

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
Sheraton Cavalier Hotel at
Saskatoon, Saskatchewan

On Thursday, August 25th, 2005

Volume 63

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

EDDIE ALEXANDER KARST, continued:

BY MR. HODSON:

Q Good morning, Mr. Karst.

A Good morning, sir.

Q If we could call up the, your Supreme Court of
Canada evidence, it's doc ID 121433, and if you go
to page 121500, please. I'm sorry, page 568,
121568, please. And, Mr. Karst, this is where you
were examined, or testified at the Supreme Court
of Canada, you recall that, in the reference case?

A I remember being there.

Q And this is some questions asked to you by Mr.
Wolch and talking again about the Miller file and
your visit to Winnipeg in October of 1970, and he
asks at line 9:

"Q This is October 22 of 1970. It hadn't
exactly been filed away for a long time.

A Oh, no, but it was solved as far as I
am concerned.

Q So your mind was closed about it?

A Certainly. I wouldn't bring up a past



1 file that has already been completed
2 in the courts."

3 And I take it you accept that answer as being
4 accurate and truthful; is that fair?

09:03 5 A I do.

6 Q And I'm just wondering, I think yesterday, this --
7 it says you wouldn't bring up a past file, but I
8 want to clarify, yesterday I think you said, and
9 please correct me if I'm wrong, that if something
09:03 10 came up in the course of the interview that caused
11 you to think there would be a connection, that you
12 would do something about it?

13 A Yes, if there was some extenuating circumstances,
14 I would certainly want to look at it.

09:03 15 Q But do I take it from this answer to Mr. Wolch's
16 question that because the file was completed in
17 the courts, would it be not something you would
18 bring up on your own; is that what you are saying?

19 A That's correct, that's fair.

09:03 20 COMMISSIONER MacCALLUM: And that's the
21 Milgaard file we're talking about is it?

22 MR. HODSON: The Miller investigation file,
23 yes.

24 COMMISSIONER MacCALLUM: All right.

09:03 25 BY MR. HODSON:



1 Q If we could then go -- skip ahead to 1993, you
2 were interviewed by the RCMP in connection with
3 the Flicker -- I'm sorry, I shouldn't have used
4 Flicker. It was an investigation by the RCMP in
09:04 5 1993. Do you remember meeting with Constable
6 Homeniuk and Gagne?

7 A I remember meeting some police officers several
8 times. Which one or who these were I don't know.

9 Q And if we could go to page 040148 of doc ID
09:04 10 040146, and you are asked here about again your
11 trip to Winnipeg, Mr. Homeniuk asks:

12 "KEN HOMENIUK: Inspector Nordstrum was
13 in charge of Morality I believe?

14 ED KARST: He was in charge of Morality.

09:04 15 And he wouldn't give, I'm sure, he
16 didn't delegate me the order, it either
17 come from my boss, which was likely
18 Hughy Frazer at the time or --"

19 It says Keith, but I think that should,

09:04 20 "-- Chief Kettles which one it was I
21 don't know, but I know that Nordstrum
22 didn't have the authority to say we're
23 going to Winnipeg. It would have to
24 come from the chief or deputy chief."

09:05 25 And I just wanted to confirm, is that accurate,



1 Mr. Karst?

2 A No.

3 Q No?

4 A Excuse me, I say in there it likely come from
09:05 5 Hughy Frazer. Well, that was certainly wrong
6 because he was not in that section. I guess I
7 should have said Superintendent Wood, but for some
8 reason or other I had Frazer mentioned several
9 times, but I don't know why.

09:05 10 Q Okay. Putting aside Frazer, let's just go back,
11 is your answer correct that Nordstrom didn't have
12 the authority that either the head of detectives
13 or Wood or Kettles would have to give; is that --

14 A That's my understanding.

09:05 15 Q Okay. So just so that Inspector Nordstrom on his
16 own couldn't be one who would make a decision for
17 you to go to Winnipeg with him?

18 A I don't believe so.

19 Q Page 040151, please, and down at the bottom, Mr.
09:05 20 Homeniuk asks:

21 "KEN HOMENIUK: Okay. I think you have
22 answered the next question as to why
23 Morality wouldn't have went. Your
24 discussions with Gus Weir, did he ever,
09:06 25 did he ever bring this up about Fisher.



1 Your answer:

2 "ED KARST: No, no. It never came to
3 light until, I can't remember who was
4 here before that showed me, but I think
09:06 5 it was another mounted policemen
6 investigating this sometime ago, I can't
7 remember ..."

8 And then question:

9 "KEN HOMENIUK: ... Rick Pearson ...?"

10 Answer:

11 "ED KARST: ... Ya right. And when he
12 showed me the statement that's the first
13 time I really realized. And that's the
14 only time I ever talked to Gus about it,
09:06 15 I think he called me or I called him.
16 And I said, I don't know how the hell I
17 went, it was your file, had no idea."

18 And I'm wondering, Mr. Karst, it appears that at
19 this time you are talking about a recollection of
09:06 20 a conversation with Gus Weir. Do you know what
21 that's referring to?

22 A I may have at that time.

23 Q Do you recall that?

24 A No, I don't.

09:06 25 Q And then to page 040161, please, and at the bottom



1 you are asked again by Mr. Homeniuk about coming
2 back from Winnipeg in October of 1970:

3 "KEN HOMENIUK: Okay. So as far as
4 coming back then and discussing it with
09:07 5 anybody else in Morality, do you recall
6 it."

7 And your answer is:

8 "ED KARST: I wouldn't have, no, because
9 it was, it wasn't my file and I just
09:07 10 didn't. And I've heard since say that
11 well that the guys didn't know, that
12 those cases were solved."

13 If I can pause there. You will recall yesterday,
14 Mr. Karst, I read you a couple of media reports
09:07 15 where some officers were saying they didn't know
16 the cases were solved. Do you recall --

17 A I recall that.

18 Q And then carrying on:

19 "Well, if they read their files they had
09:07 20 to know because that would be the
21 routine thing, you take your file back,
22 it goes to CR --"

23 Which is central records,

24 "-- its printed up and put on the files.

09:07 25 Well it had to go on their files unless



1 it was somebody's file if he didn't read
2 it, I don't know, he didn't do to a
3 thorough job if he didn't read his file
4 to see that his only suspect was
09:07 5 caught."

6 And again, is that an accurate answer?

7 A Generally, but I probably didn't think that out
8 too well because I said if they read their files.
9 Well, I guess I really don't know whether somebody
09:08 10 put it on their file. I assumed that, but I'm not
11 in a position to say that it went on their file.

12 Q And I think you said yesterday you think your
13 practice would have been to prepare an
14 investigation report and you are telling us you
09:08 15 don't know whether or not you did that, you think
16 you would have?

17 A I don't put it on there.

18 Q You think you would have dictated it?

19 A I don't dictate it. I wrote them out --

09:08 20 Q I'm sorry.

21 A -- and handed them in probably to Inspector
22 Nordstrom.

23 Q Okay.

24 A And whether somebody put them on that file, I
09:08 25 don't know.



1 Q Okay.

2 A I assume that -- I know that's the system that
3 goes there, but whether it exactly went on at that
4 time I'm not in a position to say.

09:08 5 Q And then if you can go to 040165 and here's what
6 you say in response to -- I think the significance
7 of -- I think just previous Mr. Homeniuk is
8 asking -- let me maybe just scroll up to put it in
9 context, a little further, and it says:

09:09 10 "KEN HOMENIUK: Pretty insignificant
11 really this Fisher, I mean just these,
12 along with another rest of the
13 interviews you were doing at that time
14 ..."

09:09 15 And you say:

16 "ED KARST: ... there was nothing
17 exceptional or it would stick in my mind
18 ..."

19 Question:

09:09 20 "KEN HOMENIUK: ... Nothing stood out,
21 ya.

22 Answer:

23 "ED KARST: Like I said, in court you
24 know over that period of twenty years,
09:09 25 I'm sure I took thousands of statements,



1 not just the hundreds, but thousands.
2 Well how the hell do you now pick one
3 out of the, you know. Unless it was
4 really something outstanding like, you
09:09 5 know, I remember taking statements from
6 Milgaard. But I don't remember that
7 Fisher, and if they wouldn't have showed
8 me my signature on the bottom, I would
9 have denied it."

09:09 10 And is that an accurate, truthful statement?

11 A That would be.

12 Q And it appears here that we're talking about,
13 where you say you saw your signature on the
14 bottom, and you recall when I showed you those
09:10 15 statements before it was just typewritten?

16 A I recall that.

17 Q Do you think there was a handwritten -- or do you
18 know what you are referring to there?

19 A Obviously it was the statements taken because I
09:10 20 state that in this statement.

21 Q And if we could -- okay, I'll come back. I have
22 another reference to that in your discovery I'll
23 show you in a moment. Actually, if we could go to
24 page 146533, please, of doc ID 146450, and
09:10 25 question 370, this is at your discovery, you were



1 asked:

2 "Q Which documents, specifically, are you
3 referring to, then, that tell you that
4 you are in Winnipeg?

09:11 5 A I'm sure when I was in Ottawa they
6 showed me a statement that I took in
7 handwritten form, in my handwriting
8 with my signature and, therefore, I
9 know that I was there."

09:11 10 And it would appear from those two answers, Mr.
11 Karst, that at least at that time you were
12 recalling a handwritten signature?

13 A That's what it appears to be.

14 Q And then if you could go back to page 146461,
09:11 15 please, and again this is from your discovery
16 transcript you were asked:

17 "Q And would you agree with me that in all
18 likelihood, you would have had occasion
19 to review the full file --"

09:11 20 This is the Gail Miller file,

21 "-- after your initial review of it,
22 just to acquaint yourself with all the
23 facts and evidence?

24 A I can't remember that I specifically
09:11 25 did, but I'm sure that I would have.



1 It would be normal procedure to keep
2 up to date with the file."

3 I'm just wondering if that is accurate, Mr.
4 Karst?

09:12 5 A I agree with that.

6 Q That's fine, I'm done with that document. Now,
7 Mr. Karst, just some final questions here, and
8 we've gone over a fair bit of detail about your
9 role in the investigation and I take it, sir, that
09:12 10 you would agree that you played a role in the
11 decision to pursue David Milgaard as a suspect in
12 the murder of Gail Miller?

13 A I did.

14 Q And did you play a role in the decision to charge
09:12 15 David Milgaard with the murder of Gail Miller?

16 A I don't know whether I would say I played a role
17 in it. I certainly had a significant part in it
18 in my views.

19 Q And did you have a belief at that time about David
09:12 20 Milgaard's responsibility for the murder of Gail
21 Miller?

22 A I did.

23 Q And what was that?

24 A I considered him to be guilty.

09:12 25 Q And on what basis did you have that belief?



1 A On the evidence that was obtained from all the
2 people we spoke to and just that I guess.

3 Q Were there any parts or significant parts of the
4 evidence that stood out in your mind which caused
09:13 5 you to reach that conclusion?

6 A I suppose that a significant part of it was the
7 blood that was mentioned on his clothing,
8 statements he made, the throwing out of the
9 compact or alleged throwing out of the compact out
09:13 10 of the vehicle and then of course Mr. Roberts'
11 portion of the investigation.

12 Q And one of the mandates of this Commission of
13 Inquiry is to inquire into the conduct of the
14 investigation into the death of Gail Miller and,
09:13 15 as you know, Larry Fisher has been convicted of
16 the rape and murder of Gail Miller and the
17 Government of Saskatchewan has exonerated David
18 Milgaard and declared him to be factually innocent
19 of this crime. If you look back at your role in
09:13 20 the investigation into the death of Gail Miller,
21 is there anything that you believe you could have
22 or should have done differently?

23 A Personally, I don't know.

24 Q If you look back at the original police
09:14 25 investigation in its entirety, and not just your



1 role but the entire investigation, and based upon
2 your observations or personal knowledge of the
3 investigation, what do you think could have or
4 should have been done differently?

09:14 5 A I think, looking back, probably we should have had
6 an independent, I don't know what you would call
7 them, a reader that -- excuse me -- that would not
8 have been involved in the investigation itself,
9 only read the information that comes in. Maybe he
09:14 10 would have been -- I don't know, but he may have
11 been in a better position to make an independent
12 decision without speaking to or, you know, being
13 influenced by the officers, and I don't know
14 whether that would have helped, but --

09:15 15 Q And are there any specific parts of the
16 investigation that you think an independent reader
17 would have assisted on, is there anything in
18 specific you can --

19 A I don't think anything specifically, I just think
09:15 20 it's a good idea to have somebody independent
21 review the file that doesn't go out and do actual
22 investigating, that's the way my opinion --

23 Q And?

24 A That's only my opinion.

09:15 25 Q And did you see, and again I appreciate you are



1 just giving your opinion, but did you see -- were
2 there some problems inherent, then, with the
3 investigating officers being the readers or the
4 analysts; is that --

09:15 5 A No, I don't think so.

6 Q No?

7 A But I, what I am trying to get at is I think
8 whoever was -- and in charge of the files, or we
9 know who that was -- were obviously influenced by
09:15 10 officers' opinions conversing with them. However
11 if you hadn't, what I am getting at, if you had an
12 independent reader he may not have been influenced
13 to that extent.

14 Q So are you talking about someone who could take a
09:16 15 step back and perhaps be a devil's advocate?

16 A Exactly what I am saying.

17 Q And perhaps challenge some of the officers?

18 A I think so.

19 Q And you think that would have been of assistance?

09:16 20 A It wouldn't have done any harm.

21 Q Okay. Thank you, Mr. Karst, for answering my
22 questions. I believe I can -- you will be
23 cross-examined first by Mr. Lockyer; next by
24 Mr. Wolch; and then after that I think Mr. O'Keefe
09:16 25 or Mr. Beresh next Monday has questions; and



1 Mr. Pringle. Well, we'll see what happens after
2 the first two, and counsel will introduce
3 themselves to you.

4 A Yes, sir.

09:16 5 **BY MR. LOCKYER:**

6 Q Yes, sir, Mr. Karst. As I'm sure you realize, I'm
7 here on behalf of Mrs. Milgaard.

8 A Yes sir.

9 Q And it would be reasonable to say do you think,
09:17 10 sir, that the days of May 21st to May 24th of 1969
11 were really three or four sort of seminal days for
12 the future of David Milgaard and, indeed, Joyce
13 Milgaard as well?

14 A I don't know what you mean by the word 'seminal'?

09:17 15 Q Well very -- they had an impact on their lives
16 that was to last many, many, many years, including
17 right up to today?

18 A I agree with that.

19 Q Uh-huh. Because up until then the investigation
09:17 20 had focused, really for about 11 weeks, on David
21 Milgaard as a potential suspect?

22 A Right, I would agree with you.

23 Q And had seemingly come up short, you didn't have
24 any evidence or any sufficient evidence upon which
09:18 25 to base a charge for murder?



1 A I think we had a suspicion but whether it was, you
2 know, it certainly wasn't conclusive.

3 Q Well the only evidence you had, for what it was
4 worth, really was that he was in the area at the
09:18 5 time, based on what he had told you, and Cadrain
6 saying he had seen blood on his trousers; that was
7 about it, wasn't it?

8 A I would have to go over it all to agree with that
9 but --

09:18 10 Q That's hardly reasonable and probable grounds for
11 charging someone?

12 A Yes.

13 Q It's not, is it, when you think about it?

14 A I didn't get the last comment.

09:18 15 Q I say that's not reasonable and probable grounds
16 to charge someone?

17 A I agree with you.

18 Q Yes. So, really, everything had come up short at
19 least until, if we had put ourselves in your
09:18 20 shoes, on -- and, indeed, the investigators'
21 shoes -- as of May 16th?

22 A As far as laying a charge, yes.

23 Q And indeed, up to that point, you had statements
24 from David himself, Mr. Wilson and Ms. John which
09:19 25 largely matched each other as to their -- as to



1 what happened and what they did on their journey
2 from Regina to out west, including their stop in
3 Saskatoon?

4 A Generally.

09:19 5 Q Uh-huh. Now you said in your
6 examination-in-chief, I think three days ago,
7 that -- and I think I'm quoting you -- you said 'I
8 didn't place much significance on the matching
9 stories', and I'm wondering why you didn't? Why
09:19 10 not?

11 A I, I fail to follow you there, and --

12 Q The stories, you said in the context of that David
13 had said -- David and Mr. Wilson and Ms. John had
14 really all said the same thing about their trip,
09:19 15 including their stop in Saskatoon, in that context
16 you said in your examination-in-chief 'I didn't
17 place much significance on the matching stories',
18 and I'm wondering why you didn't place much
19 significance on the matching stories?

09:20 20 A Probably, at that stage of the investigation, I
21 suppose that I was, as in any other investigation,
22 proceeding to investigate every aspect of it, and
23 if they, if their stories were similar, I still
24 had to investigate.

09:20 25 Q Okay. That's not -- I understand that, that's not



1 quite the same as saying 'I didn't place much
2 significance on it', would it be better to say you
3 placed a fair bit of significance on it but you
4 still thought it required further work?

09:20 5 A I think, if I'd have placed a lot of significance
6 on their stories being similar, I would have
7 thought I didn't need much more investigation.

8 Q Well it's a good point.

9 A In my opinion.

09:21 10 Q But you didn't think that, clearly?

11 A Obviously not.

12 Q And nor did the others investigating the case?

13 A I can't -- I don't know about that.

14 Q Well, no, I thought you were basically following
09:21 15 orders?

16 A I was.

17 Q And you were given orders to 'look, Milgaard is
18 obviously a pointless suspect, he clearly didn't
19 do it because of all the interviews we've done, so
09:21 20 lay off and let's get someone who's realistic';
21 you didn't get instructions like that, did you?

22 A No, I didn't.

23 Q No, you got instructions to keep going?

24 A To keep investigating, yes.

09:21 25 Q To keep investigating David Milgaard?



1 A Or anything else that might come up.

2 Q But, in particular, David Milgaard?

3 A That was my portion of the file.

4 Q It wasn't just yours, it was others' portion,

09:21 5 other people's portion of the file as well; wasn't
6 it?

7 A Some of them, yes.

8 Q I mean in the period of March-April-May the

9 primary focus of the investigation was David

09:21 10 Milgaard?

11 A Of some investigators, I being one of them.

12 Q But there was no other realistic suspect who was
13 being investigated in March-April-May; was there?

14 A We had no other suspects that I was aware of.

09:22 15 Q Right.

16 A But I also recall reading some statements and
17 information that Penkala, and probably others,
18 were of the opinion that there was a connection
19 between the rapes and the murder and they were
09:22 20 also looking at that aspect.

21 Q And there was being a lot invested in the
22 investigation of David Milgaard, there were --
23 people were going to, I have got three cities,
24 there may be more, Edmonton, people were going to
09:22 25 Winnipeg, people were going to Regina, there was



1 quite a lot of investment in the investigation of
2 David?

3 A A lot of investigation going on, yes.

4 Q Right. You keep saying 'investigation going on',
09:22 5 I'm saying 'the investigation of David'.

6 A Well that's --

7 Q A lot of investment in the investigation of David;
8 am I right?

9 A And I -- I'm saying in the investigation of David.

09:22 10 Q Right, well okay, I think we're on the --

11 A Same track.

12 Q Well, we're on the same golf course, so to speak.
13 And the significance, if any, of the interviews of
14 Ronald Wilson, David himself, and Nichol John, is,
09:23 15 I would suggest to you, is that you knew that they
16 had been interviewed quite separately; right?

17 A I believe so.

18 Q Umm, Wilson in jail, David free, and at the same
19 -- on the same day, at the same time, in two
09:23 20 different places, and then Nichol John a week or
21 two later; right?

22 A I believe that's correct.

23 Q And, really, the -- and, indeed, in different
24 cities if you take David in Winnipeg and Nichol
09:23 25 and Wilson in Regina; correct?



1 A Correct.

2 Q Right. So, in the circumstances, really any
3 theory that David was responsible for the murder
4 was really going to have to resort to a theory,
09:24 5 wasn't it, that the three of them, meaning Mr.
6 Wilson, Ms. John and David, had got together at
7 some point and said to each other 'this is the
8 story that we will give the police'? Isn't that
9 the only logical explanation of how they could all
09:24 10 have really said the same thing if, indeed, they
11 were all lying?

12 A Well, that's difficult to answer, I don't know.

13 Q Well your theory is they were all lying, that was
14 the theory that David was the culprit; right?

09:24 15 A I wouldn't say my theory was that they were all
16 lying, I was saying that my theory was that I
17 don't think we were getting the whole story.

18 Q All right. Well getting half a story, a half
19 truth is a lie, really?

09:24 20 A Well.

21 Q In the context of investigating someone about a
22 murder or questioning them about a murder, if they
23 leave out the fact that they know all about it and
24 saw it, then you would think that what their --
09:25 25 their response to you is a lie, really, wouldn't



1 you?

2 A You could interpret it that way, yes.

3 Q Yes. And the only realistic explanation for that,
4 if that's what was really happening, is that the
09:25 5 three of them had agreed between themselves as to
6 the story they were going to give the police?

7 A It's a possibility.

8 Q I mean that must have gone through your mind May
9 15th of 1969, that it's all very well, we've got
09:25 10 these three stories, they have all said much the
11 same, but I'm still not satisfied they are all
12 telling the truth, it could well be maybe they
13 just all got together and said that they would
14 give these stories to the police; that must have
09:25 15 gone through your mind?

16 A I don't think so. I don't think I ever had the
17 theory that they all got together and cooked up a
18 story, I just had the theory that they weren't
19 telling us all that was to be told.

09:25 20 Q It's pretty remarkable that they are all telling
21 you the same things and leaving out the same
22 things if they haven't sort of sorted it out
23 between themselves beforehand; don't you think?

24 A It may have been remarkable, --

09:26 25 Q Right.



1 A -- but I didn't see it that way.

2 Q And surely you would have thought that way?

3 A I beg pardon?

4 Q You would have thought to yourself that I can't

09:26 5 trust these statements because they may well have

6 got together beforehand and said, you know, we're

7 not going to tell the police, David, that you

8 killed this lady and we're going to give them a

9 story that leaves out a whole section of our trip

09:26 10 in Saskatoon, our whole breakdown, for example;

11 right?

12 A I can't ever recall, and I don't remember things

13 back that way, that -- that too clearly, but I

14 don't recall having a theory in my mind that they

09:26 15 had got together prior to us interviewing them.

16 Q Well if you think about it logically now, sir,

17 it's really the only -- if we assume for a moment

18 that the three of them all commonly gave the same

19 false story to you and other officers in March of

09:27 20 1969, that the only really logical explanation for

21 that is that they had sort of talked about it

22 beforehand between themselves as to what they were

23 and weren't going to tell the police?

24 A Knowing what I know now I could have well come to

09:27 25 that conclusion at that time.



1 Q A bit coincidental, otherwise, that the three of
2 them all happened to say the same thing and all
3 happened to leave out the same things?

4 A Well, originally.

09:27 5 Q Right, okay. So when you -- certainly there was
6 nothing in the statements that the three of them
7 gave, the series of statements that the three of
8 them gave, because each of them gave more than
9 one, they were all questioned two or three times
09:27 10 before May 15th; right?

11 A I believe so, several times.

12 Q Yes. And it all, as you -- as it's put in, I
13 think it's, I'm not sure if it's your report or
14 someone else's, they all, as it was put with
09:27 15 respect to David Milgaard in an April 18th report,
16 they all stuck to the same story; right?

17 A I think those words were mentioned.

18 Q Yes. And there is nothing that you knew, at
19 least, as of May 15th to suggest, other than your
09:28 20 own surmise, there was no evidence that they had
21 got together and concocted their stories
22 beforehand?

23 A I concur with that.

24 Q Right. But when, on May 21 through 24, you
09:28 25 suddenly find out that, indeed, Wilson and John



1 had not told the truth in their previous
2 statements, right, when you find that out then
3 surely it must have dawned on you that they must
4 have contrived, together, their earlier statements
09:28 5 for them to match the false statements, which you
6 now knew were false as of May 24th; right?

7 A I'm a little behind you there.

8 Q Well May 24th you find out Wilson and John -- this
9 is your view of it at the time -- have been lying
09:29 10 in a series of statements that they had given in
11 March and April?

12 A Yes, they had left certain things out.

13 Q Right. Okay. Well can we call it lying?

14 A If you like.

09:29 15 Q If you agree we can call it that, sir.

16 A If you like, sir.

17 Q Otherwise, I keep saying long sentences, and I'm
18 trying to avoid it; all right?

19 A Okay.

09:29 20 Q So you know as of May 24th -- this is your
21 belief -- that they have been lying in March and
22 April, you know as of May 24th the lies that they
23 have told are the same as each other and the same
24 as the lies that you now believe David Milgaard
09:29 25 told in his statement to the police as well;



1 right?

2 A I'd have to look at that file over again, I
3 can't -- I can't remember all the things, and
4 probably you are right to some of them --

09:30 5 Q And it's --

6 A -- but I don't know about them all.

7 Q And there were some things, for example David had
8 in his statement about stopping the old lady and
9 asking for directions, the other two didn't?

09:30 10 A Yes.

11 Q So there were some things in one statement that
12 weren't in the other but, in essence, the three of
13 them gave matching statements? I think you used
14 that term yourself.

09:30 15 A I believe you are right.

16 Q And I appreciate they are not word for word, you
17 would never expect that under any circumstances,
18 but they were matching -- that's a generic term --
19 'matching statements'?

09:30 20 A And you are talking about originally?

21 Q Yes.

22 A Yes.

23 Q For a two-month, for an 11-week period, insofar as
24 they were questioned several times between them in
09:30 25 that 11-week period; right?



1 A All denials, yes.

2 Q Okay. So we now, on May 24 at the very latest --
3 really even before May 24, in the preceding days,
4 but let's go to you on May 24th -- but on May 24th
09:30 5 you now know that John and Wilson lied to you and
6 others, other police officers, in their preceding
7 11-week period; correct?

8 A Inconsistencies, yes.

9 Q A little more than that, sir.

09:31 10 COMMISSIONER MacCALLUM: Mr. Lockyer, you
11 clearly put words in his mouth, you instructed
12 him to describe leaving things out as a lie and
13 it's going to just -- I understand what you are
14 getting at, you don't want to use long sentences,
09:31 15 but it's going to make it very difficult to read
16 the transcript later and find out what this
17 witness actually meant.

18 So he wants to tell you that
19 what he saw was, between the original statements
09:31 20 and the ones of May 24th, was the fact that the
21 first ones left things out which were included on
22 May 24th.

23 MR. LOCKYER: Okay. I'll do it that way.

24 BY MR. LOCKYER:

09:31 25 Q So as of May 24th, sir, you know that John and



1 Wilson have left out highly material facts in all
2 their previous statements; right?

3 A I agree.

4 Q And that they have both left out the same highly
09:32 5 material facts, namely seeing or knowing about a
6 murder committed by David Milgaard?

7 A That part is correct.

8 Q All right. And, insofar as they had spoken to the
9 police in March and April and May before the 21st,
09:32 10 had said the same things, in essence, to the
11 police?

12 A I agree with that.

13 Q And the same things, in essence, as David had said
14 when he had spoke to the police too?

09:32 15 A Generally.

16 Q Yes. So did you say to Wilson and John, in your
17 case in particular Wilson, did you say to him
18 'explain to me how you came to say what you did in
19 March and April up til now, how did it come about
09:33 20 that you said the same as John and the same as
21 David, had you got a story together, how did it
22 come about?'; did you ask him that?

23 A I probably did but I can't remember now.

24 Q That's such an obvious question, isn't it, sir?

09:33 25 A It probably is.



1 Q But you don't have any record of any answer to it?

2 A No I don't.

3 Q Because the only -- if you think, if you use your
4 imagination as best you can, sir, your imagination
09:33 5 can only lead you to one con -- two conclusions;
6 either by pure fluke they all happened to give, in
7 essence, the same story, which was an incomplete
8 story, to say the least, in their March-April
9 interviews; or the three of them had sorted out,
09:33 10 between themselves, the story they were going to
11 tell the police; it was really one or the other,
12 wasn't it?

13 A It's a possibility.

14 Q And the first likelihood doesn't seem very likely,
09:33 15 does it, that they had all coincidentally happened
16 to all say the same things and leave out the same
17 things; doesn't seem likely, does it?

18 A Yeah, no, it doesn't.

19 Q No. So that means that somewhere, if we're
09:34 20 thinking of it logically, somewhere along the road
21 you should have been saying to yourself on May
22 24th that David, Nichol, and Wilson must have at
23 some point got together and decided what they were
24 going to tell the police, so why wouldn't you ask
09:34 25 them? That's highly material evidence against



1 David if you visualize the three of them in a
2 discussion, one of them being the murderer, as to
3 the story they are going to give the police, but
4 there's nothing about that in any of the
09:34 5 materials, is there sir?

6 A Not that I am aware of.

7 Q No. Why not?

8 A I can't recall.

9 Q I'm going to suggest you never asked the questions
09:34 10 of Wilson?

11 A I can't recall if I did or not.

12 Q And I am going to suggest you never asked the
13 question because you didn't want to know the
14 answer?

09:34 15 A That's not true. I was trying to get all the
16 answers I could.

17 Q Because Wilson wouldn't have had an answer for
18 you, sir?

19 A That I didn't know.

09:35 20 Q But I suggest you would have known that because
21 you were present and saw how you had manipulated
22 Wilson into giving the statements that he gave May
23 23rd, May 24th, and indeed May 21st, May 22nd?

24 A Are you asking me if I manipulated him?

09:35 25 Q I'm suggesting to you that's what you did?



1 A That's not true.

2 Q Uh-huh. And that's why you didn't want to know
3 what would otherwise have been the most obvious
4 question for a PC who had been in the force for a
09:35 5 day or two, let alone a sergeant in your position?

6 A It may be.

7 Q 'When did you get together and concoct this story
8 that you have been giving us for the last 11 weeks
9 and given us so much pain'; you would surely have
09:35 10 asked that?

11 A I don't recall that.

12 Q No, I know you don't, I have heard that. I'm
13 saying you surely would have asked that, sir,
14 wouldn't you?

09:35 15 A I'm saying I don't recall it, so I don't know.

16 Q Now as of May 15th the investigation of David
17 Milgaard is really at something of a dead end,
18 isn't it? Cadrain had given you a glimmer of hope
19 in early March and, since then, there's really
09:36 20 nothing else that's come along to help; am I
21 right?

22 A We haven't progressed too far.

23 Q Right. Indeed, pretty well everything you've got
24 up to this point is exculpatory, not inculpatory,
09:36 25 if you look at what David told the police, what



1 Ron Wilson told the police, and what Nichol John
2 told the police; right?

3 A If we exclude Cadrain's story.

4 Q Yes, no, I'm talking -- I'm saying since Cadrain's
09:36 5 story --

6 A Okay.

7 Q -- all that's come along, really when you look at
8 it, is exculpatory?

9 A That looks that way.

09:36 10 Q Right. And the May 16th meeting that we've heard
11 about, and you say you weren't at, generated, as
12 you saw, a theory put forward by, as we understand
13 it, Mackie, that would make David the murderer and
14 describe the circumstances as to how the murder
09:37 15 had come about; am I right?

16 A That's what it looked like.

17 Q All right. And the essence of the theory, sir,
18 was that they stopped a nurse, Gail Miller
19 obviously, and they stopped her, to use the words
09:37 20 of a document, 'on the pretence of asking her for
21 directions but, in fact, to steal her purse';
22 remember that?

23 A I remember it.

24 Q That David gets out of the car to get her purse,
09:37 25 to steal it, right, and then loses control of his



1 sexual urges; correct?

2 A That's what's in that report.

3 Q Right. That Nichol John runs away from the car,
4 and that explains the lady who says she saw a
09:38 5 woman running by her, remember?

6 A Yes.

7 Q And that the purse of Gail Miller was thrown into
8 a garbage can?

9 A Beg pardon?

09:38 10 Q The purse of Gail Miller was thrown into a garbage
11 can?

12 A That's -- yes.

13 Q Remember that? That was sort of the essence of
14 the theory that was set up, or that was imagined
09:38 15 or worked out, or whatever word, term you want to
16 use, by Mackie?

17 A I agree with that.

18 Q Right. And even though you weren't at that
19 meeting, sir, it's not very long, is it, before
09:38 20 Wilson starts giving you elements of that theory
21 according to you; right?

22 A I don't remember the dates, but if you say that's
23 --

24 Q Well wasn't -- I think it was on the car journey,
09:38 25 someone correct me if I'm wrong -- I know it was



1 early on that Wilson starts telling you that there
2 was an in -- that the lady was stopped and asked
3 for directions; remember? That was very early on
4 in his dealings with you?

09:39 5 A I think that was early on, I don't know what --

6 Q Right. Which -- and it's now a young lady, it's
7 not an old woman any more --

8 A Right.

9 Q -- or an old lady as described by David, it's
09:39 10 become a young woman. So already, right at the
11 outset, you, who don't even know this theory you
12 say or you weren't at the meeting anyway, are
13 already -- right at the beginning Wilson is
14 starting to feed it to you; is that right?

09:39 15 A On our trip home from Regina, yes, --

16 Q Right.

17 A -- I recall that's where he --

18 Q Right, he starts feeding bits of it to you;
19 correct?

09:39 20 A I suppose after --

21 Q And you are saying, sir -- are you saying that at
22 this time, whether or not you were at the meeting
23 on May 16th, did you know the Mackie theory at
24 this point?

09:40 25 A I didn't know that theory but I think I probably



1 generally concurred with it. I don't -- I know I
2 wasn't there, but I agree with mostly what I read
3 in there.

4 Q Well, do you all sit in separate offices, or were
09:40 5 you sort of sitting and talking about this case
6 for hours and hours and hours?

7 A I'm sure we discussed it many times.

8 Q I'm sure you did, for many hours, right?

9 A I don't know whether I'd put a time frame on it,
09:40 10 but many times.

11 Q And surely, sir, if Mackie had a theory that he
12 had worked out and actually committed to paper as
13 to how Gail Miller had met her death at the hands
14 of David Milgaard, it's almost inconceivable,
09:40 15 isn't it, that five days after he -- at least five
16 days after he has put it to paper, if we assume
17 that he put it to paper on May 16th at the very
18 latest, and certainly in that five days following
19 that meeting you would have found out from Mackie
09:41 20 that theory that he was presenting that he had
21 committed to paper, right; you would have surely
22 known it?

23 A I'm sure he related information to me.

24 Q Right. And it's your position, sir, that as
09:41 25 Wilson, over the next few days, gave you the



1 theory in dribs and drabs over the next few days,
2 it's your position that you never provided him
3 with the theory for him to adopt as opposed to him
4 independently coming up with it; is that right?

09:41 5 A What you are saying is that I told him?

6 Q Yes. You are saying that Wilson independently
7 volunteered a story to you that happened to match
8 the theory as opposed to you giving him the theory
9 and having him adopt it, that's your position?

09:41 10 A I gave him no theory.

11 Q You didn't?

12 A No, sir.

13 Q Okay. So he independently, coincidentally,
14 adopted the theory that had been presented by
09:41 15 Mackie to the May 16th meeting; right?

16 A Well, I don't agree with that.

17 Q Well he adopted the theory of the stopping, the
18 stopping of the nurse on the pretence for
19 directions to steal --

09:42 20 A Yes, there were portions of it.

21 Q -- stealing her purse, he adopted that; he adopted
22 the theory of David being the one who went and got
23 the purse, went towards the woman; correct?

24 A Yes.

09:42 25 Q He adopted the theory of Nichol running away from



1 the car; correct?

2 A Yes.

3 Q And so did she; and he adopted the theory of the
4 purse, of seeing the purse being thrown in the
09:42 5 garbage by David Milgaard; right?

6 A That's in the report.

7 Q Okay. So all those, Wilson took on all those
8 theories that Mackie had thought up for him;
9 right?

09:42 10 A Not immediately. In time.

11 Q No, I said in dribs and drabs, remember?

12 A That's correct.

13 Q In dribs and drabs over the next few days?

14 A Yes, sir.

09:42 15 Q And of course we now know, do we not, that what
16 Wilson told you in that regard is false; correct?

17 A In what regard?

18 Q Well, let's take the purse in the garbage, we know
19 he didn't see David put the purse in the garbage;
09:42 20 don't we?

21 A Yes.

22 Q Right. So, coincidentally, --

23 COMMISSIONER MacCALLUM: I'm sorry,

24 Mr. Lockyer, I'm just having trouble remembering
09:43 25 where he said that. Could you point it out,



1 where Wilson said he saw the purse thrown in the
2 garbage?

3 MR. LOCKYER: Not immediately, not -- no, I
4 can't.

09:43 5 COMMISSIONER MacCALLUM: Somebody will make
6 a note of it then. Mr. Fox, do you know?

7 MR. FOX: I think just generally, when you
8 are cross-examining the witness and saying to
9 them 'Wilson said this in a statement' and
09:43 10 'Wilson said that' and so on, again normal
11 procedure would be to produce the statement,
12 bring it up on the doc. screen, point out what
13 you are referring to, let the witness look at it,
14 and then ask him to comment on it.

09:43 15 COMMISSIONER MacCALLUM: That's the trouble
16 I'm having, Mr. Lockyer, I can't remember. I
17 can't verify in my own mind that Wilson actually
18 said the things that you have been attributing to
19 him.

09:43 20 MR. LOCKYER: Well the witness has adopted
21 it so --

22 COMMISSIONER MacCALLUM: Pardon me?

23 MR. LOCKYER: The witness has adopted that
24 that's what he was told.

09:44 25 COMMISSIONER MacCALLUM: He is agreeing



1 with what you said.

2 MR. LOCKYER: Yes, yes.

3 COMMISSIONER MacCALLUM: But Mr. Fox's
4 point is it's probably unfair to ask him to
09:44 5 remember all those things. How do I know he is
6 not just agreeing with it because he can't
7 remember?

8 MR. LOCKYER: I'm sorry, there are just
9 some things that are in my mind that I just feel
09:44 10 I didn't need to refer to as I went along, I --

11 COMMISSIONER MacCALLUM: Well, you do as
12 far as I'm concerned, because my memory is
13 obviously not as good as yours, Mr. Lockyer.

14 MR. LOCKYER: Yes. Umm, anyway I can't,
09:44 15 I'm sorry I can't give you the passage offhand,
16 maybe Commission Counsel can?

17 MR. HODSON: I can maybe clarify this. In
18 Ron Wilson's statement of May 23rd, 065362, he
19 said in Calgary David hold him he grabbed her
09:44 20 purse and she fought and he said he jabbed her
21 with a knife a few times and said he put her
22 purse in a trash can. And I think right -- is
23 that the second page, if you look at the end of
24 the first paragraph, I think that's the
09:44 25 reference.



1 COMMISSIONER MacCALLUM: May the 23rd?

2 MR. HODSON: May the 23rd, and the
3 statement of Ron Wilson is that he was told by
4 Mr. Milgaard --

09:44 5 MR. LOCKYER: Right.

6 MR. HODSON: -- that he put the purse in.
7 I don't believe, and I stand to be corrected,
8 that he ever said he saw David Milgaard put the
9 purse in the garbage can.

10 COMMISSIONER MacCALLUM: Uh-huh.

11 MR. HODSON: In a statement anyway.

12 COMMISSIONER MacCALLUM: Oh, that's --

13 BY MR. LOCKYER:

14 Q So it's your position, sir, that quite
09:45 15 independently of you providing Mr. Wilson with
16 Mackie's theory, that he came up with it; is that
17 right?

18 A That's correct.

19 Q Right. I see. And would I be right, sir, if I
09:45 20 put it this way; that the purpose of the whole
21 exercise in May, from May 21 to May 24th, was to
22 verify everything that you already had suspicions
23 of?

24 A Either verify or discount, one or the other.

09:45 25 Q Uh-huh. If we can go to 014227, please, and



1 particularly 014353. You were asked in the
2 Supreme Court of Canada, sir, by Saskatchewan
3 Crown a question at line 4:

4 "Q Was your only purpose in getting these
5 two individuals to Saskatoon to find out
6 once and for all what they knew?

7 A To verify everything that we had
8 suspicions of."

9 Do you remember saying that, sir?

09:46 10 A I don't remember it, but it's there, and I
11 obviously said it.

12 Q Your words, you didn't qualify, to verify or
13 refute everything we had suspicions of, you saw it
14 in terms of to verify everything we had suspicions
09:46 15 of?

16 A That's what I said.

17 Q Yes. And in fact Mr. Neufeld didn't seem to like
18 that focus because his next question was to find
19 out what they knew, and you said yes; right?

09:47 20 A Yes.

21 Q Uh-huh, thank you. Now, really by, then by May
22 the 24th, sir, once again we have matching stories
23 from Wilson and John, but of course now they are
24 stories that match with an entirely new slant to
09:47 25 them; right?



1 A An entirely new which?

2 Q An entirely new slant to them; namely, that David
3 Milgaard was the person who killed Gail Miller?

4 A Yes.

09:47 5 Q Right. So they've gone from matching stories that
6 were completely innocent stories to matching
7 stories that are highly incriminating; correct?

8 A I agree.

9 Q And you found their stories, their new stories,
09:48 10 unlike their old stories, their new stories very
11 credible; am I right, sir?

12 A Very credible?

13 Q Yes. Believable?

14 A Believable.

09:48 15 Q Credible, same thing I think. You found them very
16 believable; is that right?

17 A That's correct.

18 Q Okay. And I want to see, I want to quickly go
19 through why you found them so believable, sir, and
09:48 20 make a few suggestions to you as to why you found
21 them so believable. First of all, if you put what
22 Wilson said beside what John said, essentially
23 they were saying the same thing from different
24 perspectives; am I right?

09:48 25 A I don't follow that.



1 Q Well, they were saying the same thing except at
2 one point Wilson is away from the car so he's not
3 describing the same events as John is when he's
4 away from the car. You see my point?

09:49 5 A Yes, I do.

6 Q But if you take that into account, they are
7 different perspectives is what I mean by that,
8 essentially they are giving the same story; right?

9 A I agree.

09:49 10 Q They jibe in other words with each other?

11 A Yes.

12 Q And that made it quite convincing to you; is that
13 fair?

14 A I would agree.

09:49 15 Q As well, sir, they gave stories that certainly, as
16 far as you are concerned, had not been fed to them
17 by anyone; right?

18 A Had not been which?

09:49 19 Q Fed to them by anyone, by the police, in other
20 words, in particular.

21 A Repeat that, please?

22 Q They hadn't been fed their stories by the police?

23 A You are saying they hadn't been fed by the police?

24 Q Yeah, I'm putting that to you.

09:49 25 A I agree with that.



1 Q And that's a reason to believe their stories, that
2 independently of each other --

3 A Oh, yes, yeah.

4 Q -- they have come up with the same story as of May
09:49 5 24th; right?

6 A Generally the same.

7 Q The only challenge to that independence would be
8 when they were both together with Roberts, if you
9 remember that was brought out by Commission
09:50 10 Counsel, but by that time, by the time that
11 Roberts has them together they both largely
12 committed themselves to their new stories anyway,
13 so I'm not sure we have to be too worried about
14 the contamination of that meeting. Do you follow
09:50 15 me?

16 A I follow you.

17 Q Right. And so we have really two uncontaminated,
18 matching stories from these two people which helps
19 make it convincing; am I right?

09:50 20 A I believe that's true.

21 Q Right. And in fact, sir, I think in your May 25th
22 report, and I can take you to the page if you
23 like, but maybe you can just remember this, you've
24 concluded your report on May 25th by pointing out
09:50 25 that Nichol John's statement that would have been



1 taken that day coincides with Wilson's statement.

2 Do you remember writing that?

3 A I remember that, yes.

4 Q Right. Which shows how you saw them as having
09:51 5 given matching statements?

6 A I believe that's true.

7 Q Right. And as well, sir, I'm going to suggest to
8 you another reason that you found their stories to
9 be so believable was because within their stories
09:51 10 they both provided facts which could really only
11 be known to someone who was at the murder; fair?

12 A They provided facts that were --

13 Q Stories that could only really be known to someone
14 who was at the murder?

09:51 15 A Agreed.

16 Q Particularly true in the case of Nichol John and
17 to a lesser extent in the case of Ronald Wilson,
18 sir?

19 A Yes.

09:52 20 Q Yes. And if we go through Nichol's statement
21 particularly, could I have 065356, please, this is
22 Nichol John's statement of May 24th, sir. I
23 appreciate you didn't take it, but you saw it, so
24 you had a chance to assess it, and as we go
09:52 25 through, let's look at some of the things that



1 really you would have to have been a part of, you
2 would have to have been there to be able to say
3 these things. All right?

4 A All right.

09:52 5 Q First of all, start there, we've got the knife,
6 that there was a knife used, that's the first
7 thing, a true fact; correct?

8 A Just a minute. Is this my statement here?

9 Q No, this is Nichol John's statement, okay, which
09:52 10 you read and said coincided --

11 COMMISSIONER MacCALLUM: Where was this
12 knife, Mr. Lockyer, where was it at this time?

13 MR. LOCKYER: She's describing the knife
14 that David had and I'm just going to say --

09:53 15 COMMISSIONER MacCALLUM: Whereabouts?

16 MR. LOCKYER: It's the knife that she says
17 he stole from the elevator that he has on his
18 person.

19 COMMISSIONER MacCALLUM: Oh, okay, yeah. I
09:53 20 think the preface to your questioning though was
21 that Nichol John said things which could only
22 have been known by someone who was at the murder,
23 so it's clear he doesn't --

24 MR. LOCKYER: No, no, but she turns the
09:53 25 knife into the weapon that David used to commit



1 the murder and presumably you would have to be
2 there to know a knife was used to commit the
3 murder. Do you see the point?

4 COMMISSIONER MacCALLUM: Mr. Fox?

09:53 5 MR. FOX: The only comment I make, I
6 thought Mr. Karst's evidence was that he hadn't
7 taken the statement. He was generally aware of
8 the statement and likely the contents of it, he's
9 not aware that he had particularly read the
09:53 10 statement as such. This particular statement of
11 Nichol John I think was taken by Mr. Mackie, so
12 again I think if he's going to be asked questions
13 about this document, because it isn't his
14 document it is important that it be pointed out
09:54 15 what section of the statement is being referred
16 to and did he in fact read that and have
17 knowledge of it before you make the assumption
18 that he has read the statement, because I don't
19 think that's what his evidence was.

09:54 20 COMMISSIONER MacCALLUM: Well, I think he
21 agreed that he was familiar with it.

22 MR. FOX: He certainly said he was
23 familiar, generally familiar with the information
24 contained in it.

09:54 25 COMMISSIONER MacCALLUM: Just be careful



1 that he understands the context and that he has
2 seen it before.

3 BY MR. LOCKYER:

4 Q Yeah, I had introduced this by saying you didn't
09:54 5 take it, and he has agreed that -- you've agreed,
6 sir, particularly in the case of Nichol John, she
7 has given a series of facts to the police in her
8 statement that really require her to be at the
9 scene of the killing to be able to say them?

09:54 10 A I think that would be a reasonable assessment.

11 Q Yes. And the first one I was going to bring to
12 your attention is where she says, and maybe I'll
13 just quote it for the sake of simplicity:

14 "This knife --"

09:54 15 And this is the knife that she says David stole
16 from the grain elevator; right?

17 A I don't know.

18 Q "This knife was a kitchen knife used to
19 peel potatoes and things like that. It
09:55 20 had a maroon handle."

21 MR. FOX: Again, the statement --

22 COMMISSIONER MacCALLUM: I don't think you
23 have to stand up, Mr. Fox, I already put that
24 difficulty to him. There's nothing to connect
09:55 25 this with what she purports to have seen at the



1 murder.

2 MR. FOX: Well, he said that she says the
3 knife was stolen from the grain elevator which
4 would seem to corroborate Wilson. In fact,
09:55 5 that's not what she says, she says I don't -- I
6 think the statement says I don't know if the
7 knife came from the elevator or not, so again, if
8 you are going to put the statement to him, it has
9 to be at least accurate.

09:55 10 MR. LOCKYER: Where the knife came from,
11 sir, doesn't bother me at all. I don't care two
12 hoots where the knife came from.

13 MR. FOX: It does because he's suggesting
14 the statements are the same and Ron Wilson said a
09:55 15 knife came from the grain elevator. Mr. Lockyer
16 stands up and says she says the knife came from
17 the grain elevator. That's exactly what she did
18 not say, so it is significant.

19 BY MR. LOCKYER:

09:55 20 Q I'm sorry, Mr. Fox doesn't understand what I'm
21 doing. It has nothing to do with whether her
22 statement was similar to Mr. Wilson's or not,
23 that's nothing to do with what I'm asking at the
24 moment, so I'm not trying to make any points in
09:56 25 that regard. Let me just read what's there, sir.



1 "This knife was a kitchen knife used to
2 peal potatoes and things like that. It
3 had a maroon handle. This knife was the
4 same as one of a group of knives that I
09:56 5 was shown by Mr. Roberts."

6 You understand --

7 A I have difficulty remembering what knife that's
8 referring to.

9 Q It's a knife that she said David Milgaard had with
09:56 10 him that morning.

11 A Okay.

12 Q All right.

13 A All right.

14 Q Don't worry about where it came from, we'll just
09:56 15 leave that out. All right?

16 A All right.

17 Q And like Mr. Wilson, you remember he as well
18 picked out the same knife from a group of five
19 knives. Do you remember that?

09:56 20 A I don't know whether he picked out the same knife,
21 but I was present when he picked out a knife.

22 Q I think we know it was the same one.

23 A Okay.

24 Q And if we presume, sir, as indeed I think I can
09:56 25 tell you, that the knife that she's referring to



1 as the one she picked out of a group of knives was
2 in fact the knife found by Gail, or under Gail
3 Miller's body, then either she's just had a very
4 lucky pick or, a one in five I guess you could
09:57 5 say, or she did indeed see the knife that David
6 used when she says he stabbed Gail Miller; right?
7 Do you follow?

8 A Are you talking about Nichol John?

9 Q Yes.

09:57 10 A I wasn't aware that she picked out a knife.

11 Q Yeah, but as a matter -- I'm just talking as a
12 matter of common sense here, sir, she has a fact
13 here in her statement which is a reason to believe
14 her statement because she has said and picked out
09:57 15 the very knife that seems to have been used to
16 stab Gail Miller as the knife David had with him,
17 and that was a reason to believe what she said to
18 the police; wasn't it?

19 A I suppose so.

09:57 20 Q Yes. Just common sense it seems to me. You then
21 move on to the next paragraph, sir --

22 COMMISSIONER MacCALLUM: I don't mean to be
23 nitpicky, but she was shown an entire knife, I
24 guess the police used an entire knife which they
09:58 25 got as an example. The knife which was found and



1 which was suspected to have been the murder
2 weapon was broken, was it not, Mr. Lockyer, just
3 to make that clear?

4 MR. LOCKYER: So it was an identical knife,
5 I'm sorry, I think you are right.

6 COMMISSIONER MacCALLUM: Yes. You are
7 saying the same knife.

8 BY MR. LOCKYER:

9 Q Yes, identical to look at, so I think the point
09:58 10 remains.

11 The next paragraph, sir:

12 "On the way to --"

13 What Nichol John says:

14 "On the way to Saskatoon Dave spoke of
09:58 15 wanting to snatch a purse. I didn't
16 like the idea of the B & E or the
17 snatching of the purse bit."

18 In fact, there's good -- from the scene, sir, we
19 know that Gail Miller's purse was taken from her
09:58 20 and dumped some distance from her body; correct?

21 A That's true.

22 Q So it doesn't take a genius to realize then that
23 her killer took her purse and then dumped it;
24 correct?

09:59 25 A I believe you are correct.



1 Q So that's a good reason to believe what Nichol
2 John is saying because once again she's giving a
3 story which matches the known facts to the police
4 of the crime; right?

09:59 5 A That part of it, yes.

6 Q Which she wouldn't have known that Gail Miller's
7 purse was taken unless she was at the scene?

8 A That's what we felt I guess.

9 Q Right. Item 3 is the next -- sorry, two
09:59 10 paragraphs down, after we got to Saskatoon:

11 "After we got to Saskatoon we drove
12 around for about 10 or 15 minutes. Then
13 we talked to this girl. This was in the
14 area where Sgt. Mackie drove me around."

09:59 15 Well, the area where Sergeant Mackie drove her
16 around, sir, and where she identified the murder,
17 or the attack as having taken place, was in fact
18 where it had taken place; right?

19 A I don't know that.

10:00 20 Q Well, I'm telling you that as a fact.

21 A If you are telling me that.

22 Q I would imagine, I can't believe by May 24th you
23 didn't have some idea of that, that she had picked
24 out the area where Gail Miller was killed?

10:00 25 A I may have, but like I say, I wasn't there.



1 Q It seems pretty likely you would have known that.
2 So that's a pretty good reason to believe what she
3 said to the police isn't it?

4 A I would think so.

10:00 5 Q She can pick out where the murder happened?

6 A I would agree.

7 Q And if you think about Wilson, did you know, sir,
8 I know he didn't do it with you, but did you know
9 that later on when he came to testify at the
10:00 10 preliminary hearing and at the trial, he purported
11 to remember that the area where they broke down
12 the first time, there was a funeral home nearby.

13 A I wasn't aware of what he said at the --

14 Q But if you had known that -- I mean, you probably
10:00 15 did know that back in 1969 at some point; right?

16 A I've lost you a little bit there.

17 Q I say you probably knew at some point back in
18 1969?

19 A I knew what?

10:01 20 Q That Wilson had said there was a funeral home near
21 where they broke down?

22 A I suspect that, yes, agreed.

23 Q And that of course would be another reason to
24 believe Wilson?

10:01 25 A Correct.



1 Q Much as it was a reason to believe Nichol John
2 that she was over to identify where the killing
3 had happened?

4 A Agreed.

10:01 5 Q Right. And then if you carry on down to here, you
6 actually have Nichol John telling you -- not you,
7 but telling you generically, police is what I mean
8 by that, all right?

9 A It appears that way.

10:01 10 Q "We started to drive away and only went
11 about half a block when we got stuck.
12 We ended up stuck at the entrance to the
13 alley behind the funeral home."

14 Well, that's bang on where Gail Miller's body was
10:01 15 found; right?

16 A Very close.

17 Q Okay. Every reason then to believe what Nichol
18 John has told the police; am I right?

19 A I would agree.

10:01 20 Q Uh-huh. And then over the page we have here, we
21 have another reference to the taking of the purse:

22 "The next thing I recall is seeing Dave
23 in the alley on the right side of the
24 car. He had a hold of the same girl we
10:02 25 spoke to a minute before. I saw him



1 grab her purse. I saw her grab for her
2 purse again. Dave reached into one of
3 his pockets and pulled out the knife. I
4 don't know which pocket he got the knife
10:02 5 from. The knife was in his right hand."

6 Now, there we've got a whole series of facts,
7 some of which we've seen before, the grabbing of
8 the purse is entirely consistent with what the
9 police knew of the murder scene; correct?

10:02 10 A That's true.

11 Q Every reason then -- another reason then to
12 believe what she's saying?

13 A I concur.

14 Q David reached into his pocket and pulled
10:02 15 out a knife, so we know -- and then she says in
16 the next sentence, or the next paragraph that she
17 saw him stabbing her with it. You see that?

18 A Yes.

19 Q Well, that requires knowledge, requires you to
10:03 20 have been there to see it; am I right?

21 A I would think so.

22 Q Because Gail Miller was indeed stabbed numerous
23 times; am I right?

24 A That's correct.

10:03 25 Q Right. And then what's particularly interesting



1 of that part is the knife was in his right hand
2 and we know that David Milgaard is left-handed;
3 right?

4 A Yes.

10:03 5 Q And we also know that the pathologist, Mr. Emson,
6 had come to the conclusion that the murder had
7 most likely been committed by someone who was
8 right-handed given the nature and location of the
9 stab wounds; right?

10:03 10 A I don't recall that, but it may be so.

11 Q Okay. So here we have her describing David doing
12 a stabbing with the hand that you wouldn't expect
13 him to, given that he's left-handed, he's doing it
14 with his right hand which, low and behold, happens
10:04 15 to match the best police theory which is that the
16 assailant of Gail Miller was probably right-handed
17 and that's a reason to believe what she's saying
18 isn't it? That she thought the person doing it,
19 she says David was stabbing with his right hand
10:04 20 was a reason to believe what she was saying?

21 A I don't know whether it was because of the right
22 hand or not, but the fact that she seen him stab I
23 think was reason.

24 Q But with the right hand?

10:04 25 A It would give me reason anyway.



1 Q But with the right hand would be something that
2 would have a familiar ring to the police given
3 that the pathologist had said that the assailant
4 was most likely right-handed? It would just be
10:04 5 another reason to give credibility to what she's
6 saying don't you think?

7 A I'm not sure about that.

8 Q All right. Then we have, if we go to here:

9 "The next I recall is him taking her
10:05 10 around the corner of the alley. I think
11 I ran after that. I think I ran in the
12 direction Ron had gone. I recall
13 running down the street. I don't recall
14 seeing anyone. The next thing I knew I
10:05 15 was sitting in the car again."

16 And you know, and the you again is generic, you
17 and all the investigators in this case know that
18 a lady saw a woman running down the street,
19 right, around the time of the murder; correct?

10:05 20 A It may be. I don't recall.

21 Q I'm sorry, her name isn't in my head. Can someone
22 -- Marie Indyk? Okay, there is such a lady.

23 A I believe that, I know the name, but are we
24 referring to the one that says a barefoot person,
10:05 25 is that the one?



1 Q Well, the barefoot person, the theory there would
2 have been it would have been David Milgaard.

3 A I'm just wondering whether we're talking about the
4 same --

10:06 5 Q Yeah, I think it's the same lady. She saw --
6 first of all she saw the lady run and then someone
7 who was very quiet. She didn't say the person was
8 barefoot, but she didn't hear anything.

9 A Made no noise.

10:06 10 Q In contrast to hearing the lady's shoes on the
11 road or the pavement or the alley or whatever it
12 was.

13 A Yes.

14 Q And so once again there's a reason, is there not,
10:06 15 to believe what Nichol John is saying because she
16 is describing an event which fits right in with
17 another witness.

18 A That looks right.

19 Q Right. So that's a reason to believe what Nichol
10:06 20 John is saying?

21 A Agreed.

22 Q Then, and this, perhaps the best reason of all to
23 believe what she's saying:

24 "I seem to recall seeing Dave putting a
10:06 25 purse into a garbage can. I don't



1 remember which time it was or where I
2 was when I saw this."

3 Now, that, without any question whatsoever,
4 places her at the scene and makes David the
10:07 5 killer; doesn't it?

6 A I don't know whether I put a lot of emphasis on
7 the statement. "I seem to recall," I mean, she's
8 thinking that she seen it.

9 Q But there was a purse in the garbage?

10:07 10 A Yes, there was.

11 Q She seems to recall something you know is true?

12 A Depends on the interpretation.

13 Q That surely --

14 A She doesn't remember which time or where. I can't
10:07 15 place much faith in that statement, but --

16 Q Let's say it helps --

17 A Yes.

18 Q -- you believe that she was at the scene because
19 what she seems to recall turns out to be bang on;
10:07 20 correct?

21 A That's right.

22 Q Okay. And then she says:

23 "I recall there were two garbage cans.
24 The one on the left had the lid tipped.
10:07 25 I don't recall which one he put it in."



1 Would you have known, sir, at the time, that
2 there were two garbage cans?

3 A I didn't, no, sir.

4 Q You remember you didn't or do you think you might
10:07 5 have known back then?

6 A It is not in my mind that I remember.

7 Q All right. But if indeed there were two garbage
8 cans, that would be a reason to give her --

9 A That's true.

10:08 10 Q -- special credibility?

11 A Yes, if there were two.

12 Q And that's sort of -- those are the items I wanted
13 to take you through, sir. Oh, no, sorry, there's
14 one more, if we go to page 065359, please:

10:08 15 "On May 23 Mr. Roberts showed me a coat.
16 This coat as I recall is identical to
17 the one worn by the girl we spoke to and
18 Dave attacked."

19 That coat of course that was shown to her was
10:08 20 Gail Miller's coat, sir, so once again that's
21 reason to believe what she's saying because by
22 recognizing that coat she is placing herself at
23 the scene of the murder; right?

24 A That appears to say that.

10:08 25 Q Right. So by my count, and I don't know that the



1 count matters, but by my count it's a series of 10
2 items, give or take two so we don't argue about
3 it --

4 A Okay.

10:09 5 Q -- where she has described things that really
6 place her at the scene of the crime according to
7 the knowledge that the police had of the scene of
8 the crime?

9 A Some of it.

10:09 10 Q Well, all the ones I've taken you through without
11 exception, all those items I've taken you through
12 place her, or she is describing the scene of the
13 crime in the way the scene of the crime is known
14 to have been to the police?

10:09 15 A Allegedly.

16 Q I'm not sure what you mean by allegedly. Who is
17 the alleged here, the police, the police version
18 of the crime scene or her version?

19 A I'm not convinced that I know in my mind whether
10:10 20 this story she says, that he used the right hand
21 to stab, whether it was actually that way or not.
22 I don't know whether he stabbed her with the right
23 hand or left hand, or whoever was responsible.

24 Q Okay. I agree the pathologist was not definitive
10:10 25 on the fact that the killer must have done it with



1 his right hand and I think I made that clear in
2 the questioning.

3 A Okay.

4 Q Why don't we just leave that one out so we don't
10:10 5 argue about it. The rest of them, though, are all
6 entirely consistent with what the police know of
7 the murder scene?

8 A I would have to read each one separately to be
9 able to answer that.

10:10 10 Q I think we've been through them, I tried to
11 take --

12 A Generally I'll agree with you.

13 Q All right, good. So when you put all that
14 together, sir, just looking at Nichol John's
10:10 15 statement, there is really every reason for you to
16 believe what she's saying and, in particular, at a
17 broad level, to believe that she saw Gail Miller
18 being stabbed to death by David Milgaard?

19 A I would agree with that.

10:11 20 Q Right. Now, in the case of Mr. Wilson, sir, that
21 you were questioning, you had some, some of the
22 same types of answers that he gave that required a
23 familiarity with the scene, but not as many as
24 Nichol John, and perhaps that's because he claimed
10:11 25 he was away from the car at the time of the actual



1 stabbing, but the kinds of things that Wilson told
2 you was he told you, for example, and we've just
3 seen it, that he was told by David what he had
4 done with the purse, that he had thrown it in the
10:11 5 garbage; right?

6 A Yes.

7 Q And indeed the purse was found in the garbage?

8 A That's true.

9 Q So that surely gives huge credibility to what
10:11 10 Mr. Wilson is telling you?

11 A I thought so.

12 Q Right. There's the funeral home which he comes up
13 with at the preliminary hearing?

14 A Yes.

10:12 15 Q Correct. Huge credibility, he's placing the
16 murder where it happened; correct?

17 A Correct.

18 Q He picks out the right knife when he's shown -- a
19 one in five chance when he's shown a bunch of
10:12 20 knives; right?

21 A A similar knife, yes.

22 Q And he describes the -- he describes them being
23 near a laneway which is consistent with, when they
24 broke down, which is consistent with where Gail
10:12 25 Miller was murdered; right?



1 A Consistent, yes.

2 Q And he describes her as wearing a dark coat; do
3 you remember that?

4 A I don't remember it, but --

10:12 5 Q It came out yesterday, I'm sorry, I can't take you
6 to it, but hopefully we can all remember that.

7 COMMISSIONER MacCALLUM: Well, no, no, if
8 you are expecting him to agree with it -- he just
9 said he can't remember it.

10:12 10 MR. LOCKYER: It's the first page of the
11 statement, what he said, he would accept it from
12 me.

13 COMMISSIONER MacCALLUM: Just give us the
14 statement then, please.

10:12 15 MR. LOCKYER: I think it's the first page
16 of the statement that was put up before.

17 MR. HODSON: Wilson?

18 COMMISSIONER MacCALLUM: Wilson, yes.

19 MR. HODSON: 065361.

20 BY MR. LOCKYER:

21 Q I think it's in here. Yeah, there it is. He told
22 you after he had spoken to a young lady in a dark
23 coat; right? Do you see that?

24 A Not just yet, but I'm trying.

10:13 25 Q Third line.



1 A Okay.

2 Q And that adds some credibility to him being at the
3 scene because indeed Gail Miller was wearing a
4 dark coat; right?

10:13 5 A Okay.

6 Q You agree with me?

7 A Yeah.

8 Q So when you put the statements of John and Wilson
9 together and look at them, not just from the point
10:13 10 of view of how they jibe with each other, but also
11 from their different perspectives, you remember I
12 added that little rider, but also describe things
13 that means they really have to have been at the
14 scene to say what they were saying, then there was
10:13 15 every reason to believe what they were saying to
16 you and that's why you believed them; isn't that
17 right?

18 A That's true.

19 Q Now, you've been here, sir, for the last eight
10:14 20 months, I'm not sure you've missed a day actually.

21 A A couple.

22 Q All right, a couple. I've missed a lot more than
23 you, I'm sorry, but it's not for want of being
24 here, and you must have thought, you must have
10:14 25 been thinking very hard over those eight months



1 about this, about all of this; have you not?

2 A About?

3 Q About this whole case?

4 A I would think so.

10:14 5 Q And particularly thinking hard as to how it is
6 that Nichol John and Ronald Wilson said what they
7 said in those days from May 21st to May 24th; is
8 that fair?

9 A Are you referring to what I'm thinking during
10:14 10 these last few months?

11 Q Yes, yes. In the last eight months you must have
12 thought about that?

13 A Certainly, now that I know they were lying.

14 Q And I want to take you through -- I've got five
10:15 15 possible explanations, sir, I want to take you
16 through, which would explain, each one of them
17 would provide a different explanation as to how
18 John and Wilson could have said what they said by
19 the time the day of May 24th is over. All right?

10:15 20 A Good.

21 Q And the first possibility, and then I'm going to
22 ask you which ones you reject out of hand, if any,
23 and which ones you accept as feasible, all right,
24 and the first one, sir, is the simple one, that
10:15 25 they did indeed tell the truth and they did see



1 David Milgaard murder Gail Miller.

2 A Okay.

3 Q Do you reject that out of hand now, sir?

4 A Are you saying what my opinion is now?

10:15 5 Q Yes.

6 A Yes, I reject it now.

7 Q Out of hand?

8 A You better ask that question again.

9 Q Do you reject out of hand that they saw David
10:15 10 Milgaard murder Gail Miller?

11 A Yes, I reject that.

12 Q Okay, good. The second explanation, sir, very
13 close to the first one, is that they saw David
14 Milgaard participate in Gail Miller's murder with
10:16 15 Larry Fisher. Do you reject that out of hand?

16 A I guess so.

17 Q It seems pretty unlikely if only because they
18 never mentioned a second person.

19 A That seems unlikely.

10:16 20 Q Right. So we can reject that one out of hand; do
21 you agree?

22 COMMISSIONER MacCALLUM: I'm sorry, here
23 again the witness keeps -- you ask him if he
24 rejects it out of hand, he says I reject it, so
10:16 25 could you either explain to him what you mean by



1 out of hand -- it makes no sense at all or what?

2 BY MR. LOCKYER:

3 Q Yes. You reject it completely?

4 A At this time?

10:16 5 Q Yes.

6 A Yes.

7 Q Yes, yes, I'm talking now, please understand, I'm
8 talking today, I'm not talking back in 1969.

9 A Okay.

10:16 10 Q I've done that, we've been talking about 1969 and
11 I've moved to 2005. All right?

12 A All right.

13 Q So think of all these questions in 2005 terms,
14 please. The third possible scenario, sir, to
10:16 15 explain what they said in those days, May 21 to
16 May 24, is that Nichol John, Ronald Wilson and
17 presumably David Milgaard all watched Larry Fisher
18 murder Gail Miller, they all saw it happen. Do
19 you reject that completely as a feasible theory,
10:17 20 sir?

21 A I reject it as a feasible theory, yes.

22 Q I mean it's just stupid; isn't it?

23 A Yes.

24 Q Yes, it is.

10:17 25 A Doesn't seem reasonable.



1 Q The fourth possibility, sir -- I'm going to ask
2 you, when I have given you my five, if you can
3 think of a sixth, but these are really the only
4 ones I can think of -- the fourth possibility,
10:17 5 sir, is that Nichol John and Ron Wilson,
6 separately really, because apart from that little
7 meeting with Roberts they were giving their
8 stories separately and independently, at least
9 between May 21 and May 24, had concocted stories
10:18 10 in their own minds which they then gave to the
11 police which coincidentally happened to match; do
12 you think that's a viable theory, sir?

13 A I don't think so.

14 Q Nor do I.

10:18 15 COMMISSIONER MacCALLUM: No, and which
16 stories, please, at what time?

17 MR. LOCKYER: I'm talking --

18 COMMISSIONER MacCALLUM: Are you speaking
19 about after May 24th?

10:18 20 MR. LOCKYER: As of May 24th.

21 COMMISSIONER MacCALLUM: As of May 24th?

22 BY MR. LOCKYER:

23 Q Midnight May 24th, if I can do it that way, as of
24 midnight May 24th?

10:18 25 A But you are asking me what my opinion was now?



1 Q You are -- absolutely.

2 A Okay.

3 Q 2005.

4 COMMISSIONER MacCALLUM: And so do you
10:18 5 reject that, sir?

6 A I do.

7 BY MR. LOCKYER:

8 Q I mean it doesn't really make any sense if you
9 think about it, sir, how could they have come up
10:18 10 with facts where the one jived with the other, how
11 could they come up with all these facts that were
12 true but could really only be known to someone who
13 was at the scene of the crime, it's just not a
14 feasible explanation that Nichol John said 'right,
10:18 15 this is going to be my story', Ronald Wilson said
16 'and this is going to be my story', and lo and
17 behold they give stories that match each other and
18 they give stories which match the scene of the
19 crime; doesn't make any sense, does it?

10:19 20 A To some extent, yes.

21 Q Really to a considerable extent, would you agree,
22 sir?

23 A All right, I agree.

24 Q Yes, all right. The fifth alternative, sir -- and
10:19 25 it's really the last one I have got, I don't have



1 any more after this -- is that they have to have
2 been in those days, May 21 to May 24, they have to
3 have been provided with the information that they
4 then regurgitated during those days by people in
10:19 5 the know as to what had happened at the scene of
6 the crime. Now leave aside whether you accept
7 that or reject that as a theory, that is a viable
8 theory; would you agree, sir, in the abstract?

9 A Probably a viable theory, but it wasn't a theory.

10:19 10 Q Just in the abstract, please. In the abstract,
11 that's a viable theory, do you agree?

12 A Yeah, oh yeah.

13 Q Gives a perfectly good explanation for it?

14 A Yeah.

10:20 15 Q If we take the police as being the ones in the
16 know, they tell Ronald Wilson about the purse
17 being found in the garbage, they take Nichol John
18 to the scene of the crime and say 'this is where
19 it happened and take note of the funeral home',
10:20 20 they explain how Gail Miller suffered multiple
21 stab wounds, they show them the knife and say
22 'this is the knife that was found under her body';
23 if all of that happened, and in the meantime they
24 are saying 'and you better give that back to us
10:20 25 because if you don't you are in big trouble', if



1 we imagine that, in the abstract that's a viable,
2 reasonable explanation -- in the abstract -- for
3 how they could have come up with the stories that
4 the police are left with as of midnight May 24th;
10:21 5 do you agree? In the abstract.

6 A Even at this stage of this Inquiry I can't even
7 assume, now, that that was done.

8 Q Move yourself out of it, sir, it's -- you are
9 looking at someone else's investigation in another
10:21 10 city, a homicide you've never had anything to do
11 with, and you were presented with the scenario
12 that we have. Let's say it's the Utah police
13 force we're looking at. All right. It would be
14 perfectly reasonable to say, in the factual
10:21 15 situation that we have, that one could explain how
16 things happened as the way they did at midnight on
17 May 24th that the members of the Utah police force
18 had fed the information, in the way I have
19 described it, and cajoled the witnesses into
10:22 20 saying what they said; agreed?

21 A You could assume anything, yes, sir.

22 Q And that there's no giant leaps of credulity when
23 you come up with that explanation, is there, sir?

24 A I didn't understand that word that you used.

10:22 25 Q Well you don't have to -- it's not like



1 visualizing that somehow, independently, Nichol
2 John and Ronald Wilson came up with these stories
3 that not only matched each other but also matched
4 the scene of the crime. I mean the reason you
10:22 5 reject that is, as a matter of common sense, it
6 just seems so implausible as to be unacceptable.
7 But in the other case, what I have described to
8 you, the Utah police, those kind of things can
9 happen in normal life; can't they?

10:22 10 A I suppose they can.

11 Q Yes. All right. Now of those five theories then,
12 sir, and they are all abstract -- well, actually
13 the first four weren't but the fifth is presently
14 just an abstract theory -- the only really viable
10:23 15 theory that doesn't fly in the face of common
16 sense is the last theory of those five theories;
17 do you agree?

18 A No.

19 Q Well, okay, I guess we just have to go back
10:23 20 through what we said so far and I don't want to do
21 that all over again. Let me ask you this. Do you
22 have a sixth theory, sir? You have had eight
23 months to think about it, and so have I.

24 A I have had longer than eight months.

10:23 25 Q Well, there you go. Do you have a sixth theory,



1 sir? I've given five.

2 A They just lied, period.

3 Q But that's --

4 A That's the only theory I have now.

10:23 5 Q But we rejected that one as being implausible.

6 A I haven't. Well that's the only --

7 COMMISSIONER MacCALLUM: Who lied, Wilson
8 and John did?

9 A I beg your pardon?

10:23 10 COMMISSIONER MacCALLUM: Who lied, Wilson
11 and John?

12 A I can think of about five witnesses; Wilson, John,
13 Cadrain, Melnyk, Lapchuk, and whoever else we
14 talked to, they were all --

10:24 15 COMMISSIONER MacCALLUM: Okay.

16 BY MR. LOCKYER:

17 Q All right, sir. But that, sir, takes us back to
18 theory number 4. What you are saying, then,
19 is that -- I'm only focused on John and Wilson
10:24 20 here, don't care about the others, all right?

21 A Uh-huh.

22 Q Just focused on John and Wilson as of midnight May
23 24th. If your theory is that they came up with
24 the stories they did just because they were
10:24 25 liars -- which I wouldn't dispute for a minute



1 that they were liars -- but the question is how
2 did they come to tell the lies they did, that's
3 the issue, not whether they lied but how did they
4 come up with these lies, that's the issue. You
10:24 5 understand?

6 A I understand.

7 Q Right. If you go back to my fourth theory, sir,
8 it was do you think it's feasible that the two of
9 them independently came up with the same stories,
10:24 10 that were lies, and independently came up with
11 stories that matched the crime scene, and you said
12 'no, that's not plausible'?

13 A That's right, in my mind it's not.

14 Q But now you are saying that's the only explanation
10:24 15 you've got for us?

16 A Well, that's two different things. I'm saying,
17 now, that they completely lied.

18 Q But to completely lie, sir, doesn't -- that begs
19 the question how did they come up with the lies
10:25 20 that they came up with?

21 A I don't know that, sir.

22 Q Well, that's the point, and that's what my
23 theories are designed to address. You don't have
24 a theory as to how they did that, do you? You
10:25 25 can't think of a reasonable explanation for how



1 they could have done that, can you?

2 A That's --

3 Q You can't think of a plausible theory?

4 A They just lied.

10:25 5 Q Right. And I'm suggesting to you, sir, the only
6 plausible explanation is that the police fed it to
7 them and they adopted it out of sheer fear, and
8 that's the only plausible explanation?

9 A Certainly not by me nor by anybody that I know.

10:25 10 Q Because they were two really very vulnerable
11 people, sir, between May the 21st and May the
12 24th; don't you think?

13 A I don't know.

14 Q Well they were, they were both young, in their
10:25 15 late teens; correct?

16 A That's correct.

17 Q They had both been taken out of their home towns;
18 correct?

19 A Correct.

10:26 20 Q To a town they didn't know very well?

21 A That's probably true.

22 Q Right. I think, I don't know if they had only
23 been here once but they certainly hadn't been here
24 very much, that's clear; right?

10:26 25 A That's true.



1 Q They were both kept in the cells for at least one
2 night; correct?

3 A I believe so.

4 Q And, in the case of Nichol John, it may well have
10:26 5 been two or three nights?

6 A That's probably true.

7 Q Yes. And in the case of Nichol John in
8 particular, we don't have any reason to think that
9 she had suffered that experience before, being in
10:26 10 cells?

11 A Are you asking me?

12 Q Yeah. She didn't have a record.

13 A I find it highly unlikely that they would keep her
14 there and wouldn't feed her.

10:26 15 Q I'm sorry, we're at crossed purposes, you didn't
16 understand my question.

17 A Okay.

18 Q I said I, at least in the case of Nichol John, as
19 far as we know it was the first time she had ever
10:26 20 been kept in cells overnight or been kept in
21 police cells?

22 A I don't know that.

23 Q All right. They were being questioned yet again
24 about a very serious case indeed?

10:27 25 A I agree with that.



1 Q A horrible case; right?

2 A Beg pardon?

3 Q A horrible case?

4 A Yes.

10:27 5 Q Yes. It was -- must have been clear to them by
6 now that the police weren't buying their original
7 stories, all right, how many times --

8 A I don't know that.

9 Q -- do you ask the same person the same thing?

10:27 10 A I don't know that, sir.

11 Q Do you think that that's a reasonable assumption
12 that that's probably how they felt, even on your
13 story?

14 A I just can't comment on how they felt.

10:27 15 Q All right. And they were surrounded by a large
16 number of male police officers; correct?

17 A I would agree with that.

18 Q All of whom were significantly older than them?

19 A I would agree with that.

10:28 20 Q Probably the youngest officer they were dealing
21 with was in his forties and many of them in their
22 fifties and sixties?

23 A Well, that could be, yes.

24 Q Yes. And certainly some of you -- and please
10:28 25 don't think I'm being rude because I'm not -- but



1 just to take you, you are a big man, and I imagine
2 you were a fairly big man back then?

3 A I would believe so.

4 Q Okay. And probably some of the other officers

10:28 5 around were big men as well? 'Burly' would be a
6 better description.

7 A Agreed.

8 Q Yes.

9 A Agreed.

10:28 10 Q So they really were, were they not, sir, ripe for
11 persuasion by police officers who were determined
12 to solve an awful crime and had come up to a dead
13 end before May 21st?

14 A Just repeat that, please?

10:28 15 Q I said they were ripe for persuasion by police
16 officers who were determined to make an arrest for
17 an awful crime, had decided that David Milgaard
18 was the culprit but had come up against a solid
19 wall in terms of proving what they believed, and
10:29 20 the only way through the wall was through Nichol
21 John and Ronald Wilson; do you agree with that?

22 MR. FOX: I wonder which one of those three
23 questions --

24 COMMISSIONER MacCALLUM: It's a pretty big
10:29 25 question, yeah.



1 A Yes, just define that in one or two or three
2 sections so I can --

3 COMMISSIONER MacCALLUM: I know it's a
4 summary, but he is obviously having difficulty
10:29 5 focusing on what you are after, so maybe you
6 could break it down, please.

7 BY MR. LOCKYER:

8 Q Do you think, sir, that in all the circumstances
9 that Nichol John and Ronald Wilson were facing
10:29 10 between May 21st and May 24th they were ripe for
11 persuasion by police officers who had already
12 decided who had committed the crime?

13 A I agree with your first portion probably, that
14 they may have been ripe for persuasion, but I
10:30 15 don't agree with the second part.

16 Q You don't think, sir, now you've read the May 16th
17 document, that it makes it very clear that --
18 leave you out for a minute -- but the other
19 officers certainly had decided that David Milgaard
10:30 20 was the culprit?

21 A I can't speak for the other officers.

22 Q Well you've read the document, that's all I'm just
23 saying, relying on that document, sir?

24 A Well, you can.

10:30 25 COMMISSIONER MacCALLUM: Well now show him



1 the document and show him exactly what you mean
2 please.

3 MR. LOCKYER: Well, it's the document you
4 saw yesterday.

10:30 5 COMMISSIONER MacCALLUM: I know which
6 document you are referring to, sir.

7 MR. LOCKYER: The document is at 006799.

8 COMMISSIONER MacCALLUM: And now please
9 point it out to him where the officers had
10:31 10 decided that Milgaard was guilty.

11 BY MR. LOCKYER:

12 Q I was meant to be --

13 A What date is it?

14 COMMISSIONER MacCALLUM: That would be the
10:31 15 report.

16 MR. HODSON: I have got 050609.

17 COMMISSIONER MacCALLUM: What is it now?

18 MR. LOCKYER: I'm sorry, yes, I'm sorry, I
19 read the wrong number.

10:31 20 COMMISSIONER MacCALLUM: 050609.

21 MR. HODSON: Is that --

22 MR. LOCKYER: No, it's what I call the
23 smoking gun, but I'm not sure I dare call it that
24 again.

25 COMMISSIONER MacCALLUM: No.



1 MR. LOCKYER: That has been criticised. I
2 had it right? Apparently I had it right. Is
3 that it? Okay. Oh, I'm looking at the map, I'm
4 not looking at the screen. For some reason I'm
10:31 5 look at the map over there.

6 BY MR. LOCKYER:

7 Q Yeah, this document, thank you. This document.
8 So you've had a chance to read this now?

9 A I have.

10:31 10 Q Right. And that's the document I'm talking about;
11 you understood that's the document I'm talking
12 about?

13 A Right.

14 Q And don't you think that document, sir, makes it
10:32 15 very clear that certainly its authors had decided
16 that David Milgaard was the culprit?

17 COMMISSIONER MacCALLUM: Whereabouts? I
18 asked you to show him exactly.

19 BY MR. LOCKYER:

10:32 20 Q Well, I don't want to really read five pages,
21 it's just -- just taking the fifth page alone,
22 sir, it describes a theory. Go to page 803,
23 please, that page, sir. Look at the summary of
24 it. I mean do you really -- do you need to read
10:32 25 it again, sir, or are you familiar with it?



1 A No, I think I remember it.

2 Q Yeah, I think you probably are. That summary,
3 sir, makes it pretty clear that its author, at the
4 very least, thinks that David Milgaard is the
10:32 5 culprit; right? And that's Mackie?

6 A The author may think that.

7 Q And that's Mackie?

8 A Yeah.

9 Q Yes, who was as involved in this investigation as
10:32 10 anyone; right?

11 A Correct.

12 COMMISSIONER MacCALLUM: Let's look at the
13 rest of it, please.

14 A On second reading there, it doesn't look like he
10:33 15 had his mind made up, suggestions, obtained,
16 brought to the -- so the stories can be obtained,
17 so I don't know whether he was -- I don't know
18 what was in his mind.

19 BY MR. LOCKYER:

10:33 20 Q Well he says 'where the true story can be
21 obtained'?

22 A Yeah.

23 Q As if the story up to date has not been true?

24 A I --

10:33 25 Q That's how I would read it, sir, anyway.



1 A You may.

2 Q Yes. And just a couple more points about this
3 particular time frame, sir. You told us in your
4 examination-in-chief that at some point, and as I
10:33 5 understood it, it was many many years ago, you
6 became aware of the fact that Chartier had been
7 taping much of the events of what was going on in
8 the hotel; do you remember saying that?

9 A I became aware of it, yes.

10:34 10 COMMISSIONER MacCALLUM: Just before we
11 move to a new subject, do you think this might be
12 an appropriate time for a break, will you be much
13 longer?

14 MR. LOCKYER: Sure. Could you give me two
10:34 15 minutes just to finish this May 21 to 24 and then
16 I'm done with that section?

17 COMMISSIONER MacCALLUM: Yes, you may.

18 BY MR. LOCKYER:

19 Q And Commission Counsel didn't ask you when you
10:34 20 became aware of it, sir, I wanted to ask you when?

21 A When I became aware of it?

22 Q Roughly? I --

23 A You know, I can't remember.

24 Q But it was many years ago?

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



1 Q And the -- all right, that's a good time, Mr.
2 Commissioner.

3 COMMISSIONER MacCALLUM: All right.

4 (Adjourned at 10:34 a.m.)

10:51 5 (Reconvened at 10:51 a.m.)

6 BY MR. LOCKYER:

7 Q There's just one more area that I want to ask you
8 about in connection with the May 21 to May 24,
9 sir. Do you think that there's kind of an absence
10:51 10 of written material about what happened over those
11 four days? I mean let's take, let's take your
12 report, for example. Really what -- your
13 involvement, aside from the statement and the
14 supplementary statement that you had Mr. Wilson
10:52 15 sign, apart from those two documents everything
16 else that you did in those days is all contained
17 within the six pages of your May 25th report; is
18 that right?

19 A See, I don't know, there may be more there that
10:52 20 isn't there, that I don't know.

21 Q I'm sorry, I don't understand, 'there may be more
22 there'; where?

23 A You are saying that everything that I knew was
24 contained in them six pages?

10:52 25 Q No, not everything you knew. Everything you



1 recorded, I said, was contained within those six
2 pages, of what you did in those days; right?

3 A I don't know.

4 Q Well there is no other reports that we have of
10:52 5 yours telling us things that you did in that
6 period --

7 A Well I don't --

8 Q -- from May 20, really from May 20th to May 25th;
9 is what your report covers?

10:52 10 A That's all we see, yes.

11 Q Right. I mean you would have had your notes,
12 presumably?

13 A I would have.

14 Q But as I understand it your notes wouldn't even be
10:53 15 as detailed as your report; correct?

16 A They would have been more concise.

17 Q Yes. So in -- do you think, sir, that given the
18 enormity of what was going on in these days,
19 namely creating a case that resulted in an arrest
10:53 20 and a conviction for first degree murder -- and
21 that was the intention from the outset was to see
22 if you could create a case against him; right?

23 A No.

24 Q But --

10:53 25 A You are saying it was my intention from the outset



1 to create a charge against David?

2 Q 'Create' is not a good word, it has connotations
3 to it. Your intention at the outset was to see
4 if, at the end of dealing with Wilson and John
10:53 5 again, to see if you could build a case so that
6 you could charge David Milgaard; right?

7 A No, I don't think I could say that.

8 Q You can't? Well you were certainly -- the
9 endeavour was to see if, to use not the words you
10:54 10 gave in the Supreme Court of Canada but the words
11 you gave today, to see if you could either
12 incriminate him or clear him?

13 A That's true.

14 Q All right. Let's do it that way.

10:54 15 A Okay.

16 Q Umm, so do you think -- do you not think, sir,
17 that, given the significance of this time frame
18 and the intention which you had in your mind when
19 you went into it, that your notes are, to say the
10:54 20 least, sparse for four very important days in the
21 lives of so many people?

22 A I don't know.

23 Q We don't have much of a record of it, do we, of
24 what happened in those four days?

10:54 25 A I don't know whether everything that I did or



1 inquired about is in there but I think, generally,
2 the outlining is there.

3 Q The outlining?

4 A Right.

10:55 5 Q I mean I will say this to you, sir, that your
6 report of May 25th is significantly more detailed
7 than Mackie's report for the same period, but I'm
8 still going to put to you that your report, as you
9 say, is at best an outline of that?

10:55 10 A I could have -- knowing what I know now, I wish
11 there could have been more detail, but at that
12 time I suppose it looked like it was sufficient.

13 Q And when did you come to -- did you draft -- just
14 going by practice, I wouldn't expect you to
10:55 15 remember this for a moment --

16 A Uh-huh.

17 Q -- but by practice, sir, would you have sat down
18 on May 25th and drafted that report from beginning
19 to end?

10:55 20 A Did I?

21 Q No, would you have, 'did' if you like but I'm
22 doing it in terms of 'would' rather than 'did'. I
23 mean if you did a report that covered a series of
24 days, were you doing the report day by day and
10:55 25 then putting it all together and then submitting



1 it, or would you have sat down on May 25th and
2 done the report?

3 A I think, if there was opportunities to leave a
4 day-by-day report, I did that. If there was no --
10:56 5 if you were involved in too many other things, and
6 that was too busy, you probably left a report at
7 the end of several days.

8 Q But if you did it by --

9 A If that's --

10:56 10 Q Sorry?

11 A If that's the question you asked. I don't
12 remember.

13 Q Well, it sort of was. It didn't quite answer it,
14 though, because I want to ask you this. If you do
10:56 15 it day-by-day report then, sir, do you file daily
16 reports presumably?

17 A Ask that again, slower.

18 Q If you do reports day by day, --

19 A Yes.

10:56 20 Q -- so if you did a report May 21, May 22, May 23,
21 May 24, would we not most likely have four
22 different reports, one for May 25 --

23 A If I did that, yes, there should be.

24 Q Well, okay. So given that all we have in your
10:56 25 case is a report dated May 25th that covers May



1 20th to May 25th, can we reasonably safely assume
2 that you started writing that report maybe the
3 night of May 24th but really on May 25th?

4 A That's a reasonable assumption.

10:57 5 Q Right. And so it was really a bit of a memory
6 exercise you would have been engaged in on May
7 25th with the assistance of your notes, which, as
8 best I can understand, are at best cryptic
9 references to what you were reporting on?

10:57 10 A I would agree with that.

11 Q So it would have been quite a memory exercise that
12 you were engaged in on May 25th as you -- I think
13 you hand-wrote your reports, is that --

14 A I did.

10:57 15 Q Yes. As you were hand-writing your May 25th
16 report it was a bit of a memory exercise as to
17 what had happened in the previous five days?

18 A Yeah, in addition to what you said, using my notes
19 as a guide.

10:57 20 Q Right, using cryptic notes, all right.

21 I want to move into the Fisher
22 side of the case, sir, and I want to see if I'm
23 right in some assumptions that I think I have
24 gleaned from your evidence-in-chief, but I'm not
10:58 25 entirely sure, meaning your evidence-in-chief here



1 in the last three days. First of all am I right
2 that you most certainly knew, as of January of
3 1969, that someone had been committing some
4 serious rapes in Saskatoon in the preceding
10:58 5 months?

6 A I think I would have known at that time, yes.

7 Q All right. When you testified in the Supreme
8 Court of Canada, sir, you didn't qualify it. And
9 I'll take you to it, 121433 going to 121499 of the
10:59 10 transcript -- sorry, doesn't seem to have worked

11 MR. HODSON: Bottom, the very bottom?

12 MR. LOCKYER: The very bottom?

13 BY MR. LOCKYER:

14 Q Yes, thank you, right. Can you read your answer
10:59 15 at the bottom there? I won't read it all to you,
16 just the last phrase is what I am interested in,
17 or the last sentence.

18 A Just a moment.

19 Q "They had the rape cases which I was not
20 a part of, although I am certainly aware
21 that there were rapes happening."

22 A I would agree with that.

23 Q All right. And did you know, sir, am I right in
24 my understanding that you knew, back in 1969, that
10:59 25 there was a suggested linkage between those rapes



1 and Gail Miller's murder?

2 A Did I know there was a linkage?

3 Q Yes?

4 A I don't believe so.

10:59 5 COMMISSIONER MacCALLUM: No, he asked you
6 if you knew there was a suggested linkage,
7 somebody was --

8 A Somebody may have, but I can't recall that at this
9 time.

11:00 10 BY MR. LOCKYER:

11 Q All right.

12 A In fact I --

13 Q Sorry?

14 A -- I think I read a report in the last few days
11:00 15 here --

16 Q If we go back --

17 A -- that somebody had connected something.

18 Q If we go back a page to 498 you will see:

19 "Q Obviously ...",
11:00 20 looking at line 11 here:

21 "Q Obviously, you are looking for the
22 victims of Fisher to identify the killer
23 of Gail Miller.

24 A There may have been some work along
25 that line -- not by myself, but by



1 other officers.

2 Q But, clearly, you would have been aware
3 of it from the newspaper reports and
4 being seriously involved and keeping
5 abreast of the reports.

6 A Oh, certainly."

7 Remember being asked that?

8 A I agree with that.

9 Q All right. And if we then look two pages on at
10 121500, sir, you have read to you, starting here
11 at line 10:

12 "Q Do you recall a report from a Mr.
13 Penkala. February 27 is the actual date
14 of the report, in which he says at the
15 bottom of the page:

16 'The similarity of our departments'
17 occurrences --'

18 Numbered so and so and so and so.

19 '-- complaints of rape with this murder
20 investigation lists the following items
21 which are reported missing identafile
22 and could be of evidential value.'

23 Then he lists a whole number of items
24 that could correlate the two cases.

25 A I recall reading it."



1 Do you remember saying that at the Supreme Court
2 of Canada, sir?

3 A I don't, but obviously I did.

4 Q All right. And then as well Commission Counsel
11:01 5 put to you your April 18th, 1969 report, sir,
6 that's at 106664, where you say:

7 "On March 28 one Richard McKee known to
8 this dept., ... was interviewed with
9 regards to this file, this being as he
11:02 10 fitted the description of the composite
11 photo described in one of the rape cases
12 however his alibi appeared to stand up
13 and he was also taken to the Red Cross
14 where a sample of his blood was taken
11:02 15 and found to be of "O" type, which would
16 eliminate him in this murder file."

17 And that was filed, that investigation report,
18 on -- in the Gail Miller file, so that -- you see
19 it at the top, 'Gail Miller murder'; do you see
11:02 20 that?

21 A I do.

22 Q Right. So clearly, sir, you knew of the tie
23 suggested as being possible between the rapes and
24 Gail Miller's murder, right, back in 1969?

11:02 25 A It would appear that way, that I had some --



1 Q Yes.

2 COMMISSIONER MacCALLUM: What's the
3 document ID please?

4 MR. LOCKYER: Sorry, 106664.

11:02 5 COMMISSIONER MacCALLUM: 106664.

6 BY MR. LOCKYER:

7 Q And that is right in the midst of the
8 investigation of David Milgaard that you wrote
9 that report; correct?

11:03 10 A That's correct.

11 Q April 18th, you've already got all the original
12 statements I think for April 18th, isn't that a
13 day that David Milgaard was re-interviewed as I
14 recall, and a good month and a bit before the
11:03 15 fateful days May 21 to May 24; right?

16 A Correct.

17 Q Okay. And had you -- you were asked by Commission
18 Counsel yesterday whether you had always
19 remembered McCorriston's report and I thought I
11:03 20 would just take you to 121433. And this is the
21 conversation that the -- the one-sided
22 conversation, if I can call it that, that you had
23 with CBC's Gillian Findlay, all right. And at
24 121582 --

11:04 25 MR. HODSON: Wrong numbers. 121582?



1 MR. LOCKYER: Oh, that didn't work. Sorry.
2 I better leave that because it doesn't -- I have
3 got the wrong numbers down.

4 MR. HODSON: I'm sorry, do you want the
11:04 5 Findlay one?

6 MR. LOCKYER: Yeah, but I don't know what
7 page it will be in the middle of that report,
8 clearly I've got everything -- what is the number
9 of the report? That might help me.

11:04 10 MR. HODSON: It was 153652.

11 MR. LOCKYER: No, I'll leave the question,
12 it's -- I'm not going to be able to find the
13 reference without a bit of work.

14 BY MR. LOCKYER:

11:04 15 Q Umm, do you remember, sir -- let me just ask you
16 this, I can't take you to it -- but do you
17 remember whether you might have said to Gillian
18 Findlay that McCorriston's report was something
19 that you had remembered?

11:04 20 A I could well have told her that.

21 Q You may well have told her that?

22 A I may well have told her that.

23 Q And could that well have been true, sir, when you
24 spoke to her?

11:05 25 A I don't know. As I said yesterday or the other



1 day, I was pretty upset with her and I don't think
2 I -- I didn't think out my answers very clear.

3 Q Because Commission Counsel suggested to you
4 inferentially that perhaps you hadn't remembered
11:05 5 it for all that time, but perhaps you had seen it
6 more recently before you met with her?

7 A I may have said that.

8 Q No, no, sorry, listen to me.

9 A Okay.

11:05 10 Q Commission Counsel, when he was questioning you
11 yesterday and came to this part of your interview
12 with her, suggested to you that maybe you hadn't
13 remembered the report for all those years, but
14 maybe you had seen it more recently. Do you
11:05 15 remember he suggested that to you?

16 A He may have. I can't remember that.

17 Q And you said, you sort of adopted that that may
18 well be what happened.

19 A All right.

11:05 20 Q And that raised a question in my mind as well,
21 that by the time you spoke to Gillian Findlay you
22 had been retired for some time; had you not?

23 A What year was my interview with her?

24 MR. HODSON: October of '90.

11:06 25 MR. LOCKYER: October of '90, yes. I was



1 going to say 1990.

2 A I was retired for months or a year.

3 BY MR. LOCKYER:

4 Q Pardon?

11:06 5 A I was retired then by a few months or a year.

6 Q Right. Did you still, were you still getting
7 access to the Gail Miller files if you requested
8 it, sir, after you retired? Did you do that?

9 A I don't ever remember asking to have access. I
11:06 10 suppose --

11 Q That's all I'm interested -- I'm not interested if
12 you could have got it, I'm interested if you
13 sought it. You didn't seek access at all?

14 A Not to my recollection.

11:06 15 Q Right. So anything that you remembered after your
16 retirement was something -- wasn't without at
17 least being shown it by someone like Eugene
18 Williams or someone like that?

19 A Yeah, some of the interviews.

11:06 20 Q Anything else that you remembered would have been
21 a memory that you had retained from being a police
22 officer as opposed to going back into the file and
23 seeing it again?

24 A I would say that's right.

11:07 25 Q Okay. And then post David's conviction, sir, in



1 January of 1970, it's a month later that you
2 become involved and play a role in the
3 investigation of the rape of (V5)-- (V5)---; is
4 that right?

11:07 5 A No, I didn't become involved in that.

6 Q Well, remember the, you were shown the February
7 22nd, 1970 report of your involvement with Mackie
8 in the (V5)-- (V5)--- rape investigation?

9 A I don't remember becoming involved in that. I
11:07 10 think -- I would have to see that report.

11 Q Sorry, can someone give me the number?

12 A I think I said I was with Mackie.

13 Q Yes, you were, the report says you were.

14 A But I don't think I was involved. At least I
11:07 15 don't recall being involved.

16 MR. HODSON: It's 105211.

17 BY MR. LOCKYER:

18 Q And that's the report, sir, where it says on this
19 date Detective Karst and myself contacted Mr. Wood
11:08 20 who had been working at the hotel, and you'll
21 see that, when you read the rest of the report,
22 that it's in the context of (V5)-- (V5)---, and
23 it's a matter of days after her rape and you'll
24 remember this is the report where you went and
11:08 25 spoke to Albert Cadrain about it. Do you remember



1 that now from yesterday?

2 A I remember it coming up yesterday or the day
3 before.

4 Q And one would think, if you were with Mackie and
11:08 5 you went to speak to Albert Cadrain, given your
6 relationship with him, it's likely you were the
7 one who did the talking, not Mackie; is that fair?

8 A No, he's the senior officer. It could be either
9 way. I'm not saying I wouldn't have talked to
11:09 10 him, certainly I knew him.

11 Q And you have no idea, I think you told us, why you
12 went and interviewed Albert Cadrain?

13 A None whatsoever.

14 Q Because coincidentally you were interviewing the
11:09 15 chap who lived in the same house that Fisher had
16 lived in.

17 A Coincidentally.

18 Q Coincidentally how that came about?

19 A Coincidentally, yes.

11:09 20 Q But for some reason, the way this reads, you or
21 Mackie or both of you had reason to think that
22 Albert Cadrain might be able to help in (V5)--
23 (V5)---' rape; is that right?

24 A My recollection, certainly not me. Maybe Mackie.
11:09 25 I don't know.



1 Q And it's interesting the way it reads is he was
2 interviewed in regards to his information, this is
3 Cadrain, he might be able to supply concerning
4 this suspect, but if you read the previous
11:10 5 sections of the report, there's no reference to a
6 suspect in the report. Do you see that?

7 A I see that, but that's not my report.

8 Q So it's an anonymous suspect is being, someone is
9 speaking to Albert Cadrain about a suspect whose
11:10 10 name we don't know; is that right?

11 A It would appear that way.

12 Q Could it have been Larry Fisher, sir? I suppose
13 it could have been.

14 A I have no idea.

11:10 15 Q And is it fair to assume, sir, given the way that
16 this report is written, it's not written with
17 Mackie, he's not describing what he did with you
18 sort of tagging along, but he's describing it, is
19 the way I read it, as if the two of you are
11:11 20 working together. You see that?

21 A I see that.

22 Q Right. Do you think, sir, that it's a reasonable
23 assumption to make that in those circumstances you
24 likely would have known the essence of what had
11:11 25 happened to (V5)-- (V5)---?



1 A Not necessarily.

2 Q Well, the question presupposed, not necessarily,
3 the question was do you think it likely you would
4 have?

11:11 5 A I may have.

6 Q Yes, all right. And do you think, sir, that if
7 you had, alarm bells might have gone off in your
8 mind a month after, less than a month after David
9 Milgaard's trial had come to an end, that here was
11:12 10 a woman who had been raped who worked at the same
11 hospital that Gail Miller had worked at; who rode
12 the same bus that Gail Miller rode; who was
13 followed by her assailant off the bus, you could
14 conceivably think that Gail Miller was followed by
11:12 15 her assailant as she walked to the bus, so there's
16 a similarity not identical there; that the man she
17 described as wearing orange construction boots,
18 not far off yellow, similar colours, within blocks
19 of where Gail Miller had been murdered; she had
11:12 20 been forced to remove some of her clothes; had
21 been raped; had been attacked from behind and
22 violently raped, violence used in an alleyway; do
23 you think if you had read that, sir, it might have
24 all suddenly rung some startling bells in your
11:13 25 mind?



1 A If I had studied these rape files --

2 Q No, no, this one only, don't plural it.

3 A This one? Is there any mention made of a knife
4 here?

11:13 5 Q She didn't say she saw a knife.

6 A Yeah, there's no -- there's no murder. I can see
7 similarities, but I can also see dissimilarities.

8 Q No, no, I'm not asking you whether you see
9 similarities or dissimilarities, I'm just asking
11:13 10 you, do you think if you read this and realized
11 these facts, that she worked at the same place,
12 rode the same bus, orange construction boots, so
13 on and so forth, do you think it might have gone
14 in your mind, my God, this rings a big bell, three
11:14 15 weeks after David Milgaard's conviction?

16 A If I had read all that and studied it you are
17 asking me?

18 Q Yes.

19 A It may have.

11:14 20 Q All right. It would have, wouldn't it? Don't you
21 think it would have and don't you think it would
22 have done --

23 A I answered that.

24 Q Sorry, my fault, but let me finish the question.

11:14 25 A Okay.



1 Q And don't you think it would have if Mackie had
2 read the report as well, that the two of you were
3 so intricately involved in the Gail Miller murder
4 investigation and the apprehension of David
11:14 5 Milgaard for it, that it would have been almost
6 impossible for it not to have rung bells if you
7 had read the (V5)-- (V5)--- complaint?

8 A Obviously it didn't.

9 Q Obviously not. And do you think, sir, that it's
11:14 10 because of your involvement as exemplified in this
11 report in (V5)-- (V5)---' rape complaint, do you
12 think that may explain why you were one of those
13 sent to Winnipeg on October the 22nd, later the
14 same year, to take a statement from Larry Fisher?

11:15 15 A I don't know why I was sent.

16 Q Do you think that's a reasonable explanation for
17 why you were sent?

18 A It could well be.

19 Q Yeah. And you've acknowledged that in going there
11:15 20 you would have had, I think we ended up with you
21 agreeing you would have had all four of the rape
22 and attempted rape files?

23 A I don't think I agreed that we had all four. I
24 said Nordstrom may have had them, because I don't
11:15 25 know what he had.



1 Q It was common sense he would have had them?

2 A May have had them.

3 Q I'm just trying to think about how police officers
4 work, sir. I can't conceive of you going to take
11:15 5 a statement from someone on a serious case without
6 having some idea of what the case was all about
7 beforehand; in other words, reading the file.

8 A Well, I'm sure --

9 Q Maybe I'm wrong.

11:15 10 A -- we had the two files.

11 Q And I'm sure you would have read them before you
12 interviewed him?

13 A I would think I would look at them.

14 Q Right. And given we found out that you also
11:16 15 questioned him about the other two and he denied
16 them, (V1)- and (V2)----- --

17 A I didn't say I don't think I talked --

18 Q Remember the letter that we saw yesterday where
19 there was a letter sent saying that he had
11:16 20 admitted two and denied the other two when
21 interviewed?

22 A I think I remember that.

23 Q And you acknowledge that --

24 A I'm not aware that I questioned him about the
11:16 25 other two.



1 Q Okay. Well, I don't think there's any suggestion
2 there was any other trip by other Saskatoon police
3 officers down to Winnipeg to question him, so I
4 sort of assumed it was you.

11:16 5 A I don't recall doing that and I said yesterday if
6 I would have, I would have thought I would have
7 had a statement form outlining that with a
8 negative response, but I don't see anything like
9 that, and if it was there, it's not there.

11:16 10 Q If you look at it now, sir, do you think it's
11 not -- unless the Saskatoon Police Service was
12 wanting in its investigative abilities --

13 A That's possible.

14 Q I suppose it is -- that it just seems so likely
11:17 15 that you would have taken all four files with you
16 that had been linked in the way that they have as
17 a series of interconnected rapes; right? Forget
18 Gail Miller now, just as a series of
19 interconnected rapes, it's inconceivable you would
11:17 20 only have gone to talk to him about two and not
21 the other two?

22 A I can't agree with that.

23 Q You can't?

24 A No. If my superiors were in touch with Winnipeg,
11:17 25 which obviously they were, and they say we have a



1 suspect here that's willing to I believe question
2 I suppose on various things and he's prepared to
3 give you a statement on two of them, I suspect
4 that's why we went and took two statements.

11:17 5 Q And the only information, sir, that we have, at
6 least now about -- tell me, is this the only
7 serial rapist that you are aware of in Saskatoon
8 in your career as a police officer? I asked
9 Penkala that, he couldn't think of any others.
11:18 10 I'm wondering if you can.

11 A As we know -- I don't know if we knew of a serial
12 rapist then, but I can't recall anything like
13 that.

14 Q So it would be fair to say that at least as far as
11:18 15 you know, this was the only serial rapist that
16 operated in Saskatoon in your career?

17 A As we know it now.

18 Q Well, as it was known then, because the rapes back
19 in 1969, sir, and '70, to take (V5)-- (V5)---,
11:18 20 were linked by the police to each other. Leave
21 out Gail Miller. It was always assumed that
22 whoever was committing these rapes was almost
23 certainly going to be the same person, wasn't it?
24 I mean, look at the letter that was written that I
11:18 25 related to you that resulted in them charging



1 Larry Fisher with all four of them.

2 A That's probably true, but what I'm saying is I
3 don't recall the term serial rapist used by us at
4 that time.

11:19 5 Q Maybe, all right, but there's no magic in the
6 term, sir.

7 A I don't think so.

8 Q No. The label is just a label.

9 A Right.

11:19 10 Q But as far as you can remember in your career,
11 there was no other case of the same person
12 committing multiple rapes on strangers in the City
13 of Saskatoon?

14 A Not that I'm aware of.

11:19 15 Q Right. So to say the least, sir, a big case?

16 A Oh, certainly.

17 Q Yes. And you must have known that when you went
18 to Winnipeg with Nordstrom?

19 A That which?

11:19 20 Q That this was a big case?

21 A The murder?

22 Q No, no, the rapes. What are you talking about?

23 When you went to Winnipeg with Nordstrom to see

24 Fisher, you knew that you were going on an

11:19 25 expedition to do with a very serious big case, a



1 one and only --

2 A Not in comparison to the murder file that I had
3 been working on.

4 Q By comparison to the murder file, still, sir, a
11:20 5 very serious, big case?

6 A Oh, certainly, rape is serious.

7 Q Yes, yes. I mean, next to murder, it would be
8 really about the most serious thing one could
9 visualize, wouldn't it --

11:20 10 A I think you are right.

11 Q -- multiple rapes being committed by the same
12 person on strangers?

13 A Yes.

14 Q Hard to think of anything worse?

11:20 15 A Right.

16 Q Hard to think of anything more dangerous?

17 A Uh-huh.

18 Q If only because, forgetting Gail Miller, I'm sure
19 you are aware that serial rapists often end up at
11:20 20 some point killing their victims?

21 A Yes, I'm aware of that.

22 Q So a very dangerous individual that you were on
23 your way to see in Winnipeg and you knew that;
24 right, as you went there? You must have known
11:20 25 that.



1 A When I went to see Fisher?

2 Q Yeah.

3 A I don't think I was aware of that.

4 Q You don't think so?

11:20 5 A I don't think we had anything, any knowledge of
6 Fisher other than the Winnipeg police telling us.

7 Q Right.

8 A If my memory serves me correct, that's the first
9 time I heard that.

11:20 10 Q What the Winnipeg police were telling you that you
11 could then convert into what you already knew in
12 Saskatoon would have made you realize that this
13 was a very, very serious case that you were on?

14 A Rape is considered serious.

11:21 15 Q Yes. He's been charged with two rapes in
16 Winnipeg, you know that?

17 A I think I did.

18 Q And there's two more at least he's confessing to
19 in Saskatoon which are linked to two others at
11:21 20 least?

21 A Correct.

22 Q Right?

23 A Absolutely.

24 Q Right, okay. And yet you've just forgotten the
11:21 25 interviews?



1 A I forgot -- yes, I have.

2 Q Just forgotten, just gone out of your mind
3 completely?

4 A I beg your pardon?

11:21 5 Q Went out of your mind completely?

6 A Absolutely.

7 Q Right. And even though, sir, you acknowledge that
8 you did speak to this other officer, Gus Weir,
9 about what you had done in Winnipeg some years
11:21 10 later, is that right, which means the memory is
11 retained for several years?

12 MR. FOX: With respect, again, what the
13 witness said was that if Gus Weir said that, he
14 wasn't disputing it. He's not said he had any
11:22 15 recollection of speaking to Gus Weir subsequent.
16 I'm sorry, I should go to the --

17 COMMISSIONER MacCALLUM: Okay.

18 MR. FOX: I apologize for popping a mint in
19 my mouth just before I got up. What the witness
11:22 20 said is he had no recollection of speaking with
21 Gus Weir or Gus Weir raising the subject with
22 him. What was put to him was Gus Weir's
23 statement that he recalled some conversation with
24 Mr. Karst. All Mr. Karst said, if Gus Weir said
11:22 25 that happened, I'm not in a position to say it



1 didn't happen. He didn't acknowledge the
2 conversation or say that he had a recollection of
3 that conversation occurring.

4 BY MR. LOCKYER:

11:22 5 Q Maybe we can look at what you did say, 146450,
6 please, this is what you said at the discovery
7 proceedings, Mr. Karst, going to 146556. Starting
8 here, sir:

9 "Q Now you do recall discussing the whole
11:23 10 Fisher interview with Gus Weir, you've
11 already told us that?

12 A No, not the whole Fisher interview, it
13 was just, I remember him talking to me
14 about it and I think it was even on
11:23 15 the telephone, but you say it was a
16 social function, it might have been.
17 I know it was touched upon, I remember
18 that.

19 Q And when was that?

11:23 20 A I don't know.

21 Q He says seven or eight years.

22 A That could well be.

23 Q How could you have this discussion with
24 Gus Weir if you didn't even remember
11:23 25 going?



1 A I guess maybe Gus asked me. I don't
2 know. I mean I just don't know.
3 Maybe it came up and he said, you
4 know, "How come you went to Winnipeg?"
11:23 5 I don't know what -- ask him, he'll
6 know."

7 Do you remember being asked those questions and
8 giving those answers, sir?

9 A Where was this at?

11:23 10 Q At the discovery proceedings in --

11 A Probably. It was recorded.

12 Q Which was the most recent time you testified?

13 COMMISSION MacCALLUM: When was that?

14 BY MR. LOCKYER:

11:24 15 Q I'll give you a date. It was on April 30th of
16 1996, sir. Do you accept --

17 A I accept what's there.

18 Q -- the answers that you gave there, sir?

19 A They are very --

11:24 20 Q Sorry?

21 A I would say they are very vague to say the least.

22 Q Well, you don't --

23 A I didn't remember going, I didn't --

24 COMMISSIONER MacCALLUM: Yes, Ms. Knox?

11:24 25 MS. KNOX: Yes, just a point in terms of



1 the math. If this was done, if this conversation
2 that the witness is talking about having with Gus
3 Weir was seven or eight years earlier, that would
4 have been 1988, 1989 when the review was
11:24 5 happening, not back in the early '70s, which is a
6 conversation that I think Gus Weir was supposedly
7 talking about.

8 MR. LOCKYER: Seven or eight years is in
9 the context of when he was in Winnipeg.

11:24 10 MS. KNOX: I took it to be in the context
11 of when he was giving his evidence, but it could
12 be 1988, 1989.

13 COMMISSIONER MacCALLUM: Well, thanks for
14 the reminder, but go ahead with your questions.

11:24 15 BY MR. LOCKYER:

16 Q Thank you. So is it conceivable, sir, from what
17 you said here, that you remembered the Winnipeg
18 encounter for several years and then forgot it? I
19 guess logically that's how memory works, you do
11:25 20 remember things for a fair period of time and then
21 you forget them; right?

22 A That's very possible.

23 Q I mean, if we -- as I recall -- could we turn to
24 the next page, because your counsel says, the next
11:25 25 page, he, meaning Mr. Karst, doesn't remember now



1 who has determined that he didn't --

2 "He probably remembered the day after he
3 went, and maybe three days after, or
4 maybe he did five. Is he able to answer
11:25 5 that, Mr. Rodin, in fairness?"

6 So you see what your counsel is saying you would
7 have remembered it for a while certainly, and I
8 have no doubt you would have if we had asked you
9 October 23, 1970, but it would seem that you may
11:25 10 have acknowledged here that you remembered it for
11 several years. Is that fair, sir?

12 A I know I just don't remember it now and that's --

13 Q Right. And something else you said, sir, that was
14 interesting. Would I be right in saying that when
11:26 15 you went to see Mr. Fisher on October 22nd, your
16 mind was closed regarding who had murdered Gail
17 Miller?

18 A I would suspect that's right.

19 Q Yes. That's the way you put it at the discovery,
11:26 20 sir.

21 A I concur with that.

22 Q Same document, 146625, and:

23 "Q At that point --"

24 And that point in time is October 22, all right:

11:26 25 "Q And at that point in time --"



1 Starting at 787,

2 "-- there was no room in your mind for
3 any doubt about the guilt of David
4 Milgaard, both during the course of your
11:26 5 continued investigation of the Miller
6 matter and when you investigated Fisher
7 to the extent that you did; is that
8 fair?

9 A When I went to see Fisher I was closed
11:27 10 altogether, as far as Miller was
11 concerned.

12 Q Yes, but your mind was still closed too,
13 your mind didn't open up at any point
14 when you talked to Fisher?

11:27 15 A Not with regards to Miller, no."
16 Do you remember being asked those questions and
17 giving those answers?

18 A I don't remember, but it's there.

19 Q And it's interesting the way you are answering
11:27 20 those questions is actually as if you are
21 remembering the trip, don't you think, the way you
22 answered those questions?

23 A You could interpret it that way I suppose.

24 Q "When I went to see Fisher --"

11:27 25 An event apparently you don't remember,



1 "-- I was closed altogether as far as
2 Miller was concerned."

3 And I'm not sure how you would know that if you
4 can't even remember going, and then,

11:27 5 "But your mind was still closed too,
6 your mind didn't open up at any point
7 when you talked to Fisher?"

8 And your response, you seem to be remembering
9 your conversation with him in that you could
11:27 10 answer:

11 "Not with regards to Miller, no."

12 You see that, sir?

13 A Yes. I can analyse that a little different.

14 Q Well, feel free.

11:28 15 A Had I have asked him where my mind would have been
16 open to the Miller file, I would have probably
17 asked those questions, but I don't see anything in
18 my report saying that.

19 Q If we can go to 15 -- you don't have a report, so
11:28 20 I'm not sure what you mean by that. You didn't do
21 a report, or if you did, we don't have it.

22 A That's true. I'm sure I did, but it's not
23 available.

24 Q Okay. 153652, this is the October 12th
11:28 25 conversation, which I've now found, with the CBC



1 reporter, sir. Perhaps it's because the number
2 was upside down I got lost. Could we go to -- and
3 this is something that Commission Counsel asked
4 you about yesterday, 153659. Remember, this is
11:28 5 the conversation, sir, we don't have the
6 questions, we have the answers?

7 A That's correct.

8 Q And one of the answers that you gave, you said,
9 it's right here, and there was sort of a query as
11:29 10 to what was meant by it:

11 "I certainly expect that back in 1971
12 when Fisher was transferred from
13 Winnipeg that it should have been
14 checked out. But it never --"
11:29 15 -- was. And I'm going to suggest to you, sir,
16 that first of all the "it" would be Fisher's
17 possible involvement in the Miller murder. Do
18 you agree, that's what the "it" would mean there?
19 We can go back a bit, can we move --

11:29 20 A This is the interview in Winnipeg with the press?

21 Q Yes, this is the CBC reporter.

22 A I don't place too much on any of my answers there.

23 Q She's asking you about -- well, I'm going to
24 question you about it anyway, sorry.

11:29 25 A Fine.



1 Q You are not going to put me off that easily, Mr.
2 Karst.

3 A I'm not trying to.

4 Q You are being questioned, sir, about Fisher and
11:30 5 why isn't it that anyone followed up on Fisher for
6 Gail Miller's murder and that's gone on for some
7 time and then you have this answer:

8 "I certainly expect that back there '71
9 when Fisher was transferred from
11:30 10 Winnipeg that it should have been
11 checked out. But it never came to my
12 attention."

13 And that's when -- because this is, remember,
14 before you knew that you had taken the statements
11:30 15 from Fisher; right?

16 A Okay.

17 Q So you are talking in the context as if you had
18 nothing to do with Fisher in 1970, '71. You
19 follow?

11:30 20 A I don't know what -- I can't recall what this
21 would even refer to, being transferred from
22 Winnipeg, I don't know what that means.

23 Q I'm going to get to that.

24 A Okay.

11:30 25 Q Right now I'm just trying to pinpoint when you are



1 talking to this reporter. This is at a point in
2 time when you say you have no memory of the fact
3 you had anything to do with Fisher in 1970.

4 A All right.

11:30 5 Q And I'm going to suggest to you, sir, that the
6 question would have been, because remember the
7 reporter at this point doesn't know that you've
8 been involved in 1970 either.

9 A I don't know if she knows that or not.

11:31 10 Q No one knew. Well, no one knew -- well, no one on
11 David Milgaard's side of things or in the media
12 knew, they found out in December, we saw that
13 yesterday, several months later, and I'm going to
14 suggest to you, sir, then, her question logically,
11:31 15 because of her ignorance of October, 1970, would
16 have been, well, we know that Fisher was
17 transferred from Winnipeg to Regina in 1971 for
18 his guilty plea, at which point you could then say
19 I certainly expect that back in 1971 when Fisher
11:31 20 was transferred from Winnipeg to Regina. You see
21 the sense of that?

22 A I see it.

23 Q That it should have been checked out, but it never
24 came to my attention. You see?

11:31 25 A Yes.



1 Q So that's the context. I can't think of any other
2 logical context. It makes complete sense, it
3 seems to me, that that's the context in which you
4 are saying what you are saying, and really then
11:31 5 what you are saying is, and this is before it's
6 brought to your attention, that you were the one
7 who questioned Fisher in October, 1970, you are
8 saying whoever had these dealings with Fisher in
9 1970, '71 should have done something about it,
11:32 10 that's what you are saying there isn't it?

11 A I can't really answer that because there's too
12 much out of this thing missing.

13 Q And it turned out it was you who was the one who
14 should have checked things out. In effect, your
11:32 15 comment was on your own conduct without you
16 realizing it at the time you made it. Do you
17 follow?

18 A No.

19 Q You are saying whoever dealt with Fisher, in
11:32 20 essence, should have checked him out for the Gail
21 Miller murder, but it never came to my attention,
22 when in fact we now know it sure did come to your
23 attention in spades in October of 1970 when you
24 are the one who went and interviewed him alone.
11:32 25 Right?



1 A I said I never connected Fisher and didn't know I
2 was there, I didn't remember I was there, so I
3 never connected Fisher with those files, period.

4 Q I understand, but you are the one who should have
11:33 5 checked it out?

6 A You are probably right.

7 Q Yes. And your claims, sir, to not remember the
8 October 22nd, 1970 meeting comes despite what
9 we've heard of your memory about your meeting with
11:33 10 Cadrain which you've said you have such a good
11 memory of, your meeting with David Milgaard that
12 you say you have such a good memory of, your
13 meetings with Ronald Wilson and the events of May
14 21 to 24 --

11:33 15 MR. FOX: Again --

16 COMMISSIONER MacCALLUM: Yes.

17 MR. FOX: -- I think it's objectionable to
18 say your meetings with Albert Cadrain that you
19 have such a good memory of, your meeting with
11:33 20 David Milgaard that you -- -

21 MR. LOCKYER: Meeting, singular I said.

22 MR. FOX: Meeting that you had with David
23 Milgaard that you had such a good memory of.

24 COMMISSIONER MacCALLUM: Well, I think he
11:33 25 said what you say he had such a good memory of.



1 Did you say that, sir?

2 MR. LOCKYER: He said it in
3 examination-in-chief, the meeting he had with
4 Cadrain in early March, was it March 3rd, he said
11:34 5 he had a very good memory of it. The meeting
6 with David Milgaard in March, he said he had a
7 very good memory of it in his
8 examination-in-chief, I made a note as he said
9 it. The meeting with Wilson, he said the same
11:34 10 thing. The five-year-old Cadrain, he said the
11 same thing. He had a very distinct memory of
12 Malanowich describing his interview with Sharon
13 Williams he said in his examination-in-chief.

14 COMMISSIONER MacCALLUM: You mean here in
11:34 15 the Inquiry?

16 MR. LOCKYER: Right here, yes. I made a
17 note of it each time he said it.

18 MR. FOX: The description that he had a
19 very good memory of it is different from
11:34 20 acknowledging that I have a memory of it.

21 COMMISSIONER MacCALLUM: Yes.

22 MR. FOX: For example, the recollection of
23 speaking to the young person at the Cadrain
24 household, he remembers speaking, he said I
11:34 25 remember speaking to a young person. He didn't



1 know the age, didn't know who it was, I'm not
2 even sure if he knew the gender. A recollection
3 of it isn't saying I have a very good memory of
4 it. That's my objection to it, that's all.

11:34 5 COMMISSIONER MacCALLUM: Mr. Fox, in
6 effect, is saying that you are putting words in
7 the witness' mouth. If you are not, please refer
8 us to the page number of the transcript --

9 MR. LOCKYER: I can't.

11:35 10 COMMISSIONER MacCALLUM: -- where this came
11 up. Okay, if you can't, that's fine. The
12 objection then is --

13 BY MR. LOCKYER:

14 Q Then I'll go through them one by one. You have an
11:35 15 excellent memory of your first meeting with
16 Cadrain; is that right, sir?

17 A I haven't got an excellent memory of any kind, but
18 I have a memory of it.

19 Q Do you remember saying in examination-in-chief you
11:35 20 have a very good memory of it?

21 A I probably said that.

22 Q Yes. Do you remember saying in your
23 examination-in-chief you had a very good memory of
24 your first meeting with David Milgaard?

11:35 25 A I probably said it if you have a record of it.



1 Q Do you remember saying in you're
2 examination-in-chief you had a very good memory of
3 your meetings with Wilson?

4 A I probably said that.

11:35 5 Q Do you remember saying in your
6 examination-in-chief you had a very good memory of
7 the five-year-old Cadrain corroborating his
8 brother's claim of blood on the jeans or blood on
9 the trousers?

11:35 10 A I have a memory of that.

11 Q Do you remember saying you had a very good memory
12 of it, sir?

13 A I don't recall saying a 'very good memory', but if
14 I said it, that's fine.

11:35 15 Q Might you have said it?

16 A I might have said it.

17 Q Yes, okay. Do you remember saying you had a very
18 good memory, sir, of Malanowich describing his
19 interview of Sharon Williams?

11:35 20 A It might have said it.

21 Q All right. And yet you don't remember anything
22 about October 22nd, 1970?

23 A If that's the date you are referring to being in
24 Winnipeg, you are correct.

11:35 25 Q Yeah. What about the 1980 Linda Fisher interview,



1 sir, did you know about that?

2 A About Linda Fisher coming to the police station?

3 Q Yeah?

4 A I suspect that, subsequently to her coming there,
11:36 5 I must have been made aware of it.

6 Q Did you read the statements?

7 A I don't ever recall that I did.

8 Q Well what you kept saying yesterday is -- I say
9 'kept', you said it twice and I made a mental note
11:36 10 of it when you did -- you said 'I may have read it
11 but if I did that's as far as it went'; do you
12 remember saying that yesterday?

13 A I don't remember it, but if it's there, it's
14 there.

11:36 15 Q Yes. And did you say that, sir, because you are
16 aware that in previous proceedings you have said
17 that you knew about Linda Fisher coming in at the
18 time?

19 A I missed the question.

11:37 20 Q Did you say that because you are aware that that's
21 what you said in the past, that you did know about
22 Linda Fisher coming in at the time she came in?

23 A What I said in the past I can vaguely remember so
24 whatever I said there was because it's like it
11:37 25 was.



1 Q Have you not gone through your transcripts of what
2 you said in the past in preparation for --

3 A Oh, many, many times.

4 Q Okay. Well, let's look at your discovery
11:37 5 proceedings, the most recent evidence in 1996.
6 146450 going to 146483, starting here:

7 "Q When did you first become aware that
8 Lillian Fisher attended at the Saskatoon
9 Police Station in August of 1980?

11:38 10 A When was I aware of it?

11 Q When did you become aware of it, yes?

12 A Probably shortly after she came in. I
13 don't know but I would expect I would
14 be informed.

11:38 15 Q Do you recall who informed you?

16 A No, I don't.

17 Q I show you document 263, which is an
18 investigation report, Saskatoon Police
19 Department, it's a report of Inspector
11:38 20 Wagner. I wonder if you'd look at it
21 and tell me whether you've seen that
22 report before?"

23 "A Yes, I've seen this before.

24 Q I take it when Lillian Fisher came in,
11:38 25 or shortly thereafter, that's what you



1 would have seen in terms of that
2 particular --

3 A I didn't hear you.

4 Q I said that's the document you would
11:38 5 have seen when you learned that Lillian
6 Fisher came in, in August of 1980?

7 A I would think so.

8 Q And who was assigned to follow up on the
9 information given by Lillian Fisher?

11:38 10 A I don't know.

11 Q Were you assigned?

12 A I'm sure somebody was. I know I
13 wasn't.

14 Q You weren't?

11:38 15 A No.

16 Q I take it you would have seen this
17 document within a short period of time
18 after she attended, it wasn't a year or
19 two years or --

11:39 20 A No, but it could have been weeks if I
21 was on annual leave or something. But
22 I'm sure it was relatively close.

23 Q Did you make any inquiries as to who, in
24 fact, followed up on this information?

11:39 25 A I know somebody did but I can't



1 remember who.

2 Q And what information did the follow-up
3 reveal, do you know?

4 A No, I don't."

11:39 5 Remember giving those questions -- being asked
6 those questions and giving those answers, sir?

7 A Yes, yes.

8 Q So you did read the report around the time, within
9 weeks at the most if you were on vacation, at the
11:39 10 time --

11 A It would appear that's what I thought.

12 Q -- of Linda Fisher coming in; is that right, sir?

13 A It would appear that's what I thought. Obviously
14 I hadn't read it very close because I see it the
11:39 15 other day where it was signed Parker and I don't
16 know that, here, when I'm giving this evidence.

17 Q And you said another very interesting thing, sir,
18 at the examination for discovery in this regard.
19 If we could -- first of all, can we move to
11:40 20 146488, just for the sake of completeness.
21 Perhaps we could go back to the previous page, I'm
22 sorry:

23 "Q I take it you will agree with me that
24 when Linda Fisher came in and Larry
11:40 25 Fisher's name was mentioned you were



1 aware that McCorriston had interviewed
2 Fisher shortly after the murder; is that
3 correct?

4 A When Linda Fisher came in?

11:40 5 Q Yes.

6 A I wasn't there so I don't know.

7 Q Well back to document 263, perhaps we
8 should clarify that. When Linda Fisher
9 came in, you know that she gave

11:40 10 information concerning Larry Fisher and
11 the Miller murder; is that correct?

12 A You're talking about 1980?

13 Q When she came in in 1980?

14 A I would be aware of it sometime after
11:40 15 that, sure.

16 Q And my question to you is, when Linda
17 Fisher came in, when you learned that
18 she gave information about Larry Fisher,
19 I take it that you remembered

11:41 20 McCorriston's reference to Larry Fisher
21 in the course of his investigation, is
22 that correct, the reference that I just
23 directed your mind to

24 A I'm missing your question, then.

11:41 25 Q Well would you have said, 'Gee, Larry



1 Fisher, that fellow was interviewed by
2 McCorriston."

3 A I would think so, yes."

4 Do you remember being asked those questions and
11:41 5 giving those answers?

6 A I don't remember, but it's there.

7 Q How do you explain, Mr. Karst, that in 1980 you
8 became aware that this lady had come in and said
9 that she believed her husband had committed the
11:41 10 crime, and by this time David Milgaard had been in
11 jail for more than 11 years, and you did
12 absolutely nothing about it? How do you explain
13 that?

14 A It wasn't assigned to me in the first place.

11:41 15 Q Just wasn't your responsibility?

16 A No, certainly not.

17 Q You didn't --

18 A Had she have come to me with that, and I'd have
19 probably had somebody assign it to me, I would
11:42 20 have interviewed -- investigated, but this is not
21 up to me to go over somebody else, Inspector
22 Wagner's head.

23 Q Well as a human --

24 A Say 'I'm going to investigate that file instead of
11:42 25 Parker'.



1 Q But as a human being, sir, did you worry about it?
2 'Holy smokes, she's came in to say she thinks her
3 husband committed the crime, this is a chap who I
4 know from the McCorriston report was questioned to
11:42 5 some degree in the early days', maybe in 1980 you
6 still remembered your Winnipeg interview in
7 1971 -- or 1970, rather, maybe not, who knows?

8 A Uh-huh. I know.

9 Q As a human being, sir, wouldn't you say to
11:42 10 yourself, forget you are a police officer, forget
11 everything, 'my God, someone had better follow up
12 on this and inquire about it and follow up on it
13 to see, if only with the people whose
14 responsibility it was to follow up on it'; you
11:43 15 didn't think of doing that?

16 A I'm sure I wouldn't go over Inspector Wagner's
17 head, I know that.

18 Q I'm not asking you to do that, sir.

19 A Well if I wanted to go investigate it I would have
11:43 20 to be going over his head.

21 Q I'm not asking you to investigate it. I'm just
22 saying to you, sir, did it come to your mind as a
23 human being to say 'I want to know what's coming
24 of this, I want to know what's happening. Someone
11:43 25 else said that the man who I was involved and



1 played a big role in investigating and putting in
2 jail for 11 years as of 1980, that here's someone
3 else coming in and saying he didn't do it'?

4 A You can perceive that that way now.

11:43 5 Q But you didn't -- it just didn't phase you, it
6 doesn't seem it phased you as a human being, you
7 didn't react to it as a human being at all, you
8 just carried on doing your job?

9 A That's your opinion.

11:43 10 Q No, that's a question.

11 A A question?

12 Q It's a question; what did you think?

13 A I don't know whether it phased on me because this
14 was his, another person's inquiry, and it -- I may
11:43 15 have asked questions, I can't remember, I may have
16 asked him or somebody or, you know, 'did you check
17 that'. I can't remember that.

18 Q Well you didn't say -- and don't you think, sir,
19 that it was a sufficiently startling event that
11:44 20 you would remember how you reacted to it?

21 A Oh, I don't remember how I reacted to it.

22 Q No, no, you missed the first part of the question,
23 sir.

24 A Okay.

11:44 25 Q Don't you think it was a sufficiently startling



1 event that maybe this man had been in jail for 11
2 years for something he hadn't done that you would
3 remember what you felt and what you did as a
4 consequence of learning about Linda Fisher's trip
11:44 5 and reading the statement; don't you think?

6 A That's probably not the first piece of information
7 that came in and I can't answer that because it
8 wasn't assigned to me.

9 Q Don't you think you would remember; that's the
11:44 10 question?

11 A Obviously, I don't.

12 Q Well, maybe you don't because it didn't bother you
13 at all, you didn't give it another thought and
14 just carried on with your life?

11:44 15 A That's a possibility.

16 Q Uh-huh. And did you think, sir, or do you think
17 you might have thought at the time that maybe,
18 somehow, this information should be communicated
19 to David Milgaard --

11:45 20 A I don't suppose --

21 Q -- or his counsel if he had one?

22 A I don't suppose I thought of that.

23 Q I'm sorry?

24 A I don't suppose I thought of it and, if I did, it
11:45 25 wasn't my authority to do that.



1 Q You gave a really cold answer to that question at
2 discovery, sir.

3 A Did I? Okay.

4 Q 146628, you were asked the same question, it was a
11:45 5 very cold answer.

6 A Okay.

7 Q Look at this:

8 "Q You certainly didn't advise David
9 Milgaard or any lawyer representing
11:45 10 David Milgaard that Linda Fisher had
11 come forward in August of 1980 with
12 information implicating Larry Fisher?

13 A No, I didn't.

14 Q Why not?

11:45 15 A In 1980, I seen no point. That file
16 was closed."

17 A I still felt that way then.

18 Q Yeah. David Milgaard is locked up, that's the end
19 of it, right?

11:46 20 A I had no reason to disagree with the Court at that
21 time.

22 Q But you did. You had someone -- you had read a
23 statement of someone who had come in and said --

24 A I didn't, I --

11:46 25 Q -- 'I think my husband committed this crime', and



1 gave reasons as to why she believed that, and it
2 was someone whose name was familiar to you from
3 the investigation?

4 A I didn't say I disagreed with that, I just said it
11:46 5 was not my place to follow that up.

6 Q It's just, sir, a lot of times yesterday when you
7 were answering Mr. Hodson's questions you came
8 across or presented yourself, at least from my
9 perspective, as saying 'you know, if I had thought
11:46 10 there was any reason to challenge David Milgaard's
11 guilt, I would have done something about it,
12 because that's the right thing to do'; correct?

13 A I still agree with that.

14 Q But you had your chance in 1980, sir, and look
11:46 15 what you said about it in 1996:

16 "... I seen no point. That file was
17 closed."

18 It's kind of a ruthless position, isn't it, sir?

19 A No, I don't think so.

11:47 20 Q You don't?

21 A No.

22 Q Uh-huh. So you realize if you had said to
23 yourself -- forget being a police officer -- as a
24 human being, if you had said to yourself 'oh dear,
11:47 25 maybe the wrong man's in jail and has been for 11



1 years for a crime he didn't commit, maybe
2 something should be done about this and I should
3 make sure, as a human being, something is done
4 about it in one form or another'; if you had done
11:47 5 something, sir, you might have saved David
6 Milgaard spending the next 12 years in jail? Do
7 you see the point?

8 A I see the point.

9 Q Yeah. And how would you explain, sir, given you
11:48 10 are saying it wasn't your responsibility, how
11 would you explain the fact that, whoever's
12 responsibility it was, he or she did absolutely
13 nothing --

14 A I can't --

11:48 15 Q -- with Linda Fisher's information?

16 A I cannot explain that, sir. I don't know what
17 their reasons were.

18 Q And it's reprehensible, isn't it, that no one did
19 anything; --

11:48 20 A I would agree with that.

21 Q -- don't you think? Yes. And wasn't it, sir,
22 just that same mindset that you displayed in your
23 answer here in 1996:

24 "That file was closed."

11:48 25 End of story.



1 A Oh, I felt that way prior to any new information
2 coming in that was valid.

3 Q And you felt that way after new information came
4 in as well, just take Linda Fisher's statement?

11:48 5 A No. As I said, I didn't follow that up, so I
6 don't know.

7 Q But that's new information?

8 A It is.

9 Q And yet you still reacted the same way:

11:49 10 "That file was closed."?

11 A In my mind, it was, unless something credible come
12 in.

13 Q In a sense you are saying 'the cell door is
14 closed, the key is thrown away, that's the end of
11:49 15 it'. Right? In reality that's what --

16 A In a sense, you can interpret it that way, the
17 courts convicted him and I had no further dealings
18 with it.

19 Q If you knew about the statement, or given that you
11:49 20 knew about and read the statement that Linda
21 Fisher gave, sir, is it reasonable to suppose that
22 other members of the old Milgaard team also knew
23 that she had come in and read the statement?

24 A You know, I can't answer that.

11:50 25 Q The Mackies of the world, he was still in -- he



1 was still working in 1980; right?

2 A I don't know, I can't answer that, because --

3 Q Well you got it, I mean presumably someone had to
4 come to you to show it to you, all right, so
11:50 5 presumably they came to you knowing that you --
6 they came to you because they knew what your
7 involvement was in the case; that's logical,
8 anyway, isn't it?

9 A Sir, I don't know how I became aware of it, --

11:50 10 Q Uh-huh?

11 A -- and I don't know how the other people did, so I
12 can't answer that.

13 Q And in essence, sir, isn't it right, isn't it true
14 that the Saskatoon Police Service buried Linda
11:50 15 Fisher's report, period?

16 A I have no idea, sir.

17 Q Uh-huh. Let's look at (V4)---- (V4)--- for a
18 moment because I'm not -- I don't understand, at
19 the moment at least, your position in that regard.
11:50 20 You said, sir, in your evidence-in-chief
21 yesterday, and I tried to write it down verbatim,
22 and I can't reference it so this is what I wrote
23 down, quote:

24 "I can't attach any significance to the
11:51 25 (V4)--- event."



1 Do you remember saying words like that?

2 A Yesterday?

3 Q Well, it was the day before yesterday, actually.

4 A Can we -- what was that in context --

11:51 5 Q What, you want me to say it again?

6 A No, I just wondered what was that in --

7 Q Oh, (V4)---- (V4)--- is the lady who was assaulted
8 shortly after 7:00 a.m. a --

9 A Okay.

11:51 10 Q -- few blocks from where Gail Miller was murdered,
11 I'm sorry.

12 A All right.

13 Q And you said in your examination-in-chief, and I
14 think I quote:

11:51 15 "I can't attach any significance to the
16 (V4)--- event."

17 Do you remember saying that?

18 A I probably said that.

19 Q "I can't see two assaults being committed
11:51 20 by the same murderer.";

21 do you remember saying that? Sorry:

22 "I can't see two assaults being
23 committed by the same person.";

24 do you remember saying that?

11:51 25 A I think so, yes.



1 Q You said:

2 "The time element is too close for the
3 same person to have committed both
4 assaults.";

11:52 5 do you remember saying that?

6 A I said that.

7 Q Now you said all that in the present tense, 'I
8 can't', 'I can't', 'I can't', not 'I couldn't', 'I
9 couldn't', 'I couldn't', and I want to ask you is
11:52 10 it your opinion today, sir, that Larry Fisher was
11 not the person who assaulted (V4)---- (V4)---; is
12 that your belief?

13 A I can't answer that --

14 Q Well what's your belief?

11:52 15 A -- because I don't know what my belief is in that.
16 I don't think I have made up my mind about it.

17 Q Really?

18 A Yes.

19 Q So despite what you heard here -- did you see
11:52 20 (V4)---- (V4)--- give her evidence?

21 A I think I did.

22 Q Kind of hard to forget.

23 A I have --

24 Q Remember, Mr. Beresh cross-examined her and put to
11:52 25 her in any number of different ways that she had



1 misidentified Larry Fisher as her assailant, do
2 you remember that?

3 A No.

4 Q You don't?

11:52 5 A I don't.

6 Q Okay. Maybe you did miss it, because it would be
7 hard to forget, --

8 A Okay.

9 Q -- at least in my view. You know (V4)---- (V4)---
11:53 10 identified Larry Fisher as her assailant, sir,
11 right?

12 A I'm aware of that.

13 Q All right. And you know that (V4)---- (V4)--- was
14 sexually assaulted on the same morning as Gail
11:53 15 Miller's murder, right, you know that?

16 A Was she sexually assaulted or assaulted?

17 Q She was sexually assaulted, remember, the man who
18 assaulted her put his hand on her thigh --

19 A Okay.

11:53 20 Q -- as part of her description of the assault.

21 A Okay.

22 Q All right?

23 A All right.

24 Q So we've got that far?

11:53 25 A Yes.



1 Q You remember it was on the same morning as Gail
2 Miller's murder?

3 A Agreed.

4 Q Within 20 minutes --

11:53 5 A Agreed.

6 Q -- of her murder?

7 A Yes.

8 Q Within, I think, ultimately worked it out as seven
9 blocks of her murder?

11:53 10 A Something like that.

11 Q Right. On a freezing cold day, of course?

12 A Very cold.

13 Q Right. So I mean if you want to see the report I
14 can pull it for you, sir, I actually have the
11:54 15 reference for it so I can dare say that.

16 COMMISSIONER MacCALLUM: Which report,
17 please?

18 MR. LOCKYER: It's the Bennett report,
19 106110. Maybe we should pull it up, 106110,
11:54 20 please.

21 BY MR. LOCKYER:

22 Q My heart is always in my mouth, Mr. Karst, as to
23 whether the right document is going to appear. It
24 has. That's the interview of her; all right?

11:54 25 A By?



1 Q See that? If you look here, just the sexual
2 issue, right?

3 A Okay.

4 Q "Her storey is that she was on the way to
11:54 5 catch her bus on 22nd St., to the
6 University, she was assaulted by a male
7 person. This male came out of a yard
8 (after taking her back there) of 201
9 Ave. H. So., and walked towards her.
11:54 10 This male person then grabbed her and
11 ran his hand up and down her legs."

12 A Yes.

13 Q That's the sexual aspect of the assault.

14 A I think, at that time, that was considered an
11:55 15 assault. I don't think it was a sexual assault.

16 Q I would certainly hope so, as much as it would be
17 now, too.

18 A Okay.

19 Q Umm, and an assault with sexual connotations, so I
20 guess --

21 A That's -- I could agree with.

22 Q All right.

23 A Yes.

24 Q That's a sexual assault, believe me.

11:55 25 A Okay.



1 Q It is now, it was then, sir.

2 A Okay.

3 Q Or indecent assault I guess it would have been.

4 A All right.

11:55 5 Q And then she basically threw her books at him and
6 he disappeared. Umm, I'm wondering sir, and maybe
7 it helps us, it might help us to get an
8 understanding of your thinking as a police
9 officer, I mean the options here are really -- and
11:55 10 we've talked about options before this morning,
11 you and I -- the options here are twofold; either
12 it was Larry Fisher who committed the murder of
13 Gail Miller and the attack on (V4)---- (V4)---; or
14 you had two completely different individuals
11:56 15 roaming the streets of Saskatoon at 7:00 in the
16 morning within seven blocks of each other, both
17 with similar intentions in mind, the desire to
18 sexually assault women who carried out their acts
19 within minutes of each other within blocks of each
11:56 20 other. I mean the latter seems so inherently
21 unlikely, doesn't it, in minus 35 degrees
22 Centigrade?

23 COMMISSIONER MacCALLUM: 41.1.

24 MR. LOCKYER: Well, even better or even
11:56 25 worse, I'm not quite sure which way you look at



1 it.

2 COMMISSIONER MacCALLUM: There was some --
3 I interjected on purpose, not to be funny. There
4 was some difference in those estimates so we took
11:56 5 the trouble of getting a record from Environment
6 Canada which is in the documents.

7 MR. LOCKYER: Okay. Centigrade?

8 COMMISSIONER MacCALLUM: Either way.

9 MR. LOCKYER: They are not the same, minus
11:57 10 41 Centigrade or --

11 COMMISSIONER MacCALLUM: They cross at
12 minus 40, the scales cross.

13 MR. LOCKYER: So they do, that's quite
14 right.

11:57 15 COMMISSIONER MacCALLUM: But I think it's,
16 Celsius is the record which was given.

17 BY MR. LOCKYER:

18 Q Right. I mean the latter option, I mean just
19 thinking of it as a matter of common sense let
11:57 20 alone as a police officer, just seems so unlikely
21 as to be not acceptable; doesn't it?

22 A You are talking about two different people?

23 Q Yeah?

24 A I find the other --

11:57 25 Q You do?



1 A -- thing you have posed as just as ridiculous, but
2 --

3 Q I don't understand. A man carries out a
4 rape/murder, that doesn't necessarily mean that
11:57 5 his sexual desires to attack strangers has
6 suddenly come to a halt?

7 A I didn't say that, but --

8 Q Well I'm not sure why it's inherently unlikely,
9 then, it seems quite likely to me?

11:57 10 A It's quite unlikely that, in my opinion, that you
11 commit a rape and a murder and then go seven
12 blocks away and you are in the middle of, as
13 somebody has said, where there is people walking
14 down Avenue H, a busy street, I find that rather
11:58 15 difficult to understand too. Both of them are
16 rather --

17 Q Well there's nothing about people, it's just
18 her, --

19 A Okay.

11:58 20 Q -- she didn't talk about others.

21 A I thought I heard, here, some evidence by somebody
22 saying it's a very busy area, or busses and cars,
23 but maybe I'm mistaken.

24 Q Okay. Well there's nothing in this report about
11:58 25 it.



1 A Not in --

2 Q There may have been cars, I think that may be
3 right, but no pedestrians.

4 A Okay.

11:58 5 Q I mean pedestrians must have been pretty few and
6 far between that morning --

7 A I would think so.

8 Q -- at minus 41 degrees?

9 A I think that's right.

11:58 10 Q All right, okay, I hear you. I hear your
11 position. Umm, something I want to ask you,
12 really I'm going to move off the case itself and
13 move into what might be best called sort of
14 systemic issues, which --

11:58 15 COMMISSIONER MacCALLUM: Oh, which is a
16 good time to adjourn?

17 MR. LOCKYER: Oh, all right.

18 COMMISSIONER MacCALLUM: It's 12:00.

19 MR. LOCKYER: I'm sorry, I had no idea what
11:59 20 time it was.

21 (Adjourned at 12:00 noon)

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

23 BY MR. LOCKYER:

24 Q Sir, one of the things that gave you, and again
01:30 25 you in the terms of you and the others, the



1 police, in other words, as a whole, some cause
2 for, to pause in terms of whether or not you
3 thought David was the one who had killed Gail
4 Miller, was what David told you when you
01:30 5 interviewed him on March the 3rd; is that right?

6 A I would agree with that.

7 Q And it was a document -- well, it became a
8 document, what he's told you, it became a document
9 that really, that really was something that
01:31 10 certainly on its face would help establish that
11 David had not killed Gail Miller; fair? I mean,
12 he told you he didn't and he gave you a whole
13 statement as to what he had done that day; right?

14 A I missed what you are saying.

01:31 15 Q Yeah, I didn't put it very well so I'll do it
16 again. What he told you, sir, gave you reason to
17 pause about whether or not he had committed the
18 crime because of the way he denied it.

19 A You are talking about Mr. Milgaard?

01:31 20 Q Yes.

21 A Yes.

22 Q And perhaps even more importantly than that was
23 the fact that what he had told you, and I think we
24 went through this at the beginning, jibed a great
01:31 25 deal with what Mr. Wilson and Nichol John told you



1 as well in the case of Wilson on the same day and
2 in the case of Nichol John a few days later;
3 correct?

4 A I would agree.

01:32 5 Q Now, one thing, sir, that the jury in David's
6 trial did not hear was what David told you on
7 March the 3rd of 1969; right? You understand
8 that? I'm telling you that as a fact.

9 A All right.

01:32 10 Q All right. And one would assume the reasons for
11 that were essentially twofold, the Crown, who had
12 the option and had the right to lead David's
13 statement in front of the jury, assuming it passed
14 the rules of voluntariness, chose not to try to
01:32 15 present the statement to the jury. You
16 understand? They had the option to try and they
17 chose not to try?

18 A I don't know about that.

19 Q I'm just telling you that as a fact.

01:32 20 A All right.

21 Q The defence, whether or not they wanted to, I
22 don't know, maybe Mr. Tallis will tell us when he
23 comes, but if we assume for a moment that
24 Mr. Tallis had thought that the statement that
01:33 25 David gave you would help David in the eyes of the



1 jury, the law would have prohibited him from
2 leading it. Do you understand what I'm saying?

3 A No.

4 Q Well, if Mr. Tallis had wanted to put David's
01:33 5 statement in in front of the jury, he wouldn't
6 have been allowed to by the trial judge.

7 A All right.

8 Q To simplify what I just said.

9 A Okay.

01:33 10 Q And the question I wanted to ask you, sir, was
11 this: Do you think that that's perhaps a bit
12 unfortunate, that it may have been very helpful
13 for the jury in 1969, 1970 I suppose, if they had
14 had a chance to hear what David had told you on
01:33 15 March 3rd?

16 A It's a possibility.

17 Q Yes. I mean, they would have heard David right
18 from the beginning when first confronted with the
19 accusation that he was involved in Gail Miller's
01:34 20 murder, they would have heard his reaction to that
21 accusation and his description of what he did on
22 the day that Gail Miller died; right?

23 A That's true.

24 Q And that would surely have helped them come to
01:34 25 their decision don't you think?



1 A I would think it might help.

2 Q Yes. And perhaps even more helpful if the jury
3 had had a chance to hear not only what David had
4 told you on March 3rd, but what Ronald Wilson had
01:34 5 told Riddell on March 3rd and what Nichol John had
6 said on March 12th, if I'm right -- 11, 12, one or
7 the other -- and been able to see how the three of
8 them said much the same thing in those early days.
9 Don't you think that would have helped the jury as
01:35 10 well?

11 A It may have.

12 Q And might have really helped them in an
13 understanding that perhaps the statements of
14 Wilson and John that they gave in May, and in
01:35 15 particular the evidence that they gave to the jury
16 which, in essence, in the case of Wilson matched
17 what he had said in May and in the case of Nichol
18 John was I don't remember most of what I'm
19 supposed to have said in May, would have been
01:35 20 helpful to a jury to hear all those original
21 statements in assessing whether they should
22 believe what they said in May don't you think?

23 A It may have.

24 Q Yeah. So tell me, sir, as a police officer who
01:35 25 has been in the game or was in the game for many,



1 many years, and I appreciate you haven't had a lot
2 of time to think about this and this perhaps isn't
3 the ideal circumstances to think about it, in the
4 middle of a cross-examination before a commission
01:36 5 of inquiry, but do you think it might be worth
6 considering whether a defence counsel, if he
7 wishes, should be allowed, as of right, to lead
8 his client's statement when he's first interviewed
9 by the police so the jury can hear it?

01:36 10 A I don't know that.

11 Q But you think in this case it would have been
12 good?

13 A It may have been.

14 Q Uh-huh. Now, I want to ask you a question to sort
01:36 15 of, to end this, not unlike the last questions
16 asked by Commission Counsel, but perhaps a little
17 more direct, I want to ask you this: Do you, sir,
18 yourself accept any responsibility for what
19 happened to David Milgaard and Joyce Milgaard?

01:36 20 A I do.

21 Q And the Miller family?

22 A Yes.

23 Q You do? And I imagine you don't feel very good
24 about it; is that fair, sir?

01:37 25 A Certainly I don't.



1 Q No, I don't think you would, I'm not trying to be
2 facetious. All right?

3 A All right.

4 Q Have you ever wanted to apologize to them, sir?

01:37 5 A No. I certainly feel sorry for David Milgaard or
6 anyone else that has been wrongly incarcerated or
7 for Mrs. Milgaard having been put through this;
8 however, I did nothing wrong in my opinion and I
9 don't feel I have anything to apologize for.

01:37 10 Q Okay. You sort of apologized and then retracted
11 it.

12 A I feel sorry for them.

13 MR. LOCKYER: All right. Thank you, that's
14 all.

01:38 15 BY MR. WOLCH:

16 Q Mr. Karst, I'm Hersh Wolch and I'm David
17 Milgaard's lawyer.

18 A Yes, sir.

19 Q And I don't expect to be overly long with you. I
01:38 20 can tell you I've been busily editing what I was
21 going to ask you, between Commission Counsel and
22 Mr. Lockyer, so hopefully I'll try not to be
23 repetitious if I can avoid it.

24 A Thank you.

01:38 25 Q I want to pick up on a suggestion you made to



1 Commission Counsel and to the Commission this
2 morning, and it's one that I find interesting, and
3 that is the suggestion that maybe there should be
4 somebody independent to look into the reports or
01:39 5 the file or whatever it might be. Could you
6 elaborate on that a little bit for me?

7 A I don't think I can elaborate much more than what
8 I said there. It seems to me to have an
9 independent investigator look at all these reports
01:39 10 without actually being involved in the field, not
11 speaking to people personally, it was just a
12 thought that went through my mind, it might have
13 been useful. Maybe it wouldn't have been.

14 Q And don't take what I'm going to say as being
01:39 15 critical because I think I'm, what you're being is
16 realistic, but I would have thought that one
17 should be able to look at the police as
18 independent in what they are doing, and is it a
19 fact that you are recognizing that police can
01:40 20 become -- I don't mean this critically -- biased
21 or develop some sort of tunnel vision or not see
22 the broader picture, not through any ill intent,
23 but just through a fact of life?

24 A I think that could happen.

01:40 25 Q So that when you are an officer faced with a case



1 that you are trying to solve, particularly a
2 brutal case like this, you are pretty desperate to
3 want to solve it, and you may be, by human nature,
4 inclined to jump on a lead and really form a
01:40 5 strong opinion and perhaps lose some of the
6 independence or whatever one might call it?

7 A Those are possibilities.

8 Q So that when they are investigating this
9 particular case and the theory of the rapist who
01:41 10 was on the loose in Saskatoon seems to be going
11 nowhere and then Cadrain comes in with the blood
12 idea, that human nature and such, you really jump
13 on that and you hope and pray it's right that it
14 will lead you to the killer?

01:41 15 A I would think something would have led us to him,
16 yes.

17 Q So it's -- you see, what I'm trying to lead up to
18 is that in the system we try to look at the police
19 as being independent, that is, they are fair, they
01:41 20 look at all sides, and then we have the added step
21 of the prosecutor who is deemed to be independent
22 and, you know, etcetera, etcetera, but in truth,
23 in the real world when you are trying to solve a
24 crime, there's a tendency to get a little carried
01:41 25 away perhaps or focus so much that you might not



1 look at the other side?

2 A That could happen.

3 Q And is that what you are getting at, maybe

4 somebody should look at it who hasn't been

01:42 5 involved, hasn't been under the gun, so to speak,

6 to solve the crimes, somebody should look at it

7 and say, hey, wait a minute, what about this and

8 what about that?

9 A I suppose essentially that's what I was trying to

01:42 10 say.

11 Q That's what your idea is, because I would like to

12 touch a little bit on this concept that I think

13 has been called tunnel vision, but I think you

14 know what tunnel vision basically is don't you?

01:42 15 A I have a vague idea.

16 Q And I'm going to suggest to you, and perhaps cite

17 some examples, that that is something of what

18 occurred here in the sense that once you focused

19 on David Milgaard, there was a tendency to jump on

01:42 20 anything that incriminated, and anything that

21 pointed the other way to sort of slough it aside,

22 that's the general theme. I'm going to try and

23 get more specific obviously, but would you accept

24 the general preface before I go into it?

01:43 25 A I don't think so. I think if we could have



1 envisualized things that were anti to his guilt,
2 we would have looked at those too.

3 Q Well, I guess what I'm talking about, Mr. Karst,
4 is when David was questioned, he was questioned
01:43 5 several times, but when he was questioned, first
6 of all, he answered the questions?

7 A Correct.

8 Q And in your experience many people choose not to
9 answer questions?

01:43 10 A That's correct.

11 Q And he didn't ask for his counsel, he didn't stop
12 the questioning; correct?

13 A You are referring to who?

14 Q David.

01:43 15 A That's correct.

16 Q And I haven't got it in front of me, but I believe
17 that the notes of his statement from your first
18 interview with David encompasses about 20 pages of
19 notes, so it was a long interview your first time
01:43 20 in Winnipeg?

21 A Fairly long.

22 Q Lots of notes and David drew diagrams to be
23 helpful?

24 A That's correct.

01:44 25 Q And in the course of talking to you he mentioned



1 things that were actually unflattering to him,
2 many people might not volunteer, such as he talked
3 about a criminal record?

4 A True.

01:44 5 Q And he talked about psychiatric familiarity?

6 A That's correct.

7 Q Right?

8 A I remember that.

9 Q And I take it if you had checked the criminal
01:44 10 record, you would have seen that he exaggerated
11 it?

12 A I didn't check it, so I don't know.

13 Q Much of what he told you doesn't exist.

14 A I see.

01:44 15 Q That is, it's not on his record at all, and in
16 fact the sexual immorality you would have learned
17 involved he and Sharon Williams being found out by
18 the police and told to go home because they were
19 under age. It's not a sex crime, it's just young
01:45 20 kids in those days were found to be immoral if
21 they were having sex. Correct?

22 A Probably true.

23 Q See, the point I'm getting at is that it seems to
24 me that you would look at sexual immorality in
01:45 25 David's case as being something significant and



1 yet, if I hear you correctly, when you have a
2 rapist going out on the street you tend to say
3 'well he doesn't kill', as if in one hand minor --
4 when you are looking at David, minor sexual --
01:45 5 consensual sex between kids is significant that he
6 may have committed a rape/murder whereas the
7 rapist on the street is not killing so maybe he
8 didn't kill Gail Miller. You see the difference
9 in approach when you are focusing on one person?

01:45 10 A Possibility.

11 Q And so what I am saying is basically David sat for
12 a long questioning, answered many, many, many
13 questions, drew diagrams, talked about himself,
14 and yet what you seemed to take out of it is that
01:46 15 he wasn't nervous, he didn't ask for a lawyer as
16 those kind of kids are doing, and he didn't
17 specifically deny the offence. Now isn't that
18 sort of a negative look at the bigger picture?

19 A I suppose you could analyse it that way.

01:46 20 Q I mean not being nervous is consistent with
21 innocence; isn't it?

22 A Maybe sometimes.

23 Q Well you -- well we know now, of course, that
24 David is innocent and had nothing to hide?

01:46 25 A Right.



1 Q Right?

2 A Right.

3 Q So we know, now, that he was behaving like a
4 normal innocent person, he wasn't nervous, he
01:47 5 didn't need a lawyer, those are typical responses
6 by an innocent person; aren't they?

7 A Sometimes innocent people are nervous too.

8 Q Oh, of course, but to say that he wasn't nervous
9 and therefore that's somewhat suspicious is really
01:47 10 stretching it a bit; isn't it?

11 A It could be construed that way.

12 Q And in fairness, also, you now appreciate that
13 what he was remembering was really a non-event?

14 A That's correct.

01:47 15 Q And if I can briefly touch on a matter Mr. Lockyer
16 raised with you, and there was some difficulty
17 with whether the kids' stories were all the same
18 and whether there was a lie or omission, and I
19 might suggest to you that, umm, you would have had
01:48 20 to conclude that they were, and I'll use the word
21 'lying', because all three were saying that there
22 was no opportunity for David to commit an offence,
23 were they not?

24 A Originally, yes.

01:48 25 Q I mean. So I guess it's not a matter of omission,



1 it's a matter of specifically, specifically taking
2 the position that there was no opportunity for the
3 crime.

4 A If you believed their statements to begin with,
01:48 5 yes.

6 Q Yes. So when we talk about them coinciding it
7 wasn't that they were coinciding by omission
8 alone, it's they were coinciding by specifically
9 not allowing for an opportunity for the crime, in
01:48 10 other words David is saying 'I was with these
11 people all the time' and they were saying 'yes,
12 that's true'?

13 A That's what he said.

14 Q Right? But I'm going to suggest to you that what
01:49 15 you were doing was --

16 A Excuse me.

17 Q -- looking at the negatives all the time. For
18 example, there's much been made about David in a
19 hurry to leave town, you recall that?

01:49 20 A I recall that.

21 Q And then the significance of that is obvious, but
22 did you ever stop and say to yourself 'well who
23 stops to help somebody who is stuck after you've
24 committed a murder/rape, volunteer to help the
01:49 25 Danchuks', did you ever look at it that way?



1 A I can't really recall that, sir.

2 Q You see, now, how that's kind of obvious; isn't
3 it?

4 A Looking back, you see many things that are
01:49 5 different.

6 Q Yeah. But I mean if you are focused completely on
7 trying to find the incriminating then you go 'oh,
8 they are in a hurry to leave town, many hours
9 later he is driving fast', but you don't look at
01:50 10 how come somebody who has committed a horrible
11 crime and is in a hurry to get away is going to
12 stop to help somebody or take their time helping
13 somebody?

14 A I'm not aware that they stopped to help somebody,
01:50 15 I think somebody stopped to help them.

16 Q No, the Danchuks --

17 A I could be wrong.

18 Q Okay. Well the record will, I'm sure, back me
19 up --

01:50 20 A Okay.

21 Q -- but I don't blame you for not following that.
22 And did it come to your attention or cross your
23 mind that, if these kids are in the area where the
24 crime is being committed, then with the landmarks
01:50 25 they went looking for they would just go to



1 Cadrain's as opposed to going to the Trav-a-leer
2 and away from where they were; did that cross your
3 mind?

4 A The way they under -- what do you -- excuse me,
01:50 5 the way I understood it was they went to get a map
6 to find Cadrain's.

7 Q Yeah, but they would have already been by all the
8 landmarks they were looking for, if they were
9 where Gail Miller was killed, they would have been
01:51 10 there?

11 A Been at Cadrain's?

12 Q Well, they were a block away, with the steeple and
13 everything else they were looking for?

14 A My understanding was that they weren't too
01:51 15 familiar with the area.

16 Q Okay. And I'm focusing, sir, on this point in
17 time around the time where Cadrain came in and up
18 and to the laying of the charge. So you had from
19 David, you had his story, you had what he told
01:51 20 you?

21 A Right.

22 Q Umm, and then you had Cadrain. Now regarding
23 Cadrain, there were clearly problems with him,
24 were there not? And I will be more specific. His
01:51 25 questioning in Regina, now I appreciate you say he



1 raised it with you but we did see your report
2 where you were concerned about it, he took the
3 position that he learned about the whole thing in
4 Saskatoon from his parents or mother, you recall
01:52 5 that, he got back and found out about it?

6 A I think what he, I can't remember the exact words,
7 but he learned about the whole story when he got
8 back.

9 Q Yeah. But did anybody go to Regina to find out
01:52 10 what he was questioned about, why he was
11 questioned, what he said?

12 A I didn't. I don't know if other officers did.

13 Q Well wouldn't that be something that perhaps
14 should have been done?

01:52 15 A I expect so.

16 Q And do you know why they questioned him in Regina?

17 A Why they questioned Cadrain?

18 Q Yeah?

19 A I think he was arrested or held on a vagrant
01:52 20 charge.

21 Q Okay, but are you aware of the licence plate being
22 taken down of Wilson's car and people being in Reg
23 -- police being interested in it?

24 A I believe I understand that the car was searched
01:53 25 when they returned.



1 Q Okay, but they had the licence number and that led
2 them to Cadrain; did you know anything about that?

3 A No, sir.

4 Q Okay. Leaving that aside, do you not think it
01:53 5 would have been good to go to talk to the Regina
6 police and say 'look, what did this kid say, what
7 did you say to him, how did he react'?

8 A I -- they may have done that, I don't know.

9 Q You don't know?

01:53 10 A I didn't.

11 Q Okay. You also know he lied to you about taking
12 drugs the night before?

13 A Yes.

14 Q And as time went on he added the Mafia, he added
01:53 15 the idea that David was going to get the witnesses
16 killed, and things like that?

17 A I don't know if it was added on or it was given in
18 the original statement, I can't remember.

19 Q Okay, but whatever it is, it didn't make any sense
01:53 20 to you?

21 A Yeah, that's true, I had doubts.

22 Q Yeah. And did you question him about that, like,
23 'why didn't you tell me about this before'? I
24 mean you don't forget something like that; would
01:53 25 you not agree?



1 A As I say, I can't really remember, okay.

2 Q But I don't mean you, I don't mean you, but as an
3 officer you would expect anyone to remember,
4 within a, at least for a month that a person said
01:54 5 'let's get a gun and kill people', it doesn't
6 drift out of your mind; right?

7 A I could believe that.

8 Q And if you are coming into the police station the
9 first time and you are going to tell them you may
01:54 10 suspect somebody in a killing, the first thing you
11 would say -- or the second thing after blood I
12 suppose -- would be 'he also told me he wanted to
13 get a gun and kill people, the witnesses'?

14 A I would think it would be important.

01:54 15 Q Yeah. So did you or anyone ever go to him and say
16 'look, look fella, I mean this is not making a lot
17 of sense to me here, you are adding things that
18 are so important you couldn't have forgotten them,
19 either you are holding back or you are lying to
01:55 20 us'; was there any of that critical looking at
21 him?

22 A All I can say in answer to that is that I know he
23 was interrogated several times and what all
24 questions were asked I can't remember.

01:55 25 Q But do you remember him also coming up with more



1 fanciful tales about virgins in bathtubs and all
2 that sort of stuff?

3 A I remember that but I don't remember when it came
4 up.

01:55 5 Q But didn't it cause you serious concern about him?

6 A When I heard about this it was, I think, after the
7 trial.

8 Q Okay. Now if I understand correctly, and this may
9 be a test of your memory, but you indicate that
01:55 10 you took some solace in the fact that a
11 five-year-old indicated that he had seen blood
12 also?

13 A Yes, it -- I placed some faith in that story.

14 Q Well, isn't that something that would find its way
01:56 15 into some report somewhere?

16 A It should have, and I suspect it's in my notebook,
17 but --

18 Q Well even if it's in your notebook that's pretty
19 significant, but whether it's a five-year-old or
01:56 20 not, that somebody in the house confirms blood?

21 A And it may have been on the file at one time, I
22 don't know.

23 Q Okay, it's -- you know there is no sign of it?

24 A I know that now.

01:56 25 Q There is no sign of that at all. And, now,



1 thinking about that, so you would have gone to a
2 house to find out if anybody else saw blood; is
3 that what it was?

4 A I'm sure we questioned them.

01:56 5 Q And how would you know the five-year-old was
6 there?

7 A Probably the parents told us, or somebody.

8 Q And how would you identify to the five-year-old a
9 month earlier, like, how would the five-year-old
01:56 10 know what you are talking about?

11 A He was probably --

12 Q And --

13 A -- questioned by other members of the family did
14 he see something.

01:56 15 Q Well keep in mind this is a month or so later.

16 A Right.

17 Q Okay. It's kids coming to the house and leaving;
18 would you expect a five-year-old to remember kids
19 coming to the house a month earlier and leaving?

01:57 20 A I suppose that's what impressed me, that child
21 remembering that long back.

22 Q But at the same time you knew that the Danchuks
23 didn't see blood, you knew that nobody else
24 appeared to see blood anywhere on David?

01:57 25 A I recall that.



1 Q But you took solace in a five-year-old?

2 A I don't know whether I would put that it way, but
3 it made some impression on me.

4 Q So you tried to found out what anybody else in the
01:57 5 house saw?

6 A Correct.

7 Q Well how could you miss the Fishers?

8 A I didn't realize there was anybody downstairs.

9 Q No, but I mean if you are raising the question, I
01:57 10 presume it would be 'who else would have been in
11 the house that day?'

12 A And I wouldn't be surprised if that question was
13 asked.

14 Q And I presume the answer would be 'just us and the
01:57 15 Fishers downstairs'?

16 A And I don't recall the Fishers' name ever coming
17 up, it's not in any report of the people that were
18 there.

19 Q No, I appreciate that, but what I am saying is
01:58 20 that you, if you had actually gone so far as to
21 determine a five-year-old was in the house, it's
22 hard to imagine you wouldn't have found out there
23 were people living downstairs. But returning then
24 to Wilson, you were aware that he had changed his
01:58 25 stories?



1 A Yes.

2 Q And that he had done it by increments, little bits
3 at a time?

4 A Yeah, I would say that.

01:58 5 Q And, really, nothing he said could ever be
6 verified, could it, by somebody independent?

7 A Not by somebody independent.

8 Q Didn't that cause you concern?

9 A Apparently not.

01:59 10 Q He couldn't identify the location; could he?

11 A No.

12 Q Now keeping in mind that this is an area where he
13 says he was stuck and walked out for 15 minutes
14 and he couldn't tell you where that was; is that
01:59 15 right?

16 A That he couldn't tell us, that's correct.

17 Q He had no trouble with Danchuks, he had no trouble
18 with Trav-a-leer, but this crucial incident he
19 couldn't identify the location; wouldn't that
01:59 20 cause you a great deal of concern?

21 A I know they weren't familiar with the city, it was
22 a, I think a half-dark, very frosty morning, you
23 know, I think you would have -- if you didn't
24 notice it you would have trouble identifying
01:59 25 places.



1 Q Okay. But did it cross your mind as a grave
2 concern is the fact that nobody saw any of this,
3 like no independent person saw Wilson walking
4 around looking, a car stuck, umm, nobody saw
02:00 5 anything?

6 A I wouldn't be surprised at that, because on a
7 morning of what we understand to be 41 below, I am
8 doubtful whether there was too many people around.

9 Q Well your files show there were many around. The
02:00 10 Merrimans are waiting for a taxi right at the
11 spot?

12 A Oh, I'm not saying there was no people, but there
13 was certainly -- I'm only assuming that, on a
14 morning like that, there wouldn't be much traffic
02:00 15 or pedestrians.

16 Q Well, but you would think somebody, if a man is
17 walking for 15 minutes in the area looking around
18 and a car was stuck you would think somebody would
19 see something?

02:00 20 A And maybe somebody did see him.

21 Q Okay. But you couldn't find anybody?

22 A We couldn't find anybody.

23 Q Okay. Now, if you turn to John, she had changed
24 her story; right?

02:01 25 A That's correct.



1 Q And that the story she changed to had many
2 problems in it as Mr. Lockyer took you through?
3 What I am getting at is, firstly, she says that
4 she was reminded because she saw the bloodstained
02:01 5 dress; do you remember that?

6 A I recall that.

7 Q That's a bit hard to understand, isn't it, given
8 the story she tells? She never would have seen a
9 bloodstained dress.

02:01 10 A Well, originally, no.

11 Q Yeah. No, she never did, even at the end she
12 never saw a bloodstained dress.

13 A I can't recall what I read here about what Mr.
14 Roberts had said she had said, but she --

02:01 15 Q She said she saw a stabbing through a coat.

16 A Okay.

17 Q Okay? So how a bloodstained dress would remind
18 her of anything is difficult to fathom. Even her
19 story about a stabbing through a coat and not a
02:02 20 dress doesn't match the facts.

21 A Never been able to understand it.

22 Q Well we understand it now; don't we?

23 A I don't know whether I do, as to --

24 Q Well that's how Fisher operates. He did -- all
02:02 25 the crimes, he takes the clothing off, lies them



1 on them, covers their faces, we know how it works.
2 That explains what happened.

3 A I wasn't aware of all that.

4 Q Okay. But that's the explanation, clearly. And
02:02 5 that the sweater was inside out, if you -- you
6 don't recall or do you recall that?

7 A I probably knew it at the time but I --

8 Q Yeah. So it didn't match Nichol John's story, and
9 we know why, it didn't happen, so we know that.

02:02 10 But I'm wondering why you didn't see that earlier,
11 is what I am trying to get at. But you did allude
12 to something this morning where she seems to
13 recall the purse in the garbage; you recalled that
14 with Mr. Lockyer I think it was?

02:03 15 A Yes, I believe so.

16 Q Yeah. You said it sounded a bit funny to you, and
17 I totally agree with you, isn't that the kind of
18 thing that you either remember or you don't?

19 A I would assume so.

02:03 20 Q I mean if you are watching a murder and you see
21 somebody put a purse in a garbage, either you see
22 it or you don't, you don't see to remember maybe
23 it happened; wouldn't you expect that?

24 A I would expect that.

02:03 25 Q And that was what you were alluding to this



1 morning that it sounded kind of funny. And then
2 of course you have her behaviour, which appears to
3 be, to the Danchuks and everybody else, quite
4 normal, not quite consistent with somebody who has
02:03 5 just seen a horrific murder; correct?

6 A I don't know whether the Danchuks -- excuse me --
7 I don't know whether Danchuks made any comment
8 about her being normal or not, I can't recall.

9 Q Okay. And as Commission Counsel asked you, it
02:03 10 does seem kind of improbable that people, or at
11 least David, or anyone would embark on a robbery
12 which either was planned to be a rape or escalated
13 with the getaway car stuck; wouldn't that sound
14 kind of strange?

02:04 15 A Not the smartest thing to do.

16 Q Well it's about the dumbest thing to do; isn't it?

17 A Probably.

18 Q I mean can you imagine the picture of you've got a
19 rape/murder and you are waiting for a car to come
02:04 20 by for two strangers to push you out of where you
21 are stuck? It's kind of ridiculous, isn't it?

22 A I would guess that.

23 Q One, the one factor that maybe gave you some
24 comfort was the idea of the compact; correct?

02:04 25 A I suppose it coincided with the fact that there



1 was something missing, or could be missing, at the
2 time.

3 Q Right. But no compact was found in any ditch?

4 A That's correct.

02:05 5 Q And was any effort made to see if Gail Miller's
6 compact was still in her purse?

7 A I believe some investigators checked that, yes.

8 Q Yeah. And whether any members of the Miller
9 family could identify a compact that matched any
02:05 10 description that may have been given?

11 A I know some people checked on it, but what the
12 results were, I can't remember.

13 Q So would it be fair to say that, when you look
14 back at it now, you see all these flaws or
02:05 15 problems in what these kids were saying, Wilson,
16 John?

17 A Looking back now I can see some.

18 Q What I say to you makes sense, doesn't it, in
19 terms of the problems?

02:05 20 A In some aspects, yes.

21 Q Yeah. But is it fair to say you weren't seeing
22 them then?

23 A Apparently not.

24 Q And might that be what is called tunnel vision,
02:06 25 that you were focused so much you weren't seeing



1 the problems, you were only focusing on what might
2 implicate?

3 A I thought, at the time, we were looking at
4 everything we thought plausible.

02:06 5 Q But you see now that you weren't?

6 A I suppose you can assume --

7 Q Sorry, I didn't mean to cut you off?

8 A Yes.

9 Q What I am getting at is it finds its way into
02:06 10 police files that David is criticized because he
11 says he can't find Cadrain's but he's good enough
12 to find drug houses; do you recall that general
13 criticism of him?

14 A I don't know if it was a criticism, it was just a
02:06 15 fact that --

16 Q A fact, I mean it's like looking at him under a
17 microscope almost, but at the same time I can go
18 through a whole file and I can't see one point
19 where it said 'why would somebody rob somebody
02:07 20 when their getaway car is stuck?' I can't see
21 that anywhere that anybody put that forward. You
22 see what I am getting at?

23 A I see what you mean.

24 Q So what I am saying is it would appear that,
02:07 25 collectively, the police were going down one



1 path -- and tunnel vision, we know it exists --
2 going down one path and not looking critically or
3 looking at those things which exculpate the person
4 who you are focused on?

02:07 5 A I don't know whether I completely agree with that.
6 I thought we looked at, at the time, all the
7 aspects there were --

8 Q Well I think an extension of that would be
9 (V4)---- (V4)---. I mean she couldn't fit in any
02:07 10 theory that linked David Milgaard; right?

11 A I don't remember who --

12 Q The lady 800 yards away.

13 A Okay.

14 Q Okay. There is no theory that can implicate David
02:07 15 Milgaard in that?

16 A Not that I am aware of.

17 Q Okay.

18 A Okay.

19 Q So it's just discarded and left out is what
02:08 20 happens. Are you aware that the jury never heard
21 a word about it?

22 A I'm not aware of what the jury heard.

23 Q Now do you know where her -- the assault on
24 (V4)---- (V4)--- occurred?

02:08 25 A I was never at the scene but I know the address



1 that was given.

2 Q But, being familiar with Saskatoon, you can
3 picture it in your mind?

4 A I can picture in my mind where she was.

02:08 5 Q Yeah. And if you went from there down the railway
6 tracks you would get to Cadraains'; wouldn't you?

7 A I'm not that familiar at this time --

8 Q Okay.

9 A -- but you may be right.

02:08 10 Q Okay. But I -- Mr. Lockyer covered it with you so
11 I'm not going to, but I take it that, or am I
12 right that you are saying that you wouldn't expect
13 a person who has committed a horrible rape/murder
14 to still wish to attack?

02:09 15 A Not within minutes in the same area, it, it just
16 doesn't sound reasonable to me.

17 Q But there's nothing reasonable about rape/murder?

18 A You are right.

19 Q Okay. So you can't put yourself in your mindset
02:09 20 as to what you would do, but I'm going to suggest
21 to you that Larry Fisher is what they call a
22 punishment rapist and hates women, and when he has
23 committed the act he's still on a high, coming
24 down, and would still attack.

02:09 25 A I was not aware of that.



1 Q Okay. But you also do agree with the idea that to
2 have two people committing sexual assaults in
3 41-below Celsius weather at around 7:00 in the
4 morning is beyond coincidence that it be two
02:10 5 different people?

6 A I find that easier to believe than one person done
7 it.

8 Q Do you know of anybody else who has ever committed
9 a sexual crime in Saskatoon at 40 below at 7:00 in
02:10 10 the morning?

11 A I don't.

12 Q In all your history as a policeman?

13 A No, I don't recall that.

14 Q So the only two happened within minutes of each
02:10 15 other on the same morning by two different people?
16 It sounds pretty farfetched, doesn't it?

17 A Yes, it does.

18 Q Okay. Now we mentioned earlier that the three
19 kids basically were consistent in their original
02:10 20 statements and subsequent questioning for a time
21 in not giving any opportunity for David to have
22 committed a crime?

23 A That's true.

24 Q And Mr. Lockyer asked you and took you through the
02:11 25 portion of the time after May 16th, as to your



1 view as to what exactly happened, and if I heard
2 you correctly you say that the kids lied; that is
3 John and Wilson?

4 A I know that now.

02:11 5 Q Yeah. You know they lied?

6 A Yes.

7 Q Okay.

8 COMMISSIONER MacCALLUM: About what?

9 MR. WOLCH: They lied -- well in --

02:11 10 COMMISSIONER MacCALLUM: But what, they
11 lied on May the 24th or they lied in their first
12 version, that's what I want you to get down.

13 MR. WOLCH: Oh, I'm sorry, I'm sorry. All
14 right, thank you, Mr. Commissioner.

02:11 15 BY MR. WOLCH:

16 Q What I am getting at is that when they were
17 speaking to you in May, Wilson incrementally and
18 John after speaking with Mackie and being with
19 Roberts in particular, whatever it is, those are
02:11 20 lies?

21 A That's correct.

22 Q I mean not every word is a lie --

23 A Yeah.

24 Q -- but the part that's important is a lie?

02:12 25 A Most of it.



1 Q Right, okay. And then are you aware of evidence
2 that has been given that the two of them said to
3 each other 'let's give them what they want'; are
4 you aware of that, have you heard that?

02:12 5 COMMISSIONER MacCALLUM: Wilson and John he
6 means?

7 BY MR. WOLCH:

8 Q Yeah, Wilson and John saying 'okay, let's just
9 give them what they want'?

02:12 10 A Yeah, I think I have seen that somewhere.

11 Q Okay. Now you will agree with me that, when
12 people lie, they usually have a reason; right?

13 A Sometimes.

14 Q I mean if we were to ask Larry Fisher, 'did you
02:12 15 rape and kill', he might say 'no', and we say
16 'well he doesn't want to admit he did it', that's
17 a reason?

18 A Okay.

19 Q Okay. I mean people have reasons for lying, I
02:12 20 mean, normally speaking?

21 A Normally.

22 Q Okay. To what do you attribute the reason is that
23 these kids lied on this occasion, like, why?

24 A I don't know.

02:13 25 Q You can't think of a reason that they would lie?



1 A Originally you are talking about?

2 Q No, no, I'm talking about, yeah, in May. Like --

3 A When they were implicating Mr. Milgaard?

4 Q Absolutely.

02:13 5 A Yes. I don't know why.

6 Q Can you give a reason why they might have?

7 A I cannot.

8 Q Do you agree that the only imaginable reason is

9 that they felt pressured and manipulated -- and

02:13 10 were manipulated?

11 A No, I can't agree with that.

12 Q I'm not saying you should agree with it, but is

13 there any -- that is a feasible reason?

14 A That's a feasible reason.

02:13 15 Q Can you think of any other feasible reason?

16 A No.

17 Q And your question about Wilson in particular, and

18 Cadrain, in terms of them later on saying that

19 they were manipulated or coerced or whatever,

02:14 20 nothing nice about the police, you know what I am

21 talking about?

22 A I know that, yes.

23 Q Okay. Now Wilson, when he came forward and said

24 that, you would agree with me was putting himself

02:14 25 in jeopardy?



1 A Said which, sir?

2 Q Well when Wilson came forward and said 'look, I
3 lied because I was manipulated', or 'coerced' or
4 whatever words he used, he is putting himself in
02:14 5 jeopardy?

6 A In what respect?

7 Q Well he committed perjury at the trial?

8 A I guess he could have been. I don't know the
9 legal part of that but --

02:14 10 Q Okay. But you do agree with me that you can't
11 think of any other explanation as to why they
12 would lie that is feasible other than coercion
13 and/or manipulation?

14 A Yeah.

02:15 15 Q And it's fair to say that when you first talked,
16 or at least not you personally, but when Wilson
17 and John were first interviewed they knew nothing
18 about the murder?

19 A That's correct.

02:15 20 Q And that's nothing surprising, is it, if you are
21 living in another city? I mean kids don't pay
22 attention, necessarily, as to crimes in other
23 cities, or get any details, that's not surprising?

24 A True.

02:15 25 Q Correct?



1 A You are correct.

2 Q And we know now they didn't know anything about
3 the murder?

4 A I don't know that either.

02:15 5 Q Well, how could they know something, they left
6 town and Larry Fisher did a crime?

7 A I don't believe they did, but they could have read
8 a paper or they could have done anything.

9 Q They could have read a paper in Edmonton or
02:15 10 whatever?

11 A Yeah.

12 Q And remembered it? Okay.

13 A They may not have, I'm just saying that's a
14 possibility.

02:16 15 Q Okay. But would that be the only possibility,
16 other than the police, where they could have
17 gotten the information they used to describe the
18 crime?

19 A You are posing a possibility, I know that I don't
02:16 20 agree with it. I had nothing to do with it and I
21 don't know of anybody else that did, so I just
22 have to leave that there.

23 Q Okay. Well, I'll try not to leave it there for a
24 second, I'll try to rephrase that. I'm not saying
02:16 25 you yourself were responsible, but I'm asking you



1 as the man who was there, and, I mean, you are the
2 chief officer, in fact, you were the only one that
3 went to Ottawa for the Supreme Court, as the man
4 who was there, can you see any other source of
02:16 5 information to these kids to what they put in the
6 statement other than police?

7 A I just can't answer that.

8 Q So you can't see any other source?

9 A I don't know.

02:17 10 Q Mr. Karst, I've covered basically the first half
11 in the sense that there really are two aspects to
12 this case, we have Milgaard and we have Fisher. I
13 want to get into the Fisher end of it now. Now,
14 there's no doubt about it that when you were doing
02:17 15 the Miller investigation you knew about the rapist
16 who was terrorizing a good part of Saskatoon;
17 correct?

18 A I would put it this way, I probably knew of rapes
19 that were occurring.

02:18 20 Q But in the newspapers they were looking for a
21 rapist?

22 A They probably were.

23 Q And when the investigation of Miller turned up,
24 there was certainly involvement with (V1)- and
02:18 25 (V2)----- to try to link the crimes, it was a



1 logical conclusion?

2 A I understand some did that.

3 Q It was a correct conclusion; right?

4 A Probably was.

02:18 5 Q And --

6 A Excuse me. (Pours water) Thank you.

7 Q And in fact you had some involvement with the
8 (V5)--- rape, Mr. Lockyer showed it to you this
9 morning?

02:18 10 A Yeah, that's right.

11 Q In fact, you had questioned Cadrain about that or
12 talked to Cadrain?

13 A I don't think I did, but I read the report.

14 Q You saw Cadrain's name in there?

02:19 15 A Yes, I did.

16 Q And I'm a little unclear about you and Nordstrom
17 as a combination going to Winnipeg. Nordstrom was
18 very senior I take it?

19 A Very much so.

02:19 20 Q So that means to me at least that the police took
21 this very seriously?

22 A I don't know what conclusion I could draw to that.

23 Q Well, isn't it an obvious conclusion, you know,
24 that the big guns don't go out every day?

02:19 25 A Well, I suppose the information was just as good



1 when I went to Winnipeg to see Mr. Milgaard, but
2 they didn't send a senior officer. I don't know
3 what conclusion to draw from that.

4 Q Well, I'm just saying the obvious one is that the
02:19 5 police took it very seriously, that they sent out
6 a high-ranking officer?

7 A I could construe it that way I guess.

8 Q And you say you are not clear as to why you were
9 chosen?

02:20 10 A I certainly am not.

11 Q But your being chosen is unusual?

12 A I would have thought so.

13 Q But you don't recall obviously questioning anybody
14 as to why me?

02:20 15 A No, I didn't question the chief's orders.

16 Q Through your counsel, a number of witnesses who
17 testified here have commented upon you being a
18 good investigator and, more importantly, a good
19 questioner or interrogator or whatever word has
02:20 20 been used, we've heard that quite a few times?

21 A I have.

22 Q Do you agree with that assessment?

23 A I'm not going to agree or disagree. I don't know.
24 I'll leave that to other people to decide.

02:20 25 Q What would make you a good interrogator, why would



1 you be better than someone else? What's your
2 talent?

3 A I don't know.

4 Q It's a reputation you probably have or have
02:20 5 enjoyed, and it's not a bad one, it's a good one.

6 MR. FOX: Actually, I think, Mr.
7 Commissioner, I'm not aware of anybody referring
8 to Mr. Karst as a good interrogator.

9 COMMISSIONER MacCALLUM: No, I can't
02:21 10 remember that either.

11 MR. WOLCH: A good questioner I thought.

12 MR. FOX: I think he was referred to as a
13 good investigator.

14 COMMISSIONER MacCALLUM: That for sure he
15 was.

16 BY MR. WOLCH:

17 Q I thought a good questioner, I thought, but I'll
18 have to check that. I'm pretty confident I heard
19 somebody say you were very good at taking
02:21 20 statements?

21 A I don't recall it, but I'm not saying it didn't
22 happen.

23 Q Okay. I thought somebody gave that as an
24 explanation as to why you went to Winnipeg,
02:21 25 because you were good at taking statements. In



1 any event, this was a very serious matter that you
2 went there for?

3 A Absolutely.

4 COMMISSIONER MacCALLUM: To Winnipeg?

5 BY MR. WOLCH:

6 Q To Winnipeg. I'm sorry, Mr. Commissioner. And I
7 take it you were going there on four matters,
8 there was four matters to clean up, or was there
9 more?

02:21 10 A From what I have understood, there was two, but
11 there could have been four. We're talking about
12 interviewing Fisher?

13 Q Yeah.

14 A Yes.

02:22 15 Q Well, you know that Fisher in the end pled guilty
16 to (V1)- and (V2)-----?

17 A I understand that.

18 Q So it's hard to imagine you wouldn't be there to
19 question him about those is it?

02:22 20 A As I said before, I can't recall questioning him
21 and I thought if I would have, I would have had
22 statement forms saying I refuse to answer the
23 questions or whatever.

24 Q Well, to the best of your knowledge, you and
02:22 25 Nordstrom were the only two that went; is that



1 correct?

2 A To the best of my knowledge.

3 Q And you are basing that on having read reports and
4 looked at the file?

02:22 5 A Yes.

6 Q And (V5)--- was a file you had some peripheral
7 involvement in?

8 A I don't recall it, but I see my name connected
9 with it.

02:22 10 Q Would it be fair to say that whatever files you
11 were going there to question him on you would have
12 studied?

13 A I don't know whether I would have studied them.
14 Like I said earlier, we had information that Mr.
02:23 15 Fisher wanted to plead guilty to two of our files.
16 Not much use of me studying the file if I know
17 ahead of time he's going to plead guilty.

18 Q Well, surely you would want to know details?

19 A I think I had sufficient details there for the
02:23 20 charge.

21 Q Well, sometimes you can get false confessions?

22 A That's true.

23 Q You like to know you have the right guy and you
24 want to know what the facts are?

02:23 25 A I guess they would have sent me back for another



1 statement.

2 Q No, but I'm thinking if you flew there or whatever
3 you did, you would at least be reading reports and
4 say I'm going to know what I want to talk to the
02:23 5 guy about?

6 A I'm quite sure I would have familiarized myself.

7 Q That's what I'm getting at. It's hard to imagine
8 you wouldn't.

9 A Essential facts.

02:23 10 Q Our question is which files did you look at,
11 whether it was two or four, and what you are
12 saying is you know you would have looked at --

13 A Two.

14 Q -- (V5)--- and (V3)-----, but not necessarily
02:24 15 (V1)- and (V2)-----?

16 A Yes.

17 Q Now, (V1)- and (V2)----- are the two that are most
18 familiar with Miller; are they not?

19 A I don't know that.

02:24 20 Q Well, they both find their way into the Miller
21 file.

22 A Okay.

23 Q Okay? We know that, those are the two files.

24 (V5)--- was after, for example, and (V3)----- was
02:24 25 an indecent assault. (V1)- and (V2)----- are the



1 ones who we have blood types and things like that,
2 so is it coincidence that Larry Fisher was
3 avoiding the two that he was guilty of that most
4 are connected to the Miller file? You see the
02:24 5 connection between those two in particular?

6 A Not at this time I cannot. I probably didn't then
7 either.

8 Q But I take it to determine whether, you know, what
9 you may have looked at at that time, we have to
02:24 10 rely in part on reports and what we can glean from
11 them, and I'm going to suggest to you that those
12 rapes, that is, (V1)-, (V2)----- in particular,
13 were well known, not just to the police, but to
14 the general public. They were publicized, they
02:25 15 were advertised, there was a deep concern to the
16 general public. Would you agree with that?

17 A I understand there was information for the public.

18 Q If the public heard about it, it would be hard to
19 imagine that a detective with your training and
02:25 20 experience wouldn't be well versed into it?

21 A I'm sure I was aware of them, but as far as well
22 versed into them, they were not in my division and
23 I don't think I would study them.

24 Q I wonder if we could look at 261053, and before I
02:25 25 do, Mr. Commissioner, I'm at your direction as to



1 when you would like a break. Whatever you want.

2 COMMISSIONER MacCALLUM: When did we start,
3 1:30? Another 15 minutes.

4 MR. WOLCH: We only go to 3:30, that's why
02:26 5 I'm asking, so whatever you -- it doesn't matter.

6 COMMISSIONER MacCALLUM: Well, we can -- do
7 you need a break?

8 MR. WOLCH: No, I don't need a break.

9 COMMISSIONER MacCALLUM: Does anybody else
10 need a break?

11 MR. WOLCH: There's no point in breaking at
12 three o'clock or something.

13 COMMISSIONER MacCALLUM: Can you go to
14 3:30?

02:26 15 A Yes, I'm fine, Mr. Commissioner.

16 MR. WOLCH: Whatever.

17 COMMISSIONER MacCALLUM: Let's do it that
18 way.

19 BY MR. WOLCH:

02:26 20 Q Okay, now, I think this was shown to you before,
21 if we can just -- this is a letter from, to Regina
22 from Saskatoon, and if we can turn the page. Now,
23 it goes through the various charges and details
24 the charges and what the facts are and it deals
02:26 25 with (V1)-, (V2)----- and, you know, it says



1 (V2)----- was unable to identify Fisher from
2 photos, and Ms. (V1)- viewed police photos,
3 including that of Fisher, and was unable to
4 identify him as the assailant. You see that?

02:27 5 A I see that.

6 Q Now, if we can turn the page, it says here:

7 "During October 22, 1970, Members of our
8 Force interviewed Fisher while he was
9 confined to cells at the Fort Garry,
02:27 10 Manitoba, Police Station. Fisher
11 admitted being responsible for the rape
12 of (V5)-- (V5)----- (V5)--- ... and also
13 the attempted rape of (V3)-- (V3)
14 (V3)----- ... Fisher was questioned
02:27 15 about the offences committed on October
16 21 and November 13, 1968, and denied any
17 knowledge of same."

18 You see that?

19 A Yes.

02:28 20 Q Well, that would seem to suggest that you and
21 Nordstrom would have questioned Fisher about (V1)-
22 and (V2)-----, which makes total sense.

23 A It wouldn't surprise me. As I said -- but I think
24 there should have been statements. Of course,
02:28 25 there's no files.



1 Q Oh, I agree there should be something, but we
2 haven't got it, so we have to try and create and
3 work with what we have, but what I'm saying is
4 that right here it would appear that you and
02:28 5 Nordstrom would have questioned Fisher about the
6 two that he denied, (V2)----- and (V1)-.

7 A It appears that it was brought up, unless somebody
8 else questioned him about them.

9 Q Well, it says during October 22, 1970.

02:28 10 A Obviously the Winnipeg department had questioned
11 him because we've already had responses that he
12 was wanting to pled guilty to two. Maybe they
13 questioned him on these other ones, I don't know.

14 Q I appreciate that, but what I'm saying is this
02:29 15 seems to clearly indicate that you and Nordstrom
16 would have questioned him about (V1)- and
17 (V2)-----?

18 A It doesn't clearly indicate that to me.

19 Q Well, Fisher -- it says here:
02:29 20 "Members of our Force interviewed Fisher
21 while he was confined to the cells. He
22 admitted being responsible for the rapes
23 of (V5)--- and (V3)-----."

24 Obviously that's the members of the force isn't
02:29 25 it? I mean, it follows that what the author is



1 saying, that he admitted to the members of the
2 force these rapes, otherwise it wouldn't make any
3 sense. Do you see that?

4 A That's what it appears.

02:29 5 Q And when it goes on and says he was questioned
6 about the others and denied it, it would be to the
7 same people, as it's a paragraph talking about the
8 interviews of October 22nd.

9 A Possible.

02:29 10 Q It's also logical, isn't it, it's hard to imagine
11 you would go there and not question him at all
12 about certain offences which he ends up pleading
13 guilty to months later?

14 A As I said, I wouldn't be surprised if I did
02:30 15 question him.

16 Q Now, the -- there was some indication that you
17 were the better questioner versus Nordstrom; is
18 that correct?

19 A I've never seen Nordstrom question anybody, so I
02:30 20 don't know.

21 Q So then you must have questioned him then?

22 A I presume I did.

23 Q Okay. Now, there's no record of your questioning
24 him anywhere to your knowledge?

02:30 25 A Not that I'm aware of.



1 Q Now, might you -- sorry, can you leave that
2 document up, I'm not finished with it. Would you
3 agree with me that normally when you, Ed Karst,
4 question somebody, you are pretty thorough?

02:30 5 A I would like to think so.

6 Q I mean, David Milgaard talking about nothing took
7 20 pages?

8 A Oh, I think we were talking about lots.

9 Q No, but talking about not crime, he's talking
02:31 10 about what he did on a particular day.

11 A Yeah, okay.

12 Q Here we've got two rapes, you've got a chance to
13 break two major cases, hard to imagine you saying,
14 you know, "Larry, did you do it? No? Okay,
02:31 15 thanks." Right?

16 A I don't know what the circumstances were there
17 because I can't remember, but I assume that the
18 Fort Garry police had questioned him and it was as
19 a result of that that we went and took confessions
02:31 20 and probably didn't do any more thorough
21 investigations.

22 Q Well, you are asking a man whether he committed
23 two terrible rapes in Saskatoon and terrorized the
24 women of Saskatoon.

02:31 25 A We already knew he did that.



1 Q Not (V2)----- and (V1)-.

2 A Oh, not those two, no.

3 Q And surely you would have asked him a lot of
4 questions?

02:31 5 A I may have.

6 Q And the kind of thing, first of all, you would ask
7 for a blood sample or some sample because you had
8 the blood types of the assailant in both those
9 cases?

02:32 10 A I wasn't aware of that.

11 Q It was on the Miller file.

12 A Could have been.

13 Q And you had the (V1)- and (V2)----- files to
14 review when you went to Winnipeg, you had to have
02:32 15 had.

16 A I don't know.

17 Q I mean, surely you are not going to say this man,
18 who is very -- I mean, he's beyond being the prime
19 suspect in those cases, you are not going to have
02:32 20 him say to you I didn't do it and you are going to
21 walk away, you are going to ask him where he was
22 living, where he was working, was he working, who
23 was he living with, you are going to ask him a
24 whole bunch of questions. Doesn't that make
02:32 25 sense?



1 A I don't recall that, sir, so I can't answer it.

2 Q But does it make sense to you?

3 A I could ask him lots of questions. Yes, it makes
4 sense.

02:33 5 Q We're talking here about two very, very serious
6 crimes and you, as a dedicated officer, aren't
7 just going to, oh, well, I can walk away from
8 here, but let's look at the next paragraph:

9 "Police investigation revealed that
02:33 10 Fisher lived within a block of the
11 locations where these rapes occurred,
12 the description of the culprit is very
13 similar and the modus operandi is the
14 same in all four cases. Fisher claims
02:33 15 that he had never heard of these
16 offences being committed, which is hard
17 to believe as they happened within a
18 three week period in the same area and
19 received wide publicity."

02:33 20 You see that?

21 A I see that.

22 Q Now, I just put it out as interest, the deputy
23 chief thinks Fisher should have known about those
24 rapes being committed in the area, so you would
02:33 25 think the police, all police would know about it;



1 right?

2 A That's his version.

3 Q Yeah. Even Fisher should know. And so what you
4 are looking at is Fisher lived within a block of
02:34 5 where the rapes are committed; right?

6 A I -- okay, go ahead.

7 Q You see that?

8 A I see it.

9 Q So you would want to know where Fisher lived?

02:34 10 A I believe I seen on the statements we took from
11 him, I think there's addresses on there.

12 Q But where did he live for (V1)- and (V2)-----?

13 A I don't know.

14 Q But you must have found out?

02:34 15 A I can't answer that. I don't know.

16 Q But you are there questioning him about offences
17 and one has to assume you were prepared to
18 question him, that you didn't just go all the way
19 to Winnipeg with no information, you and
02:34 20 Nordstrom, so you are there prepared to question
21 him, you know that these crimes are committed
22 close to Fisher's residence, the two he admits.
23 It's right in his statements, you know he's living
24 close to his crimes; right?

02:35 25 A Apparently.



1 Q You would want to know where he lived for (V1)-
2 and (V2)----- wouldn't you? "Larry, where were
3 you living on October 21st; Larry, were you living
4 on November 13th?"

02:35 5 A All I can say is that, as I repeated before,
6 obviously I went there with the intent of taking
7 two admissions which the Winnipeg police had.
8 Beyond that, I can't comment.

9 Q Were you not going there with the intent of
02:35 10 getting four admissions?

11 A I don't know because I can't remember that.

12 Q Logically you were; weren't you?

13 A Depending on what Inspector Nordstrom had
14 instructions or whatever.

02:35 15 Q Well, police investigation revealed where Fisher
16 lived when all these rapes occurred; right?

17 A That's possible.

18 Q And the way to find out where Fisher lived was to
19 ask him?

02:36 20 A I agree.

21 Q And the people who talked to him were you and
22 Nordstrom; right?

23 A Correct.

24 Q Okay. And I'm going to suggest to you that
02:36 25 assuming you asked him to account for where he



1 lived, he would have told you the Cadrain house?

2 A I can't answer that either because I don't know
3 what he would have told me.

4 Q Reasonable chance, isn't there?

02:36 5 A It's which?

6 Q There's a reasonable chance he would have given
7 you the address?

8 A He may have.

9 Q And if he had given you Cadrain's address, that
02:36 10 would have put up a red flag for you?

11 A It may have.

12 Q I want to now turn to Linda Fisher, I think her
13 name is, I think she was called Lillian, but I
14 think it's Linda. She came into the police
02:38 15 station, I think Mr. Lockyer took you through it,
16 and made a statement to the police which I believe
17 you indicated you saw, and with that premise, did
18 you note that she had the wrong address? Did you
19 see that?

02:38 20 A No.

21 Q Pardon me?

22 A No, sir.

23 Q Okay.

24 COMMISSIONER MacCALLUM: May I see it,
02:38 25 please?



1 BY MR. WOLCH:

2 Q Yes. 004921. Now, it starts off, her maiden name
3 is Linda Pambrum. Is Pambrum a name you are
4 familiar with?

02:38 5 A No, sir.

6 Q Just for interest, there's some indication Larry
7 might have had a Pambrum car on the night of the
8 murder. She says she married --

9 COMMISSIONER MacCALLUM: Could you get back
02:39 10 to the wrong address thing first, sir, so I
11 understand what that is?

12 MR. WOLCH: Oh. Here.

13 COMMISSIONER MacCALLUM: Oh, yes. So she
14 says 329 Avenue O South.

02:39 15 BY MR. WOLCH:

16 Q Yeah. Okay, she says something about Larry and
17 then his mother, Marcy, still resides there.

18 "We were living at 329 Avenue O South
19 ("O"?) when that nurse was found
02:39 20 murdered."

21 I think, though, that the address being wrong is
22 not really a problem because she goes on to say:

23 "David Milgaard was convicted of that
24 murder and was to have come to our house
02:39 25 that morning."



1 You see that?

2 A I do.

3 Q "He apparently knew the Cadrain family
4 who lived upstairs in that house."

02:40 5 Okay?

6 A All right.

7 Q So if you look at that, when she gives the address
8 as 329 Avenue O South, and with a question mark,
9 it indicates to me that she may not have been sure
02:40 10 of the exact address, but there can be no doubt as
11 to what house she's talking about. Do you agree
12 with that?

13 A I agree with that.

14 Q I mean, David Milgaard came to the house where the
02:40 15 Cadrain family lived?

16 A Yes.

17 Q "We lived in the basement suite. The
18 police have never talked to me about the
19 murder."

02:40 20 When you read that, that must have been quite
21 shocking to you?

22 A I don't remember when I read it and, as I said,
23 that report was never assigned to me although I
24 believe I had looked at it.

02:40 25 Q Okay, well, I won't go through all that,



1 Mr. Lockyer did and we have it on the record, but
2 what I'm getting at is whenever you read it, and
3 we can check with what you told Mr. Lockyer, would
4 it not have come as a shock to you to learn that
02:40 5 this guy Fisher was living in the Cadrain basement
6 and you as one of, if not the key investigator
7 didn't know that?

8 A I can't recall that.

9 Q No, but logically would you not agree that's how
02:41 10 you probably would have reacted?

11 A I would have probably wanted to look into it.

12 Q Yeah.

13 "I divorced Larry two years ago while he
14 was serving time for rape. He has been
02:41 15 involved in several cases of rape."

16 You see that?

17 A Yes, sir.

18 Q Now, as the man who questioned Fisher, the man who
19 got him confessing to two of the rapes and you
02:41 20 know he pled guilty to four, he's the Saskatoon
21 rapist, you are looking at this, doesn't -- when
22 she's talking about Larry Fisher and rape,
23 wouldn't that ring a bell?

24 A I never connected the rape, no.

02:41 25 Q So you are saying that you could look at this and



1 you see Cadrain and all the background of that,
2 you see the woman talking about Larry Fisher
3 having committed rapes and you know you are the
4 man who went and talked to him and nothing goes
02:42 5 off in your head about this?

6 A I don't know if it did or not.

7 Q So if it did, you chose to do nothing?

8 A Well, as I said earlier today, that if it was
9 assigned to somebody, not my business.

02:42 10 Q It's not your business? That's your best answer,
11 it's not your business?

12 A I'll put it a little more emphatically, that
13 Inspector Wagner assigned it to somebody else.

14 Q But you are the man who knows, you know Fisher,
02:42 15 you are the man who went to Winnipeg?

16 A As I said, I didn't recall that.

17 Q Well, you are a major investigator in the Milgaard
18 case, why wouldn't you just go and look up Fisher,
19 who is he, when did he plead guilty, what is this
02:42 20 all about?

21 A I just answered that, sir.

22 Q It's not your business, is that what it is? And
23 this is 1980ish, it's not that long after, you've
24 gone to Winnipeg to talk to probably the most
02:43 25 vicious rapist in Saskatoon history and he's pled



1 guilty to four of them and here you are reading a
2 statement, God all mighty, he lived in the
3 basement where Milgaard visited, and you say it's
4 somebody else's file?

02:43 5 A Besides that, I never knew -- that's what I said,
6 yes. I never knew that he pled guilty to four
7 files, I wasn't aware of it. Had I have, I don't
8 know if it would have made any difference.

9 Q You know he admitted it?

02:43 10 A Yes, two of them.

11 Q And when you charged and cautioned him, you said
12 you will be charged, you didn't say you may be
13 charged?

14 A Yes.

02:44 15 Q You said you will be charged?

16 A That's true.

17 Q Right?

18 A That's true.

19 Q And you say even out of curiosity you never went
02:44 20 back and said to anybody, "what happened with
21 those two rapes that Fisher denied to me?"

22 A Not that I ever recalled.

23 Q Likely you would have?

24 A I may have, but I don't recall that.

02:44 25 Q Likely you went and talked to them about it, he



1 denied them, you would have likely said to
2 somebody, "Whatever happened to those things?"
3 Right?

4 A Apparently I didn't.

02:44 5 Q If we can just scroll down, it says:

6 "Something has been bothering --"

7 You see here she says:

8 "The day of the murder or the day after
9 I found my paring knife missing. Larry
02:44 10 and I were not getting along well and I
11 said to him "You probably killed that
12 nurse." He went very pale but at that
13 time I didn't think any more of it. It
14 has been bothering me ever since,
02:45 15 especially when Larry started raping
16 women."

17 And then she goes on to describe the paring
18 knife.

19 "Larry was never questioned about this
02:45 20 case. I have a feeling that Milgaard
21 was innocent of that crime. I don't
22 know Milgaard. I have never seen him."

23 You see all that there?

24 A I do.

02:45 25 Q Now this is not a woman who has been fed details,



1 given information, or has any reason,
2 particularly, other than with appears to be her
3 conscience, to come forward, and she specifically
4 says about confronting Larry with 'you probably
02:45 5 killed that nurse' and him re -- and his reaction,
6 and her paring knife missing; those are all facts
7 that must have struck you, confounded you?

8 A Apparently it didn't.

9 Q One of the key bits of information that was
02:45 10 troubling to you as an investigator was that some
11 articles were found around the Cadrain home;
12 correct?

13 A Yes.

14 Q And now you have a reason for them to be there
02:46 15 because, here, you got a suspect living in that
16 home?

17 A Ten years --

18 Q Do you see that?

19 A Ten years later.

02:46 20 Q 10, 20, 30, who cares if you get the right guy,
21 living in the home at the relevant time; correct?

22 A Correct.

23 Q You have his wife saying her knife went missing,
24 he behaved somewhat inappropriate when she
02:46 25 confronted him with the killing, he lives in the



1 Cadrain basement, you've questioned him in
2 Winnipeg about rapes, that rapist was suspected of
3 being the rapist who killed Gail Miller, and you
4 are saying nothing registered with you?

02:46 5 A It didn't really come to me because it went to
6 somebody else.

7 Q No matter how you get something, if it's
8 important, shouldn't you deal with it?

9 A Well, if you are instructed by a senior officer to
02:47 10 do other work, I don't think you would -- if you
11 -- put it this way; if I was instructed, if my
12 name would have been on it, I'm sure I would have
13 looked into it. What happened with somebody
14 else's name I don't know.

02:47 15 Q But the other officer wouldn't have your personal
16 knowledge, you know the Cadrain house, you know
17 the address, you know everything, you know Fisher,
18 it's all personal to you; isn't that right?

19 A That's true.

02:47 20 Q Mr. Commissioner, I note we're going to 3:30, I
21 would prefer to have a very brief break to get my
22 throat back and I'll finish easily this
23 afternoon --

24 COMMISSIONER MacCALLUM: Sure.

02:48 25 MR. WOLCH: -- with plenty of time to



1 spare.

2 COMMISSIONER MacCALLUM: Would ten minutes
3 be all right?

4 MR. WOLCH: Sure.

02:48 5 (*Adjourned at 2:48 p.m.*)

6 (*Reconvened at 2:59 p.m.*)

7 BY MR. WOLCH:

8 Q Mr. Karst, I only have a few more questions for
9 you. I want to refer to a document, I wonder if
03:00 10 you could pull up the document I'm thinking about?
11 Thank you.

12 MR. HODSON: That's amazing.

13 MR. WOLCH: I wondered if you would notice
14 that.

15 BY MR. WOLCH:

16 Q This is your testimony in the Supreme Court, and
17 I'll try to get through it, this part fairly
18 quickly because there's only really one main
19 question I want to ask you. Umm, it starts off
03:00 20 where I'm asking you a few questions about
21 basically the Gus Weir situation and the
22 investigators who say they didn't know anything,
23 etcetera, etcetera, but I'm not focusing on that,
24 I'm just trying to get you into the frame. If we
03:01 25 can go, scroll down then, and I asked you what --



1 "Q They indicate that for years they
2 continued to try to solve those very
3 crimes."

4 If you can turn the page:

5 "A I can't understand it.

6 Q You were interviewed and gave a fairly
7 lengthy interview ...",
8 and I'm just going to speed read if I could:
9 "... to a lady named Gillian Findlay
10 from The Fifth Estate television show,
11 were you not?

12 A Yes, I was."

13 And I then go on to quote you, and we've gone
14 through this before, that's why I went through it
03:01 15 pretty fast:

16 "I certainly expect that back in
17 1971 when Fisher was transferred from
18 Winnipeg that it should have been
19 checked out."

03:01 20 Those would have been your words in the Gillian
21 Findlay interview. And reading, going down
22 fairly quickly, those are your words out of
23 Findlay:

24 "Q. 'I certainly expect that back in
25 1971 when Fisher was transferred from



1 Winnipeg that it should have been
2 checked out. But it never came to my
3 attention. I'm in the section at that
4 time and I don't recall that at all.
5 But maybe it never got to me. Because
6 if it had of, I'd have looked at it. I
7 can only speak for myself. I know
8 there's some shoddy work done places.
9 There's probably some done by some of
10 them there. But where are you going to
11 go that you don't find that? I don't
12 know. As sure as I am that everything
13 went right, I would still check that
14 out. If I was still there I would still
15 do it. I can't speak for somebody
16 else."

17 Then it goes on. Once again I point out this is
18 quoting yourself to Findlay:

19 "'It's very possible that there had been
20 rapes in Saskatoon prior to the Miller
21 case. I don't know. That's handled by
22 morality section. Rape isn't handled by
23 detectives and we were a different
24 squad. It's a funny way to work but
25 most are set up like that - you have a



1 morality squad. Why hadn't Joe sent
2 somebody up there to investigate Fisher?
3 I don't know.'

4 A. I don't.

5 Q. But you did. You went yourself.

6 A. Not about the Milgaard file.

7 Q. No, but you are being asked about
8 checking Fisher out in 1971, transferred
9 to Winnipeg. You said to Gillian
10 Findlay: 'I don't know anything about
11 it.'"

12 And this is the answer that I am concerned about:

13 "I may have told her that. I wouldn't
14 tell her everything."

03:03 15 A Right.

16 Q Do you see that?

17 A I see it.

18 Q And then, unfortunately, the Chief Justice put us
19 on a different train of thought. So I want to
03:03 20 now, 13 or so years later, carry on with that
21 thought. You say:

22 "I wouldn't tell her everything."

23 Now that suggests to me that you were mis --

24 deliberately misleading her. I'm going to give
03:03 25 you a chance to answer that. You see, you said



1 to her:

2 "I don't know anything about it."

3 Now your next answer isn't 'I didn't remember it'
4 or 'I couldn't remember it', your answer is:

03:04 5 "I wouldn't tell her everything."

6 Do you see that?

7 A I see it.

8 Q And I take it at that point in time you are saying
9 under oath that you did remember but you misled
03:04 10 her, you wouldn't tell her, in other words you
11 were being untruthful to her?

12 A That doesn't imply that to me. I think earlier in
13 this hearing I said I was some upset with her and
14 I wouldn't be telling her everything.

03:04 15 Q Okay. But if she is asking you about Fisher and
16 you say:

17 "I don't know anything about it."?

18 A That's probably what I told her.

19 Q Okay. But you are now saying that would be a
03:04 20 truthful answer; is that not the truth?

21 A About the Fisher --

22 Q About checking out Fisher in '71.

23 A I probably told her that.

24 Q So you are not trying -- that's what I am getting
03:04 25 at; what I understand you to be, your position to



1 be, that that is the truth?

2 A We --

3 Q That you didn't know anything about it, you
4 forgot?

03:05 5 A I'm not following you, sir.

6 Q Okay. You are being asked about --

7 A You are asking me?

8 Q Yeah. And I'm quoting to you from Gillian Findlay
9 where, basically, your position is 'I know from
03:05 10 nothing about Fisher'. Right?

11 A Probably.

12 Q Okay.

13 A Okay.

14 Q Now there is two reasons for saying 'I know
03:05 15 nothing', one is you really know nothing, --

16 A Right.

17 Q -- and the other one is you are not telling the
18 truth, or and you do know and you don't want to
19 tell her?

03:05 20 A I don't -- I don't believe that.

21 Q Those are the two possibilities; right?

22 A The possibility I just put to you was that I
23 wasn't telling her very much of anything in the --

24 Q Well, but hang on, you know or you believed that
03:05 25 there may not be any files anywhere? Dan Lett



1 told you that, as far as he knew, the Winnipeg
2 files weren't in existence?

3 A I don't remember that, but he probably did.

4 Q And you thought the Saskatoon files, most of them,
03:06 5 were gone?

6 A I don't know if I was aware of that either.

7 Q Okay. So this -- but there is two possibilities,
8 and I'm not asking you to accept one or the other
9 yet; one possibility is that you didn't know, you
03:06 10 forgot, okay?

11 A About the Fisher interview?

12 Q Yeah. You may have remembered going to Kandahar
13 for steaks but you didn't remember Fisher?

14 A That's not a possibility, that's a fact.

03:06 15 Q Well that's -- well, we'll get to that.

16 A Okay.

17 Q The other one is that you did remember Fisher but
18 because you thought, (a) they couldn't prove
19 otherwise, (b) it could be embarrassing, that you
03:06 20 would mislead her; those are the two
21 possibilities?

22 A And the other possibility is that I wasn't telling
23 her.

24 Q Not telling her what?

03:06 25 A Probably anything.



1 Q No, no, but what -- you could only -- when she
2 asked you about Fisher you could only say 'yes I
3 know', 'no I don't', and you could say 'yes, I
4 know but I'm not telling you'?

03:07 5 A I wasn't telling her I wasn't telling her. I'm
6 just --

7 Q But you might not be telling her because you
8 couldn't remember or you were deliberately
9 withholding?

03:07 10 A I don't think it's either one of them. Well, it
11 could have been the last one, maybe I was
12 deliberately withholding it from her.

13 Q So maybe you were deliberately withholding that
14 you remember going and talking to Fisher?

03:07 15 A No, that's not true.

16 Q Then what were you withholding?

17 A I can't tell you at this time if I was withholding
18 anything.

19 Q But you -- okay -- but you say here:

03:07 20 "I wouldn't tell her everything."

21 Right?

22 A I believe I said that.

23 Q Well you did say it under oath in the Supreme
24 Court?

03:07 25 A Okay.



1 Q And I'm going to suggest to you that the only
2 meaning to take from that is that you remembered
3 Fisher but you weren't going to tell her?

4 A I didn't remember it, so I don't know how I could
03:07 5 tell her.

6 Q Okay. Can you give me any explanation as to what
7 you meant by:

8 "I wouldn't tell her everything."

9 A I tried to, but that's all I can say.

03:08 10 Q You tried -- it's my last question, can you try it
11 one more time, I'd just like to --

12 A I don't know what else to say.

13 Q Yeah, but try one more time, it's my last
14 question, try to explain what you meant by:

03:08 15 "I wouldn't tell her everything."?

16 A I don't know.

17 Q You don't know?

18 A No.

19 Q Okay. Those are all my questions, Mr.
03:08 20 Commissioner.

21 COMMISSIONER MacCALLUM: Does anybody have
22 questions which can be finished in 20 minutes?

23 MR. HODSON: I think -- yeah. My
24 understanding is that Mr. O'Keefe and/or
03:08 25 Mr. Beresh is here next week, and I'm not sure,



1 Mr. O'Keefe, if you wish to address whether he
2 wishes to do it today and can get done, or on
3 Monday. But I don't think, other than Mr. Fox, I
4 don't believe any other counsel wish to question;
03:08 5 would that be fair?

6 COMMISSIONER MacCALLUM: Will you be more
7 than 20, Mr. Fox?

8 MR. FOX: I will.

9 COMMISSIONER MacCALLUM: Okay.

03:08 10 MR. O'KEEFE: I think I'm likely to be a
11 little bit more than 20 as well, sir, and I think
12 Mr. Beresh probably will have some questions, as
13 well, he would like to ask.

14 MR. HODSON: I might, if I could about
03:09 15 Mr. Beresh on Monday, there is a concern about
16 getting done on Monday; Mr. Fox, do you think you
17 will be done with him, that we have three hours
18 Monday, and as long as we are certain that we
19 will finish Mr. Karst on Monday, I think the
03:09 20 concern is losing the 20 minutes today, and if
21 we're assured we will be done Monday with Mr.
22 Karst is essential. Secondly, the rest of the
23 police witnesses next week will be fine in the
24 three days we have, assuming we get Mr. Karst
03:09 25 done in one day.



1 MR. FOX: Yeah. I'm assuming if Mr. Beresh
2 is something in the order of a half hour, or
3 something like that, that I will still finish
4 comfortably on Monday.

03:09 5 MR. O'KEEFE: I can't imagine that he would
6 be longer than 45 minutes, sir.

7 COMMISSIONER MacCALLUM: All right.

8 MR. FOX: So I, yeah, I would leave it at
9 that.

03:09 10 COMMISSIONER MacCALLUM: Yeah. Clearly you
11 would like to go last, Mr. Fox?

12 MR. FOX: I would, yes.

13 COMMISSIONER MacCALLUM: So we adjourn,
14 then, and I guess we go to the Radisson at 1:00
03:10 15 on August the 29th, eh. So we're adjourned to
16 that time.

17 Oh. Mr. Hodson, I'm sorry,
18 without consulting our rules with respect to
19 contacting a witness in the course of
03:10 20 cross-examination it might be prudent to say to
21 Mr. Karst that he should not discuss the case
22 with others except for yourself.

23 MR. HODSON: In fact, I don't think I'm
24 allowed, I think the rules preclude even me from
03:10 25 talking to him. I have no intention to.



1 COMMISSIONER MacCALLUM: All right. As
2 long as he understands it. Thank you.

3 (*Adjourned at 3:10 p.m.*)
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