I can almost
19 visualize the culprit being generous enough in 40
01:58 20 below weather to have her put her coat back on
21 before he raped her. You know, it's all
22 speculation.

23 Q But did you have those thoughts at the time, Mr.
24 Penkala, trying to understand what may have
01:58 25 happened to Gail Miller so that you could try and



1 find the killer?

2 A Oh, obviously, yes.

3 Q Now, you've talked about a knife and if we could

4 just scroll down here, and if you want to, I

01:59 5 won't -- if you want to just take a look there and

6 maybe just read that to yourself and then I'll

7 just ask you to tell us your recollection of

8 finding the knife blade.

9 A Once the coroner was, had cleared the scene and

01:59 10 the body was taken away, I stayed at the scene and

11 I proceeded to go over the packed snow in the

12 trampled area that I spoke of earlier bit by bit

13 and I found the knife blade along with some

14 seepage of blood through the snow.

01:59 15 Q How far down -- let me just get this clear. So

16 the body was on top of the snow, the body was

17 removed and was the snow packed or was it still --

18 A Well, at that point it was packed because of the

19 trampling and I would say there was probably a

02:00 20 layer of about 10 inches of snow between the

21 victim and the ground.

22 Q And there was blood in the snow was there?

23 A There was seepage from the top.

24 Q And was that frozen?

02:00 25 A It was frozen and obviously diluted because the



1 colour wasn't blood red, it was already --
2 obviously it was blood, but diluted.

3 Q And how far down in the snow did you find the
4 knife blade?

02:00 5 A I can only -- I was only capable of guessing, but
6 it would be probably midway between the top and
7 the bottom, like, somewhere within the 10 inches.

8 Q Was it visible at the top of the snow when you
9 removed the body?

02:00 10 A No, it wasn't visible when the body was removed.

11 Q And did you reach any conclusions at the time as
12 to how the knife blade may have ended up buried in
13 the snow underneath her?

14 A Well, the thing that came to my mind was that the
02:00 15 knife was obviously used in the stabbing because I
16 was aware that the victim had been stabbed and
17 that the knife had been broken as a result of the
18 stabbing and obviously it was an instrument that
19 may have caused the death.

02:01 20 Q How -- in this report here you describe -- is this
21 an accurate description of the knife blade that
22 you found?

23 A Yes. I think those were exact measurements, 3 1/2
24 inches long and 5/8 inch blade on it. It's a very
02:01 25 common, cheap vegetable knife, paring knife.



1 Q When you say cheap, are you referring to cost or
2 quality or both?

3 A Quality, yeah.

4 Q Now, I understand that you or others in the police
02:01 5 force went out and located a knife that matched
6 this blade; is that correct?

7 A Yeah. At some point, and I don't have a record of
8 that, we went out looking and we went to a, I
9 think they called it Metropolitan store and we
02:02 10 found a knife similar with the same kind of
11 markings on it that had a maroon handle and those
12 knives came in kind of like a pair, one blade was
13 longer and one blade was shorter, and I think we
14 purchased those knives and kept them because we
02:02 15 needed something to show and we were quite sure
16 that that's the type of a knife it would have been
17 as a whole knife.

18 Q I think the record will show, in fact I will get
19 to this in a bit, that on March 2nd of 1969 the
02:02 20 handle that matched the murder weapon or the blade
21 was found by Daniel Hounjet in his back yard, it
22 was a maroon handle. Do you recall that being
23 found?

24 A I'm aware of it, yes.

02:03 25 Q And the purchase of the matching maroon-handled



1 knives at the Metropolitan store, did that occur
2 prior to Mr. Hounjet finding the handle in his
3 back yard?

4 A Oh, yes, yes.

02:03 5 Q And in fact I think we'll see a report at some
6 point where you are looking for a matching
7 maroon-handled knife or refer to the murder weapon
8 as a maroon-handled paring knife; is that right?

9 A Yes. I made up some summaries for the aid of
02:03 10 investigators kind of summarizing the conditions
11 and the facts that we knew in the interests of
12 helping investigators to know what they might be
13 looking for.

14 Q And did you make any -- I'm sorry, this store that
02:03 15 you bought the knives at, do you remember where it
16 was located?

17 A My recollection is it's a store at the corner of
18 Avenue C and 20th Street in the City of Saskatoon.
19 There used to be what you call a five to a dollar
02:04 20 store or something like that.

21 Q And I think you said they came in pairs; is that
22 right? Did you buy it individually or was it with
23 a pair?

24 A I think they were available individually, but I
02:04 25 recall that there was a pair and I recall that one



1 blade was longer than the other blade. I suspect
2 that there might be photographs of it somewhere.

3 Q Yes, we have those and we'll get to those. It
4 also talks here about finding a pair of lady's
02:04 5 gloves. Do you recall finding those gloves?

6 A At the scene?

7 Q Yes.

8 A Yes. Well, they were found at the scene and
9 identification officer Thor Kleiv took possession
02:04 10 of those.

11 Q Do you recall if you did any testing on those
12 gloves?

13 A I don't think there was anything that we thought
14 needed to be tested in regards to the gloves.
02:05 15 They were obviously examined physically and there
16 was nothing to --

17 Q Now, before we get -- I'll just leave off here and
18 we'll come back because your report gets into the
19 autopsy right here and before we do that I just
02:05 20 want to touch on Thor Kleiv's report from that day
21 and if we can call up 006241, please, and this is
22 a February 1, '69 report, if you could just go to
23 the next, or the last page, please. You'll see
24 that's Kleiv's report of that day, Mr. Penkala?

02:05 25 A Yes.



1 Q So I take it that both of you are out there
2 working together, but both make your own report as
3 to what happens; is that right?

4 A That's the usual practice, yes.

02:06 5 Q And then if we go back to Kleiv's report, he's
6 talking about two gloves were found in the snow on
7 the east side of the alley and then goes on to
8 talk about photographs, if you just scroll down a
9 bit, and some versions of this report have a list
02:06 10 of eight photographs. In fact, I believe there
11 were only seven photographs, at least that's what
12 was put in at the prelim and trial. Would it have
13 been Thor Kleiv who took the photographs that
14 morning?

02:06 15 A Yes, and that's why he listed them. That's the
16 usual practice, is to identify the general
17 direction of the photography and more or less
18 establish that the photographs are really the
19 photographs of the scene.

02:06 20 Q And I believe those photographs were put to you at
21 David Milgaard's preliminary hearing and trial,
22 and in fact I think even at Larry Fisher's trial;
23 is that correct?

24 A Yes, yes.

02:07 25 Q And those photographs at that time you identified



1 as being depicting the scene that you saw that
2 morning; is that correct?

3 A Yes, that's my recollection, yes.

4 Q If we can just maybe call up a couple of these and
02:07 5 just ask -- 066719, please, and this is photograph
6 number 2, and just -- does this represent what you
7 would have observed that morning, Mr. Penkala?

8 A Yeah. From a distance, that's what I recall, yes.

9 Q And you can't see it as well as I would like, but
02:07 10 in that area, is that sort of the trampling down
11 in the snow you are talking about?

12 A Yes.

13 Q So in this vicinity here, would that be a --

14 A Approximately, yes.

02:08 15 Q And is that what caused you to conclude that there
16 had been a struggle in that area?

17 A Yes.

18 Q If we could go back to 00624 -- pardon me, 106130,
19 please. I want to turn our attention now to the
02:08 20 autopsy and I understand that you and Thor Kleiv
21 attended at St. Paul's Hospital in the afternoon
22 of January 31, '69 to view and participate to some
23 extent in the autopsy; is that correct?

24 A That's correct.

02:09 25 Q And Dr. Harry Emson was the pathologist?



1 A He was.

2 Q Had you previously worked with Dr. Emson?

3 A Oh, yes, many times, yes.

4 Q And on homicide cases?

02:09 5 A Yes.

6 Q On other rape cases, sexual assault cases?

7 A Sudden death cases and homicide cases. I don't
8 recall too many cases relative to rapes unless it
9 was a homicide as well.

02:09 10 Q And do you recall whether Dr. Emson had a fair bit
11 of experience in this area at the time?

12 A Oh, I think he has a very qualified and extensive
13 experience in this area. He was very much
14 respected by our department and his ability to
02:10 15 guide us in certain areas because of his medical
16 profession.

17 Q At the time, and again of the autopsy, January 31,
18 '69, did you have confidence in Dr. Emson and his
19 work as the pathologist doing the autopsy?

02:10 20 A Oh, yes, of course.

21 Q Can you tell me what your understanding was --
22 let's talk about at the time, and if it has
23 changed since then, you can tell me later, but
24 your understanding at the time as to what
02:10 25 Dr. Emson's role was in the autopsy and what your



1 role was as the identification officer?

2 A Well, Dr. Emson's role I would -- you know, I
3 think he would better know what his role is there,
4 but his role is to establish the medical aspects
02:11 5 of the victim, the condition, those facts would be
6 established by him. The police department, they
7 attend the autopsy for the purpose of learning
8 from him what these conditions are that he has
9 discovered and he was very thorough about telling
02:11 10 us what was found and we would back that up with
11 photography for our purposes. We would take
12 biological specimens for submission to the Crime
13 Detection Laboratory to establish certain
14 conditions. Even though on occasions the
02:11 15 pathology lab could have done the things, we
16 attempted to do it through the Crime Detection
17 Laboratory because they are experienced at giving
18 evidence and preparing for evidence.

19 Q You said 'biological samples'; what did you mean
02:13 20 by that?

21 A We would usually end up with samples of blood,
22 sometimes samples of the stomach, umm --

23 Q Who would decide whether you should get a sample
24 of the stomach or not; would that be your decision
02:13 25 or Dr. Emson's decision?



1 A I think it would be somewhat of a joint thing.
2 The doctor would identify the condition and, if
3 the police felt that it was relative and could be
4 of some value, then we would ask for a sample of
02:14 5 that content.

6 Q Would it be your responsibility, as the
7 identification officer, to determine what
8 biological samples you believed you needed for
9 your investigation?

02:14 10 A Well we could certainly ask for, and he would
11 provide them, yes.

12 Q Right. But was it your responsibility to
13 determine what samples should be --

14 A Generally, generally that was our responsibility,
02:14 15 to seek.

16 Q I'm sorry, I didn't mean to --

17 A No, that's --

18 Q Carry on?

19 A No, that's it.

02:14 20 Q Let me give you an example, something underneath
21 the fingernails of the victim, and I take it if
22 you didn't ask for it would that be Dr. Emson's
23 responsibility to check that and put it in a vial
24 and give it to you?

02:14 25 A No, that would without a doubt be our



1 responsibility, and we would check that and we
2 would ask for his assistance if it was necessary.

3 Q But it would be a case of saying 'lookit, Dr.
4 Emson, would you please look underneath the
02:15 5 fingernails'?

6 A Yes.

7 Q If there was a bullet somewhere lodged in the
8 body, again you would say 'Dr. Emson, please --'

9 A 'We would like to preserve the bullet' and he
02:15 10 would accommodate.

11 Q In fact he might go further and say, you know,
12 'the angle of the bullet' and those things?

13 A Yes.

14 Q And in the autopsy report Dr. Emson also talks
02:15 15 about how deep some of the stab wounds are, and
16 that, is that again something you would say 'tell
17 us how deep the stab wounds are and how many they
18 are -- there are'?

19 A Well generally we would leave that to the
02:15 20 pathologist, because he is the most qualified to
21 describe that, and he would be called and he was
22 called to, pardon me, to Court to testify on his
23 findings. And we -- there is a certain amount of
24 restrictiveness for a police officer to get
02:16 25 involved in the actual autopsy, that's strictly



1 his business and he deals with it, and while he
2 cooperates with us and tells us about it I
3 wouldn't think of making any effort to examine the
4 wounds or anything like that.

02:16 5 Q Right. But if you wanted -- let me back up.
6 Would it be fair to say that your purpose and
7 objective in being in there is to gather any and
8 all information, biological samples, evidence to
9 assist the police in the investigation?

02:16 10 A Yeah, yes.

11 Q And what you are saying is that, short of you
12 gowning up and getting in there, that's where you
13 would draw the line, is that --

14 A That's correct, yeah.

02:16 15 Q But you would, if you felt that something should
16 be done by Dr. Emson, it was your view that you
17 could say 'would you please get X, Y, or Z for
18 me'?

19 A That's right.

02:17 20 Q Now I understand that, in the course of the
21 autopsy, Dr. Emson removed the vaginal contents
22 from Gail Miller; is that correct? I think it's
23 called vag --

24 A Yes.

02:17 25 Q The 'aspirate' I think it's been referred to; do



1 you recall that?

2 A Yes.

3 Q And his evidence was that he examined it under a
4 microscope and found non-motile spermatozoa; is
02:17 5 that correct?

6 A That's what I understood, yes.

7 Q Okay. What would the purpose be of checking the
8 contents of the vagina?

9 A Well the very purpose would be to establish sperm
02:17 10 there, which would support the fact that a rape
11 had taken place, although not necessarily in all
12 cases. But that is the prime purpose for taking
13 the aspirate from the thing, other than whatever
14 medical aspects the pathologist himself would want
02:18 15 to retain and verify.

16 Q Okay. And would another purpose be to get the
17 seminal fluid of the assailant, perhaps?

18 A Well that would be, that would be a possibility,
19 yes.

02:18 20 Q And we will talk in a moment about the frozen
21 lumps of snow that I think were determined to be
22 seminal fluid, but would you agree, sir, that
23 seminal fluid, if you had the seminal fluid of the
24 assailant, that would assist you or may assist you
02:18 25 in identifying or eliminating suspects?



1 A I don't, I don't think that that was the case in
2 1969, and if -- if the suggestion is that we
3 should have taken a sample of the aspirate, I
4 don't recall what the conversation was at the
02:19 5 particular time, but obviously we would have
6 conferred on this with the pathologist. I am not
7 aware or was not aware that any kind of an
8 identification could have been made from the semen
9 that would have been collected if there was semen
02:19 10 within the vaginal cavity.

11 Q I believe in the, one of the previous sexual
12 assaults, and I believe it was the (V2)-----
13 assault, and I believe it was you or some other
14 identification officer, in fact, obtained a
02:19 15 vaginal smear from the victim who was alive?

16 A Yes.

17 Q But in that case the contents of the vagina were
18 obtained, and tagged as an exhibit, and in fact
19 sent to the RCMP lab. Why would you save it in
02:19 20 that instance but not save it in the case of Gail
21 Miller?

22 A Umm, my recollection of dealing with rape cases is
23 that could be established by simply getting a
24 slide smear, they could establish that there was
02:20 25 sperm there.



1 Q It --

2 A In some cases they took samples of the contents of
3 the vaginal --

4 Q Well let me just go -- and we'll go through this
02:20 5 in a bit more detail, Mr. Penkala, but on February
6 4th, 1969 the record shows that you found some
7 frozen lumps of snow that Dr. Emson identified as
8 being semen, and they were tested, and on the
9 basis of that some concluded that the assailant,
02:20 10 assuming that that frozen semen was the
11 assailant's, was from an A secretor. Do you
12 recall that, do you know what I am talking about?

13 A Yes.

14 Q And, in fact, that was used to eliminate suspects
02:20 15 in the Gail Miller murder investigation; was it
16 not?

17 A To eliminate?

18 Q Yes? In fact there were some reports, and we'll
19 get to them, where people were tested and they
02:21 20 were blood type O or blood type B?

21 A Oh yes, yes, yeah.

22 Q And the police said 'well, they are eliminated as
23 a suspect, because our assailant has a -- is an A
24 secretor blood type based upon what was found in
02:21 25 the frozen lumps of snow?'



1 A Yes.

2 Q Agreed?

3 A Yes.

4 Q And my question is this; if the semen found frozen
02:21 5 in the snow four days later is of value to the
6 investigation to have and to test, why is the
7 semen that you removed from her vagina in the
8 autopsy also not just as if not more important to
9 save and to test?

02:21 10 A I, I think -- and I simply think because I don't
11 know -- but it seems to me that, that
12 contamination would prevent that from being done.
13 Now this is my version and I don't have any
14 recollection of how our conversation went at the
02:22 15 time and why we didn't retain the aspirate.

16 Q Would you agree, Mr. Penkala, that the vaginal
17 aspirate should have been saved by someone?

18 A Well, you know, in hindsight I guess that would
19 have been the thing. I -- obviously we were
02:22 20 convinced that Dr. Emson was able to identify that
21 sperm was there, that it was, it was not mobile,
22 he gave us a time frame in which that would have,
23 that would have occurred, and it's -- it had a
24 significant time frame within it. He is as
02:23 25 capable to give that information as the crime lab



1 was .

2 Q Let's focus on the blood type and the secretor.
3 Let's say, for example, that you had saved the
4 vaginal aspirate and on February 7th, when you
02:23 5 sent your frozen lumps of snow to the lab to test,
6 you also sent the vaginal aspirate to test, and
7 you got the same result; would that not -- would
8 you not do the exact same test to --

9 A Well I -- it's obvious, it's obvious that if that
02:23 10 were possible, that would be a very, very good
11 piece of evidence.

12 Q Yeah. And what I -- what my question is, I think
13 what made it not possible is the fact that it
14 wasn't saved, correct?

02:23 15 A Well that, that may be true, I don't know.

16 Q Yeah.

17 A At the time I would suggest that the indication
18 was that, that it's identified, it's sperm, it's
19 not mobile, there was a time frame put on this,
02:24 20 and I don't know if the question of whether a
21 grouping could be made on that aspirate or not.

22 Q Would it be fair to say, then, there are possibly
23 two investigative aids, if I can call it that,
24 that would come from checking the contents of the
02:24 25 vagina. First would be to identify whether or not



1 the victim had had sexual intercourse recently to
2 help you determine whether or not there had been a
3 rape; is that correct?

4 A Yes.

02:24 5 Q In other words, if there is no semen or
6 spermatozoa in there, you could say 'well there
7 wasn't a rape'; that would be one test, right?

8 A Well it could be interpreted that way, yes.

9 Q Yes. And so the fact that Dr. Emson can look on
02:24 10 his slide and say 'yes, here is what I see, I'll
11 make notes', Dr. Emson is able to say 'okay, I
12 concluded that there was semen/spermatozoa in
13 there, there had been intercourse, and based on
14 what I observed I can make a conclusion or an
02:25 15 opinion as to when that might have taken place
16 prior to the death'; correct?

17 A Yes.

18 Q And so I think what you are saying is 'lookit, for
19 that purpose it didn't need to be saved, because
02:25 20 the work had been done on it'.

21 A Yes.

22 Q Correct?

23 A Yes.

24 Q Okay. I want you to focus on the second purpose,
02:25 25 which is to assist in identifying who may have



1 been responsible for the rape or who may have had
2 sexual intercourse with Gail Miller the night
3 prior, for example, and I thought you agreed that
4 having the contents available to do some
02:25 5 examination might assist in either identifying or
6 perhaps eliminating people who would have been the
7 donor of that; do you agree with that?

8 A Yeah. Well I, you know, I -- I -- at this stage
9 my understanding was that that was of no value, at
02:26 10 that particular time, and of course the aspirate
11 was not retained and --

12 Q Why are --

13 A -- and I can't tell you whether they can tell
14 anything from that or not. I -- you know, and
02:26 15 then since then we have DNA and I, I don't know
16 about those things, I'm not a, I'm not a, I'm not
17 a scientist, I'm not a medical man.

18 Q Let's go back to February 4 when you found the
19 frozen lumps of snow, which I think you said you
02:26 20 thought was semen, you must have thought it was
21 important at that time to have?

22 A Of course.

23 Q Well why not, on January 31st, did you not think
24 that the same -- let's assume for a moment that
02:26 25 what's in the snow is from the same person as



1 what's in the vagina, what if you hadn't have
2 found the frozen lumps of snow, wouldn't there
3 have been value in the contents of --

4 A It's possibly, yeah.

02:26 5 Q And you also talked about contamination, were
6 you -- were you -- was there more concern about
7 contamination of the contents of the vagina or
8 contamination of what you found in the snow?

9 A Yeah, the contamination of the vagina, and there
02:27 10 is some indication that there was -- it was at a
11 stage of premenstrual, just at premenstrual, as I
12 recall from Dr. Emson's report.

13 Q In fairness, I think what Dr. Emson told this
14 Commission of Inquiry is that, as long as the
02:27 15 blood type of the victim and the donor of the
16 sperm were different, that examining the vaginal
17 contents may have been of assistance. I think he
18 said 'may have been', it wasn't for certain.

19 A Okay.

02:27 20 Q Umm, but let's just go back, then, to the autopsy,
21 then. Who would have been -- let's assume for the
22 moment that the vaginal contents should have been
23 saved; whose responsibility, sir, was it to save
24 it?

02:28 25 A Well it would have been the police responsibility,



1 we would have asked for it and we would have saved
2 it, we obviously didn't do that.

3 Q Okay, and are you able to tell us why, why it
4 wasn't saved?

02:28 5 A I can only assume that in the discussions that we
6 had and -- that we didn't feel that there was any
7 benefit to it at the time. We may have very well
8 missed on that. I certainly would have relied on
9 Dr. Emson's views on that. I haven't -- I have
02:28 10 no, I have no real recollection of dealing with
11 that at the time.

12 Q No, that's fair enough, and I -- my next question
13 was going to be whether, whether it was a case of
14 it was forgotten, or whether there was a
02:28 15 deliberate decision made by someone to say 'you
16 know what, we don't need that, discard it'; are
17 you able to tell us whether it was one of those?

18 A I haven't -- no, I can't tell you for sure just
19 how that, how that manifested itself.

02:29 20 Q Now was there a point, after the autopsy and
21 before you found the frozen lumps in the snow,
22 where you realized or were told that the vaginal
23 aspirate wasn't saved?

24 A No, I never -- that never came up again.

02:29 25 Q If we could just go to the next page, please, and



1 I think, Mr. Penkala, if we could just call out
2 that part, please, where it talks about:

3 "The mouth, nose and face bore marks
4 ...",

02:30 5 sorry, this is your notes, investigation of the
6 autopsy:

7 "... bore marks of bruising, consistant
8 with having the face pushed into
9 something."

02:30 10 I think that's what you told us about earlier; is
11 that correct?

12 A Yes.

13 Q And if you could just scroll down? Stop there.
14 And it says:

02:30 15 "The examination of the vagina and the
16 vaginal tract found no bruising or
17 injury consistant with a sexual attack."

18 Do you recall discussing that with Dr. Emson at
19 the time or subsequent?

02:30 20 A I don't recall, but obviously that was talked
21 about, because I put it in my report. I recall
22 him making comments and I think in the next
23 paragraph I indicate that the information is
24 related on the strength of the pathologist's
02:31 25 account.



1 Q Okay. If we just read here, it says:

2 "The presence of the spermatoza
3 indicates that intercourse had taken
4 place within the previous 72 hours and
02:31 5 more likely within the past 48 hours."

6 A Yes.

7 Q If we could just pause there, that wouldn't
8 conclusively tell you whether or not she had been
9 raped as part of the murder, would it?

02:31 10 A No.

11 Q And then it goes on to say:

12 "It could also have occurred within the
13 past 8 hours due to the extreme
14 conditions under which the victim was
02:31 15 found."

16 And I take it the 'extreme conditions' was the
17 cold?

18 A Yes. This is, this is Dr. Emson's --

19 Q I --

02:32 20 A -- opinions that's being quoted in my report.

21 Q Yes.

22 A It's not my opinion.

23 Q I appreciate that.

24 A Okay.

02:32 25 Q Did you, Mr. Penkala, ever -- back at the time, in



1 the course of the investigation, come to a
2 conclusion in your own mind as to whether or not
3 Gail Miller had been sexually assaulted in
4 conjunction with the murder; in other words at,
02:32 5 during, or after the murder?

6 A Well my obvious, my obvious exam -- my obvious
7 indication was that she must have been raped and
8 murdered.

9 Q Yeah.

02:32 10 A I mean the way, the way she was found, that -- it
11 certainly indicated that she had been raped.

12 Q And did Dr. Emson's findings in the autopsy assist
13 you, then, in reaching that conclusion?

14 A Well to the extent that there was sperm in her
02:33 15 vaginal, in her vaginal thing, and the fact that
16 -- the conditions that were found, but there were
17 no injuries to suggest if there was a forceful
18 penetration, or anything of that nature. My
19 recollection or my report indicates that he found
02:33 20 nothing that would suggest that there was a
21 forcing of any kind, or any tears or injuries.

22 Q If we could just go to the autopsy report, please,
23 which is 065372. And this is Dr. Emson's report,
24 Mr. Penkala, and I just want you to -- if you
02:34 25 could go to page 065374, and this is Dr. Emson's



1 report and he just talks about the clothing. And
2 I take it that the body would be delivered to the
3 hospital intact, in other words the idea would be
4 to present it to the pathologist in as close a
02:34 5 form as possible as to how it was found?

6 A Yes.

7 Q And he goes on to describe a black coat into which
8 both arms were fitted, a brassiere the right strap
9 of which was broken, a white uniform of nurse's
02:34 10 type which was rolled down around the waist, the
11 arms of the body being out of the sleeves of the
12 uniform which were intact; and is that consistent
13 with what you observed at the scene of the crime?

14 A Yes.

02:35 15 Q If I could then go to page 065376, please, and
16 just down on Specimens Taken this appears, then,
17 to be Dr. Emson writing in his report what it is
18 that was taken by way of specimens and they were
19 handed to Lieutenant Penkala, and number 1, scalp
02:35 20 hair?

21 A Yes.

22 Q I take it you would have asked Dr. Emson to get
23 you a sample of her scalp hair?

24 A Yes.

02:35 25 Q And why?



1 A For comparison purposes. If, if you were to find
2 hair at the scene or on the suspect, you could
3 make a comparison through scalp hair, pubic hair,
4 we also, according to the report, obtained blood
02:36 5 from the chest cavity where the stab wound was
6 apparently the cause of death.

7 Q So scalp hair and pubic hair, same thing for the
8 pubic hair, that would -- to assist you in perhaps
9 identifying or eliminating suspects; is that fair?

02:36 10 A That's right, yes.

11 Q And the blood that you obtained from the victim;
12 what would be the purpose in getting that?

13 A To establish blood grouping for elimination
14 purposes, sometimes you examine the blood for
02:36 15 substances other than -- for example, alcohol or
16 drugs.

17 Q All right. And then the clothing removed from the
18 body; what would be the purpose in taking the
19 clothing?

02:36 20 A The retention of the clothing, because we would
21 send those to the crime lab eventually and seek
22 some additional examination on the clothing.

23 Q And so the clothing would be retained by the
24 police for investigative purposes?

02:37 25 A Yes. Actually, for submission to the crime lab.



1 Q And sent to the crime lab to see what evidence
2 might come out of them; is that --

3 A Yes, yes.

4 Q Now I understand that -- would there be any need
02:37 5 to prevent, I think the term is,
6 'cross-contamination' of clothing, or what was the
7 procedure at the time about gathering and saving
8 the clothing?

9 A There was an issue that came up at the, at the
02:37 10 Fisher trial. The clothing had been placed on the
11 floor in the pathology theater as opposed to, I'm
12 not sure just what the desired thing would have
13 been, and there was a considerable amount of
14 questioning as to why it wasn't preserved in a
02:38 15 different fashion, and of course the recollection,
16 after these years we have no way, but it was
17 obvious, there was a photograph showed that they
18 were placed on the floor, and contamination is
19 always a concern when you are taking exhibits.
02:38 20 The contaminant that might be as a result of what
21 was in that photograph would be from the floor of
22 the operating, or the pathology thing, and I can
23 only speculate that in all likelihood there was no
24 place to put these clothings, because there is
02:38 25 steel countertops, but that's taken up by the



1 pathologist and his -- his needs within the,
2 within the pathology theater.

3 Q Okay.

4 A So we obviously put them on the floor and then
02:39 5 gathered them up later and took them with us.

6 Q I'll just call up that photograph, I think it's
7 the same one Mr. Beresh put to you at the Fisher
8 trial, it's 241973. And, again, I think that's
9 the photograph that you were talking about, is
02:39 10 that right, that shows the clothing on the floor?

11 A Yes.

12 Q And did you, when you talked about, did you ever
13 reach a conclusion as to whether having the
14 clothes on the floor would have caused any type of
02:39 15 contamination based on your experience?

16 A Well I don't think there was any, anything in this
17 particular case, because there was nothing of a
18 foreign nature that was identified on the clothes
19 that -- that played a role in the investigation.

02:40 20 Q Is it fair to say that the clothes probably should
21 have been treated differently at the time?

22 A Well, you know, in hindsight that's probably true.
23 I, I don't know how that actually happened, I'm --
24 I just simply don't know.

02:40 25 Q Okay. If we could just call up your notebook,



1 please, and go to page 325066, and this is your
2 notebook of the autopsy, I believe?

3 A Yes.

4 Q And:

02:40 5 "Dr. H. Emson, stab wounds of abdomen
6 just below breasts, 4 stab wounds, 3
7 stab wounds left collarbone area,
8 shoulder, 10 slashes of the next mostly
9 left side, 1 stab wound under the right
02:41 10 arm into chest area, 4 stab wounds in
11 the back, 3 low in ...",

12 what's that word there?

13 A 'Loin'.

14 Q "... loin area, 1 high between shoulder
15 blades right of centre",
16 and then scroll down and it's got:

17 "Blood

18 Hair

19 Head

20 Pubic",

21 and checkmarks; can you tell me what that refers
22 to?

23 A That's reminding us to get those samples, and we
24 did take those samples.

02:41 25 Q So you would have written:



1 "Blood

2 Hair

3 Head

4 Pubic",

02:41 5 and then are those your checkmarks?

6 A Yes.

7 Q And am I reading this right that you would have
8 checked it after you made sure you got it?

9 A I would assume that that's what happened, yes.

02:41 10 Q And then:

11 "Fingers nothing well trimmed clean",
12 what is that word?

13 A "Prints".

14 And I don't remember, but as a rule we generally
02:41 15 take a set of fingerprints from the victim, again
16 for the purpose of the possibility that you would
17 need, elimination prints for whatever, whatever
18 is found at a later date.

19 Q And did you check under the fingernails, is that
02:42 20 -- was that a practice at the time?

21 A Oh yes, yes.

22 Q And would you have done that in this case; do you
23 recall?

24 A Yes, we obviously did, that's what the notes refer
02:42 25 to:



1 "Fingers noting well trimmed clean".

2 Q so am I correct in reading this that they were
3 checked but that there was nothing there?

4 A That's right.

02:42 5 Q And then the next page, please. And I take it
6 this would have been your sketch and notes about
7 where the stab wounds were on the neck, or the
8 slashes?

9 A Yes. I tried to reconstruct what I saw in a
02:42 10 diagram.

11 Q Now I understand the photographs that were taken
12 during the autopsy, those would have been taken
13 by, Thor Kleiv took the black and white photos?

14 A Yes.

02:42 15 Q And I understand from one of the reports that you
16 would have taken colour photographs but there was
17 a problem with the camera, was there?

18 A Yes.

19 Q And so --

02:43 20 A Yes. And I was backing up the black and white
21 photos with a colour, a colour camera, and the
22 camera malfunctioned and the film was shredded,
23 unfortunately.

24 Q And would your photographs be similar in nature to
02:43 25 what Thor Kleiv was taking in black and white?



1 A In most respects. It was for the purpose of
2 seeing it in colour as opposed to black and white.

3 Q I would now go, I would like to go back to Thor
4 Kleiv's report, 006241, and go to the second page,
02:43 5 please. And this is Thor Kleiv's report and I
6 think you told me earlier that he was the fellow
7 that was going to be in charge of exhibits and
8 continuity; is that correct?

9 A Yes.

02:44 10 Q So in his report he writes out what's, what's
11 being retained. What would be the practice, what
12 would you keep and what wouldn't you keep as
13 exhibits?

14 A I'm, I --

02:44 15 Q Maybe I'm not asking you. What, would you
16 gather -- for example we see here one package of
17 Chicklet wild cherry gum that I think was found at
18 the scene, and would that be saved for a
19 particular reason?

02:44 20 A Well what really happens in these cases is the
21 challenge is out there for every investigator and
22 every police officer that is looking to assist,
23 and a lot of things are brought in and the
24 significance of it is not known, but it's kept
02:45 25 until such time that it can be eliminated or



1 applied as necessary.

2 Q And so, if we look at the exhibits retained, I
3 think this is the clothing that would have been
4 taken from the autopsy; correct?

02:45 5 A Yes.

6 Q 1 to 7, and then we have the sample of the pubic,
7 scalp hair, blood?

8 A Right.

9 Q What else did we have in the -- bear with me for a
02:45 10 moment, I thought there was a fourth item in your
11 notes there, Mr. Penkala. Sorry, in your notes
12 you had:

13 "Blood

14 Hair

15 Head

16 Pubic",

17 was that -- head and pubic were referring to the
18 hair, there was nothing else about the head or
19 anything like that, samples you had to take?

02:46 20 A Umm, my, my notes indicate that we had pubic hair
21 and head hair.

22 Q Okay. So then the three items, the if I can call
23 them biological samples, then, that you got from
24 the autopsy were pubic hair, scalp hair, and the
02:46 25 victim's blood?



1 A Yes.

2 Q Is that correct?

3 A Yes.

4 Q And then again the gloves, the Chicklets, if we go
02:47 5 to the next page and we see that Thor Kleiv has
6 listed the exhibits and have been marked and
7 tagged for identification; can you tell us what,
8 what kind of process and paperwork did you have in
9 place for keeping track of the exhibits?

02:46 10 A In generalities what it amounts to, we had some
11 different forms that we applied, but if someone
12 provided you with an exhibit, you would
13 acknowledge it by leaving it in the investigation
14 report suggesting that I had received an exhibit
02:46 15 of whatever at such a time and date and for the
16 purpose of.

17 Q If we can maybe call up 025591 and go to the
18 second page, please, it's called a Saskatoon
19 police exhibit and seized article record. That's
02:47 20 the type of form?

21 A It's a form designed to accommodate this very
22 thing and you'll notice that it describes briefly
23 the exhibit received from, purpose or seizure and
24 disposition showing where it went from. In this
02:47 25 case it was Identification Officer Kleiv.



1 Q So here we would have the four vials of blood,
2 time, date, where it was received from, purpose
3 and then disposition and I take it some of these
4 exhibits would end up going to the lab, coming
02:47 5 back and going out and so there was a system in
6 place of tracking them; is that fair?

7 A That's right.

8 Q And I don't propose to go through all of those,
9 Mr. Commissioner, there's a number of documents
02:47 10 like this. If there becomes any issues about
11 continuity of exhibits, we will deal with them,
12 but I think at this stage this document will be
13 the only one of this type that I think we need to
14 take a look at. So here would be, again I think
02:48 15 this is the same listing of what was in Thor
16 Kleiv's report; is that right?

17 A Yes.

18 Q And then officers would store them in their
19 locker, was that the practice?

02:48 20 A Yes. In the identification section we had large
21 lockers, each officer had his own locker and he
22 would secure his exhibits within that locker.

23 Q Each ident officer?

24 A Yes.

02:48 25 Q I notice on some of the reports that, for example,



1 Parker I think on one case found a boot or a
2 sweater and hung onto it for a while in his own
3 locker, then turned it over. Did that happen as
4 well?

02:48 5 A Oh, yes.

6 Q So non-ident officers had their own locker where
7 if they found something, they could mark it, tag
8 it, put it in their locker and would they prepare
9 their own exhibit sheet or just make a note of it?

02:49 10 A They should, yes, or an investigation report.

11 Q And then at some point if they didn't want to hang
12 onto it any more, they would come and give it to
13 you in ident and say here, I'm done with it?

14 A And then put in another report indicating that
02:49 15 they turned it over to ident.

16 Q If we can just go back to the previous page,
17 please, of this document, and I think this is your
18 report?

19 A Yes.

02:49 20 Q And this is the broken knife blade that you found,
21 and I see here a couple of notes, sent to crime
22 lab February 7, '69, turned over to Thor Kleiv?

23 A Yes.

24 Q Now let's skip ahead and we've talked about it a
02:50 25 bit on February 4th, 1969. I understand that you



1 went back to the scene; is that correct?

2 A Yes.

3 Q And can you tell us, and if you like we'll call up
4 your notebook 325068, please, if you want to take
02:50 5 a look at that, that's your notebook for February
6 4th, and on the right-hand side if you could
7 please call up 106199, please. So you'll see this
8 is your notebook of February 4 and this is your
9 report of February 4 and if you could, if you
02:51 10 wish, review those and then tell us about what you
11 recall happening on February the 4th?

12 A Yes. I made lots of visits back to the scene. On
13 this occasion while examining the, re-examining
14 the snow that I had gone through on the 31st of
02:51 15 January, I had literally gone over it the second
16 time and while I was doing that I found two frozen
17 lumps and found some interest in these and took
18 them into possession, kept them in the frozen
19 state that they were in. At a later date I went
02:51 20 by the, Dr. Emson's office and I took that to him
21 and asked him to take a minute sample of it and
22 try and identify what it was and he identified it
23 as spermatozoa and I didn't leave it with him, I
24 then took it and sent it to the crime lab and
02:52 25 asked for analysis by the crime lab for



1 identification of the content of the substance and
2 also to attempt to establish a blood grouping on
3 it which did occur.

4 Q And that came back, and we'll go through the
02:52 5 documents later today, came back and indicated
6 that it was from an A secretor, blood type A
7 secretor; is that correct?

8 A Yes.

9 Q And let's just go back to January 31, between
02:52 10 January 31 and February 4. January 31 we know was
11 very cold; is that right?

12 A Yes.

13 Q How much time did you spend outside at the crime
14 scene that day, that morning going through and
02:53 15 looking, for example, for the knife?

16 A I found it quite soon once the body was removed
17 and I concentrated on the trampled area, I found
18 that very quickly.

19 Q What did you do with the snow when you were
02:53 20 looking through it?

21 A Basically my recollection is that as I broke away
22 the pieces, I'd pile it and I piled it up and then
23 of course left it there and when I returned on the
24 4th of February, I again went after that pile of
02:53 25 snow that I had previously gone through, only I



1 was attempting to go at it more meticulously. I
2 was looking for a button, I was looking for
3 anything that would connect the perpetrator with
4 that scene.

02:54 5 Q Were you looking for the knife handle?

6 A Knife handle, yes, I would have been aware that
7 there was a knife handle there somewhere, yes.

8 Q So just so that I have this, the snow was piled
9 up -- the snow that you found the frozen lumps in
02:54 10 was piled up snow; is that right?

11 A Well, when I did it initially I had kind of piled
12 it.

13 Q So you took the snow away from where the body was,
14 put it in a pile?

02:54 15 A Yes.

16 Q And how big a pile was that?

17 A A couple of feet tall, quite high, and it
18 pyramided out of course.

19 Q And then between January 31 and February 4 did you
02:54 20 go back and check the scene at all in that time
21 frame?

22 A Between the 31st and the 4th?

23 Q Yes.

24 A I don't recall going back to the scene. I was
02:55 25 involved in another incident in that span of time



1 I believe -- I'll tell you in a minute -- maybe
2 not.

3 Q Now, after you left the scene on January 31, was
4 that area secured at all from the general public?

02:55 5 A I had no knowledge of that. Generally that's left
6 to the investigators and I'm not sure what had
7 taken place. Of general knowledge, I know that it
8 was, that they had kept surveillance on the scene,
9 but just how and what kind I can't tell you. I
02:55 10 don't know.

11 Q When you went back on February the 4th, 1969 at
12 about two p.m., was there anybody there when you
13 got there do you remember?

14 A I don't recall. There's nothing -- if there had
02:56 15 been, I would have indicated.

16 Q Did you have any concerns that the site might have
17 been, and maybe this is the wrong word,
18 contaminated or that it had been unattended or
19 exposed for those four days?

02:56 20 A That's always a concern. It was simply just not
21 possible to deal with it in the way I did on the
22 4th in the first instance.

23 Q And why not?

24 A Well, I had to go to the autopsy in the afternoon.
02:56 25 There's always something that interferes with the



1 continuation of a --

2 Q So the frozen lumps of snow, if I have this right,
3 were found in a pile that you had gone through on
4 January 31st?

02:56 5 A Yes.

6 Q And that had been taken from in the vicinity of
7 the body?

8 A Yes.

9 Q And did the manner in which you searched on
02:57 10 February 4th differ from the manner in which you
11 searched or January 31?

12 A I'm not sure I understand.

13 Q Well, did you -- I think you told us when you
14 piled up the snow you were looking in the snow
02:57 15 and --

16 A Oh, had it been disturbed, is that what you are
17 saying, whether the pile had been disturbed?

18 Q No. Well, you would agree with me that you didn't
19 find the frozen lumps on January 31?

02:57 20 A That's right.

21 Q And you found it on February 4th. My question is
22 did you search in a different way on the 4th than
23 on the 31st?

24 A Oh, yes, yes, I was breaking up the lumps into
02:57 25 smaller bits because the snow was trampled and it



1 would break away in pieces and so then I started
2 to go through these more carefully breaking up the
3 lumps of snow. That's when I found the --

4 Q But when you found the lumps, what did you think
02:58 5 they were?

6 A Well, I thought that it might be an ejaculate.

7 Q And why was that?

8 A By the -- because of the way the whole scene
9 looked at the time. There had been a rape
02:58 10 obviously, there was -- it just seemed to make
11 sense.

12 Q Was there anything else in the frozen lumps of
13 snow that you recall?

14 A No, nothing of any significance other than that,
02:58 15 and that was the other reason, is that that
16 identified itself simply because it was slightly
17 discoloured in comparison with snow.

18 Q And what --

19 A And --

02:58 20 Q I'm sorry, carry on.

21 A And there was hair, there was hair frozen into it
22 as well which was significant and of interest to
23 us.

24 MR. HODSON: This might be an appropriate
02:59 25 time to break, Mr. Commissioner.



1 COMMISSIONER MacCALLUM: Thanks. 15
2 minutes.

3 (Adjourned at 3:00 p.m.)

4 (Reconvened at 3:20 p.m.)

03:22 5 BY MR. HODSON:

6 Q If I could call up document 052923, please, and,
7 Mr. Penkala, this is a letter that you wrote on
8 February 5, 1969 five days after the murder to the
9 Commissioner of the RCMP; is that correct?

03:22 10 A Yes.

11 Q And just -- we've seen this before. Was it
12 practice at the time for all officers to be
13 writing on behalf of the chief, was that just a
14 protocol?

03:22 15 A Yes.

16 Q And am I right that it wasn't Chief Kettles'
17 letter, was it, that was being sent and you for
18 him, it was more of a way that you signed all
19 letters?

03:22 20 A Yeah.

21 Q And was that something Chief Kettles wanted or was
22 that just the way it was?

23 A It seemed to be the practice within police
24 services. It eventually changed.

03:22 25 Q In your term?



1 A Yes.

2 Q So if we look at this, tell us what the crime
3 index section is?

4 A The crime index section, it's a central
03:23 5 governmental agency that collects all the
6 information concerning convictions of indictably
7 charged people and it provides and distributes
8 information to all legitimate police forces or
9 police agencies on needs that they have.

03:23 10 Q I should just pause here, Mr. Commissioner. I
11 think I gave a different version of the doc ID,
12 we'll see. It's actually 054876 and it has the
13 red flag that indicates where this document was
14 located, so for the record, that should be the
03:23 15 reference. So would it be practice then -- let me
16 ask you this. Why would you be sending in this
17 report then?

18 A The purpose would be to identify a particular
19 situation that we had or a crime that we had, an
03:24 20 unsolved crime with the idea that they would place
21 it in their indices and that possibly somebody
22 could assist in identifying the nature of the
23 crime that we had and be able to help us.

24 Q So, for example, if you put in details of a crime,
03:24 25 someone in Calgary or Regina, a police force may



1 also access the crime index and find some
2 similarities, is that the idea?

3 A Exactly.

4 Q So I take it, would you have access at the time in
03:24 5 Saskatoon to the national crime index?

6 A Yes, through mail mostly at that time.

7 Q So it worked both ways?

8 A Yes.

9 Q So this would be before computers, etcetera. How
03:25 10 would you physically find out what's in the crime
11 index to be able to help you?

12 A You would request it as this letter. You submit
13 it and you would also request.

14 Q I see.

03:25 15 A And they had staff that would -- basically there
16 would be clarifications and, for example, if it
17 was a rape situation, they would go to the
18 classification and then they would pick up on
19 obvious similarities and give you some suggestions
03:25 20 and of course the investigating police department
21 might want to investigate and find out where these
22 individuals were at a particular time.

23 Q So someone would look at your report, look at what
24 else is in the index and then write back or call
03:25 25 back and say you know what, here's a couple of



1 people who might fit the MO?

2 A That's right.

3 Q Do you recall in this case whether you ever did
4 hear anything back from the crime index?

03:26 5 A Not to my knowledge.

6 Q And I don't recall seeing any documents on that.
7 There may have been one reference to an incident
8 in Toronto that I saw somewhere, but I don't --

9 A No, I'm not aware that anything came back.

03:26 10 Q And so if we could just turn to the next page,
11 please, and would I be correct that you prepared
12 this report; is that right?

13 A Yes, I did, with the assistance and information of
14 others.

03:26 15 Q Would you have read -- the date of this is
16 February 5. Would you have read the investigation
17 reports to date on the files to help you prepare
18 this?

19 A Yes.

03:26 20 Q And you would have talked to other officers
21 involved in the investigation; is that fair?

22 A Yes. Really it would be a joint type of
23 preparation and basically I just assembled it and
24 sent it off, and of course because it was so early
03:27 25 after the actual incident after the crime was



1 discovered, it might not be thorough in every
2 respect, so that occurs as well.

3 Q But would this reflect a snapshot of what you
4 believed to be the facts as you knew them from
03:27 5 various sources at the time?

6 A That's correct.

7 Q And if we look at paragraph 1, and it talks about
8 the victim, it says:

9 "The victim was in the habit of
03:27 10 commuting to work by bus which she would
11 have caught within a block of her
12 residence at about 7:00 a.m. The victim
13 was last seen at 6:45 a.m., January 31,
14 1969, as she was about to leave her
03:27 15 residence for work."

16 And I take it that's something you would have got
17 from a police report or from someone else?

18 A Exactly, yes.

19 Q And then if you could scroll down, please, to the
03:28 20 fourth paragraph, and you'll see a reference here,
21 it says:

22 "A white nurse uniform dress was found
23 crumpled at the waist, front; the arms
24 of the victim were out of the sleeves of
03:28 25 this dress, but the dress was still



1 around the waist."

2 And then down here you say:

3 "The facts indicate the possibility that
4 the victim may have, through threats,
03:28 5 been forced to undress herself."

6 And I take it that's a thought, theory,
7 conclusion, belief you had at the time; is that
8 fair?

9 A Oh, yes, yes.

03:28 10 Q And then you go on to describe the scene:

11 "Examination, found a knife blade,
12 (vegetable paring knife) with the handle
13 broken off and missing which is
14 consistent with the stab wounds."

03:28 15 And I take it that's something that Dr. Emson
16 would have told you about or assisted you with?

17 A Yes.

18 Q Go to the next page, please, it says:

19 "Pathological examination established
03:29 20 the presence of immobile spermatozoa in
21 the vaginal aspirate; however, no signs
22 of bruising or injury was found in the
23 area of the genitals."

24 Next paragraph:

03:29 25 "Our department has two unsolved cases,



1 dating back into October and November of
2 1968, which involve complaints of rape.
3 In both these cases, the victim was
4 attacked from behind while walking in
03:29 5 the late evening, forced into a lane
6 and, under threat with a knife, made to
7 undress and submit to intercourse. The
8 victims were always threatened and
9 forbidden to see the attacker who, after
03:29 10 the attack, carried away some of the
11 victim's clothing. In these cases, the
12 attacker allowed the victim to replace
13 some of the clothing, usually the outer
14 garment or coat."

03:29 15 I take it, Mr. Penkala, that you would have
16 gathered this -- you either would have known this
17 information or gathered it from some morality
18 files or can you help us out there?

19 A It would have been gathered from the existing
03:30 20 files concerning those particular cases, yes.

21 Q Now, it's -- I'm going to suggest to you that you
22 are -- well, let me ask you. Can you tell me
23 whether the rapes, the two unsolved cases that you
24 were referring to were in fact the (V1)- and
03:30 25 (V2)----- rapes?



1 A I would suggest that they are, but I don't know
2 that for a fact.

3 Q Okay. If we maybe just go to a couple of things
4 here, we talk about, and we'll just take a look at
03:30 5 this document, maybe we can just put the document
6 on the left-hand side, please, and on the
7 right-hand side if we could call up document
8 011827 and this is the statement of (V1)--- (V1)-
9 dated -- the date of that occurrence was October,
03:31 10 1968 and so -- are we able to just call out that
11 paragraph? You can see it a little bit better.
12 And you'll see then you are talking about cases in
13 October and November?

14 A Yes.

03:31 15 Q And then:

16 "In both cases the victim was attacked
17 from behind while walking in the late
18 evening, forced into a lane and, under
19 threat with a knife, made to undress and
03:31 20 submit to intercourse. The victims were
21 always threatened and forbidden to see
22 the attacker who, after the attack,
23 carried away some of the victim's
24 clothing."

03:31 25 If we go and take a look at the (V1)- statement,



1 if you can just go to the second page of that,
2 please -- just have that first document back,
3 please. We can just leave the document on the
4 left there for now. So the second page of the
03:32 5 (V1)- statement, if we could just call out that
6 paragraph, please, and again this is October
7 where (V1)--- (V1)- says:

8 "He took me about halfway down the lane
9 and told me to undress. He always kept
03:32 10 me behind him so I couldn't see his
11 face. I said I wouldn't so he stuck the
12 knife in my back and I took my coat off
13 and put my purse on the ground along
14 with my coat."

03:33 15 Then the next page of the (V1)- statement,
16 please, right here, if you could call that out,
17 please, (V1)- says:

18 "Then he grabbed my Blue Jeans and I
19 tried to see what he was taking as I
03:33 20 thought he was after my purse but I
21 could only see his outline through my
22 blouse."

23 And if we pause there, does that seem similar to
24 what you are describing in your February 5
03:33 25 letter, Mr. Penkala, as one of the rapes?



1 A Generally, yes.

2 Q If we could then call up on the right-hand side
3 document 087736 and this is a statement of (V2)
4 (V2)- (V2)----- and you'll see this is a November
03:34 5 rape, and if you look back at your February 5th
6 letter you'll see there you are talking about
7 rapes into October and November and again attacked
8 from behind, walking in the evening, forced into a
9 lane, forced to undress, and if we could just call
03:34 10 out this part of the (V2)----- statement where it
11 says here about taking her clothes off:

12 "Then my black panties and girdle. He
13 had his arm around my neck while he
14 undressed me. He then put the coat on
03:34 15 the ground and forced me down onto it."
16 Then scroll down.

17 "This person then picked up my coat,
18 dress and my bra and ran north towards
19 18th Street."

03:35 20 And again does that sound like one of the two
21 rapes that you were describing in your February
22 5th letter, Mr. Penkala?

23 A Yes.

24 Q Okay. If we could go back to the main document,
03:36 25 to the February 5 document, just call out that



1 paragraph again, please. And would it be fair to
2 say, Mr. Penkala, at this time, that you had
3 identified some similarities between the Gail
4 Miller murder and these two unsolved rapes; is
03:37 5 that fair?

6 A Oh yes.

7 Q When you say 'oh yes' do you mean a number of
8 similarities?

9 A Very much, yes.

03:37 10 Q And if we just go through them from this, and then
11 I'll ask you to add if there's anything else, you
12 say:

13 "In both these cases, the victim was
14 attacked from behind while walking in
03:37 15 the late evening, forced into a lane
16 ...",

17 and I take it Gail Miller's body was found in a
18 lane and you had a belief that the attack took
19 place there; is that correct?

20 A Yes.

21 Q So that would be one similarity. And then:

22 "... under threat with a knife ...",
23 and you found a knife blade under the body and
24 Gail Miller was stabbed, so I take it that would
03:37 25 be another similarity?



1 A Yes.

2 Q "... made to undress and submit to
3 intercourse."

4 Again, was that something you noticed,
03:38 5 similarities between the two rapes and the Gail
6 Miller murder?

7 A Well it was obvious that there had been an actual
8 rape or an attempt to rape, yes.

9 Q And the fact that in the (V1)- and (V2)----- rapes
03:38 10 both victims said the assailant told them to take
11 their coat off and lay down on it before they were
12 raped; is that correct?

13 A Well that's what the statements --

14 Q Yeah.

03:38 15 A -- indicate.

16 Q Yeah.

17 A I wasn't specifically involved with those cases so
18 I am, I was garnishing the information, or someone
19 was feeding me the information in preparing the
03:38 20 report.

21 Q But it's likely sir, is it not, that you would
22 have looked at the witness statements and the
23 investigation reports in these two unsolved cases
24 when you prepared this report; is that fair?

03:38 25 A I'm sure I had, but I have no recollection of --



1 Q Sure.

2 A -- actually ever seeing those statements before
3 but I -- you know.

4 Q How were you able to get the detail about -- you
03:38 5 described, in both these cases, what happened to
6 these victims; where would you get that
7 information from?

8 A Umm, could have got it from investigators.

9 Q And would they have --

03:39 10 A But I could have very well seen the statements, I
11 just, I just don't have any specific recollection
12 of reviewing those particular files.

13 Q And this comment here about:

14 "... made to undress and submit to
03:39 15 intercourse."

16 would you have drawn a similarity between that
17 and the fact that Gail Miller's coat, or the way
18 that Gail Miller was found with her dress off and
19 her arms back in the coat, did you, in your mind,
03:39 20 see a similarity there?

21 A Oh yes, yes.

22 Q And:

23 "The victims were always threatened and
24 forbidden to see the attacker ...",
03:39 25 and I take it in the Gail Miller case, did you



1 have anything to determine whether that was the
2 case or a similarity?

3 A Not specifically in that area to my knowledge.

4 Q And --

03:39 5 A There was obviously an indication of attempting to
6 suppress a cry-out, that's --

7 Q And then it goes on to say:

8 "... after the attack, carried away some
9 of the victim's clothing."

03:40 10 And, again, you are referring to the two earlier
11 rapes, which I think you are saying were the
12 (V1)- and (V2)----- rapes; is that fair?

13 A Yes.

14 Q And in the Gail Miller case was there clothing,
03:40 15 some of the victim's clothing, found away from the
16 scene --

17 A Yes.

18 Q -- where the body was found?

19 A My understanding is that a boot and a sweater had
03:40 20 been taken away from the actual specific scene and
21 was found in the snow not too far from the thing,
22 from the initial spot.

23 Q And then it goes on to say:

24 "In these cases, the attacker allowed
03:40 25 the victim to replace some of the



1 clothing, usually the outer garment or
2 coat."

3 And I take it, again in the Gail Miller case, the
4 manner in which the body was found, with the
03:40 5 dress off and the coat on, you -- did you think
6 that to be a similarity with the rapes?

7 A Yes.

8 Q So would it be fair to say at this time, February
9 5, 1969, Mr. Penkala, at least in your mind at
03:41 10 that time, that -- and please tell me how strong a
11 connection you thought there was -- but there was
12 at least a connection between the (V1)- and
13 (V2)----- rapes and the Gail Miller murder?

14 A Yes.

03:41 15 Q And, in your mind, you thought it may have been
16 the same perpetrator; is that fair?

17 A Yes.

18 Q Can you give me a degree of was it highly likely,
19 likely, a possibility, or are you able to answer
03:41 20 that?

21 A Well obviously the MO was consistent with what we
22 knew about the Miller, the Miller investigation.
23 The only detrimental aspect of it is that these
24 cases can take on a similarity and still be
03:41 25 different perpetrators. The knife, for example,



1 is a very common, neutral type of weapon, it can
2 be used for a weapon or it can be used to carve
3 your bread. So, you know, these kinds of things
4 also crossed the minds of investigators because,
03:42 5 while there is a specific indication that this is,
6 this is what happened, you realize that other
7 people would -- other perpetrators will use the
8 similar method.

9 Q Yeah. What about the fact that the two rape
03:42 10 victims were not stabbed or killed and Gail Miller
11 was; how did that factor into your thinking?

12 A Well, again, it's -- it's a situation where I
13 think most experienced police officers recognize
14 that it becomes a, an aggressive situation, if
03:42 15 there is a serial rapist out there he progresses,
16 so I think investigators would be aware of that.

17 Q Would, on February 5, 1969 -- and I just want to
18 talk about in your view -- would it be fair to say
19 that finding the perpetrator of the sexual
03:43 20 assaults on (V1)- and (V2)----- might well lead
21 you to the killer of Gail Miller?

22 A Oh, I think, I think that was always, it was
23 always a question that was there, yes.

24 Q And would it be fair to say that, in trying to
03:43 25 find the killer of Gail Miller at this time, that



1 investigators would also look at the (V1)- and
2 (V2)----- rapes?

3 A Yes.

4 Q Because that may assist them in finding --

03:43 5 A Yes.

6 Q Now can you help us understand how widespread -- I
7 think you have told us, certainly, you wrote this
8 letter and what your belief was; are you able to
9 tell us whether other investigators involved would
03:43 10 have had this same information and belief?

11 A In, in a general sense the investigators that I
12 was associated with, I think they all viewed it in
13 the same manner, in the same sense, that there was
14 a similarity, but we didn't have the
03:44 15 identification of, of the perpetrator of the
16 rapes, nor of the murder.

17 Q So I take it that certainly, in preparing this
18 February 5 report that we've looked at, you would
19 have talked to the key investigators at the time
03:44 20 in the Gail Miller murder?

21 A I can only surmise that I did. I, you know, I
22 don't remember at this stage just how it came
23 about.

24 Q And perhaps some morality officers?

03:44 25 A Umm, actually it was their files, I would think



1 that they would be in some way involved, yes.

2 Q And this report, and this letter and this report,
3 would it have been placed on the file, would it be
4 sent up the line much like other communications?

03:45 5 A There, there should be a number.

6 Q If we could go back to the first page.

7 A The covering letter might have an occurrence
8 number.

9 Q Yes it does.

03:45 10 A There's an occurrence number on, I don't know if
11 that was placed at the time, but that would --
12 that's the number for the Miller murder, yes.

13 Q So would this have been sent, much like your
14 investigation report, --

03:45 15 A Yeah.

16 Q -- sent through to central records and to Mackie
17 and Reid, I think is who you --

18 A So all investigators would have access to it.

19 Q And you believe that to be the case?

03:45 20 A Yes, I believe that that's what happened.

21 Q Now there was also a third assault, and it
22 involves (V3)-- (V3)-----, and it was in November
23 and it was an attempted assault, the assailant --
24 over by the university area off Wiggins and
03:46 25 Temperance, into an alley, and a car came along



1 and the assailant left, and subsequently Larry
2 Fisher pled guilty to that; do you recall whether
3 that occurrence or incident was looked at by you
4 or factored into this at all?

03:46 5 A There is, there is a document in my collection of
6 things that identifies three victims, and I
7 believe that that victim is on that one as well.

8 Q Right. Why don't we call up 324806, please. And
9 this is a document, Mr. Penkala, that you provided
03:46 10 to the Commission in the last couple of months; is
11 that correct?

12 A Yes.

13 Q And this was on your file?

14 A It was, it was a copy in my file, yes.

03:46 15 Q Right, and you -- and it was a copy; is that
16 correct?

17 A Yes. And it's not my copy, I didn't initiate
18 this, --

19 Q Right?

03:47 20 A -- it just happened to show up in my file, so
21 somewhere along the line I had, I had viewed this
22 and been exposed to it.

23 Q Okay. And if we look at this, this is not your
24 handwriting, is that correct?

03:47 25 A No, it's not my handwriting.



1 Q Those checkmarks look like the checkmarks in your
2 notebook; would those be your checkmarks?

3 A They could be, yes. I have, I have no way of
4 knowing.

03:47 5 Q Is that -- that's how you, I'm not saying they are
6 left-handed, but they are --

7 A But I am.

8 Q You are. And they check to the left instead of
9 the right, and after you quashed my football
03:47 10 analogy I'm not going to try anything else but is
11 that consistent, does that look like your
12 checkmark?

13 A I really can't say, but I would -- yeah, I could
14 check it that way or the other way, I just have no
03:47 15 way of knowing. I, I would accept responsibility
16 for it.

17 Q Do you know who prepared this document?

18 A No.

19 Q Do you --

03:48 20 A Haven't got a clue. I tried to, I tried to think
21 about the handwriting and I just haven't got a
22 clue, and --

23 Q And it talks about the (V1)-, (V2)-----,
24 (V3)-----, and these are file numbers; correct?

03:48 25 A That's correct.



1 Q And, if we go down, I think that's, because we
2 have a hole punch that's 'description', D-E-S-C,
3 describes the crime, the place, weapons, and
4 approach; is that fair?

03:48 5 A Yes.

6 Q Now you are aware that there was a fourth rape
7 that Mr. Fisher pled guilty to in 1971, and that
8 was the (V5)-- (V5)--- rape which occurred on
9 February 20th, 1970, about three weeks after Mr.
03:48 10 Milgaard was convicted. Are you aware -- you
11 recall -- you know of that now?

12 A Umm, well I know that some things occurred, but
13 I'm not particularly acquainted with, with that
14 particular rape.

03:49 15 Q And those rapes have been reviewed, analysed, and
16 compared, the four incidents being (V1)-,
17 (V2)-----, (V3)-----, and (V5)---, and my
18 question is this document doesn't refer to the
19 (V5)-- (V5)--- rape, and can we assume from that
03:49 20 that this document would have been prepared before
21 that; are you able to tell us?

22 A Well, I would come to that conclusion, but I don't
23 really have a clue. In terms of the handwriting,
24 you know, the possibility would be to, if these
03:49 25 files are available, to see who the investigators



1 were because you --

2 Q We're workin' on it.

3 A Okay.

4 Q Maybe if we could call up, again, the February

03:49 5 5th, 1969 letter, I think I had the wrong doc. ID,

6 could we put that on the left-hand side, I want to

7 keep this document on the right, and if we can go

8 to the third page of that document. Thank you.

9 So, again, this is, on the left-hand side, Mr.

03:50 10 Penkala, is the report that you prepared to the --

11 and sent to the crime index, and I think if you

12 look at -- and we went through this again, what is

13 in that last paragraph in describing the unsolved

14 rapes, and if you take a look at what's in the

03:51 15 (V1)-/(V2)----- descriptions here, I'm just

16 wondering whether or not the document on the

17 right, 324806, may have been a document prepared

18 for you by someone to assist you in making this

19 report? Does that --

03:51 20 A I just, I just don't know. I, I quite honestly

21 believe that there was a lot of effort by a lot of

22 investigators that went into these, into all these

23 cases, including the rapes that we're talking

24 about now, and at some point these things would

03:51 25 come together and somehow a copy of it ended up in



1 my file. And --

2 Q But would --

3 A -- I have no idea just who could have possibly put
4 that together, but it's very likely that I -- that
03:52 5 these, that these similarities would obviously
6 have been used in viewing.

7 There were other issues where we
8 examined. For example, you would take the
9 physical height and description of the individual
03:52 10 as described by the, by the two victims there, we
11 had what we called a card system, and we purged
12 that card system to try and associate a sex
13 offender with the descriptions that were on these
14 cases.

03:52 15 Q So in, and let's talk February 1969 and
16 thereabouts, February-March-April even, I think
17 you have told us certainly you, and I think you
18 said other officers involved in the investigation,
19 to your knowledge, would have identified
03:52 20 similarity between the (V1)- and (V2)----- rapes
21 and the Gail Miller murder; is that correct?

22 A Yes.

23 Q And I take it that there would be discussion
24 amongst the people about the similarities and
03:53 25 looking at what was done, how it was done, and



1 those types of things?

2 A Yes.

3 Q And would it be fair to say that, in the course of
4 that, people may have made notes about the
03:53 5 comparisons something like the document on the
6 right, comparing them?

7 A Yes.

8 Q If we can just go back to the one document on the
9 right, please, we can -- and again, if you go
03:53 10 across here, if you look at the description of
11 age, '18', '18 to 25', '20', fairly similar;
12 correct?

13 A Yes.

14 Q Height; fairly similar?

03:53 15 A Yes.

16 Q Build, 'small', 'medium'; similar?

17 A Yes.

18 Q Description of hair, 'dark hair hung down', 'dark
19 hair curly', 'long dark hair ear length - side
03:54 20 burns'; similar?

21 A Right.

22 Q 'Face', I'm not sure if that is over -- 'long down
23 over face - short in back', I'm sorry, that was
24 still part of the hair. Clothing 'dark sweater
03:54 25 and slacks', I see we've got 'thin face', anyway



1 that doesn't -- here is what I am looking for
2 'harsh voice', 'rough voice', and I see here we
3 have identifying a 'white hard hat' --

4 A Yes.

03:54 5 Q -- that I will come to later; do you remember that
6 being an identifier of one of the assailants, that
7 you might have been looking for someone with a
8 hard hat?

9 A I constructed a summary of what might be vital to
03:54 10 the investigation and I recall indicating the hard
11 hat.

12 Q Yeah.

13 A The white hard hat.

14 Q That's in your February 27th report, which we'll
03:55 15 get to a bit later, --

16 A Okay.

17 Q -- and I'll show you that.

18 A Okay.

19 Q And then we go down to 'place', again 'lane Avenue
03:55 20 G and H', 'lane Avenue E', 'lane Temperance
21 Street', those are all back alleys; correct?

22 A Yes.

23 Q 'Weapon', being a 'knife', and again 'approach',
24 and I won't go through these, I think we covered
03:55 25 that when we went through the (V1)- and (V2)-----



1 statements, but similarities in the approach and
2 the attack; is that fair?

3 A Yes, very much so.

4 Q And would you agree, then, that the similarities
03:55 5 in the approaches of these three also had
6 similarities with the Gail Miller murder?

7 A Yes.

8 Q At some point, Mr. Penkala, did the police -- and
9 I'll touch on this in a bit more detail later, but
03:56 10 obviously when the decision was made to pursue
11 David Milgaard and in fact charge him with the
12 murder of Gail Miller, did the police determine
13 that he was not the person who assaulted (V1)- and
14 (V2)-----?

03:56 15 A I have no indication of that whatsoever.

16 Q Okay.

17 A I think once, once the pieces came together and
18 David Milgaard was identified, I think -- I think
19 it must be obvious that they didn't associate him
03:56 20 with those rapes because he wasn't charged with
21 that.

22 Q Yeah. And would it be fair to say that the police
23 concluded that, I mean if they would have thought
24 that David Milgaard had raped (V1)- and (V2)-----,
03:57 25 presumably they would have asked him about it,



1 investigated, and charged him?

2 A Yes.

3 Q And I don't believe there's any record of that in
4 the file; is there?

03:57 5 A I'm not aware of it.

6 Q And so is it fair to say that at some point the
7 police, you and other investigators, concluded
8 that it must not be the same person who committed
9 the murder as who committed the previous rapes?

03:57 10 A It's obvious that that's what happened.

11 Q If we could just turn our attention, now, to some
12 of the exhibits and the dealings with the lab. I
13 just want to call up a document, 060414, and this
14 was a, I think a summary prepared for the prelim.
03:58 15 or trial of David Milgaard about exhibits and
16 continuity that might shorten our work a bit here.
17 Do you know who would have prepared this?

18 A No, I don't. Umm, --

19 Q It may have been Mr. Kleiv or someone for -- or
03:58 20 even Mr. --

21 A I was just going to suggest, I see in handwriting
22 'C.R. Files', and I kind of recognize that as his
23 writing but I don't know for sure.

24 Q And what was that, 'C.R.' would be continuity
03:58 25 reports files?



1 A It would be --

2 MR. LOCKYER: Central registry.

3 BY MR. HODSON:

4 Q Central registry? Thank you.

5 A Sorry?

6 Q Central registry.

7 A Oh, I'm sorry, I was concentrating on something
8 else.

9 Q Yes.

03:59 10 A Yeah, it's central registry, yes.

11 Q And so the questions I had on this document, it
12 does -- and the other documents, these exhibits
13 are identified in many reports about where they
14 came from, what were done with them, and it
03:59 15 appears that the police would use a letter exhibit
16 number for a document or for an exhibit; is that
17 right?

18 A Yes. That exhibit number or letter is assigned
19 when the request is forwarded to the Crime
03:59 20 Detection Laboratory, and then from that point on
21 the references are always to, for example Exhibit
22 A is that three-quarter-length coat that was found
23 on the victim.

24 Q Right. And so once you get the exhibit in, it
03:59 25 gets a letter once you send it to the lab, is that



1 correct?

2 A Yes, yes.

3 Q And once it's got a letter it's always got that
4 letter as far as your dealings with the lab; is
04:00 5 that fair?

6 A Yes, yes.

7 Q And so the black cloth coat was Exhibit A as
8 according to the police records. Now once it gets
9 to the prelim and trial they get different exhibit
04:00 10 numbers; correct?

11 A The Crime Detection Laboratory has its own method
12 of dealing with identifying the exhibit. Even
13 though we've listed it as -- they will make
14 reference to Exhibit A, --

04:00 15 Q Right?

16 A -- but they have their own method of dealing with
17 it.

18 Q And when you get to Court, in the Court system
19 they then attach a different exhibit number to it,
04:00 20 correct, P-1, P-2 or --

21 A The Court again assigns its own exhibit number,
22 yes.

23 Q Yes. And so what this report shows, again, is
24 where the coat was received and when, and turned
04:00 25 over to Paynter at the lab and then over to



1 Molchanko, who I think was the hair and fibre guy,
2 May 23rd turned back to Mackie and then they get
3 it back from Mackie. So this would just detail
4 the continuity --

5 A Yes.

6 Q -- as to where your police exhibits would go?

7 A Yes.

8 Q And I think, just generally, these exhibits would
9 go back and forth with the lab with specific
04:01 10 instructions; is that fair?

11 A Umm, in a lot of cases, --

12 Q Some of them?

13 A -- wherever possible they would remain at the lab,
14 if there was significant evidence, and it would
04:01 15 remain at the lab and that technician would then,
16 when the -- when a trial would occur, he would
17 bring that exhibit and he would turn it in to the
18 Court.

19 Q So for example if you sent the coat to the RCMP
04:01 20 lab, which you did here -- let's actually use a
21 better example. The --

22 A I would -- I could explain that it looks as
23 though, on the 23rd of May, the coat was turned
24 over to Detective Sergeant Ray Mackie. Umm --

04:02 25 Q If we --



1 A Umm, and on the 22nd it was in possession of a
2 corporal from the RCMP crime lab.

3 Q Yeah. If we could actually go to the next page
4 we'll use the nurse's uniform as an example. We
04:02 5 know that that is Exhibit F, right, the Gail
6 Miller's dress?

7 A Yes.

8 Q If we could just call that out, please. And so,
9 again, received at the autopsy, it would be sent
04:02 10 on February 7th to the lab, and I think you said
11 it would stay there in the event that you would
12 need to do further testing; is that right?

13 A Yes.

14 Q And it looks as though on May 22nd or May 23rd --
04:02 15 or pardon me -- May 22nd it came back from
16 Molchanko at the lab; correct?

17 A Right.

18 Q And the RCMP lab, at that time, was in Regina;
19 wasn't it?

04:02 20 A Yes.

21 Q And then it looks as though, on 10:00 a.m. on May
22 23rd, Detective Sergeant Ray Mackie got the
23 uniform?

24 A Yes.

04:02 25 Q And then he returned it back the next day at 3:00



1 p.m.; is that correct?

2 A It would appear that this all has to do with, with
3 the author of this thing, and which, if I'm right,
4 is Identification Officer Kleiv.

04:03 5 Q Yes, I believe so. And I gather, it appears from
6 this that, and I think we've heard other evidence
7 and seen documents where the nurse's uniform went
8 with Mackie over to Art Roberts --

9 A Okay.

04:03 10 Q -- to be involved in the interview of Wilson and
11 John. And so my earlier question was that
12 exhibits that the police would have would leave
13 the police station to go to the RCMP lab for
14 testing, some of them; correct?

04:03 15 A Yes.

16 Q In some cases you would leave them there, if you
17 felt more testing was necessary, until there would
18 be Court proceedings; is that fair?

19 A Or if there was a positive consequence of their
04:04 20 examination they would keep it. Unless there was
21 a reason for it to come back --

22 Q Right.

23 A -- they would keep it until the Court date.

24 Q Right. And in some cases you might need it back,
04:04 25 for example if you said 'you know what, I got to



1 show somebody that coat, send it back, we need
2 it'; right?

3 A Exactly, yes.

4 Q If we could call up document 009276, please, and
04:04 5 this is a letter February 7th, 1969. If you can
6 just go to the next page, please, and I'll show
7 you your signature there. You will see at the
8 bottom this is your letter; right?

9 A Yes it is.

04:04 10 Q Go back to the first page, and it's got the Gail
11 Miller occurrence, and it's sending:

12 "... exhibits are being personally
13 delivered to your lab by ... Officer ...
14 Kleiv for examination:",

04:05 15 and so can I take it, from that, that on February
16 7th, 1969 Thor Kleiv personally delivered a bunch
17 of exhibits to the crime lab?

18 A That's correct.

19 Q And, although this copy isn't very clear, you will
04:05 20 see that you have used the exhibit numbers A down
21 to J on this page and I think, from the previous
22 document I showed you, that again we'll see A as
23 the black cloth coat, F is the nurse's uniform,
24 and so again I think the knife blade -- Exhibit I,
04:05 25 the two plastic vials of unknown yellowish



1 substance in frozen state, those are the lumps of
2 snow you found on February 4?

3 A Yes.

4 Q Correct?

04:05 5 A Yes.

6 Q And then I think the others are self-explanatory,
7 control sample, pubic hair from victim, and then
8 -- next page, please -- and the control sample of
9 hair from the victim. Now here we get into

04:06 10 Purpose of Submission, and I think this is what
11 you told me earlier, that you would decide, at
12 least initially, what it is you wanted done. You
13 would say 'lab, I'm sending you my exhibits, and
14 here's what I want you to do'; correct?

04:06 15 A Yes. It's not just, necessarily just my, it would
16 be a joint type of thing, but --

17 Q But the ident. people, I'm sorry, and the police
18 force, it would be --

19 A Yeah, it would be the investigators.

04:06 20 Q The investigators. And so here we see, and again
21 this would be the first, the first contact you
22 would have with the RCMP lab, I think, right,
23 February 7th where you are sending this
24 information?

04:06 25 A Concerning this case, yes.



1 Q Yeah. And so we see the black cloth coat, which
2 was the coat that Gail Miller was wearing when she
3 was found, and you put here specifically:

4 "examine coat tail area, inside and
04:06 5 outside".

6 Why would you put that there?

7 A Because we wanted to establish whether there was
8 any biological stains on, on the coat.

9 Q In fact you say in the paragraph:

04:07 10 "Examine for human seminal stains"
11 on her coat and in particular:

12 "examine coat tail area, inside and
13 outside"?

14 A Yeah.

04:07 15 Q And did you have some reason to think that there
16 might be seminal stains on her coat?

17 A Well, she was clad in the coat, and generally you
18 would anticipate that if there had been a rape or
19 a -- or sexual intercourse it would have been over
04:07 20 the coat tails.

21 Q And what would be the value of finding human
22 seminal stains on her coat?

23 A It would establish the general conduct that took
24 place by the perpetrator. At that time I don't
04:08 25 know if they could have done a blood grouping on



1 that, but that might have been a possibility as
2 well, I don't know.

3 Q And I think, and we'll hear more about this later,
4 certainly the semen, the froze semen found in the
04:06 5 snow, the lab was able to determine it came from
6 an A secretor; correct?

7 A Yes.

8 Q So it would have been possible then as well if
9 they found semen stains on other, in other areas,
04:07 10 on garments or whatever, that they may have been
11 able to identify a blood grouping from that; is
12 that fair?

13 A Yes.

14 Q And at this time I think we are on common ground
04:07 15 DNA was not on the radar screen and did you know
16 anything about DNA at that time?

17 A No, unfortunately we didn't and it wasn't in
18 existence.

19 Q I think we heard evidence from Dr. Emson that it
04:07 20 may have been in the late '80s that that became a
21 tool for identification officers; is that --

22 A I don't know really.

23 Q We then go on and again you are asking to examine
24 for human seminal stains on the panties, girdle
04:07 25 and stockings, half slip and the white uniform



1 dress; correct?

2 A Yes.

3 Q And I take it that would be for the same reason as
4 the coat?

04:08 5 A Yes.

6 Q And then as well, number 2, you are saying examine
7 the lady's panties and the girdle and stockings to
8 determine whether the blood stains are menstrual?

9 A Yes.

04:08 10 Q And I take it there was blood on those garments,
11 visible blood?

12 A Yes.

13 Q And why would you be asking them to determine
14 whether they are menstrual?

04:08 15 A I think that the pathologist had suggested that
16 the victim was in a premenstrual state and I think
17 we probably wanted to ensure that we knew
18 everything that we possibly could about the
19 condition of the victim.

04:08 20 Q And then number 3, examine Exhibit "F", the white
21 uniform dress, the name badge back which bears
22 fibre and determine the nature of the fibre. Can
23 you tell us what that was about?

24 A On the dress, on the uniform dress there was an
04:08 25 identification tag or label --



1 Q Yes?

2 A -- and it was attached by a pin as I recall and of
3 course it had collected some fibres and of course
4 the obvious intent there was to establish whether
04:09 5 those fibres might have come from the attacker.

6 Q At that time was the science, was the state of
7 science such that you could match a fibre?

8 A Oh, yes.

9 Q So that if you found a fibre on her dress and
04:09 10 matched it with a fibre in another person's
11 garment, you would be able to identify a match?

12 A Well, my understanding of fibre matching is that
13 you can identify it as a particular fibre, you
14 can't be specific. I think there is a closer
04:09 15 attempt to identify when it comes to human hair or
16 something of that nature.

17 Q So in number 3, what you are saying is take a look
18 at the fibres, determine the nature of it?

19 A Yes.

04:10 20 Q And it may be a tool that you can use at a later
21 date to either eliminate a suspect or perhaps
22 incriminate; fair?

23 A Exactly.

24 Q Number 4, the broken knife blade and determine
04:10 25 whether the stain is human blood and of the same



1 grouping as Exhibit "G", blood from the victim,
2 and I take it from that you are saying look, (a),
3 tell us it's blood, it looks like blood, and (b),
4 tell us it's from the victim; correct?

04:10 5 A Yes, and that would associate the knife blade with
6 the actual stabbing of the victim.

7 Q Did you fingerprint the knife blade?

8 A I examined it for fingerprints.

9 Q And what did you find?

04:10 10 A I found no fingerprints. Because of the nature of
11 the object, we examined it with very intense light
12 and if there was a fingerprint on it, it would
13 observe. Generally that's the only way you have
14 success with a fingerprint on a stainless steel
04:11 15 article.

16 Q And so you didn't find any fingerprints on the
17 knife blade?

18 A No.

19 Q I don't believe you asked the RCMP to check it for
04:11 20 fingerprints did you?

21 A No.

22 Q And were you confident in your review that had
23 there been fingerprints on there, that you would
24 have been able to find them based upon the method
04:11 25 that you used?



1 A Yes.

2 Q So the RCMP didn't have you -- you talked about
3 x-ray methods or they didn't have better methods
4 that might have found something you didn't find?

04:11 5 A It wouldn't have applied in my estimation on that
6 situation, in that situation.

7 Q We then go down, if you could scroll down to
8 number 5, to examine the coat, the cuts in the
9 back, and determine whether they are consistent
04:11 10 with having been made by the broken knife blade;
11 further examine the centre button area, there was
12 a button missing, and determine whether button was
13 ripped off and under what possible circumstances.
14 I think that's fairly self-explanatory. Anything
04:12 15 else to add to that?

16 A No.

17 Q Did you look at the coat and the cuts, did you
18 and/or Mr. Kleiv and others take a really close
19 look at that coat before you sent it?

04:12 20 A I'm sure we did. Unfortunately I don't have any
21 recollection at this stage.

22 Q Fair enough.

23 A If we would have seen something significant, we
24 would have noted it.

04:12 25 Q For example, if we go up to -- let's just scroll



1 back up to number 1 for a moment. You are asking
2 the RCMP to examine for human seminal stains on
3 various garments. Would you have looked to see if
4 you could see something visible?

04:12 5 A Oh, yes.

6 Q And what methods would you have used to check the
7 coat, for example?

8 A Just strictly physically observe it, sometimes
9 it's visible that way. There's also a method of
04:12 10 special lighting that you use, but I think that's
11 why it was relegated to the Crime Detection
12 Laboratory because they had appropriate lighting
13 equipment which would identify stains.

14 Q But if there was a visible stain on the coat, for
04:13 15 example, that you observed --

16 A We would have identified it for them and said this
17 is what we observed, but it would have still gone
18 for confirmation to the crime lab.

19 Q So you would have put in here, for example,
04:13 20 examine the black cloth coat for human seminal
21 stains, please note the stain located in area X of
22 the coat?

23 A Yes.

24 Q Did you have any experience as an ident officer
04:13 25 identifying human seminal stain s on garments



1 before, was that something that --

2 A Oh, yes, yes. This is -- this was often, this was
3 often encountered.

4 Q And are they visible to the naked eye usually in
04:14 5 your experience?

6 A They can be, yes. It depends on the background,
7 it depends on the amount of the stain. With the
8 aid of -- they used to call it a black light, with
9 an aid of a black light it fluoresces and seminal
04:14 10 fluid fluoresces along with many other elements as
11 well, but seminal fluid does fluoresce.

12 Q Did you have a black light at that time, in 1969?

13 A I don't recall.

14 Q And would you have used it and checked this before
04:14 15 you sent it to the RCMP lab?

16 A I don't recall any examination of that nature.

17 Q Just go down to number 6 there, please, examine
18 Exhibit "F", the white nurse's uniform, in regards
19 to ripped seams and the zipper, to determine the
04:14 20 manner the seam may have been ripped, and whether
21 the zipper had been pulled apart or conventionally
22 operated. I take it that's exactly what it says,
23 trying to get some evidence of what --

24 A Well, the point of that kind of an examination is
04:15 25 to get confirmation from an expert that can tell



1 you about it. While it might be quite visible
2 that it was a forced tear or whatever, the fact of
3 the matter is that the crime detection technicians
4 are experienced and have much exposure to that and
04:15 5 they can give that evidence with far more
6 convincing clarity than the average person.

7 Q Then it goes on to say examine the lady's panties,
8 a tear near the crotch, to determine whether it is
9 torn or cut, and I understand from other reports
04:15 10 that there was a rip in the panties; is that
11 correct?

12 A My understanding was that there was. It was
13 identified I think as normal.

14 Q Normal wear and tear?

04:16 15 A Yeah.

16 Q So you would have found the garment and found
17 something about it unusual and you are saying to
18 the lab tell us whether this was ripped --

19 A Yes.

04:16 20 Q -- or whether it was normal wear and tear. And
21 paragraph 8, the tests on the vials of blood from
22 the victim to determine blood grouping, alcoholic
23 content and the presence of drugs. So I take it
24 the blood grouping would be important so that you
04:16 25 could find out, determine what was her blood and



1 maybe what was a suspect's blood?

2 A Yes, elimination purposes.

3 Q And alcoholic and drug content, would that be a
4 standard test you would do?

04:16 5 A It would be something that you would want to know,
6 whether the person was -- it may all come together
7 if a person was heavily intoxicated, that might
8 put a different slant on how you investigate it or
9 what effect it had on the tragedy that occurred.

04:17 10 Q And then you go on to say examine Exhibit "I", the
11 two plastic vials of unknown substance, and we
12 know that Exhibit "I" are the two lumps of frozen
13 snow; correct?

14 A Yes.

04:17 15 Q Or substances. Were they melted by the time you
16 sent them in or did you send them in frozen?

17 A No, we kept them in a frozen state and delivered
18 them that way.

19 Q And then it goes on to check for the presentation
04:17 20 of spermatozoa and establish whether it is of
21 human origin, and I think prior to that, I think
22 you told us that prior to that you had gone to
23 Dr. Emson and had him take a look at it; is that
24 correct?

04:17 25 A Initially I was questioning what these lumps of



1 snow or these lumps of, frozen lumps were, and I
2 asked Dr. Emson to take a look at it. He scraped
3 a little bit off and put it under his microscope
4 and established that it was sperm and we sent it
04:18 5 on to the crime lab for their confirmation.

6 Q If we could just maybe call up 325069, please, of
7 the notebook, and you'll see here this is February
8 6th, Dr. Emson, St. Paul's, examination of unknown
9 substance, identified spermatozoa?

04:18 10 A Yes, 10 o'clock on February the 6th that I visited
11 Dr. Emson at St. Paul's Hospital.

12 Q So if we can go back to 009276, please, next page,
13 please. So I take it at this time you had already
14 had Dr. Emson take a look at a snippet of it or a
04:19 15 piece of it and he said yes, there's spermatozoa?

16 A Yes.

17 Q And was there some question as to whether or not
18 it was of human origin?

19 A It wasn't a question at that time, but obviously
04:19 20 that would be straightened out by sending it to
21 the Crime Detection Laboratory. I think everybody
22 assumed that it was of human origin and I think
23 later on it was established that it was.

24 Q So you were asking them two questions, one, tell
04:19 25 us whether there's spermatozoa in there, even



1 though Emson had done a check?

2 A Yeah. That was just a very preliminary thing.
3 You don't necessarily want to waste effort and
4 time.

04:19 5 Q Right. And secondly, you asked the lab to say
6 whether it was of human origin?

7 A Yes.

8 Q And was that because you found it laying in the
9 snow that you had some concerns?

04:20 10 A I don't think it was ever really a concern for me.
11 I was confident that it was there from the
12 incident.

13 Q Let me ask you this. In other cases where you
14 would be -- put it this way. Had you checked in
04:20 15 the -- if you had saved the vaginal aspirate and
16 sent it into the lab to check for the presence of
17 spermatozoa, would you have asked them to confirm
18 that it's of human origin?

19 A I never encountered that. I suppose that would be
04:20 20 legitimate enough to ask, but it doesn't seem
21 commonsensical.

22 Q No, it doesn't, and that's why my question, is to
23 establish whether it is of human origin. It
24 strikes me that it's because you found it in the
04:20 25 snow. Is that fair? I'm trying to understand



1 why -- if this was a routine request that every
2 time you sent in a substance to check for the
3 presence of spermatozoa you asked to confirm that
4 it was of human origin, and I think by your last
04:21 5 answer you are saying no, that wouldn't be your
6 standard case, and so I guess my question is why
7 did you in this case ask to establish whether it
8 was of human origin?

9 A Well, it's a logical thing if you are attempting
04:21 10 to identify something.

11 Q Was it because you found it -- was it because of
12 where and how you found it?

13 A I'm sure it played a part.

14 Q Okay.

04:21 15 A I don't think that ever crossed my mind, although
16 again, recollection is very difficult at this
17 stage of the game.

18 Q Would -- and I'm sorry if I've asked this already,
19 but I take it that in other -- had you ever asked
04:21 20 to confirm spermatozoa to be of human origin in
21 other cases?

22 A I don't recall ever having to do it that way
23 before, no.

24 Q And then you go on to say examine hair in the
04:21 25 sample, and I think you told us there was hair in



1 the frozen lumps of snow; is that right?

2 A Yes, yes.

3 Q Do you remember how many?

4 A Not really, no.

04:22 5 Q It says examine hair in this sample to determine
6 nature of the hair, pubic, etcetera, and whether
7 it has any similarity to Exhibits "J" and "K", and
8 "J" and "K" are the samples, right, from Gail
9 Miller, one is her pubic hair, one is her head?

04:22 10 A Yes.

11 Q Then it goes on to say:

12 "In connection with this case, the
13 examinations sought in this report may
14 not be conclusive in nature and further
04:22 15 examination may be required at some
16 time."

17 And I think that's consistent with what you told
18 me before, that sometimes you leave it there?

19 A Well, this is to kind of forewarn them that we
04:22 20 might request additional examination of the
21 exhibits that are in their hands, yes.

22 Q If we could then call up document 105542, please,
23 and this is a Crime Detection Laboratory report,
24 you see that, dated March 12th, 1969?

04:23 25 A Yes.



1 Q And this is the standard form that the RCMP would
2 communicate back; is that correct?

3 A That's right.

4 Q And we'll see that there's a section, the serology
04:23 5 section?

6 A Yes.

7 Q They would do the blood, semen work; correct?

8 A Yes.

9 Q And I think you told us there was a fibre, hair
04:23 10 and fibre, firearms and other divisions?

11 A Oh, yes, yes.

12 Q Now, this report is a little over a month after
13 you sent in the samples on February 7th; correct?

14 A Right.

04:23 15 Q Was that a normal time, turn-around time for --

16 A It was consistent with my experience. They did a
17 lot of work and they put priorities. If you had a
18 specific priority, they attempted to assist you,
19 but generally you take your turn.

04:24 20 Q Would this not be a priority case, at least for
21 the Saskatoon City Police?

22 A Certainly a priority case for us, but they may not
23 have wanted to go along with that. That was my
24 experience, you would have to kind of wait for
04:24 25 their co-operation.



1 Q Now, the information that you were seeking from
2 them would be, was important information wasn't
3 it?

4 A Of course.

04:24 5 Q And it would be information that would --

6 A Just one thing, while the report is March the
7 12th, some of the technicians would have been
8 working on it, some of them could have even been
9 working on it immediately after they received it
04:24 10 and then the report is produced later, so there's
11 always that possibility.

12 Q Sure, but the first time that you or anybody at
13 the Saskatoon City Police Service would learn of
14 the results would be when you got the written
04:25 15 report; is that fair?

16 A Generally that's the way it came back, but there
17 were situations where you had telephone
18 conversations with technicians. Again, I don't
19 recall that happening, but it could happen.

04:25 20 Q If there had been in this case and a technician
21 had called you and said, you know what, A secretor
22 in the frozen lumps, human semen, is that
23 something you likely would have made a note of?

24 A Oh, yes, yes.

04:25 25 Q And so if we can't find any notes prior to March



1 12th, 1969, is it fair to conclude that this would
2 have been the first time that the police would
3 have, the Saskatoon City Police Service would have
4 learned of this information?

04:25 5 A I would think so, yes.

6 MR. HODSON: Mr. Commissioner, this might
7 be an appropriate spot to break. I'm going to be
8 some time with this document, so --

9 COMMISSIONER MacCALLUM: Yes. Nine o'clock
04:26 10 tomorrow, please.

11 (Adjourned at 4:25 p.m.)

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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
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notes taken herein to the best of my knowledge, skill, and
ability.

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Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

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