

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

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Volume 50

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

I'll deal with the objections first, Mr. Lockyer.

09:01 MR. LOCKYER: Yes, sir.

COMMISSIONER MacCALLUM: It will take a few minutes if you want to --

MR. LOCKYER: Do you want me to sit down?

COMMISSIONER MacCALLUM: Sure, if you wish.

09:01 10 When Mr. Lockyer for Joyce Milgaard in his
11 cross-examination of Mr. Penkala turned to the
12 actions of the Saskatoon Police Department in
13 dealing with Wilson and John from May the 22nd to
14 May the 24th approximately of 1969, he explained
09:02 15 to me his objective. Because Mr. Penkala had
16 said to Commission Counsel that there was no
17 cover-up, concealment of evidence relating to the
18 Fisher rapes, he would prove him wrong. To this
19 end he showed the witness certain documents and
09:02 20 made suggestions that Caldwell, pretrial, knew of
21 the common perpetrator theory for the Miller
22 rape/murder and the other rapes. Mr. Penkala
23 replied that he could not speak to Caldwell's
24 knowledge, he was not involved directly with him
09:02 25 on this issue, but in general the police kept the



1 prosecutor abreast of the evidence they had.

2 Objections were made to
3 Mr. Lockyer's questions on the basis that he was
4 stating as a fact certain things that were
09:02 5 unproven. Mr. Lockyer referred to document
6 261053, a March 17th, 1971 letter to the Deputy
7 Attorney General from the Deputy Chief of Police
8 in which the latter said that Caldwell had asked
9 that the police, the Deputy Police Chief send a
09:03 10 summary of the attacks committed by Larry Fisher,
11 so he detailed the (V1)-, (V2)-----, (V3)-----
12 and (V5)--- charges and reported that Fisher had
13 admitted the rape of (V5)--- and the attempt on
14 (V3)-----, but denied the other two. This is
09:03 15 some evidence that Mr. Caldwell knew about the
16 rapes, but it does not prove if indeed that was
17 the objective, when he knew about that and
18 certainly not that he was aware of the common
19 perpetrator theory pretrial.

09:03 20 As background to what followed,
21 Mr. Lockyer suggested that the letter makes it
22 clear that the writer did not believe the denial
23 of Fisher and Mr. Penkala agreed that the deputy
24 chief might well, on the basis of similar MO, had
09:04 25 added the Miller and (V4)--- attacks to the list



1 of Fisher crimes. Mr. Lockyer then asserted that
2 Mr. Caldwell knew about the Fisher rapes and in
3 support produced 150576, a handwritten memo of
4 uncertain provenance which acknowledged the
09:04 5 letter of March the 24th, 1971 and assured
6 someone that the Saskatoon charges would be
7 disposed of and that Caldwell would be attending
8 to the matter. This document, the memo, fails to
9 show that Caldwell even knew about the rapes, let
09:04 10 alone when he came to that knowledge.

11 Documentary hearsay is received
12 in this inquiry. I assign the weight to be given
13 to it, but counsel must not state as a fact to a
14 witness something which has not been proven or is
09:05 15 not supported by the document he proffers. There
16 are two reasons for this. The first is a public
17 interest one, assertions by counsel tend to be
18 reported as facts and the objective of the
19 inquiry is to make the facts known, not
09:05 20 conjecture. The second reason is fairness to the
21 witness which of course impacts fairness of the
22 inquiry. It is simply unfair to confront a
23 witness with "fact" which has not been proven.

24 Mr. Penkala, as it happens, is
09:05 25 a seasoned witness and one who is unlikely to



1 accede to any proposition put to him however
2 emphatically, but no witness, not in a trial and
3 not here, should, in fairness, be taxed with the
4 chore of evaluating every question for the
09:05 5 soundness of its premise. The pointed issue is
6 not merely an evidentiary argument. This is an
7 important witness whose evidence is central to
8 the question of the integrity of the
9 investigation.

09:06 10 Moreover, Mr. Lockyer, in his
11 cross-examination of Nichol John, has placed in
12 issue the very integrity of the Saskatoon Police
13 Service in relation to the Miller murder
14 investigation. At page 5208 of the transcript
09:06 15 the discussion had to do with the similarities
16 between the Ron Wilson statement and that of
17 Nichol John on the 24th of March -- or May,
18 sorry, and the question to begin with is this:

19 "Q And much more sinister and also like an
09:06 20 echo of what's in the document that you
21 signed on May the 24th."

22 Nichol John replies:

23 "A Okay.

24 Q Right? See how it's -- it's as if the
09:07 25 document of May 24th is getting written



1 over a period of days as Wilson is
2 developing, according to Karst, his
3 story. Do you see that?"

4 Answer by Nichol John:

09:07 5 "A So in other words, what you are
6 suggesting is that the words in my
7 statement were not my words, that they
8 were someone else's; is that what you
9 are suggesting?

09:07 10 Q Oh, I've been suggesting that from the
11 first moment I started questioning you
12 madam, yes.

13 A Okay.

14 Q So it's as if, to repeat, the document
12:23 15 that you signed -- and that's why I keep
16 calling it that, on May the 24th, rather
17 than your statement -- the document that
18 you signed on May 24th, it's as if it's
19 being written by Wilson, or at least by
12:24 20 Karst's version of what Wilson is saying
21 to him over these days. Do you see
22 that?

23 A Yeah, I'm following you."

24 Mr. Lockyer has thus accused the Saskatoon Police
09:08 25 Department of fabricating evidence. Currently he



1 is accusing the Saskatoon Police Department, and
2 it seems the prosecutor, of concealing or
3 suppressing evidence. These are grave
4 accusations to make of any institution and
09:08 5 especially so of a police service and the office
6 of Crown for whom integrity is paramount if they
7 are to enforce the rule of law. I expect
8 evidence in support of these accusations, which
9 of course he's free to make, to be of substance,
09:08 10 mere assertions will not do, nor will the
11 presentation of inconclusive documents to a
12 witness in support of such assertions. The
13 graver the allegation, the greater is the
14 imperative of fairness in examining witnesses.

09:08 15 The cross-examination of Mr.
16 Penkala has, in my view, taken an impermissible
17 leap from challenging his opinion that there was
18 no concealment of evidence by the police
19 department to trying to demonstrate to him that
09:09 20 there was concealment by the prosecutor's office.
21 I would much rather have that shown to me through
22 witnesses who are in a position to know. Mr.
23 Penkala has made it plain that he is not one of
24 them. Thank you.

09:09 25 Mr. Lockyer, you may proceed



1 with your cross-examination.

2 JOSEPH PENKALA, continued:

3 BY MR. LOCKYER:

4 Q So if we take that March 17th letter, sir, it
09:09 5 certainly means, at a minimum, that the deputy
6 chief knew about the Larry Fisher rapes?

7 A Right, I would assume he did, but I'm not, I don't
8 know what the deputy chief knew.

9 Q Well, he signed the letter outlining the facts of
09:10 10 the rapes; right?

11 A Yes, it would appear that way, and of course he
12 would be provided with the file I would think,
13 that's where the information would come from. I'm
14 not aware that he was ever involved in the actual
09:10 15 discussions or the investigation of the --

16 Q And he's purporting to write on behalf of Chief
17 Kettles who may or may not have known the contents
18 of what the deputy was writing, what one would
19 hope knew at least the barest contents?

09:10 20 A I think that's fair, yes.

21 Q Right. But word of, even though these two
22 officers right at the top of the Saskatoon police
23 seemed to know about these, seemed to know about
24 these cases, as we found out yesterday the only
09:10 25 serial rape case that you remember in your 37



1 years on the force, word didn't seep down through
2 the ranks certainly to you anyway; is that right?

3 A Yes.

4 Q Uh-huh. If we then move on the chronology of it,
09:11 5 sir, in fact if we go back a little bit for a
6 moment from this March, '71 letter, Mr. Fisher was
7 charged with these crimes; that is, the three '68
8 sexual offences and then the 1971 sexual offence
9 that we talked about yesterday on Ms. (V5)---. Do
09:11 10 you remember that?

11 A Yes.

12 Q Yes. On December 30th, 1970, and the informant
13 was a PC Elmer Goya of the Saskatoon police, you
14 know of him do you?

09:11 15 A I do, yes.

16 Q That's at document, I don't propose to bring it
17 up, 043073. So we've now got, at a minimum, a
18 fourth officer in the Saskatoon Police Service who
19 knows about the Larry Fisher crimes?

09:12 20 A It would appear as you are describing it, yes.

21 Q Actually, a fifth because when Karst went to
22 Winnipeg, he went with Nordstrom as well, so we've
23 got five?

24 A That's my understanding, yes.

09:12 25 Q So at a bare minimum we've got five officers,



1 including the chief, deputy chief, two senior
2 detectives and PC Goya who is the informant for
3 the information?

4 A That would appear to be the case, yes.

09:12 5 Q But word doesn't seep through to you?

6 A Pardon me?

7 Q Word doesn't get through to you?

8 A No.

9 Q That they've solved the serial rape?

09:12 10 A No.

11 Q Five days later, sir, actually six days later, my
12 mistake, after the charges were laid, on January
13 5th of 1971 the Saskatchewan Court of Appeal
14 dismissed David Milgaard's appeal. Presumably you
09:12 15 would have been aware of that?

16 A What is the date again, please?

17 Q January 5th, '71. You would have been aware --

18 A Oh, the dismissal, yes, yes, yes, I did learn of
19 it. I'm not certain precisely when I learned of
09:13 20 it.

21 Q I wouldn't expect you to remember the date, but
22 you certainly learned he lost his appeal?

23 A Eventually, yes.

24 Q You heard of no link between his case then and
09:13 25 Larry Fisher; is that right, sir?



1 A That's right.

2 Q So the linkage that you've made back in 1969
3 doesn't resurface so far as you know, put it that
4 way?

09:13 5 A That's right, yes.

6 Q 11 months later, sir, on November the 15th of
7 1971, leave to appeal -- Mr. Milgaard's
8 application for leave to appeal to the Supreme
9 Court of Canada is dismissed by the Supreme Court
09:13 10 of Canada. Presumably at some point shortly
11 thereafter you had become aware of that too?

12 A Yes.

13 Q Once again, no linkage you hear about between the
14 two cases; am I right?

09:14 15 A That's correct.

16 Q And a month later, sir, December 21st of 1971, Mr.
17 Fisher pleads guilty to the four charges that he's
18 facing in the Saskatchewan Queen's Bench in
19 Regina. Did you hear anything about that, sir?

09:14 20 A I did not.

21 Q So you didn't know that a man had pleaded guilty
22 to the serial rapes, the only ones that you had
23 known of in your 37 years, you never found that
24 out?

09:14 25 A I didn't find that out.



1 Q At that time certainly, uh-huh. Would that be
2 partly, do you think, sir, because it took place
3 in Regina, not in your city? Do you think the
4 media in Saskatoon might have jumped on it if it
09:14 5 had happened in Saskatoon, but since it was in
6 Regina they could have missed it quite easily?

7 A Well, I can speculate and I think those are valid
8 concerns, valid reasons, yes.

9 Q Do you think that's maybe a reason why you didn't
09:17 10 hear it in the Saskatoon Police Department, sir,
11 if it had happened in Saskatoon there was a hell
12 -- heck of a good chance -- excuse me -- a heck of
13 a good chance that members of the Saskatoon Police
14 force, more members would have found out about it
09:17 15 and it would have become a part of discussion
16 within the police service?

17 A Yes, that sounds reasonable, yes.

18 Q Uh-huh. At the time that Mr. Milgaard (sic), that
19 day when he pleaded guilty, December 21st, to the
09:17 20 crimes in Regina, sir, he was at that time --

21 MRS. JOYCE MILGAARD: Mr. Fisher.

22 MR. LOCKYER: I'm sorry, what did I say?

23 MR. HODSON: Milgaard.

24 BY MR. LOCKYER:

09:18 25 Q Oh, sorry, excuse me. At that time when Mr.



1 Fisher entered those pleas he was serving a
2 13-year sentence for sexual offences that he had
3 committed in Winnipeg in the Prince Albert
4 Penitentiary, and you know where that is,
09:18 5 presumably?

6 A I know where it is, yes.

7 Q And was, in fact, shipped from the Prince Albert
8 Penitentiary that day, arriving, as best we can
9 tell, in Regina sometime around 2:00 p.m. in the
09:18 10 afternoon by airplane; all right?

11 A Well, I don't know that --

12 Q No, I --

13 A -- by my own account, but I assume that's what
14 happened.

09:18 15 Q That's at 039619 in the left-hand margin of the
16 document that's when he arrived, or was supposed
17 to arrive, in Regina. Tell me, sir, I'm not from
18 Saskatchewan; is Prince Albert nearer Saskatchewan
19 -- Saskatoon or Regina?

09:19 20 A Prince Albert is nearer to Saskatoon.

21 Q How much nearer?

22 A About an hour and a half.

23 Q By plane or by car?

24 A Oh, by car.

09:19 25 Q By car. So Prince Albert is how far by car from



1 Saskatoon, roughly?

2 A Roughly an hour and a half, I would suggest.

3 Q So Regina is about three hours?

4 A That's correct.

09:19 5 Q So Mr. Milgaard (sic) got flown twice as far, to a
6 city where the crimes hadn't occurred, to plead
7 guilty in that city to crimes that had occurred in
8 Saskatoon, it seems --

9 A It would appear --

09:19 10 Q -- Mr. Fisher; is that right?

11 A It would appear that way, yes.

12 Q Uh-huh. So is this -- are we then looking at the
13 chain of circumstances here, sir, that do you
14 think that, for one reason or another, took place
09:19 15 in the way they did and, as a result, it didn't
16 become known to you, and it would seem potentially
17 within the grapevine of the Saskatoon Police
18 Department that these serial rapes had been
19 solved, that the plea was done in another city for
09:20 20 some reason, twice as far from where Mr. Fisher
21 was, as opposed to Saskatoon, and so just word
22 never got through to you?

23 A Well, after the fact, one wonders --

24 Q Right.

09:20 25 A -- what the reasons were, --



1 Q We do.

2 A -- and I don't know what those reasons are, --

3 Q Right.

4 A -- but supposedly there were reasons, and maybe
09:20 5 somebody can enlighten this Inquiry on that.

6 Q Maybe. And the prosecutor, sir, who took Mr.
7 Fisher's pleas was Serge Kujawa, did you know
8 that, in Regina?

9 A I knew it eventually, yes.

09:20 10 Q Uh-huh. Mr. Kujawa had been counsel for the
11 Saskatchewan Government or the Queen, the
12 prosecution, on Mr. Milgaard's appeal to the
13 Saskatoon (sic) Court of Appeal and to the Supreme
14 Court of Canada; you knew that?

09:21 15 A I knew that, yes.

16 Q And yet Mr. Kujawa never communicated back to the
17 Saskatoon Police Department, as far as you know,
18 to the Saskatoon Police Department that the serial
19 rapes in Saskatoon had been solved?

09:21 20 A That's right.

21 Q And never communicated back either, at least as
22 far as you know, that there might be a connection
23 between what Mr. Fisher had pleaded to and what
24 Mr. Milgaard had been convicted of?

09:21 25 A Yeah, I was never in possession of that



1 information.

2 Q As a former police chief, sir, you would have some
3 familiarity with the way the courts work, am I
4 right, and you would be involved in them, too, as
09:21 5 an identification officer?

6 A I would hope so, yes.

7 Q Yes. Do you know of a reason, sir, why charges
8 would be dealt with in Regina that related to
9 serial rape in Saskatoon?

09:22 10 A I have no idea.

11 Q No.

12 A I know that, in a very general sense, my
13 interpretation of those types of issues were at
14 the request of the accused and, with the
09:22 15 permission of the Attorney General, charges could
16 be waived, and that's generally my knowledge in
17 regards to the waiver of charges from one
18 jurisdiction to another.

19 Q But in this case, sir, the charges had been laid
09:22 20 in Saskatoon in the first place, we know that, by
21 a Saskatoon Police officer; right?

22 A It appears that way, yes.

23 Q Mr. Fisher is nearer Saskatoon than he is Regina,
24 he goes back to Prince Albert after the plea, so
09:22 25 it seems hard to understand why, is it not, why



1 the charges from Saskatoon would go to Regina so
2 that Mr. Fisher could have his -- twice as long a
3 flight, essentially, to get to Regina.

4 A I'm sorry, I can't help you on that because I have
09:23 5 no idea.

6 Q All right. But I asking you from your experience,
7 if you can, if you can't you can't?

8 A Well, the way it's identified by you, I would
9 suggest that there is some questions that remain
09:23 10 unanswered.

11 Q Do you think the timing of this, sir, that the
12 plea was entered on a, what I believe was a
13 Tuesday afternoon, on December 21st, a matter of
14 four days before Christmas, may have been one of
09:23 15 the reasons that word didn't get back to the
16 Saskatoon Police as to what had happened with
17 their serial rapes?

18 A I have no idea.

19 Q It could have had an impact, don't you think, I
09:23 20 mean --

21 A Oh, I --

22 Q -- people would tend to worry about other things
23 around Christmas?

24 A I would think that that's a possibility, yes.

09:24 25 Q Uh-huh. And another thing, sir; do you think the



1 fact that the consequence of the plea, that Mr.
2 Fisher did not, in effect, receive a single day
3 extra in jail for the four serial rapes that he
4 pleaded guilty to -- and I appreciate one of them
09:24 5 actually wasn't a rape but I'm, you understand
6 what I mean when I call them four serial rapes;
7 right?

8 A Yes.

9 Q Umm, do you think, sir, the fact that he in fact
09:24 10 got a 4 1/2-year sentence concurrent to the
11 sentence he was already serving -- or I'm sorry, a
12 4-year sentence concurrent to the sentence he was
13 already serving, might have played a role in why
14 word didn't get back to the Saskatoon Police
09:24 15 Department?

16 A I suppose it could have, yes.

17 Q In your experience as a police officer, sir, would
18 it surprise you to know that the one and only
19 serial rapist you can remember in your career, in
09:25 20 effect, didn't get an extra day in jail for the
21 four sexual offences that he pleaded guilty to
22 having committed in Saskatoon? Does that surprise
23 you, not a day, not an hour, not a minute in jail
24 as a consequence of those crimes?

09:25 25 A Well dealing with the, with the specifics of that,



1 personal views, I don't think, are necessary. But

2 --

3 Q I'm not asking your personal view.

4 A But, as a police officer, you do not question the
09:25 5 justification of a Court in making its resolvment
6 on cases.

7 Q One would normally expect -- perhaps we can take
8 it this far from your experience as an officer --
9 one would normally expect a convicted serial
09:25 10 rapist to get some kind of substantial sentence of
11 imprisonment of meaning for his crimes; is that
12 fair?

13 A Are you seeking my personal opinion?

14 Q No, I'm seeking your police opinion, your police
09:26 15 knowledge, that one would expect that. You, as a
16 police officer with your experience, would expect
17 that?

18 A I suppose it would be fair to suggest that a
19 police officer would expect that, yes.

09:26 20 Q Uh-huh. Now you then went on to say in your
21 examination-in-chief, sir, that word didn't
22 apparently get back to the police department
23 about -- at least beyond a few individuals that we
24 know knew and maybe, for all we know, one or two
09:26 25 others -- but word didn't get back, generally, to



1 the police department that the serial rapes had
2 been solved because, if it had, you'd have heard?

3 A Yes.

4 Q Yes. And we have talked about how the word didn't
09:26 5 get back, as well, to others. The word didn't get
6 back to at least -- well in fact the fact that
7 Larry Fisher had pleaded guilty to these charges
8 didn't seem to get back to any of the complainants
9 in the four rapes either? Remember, we talked --
09:27 10 you talked about that with Commission Counsel?

11 A Yes.

12 Q And we talked about the fact that the media, which
13 one might normally expect to jump on a case like
14 this having been solved, a case, almost
09:27 15 once-in-a-lifetime case in Saskatoon has been
16 solved, that the fact that the media didn't get to
17 hear about it was -- would you agree it was
18 unusual? Let's put it like that.

19 A I think that's fair, yes.

09:27 20 Q Yes. And I suppose that, without really knowing
21 for sure, one can deduce that perhaps the reason
22 they didn't get to know about it, or one of the
23 reasons, was that the plea had happened in a city
24 where none of the crimes had been committed in the
09:27 25 first place?



1 A I think that's reasonable, yes.

2 Q Right. Hard to believe the media wouldn't have
3 got it, even on a Tuesday afternoon before
4 Christmas, if it had happened in this city; right?

09:27 5 A Yes.

6 Q Yes. Umm, because normally, I mean, the police
7 today and back then -- and, indeed, we have seen
8 it in this Inquiry -- the Saskatoon Police were
9 regularly issuing press releases to the media
09:28 10 about individual cases in the form of warnings to
11 the public, for example in the context of the
12 rapes that Mr. Fisher was committing in 1968; in
13 the context of Gail Miller's murder appeals for
14 help; and of course Mr. Milgaard's arrest and so
09:28 15 on and so forth, that the Saskatoon Police were
16 regularly issuing media releases on those cases
17 and, no doubt, many other cases; am I right?

18 A Yes.

19 Q And in the normal course of events, sir, the
09:28 20 Saskatoon Police would undoubtedly release, would
21 they not, a media release that they have solved
22 and arrested the serial rapist committing rapes in
23 Saskatoon?

24 A Yes.

09:29 25 Q Yes. And yet not a whimper, not a whisper about



1 it anywhere in the local media, right?

2 A Not to my knowledge.

3 Q Hard to understand, would you agree as from your
4 experience, sir, how that could have happened?

09:29 5 A That's right.

6 Q All that -- everything seems to have broken down,
7 when it came to Larry Fisher and the 1968-1970
8 sexual assaults, everything seems to have broken
9 down all over the place so that, ultimately,
09:29 10 virtually no one seems to know about them; is that
11 right?

12 A I think that's fair, yes.

13 Q Yeah. Even though we know that -- excuse me --
14 that there was a commonality between some of the
09:29 15 individuals involved in the cases, that is a
16 commonality between the Milgaard-Fisher cases, if
17 only to take an example Mr. Kujawa?

18 A I'm not certain that I understand.

19 Q That he had an involvement in both cases, a
09:30 20 substantial involvement in both cases.

21 A Oh, I see. Yes.

22 Q And Detective Karst had a substantial involvement
23 in both cases, just to take one police officer,
24 one Crown attorney; right?

09:30 25 A Yes.



1 Q But for some reason it just didn't get out, no one
2 talked about it, no one publicized it, it just
3 didn't get out; right, sir?

4 A It appears that way, yes.

09:30 5 Q Uh-huh. Now you said yesterday, when Commission
6 Counsel was questioning you about the missing
7 files in I think it was three of the four or two
8 of the four -- I forget which -- Fisher rape
9 victims from '68-'71, you said that one of the
09:30 10 reasons the files may have been destroyed is
11 because the police knew the cases had been solved,
12 I think was your word; remember that?

13 A That would be, that would be one condition which
14 would allow the destruction of files, yes.

09:31 15 Q But as best we can tell from what you have been
16 telling us, no one is communicating anything about
17 these cases being solved to the Saskatoon Police,
18 to the media, or the victims?

19 A It would appear that way, yes.

09:31 20 Q So that doesn't seem like a very good reason, and
21 unless there's yet another officer who gets a
22 phone call and keeps it all to himself, doesn't
23 tell anyone else but destroys the files, it
24 doesn't seem a very likely reason why those files
09:31 25 went missing in the circumstances, does it, sir?



1 I mean who would have made the call?

2 A Well I think, I think this needs to be put in
3 perspective. There was also a suggestion, in the
4 examination of the missing files, that it was
09:32 5 accidentally -- the files were accidentally
6 destroyed as a result of the process that was, at
7 that time, being followed. So I, I think, I think
8 that has to be weighed into this question as well.

9 Q Yeah. I'm focusing on, like you said that one of
09:32 10 the reasons may have been that the cases were
11 solved, and I think you are beginning to agree
12 with me that that may not be a very likely
13 explanation in the circumstances that we're seeing
14 happened with these cases of Mr. Fisher's, it
09:32 15 doesn't seem to be a very likely explanation if we
16 look at everything else, that that's why the
17 case -- the files got destroyed?

18 A Well, in my opinion, I would suggest that it --
19 the conditions lean towards an accidental
09:32 20 destruction of those files as opposed to simply
21 destroying the files because -- because there was
22 a wanton need or desire by someone to destroy the
23 files.

24 Q As I understand it, sir, we're going to hear at
09:33 25 this Inquiry that in the case of some, if not all



1 of these four rape offences, the officers in
2 charge of those cases didn't know that Larry
3 Fisher had been arrested and pled guilty -- had
4 pleaded guilty to those offences?

09:33 5 A It must be, yes.

6 Q And that must be almost unique, I would hope, in
7 your police department, sir, that the officers in
8 charge of extremely serious cases never find out
9 that those cases have been destroyed; that must be
09:33 10 unique, isn't it?

11 A That the cases were destroyed? That the files
12 were destroyed.

13 Q No, no, no, no, maybe I'll ask it again. I
14 suggest to you that it must be unique in your
09:33 15 department that, in such serious cases, the
16 officers in charge of the cases never find out
17 that they have been solved?

18 A Oh, yes, very so -- very much so, yes.

19 Q So there seem to be an awful lot of unique
09:34 20 features to what happened to those rape cases and
21 what happened to Mr. Fisher in the era of
22 1970-1971 after Mr. Fisher first confessed to the
23 rapes?

24 A Well there would be --

09:34 25 Q Would there be?



1 A There certainly appears to be some problems in
2 that, and I --

3 Q But they are unique problems, and one after
4 another, right?

09:34 5 A I agree they are unique, but I don't have any
6 knowledge that I can offer you in the
7 circumstances.

8 Q No, I understand, but you can give us your
9 experience, that's unique. And these problems,
09:34 10 sir, when you accumulate them all together and add
11 them all up and put them into a pile, means that
12 the net effect is that, apart from a very small
13 number of individuals, no one seems to have known
14 about the solving of the serial rapes in
09:35 15 Saskatoon?

16 A That appears to be the case.

17 Q And Larry Fisher's name is a meaningless name
18 within the Saskatoon Police Department, subject to
19 the odd individual that we've talked about, and
09:35 20 within Saskatchewan Justice as a whole as far as
21 you know; is that right?

22 A That's right.

23 Q I mean if someone had come up to you and said
24 'Larry Fisher' in 1972 you would have said 'yeah,
09:35 25 who is he, is he a singer or what'; right?



1 A Yeah, that's a reasonable statement, yes.

2 Q And yet here is the man who has committed what, in
3 your career, is a unique series of crimes?

4 A That's right.

09:35 5 Q And you never knew?

6 A That's right.

7 Q Wouldn't there be a responsibility at a bare
8 minimum, sir, in your experience, for Mr. Kujawa
9 to communicate back to the police service what
09:35 10 happened however far Regina is from Saskatoon, 120
11 miles away, when he took a guilty plea in the
12 Queen's Bench in Regina? Wouldn't there at least
13 be some onus on Mr. Kujawa to say 'eh, eh guys,
14 we've solved that serial rape for you'; wouldn't
09:36 15 you have expected that to happen?

16 A I think, somewhere within the process, there
17 should have been something that assured that that
18 information was relayed back to the Saskatoon
19 Police Department.

09:36 20 Q Uh-huh. But given, as far as we know, the only
21 person in authority, so to speak, that was present
22 at the time of Mr. Fisher's plea was Mr. Kujawa,
23 we have no reason to think that Saskatoon Police
24 officers were there for example, surely the onus
09:36 25 would be on him to make sure that your service



1 knew 'we solved this crime'?

2 A Well I'm not, I'm not sure who would be
3 responsible, but obviously Mr. Kujawa would have
4 very much been knowledgeable about what you are
09:36 5 describing, I would think.

6 Q Tell me this, sir; in the normal case like this,
7 in which we know that in at least three of them --
8 or in three of them, the Ms. (V5)---, Ms. (V1)-
9 and Ms. (V2)-----, we know samples of one sort or
09:37 10 another have been submitted to the RCMP lab in
11 Regina; right?

12 A Yes.

13 Q Would one not expect that, when the crimes are
14 solved, the RCMP lab would be informed if only so
09:37 15 they could get rid of samples that are locked away
16 in their exhibit room? I mean for all we know in
17 one case they might have six garbage bags of
18 materials that they would like to get rid of, I
19 mean wouldn't that normally be the practice, to
09:37 20 let the RCMP lab know?

21 A I don't think I'm in a position to comment on what
22 the RCMP would do in regards to that.

23 Q No, no, that's not what I am asking you. I'm
24 saying wouldn't it be the responsibility of the
09:38 25 Saskatchewan (sic) police department to let the



1 RCMP lab know that the case had been solved?

2 A I'm trying to think of situations where that would
3 have occurred and I am -- I have no knowledge of a
4 situation where we would advise the Crime
09:38 5 Detection Laboratory that the exhibits that they
6 were holding were no longer -- usually, in my
7 recollection, is usually they would -- they
8 would -- they had their own system of auditing on
9 exhibits, they would contact the police department
09:38 10 and say 'we are holding exhibits'.

11 Q I see.

12 A 'What is your wish in regards to this'.

13 Q So the RCMP lab would likely get back to the
14 officer in charge of the case and say 'we've still
09:38 15 got these exhibits, what do you want us to do with
16 them?'

17 A Yes, and I would, I would suggest it's generally
18 department to department, it would be addressed to
19 the Saskatoon Police Department --

09:39 20 Q All right.

21 A -- as opposed to a specific investigator or a
22 specific coordinator of a file.

23 Q And then presumably the recipient, in this case,
24 in our imaginary situation the Saskatoon Police
09:39 25 Service, would contact someone in the know, likely



1 the officer in charge, and ask him or her for her
2 opinion; right?

3 A Someone would be assigned to attend to the --

4 Q Yes?

09:39 5 A -- request, yes.

6 Q Mr. Commissioner, perhaps I can advise you that we
7 -- it occurred to us just the other day, actually
8 was it yesterday or the day before yesterday, that
9 when the RCMP lab was asked to produce their files
09:39 10 for this Inquiry they weren't asked to produce any
11 files they might have on the (V1)-, (V2)-----,
12 (V5)--- cases, they were only asked, as I
13 understand it, on the Gail Miller case, and we've
14 now asked them, as of a day or two ago, if they
09:40 15 would look for anything under those names in their
16 files, and indeed other names as well, and that's
17 being done. So it may be that further information
18 will come forward in that regard.

19 COMMISSIONER MacCALLUM: Okay.

09:40 20 BY MR. LOCKYER:

21 Q All right. So 1971 comes and goes, Chief Penkala
22 and everyone, with very few exceptions, seems to
23 continue to be in the dark about these rapes that
24 took place in Saskatoon, what happened to them,
09:40 25 and also seems to be in the dark about a man



1 called Larry Fisher; is that fair?

2 A Yes.

3 Q Uh-huh. And then the next step, so to speak,
4 where things might have happened happens in 1980
09:41 5 when, as you know, Linda Fisher came forward and
6 was interviewed by the Saskatoon Police
7 Department; right?

8 A Yes, I recall that, yes.

9 Q And it would appear that nothing happened as a
09:41 10 result of her coming in; is that right, sir?

11 A That's my understanding, yes.

12 Q Look at this systemically, sir; what would you do,
13 what would you recommend to make sure that
14 something like that could never happen again?
09:41 15 Because here was a chance for David Milgaard to
16 get out of jail, ten years had gone by but ten
17 years is better than 23; what might you -- what
18 might you recommend systemically to say that the
19 Saskatoon Police could never do something like
09:42 20 this again, or, for that matter, another police
21 force?

22 A I, I don't know at this stage, and I'm not sure of
23 my own knowledge whether there was any effort in
24 following up on Linda Fisher's request of the
09:42 25 police department -- or complaint to the police



1 department, I'm not personally aware of that and
2 I'm not sure. Hopefully, somebody else will be in
3 a position to give you that information.

4 Q I don't think that they will, --

09:42 5 A As far as --

6 Q -- as far as I know anyway, there was no follow-up
7 so there's not much that we can be told. But how
8 can you ensure that in future, if someone walks
9 into a police station and says 'I think my husband
09:42 10 committed a murder', who at least on the face of
11 it seems, according to the interviewer seems quite
12 sane, what can we do to ensure that the links
13 aren't then made, that the antennae don't go up
14 all over the place saying 'my God, we better look
09:43 15 into this'? Do you think, sir, that some internal
16 rules, both requiring that the officer in charge
17 of the original case be notified forthwith, that
18 the chief of police be notified forthwith, that
19 the prosecutor's office be notified forthwith, at
09:43 20 a minimum, is needed at a systemic level?

21 A My knowledge in regards to this is that this was
22 taken by a duty officer, --

23 Q Right?

24 A -- an Inspector Wagner, and that he assigned it.
09:43 25 I think, as far as I know, that's the end of the



1 line.

2 Q It is.

3 A I can't help you beyond that point, and that,
4 someone may be able to give you some answers in
09:43 5 regards to that, but I simply can't. It's a
6 process that was followed in most documentation
7 within the police department, it -- it works, it
8 works in most cases, obviously it had some kind of
9 a problem in this case.

09:44 10 Q But that's what we keep encountering, sir. Year
11 after year, time after time, any time Fisher
12 appears on the scene it just seems to get buried.
13 Do you see my point?

14 A Yes, I see your point.

09:44 15 Q That's what happened time after time in 1970-1971.
16 There were a number of opportunities in those
17 years where you might have expected his existence
18 and his involvement in the rapes to have become a
19 matter of knowledge generally, certainly within
09:44 20 the police department and outside it, and now here
21 we are back in 1980 with yet another chance, and
22 it, it is extraordinary, isn't it sir, that Linda
23 Fisher comes in, tells the police what she does,
24 and that's essentially the end of it? Everyone
09:45 25 carries on and no one seems to know much about it,



1 if anything it is extraordinary, isn't it?

2 A I, I would agree, yes.

3 Q Yes. You have really got one extraordinary event
4 mounted on another extraordinary event, happening
09:45 5 again and again, all of which relate to the
6 existence of Larry Fisher and the fact of the
7 serial rapes and their solution; don't you agree?

8 A I think so, yes.

9 Q Now when you were talking to media so irately in
09:45 10 1990-1991, and being so critical of them and
11 suggesting that everyone had political agendas
12 here and so on and so forth -- and I'm sort of
13 summarizing some of the things you said,
14 remember --

09:46 15 A Yes.

16 Q -- did you consider any of these matters, sir,
17 that, you know, that there seemed to be some
18 validity to this that everyone was saying, that
19 how did all these things get buried for so long?
09:46 20 Did you think about that --

21 A I don't --

22 Q -- or did you just assume that everything had been
23 done properly and appropriately and just carried
24 on from there?

09:46 25 A Well I suppose I can say I assumed it was done



1 properly and I wasn't aware, I wasn't aware of
2 these things.

3 Q I see.

4 A But I --

09:46 5 Q But the problem with the media reports, sir, if
6 you read them carefully they were saying in their
7 reports many of the things that I have now been
8 taking you through, the very things I have been
9 taking you to; the suppression or the -- perhaps
09:46 10 'suppression' is a loaded word -- the
11 non-information about Larry Fisher's pleas, for
12 example, those were the kinds of things the media
13 was reporting about that you are agreeing with me
14 were extraordinary, but back in 1990-1991 when you
09:46 15 read about them in the media you said were
16 political agendas at work and disgraceful
17 behaviour on the part of the media. I don't get
18 it. I don't know how, if you read the stories,
19 you didn't say to yourself 'my God, is this true,
09:47 20 what we're reading'?

21 A Well I think my experience is that you cannot put
22 all the credibility on a news release in a -- or
23 any news event. I don't think that's where you
24 would look for credible, credible conditions.

09:47 25 And I respectfully remind you



1 that we did have a conviction, we had a denial of
2 appeal, there would be obviously a tendency on
3 police officers to say, you know, 'why would we
4 continue in this direction when it's a done deal',
09:47 5 and --

6 Q But the media was accurately reporting that there
7 had been a conviction, --

8 A I don't --

9 Q -- and he had lost all his appeals, and they were
09:48 10 also accurately reporting to a large extent -- and
11 there may have been mistakes here and there and it
12 wasn't necessarily their fault, they had trouble
13 getting information particularly, as we have seen,
14 from your police department -- but insofar as they
09:48 15 were reporting things there was pretty good
16 accuracy to a great deal?

17 A Well, I think that's subject to consideration. I,
18 as I -- I stand on my experience that issues in
19 the print media and even in the, even in the
09:48 20 electronic media, doesn't necessarily represent
21 the facts as they are.

22 Q So your reactions in the media were more a rote
23 reaction based on your experience with the media
24 rather than an investigation, rather than you
09:46 25 carrying out an investigation of what they were



1 saying about the particular case in which you were
2 being critical of to see whether or not they got
3 it right or wrong; is that right? You acted on an
4 assumption in other words about media rather than
09:46 5 saying --

6 A Well, I've already said that --

7 Q -- these stories aren't true?

8 A I already said that I wasn't prepared to accept, I
9 wasn't prepared to accept the way it was reported
09:46 10 in the media. I had no other cause. I've said
11 before that had I received direction as the chief
12 of police to pursue this issue specifically, I
13 would have attended to it. I never received, as
14 the chief of police, I never received any
09:47 15 instructions from the justice department saying,
16 look, I think you should look at this case.

17 Q In 1990, sir, as we know, Mr. Wolch finds out
18 about Larry Fisher and finds out that he's been
19 convicted of a series of rapes and you presumably
09:47 20 became aware of that through the media; am I
21 right?

22 A At some point, yes.

23 Q Right. He asks the, he advises the Department of
24 Justice, sir, Eugene Williams, who's conducting
09:47 25 the proceedings on behalf of the Department of



1 Justice, and then we find out -- you would think
2 at this point, would you not, that now that this
3 has come out, that the Saskatoon police might say
4 to themselves, you know, we better co-operate as
09:48 5 best we can now that this has come out and at the
6 very minimum give Ottawa, the Department of
7 Justice in Ottawa, complete and accurate
8 information about Larry Fisher; would you agree?
9 That should have been the reaction of the
09:48 10 Saskatoon police. Whether it was or it wasn't is
11 by the by for the moment, but that should have
12 been the reaction?

13 A I agree and we did.

14 Q If we go to 010019, sir, and it's a document that
09:48 15 Commission Counsel brought to your attention as
16 well, it would seem that you didn't, you meaning
17 the police department, and you are chief by now;
18 is that right? When all this is happening you are
19 chief?

09:48 20 A Yes, from '82 to '91.

21 Q So when we look at this memo, sir, of July 5th,
22 '90 when you are chief of police, we have
23 Mr. Williams writing to his file that:

24 "On July 4th, 1990, I learned from Bruce
09:49 25 MacFarlane -- "



1 Who, for your information, was also working
2 within the Department of Justice at the time
3 dealing with Mr. Milgaard's application, all
4 right, just so you know who he was:

09:49 5 "-- that Hersh Wolch had the names of
6 four Saskatoon rape victims, allegedly
7 assaulted by Larry Fisher. This
8 information did not accord with the
9 information we had earlier received from
09:49 10 the RCMP and the Saskatoon City Police,
11 who advised us that there were not any
12 incidents of rape attributed to Larry
13 Fisher, which occurred in Saskatoon."

14 Now, how on earth could that have happened,
09:49 15 really, how on earth could that have happened?

16 A I have no idea.

17 Q It's outrageous isn't it, sir, outrageous, that
18 the Saskatoon City Police told the Department of
19 Justice that there were no incidents of rape
09:49 20 attributed to Larry Fisher in Saskatoon, that is
21 false and wrong; right?

22 A It certainly appears, date wise, it appears that
23 they should have known.

24 Q Who should have known, the Department of Justice?

09:50 25 A The police department should have known --



1 Q Your police department?

2 A -- if they were specifically requested to provide
3 that information. They obviously didn't know.

4 Q Yes.

09:50 5 A They obviously didn't know, and of course you've
6 already identified that there are some problems in
7 the way that entire issue was dealt with.

8 Q So the Saskatoon City Police could have -- if
9 their information, which was false, had been the
09:50 10 only information available and the CBC hadn't
11 found out that Larry Fisher had committed a series
12 of rapes in Saskatoon, because that's who found
13 out, the CBC, hadn't found that out, we might
14 still be none the wiser, David Milgaard could
09:51 15 still be in jail?

16 A Well, I don't agree that the Saskatoon police
17 provided false information. I would --

18 Q That's what it says.

19 A Well --

09:51 20 Q The Saskatoon City Police advised us that there
21 were not any incidents of rape attributed to Larry
22 Fisher which occurred in Saskatoon. I can't think
23 of anything more false. That's utterly false
24 isn't it?

09:51 25 A Well, that's not the way I would perceive it. I



1 think the Saskatoon Police Department was not in a
2 position to, or didn't have the information and
3 provided the information that they did have and
4 it's being interpreted as being false information,
09:51 5 I don't think that's accurate and I don't think
6 that's right.

7 Q So in 1990 the Saskatoon City Police somehow, as
8 an organization that you commanded at the time,
9 still didn't know as an organization you are
09:52 10 saying, that the only, and I keep saying it, but I
11 think it's important, that the only serial rapist
12 you had experienced in your career operating in
13 Saskatoon had been apprehended, pleaded guilty and
14 sentenced, albeit to, in effect, nothing for those
09:52 15 crimes, you still didn't know 20 years later?

16 A It would appear that way, yes.

17 Q Remarkable, isn't it, sir, absolutely remarkable.
18 Unbelievable, isn't that a better word for it, but
19 true you are saying, unbelievable but true?

09:52 20 A Well, that could be.

21 Q Is that a fair summary of what you are saying,
22 unbelievable but true?

23 A Well, I think I would suggest that it's a
24 situation where the information wasn't available
09:52 25 to those people that were distributing or were



1 requested to provide the information and they
2 could do no more than provide exactly as it's
3 identified in this document.

09:53 4 Q Having heard, sir, that it was the CBC of all
5 people, so to speak, that discovered that Larry
6 Fisher had committed rapes in Saskatoon, heaven
7 knows how they could find it out and you, your
8 service couldn't find it out, that's hard to
9 credit, that somehow the CBC found it out when
09:53 10 your service didn't find out that he had committed
11 four rapes right within the boundaries of the city
12 that your police service operated in, do you
13 think, sir, that in those circumstances maybe some
14 of your criticism of media may have been a trifle
09:53 15 misguided?

16 A Well, I suppose you could judge it that way. I
17 don't think I would have done it any different
18 today.

09:54 19 Q You don't think that the CBC and journalism as a
20 whole deserve enormous kudos for finding out
21 something that happened under the noses of the
22 Saskatoon Police Force that the Saskatoon Police
23 Force never knew about?

09:54 24 A Well, I'm not sure that that's a fair assessment.
25 They have the resources to do that. They



1 obviously did that and they established certain
2 facts as you are suggesting and under the
3 circumstances these things happened and that still
4 does not -- if we do not have documentation within
09:54 5 our system, how can we verify something that
6 someone else has investigated and put forward.

7 Q Because a former police chief, a former deputy
8 police chief, officers operating within the
9 department knew, we know that, at a minimum, and
09:55 10 senior prosecutors knew, we know that. You see,
11 what I'm suggesting to you, sir, is at some point
12 you have to step back from this and say, you know,
13 this is unbelievable, it is unbelievable that
14 every time that an opportunity comes along for
09:55 15 Larry Fisher and his involvement in the rapes to
16 become a matter of knowledge to the public and
17 hence to David Milgaard who's languishing in jail
18 for a crime he didn't commit, every time that
19 opportunity comes along your police service
09:55 20 doesn't provide the information and at some point
21 one has to stop, don't you, sir, and say to
22 yourself, you know, there's a limit as to how
23 negligent people can be, there's a limit to how
24 many mistakes can be made, there's a limit to how
09:55 25 many pieces of paper can get lost or can't get to



1 the right place, at some point you have to say to
2 yourself there's something more behind this.

3 Don't you feel that way, sir, as I've taken you
4 through the circumstantial evidence?

09:56 5 A Well, it's certainly, your points are certainly
6 reasonable points, but there is another side to
7 this entire thing. There are, there is evidence
8 that points in yet another direction, the initial
9 evidence that took David Milgaard to trial, and
09:56 10 this is being completely avoided in your
11 suggestions that you are making to me, is that we
12 somehow blindly just continued on our way. The
13 case of the Miller murder was presented to the
14 Court on the basis of evidence which the Court
09:56 15 found to be credible and a conviction was obtained
16 and later an appeal was dismissed. That has to
17 play a part in this entire equation.

18 Q On the contrary, sir, it is the seminal event and
19 it's the curse of that trial and the dismissal of
09:57 20 the appeal and the conviction of an innocent man
21 that it was so important that these events that
22 would help prove that should have been presented
23 to Mr. Milgaard and his counsel and the public but
24 were in fact, I suggest to you, suppressed because
09:57 25 they could impact on that verdict.



1 A I have difficulty accepting the fact that things
2 of that nature were suppressed.

3 Q Don't think for a minute, sir, that I've forgotten
4 that David Milgaard was convicted of a crime he
09:57 5 didn't commit, that's the whole point of this
6 inquiry and the whole point of my questions.

7 A I understand.

8 Q This whole issue could have been solved long, long
9 before, sir, if information that should have been
09:58 10 made available had been made available, but it
11 wasn't, and we're even 20 years on in 1990 and the
12 Saskatoon police is giving, I'll leave out the
13 word false if you like, the Saskatoon City Police
14 is giving inaccurate information to the Department
09:58 15 of Justice in Ottawa which is dealing with David
16 Milgaard's claims of innocence, that's certainly
17 what this tells us.

18 A It would appear that way from the document.

19 Q So anyway, now this document tells us, and we're
09:58 20 talking now July 4th of '90, that now, finally,
21 it's out there, albeit no thanks to the Saskatoon
22 City Police or Saskatchewan Justice for that
23 matter, but thanks to the CBC the information is
24 now out there that Larry Fisher pleaded guilty to
09:59 25 four sexual crimes committed in 1968 and 1971. If



1 this document could just be lifted a bit, you'll
2 see that the 1970, rather, assault on Ms. (V5)---
3 is finally out in the open; right?

4 A Yes, it would appear that way.

09:59 5 Q Thanks to the CBC. And of course the next thing
6 they find out in this chain of circumstances,
7 having found out through anyone but the people who
8 you would think they might have found it out from,
9 they now find out from the people who have had
09:59 10 custody of these files that most of the files are
11 missing; right? That's the next thing, that's the
12 next problem we find; right?

13 A Well --

14 Q Just one thing after another, sir. When do you
09:59 15 stop and say hold it, is there something behind
16 this, because every time we seem to get somewhere,
17 albeit no thanks to the Saskatoon police, we run
18 into our next obstacle.

19 A I can see your suspicions in regards to this.

10:00 20 Q Suspicious isn't a bad word, sir.

21 A But I don't support the proposal that somehow,
22 within the department, there was a desire to keep
23 information away from anybody or to fraudulently
24 proceed with something that was very wrong.

10:00 25 Q Right. You are now police chief, sir, you are



1 obviously keeping cognizant of what is going on in
2 David Milgaard's application to the Department of
3 Justice; right?

4 A At the present time?

10:00 5 Q No, then.

6 A Oh, then.

7 Q As chief of police it must have been one of the,
8 the most, I guess probably the only national case
9 that was getting national attention -- sorry, the
10:01 10 only case that was getting continual national
11 attention in Canada?

12 COMMISSIONER MacCALLUM: In 1990?

13 BY MR. LOCKYER:

14 Q Yes, 1990, 1991. Sorry, you left in May of '91,
10:01 15 was it, in effect?

16 A Yes.

17 Q Yes.

18 A Actually, the issues surrounding the Milgaard
19 conviction started before that, started before I
10:01 20 was --

21 Q I'm focusing on 1991.

22 A In '91 there was certain activity.

23 Q '90-'91, sorry, can I get you there?

24 A Yeah.

10:01 25 Q So you knew in 1991 as police chief that it was



1 now the position of David Milgaard and the people
2 who were assisting him, lawyers and others, that
3 Larry Fisher, the man who had committed the rapes
4 in 1968 and 1970, was in fact the person who had
10:01 5 killed Gail Miller?

6 A Well, I don't think it was established at that
7 point, or yes, it was -- no, no, it wasn't.

8 Q Would you listen to the question.

9 A Okay.

10:02 10 Q I'm not saying it was established as a fact, it
11 wasn't established as a fact until 1997. What I'm
12 putting to you is that in 1990, 1991, just to take
13 1990 for the moment, you knew that that was the
14 position of David Milgaard and his counsel, that
10:02 15 Larry Fisher was the one who killed Gail Miller,
16 not David Milgaard?

17 A I'm not certain of whether I knew it was Larry
18 Fisher, but I want to identify the fact that we
19 had already accommodated the Federal justice
10:02 20 department in allowing them to examine the case.

21 Q Okay, focus on the question, please, all right.
22 The question is this, or the proposition I'm
23 putting to you is this, that in 1990, certainly
24 shortly after July 5th of 1990, you would have
10:02 25 become aware that David Milgaard was saying Larry



1 Fisher, the serial rapist from Saskatoon, was the
2 guy who killed Gail Miller, not me, and we've just
3 found out about his existence, that's the chap who
4 did it. It was all over the media; right? You
10:03 5 could hardly miss it unless you never read a
6 newspaper. You knew that, didn't you, that that
7 was David Milgaard's position?

8 A At some point the name Larry Fisher came up.

9 Q That's not what I'm saying, his name came up, of
10:03 10 course his name came up. The point is you knew as
11 police chief that's what David Milgaard was
12 claiming, Larry Fisher did it, not me?

13 A Yes.

14 Q The serial rapist did it, not me; right?

10:03 15 A Yes, yes, yes.

16 Q Yes. Now, Chief Penkala, you found that out, did
17 you say to yourself, holy smoke, that's exactly
18 what I thought might be the case back in 1969, in
19 February of 1969 I was writing, people were
10:03 20 writing reports saying that -- the investigating
21 officer was writing a report saying that very
22 thing, whoever committed those rapes likely killed
23 Gail Miller. I'm busy sending off samples to the
24 police lab from these other rapes to see if they
10:04 25 compare to what was retrieved from Gail Miller's



1 body, I'll be blurred (ph) if they haven't got the
2 very theory that I had put forward and other
3 officers put forward and indeed we discussed at
4 length on May 16th of 1969 they finally cottoned
10:04 5 onto it at 21 years too late. Did that occur to
6 you, they're 21 years behind us?

7 A Not in that sense, no.

8 Q Why not, because that's what happened, that's
9 exactly what has happened. In 1990 Milgaard and
10:04 10 his supporters have finally come up with the very
11 theory that's contained in police reports in 1969,
12 whoever did those rapes killed Gail Miller and
13 darned if they are not saying the same thing in
14 1990. Whoever committed those rapes, and we know
10:05 15 who it is, Larry Fisher, killed Gail Miller, the
16 same thing that you were saying 21 years earlier;
17 right?

18 A Well, the substance might have been there, but the
19 facts weren't there.

10:05 20 Q Did the thought cross your mind that they were 21
21 years behind you?

22 A At that point I would have not been in a position
23 to analyse as you are suggesting. I had some
24 horrendous responsibilities that went beyond a
10:05 25 case that I had investigated in 1969.



1 Q That's hardly a complex analysis, Chief Penkala,
2 it's a simple conclusion, they are saying what I
3 thought 21 years ago. Until we focused on David
4 Milgaard on May 16th, 1969 I had thought the same
10:05 5 thing, indeed I sent things to the lab to see if
6 it was so. It's not a complex thought process to
7 go through, it's as simple as you can imagine,
8 isn't it, but you didn't go through it, didn't
9 think of it?

10:06 10 A I didn't act on it, no.

11 Q No, you didn't think of it, let alone act on it.

12 A That's correct.

13 Q Did you think, sir, this, did you say to yourself,
14 well, you know, we've got the Saskatoon Police
10:06 15 Department here being vilified in the national
16 media, that's how you saw it; right?

17 A Yes.

18 Q Yes. And here we are with David Milgaard
19 presenting a theory that we had back in 1969 for
10:06 20 months following Gail Miller's murder, at a
21 minimum we should tell David Milgaard and his
22 counsel that that used to be our theory as well.
23 Did you think that, that at a minimum we should
24 tell them that that's what we used to think too
10:06 25 and we've got police reports saying it? Did you?



1 A I don't -- I don't agree that that was our
2 responsibility at that stage of the game. We
3 co-operated with the Department of Justice,
4 Federal Department of Justice, and literally it
10:07 5 was in their hands and I think that the results of
6 their analysis would have dictated direction from
7 that point on and that's generally the way I
8 viewed it and it remained that way until
9 eventually the consequences resulted as they did.

10:07 10 Q Did you, the then chief, Chief Penkala, did you
11 say to yourself, well, all right, maybe I don't
12 have to notify Milgaard and his people that that
13 was our theory too, but I better notify the
14 Department of Justice in Ottawa and let them pass
10:07 15 it on to David Milgaard?

16 A Well, I would respectfully suggest that the
17 justice department would have known.

18 Q How?

19 A Because they were analysing the entire file.

10:08 20 Q Well, how long did they spend in Saskatoon, sir,
21 how long was Eugene Williams in Saskatoon, a day?

22 A I would guess probably a month. I provided an
23 office for him and provided all the documentation
24 that was, that we had to him.

10:08 25 Q So was he -- was he alerted to the fact that the



1 claim being made by David Milgaard was the very
2 position taken at the outset in the investigation?

3 A He would have access to the file, the complete
4 Milgaard/Miller file.

10:08 5 Q And this is back in 1990?

6 A It was in the late '80s I think.

7 Q Well, if he knew, sir, the Department of Justice,
8 Eugene Williams knew, it would seem, as best we
9 can tell, they certainly never notified David
10:08 10 Milgaard or his counsel that they had latched onto
11 the very theory that you had had, you being the
12 officers investigating this case, RCMP and
13 Saskatoon police as we've seen, that the
14 perpetrators of the '68 rapes were likely or could
10:09 15 well be or a good possibility, I forget the words,
16 the killer of Gail Miller?

17 A There were certainly --

18 Q Never got passed on by Mr. Williams to David
19 Milgaard which suggests to me that Mr. Williams
10:09 20 never heard it from the Saskatoon police.

21 A Well, I don't know what the consequences. I know
22 that Mr. Williams, I know that Mr. Williams was
23 provided all the documentation that was available
24 within the Saskatoon Police Department --

10:09 25 Q So here we've got --



1 A -- and that he spent at least a month at the
2 police department reviewing these files and I
3 believe that there was even a report as to his
4 findings.

10:09 5 Q So regardless of whose fault it was for the
6 moment, and I guess we'll find out as we go on
7 through the inquiry, we've got another breakdown
8 here regarding Larry Fisher where David Milgaard
9 and his counsel don't find out, whoever's fault it
10:10 10 may have been, that the theory that they now
11 project publicly Larry Fisher is the one who
12 killed Gail Miller, was in fact in effect the
13 theory, or one of -- the most prominent theory for
14 the first several months of the investigation of
10:10 15 Gail Miller's murder, somehow is another breakdown
16 in the line of communication; is that right, sir?
17 Is that the best we can conclude?

18 A The way you describe it, yes.

19 Q They just never seem to stop, do they, where Larry
20 Fisher and his involvement in this case is
21 concerned, they just go on and on don't they.
22 We're now in 1990, 1991, 22 years we've moved now;
23 right?

24 A Yes.

10:10 25 Q And all you are able to do, sir, as best I can



1 tell, and I don't mean to be offensive, but it
2 does seem to be all you are able to do, is all you
3 are able to do is go to the media and ridicule the
4 position taken by David Milgaard and his counsel
10:11 5 that it was Larry Fisher who committed these
6 crimes, not David Milgaard, or committed this
7 crime of Gail Miller's murder, you ridicule the
8 media don't you?

9 A Well, I don't think I would interpret it as
10:11 10 ridiculing the media. I stated my feelings
11 because of the methods that were used and the
12 aggressiveness of the media and I was of the
13 opinion that they needed to feel and hear my side
14 of the story and that's why that news release went
10:11 15 the way it went.

16 Q And your side of the story wasn't, hey, media,
17 what David Milgaard is now saying is what we were
18 saying 21 years ago, you sure didn't tell the
19 media that did you?

10:11 20 A I had no intentions of revealing the facts of any
21 investigation and that was not in the release.

22 Q Yes, it certainly wasn't, because that would have
23 opened a huge Pandora's Box, wouldn't it, Chief
24 Penkala. Can you imagine if in 1990 you had gone,
10:12 25 called a press conference and said you know what,



1 what they are saying now is what we thought might
2 well be the case back in 1969? Can you imagine
3 the reaction to that? Game over; right? It would
4 have been the end of the case for David Milgaard.
10:12 5 He would have got out of jail hopefully within
6 weeks; right?

7 A Well, I still maintain that we didn't have the
8 evidence to make that kind of a statement.

9 Q I'm just wondering why you didn't tell the media a
10:12 10 simple fact that what they are now claiming is
11 what we thought might be the case 21 years ago,
12 why didn't you tell them that? Why on earth
13 wouldn't you tell them that?

14 A Well, why would we tell them that.

10:12 15 Q That's a good question, why would you, because if
16 you did, it might lead to David Milgaard getting
17 out of jail where he's sitting for a crime he
18 didn't commit.

19 A Let me assure you that any police officers that I
10:13 20 know would never want to see an innocent man being
21 held in jail, I don't subscribe to that. There
22 was obviously a lack of support for what you are
23 suggesting here this morning and we could -- I
24 think if there was any specific indication that
10:13 25 the wrong person was in jail, there would have



1 been a different effort put into this entire
2 situation.

3 **Q** This has nothing to do with lack of support that
4 I'm talking about now, it's within your own head,
10:13 5 the knowledge of what happened in 1969, that
6 they've latched onto what you had already thought
7 in 1969. That's not requiring resources or
8 support, it's just something that you would have
9 known?

09:48 10 **A** With respect.

11 **Q** But you didn't. On the contrary, you go and
12 lambaste the media for what they are doing when
13 it's thanks to them they even know, Milgaard's
14 people, about Larry Fisher's crimes in Saskatoon.
10:16 15 They are saviours, in other words, the saviours of
16 David Milgaard are being lambasted by you who has,
17 within your head, the knowledge that what
18 Milgaard's people are now saying is what you had
19 thought back in 1969?

10:16 20 **A** With respect, I would suggest to you that what's
21 in my head is not necessarily factual evidence.

22 **Q** Of course. Of course when you think about it,
23 sir, David Milgaard, if a conclusion is drawn --
24 and I'm sort of thinking back 1990-1991 -- that
10:17 25 David Milgaard had in fact been wrongly convicted



1 of Gail Miller's murder, and Larry Fisher, who was
2 the real culprit; if you thought that through at
3 the time, as I suggest you would be, have been
4 bound to have given what happened in 1969 and your
10:17 5 thoughts in 1969, I suggest to you you must have
6 thought it through and, as police chief, discussed
7 it, at a minimum, with other senior officers, and
8 discussed one thing in particular, the enormous
9 embarrassment to the Saskatoon Police of what had
10:17 10 happened. Because if nothing else, as a result of
11 your failure to -- or as a result of your
12 apprehension of David Milgaard for a crime he
13 didn't commit -- 'your' meaning, again, the
14 Saskatoon Police Department -- it allowed Larry
10:18 15 Fisher to rape Ms. (V5)---, to rape (V7)---
16 (V7)--- in Winnipeg, to rape (V8)-- (V8)--- in
17 Winnipeg, and to all but kill (V10) (V10)- in
18 North Battleford in the ensuing years; right?
19 That was the consequence of the arrest and
10:18 20 conviction of David Milgaard for a crime he didn't
21 commit, and I suggest to you you talked about
22 that, you must have talked about that with other
23 senior officers as the police chief at the time,
24 given what you knew in 1990-1991; isn't that true?
10:18 25 A I don't, I don't recall addressing it in the



1 manner that you are suggesting.

2 **Q** An interesting way you respond to the question,
3 sir, it's not exactly a definitive 'no, nothing
4 like that happened', you don't recall it happening
10:18 5 in the way I'm suggesting it to you. Because
6 that's the reality, isn't it sir, that thanks to
7 Fisher getting away with it in 1969 and having the
8 pleasure of watching an innocent man being
9 convicted of his crime he was able to carry on
10:19 10 attacking women in Saskatoon, in Winnipeg, and in
11 North Battleford over the ensuing years, right,
12 when he should have been locked up for being a
13 serial rapist and a murderer back in 1969;
14 correct?

10:19 15 **A** Well you have to prove --

16 **Q** Uh-huh?

17 **A** -- these things, and I don't feel that we were
18 ever in a position to prove that throughout that
19 phase, that Larry Fisher was in any way connected
10:19 20 with --

21 **Q** Did you know, sir, back --

22 COMMISSIONER MacCALLUM: Let him finish.

23 BY MR. LOCKYER:

24 **Q** I'm sorry, Mr. Commissioner. Go ahead?

10:19 25 **A** I'm finished Your Honour.



1 Q Did you know by now, sir, that back in shall we
2 say 1990, sometime after July of 1990 -- let me
3 ask this before I ask that. Surely, as police
4 chief, you were getting well briefed on David
10:20 5 Milgaard's case; weren't you?

6 A In 1990?

7 Q Yes, 1990-1991?

8 A I think the extent of it was possibly what was in
9 the media. I don't recall. I don't recall.

10:20 10 It's -- as I said earlier, some of these things
11 commenced before I became chief. My predecessor,
12 Chief Gibbon, had dealings with the suggestion
13 that there was something wrong with the original
14 conviction --

10:20 15 Q But --

16 A -- and then it --

17 Q Sorry?

18 A -- was passed on when I took over as chief of
19 police.

10:20 20 Q But the Fisher part of it broke on your watch;
21 right?

22 A Umm, --

23 Q In 1990?

24 A In what, in what form?

10:21 25 Q The Fisher part of the case, the existence of



1 Larry Fisher, broke on your watch?

2 A Yes.

3 Q Yes.

4 A Yes.

10:21 5 Q That's the point.

6 A Yes.

7 Q And I'm suggesting to you, sir, that it was surely
8 a matter of considerable discussion at the highest
9 levels in your police department?

10:21 10 A My recollection is that, at a point, the -- and I
11 was already retired -- the RCMP were pursuing the
12 conviction or the charges against Larry Fisher, so
13 up until the point of --

14 Q I'm sorry, could you say that again, I just didn't
10:21 15 -- the RCMP were pursuing the charges against
16 Larry Fisher?

17 A Yes.

18 Q When you left?

19 A After I left.

10:21 20 Q Well that's 1997?

21 A Well, umm --

22 Q That's way after you left?

23 A Yes.

24 Q Were you --

10:21 25 A As a matter of fact, as a matter of fact, I think



1 the trial of Larry Fisher was in 1999.

2 Q Yes, but he wasn't being pursued for Gail Miller's
3 murder as such until 1997 --

4 A Yup.

10:22 5 Q -- by the police, if we can put that it way?

6 A Yes.

7 Q All right.

8 A And I was, I was -- and I don't want to excuse
9 myself from any responsibilities, but I was, I was
10:22 10 away from the entire field of policing and
11 administration, and once, once you, you leave the
12 service, other than at forums such as this, you
13 have little effect on what happens within the --
14 within a department.

10:22 15 Q Tell me this, sir; in August 1991 the existence of
16 (V4)---- (V4)--- broke, right?

17 A Well I didn't know that.

18 Q Broke out, should I say?

19 A I assume that that's correct, --

10:23 20 Q All right.

21 A -- but I was not aware of it. My actual official
22 retirement date was the end of August of '91, and
23 I was away from duties from approximately the 1st
24 of May.

10:23 25 Q But did you say to yourself, sir, as you read



1 about this in the media, 'why on earth are they
2 only finding out now, 22 years after the event,
3 that another woman was sexually assaulted 20
4 minutes later on the same morning in the same
10:23 5 temperature in the same area'; did you say that
6 sort of thing to yourself?

7 A I didn't.

8 Q 'How didn't they know this 22 years ago?'

9 A I wouldn't have had those kind of details.

10:23 10 Q Well, it was in the media, you can't miss it.
11 (V4)---- (V4)--- comes forward in the media, it's
12 emblazoned in the papers, unless you don't read
13 newspapers -- and I think as a police chief you
14 probably do. Don't you get the articles sort of
10:23 15 put in front of you every morning sort of like the
16 Prime Minister does?

17 A Well, sometimes I think it's a mistake to read the
18 newspaper, --

19 Q Well it's --

10:24 20 A -- but that's my opinion.

21 Q Fortunately for David Milgaard, it was the media
22 who came to his rescue, sir, it certainly wasn't
23 the Saskatoon Police; was it?

24 A I agree with you on that, yes.

10:24 25 Q Uh-huh.



1 A Fortunately --

2 Q Uh-huh.

3 A -- that that did occur.

4 Q Not to leave out people like Mr. Wolch and his
10:24 5 mother, and so on and so forth, but focusing on
6 the media for a moment. Tell me, did you also say
7 to yourself at any time, 'how come the defence in
8 1969-1970 didn't know about this serial rapist
9 that had been roaming in Saskatoon, how come that
10:24 10 wasn't disclosed to them'; did you say that to
11 yourself?

12 A No.

13 Q No?

14 A No I didn't.

10:24 15 Q You didn't?

16 A And I would have assumed, I think, that that was
17 known by the Crown when the information was
18 provided to the Crown.

19 Q And did you say to yourself, sir, when the (V4)---
10:25 20 story broke out, that, once again, 'thank God for
21 the media because, without them, (V4)---- (V4)---
22 would not have come forward'?

23 A Well, as I said just moments earlier, I wouldn't
24 have had the details on that particular, on that
10:25 25 particular incident, and I would have really not



1 known about it.

2 Q Let me ask you this, sir, and -- in 1969 you and
3 other officers involved in the investigation have
4 theorized in, for what it's worth, in my opinion
10:25 5 entirely sensibly, that whoever killed Gail Miller
6 might well have been the person committing the '68
7 sexual attacks on women; right?

8 A Yes.

9 Q All right. By the time 1990 rolls along, sir, and
10:26 10 you are police chief now, a number of other things
11 had happened in the intervening years which one
12 might think endorse the theory that you had back
13 in 1969, and I'm going to take you through them
14 quickly. We've referred to them all in passing in
10:26 15 one way or another already. First of all, since
16 you had that original theory in 1969, in 1980
17 Linda Fisher has come forward and said 'the man
18 who committed those rapes', he has already pleaded
19 guilty to them years before, 'I think killed Gail
10:26 20 Miller', she gives reasons why she thinks that and
21 she talks about the knife, that he didn't go to
22 work that morning, umm, and the way he acted, she
23 says she thinks he may have killed Gail Miller.
24 So that's one piece of information that's come
10:27 25 forward since your original theory in 1969; all



1 right?

2 A It would appear that way, yes.

3 Q Yes. Secondly, what's happened since 1969 is that
4 there was -- I'm sort of going back a bit now --
10:27 5 is you got a bunch of other sexual attacks on
6 women that the Saskatoon rapist from 1968, we now
7 know, committed after Gail Miller's murder. We
8 know now that in 1971 he sexually attacked (V5)--
9 (V5)---, right, in Saskatoon yet again?

10:27 10 A Yes.

11 Q In the same area?

12 A Well --

13 Q So this is a chap who keeps doing it, he hasn't
14 stopped in 1968, or if he did stop in 1968 he has
10:28 15 restarted in 1970; right?

16 A It appears that that's what happened.

17 Q Yes. And there's kind of an interesting feature
18 to it, that he -- that he has stopped committing
19 sexual attacks on women between the time of the
10:28 20 murder of Gail Miller and the conviction of David
21 Milgaard for that murder, he seems to have stopped
22 committing sexual assaults, but within less than a
23 month of David Milgaard's conviction he is back at
24 it. Kind of an interesting piece of
10:28 25 circumstantial evidence; wouldn't you agree?



1 A Yes.

2 Q Yes. All right. We also know that whoever this
3 -- the -- sorry, not whoever -- we also know that
4 the man now identified as Larry Fisher has since
10:28 5 1969, on August the 1st of 1970, done the same
6 thing to a lady called (V7)--- (V7)--- -- and
7 there is a ban on, I would expect a ban on
8 publication with respect to these names,
9 Mr. Commissioner --

10:29 10 COMMISSIONER MacCALLUM: Yes.

11 BY MR. LOCKYER:

12 Q -- in Winnipeg as she is walking home from a bar.
13 So, again, we can see -- and I might say viciously
14 assaulted in the process, so we're seeing another
10:29 15 reason why you could look back and say 'this is --
16 might well be the man who killed Gail Miller';
17 right, a post-'69 reason. Do you follow me?

18 A Well you are relating to facts that I am not aware
19 of, I was not aware of, because --

10:29 20 Q But in 1990, 1990 and 1991, sir, you are police
21 chief, you surely know what is being alleged by
22 David Milgaard and his counsel? It's all there,
23 they are printing all this out, they are saying
24 this to the media, it's in these very media
10:29 25 stories that you lambaste in your press conference



1 and that's what these media stories are saying,
2 that Fisher did all these things. You surely took
3 that into account and said 'my God, this is added
4 information that reinforces the opinion we formed
10:30 5 in 1969', and if you didn't that's what you should
6 have done; shouldn't you?

7 A I'm not so sure that that responsibility --

8 Q I see?

9 A -- fell on the Saskatoon Police Department without
10:30 10 specific direction.

11 Q So who did it fall on? I mean the Saskatoon
12 Police Department is the one who gave the evidence
13 to the prosecution that they used to convict;
14 whose job is it, it must be someone's, let's hope
10:30 15 it's someone's job?

16 A Well hopefully this Inquiry will establish --

17 Q All right. All right.

18 A -- where the problems exist.

19 Q You also know sir, if you are following it at its
10:30 20 barest level as police chief, that on September
21 19th, 1970 Larry Fisher, the man who did the '68
22 rapes that led you to believe that that man likely
23 had killed Gail Miller, had raped and seriously
24 assaulted another lady in Winnipeg as he followed
10:31 25 her off a bus -- the bus keeps appearing in Larry



1 Fisher's rapes -- a (V8)-- (V8)---; you would have
2 known that, would you not, sir?

3 COMMISSIONER MacCALLUM: What's the name?

4 MR. LOCKYER: (V8)--, (V8)-----.

10:31 5 COMMISSIONER MacCALLUM: Yes?

6 MR. LOCKYER: (V8)---, (V8)-----.

7 BY MR LOCKYER:

8 Q And that Larry Fisher had pleaded guilty to that
9 crime, indeed he had been caught in the act of
10:31 10 that crime, you would have known that by 1990;
11 wouldn't you have, sir?

12 A I was not aware of the details of the Manitoba or
13 the Winnipeg --

14 Q Well, that's a minimal detail, but he raped and
10:31 15 attacked two women in Winnipeg in 1970?

16 A I was certainly aware of some generalities, --

17 Q Uh-huh?

18 A -- but not to the extent that you are relating to
19 me at this stage.

10:31 20 Q That within months of getting out on those
21 sentences, sir, the 13-year sentence plus the 4
22 years concurrent for the Saskatoon serial rapes,
23 on March 31st, 1980 he attacks and almost kills,
24 in a virtually identical way to the way Gail
10:32 25 Miller was actually killed, a lady called (V10)



1 (V10)- in North Battleford, Saskatchewan; you
2 would have known that too, wouldn't you, sir?

3 A I have heard that through the media too, yes.

4 Q Yes. And you'd have heard through the media,
5 would you not, that Larry Fisher told her, while
6 he was stabbing her and slitting her throat, I
7 hasten to add, that, quote, "he had done the same
8 thing before and had slit her throat as well";
9 you'd have known that in 1990-1991, it was in the
10 news?

11 A Well, whether I did or not, I don't remember at
12 this stage of the game whether -- but that would
13 have come as --

14 Q And you'd have known about --

15 A -- through the media or by that method. I wasn't
16 specifically aware of that investigation.

17 Q And by 1991 -- and I appreciate this is right
18 around, just shortly before you retire as police
19 chief, and indeed in the time when you are not
20 really acting much as police chief -- (V4)----
21 (V4)---'s existence comes into play as well, and
22 she is telling the media that Larry Fisher is the
23 person who attacked her 20 minutes after Gail
24 Miller was murdered five blocks away, that's what
25 she's telling the media, 'that's the man who did



1 it'; you'd have known that; right?

2 A Well, again, I would have known that through,
3 through media, that --

4 Q Don't you think --

10:34 5 A And my responsibilities at that point, and I don't
6 want to excuse myself, but the responsibilities
7 were no longer mine in regards to having the
8 authority to act.

9 Q Could you give me another few minutes before we
10:34 10 break, Mr. Commissioner, I'm almost finished this
11 whole where we began.

12 COMMISSIONER MacCALLUM: All right.

13 MR. LOCKYER: I'm almost there.

14 BY MR. LOCKYER:

10:34 15 Q Let me ask you this, sir; bearing in mind now your
16 theory in 1969 which is sort of based, given what
17 you had by 1991, on a paucity of information given
18 what's happened since in the context of Larry
19 Fisher, do you think, sir, at a minimum, whether
10:34 20 it was your responsibility, the Saskatoon Police
21 responsibility or the Department of Justice's
22 responsibility or Saskatchewan Justice's
23 responsibility; do you think that it must have
24 been someone's responsibility to tell Hersh Wolch
10:34 25 'you know what, that was our theory back in 1969'?



1 Do you think someone should have told him,
2 someone?

3 A Someone, yes.

4 Q Yes. Is this a good time to break, Mr.
10:35 5 Commissioner?

6 COMMISSIONER MacCALLUM: Yes.

7 MR. LOCKYER: Thank you.

8 (Adjourned at 10:35 a.m.)

9 (Reconvened at 10:54 a.m.)

10:54 10 BY MR. LOCKYER:

11 Q Yes, sir, I would like to take you to a document
12 that Commission Counsel took you to as well, it's
13 042831, and this is the report of the Saskatoon
14 (sic) Police Commission dated November 18th of
10:55 15 1991. And Commission Counsel took you to where --
16 some of the things you said to them and took you
17 through them, I just want to take you to 042905,
18 please. Now it would seem that the Commission
19 advises that they spoke to you on November 15th,
10:55 20 sir, which would be three days before their report
21 came out, November 15th, 1991. And on this page,
22 as you can see, you say, and I think I'm right in
23 saying Commission Counsel read this part out to
24 you, that:

25 "During this point he was most emphatic



1 that the investigation of Milgaard was a
2 thorough investigation and that all the
3 spurious statements made by Walsh and
4 Asper do not shake his belief that
5 Milgaard was responsible for the murder
6 of Gail Miller. He interjected that he
7 had gone to his Commission and wanted
8 them to counter the statements being
9 made but that the Commission would not.
10 He felt that there was an unjust attack
11 on his administration that was not being
12 answered. He further said that the
13 implications that there was a cover-up
14 and as much as sabotage of the files was
15 so much garbage. Going back to the time
16 of the investigation and trial the case
17 was so conclusive that once the
18 conviction was registered he was
19 satisfied that all appeals would be
20 successful also."

21 Now you are saying this, by the time you are
22 saying this everything that I took you through
23 just before the break had occurred, the last
24 event in the series of events having been
25 (V4)---- (V4)--- coming forward in August of 1991

10:56



1 and the media reporting on her claim that it was
2 Larry Fisher who had attacked her 20 minutes
3 after Gail Miller's murder; right? That was,
4 that's a piece of information for you as a basis
10:57 5 of what I am now going to ask you.

6 A Yes.

7 Q Umm, and it seems, sir, that even now you have
8 left the service -- you are not in the service as
9 of November 15th, '91; right?

10:57 10 A That's right.

11 Q Which is when you were interviewed, in --

12 A September the 1st, '91.

13 Q That your concern at this point is a concern not
14 related to looking into the allegations being made
10:57 15 by David Milgaard and his lawyers, not looking
16 into the allegations being made by the media to
17 see if they are in fact true, but rather reacting
18 on an assumption; (a) that David Milgaard killed
19 Gail Miller; and (b) therefore whatever they are
10:57 20 saying is wrong. That's essentially what's going
21 through your mind November 15th, 1991, is that
22 right, sir?

23 A That's correct.

24 Q So in a sense, to coin a phrase that's often used
10:58 25 in wrongful conviction cases, you are really, at



1 this point in time, in November 15th of 1991 you
2 are acting under what can be summarized as tunnel
3 vision?

4 A Well that's, that's your, obviously your attitude
10:58 5 and your suggestion. I still bring you back, with
6 respect, that while there was much in the media,
7 it was not evidence in my --

8 Q Uh-huh?

9 A And I obviously was labouring under the
10:58 10 requirement of evidential nature, not just what
11 someone said or what was in the newspaper or what
12 was in the media.

13 Q On reflection, sir, do you wish, now, that you had
14 said to yourself and to your police department
10:59 15 before you left it, 'there's all these allegations
16 in the media, let's investigate them and see if
17 they are true or not'; do you wish, on reflection,
18 you had done that?

19 A I'm not sure that I could have done that, to be
10:59 20 honest with you.

21 Q So, as police chief, you couldn't have done that?
22 You couldn't have ordered your detective, or two
23 or three, to pull out those Milgaard files and see
24 if what the media is saying is true, pull out the
10:59 25 Larry Fisher files to see whether or not what the



1 media is saying is true?

2 A Yes, I'm not certain that that would have been
3 within my capacity to do.

4 Q I can't understand why a police chief can't do
10:59 5 something like that?

6 A Well I think a lot of people don't understand the
7 limits of a police chief.

8 Q A police chief can't instruct his officers to
9 investigate a particular case?

11:00 10 A He can, --

11 Q Okay.

12 A -- but it's got to be reasonable, it's got to be
13 based on --

14 Q Well it's a national story that's going on, don't
11:00 15 you think it's reasonable for the chief of the
16 Saskatoon Police to say to the Saskatoon Police
17 Service that he runs, 'let's see if what the
18 nation is reading in the newspapers for breakfast
19 every morning is true or false, that we should
11:00 20 find out'; you couldn't do that?

21 A Your, your document already indicates --

22 Q I didn't hear you?

23 A Your document that you have placed forward already
24 indicates that I went to my principals, I had
11:00 25 suggested that --



1 Q Yes?

2 A -- I went to the Police Commission, my principals,
3 and --

4 Q Yes. You wanted them to counter the statements
11:00 5 being made, not to investigate whether the
6 statements being made were true or not?

7 A Right.

8 Q You just wanted them to publicly say 'the media is
9 full of it and it's all nonsense'?

11:00 10 A Well, that's how it's interpreted at this moment,
11 but --

12 Q That's how I'd read it.

13 A -- I was certainly looking for assistance to --

14 Q Uh-huh?

11:01 15 A -- to what was -- how the police department was
16 being battered by the, by the news accounts.

17 Q So do you think on reflection, sir, let's look at
18 this systemically, we've got another police force
19 in the position you were in with the media in an
11:01 20 uproar at a national level about what this
21 imaginary police force has done to a particular
22 individual; do you think, at the barest level
23 systemically, sir, it might be a good idea if
24 someone investigates the validity of the
11:01 25 accusations being made by the media?



1 A Well I have stated before and I still, still
2 maintain that when it went through the courts it
3 was then a responsibility of the Justice
4 Department to provide direction, be it to the
11:01 5 police department to investigate, or another
6 agency to investigate the allegations that were
7 made at that particular time, and I think that, in
8 a general sense, that's what was taking place.

9 Q So you wouldn't say at a systemic level to the
11:02 10 next police chief who was in the position that you
11 were in in 1990 to 1991, just to take those years,
12 'you, police chief, I would strongly advise you to
13 make sure and demand that someone, whether it's
14 your own force, another force independent of you,
11:02 15 a Justice Department, be it a provincial or at a
16 federal level, but someone in authority
17 investigate the allegations immediately so you
18 don't have to go through what I went through and
19 you don't end up making statements like I made
11:02 20 where I have got egg all over my face now'?

21 A Well I --

22 Q Would you not advise him that?

23 A Well, with respect, the very document that you
24 have put up on the screen is an investigation that
11:03 25 was carried out, it was carried out by the



1 Saskatchewan Police Commission.

2 Q Well, that's just an investigation into missing
3 files, I'm more interested in the overall series
4 of allegations. That was just one of the
11:03 5 multifarious allegations being made that was being
6 dealt with here. More important, is, is there an
7 innocent man in jail, that, surely that should
8 have been the focus and it wasn't; right?

9 A Well, I agree with you, but who makes that
11:03 10 decision.

11 Q There's a document, sir, that Commission Counsel
12 didn't raise that you provided to him I believe,
13 to counsel -- to the Commission, I believe, from
14 your own files, it's 324748, and I'm wondering if
11:01 15 you can identify whether or not you are the author
16 of it, sir, because I don't know the answer to the
17 question. Is this your document, sir, or not?

18 A Yes, it is.

19 Q That's your writing?

11:01 20 A Yes.

21 Q And you've read this through in recent weeks
22 presumably or --

23 A Yes.

24 Q You know what it is?

11:01 25 A Yes.



1 Q And would I be right in saying, sir, it would have
2 been written by you around 1991, it would have
3 been written by you?

4 A I don't know specifically, but I think it would be
11:02 5 after I retired. There was a certain amount of
6 pressure from the community because of the media
7 hype that was being presented at that time and
8 this was my notes which I presented to a public
9 group explaining my involvement to an extent and
11:02 10 what was, what had transpired in the conviction of
11 David Milgaard.

12 Q All right. It would suggest, I would suggest to
13 you, sir, it was -- certainly from what's written
14 in it, that it was likely written before -- while
11:02 15 you were still chief of police, but do you
16 remember distinctly that you were no longer chief
17 when you wrote this?

18 A I don't know for sure because I don't think I
19 put -- well, I know there's no date on it, so I
11:02 20 can't be certain.

21 Q It kind of self dates itself and I'll show you
22 how, sir.

23 A Okay.

24 Q Let's start from the beginning. It's a document
11:03 25 that you wrote called the Milgaard controversy,



1 it's nine pages long, sir, by my reckoning, and it
2 begins:

3 "During the past two years there has
4 been a disturbing and persistent
11:03 5 controversy concerning convicted
6 murderer David Milgaard.

7 The controversy dwells on the
8 supposed innocence of Milgaard mostly on
9 his persistent denial of guilt. He has
11:03 10 spent almost twenty-two years in custody
11 of his life imprisonment."

12 And that's where the hint comes.

13 A Yes.

14 Q As of January, 1991, January 30th, 1991 he would
11:03 15 have spent 22 years in custody, so it suggests you
16 wrote this just before January 30th, 1991. You
17 see the point?

18 A Yes.

19 Q Which would be while you were still chief, in
11:03 20 other words, that you wrote this?

21 A No. January of '91?

22 Q Yes.

23 A Yes, I guess I would have been, yes. Okay.

24 Q You go on:

11:04 25 "He has not been successful in winning



1 parole privileges."

2 Did you know, sir, that the reason -- or it was
3 certainly being suggested that the reason he
4 wasn't getting parole was because he wouldn't
11:04 5 admit that he had killed Gail Miller?

6 A I think I was kind of aware that that was one of
7 the conditions or condition.

8 Q "His sentence commits him to life
9 imprisonment or imprisonment and
11:04 10 supervised parole for the rest of his
11 life. To date and as recently as
12 October 31st, he has been repeatedly
13 denied parole privileges.

14 This controversy is perpetuated
11:04 15 by Milgaard's lawyer, family and the
16 media. They in their controversy ignore
17 the crime aspect and victim Gail Miller
18 who was brutally and viciously assaulted
19 and died on January 31st, 1969."

11:04 20 Now, of course I guess it would be fair to say,
21 sir, that if, as we now know, Gail Miller was not
22 killed by David Milgaard, it would be
23 extraordinarily unfair to her family to have them
24 believe that you had apprehended the man who had
11:05 25 killed their loved one when in fact you hadn't;



1 right?

2 A Right.

3 Q So insofar as they, your accusation that they are
4 ignoring the crime aspect and victim Gail Miller,
11:05 5 I suppose if insofar as they are projecting
6 David's innocence, you could say they are taking
7 into account the victim Gail Miller because the
8 real killer, her real killer has never been
9 apprehended; right?

11:05 10 A Well, at that point I guess --

11 Q You didn't know that at that point, but --

12 A Yeah.

13 Q But that's true nevertheless; right?

14 A Right.

11:05 15 Q You go on:

16 "I'm personally annoyed and disappointed
17 with the media in this whole affair
18 because of its biased, one-sided and
19 unsubstantiated reporting."

11:06 20 Of course, you didn't know if it was
21 unsubstantiated because you had never
22 investigated the truth behind what they were
23 reporting; right?

24 A Yes, that's true.

11:06 25 Q That's just your assumption that it was



1 unsubstantiated; correct?

2 A Yes.

3 Q "I'm further perplexed by the media's
4 attempt to smear my reputation along
5 with that of the Saskatoon Police
6 Force."

7 So you took all this very personally; is that
8 right, sir?

9 A Sure.

10 Q If you took it all personally, sir, you were
11 perhaps not a good person to be the judge of
12 whether or not the accusations being made by David
13 Milgaard and his lawyers were true, you were too
14 personally involved by this time; fair?

15 A Well --

16 Q It's a systemic question.

17 A That could be, yes.

18 Q "The media's persistent reporting of
19 innuendos and unsupported third-party
20 allegations are not easy to take
21 particularly when my principles were
22 also reluctant to --"

23 By principles, you mean your superior officers?

24 A No, that would be --

25 Q Your personal principles?



1 A The Board of Police Commissioners.

2 Q Oh, okay, my principles meaning the Board of
3 Commissioners:

4 "-- were also reluctant to become
11:07 5 involved and would not even provide a
6 verbal protest of the defamation
7 assaults that were freely being aired.
8 I find this opportunity to share the
9 real facts of the 1969 murder as a
11:07 10 vindictive reward --"

11 Is that right, vindictive, is that what it says?

12 A It appears, yeah.

13 Q Okay.

14 "-- which has not been available to me
11:07 15 because of my involved position in the
16 initial investigation and the inability
17 to comment publicly on the media
18 accounts.

19 The raised controversy in this
11:07 20 matter placed me and the police force in
21 a position where we could not publicly
22 become embroiled through defending
23 comments."

24 In fact, you did become publicly involved, you
11:08 25 issued a press release; right?



1 A I did release a press release, but I think it was
2 also made known that there were no facts included
3 in that press release.

4 Q Is this in preparation -- is this sort of a
11:08 5 thought of what you are going to present as a
6 press release? Who are you writing this for, who
7 is it addressed to when you write it?

8 A This was my notes which I verbally presented to a
9 group of people who had asked me to report.

11:08 10 Q To do what?

11 A To report or to talk to them as a result of the
12 controversy that was going on concerning the
13 Miller murder at that particular time.

14 Q And who were they, sir, the group?

11:08 15 A It was a group of the public.

16 Q What sector of the public?

17 A I think it was a, what do you call them, something
18 like the Rotary or something like that.

19 Q Kiwanis, Rotary, Lions, something like that?

11:09 20 A Yeah.

21 Q I see. So you were in fact then reacting
22 publicly, despite your saying that you couldn't,
23 in the course of giving this speech?

24 A Well, I felt obligated to provide them an
11:09 25 explanation. They had invited me to share with



1 them and that's what I was doing.

2 Q They invited you to speak about the Milgaard case?

3 A Yes.

4 Q And you agreed to do so?

11:09 5 A Yes.

6 Q All right. And then going on from where I left
7 off:

8 "The reasons are straightforward in that
9 any responses to Milgaard's appeal of a
11:09 10 specific obligation of the Federal
11 Justice Minister. It would be
12 inappropriate and contemptuous of me or
13 the police force to comment while the
14 minister is investigating Milgaard's
11:09 15 appeal."

16 Albeit that's exactly what you are doing, is you
17 give this speech?

18 A Yes.

19 Q Yes, all right. Now, if we move on, you then go
11:10 20 through why the sort of -- it'll take too long to
21 go through the whole document, but what you then
22 do for the next six or seven pages is go through
23 the facts as you perceived them as to why David
24 was in fact Gail's killer and then if we can go,
11:10 25 when you finish there, if we can go to the end,



1 324756, please, you say, starting here:

2 "What I find disturbing is not believing
3 that Milgaard's guilt or innocence is at
4 stake and that there are other motives
11:10 5 behind the scene.

6 - I keep wondering what is the media's
7 interest?

8 - I keep wondering whether Mr. Rushner's
9 publishing of a book on Milgaard's
11:10 10 supposed innocence has a bearing? Mr.
11 Rushner is a CBC employee in Winnipeg."

12 You really -- would it be fair to say, sir, on
13 reflection as we look at this, that you had
14 literally become paranoid about the media; isn't
11:11 15 that a good word to use? This reflects paranoia
16 doesn't it?

17 A It may to you, but you need to be in my shoes and
18 you would have felt some of these issues.

19 Q What do you think this is, some giant communist
11:11 20 conspiracy? I don't know what it is you've got in
21 mind, what you are suggesting here.

22 "- I keep wondering --"

23 You say,

24 "-- whether there's a political motive
11:11 25 in this affair?"



1 Like what political motive? I don't get it. To
2 bring a government down or -- I don't know. What
3 do you mean?

4 A Well, there was, in the controversy there were
11:11 5 concerns about, as I recall, there were direct
6 attempts to contact the prime minister of the day,
7 the justice minister of the day, that sort of
8 issue that was in the controversy.

9 Q This is truly paranoia on your part, isn't it,
10 sir?

11 A Well, that may be your opinion.

12 Q One thing we can take from this is that there's
13 one person and one organization, if only because
14 you led it at the time, that shouldn't be involved
11:12 15 in trying to uncover the truth in who murdered
16 Gail Miller, it was you and the Saskatoon Police
17 Department; right?

18 A Well, I don't agree with it under the
19 circumstances. I honestly believe that direction
11:12 20 had to, it had to come, under the circumstances,
21 after the conviction.

22 Q From you?

23 A The direction had to come from the justice
24 department, either federal or provincial.

11:13 25 Q You go on saying:



1 "- I keep wondering whether there is a
2 political motive in this affair in light
3 of the severe criticisms that the
4 Justice Minister and the Government has
11:13 5 had to endure.

6 - I understand that defence lawyer Asper
7 has an obligation to his client,
8 however, his comments are inconsistent
9 with an officer of the Court with his
11:13 10 defence and responsibility to his
11 client.

12 - I wonder about the reliability of an
13 American private investigation agency
14 which promotes itself under the auspices
11:13 15 of religion."

16 What you meant by that, Jim McCloskey, who ran,
17 and still does, Centurion Ministries, was a
18 former chaplain in the American services; right?

19 A I don't know that about him.

11:13 20 Q Well, you knew he was Reverend McCloskey?

21 A I knew that, yes.

22 Q Yes, I see. So you just threw in a series of
23 insults about his agency as you spoke to this
24 group of people, Lions, whatever they were; right?

11:14 25 A This is a summary of my understanding of the



1 situation at that point in time.

2 Q Who you say is verifying the quality of the facts
3 they are so loosely throwing around.

4 "I know that the Federal Justice
11:14 5 Department is following up on all these
6 allegations and that the claims cannot
7 stand the test of Canadian law as it
8 applies to credibility."

9 You must really, now looking back, sir,
11:14 10 reflecting on this, regret these things that you
11 said do you? Is that fair?

12 A I'm not so sure that I regret, under the
13 circumstances, having to withdraw any of this.

14 Q You don't regret it?

11:14 15 A No, under the circumstances at that particular
16 time.

17 Q No, but I'm talking about now, you regret that you
18 said those things?

19 A Many things have happened since this was done.

11:14 20 Q Well, I know, but I'm just asking you, do you
21 regret now that you said those things, you wish
22 you hadn't said them?

23 A Well, obviously.

24 Q Uh-huh, okay, that's all I'm asking you and I'm
11:15 25 glad to hear you do. It's what I wanted to hear.



1 You go on to say:

2 "- I do recognize Mrs. Milgaard's
3 actions, she is a mother and always
4 maintained that her son could not have
11:15 5 committed such a heinous crime.

6 There are other little known facts which
7 are not being shared with the public
8 which may not be evidence of Milgaard's
9 guilt, however -- "

11:15 10 Sorry, I'm not sure I'm reading this right.

11 "There are other little known facts
12 which are not being shared with the
13 public -- "

14 I think the "not" shouldn't be there, I think
11:15 15 what you are trying to say "... which may be
16 evidence of Milgaard's guilt, however, and
17 significant if media reports are to be fair." Do
18 you think I've read it as you meant to write it?
19 I'm not sure it makes any sense with the word not
11:15 20 there. And then you -- I'll leave that, I just
21 think that's a matter of sense. And then you
22 say:

23 "Milgaard was prior to the murder a
24 patient for psychiatric disorder.
11:16 25 He was a drug user/abuser.



1 He was known for his sexual
2 aggressiveness.

3 He escaped twice from custody.

4 That he has consistently been denied
11:16 5 parole during his imprisonment."

6 And then you were going to answer any questions.
7 Do you remember effectively saying all that, sir,
8 to this group of people that you were addressing?

9 A Well, I go by this particular document and I did
11:16 10 obviously address those issues.

11 Q Let me just try one more time, sir, a systemic
12 level, if you had to advise a police chief in your
13 position at a future date who, facing a similar
14 position that you were facing as you perceived it
11:16 15 in 1990, 1991, would your advice be something like
16 this, first of all, investigate the allegations,
17 but don't do it yourself. Would that be good
18 advice do you think, sir?

19 A Yes.

11:17 20 Q Have someone do it for you?

21 A Yes.

22 Q Make sure they do it; correct?

23 A Yes.

24 Q Tell them to do it?

11:17 25 A Well, that's --



1 Q As best you can?

2 A Well, okay.

3 Q All right. I don't mean point a gun at them and
4 say do it or I'll shoot, all right. And don't
11:17 5 comment yourself at all until you have found out
6 the facts yourself. Is that fair advice?

7 A That's sound advice, yes.

8 Q And don't assume that the media has necessarily
9 got it wrong until you've checked it out. Not bad
11:17 10 advice?

11 A Well, that's -- I think that's fair as well.

12 Q And do you know what, in the Milgaard case you
13 could say to the police chief, in many ways it
14 could be said it was thanks to the media that he
11:18 15 got out of jail when he did in 1992 as it was;
16 right?

17 A Yes.

18 Q You've seen that?

19 A Yes.

11:18 20 Q I want to move on, sir, to what Commission Counsel
21 called the fork in the road and I call, I suggest
22 it might be called the turning point, May 16th.
23 In a way May 16th, as it turned out, was really
24 the point of no return, is that right, focus on
11:18 25 David Milgaard and it wasn't until 28 years



1 later -- sorry, 30 -- 28 years later that everyone
2 came to appreciate that he was the wrong direction
3 to go; right?

4 A Well, the only caveat would be the fact that there
11:18 5 was support, there was support as a result of
6 following that particular --

7 Q And then we -- sorry. We know that in the days of
8 May 22nd to 24th of 1969 Nichol John and Ronald
9 Wilson came to give new statements that were in
11:19 10 stark contrast to their original statements and
11 new statements which, to a considerable degree,
12 matched the theory presented on the last page of
13 the five page briefing document for the May 16th
14 meeting; right?

11:19 15 A It certainly can be interpreted that way, yes.

16 Q And what happened in those days, May 22 to May 24,
17 really did dictate what happened thereafter,
18 because what happened on those days, those new
19 statements led to David Milgaard's arrest for the
11:20 20 murder of Gail Miller and everything that happened
21 over the next 20 to 30 years; right?

22 A That's true, but it was supported by evidence
23 that --

24 Q And -- sorry?

11:20 25 A And it was supported by evidence that eventually



1 provided a conviction.

2 Q And one of the things, sir, that is noticeable
3 about those seminal days, May 22nd to May 24th, is
4 an absence of a complete or indeed a good record
11:20 5 of what happened during the course of those days.
6 Did you know that, sir?

7 A I'm finding that out, yes.

8 Q And, for example, and I'm only going to do an
9 example because I don't want to spend a lot of
11:20 10 time on this, but if we look at Nichol John and
11 look at Mackie's report, 025176, for May 29th of
12 '69 or -- yeah, '69, 025176, Mackie is the one
13 sort of in charge, you might say, of Nichol John
14 as best I can tell in these days, May 22nd to May
11:21 15 24th, and he describes on this report how he picks
16 her up, drives her into Saskatoon -- picks her up
17 in Regina, drives her to Saskatoon, drives her to
18 the murder scene, takes her around the murder
19 scene, talks about, it's all on the first page,
11:21 20 some of the things she says at the murder scene,
21 and then we get to the bottom here, he says:

22 "I drove her into the alley at the rear
23 of the funeral home."

24 He then says:

11:22 25 "Shortly after this I returned to the



1 police station where Nichole John was
2 interviewed in regard to LSD trips she
3 had been on and nightmares she had been
4 having since this offence occurred. At
11:22 5 this time it appeared that Nichole John
6 had forgotten a great deal of what had
7 happened, possibly due to shock of what
8 she had witnessed."

9 So there's an acknowledgement here, if nothing
11:22 10 else, by Mackie that she had forgotten events as
11 opposed to was falsely denying events. Do you
12 see the difference; right?

13 A That's what the report suggests.

14 Q Yes.

11:22 15 "... possibly due to shock of what she
16 witnessed. At approximately 10:00 PM I
17 proceeded to Cavalier hotel where Supt.
18 Wood, Lieut. Penkala and I interviewed
19 Insp. Roberts of Calgary police, in
11:22 20 regards to this file, so that he would
21 be able to interrogate Ron Wilson and
22 Nichole John for us on the 23rd."

23 Next page:

24 "On May 24th I returned to Regina with
11:23 25 Ronald Wilson and Nichole John."



1 So he's completely skipped the events between
2 what happens when he talks to Roberts and two
3 days later when he's driving Nichol John back to
4 Regina. Do you see?

11:23 5 A I see what you are saying, yeah.

6 Q And the only record we have from Mackie, written
7 record, that is, of what happened in this
8 intervening period, is the statement that he took
9 from her on May the 24th, I hope I've got my day
11:23 10 right, but yes, on May the 24th, but nothing about
11 what happened before that, during it and after it,
12 so Nichol John has, on his report, gone from she
13 can't remember things because of her distress to
14 giving a statement without any context written
11:23 15 down about the giving of the statement to driving
16 her back to Regina. Do you see the point, the
17 absence of any writing about what happened to
18 cause her to go from, in effect, a completely
19 exculpatory statement that matched, in essence,
11:24 20 everything David and Ronald Wilson had said in
21 their earlier statements as well, to a statement
22 where she's saying, in effect, I saw David
23 Milgaard stab Gail Miller, but a complete absence
24 of how all that had come about. Do you see the
11:24 25 point, sir?



1 A I understand what you are saying, yes.

2 Q And I want to show you, sir, and I think I told
3 you this yesterday, that I was going to, that
4 there's a remarkable comparison here with the case
11:24 5 of Guy Paul Morin, where really the same thing
6 happened at the same point in the investigation,
7 in an investigation of the same kind of profile as
8 this one, quickly take you through that and then
9 put to you the recommendation that came out of
11:24 10 that inquiry and ask you if you think it might not
11 be a bad recommendation for this inquiry as well.

12 In Guy Paul Morin's case, sir,
13 to give it to you in a nutshell, Christine Jessop
14 disappeared on October the 4th of 1984. Her body
11:25 15 was found, she had been raped and murdered, she
16 was a nine year old girl, on December the 31st of
17 1984, so three months later in essence.

18 The police, in the ensuing
19 months, both the York region police who had
11:25 20 investigated her disappearance before her body was
21 found and then the Durham region police after it
22 was found, and the two different jurisdictions
23 because her body was found in Durham region but
24 she disappeared in York region. You follow me?

11:25 25 A Yes.



1 Q So you've got two different police forces at work
2 here, were getting nowhere in their
3 investigations, sir. It was, like Gail Miller, a
4 very high profile crime, the rape/murder of a nine
11:26 5 year old girl. The police, as in Gail Miller, by
6 the time you had your meeting on May 16th, seemed
7 to be getting nowhere in terms of finding a
8 culprit.

9 If we, and I'm using the report
11:26 10 for this, sir, if we go to the report, by March
11 6th -- no, sorry, I don't mean that report, it's a
12 report you don't have.

13 By March 6th of 1985, sir, this
14 was the dilemma the police had. They had a
11:26 15 suspect, Guy Paul Morin, the neighbour of the
16 Jessops. The problem was, with the investigation,
17 that the Jessops claimed, both to the York region
18 police before the body was found and to Durham
19 region after Christine's body was found that they
11:27 20 got home that day at 10 past four in the afternoon
21 on the day she disappeared. Do you follow?

22 A Yes.

23 Q If that was the case, then Guy Paul Morin could
24 not have been the person who abducted her because
11:27 25 he had punched out from work at 3:32 that



1 afternoon and the police determined that he could
2 not have got home until 14 minutes past four, so
3 he couldn't have been the one to abduct Christine
4 before Mrs. Jessop and her other son came home.
11:27 5 Do you follow?

6 A I'm listening, yes.

7 Q So in essence, the Jessops, Mrs. Jessop and her
8 son gave an absolute alibi, if you like, to Guy
9 Paul Morin if 4:10 was right. They had one
11:28 10 glimmer of a window of opportunity because in one
11 of his statements Ken Jessop had suggested, the
12 brother, that they may have got home as late as
13 4:20, but nothing better than that, and meanwhile
14 the mother was still saying 4:10. This is what
11:28 15 Justice Kaufman wrote, and it's at page 807 of his
16 report.

17 "On March 6th, 1985 --"

18 And March 6th is really the equivalent of your
19 May 16th, sir -- or perhaps I'll start with this,
11:28 20 at page 803, Shephard and Fitzpatrick, the
21 investigating officers, ascertained that
22 Mr. Morin had punched out of work at 3:32 p.m.
23 Sorry, I've skipped a page. In a timing run
24 conducted on May 26th, 1985 at normal speeds
11:28 25 travelling the same route, a timing run from ILL,



1 where he worked, to the Morin residence took 42
2 minutes, which meant that the earliest Guy Paul
3 Morin could have arrived at home was at 4:14 p.m.

4 At page 807, Fitzpatrick and
11:29 5 Shephard were certain that the Jessops had erred
6 in putting forward the arrival time as 4:10 p.m.
7 On March 6th, 1985 at 10:45 a.m., Fitzpatrick and
8 Shephard went to the Jessop residence to
9 interview Ken and Janet regarding the timing of
11:29 10 their activities on October 3rd, 1984. Detective
11 Fitzpatrick told the inquiry that although he
12 could not specifically recall doing so, he was
13 sure he read the York region reports, or tried
14 to, before going there, had checked the reports
11:29 15 concerning times. The evidence of both Detective
16 Fitzpatrick and Inspector Shephard was that Janet
17 and Ken Jessop were not separated during the
18 interview, despite Janet Jessop's interjections
19 during their interview of Ken Jessop three weeks
11:29 20 earlier, the interview was not tape recorded, no
21 formal statement was taken, nor were there
22 detailed notes in the officers' notebooks of this
23 two and one half hour meeting. Detective
24 Fitzpatrick's rough foolscap notes were discarded
11:30 25 or were mislaid before trial. The only record of



1 the interview is a supplementary report prepared
2 by Detective Fitzpatrick on March 11th, '85, five
3 days later. It states as follows: On March 6,
4 '85 at 11 in the morning Detectives Fitzpatrick
11:30 5 and Shephard attend at Queensville and
6 interviewed Janet and Ken Jessop with regards to
7 the times they had arrived home on October 3rd,
8 '84. Through taking them both step by step
9 through their times and their travelling on that
11:30 10 date, it was found that Janet and Ken arrived
11 home sometime around 4:35 p.m.

12 So suddenly what happened is
13 that on March 6th they created a window of
14 opportunity for Guy Paul Morin to have got home
11:31 15 by 4:14, abducted Christine Jessop from the home
16 and subsequently murdered her many miles away.
17 You understand the parallel, sir?

18 A Yes.

19 Q Fitzpatrick and Shephard decided that Mrs. Jessop
11:31 20 and her son must be wrong just as you decided on
21 May 16th that what John and Wilson have been
22 saying must be wrong; just as you decided John and
23 Wilson must be re-interviewed so they could get it
24 right, Shephard and Fitzpatrick decided that they
11:31 25 must re-interview the two Jessops so they could



1 get it "right." In both cases what happened
2 thereafter, on March 6th, '85, in Guy Paul Morin's
3 case, between January (sic) 22nd and 24th, '69 in
4 David Milgaard's case, there's a completely
11:32 5 inadequate record of what happened to cause the
6 witnesses who exculpated the suspect to now
7 inculcate the suspect. Do you see the point?

8 A Yes.

9 Q It's the same type of case, sir, high-profile, a
11:34 10 rape/murder, Guy Paul Morin's case a little girl,
11 your case a young nurse; the parallels are
12 extraordinary, don't you think?

13 A Yes.

14 Q In your case, sir, you had been unsuccessfully
11:35 15 investigating the murder of Gail Miller, a
16 high-profile case, since January 31st, by May
17 16th, for 1, 2, 3 1/2 months; right?

18 A That's right.

19 Q In the case of a disappearance and the murder of
11:35 20 Christine Jessop, she disappeared in early October
21 -- I think I might have said October 4th, I should
22 have said October 3rd of 1984 -- for 1, 2, 3, by
23 March 6th 4, 5, we're into 5 months, the
24 investigators are getting nowhere, their only
11:35 25 suspect has an absolute alibi and it's 2 months



1 after the finding of the body; once again the
2 pressure is clearly there on the police to try and
3 further develop a case against their suspect. Do
4 you see the point?

11:35 5 A Yes.

6 Q The parallels?

7 A Yes, I see it.

8 Q Justice Kaufman, sir -- and I might say that
9 insofar as I have read to you from the report, I
11:35 10 have done a little bit of editing here and there
11 rather than read everything, because a lot of it
12 wouldn't make sense to those of us who don't know
13 the case well enough, but then we go to his
14 recommendations. It's recommendation number 98,
11:36 15 sir, at page 1,209 of Justice Kaufman, this is
16 what he says under the heading Police videotaping
17 of designated witnesses, and this is all in the
18 context of what happened on March 6th, 1985 that
19 he makes his recommendation:

11:36 20 "The Durham Regional Police Service
21 should implement a similar policy for
22 interviews conducted of significant
23 witnesses in serious cases where it is
24 reasonably foreseeable that their
25 testimony may be challenged at trial.



1 This policy extends, but is not limited
2 to, unsavoury, highly suggestible or
3 impressionable witnesses whose
4 anticipated evidence may be shaped,
5 advertently or inadvertently, by the
6 interview process. The Ministry of the
7 Solicitor General should assist in
8 implementing this policy (in the very
9 least) for all major Ontario police
10 forces."

11 Good recommendation, sir?

12 A It sounds very good to me, yes.

13 Q Might have helped, or indeed it would have helped
14 to understand somewhat better, both at the time of
11:37 15 his trial in 1970 and thereafter right up to now,
16 here at this Inquiry, if that recommendation had
17 been in existence and followed back in 1969,
18 between January (sic) 22nd and January (sic) 24th
19 of 1969; you agree, sir?

11:37 20 A I agree.

21 Q We wouldn't be here wondering what happened in
22 those two days, we would be able to watch what
23 happened during those two days; right?

24 A That's reasonable, yes.

11:37 25 Q I have suggested to you, sir, that you personally



1 -- and I, and I don't really, don't want you to
2 take this as an insult, but I have suggested to
3 you personally that you were operating under, at a
4 minimum, under tunnel vision back in the period,
11:38 5 really from 1969 right through to that speech you
6 gave in 1991 it was still, I suggest to you,
7 evident there, and I know you have said you don't
8 think you were, but did you follow, sir, when the
9 DNA results came out in July of 1997? Did you --
11:38 10 or let's start with the 1992 release of David from
11 prison by the Supreme Court of Canada. Did you
12 follow the comments made to media by various
13 authorities back then, when he was released in
14 1992, in February of '92 -- April, sorry, right,
11:38 15 April of '92; did you?

16 A I may have. I'm not quite certain.

17 Q Am I right -- and am I right in saying, sir, your
18 best memory is that the position of the Saskatoon
19 Police, of Saskatchewan Justice at that point in
11:39 20 time, was that David Milgaard had really got away
21 with it in 1992, he had committed the crime but
22 the Supreme Court of Canada had let him go?

23 A I don't, I don't specifically recall it in that,
24 in those type of terms.

11:39 25 Q Do you remember -- sorry?



1 A I do, in a general sense, I recall the Supreme
2 Court instructing that David Milgaard be released
3 and that there be a retrial and turning it back to
4 the, to the Justice Department of Saskatchewan to
11:39 5 deal with it.

6 Q Do you remember, sir, that it went right up to the
7 Attorney General of Saskatchewan who told *The*
8 *Globe and Mail* in an interview after David's
9 release by the Supreme Court of Canada, and I
11:40 10 quote, "I think he was properly convicted. I
11 think he did it." It went that high. Do you
12 remember that, sir?

13 A I, I don't specifically remember, but that could
14 very well be.

11:40 15 Q At 077508 where what he said is quoted -- sorry,
16 that's not the actual time he said it, I thought I
17 was going to bring up that news -- I don't know
18 the reference where, the *Globe* article where he
19 actually said it, but this article refers to where
11:40 20 he had said it after the DNA results came out.
21 Sorry, sorry Mr. Commissioner, it was not the
22 right reference, really.

23 But doesn't that suggest, sir,
24 that the tunnel vision that I have put to you
11:41 25 existed in this case, it didn't just infect the



1 Saskatchewan police service but it infected
2 Saskatchewan Justice, right up to the very
3 minister himself?

4 A Well that's, that's an easy assumption to have
11:41 5 been made, but I personally -- I personally know
6 from my own I wasn't the only one involved, and
7 you are suggesting I had tunnel vision, I don't
8 know if I can be a judge of my own --

9 Q Fair enough.

11:41 10 A -- requirements in that regard but I feel very
11 confident that I would be open to anything that
12 would be fair and just and right. And I would
13 respectfully, again, remind you that there were a
14 number of people; were they all suffering from
11:41 15 tunnel vision?

16 Q I'm saying I agree, including the Attorney General
17 of Saskatchewan, I mean that's the point I'm
18 trying to make to you. I'm not trying to say that
19 you were the only one by any stretch of the
11:42 20 imagination, but if it's -- the infect -- the
21 infection goes right through to the very top, as I
22 suggest to you it did in this case, then clearly
23 some type of systemic recommendations are needed,
24 would you agree, to avoid this kind of reaction to
11:42 25 happen in the future when the next person comes



1 along and says 'I have been convicted of a crime I
2 didn't commit'.

3 A Well that goes without question, that if there is
4 a -- ways to prevent such a reoccurrence, it
11:42 5 should be taken.

6 Q You said it yourself, sir, from what you had said
7 to the media that was read to you by Commission
8 Counsel after the DNA results came out. This is
9 what the media reported you as, and it was read to
11:42 10 you yesterday:

11 " 'God knows how this could have
12 happened. I don't know. I just don't
13 know' ."

14 Do you remember that's what you were reported as
11:43 15 saying?

16 A Yes.

17 Q And of course one of the ways it happened, or many
18 of the ways it happened we've been through, you
19 and I, in the course of the questioning yesterday
11:43 20 and today, you have seen a lot of how it happened
21 going right back to non-disclosure at the time of
22 David Milgaard's trial in 1969-1970; right?

23 A Well that's, that's what you are proposing, yes.

24 Q Well I'm not sure you disagree with that proposal.

11:43 25 I mean we've been right through what happened in



1 '69 and thereafter and you have seen, one after
2 another, a series of events that happened that, in
3 one way or another, prevented David Milgaard from
4 being able to establish his innocence.

11:43 5 A I guess my reaction is whether it was the police
6 responsibility to share the information with
7 defence counsel, I -- that's the point that I was
8 dwelling on, and I'm not sure what transpired
9 between the Crown and defence counsel.

11:44 10 Q Did you follow the reaction of the Saskatoon
11 Police Service, sir, when the DNA results were
12 published?

13 A The reaction?

14 Q Of the Saskatchewan police service -- Saskatoon
11:44 15 Police Service, I'm sorry, when the results were
16 published for the DNA?

17 A Well, you know, I suspect that there were a
18 variety of views and I'm not sure --

19 Q No, I mean by senior officers, I'm sorry. I don't
11:44 20 mean by the man on the beat, so to speak, I mean
21 the official reaction, the official public
22 reaction of the Saskatoon Police Service when the
23 --

24 A I --

11:44 25 Q -- DNA results came out?



1 A I would have been gone at that point and, as I
2 have stated before, there's -- once you leave
3 there the door kind of closes and you are a
4 civilian and there's -- you don't have access to
11:45 5 the kinds of things that you are --

6 Q Well let's --

7 A -- asking me to provide you.

8 Q I'm asking you did you read the papers, in
9 essence, that's what I'm asking you?

11:45 10 A Well, yes, well of course the paper was there,
11 yes.

12 Q Yes. I want to ask you as a former chief, sir, to
13 comment on this. Could we go to 229780, please.
14 This is a report of *The Globe and Mail*, sir, the
11:45 15 day after the results have been obtained, the DNA
16 results, because newspapers obviously are always a
17 day late so to speak. So that would be July the
18 19th, Saturday, July the 19th, 1997, 229780.

19 MS. BOSWELL (Document Manager): It's
11:46 20 coming.

21 BY MR. LOCKYER:

22 Q Yes. Did you know a Staff Sergeant Glenn
23 Thompson, sir, presumably?

24 A Of the Saskatoon Police Department?

11:46 25 Q Yes.



1 A Yes.

2 Q This was, I raised this issue once before, Mr.
3 Commissioner, and suggested his name was Hall by
4 memory, and I was wrong, it was Staff Sergeant
11:46 5 Thompson was the name that I was trying to
6 remember and I, for some reason, remembered his
7 name as being Hall, and I have no idea why but I
8 did. Could we expand it just down here, please:

9 "Meanwhile ...",

11:46 10 it says starting here, sir:

11 "... Saskatoon Police have re-opened the
12 investigation of the Miller slaying.

13 Mr. Fisher, who says he is
14 innocent of the crime, was interviewed
11:46 15 by police late yesterday. A spokesman
16 for the Saskatoon Police Service said no
17 one has been arrested and Mr. Fisher is
18 not necessarily a suspect.

19 'He's the same person he was
11:47 20 yesterday,' Staff Sergeant Glenn
21 Thompson said. 'Assuming it was Mr.
22 Fisher's semen on the clothing, all that
23 shows is that he was in contact with the
24 victim, it doesn't say Mr. Milgaard
11:47 25 didn't commit the murder. It wouldn't



1 be fair to say ...'",

2 it's a bit higher up:

3 "... this clears one person and

4 implicates another.'" "

11:47 5 Now do you think, sir, that's a reflection of an
6 extraordinary tunnel vision on the part of the
7 Saskatoon Police Service, what Staff Sergeant
8 Glenn Thompson has said there?

9 A I suspect that that kind of an interpretation
11:47 10 could be made, however --

11 Q Yeah?

12 A -- when you look at that statement, and obviously
13 there were no facts that -- that were presented at
14 that time regarding Mr. Fisher --

11:47 15 Q Yes there were. The DNA had been identified as
16 his.

17 A But that was all just in the media, I don't think
18 it was a situation where the Saskatoon Police
19 Department was provided with a specific affidavit
11:48 20 saying 'under the circumstances Mr. Fisher is
21 responsible for this particular, particular
22 murder, and go and arrest him'.

23 Q I can't believe you are defending his remarks.
24 Are you defending this remark by Sergeant
11:48 25 Thompson?



1 A No. I'm just saying there is another, there is
2 another avenue, you are suggesting one thing but
3 there is another avenue.

4 Q And the other avenue is tunnel vision at its
11:48 5 worst, isn't it sir, it's an avenue with a tunnel
6 right round it that Staff Sergeant Glenn Thompson
7 is stuck in; isn't it?

8 A Well, you know, that's certainly one avenue, yes.

9 Q Yes. And if we look at 148025, sir, we'll see
11:49 10 what your successor had to say about it, Chief
11 Scott.

12 MS. BOSWELL (Document Manager): You are
13 giving us numbers we don't have on CaseVault.

14 MR. LOCKYER: That's all right, I just want
11:49 15 to make sure you have them.

16 BY MR. LOCKYER:

17 Q This is what your successor had to say, sir, and
18 this, I believe I'm right in saying, is the, the
19 Saskatoon *Star-Phoenix*, *StarPhoenix*. Sorry, yeah,
11:50 20 it is, I'm sorry, it says it is. And this is what
21 it says, sir, I'm not going to read the whole
22 thing but a good part of it:

23 "Saskatoon Police handed the
24 Gail Miller murder investigation to the
11:50 25 RCMP to avoid charges of a coverup,



1 police Chief Dave Scott said Wednesday."

2 And this would be, we're now about, this is the
3 Wednesday after the DNA results which had been
4 obtained on the previous Friday so we've moved on
11:50 5 five days, all right. You follow me?

6 A Yes, I --

7 Q I'm sorry, I don't have a date, but I guess I can
8 work it out. 23, it would be the 23rd of July,
9 this article, of 1997 -- sorry, it would be the
11:50 10 24th because it's a day after the Wednesday, so it
11 would be -- this would be Thursday the 24th of
12 July that this is written:

13 "Saskatoon Police handed the
14 Gail Miller murder investigation to the
11:50 15 RCMP to avoid charges of a coverup,
16 police Chief Dave Scott said Wednesday.

17 Scott flew home from holidays
18 on Wednesday, six days after DNA tests
19 cleared David Milgaard of Gail Miller's
11:51 20 rape and murder."

21 So, you see, *The StarPhoenix* has no problem
22 suggesting that the DNA results have cleared
23 David Milgaard of the murder, right, they have
24 said it simply as a fact.

11:51 25 "Scott offered no apology to



1 Milgaard, nor did he acknowledge the
2 likelihood that Milgaard didn't kill
3 Miller."

4 We're five days on here, sir, and the police
11:51 5 chief, even though the Federal Minister of
6 Justice within hours of the announcement of the
7 results on the 18th of July had publicly gone to
8 a microphone and apologized, Anne Mclellan; the
9 Saskatchewan Justice Minister whose name I forget
11:51 10 had gone to a microphone and publicly apologized
11 on the same day the results came out; we've moved
12 on five days and your successor is offering no
13 apology to Milgaard, nor is he acknowledging the
14 possibility that Milgaard didn't kill Gail
11:52 15 Miller. Look how he uses his words, sir, how
16 carefully he uses his words:

17 "It's always unfortunate
18 when someone goes to jail wrongly.
19 Evidence must be looked at to either
11:52 20 implicate or exonerate suspects. We
21 accept that Milgaard did not make the
22 sample DNA stains that were tested,'
23 Scott told reporters at a news
24 conference."

11:52 25 That's very nice of him, really -- I'm being a



1 little sarcastic -- don't you think, sir?

2 A That --

3 Q To accept that the DNA results showed it wasn't
4 Milgaard, but he just doesn't seem, he is not
11:52 5 prepared to take it the extra step, 'so David
6 Milgaard didn't kill Gail Miller'. Do you see
7 that? We're even five days down the road and your
8 successor isn't prepared to acknowledge this.
9 What's wrong in the Saskatoon Police Service that,
11:52 10 five days later, the chief of police is still not
11 prepared to acknowledge David Milgaard's
12 innocence? How bad was the tunnel vision, sir?
13 Can you answer that? I mean I -- maybe it's a
14 very unfair question, but you were there just
11:53 15 before this.

16 A I think, I think this would be a question for
17 Chief Scott to answer.

18 Q It would, but he is the man who came after you, --

19 A Well --

11:53 20 Q -- and you were in the department, you know, not
21 long before this.

22 A I would like to remind you that there was another
23 chief between my tenure and Dave Scott.

24 Q Oh, I didn't know that, but he is still a
11:53 25 successor to you once removed.



1 A Yes.

2 Q That --

3 COMMISSIONER MacCALLUM: Before I lose
4 track of this, I wonder if I could have the
11:53 5 CaseVault references for the *Globe* report which
6 you gave as 229780?

7 MR. LOCKYER: 229780, yes, Mr.
8 Commissioner.

9 COMMISSIONER MacCALLUM: And what's the
11:53 10 CaseVault for that?

11 MR. LOCKYER: That is the CaseVault.

12 COMMISSIONER MacCALLUM: Is it? Okay. And
13 how about 148025?

14 MR. LOCKYER: That is the CaseVault.

15 COMMISSIONER MacCALLUM: That is the
16 CaseVault?

17 MR. LOCKYER: Yes.

18 MS. BOSWELL (Document Manager): But they
19 are not on CaseVault.

20 COMMISSIONER MacCALLUM: They are not on
21 CaseVault.

22 MR. LOCKYER: Oh, they're not?

23 COMMISSIONER MacCALLUM: That is? I see
24 the problem. Thank you very much.

11:54 25 BY MR. LOCKYER:



1 Q I'm sorry, I don't understand those two things,
2 Mr. Commissioner. Going on:

3 "When asked whether Milgaard
4 was sent to jail wrongly, Scott replied:
11:54 5 'I wouldn't want to comment on whether
6 he did or not. At this point, I do not
7 know. Maybe he didn't, maybe he did.
8 That will come out of an
9 investigation.'"

11:54 10 I -- let me ask you this, sir; do you think you
11 would have said these things if you had still
12 been chief and if the DNA results had just come
13 out during your tenure as police chief?

14 A With the circumstances that I am aware of, I would
11:54 15 be inclined to answer it similarly to --

16 Q You would have.

17 A -- Chief Scott, because there was an absence of
18 support at that stage.

19 Q An absence of support of what?

11:54 20 A Of the suggestion that Milgaard was totally
21 exonerated and that someone else was responsible
22 for the murder.

23 Q Well the -- then what's the theory, sir, what
24 would you have had in mind as to a possible
11:55 25 theory?



1 A Well I'm not sure just at what point this all
2 occurred. This was after the announcement, the
3 public announcement of DNA identification.

4 Q Five days after.

11:55 5 A Five days after.

6 Q Five days had passed. As far as --

7 A And I would assume that Chief Scott was not aware
8 of all the particulars, even though the
9 announcement was made publicly in the media.

11:55 10 Q Well it was the front page of every newspaper in
11 the country, sir, how could you miss it?

12 A Well I guess it, it goes back to my interpretation
13 of what you rely on, whether you rely on newspaper
14 articles or whether you rely on justifiable
11:55 15 documentation from appropriate authorities.

16 Q What about the Federal Minister of Justice
17 publicly apologizing for David Milgaard's wrongful
18 conviction; do you put any reliability in that or
19 not?

11:56 20 A I suppose you could, but --

21 Q You could, yeah, I suppose. What about the
22 Saskatchewan Attorney General publicly apologizing
23 in a microphone; do you put any reliance in that,
24 that just maybe these people knew what they were
11:56 25 talking about?



1 A Of course.

2 Q What about the prosecutors? Even they by this
3 time, Kujawa, Mr. Kujawa and Mr. Caldwell had
4 publicly apologized; do you think you might put
11:56 5 some credence in that, if you were a police chief,
6 by this time?

7 A That's, that's a possibility.

8 Q Uh-huh. I mean this truly reflects, doesn't it
9 sir, on the part of Officer Scott, an
11:56 10 extraordinary tunnel vision on the part of the
11 Saskatoon City Police; that even with irrefutable
12 DNA evidence showing who did it and who didn't do
13 it --

14 COMMISSIONER MacCALLUM: Did what?

11:56 15 MR. LOCKYER: Killed Gail Miller.

16 COMMISSIONER MacCALLUM: Killed Gail
17 Miller; is that what you are saying?

18 BY MR. LOCKYER:

19 Q Yes, that who did it and didn't do it, they still
11:57 20 couldn't accept it; isn't it -- don't you agree?

21 A Well I think, I think in the police world there is
22 a certain amount of cautiousness that exists, and
23 you are interpreting it in terms of tunnel vision
24 and the likes of that, but there is a cautiousness
11:57 25 within the police society that provides for not



1 sharing and making statements that can reflect
2 back on the case.

3 Q But Chief Scott, sir, isn't being cautious.
4 That's the problem. He is suggesting here, sir,
11:57 5 that David Milgaard may have been the killer of
6 Gail Miller five days after the DNA results.
7 That's the opposite of cautious. He is making an
8 extraordinary and I would suggest utterly
9 ridiculous statement to the media really casting
11:58 10 himself in the eyes of right-thinking people, I
11 would suggest, as something of a buffoon?

12 A I read it, yeah, the comment being that:
13 "At this point, I do not
14 know. Maybe he did ...",
11:58 15 or I'm sorry, yeah.

16 Q I mean a cautious chief of police, if you really
17 want to be cautious, might do nothing, say
18 nothing, just not say anything to the media, but
19 to come out and do what he did is extraordinarily
11:58 20 uncautious; don't you think?

21 A Well I, I think it would be up to Scott to --

22 Q Uh-huh. Now something raised here, sir, in this
23 article which I just read -- and it does go on to
24 a second page but I'll leave it:

11:58 25 "Scott offered no apology to



1 Milgaard ..."

2 Am I right, sir, at least insofar as I know, the
3 Saskatchewan (sic) police service has never
4 apologized to David Milgaard? Are you aware of
11:59 5 them ever having done so?

6 A I'm not aware.

7 Q Do you think, sir, that it might be something that
8 they should consider doing, as a former chief?

9 A I --

11:59 10 Q The justice departments have done it federally and
11 provincially; prosecutors, to their credit
12 Mr. Caldwell and Mr. Kujawa have done it; that
13 only leaves the police really; do you think it
14 might be something that should have been, and
11:59 15 should still be, considered, sir?

16 A I would consider the fact that obviously the
17 police do not feel that they did anything wrong,
18 and under the circumstances would you apologize
19 for something that you, in your heart, felt you
11:59 20 didn't do wrong?

21 Q If I -- my conduct, rightly or wrongly, had led to
22 someone being in jail for 23 years for a crime I
23 didn't commit it's certainly something I would
24 consider, but do you think the police service
12:00 25 should consider it, sir? I only say that because



1 you asked me. Do you think, if you were police
2 chief now, sir, you would say to yourself 'it
3 would be appropriate for my service, not to accept
4 that we did anything wrong, but just to stand up
12:00 5 in front of a microphone and say David Milgaard,
6 sorry, we thought you did it and we were utterly
7 wrong'; do you think that's something, at a
8 systemic level, might be a good thing to do if
9 only because it might help David Milgaard?

12:00 10 COMMISSIONER MacCALLUM: Mr. Elson?

11 MR. ELSON: Mr. Commissioner, I recall that
12 there was one occasion in which we had a previous
13 witness in which the issue about the wisdom or
14 the advisability of making an apology had been
12:00 15 addressed to you earlier, and I'm not here to
16 comment on the wisdom or the advisability of
17 making an apology, that is a judgement that
18 everybody has to bring and has to have for
19 themselves, including former Chief Penkala. The
12:01 20 question is whether or not it falls within the
21 Terms of Reference of this Inquiry to determine
22 whether or not an apology ought to be made and I
23 think, with all due respect, that that's
24 ultimately a decision, perhaps, that you have to
12:01 25 make, Mr. Commissioner, in the event the



1 circumstances present to you give you some
2 discretion or you perceive as giving you some
3 discretion to make that order. I'm not sure that
4 it serves the debate to ask this witness whether
12:01 5 or not an apology ought to be made, and I'm not
6 sure it serves the purpose of the Commission, and
7 I don't make a comment on the purpose or the
8 advisability of an apology, simply whether or not
9 this is the forum in which that ought to be
12:01 10 discussed.

11 COMMISSIONER MacCALLUM: Well the other
12 instance is that the apology, of course, involved
13 a third party, and actions on other third parties
14 not directly connected with our Terms of
12:02 15 Reference, so of course there, in a sense, it was
16 irrelevant, which cannot be said in the present
17 instance because I think the point Your Friend is
18 trying to make is that, as a systemic matter to
19 improve within, as our Terms of Reference say, to
12:02 20 improve the administration of justice in the
21 Province of Saskatchewan, apologies in cases like
22 this might be a good thing. So I suppose, in
23 that sense, it is relative -- relevant.

24 I do think, however, that I
12:02 25 could agree with you here that the witness'



1 suitability to answer this is perhaps not the
2 best, and in any case he has answered it, he said
3 why should they apologize, they feel they did
4 nothing wrong.

12:02 5 MR. ELSON: Sorry, I was a little slow on
6 the mark in getting up, but having said that I
7 did want to raise it as a concern.

8 COMMISSIONER MacCALLUM: Yes, thank you,
9 yeah, yeah. Do you have something to add?

12:02 10 MS. KNOX: Mr. Commissioner, again -- and I
11 hesitated to stand up because it seems like I do
12 this frequently -- but I think that another
13 factor that needs to be drawn to Chief Penkala's
14 attention here, especially when somebody like
12:03 15 Chief Scott is being characterized as having
16 been -- he could even be said to be a buffoon, is
17 the second paragraph of that article which says
18 he flew home from holidays on Wednesday. And I,
19 if I was listening to Mr. Lockyer fully, this is
12:03 20 an article that's in the paper on Thursday, it
21 says this was six days after the DNA test had
22 been cleared, and it's very possible -- I don't
23 know where he was, he could have been in
24 Tuktoyuktuk, he could have been in Regina, he
12:03 25 could have been in Africa, it's very possible



1 that at the time he did this he had never heard
2 of the apologies that were done by my client and
3 Mr. Kujawa, he had never heard of the apology
4 that was done by the federal minister or the
12:03 5 provincial minister. He looks like he has got a
6 beard on his face, and we know by the article
7 itself he has been away for at least six days and
8 he had to fly back from somewhere, so I think
9 that's a factor that we need to keep in mind as
12:03 10 well.

11 COMMISSIONER MacCALLUM: Thank you.

12 MR. LOCKYER: I'm not sure what the beard
13 has got to do with it.

14 COMMISSIONER MacCALLUM: I don't,
12:03 15 Mr. Lockyer, frankly I don't appreciate the
16 characterizations of people, let alone attacks on
17 people who hold a different view than you of the
18 logic of certain positions, as opposed to what
19 you perceive their logic should be.

12:04 20 I don't know what more I can
21 say. This witness has, to my satisfaction,
22 answered your question.

23 MR. LOCKYER: I was actually going to say I
24 think I have covered the apology as well as I
12:04 25 can.



1 BY MR. LOCKYER:

2 Q Perhaps I would just say this. If you would
3 still -- if you had been chief, sir, when the DNA
4 results came out, do you think you would have
12:04 5 apologized on behalf of the Saskatchewan --
6 Saskatoon Police Service to David, or at least
7 considered it?

8 A Well I, I certainly would have considered it.

9 Q Uh-huh?

12:04 10 A I don't think anybody is pleased about the fact
11 that an innocent person was in jail, but I still
12 go back to the fact that the, the understanding
13 was that there was nothing that was done
14 improperly, and what am I apologizing to. So I
12:05 15 would view it in that respect.

16 Q And you say that despite having heard what you've
17 now heard about how all the Fisher matters just
18 never seemed to make their way out into the public
19 eye and David Milgaard to become aware of them; is
12:03 20 that right?

21 A Well, we've gone through that many times and while
22 there are circumstances in the relationship
23 between the Miller and -- the Miller case and the
24 other cases which Fisher was responsible for, the
12:03 25 fact of the matter is that there are other avenues



1 in regards to that as well.

2 Q Is this a good sort of very short summary, sir,
3 just as David Milgaard -- this is your position,
4 so to speak, just as David Milgaard was the victim
12:03 5 of circumstances, so was the Saskatoon Police
6 Service the victim of circumstances? You shared a
7 common denominator in other words?

8 A Well, I'm not so sure that I would -- that I would
9 put it in that particular situation. I think the
12:04 10 police department did what would be expected of
11 them. It was presented appropriately, a
12 conviction was obtained. If circumstances had
13 been different, there probably wouldn't have been
14 a conviction.

12:04 15 MR. LOCKYER: All right. Thank you, sir,
16 those are my questions.

17 COMMISSIONER MacCALLUM: It's time -- have
18 we settled the order of cross-examination when we
19 come back at 1:30?

12:04 20 MR. HODSON: I don't think so. I will,
21 over the break, enter into the ring and see if I
22 can sort out where we're at, and if not -- unless
23 counsel wishes to address it now. If there's not
24 an agreement, I'm presuming submissions will be
12:04 25 made. Would people like to know the order now



1 before we break?

2 COMMISSIONER MacCALLUM: Well, just let me
3 say, Mr. Hodson, that my decision will, to the
4 extent possible, be based upon the principle that
12:04 5 it is an advantage to be last and those whose
6 clients are most directly and substantially
7 affected by the testimony of this witness would
8 have first claim on being last if they choose to
9 exercise it.

12:05 10 Apart from that, I'm prepared
11 to go along with anything that they decide.

12 (Adjourned at 12:05 p.m.)

13 (Reconvened at 1:30 p.m.)

14 BY MR. WOLCH:

01:33 15 Q Mr. Penkala, I'm Hersh Wolch and I'm counsel for
16 David Milgaard. I hope not to be too long
17 questioning you, obviously Mr. Lockyer covered a
18 number of areas that I would have delved into and
19 if I touch on them it will be nowhere near the
01:33 20 same detail and hopefully not repetitious.

21 In a broad sense, it's obvious
22 that police do the investigating and gather the
23 evidence; correct?

24 A Yes.

01:33 25 Q And when you are investigating, you are looking



1 for evidence for or against, it doesn't matter, if
2 it's evidence that exists, it's evidence?

3 A That's correct.

4 Q And evidence may tend to exonerate somebody, may
01:33 5 tend to inculcate or may even be neutral?

6 A That's correct.

7 Q And in fact evidence can change in the sense that
8 what may look as exonerating evidence today might
9 be inculcating evidence when you know more facts?

01:34 10 A I'm sure that that happens, yes.

11 Q Yes. And so it's crucial to marshal all the
12 evidence and keep control over the evidence, that
13 you have it available as times change and new
14 facts are learned?

01:34 15 A I would agree with that, yes.

16 Q And I'm confident you would agree with me then
17 that it's important that all the evidence get to
18 the Crown and to the defence?

19 A Yes.

01:34 20 Q And one of the problems that might arise is when
21 one tries to determine what is relevant, it's
22 possible to make mistakes?

23 A I would agree with that, yes.

24 Q And what might be not relevant from one person's
01:35 25 perspective might be very relevant from somebody



1 else's?

2 A I agree again, yes.

3 Q So I would think that from the police point of
4 view, the easiest thing to do is to give it all to
01:35 5 the Crown or, at the very least, if in doubt about
6 relevancy, give it to the Crown as well; would
7 that be fair?

8 A Yes.

9 Q And it may not be your area, but obviously the
01:35 10 same would apply to the Crown and defence, give
11 the defence everything or at least even the
12 marginal material as well?

13 A I would presume that would be the procedure, yes.

14 Q And I noted that a number of times in your
01:35 15 evidence so far you placed a great deal of
16 confidence and reliance on the Court decision or
17 the appeal decision?

18 A That's correct.

19 Q But might you agree that that decision can only be
01:36 20 greeted with confidence if the Court had the
21 relevant evidence?

22 A Oh, I don't think you can disagree with that,
23 that's right.

24 Q Yes. So -- because at times when you are putting
01:36 25 your reliance on the Court system in this



1 particular case, would you not have been affected
2 by the fact that the Court didn't have it all?

3 A I'm in the unfortunate position that I wouldn't
4 have really known whether it was all there or not.

01:36 5 Q Now, both counsel have dealt with what I will now
6 call the brainstorming meeting and I want to take
7 you to that, but before I do I have a few general
8 questions. I'm not quite clear if your purpose
9 was to determine David Milgaard in particular or
01:37 10 the case in general and where the case was going.

11 A I think it varied from some of the initial
12 meetings to the latter meetings where the focus
13 may have changed, but initially it was, we had
14 absolutely no suspects, no one to relate to the
01:37 15 crime, to eventually having a situation where
16 circumstances pointed to, in this case, to Mr.
17 Milgaard, and even though they pointed to Mr.
18 Milgaard, my observations and my approach to this
19 was these are all things that yet have to be
01:37 20 proven, it's not a done deal.

21 Q You say you had no suspects and I'll say Larry
22 Fisher, you didn't know who he was, but Larry
23 Fisher would have been a suspect, you just had no
24 evidence to identify him at that time?

01:38 25 A That would be correct, yes.



1 Q So there really were two suspects of note, that
2 is, Larry Fisher, and once again you don't know
3 who he is, Larry Fisher and David Milgaard at that
4 time?

01:38 5 A That would be correct.

6 Q And at that meeting there was reference to at
7 least one of the victims of Larry Fisher, but I
8 want to go to that document, and I'll skip over
9 what Mr. Lockyer touched on I hope, I think it's
01:38 10 006799 if I have it right. Now, what I would like
11 to understand is when this document was being
12 looked at or considered, was it the intention of
13 the senior officers who were there, and all
14 officers obviously, to provide a balanced view or
01:39 15 to focus or do you know?

16 A I'm not sure that I know and it may be, it may be
17 a question of not recalling at this stage of the
18 game. To be honest, I don't remember reference to
19 the document, although I do recall the issues that
01:39 20 are in the document were things that at some point
21 had been discussed and looked at.

22 Q Would it be fair to say that if, if you were
23 looking at Larry Fisher at that time, the offence
24 very easily could have and would have occurred on
01:40 25 O Street; would that be fair?



1 A I'm sorry?

2 Q On Avenue N -- or Avenue O I mean.

3 A Yes. Well, obviously if we had had knowledge
4 about Mr. Fisher at that time, I'm sure that the
01:40 5 people that were involved in these meetings would
6 have relayed to the investigators. That meeting
7 didn't really accommodate investigators, but there
8 would have certainly been a requirement to advise
9 the investigators that there is another option
01:40 10 here, there's another avenue that you must
11 examine.

12 Q What I'm getting at though is we know Larry Fisher
13 committed the crime and there's no reason to
14 believe that it didn't emanate on Avenue O. You
01:40 15 understand that?

16 A Yes.

17 Q Okay. Now, for David Milgaard to commit the crime
18 in the theory being advanced, it had to be Avenue
19 N; did it not?

01:41 20 A I'm not sure. I may be confused on -- Avenue O is
21 the --

22 Q Where Gail Miller lived, her bus stop and Fisher.

23 A Okay. And Avenue N?

24 Q Is something that we'll have to deal with.

01:41 25 There's no -- I will be submitting there's no



1 connection to Avenue N, but leaving that aside,
2 Gail Miller's Avenue O, her bus stop is Avenue O,
3 Fisher is Avenue O, but I'm saying for him to drag
4 her into the lane on Avenue O is likely what
01:41 5 happened, but the Milgaard theory could not happen
6 on Avenue O.

7 A Well --

8 Q I'll help you if you want.

9 A Okay.

01:41 10 Q Do you want me to go further?

11 A Well, I'm not quite certain what you want, what
12 question you are putting to me, but if it's a
13 question of whether there was a connection between
14 Milgaard and Avenue O, my understanding was that
01:42 15 at that time there was a connection between Mr.
16 Milgaard and Avenue O as you are suggesting.

17 Q Let me be -- I want to make sure you understand
18 me.

19 A Yes.

01:42 20 Q The Milgaard theory involved a car stopping and
21 asking for directions, turning around and being
22 stuck, etcetera?

23 A Yes.

24 Q That's the general theory?

01:42 25 A Yes.



1 Q That couldn't happen on Avenue O because you have
2 Diewold, Indyk, Gallucci and all sorts of people
3 around there who didn't see anything like that.
4 Do you understand what I'm saying?

01:42 5 A Yes, now I understand what you are saying.

6 Q So it couldn't be Avenue O for a car theory being
7 stuck on the street because none of those parties
8 saw a car on Avenue O.

9 A Well, again I'm recalling -- I'm relying on what I
01:43 10 understand which is maybe not specifically of my
11 own information, but my understanding was that
12 there was an indication that somebody at St.
13 Mary's church, which is on Avenue N -- or on
14 Avenue O, did see a vehicle on Avenue O or in that
01:43 15 vicinity, that's my understanding.

16 Q Mr. Diewold saw a car in the lane at the T
17 intersection?

18 A Or in the lane, yes.

19 Q Which could have got there from either avenue.

01:43 20 A That's --

21 Q The car could have got there from either avenue,
22 but nobody saw a car stuck around the lane on
23 Avenue O, but more particularly we have two
24 specific witnesses who were there at the relevant
01:43 25 time and didn't see a car. Do you see what I'm



1 saying?

2 A Yes, I understand what you are saying. I suspect
3 that -- my understanding is that the vehicle that
4 I assume you are referring to was literally at
01:44 5 Avenue N and the approach -- and the approach to
6 the lane which led to Avenue O.

7 Q Well, we can get into that, but what I'm saying to
8 you is, perhaps you might accept it, the Milgaard
9 theory would not conform with Avenue O being the
01:44 10 street that Gail Miller walked down?

11 A No, not Avenue O.

12 Q That's what I'm getting at. And that's why I'm
13 saying in order for the Milgaard theory to work,
14 Gail Miller had to walk down Avenue N for that
01:44 15 suggestion of being stopped for directions to work
16 to link David to the crime.

17 A Yes.

18 Q Do you follow me?

19 A I understand that now, but my version, or my
01:44 20 understanding was it was Avenue N that Miller had
21 been down.

22 Q That's what I'm going to look at. You'll see, and
23 what you are saying is what's contained in this
24 summary, or not summary rather, but whatever the
01:45 25 word is, if you look here, Simon Doell rides the



1 bus, is certain Gail Miller caught the bus at N
2 and 20th and then there's some conversation from
3 Miller. You see that?

4 A I see that, yes.

01:45 5 Q Now, if you look at Simon Doell, he conforms with
6 the Milgaard theory, but I'm just wondering if you
7 can recall why there would be no investigative
8 look at all the evidence pointing to her going
9 down Avenue O?

01:45 10 A I can't answer that. I don't know. I was always
11 of the understanding that she had taken the way of
12 Avenue N and that's where she encountered the
13 Milgaard --

14 Q No, and I appreciate what you are saying, but if
01:46 15 we look at 075900, I hope I have it right -- is
16 there a second page to that or not? Yeah. I
17 think it would be in here, focus on that. So you
18 interviewed Simon Doell, former address of 313
19 Avenue R, he has now moved, he moved out previous
01:46 20 to the murder. He states that on occasion he had
21 been riding the bus and when Miss Miller got on
22 the bus she was always on the corner of N and 20th
23 directly across from the funeral home. He states
24 that he missed her on the bus a couple of times
01:47 25 and it goes on from there. Now, he was not even



1 living there at the time of the murder, and in
2 fact if I can draw your attention to 044252, now,
3 this would be information you would not have had
4 at all, if you can just turn the page, this is an
01:47 5 affidavit of Simon Doell and if we can focus on
6 this paragraph here, that he lived at one time on
7 Avenue R South and believe I moved to that address
8 around May of '68 and was there for six months or
9 so and then he moved somewhere else, and the
01:47 10 affidavit goes on to say he didn't particularly
11 know Gail Miller, but leaving that out of it
12 because you wouldn't have known that, but clearly
13 it was open to the police to determine that he
14 hadn't even lived in the area for several months.
01:48 15 Do you see that?

16 A Yes, I see, and I understand, but I don't know if
17 I can add anything to your suggestion.

18 Q No, I understand that, but you see how Doell is
19 not the most reliable indicator of how Gail Miller
01:48 20 went to the bus stop. You can see that?

21 A Oh, I see, yes.

22 Q Right.

23 A Yes.

24 Q Because keep in mind O is logical; right?

01:48 25 A That's right.



1 Q I mean, O is the logical way to walk in 40 below.
2 I mean, the presumption is she would take the
3 shortest route to her bus stop which is right down
4 Avenue O, so this is not the logical, and yet it's
01:48 5 from a fellow who hadn't been there for a few
6 months; right?

7 A That's correct.

8 Q But now if we look at 006585, and this is a lady
9 who testified here, Anne Friesen, now, she would
01:49 10 be a roommate who presumably would know, and if we
11 can focus on this paragraph here, starting here,
12 she leaves every morning between 6:40 and 6:45
13 when the, I take it bus, is due at 20th and O at
14 6:45. She walks south on Avenue O to 20th bus
01:49 15 stop. She leaves by the front door. Now, you
16 might agree with me that that's much more
17 compelling than Simon Doell would you?

18 A Well, it's a logical way for her to go to get to
19 the Avenue O and 20th Street bus stop.

01:49 20 Q I appreciate that, but would you not agree with me
21 that if given a choice between Avenue N and O,
22 dependent on Doell and Friesen, you would likely
23 take Friesen, being she's the roommate, or at
24 least a housemate, is more likely to know?

01:50 25 A Oh, I agree.



1 Q And then if we go to 006628, and this is another
2 roommate, and if we go to the third -- I think
3 it's a four page document, if we can go to the
4 third page, and here's another roommate, if we can
01:50 5 zero in on that part there, leaves every morning
6 at 6:45 to catch the bus and goes out the front
7 door. I believe she walks south on Avenue O to
8 20th and the bus stop. So there's another
9 roommate corroborating the first roommate and
01:50 10 corroborating the logical inference?

11 A Right.

12 Q Right. So would you agree with me that that
13 appears to be an example of the investigators
14 focusing on whatever might lead to David and not
01:51 15 on what might lead in a different direction?

16 A I suppose it could be interpreted that way, yet
17 these are thoughts of these witnesses as I
18 understand it, it doesn't really suggest that
19 that's definitely what happened.

01:51 20 Q Mr. Penkala, and I want you to understand,
21 whatever questions I'm asking you, I'm not for a
22 moment suggesting that you were out to frame an
23 innocent person, to manufacture evidence or any of
24 that, I'm trying to get into the psychology of
01:52 25 where you are focusing and why and how we can



1 prevent what I will suggest is a, well, a tunnel
2 vision in the next case. There's no improper
3 motive to be suggested here, that you wanted to
4 get somebody wrong or anything like that, please
01:52 5 understand me on that.

6 A Okay.

7 Q I'm trying to focus on your thought process.

8 A Right.

9 Q Because it does appear, I think you agree with me,
01:52 10 that there appears to be a thought process when
11 the only discussion of anybody's evidence is Simon
12 Doell here when there's pretty compelling evidence
13 that he's wrong, and in fact there's more evidence
14 of that if I can go to 106234, and if we could
01:52 15 outline this portion here, and this is a police
16 report which you would have had access to, also
17 interviewed was Mary Gallucci who stated that she
18 takes the bus at O and 20th every day and that on
19 Thursday morning, the day before the murder, she
01:53 20 recalls a girl get on the bus at the above with
21 her. She describes this girl as follows, younger
22 girl, dark hair, wearing a white dress and
23 stockings, dark coat believed cloth, could be
24 brown, no hat and believes to have had a white
01:53 25 scarf. She has seen her on the same bus before,



1 but does not think seen on Wednesday. There was
2 also a young man who got on the bus, construction
3 worker, blue jeans and a hard hat, possibly
4 yellow, coming from the other direction, who we
01:53 5 believe to be Fisher obviously, but here you have
6 Mary Gallucci seeming to corroborate the girl in
7 the white dress coming to take the bus on a fairly
8 regular point, and I might add, I haven't got it
9 in front of me, but there is more from Mary
01:54 10 Gallucci where I think she refers to her as the
11 pretty girl, the pretty nurse, but in any event,
12 you have Gallucci, two roommates, or two
13 housemates, and yet you focus on a fellow who
14 hasn't even lived in the area and doesn't know
01:54 15 her, to look at what he says, and I'm saying to
16 you that you are looking at whatever evidence can
17 fit to what you are thinking as opposed to the
18 broader picture.

19 A Well I, I understand, I understand what you are
01:56 20 suggesting. I, with respect, want to point out
21 that there were a number of people at that
22 supposed decisive meeting that would have had
23 access to information. This information wasn't
24 readily available to me and I, I appreciate that
01:56 25 you are asking me for my opinion, and I agree with



1 you on, on what you have proposed, but --

2 Q Okay.

3 A But --

4 Q I think it's fair to say that you were one of a
01:57 5 number of people, you were all contributing, --

6 A Right.

7 Q -- and then to say that you are absolutely at
8 fault for something is not fair. I can see that.

9 A No, I understand.

01:57 10 Q But we want to look at the cumulative effect of
11 senior officers getting together, and I take it
12 there doesn't seem to be what I might call a
13 devil's advocate in there saying 'wait a minute,
14 what about this' or 'what about that', like it
01:57 15 doesn't appear anybody is saying 'wait a minute,
16 we have two roommates and a lady at the corner,
17 why are we putting her on Avenue N'; I don't see
18 anybody doing that is what I am saying.

19 A That's right, and I have no recollection of that
01:57 20 taking place at the meeting.

21 Q That's all right. If we go back to the document,
22 the main document -- I'm sorry, I meant 006799 --
23 and if we can turn the page, then, please. Now I
24 know Commission Counsel went over this with you
01:58 25 and I just want to touch on it because it is



1 somewhat puzzling. This appears to be a
2 recitation of what Nichol John said in her
3 statement of March the 11th, and the part that
4 Commission Counsel questioned you about and a part
01:58 5 that I would like to question you a little bit
6 about is the paragraph, if I can call it that,
7 that I'm highlighting that really is not in that
8 statement. Everything else is, it's almost in
9 sequence, but that isn't. Now do I take it you
01:58 10 really have no explanation as to how that got in
11 there?

12 A Umm, no, because I didn't, I didn't author that
13 specifically and I'm sure that, that the author
14 was accumulating what he knew, and I would suggest
01:59 15 that, at that particular meeting, we would have
16 observed this as facts that were brought forward,
17 and I don't have a recollection of whether and how
18 deeply these issues were discussed.

19 Q You see, you do agree with me, would you, that it
01:59 20 appears that he ostensibly has taken it from the
21 March 11th statement, on the face of it?

22 A I did see, I did see that, I did see Nichol John's
23 statement, but I, you know, I don't have a good
24 recollection of it at this moment.

01:59 25 Q You might accept that that's not in there, I think



1 we'll all agree on that.

2 A Yeah, I can't -- I don't have -- yes.

3 Q So you really can't account for how that got in,
4 purportedly out of that statement?

02:00 5 A No.

6 Q Umm, but it could easily be a misunderstanding or
7 a failure to remember correctly or something like
8 that I suppose?

9 A Could very well be, yes.

02:00 10 Q Is it possible that some of the theories that get
11 advanced later in this material had been discussed
12 between officers to some degree?

13 A Well I would be surprised if it wasn't.

14 Q Yeah. And, in terms of asking anyone for
02:00 15 directions, my understanding is the only person
16 who even hinted at that would have been David
17 Milgaard himself in his first statement, the other
18 two kids didn't, but is it possible that in
19 comparing things, one officer to another, it just
02:00 20 got confused?

21 A Oh, I think there is always a possibility of that.

22 Q You know how people get around in a circle and you
23 whisper in each other's ear until finally you see
24 what came out at the other end is quite a bit
02:01 25 different than what the first person said?



1 A Yes.

2 Q So it may have just been a faulty recollection or
3 misunderstanding that got that in there?

4 A I'm sure that's a possibility.

02:01 5 Q Okay. And if we can just turn the page. Now this
6 report, which I guess I shouldn't call it a
7 report, what would you call this, a summary? I'm
8 not sure what to call it. Background?

9 A I would suggest it was a summary.

02:01 10 Q Summary? Okay. You are now talking, or whoever
11 wrote it is now talking about Albert Cadrain, and
12 I want to get to the point about how we're all
13 looking at this from one side. Talking about
14 Cadrain, take a look at this paragraph here, could
02:02 15 we just highlight that for a minute:

16 "- Karst and ... Short told by Cadrain
17 that Milgaard had wanted to get a gun if
18 he would help him get rid of ... John
19 and Wilson. This was on January 31st."

02:02 20 Well on the face of it, it's pretty damning,
21 isn't it?

22 A Yes.

23 Q But you are aware of the fact that he never
24 reported that until later in the proceeding, he
02:02 25 didn't come into the police station and say 'eh,



1 this is what happened', that was gotten out of him
2 quite a bit later?

3 A I am not personally aware of that but I'm sure
4 that's right.

02:02 5 Q And don't you think that somebody would say to him
6 'well didn't you ask him why' or 'what, don't you
7 know more than that', or something like that?
8 Like wouldn't he be questioned by somebody saying
9 'Albert, you know, you came into the police
02:03 10 station wanting to help, how could you have
11 forgotten that, why are you telling us that months
12 later?'

13 A Oh, I think, I think that's a reasonable, a
14 reasonable assessment --

02:03 15 Q But now Albert -- I'm sorry, I didn't mean to
16 interrupt you?

17 A I said it's a reasonable thing to expect that that
18 be asked.

19 Q For example, Albert Cadrain maintained that he
02:03 20 never heard about the murder until he got home,
21 yet there's ample evidence he was questioned in
22 Regina; did anybody put forward 'why is he lying
23 about that'?

24 A I'm sure there are people that will be called to
02:03 25 this Inquiry that may be able to give you that



1 information, but I --

2 Q But I'm wondering -- I consider this meeting to be
3 quite important, but senior, very good police
4 officers getting together trying to decide where
02:03 5 to go, and I would like to know in the future that
6 you have it all in front of you, or at least
7 somebody challenging the thought process. And
8 what I am saying is Cadrain obviously lied about
9 when he found out about the murder, we know he
02:04 10 also lied about whether he did drugs the night
11 before but that's a minor point I suppose, and we
12 know he is adding, adding, adding as time goes on.
13 Is somebody saying 'wait a minute, let's look at
14 this guy', I mean he failed grade 6 three times I
02:04 15 think?

16 A I would suggest that maybe there's more importance
17 being placed to this, this supposed decisional
18 meeting, than really needs to be. We're talking
19 about people that, that are looking at this thing
02:04 20 from a point of view of what is obvious and
21 pursuing those issues that need to be pursued,
22 they are supposedly people within the system that
23 have authority to make directions, and I would
24 suggest that that was the type of a meeting. I
02:05 25 don't think they were examining the evidence as



1 closely as it's being related. Obviously they
2 could have, I don't specifically recall it being
3 examined on a detail-to-detail basis, but it would
4 be assumed that the information that came to this
02:05 5 group would have been researched to some degree
6 and it was being accepted as it was presented.

7 Q But this group is ultimately going to come to a
8 decision, in essence, that John and Wilson are not
9 telling the truth, or probably aren't telling the
02:05 10 truth might be a better way of putting it?

11 A Yes, I think that's fair, yes.

12 Q And, in order to come to that decision, surely you
13 have to look at all the facts. And, for example,
14 the next person here, which is Celine Cadrain:

02:05 15 "- knows Milgaard and her opinion is
16 that he has no respect for women."

17 Well she also saw nothing unusual and saw no
18 blood, which are more important, more important,
19 I would suggest, factors in what she has to
02:06 20 contribute, and that's not there. You see what I
21 am getting at?

22 A Yes.

23 Q And if we could go down the page, see, we now get
24 like to the Danchuks. Now the Danchuks talk about
02:06 25 not seeing any blood, nobody seems to be in a



1 hurry to go anywhere, you wouldn't expect people
2 after a murder to stop and give somebody else
3 help, and they acted normally. I mean those are
4 pretty important factors, leaving aside we've left
02:06 5 out the Trav-a-leer lodge. So even in this
6 there's nothing about that, things that point the
7 other direction, if you see what I am getting at?

8 A Yes, I understand.

9 Q And if we go down a little bit on the page, see,
02:07 10 even in dealing with your own evidence, I mean
11 if -- if the evidence was correct as you
12 understood it, David Milgaard could not have
13 committed the crime? If your understanding of
14 secretor, more likely secretor evidence was
02:07 15 correct, he couldn't have done it?

16 A That's, that's correct, except, except that there
17 was, there was a question of whether the tests
18 were proper and whether the tests were providing
19 the appropriate -- the positive results.

02:07 20 Q Okay.

21 A That was always, that was always -- seemed to be a
22 question.

23 Q I agree with you. But, on balance, the evidence
24 was more favourable to David than not?

02:07 25 A Yes, okay, you could say that, yes.



1 Q Yet all that's said here about you, under your
2 name at least, is that 'well, maybe it isn't
3 right'. The emphasis is on discrediting it other
4 than just accepting it?

02:08 5 A Well what you are saying is right, except that
6 that was precisely the view that I had, and in
7 light of what I knew about that particular aspect
8 of the investigation, and obviously I would have
9 projected that to the rest of them, and I'm not
02:08 10 certain what part it played in this entire thing.
11 At best, the fact that the blood grouping was
12 there, it would have been a possible eliminator,
13 and it certainly didn't provide for the
14 identification of the perpetrator.

02:08 15 Q I guess the point I'm making is that -- and I
16 think you might agree with me -- is that
17 throughout this it all seems to be trying to find
18 whatever pointed in one direction and not looking
19 at anything that might point in the other
02:09 20 direction? It seems rather unbalanced is what I
21 am saying.

22 A Well I can understand, I can understand your
23 suggestions along those lines. Looking at it from
24 the point of an investigator, often the route that
02:09 25 I am suggesting is being followed, with the



1 understanding that eventually these issues, if
2 they are relative, will either be accepted or not
3 accepted.

02:09 4 Q If we can just turn the page then, sorry, and one
5 more page. Now this page starts off with the word
6 Summary, I'm not really sure that word is
7 applicable because it's not really a summary, but
8 this also contains matters that clearly aren't
9 factual, they are just theories and things like
02:10 10 that?

11 A That's --

12 Q It's clearly obviously not a summary because, for
13 example if you look here:

14 "- From where some articles were found
02:10 15 it would appear that possibly no lights
16 on at Cadrains house when the three
17 first arrived ... therefore, they did
18 not call at the house",

19 I mean that wouldn't be anything from any report
02:10 20 to go into a summary, that's just a possible
21 theory or guess as to what may have happened?

22 A That's right.

23 Q Right. Now you see here, in this paragraph:

24 "This would be around funeral home which
02:10 25 would coincide with statements of Nichol



1 John ...",

2 which we don't know how it got there:

3 "- Diewold seeing lights in alley -

4 Doell saying Miller took bus at Avenue

02:10 5 N".

6 So once again Doell is the foundation to Avenue N

7 in the face of more compelling evidence; you see

8 that, do you?

9 A I certainly understand, understand what you are

02:11 10 suggesting, yes.

11 Q Yes. And if we could just go down further a

12 little bit, but even here, for example:

13 "- Nichol John says Milgaard wore a dark

14 touque which she has not seen since Jan.

02:11 15 31st."

16 Do you see that?

17 A Yes.

18 Q She never said she saw a toque on January 31st

19 ever, it distorts the impression, if you see what

02:11 20 I am getting at?

21 A Oh, certainly.

22 Q And if we can go down to the bottom of the page,

23 these suggestions, I'm not too concerned with the

24 second one but I do have some questions for you.

02:11 25 The first one is the use of the word 'with all



1 present'; was it contemplated that the kids were
2 being questioned together?

3 A Oh, I would not, I would not assume that that
4 would be the, the method that would be used. It's
02:12 5 not a proper method.

6 Q Well, and with respect, they were put together to
7 talk to each other and compare stories, that had
8 gone on with Cadrain as well.

9 A Well I'm not --

02:12 10 Q Did you consider it improper back then, or is that
11 something that you have thought of since?

12 A Well, I would have thought it improper, I -- you
13 know, if -- well it depends on the circumstance.
14 If your subjects wanted to speak to one another I
02:12 15 think it would be appropriate to allow them to
16 speak to one another, they weren't under arrest,
17 they were free to leave at any time. I wasn't
18 there, I don't know the circumstances of that
19 particular thing, --

02:12 20 Q Okay.

21 A -- but there is a fair process that needs to be
22 applied there and I'm sure somebody can, can
23 provide that in relation to what actually took
24 place.

02:12 25 Q Well let's draw on your extensive police



1 knowledge. Then, or later, is there any policy
2 regarding questioning people together or separate?
3 In similar circumstances, I don't -- you know, I
4 don't mean a traffic accident where you see 15
02:13 5 people on the road, --

6 A No.

7 Q -- I am talking something similar or close to
8 similar?

9 A I'm not aware that there was any policy within the
02:13 10 department other than the practices, good
11 practices, that are dictated by obtaining
12 evidence.

13 Q Would it be your view that -- and I will be
14 particular on this case -- that if John and Wilson
02:13 15 were to be questioned, it should be separate?

16 A I would agree with that.

17 Q They shouldn't be allowed to hear what the other
18 one is saying so they can dovetail their story
19 with the other; would that be fair?

02:13 20 A That's very reasonable, in my opinion.

21 Q And I harken back a little bit to what Mr. Lockyer
22 said, that for recommendations from this Inquiry,
23 it might be, it might be -- and we can use your
24 help on this -- valuable for witnesses like this
02:14 25 to be filmed, to be -- have it all taken down



1 accurately, and not being consulting with the
2 other person to see what the other guy is saying
3 in terms of what happened; would that be a -- what
4 you as your, with your experience, would adopt?

02:14 5 A I would suggest that that's, that's the best
6 practice for obtaining evidence, and I would
7 support that.

8 Q And do you see any difference, for the
9 Commissioner's benefit, between kids and more
02:14 10 mature adults in terms of being questioned? And
11 they were --

12 A Well I, I think there is a difference, yes.

13 Q I mean a 16-year-old kid could be, for example,
14 intimidated far easier than you or I?

02:14 15 A Of course.

16 Q And could be more capable of being -- of adopting
17 suggestions to appease the questioner than you or
18 I might?

19 A I would, I would believe that that's possible,
02:15 20 yes.

21 Q And in this case we have 16-year-olds who have,
22 perhaps 'unsavoury' background is too strong a
23 word, but they have questionable backgrounds, both
24 of whom have had trouble with the law and they
02:15 25 have both shown dishonesty, that maybe some



1 particular care should be taken in how they are
2 questioned?

3 A Yeah, I would, I would certainly, I would
4 certainly believe that the investigating officer
02:15 5 would take that into account, yes.

6 Q Now do I have it correctly, I should know this,
7 but did you type this or somebody else write this
8 piece of paper?

9 A No, I did not have -- I was not the author nor the
02:15 10 typist of this report, and I had mentioned earlier
11 I am not even -- I don't even recall seeing that
12 at that specific meeting that is being addressed
13 here.

14 Q But you got a copy of it, though, I know that?

02:16 15 A Yes, I got a copy, and I'm somewhat familiar with
16 the contents, and I agree that the contents would
17 have been addressed throughout the meeting at some
18 point or another.

19 Q What interpretation do you put on the words 'with
02:16 20 all present', like who were 'all', what that
21 means?

22 A I'm -- I can't be certain.

23 Q And I take it the words 'the true story', in
24 context, would mean that that would be likely a
02:16 25 story not consistent with the one they have been



1 giving?

2 A Well I would interpret that that there was no
3 satisfaction with the initial story and the
4 credibility of the initial story was just not
02:17 5 there.

6 Q Perhaps you can go back in time, I don't know if
7 you can, but the word 'hypnosis'; how would that
8 help? What, what was the thinking process back
9 then in terms of how hypnosis will bring out the
02:17 10 true story?

11 A My, my understanding of hypnosis -- and I wasn't
12 specifically involved in any cases -- but I
13 understand if a witness is having difficulty in
14 remembering, placed under hypnosis, sometimes it
02:17 15 brings the memory to that particular subject so
16 that it can be related. I think that's probably
17 the context that this is to be viewed in.

18 Q But nobody here had trouble remembering, on the
19 face of it, the kids had all given statements that
02:17 20 were remarkable for the amount of detail on what
21 would have been a nothing morning?

22 A Well, I don't know, because I had absolutely
23 nothing to do with the subjects in this case.

24 Q But dealing with hypnosis; do you, in your
02:18 25 experience, buy into the idea that people can see



1 murders and forget? Have you come across that?

2 A Well I'm not, I'm not an expert in that field. I

3 agree that if something is, as terrible as that

4 had occurred, I don't think there would be

02:18 5 problems in remembering. But these are, these are

6 -- this is the scientific component that often

7 comes into cases, particularly when there is a

8 question of whether the individual cares to

9 remember, doesn't want to remember, etcetera.

02:18 10 Q But hypnosis is not really going to help you with

11 a lying person, but let's face it, the idea of

12 seeing a murder -- or take Nichol John. She may

13 have seen a murder, forgot about it, acted

14 normally, travelled out west, remembered it for

02:19 15 one brief conversation, came back, remembered it

16 again after she had forgotten it, and then forgot

17 it again; I mean that's just nonsense, isn't it?

18 A Well, I'm really not a person that can give you a

19 satisfactory --

02:19 20 Q Well I'm talking --

21 A -- answer that you want. I'm a layman in that

22 area, or not even a layman, I have no expertise

23 whatsoever in that area.

24 Q One thing that police officers do have is a lot of

02:19 25 common sense?



1 A Well I think that's a necessary --

2 Q Yeah, and common sense tells you people don't just
3 see murders, forget about it, remember about it,
4 forget about it; that's just not common sense?

02:19 5 A I would agree with you, yes.

6 Q Now in terms of a polygraph, I'm a little puzzled
7 by this because normally a polygraph, as I
8 understand it, is to check the story being
9 advanced, if you follow what I am saying? I mean
02:20 10 these kids said 'nothing happened' so I would
11 think the polygraph would be to say to them 'here
12 is your story, is it true, not a new story but the
13 story you are giving isn't true'; that's where
14 polygraph comes from?

02:20 15 A That's my understanding of the polygraph test, is
16 to prove the credibility of the witness on
17 something that has been uttered.

18 Q Yeah, but it shouldn't get the new story out or
19 the true story out, because the polygraph stops
02:20 20 with 'is the current story true or false'?

21 A I would agree with that, yes.

22 Q Now was Roberts' role far more than just a mere
23 polygrapher?

24 A I can't be certain because I was not there. I met
02:20 25 Mr. Roberts but I wasn't there at the time of his



1 involvement and supposed interrogation.

2 Q I'm trying to understand why he was brought in and
3 I'm trying to understand what qualities he might
4 have, that others didn't, to get a statement from
02:21 5 somebody?

6 A I, I'm not sure that his purpose was to get a
7 statement. I don't really know this and I'm, I'm
8 just suggesting that he was brought in because he
9 was a polygraphist, and it was a relatively new
02:21 10 thing in the Canadian police force. I'm not sure
11 where this originally -- where this originated,
12 why that was suggested that was necessary, but
13 nevertheless it was, it was suggested, because Mr.
14 Roberts was invited to come, and he did, and --

02:21 15 Q Well --

16 A -- and the rest of the story is known.

17 Q Well was it the prevailing thought at that time
18 that what the polygrapher does, or should do or be
19 used to do, is to confront the individual with
02:22 20 'you're lying' and then get another story out of
21 them?

22 A Well, again, I'm not a -- I'm not experienced in
23 that area but my understanding is that a
24 polygraph, as it -- in later years the polygraph,
02:22 25 you run a test on the individual to, I suppose to



1 get a standard, and then you proceed to put the
2 vital questions to the subject, and the results
3 are interpreted by the --

02:22 4 Q Well I'm -- I think he had a different term for it
5 back there, some kind of truth verifier or
6 something, but I'm suggesting to you that the
7 purpose of it was to be able to say to the person,
8 in this case the young person, 'look, here it is,
9 you are lying, now tell us the truth', a device to
02:23 10 get the truth out of a person?

11 A That's my understanding.

12 Q Yeah?

13 A Yeah.

14 Q And it's that reason that we went to a -- not 'we'
02:23 15 -- but the group went to all the trouble of
16 getting two rooms, I believe electronic equipment,
17 and five or six officers in the other room,
18 because of the expectation that, once the young
19 person was confronted, there would be a new story
02:23 20 that might be more helpful to the investigation?
21 You didn't need five guys in the other room for a
22 simple polygraph?

23 A No, but I understand that in modern-day polygraph
24 operations it is set up and recordings are
02:23 25 taken --



1 Q Oh, of course.

2 A -- of that information, and I think -- I think we
3 need to keep in mind that that was at the early
4 stages of the introduction of polygraph, and while
02:24 5 I'm not, I don't know anything about it and I
6 didn't see the operation taking place, I would
7 suggest that it was, it was in its infancy at that
8 particular time.

9 Q Well no, that's very truthful and accurate, and
02:24 10 I'm more trying to find out what happened then at
11 this moment in time, and because we don't have a
12 record as to what happened in there I'm suggesting
13 that the setup was to confront the kids, 'you're
14 lying, now come on, come across', that was the
02:24 15 intention, and if they were going to adopt
16 anything incriminating the officers were right
17 next door to take a statement. That was the game
18 plan?

19 A It could have been, I don't know.

02:24 20 Q Okay. But you were involved with the exhibits,
21 that is the photos of the, of the autopsy and the
22 bloody -- and the, well, with the bloody clothes;
23 were you not?

24 A Yes.

02:25 25 Q And you provided them to Roberts, I understand?



1 A Umm, not specifically, I had -- I think, I think
2 that was through some other officer.

3 Q Well was there not some concern with continuity?

4 A I don't know.

02:25 5 Q Well the dress would be a serious exhibit?

6 A In the first instance, just to clarify this, my --

7 Q I'm sorry, I -- Mr. Hodson interrupted me and I
8 interrupted you, I think he must know something.

9 A I could explain.

02:25 10 Q Just a second. I'm sorry, our guru says it was
11 Mackie that --

12 A Okay. I was about to make an explanation.

13 Q Okay. But it seems to me a very unusual feature
14 that those items would be provided for a
02:25 15 polygraph; would you agree with that?

16 A Again, I don't know, because I don't know how the
17 polygraph operator -- and what he needed, and I
18 know, I know for a fact that he needs to have some
19 background.

02:26 20 Q Well okay, I don't know for him, but the evidence
21 that we've heard is that those items were shown to
22 the kids?

23 A Oh, I'm not aware of that.

24 Q Okay. But -- and I'm trying to fathom why, if a
02:26 25 polygraph is, you know, 'are you telling the



1 truth', how that could be helpful in that pursuit?

2 Do you see what I am getting at?

3 A Yes I do.

4 Q I mean whatever scenario you make up, it doesn't

02:26 5 matter what it is, there is no way that either kid

6 saw -- or could be helped by the autopsy pictures

7 that is, you know, the tragic scene of the -- of

8 Gail Miller on the, you know, with all her

9 injuries cannot refresh a memory of one of these

02:27 10 kids. It could scare the heck out of 'em though;

11 do you agree?

12 A Yes.

13 Q So that, really, the only purpose in having that,

14 those articles there, would be to intimidate or

02:27 15 scare these kids?

16 A Well that conclusion could be come to, yes.

17 Q Yeah, sure. Okay, I would like to touch on

18 another area, hopefully somewhat briefly. I take

19 it virtually, into the '90s anyway, and in fact

02:26 20 when you made a speech that we heard about this

21 morning, you were satisfied that David Milgaard

22 committed the crime?

23 A Yes, that's the way, yes.

24 Q And I won't go through the speech with you, but I

02:26 25 would like, quite briefly, to have you convey a



1 sense of what the theory is that he committed the
2 crime would have been hopefully perhaps back
3 around the time that he was arrested and leading
4 up to his trial, and I'll -- you'll see what I'm
02:27 5 getting at in a second, but before I get into
6 that, when David was arrested there was absolutely
7 no physical evidence, was there, linking him to
8 the crime?

9 A I would agree, yes.

02:27 10 Q That is, not the tiniest thing that would link him
11 physically to the crime, that's just a fact.

12 A That's right.

13 Q When he was arrested, the foundation for the case
14 against him was really the three kids; would that
02:27 15 be fair?

16 A I think that's generally fair, yes.

17 Q Cadrain, whose evidence was regarding blood and
18 was contradicted really by Danchuks and his own
19 sister and the Trav-a-leer, it was questionable
02:28 20 evidence to say the least; right? That was
21 Cadrain.

22 A That would appear that way, yes.

23 Q Then you had Nichol John who was a drug user,
24 petty thief and had changed her story which takes
02:28 25 away from credibility; right? I mean, she had



1 changed her story completely?

2 A Yes, I think that's --

3 Q And then you had Wilson who had also changed his
4 story completely and did not have the kind of
02:28 5 background that gives one a degree of confidence;
6 would that be fair?

7 A It appears that way, yes.

8 Q So at that point the case was relatively weak;
9 would you agree with me on that?

02:28 10 A Well, the interpretation is subject to the
11 feelings at that particular time as opposed to
12 later when a lot more information was learned
13 regarding the very subjects that you have
14 identified.

02:29 15 Q Right. Well, it kind of got worse in a sense
16 because Nichol John never did adopt her story in
17 Court, so it can go either way in terms of whether
18 the case got better or worse, but in going forward
19 to the Crown at least, it was not a strong case;
02:29 20 might you agree with that?

21 A Well, I'm not sure that I'm in a position to
22 assess that part of it. I think my view would be
23 you present what you have and the Crown would
24 decide whether that's sufficient to initiate
02:29 25 charges.



1 Q Would you agree with me that when you are putting
2 forward a case against Mr. A, if there is another
3 viable suspect, that that might have a bearing on
4 the finding on Mr. A?

02:30 5 A If you had another suspect, yes.

6 Q Right. Now, Larry Fisher was a suspect at that
7 time. David Milgaard didn't change your
8 suspicions of him in the sense that it was all
9 still there, you just considered David Milgaard to
02:30 10 be a much stronger suspect or possibly having done
11 it?

12 A My recollection is that we had no knowledge of Mr.
13 Fisher or the whereabouts of Mr. Fisher.

14 Q I'm sorry, I thought I said earlier when I say
02:30 15 Larry Fisher, I mean the person who we later
16 learned to be Larry Fisher, I didn't want to keep
17 repeating that.

18 A Oh, okay.

19 Q I mean, the fact that women were being attacked in
02:30 20 the area in a similar method didn't just vanish,
21 it was still there, and do you not agree that that
22 kind of evidence could cast doubt as to whether
23 David did it or not?

24 A It could, it could.

02:31 25 Q And really it's not for you or me or even the



1 judge to decide, it's for the jury, the trier of
2 fact to determine if that raised a doubt or not;
3 would you not accept that?

4 A I would have to agree with that, yes.

02:31 5 Q Whereas you may say look, I've heard the evidence
6 against David, I don't even want to think about
7 the other stuff, that's fine for you, but maybe
8 not the trier of fact. Do you agree with that?

9 A Generally, yes, yes.

02:31 10 Q So for the trier of fact, they should be looking
11 at the evidence against David and it may be to
12 their minds overwhelming, underwhelming or
13 non-existent, or if it's somewhere in the grey
14 area they can say look, maybe this other guy did
02:32 15 it and I've got a reasonable doubt. You see how
16 Fisher becomes important, do you not, in the trial
17 of David Milgaard?

18 A Oh, I certainly understand what you are saying,
19 very much so, yes.

02:32 20 Q So I would like before that to sort of look at
21 what would be the theory regarding David Milgaard
22 having committed the crime, and I'm not going to
23 spend a long time with this, but if we could pick
24 up one of the maps, I have one at 002988. Can we
02:32 25 turn that around? Thank you. Take a second to



1 adapt to that if you could. Let me know when
2 you've seen enough that you see what you've got
3 there.

4 A Yes.

02:33 5 Q Okay. Can you -- you'll notice, if you put your
6 finger on it, you can give it a little mark there.
7 Can you start where Gail Miller would come from
8 and show us the theory that was being advanced as
9 to how the crime was committed with David having
02:33 10 done it, having Gail leave the house? Just show
11 us what happens.

12 A My understanding was that Gail Miller --

13 Q Can I interrupt you for a minute? Maybe the mike
14 could be closer to you. I'm having a little hard
02:33 15 time, that's not your fault, but I'm having a hard
16 time hearing, but please, just go ahead, and I
17 could have gone through this with your notebook
18 but I didn't want to, but if you can do it this
19 way it might be a little faster and easier.

02:33 20 A And I have to preface this by saying it's my
21 understanding, because I wasn't involved in the
22 specific gathering of this information, but in
23 what I was acquainted with is that Gail Miller
24 would have left her home at 130 Avenue O South,
02:34 25 either via the front door or the back door --



1 Q Let me pause there.

2 A Okay.

3 Q There isn't a single witness that says the back
4 door, just so you know that.

5 A Okay.

6 Q Go ahead, that's fine.

7 A But it's possible that she could have come --

8 Q Anything is possible, okay.

9 A And my understanding is that she would have worked
02:34 10 her way down --

11 Q Can you lead us with your finger, like, show us
12 the line? The bus stop of course is right here
13 that she's saying, okay, that's the old bus stop,
14 the most logical one according to the girls, but
02:34 15 just show us if you could. Follow her out and
16 down the street and where things happened.

17 A Whether she came out the back, she would come down
18 to 21st Street.

19 Q I'm sorry, down 21st, okay.

02:34 20 A Over to Avenue N.

21 Q Okay.

22 A And then she was proceeding down Avenue N where
23 supposedly she was encountered by the Milgaard
24 group.

02:35 25 Q So the car comes up to her and somewhere, I'll



1 make a circle here, somewhere in --

2 A My understanding and my summary of the speech that
3 you are referring to, somewhere along that Avenue
4 N portion initially there were directions that
02:35 5 were sought of this person.

6 Q Okay.

7 A And then later further on the vehicle became stuck
8 and of course the suggestion was that it was in
9 the vicinity of where the funeral home is here.

02:35 10 Q So the car is stuck here, okay.

11 A There's an alley, that's a T alley here.

12 Q There's considerable evidence that we've heard
13 that a U-turn was made, that seems to be a fact,
14 we've heard that quite a few times. Where was the
02:35 15 U-turn made?

16 A I don't have that knowledge and really this is
17 news to me about the U-turn.

18 Q So you don't know about a U-turn?

19 A No.

02:35 20 Q Okay.

21 A In any event, as it's known, the victim was found
22 about 50 feet back from north of the T alley
23 intersection.

24 Q Okay.

02:36 25 A Belongings to Gail Miller were found in this



1 alley, this west-east alley between Avenue N and
2 Avenue O, and that's my understanding of the
3 situation.

4 Q Okay. Well, where would the car have gotten stuck
02:36 5 according to the police theory?

6 A I don't know specifically.

7 Q Now, there's some suggestion, I think it was in
8 your speech even, that -- and correct me, please,
9 I could be very wrong -- that the male occupants
02:36 10 left for about 20 minutes or something like that
11 to look for help?

12 A I think that, and again that was, I think that was
13 in the statements that were taken from Wilson and
14 from Nichol John. I believe that's where that
02:37 15 information came from.

16 Q Well, okay, but where would this car be stuck?
17 Let me back up a bit. So you don't know about a
18 U-turn at all?

19 A No.

02:37 20 Q If a car got stuck in a U-turn on 20th Street, you
21 would expect somebody would see that?

22 A Well, it was -- I don't know. It was 40 below
23 that morning and --

24 Q And for sure you would see it, if you are trying
02:37 25 to get a car past, I mean, 20th Street is a busy



1 street, it's a bus route?

2 A That's right.

3 Q This is not a minor side street, cars and busses
4 are going back and forth constantly; right?

02:37 5 A Yes.

6 Q Now, if a car got stuck there, you would expect
7 somebody to see it, somebody?

8 A If that were the case. I was not aware that there
9 was a U-turn and that the car got stuck on 20th
02:38 10 Street. I was of the impression that the car got
11 stuck in the vicinity of the lane, the east-west
12 lane between Avenue N and Avenue O, that is my
13 understanding.

14 Q And what happened then supposedly?

02:38 15 A Again, on the information that I had learned
16 through the various documentation, one person went
17 in one direction, another person went in the other
18 direction to seek help for the stuck vehicle.

19 Q But would it not be logical that by that time the
02:38 20 walking Gail Miller would have been long gone? It
21 only takes about three minutes from her house to
22 the bus stop, let alone -- well, here it's a
23 matter of seconds to the bus stop.

24 A Well, I don't know, but my understanding was that
02:39 25 the first, the first encounter with the walking



1 pedestrian was on Avenue N just off of 21st Street
2 and then that same person walked on towards the
3 car that supposedly was stuck and then there was
4 some more conversation that took place -- or that
02:39 5 that was when the vehicle got stuck and supposedly
6 Milgaard went northward towards where the victim
7 had been coming from and Wilson went in the
8 opposite direction. That's my understanding
9 through other people's information.

02:39 10 Q If Wilson went the other way, it would have taken
11 about under a minute to get onto the busy 20th
12 Street wouldn't it?

13 A It's not very far.

14 Q Seconds to get to 20th where all the traffic and
02:40 15 everybody is?

16 A Well, I don't know about the conditions on that
17 particular day, but --

18 Q I'm just wondering also, I don't know if you know
19 this or not, but the reports indicate that at the
02:40 20 crucial spot that you are describing, Mr. and
21 Mrs. Arthur Merriman were waiting for a cab at the
22 relevant time and saw nothing.

23 A I'm not aware of that.

24 Q To your knowledge, did anybody try to check out
02:40 25 this theory as being factually possible or not?



1 A I don't know that, but I would believe that that
2 would be an effort that was put forward by the
3 operational people.

4 Q Now, Nichol John gave a statement after the
02:41 5 polygraph or polygraph incident where she
6 described seeing David I guess with a knife in his
7 right hand, and the evidence clearly is David is
8 left-handed, stabbing the victim and yet the knife
9 didn't go through her dress. Did anybody ever
02:41 10 address that or look at that or say what's going
11 on?

12 A I'm not sure. I don't know.

13 Q I mean, that is -- now we understand it, but then
14 I take it that would have been exceptionally
02:41 15 puzzling?

16 A Well, I have to agree with you, except that we
17 know a lot more about it now than we did at that
18 time.

19 Q We now know who did it and we know all of this
02:41 20 didn't happen, but we're trying to figure out how
21 to prevent it in the future, and the point I'm
22 making, unless evidence is looked at very
23 critically, that we could have another David
24 Milgaard in the future, and what I'm saying to you
02:42 25 is this whole story of her walking down the wrong



1 street, and I say it's the wrong street based on
2 her roommates and Mary Gallucci and common sense,
3 having these kids not being seen by anybody,
4 anybody in a busy area, having a stabbing through
02:42 5 a coat and not through a dress, you put that
6 together, somebody surely must have said what is
7 going on here. I'm trying to understand why
8 nobody said that. In fact, the opposite is true,
9 and I mean no disrespect, but you continued to say
02:42 10 that he was guilty when your thesis has never been
11 really tested.

12 A Well, I think that's unfair because that was a
13 summary of facts. Some of it was gathered from
14 the article which was filed at the appeal on
02:43 15 behalf of David Milgaard, I think it's called
16 Western Criminal Records or -- and all those
17 things are listed generally as I had described
18 them in my preparation to advise the public that
19 was pressing for some kind of an explanation.

02:43 20 Q I appreciate that, and I can assure you that at
21 some point in time Mr. Caldwell and Mr. Tallis
22 will explain their take on what was happening, and
23 I know it may be a little unfair for you to have
24 to, because you are first, bear the burden of
02:43 25 trying to explain what's going on, but having said



1 that, you know, as a dedicated police officer and
2 one who rose to the rank of chief, I'm trying to
3 understand why it doesn't appear at any time to
4 you or to anyone, sat down and critically looked
02:44 5 at the theory of the Crown as to how it can be
6 true or how it has all these flaws, that's what
7 I'm trying to get at. So even though you were
8 prepared publicly to say that he was guilty, you
9 really had never tested, you relied solely on a
02:44 10 guilty verdict as opposed to sitting down and
11 saying, well, why is she on the wrong street, why
12 is nobody seeing anything, how does the knife go
13 through a coat and not through a dress, what is
14 going on here. Do you see what I'm getting at?

02:44 15 A There's no question that it was based on the
16 conviction, you know, I've said that repeatedly.

17 Q What I'm saying is you never did look at it
18 critically, that is, critical analysis?

19 A I'm sure that it could have been looked at more
02:44 20 critically. I think it needs to be kept in mind
21 that the operational people, which you depend on,
22 we would have suggested or hoped that they had
23 looked at all these aspects and sifted out those
24 issues that were not relative or issues that would
02:45 25 have pointed and eliminated Mr. Milgaard in this



1 situation.

2 Q I see. What I'm saying is the core case, relying
3 on unreliable people, on looking at one side of
4 the story and not the other and etcetera,
02:45 5 etcetera, was very weak. Then we come to some
6 bolstering of the Crown's case through what we've
7 heard, ad nauseam, the motel incident, and yet on
8 the other side of the scale would be the suspicion
9 of Larry Fisher which the trier of fact never
02:46 10 heard, so you see how the bouncing --

11 A Oh, I understand, I understand what you are --

12 Q And that a jury, if they had heard, for example,
13 of (V4)---- (V4)--- and other victims, may have
14 come, or likely would have come to a very
02:46 15 different conclusion, so that's what I want to get
16 into with you a little bit.

17 Mr. Commissioner, I'm in your
18 hands in terms of timing.

19 COMMISSIONER MacCALLUM: Another 15
02:46 20 minutes, please.

21 BY MR. WOLCH:

22 Q Now, you know who (V4)---- (V4)--- is from
23 wherever I'm not sure?

24 A No, I don't know her, and the first I saw is when
02:47 25 it was brought up on the screen here.



1 Q Okay. Well, she was a young woman who I know --

2 A Oh, I'm sorry, yeah, that was brought up by Mr.

3 --

4 Q -- Lockyer?

02:47 5 A Lockyer, yes.

6 Q In any event, I'm going to suggest to you that she
7 would be very relevant to the trial process given
8 that she was attacked at 7:07 or thereabouts in
9 the morning right after Gail Miller was murdered
02:47 10 and my understanding is that, and I can't remember
11 exactly, but it could be 800 yards away or

12 something like that. Now, if you accept that it
13 was impossible to link David Milgaard to that
14 given that approximately that time he was at the
02:48 15 Trav-a-leer lodge, given that the attacker of
16 (V4)---- (V4)--- doesn't match his description and
17 given the fact that there was no car involved and
18 that it doesn't fit into John or Wilson's
19 statements at all or anything like it, you can
02:48 20 pretty well obviously rule out Milgaard in being
21 involved with her, wouldn't that perhaps cause the
22 trier of fact to think that the rapist was around
23 and was attacking women that morning?

24 A I think it would have been an issue that certainly
02:48 25 would be looked at and I'm not privy to knowing



1 whether it was or it wasn't.

2 **Q** And if my member is right, she lived in the 300
3 block on H Street I think, H Street or H Avenue.
4 Is it avenue?

02:49 5 **A** Avenue H, yes.

6 **Q** And I believe, I think the attack occurred around
7 the 200 block. That would perhaps explain how the
8 articles were found in that direction if the
9 attacker went there after, he could have gone by
02:49 10 where the articles were found on O street or as he
11 was down the railway tracks heading back to where
12 he lived. Maybe I can help you with that. If we
13 can go to 031006, this is a different map, but
14 it's a little bigger, or at least -- not bigger,
02:50 15 but it goes a little further. Here's where Fisher
16 lived; correct?

17 **A** Yes.

18 **Q** Okay. And the attack on (V4)--- occurred
19 somewhere up here I believe, and somebody can
02:50 20 correct me, but it's near the railway track on
21 Avenue H?

22 **A** Right.

23 **Q** I'm pretty confident. Now, let me pause to just
24 say where we're coming from in terms of what we
02:50 25 think happened, and that is Fisher's uncle lived



1 up in that direction and Fisher had access to his
2 car from time to time, so if he dropped off the
3 car after the killing, he would be walking down
4 those tracks home, or down that area, and our
02:50 5 theory is of course he attacked (V4)--- at that
6 time, but whether that's our theory or not, that
7 is something that the jury might have been wanting
8 to hear about as to what happened that morning,
9 because let's face it, in 40 below there aren't
02:51 10 that many guys running around attacking women
11 outside, you might agree with that?

12 A Yes, I would.

13 Q That's a pretty unusual thing; right?

14 A Yes.

02:51 15 Q I mean, the odds of having two different people
16 800 yards apart in 40 below attacking women is
17 probably as much as a DNA possibility?

18 A Well, unfortunately I don't have the particulars
19 on the incident that you are talking about, so I'm
02:51 20 somewhat unable to even see it in the light that
21 you want me to see it.

22 Q No, but in fairness to you, that was, I'm led to
23 believe, passed on to the prosecutor, it's not
24 that it was a secret. I'm not criticizing you.

02:51 25 A No, no, I know, but I personally was not aware and



1 yet I'm being asked to make comments and
2 comparisons on the thing. That's where I --

3 Q I'm sorry, I'm asking you as a police officer, one
4 who has risen to chief who obviously, you know, is
02:52 5 more competent than the average, and from your
6 experience to say that does sound pretty relevant.

7 A Oh, I think that's a given. All these conjectures
8 can be relevant to any theory that you want to put
9 there.

02:52 10 Q Okay. You'll see the guru has given me a better
11 map.

12 COMMISSIONER MacCALLUM: I think he circled
13 Avenue N as --

14 MR. WOLCH: I couldn't go far enough.

02:52 15 COMMISSIONER MacCALLUM: -- as Fisher's
16 home instead of O didn't you?

17 MR. WOLCH: Oh, I'm sorry, I didn't mean
18 to. That was probably failing eye sight.

19 COMMISSIONER MacCALLUM: Not that it
02:52 20 matters ultimately.

21 BY MR. WOLCH:

22 Q Here's a better map. You see where you have
23 Fisher here and (V4)--- here and Pambrum, the
24 uncle of Fisher, up here, so if he dropped the car
02:53 25 off and he's heading home, there's (V4)--- right



1 in the way of his way home, not very far from
2 (V1)- and not very far from (V2)----- . Do you see
3 that?

4 A Oh, yes.

02:53 5 Q So a trier of fact can look at this and say, you
6 know, we've got a guy that attacked a woman here,
7 attacked a woman here, killed a woman here and
8 attacked another one here and that would raise a
9 reasonable doubt on David wouldn't it?

02:53 10 A Oh, I don't think there's any question about it
11 raising doubts.

12 Q So a trier of fact should really know about
13 (V4)---, to make whatever they want of it, but it
14 surely is relevant and probative, and I'm not
02:53 15 faulting you for it.

16 A No, no, I understand that.

17 Q It's not your fault.

18 A I'm not --

19 Q But you see it though?

02:54 20 A I'm at somewhat of a disadvantage simply because I
21 was not involved in the process of presenting the
22 facts to the Crown, that was attended by other
23 people, and I appreciate that you are asking me
24 for my opinions on what generally would take place
02:54 25 and of course my thinking is it would be somewhat



1 clouded by the fact that I do have some knowledge
2 of the facts and it's very difficult to provide
3 evidence on the basis of that kind of a situation.

4 Q Looking at the same map, can you take me to Avenue
02:54 5 Q in the 100 block, if we can magnify it, please?

6 I think it was good the way it was. I'm sure you
7 know the city better than I do, so if you can take
8 me to Avenue Q in the 100 block?

9 A Well, it would be just off of 22nd Street, just
02:55 10 below 22nd Street, and Avenue Q is between P and
11 R.

12 Q Well, this is Q. Where's the 100s? Miller was --

13 A It would be in this first block.

14 Q It would be right about here, around there?

02:55 15 A Yeah, that's right.

16 Q Maybe -- how far would that be from where Gail
17 Miller lived?

18 A It would be approximately a block, block and a
19 half, two blocks at the most.

02:55 20 Q Very close?

21 A Yes.

22 Q Would it, do you think, be probative or relevant
23 that a nurse was attacked in the morning hours at
24 that location within two weeks of the murder?

02:56 25 A I'm sure it would be if we were going to look at



1 all these circumstances and weigh them, yes.

2 Q Well, it's my understanding that around eight in
3 the morning approximately two weeks earlier a
4 nurse in a nurse's uniform, on January 15th I
02:56 5 think it was, was attacked around the 100 block on
6 Avenue Q. Do you know anything about that at all?

7 A No, no.

8 Q You see its importance though?

9 A Of course, yes.

02:57 10 MR. WOLCH: Mr. Commissioner, I am going to
11 go into that for a bit and I wonder if this might
12 be the better time.

13 COMMISSIONER MacCALLUM: 15 minutes.

14 (Adjourned at 2:57 p.m.)

03:19 15 (Reconvened at 3:19 p.m.)

16 BY MR. WOLCH:

17 Q Mr. Penkala, when we left off I was talking to you
18 about the relevance of another nurse being
19 attacked two weeks earlier exceptionally close in
03:19 20 proximity to where Gail Miller lived, and you
21 quite rightly and readily agreed that that would
22 be relevant to the investigation into the murder
23 of Gail Miller. And I will simply advise you that
24 this nurse was attacked around 8:00 in the
03:20 25 morning, and I would expect that on January 15th



1 it was not exactly balmy in Saskatoon at that
2 time, so it was likely cold -- I haven't checked
3 the temperature but I wouldn't expect it to be
4 very warm -- and in the morning hours, and we
03:20 5 talked about the relevancy; so you do agree that
6 that would be important?

7 A Yes.

8 Q If I might perhaps bring it more to your attention
9 by pulling up 106249, there is a Detective
03:20 10 Labreque; do you know who he is?

11 A I know who he is, yes.

12 Q And what you will notice is, on this report, is
13 that it's dated February the 7th and it's placed
14 into the Gail Miller murder; you see that?

03:21 15 A I see that.

16 Q Okay. I'm going to advise you, as a fact, that
17 there is no separate report for this attack, it's
18 only in the Gail Miller murder file; would that be
19 unusual or can you expect that?

03:21 20 A I think it's unusual. I, as a matter of fact I
21 was not aware of this particular occurrence.

22 Q Well on February the 6th:

23 "Det. Hanson ...",

24 who I am confident you would know, --

03:21 25 A Yes.



1 Q -- and Labreque interviewed this lady -- and once
2 again, Mr. Commissioner, I take it there is a ban
3 of publication?

4 COMMISSIONER MacCALLUM: Yes.

03:21 5 BY MR. WOLCH:

6 Q "... a complaint of indecent assault, at
7 which time ..."

8 this lady related that:

9 "... at 8:00 or 8:15 a.m. on Jan. 15th
03:22 10 or thereabouts, while in the 100 block
11 Ave. Q. So., she was approached by a
12 young man who grabbed her by her arms
13 from behind and ran his hands over her
14 body at which time she struggled and hit
03:22 15 him in the face with an elbow and he
16 then ran. She described this person as
17 15-16 yrs., ..."

18 Larry Fisher would have been about 19:

19 "... wearing a dark coloured pile jacket
03:22 20 and hood which was on his head, was
21 aprox. 5'6", slim build, he never spoke,
22 she feels that she could not recognise
23 if seen again as she had not paid any
24 attention to this youth when he
03:22 25 approached her and that when he did grab



1 her he grabbed from behind and when he
2 ran, ran away from her consequently she
3 did not have a clear look at his face."

4 Do you see that?

5 A Yes.

6 Q Now here we have somebody within two blocks of
7 Gail Miller, a nurse, being attacked; you see
8 that?

9 A Yes.

03:23 10 Q Now in terms of her being a nurse I should perhaps
11 take you to another document, which is 020173, and
12 I have a question about handwriting on this
13 document as well. Sorry, how do I get rid of
14 those red marks, it's -- thank you. Okay. Here
03:23 15 is February -- this is the statement that I'm sure
16 was being talked about there from this same lady,
17 she states once again that:

18 "... at 8:00 a.m. to 8:15 a.m. on Jan
19 15/69 ...",

03:23 20 she:

21 "... was walking home from St. Paul's
22 Hospital where I am employed as a
23 registered nurse. I was still in
24 uniform, and was wearing a coat and
03:23 25 boots.



1 While in the 100 Blk. Ave.

2 Q-So. about the centre of the block, I
3 was walking in the middle of the street
4 a young man walking towards me, when we
03:24 5 met I stepped to the side, he came to
6 me, but pinned my arms from behind as we
7 met, he ran his hand over my body, he
8 did not try to remove any of my
9 clothing. I scuffled with him for a
03:24 10 moment and hit him in the face with my
11 elbow and he let me go.

12 I first saw this person at 22nd
13 St. Ave. Q. I did not pay any attention
14 to him when he approached toward me and
03:24 15 did not have a chance to see his face
16 when he held me because he was behind
17 me."

18 I don't know if there is a second page or not, I
19 think it does, yes. If you could just turn the
03:24 20 page, I'm sorry, could I get the next page
21 please? Thank you:

22 "I describe the person as 15
23 to 16 yrs wearing a dark colored pile
24 jacket and hood which he was wearing and
03:25 25 was about 5'6", slim build.



1 He never spoke to me. I don't
2 feel I can recognize if seen again.

3 I have not seen a similar
4 person again."

03:25 5 And it was signed by the young nurse, so that
6 would have been relevant?

7 A I would agree, yes.

8 Q And if you go back to the first page for a second,
9 here, there appears to be a handwriting on it that
03:25 10 says:

11 "Indecent assault only, no connection",
12 might be that word; do you have any idea whose
13 handwriting that is?

14 A I don't recognize it.

03:25 15 Q You know I take it, for a fact, it's not yours?

16 A Oh, it's not mine, no. I wouldn't have been in a
17 position to even administer to that, but it's not
18 mine.

19 Q Okay. I'm assuming that these words were:

03:26 20 "Indecent assault only",
21 were in consideration of the Gail Miller
22 investigation, but would you have any idea that
23 -- you probably don't -- if that was a police
24 officer or a Crown, or do you have any idea?

03:26 25 A I have no idea. I don't recognize the



1 handwriting, I could only offer that someone had,
2 had looked at this, at this particular occurrence
3 and placed the comment on it, and I would, I would
4 assume that because it says:

03:26 5 "No connection",
6 and it was first registered to the Gail Miller
7 murder, I think that's what the:

8 "No connection",
9 refers to. That's just -- that's just an opinion
03:26 10 of mine.

11 Q And I take it Ms. (V9)---- and (V4)--- would have
12 been passed on to the prosecutor as part of a
13 police report?

14 A I, I don't know that.

03:27 15 Q Well if we can go to 053694, and this is an RCMP
16 report, and if we can just pull up that paragraph
17 you will see:

18 "Members questioned Mr. Caldwell about
19 four particular items that are contained
03:27 20 in his prosecution file. He was given
21 the opportunity to read the noted
22 papers. ... Statements of (V9)---- &
23 (V4)--- ...",

24 and (V9)---- would be the nurse from the 15th and
03:28 25 of course (V4)--- we know:



1 "... a single lab report containing the
2 names of (V1)- & (V2)-----, and a ...",

3 police:

4 "... update containing (V2)-----'s name.

03:28 5 There appears to be no question that
6 Mr. Caldwell would have read these
7 particular documents and in his July
8 statement he does state that he would
9 have read through the 95 statements
03:28 10 provided to him by the police. The
11 (V9)----- & (V4)--- statements, according
12 to file documentation, would appear to
13 have formed a part of the noted 95
14 statement.)

03:28 15 In response to our question,
16 Mr. Caldwell does not recall reading
17 these documents, however, stated that he
18 undoubtedly did and undoubtedly found
19 that they had nothing to do with the
03:28 20 case. In his view, they would have been
21 irrelevant to both the prosecution and
22 the defence."

23 You see that? Now my question isn't, I don't
24 mean to ask you about that particularly, but how
03:28 25 is the prosecutor advised or informed about the



1 relevancy or non-relevancy or importance of
2 evidence? I mean you and I agree (V4)--- and
3 (V9)---- and the rest would have been important,
4 and I'm sure Mr. Tallis would have liked to have
03:29 5 had it, but how does the prosecutor arrive at
6 conclusions of importance for disclosure
7 purposes; is it by himself or is there police
8 input or is there a mechanism for that?

9 A Well there is a police input to a case
03:29 10 preparations officer and while in this particular
11 case I don't have any of my own personal knowledge
12 of this, what had taken place between the case
13 preparation officer and the Crown, Mr. Caldwell,
14 but it would be a usual process to provide the
03:29 15 information and obviously we would -- and I say
16 'we', the police department -- would accept
17 recommendations from the Crown as to what further
18 needs to be done or how this would apply.

19 Q Well, from your knowledge of Saskatoon, does the
03:30 20 ultimate responsibility for disclosure of evidence
21 to defence counsel rest in the hands of a
22 prosecutor, the police, or a combination thereof?

23 A I think my version is that it's the prosecutor,
24 and he would instruct if he needed the police to
03:30 25 assist.



1 COMMISSIONER MacCALLUM: Now or then, sir?

2 A Pardon me?

3 COMMISSIONER MacCALLUM: Now or then, in
4 '69?

03:30 5 A Then, that was my understanding then.

6 BY MR. WOLCH:

7 Q Now the prosecutor, of course, is virtually
8 totally dependant on the police for what he gets?

9 A I think that's correct, yes.

03:30 10 Q Yeah. Now do the police, or did the police play
11 any role in discussing with the prosecutor what
12 should or should not be disclosed?

13 A I don't know, I have -- I was not in a position to
14 be a part of that.

03:31 15 Q Okay. When you became chief, would you know if
16 that was the case, or did the prosecutor simply
17 rely on his own judgement?

18 A I don't know if I can -- I know that at some
19 point, when charges are already proffered, the
03:31 20 prosecutor would call on those Crown witnesses
21 that would be required and there would be some
22 discussion and renewal of dealing with the type of
23 evidence that you are prepared to present.

24 Q Okay.

03:31 25 A That part I know.



1 Q And I think you might be heading to where the
2 problem lies, because who he wants as his
3 witnesses might not necessarily be the people who
4 are helpful to the defence; do you follow me?

03:32 5 A Yes --

6 Q So --

7 A -- I do.

8 Q If all he is focusing on is who builds his case,
9 and I will disclose that, there could be a major
03:32 10 gap in the judicial process?

11 A Well, I wouldn't know, I mean that's --

12 Q If all he is giving defence is evidence that is
13 relevant to the witnesses he is calling, and not
14 evidence that may point in another direction, then
03:32 15 we have a serious problem in arriving at a just
16 verdict; do we not?

17 A Well, again, I -- you know, that's completely out
18 of my field, I -- I'm sorry, I can't --

19 Q Well --

03:32 20 A -- I can't tell you what the relationship is
21 between defence and the Crown. That was, that was
22 something that, in my experience, was not really
23 the -- something that the police would stick their
24 nose into.

03:33 25 Q So back then, at least, the police would or



1 should, at least, give the prosecutor the entire
2 file?

3 A Yes.

4 Q And the prosecutor would cull out of that what he
03:33 5 felt was important for disclosure?

6 A That would be a normal process, yes.

7 COMMISSIONER MacCALLUM: Was that RCMP
8 report in '93, do we know?

9 MR. WOLCH: Yes, yes, it's by Constable
03:33 10 Jorgenson. I'm pretty confident --

11 COMMISSIONER MacCALLUM: Does it say
12 93/12/13?

13 MR. WOLCH: Umm --

14 COMMISSIONER MacCALLUM: 93/12/13.

03:34 15 MR. WOLCH: Yes, 93/12/08.

16 COMMISSIONER MacCALLUM: 08?

17 MR. WOLCH: Yes.

18 COMMISSIONER MacCALLUM: Okay.

19 MR. WOLCH: Although I'm sorry, it does say
03:34 20 concluded a different date, I'm not sure what
21 that means. If you go up there, it's got the
22 14th, I'm not sure why.

23 MS. KNOX: What it appears to suggest is
24 that there was an original statement on December
03:34 25 8th and a follow-up Q and A on December 12th.



1 COMMISSIONER MacCALLUM: Okay.

2 MR. WOLCH: That's --

3 COMMISSIONER MacCALLUM: Thank you.

4 MR. WOLCH: I'm going to refer to another

03:34 5 document, and we've been over this a few times so

6 I'm going to be very brief with it, 090019?

7 COMMISSIONER MacCALLUM: 19?

8 BY MR. WOLCH:

9 Q 19, yes. We have been through this a few times

03:35 10 and I, you may have answered these questions and I

11 can't remember the answer, and I will ask you to

12 bear with me in that regard. You will remember

13 that Mr. Williams spent close to a month or more

14 in police offices; did anybody, in particular, act

03:35 15 as a liaison?

16 A Umm, I'm not certain if there was anybody that was

17 acting as a liaison. He would have been free to

18 come to my office, I was the chief at that

19 particular time he was -- the arrangements were

03:35 20 made through me initially and the material was

21 provided to him, the office was provided to him.

22 Q Well I take it he -- well, in the, in this

23 particular document he says that he was advised

24 that there were no incidents of rape attributed to

03:36 25 Larry Fisher which occurred in Saskatoon; can you



1 put that in a time as to before he was -- he spent
2 his month or during his month?

3 A You know, I'm sorry, I can't. I know that it was
4 during the time that I was chief.

03:36 5 Q Okay. I'm --

6 A I'm --

7 Q I'm --

8 A It would have been, it would have been when the
9 concerns were registered with the Federal Justice
03:36 10 Department, and then I think he was sent out to
11 look into the matter.

12 Q Okay. I'm going to make the request of counsel
13 for the RCMP and for Mr. Williams if they can help
14 in identifying who these people are, if Mr.
03:36 15 Williams knows, so I -- but --

16 MR. ELSON: Mr. Commissioner, forgive me
17 for rising, but it was a matter that I was going
18 to deal with in cross-examination but maybe this
19 is an appropriate place to deal with it now.

03:37 20 Mr. Lockyer did put to the
21 witness as a fact that there was information in
22 the document that is now on the screen to the
23 effect that the Saskatoon Police Service advised
24 him -- and I'm not entirely sure how that advice
03:37 25 was given -- but had advised him that there were



1 no incidents of rape attributed to Mr. Fisher in
2 Saskatoon.

3 There are some other documents
4 that I was able to uncover during the lunch break
03:37 5 which I was going to raise in cross-examination
6 which tend to suggest that the Department of
7 Justice, and specifically through Sergeant
8 Pearson, did not ask the Saskatoon Police Service
9 for information. And, specifically, there are
03:37 10 other documents that might assist. There is a
11 report from Sergeant Pearson which is number
12 255418, there is also a -- and I'm not asking
13 that this material be put up but there are other
14 documents -- notably 016052 which also refers to
03:38 15 the method by which information was collected by
16 the RCMP with respect to Mr. Fisher's conviction,
17 and then also most notably there is a letter from
18 Mr. Asper which is, I believe, dated March of
19 1990 in which Mr. Asper appeared to be labouring
03:38 20 under the mistake that the offences for which Mr.
21 Fisher was convicted had occurred in Regina, and
22 indeed it appears that Sergeant Pearson was
23 labouring under that same mistake. It's a little
24 difficult to tell whether or not that information
03:38 25 was provided to him by Mr. Asper and I -- it's



1 apparent that it's an innocent mistake by all the
2 parties but there certainly is no record that we
3 have been able to uncover anywhere to suggest
4 that the Saskatoon City Police advised Mr.
03:39 5 Williams, or for that matter advised Sergeant
6 Pearson, that there were no rapes attributed to
7 Larry Fisher having occurred in the City of
8 Saskatoon. There is simply no record of that and
9 the only inference or the only implication, I
03:39 10 should say, of that having occurred is in the
11 document that is up on the screen. There is
12 simply no other evidence.

13 COMMISSIONER MacCALLUM: Oh, okay. So will
14 you be asking Mr. Williams about that, then, when
03:39 15 he --

16 MR. ELSON: Well I would certainly like to
17 ask Mr. Williams about that and I understand, and
18 I have spoken with My Friend Mr. Gibson, and it's
19 my understanding that Sergeant Pearson will shed
03:39 20 some light on it.

21 Quite simply, as far as I can
22 tell -- and this stands to be corrected from the
23 evidence that we will receive -- is that there
24 was a CPIC done and the CPIC showed that the
03:39 25 convictions were entered in Regina and



1 apparently, then, nobody went behind that CPIC
2 result to determine where the information
3 originated or the wording of the information
4 against Mr. Fisher, and it was simply assumed
03:40 5 from the CPIC, obviously by both Sergeant Pearson
6 and in fairness by Mr. Asper, that the, because
7 the convictions were in Regina it was simply
8 assumed that, therefore, the offences occurred in
9 Regina as well, and it appears that no one asked
03:40 10 the Saskatoon City Police the question as to
11 whether or not Larry Fisher had committed any
12 offences in Saskatoon.

13 COMMISSIONER MacCALLUM: But of course the
14 letter, Mr. Williams' letter, indicates, does it
03:40 15 not, that that in fact happened?

16 MR. ELSON: It does, although quite frankly
17 there's another inference or there's another
18 conclusion that could be drawn from the letter,
19 and that is that Mr. Williams was relying on the
03:40 20 information from the RCMP and had simply assumed
21 that the letter -- that the information Sergeant
22 Pearson within the RCMP had collected had somehow
23 come from the Saskatoon City Police when, in
24 fact, it had come from CPIC and an honest mistake
03:41 25 made by Sergeant Pearson as to where the offences



1 had occurred.

2 COMMISSIONER MacCALLUM: Okay.

3 MR. ELSON: So I think this could be
4 cleared up, but I was quite frankly deathly
03:41 5 afraid that it was going to appear in the media
6 that the City of Saskatoon Police had
7 deliberately misinformed the Department of
8 Justice with respect to Mr. Fisher's conduct in
9 the City of Saskatoon, and quite frankly other
03:41 10 than this document -- and even then this document
11 is not firm on the point -- there is simply no
12 documentary evidence to support that conclusion.

13 COMMISSIONER MacCALLUM: Well, thank you
14 for that information. Mr. Wolch will appreciate
03:41 15 it too, I'm sure, and we look forward to being --
16 to getting more detail on it from Mr. Williams
17 then.

18 MR. WOLCH: I wonder if I can cross-examine
19 Mr. Elson now, after all the evidence he has
03:42 20 given, he has given more than the witness. But I
21 say that, obviously, in jest.

22 BY MR. WOLCH:

23 Q But I can only deal with what I have here, and
24 other evidence may say differently, and my
03:42 25 question wasn't even what was being asked there,



1 my question was who was the liaison with Mr.
2 Williams?

3 A I don't know if there was a specific liaison. I
4 know he had access to my office at that time but
03:42 5 I'm quite certain, I'm quite certain that there
6 was somebody within the, possibly the detective
7 division that was seeing to his needs.

8 Q I'm going to suggest that it would be best if
9 there was one particular senior officer, in
03:42 10 circumstances like that, who was responsible for
11 marshalling all the evidence and as opposed to
12 which office has Mr. Williams walking in and
13 asking questions?

14 A Oh, very definitely, yes.

03:42 15 Q Because, right now, I don't know who would have
16 been providing whatever to Mr. Williams, and of
17 course we'll ask Mr. Williams about all the
18 material that never got to us, but that's another
19 story for later. But dealing with this, had he
03:43 20 walked into your office, you couldn't have told
21 him anyway?

22 A That's right.

23 Q Because you didn't know?

24 A That's right.

03:43 25 Q And it had been my intention, before Mr. Lockyer



1 questioned you, to take a fair bit of time in the
2 concept of not divulging the apprehension of a
3 serial rapist to the community, and he covered
4 that so I'm not going to, but you do agree with me
03:44 5 that it's really important that, when you catch a
6 serial rapist, or anyone, but a serial rapist in
7 particular, that the community and the victim know
8 that he is caught?

9 A Oh, very definitely.

03:44 10 Q Now probably the next-to-last area I want to cover
11 with you, and help me with this please; when
12 Mr. Hodson was questioning you, you produced a
13 piece of paper that was a comparison of the
14 various, or some of the offences that Larry Fisher
03:45 15 committed; do you recall that?

16 A I, I think I know the one that you are referring
17 to.

18 Q Yeah. And perhaps I was daydreaming or whatever,
19 but did you prepare that, or was it just in your
03:45 20 house?

21 A No, no, I didn't prepare it and I didn't recognize
22 the handwriting, it was in handwriting as I
23 recall, and it dealt with the three, the three
24 rape victims.

03:45 25 Q And do you know why you would have that in your



1 house as opposed to in the file or --

2 A Umm, well obviously at, at the -- at some point,
3 and I testified to that effect, we looked at, at
4 the rape files, we looked at convicted, convicted
03:45 5 sex offenders, that issue or that aspect of it was
6 examined by the ident section. We had a system,
7 we had a system of recording people, and we could
8 select the sex offenders out of all of the
9 different categories.

03:46 10 Q And I asked you earlier and you confirmed that you
11 placed a great deal of reliance on the Court
12 decision in the Milgaard case but, as time went
13 by, were there not significant developments? One,
14 of course, was the apprehension of Larry Fisher,
03:46 15 but later we have Mrs. Fisher coming along and
16 saying some damning things about him, and I take
17 it you must have been quite shocked when you heard
18 that Larry Fisher lived in the Cadrain home?

19 A That was a surprise, yes.

03:46 20 Q I mean that was an amazing coincidence, I would
21 think, from an investigator's point of view?

22 A Yes.

23 Q I mean that would account for articles in the
24 area, and everything else, because he is in the
03:47 25 same house?



1 A Well of course, yes.

2 Q Yes.

3 A Possibility.

4 Q Yeah. And I'm suggesting that, if somebody would

03:47 5 have sat down and compared all the Fisher

6 offences, it would have stood out that he was the

7 perpetrator of the Miller murder. And in that

8 vein let me draw your attention to a particular

9 document, 040364, and I -- my intention is to go

03:47 10 through this quite quickly, I'm not going to spend

11 a great deal of time, I don't know if we can get

12 it into a -- magnified so we can read it or not,

13 but -- now this document is the MO, as we or at

14 least you use the term, of Larry Fisher -- oh,

03:48 15 that's great, thank you. And you will see we have

16 on this document (V1)- we know about; (V2)-----;

17 (V3)-----; here is that nurse we were talking

18 about, this -- well a few minutes ago, the one two

19 blocks away; then we have Gail Miller; then we

03:48 20 have (V4)---; (V5)---; if we go further (V7)---;

21 (V8)---, and (V10)-. That's rather an amazing

22 collection. (V10)-, of course, is different in

23 time and age, and so on, but there are

24 similarities.

03:48 25 Now if you look at these, these



1 offences, and if you look at age, you have got
2 young people; 22, 17, 19, 19, 20, 17, 17, 19, 18,
3 and of course (V10)- is the one much later in
4 1980.

03:49 5 Now if you go to the next
6 category, time of attack; 11:00 p.m., 8:10 p.m.,
7 10:00 p.m., 8, 8:50 in the morning, 6:45, 7:07,
8 9:00 p.m., 2:05 a.m., 1:15 a.m., and that later
9 one is 9:30 p.m., so it's, generally it's likely
03:49 10 dark.

11 Hospital connection; none with
12 (V1)-, none with (V2)-----, she was a student,
13 student (V3)-----, (V9)---- was a nurse, Miller
14 was a nurse, (V4)--- no, (V5)--- yes, (V7)--- yes,
03:49 15 (V8)--- yes, and (V10)- no. So you see that,
16 there is a similarity.

17 Proximity to the victim's home;
18 (V1)- two blocks, (V2)----- a block and a half,
19 (V3)----- six blocks, (V9)---- one, Miller one,
03:50 20 (V4)--- a block and a half, (V5)--- a half a
21 block, (V7)--- 100 yards, (V8)--- 100 yards,
22 (V10)- two blocks; do you see that, all near the
23 victim's home.

24 The locations, a lane, a lane, a
03:48 25 lane, that was on Q Street, or avenue rather, we



1 know Miller involved a lane, (V4)--- was near a
2 lane, (V5)--- a lane, (V7)---, bush, and (V8)---,
3 bush, and (V10)- a vacant house.

4 Let's go to the next one.

03:48 5 Comfort zone, is that a term you are familiar
6 with?

7 A Pardon me?

8 Q Are you familiar with the term comfort zone in
9 connection with serial rapists?

03:48 10 A Not particularly, no. What --

11 Q It means that they like to commit the crime in an
12 area they are familiar with and feel a sense of
13 comfort.

14 A Oh, I see, yes, yes.

03:48 15 Q It's a term experts have used. Now, regarding
16 Fisher's home, (V1)-, within a few blocks of his
17 home. Within a few blocks of his home for
18 (V2)----- . Close to his work for (V3)----- . A
19 few blocks from his home for (V9)---- . A block
03:49 20 from his home for Miller. (V4)--- was on the
21 railway tracks, we talked about that, (V5)--- was
22 his old neighbourhood and the number 2 bus route.
23 (V7)---, he knew the area. (V8)--- was his old
24 area he was familiar with and (V10)- was a few
03:49 25 blocks from his home.



1 Go to the next one, vulnerable
2 victims, we'll skip that, but they are all on
3 their own in the dark, very vulnerable.

4 Sudden attack. (V1)-, grabbed
03:49 5 from behind. (V2)-----, grabbed from behind.
6 (V3)-----, grabbed from behind. (V9)----,
7 grabbed from behind. Miller, we suggest the same
8 thing. (V4)---, walked toward her and lunged at
9 her. (V5)---, bumped into in passing, grabbed
03:49 10 from behind. (V7)---, grabbed from behind.
11 (V8)---, grabbed from behind after passing, the
12 same MO. (V10)-, grabbed from behind.

13 Go to the next one, weapon.
14 Knife to chest for (V1)-. Knife to throat for
03:50 15 (V2)-----. Threatened with a knife for
16 (V3)-----. No weapon for (V9)----. We know
17 Miller. No weapon for (V4)---. None for (V5)---
18 that we know of I believe, none for (V7)---.
19 Knife to throat for (V8)--- and a knife and a
03:50 20 sharp object to the throat of (V10)-.

21 Go to the next. Well, we know
22 they were all right-handed, so I'll skip that.

23 Method after contact. Pushed
24 down a lane between two garages, thrown on the
03:50 25 ground, dragged down an alley near a garage and



1 shed and thrown on the ground, dragged into an
2 alley, put into a ditch. We don't know those two.
3 Ran down hands and legs, dragged into a yard near
4 an alley, dragged into bush, thrown on the ground,
03:51 5 both of those thrown on the ground, thrown on the
6 ground, dragged into bush and dragged into back
7 yard. You see how the pattern is emerging, sir?

8 A Oh, yes.

9 Q Premeditated and planning, told her he had seen
03:51 10 her before, victim's usual route to her
11 boyfriend's house, may have been a car in the
12 area, bus to work for Gail Miller, followed her
13 off bus, rode same bus, rode same bus, waiting
14 behind a hedge. All planned.

03:51 15 Go to the next one, what
16 attacker did to avoid detection. Hand over mouth,
17 blouse over face, gagged, forearm over mouth, hand
18 over mouth to muffle scream. With Gail Miller
19 there's bruising around the mouth, sweater inside
03:51 20 out. Hand over mouth to muffle scream, hand over
21 mouth, gagged with sweater, hog-tied, hand over
22 mouth, coat over head, gagged with a girdle,
23 hog-tied. Do you see that?

24 If we can go to the next one,
03:52 25 clothing removed. Ordered to undress and forced



1 to remove all clothing except stockings, ordered
2 her to undress and pushed slip up to waist, pulled
3 panties and nylons off. I'm not sure of the next
4 two. Then we go to sweater and right boot off.
03:52 5 Of course we're talking about Gail Miller, we all
6 know the facts there. He pushed sweater and skirt
7 up, pulled panties and nylons down, tore her
8 clothing off except skirt, pushed sweater up to
9 neck, pulled panties -- another one, removed
03:52 10 panties, pants and panties and told to remove rest
11 of her clothes.

12 If we can go to the next
13 category, breasts exposed. Yes, yes, and then
14 those two were stopped. Yes, that was stopped,
03:52 15 bra torn off, yes, bra pushed up and bra cut off.
16 So you see the similarities there.

17 Degradation, rape, rape, rape.

18 Next -- I'm trying to go fairly
19 quickly. Coat on undressed victim after attacked.
03:53 20 Yes, the victim put her coat on. No, yes, there's
21 another yes, another one and there's a no.

22 Go to the next one, please,
23 clothing and other items taken. Victim 's blue
24 jeans and possibly purse. Took all her clothes
03:53 25 except slip. Nothing here, nothing here. Gail



1 Miller's was taken. No. \$15, that was
2 interrupted, and he rifled the purse here.

3 I'll skip completion of attack,
4 use of a vehicle, and of course the descriptions
03:53 5 in most cases, young, small, we know it was Larry
6 Fisher in most, he's been convicted of most of
7 those.

8 Now, clearly that's a very
9 compelling picture; is it not?

03:54 10 A Yes.

11 Q And what I'm troubled with is that this was all
12 available, and once again please don't take this
13 personally, I'm not saying you should have been
14 the one to do this, but I'm relying on you as an
03:54 15 experienced officer, a senior officer, when you
16 have this much available, and it was all available
17 in 1970 or '71 or whatever it might be, way back
18 then, it was all available, any police officer
19 could have sat down, drawn this chart and said,
03:54 20 'my God, we've got to look at this guy,' and
21 presumably that officer would have gone, seen
22 Larry Fisher, made a statement, seen he lied, he
23 didn't go to work that day, seen he took the same
24 bus as Gail Miller, talked to his wife who could
03:55 25 have told him what happened there, a paring knife



1 is missing, and we have Larry Fisher. Now, using
2 the benefit of hindsight, how could we have got
3 this information back then or what mechanism would
4 prevent a David Milgaard tomorrow from not having
03:55 5 this compelling evidence put before a trier of
6 fact and the responsible party? Using your
7 hindsight, your wisdom, your maturity as a police
8 chief and your experience, how could we have
9 prevented this or how can we in the future?

03:55 10 A I think that many of these questions that you are
11 asking are dependent on the individual
12 investigator that deals with a case and his
13 ingenuity needs to be applied. Now, you know,
14 there's no question about how compelling this
03:56 15 information is, but whether that was available to
16 the coordinating investigator I don't know, I
17 don't know just how -- there was some of these
18 things that were obviously known to him. To what
19 extent he took them into consideration I don't
03:56 20 know.

21 Q Well, there are a number of people who at that
22 time were aware of all this, they hadn't drawn a
23 diagram of course, but they were aware of all
24 these facts?

03:56 25 A That's my understanding.



1 Q I mean, Detective Karst would have known?

2 A Well, you know, when you start singling out
3 individuals, I don't know.

4 Q Well, I'm not saying he put it together, I'm just
03:56 5 saying he would have known because he's the one
6 who went to Winnipeg and interviewed Larry Fisher,
7 so he would have known those offences?

8 A Yeah.

9 Q And he obviously was heavily involved in the
03:57 10 Miller investigation, so he had to have known
11 about it. I'm not saying he put it all together,
12 but at least he had to know.

13 A Well, that's right, but again, I have to identify
14 the fact that this was long after Mr. Milgaard was
03:57 15 charged and the Court process took place.

16 Q No, with all due respect, it was only about a year
17 later, it was still in the appeal process.

18 A Well, that's the point that I'm making.

19 Q That's not a long time.

03:57 20 A That a lot of information has come over a period
21 of time even after the conviction of Milgaard,
22 that's the way I see it, and I may be wrong on
23 that, but --

24 Q But I'm saying that the discovery of Larry Fisher
03:57 25 was right around the time that, and Mr. Lockyer



1 went through it, I won't go through it, the time
2 that David was in the appeal process, we're not
3 talking many, many years later, so what I'm saying
4 is obviously it would have been nice if somebody
03:58 5 would have put it together and it's not that hard
6 to put together, and what I'm saying is at that
7 time all this was known. We know for a fact
8 that -- well, for example, Mr. Caldwell would have
9 known about everything up to Winnipeg, and maybe
03:58 10 Winnipeg, we'll have to go through that later, we
11 don't know that as of now. We know Mr. Kujawa had
12 David's appeals and he had handled Mr. Fisher, we
13 know Detective Karst was heavily involved in the
14 Miller investigation and went to interview Fisher
03:58 15 in Winnipeg, we know all that, that these people
16 at least had the potential of doing a schematic
17 just like this and going wow, I mean, look where
18 we are, and keeping in mind what I told you
19 earlier about the frailties of Avenue N, the
03:58 20 frailties of these young kids who aren't very
21 reliable, you know, the frailties of all that, and
22 you look at this and it's all available in the
23 early '70s. I'm asking you if in hindsight it
24 could have been prevented, we could have saved 20
03:59 25 years in jail.



1 A Well, that would be a desirable thing, is to have
2 prevented it.

3 Q Absolutely. But can you now, with your added
4 experience, tell us if there's something that
03:59 5 could have been done or is it all just an horrific
6 circumstantial occurrence?

7 A Well, you know, I get the feeling that there's
8 responsibility placed on me as though I was a
9 one-man police force that was totally responsible
03:59 10 for the investigation of this offence.

11 Q And I've heard that.

12 A And that's just not true, and of course while I
13 played a role in these things, it was made up of
14 many people and I would prefer that those people
04:00 15 that were involved make, answer your questions in
16 terms --

17 Q Oh, they will be asked. I'm only asking -- I'm
18 drawing on your experience as a police chief. I
19 mean, you rose through the ranks for obviously
04:00 20 good reason and I'm just asking you, with your
21 overall knowledge of the case, if you have any
22 suggestions as to how to prevent this from
23 happening, or at least discovering it sooner. I
24 mean, there are a lot of odd things here. I mean,
04:00 25 you not even knowing about the Winnipeg rapes is



1 quite remarkable, the complainants not knowing
2 about it, the media not knowing about it, it not
3 being publicized, Fisher not getting a single day
4 for doing it, and you know that in Winnipeg they
04:00 5 didn't take into account the Saskatoon charges. I
6 mean, that all is quite coincidental to say the
7 least.

8 A I agree with that, I certainly do.

9 Q It's astounding in some ways. Well, I guess we're
04:01 10 left with that, but what I'm saying is that it was
11 available to do a chart like that way back then.

12 A It wasn't available?

13 Q It was, it was available, all that information was
14 known.

04:01 15 A It could be, I don't, you know -- and I don't know
16 if it was done or not, I have no idea. I mean, I
17 can --

18 Q Well, the first number of offences were all in Mr.
19 Caldwell's file, they were all in the police
04:01 20 reports. The last Winnipeg ones -- well, there
21 was a plea of guilty in Regina, so Kujawa knew for
22 sure and Karst knew and the chief and the deputy
23 chief, they all knew, so it was available within
24 the authoritative body at that time.

04:01 25 MS. KNOX: Mr. Commissioner, just in



1 response to one comment or one phraseology that
2 Mr. Wolch just used, as Mr. Lockyer did
3 yesterday, and as you ruled on this morning, he
4 said all of these first ones were in Mr.
04:02 5 Caldwell's file. There's no evidence before this
6 Commission that all of those were in Mr.
7 Caldwell's file and in fact there will be
8 evidence I believe forthcoming that all of them
9 were not in Mr. Caldwell's file.

04:02 10 MR. WOLCH: Sorry, I was relying on that
11 report that I put from the conversation with
12 Constable Jorgenson that they were in the file.

13 COMMISSIONER MacCALLUM: All of this stuff?

14 MR. WOLCH: Of course not, this wasn't --
04:02 15 all the material giving rise to this was.

16 COMMISSIONER MacCALLUM: Okay.

17 MR. WOLCH: That is, (V1)-, (V2)----- and
18 (V3)----- were all in his files, (V9)----'s
19 statement was in his file, (V4)---'s statement
04:02 20 was in his file, that's all I'm saying.

21 MS. KNOX: The (V3)----- material was not
22 in the file as I understand it and the evidence
23 will show that it was not in his file. There
24 were references to (V2)----- and (V1)- in one
04:02 25 report. (V9) (V9)---- and (V4)---'s statements



1 were there, yes, and both of them have notations
2 on them that they weren't related.

3 COMMISSIONER MacCALLUM: Thanks, Ms. Knox.

4 BY MR. WOLCH:

04:04 5 Q Do I take it there is no suggestion you have that
6 you think might be of some benefit to us?

7 A I wish I had one for you. I simply, you know,
8 there is so many people involved in this and I
9 don't know whether there would be a way to reduce
04:04 10 the number of people. Those are the kinds of
11 situations that I think complicate, in my opinion,
12 complicate this, there's even different police
13 departments that are involved, and I assume that
14 that was all, that all interfered with the kind of
04:04 15 investigation and the kind of results that we
16 would wish to have happened.

17 Q Would you agree with this comment, that you would
18 have, surely you would have thought, and this
19 comes from the defence counsel, surely you would
04:04 20 have thought that the police department and the
21 justice system would want to ensure the community
22 was made aware that the crime -- sorry, that the
23 person responsible for those crimes had been
24 apprehended, dealt with and sentenced, that to me
04:05 25 is extremely unusual, and it makes you wonder why



1 they wouldn't want it to be known at the time.

2 A I have no problems with that. I agree that that
3 type of a crime needs to be relayed back to the
4 community because the community would be -- I
04:05 5 would be sure that the community is terrified with
6 those types of crimes going on without the author
7 being found.

8 Q Yeah. And this lawyer says that to me it's
9 extremely unusual and makes you wonder why they
04:05 10 wouldn't want it to be known at the time.

11 A Again, I have no idea how that got dropped and why
12 that information didn't return to our department.
13 I can't help you in that regard.

14 Q I have one last item I want to deal with, if we
04:06 15 can turn to 324970, it's the letter to Mr. Garvie,
16 and I know you went through it, but there's
17 portions of it I would like to finish with. You
18 talk about:

19 "I'm disappointed that the media is not
04:06 20 more objective --"

21 Sorry.

22 "-- and would not seek to report the
23 facts as opposed to innuendos which
24 introduced controversy and incited the
04:07 25 compassion of many people who are not



1 acquainted with the true facts of the
2 incident."

3 Now, that's a fairly general comment and I've
4 looked at much of the media comments and I'm
04:07 5 trying to find where they were inaccurate or
6 wrong in what they reported. Do you have any
7 specific example of false reporting?

8 A I don't think it's aimed at suggesting as false
9 reporting, I think it was reporting items and
04:07 10 issues that were not supportive for evidential
11 purposes, I think that's --

12 Q And what would that be? Give me one example, just
13 one.

14 A I'm trying to think, and I'm not sure, but there
04:08 15 was so much, so much information that was being
16 placed out to the public through the media, and of
17 course the public would make its assumptions on
18 the basis of the media and it wasn't complete.
19 Even though maybe ours wasn't complete, theirs was
04:08 20 not complete as well. That's my version of what
21 was taking place.

22 Q Okay. Do you feel there is a role for the media
23 in these type of cases?

24 A I think there's a role in helping the community
04:08 25 and being co-operative, but in my estimation the



1 information that was coming out was not in that
2 particular manner, it was more critical, accusing,
3 demanding, those were the kinds of issues, and I
4 stated before, the police department was not in
04:09 5 the habit of sharing details.

6 Q Well, leaving that aside, the media focus, as I
7 recall, would have been on recantation of
8 witnesses, the discovery of Larry Fisher, the
9 evidence that we looked at, I mean, those are all
04:09 10 factual, compelling, newsworthy events. Now, I'm
11 wondering why that would disturb you is all I'm
12 really getting at.

13 A Well, that's the way I saw it at the time and this
14 gentleman that had written to me on the first
04:10 15 occasion and then wrote the second time and I
16 thought that possibly I could help him quell his
17 concerns by giving him some of the details, and of
18 course they are not conclusive details, but simply
19 a --

04:10 20 Q Well, in fairness, I don't see a single detail.

21 A No, you are right, you are right.

22 COMMISSIONER MacCALLUM: Mr. Wolch, it
23 seems to me that the question is a pretty
24 difficult one for the witness to answer. If he
04:10 25 were given a selection of the press coverage at



1 the time, perhaps he would be able to give you
2 specific examples which he considered
3 objectionable, but it's pretty hard for anybody I
4 think to remember this on an occasion like this.

5 BY MR. WOLCH:

6 Q With respect, I can recall every objectionable
7 comment that was made in the media that I didn't
8 like in a story, but -- I can recall being called
9 an awful lot of names and an awful lot of things
04:11 10 that I can quote chapter and verse, and I
11 appreciate what you are saying, sir, obviously,
12 but in a general sense if something stood out is
13 all I'm saying because I'm having a hard time,
14 when the focus was on Wilson and John and Fisher
04:11 15 and all that, why you would be offended by it,
16 that's all I'm trying to say, but if you can't
17 help, that's fine, I'll move on.

18 A I don't think -- I don't think I was offended by
19 the fact that those facts were brought out. It
04:11 20 was the manner in which I guess the media was
21 accosting the operations of the police department
22 and the fact that we weren't more forthcoming with
23 more detailed information, the likes of that.

24 Q Okay. Then you go on to say:

04:12 25 "My purpose is to assure you that I am



1 firmly convinced that David Milgaard was
2 the person who murdered Gail Miller and
3 that he was convicted by a competent
4 court and jury of twelve men and women."

04:12 5 Well, I guess what troubles me here is by the
6 time you are writing this, you are aware of all
7 the facts that the jury didn't have; that is, you
8 are aware of a recantation, you are aware of
9 Fisher, you are aware of Linda Fisher and that
04:12 10 was now all within your purview of knowledge.

11 A But was it my duty or my responsibility to take
12 that to the media.

13 Q You go on to say:

14 "I believe that if we have any faith in
04:12 15 democracy and our Canadian judicial
16 system, the process has established his
17 guilt beyond a doubt."

18 You see that?

19 A That was the case at that time, my interpretation.
04:13 20 He was still under conviction.

21 Q Okay. Now, if you had been followed, and please
22 don't take this wrong, if you had been followed,
23 David Milgaard would likely still be in jail and
24 Larry Fisher would not have spent a single day in
04:13 25 jail for anything he ever did in Saskatoon?



1 A Thank God that that didn't occur.

2 Q Uh-huh. Now, your next line here is of some
3 concern.

4 "Your suggestion and introduction of a
04:13 5 likely other suspect is entirely without
6 base and is yet another example of
7 irresponsible journalism which has
8 mislead the reading and viewing public."

9 Now, I take it you might regret having said that?

04:13 10 A Well, maybe it would have been better that I had
11 not said that, but I also believe that that was
12 conjecture on the part of the media as well.

13 Q No, but another suspect, you had the same belief
14 20 years ago.

04:14 15 A Well, we didn't have -- we had cases, but we
16 didn't have a suspect.

17 Q No, but it's one thing to say I don't believe that
18 Larry Fisher did it, or maybe he didn't do it or
19 whatever, but to accuse the other side of having
04:14 20 no basis for even making the allegation seems to
21 be a bit strong; does it not?

22 A Well, it may very well be.

23 Q It's okay to say you made a mistake, it's not so
24 terrible.

04:14 25 A Oh, I know that, and I made some too.



1 Q Umm, a couple. If you can go down to the bottom
2 of the page, you say:

3 "It is regrettable that citizens can be
4 misled by controversial journalism
04:14 5 causing them to lose faith in the
6 integrity of their justice system which
7 is recognized as the best in the world."

8 Now, that's a pretty strong statement, especially
9 in light of this case, we might have some
04:15 10 questions about that.

11 A I agree with you.

12 Q But where do you come up with the fact that we're
13 the best in the world?

14 A Well I think in comparison with world-wide, I
04:17 15 didn't say that we were perfect, I said it was the
16 best.

17 Q You said we were the best, and you mean -- you
18 mean the system we use, or Canada personally?

19 A I think Canada. I think Canada has a justice
04:17 20 system that stands heads and shoulders beyond all
21 other nations. That's my belief.

22 Q Have you checked other nations, or do you know, or
23 --

24 A Well, you know, I can't place myself ahead as
04:18 25 being an expert on that, but somewhere along the



1 lines of my service and my experience this was
2 related on many occasions. It may not be a
3 perfect system, but it is the best system, that
4 was my understanding.

04:18 5 Q You see the irony of using that when you are
6 asking about, like, an innocent person being kept
7 in jail?

8 A Well, we have -- you have just proven the
9 situation, but --

04:18 10 Q And when we go through all the wrongful
11 convictions that we have had in Canada we might
12 have a little concern about that statement. Can I
13 modify that; that it might be the best in the
14 world if the Commissioner gives good guidelines
04:18 15 and we follow them?

16 A That might be helpful, yes, sir.

17 Q Thank you, sir. Those are my questions.

18 COMMISSIONER MacCALLUM: I don't know what
19 I could add to the 98 that I heard about this
04:18 20 morning.

21 MR. WOLCH: Pardon me, sir?

22 COMMISSIONER MacCALLUM: I don't know what
23 I could add to the 98 that I heard this morning.

24 MR. WOLCH: Well, I suppose the admonition
04:19 25 that they should follow them.



1 COMMISSIONER MacCALLUM: Thanks, Mr. Wolch.

2 MR. HODSON: I think, I believe that Fox
3 might be next and he'll be a while, and I wonder
4 whether you wish to adjourn until tomorrow
04:19 5 morning?

6 MR. FOX: That would be my preference, Mr.
7 Commissioner.

8 COMMISSIONER MacCALLUM: You would like to
9 start in the morning?

04:19 10 MR. FOX: I would prefer that.

11 COMMISSIONER MacCALLUM: 9:00 please.

12 (Adjourned at 4:19 p.m.)

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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

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Official Queen's Bench Court Reporter

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Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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