

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

Transcript of Proceedings
and
Testimony before the Commission
sitting at the
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Saskatoon, Saskatchewan

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Volume 52

Inquiry Proceedings



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Mr. Dino Bottos, Esq., **for** Justice Calvin Tallis
 (Retired)



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Transcript of Proceedings

(Reconvened at 1:00 p.m.)

COMMISSIONER MacCALLUM: Afternoon.

ALL COUNSEL: Afternoon.

MR. HODSON: I believe, Mr. Commissioner,
we have Ms. Knox who is left to cross-examine.

COMMISSIONER MacCALLUM: Okay.

JOSEPH PENKALA, continued:

BY MS. KNOX:

Q Good afternoon, Chief Penkala. Just for the
record -- but I believe you already know this --
my name is Catherine Knox and I act as counsel for
the former prosecutor on the trial of this matter,
T.D.R. Caldwell, and for the record, although you
and I have met in a previous file unrelated to
this, would it be fair to say that we have not met
in respect of this file, and we certainly haven't
met in respect of the evidence that you have
given, you have given to date or the questions I'm
about to ask you?

A That's correct.

Q Okay. Now, sir, I just want to see if I can,
given your long service with the Saskatoon Police
Service and your long working relationship with
the Crown office and in particular my client,



1 Mr. Caldwell, see if I can get some background
2 from you about how the relationship developed as
3 between the prosecution service and the Saskatoon
4 Police Service around the management of major case
01:04 5 files.

6 A Yes.

7 Q Okay. And I want to start when you were, or
8 became a Saskatoon Police Service officer and you
9 went through the various stages of your career
01:04 10 that we know about, I don't see anywhere in your
11 record, anywhere, that you ever served in the
12 office of file management or case prep or any
13 function of that nature?

14 A That's correct.

01:04 15 Q Did you at any time in your career, even on a
16 part-time basis, take on the duties of a case prep
17 officer for purposes of putting files together for
18 transportation, if I can use that phrase, to the
19 prosecution service for purposes of preparing and
01:04 20 conducting trials, preliminary inquiries?

21 A I did not.

22 Q Okay. Do you sir, from your memory, have
23 knowledge of whether there was even a case
24 preparation office function within the Saskatoon
01:04 25 Police Service when you joined the service



1 initially?

2 A There was not.

3 Q Okay. And, from your personal knowledge and your
4 best memory, do you know when and -- when,
01:05 5 approximately, and how the function or the office
6 of a case preparation officer was introduced into
7 the Saskatoon Police Service?

8 A Umm, generally I know it occurred under the, under
9 the leadership of Chief Kettles, --

01:05 10 Q Uh-huh?

11 A -- and I would guess that it would be in the early
12 '60s.

13 Q Okay, uh-huh. Now, sir, am I correct in my
14 information that Chief Kettles in fact came from
01:05 15 an outside police service to the Saskatoon Police
16 Service?

17 A Yes, my understanding is he came from the Ottawa
18 Municipal Police force.

19 Q So he came with a different background in policing
01:05 20 and a police force when he came into the Saskatoon
21 Police Service about mid-'60s, early mid-'60s?

22 A Yes.

23 Q And did he come straight into the service straight
24 into the position of chief?

01:06 25 A Yes, he did, he commenced his duties in 1954,



1 which happened to coincide with, with my date of
2 engagement.

3 Q 1954?

4 A 1954, yes.

01:06 5 Q Okay. And, sir, do you know how long he was there
6 or how he came to facilitate the creation, if I
7 may use that term, of a case preparation office
8 for purposes of preparing files for the Crown?

9 A I would, I would probably suggest that how this
01:06 10 came about was the fact that there had not been a
11 case preparation, there were obviously some
12 difficulties in, in providing the information to
13 the Crown, and I recall Mr. Caldwell coming onto
14 the scene as the Crown prosecutor, and I'm not
01:06 15 certain of my own just how influential he was in
16 that regard, but it did start while Mr. Caldwell
17 was available and Mr. Kettles.

18 Q Prior to Mr. Caldwell coming on the scene, and I'm
19 given to understand that he came to the Saskatoon
01:07 20 office in the mid-'60s, prior to him coming on the
21 scene had there been a full-time agent of the
22 Crown working in the Saskatoon office or were
23 files being primarily farmed out to private
24 counsel?

01:07 25 A I'm not certain, but I don't think there was. I



1 think there was, either by contract there was a
2 lawyer that was available for prosecuting certain
3 cases, but I think indictable cases were, I think
4 the term was used, 'farmed out'.

01:07 5 Q Uh-huh, okay. And, sir, did you, when Mr.
6 Caldwell came, ever participate to your memory --
7 and I appreciate I'm taking you way back in time
8 to the mid-'60s -- were you ever party to any
9 discussions, if they took place, as between him
01:08 10 and Chief Kettles, for example, about the need for
11 an office and about the structure of the office?

12 A I don't have any personal recollection of that,
13 but I may have been.

14 Q Okay. And I'm not -- I don't have any information
01:08 15 to suggest that you do, I'm looking for your best
16 memories, --

17 A Yes.

18 Q -- if I can give you that indication. Now, sir,
19 with respect to the development of the function of
01:08 20 the -- of the case preparation office, do you know
21 who was the first Saskatoon Police officer who was
22 assigned to that office once -- or function once
23 it had been created by Chief Kettles with or
24 without input from Mr. Caldwell?

01:08 25 A Again, my recollection is that Elmer Ulrich was



1 the first officer that was placed in charge.

2 Q Okay. Now did you, at any point in time in your
3 career, either when the office started or after
4 Mr. Ulrich -- or I don't remember, I don't
01:09 5 remember Mr. Ulrich's rank, that's why I'm saying
6 'Mr. Ulrich' -- but Officer Ulrich was assigned to
7 it, --

8 A Yes.

9 Q -- did you ever receive any briefing from him or
01:09 10 from anyone, either in the Crown's office or in
11 the police department, as to what the role and
12 function of the case preparation officer would be?

13 A Again, I don't know of my own thing, but I'm sure
14 that that did occur, because we did all have a
01:09 15 general impression of what the case preparation
16 office was all about.

17 Q I'm going to suggest to you that part of what the
18 case preparation office was about in the beginning
19 was Mr. -- or Officer Ulrich and others chasing
01:09 20 down police officers, trying to make sure that
21 paper came together in a single file and it was
22 one file, but that the system up to that point in
23 time had been -- and I don't mean this in a
24 disparaging kind of way, we're talking the '50s
01:09 25 and '60s -- a little bit catch as catch can?



1 A Yes, I think that's correct.

2 Q You know, there was not a -- when you trained as a
3 police officer, to the extent you trained, you
4 didn't get a handbook that said 'when you do A you
01:10 5 complete a report and you file it with B, when you
6 do C you complete a report and you file it with
7 B'; there was no checks and balances in place, as
8 it were, to make sure everybody did a report every
9 time they performed a function, and certainly no
01:10 10 checks and balances into place to catch where guys
11 did do a report, that they ended up in their
12 proper place?

13 A It certainly wouldn't be that precise, yes.

14 Q Right. And, in fact, it was because of that
01:10 15 uncertainty, I'm going to suggest to you, that
16 Chief Kettles had concerned and, ultimately, the
17 office of case preparation was created?

18 A Yes.

19 Q Okay. Now, sir, after that office was created did
01:10 20 you receive or was there a policy manual put in
21 place, anything that you received to your memory
22 that set out a system for you as to what had to go
23 to case prep, when it had to go, and where else it
24 had to go?

01:10 25 A I have no knowledge of a specific direction,



1 although I think generally I could say that it
2 wasn't -- it was well-understood that if it was a
3 serious, a serious criminal matter, that copies
4 had to go to a particular area. And, of course,
01:11 5 we always had a -- a -- I shouldn't say 'always',
6 but we had a central records system, --

7 Q Uh-huh?

8 A -- and most of the reporting funneled through
9 there, and the distribution was more or less
01:11 10 guided by the person in charge of central records.

11 Q Central records. So we could assume that things
12 might end up -- all end up in central records.
13 Now if you could walk with me a step beyond
14 central records and do you, to your knowledge,
01:11 15 know whether any policy was put into place as to
16 what, of the material that went to central
17 records, had to make its way into the hands of the
18 prosecution service?

19 A I --

01:11 20 Q Any policy manual, any directives of that nature,
21 that you were made familiar with and that you
22 guided yourself by?

23 A I don't have any recollection of that.

24 Q Okay. And Chief Penkala, again -- and I told you
01:12 25 I was going to be nice to you, and I'm really not



1 looking to get you in any trouble or to make any
2 negative suggestions, but I'm mindful of the fact
3 that we were talking in the '50s/'60s and we were
4 an evolving society, particularly around issues to
01:12 5 do with policing -- but, to your memory, was there
6 any kind of check within your own personal
7 practices for you to make sure that every report
8 you completed ended up in central records and
9 ultimately, if you were taking a case forward or a
01:12 10 case was going forward to Court that you were part
11 of, for you to make sure that every report that
12 you completed ended up in hands of the prosecutor?

13 A Yes, I think, I think the process was that there
14 was assurance, and in my own personal case, there
01:13 15 was assurance that my reports would end up in
16 central records.

17 Q Uh-huh?

18 A And I think the responsibility then fell on
19 central records to make the distributions from
01:13 20 there, the reports were generally in four copies,
21 and those four copies had their destinations.

22 Q Okay. But, sir, to just go back to my question if
23 I could -- and I, I'm following you quite clearly
24 -- your reports all are going to the central
01:13 25 record?



1 A Yes.

2 Q And in those days, keeping in mind that we were
3 talking about carbon copies, you couldn't run off
4 and make a photocopy of things, there was a finite
01:13 5 number of copies made of a report; once you had
6 made sure, as the identification officer, that
7 your reports had gone where they were supposed to
8 go within the police service central records
9 office, did you, as the in-charge identification
01:13 10 officer, have any way to know whether all of your
11 reports on a particular file like the Gail Miller
12 file actually got transferred and made part of a
13 court brief that went to the prosecution's office?

14 A I think the only way I could answer that, I would
01:14 15 be aware of those cases that I was involved in, I
16 would know and appreciate that they did get to the
17 case preparations person.

18 Q Not criticism, and not looking to suggest that it
19 -- all your reports didn't go, okay, that's where
01:14 20 I am.

21 A No, I understand, yes.

22 Q Yes. What I am asking you is did you, as the
23 officer in charge of the identification section,
24 do an independent report, for example as a
01:14 25 suggestion, that went to the prosecutor that's



1 saying 'on this file 61', whatever, 'number 99 I
2 prepared ten reports, please confirm that you have
3 received all ten'?

4 A No.

01:14 5 Q No? So there wasn't that check within the system
6 is the only point?

7 A That's right.

8 Q Okay. So you relied on it getting to central
9 records, and the next person in the chain of
01:15 10 responsibility doing his job right, so that what
11 needed to go to the prosecution service got to the
12 prosecution service?

13 A That's right.

14 Q You didn't take personal responsibility to be sure
01:15 15 that it went to prosecution service?

16 A No.

17 Q And not that you were required to, but you weren't
18 one of those officers who went that extra bit or,
19 you know, made sure that everything went, you
01:15 20 followed the system that was in place in other
21 words?

22 A That's right.

23 Q Okay. Now, sir, with respect to the evidence that
24 you've given, and I reviewed the transcripts
01:15 25 during the weekend, at various points in time when



1 you were being examined by Mr. Hodson and when you
2 were being examined by other counsel you were
3 being asked what of an investigation file went to
4 the prosecutor's office and at various points in
01:15 5 time you indicated that you thought everything
6 that was part of a file went to the, probably went
7 to the prosecution office, that was your evidence.
8 Am I correct on that?

9 A That is correct, yes.

01:16 10 Q Okay. And again, just so that we can be certain,
11 and it's not a criticism, everything about your
12 work seems to suggest that you were a very
13 diligent officer, you prepared your reports well,
14 you prepared them on time, but when you sit in
01:16 15 this witness stand on May 31st, 2005 and through
16 last week and you answer questions by saying that
17 it probably went, it must have gone or you think
18 it went, would it be fair to say that what you are
19 doing when you give those answers is engaging, and
01:16 20 I don't mean this negatively, but you are engaging
21 in speculation, you are thinking that it should
22 have happened that way, it must have happened that
23 way, but you in fact don't have personal knowledge
24 that it did happen that way?

01:16 25 A That is correct, and I prefaced that in many



1 occasions I think during this testimony that this
2 was as I best remember it or possibly just as you
3 had suggested, that it was a system that was
4 followed.

01:16 5 Q Yeah. And in fairness to you as I read through
6 the transcripts, you did say many times it was
7 probably that way, it must have been that way, but
8 lawyers keep pushing at you and at some point in
9 time Mr. Lockyer was saying to you we know this is
01:17 10 what was there, but in fact you as the
11 identification officer of the day and as the chief
12 of police up until whenever you retired as chief
13 of police did not then and do not now have
14 personal knowledge of what was in the prosecution
01:17 15 file do you?

16 A That's correct.

17 Q And the only way that we can determine what was
18 actually in the prosecution file, to the extent
19 that it's possible, is to reconstruct the
01:17 20 prosecution file?

21 A I would suggest that would be the approach.

22 Q Okay. Chief Penkala, would I be correct in
23 assuming that at no point in time have you ever
24 gone through and compared what appears to have
01:17 25 been in the prosecution file with what was in or



1 is in the police file?

2 A I've never made that comparison.

3 Q Okay. Are you aware, Chief Penkala, through your
4 various work that you've done in preparation for
01:18 5 giving us evidence here, that there are many
6 things in the police file that don't appear in the
7 prosecution file as we know it to exist today?

8 A Again, I don't know that of my own accord because
9 I didn't make the personal comparisons, but it
01:18 10 wouldn't surprise me.

11 Q Okay. Sir, when you say it wouldn't surprise you,
12 and I'm engaging in now what the other lawyers
13 were doing with you last week, can you tell me why
14 you say it wouldn't have surprised you?

01:18 15 A Well, there would be obviously issues brought into
16 a file that are obviously not related and have
17 been exhausted in terms of being of value to that
18 particular investigation and it would be somewhat
19 pointless to pursue those areas and I would
01:18 20 suggest that that would be areas that may not be
21 included in the correspondence that was put
22 together for the prosecutor.

23 Q Okay. Chief Penkala, you used the term that there
24 would be issues brought into the file. Can I
01:19 25 suggest to you that what would be brought into



1 many files as part of investigations would be many
2 leads?

3 A That's correct.

4 Q And would the Gail Miller file have been an
01:19 5 investigation file where many leads came to the
6 police and they were tracked down and many of them
7 ended up going nowhere?

8 A I would suggest that is the case, but I don't know
9 it precisely of my own knowledge.

01:19 10 Q Okay. There was a document prepared by Commission
11 Counsel and I don't remember, or Commission
12 Counsel's office, and I don't remember if he
13 showed it to you. If I can just have a moment,
14 Mr. Commissioner. I believe you were referred to
01:19 15 it and if I could bring up document 326548. Chief
16 Penkala, this is a document that comprises a lot
17 of pages and it documents that, as I believe you
18 were referred to, that approximately -- not
19 approximately, 208 different people were checked
01:20 20 as part of the investigative work and the leg work
21 that was done by Saskatoon Police Service when
22 they started on the task of trying to find out who
23 might have killed Gail Miller?

24 A I'm not sure whether this was the Saskatoon
01:20 25 police. I think the RCMP were involved in some of



1 these and I don't know and I don't recognize this
2 document.

3 Q Okay. So this is not a document that you have
4 personally examined?

01:20 5 A That's right.

6 Q If I were to suggest to you that it does show
7 approximately 208 persons who, for whatever
8 reason, I think the term used today in police
9 investigations were persons of interest, even if
01:21 10 only briefly in the police investigation, would
11 you have any reason to doubt, given that Gail
12 Miller was killed in January of 1969 and David
13 Milgaard wasn't arrested until May, 1969, that
14 that number of queries or thereabouts might have
01:21 15 been carried on by the police?

16 A Oh, I don't think this is unusual at all.

17 Q Okay. And if out of that 208 persons that
18 contacts were made with 199 of them didn't pan
19 out, would you expect that all of that information
01:21 20 would be made part of the prosecution file?

21 A No, it would be a pointless exercise.

22 Q Okay. So in fact when you say that everything in
23 the police file would have gone to the prosecutor,
24 in fact everything in the police file wouldn't go
01:21 25 to the prosecutor I suggest to you, but what would



1 go to the prosecutor would be that which might be
2 relevant, there's a distinction between relevant,
3 irrelevant, unfounded that has to be kept in mind
4 I suggest to you?

01:22 5 A That is correct, and I think that possibly I was
6 relating in generalities our case preparation
7 officer would, in my opinion, would have seen the
8 entire file and he would, obviously with the
9 assistance of legal people, would exclude those
01:22 10 things that were not relative.

11 Q I'm going to suggest to you, Chief Penkala, that
12 in fact the function, or one of the functions of
13 the case preparation officer was to figure out
14 what, of all of the stuff that showed up in an
01:22 15 investigation of the magnitude of Gail Miller,
16 might be necessary in order to proceed with the
17 prosecution?

18 A That's correct.

19 Q And that in fact he had a discretion to call, to
01:22 20 set aside the stuff like the old lady who calls at
21 three o'clock in the morning and says that, you
22 know, someone is breaking in her back door and she
23 thinks he might be the guy who killed Gail Miller
24 and the police go and check it out and it's
01:23 25 nonsense, that kind of stuff would be kinds of



1 things that he had a discretion not to include?

2 A Right.

3 Q Okay. And, sir, I'm going to suggest to you that

4 if as part of the investigation or the

01:23 5 investigative steps that were being taken there

6 were other files within the Saskatoon Police

7 Service under active investigation, that at least

8 for a period of time officers, including yourself,

9 thought might be related or might have a similar

01:23 10 MO or might have something in common but it turned

11 out that the evidence didn't support that theory,

12 that that would be the kind of information that

13 the case preparation officer could probably not

14 forward on because investigation had shown no

01:23 15 link?

16 A Yes.

17 Q Or no viable link I should say?

18 A Yes.

19 Q Now, sir, when you were being examined by

01:24 20 Mr. Lockyer and briefly when you were being

21 examined by Mr. Wolch reference was made to a

22 document, and if I could just have a moment to

23 find it, reference was made to a document that

24 comprises five pages that Mr. Lockyer referred to

01:24 25 as a smoking gun, and I believe the document



1 number we used was 001499, if I could have that
2 brought up, please. And, Chief Penkala, you'll
3 recall this is a five page document that was
4 brought up and shown to you and it is one that you
01:25 5 believe was prepared as a result of a meeting that
6 you and others had within the police, Saskatoon
7 Police Service on about May 16th, 1969?

8 A Yes, approximately. I did indicate before that I
9 don't recall it being at the May 16th meeting, but
01:25 10 it was certainly information that was being
11 considered in a number of meetings that were
12 carried on and could have been at the May 16th
13 meeting.

14 Q Okay. Sir, was T.D.R. Caldwell present at any of
01:25 15 those meetings?

16 A I don't recall him being at any of the meetings.

17 Q Okay. These were meetings that, if I could use
18 the term, were internal meetings except insofar as
19 there were members of the RCMP at some of them who
01:26 20 were assisting in the investigation weren't they?

21 A That's correct.

22 Q Okay. So in respect of this document, how it got
23 prepared and when it got prepared, it was an
24 internal police document, as it were, it was not
01:26 25 one that was done in concert with the



1 prosecution's office, at least not when you were
2 party to it?

3 A That's right.

4 Q Okay. Now, sir, the document itself has a brief
01:26 5 reference at the top of the first page to (V1)-
6 rape and just a description of, I'm not sure
7 looking at it whether it's the suspect or the
8 victim, but there's a brief description there with
9 respect to somebody related to a (V1)- rape on
01:26 10 October 21st, 1968. Do you see that?

11 A Yes.

12 Q Now, I have gone, and I stand to be corrected by
13 other counsel, but I've gone completely through
14 this document and basically that is what I can see
01:27 15 that would be reference to information other than
16 that which relates directly to the Gail Miller
17 investigation by and large.

18 A I believe that's correct, yes.

19 Q Okay. Sir, do you have any personal knowledge of
01:27 20 whether that document was prepared and sent to the
21 prosecution's office?

22 A I don't have that information, no.

23 Q Is it the kind of document that would ordinarily
24 be prepared to be part of the court brief in your
01:27 25 experience both as a police officer and



1 identification officer and ultimately as chief?

2 A It doesn't appear to be the type of document
3 because of the way it's formed up.

4 Q It's more about you guys brainstorming and
01:27 5 theories being documented isn't it?

6 A Yes.

7 Q Now, sir, your evidence then, or the best evidence
8 that you can give us is that you didn't prepare
9 it; there's a drawing on the back of it that maybe
01:28 10 you made?

11 A Yes.

12 Q There's a drawing on the back of it, but when it
13 was being discussed in meetings that you were at,
14 Mr. Caldwell was not there and you have no
01:28 15 knowledge of it being prepared for or ever
16 forwarded to him or becoming part of the
17 prosecution file?

18 A That's correct.

19 Q You never had any discussions with Mr. Caldwell
01:28 20 that you can recall about this particular document
21 did you?

22 A That's right, I didn't.

23 Q So this is just a little bit off topic because I
24 was speculating about it at about three o'clock in
01:28 25 the morning when I couldn't sleep very well last



1 night, but during the course of some of the
2 questions that were put to you, there were a lot
3 of questions put to you about a serial rapist,
4 referring to Larry Fisher, and if you had known or
01:29 5 had knowledge that there was a serial rapist
6 operating in Saskatoon you would have wanted the
7 people to know and things like that, and this is
8 strictly a curiosity question. Back in 1969, '68,
9 was the term serial rapist a term that had been
01:29 10 coined and was being used in police parlance and
11 investigative stages?

12 A It's interesting because I don't recall those
13 cases being referred to as serial crimes. They
14 may have been, but the nature of my duties often
01:29 15 didn't take me into that area unless it was
16 specifically required as it was through the
17 investigation of the Gail Miller murder.

18 Q Uh-huh, okay. So I guess the best that you can
19 give me is you don't recall it being a term of the
01:29 20 day. And it was also suggested to you, and I get
21 Mr. Lockyer and Mr. Wolch mixed up, not
22 deliberately, but because they both come from a
23 similar perspective in terms of where they direct
24 their examinations, it was also suggested to you
01:30 25 that the notion that there was a serial rapist or



1 a repeat rapist or whatever operating in Saskatoon
2 during 1968 and '69 would have been a public
3 concern. When I was researching and trying to
4 find newspaper reports and stuff like that, I
01:30 5 can't find very much, I find one warning that went
6 out to the public from the police, but to your
7 independent knowledge, and it may well be in the
8 database and I can't find it, but to your memory,
9 your best memory, was there a lot of publicity
01:30 10 back in 1968-'69 for women to beware that there
11 was an unidentified serial rapist on the loose,
12 that they should be locking their doors and
13 families should be locking up their daughters and
14 that kind of thing, was that kind of panic
01:30 15 happening in the community as far as you recall it
16 in 1968-'69?

17 A I have no recollection, and of course the time
18 frame is something that constantly bothered me in
19 my testimony here because I'm never sure whether I
01:31 20 learned of these things during the reading of
21 reports or whether I knew it of my own knowledge,
22 but I do not recall a particular concern, although
23 there was a concern about solving the Miller
24 murder and there was, and I think that was more or
01:31 25 less a police approach, every police officer felt



1 the same way about that particular crime.

2 Q Okay. But, sir, just to go to a point that Mr.
3 Young (sic) made when he was cross-examining on
4 Thursday, was the pressure, the public pressure
01:31 5 that was happening in 1969 any different from the
6 public pressure that was happening in 1962 when
7 the body of that nurse was found on the river bank
8 partially buried?

9 A I don't think there was any difference in the
01:32 10 pressure from the public. I think the pressure
11 was within our own organization. I think police
12 officers generally recognize these things and they
13 feel personally obligated to do whatever they can
14 to deal with them.

01:32 15 Q But in terms of doing whatever they can to deal
16 with them, in 1962 when they couldn't develop a
17 suspect or a viable suspect in the murder on the
18 river bank, they continued to investigate it and
19 in fact continue to investigate it to this day?

01:32 20 A That's correct.

21 Q And similarly with Gail Miller, when you didn't
22 get answers in February, March and April,
23 essentially you continued to investigate?

24 A Yes.

01:32 25 Q Okay. Would I be correct in assuming, and again I



1 mean no disrespect, that it wasn't the practice of
2 the Saskatoon Police Service when nurses got
3 murdered in this city that you went out to find
4 somebody to tell the public that you caught the
01:33 5 bad guy even if you didn't have the bad guy?

6 A I'm not sure about that simply because my own
7 personal view is that if you had resolved a case,
8 I would have felt responsible personally to advise
9 the complainant that there had been, a person had
01:33 10 been apprehended and possibly would keep that
11 person informed as it proceeds through the court.

12 Q Okay. But if I could just back you up a little
13 bit, I was asking you if, where it's a really big
14 case, where it's a case of a young woman murdered,
01:33 15 Saskatoon police would feel a pressure to the
16 point that they would become reckless in their
17 investigation and they would knowingly charge a
18 wrong person, as is being suggested you did in the
19 Gail Miller case, at the cost of leaving the real
01:33 20 killer out on the street?

21 A No, of course not.

22 Q Now, in some of your evidence that you gave in the
23 last number of days, you've indicated that you
24 have no recollection of meeting Mr. Caldwell, with
01:34 25 Mr. Caldwell prior to the preliminary inquiry or



1 indeed prior to the trial, but the record shows
2 you gave evidence at both proceedings?

3 A Yes.

4 Q Okay. Sir --

01:34 5 A That may be incorrect in terms -- I'm sure -- and
6 again I have to suggest that the practice was if
7 you were going to be testifying in a case, you
8 would have an interview with the prosecutor before
9 you would testify and if I gave the impression
01:35 10 otherwise, it was not properly given.

11 Q Chief Penkala, in fact you didn't give the
12 impression otherwise, what you said in your
13 evidence is that you had no recollection of
14 meeting with him, but you presume that you met
01:35 15 with him was your evidence.

16 A Okay.

17 Q Okay. And again I was just going to ask you, and
18 you've already pre-empted my question, based on
19 past practices you believe you would have met with
01:35 20 him because you were going to give testimony; is
21 that correct? Am I correctly understanding what
22 you were saying?

23 A Yes.

24 Q Chief Penkala, once Albert Cadrain had come
01:35 25 forward in March of 1969 and said that he thought



1 his friend David Milgaard might have been involved
2 and once Nichol John and Ron Wilson gave their
3 statements to officers in your force in May of
4 1969 and once the decision was made that there was
01:36 5 reasonable grounds to believe that David Milgaard
6 had been responsible for causing the death of Gail
7 Miller, did you give any -- did you take any steps
8 to make any further investigation of your working
9 theory that you had had for a period of time that
01:36 10 the same person who had committed the rapes on
11 (V1)- and the other girls or some of the other
12 girls might have also killed Gail Miller?

13 A I personally did not pursue those things after
14 charges were initiated with Mr. Milgaard.

01:36 15 Q Okay. Sir, as an identification officer and as an
16 experienced investigating officer, were you
17 satisfied that that was another lead that you had
18 been following that just didn't pan out?

19 A Well, that would be one assumption, although that
01:36 20 would not have been within my realm of
21 responsibilities, so I would also assume that
22 others had looked at that.

23 Q And they just basically made the same conclusion
24 that you made, that that was an interesting
01:37 25 theory, but you had the guy who did it, you had



1 eye witnesses ostensibly to him doing it?

2 A Right.

3 Q Okay. Now, sir, given that in your, when you had
4 the meetings that you believe that you had with
01:37 5 Mr. Caldwell prior to the preliminary inquiry and
6 prior to the trial, would you have had any reason
7 to say to him, oh, by the by, there was the time
8 during the course of this investigation when I
9 thought that the guy that did some rapes over on
01:37 10 the west side might have been responsible for the
11 murder?

12 A I don't have any recollection of ever raising
13 that.

14 Q Would you have had any reason to raise it given
01:37 15 your conclusion as an identification officer
16 that --

17 A I would have been more concerned with my specific
18 admissible type of evidence that would be
19 presented at that preliminary or at the trial.

01:38 20 Q Sir, and again not in a critical kind of way, but
21 we're trying to reconstruct a file, did you at any
22 point in time ever sit down and document a report
23 that early in the investigation you had a theory
24 or suspicions or you considered the possibility
01:38 25 that the person who had done the rapes in '68



1 might have been also the person who did the murder
2 in '69?

3 A No, I did not.

4 Q Okay. Now, sir, I just have to get a different
01:38 5 series of documents. I apologize, Mr.

6 Commissioner, I'm getting overwhelmed by that 300
7 and some odd thousand document database. Last
8 week when you were being examined by Mr. Lockyer
9 there were various points in time when he made the
01:39 10 statement that Mr. Caldwell had to know about
11 those theories because, based on your evidence,
12 everything in the file would have gone to him. To
13 your knowledge, independent of anything that
14 Mr. Lockyer may have suggested to you, did you,
01:39 15 back in 1969, or do you now know whether or not
16 Mr. Caldwell had knowledge or extended knowledge
17 of the suspicion that was briefly held by the
18 Saskatoon Police Service that the same person who
19 murdered Gail Miller might have been involved in
01:40 20 some earlier rapes?

21 A I don't have any knowledge of that at all.

22 Q Okay. Now, sir, the document that you were
23 referred to -- Mr. Commissioner, I think I have
24 the right number, there are various versions of
01:40 25 it, I'm going to ask the staff to bring up



1 document 053695, and if I could go to the next
2 page which is actually the previous page, 053694.
3 Chief Penkala, for your benefit, and
4 Mr. Commissioner, to set out or set up where I'm
01:40 5 attempting to go here, you will recall that during
6 the examination of, or cross-examination of Chief
7 Penkala there was reference to an interview that
8 the RCMP had done with Mr. Caldwell and there was
9 reference to some documents and I think what the
01:41 10 record shows is that there was an initial
11 interview conducted by Inspector Sawatzky and then
12 some follow-up questions done about four days
13 later by Constable Jorgenson who is the author of
14 the document, the two page document that I have in
01:41 15 front of the witness and counsel and yourself
16 right now, and, sir, if I could have brought out
17 the last paragraph of that. Constable Jorgenson
18 documented that members, referring to members of
19 the RCMP who were doing the clarification
01:41 20 interview in 1993, questioned Mr. Caldwell about
21 four particular items that are contained in his
22 prosecution file. He was given the opportunity to
23 read the noted papers, note attachments to
24 statement, and he refers to the statements of
01:42 25 (V9)---- and (V4)---, a single lab report



1 containing the names (V1)- and (V2)----- and an
2 SCP update containing (V2)-----'s name. Now,
3 Chief Penkala, when I attempted to look at the
4 attachments to this document, I couldn't find it
01:42 5 in the database as a six or seven page document,
6 but Commission staff have assisted me and I'm
7 going to ask first, if they will just be patient
8 with me for half a minute, that we bring up the
9 statement of (V9) (V9)---- which is referred to
01:42 10 and I have a document number 02017 -- oh, sorry,
11 if I could bring up the document that is the (V9)
12 (V9)---- statement. The staff are shaking their
13 head at me, so I know I've got it wrong. Okay.
14 Now, sir, if you would take a moment, and I
01:43 15 apologize for putting you to the inconvenience,
16 just to do a quick look at that statement for me
17 and in particular the part that I've just circled
18 at the top. Do you recognize -- if we could bring
19 out the part I've just circled, right here. Do
01:43 20 you recognize whose handwriting it is that
21 recorded on that statement "indecent assault only"
22 and I think the word is "no connection"?
23 A I don't recognize it.
24 Q Okay. Would you accept for the moment if I tell
01:44 25 you that that's one of the attachments that was



1 found in Mr. Caldwell's file that the police are
2 referring to as the four attachments?

3 A Umm, it wouldn't surprise me, no.

4 Q Yeah, that's, the record will show there was only
01:44 5 one statement from an (V9) (V9)----.

6 The next document I need to
7 bring up, that Constable Jorgenson referred to, is
8 the statement of (V4)---- (V4)---. I have the
9 number 006404, okay. And if I could highlight,
01:44 10 again, this statement has a notation on it:

11 "Ind. Assault, Not Connected",
12 which appears to be the same handwriting but,
13 again, I take it you don't recognize that
14 handwriting?

01:44 15 A Yes, and I agree that it's similar, similar
16 handwriting.

17 Q Okay. Now the next document that was identified
18 during the interview of Mr. Caldwell is a report
19 that has the names '(V2)-----' and '(V1)-', I have
01:45 20 a document number 009386 but I'm not sure, that is
21 the right number? Thank you. If I could have
22 that one brought up, please. Okay. Now if you
23 would take a minute just to look at that
24 particular document. And again, Mr. Commissioner,
01:45 25 the evidence will show that this is the one the



1 RCMP drew my client's attention to, this was the
2 third of the fourth attachments when they were
3 interviewing him and identifying documents found
4 in his file. Now, sir, you see the names
01:46 5 '(V2)-----' and '(V1)-' that the RCMP referred him
6 to?

7 A Yes.

8 Q Okay. Now, if I could, I want you to look at the
9 file number that appears at the top, if we could
01:46 10 have that brought out, please. Okay. See the
11 file number on this one is 286-69?

12 A Yes.

13 Q Okay. And this is a different file number than
14 the Gail Miller file number; right?

01:46 15 A Umm, I'm not sure whether that is the Saskatoon
16 number or not, but --

17 Q Oh, that's a lab file number, I'm sorry.

18 A Yes, yes.

19 Q Okay, you are right, thank you for drawing my
01:46 20 attention to that. But, in any event, do you see
21 the notation beside it that says:

22 "Different file"?

23 A Yes.

24 Q The squiggle drawn down through it that indicates
01:47 25 somebody is kind of not seeing it, I suppose, as



1 part of the file, potentially, but that it appears
2 that somebody -- and I'm going to suggest to you
3 that that's Mr., well, the evidence will show that
4 that's Mr. Caldwell's handwriting -- identified
01:47 5 that this was about a different file, that it
6 wasn't, at least in his mind, about the Gail
7 Miller file?

8 A That's a reasonable conclusion to come to, yes.

9 Q Yes. In looking at that document, if you were
01:47 10 sitting in the prosecutor's office and you were
11 going through the file, do you find any notation
12 in it anywhere that would draw and alert that this
13 should be considered as part of the Gail Miller
14 file?

01:47 15 A I have just gone over it in --

16 Q Take your time and see if you find the name Gail
17 Miller, or anything in the requests about the
18 exhibits and what was to be done with them, to
19 determine whether there was a link to the Gail
01:47 20 Miller file or anything of that nature?

21 A Don't see any.

22 Q So just on the face of it, if this was one of the
23 few things that was in the prosecution file, that
24 wouldn't be a screaming alert to anybody that they
01:48 25 should be looking at whether or not, as a



1 prosecutor, these files were related; would you
2 agree?

3 A Yes.

4 Q Okay. Now the next attachment to, or the fourth
01:48 5 attachment that was drawn to Mr. Caldwell's
6 attention by Constable Jorgenson which he referred
7 to is, I believe, the document number 009252, if I
8 could have that brought up, please. And Constable
9 Jorgenson indicated that in that report there was
01:48 10 a reference to (V2) (V2)-(V2)-----, if I could
11 have that part of it brought up, please, and if
12 you would indulge me by doing a brief read through
13 that to tell me whether or not you see anything in
14 that report that refers to the theory of a
01:49 15 possible connection to the Gail Miller
16 perpetrator?

17 A To the bottom of the paragraph concerning -- oh,
18 there's more to come? Okay.

19 Q Okay. Down at the bottom there is reference to
01:49 20 them doing some more work on the (V2)-----
21 investigation, if I'm saying that right; would you
22 agree?

23 A Yes.

24 Q Okay. And in fairness, if we could go back to the
01:49 25 top just so that I'm -- the occurrence number up



1 here would appear to be the Gail Miller occurrence
2 number, I think?

3 A That's what I recognize it as, yes.

4 Q Yes, that is the Gail Miller occurrence number, no
01:50 5 question about that. But within this there is no
6 theory documented referring to this report by
7 Detective Sergeant Mackie of a possible link
8 between the rapes, or the rape of (V2)----- and
9 the murder of Gail Miller; is there?

01:50 10 A Yes.

11 Q Okay. Now to take you back, given your patience
12 and indulgence with me, to questions that were
13 asked of you by Mr. Lockyer with respect to what
14 the prosecutors, or what he presumed and asked you
01:50 15 to presume what the prosecutor knew about the
16 (V2)-----, (V1)- and (V5)--- files among others
17 based on that document in the RCMP file, would it
18 be fair to say that those four pieces of paper --
19 and I'm not suggesting that those are the only
01:50 20 ones in the file, these are the ones that
21 Constable Jorgenson referred to and to which
22 Mr. Lockyer was referring -- wouldn't exactly have
23 given any prosecutor a screaming alert that he
24 should be looking at rape files because there was
01:51 25 a possibility that the rapist on the (V2)-----



1 file or the (V1)- file, if we go that far in terms
2 of the other one, might have been the same person
3 who killed Gail Miller; would we?

4 A That's a reasonable assumption, yes.

01:51 5 Q Okay. If I could bring up document 009374, sir,
6 do you recognize the handwriting on the cover
7 page?

8 A I do not.

9 Q Okay. If I suggest to you that the evidence will
01:52 10 show that it is the handwriting of Mr. Caldwell
11 would you have any difficulty accepting that?

12 A I just don't recall his handwriting, but --

13 Q No? Okay. And if I could go to page 009390 of
14 that series of pages, please, if you could take a
01:52 15 quick look at that report. And, again, I'm going
16 to suggest to you that this -- these are, these
17 are reports that were found in the prosecution
18 file under a cover page attached by Mr. Caldwell
19 identifying them all as police -- or lab reports.
01:53 20 Okay. Now if I could just have the staff bring up
21 for me a moment the document that they have
22 already referred us to, which is the 009386, and
23 put the two of them side by side. To the extent
24 that it's possible to identify the authors of
01:53 25 squiggly lines, would you agree with me that there



1 is some similarity between the squiggly lines that
2 go through 009390 -- and I'm referring to this
3 squiggly line -- and the squiggly line that goes
4 through 009386?

01:53 5 A I would assume that it was -- I don't think it's
6 identifiable, but it's certainly an indication
7 that 'disregard', 'disregard'.

8 Q Now, chief, go with me so far as to say it looks
9 suspicious; like it might be the same squiggly
01:54 10 line-maker?

11 A Well, I don't --

12 Q I'm not trying to trick you, understand that.

13 A No, I know that, but I don't -- I have a little
14 bit of knowledge about handwriting --

01:54 15 Q Oh, okay?

16 A -- and I don't think anyone would attempt to make
17 any identification on the basis of a squiggly
18 line.

19 Q Okay. And how about the words 'Omit' on each of
01:54 20 them?

21 A I would suggest they are quite similar.

22 Q Okay. Now, taking us back to this one, we are
23 talking to -- we're talking about (V2) (V2)-
24 (V2)----- and (V1)--- (V1)-, this one is clearly
01:54 25 about Gail Miller?



1 A Yes.

2 Q Okay. Would you agree with me that the same sort
3 of markings appear on both of these documents in
4 terms of whether or not they would be considered,
01:55 5 were being considered, if they came from Mr.
6 Caldwell, to be necessary for purposes of evidence
7 to be tendered at trial?

8 A Yes, I would agree to that.

9 Q Okay. So, clearly, there was an examination being
01:55 10 done of various reports, and if I can go back to
11 the word I used earlier, some determinations were
12 made that -- were being made about relevance,
13 admissibility, connection, and those kinds of
14 things, as part of a review of the file?

01:55 15 A That's very reasonable, yes.

16 Q Now, sir, I realize I'm jumping a bit around here
17 and I apologize for that, Mr. Commissioner, and to
18 the witness as well. The next document I want to
19 bring up is 105600, and if you would take a
01:56 20 moment, Chief Penkala, to look at it, you will see
21 it is dated July 8th, 1969?

22 A Yes.

23 Q And if we could go just briefly, and perhaps we
24 could bring up beside it the last page -- Mr.
01:56 25 Commissioner, this is a three-page document --



1 it's signed by Deputy Chief Forbes?

2 A Yes.

3 Q Okay. And, again, if you could take a quick
4 moment to do a read of the first page of that
01:56 5 document that I have on the screen for you?

6 A Yes.

7 Q And then if we could bring up the next page,
8 please, page 2. And, chief, in the interests of
9 time I'm going to suggest to you that this
01:57 10 continues on to be a summarization of the factual
11 circumstances surrounding the investigation, the
12 charging of David Milgaard, that's going from the
13 deputy chief of police to the Agent of the
14 Attorney General for Saskatchewan -- or for
01:57 15 Saskatoon, being Mr. Caldwell; would you agree
16 with that?

17 A Yes.

18 Q Okay. And if we continue to page 3, if you would
19 read the last line or the last sentence of that
01:57 20 letter, and it's a request to Mr. Caldwell to
21 conduct the prosecution?

22 A Yes.

23 Q Okay. Now, sir, was it the usual procedure or do
24 you know whether it was the usual procedure of the
01:58 25 deputy chief of police to do this kind of a letter



1 of instruction to the prosecution's office after a
2 person had been charged with an offence, and as in
3 this particular case, the offence of murder?

4 A I would suggest that it is.

01:58 5 Q Okay. So Mr. Milgaard was arrested in -- and
6 charged in May '69?

7 A Yes.

8 Q And I'm not suggesting that there was no
9 involvement of Mr. Caldwell up until July 8th, but
01:58 10 would you agree with me that the formal request
11 from his involvement in the file appears to be
12 dated, under cover of this letter, July 8th, 1969?

13 A Yes.

14 Q All right. And up to that point in time, as you
01:59 15 had not given any -- the preliminary was not yet
16 going, in fact it was indicated here it is set to
17 commence August 18th, 1969, I take it you had no
18 direct involvement with Mr. Caldwell and you don't
19 know what information he had received from the
01:59 20 police service prior to this letter of July 8th,
21 1969 from Deputy Chief Forbes?

22 A That would be correct.

23 Q Okay. Now if I could bring up document number
24 105603. Now, sir, this document comprises -- oh,
01:59 25 it goes, the first number at the top in the re --



1 in the binders is E87 and it appears to go through
2 to E112, and I'm not going to ask you to look at
3 all the pages but it's what has been referred here
4 Mr. Commissioner, by Commission Counsel as the
02:00 5 court brief for the preliminary inquiry, and the
6 document number continues from 105603 to 105626,
7 and then in my copy I have two additional pages
8 attached that are 044549 and 045802, and I
9 couldn't figure out last night why they are a
02:00 10 different order. But Mr., or Chief Penkala, if I
11 could ask the staff to go to page 105605, the
12 first two pages of that being basically a list of
13 private witnesses and then a list of police
14 witnesses, the next page starting here has the
02:00 15 heading Summary?

16 A Yes.

17 Q You see that? And then, without asking you to go
18 through all of it, it goes on for a number of
19 pages including listing the witnesses required,
02:01 20 summarizing what evidence they can be expected to
21 give; is that, or do you recall whether this is
22 the kind of document that was prepared by the
23 court case preparation office for transmittal to
24 the prosecution's office on files of -- that were
02:01 25 going forward for charge?



1 A This would be a typical prepared report, yes.

2 Q Okay. Now, sir, again just going back to
3 questions I asked you earlier, I take it you have
4 no personal knowledge of what, if anything,
02:01 5 attached to this court brief when it went over
6 from the Saskatoon Police Service to Mr. Caldwell
7 and, indeed, you can't tell us whether it went as
8 an attachment to Deputy Chief Forbes' letter even;
9 can you?

02:02 10 A No, I can't.

11 Q Would it be usual practice, or do you know if it
12 would be usual practice that this kind of a brief
13 would have gone out at the same time the deputy
14 chief sent out the letter that he authored on July
02:02 15 8th, 1969?

16 A I really don't know, other than the fact that it
17 seems reasonable that that would be attached and
18 had been prepared by the case preparations officer
19 and forwarded to the deputy chief, who did the
02:02 20 formal correspondence and request.

21 Q Okay. So you can't say, but it may have been,
22 that may have been the way that it was?

23 A Yes.

24 Q Okay. Now, sir, I want to draw your attention --
02:02 25 Mr. Commissioner, if you would bear with me, I



1 appear to have mislaid a series of letters that
2 were done by Mr. Caldwell and Mr. Tallis to each
3 other in June and August of 1969, I gave a list to
4 the staff, that's why I'm looking at them to see
02:03 5 if they have them. I just wanted to draw your
6 attention to document 008 -- 000 -- sorry -- 802,
7 which you will see is a letter from Mr. Caldwell
8 to Mr. Tallis, and of course this letter precedes
9 the one written by the deputy chief to Mr.
02:03 10 Caldwell as it's dated June 23rd, 1969. Would you
11 do a quick look at the full paragraph of this
12 letter. You see that what Mr. Caldwell is
13 reporting to the defence counsel Mr. Tallis, at
14 that time, is that as of that date, being June
02:04 15 23rd, he doesn't have any statements, police
16 reports or anything in written form regarding the
17 matter, but that he would be in touch when the
18 file arrives at the office?

19 A That's what I understand, yes.

02:04 20 Q Okay. And this would be consistent, would it not,
21 with the letter from the chief -- deputy chief
22 some weeks later saying 'this is our invitation to
23 you to assist us with this file'?

24 A Yes, I would agree with that.

02:04 25 Q Okay. And then, sir, if I could have the next



1 letter of that series of correspondence brought
2 up -- and, Mr. Commissioner, the next letter being
3 August 15th, 1969. If you would take a look at
4 that, and I just direct your attention again to
02:04 5 the fact that it's to Mr. Tallis from Mr.
6 Caldwell, but by August 15th, 1969 Mr. Caldwell is
7 clearly in a position that he is getting some
8 documents from the police department; would you
9 agree with that?

02:05 10 A Yes.

11 Q Okay. And you will note, if you would for me, the
12 last paragraph, 'the above are the only
13 statements', I'm marking out, 'the above are the
14 only statements from these two witnesses which I
02:05 15 have at present'; do you see that?

16 A Yes.

17 Q And, at this point, obviously Mr. Caldwell doesn't
18 still have the full file. And the next letter,
19 please. August 20th another little bit has
02:05 20 clearly come in, he has got another statement,
21 would you agree with that?

22 A Yes.

23 Q Okay. And if I could have the next letter,
24 please. And you will see that this is a letter
02:05 25 dated August 21st from Mr. Tallis asking Mr.



1 Caldwell to do a complete disclosure, if I can use
2 that statement, that phrase, to give him any other
3 witness statements that may be available. And
4 then if I could have -- sorry, if you are finished
02:06 5 with that I just have, it's the next letter which
6 I want to show you more importantly than that one;
7 you see this is dated September 9th, 1969?

8 A Yes.

9 Q And as a follow-up to that letter that you were
02:06 10 just looking at, it becomes clear that Mr.
11 Caldwell has taken some steps to obtain additional
12 information from the police, as he says 'In answer
13 to your letter of August 21st since receiving your
14 letter I have obtained all the statements from
02:06 15 civilian witnesses in this investigation,
16 totalling ninety-five'; okay?

17 A Yes.

18 Q And he then goes on, we don't need to go through
19 the full letter, but would you agree with me, sir,
02:06 20 that when you look at this series of
21 correspondence that shows that -- and, again, I'm
22 not being disrespectful of the police because I'm
23 mindful, again, that we're talking 1969, we're
24 talking a complex file -- would you agree with me
02:07 25 that the method of operation in terms of the



1 funneling of the information to the prosecution's
2 office is more of the bent that they are getting
3 bits and pieces as time go along rather than
4 getting delivered to them a full police file?

02:07 5 A Yes.

6 Q And I appreciate that right now we're only into
7 1969 and there is a path to be followed all the
8 way through to the trial, but despite your
9 evidence last week that you thought the whole
02:07 10 police file went over, there's documentary
11 evidence from 1969 that suggests that there was a
12 process of ex -- delivering information but that
13 it wasn't 'here is your copy, here is my copy, you
14 have everything I have' as between police and
02:07 15 trial?

16 A Yes, this correspondence suggests that.

17 Q Okay. And, sir, with respect to the going back,
18 if I may -- and this will be the last time I touch
19 on it, I promise -- but going back to the
02:08 20 suggestions that were made to you last week that
21 Mr. Caldwell had to know because, you know,
22 statements in 1993 seemed to suggest that he had
23 the full file; I take it that these letters
24 further build on the likelihood that, in fact,
02:08 25 that a prosecutor didn't get everything in a



1 police file as part of the exchange of information
2 that took place, and certainly he didn't get it
3 all at one time at least, and there simply was no
4 mechanism in place, that you are aware of in 1969,
02:09 5 to be sure that in fact everything went over?

6 A That's correct.

7 Q Okay. Now, sir, I want to go for a moment, as I
8 have identified with you, the documents that the
9 RCMP put to my client in 1993 that they found in
02:09 10 the prosecution file, being the (V9) (V9)----
11 statement, the (V4)---- (V4)--- statement, that
12 one lab report about (V1)- and (V2)----- and the
13 one report from Detective Sergeant Mackie that had
14 some references to (V2)----- -- and, again, not
02:09 15 meaning to suggest that there won't be other
16 police reports that have the suggestions, but just
17 in terms of the, what was found on the file in
18 1990 or 1991 when the prosecution file was
19 revisited -- umm, there has been much evidence or
02:09 20 have been many questions asked of you about the
21 investigation files on (V5)-- (V5)---, (V2)---- or
22 (V2) (V2)- (V2)----- and Ms. (V3)----- and
23 others, who were ultimately women that Larry
24 Fisher pled guilty to sexually assaulting or
02:10 25 indecently assaulting; you will agree?



1 A Yes.

2 Q Now, sir, in terms of the practices of the day
3 Larry Fisher was not identified as the
4 perpetrator, according to the file documentation
02:10 5 that we have he was not identified as the
6 perpetrator of the assaults on these women until
7 after he was arrested in Winnipeg in 1970,
8 according to all of the information that we have
9 available?

02:10 10 A That's my understanding, yes.

11 Q Okay. And the files up to that point in time, as
12 I understand it, were files that were still open
13 and under investigation by the Saskatoon Police
14 Service?

02:10 15 A I could only assume that they were, yes.

16 Q Okay. Now, sir, there is documents before us --
17 and I won't bring them up -- that show
18 informations in respect to the assaults or the
19 rapes of these women were not sworn until December
02:11 20 1971?

21 MR. HODSON: December, December 30, 1970.

22 BY MS. KNOX:

23 Q December 1970, of course, which was quite some
24 months after Mr. Milgaard had in fact been
02:11 25 convicted of causing the death of Gail Miller;



1 agreed?

2 A Again, that's what I understand, yes.

3 Q So up to the point in time that those informations
4 were sworn, at -- and in other words charges were
02:11 5 laid, these would still have been files that I
6 suggest to you were investigation files?

7 A Yes.

8 Q Okay. Now I'm going to suggest to you, sir, that
9 investigation files remained within the hands of
02:11 10 the Saskatoon Police Service, just as the Gail
11 Miller file remained in the hands of the police
12 service, until a perpetrator was identified and
13 charges were laid?

14 A That is the practice that I understand and that
02:12 15 was followed by the Saskatoon Police Department.

16 Q So in August of 1969 when the preliminary inquiry
17 was commenced, and in January of 1970 when the
18 trial of David Milgaard was commenced, the files
19 on those women, (V1)-, (V2)-----, (V3)-----, and
02:12 20 if I -- the other name I'm forgetting at the
21 moment -- but all of those were open investigation
22 files and, unless something unusual had happened,
23 they -- no copies of them would be in the offices
24 of the prosecution service?

02:12 25 A I would see no purpose in them being there, yes.



1 Q Yeah. It would be unheard of that those files
2 would go --

3 A That's --

4 Q -- to the prosecution service until you had
02:12 5 identified and been able to charge someone,
6 because there is no role for the prosecutor to
7 play?

8 A That's where that -- that would be my assumption,
9 yes.

02:12 10 Q And in these files in particular, there wasn't
11 even a suspect, so there would be no basis to go
12 for an opinion or an informal discussion or
13 anything; would there?

14 A Yes, I think that's a reasonable assumption, yes.

02:13 15 Q Okay. So, sir, with respect to what the
16 prosecutor would have known, should have known, or
17 must have known as of the time of the preliminary
18 inquiry and the trial of David Milgaard, the
19 likelihood is that those files were not in the
02:13 20 prosecution office?

21 A I would certainly believe that that was the case.

22 Q And, sir, you were referred to a letter that was
23 written I believe to Mr. MacKay in March of 19 --
24 I didn't copy down the number -- but there was a
02:13 25 letter written to the Deputy Attorney General's



1 office in Regina by again, I think, Deputy Chief
2 Forbes that said 'at the request of T.D.R.
3 Caldwell I am forwarding a summary of facts to do
4 with the women', and he named the women who were
02:14 5 the victims of Larry Fisher in '68-'69; do you
6 recall being shown that letter last week?

7 A Yes, vaguely, yes I do.

8 UNIDENTIFIED SPEAKER: Deputy Chief Corey.

9 BY MS. KNOX:

02:14 10 Q Oh, I'm sorry, it was from Deputy Chief Corey?

11 A Yes.

12 Q And it went to Regina and it was about Larry
13 Fisher?

14 A Yes, I have some recollection of that.

02:14 15 Q Okay. Now, sir, I'm going to suggest to you that,
16 if those files had been in the prosecution's
17 office, Mr. Caldwell wouldn't have needed to go to
18 the police service to get those summaries because
19 he would have had it in his own files; wouldn't
02:14 20 he?

21 A Yes, that makes sense, yes.

22 Q Yes. And the fact that he had to go to the police
23 service and say 'I have got a request for
24 information on these, can you please take care of
02:14 25 it', would indicate, consistent with what you



1 would expect given that no charges had been laid,
2 that those files were still in the possession of,
3 and the record-keeping system of, Saskatoon Police
4 Service?

02:15 5 A Yes.

6 Q Okay. So that brings us back to the conclusion,
7 or the likely conclusion, that there was limited
8 information within the prosecution files with
9 respect to those sexual assaults at the time of
02:15 10 the preliminary inquiry and the trial of David
11 Milgaard?

12 A Yes, that makes reasonable sense.

13 MS. KNOX: Now, sir -- Mr. Commissioner, I
14 know it's only quarter past two. I'm wondering
02:15 15 if we could take a break. I've got two more
16 areas to cover, each of them brief, but I need to
17 pull together some documents to go with them. I
18 will be a little more efficient if I can have 10
19 minutes.

02:15 20 COMMISSIONER MacCALLUM: All right.

21 (Adjourned at 2:15 p.m.)

22 (Reconvened at 2:33 p.m.)

23 BY MS. KNOX:

24 Q Chief Penkala, I just have a couple of other areas
02:34 25 that I want to touch on and one of them more for



1 clarification because it's an area that has been
2 addressed by various counsel, including Mr. Elson
3 at some length, but I wanted to direct your mind
4 back if I could, and I don't think we need to
02:34 5 bring up the documents, to a series of reports
6 from the RCMP that you've been referred to which
7 were summary reports prepared by Inspector Riddell
8 and by, I think it was Staff Sergeant -- one by
9 Rasmussen, some by Riddell and some by some other
02:34 10 officers who were assisting your members or the
11 Saskatoon Police Service in the investigation and
12 you indicated in your evidence, if I'm remembering
13 it correctly, it was one area that I didn't review
14 prior to this examination, that you don't recall
02:35 15 having seen those RCMP reports come into the
16 Saskatoon Police Service, at least to your memory,
17 when you were working on the file or in
18 preparation for the trial. Am I right in that?

19 A That's correct. I first saw them here.

02:35 20 Q Okay. Now, sir, again without bringing them up,
21 many of these reports have a stamp on them that
22 offices put on when the report is received and the
23 May 7th, '69 one, for example, has a stamp of the
24 Attorney General's department, it says May 16th,
02:35 25 1969 and it says Saskatchewan. Am I correct that



1 that stamp means that it was received at the
2 Attorney General's office in Regina, head office
3 in other words?

02:36 4 A I really have no knowledge of what their system
5 is, but I think that's kind of a practice that was
6 accepted, the Saskatoon police had a stamp that
7 was also placed when correspondence came to the
8 police department.

02:36 9 Q Okay. But if these reports in fact were going to
10 the head office in Regina as opposed to going to
11 Saskatoon Police Service or to the Saskatoon
12 prosecution's office, it might be an explanation
13 for why they may not, and I'm not saying that they
14 didn't, may not have ended up on the prosecution
02:36 15 file?

16 A I think that's a good conclusion, yes.

17 Q That proves through some, or the practices of the
18 day, the RCMP were reporting to their own
19 commanding officer who was reporting to the
02:36 20 Attorney General rather than, or in reporting to
21 the Saskatoon Police Service and putting or
22 copying it to the Saskatoon Police Service as a
23 possibility?

24 A That's the assumption I came to before, yes.

02:37 25 Q Okay. And there will be undoubtedly more evidence



1 in that regard, but as I said, the stamp suggests,
2 there's no stamps on any of them that I can find
3 indicating they were received at the Saskatoon
4 Police Service or at the Saskatoon prosecution's
02:37 5 office?

6 A Yes.

7 Q Okay. Now, sir, the final area I want to go to is
8 just going back a bit again to some of the
9 cross-examination that was done particularly by
02:37 10 Mr. Lockyer I think around his suggestion that the
11 Saskatoon Police Service and you as a member of
12 the Saskatoon Police Service, either directly or
13 indirectly, and the Saskatoon prosecution's office
14 may have been complicit in covering up the
02:37 15 possibility that Larry Fisher had killed Gail
16 Miller rather than David Milgaard who had been
17 charged as a result of the investigation, and
18 without going to the transcript, you remember
19 those various suggestions being made to you over a
02:38 20 number of days I take it?

21 A Yes.

22 Q Okay. Now, you were also asked some questions
23 about what contacts were made with you over the
24 years, and in particular when you became police
02:38 25 chief, about information or follow-ups on the



1 David Milgaard file up to 1990 when you directed,
2 I believe it was under your stewardship as chief,
3 that you directed officers within the department
4 to put together the files and we ended up with the
02:38 5 six volumes of binders, we have A to F that is the
6 chronology of the report, and you indicated you
7 did that for Mr. Williams of the federal justice
8 department?

9 A Yes.

02:38 10 Q Okay, and I'm summarizing here, I know there were
11 other involvements. Now, through the course of
12 the evidence that we have, both from you and the
13 documents we have and some witness evidence, you
14 agreed last week that you were aware that Linda
02:39 15 Fisher, the wife of Larry Fisher, went into the
16 police station one night in 1980 and she gave a
17 statement?

18 A Yes, I'm aware of that now, yes.

19 Q And she made the police officer who took the
02:39 20 statement at least aware that she suspected her
21 husband might have killed Gail Miller?

22 A Yes.

23 Q And you recall and you agreed last week that the
24 fact that she came in in the middle -- or the
02:39 25 early morning hours, that she had been drinking,



1 that there was acrimony with her husband who was
2 about to get out of jail might have been factors
3 that would have been considered in determining
4 whether any serious weight should be given to that
02:39 5 allegation that was being made by her?

6 A Well, I think that's a reasonable assumption, but
7 I don't recall ever really being involved in any
8 of those concerns.

9 Q And I'm not -- bear with me, I'm not suggesting
02:39 10 you were. I'm trying to move you and me and the
11 Commission and other counsel from your role as the
12 identification officer in 1969 to the roles and
13 responsibilities that you took on as you proceeded
14 up the ranks to the point that you became chief of
02:40 15 police through to your retirement in 1991.

16 A Yes.

17 Q If you are following me?

18 A Yes, I am now.

19 Q Now, there's documentation in the file or
02:40 20 correspondence in the file at various points in
21 time where members, or persons on behalf of the
22 Milgaard family or Mrs. Milgaard or counsel
23 contacted the Saskatoon Police Service looking for
24 information and expressing concerns about whether
02:40 25 or not David Milgaard was wrongfully convicted.



1 Do you remember reviewing or receiving any of that
2 correspondence or becoming aware of the requests?

3 A I was never formally requested to provide any of
4 that information and I think I was generally
02:40 5 knowledgeable about the efforts of the Milgaards
6 concerning that, but I was never formally
7 requested to provide any of that.

8 Q Okay. Sir, were you at any point in time
9 contacted by an individual by the name of Peter
02:41 10 Carlyle-Gordge who identified himself as working
11 for McLean's magazine and who may or may not have
12 identified himself in trying to assist the
13 Milgaard family in looking into the circumstance
14 of Mr. Milgaard's conviction?

02:41 15 A I don't recognize the name and I don't have any
16 recollection of a reporter contacting me for that
17 purpose.

18 Q Okay. Were you at any point in time made aware of
19 an ad that was running in the *Saskatoon*
02:41 20 *StarPhoenix* in March of 1983 seeking information
21 on the whereabouts of Linda Fisher?

22 A I'm not sure that I saw that one. I saw some
23 advertisements on behalf of the Milgaard concerns
24 that were advertisements in the newspaper.

02:42 25 Q I wonder if we could bring up document number



1 159890 and direct your attention to this part, if
2 we could highlight that, please. Do you remember
3 ever seeing that ad?

4 A I don't have any recollections of seeing that, no.

02:42 5 Q Do you remember anybody, anyone to your
6 recollection coming to the police department or
7 sending a request to you as police chief to
8 attempt to assist in finding this person?

9 A No.

02:42 10 Q Okay. If I could bring up the full page again,
11 please. You'll note the document date on top of
12 this is March 26, 1983 and the information
13 suggests that it ran for, as I'm looking at it,
14 about a week, and would you agree with me that
02:43 15 this would have been about three years, give or
16 take a few months, after Linda Fisher came in and
17 gave that late night, early morning statement
18 about her husband?

19 A Yes.

02:43 20 Q Now, sir, I wonder -- or, ma'am, I wonder if I
21 could bring up documents 213946 and 213948 and
22 place them side by side. Sir, have you ever seen
23 or were you made aware in 1983 of a response to
24 that ad -- I suspect you weren't but I'll ask
02:43 25 since I started going there -- a response to that



1 ad indicating that an individual was the
2 common-law partner of Linda Fisher and giving a
3 phone number to whoever posted the ad as to where
4 he could be contacted?

02:44 5 A I'm not aware of this information.

6 Q And if I could bring up 213947 side by side with
7 213945 and if I could bring up the upper part of
8 this. We can take down the envelope if that
9 assists in bringing it up. This letter is dated
02:44 10 March 27, 1983 -- okay, that's better -- and
11 you'll see that it reads:

12 "I am writing in regard to the ad you
13 placed on Saturday, March 26, edition of
14 *StarPhoenix*.

02:45 15 I wonder who you are? Why you
16 want to get in contact with me, and,
17 what it is all about. You can contact
18 me at this address."

19 And it's signed Linda Fisher. So you've never
02:45 20 seen this before either I take it?

21 A No.

22 Q Now if we can go to the bottom of that document,
23 please, and there's various handwritten notations
24 that appear to be about a phone number for Linda
02:45 25 Fisher and directions on how to get to Cando,



1 Saskatchewan; would you agree?

2 A That's what it appears to be, yes.

3 Q And were you at that point in time or do you have
4 any memory at that point in time of ever being
02:45 5 contacted by anyone indicating they had located
6 Linda Fisher and asking the Saskatoon Police
7 Service to contact her or obtain information from
8 her?

9 A I'm not aware of that.

02:45 10 Q Okay. If I could now bring up 213943 and if I
11 could have just enlarged -- now, I asked you
12 earlier whether you had ever been contacted by an
13 individual by the name of Peter Carlyle-Gordge and
14 you indicated you don't recognize the name?

02:46 15 A That's right.

16 Q And, sir, I'm going to suggest to you that the
17 evidence will show that he was the person who
18 placed that ad and to whom those responses were
19 directed. I now want to bring up document
02:46 20 325616 -- sorry, 325634 and, sir, for the benefit
21 of the record, what I am having brought up is a
22 transcription of an interview conducted between
23 Peter Carlyle-Gordge and Dennis Cadrain who is the
24 brother of Albert Cadrain and you will recall
02:46 25 Albert Cadrain is the person who came to the



1 police station and said that he saw blood on Mr.
2 Milgaard's clothes?

3 A Yes.

4 Q Okay. If I could go to page 325644 of that
02:47 5 document and a series of questions being asked by
6 Peter Carlyle-Gordge to Dennis Cadrain asking him
7 if he knew, if he knows a Larry Fisher. Now,
8 there's reference in this transcript, or to
9 another transcript, and I apologize,

02:47 10 Mr. Commissioner, I'll go to the other transcript,
11 but I didn't mark the exact point, to the fact
12 that Mr. Carlyle-Gordge had seen the file, which I
13 take to mean he had seen the police file, and that
14 he had seen a reference in it to Larry Fisher, and
02:47 15 where I started going with this, it's your memory
16 or your best evidence that you never ever gave an
17 individual by the name of Peter Carlyle-Gordge
18 access to a police file?

19 A I certainly didn't.

02:48 20 Q But further to that, you never received a request
21 from him that you can remember in your position as
22 chief of police to be allowed access to the file?

23 A That's correct.

24 Q Okay. Now if I could bring up 325616 and this is
02:48 25 a transcription again of what is identified as an



1 interview by Peter Carlyle-Gordge, but this time
2 of Detective Sergeant Mackie. It doesn't have a
3 date, but Detective Sergeant Mackie of course was
4 one of the members of your police service, and if
02:48 5 we could go to page 325621 and I found the part
6 that I was looking for. In the interview between
7 Mr. Carlyle-Gordge and Detective Sergeant Mackie,
8 starting right here, Peter Carlyle-Gordge asks the
9 questions or he says:

02:49 10 "I read all the antigen stuff, it's very
11 complicated stuff. I noticed too in the
12 files -- "

13 And the word appears unclear,

14 "-- the police interview somebody at
02:49 15 Cadrain's address beforehand, someone
16 called Larry Fisher."

17 And it was this part about his statement that he
18 noticed it in the files that causes me to
19 question whether you as chief ever received a
02:49 20 request from him, had contact with him or shown
21 him the files, and your answer?

22 A I did not.

23 COMMISSIONER MacCALLUM: What was date of
24 that, please, Ms. Knox?

02:49 25 MS. KNOX: Mr. Commissioner, as best as I



1 can determine, we don't have -- and I'll let Mr.
2 Hodson speak to those two transcripts.

3 MR. HODSON: I believe it's in early 1983
4 is the interview between Carlyle-Gordge and
02:49 5 Raymond Mackie.

6 COMMISSIONER MacCALLUM: Thanks.

7 BY MS. KNOX:

8 Q And, Mr. Commissioner, with respect to the
9 document that I referred to which was the
02:50 10 interview of Dennis Cadrain, again that one
11 doesn't have a date, but in that interview
12 transcript there's reference to the fact that Mr.
13 Carlyle-Gordge had just spoken to Albert Cadrain
14 the previous weekend and we have that transcript,
02:50 15 it's document number 040654, it's an 83 page
16 transcript and it was the interview done at
17 Dalmeny, Saskatchewan, it too doesn't have a date
18 that I can find, but again it would appear what
19 clearly was indicated in the transcript of the
02:50 20 Dennis Cadrain interview is Mr. Carlyle-Gordge
21 saying to him that he had just spoken with Albert
22 that past weekend, so all of them would appear to
23 be in the same approximate time frame.

24 Sir, at any point in time in the
02:51 25 course of your duties as an identification officer



1 involved in this file, in the course of your
2 preparation for the preliminary inquiry and the
3 trial or in the course of your duties in
4 subsequent years as the chief of the Saskatoon
02:51 5 Police Service, were you ever asked or instructed
6 by T.D.R. Caldwell to hide, disclose, distort or
7 in any manner alter any information with respect
8 to the investigation and prosecution of David
9 Milgaard?

02:51 10 A Never.

11 Q Sir, to your knowledge was anybody within the
12 police service, be it an investigating person
13 attached, a court preparation officer or anyone in
14 the service, asked, invited or requested by Mr.
02:51 15 Caldwell to in any manner whatsoever suppress any
16 information prior to preliminary, during, prior to
17 trial, during or subsequently?

18 A I have no information of that nature.

19 Q Sir, during the course of your tenure as chief of
02:52 20 police and the various positions you held up until
21 the point in time when you became chief of police,
22 to your knowledge did anyone ever make T.D.R.
23 Caldwell aware that Linda Fisher had attended at
24 the Saskatoon Police Service in August of 1980 and
02:52 25 given -- I think it was August anyway -- attended



1 there in 1980 and given a statement to one of your
2 constables suggesting her belief that her husband
3 and not David Milgaard had killed Gail Miller?

4 A I'm not aware of anyone advising Mr. Caldwell.

02:52 5 Q And in 1983 when this ad was being run in the
6 newspaper and information was being forwarded to
7 Mr. Carlyle-Gordge who the records seem to
8 indicate was working to assist in investigating or
9 looking behind the conviction, did you at any
02:53 10 point in time receive any requests from anyone,
11 and in particular from T.D.R. Caldwell, asking you
12 not to communicate, not to co-operate or withhold
13 any information from this man if he should be in
14 touch with you?

02:53 15 A No.

16 Q Sir, in 1990 or thereabouts when information was
17 being put forward in the press, and we've had a
18 lot of evidence about what was in the press, some
19 of it which was upsetting to you because it was
02:53 20 not correct, some of which appeared to be correct,
21 did you at any time receive any contact from or
22 request from T.D.R. Caldwell asking you to do
23 anything, to cover up anything that he might have
24 done, you might have done or any police officer
02:53 25 might have done in the investigation and



1 prosecution of David Milgaard?

2 A No.

3 Q Did you at any time from him receive any request
4 or any indications of any concerns on his part
02:54 5 about a review being done of the conduct of the
6 investigations of the rapes of these young women,
7 (V2)-----, (V5)---, (V3)----- and others, or in
8 any way receive any information or suggestion from
9 him to cause you to believe he was concerned about
02:54 10 that information coming to light?

11 A No.

12 Q Has anybody ever reported to you any information
13 apparently or alleged to have come from him to
14 suggest that he was in any way involved in doing a
02:54 15 cover-up, participating in a cover-up or
16 soliciting your and the assistance of Saskatoon
17 Police Services in covering up the fact that he
18 was involved in a cover-up?

19 A No.

02:54 20 MS. KNOX: I have no further questions for
21 this witness.

22 COMMISSIONER MacCALLUM: Thanks. Mr.
23 Hodson, do we have any cross-examinations?

24 MR. HODSON: I believe I have some
02:54 25 re-examine, but I think I prefer to wait, I



1 believe Mr. Wolch has indicated he wishes to seek
2 permission for re-exam. I have a few questions,
3 I can deal with those now or after Mr. Wolch is
4 heard.

02:55 5 COMMISSIONER MacCALLUM: On what basis, Mr.
6 Wolch, please?

7 MR. WOLCH: There were a number of areas
8 touched on that I couldn't anticipate and I would
9 like to clarify them. There's a few that are
02:55 10 specifically, would leave you with the wrong
11 impression.

12 COMMISSIONER MacCALLUM: Tell me
13 specifically if you could, please.

14 MR. WOLCH: Pardon me?

02:55 15 COMMISSIONER MacCALLUM: I say just let me
16 know what they are, please, before you start.

17 MR. WOLCH: Well, if I may -- and I will
18 certainly, but before I do that, I might remind
19 Mr. Commissioner that for other witnesses, a
02:55 20 number where I went last, and in virtually or
21 nearly every occasion permission was granted to
22 those who went first to re-examine.

23 COMMISSIONER MacCALLUM: Oh, there's --
24 well, that's not my memory, but you of course
02:55 25 realize that re-examination is not a right except



1 for Commission Counsel. We've been a long time
2 with this witness and in the interests of
3 avoiding repetition I want to know what it is you
4 are interested in.

02:56 5 MR. WOLCH: I don't intend to be
6 repetitious I hope, it's just -- one small
7 example is I would like to delve a little bit
8 into the advertisement for Linda Fisher which I
9 didn't anticipate would be coming through this
02:56 10 witness and there's a few questions I can ask
11 there.

12 COMMISSIONER MacCALLUM: Yes.

13 MR. WOLCH: The witness was asked things
14 about the Supreme Court which I think I can,
02:56 15 which I think I can bring to his attention to
16 clarify a few things. Most important there was a
17 number of issues raised about the, by I think
18 possibly three counsel about the sentencing of
19 Larry Fisher which I think, if you accept the
02:56 20 questioning and the answers, you will, not
21 deliberately, but you will be misled, and I would
22 like it clarified.

23 COMMISSIONER MacCALLUM: Well, all right,
24 Mr. Wolch, go ahead, but I must say I'm very
02:57 25 reluctant to have this witness taxed any more



1 about matters of which he has no knowledge.
2 Counsel have been allowed to go a long way with
3 him on the basis that he was, after all, the
4 chief of police and in a sense he was responsible
02:57 5 for a lot of things that he might not have had
6 personal knowledge of it, but after a week and a
7 half of it I've had about enough, so go ahead and
8 put your questions then, please, as briefly as
9 you can.

02:57 10 **BY MR. WOLCH:**

11 **Q** Sorry, I'll go in reverse order as to what I would
12 have liked to have done, but I will do that.

13 You were asked by a number of
14 the counsel as to the question, I think they used
02:58 15 the term global sentence, because you will recall
16 when you were first questioned the position taken
17 was that Larry Fisher had received absolutely not
18 a single day for the Saskatoon offences and you
19 will recall I think three of the other lawyers
02:58 20 said to you no, there's a global effect; that is,
21 the 13 year sentence encompasses the Saskatoon.
22 Do you know what I'm talking about?

23 **A** I believe I do, yes.

24 **Q** You recall being asked those questions by I
02:58 25 believe Mr. Fox for certain and I believe Mr.



1 Beresh went into that and possibly Mr. Wilson,
2 about it took into account the Saskatchewan
3 offences and you said that was likely what would
4 have happened. Do you recall that?

02:58 5 A Yes.

6 COMMISSIONER MacCALLUM: Now, Mr. Fox?

7 MR. FOX: Thank you. Actually, I think the
8 suggestion I made to the witness was that there
9 could be a large number of circumstances
02:59 10 surrounding the sentencing that took place in
11 Saskatchewan of Mr. Fisher. I asked him if he
12 had any knowledge of those circumstances and he
13 said he didn't. That was the point that we made
14 or I made with the witness in that. Really after
02:59 15 that we could speculate as to why the sentencing
16 took place as it did, but the witness was pretty
17 candid, he just didn't have any involvement in
18 it.

19 COMMISSIONER MacCALLUM: Okay. Well, the
02:59 20 mistake I made to start with, Mr. Wolch, I think
21 was in ever allowing, I think it was Mr. Lockyer,
22 to get into the business of this sentencing and
23 as if he was responsible for it or even if he
24 knew anything about it. Why is he being asked
02:59 25 all this stuff? Surely the prosecutor, surely



1 the Crown's office should be questioned about
2 this sort of thing. This man didn't have
3 anything to do with it.

02:59 4 MR. WOLCH: Except that the point we would
5 make is that if in fact Mr. Fisher didn't get a
6 single day for the Saskatoon offences --

7 COMMISSIONER MacCALLUM: Yes.

8 MR. WOLCH: -- and there is no complaint
9 about that from anywhere, that is a fact to
03:00 10 consider, and I believe I can establish that the
11 suggestion of a global sentence, which Mr. Beresh
12 made for certain, that it was -- I appreciate
13 from your judicial training you understand what a
14 global sentence is in terms of it took into
03:00 15 account Saskatoon, and I can establish in a
16 minute that it didn't. I want to bring that to
17 your attention, that all those questions about
18 global sentence taken into account are wrong.

19 COMMISSIONER MacCALLUM: Well, I wish you
03:00 20 would save it for Mr. Caldwell.

21 MR. WOLCH: If I can show you one document,
22 I think I can clear the whole thing up.

23 COMMISSIONER MacCALLUM: Go ahead then.

24 MR. WOLCH: If I can have 032190. This is
03:01 25 a letter from William W. Morton, the Crown



1 attorney, to Mr. Heald, the Attorney General, and
2 I believe it is dated -- would that be June the
3 7th, 1971, and I won't read the entire letter
4 out, Mr. Commissioner, you can certainly read the
03:01 5 first two paragraphs, but I think the last
6 paragraph is the crucial one.

7 "You might wish to advise your Crown
8 attorney handling the prosecution of
9 Fisher that at no time was Fisher's
03:01 10 Saskatchewan involvement made known to
11 the sentencing Judge and therefore this
12 involvement was not taken into account
13 in his 13 year sentence."

14 So, Mr. Commissioner --

03:02 15 COMMISSIONER MacCALLUM: You are talking
16 about the Winnipeg --

17 MR. WOLCH: Sorry?

18 COMMISSIONER MacCALLUM: Is he talking
19 about the Winnipeg sentence?

03:02 20 MR. WOLCH: Yes. It says at the top in the
21 first paragraph that Fisher appeared in Court of
22 Queen's Bench before Justice Matas, who later
23 went to the Court of Appeal, and was sentenced to
24 13 years, and I've been given to understand he
03:02 25 faces similar charges that arose prior to the



1 Manitoba offences in your province. It talks
2 about his counsel, the next paragraph, which
3 everyone is free to read, and then he gets to the
4 last paragraph where it says Saskatchewan was not
03:02 5 taken into account in the 13 year sentence.

6 COMMISSIONER MacCALLUM: Yes.

7 MR. WOLCH: And my point is obviously,
8 Mr. Commissioner, that other counsel had
9 suggested it was a global sentencing encompassing
03:03 10 both, but it specifically is not, and if you can
11 put the entire document up and if you can
12 highlight what I've circled, it appears to be a
13 note to someone named Darlene, "Please pass to
14 Mr. Kujawa," and that comes from the Deputy
03:03 15 Attorney General.

16 COMMISSIONER MacCALLUM: Right. I take it
17 that's not a question to the witness, just for my
18 information?

19 MR. WOLCH: He was questioned about it,
03:03 20 sir.

21 COMMISSIONER MacCALLUM: He was, yes.

22 BY MR. WOLCH:

23 Q I don't want to leave you with a wrong impression
24 on that point.

03:03 25 Another point you were



1 questioned about that I would like to deal with,
2 this was done by a number of counsel as well, and
3 that was that somehow the Supreme Court ruling
4 gave you comfort in that they had not pointed
03:04 5 fingers at Mr. Fisher or at your investigation.
6 Do you recall that being asked of you by I think
7 Mr. Fox and others, about the Supreme Court
8 ruling?

9 A In general terms somewhat, I remember some of
03:04 10 that, yes.

11 Q In fact, we even got into possibly what
12 Mr. Justice McIntyre thought in a legal brief, but
13 as to what others thought maybe the same as you.
14 I wonder if we could have 232029 and I'm going to
03:05 15 suggest, this is from the Supreme Court, and this
16 should clarify a few issues on what they found and
17 what they didn't find, and you have Mr. Beresh
18 speaking here and you have the chief justice at
19 the bottom of the page:

03:05 20 "LAMER, J.: But, Mr. Beresh, we haven't
21 been asked anything about your client.
22 We have been asked that there has been a
23 miscarriage of justice in regard to Mr.
24 Milgaard. We haven't been asked what we
03:05 25 think about Mr. Fisher.



1 You are here on a very special
2 status. I think I made it clear at the
3 time I granted you status. It is just
4 in case that somebody starts pointing
03:05 5 fingers at your client that you should
6 have an opportunity under the rules of
7 fairness to respond to that.

8 Whatever we say, I don't think
9 we are going to be saying, "Oh, we think
03:05 10 it is Mr. Fisher." We are not asked
11 that. We are just going to answer the
12 question that was put to us, and that is
13 all."

14 Do you see that?

03:06 15 A Yes.

16 Q The Court specifically said, and this is not the
17 only time, they would not make any findings
18 regarding the guilt of Mr. Fisher. He could never
19 get a fair trial afterwards if the Supreme Court
03:06 20 pronounced him guilty; would you not agree with
21 that?

22 A No, no, I would agree.

23 Q Yeah. So to say you would take comfort in a
24 finding or a non-finding of Mr. Fisher, I suggest,
03:06 25 should not be of any assistance to you because the



1 Court would not make the finding regardless of
2 what they found; do you see that?

3 A It certainly makes sense to me, yes.

4 Q And you were also asked by counsel about the
03:06 5 investigation. Now the Saskatoon Police did not
6 have standing at that particular inquiry, did
7 they, at the reference?

8 A I don't really know to be honest with you.

9 Q Are you aware that, like Mr. Fisher, the conduct
03:07 10 of the police was not in issue?

11 A I wasn't really aware of that.

12 Q That counsel were not allowed to lead evidence
13 at -- on that point?

14 A I'm not aware of that, no.

03:07 15 Q Mr. Commissioner, I feel somewhat uneasy, I would
16 like to continue, I'm not sure what your feelings
17 are about going further?

18 COMMISSIONER MacCALLUM: Yes, go ahead.

19 BY MR. WOLCH:

03:07 20 Q Thank you. If I could refer to 160801, this was
21 brought to your attention by other counsel, if you
22 go to page four, this is the judgement of the
23 Supreme Court.

24 And one thing I think most of us
03:08 25 will agree upon is that the judges at all levels,



1 including the Supreme Court, pick their words
2 pretty carefully.

3 It's the fourth, the fourth page
4 of the judgement, is the one I would like to go to
03:08 5 as parts of it were presented to you. Highlight
6 that paragraph. That was read to you. See, they
7 say:

8 "... in our view David Milgaard had the
9 benefit of a fair trial ...",

03:08 10 okay?

11 A Yes.

12 Q That's a specific statement. Now:

13 "We have not been presented with any
14 probative evidence that the police acted
03:08 15 improperly in the investigation ...",
16 'not been presented'; do you see that?

17 A Yes.

18 Q "Nor has evidence been presented that
19 there ...",

03:08 20 has been:

21 "... inadequate disclosure in accordance
22 with the practice prevailing at the
23 time."

24 A Yes.

03:09 25 Q I suggest to you the key words there are



1 'presented', they didn't want to hear that, it
2 wasn't an issue; do you see that? Fisher was not
3 an issue, police conduct was not an issue, only
4 Milgaard was the question they were going to
03:09 5 answer, and that's what I am -- the point I am
6 making.

7 I think, go down another
8 paragraph:

9 "However, fresh evidence has been
03:09 10 presented to us."

11 'Wilson, a key witness, has recanted part of his
12 testimony. Additional evidence with respect to
13 the alleged motel room confession'.

14 "More importantly, there was evidence
03:09 15 led as to sexual assaults committed by
16 Larry Fisher which came to light in
17 October 1970 ...";

18 do you see that?

19 A Yes.

03:09 20 Q It didn't say it come to light in 1990, it came to
21 light in 1970, --

22 A Yes, I see.

23 Q -- that's their specific finding. Okay?

24 A Yes.

03:09 25 Q And as I hear your evidence, when it did come to



1 light no one told you, when it came to light in
2 1970 that's --

3 A That's right, yes.

4 Q Yes. And finally, when Ms. Knox was concluding
03:10 5 her questioning of you and she talked about Linda
6 Fisher and Peter Carlyle-Gordge's attempt to find
7 her, you understood Linda Fisher to be living in
8 the basement of the Cadrain home at the relevant
9 time; correct?

03:10 10 A Yes.

11 Q And, if I understand it correctly, Larry Fisher
12 was spoken to at the bus stop; correct?

13 A That's my understanding.

14 Q He gave an account of where he was that day but it
03:10 15 was never, never followed up on?

16 A That's the general understanding. I wasn't
17 specifically involved myself, but --

18 Q No.

19 A -- but I, through my involvements I had learned
03:10 20 that, yes.

21 Q But Linda Fisher was never spoken to at all?

22 A I don't know that.

23 Q Would you have expected the people who lived in
24 the Cadrain basement the day the kids arrived
03:11 25 there to have been interviewed?



1 A Yes.

2 Q And that would be just appropriate police work.

3 And once again, everybody makes mistakes, but

4 that's probably a mistake; would you agree with

03:11 5 me?

6 A Well I'm, I'm acting under the presumption that it

7 -- that was attended to.

8 Q But there is no sign of them being spoken to, but

9 -- so what I am saying is this; you have all this

03:11 10 evidence of kids coming, cars being turned around,

11 all that, good police work says you would talk to

12 everybody in the house?

13 A Certainly.

14 Q And Linda Fisher was in the house, in the

03:11 15 basement?

16 A I -- that's what I understand, yes.

17 Q Yes. But it wasn't followed up on; right?

18 A Well, I don't know that of my own accord.

19 Q Accept that as a fact, it just wasn't. Would you

03:11 20 be at all surprised, if somebody was looking into

21 the case and trying to get information on Albert

22 Cadrain and all those occurrences, that they would

23 try to locate somebody who they now find out was

24 in the basement that day?

03:12 25 A That's a reasonable, a reasonable assumption, yes.



1 Q So it's quite likely that Carlyle-Gordge was
2 taking a long shot that maybe the people in the
3 basement might know something; isn't that what's
4 quite likely?

03:12 5 A That's reasonable, yes.

6 Q And then, when he talks to Detective Sergeant
7 Mackie, Mackie doesn't even know who Larry Fisher
8 is; right?

9 A Yes, that's -- I see.

03:12 10 Q So even he doesn't know by name the rapist who had
11 plagued Saskatoon?

12 A Well, that's quite obvious in the examples that
13 you have given, yes.

14 Q Just, with the Commissioner's permission, a couple
03:13 15 minor things. You were asked about the authority
16 to reinvestigate a case by one of the counsel.
17 There is no prohibition, that I know of, that
18 would stop you from looking up a case that's
19 been -- gone through the courts; is there?

03:13 20 A Well I'm sure you are correct on that.

21 Q Yeah. And in fact, even on this case here, it
22 follows that, if you were reinvestigating, you
23 could still reinvestigate perjury or obstruction
24 or anything that might arise out of a closed file
03:13 25 in any event?



1 A Umm, that's possible, but usually it's initiated
2 by someone making a formal, a formal request or a
3 complaint.

4 Q Mr. Commissioner, those are my questions, thank
03:14 5 you.

6 COMMISSIONER MacCALLUM: Okay.

7 MS. KNOX: Just before you speak,
8 Mr. Hodson -- I'm not looking to re-exam, I just
9 have a point.

03:14 10 Mr. Commissioner, in the
11 exchange that was occurring between yourself and
12 Mr. Wolch you indicated that you preferred that
13 questions about the sentencing with respect to
14 Mr. Fisher be directed to the prosecutor, Mr.
03:14 15 Caldwell.

16 COMMISSIONER MacCALLUM: Well, somebody who
17 knows.

18 MS. KNOX: Oh yeah, but my -- the only
19 point I wish to make is that Mr. Caldwell was not
03:14 20 the prosecutor who handled the Fisher matter, it
21 was handled in Regina by another prosecutor, and
22 my client was concerned that I bring that to your
23 attention --

24 COMMISSIONER MacCALLUM: Oh.

03:14 25 MS. KNOX: -- that, in fact, it was not he



1 who had any dealings with the file.

2 COMMISSIONER MacCALLUM: Oh, thank you,
3 yeah. I'm sure we will hear all about that.

4 MR. HODSON: I can assure you, Mr.
03:15 5 Commissioner, we will.

6 COMMISSIONER MacCALLUM: Okay.

7 MR. HODSON: Just a couple questions.

8 **BY MR. HODSON:**

9 **Q** Just a couple of questions, Mr. Penkala.
03:15 10 Mr. Lockyer asked you about your involvement in
11 the (V5)-- (V5)--- rape, which was February 21,
12 1970, and you recall he showed you a lab report, a
13 letter that you wrote to the RCMP lab; do you
14 recall that questioning?

03:15 15 **A** Yes, yes.

16 **Q** And I believe you had indicated that that was, or
17 you believed to be, your only involvement. I just
18 want to put up a couple of documents and draw them
19 to your attention. The first is 070545 which is
03:15 20 the occurrence report, this is the occurrence
21 report for the (V5)-- (V5)--- rape, it was
22 prepared by Officer Weir. If you could go to the
23 fourth page, 075048 please, and in the occurrence
24 report Mr. Weir says:

03:16 25 "I then took (V5)-- to the Ident.



1 section where I/O Simpson took some
2 pictures and had her identify some
3 articles which he had recovered."

03:16 4 And then scroll down to the bottom, to that
5 paragraph:

6 "At 1:15 a.m. February 22/70, I turned
7 over the two glass vials marked #1 & #2
8 which I received from Dr. Kavanagh to
9 I/O Simpson for the purposes of
03:16 10 refrigeration ...".

11 And then as well if you could call up document
12 105205, and this is a report February 22nd, 1970
13 by I/O Simpson, and it's the identification
14 section report and then goes on to identify
03:16 15 various articles, and I think, if you look at
16 those, those would be the items referred to in
17 the letter. If you could go back up to the
18 second paragraph, it -- Officer Simpson talks
19 about going there with Constable Winter, and I
03:17 20 believe; were Officers Simpson and Winter part of
21 the identification section at that time?

22 A Yes. Constable Winter was there as a -- we had a,
23 we had a program where every officer was allowed
24 to go through different -- various sections just
03:17 25 for general knowledge of what went on in the



1 sections.

2 Q And apart from the letter that Mr. Lockyer put to
3 you, which is 056325 -- and maybe we'll just
4 quickly call that up, it's not very legible --
03:17 5 where I think he identified your signature to the
6 lab, and I believe you stated -- and please
7 correct me if I'm wrong -- that you would have
8 authored all communications with the RCMP lab on
9 behalf of the ident section at the time?

03:18 10 A Yes.

11 Q Can we assume from that, and the fact that I don't
12 believe your name comes up anywhere else in the
13 (V5)--- investigation reports, that -- would
14 Simpson and Winter have been the officers, then,
03:18 15 who dealt with this file?

16 A Umm, from their involvement with the evidence and
17 so on, and I would have been approached simply to
18 write a letter of direction on behalf of the
19 examinations that they wanted conducted, and that
03:18 20 was the usual process. And it wasn't limited to
21 just the identification section, it might be the
22 traffic section that said 'we have these articles,
23 we would like to have physical examinations
24 conducted'.

03:18 25 Q It would --



1 A It would come through me to write the letter of
2 direction on behalf of those investigators.

3 Q If your name, sir, does not appear anywhere else
4 in the (V5)--- file and investigation reports, can
03:18 5 we conclude, from that, that you were likely not
6 involved in the (V5)-- (V5)--- file other than
7 this letter, or is it possible that you would have
8 been involved in reviewing matters?

9 A No, I wouldn't have been involved.

03:19 10 Q Umm, one last point. You were questioned, I think
11 by a couple of counsel, about the media reporting
12 on Mr. Fisher's convictions; you will recall that.
13 And I think Mr. Lockyer went through, in 1970 and
14 '71, the fact that Mr. Fisher's conviction in the
03:19 15 Regina courtroom of December 21, 1971 was not
16 reported in the Saskatoon -- or Saskatchewan
17 papers, do you recall those questions, and I think
18 you were asked to give your take on why that may
19 not have been; do you recall those questions?

03:19 20 A Yes, I think I -- yes.

21 Q And I believe your evidence was -- and please
22 correct me if I'm wrong -- to the effect that,
23 that there were not formal proactive steps taken
24 by the police at the time to alert the media to
03:20 25 Court happenings, that the media reported what



1 they wanted to report on; is that a fair summary?

2 A That's right, yes.

3 Q And if I could call up a couple of documents, the
4 first is 159723. And I don't believe these were
03:20 5 shown to you, Mr. Penkala, and I think the record
6 is clear that there is no -- at least we don't
7 have any copy of a newspaper report in about 1971
8 or '72 reporting on Mr. Fisher's convictions for
9 the four Saskatchewan rapes where he was convicted
03:20 10 in Regina, but this is an article in the
11 Leader-Post of May 29th, 1971, and if we could
12 just call out that column. And it says, it's a
13 Winnipeg story, CP:

14 "Larry Earl Fisher of
03:20 15 Saskatoon was sentenced to 13 years in
16 penitentiary Friday when he pleaded
17 guilty in Manitoba Court of Queen's
18 Bench to charges of rape, robbery and
19 possession of an offensive weapon.

03:21 20 Court was told Fisher, 22,
21 raped a 19-year-old girl in south
22 Winnipeg last August and an 18-year-old
23 girl in the same area in September."

24 And if I could also call up 159724, please. And
03:21 25 this is, again, the same date in the Saskatoon



1 *Star-Phoenix* -- and I believe it's the identical
2 story, I won't read it -- that talks about Mr.
3 Fisher's conviction, and I believe it's,
4 coincides with his court date in Manitoba.

03:21 5 And my question, Mr. Penkala,
6 whether, to your knowledge, would the Saskatoon
7 City Police have taken any steps to have Mr.
8 Fisher's conviction in Winnipeg noted, would they
9 notify the media in Saskatchewan to have this
03:21 10 story run, or can you give us any explanation as
11 to why this story would appear in May of 1971
12 about Mr. Fisher's convictions in Winnipeg for
13 the Manitoba rapes, yet the media did not appear
14 to report on Mr. Fisher's convictions in Regina
03:22 15 for Saskatchewan rapes?

16 A Yes, I -- I have no idea, I have no idea why that
17 occurred. Usually those things are attended. The
18 only thing is the jurisdictional aspect, where the
19 charges were eventually disposed of in Regina,
03:22 20 which was out of the Saskatoon jurisdiction. I'm
21 just simply indicating that that obviously
22 happened, but I can -- I have no explanation for
23 why it would be.

24 Q Those are all my questions, Mr. Penkala. If I
03:22 25 could, on behalf of Mr. Hardy and myself and the



1 Commission, thank you for your courtesy and the
2 time you spent with us and your cooperation in
3 preparing for the Inquiry.

4 A I didn't expect to be here as long as I have.

03:23 5 Q I may have fibbed when I said a couple of days,
6 I'm sorry. I believe that's all for Mr. Penkala.

7 COMMISSIONER MacCALLUM: Thank you very
8 much, Mr. Penkala.

9 A Thank you.

03:23 10 MR. HODSON: The next witness is Mr. Reid,
11 Officer Reid, and Mr. Hardy will be leading him.

12 MR. HARDY: I believe Mr. Reid is being
13 retrieved from the lobby.

14 COMMISSIONER MacCALLUM: Yes.

03:23 15 **GEORGE TURNER REID, sworn:**

16 **BY MR. HARDY:**

17 Q Good afternoon, Mr. Reid.

18 A Good afternoon.

19 Q I know you have been on standby for a number of
03:24 20 days, and I want to thank you for your patience,
21 and thank you for attending at this Commission of
22 Inquiry this afternoon to provide testimony.

23 I understand, sir, that you
24 presently reside in Saskatoon?

03:24 25 A I do.



1 Q And can you tell us, please, what your age is?

2 A 78.

3 Q And I understand, as well, that you were
4 previously a Saskatoon City Police officer?

5 A Correct.

6 Q And can you tell us, please, when you began and
7 when you retired from the force?

8 A I joined in June of 1951 and retired in 1987.

9 Q And we have received, from the Saskatoon Police
03:25 10 Service, a record of service, so to speak, and now
11 I'm going to show you that document. The doc. ID
12 is 325555 and if we could turn, please, to page
13 325561. And, Mr. Reid, you and I have had an
14 opportunity to review this document?

03:25 15 A Yes.

16 Q I'll let you get familiar with it again. I
17 understand that you are in general agreement with
18 the service record as noted?

19 A It appears to be correct.

03:25 20 Q Just noting a couple of the entries, January 1956
21 detective, again 1961 detective, followed in
22 February 16th, 1968 detective sergeant, and
23 detective sergeant again May 1st, 1973; would it
24 be correct, Mr. Reid, that the bulk of your time
03:26 25 with the Saskatoon Police Service was spent with



1 the detectives division?

2 A I would believe it would be about half and half,
3 half the time in patrol and half the time in
4 detectives.

03:26 5 Q Okay. And for our purposes, as of January 31st,
6 1969, by this entry I understand you would have
7 been a Detective Sergeant?

8 A I believe so, yes.

9 Q I'm going to turn you, as well, to an
03:26 10 organizational chart that we have obtained, the
11 document is ID 325569. This was a chart taken
12 from the 1969 annual report, and again, you and I
13 have had an opportunity to review this document
14 and I understand that you are in general agreement
03:26 15 with this structure as depicted on this chart?

16 A Yes.

17 Q I note in particular, briefly, the detectives
18 division and it states:

19 "Investigations of Criminal Offences
03:27 20 Fraud
21 Robbery
22 Homicide",

23 and if we look at morality:

24 "Investigations of Moral Offences
03:27 25 Liquor Act



1 Gaming

2 Youth Section";

3 does that generally accord with your recollection
4 as of 1969, Mr. Reid?

03:27 5 A That does.

6 Q And I'm wondering if you might share with us as of
7 1969, as best you can recall at the Saskatoon
8 Police station, where these particular divisions
9 were located?

03:27 10 A The detective division was located on the third
11 floor and I believe the morality division was down
12 around the second floor.

13 Q Okay. And what about the identification division?

14 A They were on the third floor with detectives.

03:27 15 Q Okay. And what about the office of the
16 Superintendent of Criminal Investigations; where
17 was that physically located?

18 A More or less next door to the detective sergeants'
19 office.

03:27 20 Q And I think you shared with me, but I'll ask the
21 question, Chief of Police; where was his office?

22 A Down on the main floor.

23 Q And if we could turn to the next page of that
24 document please, it's 325571, a couple of pages
03:28 25 forward.



1 A Uh-huh.

2 Q And, again, you and I have taken a look at this
3 document previously, Mr. Reid, and what this is is
4 a document created by the Commission, it's our
03:28 5 best attempt at a reconstruction of the
6 individuals who would have been active in the
7 force, as noted on the right-hand side of the
8 document, as of 1969; and would that generally
9 accord with your recollection as best you can
03:28 10 recall, Mr. Reid, as of 1969?

11 A I believe it does, yes.

12 Q And I'll perhaps, again, focus just on the
13 detectives division. I note that your name is
14 noted as a detective sergeant along with Detective
03:28 15 Sergeant Raymond Mackie, Detective Sergeant Andrew
16 Porter, and Detective Sergeant Jack Ward; do you
17 have a recollection, in terms of the seniority
18 amongst those four officers noted, who was the
19 most senior, and perhaps you could let us know
03:29 20 down to the most junior?

21 A I would be the most junior, the -- Mackie, Porter,
22 and Ward were -- had joined the force long before
23 I had, in fact I believe they joined shortly after
24 returning from the war.

03:29 25 Q And was there a senior officer, so to speak,



1 amongst those four?

2 A I would say Mackie would be the -- would be the
3 one.

4 Q And I take it, just from the way that the chart is
03:29 5 organized, the four of you; would there be a
6 direct reporting to Lieutenant Short?

7 A You would report to the division head, yup.

8 Q Okay. And perhaps, if we could expand out to the
9 full document again, and do you recall Jack Wood,
03:29 10 then, being in the position of Superintendent of
11 Criminal Investigations?

12 A That is correct.

13 Q And would there have been reporting directly to
14 Jack Wood as a superior, so to speak, as well?

03:30 15 A Yes.

16 Q And I'm wondering, in terms of your position as a
17 detective sergeant in 1969, can you share with us
18 your recollection of what your responsibilities
19 would be on a day-to-day basis?

03:30 20 A You would be running the detective department from
21 -- on a day-to-day basis. You would be
22 responsible for everything that more or less took
23 place.

24 Q And perhaps you could tell me then, I mean we note
03:30 25 a number of detectives underneath the four



1 detective sergeants mentioned, what was the nature
2 of your authority, then, over the detectives
3 listed?

4 A We would be the ones to assign all the files. Any
03:30 5 outside inquiries, they would all have to be
6 assigned to the various detectives, plus the fraud
7 section.

8 Q And would you be working at the office, then, for
9 the most part?

03:30 10 A Basically, yes.

11 Q And who would you be receiving instructions from?

12 A Either Wood, Wood or -- I keep calling him
13 inspector -- Inspector Short. I believe he was
14 lieutenant at the time though.

03:31 15 Q Okay. And assignments, so to speak, would they
16 flow as depicted on this chart from Jack Wood or
17 from Lieutenant Short to then be delegated, again,
18 by yourselves?

19 A Yes.

03:31 20 Q And we can -- you can put the document down now.
21 And, in the course of your career, I'm wondering
22 if you can give us a bit of a comment on the
23 training that you received, Mr. Reid?

24 A During the whole span of the career?

03:31 25 Q Yes. I'm wondering, in particular, what sort of



1 training you recall receiving in terms of
2 investigation techniques, the taking of
3 statements, that sort of thing?

03:31 4 A Umm, I believe when we joined, that as far as
5 statements, we received word on how to take them.
6 During the course of time I was on they had
7 in-service seminars, and such as prosecutors,
8 lawyers and such, we had quite a few from the
9 university, and a lot of them would -- would
03:32 10 pertain to, I believe, statements at that time.
11 The, I don't recall the exact time.

12 Q Sure, no. Would I be correct -- and please
13 correct me if I'm wrong -- that the majority of
14 your training, so to speak, would be on-the-job
03:32 15 training?

16 A That's right.

17 Q So you would learn from senior officers by
18 observing?

19 A Yes.

03:32 20 Q And that was with respect to investigation
21 techniques, as I say, and the taking of
22 statements; that sort of thing?

23 A Yes.

24 Q And then I understand, Mr. Reid, that you had some
03:32 25 direct involvement in the investigation of the



1 death of Gail Miller in 1969?

2 A I did.

3 Q And I further understand that you, in fact, were
4 one of the first two officers to attend at the
03:33 5 scene on that morning?

6 A I was, with Jack Parker.

7 Q And we'll review your investigation report and
8 some of the other material that speaks to that
9 morning in a moment, but stepping away from the
03:33 10 documents, I wonder if you might share with us,
11 generally, your recollection of that morning?

12 A It was very cold, very foggy. We proceeded to the
13 scene of the crime, we went up 20th Street to
14 Avenue N in the 200 block, and proceeded down the
03:33 15 alley where we observed what they were sent to.

16 Q And can you continue on from there; what you
17 recall in terms of arriving at the scene?

18 A Yes. When we entered the T section of the lane
19 which ran north and south behind the 200 block N
03:33 20 South we proceeded up the lane to, going south a
21 short distance, and we observed someone laying on
22 a -- in the snow on -- by the east fence in the
23 lane. Further down, near the intersection of the
24 T section, there were two gentlemen waiting for
03:34 25 us. I believe they were from the funeral home.



1 Q And maybe you could share with us; what, in
2 effect, would be your responsibilities, so to
3 speak, at -- upon arriving at a scene of this
4 nature?

03:34 5 A First, try to determine if there was any life in
6 the, in the person. When we checked it was the
7 body of a woman, we noticed that she appeared to
8 be deceased at the time, jack Parker checked for a
9 pulse, found nothing. We left the body more or
03:34 10 less intact. I then proceeded to where the two
11 men were and found out that they had a witness,
12 that a young girl had came and told them about
13 this matter.

14 Q And we'll review some of those details in your
03:35 15 report in just a moment. What would have been the
16 respective roles of yourself and Detective Parker?

17 A Preserving the scene until the ident section
18 arrived.

19 Q And that would be a joint task, then, or would you
03:35 20 have different roles, so to speak, when the two of
21 you would arrive at a scene?

22 A No, well at the time we would be making notes and
23 waiting the detective -- or the ident section.

24 Q Perhaps we will bring up your investigation report
03:35 25 now. If we could turn, please, to document ID



1 006258, note the date of the document is January
2 31st, and I believe that's meant to be 1969, we'll
3 turn to the second page in a moment but it's a
4 document authored by yourself, Mr. Reid. Before
03:35 5 we go into the contents there might be an obvious
6 question; could you tell us, though, what was the
7 intent, generally speaking, of an investigation
8 report?

9 A To bring all the pertaining facts of what we saw
03:36 10 and did at the scene so that the people would be
11 familiar with it.

12 Q And when you refer to other people, you are
13 referring to those who may be reviewing the file
14 or otherwise?

03:36 15 A That is correct.

16 Q And I note in the upper left-hand corner reference
17 as follows, division assigned to Detective
18 Sergeant Reid, and I take it you perhaps would
19 have directed that that notation be made. Can you
03:36 20 tell us what the significance of that particular
21 entry would be?

22 A No, I can't see any significance other than the
23 report was intended for the detective department.

24 Q And we'll touch upon this further in a moment, but
03:36 25 do you recall whether perhaps you had been



1 assigned responsibility for the investigation at
2 the outset?

3 A I was just a senior officer that attended at that
4 time. I don't recall being advised that I would
03:37 5 be the senior officer for the investigation.

6 Q So in terms of your name being mentioned on the
7 document, and I think we see your name mentioned
8 on a number of other investigation reports and you
9 and I have had a chance to review some of those,
03:37 10 am I correct in hearing you that your
11 understanding would be that that was because you
12 were the senior officer initially attending upon
13 the scene?

14 A I imagine that I put it on myself when I left the
03:37 15 report.

16 Q Okay. I'm also noting, before we go into the
17 contents, a stamped number 21. Are you aware of
18 where that number may have come from?

19 A No, sir, I'm not.

03:37 20 Q It's not familiar to you at all?

21 A No.

22 Q And it wasn't a process by which you would direct
23 the numbering, for example, of an investigation
24 report when you left one?

03:38 25 A No.



1 Q And how would these reports generally be
2 processed? I take it -- was it a dictation?

3 A Yes, we left the reports on a Dictaphone and the
4 reports were then, I believe we took them down to
03:38 5 central registry and dropped them off there to be
6 typed.

7 Q And can you perhaps continue forward from there,
8 where then would the reports end up?

9 A They would end up at the detective department.

03:38 10 Q And was it just one copy then or were there more
11 than one copies that were made?

12 A There would be more than one.

13 Q And from your recollection then, one at least
14 would end up in the detective's department?

03:38 15 A Maybe two.

16 Q And do I assume correctly that one would be left
17 with central records?

18 A They would keep the -- if my recollection is
19 correct, they would retain the original.

03:38 20 Q And perhaps we'll take a look briefly at the
21 contents of the document, focus perhaps on that
22 first paragraph, and again you and I have had a
23 chance to review it together, but very briefly
24 I'll read some of it, it indicates:

03:39 25 "... radio instructions were received at



1 approximately 8:40 AM to proceed to the
2 lane in the 200 block Avenue N South
3 regarding a suspicious person."

4 Moving down a little bit further, you proceeded
03:39 5 to the lane at the rear of the 200 block Avenue
6 N. It indicates:

7 "While driving down this lane we
8 observed two men standing near the far
9 end or south end of this lane and upon
03:39 10 approaching in the car we observed a
11 blue blanket covering some sort of
12 object. We arrived at approximately
13 8:50 AM. I lifted the blanket which
14 covered this object and observed the
03:39 15 face of a woman. I then spoke to the
16 two male persons in question where it
17 was found that they were Mr. Ray Murdoch
18 who is the manager of the Westwood
19 Funeral Chapel and who resides in suites
03:39 20 located above this funeral chapel. The
21 person with him was his assistant
22 manager Mr. Terry Michalyliuk who also
23 resides in the suite located above the
24 funeral chapel. Mr. Murdoch advised
03:40 25 that a young girl came to his suite door



1 and advised them of the body of a woman
2 being in the lane and he advised that
3 his assistant Mr. Michalyliuk and they
4 both proceeded to the spot in question
03:40 5 where the body of the woman laid
6 directed by this girl. This girl then
7 on the request of Mr. Murdoch returned
8 to the suite and she waited there. Mr.
9 Michalyliuk advised that when he arrived
03:40 10 he checked the body and in his opinion
11 there appeared to be no signs of life."

12 And would that be generally an accurate account
13 of the information as you recall it, Mr. Reid?

14 A That is true, yes.

03:40 15 Q Just reading one further paragraph on that
16 document, the following paragraph:

17 "I returned to Mr. Murdoch's suite and
18 interviewed the girl in question who
19 apparently had found the body and she
03:40 20 gave her name as Mary Marcoux, age 11
21 years ... and she advised that at
22 approximately 8:30 she was walking south
23 in this lane on her way to school to St.
24 Marys school when she observed this body
03:40 25 and at this time apparently met the



1 three Hnatiuk boys. All four proceeded
2 to inform Mrs. Hattie Hnatiuk 219 Avenue
3 N South regarding this matter and it was
4 Mrs. Hnatiuk that contacted the police
03:41 5 in respect of this occurrence. It will
6 be noted that it was Mr. Michalyliuk
7 that brought a blanket, blue in colour,
8 from the funeral home and covered the
9 body in question and they both waited
03:41 10 there until the police arrived."

11 And again, Mr. Reid, would that be a generally
12 accurate account of your recollection in terms of
13 the information and your observations that
14 morning?

03:41 15 A Yes.

16 Q And I'll pause there for a moment. Do you recall,
17 there's mention made in the paragraph to a Mary
18 Marcoux as well as the Hnatiuk boys and their
19 discovery of the body that morning. Do you recall
03:41 20 the name Linda Duffus arising during any of your
21 discussions with witnesses?

22 A No, it means nothing to me.

23 Q Okay.

24 A I never did hear that name before.

03:41 25 Q Okay. I'm going to show you some photographs as



1 well of the scene from that morning, Mr. Reid, and
2 I'm going to try and do it this way. First of
3 all, the photographs that we've previously seen
4 during the course of the hearing, 077846, if we
03:42 5 could bring that up, please, and I take it that
6 that is a picture that you've previously seen, Mr.
7 Reid?

8 A Yes.

9 Q And I'm going to take a moment and we'll I think
03:42 10 need to use the Elmo device and put up a clearer
11 version of that photograph, if you'll just give us
12 a moment, and for reference, the document ID is
13 325573, and again I'll just give you a chance to
14 take a look at that, Mr. Reid. I take it, would
03:42 15 that be your vehicle noted in the background of
16 that picture?

17 A Yes, I believe you are right, yes.

18 Q And perhaps we'll proceed through the other
19 pictures and then I'll ask you to comment on them.
03:43 20 If you could put up as well 325574 and 325575,
21 325576 and 325577, please, and we can take those
22 pictures down, please. And would those
23 photographs be an accurate depiction of the scene
24 as you came upon it on the morning of January
03:43 25 31st, Mr. Reid?



1 A Yes, they are accurate.

2 Q And do you recall upon arriving at the scene
3 whether you had made any preliminary conclusions
4 as to what had transpired at that location?

03:44 5 A Not at that time other than it appeared that the
6 snow had been trampled around the body and we had
7 not turned the body over, we did not until the
8 ident and coroner arrived.

9 Q And do you recall having an opinion on whether
03:44 10 Miss Miller had been killed at that location?

11 A It appeared at that time that that was the case.

12 Q And on what basis were you reaching that
13 conclusion?

14 A There was nothing else that we could see that
03:44 15 would indicate to be otherwise.

16 Q Did you notice the presence of blood at the scene?

17 A I noticed a few drops. That's before the body was
18 turned over.

19 Q In and around the body then before it was turned
03:44 20 over?

21 A Around there, yes.

22 Q And again, and I think you've already confirmed
23 for us, but the indentations in the snow and such,
24 was that generally the look of the scene at the
03:45 25 time that you arrived on the morning of January



1 31st?

2 A Yes, it was.

3 Q And was there anything to suggest to you that the
4 scene had been disturbed, so to speak, before your
03:45 5 arrival?

6 A Not to our -- not that I noticed.

7 Q And do you recall, was there anything else
8 significant about the scene that you had noted on
9 that morning, Mr. Reid?

03:45 10 A That the roadway was, appeared to be well
11 travelled, packed well. Once you got off the
12 road, then you did hit the snowbanks and the
13 fences.

14 Q And are you talking about the lane way as we noted
03:45 15 it in the pictures that we just saw?

16 A Yeah.

17 Q I'm going to turn your attention to Detective
18 Parker's occurrence report, it paralleled your
19 report, and it's document ID 006255, and before we
03:46 20 go into the report, perhaps you can tell us, do
21 you recall how you had come to be paired with
22 Detective Parker on that morning?

23 A I really can't tell you. I don't know.

24 Q I only ask because you had previously noted that
03:46 25 as a detective sergeant, was it more likely that



1 you would be at the office?

2 A Yes, unless that day there was an overlap of
3 detective sergeants, but that's strictly a guess,
4 I don't know.

03:46 5 Q And when you say an overlap, another detective
6 sergeant would be at the station which would allow
7 you to go out on calls?

8 A Yes, but I don't know if that really was the case
9 or not. I'm just explaining what may be.

03:47 10 Q Sure. And do you recall why it was that it was
11 Detective Parker that left the occurrence report
12 and not yourself?

13 A Not really, no.

14 Q And I note at the top right-hand page again,
03:47 15 although it looks like it was upside down, is the
16 stamp number similar to what we had previously
17 seen, and perhaps we can turn to the second and
18 third pages of this document briefly, please, and
19 you'll see it continues forward with the number 2
03:47 20 and then on the third page a number 3. Again, do
21 you recognize that stamp numbering at all, Mr.
22 Reid?

23 A No, I do not.

24 Q And you have no ability I take it to explain how
03:47 25 that numbering came to be on these pages?



1 A I've never seen the numbers on any of our reports
2 like that, so somebody put it on.

3 Q Okay. And one more observation, do you recognize,
4 I'm not even sure what that says, but do you
03:48 5 recognize that note on the report?

6 A No, it doesn't mean anything to me.

7 Q Okay. And if we could turn to page 2 of the
8 report, please, and I won't read it out, but I
9 note at the top it indicates that identification
03:48 10 arrived at the scene at approximately nine a.m.,
11 the coroner at 9:45, and could you tell us please,
12 Mr. Reid, upon the arrival of identification at a
13 scene of this nature, what becomes the nature of
14 your responsibilities, what becomes the nature of
03:48 15 the responsibilities of identification?

16 A Once the identification arrives at the scene, they
17 in fact take over the scene. It is, prior to
18 that, preserved for them, that nothing is changed
19 or touched, and once they arrive, they are
03:48 20 responsible for the scene.

21 Q Are you overseeing their efforts, are you giving
22 direction?

23 A No. They know their job. I don't need to give
24 them direction.

03:49 25 Q And what are you doing then after they arrive at a



1 scene of this nature?

2 A More likely making as many notes as possible in my
3 book, plus if they need any help, do whatever they
4 request. They don't really need our help because
03:49 5 they know their job, they are good at it, and I
6 may have walked up and down the lane looking for
7 things that were unusual, but that's something I
8 really can't, don't recall really.

9 Q And would you -- maybe you've answered this in
03:49 10 part already, but would your investigative efforts
11 continue then independent of whatever
12 identification was doing?

13 A No, I would wait for identification to proceed
14 with what they were doing. If they wanted our
03:49 15 assistance, they would say so.

16 Q Okay. And just following through with the report,
17 and again I won't read the portions, it would
18 appear that yourself and Detective Parker stopped
19 at the -- I'm sorry, I'll back up. First of all,
03:50 20 it looks like you identified that the body had a
21 name tag noting Miss G. Miller and I take it you
22 recall that?

23 A Yes.

24 Q And that was followed by efforts to further
03:50 25 identify Ms. Miller and I believe you attended at



1 the St. Paul's Hospital first, followed by City
2 Hospital?

3 A Correct.

4 Q If we could go to the next page, please, and I
03:50 5 think you eventually found an individual, and we
6 previously heard, a Vicky Fontaine. Do you recall
7 that name?

8 A Yes, I do.

9 Q And Ms. Fontaine attended with you to St. Paul's
03:50 10 Hospital to identify Miss Miller?

11 A Yes.

12 Q And it looks like, if we continue further on down
13 the report, that a stop was made at 130 Avenue O
14 South midway through the day again by yourself and
03:50 15 Detective Parker. Does that fit with your
16 recollection? We later learn that that is the
17 residence of Gail Miller. Do you recall making a
18 stop at the house during that day?

19 A No, I don't.

03:51 20 Q Okay. And then if we follow through with the
21 report, it would appear that you and Detective
22 Parker returned to the scene and you took some
23 statements from Mrs. Hattie Hnatiuk, from Mr. Rae
24 Murdoch and from Terry Michalyliuk. Do you recall
03:51 25 taking those statements?



1 A Yes.

2 Q And I noted you were taking the statements. Was
3 there any reason in particular why you were taking
4 the statements and not Detective Parker?

03:51 5 A No reason. I just decided to go ahead and do it.

6 Q And then at the very end of the report, maybe we
7 could blow that paragraph up, please, it notes:

8 "After this was completed we returned to
9 the police station detective office and
03:51 10 met with Superintendent Wood and other
11 members of the department and they were
12 informed of our investigation to date."

13 Do you recall returning to the station to brief
14 Superintendent Wood and others?

03:52 15 A I -- my recollection is that we returned to the
16 station prior to these statements being taken.

17 Q And I'm not disagreeing with you, Mr. Reid, that
18 may in fact have been the case, and in fact I
19 glanced down at the page, I think I've seen that
03:52 20 elsewhere as well, and it may have been in your
21 investigation report, but in any event, at the end
22 of the day do you recall a meeting with
23 Superintendent Wood and others?

24 A Yes.

03:52 25 Q And do you know who the other members of the



1 department would be that you would have been
2 meeting with?

3 A I believe Lieutenant Short was present, Wood, Hugh
4 Fraser that used to be a well-known investigator
03:52 5 in the department, plus the head of the detective
6 department at one time, and I believe whoever was
7 in charge of morality, plus I believe ident were
8 there.

9 Q Okay.

03:53 10 A And I think maybe the chief was there too.

11 Q And I take it for a serious crime of this nature,
12 that would be sort of standard procedure then?

13 A Yes.

14 Q And you mentioned Hugh Fraser and I've heard that
03:53 15 name a fair bit in the course of my dealings and
16 probably others are better aware than me, but what
17 do you recall was his position at this particular
18 time, and I don't know if you will be able to
19 pinpoint it for us, but I didn't -- his name is
03:53 20 not on the chart that we looked at earlier, but do
21 you recall what position he may have had at this
22 time?

23 A I remember on one of your charts, and I think it
24 may go back, that maybe he was in administration
03:53 25 at that time and maybe in charge of personnel.



1 Q And am I correct that administration would be over
2 on the left side of that organizational chart that
3 we were looking at?

4 A Yes.

03:53 5 Q Okay. But he had been a detective or a part of
6 the detective's division?

7 A Yes. He was very well known and a very good
8 investigator.

9 Q And perhaps I'll show you a couple of the
03:54 10 statements that are referred to in that occurrence
11 report just for identification purposes and the
12 first would be Hattie Hnatiuk, if we could turn,
13 please, to document 006282. I'll let you take a
14 look at that document, Mr. Reid. Do you recognize
03:54 15 the writing on this page?

16 A I'm afraid so.

17 Q And what does that mean?

18 A It's terrible.

19 Q And what else does that mean?

03:54 20 A I'm about the only one that can read it.

21 Q So this is your writing, Mr. Reid?

22 A Yes, it is.

23 Q And if we could turn, please, to the third page of
24 that statement, I note at the bottom a signature.
03:54 25 Is that your signature, Mr. Reid?



1 A Yes, sir.

2 Q If we could turn again back to page 1, please, and
3 I don't think you can give us a comment again on
4 this, but I note again the stamped numbering and
03:55 5 I'll try to quit marking up what I'm wanting to
6 focus on. You have no knowledge of that numbering
7 again, Mr. Reid?

8 A No, and I do not recall detectives ever stamping
9 anything on reports like that.

03:55 10 Q That doesn't fit with your recollection in terms
11 of dealing with an investigation?

12 A That's right.

13 Q And we'll look as well at Mr. Murdoch's statement,
14 that's 279564, and again that's your handwriting,
03:55 15 Mr. Reid?

16 A Yes, sir.

17 Q Again I note the stamped number 4 at the top of
18 the page. If we turn to the third page, I think
19 we can confirm that that's your signature again?

03:55 20 A Yes.

21 Q And as well Mr. Michalyliuk's statement, document
22 006272, another stamped number at the top
23 right-hand side, again that's your handwriting?

24 A Yes.

03:56 25 Q And if we turn to page 2 of that statement, that's



1 your signature at the bottom left-hand of the
2 page?

3 A Correct.

4 Q And could you tell us, please, Mr. Reid, what was
03:56 5 your practice in terms of taking statements from
6 witnesses?

7 A Well, I took the statements because they had
8 knowledge of what had taken place, either done
9 something or seen something, and then a chap from
03:56 10 the funeral home, I took the statements at their
11 place of business. I don't know which one I took
12 first, but I would go through it and find out what
13 they did and what they saw and that's where I
14 would start the statement and take it down more or
03:57 15 less what they were telling me. I would ask them
16 questions, I went along because I didn't know --
17 they knew it, I didn't, so --

18 Q And you referred to the two gentlemen from the
19 funeral home, but generally speaking would that be
03:57 20 your practice in terms of taking statements?

21 A Yes.

22 Q You would help the witness along, so to speak,
23 about their information by asking questions?

24 A Yes.

03:57 25 Q And you would write down the information as they



1 were providing you information?

2 A I was trying to make more or less a reasonable
3 story out of it.

4 Q And then once you had the information down on
03:57 5 paper, what would take place then?

6 A I would usually turn it over to them and ask them
7 to read it and if they find it satisfactory and if
8 they so wished, to sign it, if they wished to.
9 They didn't have to, but --

03:57 10 Q I'm sorry, continue.

11 A Most of them did though, no problems.

12 Q And you would witness these statements?

13 A I did.

14 Q And you would sign it then after the individual
03:57 15 had signed the statement?

16 A Yes.

17 Q And that in effect, am I correct, would be
18 indicating that you had witnessed the individual
19 sign the statement?

03:58 20 A Yes.

21 Q And we've heard from Mr. Michalyliuk in particular
22 previously in this Inquiry, Mr. Reid, and I'm just
23 going to turn your attention to, very briefly
24 anyways, to a portion of his testimony, I hope
03:58 25 that we can get this up for you, I believe it was



1 from January 20th and the page number was page
2 759. Just give me a moment to find the spot. I'm
3 going to start reading about there and maybe if we
4 could enlarge that portion. Again, Mr. Reid, this
03:58 5 is Mr. Michalyliuk giving testimony previously at
6 this Commission of Inquiry on January 20th.

7 A Very good.

8 Q And I'll read:

9 "Q Now, I take it --"

03:59 10 And again this is I believe Mr. Hodson asking
11 questions:

12 "Q Now I take it, then, the police
13 interviewed you; did they?

14 A Yes, later that day.

02:44 15 Q And was that in the police car, in the
16 funeral home.

17 A They came to, a police officer came to
18 the funeral home.

19 Q Okay. And tell me what you recall about
02:44 20 talking to the officer and providing a
21 statement?

22 A Umm, well I think I was, I was working
23 downstairs, and I was called up, and
24 there was a police officer that was
02:44 25 sitting, talking to Ray Murdock in the



1 office. And then I don't totally
2 recall the conversation, but it was
3 sort of to the effect that, you know,
4 this is kind of what happened, you
02:45 5 know, and he had it written down and
6 said "do you, is this what you think
7 happened" or "is this okay with you,"
8 and basically it seemed to be fairly
9 close, and so I signed the report at
02:45 10 that time.

11 Q Okay. I'll maybe just call that up,
12 006272, please. Does this look like the
13 witness statement form that would have
14 been presented to you?

02:45 15 A Seems to, yes.

16 Q Yeah. And is that your signature at the
17 bottom right corner?

18 A Yes.

19 Q Okay. So, just so that I have this
02:45 20 clear, in fact it says 3:20 p.m. up
21 there; does that sound about right?

22 A That sounds about right.

23 Q So the officer -- is it your evidence,
24 sir, that the officer would have written
02:45 25 this statement out and given it to you



1 and asked you to read it then?

2 A Yes.

3 Q And did you describe these events to the
4 officer before he wrote this statement;
02:45 5 do you recall?

6 A Not that I recall."

7 And it's not necessarily real clear, Mr. Reid,
8 but if the suggestion by Mr. Michalyliuk is that
9 you had, in effect, written out the statement
04:00 10 beforehand, perhaps based upon information
11 provided by Mr. Murdoch, would that be a
12 possibility?

13 A No.

14 Q So if that in fact is what Mr. Michalyliuk is
04:00 15 suggesting happened, you would disagree with that?

16 A I took the statement as written from that
17 gentleman.

18 Q And I think you've indicated to us that you have
19 some recollection of actually taking those
04:00 20 statements from those two gentlemen?

21 A Yes, I do.

22 Q Thank you, Mr. Reid. And I'm wondering, Mr. Reid,
23 apart from your own involvement in the
24 investigation, what is your general recollection
04:00 25 of the course of the investigation into the Gail



1 Miller murder?

2 A In what way, sir?

3 Q I'm asking you to step back from your own
4 involvement and think about those several months
04:01 5 from January to May or June of '69 and I'm
6 wondering what stands out for you in terms of the
7 course of that investigation?

8 A Well, we had quite a few meetings in the
9 superintendent's office which was related to the
04:01 10 direction and progress of the murder file.
11 Everybody that had anything to do with it usually
12 was there and if they had something to say, they
13 did say it, any suggestions, any clear motives as
14 to what we should be following and that sort.

04:01 15 Q And who was in charge in effect? Do you recall
16 who was in charge of this investigation?

17 A In my opinion, I thought that Lieutenant Short was
18 overseeing the operation.

19 Q And on what basis do you have that recollection?
04:02 20 Can you share some of your memory with us?

21 A Well, he was very, to my knowledge, very
22 interested in it, very involved and seemed to be
23 the go-to guy.

24 Q And we touched on this earlier, if the suggestion
04:02 25 was made that you had either responsibility as the



1 lead investigator or perhaps joint responsibility
2 as the lead investigator, would that fit with your
3 recollection?

4 A I don't ever remember being told that I was the
04:02 5 lead investigator, but after viewing all the
6 reports that you handed me, I assume maybe I
7 was -- I could be involved in there somewhere. I
8 just don't recall having that, been told that.

9 Q And maybe I'll follow through a little bit more.
04:03 10 Do you have a memory at all of sort of directing
11 tasks, reading the information that was coming in,
12 coordinating matters, do you have a recollection
13 of that at all?

14 A Not really. I believe that at one time, like I
04:03 15 suggested to you, I believe I was reading the
16 file, but I just -- was it reports I was looking
17 at that I had left for or was it trying to pair up
18 tips or information that come in to see if they,
19 that information was covered or not. I don't
04:03 20 remember just sitting down and reading the whole
21 file.

22 Q So the mention of reading the file you think was
23 for a specific purpose?

24 A I think it was, yes.

04:03 25 Q Not in a sense of reading the entire file and



1 coordinating matters from there?

2 A I doubt -- I don't think, I don't recall reading
3 the entire file. I was more likely looking for
4 something specific.

04:03 5 Q And if you were then to summarize what you recall
6 as your role in this investigation, what would
7 that summary be?

8 A Just an investigator.

9 Q And do you recall then that you were, in effect,
04:04 10 taking directions from someone else?

11 A From the -- either Short or Wood, yes.

12 Q And you mentioned Wood. What do you -- do you
13 have a memory of Superintendent Wood's involvement
14 in this investigation?

04:04 15 A Other than just being head of the department,
16 that's all.

17 Q And do you have a recall of how he would be
18 involved, for example, on a day-to-day basis in
19 this investigation?

04:04 20 A Well, I do know that I went out of the city to
21 some country point. Now, there's either one of
22 them that told me to go with the RCMP.

23 Q And you say one of them. Who do you mean, sorry?

24 A Either Short or Wood.

04:04 25 Q And sorry if I'm belabouring this, but if I talk



1 about Superintendent Wood for a moment, and again
2 all you can speak to is your own recollection, but
3 do you have a memory of his involvement to the
4 extent that you could summarize for us what his
04:05 5 role would be in this investigation?

6 A No, I couldn't, no.

7 Q Okay. And what about Detective Sergeant Mackie,
8 do you recall his involvement in this
9 investigation?

04:05 10 A Other than seeing the reports, I didn't even know
11 that -- I didn't remember his name.

12 Q So nothing stood out for you in terms of his
13 involvement in this matter?

14 A No. What embarrasses me even more is that we were
04:05 15 together on doing the investigation, but I didn't
16 even remember that.

17 Q Okay. And if -- excuse me. If it has been
18 suggested that Detective Sergeant Mackie perhaps
19 had a lead role in the investigation, would you
04:05 20 have any reason to dispute that?

21 A No, I wouldn't.

22 Q And you mentioned some meetings that you remember
23 taking place on an ongoing basis. Can you explain
24 for me again what the nature of these meetings
04:06 25 were?



1 A In my opinion, they were to upgrade us on the
2 status of the investigation because it was
3 impossible for one person to sit there and read
4 all the investigation reports coming in.

04:06 5 Q And I'm sorry if you mentioned it earlier, but who
6 do you remember being in attendance at these
7 meetings?

8 A Some of the investigating officers primarily that
9 would be, and to get an update as to where we
04:06 10 proceeded and what other action that they wanted
11 to take.

12 Q And, for example, would Superintendent Wood be at
13 these meetings?

14 A Yeah.

04:06 15 Q And Lieutenant Short?

16 A As far as I know, yes.

17 Q And what about the other detectives as we looked
18 on the chart who were underneath you and Detective
19 Sergeant Mackie, would they attend meetings of
04:07 20 that sort?

21 A Some of them I imagine would be.

22 Q And was Chief Kettles involved in these meetings?

23 A He was there for some of them. Sometimes he
24 wasn't.

04:07 25 Q And, Mr. Reid, to confirm for the Commission, you



1 and I did indeed have a chance to review the
2 various investigation material that we have that
3 mentions your name and perhaps what I've done is
4 I've summarized those documents in a Commission
04:07 5 document, maybe we can bring that up briefly for
6 reference, it's document ID 326597, and we have
7 set up this document to note on the far left side
8 those reports that we've identified that were
9 authored by yourself, Mr. Reid, the middle column
04:07 10 being those reports authored by other officers
11 that reference your name, and then the last column
12 mentioning the witness statements that we've
13 identified as having been taken by yourself, and
14 by our count it appears that you were the author
04:08 15 of 26 separate investigation reports and those
16 were between the dates of January 31st and May
17 7th, '69. You are referred to in 14 further
18 reports between February 3rd and March 3rd and it
19 appears you took 14 witness statements, and I take
04:08 20 it, Mr. Reid, you would have no reason to dispute
21 those numbers from the best of your recollection?
22 A None whatsoever.
23 Q And again to confirm, you and I have had a chance
24 to review these documents; is that correct?
04:08 25 A Yes.



1 Q And am I correct in stating as well that you are
2 in agreement with the contents of the reports as
3 best you can recall?

4 A Yes.

04:08 5 Q And perhaps better put, that you have no reason to
6 dispute the contents from the best of your
7 recollection?

8 A Correct.

9 Q And in terms of the statements taken, I take it
04:09 10 you would agree that the information recorded
11 would have been as taken from you by the witnesses
12 noted?

13 A Yes.

14 Q And, Mr. Commissioner, I don't propose to review
04:09 15 the reports in detail, I will refer to some of
16 them. I would note the reports do provide
17 generally a good sampling of the types of
18 investigative endeavours that were being
19 undertaken by the force and I invite a review, but
04:09 20 there's nothing controversial or noteworthy I
21 don't think that needs to be brought out through
22 this witness at this time and I'll provide this
23 document for reference sake.

24 I do want to briefly touch on
04:09 25 some of the reports, though, with you, Mr. Reid,



1 and you and I have previously reviewed some of
2 these together, and I'll first turn to document
3 106175. It's a report that we've previously seen
4 dated February 2nd, 1969. I'll give you a chance
04:10 5 just to familiarize yourself again with that
6 document. You report on a witness statement taken
7 from a William Campbell who was a service station
8 operator at the Belmont Texaco service station.
9 Do you recall meeting with Mr. Campbell, Mr. Reid?

04:10 10 A Not offhand, no.

11 Q And as we know, Mr. Campbell reports on a service
12 call that he and one of his employees attended to
13 at Avenue T on January 31st, 1969 and in
14 particular he talks about three young persons who
04:10 15 received a boost in that particular alley and I
16 think goes on to indicate that although they had
17 come upon some money, or reference is made to them
18 having some money, that they didn't ultimately pay
19 for the boost. Does that ring a bell at all in
04:11 20 terms of that information?

21 A Yes, I believe I took a statement from that
22 gentleman.

23 Q I think you are correct, and we'll look at that in
24 just a moment, and as we know as well, one of
04:11 25 these individuals we later learn in the course of



1 the investigation is David Milgaard and I wonder,
2 looking back, do you recall making a connection in
3 terms of gathering this information on February
4 2nd and later learning that one of these
04:11 5 individuals was David Milgaard?

6 A No, I did not.

7 Q And perhaps also I'll just very briefly reference
8 a portion of the report. It looks like at the
9 bottom of that paragraph you had noted a license
04:11 10 number and indicated we have no listing for at the
11 present time, but this license should be sent to
12 Regina and obtain the listing, and I'm not going
13 to suggest for a moment, Mr. Reid, that that
14 wasn't followed through with, in fact we've ended
04:12 15 up with a document on our file that perhaps was a
16 response to an inquiry that may have followed
17 this, but I wanted to more generally ask you, when
18 information of this nature would be left in an
19 investigation report, what was the expectation,
04:12 20 and again I'll generalize, if it was a matter that
21 the reporting officer had identified as requiring
22 follow-up, what was the process by which a piece
23 of this information then would be followed up on?

24 A To obtain the license listing.

04:12 25 Q Right.



1 A I believe there was policy in place that, I forget
2 whether it was through traffic or through central
3 registry, that if you left the license plate
4 number, that it would eventually be forwarded to
04:13 5 Regina and that listing obtained.

6 Q And do you recall, who would it be that would take
7 a look at this information and note that license
8 plate number and trigger that response? Do you
9 remember what process was in place?

04:13 10 A No, and what I don't remember is did I do it or
11 not. If it was the weekend maybe there was nobody
12 there to take it or send it.

13 Q Okay. So one possibility is that you, although
14 you had left the report indicating that this
04:13 15 needed to be followed up on, that you could have
16 yourself followed up on it?

17 A Yes. When I read that report that you gave to me,
18 I asked myself the same question and I cannot
19 recall whether it was me that left the license
04:13 20 number or I just left it in the report.

21 Q And just stepping back for a moment, and not
22 necessarily talking about the license number
23 information, but just in terms of leaving
24 information that required follow-up by any given
04:14 25 investigating officer, I take it that the



1 expectation was that someone would receive that
2 information and would direct follow-up and what
3 I'm hoping to get from you, Mr. Reid, is your best
4 recollection of how that process took place.

04:14 5 A I think really -- I don't think I did it, that I
6 think it should have been my responsibility to
7 have followed up on that, getting that
8 information.

9 Q And okay, let's step away, let's pretend it's a
04:14 10 report that wasn't authored by yourself, just
11 another investigating officer and he identifies a
12 particular individual that should be contacted for
13 relevant information and states as much in his
14 report. I'm wondering how, from your
04:14 15 recollection, and that's all you can share with
16 us, but how would it be that that information
17 would be followed up on after the report I assume
18 would make its way through central records, back
19 to the file, do you have a recollection of that?

04:15 20 A No, I don't.

21 Q And, I'm sorry, I'm probably being garbled in my
22 questions, Mr. Reid. I'm going to state what
23 would be a possibility and maybe you can comment
24 on that. You've shared with us earlier, I think,
04:15 25 that an investigation report would be left, that



1 it would find its way to central records, a copy
2 would be left there, another copy would make its
3 way up to the detective's division. Would there
4 be someone who was reviewing the reports, someone
04:15 5 who had the responsibility of reviewing all the
6 reports as they were gathered together?

7 A I can't answer that question. I don't know.

8 Q Okay.

9 A I would almost think somebody up there was reading
04:15 10 something, but I don't recall who.

11 Q Okay, thank you, Mr. Reid. I'll turn your
12 attention next to the statement that was taken
13 along with this report, William Campbell's
14 statement, the document 006233, and again is that
04:16 15 your handwriting, Mr. Reid?

16 A Yes.

17 Q And if we could turn maybe very quickly to page 3
18 of that document. That's your signature at the
19 bottom left-hand corner?

04:16 20 A Yes.

21 Q And back to the first page, I note the stamp
22 number 36 again at the upper right-hand corner,
23 and I note this reference here and I believe that
24 states suspicion. Is that your handwriting, Mr.
04:16 25 Reid?



1 A No, sir.

2 Q And we have not heard evidence relating to that
3 notation, but if I was to suggest to you that that
4 could have been the handwriting of Detective
04:17 5 Sergeant Jack Ward, do you have a recollection of
6 what the involvement of Detective Sergeant Jack
7 Ward would have been in this investigation?

8 A I don't even remember him being a detective
9 sergeant in the detective department at that time.

04:17 10 Q Okay. I turn your attention next to another
11 investigation report, Mr. Reid, the document ID is
12 009330. And, very briefly, the document outlines;
13 it would appear that yourself and Detective
14 Sergeant Mackie returned to the scene on February
04:18 15 3rd, drove to the vicinity of the 200-block Avenue
16 N and O, and from there it looks like spoke with a
17 number of different individuals as noted. And I'm
18 not going to review the entire report, perhaps we
19 could focus in on the second paragraph, please.

04:18 20 And before we review that, again, I take it you
21 have no recollection of working with Detective
22 Sergeant Mackie on matters as noted in this
23 report?

24 A Not at the present, no.

04:18 25 Q And just on a general basis, and maybe I'm making



1 presumptions, but would it be usual for two
2 detective sergeants to be out working together?

3 A Not usually.

4 Q That wouldn't usually be the case?

04:19 5 A No. I imagine the only reason is because of a
6 shortage of cars.

7 Q Sorry?

8 A About the only reason we would be together is
9 because of a shortage of detective cars.

04:19 10 Q Meaning that you usually would have been out
11 separately, or I'm sorry, maybe I'm not following
12 the logic there?

13 A Well there's only so many cars assigned to
14 detective department and, if the other detectives
04:19 15 had the cars, we would have to find something
16 else.

17 Q Okay. I see. And in that second paragraph it
18 refers to a bus driver that was spoken to by the
19 name of John Husulak, and it looks like in
04:19 20 particular a discussion was had with him
21 respecting a construction worker wearing a red
22 hat, and we've seen this reference in a number of
23 other locations, but do you have any recollection
24 of speaking with the bus driver, Mr. Husulak,
04:20 25 relating to a construction worker wearing a red



1 hat?

2 A No, sir.

3 Q And do you have any recollection of the
4 significance of the notation relating to a
04:20 5 construction worker at all?

6 A No.

7 Q And we see this followed through, and other
8 witnesses will be able to speak to that and have
9 spoken to that, in terms of how that investigative
04:20 10 lead was followed up on. I'm going to move down
11 the page, please, to this paragraph here. And
12 I'll read that to you, Mr. Reid, it states:

13 "At 7 a.m., interviewed Harry Henry
14 Bidwold, caretaker of St. Mary's Church
04:20 15 Ave. O & 20th St. Mr. Bidwold stated
16 that on the morning of Jan. 31/69 opened
17 the front door of the church, at that
18 time noticed an auto in the lane running
19 north and south between Ave. O & N in
04:20 20 the vicinity of the Westwood Funeral
21 Home. Auto was running with the lights
22 on, noticed someone pass in front of the
23 auto. At this time he was unable to
24 give any further description whatsoever
04:21 25 due to the distance and fog during am,



1 of that date. Mr. Bidwold also stated
2 that when he opened the church an
3 elderly woman wearing a fur coat was
4 waiting to get in and observations were
04:21 5 made at the church from 7 a.m. to 8 a.m.
6 but this person did not show up.

7 Mr. Bidwold states he does not know the
8 person's name or address but believes he
9 would know her again and if he sees her
04:21 10 in church he will obtain her name and
11 address for this dept."

12 Do you have any recollection of receiving this
13 information from Mr. Diwold?

14 A Yes. I did not remember the chap's name, I do
04:21 15 remember that we spoke to the caretaker of that
16 church, and I believe this is the information that
17 he passed on to us at that time.

18 Q Do you have an independent recollection, --

19 A No.

04:21 20 Q -- apart from the document, of the information
21 that you received from him?

22 A No, I don't, no.

23 Q And what about the reference to the woman, in the
24 later part of the paragraph, that attended at the
04:21 25 church; do you have a recollection of that



1 information?

2 A No.

3 Q Any recollection of following up on that aspect of
4 the investigation?

04:22 5 A No.

6 Q And, just generally speaking, I noted, Mr. Reid,
7 that there does not appear to be a statement taken
8 from Mr. Diewold, and would there be a reason that
9 a statement wasn't taken from Mr. Diewold relating
04:22 10 to this information?

11 A Well, I imagine due to the fact that he was unable
12 to supply anything substantial.

13 Q Okay. I think the report goes on to speak -- and,
14 again, I'm not going to read it in its entirety --
04:22 15 but an attendance by yourself and some other
16 officers including Detective Sergeant Mackie,
17 Morality Sergeant Oleksyn and Corporal Mosher, to
18 Perdue; do you recall leaving the City to Perdue
19 in relation to this investigation?

04:22 20 A Yes.

21 Q And what is your recollection in that regard?

22 A I thought I went with just one RCMP, police
23 officer. I believe we spoke to Gail Miller's
24 boyfriend, I forget his name, but that is --

04:23 25 report, now, is correct, yes, there was a group of



1 us that went.

2 Q Okay. And I note the reference to Morality
3 Sergeant Oleksyn, and I'll talk about the contents
4 of the paragraphs in a moment, but do you recall
04:23 5 Morality Sergeant Oleksyn's involvement in the
6 investigation?

7 A No.

8 Q And do you know why -- and I want to state this
9 precisely -- do you have any recollection of why a
04:23 10 Morality Sergeant would be involved in the
11 investigation?

12 A I thought Oleksyn was in detectives then.

13 Q Okay.

14 A Maybe I'm wrong.

04:23 15 Q The report goes on to speak about your attendance
16 in Perdue and meeting a Les Spence who, as it was
17 learned at that point in time, had associated with
18 Ms. Miller as her boyfriend; do you recall meeting
19 with Mr. Spence?

04:24 20 A No I don't.

21 Q And if we could turn to the next page of that
22 report, please, it continues on discussing Mr.
23 Spence. And perhaps I'll just ask you, in terms
24 of the notations noted at the bottom of the
04:24 25 report, it looks like some initials here; do you



1 recognize those entries at all, Mr. Reid?

2 A No I don't.

3 Q Those aren't your entries?

4 A No.

04:24 5 Q I turn your attention next Mr. Reid, please, to
6 another investigation report ID 106243. It's a
7 report, again by yourself, dated February 7th.
8 Just very briefly, I note at the top reference to
9 a Detective Sergeant Porter, and I will ask you,
04:25 10 Mr. Reid; do you recall Detective Sergeant
11 Porter's involvement in this investigation?

12 A No, I don't.

13 Q I think the report goes on, again I don't think we
14 need to review it, it talks about your visit with
04:25 15 29 orderlies, I believe from the City Hospital,
16 including one Wesley Laroque who knew Gail Miller;
17 does that investigative effort ring true with your
18 memory, Mr. Reid?

19 A I recall, now, that I did interview people that
04:25 20 were employed at City Hospital in respect to
21 this --

22 Q Okay.

23 A -- but I had forgotten that it was Porter that was
24 with me.

04:25 25 Q Okay.



1 A I thought I had gone myself.

2 Q Okay. And, similarly, I'll show you another
3 report, it's ID 106514. And again very briefly,
4 just looking at the middle of the document, it
04:26 5 looks like you were seeking out the names of some
6 outpatients and ex-mental patients from the
7 University of Saskatchewan hospital; is that
8 something that you recall, Mr. Reid?

9 A I don't recall it, no.

04:26 10 Q Now just note the bottom, beginning at the bottom
11 of this report -- focus on that portion, please --
12 I'll just read that to you perhaps:

13 "Also interviewed on this date have been
14 Dennis Laroque, age 25, Ronald Tretau,
04:26 15 age 29, and Dennis Trettau, age 18, who
16 upon being interviewed substantiate the
17 information received in the statement
18 from Wesley Laroque, and had accounted
19 for their times on Jan. 31st, 1969 and
04:26 20 can be therefore eliminated as suspects
21 in this matter."

22 And in terms of that last comment noting that
23 these individuals, or the particular individual
24 noted could be eliminated as a suspect, would
04:27 25 that be conclusive when you would leave that



1 information in a report of this nature, Mr. Reid?

2 A I would think so, yes.

3 Q So, for whoever else was reviewing it, that would
4 be something that they would take as conclusive?

04:27 5 A Yes. We were satisfied they were no longer
6 suspects.

7 Q Okay. Mr. Commissioner, I note the time, I'm not
8 sure if my watch is accurate, it's been wrong in
9 the past. This might be, perhaps, a good time to
04:27 10 break if it suits you?

11 COMMISSIONER MacCALLUM: Yes, it does.

12 Tomorrow at 9:00 a.m.

13 (Adjourned at 4:27 p.m.)

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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

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