

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

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

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Volume 66

Inquiry Proceedings



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<i>Mr. Chris Boychuk, Esq.,</i>	for Mr. Eddie Karst
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<i>Mr. Brian A. Beresh, Esq.,</i>	for Mr. Larry Fisher
<i>Mr. David Frayer, Q.C.,</i>	for Minister of Justice (Canada), The Hon. Irwin Cotler



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MR. BOYCHUK: Good morning, Mr.

Commissioner.

STANLEY HENRY ANGUS WEIR, continued:

BY MR. BOYCHUK:

Q Good morning, Mr. Weir. My name is Chris Boychuk,
and I represent Eddie Karst, and I just have a few
questions for you this morning.

First off, arising from the
discussion that you testified about with Mr. Karst
where you first learned that Mr. Fisher may have
been charged for at least the rape file you were
investigating, (V5)-- (V5)---, do you remember
testifying about that, sir?

A Yes.

Q Okay, and I want to talk a little bit about the
context. My understanding is that the
conversation arose between you and Mr. Karst and
several other detectives when you were discussing
the dos and don'ts of taking a statement from a
person who is a suspect or an accused; is that
correct?



1 A Yes.

2 Q That was the context in which the discussion
3 happened; correct?

4 A Yes.

09:04 5 Q That's right. And, at the time, Mr. Karst was
6 giving an example of how not to take a statement
7 from a suspect, is that right, is that what he was
8 --

9 A That's basically correct.

09:05 10 Q And, in terms of doing that, it was recognized
11 that Mr. Karst had certain -- a certain skill as
12 an interviewer and taking statements from
13 witnesses and suspects?

14 A Well, I guess you could say that.

09:05 15 Q Okay. I thought I understood you to say that it
16 was recognized that he, within the department,
17 that he was a fairly skilled interviewer?

18 A Yes.

19 Q And that you were discussing, with him, techniques
09:05 20 in terms of taking statements from suspects for
21 example?

22 A Umm, I -- I guess so.

23 Q Okay. I'm just repeating what I thought I heard
24 you, in your original testimony, in terms of the
09:05 25 context.



1 A Okay.

2 Q And that not only were you present, but you named
3 several other detectives, is that correct?

4 A Umm, yes, yes.

09:06 5 Q And this discussion would have taken place after
6 you joined the detective division in 1972?

7 A Yes.

8 Q And one of the things that Mr. Karst mentioned was
9 an interview he had done in Winnipeg with a former
09:06 10 superior officer of yours, Mr. Nordstrom; correct?

11 A Yes.

12 Q And he was using Mr. Nordstrom as an example of
13 how not to approach a suspect interview; isn't
14 that what the discussion was about?

09:06 15 A Umm, I guess so.

16 Q If you disagree with me please tell me; was it
17 something else then?

18 A Well, no, I don't disagree with you.

19 Q Okay. And at the time, and you testified to this
09:06 20 yesterday, I understand it, that Mr. Karst was
21 just talking, it wasn't in context of a particular
22 case, it was just an example of how not to
23 interview a suspect, and it came up that he was
24 involved with an interview with a Mr. Fisher in
09:07 25 Winnipeg around some rape cases; is that right?



1 A That's correct.

2 Q And that triggered, for you, something in relation
3 to your own file, the (V5)--- file; is that right?

4 A That's right.

09:07 5 Q That there might be a connection there?

6 A Well, it was definite, there was no 'might be'
7 about it.

8 Q Okay. Because what I have is I have your note
9 that you had said Mr. Karst wasn't sure of the
09:07 10 names of the cases, but that you asked him if the
11 (V5)--- case was one of the cases and he wasn't,
12 he didn't know, but he thought it might be?

13 A Umm, well, that's probably right.

14 Q Okay. And that, at the time, that's where you
09:08 15 found out that Mr. Fisher had been charged
16 potentially with some other rape cases, but with
17 your file, the (V5)--- file?

18 A Yes.

19 Q And, at the time, Mr. Karst was not aware of what
09:08 20 the final disposition of those charges were?

21 A No.

22 Q And during the course of the discussion there was
23 no discussion be -- or connection made, either by
24 yourself or Mr. Karst or any of the other
09:08 25 detectives, between the interview with Mr. Fisher



1 that Eddie Karst had conducted, and the Gail
2 Miller investigation; correct?

3 A No, there was no connection.

4 Q Nobody made a connection there?

09:08 5 A No.

6 Q Okay. And with respect, and moving on to the
7 issue of your file, you told Ms. McLean, yesterday
8 as I had it, that you understood there were three
9 copies of all the reports that were generated, one
09:08 10 went to central records' file, one went to your
11 working or investigator's file; is that right?

12 A That's right.

13 Q And you weren't sure where the third copy went?

14 A Well, when I think about it, I think that there
09:09 15 were four copies made originally in CR.

16 Q Okay. But there was at least one file in central
17 records and you, as the investigator, would retain
18 a working file; is that right?

19 A Yes.

09:09 20 Q If I might call it that?

21 A Yeah.

22 Q And that would be in your possession?

23 A Yes.

24 Q And I take it, if you were working on the file,
09:09 25 you would -- you mentioned you might have it in a



1 file folder in your car, for example?

2 A Yes.

3 Q But when you were away, either on holidays or on
4 days off, the file would be in the office at
09:09 5 morality?

6 A Yes.

7 Q And that other officers, including your superior
8 officers, the morality sergeants or Inspector
9 Nordstrom for that matter, would have access to
09:09 10 the file?

11 A That's right.

12 Q So that, if there were any developments on the
13 file, they could access the file?

14 A Yup.

09:10 15 Q And one of the other things I think I heard you
16 say is that if a witness, or a statement was going
17 to be -- or a witness interview or an interview of
18 a potential suspect out of the city was going to
19 occur, that the interviewer would likely take the
09:10 20 working file with them to the interview; is that
21 right?

22 A Right.

23 Q And so when you came back, you weren't sure if you
24 were on holidays or days off, and you found that
09:10 25 your (V5)--- file was missing, umm, you had a



1 discussion with Mr. Nordstrom and he told you the
2 file was no concern of yours; correct?

3 A That's right.

4 Q And based on what you know about Mr. Nordstrom now
09:10 5 going to Winnipeg, are you fairly satisfied that
6 that's likely where your working file on the
7 (V5)--- file ended up, with Mr. Nordstrom?

8 A Yes.

9 Q And that he had taken possession of that file and
09:10 10 retained it?

11 A Yes.

12 Q And just never returned it to you?

13 A Right.

14 Q Okay. Thank you, Mr. Weir, those are my
09:11 15 questions.

16 BY MS. KNOX:

17 Q Mr. Weir, my name is Catherine Knox, and I work
18 actually at the Halyk Law Office, which you would
19 probably be familiar with, but just for the
09:11 20 record, you and I don't know each other, we've
21 never met?

22 A No.

23 Q Okay. And, also for the record, I act as --
24 Mr. Halyk and I act as counsel for T.D.R.

09:11 25 Caldwell, who was the prosecutor in the David



1 Milgaard file.

2 A Right.

3 Q Okay. And I take it it goes without saying that
4 you knew Mr. Caldwell because he came to the
09:11 5 prosecutor's office as the AG's representative in
6 1965 or thereabouts, '63, '65?

7 A Yes.

8 Q Okay. And you had occasion over the years up to
9 his retirement or your retirement, whichever came
09:12 10 first, to work with him on files?

11 A Yes.

12 Q Okay. Now, sir, I just want to start by asking
13 you a few questions about the evidence that you
14 gave yesterday, and also about different
09:12 15 information that you have given to police
16 investigators when the RCMP came in '93, to
17 reporters who came and saw you, I see newspaper
18 reports in '91, the people from the Police
19 Commission who came and interviewed you about the
09:12 20 missing files, whenever that was, and ask you if
21 you can tell us, today, when you were first
22 approached about the re-opening of the David
23 Milgaard file?

24 A Umm, I don't really remember.

09:12 25 Q Okay. Sir -- and, again, I'm not looking to trick



1 you or anything here, and people will correct me
2 if I get anything wrong, and if I do it will be
3 unintentional -- but there is -- the records that
4 we have indicate, certainly, that discussion
09:13 5 started about re-opening Mr. Milgaard's file in a
6 substantial way in 1989-1990 when an application
7 was made by his lawyers in Winnipeg to the Federal
8 Minister of Justice to have his case reviewed.
9 Did you become, or do you know whether you became
09:13 10 familiar with it as early as 1989 when that
11 application started?

12 A I don't really remember. I may have read it in
13 the newspaper, or whatever, but I wasn't concerned
14 about it.

09:13 15 Q No, because it wasn't something that you were
16 involved in at that stage?

17 A No.

18 Q Would the fact that it was calling into question
19 the competence and the ethics of fellow officers
09:14 20 be something that would attract your attention
21 even though you weren't directly involved in it?
22 After all, this was effectively calling into
23 question the Saskatoon Police Service, their work
24 and their integrity?

09:14 25 A Well, I don't know how to answer that.



1 Q And there, I don't think there is a right or wrong
2 answer, if you sort of have a memory of what your
3 thoughts were when you first became aware that
4 there was a question of whether officers had
09:14 5 knowingly done wrong and gotten, deliberately
6 gotten an innocent man convicted?

7 A Well, I didn't believe it, you know. If the
8 connotation was that they did something wrong I
9 certainly was at odds with that.

09:15 10 Q All right. And, accepting and understanding that
11 you didn't believe it, would it be fair to say,
12 though, that it was something that would have
13 caught your attention if those discussions were in
14 the newspaper, they were on the radio, they were
09:15 15 on the TV, or somebody was talking about it in the
16 coffee place where you were?

17 A Well, this question comes up all the time, and it
18 comes up with police forces all over Canada.

19 Q That's right.

09:15 20 A Umm, the *Guy Paul Morin* case which we weren't
21 involved with, the *Steven Truscott* case that we
22 weren't involved with, the *Marshall* case in Nova
23 Scotia that we weren't involved with, I mean there
24 are always questions about police integrity.

09:15 25 Q Yes. And I agree with you on that and your list



1 is short, there's more of those that I personally
2 am quite familiar with, but my only question to
3 you is whether, because you had been a member of
4 some 30 plus years' service of the Saskatoon
09:15 5 Police Service, was it something that would
6 trigger with you perhaps more than the milk man if
7 he heard the same story or read the same story in
8 the newspaper do you think?

9 A I don't think so.

09:15 10 Q Okay. You wouldn't even unintentionally have been
11 more aware of it or more attuned to it you don't
12 think?

13 A Well, I don't think so.

14 Q Okay. When is -- or do you remember at all when
09:16 15 you first had a detailed discussion with anybody
16 about the review of the David Milgaard case,
17 whether it was a newspaper reporter or police
18 officer, an investigator for the Police Commission
19 or a fellow officer from your past working days?

09:16 20 A Valila and I talked about it and we were in
21 agreement that neither one of us knew about Fisher
22 until years later.

23 Q Okay. So you know, you remember having
24 conversations with former officer Valila?

09:16 25 A Yeah.



1 Q Do you know whether that was before or after the
2 media publicity had started about it and before
3 Mr. Fisher's name was out in the public as the
4 person who probably committed the murder instead
09:17 5 of Mr. Milgaard?

6 A It was probably after.

7 Q Okay. Do you remember who the first newspaper
8 person was or TV or radio reporter who got in
9 touch with you?

09:17 10 A It was Roberts.

11 Q And that was the gentleman from *The Globe and*
12 *Mail*?

13 A Yes.

14 Q And when you were contacted by Mr. Roberts, do you
09:17 15 remember now or are you able to tell us now how
16 much information or what kind of information he
17 gave you as an explanation for, number 1, why he
18 wanted to talk to you and, number 2, why, of all
19 of the city police officers, acting and retired,
09:17 20 he had chosen to contact you?

21 A That's a long question.

22 Q How did he make contact with you the first time?

23 A He came to the house in a taxi.

24 Q Do you know how he got your name?

09:18 25 A No.



1 Q Did you -- had he called and made an appointment
2 with you, were you expecting him?

3 A I don't remember.

4 Q Okay. Do you recall whether he brought any
09:18 5 material with him, police reports, newspaper
6 reports, anything that he had physically with him
7 about the case?

8 A I don't really remember.

9 Q Okay. Do you recall what knowledge you had right
09:18 10 then, the first time Mr. Roberts came in the taxi
11 and he sat down in your house and he talked to
12 you, do you remember what you sort of knew of your
13 own memory then?

14 A Yes.

09:18 15 Q What did you -- or are you able to tell us today
16 what was your memories before any input from the
17 media or investigators about the Gail Miller
18 investigation?

19 A I don't think we discussed the Gail Miller
09:19 20 investigation.

21 Q What did he discuss with you?

22 A He discussed the (V5)-- (V5)--- file.

23 Q Okay. So by the time he came to you he had (V5)--
24 (V5)---' name, or did you give it to him?

09:19 25 A I don't remember whether -- how that went.



1 Q I wonder if I could have brought up document
2 number 329421. Now, Mr. Weir, this was shown to
3 you yesterday by Commission Counsel. Do you
4 remember this article that appeared in *The Globe*
09:20 5 *and Mail* on May 2nd, 1992?

6 A Yes.

7 Q And I believe I'm correct in saying, although I
8 don't see his name on it, that this was authored
9 by Mr. Roberts who came to your house?

09:20 10 A Yes.

11 Q Did you read that article, do you remember, back
12 in 1992 after it appeared in the paper?

13 A I don't know whether it appeared in the
14 *StarPhoenix* or where it appeared. I read it.

09:20 15 Q Okay. Now, I want to direct your attention to
16 part of the article that starts around here, if I
17 could get this paragraph brought up, and what the
18 article says on May 2nd, 1992 was that when Mr.
19 Fisher was arrested in Winnipeg eight months
09:21 20 later, being after 1970, he mumbled something
21 about some rapes in Saskatoon. Do you see that?

22 A Yes.

23 Q And it goes on to say two Saskatoon police
24 officers were sent out, were dispatched to
09:21 25 interview him. "By all accounts, the interview



1 was not a success," and then it talks about you.

2 Now, sir, do you recall whether or where the

3 information came from that in 1970 in Winnipeg

4 Larry Fisher had mumbled something about rapes in

09:21 5 Saskatoon?

6 A I never heard about it until later.

7 Q But when this appeared, like, when this appeared

8 in the newspaper article, was that information

9 that was part of your discussion with Mr. Roberts,

09:22 10 either information he gave you or information you

11 gave him do you remember?

12 A I don't remember.

13 Q Was it your belief when you talked with Mr.

14 Roberts in the spring of 1992 that what Larry

09:22 15 Fisher had done in Winnipeg was mumbled something

16 about Saskatoon rapes and that officers from here

17 had gone out to try to get information about those

18 rapes?

19 A Well, I think Fisher initially mentioned the

09:22 20 Saskatoon rapes because he didn't want them to

21 come back and haunt him later.

22 Q And when you say you think this, is this

23 information that you've received from someone or

24 just speculation on your part, or do you even know

09:23 25 the answer to that?



1 A Well, I don't really know the answer to that.

2 Q Okay. Sir, I want to bring up, if I may, document
3 002032 and ask you to take a look at it. Now,
4 just to -- have you seen this document before, and
09:23 5 it's a document, a statement taken by a Detective
6 Gilbert of the Winnipeg or Fort Garry police, I'm
7 not sure, but it was a policing agency in
8 Manitoba. Have you seen that statement before?

9 A No.

09:23 10 Q Okay. I want to bring up starting here so that
11 it's easier for Mr. Weir to read. Now, you can
12 see as you look at the top of that, that Mr.
13 Fisher is cautioned in accordance with standard
14 police procedure of the day and he's asked if he
09:24 15 wishes to give a statement, you see that, and he
16 says yes?

17 A Well, yes, but again I would speculate that he
18 only pled guilty to the ones that he felt the
19 complainant could identify him.

09:24 20 Q Apart from what your speculation is, my question
21 to you, as you look at this statement, is have you
22 ever seen it before today?

23 A No.

24 Q Okay. Were you aware when you talked to Mr.
09:24 25 Roberts in 1992 that Larry Fisher had mumbled



1 something about rapes in '70, that Larry Fisher
2 had given the Winnipeg police a confession, a
3 cautioned, warned statement in which he told them,
4 without them even having any idea, that by the
09:25 5 way, there's something I want to tell you, I
6 committed two rapes, indecent assaults, whatever
7 the terminology of the day was, in Saskatoon? Did
8 you know that he gave a confession --

9 A No.

09:25 10 Q -- that he signed?

11 A No.

12 Q Okay. Had you known, and now that you know that
13 there was a cautioned statement from Larry Fisher
14 dated October 21st, 1970 without any input from
09:25 15 Saskatoon City Police where he had admitted two
16 rapes in Saskatoon, would that have influenced the
17 conclusions or the speculation you engaged in
18 about Inspector Nordstrom and him going out to be
19 the big guy who solved the case or anything of
09:25 20 that nature? The case was already solved on
21 paper.

22 A Well, obviously it was, but I don't really get
23 your point.

24 Q Part of the evidence that you gave yesterday, if I
09:26 25 may summarize, and some of the statements that



1 you've given or some of the assertions you've made
2 in the past appear to suggest it is your belief
3 that Inspector Nordstrom was looking to be the big
4 shot?

09:26 5 A That's right.

6 Q And that he went out so that he could be the guy
7 who solved the big cases and he could get the
8 credit?

9 A That's right.

09:26 10 Q And it's also your belief, based on previous
11 statements you've made to the media and evidence
12 that you've given, that he blew it in the
13 interview and he had to be hauled out of the room?

14 A That's right.

09:26 15 Q He couldn't get Larry Fisher to confess, Eddie
16 Karst had to go in and do that?

17 A That's right.

18 Q Now, I'm saying to you, the day before he went
19 out, if it was him who went out with Detective
09:27 20 Karst, he had already confessed to the rapes.
21 Does that make any difference to your belief as to
22 Nordstrom being, going out to be the big shot and
23 blowing the interview? He had already confessed,
24 it's right there, it's in front of you the day
09:27 25 before the Saskatoon City Police mentioned it.



1 A Well, what is your question?

2 Q I asked you, does that cause you to question your
3 judgment or the statements that you've made in the
4 past about what happened or the purpose of this
09:27 5 interview and why you got cut out of the loop?

6 A No.

7 Q Okay. That's my only question. Sir, you
8 indicated yesterday, and you said to counsel
9 before me this morning, that there was, in terms
09:27 10 of the files, you said yesterday that there were
11 three copies, you said today you think you might
12 have been mistaken and that there were four copies
13 of a file made?

14 A Well, that could be.

09:28 15 Q Okay.

16 A I wasn't familiar with the procedure in Central
17 Records.

18 Q Okay. And again, just so that we're clear on the
19 record, the reality is, and this is not a
09:28 20 criticism of you because it wasn't your job to
21 know, you were never involved as an administrator
22 in the Saskatoon Police Service were you?

23 A No.

24 Q And as a police officer, you indicated that what
09:28 25 you did when you completed work and you had to



1 file a report is that you put it on a Dictaphone?

2 A That's right.

3 Q And the Dictaphone tape went to Central Records
4 where there are a number of women mostly I think
09:28 5 in those days who would transcribe the dictation
6 that you left for them?

7 A Yes.

8 Q And other officers, some typed their own reports,
9 some hand wrote, but essentially officers did
09:28 10 their reports, they didn't have to go through and
11 proofread them, they didn't have to make sure a
12 certain number of copies got made, that was done
13 by somebody else?

14 A That's right.

09:28 15 Q What you knew was that your dictation had been
16 done when your copy of the report came back to
17 you?

18 A That's right.

19 Q You didn't go down and say I want to be sure you
09:29 20 did two copies, three copies or five copies
21 because really that wasn't your job?

22 A No.

23 Q Okay. So whether it was three copies or four
24 copies or two copies, that was an administrative
09:29 25 decision?



1 A That's right.

2 Q Okay. Now, when you had your file, your copy came
3 back and you had your working file and you kept
4 your working file within the office when you
09:29 5 weren't on the street working on it, what was the
6 system within the morality office of the day for
7 keeping files of the staff, the officers who
8 worked in morality, where were they stored?

9 A They were in a filing cabinet.

09:29 10 Q Okay. And was it -- did you have your own filing
11 cabinet or was there one filing cabinet used by
12 everybody but you got assigned a drawer or a space
13 in that cabinet?

14 A No, I think they were in the top drawer of a four
09:30 15 door --

16 Q Four drawer?

17 A -- filing cabinet.

18 Q And that filing cabinet was kept open, you didn't
19 lock up your files when you left, I think that's
09:30 20 clear from your evidence?

21 A No.

22 Q And when you left, anybody else who came on shift,
23 if they were doing night or a weekend, if they
24 wanted to look at your file, they could grab it?

09:30 25 A That's right.



1 Q Okay. I'm going to ask this question, and I truly
2 don't have a sniff of a clue about the answer, but
3 was there any policy about you taking files home
4 when you weren't working?

09:30 5 A No. I think it was kind of accepted that you --
6 they had a policy that you couldn't take files
7 home. If you wanted to take a file home, you made
8 a copy of it.

9 Q Okay. So basically the expectation was when you
09:31 10 weren't there, your files still would be there?

11 A That's right.

12 Q Because somebody could become a suspect in the
13 middle of the night, a hot lead could come in and
14 your fellow officers had to be able to keep
09:31 15 working, they couldn't find you at the lake or,
16 you know, wake you up in the middle of the night,
17 or they shouldn't have, your files should be there
18 for them to work with?

19 A That's right.

09:31 20 Q Okay. Now, sir, in respect of copies, and I just
21 want to go there for a minute, you talked
22 yesterday to Ms. McLean about copies or files in
23 those days being done with carbons, carbon copies
24 being made?

09:31 25 A Yes.



1 Q Okay. And the copy that came back to you, it was
2 your understanding, was one of the carbon copies,
3 you didn't get the original, the original was
4 supposed to go to Central Records?

09:32 5 A That's right.

6 Q Now, you just said a minute ago, and you referred
7 yesterday to photocopies being made, if you wanted
8 to take a copy home you were expected to get a
9 copy made. Going back, and I know this is really
09:32 10 hard to do sometimes, but take your mind back to
11 1968, 1969, 1970 and let's talk about, try to
12 focus on when you worked in morality section as
13 opposed to when you worked on the street, do you
14 remember, and again I don't know the answer to
09:32 15 this so I'm not trying to trick you, do you
16 remember what the technology was that was
17 available to the Saskatoon Police Service in 1969,
18 1970 to make reproductions of documents except
19 using carbon paper?

09:33 20 A Well, you took it to the copy machine, the Xerox.

21 Q Okay. And do you remember what kind of copying
22 machine there was at that time? And I'm thinking
23 the stenos are typing with carbons, today we make
24 one of everything and -- well, we do computers
09:33 25 now -- but even when, with typewriters, when Xerox



1 became really easy you made one and then you made
2 a bazillion copies, you made a bazillion copies on
3 the photocopier; back then they were still using
4 carbons?

09:34 5 A Well, you see, the occurrence reports and the
6 investigation reports were four copies with
7 carbons --

8 Q Right.

9 A -- in them, and so it wasn't necessary for the
09:34 10 girls, they just put the entire four copies in the
11 typewriter and typed it.

12 Q They, and when they were finished typing, they had
13 four copies?

14 A That's right.

09:34 15 Q Okay. Now yesterday I went and looked at some of
16 the original police file, Mr. Commissioner, we
17 have some of it here. Do you remember whether
18 different-coloured paper was used within the steno
19 pool and within your department for designating
09:35 20 different kinds of reports and different copies --
21 well let's, first of all, let's go different kinds
22 of reports?

23 A Umm, yes. I think the original occurrence report
24 was blue and the carbons underneath it were white,
09:35 25 or the carbon copies were white, --



1 Q Okay,

2 A -- and the investigation reports were all white --

3 Q Okay.

4 A -- as far as I remember it.

09:35 5 Q Is it possible -- and I apologize, Mr.

6 Commissioner, I'm working with a whole bunch of

7 different papers here -- is it possible, sir, that

8 more than the original of an occurrence report was

9 done in blue -- and I'm making a distinction

09:35 10 between occurrence reports and investigation

11 reports, we'll talk about those later -- to the

12 best of your memory?

13 A Umm, no, I don't think so.

14 Q Okay.

09:36 15 A The original occurrence report was blue.

16 Q Okay. I'm going to ask -- and Mr. Commissioner,

17 just for the record, we have here part of the

18 original -- and I use the term 'original' with

19 some reservation -- but the file as it exists in

09:36 20 the form that -- of the Saskatoon Police Service

21 that's been reproduced for purposes of the

22 hearing, we have the file that was used to make

23 the reproductions. And I want to refer the

24 witness first to A1 in the police binders, and the

09:36 25 document number that I have on it in my binder,



1 that other counsel should have, would be 006255.

2 Okay. Good. We have a machine called Elmo.

3 A Umm --

4 Q Mr. Weir, just before you start to answer me, I'm

09:37 5 going to indicate what I passed to the witness. I

6 passed to the witness the first page of the

7 occurrence report that documented the call from

8 Mrs. Hnatiuk on January 31st, 1969, that children

9 or a child had found the -- a woman lying in the

09:37 10 lane way behind her house. Okay?

11 Mr. Weir, what I have passed to

12 you is the first page of that four-page report,

13 and it's on blue paper.

14 A Uh-huh.

09:37 15 Q Is that how you remember the original of the

16 occurrence report being done?

17 A Yes.

18 Q Okay. So, and looking at that, can you tell me or

19 can you answer me as to whether, at least to your

09:38 20 eye, it appears like that is the original of the

21 typewritten set of occurrence -- of the occurrence

22 report?

23 A Well, it could be, I -- I don't know.

24 Q Okay. I'm just going to give it back to

09:38 25 Mr. Agioritis so that we can put it up on Elmo so



1 that other counsel and others in the room can see.

2 Now, sir, from where you are sitting can you now

3 see -- now can you see this screen over here?

4 A Yes.

09:38 5 Q Okay. And what we have in front of you now on
6 this screen is blue paper, and it won't show up on
7 that screen you have there, okay, we're using a
8 different kind of technology, you have to look at
9 the big screen.

09:38 10 MR. HODSON: It's on his.

11 COMMISSIONER MacCALLUM: Am I in your way?

12 A No, you're not.

13 MR. HODSON: It's on his screen.

14 BY MS. KNOX:

09:39 15 Q Okay, it's on your screen? I'm sorry, I'm --

16 A Yes, it's on my screen.

17 Q Okay. So you can see on your screen a copy of
18 what you just had, you know, what might be the
19 original, I guess, in your hands?

09:39 20 A Yes.

21 Q You can see that written on it in red is that it's
22 assigned to detectives?

23 A Right.

24 Q And Detective Sergeant Reid's name as the person
09:39 25 that it's assigned to?



1 A Right.

2 Q Okay. So -- and this, I take it, is consistent
3 with your memory that the original of an
4 occurrence report was done on blue paper?

09:39 5 A That's correct.

6 Q Okay. Now if you could just bear with me for a
7 moment, Mr. Commissioner, the next document that I
8 want to refer the witness' attention to is another
9 blue document. I can indicate for the record that
09:40 10 I have removed it from the prosecution file as it
11 is in the custody of the Commission, I'm removing
12 it from the prosecution file that has the
13 handwritten label Number 4 David Milgaard, and
14 then the police have assigned a number to it as
09:40 15 well, but with your permission I want to pass this
16 to the witness as well.

17 COMMISSIONER MacCALLUM: Okay.

18 BY MS. KNOX:

19 Q I'm just going to give you back that one for a
09:41 20 moment.

21 A Umm --

22 Q Mr. Weir, I've passed you back the A1 from the
23 police file that has the tearing at the top and I
24 passed you a copy of the occurrence report from
09:41 25 the prosecution report; would you agree with me



1 that the one in the prosecution -- that I have
2 told you, if you believe me, comes from the
3 prosecutor's file, looks like it's a carbon copy
4 of the A1 that came -- comes from the police file?

09:41 5 A Umm, yes.

6 Q And would you agree with me -- and perhaps I'll
7 give it to Mr. Agioritis. Mr. Commissioner,
8 counsel asked me if I would read the document IDs
9 and the document ID for A1, again, is 006255. The
09:42 10 document ID for the duplicate, or what appears to
11 be the duplicate found in the prosecution file
12 also on blue paper, is 006255.

13 COMMISSIONER MacCALLUM: Same one?

14 MS. KNOX: Same?

09:42 15 COMMISSIONER MacCALLUM: Same number?

16 MS. KNOX: It -- hmm, I'm not sure if I've
17 got the numbers right. My copy of the police
18 report doesn't have doc. IDs on it except one
19 that my office hand wrote.

09:42 20 MR. HODSON: That's right, and I can maybe
21 explain that. The original of the A binder, the
22 police file that we received, we stamped a
23 photocopy, and so we then, in the last month or
24 so, received the A1. We will get the doc. ID of
09:43 25 the photocopy of A1 that's in the record.



1 MS. KNOX: Okay. I apologize, I didn't --

2 COMMISSIONER MacCALLUM: So which one, at
3 the moment, has a doc. ID?

4 MS. KNOX: The one, at the moment, that has
09:43 5 the doc. ID is the prosecution file number.

6 COMMISSIONER MacCALLUM: Okay.

7 MS. KNOX: Or the prosecution file copy
8 from Number 4 David Milgaard of the prosecution
9 file.

09:43 10 COMMISSIONER MacCALLUM: All right.

11 MR. HODSON: We'll straighten it out at the
12 break.

13 MS. KNOX: I'm just waiting for a minute to
14 see if we can get the number here.

09:44 15 BY MS. KNOX:

16 Q Sir, and as I said to you, I'm not meaning to
17 trick you, I went over and looked at the original
18 file in June, then went back last evening after
19 work and went through it, and I find it helpful to
09:44 20 deal with original documents. But would you agree
21 with me that, at least in the case of the
22 occurrence report for Gail Miller, the occurrence
23 report duplicates, at least one of them, was being
24 done in blue -- on blue paper as well?

09:44 25 A They might have all been on, the occurrence



1 reports, it could have been blue. It's a long
2 time ago and I don't really remember. I assumed
3 that they were, the copies were white, but --

4 Q Uh-huh?

09:45 5 A -- I wasn't familiar with what went on.

6 Q Okay. And Mr. Weir, again I'm not criticizing,
7 because the reality is it's hard for us to
8 remember what happened last week much less what
9 was happening in 1968, '69, '70, so it's not a
09:45 10 criticism, but you agree with me, when we look
11 independent of your memory at the record, we see
12 at least one copy was made on blue paper?

13 A Yes.

14 Q Okay. Now I wonder if I could bring up document
09:45 15 number A93 on Elmo, please. And again to save
16 time, if you wish to look over your shoulder or
17 you are willing to trust me, this is on the same
18 kind of blue paper in the police file in binder A
19 of the originals of the police file, as we now
09:46 20 have possession of it, and it too appears to be an
21 occurrence report?

22 A Umm, yes.

23 Q Okay. Now the difference, if I -- if you could
24 just take a quick look at it you will agree with
09:46 25 me that, number 1, it is one that was assigned to



1 morality, it was a report done by morality
2 division?

3 A Umm --

4 Q Or assigned to morality division, if you look at
09:46 5 right here?

6 A Right.

7 Q Okay. It's on blue paper. And down here,
8 handwritten on the original as we have it, is a
9 notation that it's to go to the detective office
09:46 10 and be the detective office copy?

11 A It's -- so what's your point?

12 Q So, looking at this, would you agree with me that
13 there appeared to be at least another copy, again,
14 of occurrence reports that appears -- that was on
09:47 15 blue paper?

16 A Well, yes.

17 Q And I also --

18 A That's possible.

19 Q -- just want to bring up for the record A94 and
09:47 20 A95, A94 first, please. Also on blue paper, a
21 morality report, division report, but a notation
22 that it's -- a copy is for detectives department,
23 and the detective department copy, as we have it,
24 is on blue paper. Okay? And then I'll show you
09:47 25 one more and then I'll ask you my question.



1 The next one I would ask to have
2 brought up is A95. Now, sir, I'm bringing up -- I
3 can't get rid of my lines here, could I just get
4 these lines that I have taken off, please. Again
09:48 5 we're looking at an occurrence report; agreed?

6 A Yes.

7 Q Okay. This one, unlike the previous two, is a
8 traffic division report, so presumably it was
9 prepared and copies got sent back to traffic
09:48 10 division?

11 A Yes.

12 Q And again, for reasons that become apparent when
13 you read it, it has a notation that a copy was to
14 go to the detective office, and this is the copy?

09:48 15 A Umm, okay.

16 Q Okay. And, again, this one is on blue paper?

17 A Okay.

18 Q Okay. So what the file review, as it exists now,
19 would appear to indicate is that general
09:48 20 occurrence reports, as you remember now, unlike
21 investigation reports, were done on blue paper,
22 but I'm going to suggest to you that it appears
23 that all of the copies were blue paper as opposed
24 to the original?

09:48 25 A Umm, as opposed to the original?



1 Q Only the original. Sorry, I didn't phrase that
2 very well.

3 A So --

4 Q The original was blue, we know that because we
09:49 5 have the original of the occurrence report for the
6 Gail Miller murder in blue?

7 A Yes.

8 Q A copy that ended up in the prosecutor's file was
9 blue?

09:49 10 A Yes.

11 Q And that's clearly a carbon copy if you put the
12 two side by side?

13 A Yes.

14 Q And then, with these others that are in the A
09:49 15 binder as we have it, A93, A94, and A95, that two
16 came from morality, one came from traffic, they
17 went to the detective divisions, but all copies
18 that came over were in blue?

19 A Yes.

09:49 20 Q Okay. And so it would indicate that -- well, I'm
21 not sure that it does indicate that all copies
22 were blue, but certainly that a number of blue
23 carbon copies were made?

24 A Well I think, in that respect, that the occurrence
09:50 25 reports were all blue.



1 Q Okay. So every page, every copy, whether carbon
2 or original, now, you believe, was done on blue
3 paper?

4 A That's right.

09:50 5 Q Okay. And now, just to go to the investigation
6 reports, and it's your belief that all of these
7 were done on white paper?

8 A Yes.

9 Q The original was on white paper, carbons were on
09:50 10 white paper?

11 A Yes.

12 Q Okay. And you indicated this morning that you
13 think that four copies were done?

14 A Umm --

09:50 15 Q Or it's your belief, now, that four copies were
16 done?

17 A Yes, and --

18 Q Originals went to the crim -- or central records?

19 A Yes.

09:50 20 Q A copy went back to the dictating, or author, the
21 detective who either hand wrote it or dictated it,
22 he got a copy back?

23 A Yes.

24 Q Now do you know whether or not the supervising
09:50 25 sergeant or the officer in charge of operations,



1 particularly on a major file like a murder, also
2 got a copy of your re -- of the investigator
3 reports?

4 A I don't know.

09:51 5 Q Okay. Sir, we have a series of investigation
6 reports in a police binder that's been provided,
7 and that, Mr. Commissioner, is binder B of the
8 police file. And again, Mr. Commissioner, I have
9 had Commission Counsel bring binder B, and I just
09:51 10 want to put up a series of pages from binder B
11 just for illustration, okay? And, again, there is
12 no trick here but I'm hoping that you can help
13 answer a question about how the reports got
14 divvied out, if I may. The first one I would like
09:51 15 to get brought up is B1. Ooh.

16 I should say for the record, Mr.
17 Commissioner and counsel -- Commission Counsel can
18 correct me on this if I'm wrong -- there is a
19 number of highlighted colours that appear. The
09:52 20 information we have is this highlighting was
21 placed on the reports in 1989-1990 when the review
22 was being done under the supervision, I believe,
23 of Inspector Quinn at Saskatoon Police Service,
24 and I think we can all understand that it wouldn't
09:52 25 have been done in '69-'70 because highlighting, I



1 don't believe, even existed back then. But
2 certainly, these, there are many highlighted
3 remarks.

4 Now Mr. Weir, this isn't a good
09:52 5 copy to show you, but on this particular report,
6 looking at B1, if you look to the left-hand side
7 you see there is a stamp, and if that full word
8 was there it would say 'Date', it's got a date
9 stamp that on the original appears in blue, and
09:53 10 it's got also stamped 'Sergeant J. Ward'. I can
11 tell you, when I was going through all the
12 reports, that there are many of the investigation
13 reports, whether they are original or photo -- or
14 carbon copy, that have that stamp for Detective
09:53 15 Sergeant Ward, and I -- my question to you in that
16 regard is do you know, as you look at this
17 document, and you can look at others, whether one
18 of the copies of the investigation report that was
19 done in major files, such as a murder file, went
09:53 20 to a sergeant so that he had a file for review in
21 addition to the fact that the investigator had his
22 own working file?

23 A I don't know.

24 Q Don't know? So anywhere we have a report that has
09:54 25 stamped on it Sergeant -- or Detective Sergeant



1 Ward, you don't know the purpose for that, but I
2 take it it wouldn't be on the report that -- your
3 copy of the report, the detective's copy?

4 A Umm, I -- I don't follow you.

09:54 5 Q When you got your copy back from the typist do you
6 remember whether your copy would have a stamp like
7 this at any time?

8 A I don't think so.

9 Q Okay. I'm just going -- if I could get counsel
09:54 10 just to show you the original because it loses a
11 little bit on Elmo. If you could just look at
12 that original stamp, it's very separate from the
13 text or the colour of the document because it's in
14 blue; do you remember whether that appeared on
09:55 15 your report when you got it back, or ever appeared
16 on your investigation reports when they came back
17 to you?

18 A Umm, well I'm confused, because Jack Ward was a
19 sergeant and a staff sergeant in uniform, and I
09:55 20 don't know why that particular investigation would
21 go to him.

22 Q Okay. If I could have brought up B2. Do you see,
23 this is another occurrence report, and I bring it
24 up only to show you that, although it surprises
09:55 25 you, that it appears again on B2?



1 A Well, maybe he was in detectives, I don't recall.

2 Q Okay. And again, without needing to bring all of
3 them up, I can tell you that there are lots of
4 other occurrence reports where that happens, B6 as
09:56 5 an example, B13 his name appears on a sergeant
6 stamp.

7 A Umm, okay.

8 Q Okay. But you don't know, you can't assist us in
9 telling us why some reports have that sergeant's
09:56 10 stamp on them?

11 A No.

12 Q Okay. I'm going to ask, now, whether I can bring
13 up B14 to see if you can assist us with a notation
14 that appears on that, again as an illustration.

09:56 15 It appears many times, I just picked examples.

16 Now you can see again, sir, that this is an
17 investigation report. Now up at the top of this
18 one and in, on many others as I said, if you will
19 trust me on that, there appears in red the letters
09:57 20 "CR", and there appears on the left, unlike

21 appears on the ones with Sergeant Ward's stamp, a
22 date lower down, at least on this copy, and it has
23 an initial in red on it which appears frequently
24 on copies of the report that have that "CR"

09:57 25 notation at the top. Can you -- well, first off,



1 would I be correct in assuming that "CR" means
2 central records?

3 A Yes.

4 Q Okay. So, anywhere we have a report in the police
09:57 5 binders that has that notation at the top, we
6 could conclude that that came out of central
7 records fairly comfortably, in your experience?

8 A That's right.

9 Q Okay. Do you know whose initial this is that
09:57 10 appears on this one and others of the reports that
11 we have available in the police binders?

12 A I'm not familiar. The "K" was Keelan in the over
13 -- he ran central records or the typing pool.

14 COMMISSIONER MacCALLUM: What was his last
09:58 15 name, sir?

16 A Keelan.

17 COMMISSIONER MacCALLUM: Keelan?

18 A Gerry Keelan. He ran the typing pool.

19 BY MS. KNOX:

09:58 20 Q Okay. Do you remember, sir, whether Mr. Keelan
21 was there in 1969 or whether he came later?

22 A I don't know whether he came later, or when he
23 came, I have no idea.

24 Q Can you say, or with any degree of certainty, as
09:58 25 to whether or not he was there in 1969?



1 A I don't know.

2 Q Okay. But he wasn't a police officer, am I
3 correct in understanding he was a manager and
4 administrator, somebody responsible for paper as
09:59 5 we -- I suggested to you earlier?

6 A Yes.

7 Q Yeah. His function was administrative?

8 A Yes.

9 Q Okay. Sir, you had said yesterday, and I think in
09:59 10 response to some questions from Mr. Hodson but
11 specifically in response to questions from
12 Ms. McLean in cross-examination, that it's your
13 belief that the force policy was that originals --
14 and you've said it again this morning, I think --
09:59 15 originals went on the central records file?

16 A Yes.

17 Q Originals stayed on the central records file?

18 A Yes.

19 Q You could go down and you could look at the file,
10:00 20 and you could ask for a copy of it, but you
21 couldn't take it out?

22 A That's right.

23 Q Okay. You also answered a question yesterday with
24 respect to statements and you said the original
10:00 25 statements went on the central records file?



1 A Well I -- yes.

2 Q Okay. So, if they were on the central records
3 file, then they should be in the central records
4 file when somebody goes to look at it. If you
10:00 5 went down in 1969, 1972 or 1985 or 1995, you would
6 expect the original statements to be in the
7 central records file?

8 A Yes.

9 Q Okay. Now again, in reviewing the police binders
10:00 10 and the police files, I'm going to, just by way of
11 illustration I'm going to pass you a bundle of
12 documents that are pegged that I have just removed
13 from the file that's labelled Number 5 David
14 Milgaard, the prosecution file as it exists in the
10:01 15 hands of the Commission today; okay. And, again,
16 not -- no trickery or anything here, but just
17 trying to get your help in understanding some
18 things. Is that the statement format that you
19 were familiar with as a police officer, certainly,
10:01 20 in '69-'70?

21 A Umm, yes.

22 Q It has at the top of it, like, red, looks like
23 sticky stuff, as if statement forms were in a pad
24 and you pulled out pages as you needed it?

10:02 25 A Yes.



1 Q Am I correct in assuming that?

2 A Yes.

3 Q Okay. And would you agree with me that what you
4 have in front of you right now is clearly original
10:02 5 statements, there might be one photocopy in the
6 middle of it, but clearly what you have in front
7 of you are original witness statements?

8 A Yes.

9 Q Okay. And if they came from the prosecution file,
10:02 10 as I suggest to you they have, then would you
11 agree with me that originals didn't always get
12 kept in central records, unlike what you believed
13 when you gave your testimony yesterday?

14 A Well, umm, there were exceptions probably,
10:02 15 obviously, but as far as I'm concerned the
16 originals went to CR.

17 Q Okay. And, sir, if that was the policy as you
18 understood it you would expect that there should
19 be a whole file in central records that had never
10:03 20 been separated, touched, or had anything done to
21 it except maybe to take an occasional photocopy,
22 but it would be all originals; agreed?

23 A Yes.

24 Q Okay. And if it's not the case, then either your
10:03 25 understanding of policy was wrong, or something



1 happened different with this file; would that be
2 the two possible explanations, or the only two I
3 can think of?

4 A Well, for instance, I don't know how the
10:03 5 Commission acquired this copy.

6 Q I --

7 A Or the original.

8 Q I can indicate to you that what I'm showing you
9 was in the custody of the Department of Justice,
10:03 10 the prosecutions office, and turned over to the
11 Commission through various chains from the
12 prosecutions file as it existed in 1989-1990?

13 A Okay.

14 Q Okay?

10:03 15 A That was different than my understanding, but
16 that's okay.

17 Q And when you say different, I presume you mean
18 with respect to what you, your understanding was
19 of where original documents would be in the file?

10:03 20 A Yes.

21 Q Okay. Mr. Commissioner, just for the record, the
22 bundle of statements that I showed to the witness
23 all bear Commission document stamp numbers now.
24 The number on the first of the statements in the
10:04 25 pile, which is a statement of Celine Cadrain, is



1 006333, and the last number, going all the way
2 through of what's contained on this peg, is
3 006545, and it runs consecutive page numbers all
4 the way through.

10:04 5 COMMISSIONER MacCALLUM: Okay. Now, did I
6 understand from your questioning that those came
7 from the prosecution's file, the Attorney
8 General's office to the Commission, and do I also
9 understand that they were made use of in the
10:04 10 Section 690 application, or one or both of them?

11 MS. KNOX: The other marking on this file
12 that may be of assistance is it has an RCMP file
13 number as well.

14 COMMISSIONER MacCALLUM: Yes.

10:05 15 MS. KNOX: And it has an RCMP file number,
16 this one that has the original statements, of
17 93-208.

18 COMMISSIONER MacCALLUM: Uh-huh.

19 MS. KNOX: So in 1993, or whenever project
10:05 20 Flicker started, and Mr. Hodson may need to make
21 sure I've got this right, when project Flicker
22 started the RCMP took custody of original
23 documents from the Department of Justice. By
24 that time they were in Regina because they had
10:05 25 been part of the Supreme Court of Canada



1 proceedings, but they went from Saskatoon to
2 Regina to the -- I believe they were held at the
3 court house in Regina during the 690 review.
4 Parts of them may have been taken to Ottawa for
10:05 5 the review or made available to counsel, but in
6 1993, when Inspector Sawatzky started the review,
7 he took custody of all of the original documents
8 in the possession of the Department of Justice
9 prosecution services and these are part of what
10:06 10 he took possession of, so the originals that went
11 into the hands of the Commission would have come
12 from the RCMP, but that would be the tracking
13 from the prosecution, local prosecution's office
14 to head office to the RCMP to the Commission.

10:06 15 COMMISSIONER MacCALLUM: Well, should I not
16 conclude therefore that but for the Section 690
17 applications, they wouldn't have been released
18 from Central Registry? I should not conclude
19 that?

10:06 20 MS. KNOX: I don't know that I'm the person
21 who can give you that answer. Mr. Hodson may be
22 better able to.

23 COMMISSIONER MacCALLUM: Your questions
24 were put to the witness as though he was wrong
10:06 25 about originals never leaving Central Registry.



1 Maybe they did, but exceptionally dealing with
2 Section 690.

3 MR. HODSON: I think if I might, to clarify
4 on the documents, it's our understanding that
10:06 5 that set of original statements were on Mr.
6 Caldwell's file back in 1969 and that that, his
7 prosecution files, and we'll certainly hear
8 evidence about this, but that his prosecution
9 files, once the cases were done, were retained by
10:07 10 the Attorney General's office in Regina. They
11 then were delivered to the RCMP in 1993 and then
12 returned back and the Government of Saskatchewan
13 gave us Mr. Caldwell's file as part of the
14 Commission work and the original statements were
10:07 15 in there and based on what we've traced, we
16 believe, although they may have moved around a
17 bit as part of these ongoing investigations, that
18 Mr. Caldwell had the original statements on his
19 file in 1969, and we'll certainly address this
10:07 20 through Mr. Caldwell, but that's our
21 understanding.

22 COMMISSIONER MacCALLUM: Yup. I see the
23 point.

24 MS. KNOX: And just one correction in terms
10:07 25 of that chronology from -- and I'll do the



1 correction before you speak if that's okay -- one
2 correction to the chronology is the prosecution
3 file stayed in the Saskatoon prosecution's office
4 after the case concluded. In 1989 or early 1990,
10:08 5 I'm not sure of the exact date, when Mr. Williams
6 of the federal Department of Justice commenced
7 his work on the review application, he sought
8 access to the original prosecution file. It was
9 still in Saskatoon, a closed file in the
10:08 10 Saskatoon prosecution office. Mr. Williams
11 actually accessed it in the Saskatoon office and
12 sometime subsequent to that it got sent to Regina
13 because the counsel who were appearing on the 690
14 review were counsel out of head office for
10:08 15 prosecution services in Regina. I think that's
16 how it, the movement went, and I stand to be
17 slightly corrected, but it didn't go to Regina
18 until after the 690 review had initiated.

19 MR. ELSON: Mr. Commissioner, if I could
10:08 20 also address this, and I'm not sure whether or
21 not I misheard the question that you asked
22 because you seem to be concerned with respect to
23 whether or not original statements were released
24 from the Central Registry as a consequence of the
10:08 25 690 application?



1 COMMISSIONER MacCALLUM: That was my
2 concern.

3 MR. ELSON: It's my understanding, and
4 again I believe Mr. Hodson is right, that we will
10:09 5 receive evidence on it, but I am instructed that
6 the practice was, both with respect to the
7 Department of Justice and with respect to the
8 city prosecution office, that they would require
9 the original statements because it was possible
10:09 10 that some of the witnesses who were being called
11 who authored those statements, those statements
12 might be required in either the course of a
13 preliminary hearing or a trial and the
14 prosecution insisted on receiving the original
10:09 15 statements and that was done as a matter of
16 course. The investigation reports, as I
17 understand it, were provided in the form of
18 either photocopies or carbon copies and those
19 were not the originals, but the statements,
10:09 20 simply for the purposes of properly conducting a
21 trial, it was a requirement that the original
22 statements be provided to the prosecutor, again
23 whether it was either the city prosecutor or
24 whether or not it was the Department of Justice.

10:10 25 COMMISSIONER MacCALLUM: Thanks.



1 MS. KNOX: If I could just have a moment.

2 COMMISSIONER MacCALLUM: So I make sure
3 there can't be any big dispute about this, it's
4 obvious that original statements would be needed
10:10 5 for evidentiary purposes by the prosecutors in
6 the cases where the matter went to trial and,
7 conversely, if the matter did not go to trial and
8 there was a guilty plea, then there wouldn't be
9 any need for them, they could have stayed in
10:10 10 Central Registry.

11 MS. KNOX: Mr. Commissioner, I'll leave
12 that area with this witness, but it's an area
13 that I can indicate that needs to be
14 pursued further.

10:10 15 COMMISSIONER MacCALLUM: We'll hear from
16 Mr. Caldwell?

17 MS. KNOX: Yes, and I'm not ceasing
18 questioning because in fact that's what we have
19 as originals, would be the only original, what I
10:11 20 believe to be the original in the prosecution
21 file, I was using it for illustration purposes.

22 COMMISSIONER MacCALLUM: Yes.

23 BY MS. KNOX:

24 Q Sir, I want to go now to the evidence that you
10:11 25 gave yesterday with respect to the interaction, if



1 I can use that phrase, between the police
2 officers, the investigating police officers,
3 superior officers, the city prosecutor, who in
4 those days was Mr. Wolff as I understand it, Ben
10:11 5 Wolff?

6 A He may have been. Mr. Boychuk was a city
7 prosecutor also, there were numerous, and I don't
8 know -- I can't answer for who was the city
9 prosecutor at that time.

10:11 10 Q Okay. I reviewed very quickly, because of time
11 constraints, I reviewed the transcript of the
12 testimony that you gave yesterday about how
13 charges got laid, and I'll talk about serious
14 cases, I'm not worried about the liquor control
10:12 15 act or anything like that, but in serious cases
16 like the ones that you dealt with in morality,
17 like the (V5)-- (V5)--- case as an example, the
18 murder case of Gail Miller, and you indicated at
19 one point that the police, investigating police
10:12 20 officer would have to go to the prosecutor, and if
21 I'm reading you correctly or hearing you
22 correctly, get the prosecutor's permission or
23 approval to lay a serious charge. Is that in fact
24 what your memory is of the practice of those days?

10:12 25 A Yes.



1 Q Now, sir, again can you tell me whether there was
2 any, to your memory, there was any written policy,
3 and I'm trying to pin this down, but whether there
4 was a written policy about what police officers
10:13 5 had to do with respect to what I'll call
6 pre-charge approval and the fact that they had to
7 have it?

8 A No, there was no written policy.

9 Q Okay. How then are you able to testify yesterday
10:13 10 that approval had to be gotten on those kinds of
11 charges?

12 A Well, you couldn't just charge anybody.

13 Q No, I hope we wouldn't just charge anybody, but if
14 you had reasonable or probable grounds to believe
10:13 15 that Mr. X had committed a rape or a break and
16 enter -- it doesn't have to be a rape, a break and
17 enter, as a police investigator, once you formed
18 in your mind that you've got sufficient evidence
19 that you think you've got reasonable and probable
10:13 20 grounds, what was the next step that you had to
21 take or you could take in respect to that
22 investigation that causes you to say to the
23 Commission Crown approval was required?

24 A Well, it was required. You couldn't just charge
10:14 25 anybody, you had to have some superior individual,



1 his approval.

2 Q Yesterday at one point you said either the
3 representative of the AG or a superior officer
4 could give that approval. Could -- is that in
10:14 5 fact correct, that a superior officer could give
6 the approval in certain instances?

7 A Probably.

8 Q Okay. So just so that we're clear, as an
9 individual officer working your desk in morality
10:15 10 section or as a constable working the street, your
11 evidence is you couldn't on your own make a
12 decision that Mr. X is going to be charged, you
13 had to say to somebody I've got enough evidence on
14 Mr. X that I think there's a good case here and
10:15 15 that we should charge him, that's as far as you
16 could go; am I correct on that?

17 A Well, that's probably right.

18 Q You keep saying probably and then you say other
19 things certainly. Do you, and I'm not criticizing
10:15 20 you because I'm asking you to remember 35 years
21 ago, do you actually today remember what the rules
22 were, and I'm going to call them rules, policies,
23 whatever, were back in 1969, 1970?

24 A Well, for instance, on a traffic offence, the fact
10:15 25 that you issued the ticket was probably grounds to



1 lay a charge. What more can I say.

2 Q But that's traffic offences. Can you remember
3 anything about *Criminal Code* offences,
4 shoplifting, break and enter, rape, murder, let's
10:16 5 go all the way up the level of seriousness, do you
6 have a specific memory, and it's okay if you
7 don't, do you have a specific memory today,
8 independent of anything somebody else might have
9 told you, of what you were required to do back in
10:16 10 1969?

11 A Well, first of all, you would talk it over with a
12 superior and if he agreed, the next step was to
13 take it to the appropriate prosecutor.

14 Q Okay. Are you telling me or is it your evidence
10:16 15 that every time you talked to your superior about
16 whether you had information to lay a charge, if he
17 agreed you then had to go to the AG or the
18 appropriate prosecutor or the city prosecutor?

19 A Well, sometimes maybe the superior would take it,
10:17 20 you know. Different case scenarios happened all
21 the time.

22 Q Okay.

23 A You might have a day off and when you came back
24 the charge had been laid.

10:17 25 Q Okay. So you then again, just in terms of your



1 specific memory, am I hearing you to say correctly
2 that you didn't walk every case where you laid a
3 charge through your own information to your
4 superior officer and then to the prosecutor,
10:17 5 either the city or the AG, before you went to Mr.
6 Goa or whoever and said we need an information
7 sworn here?

8 A No. Well, the -- my memory of it is that the
9 prosecutor, be it the AG's rep, would request Goa
10:18 10 to lay the information.

11 Q Do you have a specific case of yours where you
12 remember it unfolding that way or are you
13 attempting to sort of judge based on 35 years as a
14 police officer?

10:18 15 A Well, I think it happened that way all the time.

16 Q Okay. But my question to you, though, is I
17 appreciate, and I appreciate you are saying you
18 think, can you give us a specific case where you
19 had, where you know you had to get charge approval
10:19 20 because you got in trouble for not getting it or
21 you had a meeting with the prosecutor that was
22 really heated or something about it that you've
23 got a clear memory from 1969, 1970 that you had to
24 get charge approval before an information could be
10:19 25 sworn?



1 A Well, I don't ever recall an instance where I
2 asked Sergeant Goa, for instance, to swear an
3 information.

4 Q Do you ever recall a meeting with the prosecutor
10:19 5 where you asked for his permission to have a
6 charge laid?

7 A Well, again, you would discuss the file and he
8 would say we have enough evidence to proceed or we
9 don't.

10:20 10 Q Do you have a memory of a specific meeting where
11 that happened on one of your files?

12 A Yes.

13 Q Okay. What was the file?

14 A It was a charge of auto theft and Mr. Nightingale
10:20 15 was the Attorney General's representative and he
16 decided, on the basis of my file, I took it to him
17 and he decided that we had enough to lay a charge.

18 Q Okay. Was he a city prosecutor or an AG's rep?

19 A No, he was an AG's rep.

10:20 20 Q An AG's rep, okay. And when in your career did
21 that happen, what years approximately?

22 A I don't know. I spent five years in stolen auto.
23 I don't know what happened.

24 Q Stolen auto, was that a uniform position or a
10:21 25 detective position?



1 A No, it was a detective position.

2 Q And that's the only one you remember?

3 A Well, there are probably others, but, you know,
4 you are asking me to summarize 28 years as a
10:21 5 police officer and I can't specifically remember
6 exact dates.

7 Q Mr. Weir, would it be fair to say that in terms of
8 many of the questions that you've been asked here
9 and many of the answers that you've given, you've
10:21 10 drawn on 28 or 30 years of memories and you can't
11 specifically isolate what was happening in 1969,
12 1970 and say I remember this because and I know
13 I'm right about the dates, it's a melding of
14 memories of all of your years of experience in
10:22 15 your career isn't it?

16 A Well, I suppose. I remember being the court
17 officer at the Milgaard prelim.

18 Q Yeah, and that would be an unusual event because
19 back in those days, 1969, there weren't many
10:22 20 murders being charged, there certainly wasn't this
21 kind of a murder, and the fact that you had a duty
22 in that file would be kind of like the day you got
23 married, it's something you did once?

24 A That's right.

10:22 25 Q So you remember that because that was



1 extraordinary, if I could use that phrase?

2 A That's right.

3 Q But in terms of generally investigating, laying
4 charges, you did that for years, so with few
10:22 5 exceptions there would be nothing extraordinary
6 about any particular file I take it?

7 A No.

8 Q So it would be more again you drawing, and I'm not
9 criticizing you for this because this is the way
10:22 10 all of our minds work, it's more a blending of
11 memories and what you think was probably the case
12 because your recollection is generally things
13 should happen or did happen a certain way?

14 A Yes.

10:23 15 Q Okay. Now, I may have misunderstood you
16 yesterday, and I apologize, I did get your
17 transcript last night, but I didn't get to go
18 through it all in as much detail as I would have
19 liked to be fair to you, but yesterday when you
10:23 20 were talking about matters going for referral or
21 approval, you talked about the city prosecutor's
22 office, but you said certain matters went to the
23 AG's representative, like a murder I believe was
24 one of the ones that went to the AG's
10:23 25 representative. Do you remember that, or is that



1 what you said I should say first?

2 A Well, criminal cases usually went to the AG's rep.

3 Q Okay. So if your memory of that is correct, there
4 would be no reason for the city prosecutor to have
10:24 5 an involvement in a criminal file, particularly a
6 serious criminal file?

7 A No.

8 Q Okay. I'm going to ask if we could have brought
9 up document 267787. Now, if you take a minute to
10:24 10 look at this, you'll see what I've put up on
11 the -- and I'm almost finished, Mr. Weir -- you'll
12 see what I've put up on the screen is the original
13 information from 1969, May 26th, where David
14 Milgaard was charged with the murder of Gail
10:24 15 Miller?

16 A Yes.

17 Q You recognize that as an original information, and
18 I take it you recognize Leslie C. Bocking as an
19 officer, who obviously was a court officer in
10:24 20 1969?

21 A Yes.

22 Q Because he swore the information?

23 A Yes.

24 Q Now, it's your best memory that this, because it's
10:24 25 a murder, this would be dealt with by the AG's



1 office; am I correct in that?

2 A Yes.

3 Q No reason for the city prosecutor to have his
4 hands on it or have anything to do with it?

10:25 5 A No.

6 Q Should go from the police officer to Mr. Caldwell,
7 it would have been then, or Mr. Perras, the other
8 prosecutor of the day, and they would deal with
9 this file?

10:25 10 A Yes.

11 Q According to your best memory?

12 A Yes.

13 Q Okay. I'm going to ask if we could go to the next
14 page, 267788. Now, this is what we would call,
10:25 15 and you would be familiar with this, this is the
16 backing on that information. If we look at the
17 original, this would be the back side of it?

18 A Yes.

19 Q And what I'm showing you on the screen is the
10:25 20 notations for the appearances, the first one up
21 here, it's not real clear, but it looks like it
22 was June 2nd, '69?

23 A Yeah.

24 Q The second one, June 9th, '69?

10:25 25 A Yes.



1 Q The third, June 16th, '69, and there's a number of
2 other pages, but I'm just going to deal with these
3 pages. Now, looking at the person who appeared as
4 the Crown on June 2nd, you see the name Wolff?

10:26 5 A Yes.

6 Q And that was the city prosecutor; right?

7 A Yes.

8 Q And if we look on June 9th, the name Wolff appears
9 again?

10:26 10 A Yes.

11 Q City prosecutor, and if we look on June 16th it
12 says Mr. Wolff for the Crown?

13 A Yes.

14 Q And there Mr. Milgaard has counsel, Mr. Tallis for
10:26 15 the accused. Now, sir, given your memory, and I'm
16 not suggesting that it's anything but, you know,
17 an honest attempt to recall events of the day,
18 given your memory and your evidence that this
19 information would have gone to Mr. Caldwell, can
10:26 20 you offer any explanation for why at least the
21 three initial appearances on it were done by the
22 city prosecutor Mr. Wolff?

23 A I don't really know because my recollection was
24 that this was maybe a bail hearing or something.
10:27 25 I don't know.



1 Q Well, would you agree with me, sir, what it
2 indicates, or what it appears to indicate is that
3 there wasn't a black and white line dividing city
4 prosecutor responsibilities from AG representative
10:27 5 responsibilities even in the most serious case, in
6 this case a murder?

7 A Well, like I say, it could have been a bail
8 hearing or something. I don't know.

9 Q Well, what it would mean is that Mr. Wolff was
10:27 10 involved at least in the early stages in an
11 information charging someone with murder in the
12 City of Saskatoon?

13 A Yes.

14 Q Okay. And that would -- but would you agree with
10:27 15 me that that appears to be somewhat contrary to
16 what you would have expected given your memory
17 today of how the system worked back then on
18 serious criminal charges?

19 A Yes.

10:28 20 Q Okay, and that's the only point. And I guess
21 finally, Mr. Weir, I've alluded to this before,
22 but I'll try to be specific and try to be clear,
23 when you gave your evidence yesterday and as you
24 give your evidence this morning, I take it you are
10:28 25 trying your best to give the correct answers to



1 what's being asked of you by all of us?

2 A Yes.

3 Q Okay. And when you met with the reporters back in
4 1990, 1991, you were trying your best, or you
10:28 5 believed you were giving them correct information
6 based on memories that, of events that happened
7 20, 30 years ago, or 20 years ago then I guess?

8 A Yes.

9 Q Okay. You are basically doing your best?

10:28 10 A Yeah.

11 Q And when you talked to the Police Commission
12 investigator about the missing files, you were
13 doing your best to give accurate information?

14 A Yes.

10:29 15 Q And when you talked to the RCMP in 1993, you were
16 doing your best to give accurate information?

17 A Yes.

18 Q And would it be fair to say, sir, that at various
19 times when you think of this, you either remember
10:29 20 more or you remember less, depending on what the
21 triggers are for the memory?

22 A Yes.

23 Q Okay. And have you had the experience of
24 realizing, as many of us do, that what you
10:29 25 believed to be absolutely right, for example, when



1 you talked to a reporter in 1991, was probably not
2 100 percent right as you got more information, you
3 realized you made mistakes?

4 A Yes.

10:29 5 Q Honest mistakes, but nonetheless you made
6 mistakes?

7 A Yes.

8 Q And similarly, when you look back to 1969, 1970
9 and policies and practices, you are doing your
10:29 10 best, but you might necessarily make honest
11 mistakes?

12 A Yes.

13 Q You have no records, documents or notes from 1969
14 that causes you to be able to say with certainty
10:30 15 what policies were, what practices were, you are
16 doing your best to give us the best answers you
17 can?

18 A That's right.

19 Q Okay. When you walked away from here yesterday
10:30 20 I'm sure you thought about today; did you have
21 moments where you thought 'oops, when he asked me
22 that question I should have said this', or when
23 you walk away today will you have those moments
24 where you will remember other things that haven't
10:31 25 come to you this morning, do you think?



1 A Well, I don't know.

2 Q Okay.

3 A Umm, that's difficult to say.

4 Q But would it be fair to say that what you have
10:31 5 learned through this exercise is sometimes you can
6 have an absolute belief about something being
7 right and you learn, afterwards, that you were
8 mistaken, honestly mistaken?

9 A That's right.

10:31 10 Q Okay. And I'm -- just as an illustration, when
11 you talked about having a conversation in 1974
12 with Mr. Karst, you believed it was '74, but
13 yesterday when you talked about the events that
14 was happening when you had that conversation Mr.
10:31 15 Elson showed you that your time clearly had to be
16 off if you were remembering the right event for
17 the time you had the conversation because you were
18 talking about something that happened in 1977?

19 A Well, that's correct, but I didn't have any
10:31 20 documentation --

21 Q Yeah.

22 A -- at the time and I gave the date as
23 'approximate'.

24 Q Uh-huh. But, again, I -- would it be fair for me
10:32 25 to say that that's just another illustration of



1 how, sometimes, we make assumptions about things
2 in absolute good faith and honesty but it turns
3 out that we made -- we're generally just wrong,
4 we're not lying, we're just wrong?

10:32 5 A That's right.

6 Q Thank you, sir.

7 COMMISSIONER MacCALLUM: Mr. Hodson, it's
8 time for the break, will there be any further
9 cross-examination do you know?

10:32 10 MR. HODSON: I have just a couple of
11 questions of -- in re-exam?

12 COMMISSIONER MacCALLUM: Can you stand a
13 few more, sir?

14 A No, I would like a break.

10:32 15 COMMISSIONER MacCALLUM: Okay, thank you.
16 15 minutes please.

17 (*Adjourned at 10:32 a.m.*)

18 (*Reconvened at 10:51 a.m.*)

19 MR. HODSON: Mr. Weir, just a couple of
10:51 20 questions that arose out of some of the
21 examination that followed mine.

22 First, if I could just for the
23 record though, Mr. Commissioner, on the documents
24 that Ms. Knox referred to, just to clarify, when
10:51 25 the city police provided us with their binders a



1 year or so ago those documents, they were
2 photocopies of the police reports, which is what
3 they advised us, and so those are the documents
4 that were stamped with the Commission ID and
10:51 5 those which -- are those which are in our
6 database. A couple of months ago we obtained the
7 originals, which is what was referred to today,
8 the originals don't have the stamp on them, and
9 so when Ms. Knox referred to the documents in the
10:52 10 examination by letter, binder A and B and a
11 number, there was not a doc. ID on those. I have
12 those and I would just like to read them into the
13 record so that we know, we can correspond on our
14 documents as to what she showed the witness. The
10:52 15 document A1 is 106098, and again, Ms. Knox had
16 showed a second copy --

17 COMMISSIONER MacCALLUM: 098?

18 MR. HODSON: 098, yes, and that was the
19 occurrence report. And a version of that was on
10:52 20 the prosecutor's file as well, a different
21 physical document, that 006255; and then she
22 showed the witness A93, A94, and A95, and those
23 documents are 106193, 106194, and 106195; she
24 showed --

10:52 25 COMMISSIONER MacCALLUM: Those were A what?



1 MR. HODSON: A93, 94, and 95. And then she
2 showed the witness B1 and B2, which are 106508,
3 and B2 is 106509; B6 which is 106513; and B13
4 which is 106520; and lastly B14 which is 106521.
10:53 5 So those are just our doc. IDs, and those are the
6 actual exhibits, are those ones with the doc. ID.

7 COMMISSIONER MacCALLUM: Thank you.

8 BY MR. HODSON:

9 Q Mr. Weir, just a couple of questions. Yesterday
10:53 10 when I went through the (V5)-- (V5)--- files you
11 will recall, in the reports, that there was
12 physical evidence gathered, is that correct, in
13 that investigation?

14 A That's right.

10:53 15 Q And I think one was, on the day of the occurrence,
16 the clothing, her garments, and that type of
17 physical evidence; correct?

18 A Yes.

19 Q And the second was physical evidence being her
10:54 20 blood and the vaginal contents?

21 A Uh-huh.

22 Q Do you remember when I showed you that, those
23 reports?

24 A Yes.

10:54 25 Q Now you were the officer in charge of that file;



1 is that correct?

2 A Yes.

3 Q Where would the physical evidence be stored in the
4 course of the investigation?

10:54 5 A Umm, in -- there was an area for storing exhibits
6 in the police station.

7 Q And so, for example, if you took possession of
8 the, I think the report indicates the vaginal
9 contents from Dr. Kavanagh, --

10:54 10 A Yeah.

11 Q -- would you have your own locker that you would
12 put it in and you'd -- for continuity, I'm
13 assuming that there is some system where you
14 would, someone would keep possession of the
10:54 15 exhibits, is that fair, or physical evidence?

16 A Well they were stored in the exhibit room.

17 Q Okay. And was that ident then?

18 A Nope.

19 Q In morality exhibit room?

10:55 20 A Umm, they -- well, there was a common exhibit room
21 where you stored exhibits, and it was in the
22 basement of the old police station.

23 Q Yeah. I take it, sir, that if you were called to
24 testify in a case, which I am sure you were, that
10:55 25 continuity of an exhibit was -- needed to be



1 established; do you understand what I mean by
2 that?

3 A Yes.

4 Q And so that if you took the tube of the vaginal
10:55 5 contents from Dr. Kavanagh and then had it tested,
6 or it was somehow needed in Court, you would be
7 necessary to say 'well I had it and it was in my
8 possession at all times' or 'I gave it to person A
9 and they gave it back'; do you understand what I
10:56 10 am saying?

11 A Yes.

12 Q And so we've heard evidence from other officers
13 about lockers and storing exhibits and I'm just
14 wondering what -- if you recall on the (V5)--
10:56 15 (V5)--- file, and I'm assuming that the physical
16 evidence, the items were stored or retained with
17 continuity in mind; is that fair?

18 A Yes.

19 Q And do you recall what; did you keep some of those
10:56 20 exhibits in your locker?

21 A I may have. I don't remember.

22 Q Okay. And then what was the procedure, then, when
23 a file was concluded as far as what happened to
24 the physical evidence?

10:56 25 A You would return it to the appropriate people,



1 whoever it was seized from.

2 Q Okay. Now we did see the concluding report of
3 February 5, '71 where it appears -- and that's the
4 report that you say is not yours -- but it appears
10:56 5 on that report that you or someone else returned
6 Ms. (V5)---' belongings, and I think that was the
7 one group of items that were taken from her, her
8 clothing and garments; do you recall?

9 A Yes.

10:57 10 Q Okay. What about the other physical evidence,
11 being the -- her blood and her vaginal contents,
12 that test tube, and I think there was hair taken
13 as well?

14 A Umm, I don't remember where that was stored. I
10:57 15 may have stored it in my locker, I don't know.

16 Q Do you recall -- now you had told us yesterday
17 that at some point in the '70s when you talked to
18 Mr. Karst you threw out your working copy file; do
19 you recall whether you still had the physical
10:57 20 evidence in your locker or in your possession?

21 A Umm, no, I don't recall.

22 Q Do you recall ever dealing with it or doing
23 anything with it?

24 A I don't recall.

10:57 25 Q And I think you -- again, just back -- I think you



1 said that when you had your discussion with Mr.
2 Karst and learned about the confession in the
3 (V5)-- (V5)--- matter, that I think you said you
4 went to central records, is that right, and looked
10:58 5 for the files; that was your evidence?

6 A Umm, I may have, I don't recall.

7 Q Do you have a -- I'm sorry, I think you said that,
8 when I showed you the one document, that after Mr.
9 Karst told you about getting the confession and
10:58 10 you realized it was (V5)-- (V5)--- you went to
11 look for the file; do you remember saying that
12 yesterday?

13 A Yes.

14 Q In central records, and you said it wasn't there?

10:58 15 A That's right.

16 Q Do you have a recollection, today, of actually
17 going to central records and looking for the file?

18 A Umm, I -- I don't recall.

19 Q Okay. And my question was where it was located;
10:58 20 do you remember where central records was located
21 when you went to look for the file?

22 A It was -- by that time I was in detectives we were
23 in the new station, and I -- it was across, it --
24 well, central records was in the middle of the
10:59 25 ground floor of the new station.



1 Q Okay. And do you have a recollection of going
2 there though?

3 A Yes.

4 Q To look for the (V5)-- (V5)--- file?

10:59 5 A Yes.

6 Q Okay. And any -- and tell us about what you
7 recall by memory of that?

8 A Well, it wasn't there.

9 Q Do you recall anything else about that trip?

10:59 10 A Umm, well, I then inquired with the central
11 records staff to see if I could call up the other
12 files that Fisher allegedly pled guilty to in
13 Regina, and I couldn't find anything.

14 Q And I think that's what you told us yesterday; is
15 that right?

16 A Yeah.

17 Q Yeah. You were asked a question about Jack Ward
18 being involved and we heard evidence, and I think
19 you said he was in patrol or traffic, we have
11:00 20 heard some evidence that Mr. Ward was very ill in
21 1969, in fact died in the fall of '69, and had had
22 some desk duties during that year, and that may
23 explain why he was involved in the Gail Miller
24 file; is that -- were you aware of that?

11:00 25 A That could be. You see, by that time he was a



1 staff sergeant, and when I was in uniform he was
2 our staff sergeant, and I was assigned to either
3 dispatch or to station duty, and we worked with
4 Ward.

11:01 5 Q Okay. But just about him being ill and being
6 involved in the Gail Miller file; do you have any
7 recollection of that?

8 A No, --

9 Q Okay.

11:01 10 A -- I don't. I recall he was ill, he had a lung
11 disorder --

12 Q Yup, okay.

13 A -- which he acquired in Italy, I think.

14 Q I see. Those are all my questions, Mr. Weir, and
11:01 15 I think we are done with you. Thanks very much
16 for attending.

17 A Okay.

18 COMMISSIONER MacCALLUM: Thank you, Mr.
19 Weir, you are excused.

11:01 20 MR. HODSON: The next witness is Thor
21 Kleiv.

22 **THOR HENDRICK KLEIV, sworn:**

23 **BY MR. HARDY:**

24 Q Morning, Mr. Kleiv.

11:02 25 A Morning.



1 Q Thank you for attending today to give testimony.
2 I understand you are currently a resident of
3 Saskatoon?

4 A Yes, I am.

11:02 5 Q And can you tell us how old you are, sir?

6 A I'm 74.

7 Q And I understand you were previously a member of
8 the Saskatoon Police Service?

9 A Yes.

11:03 10 Q And for what years were you a member?

11 A I joined the Saskatoon Police Department on August
12 the 1st, 1956, and I retired on August the 1st,
13 1989.

14 Q And I'm going to show you, briefly, a service
11:03 15 record that we have obtained from the Saskatoon
16 Police Service. The document is 325555, if we
17 could turn, please, to page 325557. I understand
18 you have had an opportunity to review this service
19 record as indicated here, Mr. Kleiv?

11:03 20 A Yes, I have.

21 Q And is that an accurate summary of your service
22 with the Saskatoon Police Service?

23 A Yes, it appears to be accurate, yes.

24 Q And do I understand correctly from this, then,
11:04 25 that you began work in the identification division



1 in 1965?

2 A Yes, that's right.

3 Q And as of January of 1969 you had the designation
4 of an identification officer?

11:04 5 A Yes, sir.

6 Q And am I correct as well that you spent 13 years,
7 then, in the identification division with the
8 Saskatoon Police Service?

9 A Yes I did.

11:04 10 Q And did you retire then, sir, as a superintendent
11 in charge of administration?

12 A Yes I did.

13 Q I show you another document we have, Mr. Kleiv,
14 it's an organizational chart, document ID 325569.
11:04 15 This is a chart that was obtained from the 1969
16 annual report of the Saskatoon Police Service. I
17 understand you have had an opportunity to review
18 this chart previously?

19 A Yes I have.

11:04 20 Q And perhaps we could turn to page 3 of that
21 document, please. And again for explanation
22 purposes, Mr. Kleiv, we've taken that chart and
23 attempted to accurately add the names, you will
24 note on, particularly on the right side of the
11:05 25 page, that would have been associated with each of



1 the divisions noted. And if we look in particular
2 at the identification division I see your name in
3 that division, and if you look at that division
4 otherwise does that look approximately accurate,
11:05 5 in terms of the personnel that would have been
6 with that division as of 1969?

7 A Yes sir.

8 Q And perhaps, for our reference, could you just
9 tell us generally what the role of the
11:05 10 identification division was in 1969, Mr. Kleiv?

11 A Yes. We attended crime scenes, also did a
12 fingerprint examination at crime scenes, we looked
13 for physical evidence at crime scenes, we would
14 photograph crime scenes, and at times we would
11:06 15 make plan drawings of the scenes. We'd also be
16 responsible for retaining exhibits from the crime
17 scenes. The, our inside duties would be to
18 photograph and fingerprint people who were
19 arrested, and we would also be responsible for
11:06 20 developing negatives into photographs, after
21 taking photographs of the prisoners, we would
22 classify the fingerprints that were taken and file
23 them in our file system, and we would also take
24 photographs of certain individuals who requested
11:07 25 to have their picture taken for passports. We'd



1 photograph taxi drives, they would require proper
2 ID and they would require having a photo posted in
3 the taxi.

4 Q And these were the types of tasks, then, that you
11:08 5 were regularly attending to in 1969?

6 A Yes, sir, that's --

7 Q Okay. And could you tell us a little bit about
8 the training you had received up to that point in
9 time in terms of being an identification officer?

11:08 10 A Yes. I attended an eight-week course in
11 identification procedures and practices at the
12 National Police College in Ottawa, Ontario, and
13 this course involved various things that an
14 identification officer was responsible for in that
11:08 15 they had -- they provided a mock crime scene and
16 we would be expected to, under supervision, go
17 through the crime scene and do the things that we
18 were supposed to do such as photograph, measuring,
19 seizure of exhibits, examining for blood stains or
11:09 20 fabric, you know, and things of that nature.

21 Q And, as of 1969, this would have been the extent
22 of your training then, I guess, along with the
23 experience you had had on the job, so to speak, up
24 to that point in time?

11:09 25 A Yes. And, of course, there were other things



1 involved in the training aspect was fingerprint
2 examination, fingerprint identification,
3 fingerprint classification, and all aspects of
4 photography at that particular time.

11:10 5 Q Okay. If we look again at the document that's on
6 the screen in front of you, just in terms of the
7 reporting chain in the identification division,
8 who would you receive directions from as of 1969,
9 Mr. Kleiv?

11:10 10 A At that particular time Lieutenant Penkala was in
11 charge of identification, and so he would be the
12 person that I would receive my instructions from,
13 yeah.

14 Q And would you also, then, report to Lieutenant
11:10 15 Penkala?

16 A Yes.

17 Q And I see Jack Wood's name above all three
18 divisions; would there be occasion when you would
19 receive instructions directly from Jack Wood who
11:10 20 apparently was superintendent of criminal
21 investigations at the time?

22 A Not generally, that I wouldn't receive
23 instructions from him, no. It would, he would
24 speak with Penkala and then Penkala would deal
11:10 25 with whatever ident officer he decided, if there



1 was some crimes -- crime to attend or anything.

2 Q And what can you tell us about the interaction,
3 then, amongst the three divisions noted; detective
4 division, morality division, identification
11:11 5 division?

6 A Well we did all know one another and we did talk
7 on occasion about certain aspects of what was
8 going on, and -- but as far as direct instructions
9 were concerned, we received our instructions from
11:11 10 our superior.

11 Q And just taking, for example, perhaps a detective
12 having charge of a particular investigation and
13 wanting some identification work done on a
14 particular item, --

11:12 15 A Uh-huh.

16 Q -- what would be the likely chain of events in
17 terms of that work ending up with you?

18 A Well he would probably go directly to Lieutenant
19 Penkala, or the person in charge of
11:12 20 identification, and then he, in turn, would
21 delegate the responsibility of what was to be
22 done.

23 Q And I understand, sir, that you were involved with
24 the Gail Miller murder investigation in 1969?

11:12 25 A Yes I was.



1 Q And am I correct, sir, that you attended at the
2 scene on the morning of January 31st, 1969?

3 A Yes.

4 Q And what's the quality of your memory like in
5 terms of attending that scene that morning?

6 A Well, umm, Lieutenant Penkala, Constable Winter,
7 who was assigned to identification at that time as
8 a trainee, and myself went to the scene. And we
9 arrived there approximately 9:00 a.m. of that

10 morning. And we entered the area from the
11 east-to-west lane, which runs parallel to 20th
12 Street, and we came to the intersection, a
13 T-intersection of the alley which runs north and
14 south of the 200 block Avenue N South. And
15 looking to the right, there was a body lying in
16 the snow on the right-hand side of the lane way
17 which runs north and south, and it appeared to be
18 a body of a female person. The head was to the
19 south. It was lying in the deep snow on the
20 right-hand side of the alley and there was a fence
21 right running parallel with the alley. And the
22 body was clothed in a black coat and the arms were
23 through the sleeves of the coat. There was a
24 white dress, or a uniform dress was sort of
25 crumpled at the middle of the body, and there also



1 was a half-slip that was roped at the centre of
2 the body. The, going down to the bottom portion
3 of the body, there was an over boot on the left
4 foot and the panties and girdle and mesh stocking,
11:15 5 white stocking, was sort of crumpled and sort of
6 wrapped around the boot, and also the mesh
7 stocking was on the right, right foot. And,
8 basically, that's what I remember of the body.

9 Q And what do you recall the tasks that you attended
11:16 10 to that morning?

11 A The tasks? Well I photographed the scene, I
12 photographed the body from different positions,
13 and I also photographed the body after the Coroner
14 had arrived and turned the body over. And,
11:16 15 basically, that's the photographs that I took at
16 the scene.

17 Q And were you being directed by someone in that
18 respect?

19 A Umm, Penkala was there, Lieutenant Penkala was
11:17 20 there, but -- so I received, probably, some
21 directions from him.

22 Q Uh-huh. Perhaps I'll turn you to your
23 identification report in relation to this matter,
24 Mr. Kleiv, and we can review that in some detail.
11:17 25 The ID is 006241, and I understand Detectives



1 Parker and Reid were present at the scene upon
2 your arrival?

3 A Yes, that's right.

4 Q Just looking at the report, generally, you will
11:17 5 see it's a Saskatoon Police Department
6 Investigation Report dated February 1st. If we
7 turn to the second page or perhaps the third
8 page -- try the second page please, I'm sorry, it
9 is the third page -- you will see it's your
11:18 10 report?

11 A Yes.

12 Q Do you recognize the form of this report, Mr.
13 Kleiv?

14 A Yes I do.

11:18 15 Q And if we can go back to the first page, please.
16 Just looking at this first paragraph, it talks, as
17 you've told us, about your arrival at the scene
18 with Lieutenant Penkala and Constable Winter. I'm
19 just going to read a portion to you starting at
11:18 20 that spot. It indicates as follows:

21 "The scene was approached via the
22 east-west alley from the 200 blk. Ave.
23 N. So. to a point where the north-south
24 alley joins the east-west alley. A blue
11:18 25 blanket was spread over the body on



1 arrival. It was located on the east
2 side of the alley, with the head to the
3 south and feet to the north, lying on
4 stomach, face down. There was evidence
11:18 5 of the snow being packed down on the
6 east side of the body. The body was
7 clothed in a black coat, black fur
8 collar and cuffs, was bare headed and
9 was that of a female. There was an
11:19 10 overboot on the left foot and girdle,
11 panties and stocking down over left
12 boot. No boot on right foot, stocking
13 down above ankle. Left and right
14 stockings were attached to girdle
11:19 15 fasteners. There were red spots in
16 various locations about the body which
17 were consistant with being blood. Two
18 gloves were found in the snow on the
19 east side of the alley, south of the
11:19 20 body, one from left hand and one right
21 hand both tan coloured and in separate
22 places in the snow."

23 And does that account generally fit with your
24 recollection, Mr. Kleiv?

11:19 25 A Yes, that's right.



1 Q And you spoke to us about some photographs that
2 were taken at the scene, and if we could just move
3 down the page, I note that there is a list of
4 photographs indicated on that document. Now there
11:19 5 is some scribbling and someone else has written on
6 the document, and I think what likely happened
7 here, Mr. Kleiv, is that in preparation for the
8 preliminary hearing and trial some of the
9 photographs were perhaps re-ordered and placed in
11:20 10 a booklet that we've previously seen in evidence
11 here at the Inquiry, and just for reference sake
12 that, those photographs as included in the booklet
13 are document IDs 241917 to 241923. Now what I
14 have done, Mr. Kleiv, is that I've found a clean
11:20 15 version of that report prior to the markups, and
16 if we could turn, please, to document 024852 and
17 just focus in on this portion. And, with those
18 descriptions, I've taken some photos that I
19 believe were developed from a set of negatives
11:20 20 that originally existed in relation to this
21 matter, and matched them up with, with the
22 descriptions as indicated here on this document,
23 and I would like to show those photographs to you
24 and ask you some questions. And we'll need to use
11:21 25 the Elmo for this purpose but the first caption,



1 you will note, reads:

2 "Number 1: Camera facing north east
3 showing position of body on east side of
4 alley."

11:21 5 If we could place, please, document 32 -- or
6 photo 326502 on the Elmo, and is -- do you
7 recognize that photograph, Mr. Kleiv?

8 A Yes I do.

9 Q Is that a photograph you would have taken, then,
11:21 10 at the scene on January 31st?

11 A Yes.

12 Q And is that an accurate depiction of the scene
13 from that vantage point as you recall?

14 A Yes it is.

11:21 15 Q I'll turn you next to 326503. Again, is that a
16 photograph that you would have taken at the scene
17 that morning, Mr. Kleiv?

18 A Yes.

19 Q And, again, an accurate depiction of the scene as
11:22 20 you recall?

21 A Yes, that's right.

22 Q And I note in the background there is a van; am I
23 correct that that's the identification van?

24 A Yes, that's the van that we used to travel to the
11:22 25 scene with.



1 Q Do you recall who was driving that van that -- on
2 the morning?

3 A I believe I was.

4 Q Do you have any recollection of entering that
5 alley from Avenue N and driving to the spot noted
6 in the photograph?

7 A Yes.

8 Q And do you recall whether there was -- what the
9 condition of the alley was in terms of driving?

10 A It was hard-packed snow in the travelled portion
11 of the alley.

12 Q Do you recall whether there were any difficulties
13 driving into that alley?

14 A Not that I recall, no.

15 Q I'll turn you next to photo number 3, the caption
16 on your report, and maybe I'll just read it, I
17 should have for number 2 as well, indicates:

18 "Camera facing southwest, showing body
19 from back."

20 And that's photo 326504. And again, do you
21 recognize that photo as one taken by yourself,
22 Mr. Kleiv?

23 A Yes, I do.

24 Q And again, an accurate depiction of the scene from
25 that vantage point as best you can recall?



1 A Yes.

2 Q I note there's a measuring stick of some sort
3 noted in the photograph?

4 A Yes. That's a surveyor's rod.

11:23 5 Q Placed there by yourself that morning?

6 A I believe either myself or Lieutenant Penkala
7 placed it there, yes.

8 Q And I note, I don't know if you'll recall, but I
9 note some deeper markings in the snow in that
11:23 10 portion of the photograph. Do you recall whether
11 those indentations were made during your presence
12 at the scene?

13 A I believe they were probably made before we
14 arrived, yes.

11:23 15 Q Okay. It looks perhaps that you've backed
16 yourself up against the fence line to take that
17 particular photograph?

18 A Yes, that's right.

19 Q Okay. I'll turn you to the next photo, number 4,
11:23 20 and from the report the caption reads:

21 "Camera facing northeast, showing body
22 position and packed down area in snow."

23 And that photo is 326505. Again, is that a photo
24 you recognize from the morning of January 31st,
11:24 25 Mr. Kleiv?



1 A Yes, sir.

2 Q Again, an accurate depiction of the scene from
3 that vantage point as best you can recall?

4 A Yes, that's right.

11:24 5 Q And the report talks of the packing of the snow.
6 Is that an accurate depiction of the disturbance
7 in and around the body of the snow as best you can
8 recall?

9 A Yes, it is.

11:24 10 Q In terms of as you arrived at the scene that
11 morning?

12 A Yes.

13 Q And do you know whether it was determined whether
14 the scene had been disturbed in any fashion prior
11:24 15 to your arrival by bystanders or by officers? Do
16 you recall that?

17 A No, I don't really recall that, whether -- this
18 was the scene as it was when I took the
19 photograph.

11:25 20 Q Do you recall talking to Detectives Parker or Reid
21 about the condition of the scene upon their
22 arrival?

23 A No, I don't remember talking to them about that,
24 no.

11:25 25 Q Okay. So as best you can tell us, that's how the



1 scene appeared upon your arrival?

2 A Yes.

3 Q I think it was noted in your report that there
4 were some signs of blood around the body. Do we
11:25 5 see any of those signs in this particular
6 photograph?

7 A Well, there's some black spots located around. I
8 would suspect that that was what I was referring
9 to as being blood spots.

11:25 10 Q Do you have a recollection of that though, sir?

11 A Ah -- not clearly, no.

12 Q And when you say black spots, you can actually
13 touch the screen and an arrow should appear.
14 Which block spots are you referring to?

11:26 15 A There was one there -- there's a series.

16 Q Okay. What I'll do, I'll just pause there for a
17 moment. If we can save a caption of -- we can't
18 do that? No, I guess we can't if it's on the
19 Elmo. You've pointed to some spots in, it
11:27 20 appears, the travel portion of the alleyway
21 slightly to the south of the body but to the east
22 of the body as well, some closer to the body on
23 both sides of the head as depicted in the
24 photograph. Would that be accurate, Mr. Kleiv?

11:27 25 A Yes, as far as I know.



1 Q And again, do you have any recollection of whether
2 the spots you've indicated for us on this
3 photograph were in fact apparently spots of blood
4 or are you just going from speculation?

11:28 5 A Well, I believe I made a note of the fact that
6 there was blood spots visible in the area, so some
7 of these spots may not be blood. I didn't
8 actually count how many blood spots there were.

9 Q Okay. Do you recall having a thought or an
11:28 10 opinion at the time that you were observing the
11 scene on January 31st, 1969 as to whether or not
12 the attack upon Miss Miller had taken place at
13 this location?

14 A Yes, I was of the opinion that the attack took
11:28 15 place there, yes.

16 Q And perhaps we've covered these points already,
17 but can you tell us on what basis that opinion was
18 formed?

19 A With the amount of trampling of the snow in the
11:29 20 immediate vicinity, it almost indicated that the
21 attack was, a struggle took place in that
22 location, and I didn't see any place where the
23 body may have been dragged to that location or
24 anything like that, of that nature.

11:29 25 Q Okay. Now I'll turn your attention to another



1 photograph, the caption in your report, it's
2 number 5, reads:

3 "Camera facing south, showing body and
4 east-west lane joining north-south
11:29 5 lane."

6 And that's 326506, and again, did you take that
7 photograph, Mr. Kleiv?

8 A Yes, I did.

9 Q And that's an accurate depiction of the scene from
11:29 10 that vantage point as best you can recall?

11 A Yes.

12 Q I'll turn your attention next to photo number 6
13 and the caption in your report reads:

14 "Camera facing north, opposite view of
15 #5."

16 And that's 326507. Again, your photo, Mr. Kleiv?

17 A Yes.

18 Q And an accurate depiction as best you can recall?

19 A Yes, that's right.

11:30 20 Q And I see at least one vehicle, and I think there
21 are two vehicles in the background, you can see
22 just a hazy outline of another vehicle behind that
23 first vehicle. Do you recall those vehicles being
24 present in the alleyway?

11:30 25 A Yes. I don't recall, so to speak, the vehicle



1 being there, but the photograph certainly
2 indicates that there's a vehicle there.

3 Q And I've had a chance to look at the, a copy
4 that's actually on the Elmo, and I don't know that
11:30 5 a whole bunch turns on this, but I've noted the
6 vehicle behind the first vehicle, and perhaps I'll
7 show you that original photo -- do you see what
8 I'm speaking of in terms of that second vehicle
9 behind the first?

11:31 10 A No, I can't see that.

11 Q That's fine.

12 A I'm sorry.

13 Q No, no problem, Mr. Kleiv, thank you. I turn your
14 attention next to photo number 7, you'll note in
11:31 15 your report it indicates:

16 "Area south of body showing indentations
17 in snow where gloves found."

18 And that photo is 326508. Do you recognize that
19 photograph, Mr. Kleiv?

11:32 20 A Yes, I do.

21 Q Is that one that was taken by yourself at the
22 scene that morning as well?

23 A Yes.

24 Q And do you recall -- and perhaps I should back up
11:32 25 for a moment. This photograph wasn't included in



1 the booklet of photographs that was entered as an
2 exhibit at the preliminary hearing and trial of
3 David Milgaard. I'm wondering if you could
4 firstly tell us from your best recollection what
11:32 5 this photograph is depicting?

6 A Well, this is the particular area where the body
7 was found and it was taken after the body had been
8 removed.

9 Q And in terms of the caption in your report
11:33 10 referring to the area south of the body showing
11 indentations in snow where gloves were found, do
12 you recall whether or not this was the area where
13 Gail Miller's gloves were found?

14 A Yes, I believe so.

11:33 15 Q And just for reference sake, what we could do
16 perhaps is go to a scale diagram I believe that
17 you prepared, Mr. Kleiv, but perhaps you could
18 confirm that for us, it's document 241936, if we
19 could focus in on this area, please. You'll note
11:33 20 the letters there and, actually, if we could move
21 to the top of the screen. Sorry, if we could back
22 out to the full document. Focus in on that
23 portion for a moment. I note D and E, D and E are
24 associated with the right glove and the left
11:34 25 glove. If we can go back, please, to the area of



1 the body, focus in on that area again, and I see D
2 and E noted on that diagram just south of where
3 the body was. Was this a diagram, Mr. Kleiv, that
4 you prepared?

11:34 5 A Yes, it is.

6 Q And do you recall the location of the gloves as
7 noted on this diagram?

8 A There's a line that projects from D and E and then
9 there's a dot at the end of the line, at the end
11:35 10 of each line and that would be the approximate
11 location of the gloves.

12 Q Okay. And just going back then to the photograph
13 for a moment, it's 326508, and just to give this
14 some reference, you'll have to bear with me here,
11:35 15 Mr. Kleiv, I was looking at these for quite some
16 time, but this particular area, I note that
17 there's sort of a clump of snow against the
18 branches with a bit of a crevice noted near the
19 bottom of that, and if we could go back to photo
11:35 20 326502, please, it appears to me that that clump
21 perhaps is this clump noted in that photograph and
22 you and I have previously had a chance to compare
23 those, Mr. Kleiv. Would that fit with your
24 observation as well?

11:36 25 A Yes, I believe so, yes.



1 Q Just back to that photograph that we were looking
2 at. Is that likely then the location, somewhere
3 in and around this portion of the snow where the
4 gloves were found on the morning in question?

11:36 5 A Yes. Probably more to the right of -- or pardon
6 me, more to the centre of the photo.

7 Q Okay. And do you recall, were those gloves lying
8 on top of the snow or what was their condition at
9 the time they were found?

11:36 10 A No, they were found in the, partially covered by
11 the snow. They were in the snow and they weren't
12 laying on top of the snow, so to speak.

13 Q Were they or was any portion of them visible when
14 you first looked at this particular area?

11:37 15 A As far as I recall, part of them was visible.

16 Q Okay. Do you know in this particular photograph
17 whether the gloves are still there or have they
18 been removed or do you have any recollection?

19 A No, I believe I purposely took the photograph to
11:37 20 indicate the area after the body had been removed
21 and also possibly to show the area where the
22 gloves were located.

23 Q You did travel with the body though when it was
24 removed, Mr. Kleiv?

11:37 25 A Yes.



1 Q Okay.

2 A I went to St. Paul's Hospital.

3 Q Right. I'm just trying to -- with that point in
4 mind, I'm just wondering when you might have taken
11:38 5 that photograph if you are indicating that the
6 body had already been removed.

7 A Yeah.

8 Q Anyways, you've told us as best you can in terms
9 of your recollection of that particular aspect?

11:38 10 A Yes.

11 Q And I'm going to show you one further photo and if
12 you'll bear with me, it is a rather graphic photo,
13 but we need to cover just a few points on it, and
14 it's photo number 8 and the caption in your report
11:38 15 notes:

16 "View of body after being turned over by
17 Coroner Dr. Fogel showing disarrangement
18 of clothing."

19 And that photo is I believe 326509. Do you
11:38 20 recall taking that photograph, Mr. Kleiv?

21 A Yes, I do.

22 Q And is that an accurate depiction of the scene
23 from that vantage point and of Miss Miller's body
24 when it was turned over as best you can recall?

11:39 25 A Yes.



1 Q And looking at the arrangement of the clothing and
2 the state of the body, is that an accurate
3 indication of both of those aspects at the point
4 that the body was turned over?

11:39 5 A Yes.

6 Q And just a few points, I think you noted for us
7 around the ankles the girdle and mesh stockings
8 and panties were at that location?

9 A Yes, that's right.

11:39 10 Q One boot is missing?

11 A The right boot is missing, yes.

12 Q And the centre of the body, the dress and the half
13 slip are roped around the body?

14 A That's right.

11:39 15 Q And it appears the brassier, the right strap is
16 broken; is that your recollection?

17 A Yes.

18 Q And the coat has been placed back on the body over
19 the arms?

11:40 20 A Yes, that's right.

21 Q And just looking again at the ankle portion, it
22 appears, at least in this black and white
23 photograph, and I think your report refers to this
24 aspect, that there's some blood staining on some
11:40 25 of the garments that are at the ankle?



1 A Yes, there was some blood staining of the panties
2 and possibly some blood staining of the girdle as
3 well.

4 Q And do you recall whether it was determined at the
11:40 5 time whether that was fresh blood?

6 A No, I don't recall.

7 Q And I just note again, Miss Miller does not have
8 her gloves on and appears to be clutching snow; is
9 that your recollection?

11:40 10 A Yes.

11 Q We can take that photo off, please.

12 COMMISSIONER MacCALLUM: And that was not
13 the subject of a publication ban?

14 MR. HARDY: No. Actually, Mr.
11:41 15 Commissioner, all of these photos, being new
16 document IDs, perhaps should be dealt with, we
17 request a publication ban on those photographs.

18 COMMISSIONER MacCALLUM: Yes, that's
19 granted.

11:41 20 BY MR. HARDY:

21 Q And just in terms of that photograph again, and we
22 don't need to look at it, Mr. Kleiv, but I was
23 pointing out the apparent blood staining on some
24 of the garments around the ankle. Do you recall
11:41 25 any consideration at the time being given to that



1 aspect?

2 A No, I don't recall. I believe at the autopsy it
3 was sort of determined that the victim may have
4 had, been either having a menstrual period or
11:42 5 close to a menstrual period.

6 Q But prior to the autopsy then in terms of that
7 aspect, and I think we know what portion of the
8 autopsy you are referring to, do you recall
9 whether there had been any discussion amongst
11:42 10 yourself and the other officers there in terms of
11 the apparent blood staining on those garments, and
12 again, just from observation, I'm asking that
13 question because the wounds appear to be on the
14 upper torso of the body and there's some blood
11:42 15 staining down on the garments down around the
16 ankle. Any recollection of discussions about that
17 matter?

18 A I don't have any recollection about any discussion
19 with regards to that, no.

11:42 20 Q Okay. And again with those photos in mind, Mr.
21 Kleiv, do you have any recollection whether you
22 checked for evidence of fresh tracks of any sort
23 around the scene, and I guess those would be
24 footprints or tire tracks for that matter, that
11:43 25 might be significant or connected to the crime



1 scene?

2 A I can't recall specifically, but I was reading in
3 one of my reports I believe that there was
4 footprints in the alley and some appeared to be
11:43 5 from adult, from an adult or adults, and then some
6 seemed to be children's footprints, but none of
7 them were, as such, identifiable. Like, you
8 couldn't photograph them and compare them with an
9 actual boot or whatever.

11:43 10 Q And were any of those prints that you are
11 referring to, and I think maybe you discussed this
12 matter during your preliminary hearing, or during
13 the preliminary hearing and trial of David
14 Milgaard, were any of those markings that you are
11:44 15 speaking to us about considered to be connected
16 with the scene at the time do you recall?

17 A No. At the time we felt that they probably had no
18 connection with it.

19 Q And what about in terms of tire tracks from a
11:44 20 vehicle?

21 A No, I didn't -- we didn't find any tire tracks
22 that we could determine as being related to the
23 offence.

24 Q And do you recall, that would have been -- I take
11:44 25 it you would have checked then in the north-south



1 alleyway for any evidence of fresh tracks?

2 A Yes.

3 Q And do you recall looking in the east-west
4 alleyway for evidence of fresh tracks that might
11:44 5 be notable?

6 A No, I didn't check the east-west alleyway, no.

7 Q And, Mr. Kleiv, do you recall, were there any
8 samples, if I can state it in that fashion, taken
9 from the scene, and I guess in terms of any of the
11:45 10 blood on the snow or anything of that nature, do
11 you recall whether there were any samples of that
12 nature taken from the scene on January 31st?

13 A I didn't personally take any, but Lieutenant
14 Penkala apparently took some samples from the
11:45 15 scene.

16 Q Okay.

17 A But I don't remember him taking blood, but I
18 believe he found part of a knife.

19 Q And do you recall what would have been done with
11:45 20 the gloves that were located?

21 A The gloves, I kept them throughout. They were
22 rather damp because they were in the snow, so when
23 I packaged them I put a paper toweling inside the
24 bag with the glove, with each of the gloves and
11:46 25 each of the gloves were packaged separately.



1 Q And would that have happened at the scene?

2 A Yes, as far as I know, yes.

3 Q Do you have a recollection of that, Mr. Kleiv?

4 A I can't remember exactly, no.

11:46 5 Q Okay. But that would have been standard process
6 would it have been?

7 A Yes.

8 Q And I know that this was covered with you during
9 the course of the Larry Fisher legal proceedings,
11:46 10 but is it possible that the gloves were placed
11 with the body for purposes of transport to the
12 hospital?

13 A No, I don't -- I don't believe so. I think they
14 were placed in my ident kit and that's where the
11:47 15 packaging was kept.

16 Q And just maybe tell us a little bit about that in
17 terms of packaging, what do you have when you say
18 an ident kit when you are at a scene of this
19 nature?

11:47 20 A Well, there's various-sized plastic bags that are
21 kept in the ident kit and there are also tags that
22 we can use to put our name on and identification
23 of the article and the time and the date, and we
24 used that, at that time we had wire ties and this
11:47 25 wire was used to attach to the garment and to the



1 tag and it was, the wire was twisted so that it
2 wouldn't come undone.

3 Q Now, in terms of, though, being at a scene of this
4 nature and securing these items, what aspects of
11:48 5 what you've just described to us, for example,
6 using this scene, for example, and perhaps using
7 the gloves as an example, what aspects of what you
8 just described for us would take place at the
9 scene?

11:48 10 A Well, the gloves would be seized and probably go
11 to the ident van and that's where the packaging
12 would be done and then the gloves in their
13 individual packages would be kept then in the
14 identification kit and I believe that's what was
11:49 15 done in this case, but I can't remember exactly.

16 Q And when you say kit, I'm just trying to visualize
17 that, what is the kit that you are referring to?

18 A The kit would be like a briefcase or maybe larger
19 and it would contain packaging material like
11:49 20 plastic bags. There would be plastic gloves
21 probably in the kit and there would be tags and
22 this sort of thing, and then there's another kit
23 that we used was for like a fingerprint kit which
24 would have fingerprint powders and brushes in it,
11:50 25 but that was a separate kit entirely from the



1 other type of kit that I was describing.

2 Q Okay, we're going to -- and we'll talk a little
3 bit more about these aspects in a moment. I'm
4 going to take you back to your report, document
11:50 5 006241, and turn to page 2 of that report. Sorry,
6 page 1. You'll see at the bottom of the page it's
7 noted that Dr. Fogel arrived at the scene, that
8 you accompanied Ray's ambulance, or you
9 accompanied the body with Ray's ambulance to the
11:51 10 hospital and you remained with the body at the
11 hospital. Does that fit with your recollection,
12 Mr. Kleiv?

13 A Yes.

14 Q The report, if we go back out to the full
11:51 15 document -- and go to the next page, please --
16 goes on to speak about the autopsy which took
17 place at 2:30. And just apart from the report for
18 a moment, Mr. Kleiv, do you recall attending at
19 the autopsy of Gail Miller?

11:52 20 A Yes. Yes, I recall.

21 Q And who else was present, from your recollection?

22 A Umm, Lieutenant Penkala was along, he was present,
23 and also Dr. Emson who was the pathologist, and he
24 had an assistant with him, and I don't remember
11:52 25 his assistant's name.



1 Q Do you remember whether it was a male or female?

2 A It was a male.

3 Q Okay. And what do you recall was your role during
4 the course of the autopsy?

11:52 5 A Well my role was to photograph the body of the
6 victim and to retain exhibits from the autopsy,
7 and that was about the extent of it, yes.

8 Q And what do you recall was Lieutenant Penkala's
9 role during the course of the autopsy?

11:53 10 A Well, he worked more directly with Dr. Emson, and
11 he sort of indicated the -- what I should -- what
12 photographs I should take and so on. I'm not
13 quite sure on that, but I believe that's what
14 the -- what took place, yes.

11:53 15 Q And do you recall, by chance, what the nature of
16 the interaction would be between Lieutenant
17 Penkala and Dr. Emson?

18 A Well, I believe that they were probably in closer
19 contact than what I was, but he would make -- the
11:54 20 pathologist would make comments about certain
21 aspects of the -- as the autopsy continued he'd
22 make certain comments about the condition of the
23 arteries, and all that, and this sort of thing.

24 Q And just give us an example then, perhaps, of what
11:54 25 Lieutenant Penkala may be saying or doing while



1 the autopsy is ongoing?

2 A Well he would more or less be listening to what
3 Dr. Emson had to say, and I can't recall what the
4 conversation was, but --

11:54 5 Q And perhaps in particular what about in terms of
6 taking samples, securing samples, deciding what
7 might be required for purposes of the
8 investigation; how did that take place?

9 A Well that -- pardon me -- the samples that were
11:55 10 taken were blood, I believe there was four vials
11 of blood that was taken, and there was hair
12 samples taken from the pubic area and hair samples
13 from the head, head area, and these were all
14 retained by myself.

11:55 15 Q And, again, who is making the decision in terms of
16 taking those samples?

17 A Well it's more or less common, common practice to,
18 in a case like this, to take certain samples and
19 -- but blood would be one, semen stains would be
11:56 20 another, hair, and also another area that's
21 covered is the nails, the fingernails, whether
22 there's any foreign material in under the
23 fingernails and this sort of thing, that --

24 Q So if I'm hearing you correctly, then, it was just
11:56 25 sort of a common understanding that these types of



1 samples would be required in a case of this nature
2 and a cooperative effort would be put forward by
3 those of you in the room to obtain those samples?

4 A Yes.

11:56 5 Q Just referring to the report, then, take a look at
6 this paragraph here, it's your report on the
7 course of the autopsy. Perhaps I'll just read
8 some of that to you, again noting that yourself
9 and Lieutenant Penkala attended:

11:57 10 "... autopsy conducted by Dr. Emson."

11 It notes that:

12 "The body was clothed in a black coat,
13 black fur collar and cuffs. Brassiere
14 had right strap torn and blood stained.
11:57 15 White dress blood stained with name tag
16 Miss G. Miller, brown hair adhering to
17 clasp, button Saskatchewan Institute of
18 Applied Arts and Sciences Nursing
19 Assistant. Zipper on back broken, dress
20 was torn in seam on left front below
21 collar. Blood stained half slip along
22 with dress were positioned at
23 approximately waist height. The sleeves
24 on the dress were not torn which would
11:57 25 indicate that the dress was removed off



1 the shoulders and arms by removing the
2 coat and after placing the coat back
3 on."

4 I'm just going to pause there for a moment. Do
11:57 5 you recall discussing this particular feature of
6 this case with Lieutenant Penkala, for example,
7 or others?

8 A Yes, I believe I did discuss it with Penkala, and
9 we sort of agreed that this probably took place.

11:58 10 Q And what sorts of conclusions did you draw from
11 that, what was the thought process at that time,
12 as best as you can recall?

13 A Well it almost would have appeared that the
14 clothing was removed and the dress was removed,
11:58 15 and then after, somewhere along the process the
16 coat was put back on.

17 Q And do you recall considering what sort of
18 circumstance might have played out that had led to
19 that situation?

11:59 20 A Well the only thing I could think of at that
21 particular time, and it might be a kind of a
22 simple thought, but the temperature was minus 40
23 below and, somehow or another, the assailant may
24 have decided that she should have her coat on.
11:59 25 But I'm not sure about whether that's a true



1 depiction or not.

2 Q Do you recall having that thought at the time?

3 A Well during the process, in thinking about the
4 pros and cons of the situation, it would almost
11:59 5 appear that the coat was put on, back on, because
6 of the cold temperature.

7 Q Just continuing on in that paragraph it notes:

8 "Black overboot on left foot, girdle,
9 panties and white stocking down over
12:00 10 boot. No boot on right foot, stocking
11 off leg down to ankle, stockings were
12 attached to the girdle. Girdle was
13 blood stained and panties were blood
14 stained in the crotch area."

12:00 15 In terms of that full paragraph, then, that would
16 be an accurate account of your observations at
17 the autopsy, Mr. Kleiv?

18 A Yes.

19 Q And I note as well that it looks like a number of
12:00 20 photographs were taken during the course of the
21 autopsy, and I think you've confirmed that
22 photographs were taken by yourself?

23 A Yes.

24 Q Okay. And you and I have had a chance to review
12:00 25 photos, we don't need to review those photos for



1 purposes of your testimony today, but I'll refer
2 to the document IDs. It's doc IDs 241924 to
3 241934. And if you will take my word for it that
4 that is the collection that you and I have
12:01 5 reviewed together, those photographs are an
6 accurate depiction of the scene as you noted it at
7 the autopsy on January 31st, 1969, Mr. Kleiv?

8 A Yes sir.

9 MR. HARDY: Mr. Commissioner, this is
12:01 10 likely a good time to break.

11 COMMISSIONER MacCALLUM: Thank you. 1:30.

12 *(Adjourned at 12:01 p.m.)*

13 *(Reconvened at 1:32 p.m.)*

14 BY MR. HARDY:

01:33 15 Q If we could return to Mr. Kleiv's investigation
16 report, 006241, please, and page 2 of that
17 document. And before we broke, Mr. Kleiv, we had
18 made our way to this portion of the report, if we
19 could focus in there. I note it's written
01:33 20 'Exhibits retained', and a number of exhibits are
21 listed, many of which we've discussed already
22 today. And I was -- I wanted to ask you, Mr.
23 Kleiv, by what process would these various
24 exhibits be secured at the autopsy?

01:33 25 A The, as far as I recall, the -- each individual



1 item would be placed in a separate bag, in a
2 plastic bag, and they, you know, would be marked
3 for identification, like my initial would probably
4 be put on the article with the date and the time.

01:34 5 Q And that would be at the point of the autopsy?

6 A Yes. I can't remember exactly whether I did it at
7 the autopsy or at the police station, but it was
8 not -- the general procedure is that each item is
9 bagged separately and then transported to the
01:34 10 police station.

11 Q And do you have a recollection of what occurred in
12 this case?

13 A Umm, basically that's what, what occurred,
14 although I found out later that there had been a
01:35 15 mistake made with the clothing. Some of it had
16 ended up on the autopsy floor. The assistant to
17 the pathologist had removed the clothing from the
18 body and some of the clothing had accidentally
19 fallen on the floor beside the table.

01:35 20 Q And am I correct you learned that during the
21 course of the Larry Fisher, either the preliminary
22 hearing or the trial, that that aspect had
23 occurred; that was pointed out to you?

24 A Yeah, this is right.

01:35 25 Q Okay. And I want -- and we'll deal with that in a



1 moment -- but backing up, in terms of your
2 recollection, you mentioned the assistant taking
3 the clothing items and I'm wondering if you can
4 recall in this case, or if you can advise us
01:35 5 generally, exactly what the process was as items
6 of clothing were being removed from the body?

7 A Well as soon as they were removed, or shortly
8 thereafter, as soon as possible, the items were
9 gathered and placed in separate bags.

01:36 10 Q Who --

11 A Separate plastic bags.

12 Q Who would be supplying the bags?

13 A Umm, the police department.

14 Q You would have those with you then?

01:36 15 A Yes.

16 Q And, again, am I hearing you correctly that you
17 don't necessarily have a specific recollection of
18 what took place in this case, but you are speaking
19 in terms of standard process?

01:36 20 A Yes.

21 Q Okay. And who would have been receiving the items
22 for that purpose, bagging the items, in this case?

23 A I would be retaining them.

24 Q Okay. And maybe just give us a sense, you were
01:36 25 speaking about the removal of individual items and



1 the bagging of individual items, take us back to
2 1969 and help us understand what some of the
3 concerns of the day, so to speak, would be in
4 terms of maintaining the integrity of clothing
01:37 5 items and that sort of a thing?

6 A Yes, the clothing items would be individually
7 marked for future identification, my initial would
8 be placed on the portion of the clothing with the,
9 probably the date of the autopsy.

01:37 10 Q And was the concern solely relating to
11 identification, or what other purposes were at
12 play in terms of individually bagging items, if
13 indeed that was the standard process from that
14 time period?

01:37 15 A Well, they were individually bagged to keep them
16 from contaminating one another, and they were
17 forwarded to the RCMP Crime Detection Laboratory
18 to be examined for blood and semen stains and so
19 on.

01:38 20 Q Okay. And again if we take a case like this, and
21 again assuming that we have wet items of clothing,
22 for example; is the process the same in terms of
23 what you have advised us of thus far?

24 A Umm, the, if the item was wet we would have to put
01:38 25 it through a drying process before it would be



1 forwarded to the lab.

2 Q But in terms of bagging the materials at the
3 autopsy, --

4 A Yeah.

01:38 5 Q -- that would be done immediately, there wouldn't
6 be a drying process --

7 A No.

8 Q -- in the meantime?

9 A No.

01:38 10 Q Okay. And you would take those bagged items,
11 then, back with you to the identification
12 division?

13 A Yes I would.

14 Q And what about other types of items that are
01:39 15 listed, for example biological samples, hair
16 samples, fluid samples; what would you -- what
17 would be the process there?

18 A The process with the blood would be that they
19 would be -- the pathologist would syringe out the
01:39 20 blood and then it would be put into Vacutainers,
21 small vials, and in this particular case we drew
22 out three vial -- or four vials of blood.

23 Q What about with respect to some of the other
24 samples?

01:39 25 A And the hair samples would be placed in white --



1 or in envelopes, probably the smaller variety of
2 envelopes, and then -- and the envelope would be
3 sealed and the initial, my initial placed across
4 the seal, along with the date.

01:40 5 Q And would that take -- sorry?

6 A And, yes, that would probably take place at the
7 autopsy room.

8 Q You read my mind. And I take it, then, all of
9 these items, after the packaging and bagging that
01:40 10 you have mentioned, you would confirm would be
11 taken back with you to identification. And
12 perhaps take us through the process, then, in
13 terms of bringing those items back to the
14 identification section?

01:40 15 A Yes, they would be brought back to the ident
16 section and any of the wet items would be put on
17 an examining table, and this examining table, we
18 would put Kraft paper on top. We had a roll of
19 Kraft paper under the examining table and we would
01:41 20 tear off the Kraft paper and cover the table
21 before we would place the items, the wet items, on
22 top of the table.

23 Q And would, and just give us an image of this,
24 would all of the wet items be placed on this table
01:41 25 for drying?



1 A Yes. Umm, no, some of the bigger items might be
2 hung up in a manner. I can't remember exactly
3 what manner they were hung up.

4 Q In terms of the items we've talked about in this
01:41 5 case, do you have any recollection about what was
6 done with those items after they were brought back
7 to the identification section?

8 A Well they were all, I made sure that they were all
9 tagged with the name of the item on the tag as
01:42 10 well as my initial and the date, and also each
11 item was initialed with my initial and the date
12 was placed on the -- on each item, and then they
13 were stored, after they were dry and placed in
14 individual bags, again, they were stored in my
01:42 15 personal locker.

16 Q Okay. And, again, I'm just trying to picture
17 this. So in a case like this, where we had a
18 number of clothing items and a number of items
19 that would have been wet either from the snow or
01:42 20 blood or otherwise, give me a picture of what's
21 happening with all of those items once they get
22 back to identification; are some laid out on the
23 table that you have been mentioning and some hung
24 up?

01:43 25 A Yes, that's right.



1 Q And is this in a particular room then?

2 A Yes. It's considered to be an exhibit room.

3 Q And how long would items be left for drying
4 purposes?

01:43 5 A Well they could be there probably overnight. For
6 instance we, I got back from the hospital probably
7 about 4:30 in the afternoon, and then they were
8 set out for drying, and probably the next day,
9 then, they would be sufficient -- sufficiently
01:43 10 dried for packaging.

11 Q And would you have marked and tagged them at the
12 point they were brought back or after the drying
13 process?

14 A Probably after the drying process.

01:43 15 Q And was this identification room that you have
16 been talking to us about generally accessible
17 then?

18 A Yes.

19 Q Okay. And, in terms of maintaining security over
01:44 20 the items in order to avoid contamination, were
21 there any other steps taken other than what you
22 have mentioned to us?

23 A No, there -- when the process was complete, the
24 drying process and so on had been, the items were
01:44 25 placed in my personal locker.



1 Q Okay. And I understand, Mr. Kleiv, you have had
2 an opportunity to review the autopsy report
3 prepared by Dr. Emson in this case?

4 A Yes.

01:44 5 Q And did you have any comments at all, or any
6 concerns with respect to the report, that you can
7 recall for us?

8 A The only one that I was kind of wondering about
9 was that he indicated in his report that he turned
01:45 10 the exhibits over to Lieutenant Penkala, whereas I
11 believe that I was the one that received the
12 exhibits.

13 Q And I think I know the portion you are referring
14 to. If we turn to the report, please, at 105565,
01:45 15 and page 105569. It's not a very clear version,
16 but at the bottom of the page it notes, I believe:

17 "Specimens taken:

18 The following specimens were taken and
19 handed to Lieutenant Penkala, Saskatoon
01:45 20 City Police:"

21 "... scalp hair."

22 "... pubic hair."

23 "... blood obtained from the right-sided
24 haemothorax."

01:45 25 "... the clothing removed from the



1 body."

2 There's nothing further on the next page. Is
3 that the portion that you are talking about, Mr.
4 Kleiv?

01:46 5 A Yes, that's right. Especially the clothing, I
6 believe that I handled the clothing, the -- it's
7 possible that the scalp hair and the pubic hair
8 and the blood was handed over to Penkala and then
9 he, in turn, handed the sample to me.

01:45 10 Q Okay.

11 A It's possible we were both present at the time.

12 Q But you ultimately ended up with those items then?

13 A Yes.

14 Q And do you recall the taking of a, what's been
01:46 15 referred to as a vaginal aspirate during the
16 course of the autopsy?

17 A Yes, I heard about that being done, yes.

18 Q Do you recall that yourself, though, from the
19 autopsy?

01:46 20 A No, I don't recall that myself.

21 Q And I don't know if you've heard, but it has been
22 indicated into evidence that that particular
23 sample was likely discarded, we heard from
24 Dr. Emson and from Lieutenant Penkala in that
01:46 25 regard. Were you aware of that aspect of evidence



1 as it has come out in this Inquiry?

2 A Yes.

3 Q And do you have any comment on that, would that be
4 an unusual circumstance?

01:46 5 A Yes, it could be. We don't have any control over
6 what the pathologist deems right, but at that
7 particular time what we're looking for more or
8 less is semen and it was found through that
9 examination that there was semen found in the
01:47 10 vagina and that there was spermatozoa in the semen
11 and that would indicate that there was a sexual
12 assault that had taken place of some sort.

13 Q But in terms of the collecting of samples, I want
14 to understand you correctly, you are suggesting
01:47 15 based upon those findings that the thought may
16 have been that the sample itself wasn't required
17 for forensic purposes?

18 A Well, he determined that there was sperm in the
19 sample and I don't really know what his thinking
01:48 20 was about discarding it.

21 Q So your recollection or your thought on that would
22 be that the decision to discard it would have been
23 Dr. Emson's decision?

24 A Yes, I believe so.

01:48 25 Q And would Lieutenant Penkala have been able to



1 influence that decision or would the two of you
2 been able to request that that sample be kept for
3 your purposes?

4 A I can't recall that I had indicated that it should
01:48 5 be kept.

6 Q Okay. Mr. Kleiv, we were talking about some
7 information that was presented to you during the
8 course of the Larry Fisher proceedings in relation
9 to the clothing removed from the body at the Gail
01:49 10 Miller autopsy and a picture was shown to you
11 during those proceedings and I'll show that
12 picture to you again, if we could bring up
13 document ID 241973, please, and do you recall
14 being shown this particular photo, Mr. Kleiv?

01:49 15 A Yes.

16 Q And you've made brief reference to this in your
17 testimony already today. Do you have any
18 recollection of what appears to be the clothing
19 taken from Gail Miller's body being clumped
01:49 20 together on the floor in the manner as depicted in
21 the picture?

22 A Yes, it appears that the coat is on the floor and
23 possibly the dress may be underneath the coat, and
24 I'm not exactly sure, I don't remember exactly,
01:50 25 well, all the clothing that was there.



1 Q But do you recall this occurring during the course
2 of the autopsy?

3 A I didn't remember it exactly, but when it was
4 brought to my attention and the photo was shown,
01:50 5 which I hadn't seen before the trial, then it's
6 perfectly visible what has taken place.

7 Q And would you have any explanation as to how that
8 occurred?

9 A Well, the assistant to the pathologist would have
01:50 10 probably made room on the table and pushed it off
11 onto the floor. On the examining table -- from
12 the examining table to the floor.

13 Q Sorry, I'm not sure I follow you, would have made
14 room on the examining table. What table are you
01:51 15 speaking of?

16 A The table where the body was being examined.

17 Q So a matter of you are speculating that perhaps
18 the assistant pushed the clothing onto the floor
19 from that table?

01:51 20 A Yes.

21 Q And would you have been able to influence the
22 course of events in that regard? I assume from
23 what you've advised us earlier, that perhaps you
24 would have an interest at that time in terms of
01:51 25 securing the items individually?



1 A Yes, I would say that it was not the right
2 procedure and if I would have caught it earlier, I
3 might have been able to, be able to change the
4 picture there.

01:51 5 Q And in terms of not being the correct procedure,
6 again, I'm trying to take us back to 1969, when
7 you see the clothing together on the floor in this
8 fashion, what would be the concerns?

9 A Probably contamination from one item to the other.

01:52 10 Q And help me understand that. In terms of a case
11 like this, what problems might that pose?

12 A Well, it could influence the biological
13 examination of the clothing as to where the
14 seminal was found and this sort of thing.

01:52 15 Q Okay. And would there be concern as well about
16 contamination from the floor itself?

17 A Well, generally the floor in an autopsy room is
18 kept pretty sterile, but I can't testify here how
19 sterile it may have been.

01:53 20 Q And again, accepting this as an indication that
21 the clothing was on the floor in this manner, can
22 you speculate for us, I don't think you have a
23 recollection of it, would you then have gathered
24 up the items?

01:53 25 A Yes.



1 Q And bagged them as you've indicated to us from
2 this point in time?

3 A Yes.

4 Q And you've been speaking on a couple of occasions
01:53 5 about Dr. Emson's assistant and I know you spoke
6 of the assistant in the course of the Larry Fisher
7 proceedings, and correct me if I'm wrong, and we
8 can look at some of the transcript portions, I
9 don't believe you mentioned the presence of an
01:53 10 assistant during the preliminary hearing or trial
11 relating to David Milgaard.

12 A I possibly didn't, no.

13 Q Okay. And I'm not saying this is conclusive in
14 any respect, Mr. Kleiv, and please just bear with
01:54 15 me, but if I point out just a couple of portions
16 in that respect, if we turn to the, your
17 testimony, the transcript of your testimony from
18 the preliminary hearing, and I believe the
19 document is 008164 and page 008176. Just bear
01:54 20 with me for a moment. Again, I'm not suggesting
21 for a moment, Mr. Kleiv, this is conclusive, but
22 just at the top of the page you'll note the
23 question was posed:

24 "Q Who conducted the autopsy?

01:55 25 A Doctor Emson.



1 Q Doctor Emson. And who was present?

2 A Lieutenant Penkala and myself."

3 I believe that's the only portion of that
4 testimony that mentions an indication on your
01:55 5 part as to who was present, and you accept that
6 as accurate, Mr. Kleiv?

7 A Well, I was thinking back on two other times that
8 I've attended autopsies and there's always been an
9 assistant there.

01:55 10 Q Okay.

11 A But I may be, you know, I could possibly be
12 mistaken.

13 Q And again in fairness, as we can see from these
14 questions and answers, I don't think that it's
01:55 15 conclusive, but am I hearing correctly then that
16 perhaps it's speculation on your part in terms of
17 the presence of an assistant at this autopsy?

18 A Well, being that this goes back many years, and as
19 far as I'm concerned, whatever I said in court
01:56 20 under oath is the right version.

21 Q Okay. And I don't know if this is worthwhile or
22 not, but I'll just turn briefly to the trial
23 transcript, the document ID is 175921 and the
24 page, 175948, and again just bear with me for a
01:56 25 moment. Just in the middle of the page again, the



1 question was posed to you:

2 "Q And who was present?

3 A There was Dr. Emson and Lieut. Penkala
4 and myself."

01:57 5 Again, I think we've covered that and that speaks
6 for itself, Mr. Kleiv, but I suppose at the end
7 of it all it would be possible on this occasion
8 an assistant wasn't present at this particular
9 autopsy?

01:57 10 A It's entirely possible, yes.

11 Q Okay. Am I correct, Mr. Kleiv, that in the course
12 of this investigation you became the primary
13 exhibit handler?

14 A Yes.

01:57 15 Q And would that have been an assignment or a formal
16 assignment, so to speak?

17 A I believe it goes along with whoever attends at
18 the scene also is the exhibit handler.

19 Q And help us understand, what would have been your
01:57 20 responsibilities in this regard?

21 A With regard to the exhibits?

22 Q Being the exhibit handler through the course of an
23 investigation.

24 A Well, I would be responsible for making sure they
01:58 25 were tagged properly and they were bagged



1 separately and I would also prepare them for
2 submission to the Crime Detection Laboratory, and
3 any exhibits that I received from somebody else,
4 we had an exhibit form, and when an exhibit was
01:58 5 turned over from one person to the other, then it
6 was stated on this form that the exhibit was
7 received from such and such a person at such and
8 such a time and date.

9 Q And would those forms then be completed at any
01:59 10 point an exhibit left your possession and went
11 into someone else's possession?

12 A Yes.

13 Q And otherwise those exhibits in your possession,
14 you would store those in your own locker?

01:59 15 A Yes.

16 Q And I understand that you prepared a report which
17 summarizes your handling of the various exhibits
18 and the continuity of those exhibits and if we
19 could turn, please, to document 060414. Do you
01:59 20 recognize that document, Mr. Kleiv?

21 A Yes, I do.

22 Q And can you recall when that document would have
23 been created?

24 A It would have been created probably before the
02:00 25 preliminary hearing.



1 Q And can you tell us what this document is telling
2 us?

3 A Well, the items are marked with the exhibit and in
4 this case the coat was Exhibit "A", and that would
02:00 5 probably be placed on a tag along with the
6 description -- not particularly the description of
7 the item, but it would be marked black coat, for
8 instance, and then my initial would be placed on
9 the tag as well as the date, and generally, in
02:01 10 this particular case it would be the date of the
11 autopsy because it was in my possession right from
12 the autopsy until it was turned over to the lab.

13 Q And am I correct in terms of the entries
14 underneath each item, in effect, this document is
02:01 15 tracking these items in terms of coming into and
16 out of your possession?

17 A Yes.

18 Q Would that be accurate?

19 A That's right.

02:01 20 Q Noting the dates and times and the individual you
21 are receiving the item from or alternatively the
22 individual you've delivered the item to?

23 A Yes.

24 Q Okay. And you have had a chance to more recently
02:02 25 review this document?



1 A Yes.

2 Q And is it accurate, in the manner that I have just
3 mentioned, as best you can recall?

4 A Yes.

02:02 5 Q Perhaps we will take a look at some of the
6 individual items and I'll note, firstly, "A", the
7 black coat, and I'm going to show you a few photos
8 which correspond with some of these items.

9 And I should note at the outset
02:02 10 that, again, these are photos that I believe were
11 developed from negatives that were in our
12 possession. The photos were previously developed,
13 they have a matching set that has been marked with
14 IDs and is up on CaseVault, and that set is doc.
02:03 15 IDs 073424 to 073437.

16 And in terms of the first item,
17 the black coat, if we could bring up photo 331406,
18 please, on the Elmo; and do you recall that
19 photograph, Mr. Kleiv?

02:03 20 A Yes I do.

21 Q And is that a photograph that you would have
22 taken?

23 A Yes.

24 Q And I take it that's an accurate depiction of the
02:03 25 coat as it would have existed at that time?



1 A Yes, that's right.

2 Q It appears to be the front of the coat, and
3 perhaps we can quickly look at two other photos of
4 the coat, 331407 and 331408. I believe that's the
02:03 5 back of the coat. And 331408, and do you
6 recognize, when you look at that picture, where
7 that picture is being taken, Mr. Kleiv?

8 A Yes. It's taken in the ident section of the
9 Saskatoon Police station.

02:04 10 Q And you are -- do you recall what the significant
11 observations were in relation to the coat?

12 A Yes. The coat had a leather lining, and on that
13 leather lining I placed my initials and date and
14 time so it could be identified at some future
02:04 15 date, and that it also had some holes in the back
16 of the coat, and this was suspected that it was
17 from a knife, knife holes, and I believe there
18 were five of them.

19 Q Okay. And do you recall any other observation
02:05 20 about the coat?

21 A Umm, --

22 Q I think we saw in one of the reports, perhaps, --

23 A Oh.

24 Q -- that there was a button missing?

02:05 25 A Yes, I was just going to mention that, that there



1 was a button missing from the middle of the coat.

2 Q And do you know if that button was ever located?

3 A To my knowledge it wasn't, no.

4 Q And you've talked about laying items on a piece of

02:05 5 Kraft paper, and I don't know if it's real clear

6 from this picture, if we could move the photo over

7 a bit -- I don't know how this works -- to my

8 right, yes. And assuming that this is the colour

9 of the table, or the standard colour of the table,

02:05 10 it appears that there is some paper perhaps folded

11 or curled up here; is that the Kraft paper that

12 you were speaking to us about that items would be

13 laid on?

14 A Yes.

02:05 15 Q And what would be the purpose of that?

16 A Umm, because it was considered to be sterile and

17 not contaminated by any other source, and so if

18 you laid the item on this new Kraft paper then

19 there wouldn't be any chance of contamination.

02:06 20 Q Okay. If we can go back to your report, 060414,

21 move down the page, please, or back perhaps to a

22 full view of the page. And I note the next four

23 items, "B", "C", "D", and "E", the panties, the

24 girdle and white mesh stockings, ladies half slip,

02:06 25 lady's brassiere, I'll turn your attention to a



1 photo which is 331409; similarly, you recognize
2 taking that photo?

3 A Yes.

4 Q And those are the items mentioned in the report
02:07 5 taken from Miss Miller's body?

6 A Yes, that's right.

7 Q We note the broken bra strap and, again, we can
8 see some of the blood staining that I think was
9 referred to in one of your reports; is that
02:07 10 correct?

11 A Yes.

12 Q The crotch of the girdle and the panties?

13 A Right, yes.

14 Q Do you --

02:07 15 A Yes, that's correct.

16 Q Okay. And if we could return back to the report,
17 please, and the next page. You will note at the
18 top item "F", white nurse uniform dress, and if we
19 could turn, please, to photos 331410 first; and do
02:07 20 you recognize that photograph, Mr. Kleiv?

21 A Yes.

22 Q And that was the dress taken from Gail Miller; was
23 it?

24 A Yes, that's right.

02:07 25 Q And if we could look, please, at photo 331410 --



1 oh, I'm sorry, that's the one up. The only thing
2 I wanted to point out, I saw a reference in your
3 report to a name tag and a button as well, and is
4 that the name tag and button that's referred to in
02:08 5 the report?

6 A Yes. There's a name tag with Miss G. Miller, I
7 believe that was on the tag, and then the tag
8 above it was another pin, Saskatchewan nursing
9 association I believe.

02:08 10 Q Okay. And if we could move to 331411, please,
11 it's a closer shot of the dress; do you recognize
12 that photo, Mr. Kleiv?

13 A Yes I do.

14 Q And a couple things. I noted in your report, I
02:08 15 believe you mentioned a clump of brown fibre
16 attached to the back clasp of the pin, is that
17 evident in this photograph?

18 A No.

19 Q Okay. And would it be the back, somewhere along
02:09 20 the back portion of the pin that we see in this
21 photo, that that brown fibre was found?

22 A Yes.

23 Q Okay. And, also, I note that there was mention
24 made of a rip in the front left seam of the dress,
02:09 25 not the sleeves but the front left seam; are you



1 able to point out the tear or rip that was
2 mentioned in the report in this photograph?

3 A It's in that, in that particular area.

4 Q Okay. And do you recall that's where that tear or
02:09 5 rip was?

6 A Yes.

7 Q And if we could turn to the, to 331412, a picture
8 of the back of the dress; again, do you recall
9 taking that photograph, Mr. Kleiv?

02:09 10 A Yes.

11 Q And I think you made some mention in the report of
12 the zipper being broken. It's not real clear, I'm
13 not sure if we can zoom, zoom up on this portion
14 of the photo, but it appears that the zipper shoe,
02:10 15 perhaps, is at the top of the dress?

16 A Yes, it was at the top.

17 Q That's your recollection?

18 A Yeah, yes. And I believe --

19 Q And was there other evidence of the zipper having
02:10 20 been broken?

21 A Umm, there was some -- some of the clogging, the
22 clogs, were broken.

23 Q Okay. And we can return to your report, please.
24 Just moving down the page I see item "G" two vials
02:10 25 of victim's blood; going down, item "H" knife



1 blade handle broken off; item "I" two plastic
2 vials of unknown yellowish substance in frozen
3 state.

4 And with respect to that

02:11 5 particular item, do you have any recollection of
6 Lieutenant Penkala collecting those, or these
7 items from the crime scene?

8 A No, I wasn't there when he collected those.

9 Q Do you recall any discussion surrounding those
02:11 10 frozen lumps at that time?

11 A Yes, I believe the thought was it was semen, and
12 so the -- it was gathered, and then put in vials,
13 and forwarded to Staff Sergeant Paynter of the
14 RCMP lab.

02:11 15 Q And when we look at the list of continuity it
16 would appear that, the last listing, that you
17 returned these items to Staff Sergeant Paynter
18 after they had been there once previously. Do you
19 have any recollection of the return of these two
02:11 20 vials of unknown substance to Staff Sergeant
21 Paynter?

22 A Umm, I can't remember doing that, and I can't
23 remember the reason for it being done.

24 Q Okay. If we continue down your report, "J"
02:12 25 control sample of pubic hair from victim, turn to



1 the next page; "K" control sample of head hair,
2 victim; "L" ladies beige coloured handbag and blue
3 Bank of Montreal folder inside.

4 And if we could return -- or
02:12 5 turn to a report which is document 006244, please,
6 in relation to that item. And I believe, if we
7 turn to the second page, this is a report by
8 yourself, Mr. Kleiv -- back to the first page --
9 dated February 8. You will see, at this portion
02:12 10 of the report you note that you've:

11 "... received the following described
12 purse and contents from Detective
13 McCorriston."

14 And you note, in relation to the purse:

02:13 15 "One brown ladies handbag with handles.
16 Each handle having a tare or a break in
17 them. Appears to be of a plastic
18 material."

19 And then you go on to list the contents of the
02:13 20 purse. If we could turn, please, to photo
21 331415, I think we can move back a fair bit more,
22 do you recognize that photograph, Mr. Kleiv?

23 A Yes.

24 Q And is that the purse and the contents that are
02:13 25 referred to in the report that we just looked at?



1 A Yes.

2 Q And when you talk about a break or a tear in the
3 handle -- and maybe before I ask that question
4 we'll note what appears to be maybe a tear in the
02:14 5 handle in this photograph. And if we could turn
6 as well, please, to 331416. You will see the
7 purse there again, and is the tear that you
8 referred to in your report visible on this
9 photograph, Mr. Kleiv?

02:14 10 A Yes, it appears to be visible in the handle that's
11 upright.

12 Q Okay.

13 A At the very top.

14 Q And I believe your report perhaps made mention
02:14 15 that both handles were damaged; do you recall
16 where the damage was on the other handle?

17 A No.

18 Q Is that -- do you recall any of this at all or --

19 A No, no. If it wasn't for the picture I wouldn't
02:15 20 recall it.

21 Q Okay. Okay. If we could go back to the report,
22 please, it would appear that -- sorry, not --
23 sorry, Mr. Kleiv's report, 060416, yeah. And it
24 appears that the purse and the Bank of Montreal
02:15 25 folder were sent to the lab; would it be correct,



1 Mr. Kleiv, that you held onto the contents of the
2 purse yourself?

3 A Yes.

4 Q Okay. And moving down the report we see item "M"
02:15 5 one black over boot from victim's left foot, one
6 matching black over boot as well, and very briefly
7 if we look at photo 331417; that's your
8 photograph, Mr. Kleiv?

9 A Yes.

02:15 10 Q And that is one of the boots referred to in your
11 exhibit report?

12 A Yes.

13 Q And the other boot, I believe, is 331421,
14 similarly the other boot that's referred to in
02:16 15 your report, Mr. Kleiv?

16 A Yes sir.

17 Q If we go back to your report, just continuing
18 down, item "N" knife handle. Pause there for a
19 moment.

02:16 20 If we could return to a report
21 doc. ID 006247, you will see it's your report, Mr.
22 Kleiv, dated March 2nd, and you note that you
23 received a knife handle from Detective
24 McCorriston, a description is given, you note that
02:17 25 the:



1 "... handle is identical to similar
2 knives which were obtained for
3 comparison."

02:17 4 Do you recall that a replica knife was purchased
5 in the course of the investigation?

6 A Yes, I believe it was, yes.

7 Q Okay. And going back to your report, note at the
8 bottom "O" three envelopes vacuum collections; "P"
9 black leather wallet, and there is no indication
02:17 10 respecting continuity under that, it's not on the
11 next page?

12 A Umm --

13 Q Do you have any explanation respecting that, Mr.
14 Kleiv?

02:17 15 A Yes. As I recall, that leather wallet was not in
16 my possession, but it was given the letter "P" as
17 an exhibit.

18 Q Okay.

19 A But the wallet, I believe, was in Lieutenant
02:18 20 Penkala's possession.

21 Q Okay. I'm going to refer you to a chart, it's
22 006677, and I believe it will be established in
23 evidence -- it hasn't yet been -- that this is a
24 chart that was originally prepared by Detective
02:18 25 Elmer Ullrich, and it was for purposes of the



1 preliminary hearing and, again, for purposes of
2 noting the exhibits and the continuity of those
3 exhibits. And this is just one page of that
4 report, and if we could actually put up the split
02:18 5 screen, I believe it would be 006678, it doesn't
6 match up exactly but, again, this is how it
7 appears in the files that we've obtained from the
8 Government of Saskatchewan. We understand or we
9 anticipate that it will be noted in evidence that
02:19 10 Mr. Caldwell used these charts and that it's
11 likely his handwriting on the charts.

12 But in any event I just wanted
13 to note the wallet, if we could focus in on the
14 item "P", the wallet. And you will see there, Mr.
02:19 15 Kleiv, that it's noted that it was first obtained
16 by Beauchamp, and a date is given, and then it
17 lists continuity in terms of the various officers
18 who handled this particular exhibit, and I see you
19 are noted as the last officer, and it would appear
02:19 20 that you received that item on June the 3rd. And
21 I would assume you would have no reason to dispute
22 the accuracy of that listing, Mr. Kleiv?

23 A No. That was when it was received by me from the
24 Crime Detection Laboratory --

02:20 25 Q Okay.



1 A -- from Sergeant Kirby.

2 Q Okay.

3 A Yeah.

02:20 4 Q So no reason, again, to dispute the accuracy of
5 that listing?

6 A No, no.

7 Q And we'll go back to your report, please, if we
8 could turn to 060417. A few further items on the
9 page, you will note "Q" victim's sweater; it skips
02:20 10 then to "T" sample of blood suspect; "U" sample of
11 saliva two pieces of cloth; "V" control sample of
12 head hair suspect.

13 And if we turn, please, at that
14 point to a report, it's document 006248, and you
02:21 15 will see again it's one of your reports, Mr.
16 Kleiv, dated April 19th, and refers to obtaining a
17 sample of head hair from Mr. Milgaard; do you
18 recall obtaining that sample of head hair?

19 A Yes I do.

02:21 20 Q And what do you recall of your interaction with
21 Mr. Milgaard on that occasion?

22 A Well I had a pair of scissors with me and we -- he
23 was in the detective office at the time, and I
24 asked him if he would provide me with a sample of
02:21 25 head hair, and he readily agreed. And so -- and I



1 also asked him if he would mind pulling some hair
2 so that we would have some root samples as well,
3 which he did, and he was very cooperative with
4 this process. And so that's basically what I
02:22 5 remember.

6 Q And do you recall what your general impression of
7 Mr. Milgaard was at that time?

8 A I thought he was just a normal young fellow.

9 Q I'll turn back to your report, please.

02:22 10 COMMISSIONER MacCALLUM: What was the ID of
11 that again?

12 MR. HARDY: Oh, I'm sorry, it was 006248.

13 COMMISSIONER MacCALLUM: Thank you.

14 BY MR. HARDY:

02:22 15 Q And just concluding at the bottom of that page,
16 you note item "W" one pair of white mens shorts,
17 and I believe there may have been a few further
18 items that came into your possession, Mr. Kleiv,
19 and perhaps we could just review this together for
02:22 20 the sake of completeness. And I'll turn your
21 attention again to the exhibit chart that I had
22 previously showed you, 006677. Actually, if we
23 could turn to page 0066 -- oh, I'm sorry, I'll
24 deal with this page first. And if we could again
02:23 25 split screen with 006678. Just quickly, I note at



1 the bottom of the page reference is made to a
2 package of Chiclets obtained by Parker and
3 apparently given to you, Mr. Kleiv. And if we
4 look at the -- if we remove that called-out
02:23 5 portion, please -- it looks like it indicates that
6 perhaps that was marked for identification at the
7 preliminary, preliminary hearing, but not tendered
8 as a full exhibit; you will see just on the
9 right-hand side?

02:23 10 A Right.

11 Q You would have no reason to dispute the accuracy
12 of that notation, Mr. Kleiv?

13 A No.

14 Q And if we could turn to 006680, please, and again
02:23 15 if we could split screen that with 006679. So
16 another couple of pages from the exhibit charts
17 that I have been referring to, you will see at the
18 top -- I don't know why it's doing that -- but
19 anyways, if we could focus in on that at the top
02:24 20 of this page.

21 COMMISSIONER MacCALLUM: I thought you
22 wanted 679 there?

23 MR. HARDY: Umm, no, this is right.

24 COMMISSIONER MacCALLUM: Okay.

02:24 25 BY MR. HARDY:



1 Q I note reference there to the gloves that we
2 previously discussed, and I noted those weren't in
3 the report, but again it notes that those were
4 obtained by yourself, Mr. Kleiv?

02:24 5 A Yes.

6 Q And if we go to the -- if we remove the called-out
7 portion, please, it appears that they were
8 tendered at the prelim as P-20 and P-19, and again
9 at the trial as P-28 and P-27, and no reason to
02:25 10 dispute the accuracy of that entry, I take it, Mr.
11 Kleiv?

12 A That's right.

13 Q And if we could again call up photo, first,
14 331418; do you recognize that photograph, Mr.
02:25 15 Kleiv?

16 A Yes.

17 Q And that's one of the gloves referred to in the
18 report?

19 A Yes.

02:25 20 Q And the other glove, I won't bring it up, it's
21 331419; and do you recall noting anything
22 remarkable about the gloves at all?

23 A No, I didn't recall anything remarkable about
24 them, no.

02:25 25 Q Do you recall any discussion or thought at the



1 time as to, again talking about the attack itself
2 and the crime scene, as to how it may have been
3 that Miss Miller did not have her gloves on?

4 A No, it -- the only thing we would possibly think
02:26 5 about would be how the gloves were -- became
6 removed from her hands, now whether they were
7 taken off by herself or by the accused, I -- we
8 didn't come to any conclusion --

9 Q Okay.

02:26 10 A -- in that respect.

11 Q Okay. Turn back to 006680, please, and if we
12 could again split-screen that with 006681. A
13 couple of further items on this page. Would it
14 have -- the first one is here, actually both of
02:27 15 them are there, if you can call out both of those
16 items. And I note there is some scissors, which
17 apparently came into your possession, and as well
18 a wristwatch from Miss Miller. And, again, I take
19 it no reason to dispute the accuracy of those
02:27 20 entries, Mr. Kleiv?

21 A No. No.

22 Q Briefly we have a photo of the watch, it's 331420.
23 Is that the watch that was taken from Miss Miller,
24 Mr. Kleiv?

02:27 25 A As far as I know, yes.



1 Q And I should have noted on that chart, I don't
2 believe -- perhaps we could just go back to 006680
3 for a moment, split screened with 81, just
4 following that across, it would appear that the
02:27 5 scissors perhaps were tendered at prelim and at
6 trial, P22, P29, it doesn't appear that the watch
7 was, at least from this chart.

8 A No, the watch was returned to the father,
9 Mr. Miller.

02:27 10 Q Okay. I'm going to turn your attention in
11 connection with this report that we've been
12 reviewing, Mr. Kleiv, to another report, it's
13 006251, you'll note it's also your report, it's
14 dated May 24th and it refers to a number of the
02:28 15 exhibits that we've been discussing and the
16 receipt by yourself of those exhibits, the first
17 two noted from Staff Sergeant Paynter on May 22nd,
18 the next several noted in the middle of the page
19 from Corporal Melshanko of the RCMP, and then if
02:28 20 we could move down a page, and this is borne out
21 on your continuity report as well, it indicates
22 that on May 23rd the following exhibits were
23 turned over to Detective Sergeant Ray Mackie, A
24 being the coat, I believe F being the nurse's
02:29 25 dress and E being the brassier. Do you recall



1 giving those items to Detective Sergeant Ray
2 Mackie?

3 A No, I don't. I can't remember distinctly giving
4 them to him, but it is distinctly noted in the
02:29 5 report, so there's every indication that that's
6 what transpired.

7 Q Okay. So no recollection of that matter, a
8 discussion perhaps that revolved around the
9 provision of those exhibits. It would appear that
02:29 10 he returned them to you the next day, on May 24th.

11 A I don't exactly know why he needed these items.

12 Q Okay. And just for purposes of completeness,
13 Mr. Commissioner, there are a number of other
14 documents which discuss the handling of the
02:30 15 exhibits and the dealings with those exhibits by
16 Mr. Kleiv, and I don't think we need to
17 specifically refer to those, but perhaps I'll read
18 out those document IDs, there are 12 of them,
19 006253, 265331, 105573, 105578, 106597, 105579,
02:30 20 060460, 006249, 060462, 105589, 006252 and also
21 007008.

22 Mr. Kleiv, switching gears for a
23 moment, I understand, or do I understand correctly
24 that another knife was located at some point in
02:31 25 time in the vicinity of the crime scene?



1 A Yes.

2 Q And what do you recall of that matter?

3 A Constable Oliver and myself were in the vicinity
4 of where the body was found and we were taking
02:31 5 measurements of the fence line and the alley and
6 this sort of thing to make a, to produce a
7 diagram, and Constable Oliver found this knife on
8 the lower stringer of the fence, on the inside of
9 the fence in the back yard which was fairly
02:32 10 adjacent to where the body was found.

11 Q And what did the knife look like; do you have a
12 recollection of that?

13 A I can't recall exactly, but I believe it had a
14 bone handle, it was a bone-handled knife, and it
02:32 15 also had sort of a drilled-out portion in the
16 handle for which possibly a compass was in the
17 handle at one time or another, or a similar type
18 of item, but I believe it was customary with some
19 hunting knives that they would have a compass
02:32 20 included in the handle.

21 Q Okay.

22 A And -- but the compass was missing.

23 Q Do you recall whether it was a single-edged or
24 double-edged blade?

02:32 25 A I'm sorry, I didn't make a note of that at the



1 time.

2 Q And do you have any recollection?

3 A And I don't have -- I believe it was -- I believe
4 it was a single edge, but I can't positively say.

02:33 5 Q I'm going to turn your attention to a report, one
6 of your reports, the document ID is 020250. Can
7 you see that all right, Mr. Kleiv?

8 A Yes.

9 Q And we've reviewed this report previously in the
02:33 10 course of the hearings, and perhaps if you can
11 just take a moment and read the report to
12 yourself.

13 A Yes.

14 Q And does that report refresh your memory at all in
02:34 15 terms of the finding of that knife and the
16 circumstances surrounding that?

17 A Yes.

18 Q In what respect?

19 A Well, in respect to the measurement of the blade
02:35 20 and so on and the length of the handle and the
21 total length of the knife.

22 Q And would you adopt the contents of the report
23 then as accurate as best you can recall?

24 A Yes.

02:35 25 Q And I'm going to show you a photograph for a



1 moment. In terms of the location where the knife
2 was found, if we could bring up 077847, please, I
3 don't know if this photograph suits this purpose,
4 but are you able to point out the approximate
02:35 5 location where you recall that knife was found,
6 Mr. Kleiv?

7 A It would be on the inside of that fence, but I'm
8 not exactly sure of the exact location.

9 Q Do you accept the measurements that you provided
02:36 10 in your report, and if I look at those, it
11 indicates bottom stringer, borders the west end of
12 property number 221, and the fence that you've
13 indicated we know in evidence already is 221
14 Avenue N South, and it indicates one and a half
02:36 15 feet north of the south fence line of this
16 property?

17 A Yes.

18 Q And you would accept that description, and would I
19 be correct then in indicating that the knife was
02:36 20 somewhere in that approximate location?

21 A Yes.

22 Q Where I've noted the arrow on the screen?

23 A Yes, possibly, yes.

24 Q You don't necessarily recall that?

02:36 25 A No.



1 Q Okay. And it looks like the report indicates that
2 you checked at that particular address, 221 Avenue
3 N South, at the Bentleys, to see if they were
4 aware --

02:37 5 A Yes.

6 Q -- or had any knowledge respecting that knife?

7 A That's right.

8 Q And am I correct then, Mr. Kleiv, that you
9 retained that knife in your possession at this
02:37 10 point?

11 A Yes.

12 Q And just going back to your report for a moment,
13 020250, do you otherwise recognize any of the
14 handwriting on this report, and in particular I'm
02:37 15 wondering about that entry there which I think
16 says, "Knife not believed connected with this
17 case."

18 A Well, I don't know, it's not my handwriting,
19 but -- and it's not Penkala's handwriting either,
02:38 20 so it could be one of the investigators.

21 Q Okay. That's fine. Do you know what happened to
22 this knife after it was retained by yourself?

23 A Yes. As far as I remember, I was going to tender
24 it as an exhibit at the preliminary hearing of
02:38 25 David Milgaard, but I was told that I should turn



1 it over to Constable Oliver and that's what I did.

2 **Q** And who told you to do that?

3 **A** The -- I think it was Mr. Caldwell, the Crown
4 prosecutor.

02:38 5 **Q** And your recollection is that that may have
6 happened at the preliminary hearing?

7 **A** Yes, I believe it was during the course of the
8 preliminary hearing. Possibly not in the
9 courtroom itself, but possibly out in the
02:39 10 corridor.

11 **Q** Do you have a recollection of where that direction
12 took place?

13 **A** At the court house.

14 **Q** And I'm going to show you a few documents which
02:39 15 will hopefully figure out some of this, but I'll
16 start firstly with the question, is it possible or
17 likely that the knife could have been given to
18 another officer for purposes of investigations in
19 the course of the investigation?

02:39 20 **A** Yes, it's entirely possible, yes.

21 **Q** And I'll show you one document which seems to
22 confirm that, it's document ID 106605. You'll
23 note it's a report by Detective McCorriston dated
24 March 4th, 1969. He actually refers to a couple
02:39 25 of knives in the course of this report, first a



1 pearl-handled jackknife which a Daniel Hounjet, of
2 227 Avenue N South, apparently claimed as being
3 his property, and it goes on to note, though, that
4 Daniel nor anyone else at that particular address
02:40 5 was able to identify the small bone-handled
6 hunting knife, and then it states:

7 "Other residences called upon during the
8 evening of this date, with negative
9 results in identifying the small bone
02:40 10 handled knife."

11 And then it lists a number of them. Is it likely
12 that Detective McCorriston had the knife that
13 we've been discussing in his possession for the
14 purposes outlined in this report?

02:40 15 A Yes.

16 Q And would there be some sort of tracking report
17 again that would indicate the day that that knife
18 had come into your possession, but B, that it had
19 gone into the possession of Detective McCorriston?

02:40 20 A I don't recall that, no.

21 Q Okay. And I only say that, we haven't found any
22 reporting of that nature which would help us
23 determine the course of the handling of this
24 particular knife. I'll show you another document,
02:41 25 it's 059015. I'm sorry, the doc is actually



1 058984. And these are some notes from 1969, they
2 are Detective McCorriston's notes, and if we turn
3 to page 059015, you'll see there's an entry there
4 relating to Albert Henry Cadrain and it states,
02:41 5 particularly in the second paragraph:

6 "Cadrain shown small bone handled
7 hunting knife found on fence at scene -
8 doesn't recognize same."

9 And again I take it no reason to dispute the
02:42 10 conclusion that Detective McCorriston had the
11 knife that we've been discussing in his
12 possession and as indicated in his notes here it
13 was shown to Albert Cadrain?

14 A That's right, yes.

02:42 15 Q And do you recall, Mr. Kleiv, being asked some
16 questions about this knife at the preliminary
17 hearing? I'll show you those portions in a
18 moment, but I'm just wondering if you have any
19 recollection of that discussion during the course
02:42 20 of the preliminary hearing?

21 A No, I don't.

22 Q Okay. And I'll show you, it's fairly brief, if we
23 turn to document 008164 and in particular page
24 008234, and again this is your evidence from the
02:42 25 preliminary, Mr. Kleiv, and starting approximately



1 here, there's some discussion about the melting
2 unit, this is on the cross-examination being
3 conducted by Mr. Milgaard's lawyer, and there's
4 some discussion about the knife, and I won't read
02:43 5 any of this particular portion, I just want to
6 note where that discussion started. If we turn to
7 the next page, 008235, and focus in approximately
8 here, you'll see Mr. Tallis asks you at that
9 point, starting at 226, again this is in relation
02:43 10 to the knife we've been discussing:

11 "Q I see. And where is that knife?

12 A I believe one of the other members has
13 it right now.

14 Q I see. Do you recall who you turned it
02:43 15 over to?

16 A Not off-hand, I don't, no.

17 Q But you could check your notes and
18 determine that?

19 A Yes."

02:44 20 And then it goes on to discuss the knife, giving
21 a description, and I note as well beginning at
22 232, if we could move down a little bit further,
23 and starting at 232, the question states:

24 "Q Three inches. And there would be just
02:44 25 one edge to this blade?"



1 And you respond:

2 "A I believe it was a double edge.

3 Q That is both edges were sharpened?

4 A Yes."

02:44 5 And do you recall -- we'll start maybe with that
6 last portion that I read to you in terms of the,
7 your thought at that time that the knife may have
8 been double edged. Do you recall giving that
9 testimony at the preliminary hearing, Mr. Kleiv?

02:44 10 A No, I don't recall that.

11 Q Okay. And do I take it from what you've told us
12 today that that doesn't necessarily fit with your
13 present recollection?

14 A Well, I wasn't sure whether it was a double-edged
02:45 15 knife or a single-edged knife.

16 Q And you are saying at this point when you are
17 giving testimony in August of 1969 that was the
18 case?

19 A Well, I might have had a better idea at that time.

02:45 20 Q Okay.

21 A Because it was closer to the time of the
22 occurrence.

23 Q Okay. I was just following up, I do note your
24 answer, you indicate:

02:45 25 "A I believe it was a double edge."



1 So I wasn't sure if you were certain at that
2 point in time.

3 A Well, it was entirely possible I wasn't.

4 Q And you'll note the earlier portion I read to you,
02:45 5 that it appears that it was not in your
6 possession, at least at the point of the
7 preliminary hearing, and there's some discussion
8 about you checking your notes to determine who you
9 may have turned it over to. Do you recall making
02:45 10 that determination?

11 A No, I don't.

12 Q There's nothing further in the preliminary hearing
13 transcript which would confirm whether or not that
14 was determined, and you have no memory then of
02:46 15 that?

16 A No.

17 Q Just one other portion of the transcript from the
18 preliminary, if we could turn to page 008239,
19 starting at 261, again talking about the knife,
02:46 20 and you'll see it says:

21 "Q And of course an article such as this
22 would clearly be of some significance,
23 to say the least, when found at a scene
24 like this?

02:46 25 A Yes.



1 Q And particularly in view of the nature
2 of the wounds that you could observe
3 right there with the naked eye?

4 A Yes.

02:46 5 Q And I suppose that as soon as you got
6 that knife into your custody, you would
7 check to see if the owner of it could be
8 found?

9 A Yes."

02:47 10 Do you recall having the thought that the knife
11 may be of some significance at the time that it
12 was located, Mr. Kleiv?

13 A Yes, there was some thought in that regard, that
14 it could possibly have been used, but I believe at
02:47 15 that time it was felt that the knife that was
16 found, that broken knife was the one that was
17 used.

18 Q Okay. And I'm not sure whether it's in the prelim
19 transcript or in the trial transcript, I know that
02:47 20 there is a further exchange relating to whether or
21 not a connection had been made in terms of the
22 knife and the crime and I think you had confirmed
23 that no such connection had been made, although I
24 think you also indicated that you hadn't ruled it
02:47 25 out as possibly being involved in the matter, at



1 least at the point that you were providing
2 testimony. Would that sound accurate in terms of
3 your recollection?

4 A As far as I know, yes.

02:48 5 Q I'll refer you to as well, we note that the knife
6 was in Detective McCorriston's possession. He's
7 asked some questions in relation to the knife
8 during the course of his testimony at the
9 preliminary hearing, and I'm just noting this for
02:48 10 reference sake, the doc ID is 087201, and if we
11 turn to page 087212, you'll see Mr. Caldwell is
12 examining at this point and at the bottom of the
13 page it notes:

14 "Q And did you at one time receive a
02:48 15 complete or whole knife of some
16 description from someone; from another
17 police officer."

18 And the answer is:

19 "A On March 4th I received two knives from
02:49 20 one of my superior officers, I believe
21 it was Superintendent Wood."

22 And we'll see another portion relating to that in
23 a moment, but I'm assuming that one of the knives
24 he's speaking of is the bone-handled hunting
02:49 25 knife. Is it possible that you had provided the



1 knife to Superintendent Wood after locating it or
2 retaining it, Mr. Kleiv?

3 A No, I don't believe that I at any time turned the
4 knife over to Superintendent Wood, no.

02:49 5 Q Okay. I'll turn your attention to a portion of
6 the cross-examination by Mr. Tallis, 087213, again
7 this is Detective McCorriston testifying just at
8 the bottom of the page. Again he notes that two
9 knives were described as being received from
02:50 10 Superintendent Wood and he mentions the
11 pearl-handle jackknife and then goes on to ask:

12 "Q Now, to whom did you turn over that
13 particular knife after you had it in
14 your custody."

02:50 15 I'll turn your attention to 087214 -- actually,
16 we can move down the page to question 7, you'll
17 note the question:

18 "Q Now, what was the other knife that you
19 were telling my learned friend about?
02:50 20 You didn't describe it.

21 A It was a very small hunting knife with
22 a brown bone handle."

23 And a further discussion ensues about that knife
24 and the description of that knife. And then I'll
02:50 25 turn your attention to 087216, the top of the



1 page, you'll see Detective McCorriston is asked:

2 "Q And was this a double edge or a single
3 edge knife?"

4 And his answer is:

02:51 5 "A Single edge.

6 Q Single edge. And now what did you do
7 with this particular knife?

8 A Sometime subsequent to March 4th, I
9 turned it over to one of the
02:51 10 Identification Officers.

11 Q Here in Saskatoon?

12 A Right.

13 Q And can you check your notes to
14 ascertain the person to whom you turned
02:51 15 that over?

16 A I have checked my notes sir, and I
17 don't have any anything as to ...

18 Q Well, do you know the officer to whom
19 you turned it over?

02:51 20 A I can't swear that I do. I believe it
21 was Identification Officer Kleiv."

22 And I guess firstly with his description, I think
23 you've already indicated to us that you don't
24 recall necessarily in terms of whether the knife
02:51 25 was single edge or double edge and you'll note



1 Detective McCorrison describes it as a
2 single-edge knife, and would you have any reason
3 to dispute that description as accurate?

4 A No.

02:51 5 Q And in terms of the portion of that testimony,
6 Detective McCorrison's indication that that knife
7 perhaps was turned over to you at some point
8 subsequent to March 4th, do you have any comment
9 on his position in that respect?

02:52 10 A No. As far as I know, I received it back from
11 him, it was placed back in my locker.

12 Q But noting your testimony already, Mr. Kleiv,
13 during the course of the preliminary hearing, and
14 I should have noted that you testified prior to
02:52 15 Detective McCorrison during the course of the
16 preliminary, and again you'll recall you indicated
17 that the knife wasn't in your possession at that
18 time and Detective McCorrison is indicating that
19 he may have turned it over to you, it's not in his
02:52 20 possession. Would you have any recall as to where
21 that knife may have been, at least at the time of
22 the preliminary hearing?

23 A No. I was of the opinion, and I couldn't remember
24 exactly, but I thought that I had turned that
02:53 25 knife in at the preliminary hearing.



1 Q Okay. And --

2 A But that was my recollection, but I could be
3 wrong.

4 Q Okay. And do you accept your testimony as I've
02:53 5 indicated to you, that it would appear that you
6 didn't have the knife at the time of the
7 preliminary hearing?

8 A Yes, that's entirely possible, because I can't
9 remember exactly.

02:53 10 Q Okay. And again, I appreciate your bearing with
11 me through this and I'm just trying to take this
12 through to its conclusion, Mr. Kleiv. I'll show
13 you as well, just for further reference, there's a
14 note by Mr. Caldwell, I believe Mr. Caldwell, we
02:53 15 haven't heard that in evidence, but I believe it
16 will be confirmed as a note by Mr. Caldwell, and
17 the document is 007005. You'll see the date at
18 the top of this particular note is September 10th,
19 1969, that would have been I guess approximately
02:54 20 10 days after the conclusion of the preliminary
21 hearing, and just in terms of the entry relating
22 to yourself at the bottom, you'll note he
23 indicates:

24 "Rec'd small hunting knife ex Oliver.

02:54 25 K. -- "



1 I believe meaning Kleiv,
2 "-- there when Oliver found it, but K.
3 didn't see where it was. Feb. 28 -
4 12:30 p.m."

02:54 5 And then it notes

6 "- K. still has knife."

7 And would it make sense that, assuming again you
8 didn't have the knife in your possession at the
9 time of the preliminary hearing, Mr. Kleiv, would
02:54 10 it make sense that you came into possession of
11 that knife shortly following the preliminary
12 hearing?

13 A It's entirely possible, yes.

14 Q And again I appreciate your bearing with me, and I
02:54 15 take it you just, you don't have a recollection of
16 these matters?

17 A No.

18 Q Is that correct?

19 A No.

02:55 20 Q And if you were to speculate for us, Mr. Kleiv, do
21 you have any idea where that knife may have been
22 during the course of the preliminary hearing?

23 A No. The only speculation I might have is that it
24 may have been turned back to Constable Oliver
02:55 25 before the preliminary hearing.



1 Q Okay.

2 A Yeah.

3 Q I'm not quite done with this path so I'll just
4 continue on. I will note for you, Mr. Kleiv, it
02:55 5 doesn't appear that you were asked any questions,
6 I reviewed your trial testimony, you were not
7 asked any questions in relation to, specifically
8 in relation to this knife either by Mr. Caldwell
9 or by Mr. Tallis. Taking us up to the point of
02:55 10 the trial, do you know who was in possession of
11 the knife at the time of the trial, and there's
12 going to be a document that maybe helps us along
13 further, but I just did want to check with your
14 recollection first.

02:56 15 A Yeah. I don't recollect that.

16 Q Okay. Is it possible that it was in your
17 possession at the time of the trial?

18 A It's entirely possible.

19 Q And I should also note, Detective McCorriston was
02:56 20 asked some questions in relation to the knife, and
21 we don't need to specifically go to those
22 portions, I can note the doc ID is 041663 and the
23 portion of the transcript where some further
24 questions are posed is 041680 and in summary he
02:56 25 simply indicates again that he had received a



1 knife from Superintendent Wood and he notes that
2 he had turned it over to somebody, he was unsure
3 who, and he was unwilling to speculate, didn't
4 guess that it may have been you during his
02:57 5 testimony at trial.

6 Lastly I'm going to turn your
7 attention to a report, it's your report dated
8 January 30th, 1970, the doc ID is 113810. You'll
9 note it's your report at the bottom dated January
02:57 10 30th, 1970 and this would be I guess shortly
11 before the conclusion, actually perhaps one day
12 prior to the conclusion of the trial, and you'll
13 see the exhibits that we've been discussing are
14 listed there, you are confirming that they've been
02:57 15 entered as exhibits in court, you make some
16 specific reference to a couple of other items, the
17 Chicklets and the scissors, and then if we focus
18 in just at the bottom of the page, it's noted:

19 "The knife found at 12.30 p.m. Feb. 28,
02:57 20 1969 at the scene was turned over to
21 Constable Ian Oliver at 9.20 a.m. Jan.
22 28, 1970 upon instructions from Mr.
23 Caldwell, agent for Attorney General ."

24 And does that fit with your recollection, Mr.
02:58 25 Kleiv?



1 A Yes.

2 Q Okay. And again, do you recall receiving those
3 instructions from Mr. Caldwell or via somebody
4 else from Mr. Caldwell?

02:58 5 A No, I don't recall that specifically.

6 Q Okay.

7 A Although I believe what's right in my report.

8 Q Okay. So I take it we can obviously take from
9 this the knife was in your possession then at
02:58 10 least at the time of trial?

11 A Yes, whatever date the trial was. January 28th.

12 Q It began January 19th and followed through until
13 just three days after the January 28th date noted
14 I believe is correct.

02:59 15 A Was that the prelim or the --

16 Q No, this is the trial that we are talking about.

17 A The trial? Okay. So the indication is that it
18 was turned over to Constable Oliver at 9:20 a.m.
19 January the 28th, 1970, and I would say that that
03:00 20 is correct.

21 Q Okay. And it's clear that Mr. Milgaard's counsel
22 was aware of the knife, and I don't know if we've
23 gotten any closer to this, what is not clear
24 necessarily is if he was aware of the whereabouts
03:00 25 of the knife during the time of the preliminary



1 hearing and the time of the trial, and I don't
2 know if you can comment on that at all, Mr. Kleiv,
3 or if you have sort of provided us all the
4 information you can on this particular issue. Do
03:00 5 you have any other recollections or comments on
6 that matter?

7 A No I don't.

8 Q And, of course, we may hear and will hear evidence
9 from others that will, I'm sure, help us sort this
03:01 10 out.

11 And following the conviction of
12 Mr. Milgaard, Mr. Kleiv, do you recall having any
13 further involvement of any nature in the David
14 Milgaard matter as the years progressed?

03:01 15 A No. The only involvement was that I was called as
16 a witness for the *Larry Fisher case*, but I had no
17 further dealings with the Milgaard matter.

18 Q Okay. And I should have touched on this first. I
19 understand, in terms of your full testimony from
03:01 20 the preliminary hearing, David Milgaard's
21 preliminary hearing and trial, I understand you
22 have had an opportunity, recently, to review the
23 full transcripts from both of those proceedings?

24 A Yes.

03:01 25 Q And other than, I guess, some of the points we've



1 discussed today would you adopt the contents of
2 those transcripts as accurate testimony on your
3 part?

4 A Yes.

03:02 5 Q Okay. And do you recall discussing this matter
6 with the RCMP during an investigation that they
7 were conducting in 1993 into alleged wrongdoings?

8 A Yes.

9 Q Mr. Commissioner, I do note the time, if -- we can
03:02 10 break at this point if that would suit you.

11 COMMISSIONER MacCALLUM: Yes, it would.

12 *(Adjourned at 3:02 p.m.)*

13 *(Reconvened at 3:20 p.m.)*

14 BY MR. HARDY:

03:22 15 Q Mr. Kleiv, there's an item I should have brought
16 to your attention during the discussion of the
17 bone-handled hunting knife, it is an exhibit
18 report and it's marked E63, I'm not sure what the
19 doc. ID is but I think perhaps it's -- there it is
03:22 20 retrieved. And you'll -- first of all, take a
21 look at that report. And, Mr. Kleiv, maybe for
22 your purposes it might assist if you saw the
23 original version of this report, and we have that
24 available as well, do you want --

03:23 25 COMMISSIONER MacCALLUM: Just for the



1 record, the document ID is?

2 MR. HARDY: I'm sorry, the ID is 025591.

3 No, that -- is that it in --

4 COMMISSIONER MacCALLUM: 598 I thought it
03:23 5 was?

6 MR. HARDY: Yeah, and what page number,
7 then, is that? It's page 025598.

8 COMMISSIONER MacCALLUM: Okay, thanks.

9 BY MR. HARDY:

03:23 10 Q And, John, if you could hand Mr. Kleiv, perhaps,
11 the original version of that report; do you
12 recognize that form of report, Mr. Kleiv?

13 A Yes I do.

14 Q And can you tell us about a report of this nature,
03:23 15 what its intended purpose was?

16 A Umm, its intended purpose is record of articles
17 seized, the exhibit number, and the time it was
18 received, and the date, and a description of the
19 exhibit, and who it was received from, and the
03:24 20 purpose of the seizure, and the disposition of the
21 exhibit. In this particular case it was turned
22 over to Constable Oliver at 9:20 a.m. January the
23 28th, 1970.

24 Q And you are speaking of the first entry, one
03:24 25 6-inch long knife found February 28th, 1969 at the



1 scene, and is that your signature on this document
2 at the bottom of the page?

3 A Yes it is.

4 Q And correct me if I'm wrong; is this a document
03:24 5 that's intended to track the possession of the
6 exhibit, or is it simply a seizure record, or what
7 is it, in the usual course, intended to
8 demonstrate?

9 A Oh, it -- it's a form that is used to, first of
03:25 10 all, record the exhibit and to sort of have
11 control over what has happened to the exhibit and
12 where the exhibit is at a certain time.

13 Q And would you have had some responsibility in
14 relation to the completion of this report?

03:25 15 A In all probability, I -- I'm the author of the
16 report.

17 Q Okay. And let's use what we have been discussing
18 thus far as an example. Assuming, indeed, that
19 you retained possession of the knife initially,
03:25 20 and that it was then turned over to at least
21 Detective McCorriston, would this report, in the
22 usual course, have noted that change of
23 possession?

24 A Umm, yes, it could have, but in this particular
03:26 25 case it wasn't recorded.



1 Q And when you say it, I mean did you say it 'could
2 have', I don't know if you said it 'could have' --

3 A Yup.

4 Q I don't know whether you said it 'could have' or
03:26 5 'should have'?

6 A Well, it could have.

7 Q Okay.

8 A And, probably, that there wasn't any problem with
9 turning it over to someone else because it was
03:26 10 well-marked for identification purposes and so,
11 that way, you would know it was the same article
12 that you were getting back.

13 Q But just in terms of maintaining continuity of a
14 particular item, am I correct that by some means
03:26 15 you would want to track that change of possession
16 in relation to the knife, for example again from
17 yourself to Detective McCorriston if, indeed, that
18 happened?

19 A It probably would be recorded in my notebook.

03:27 20 Q Okay.

21 A Which I don't have possession of.

22 Q What happened to your notebooks?

23 A Well all -- all my notebooks were destroyed.

24 Q Okay.

25 A Uh-huh.



1 Q And would this report, in the usual course,
2 reflect that change of possession, or maybe I
3 should state should this report have reflected
4 that change of possession?

03:27 5 A Umm, possibly this report, or another one.

6 Q And 'another one'; when you say 'another one' what
7 do you mean?

8 A Well when the item was received back from
9 McCorriston it could possibly be another form made
03:27 10 up but, in this particular case, it should have
11 probably been recorded on this form.

12 Q And just give me an idea, where are these forms
13 maintained as of 1969, where were they maintained?
14 And help me understand, sort of, when they would
03:28 15 be completed or when they might be accessed again?

16 A The form would be kept on the, once it's completed
17 it would be kept in central records on the
18 original file, and if the file was ongoing it
19 could be kept in the division on the division
03:28 20 file.

21 Q And there's an entry:

22 "... Exhibits Are Presently Stored",

23 I see:

24 "I/O Kleiv's locker, Identification

03:28 25 Department",



1 which would be an indication I take it, at least
2 in terms of what's recorded, that at least until
3 the disposition noted that item was in your
4 possession?

03:28 5 A Yes.

6 Q Okay. And, again, if indeed it went out of your
7 possession am I hearing correctly that, in the
8 usual course, that should have been tracked in
9 some respect?

03:28 10 A Yes, it should have been.

11 Q Okay. And I was also showing you those charts
12 earlier on, you will recall, in relation to a
13 number of the exhibits, and perhaps we can bring
14 up 0066 -- I think it was -- 77 again please. And
03:29 15 we can split screen that with 78. And, Mr. Kleiv,
16 for your benefit I again have the original of that
17 chart present and maybe I'll ask John to place
18 that in front of you.

19 And you will recall, Mr. Kleiv,
03:29 20 I indicated what we anticipate will be put in
21 evidence; that this was a chart created by the
22 case preparation officer to assist the prosecutor
23 relating to the various exhibits and the
24 continuity of those exhibits, and what I neglected
03:30 25 to ask you, as exhibit handler would you have had



1 some input in terms of the creation of this chart?

2 A No, I wouldn't.

3 Q You don't recall any discussions with the case
4 preparation officer in this case or a similar case
03:30 5 where a chart of this was created for the
6 prosecutor and you would offer assistance?

7 A No.

8 Q From your report or otherwise?

9 A Umm, this chart would probably be prepared by the
03:30 10 case preparations officer from the reports that he
11 had on file.

12 Q Okay. So you don't recall any, any participation
13 in that process in terms of the creation of this
14 chart?

03:30 15 A No.

16 Q Okay. And I'll note for the record, I think there
17 are three sets of dual pages as we have seen here
18 which list the exhibits, and the knife that we
19 have been speaking of is not noted on that chart.

03:31 20 And would that surprise you in any respect, Mr.
21 Kleiv, if that knife wasn't included on this chart
22 that had been prepared?

23 A Well, it would have if I'd have known about it
24 sooner, because I remembered that I was going to
03:31 25 tender that knife in Court.



1 Q And maybe that's even a better way to go at it.
2 We looked at your own report listing the numerous
3 items that sort of came into and out of your
4 possession, and again, this particular item wasn't
03:32 5 noted on that report?

6 A Right.

7 Q And would you have any explanation for why that
8 item wasn't noted on that report? And, again, I'm
9 talking about the bone-handled hunting knife.

03:32 10 A No, no.

11 Q Okay. Thank you, Mr. Kleiv.

12 We were discussing, before the
13 break, your meeting with the RCMP in 1993 which I
14 believe you confirmed; do you recall?

03:32 15 A Yes.

16 Q And I'm going to turn you to some notes that were
17 written up by the RCMP officers, or one of them,
18 following their meeting with you. And if we could
19 turn, please, to document 034771. Again, this is
03:32 20 notes by one of the RCMP officers following their
21 meeting with you, you will note the date, March
22 16th, 1993, in relation to Kleiv, and it looks
23 like you met with him at the Saskatoon Inn; do you
24 recall that?

03:33 25 A Yes, I did.



1 Q Just a few portions of this report. If we move to
2 the bottom of this page, again a discussion about
3 the knife that we have been discussing, the
4 hunting knife found at the scene, and it
03:33 5 indicates:

6 "Described same knife as having a brown
7 handle",
8 gives some dimensions:

9 "Felt the blade was single edged but
03:33 10 wasn't sure."

11 Would that be accurate, that you indicated a
12 thought, at least at that time, that the blade of
13 that knife was a single-edged blade?

14 A Yes. Yes, it's written there, felt the blade was
03:34 15 a single edge.

16 Q And is that your -- I'm sorry -- is that your
17 continued feeling today?

18 A Yes.

19 Q Okay. I'll turn your attention to the next page,
03:34 20 please. Actually 034773, umm, this portion here.
21 I'll read this to you, Mr. Kleiv:

22 "Kleiv has not spoken to any other
23 police departments regarding this
24 murder. Stated a prosecutor from Ottawa
03:34 25 called him at one time regarding photos.



1 Does not know who it was. Has not been
2 approached by anyone else except a
3 fellow by the name of Karp.

4 Karp wanted to know what Kleiv
03:34 5 thought of Kettles and Penkala."

6 Is that an accurate account of information that
7 you provided to the RCMP in 1993, Mr. Kleiv?

8 A I guess it is, I --

9 Q All right. And do you recall this contact from a
03:35 10 fellow by the name of Karp?

11 A No, no I don't.

12 Q You don't recall that today?

13 A No.

14 Q Do you accept that you recalled it, at least in
03:35 15 1993, when you were discussing matters with the
16 RCMP?

17 A Yes, it's -- that particular name doesn't mean
18 anything to me.

19 Q Any recollection of anyone asking you your
03:35 20 thoughts on Kettles and Penkala?

21 A No.

22 Q Okay. I turn your attention to the next page,
23 034774, just a small portion in the middle of the
24 page. It indicates:

03:35 25 "Doesn't recall any connections of the



1 murder to any rapes."

2 Do you recall providing that information to the
3 RCMP in 1993?

4 A "Any... (witness reading) Yes, I guess that's
03:36 5 what I told them at the time.

6 Q I'm sorry?

7 A I guess that's what I told them at the time, yes.

8 Q Do you recall a discussion respecting the context
9 of this comment?

03:36 10 A No.

11 Q Okay. But you would accept this as a comment you
12 provided in 1993 to the RCMP?

13 A Yes.

14 Q Okay. And just reading down from there it
03:36 15 indicates:

16 "Kleiv was ...",

17 I'm sorry, I can't read that:

18 "... asked about Detective Karst and his
19 relationship with other detectives.

03:36 20 Kleiv stated Karst was 'the best
21 investigator' the police department ever
22 had. Kleiv felt Karst was popular with
23 his co-workers, a team player."

24 Do you recall providing that information to the
03:36 25 RCMP in 1993?



1 A Yes.

2 Q And is that an accurate indication of your
3 thoughts on Detective Karst at that time?

4 A Yes.

03:36 5 Q And those thoughts continue today; do they?

6 A Yes.

7 Q Okay. And am I correct as well, Mr. Kleiv, as
8 we've discussed, that you provided testimony at
9 the preliminary hearing and trial of Larry Fisher
03:37 10 in 1999?

11 A Yes.

12 Q And I understand that, prior to your testimony
13 today, you have had a chance to review your
14 testimony from both of those proceedings?

03:37 15 A Yes.

16 Q And do you adopt the contents of those transcripts
17 as accurate?

18 A Yes.

19 Q For purposes of today?

03:37 20 A Yes.

21 Q I don't have any specific portions that I want to
22 review with you from those transcripts, Mr. Kleiv.

23 Just give me one moment, I'm
24 going to check a note I have.

03:37 25 Thank you, Mr. Kleiv, those are



1 all the questions that I have. My Friends may --

2 COMMISSIONER MacCALLUM: Do you have those
3 document ID's handy, Mr. Hardy?

4 MR. HARDY: Oh yes, sorry, I should have --
03:38 5 I meant to tell you them, Mr. Commissioner. I
6 did have them handy but I don't know if I have
7 them. Do we have the document IDs for Mr.
8 Kleiv's testimony at the preliminary hearing and
9 at the trial? Is this -- okay. Here is one of
03:38 10 them, 313559, it looks like that's from the
11 trial; this is another transcript as well, I
12 think there was a break in that testimony, this
13 next document from the trial 313686; and the
14 preliminary hearing 313729.

03:39 15 COMMISSIONER MacCALLUM: Thanks.

16 MR. HARDY: Thank you, Mr. Kleiv. My
17 Friends may have some questions for you.

18 MR. HODSON: I think I, based on a canvass
19 at the break, I believe that Ms. Knox,
03:39 20 Mr. Beresh, and Ms. McLean have questions, is
21 that -- anybody else? Oh, Mr. Beresh does not,
22 so I think it's Ms. Knox, Ms. McLean, and I'm not
23 sure if they have -- care what order they go in?

24 MS. KNOX: I'm just going to take a moment
03:40 25 to find my binder, I lost it.



1 BY MS. KNOX:

2 Q Mr. Kleiv, my name is Catherine Knox, and I'm
3 appearing with Mr. Halyk as counsel for Mr.
4 Caldwell, and Mr. Halyk is not here so I get to
03:40 5 fill in.

6 Just for the record, you and I
7 have not met previously, and we haven't had any
8 discussions in respect of this matter?

9 A No.

03:40 10 Q Okay. Were you present this morning perchance,
11 because it might help a little bit in terms of how
12 I phrase questions, were you present this morning
13 for any of the questions that I asked of Mr. Weir?

14 A Yes, I was.

03:40 15 Q Okay. Can I ask you, then, if, similar to with
16 Mr. Weir this morning, you would give me or give
17 the Commission your best memories of the policies
18 of the Saskatoon Police Service, if you have any
19 such memories back in 1969 in particular, about
03:41 20 the preparation of reports and the distribution of
21 your reports once they were prepared?

22 A Yes.

23 Q Okay. First off, could you tell me whether, as a
24 personal practice, you dictated or wrote your own
03:41 25 -- or typed your own reports?



1 A I personally typed my own reports, yes.

2 Q Okay. Then you would be a good one to help us
3 here. When you were typing a report such as an
4 incident report or an investigation report in
03:41 5 respect to a file, how many copies of the report
6 did you make?

7 A I believe four.

8 Q Okay. And I take it, based on what's available
9 when we looked -- or at least I looked through the
03:41 10 original of the binders to the extent that they
11 exist for Saskatoon Police Service now, that you
12 were using carbon paper to make your copies as
13 opposed to photocopies?

14 A Yes.

03:42 15 Q Okay. And when you had typed your report and you
16 prepared your four copies, or your original and
17 three copies I guess is -- would be a more
18 accurate phrasing, what was the necessary
19 distribution, as you recall, of the report?

03:42 20 A The original of the report was kept in central
21 records.

22 Q Okay.

23 A And there was two reports were sent to the
24 division.

03:42 25 Q Okay. And when you say 'to the division' in your



1 case two reports, then, would be kept for
2 identification division?

3 A Yes.

4 Q Okay. And what happened to the two reports that
03:42 5 were kept or sent to the division, in your case
6 identification division?

7 A One would be a working file report.

8 Q Okay.

9 A And the other one would be the supervisor's
03:43 10 report --

11 Q Okay.

12 A -- of the division.

13 Q So the supervisor would be the senior officer in
14 charge?

03:43 15 A Yes.

16 Q And, in the case of the identification section in
17 1969, am I correct in remembering that it -- that
18 would have been a copy, then, for Sergeant
19 Penkala?

03:43 20 A Right.

21 Q And a copy for you?

22 A Yes.

23 Q Now do you remember what happened to the fourth
24 copy of your report?

03:43 25 A That is something I was trying to remember.



1 Q You must hate people like me who try to get you to
2 do this.

3 A Umm, the fourth copy? No, I can't specifically
4 say what happened to the fourth one, but I think
03:43 5 it was kept as an extra, extra report in case one
6 went missing or something like that, --

7 Q So --

8 A -- or got lost.

9 Q So, in theory, it would be an extra clean copy of
03:44 10 the report, --

11 A Yes.

12 Q -- as the central records one should be a clean
13 copy, nobody putting marks on it or anything?

14 A I believe it was kept as a -- because it was
03:44 15 referred to the -- if there was a charge to be
16 laid it would be forwarded to the Crown
17 prosecutor.

18 Q Okay. So it's your belief that the fourth copy,
19 then, would be intended to be for Court purposes?

03:44 20 A Yes, it -- providing it was clear enough, but if
21 it wasn't a clear document then it would be kept
22 as probably an investigative copy, and then a
23 better copy would be sent to the prosecutor.

24 Q And when you say 'clear enough' I take it you are
03:45 25 just talking about the quality of the typing and



1 the carbon reproduction --

2 A Yes.

3 Q -- in terms of what you were getting in those
4 days? Unlike photocopies, sometimes the more
03:45 5 copies made on carbon the less clear it became, as
6 you went toward the end?

7 A That's right.

8 Q Okay. I'm good with that. Now with respect to
9 your work where you forwarded exhibits to the lab,
03:45 10 and I'm talking about the RCMP crime lab in
11 Regina, --

12 A Yeah.

13 Q -- can you tell us what the paper trail was for
14 those kinds of reports? And I appreciate we
03:45 15 already have evidence that a covering letter would
16 be done; was it always under the signature of the
17 officer in charge as opposed to an individual
18 officer such as yourself?

19 A Yes. It was generally the officer in charge would
03:45 20 compose the letter and send it off to the lab,
21 yeah, along with the exhibits.

22 Q Okay. So as a -- the exhibit person working
23 under, on second down the ladder, I take it you
24 would have to communicate to your sergeant,
03:46 25 Sergeant Penkala, that you had possession of



1 certain exhibits that you felt needed to be
2 tested?

3 A Yeah.

4 Q And it would be as a result of that consultation
03:46 5 that he would do the request for the lab testing?

6 A Yes.

7 Q And you would follow like in the one, the report
8 that you looked at earlier, the original one,
9 there is a notation on your exhibit sheet that two
03:46 10 items, a black over boot and a black and red
11 sweater, had been sent to the lab?

12 A Yes.

13 Q So if you talked to Sergeant Penkala, said "I've
14 got some exhibits that should go for testing", and
03:46 15 he agreed with you and a request was done for
16 testing, you turned your exhibits over to him and
17 made a note as to when you turned them over?

18 A The exhibits were turned over to the lab, yes, I
19 wouldn't turn the exhibits over to the officer in
03:47 20 charge.

21 Q No, I'm sorry, then I'm misunderstanding.

22 A Yeah.

23 Q So he would write the letter?

24 A Yeah.

03:47 25 Q But the marrying of the letter with the exhibits



1 would be something done within your office and
2 then it would just be sent to the lab?

3 A Yes.

4 Q So he wouldn't have to be part of the chain of
03:47 5 custody for purposes of Court down the road I take
6 it?

7 A That's right.

8 Q Okay. Okay, I think I'm following you so far, and
9 I hope you are following me.

03:47 10 A Yes.

11 Q Now once your -- his letter has gone to the lab
12 and a re -- the exhibits are sent to the lab,
13 presumably a lab report would come back?

14 A Yes.

03:47 15 Q Do you remember, as the recipient of laboratory
16 reports, how many copies of a report came to the
17 identification section from the RCMP crime lab?

18 A Umm, probably three.

19 Q Okay. And just, again just because I want to be
03:47 20 sure that -- what's accurate in terms of what you
21 have a specific memory of and what's a guess on
22 your part, you are using the term 'probably
23 three'.

24 A Yeah.

25 Q Are you certain that it was three or is that a --



1 what you think based on your memories of the
2 practices of the day?

3 A That's right.

4 Q And can you tell me, then, what you remember now
03:48 5 of what happened to the reports and -- the report
6 and the copies that came back from the RCMP lab?

7 A They would come to the identification section and
8 then the original copy would go to central
9 records.

03:48 10 Q Okay.

11 A And one copy would go to the officer in charge of
12 CID and one copy would be kept in the ident
13 section.

14 Q So when you say it would go to the officer in
03:48 15 charge, there you are making a distinction,
16 'officer in charge of CID', --

17 A Yeah.

18 Q -- you are making a distinction between the
19 investigating officer and, in this case,
03:48 20 Superintendent Woods who was at that, in 1969, the
21 officer in charge?

22 A Yes.

23 Q Okay. Now in looking at original lab reports that
24 are contained both in the police file in
03:49 25 particular, and at least one instance in the Crown



1 file, there is contained on a copy of that lab
2 report a red stamp that says 'Saskatoon Police
3 Service', and it has a date that I would presume
4 to be the date the report is received from the
03:49 5 lab?

6 A Yes.

7 Q Do you know which copy of the three, if it was
8 three that came back, got the red stamp put on it
9 saying basically that it would say in 1999 or
03:49 10 2005, as we stand here now, 'this lab report came
11 to Saskatoon Police Service this date and I know
12 this because it's got a red date stamp on it'?

13 A Right.

14 Q Did it go just on one, the original, or did it go
03:49 15 on all three copies; do you recall?

16 A I don't recall exactly, but I believe it went on
17 all three copies.

18 Q Okay. I'm going to take a moment, if I can, just
19 to direct your attention to some what appear to be
03:50 20 original lab reports in the sense that they are in
21 the Saskatoon Police binders, if I could just have
22 a moment, Mr. Commissioner.

23 I'm just passing you what are
24 some pages from, and this is from binder E, and
03:50 25 I'm passing the witness pages E27 and some pages



1 forward. If you would take a look at those, and
2 in particular at E27, the very top one, it has a
3 red stamp. Does that look to you like the reports
4 that came back from the lab, and does it appear to
03:51 5 be an original as received, given at least that
6 first page has the red -- the very red stamp on
7 it?

8 A Yes. And I believe that stamp was probably placed
9 on the document in central records.

03:51 10 Q If I could just borrow that page, again, to put up
11 on the Elmo. If I could just direct your
12 attention for a moment to that report, you will
13 agree with me that it's a lab report bearing the
14 date March 12th, 1969?

03:52 15 A That's right.

16 Q It is in relation to the murder of Ms. Miller?

17 A Yes.

18 Q And it relates to exhibits that were received
19 personally from you?

03:51 20 A Right.

21 Q On February 7th. And although it's not real
22 clear, just for the record, the red stamp that you
23 and I are talking about is what I've circled and
24 you are saying you believe that stamp would have
03:51 25 been put on in Central Records?



1 A Yes.

2 Q So just again to help me in terms, or help all of
3 us in terms of understanding the flow of paper,
4 when the RCMP crime lab sent this report back,
03:52 5 it's addressed to the chief of police, it's about
6 exhibits that you delivered. Where did that mail
7 go, and I'm assuming it came by mail, where did
8 that mail or that report go when it arrived at the
9 Saskatoon Police Service in 1969?

03:52 10 A The mail was all brought to Central Records first.

11 Q Okay. So the point of receipt is Central Records?

12 A Yes.

13 Q And they would stamp it?

14 A Yes.

03:52 15 Q And then they would do the distribution?

16 A Yes, that's right.

17 Q Or somebody there would do the distribution?

18 A Yes.

19 Q Now, you've indicated that it's your belief that
03:52 20 all -- if three copies came, which you think, that
21 all three got this same stamp?

22 A Yeah. I'm not sure of that.

23 Q Yeah, I was about to say to you, I've looked
24 fairly extensively at a lot of the reports and I
03:53 25 do find duplicates, but usually there's only one



1 copy that has the red stamp.

2 A Right.

3 Q So then if there's only one copy that has the red
4 stamp, would it be unreasonable for me or for you
03:53 5 to assume that it would be the top copy when the
6 mail is opened that gets stamped?

7 A Yes.

8 Q And that would be the one that should stay in
9 Central Records?

03:53 10 A That's right.

11 Q Because that would be the original?

12 A Yes.

13 Q And the one that ended up with Sergeant Penkala,
14 Lieutenant Penkala, I'm not sure of his rank when
03:53 15 he was in charge, would be a second or the third
16 of it, but it would be one of the two?

17 A Yes.

18 Q And the other one would go to?

19 A To --

03:53 20 Q Superintendent Wood?

21 A Yes.

22 Q Or to Superintendent Wood's office?

23 A Yes.

24 Q Or the investigators?

03:53 25 A Uh-huh.



1 Q In major crimes?

2 A Right.

3 Q Okay. Now, sir, yesterday Mr. Weir testified that
4 all original documents were required to remain in
03:54 5 Central Records, and while copies could be
6 obtained from Central Records, the originals would
7 not or should not be removed from Central Records,
8 and I questioned him a bit about that this morning
9 if you recall?

03:54 10 A Yes.

11 Q Was it your understanding and is it your memory
12 that, as he said, original documents were supposed
13 to go and stay in Central Records?

14 A Yes.

03:54 15 Q Okay. From your memory as a police officer, and
16 I'm thinking particularly if it's possible for the
17 times between 1969, 1970, can you think of any
18 reason why, or any way that an original report
19 such as this lab report would get removed from
03:54 20 Central Records and end up in a place such as the
21 prosecution file?

22 A Well, the only way that could happen would be if
23 they couldn't find any other report other than the
24 original, then I would think that the original
03:55 25 would remain in Central Records and a copy would



1 be sent to the prosecutor.

2 Q Okay. And if you'll trust me for a moment, and
3 with Mr. Agioritis' assistance I'll show you, that
4 there is in fact at least one lab report on the
03:55 5 prosecution file that has this red stamp on it the
6 same as is on this May 12th, 1969 report. I take
7 it that would be surprising to you because if they
8 lost their copies, it should have been a photocopy
9 or a photostat from Central Records, not the
03:55 10 original report?

11 A That's right.

12 Q Okay. Do you recall -- I apologize again,
13 Mr. Commissioner, I'm a little scattered on this,
14 but I was putting it together over the lunch hour.
03:56 15 I'm going to show you a document that will be
16 identified, it has a cover page on it with a
17 document ID -- I should go back to the mike -- a
18 cover page on it with the document ID number
19 009374, the handwritten cover on it is in
03:56 20 handwriting that will be identified I believe by
21 Mr. Caldwell as his handwriting using a particular
22 kind of ink that he seemed to use throughout the
23 file, and it says "Milgaard" and it's got
24 underlined "lab reports" and -- yeah, this is the
03:56 25 page, thank you. And I perused through it and



1 when I get to document 009382, you see up here,
2 sir, there's a stamp?

3 A Right.

4 Q Now, because we're dealing with photocopies in
03:57 5 CaseVault, I'm going to show you the original.

6 A Yes.

7 Q Sir, does that look to be the same stamp that
8 appeared on the report that you previously looked
9 at that you identified as the stamp that would
03:57 10 have been placed, the original of the stamp in red
11 ink that would have been placed by Central Records
12 and which should have been the copy that stayed in
13 Central Records?

14 A Yes.

03:57 15 Q Okay. And please feel free to peruse the others
16 because I do have a couple of questions for you
17 about that.

18 A This certainly does look like the original copy
19 and the only other thing I can think of is that if
03:58 20 they stamped one of the other -- if the officer in
21 charge of Central Records happened to stamp a
22 second copy as well.

23 Q Okay, that's a possible explanation.

24 A That's a possible -- that's a possibility, but I
03:58 25 don't know for sure.



1 Q Mr. Kleiv, I'm going to continue to, and for the
2 record, Mr. Commissioner, what was shown briefly
3 on the screen on Elmo was this actual report as it
4 appears with the red markings, and I apologize, I
03:59 5 have to take it back. If you could just bear with
6 me for a moment, Mr. Commissioner. Just for the
7 record, sir, the next document I'm going to draw
8 your attention to is Commission document number
9 006241 and this is a three page document that
04:00 10 Mr. Hardy went over with you this morning and it's
11 the one that has handwriting on it, a couple of
12 different kinds of handwriting, and I don't recall
13 that he asked you if you could identify the
14 handwriting, but would you agree with me that what
04:00 15 appears up top up here is Kleiv and it's got a
16 mark, number 1?

17 A Yes, that's what it looks like.

18 Q And if we could just page down a little bit, sir,
19 down to the middle of the page, there's a series
04:01 20 of handwriting beside each of the listings of
21 photographs that shows directions, northeast and
22 various other handwriting. Do you see that?

23 A Yes.

24 Q And throughout the next two pages, and I'm going
04:01 25 to pass you the original in just a moment,



1 throughout the next two pages there repeatedly
2 appears notations that are made in a bluey-green,
3 it looks like a fountain pen ink. The evidence --
4 or first off, I'll pass you the original. Do you
04:01 5 recognize the handwriting and the ink?

6 A The red marked "ident" I think would be Staff
7 Sergeant Bocking.

8 Q And you are referring to this, what appears on our
9 screen in black with a check mark beside it on the
04:02 10 original is in red ink; agreed?

11 A Yes.

12 Q And you are saying it appears to belong to Staff
13 Sergeant Bocking?

14 COMMISSIONER MacCALLUM: How do you spell
04:02 15 his name, please?

16 BY MS. KNOX:

17 Q Could you spell his name for the Commissioner,
18 please?

19 A Bocking, B-O-C-K-I-N-G. But I can't be sure on
04:02 20 that, but I believe he was looking after signing
21 files and so on and I believe that's his writing.

22 Q Okay. And thank you for that, I was about to
23 direct your attention to that. You think it was
24 Staff Sergeant Bocking?

04:02 25 A Yeah.



1 Q And I take it the shorthand for ident here was
2 intended to mean that this copy originally should
3 be in the hands of ident?

4 A Yes.

04:03 5 Q Okay. Now, referring to the bluey-green ink that
6 appears on that, I'm going to take you back to
7 exhibit 009374, that is the cover page on the lab
8 reports from Mr. Caldwell's file. Would you agree
9 with me that the same ink certainly that was used
04:03 10 to write "Milgaard, lab reports" on 009374 is the
11 kind of ink that's got the handwritten notations
12 that I drew your attention to in your
13 investigation report, like, the northeast and your
14 name at the top are all in that bluey-green colour
04:03 15 ink aren't they?

16 A Yes, it's the same colour ink.

17 Q Now, sir, again if you know, given that -- and I
18 can advise you that those documents or that report
19 in your hand also came out of Mr. Caldwell's file.

04:04 20 A Uh-huh.

21 Q Can you offer us any explanation or any reason why
22 the copy that somebody, maybe Staff Sergeant
23 Bocking, had identified to belong to ident would
24 end up in the prosecutor's file, or how it ended
04:04 25 up in the prosecutor's file?



1 A The only explanation that I might have would be
2 that another copy was made of this and then this
3 was forwarded as a prosecution file.

4 Q So it's possible that a duplicate got made of the
04:05 5 lab report and the carbon copy that came from the
6 lab and which was assigned to ident got given to
7 the prosecutor?

8 A It could happen, yes.

9 Q Okay. Now, sir, just dealing with this report for
04:05 10 a moment, and I wonder, do we have book A, binder
11 A? I apologize, Mr. Commissioner. Sir, that
12 report, and it was used by Mr. Hardy this morning
13 in terms of questioning you about this particular
14 matter, that report, I'm going to pass it back to
04:06 15 you, from Mr. Caldwell, the original from Mr.
16 Caldwell's file. I'm going to pass you as well a
17 document from binder A of the police file, the
18 page number is A39, and these are numbers that
19 were added after so you shouldn't be too concerned
04:06 20 about it. Would you agree with me that the page I
21 just gave you, A39, is the first page of the
22 document you were referred to this morning as your
23 identification report, this report as 006241 which
24 is found on Mr. Caldwell's file?

04:07 25 A Yes, they are the same report, yes.



1 Q So what A39 is, from the police binder, is
2 basically a clean copy of your report that, as it
3 appears, is 006241?

4 A I would have to ask you to repeat that, please?

04:07 5 Q Would you agree with me that the copy that you
6 have in the plastic cover that has the number A39
7 is the first page of your report without any
8 markings on it except some highlighting?

9 A Yes, the first original -- the original copy?

04:08 10 Q Uh-huh. I'm not sure if it's an original or a
11 carbon, but --

12 A Yeah, I believe it is the original, yes.

13 Q Okay. Now, sir, you may not be able to help with
14 this, but I'm just passing you the original of the
04:08 15 police binder that was put together in 1989, 1990
16 to try to compile the full Saskatoon Police
17 Service documentation in the possession on the
18 David Milgaard investigation, and page A39 in that
19 document is the first page of your report. If you
04:09 20 would look at pages 2 and 3 of the copy that came
21 from Mr. Caldwell's report and then look at pages
22 40 and 41, A40 and 41 --

23 A Yes.

24 Q Okay. Would you agree with me that the police
04:09 25 binder, as it was compiled with each page in a



1 plastic sheet, does not have pages 2 and 3 of your
2 original identification report?

3 A Yes, that's right.

4 Q Okay. Now, sir, and again I'm not meaning to sort
04:10 5 of suggest anything improper or anything, but
6 given the circumstances that were being
7 investigated here, can you offer any explanation
8 for how Saskatoon Police Service would only have
9 one page of a report of yours that had been
04:10 10 prepared in this investigation whereas the Crown
11 file has three pages?

12 A No, I don't know. I don't know.

13 Q Okay. And I appreciate that you might not be able
14 to answer that, I just wanted to ask. Now, sir,
04:10 15 and maybe I could ask John to remove the binder at
16 least because I'm going to need to get another
17 binder. Sir, again in terms of asking you if you
18 can offer an explanation, as I examined the Crown
19 prosecutor's file as it existed I believe in 1989
04:11 20 and as I examined the police binders that were put
21 together in 1989, 1990, I find in the prosecutor's
22 file two lab reports that I cannot find in the
23 police binders. For the record, Mr. Commissioner,
24 they are lab reports dated May 21st, 1969,
04:11 25 document ID 009374, and it's page 17 of that



1 document, I'm relying on notes from Mr. Agioritis
2 here, and a report dated -- a report, also a
3 report dated May 27, and again I'm going to
4 suggest to you that this is Mr. Caldwell's
04:12 5 handwriting up here which would confirm what I'm
6 saying is that I found it in his file, and then
7 there's a report dated May 27th, 1969, document
8 number 009374.

9 COMMISSIONER MacCALLUM: 390?

10 BY MS. KNOX:

11 Q 009374. I'm sorry, it would be page 9 of that
12 report, which is a lab report dated May 27th.
13 Now, I became aware of this over the lunch hour
14 and it may well be that I'm wrong, but in my
04:13 15 review and Mr. Agioritis' review of the police
16 binder which contains the identification reports
17 and the lab reports, which is binder E for the
18 record, we could not find copies of these reports
19 in the police materials, and again, I asked you
04:13 20 whether you could account for the fact that two
21 pages of a report done by you would be in a Crown
22 file, but not in the police file. Can you, from
23 your work and your day-to-day activity in 1969,
24 1970, offer any explanation for how lab reports
04:13 25 that theoretically or to the best of your memory



1 came into the police station to Central Records
2 and got distributed with one kept in Central
3 Records would end up in the Crown file but not be
4 available in the police file?

04:14 5 A No, I'm afraid I can't explain that.

6 Q Okay. It should be in the police file?

7 A Yes.

8 Q And should never leave Central Records would be
9 the policy as you understood it?

04:14 10 A There should be a copy in Central Records as well
11 as the police file.

12 Q Okay. Just again relating to your particular
13 experience, I take it in the course of preparing
14 to give evidence in trials or in preliminary
04:14 15 inquiries, you would meet with the Crown
16 prosecutor on occasion?

17 A Yes.

18 Q If you took along with you your, or the ident
19 section copy of the file, would you ever leave
04:14 20 behind the ident section copy of the file without
21 being sure that you had a duplicate?

22 A I can't remember whether we took our file with us
23 or not, but I think we assumed that the Crown
24 prosecutor's file was complete, but I don't
04:15 25 remember taking my working file along.



1 Q Sir, sometimes in the course of looking at the
2 police binders, and in particular looking at
3 binder E, there are carbon copies of reports, but
4 occasionally there's what appears to be a
04:15 5 photostatic copy of a report, and in particular
6 you were referred earlier to your exhibit report
7 that has, like, Exhibit A, Exhibit B, that has a
8 history --

9 A Right.

04:15 10 Q -- of your activity or your interaction with those
11 various reports.

12 A Uh-huh.

13 Q And the copy that's in binder E, as I identify it
14 or as I see it, is what appears to be a
04:15 15 photostatic copy of some type as opposed to a
16 carbon copy. Now, given that you prepared your
17 own -- did your own typing, would you have
18 prepared your own exhibit report in the same way
19 you prepared your investigation or identification
04:16 20 reports?

21 A Yes.

22 Q So the original of that would have been a carbon
23 version, four copies likely done by you?

24 A It would be the original and probably three
04:16 25 copies, yes.



1 Q Three copies, sorry. And the original typed
2 version by you would, should be in Central
3 Records?

4 A Right.

04:16 5 Q And somewhere within the system in the
6 identification file there should be a carbon copy?

7 A Right.

8 Q And there's another carbon copy, two carbon copies
9 elsewhere, one for the court file potentially and
04:16 10 one other. Now, given that the only copy that
11 appears in binder E is a photostatic copy, and
12 again you may not be able to help us, but can you
13 offer any explanation as to why -- Mr. Agioritis
14 is going to show you -- if I can just borrow it
04:17 15 for a minute for the record so I can give the page
16 numbers that I'm asking you to look at from binder
17 E, I'm looking at page E23, E24, E25 and E26 --
18 the yellow sticky on it is one that I placed
19 there -- and, sir, you put your fingers inside the
04:17 20 plastic if it's necessary for you to do it because
21 that's how I do it sometimes, but looking at it
22 even, you would agree with me that that's not an
23 original typewriter version or a carbon copy of a
24 typewriter version, that's some form of a
04:17 25 photostatic reproduction isn't it?



1 A No, it would be one that I typed.

2 Q You typed that one?

3 A Yes.

4 Q Okay.

04:18 5 A And it was done on plain paper, not as an
6 investigation report.

7 Q Okay. So you used a different kind of paper; is
8 that the explanation?

9 A Yes.

04:18 10 Q So what we have there is a typed copy then, thank
11 you for straightening me out on that, as opposed
12 to a photostatic copy?

13 A Right.

14 Q But you used a different kind of paper?

04:18 15 A Yes.

16 Q And again, sir, you think you made three copies?

17 A Yes.

18 Q Three carbon copies, and is it your belief that
19 what you have in front of you is the original that
04:18 20 you prepared on the typewriter?

21 A I think probably this might be a copy, not the
22 original.

23 Q You mean a carbon copy though versus a photostatic
24 copy?

04:18 25 A I didn't -- I made a carbon copy, not a



1 photostatic copy, no.

2 Q And just perhaps I'm getting confused or I'm
3 getting you confused. When you say, you just said
4 you think that's a copy of your typed report, are
04:19 5 you saying it's one of the carbons that you made?

6 A Yes.

7 Q Okay. So you think that's not the original typed
8 report, that's a carbon copy as opposed to a
9 photostatic copy made later?

04:19 10 A I believe so, yes.

11 Q Okay. Sir, some questions were asked of you by
12 Mr. Hardy about the knife that ended up being
13 turned back to Constable Oliver toward the end of
14 the trial in January, 1970?

04:19 15 A Right, yes.

16 Q And he asked you if you had any explanation for
17 why the knife was not included in your report,
18 your exhibit report that you have in front of you
19 or in the exhibit charts that were, you looked at
04:19 20 that were prepared for trial, and I'm going to
21 suggest to you that, or ask you whether it's
22 possible that because it was concluded by somebody
23 that that knife had no connection to this murder,
24 that would be a very logical reason for not
04:20 25 putting it in as an exhibit or putting it in the



1 exhibit reports?

2 A Yes.

3 Q Mr. Hardy referred you to a report that has a
4 handwritten notation, you said that you didn't
04:20 5 know the handwriting, it wasn't yours, but it
6 clearly indicated I believe by somebody, or a
7 conclusion by somebody, that this wasn't related
8 to the murder?

9 A Right.

04:20 10 Q And given that a conclusion was reached by
11 somebody, or that it wasn't related to the murder,
12 it wasn't put in as an exhibit, is there any
13 reason or would there be anything wrong with the
14 prosecutor, Mr. Caldwell, saying to you 'we don't
04:21 15 need that because' --

16 A No, it wouldn't be anything wrong with that.

17 Q Okay. Would it be preferable, in fact, that you
18 didn't end up with a bunch of materials in your
19 exhibit locker that had no bearing on ongoing
04:21 20 cases? I'm thinking, for example you gave
21 Mr. Miller back Gail Miller's watch, it's not put
22 in as an exhibit in trial, --

23 A Right.

24 Q -- you have no reason to keep it; right?

04:21 25 A Right.



1 Q There is a knife that's been determined, after
2 some door-to-door canvass, some investigation, it
3 doesn't appear to be connected to the murder, just
4 like the watch, it's not going in as an exhibit,
04:21 5 no reason to keep it?

6 A Uh-huh.

7 Q Okay. If I could just have a moment, Mr.
8 Commissioner, I think I'm done. Yeah, there's --
9 in Mr. Caldwell's file -- and I'm referring, Mr.
04:22 10 Commissioner, for the record to the prosecutor
11 file number 3 -- there is a document that bears
12 Commission ID number 009395 that I am going to ask
13 to have put up on Elmo first, Elmo being the
14 machine that makes it come up over here, and it's
04:22 15 now on your screen as well.

16 You see the document I'm
17 referring to, it appears to be a circular prepared
18 in the police department with respect to the kind
19 of knife that I suggest I can say was probably
04:22 20 suspected of being the murder weapon?

21 A Yes.

22 Q I'm going to ask Mr. Agioritis if he will pass
23 you, now, the document that's sitting on Elmo.
24 Would you agree with me, sir, that what's attached
04:23 25 to that list or that document, that circular, is



1 an original photograph?

2 A Umm, yes, the --

3 Q It's a black and white --

4 A Yeah.

04:23 5 Q And if you can hold it up so people in the
6 audience can see it, it's not a photocopy of a
7 photograph, it's the actual photograph?

8 A Yeah.

9 Q Okay. Now sir, again as the identification
04:23 10 officer, is there any reason or any basis that
11 that original photograph would be in the
12 prosecutor's file as opposed to being maintained
13 in the identification section file? And again,
14 there may be a simple explanation, I just don't
04:23 15 know the answer.

16 A It's actually considered to be an investigative
17 type of information for the investigator --

18 Q Right.

19 A -- to follow up on because it shows a picture of a
04:24 20 similar knife that was suspected of being the
21 murder weapon.

22 Q Uh-huh.

23 A And so, again, it's just a photograph of the
24 knife, and then I don't know who the author is of
04:24 25 this but I suspect it might be Penkala, and it



1 says:

2 "The Police Department are interested in
3 learning from any house holder that may
4 be missing a paring knife of this
04:24 5 description."

6 And so it probably would be taken by the
7 investigator to some of the homes that are
8 located in the area --

9 Q Uh-huh?

04:25 10 A -- and to ask them if they have seen a similar
11 knife to that.

12 Q Or are missing a knife like that I suppose?

13 A Or are missing a knife, yeah, uh-huh.

14 Q And that makes eminent good sense in terms of
04:25 15 looking at it and the message that's contained in
16 it. My question to you, however, is do you know
17 of any reason why it would end up in the
18 prosecutor's file?

19 A Umm, it was part of the investigation, I guess.

04:25 20 Q Okay. Okay. Would copies of it have been kept
21 back at the police station; do you know?

22 A Yeah, I would think so.

23 Q Okay. If I could just have a moment with my
24 client, Mr. Commissioner, I think I'm finished
04:25 25 unless there is something that he has.



1 Okay. Just to summarize then,
2 in terms of your evidence, it's your evidence that
3 you would not have taken identification section
4 reports and left them at the prosecutor's office,
04:26 5 so if they are in his file today they didn't --
6 they wouldn't likely have come from you?

7 A No.

8 Q In terms of lab reports that are on his file, or
9 that appear to be -- and I shouldn't be absolutely
04:26 10 definitive -- but they appear not to be in the
11 police file as it exists today, you could offer us
12 no explanation as to how a report would end up in
13 the prosecutor's hands without a copy of it being
14 back at the police station?

04:27 15 A That's right.

16 Q Okay. And in terms of your report that you --
17 that we referred you to, your identification
18 report where one page is in the police file but
19 three pages are in the prosecutor's file, you
04:27 20 can't offer any explanation for how that could
21 have happened or why it would have happened?

22 A No.

23 Q Okay. I don't have anything further, Mr. Kleiv,
24 thank you very much.

04:27 25 A Thank you.



1 MS. McLEAN: Mr. Commissioner, I've some
2 questions for maybe about five minutes, is that
3 --

4 COMMISSIONER MacCALLUM: Does anyone else
04:27 5 -- that's all?

6 MS. McLEAN: It would avoid -- I think
7 nobody else has any questions.

8 COMMISSIONER MacCALLUM: All right. Unless
9 anybody has to leave right now, we'll proceed
04:27 10 with Ms. McLean.

11 MS. McLEAN: Thank you. That will avoid
12 the witness having to return tomorrow.

13 **BY MS. McLEAN:**

14 **Q** Sir, from the -- sorry, my name is Joanne McLean,
04:28 15 I represent Joyce Milgaard.

16 From the photographs and your
17 attendance at the scene and the way that Miss
18 Miller's body was left, and her clothing in
19 particular -- and I don't want to bring that
04:28 20 photograph up again -- but it, there was obvious
21 connotations of sexual assault to this?

22 **A** Yes.

23 **Q** Right?

24 **A** Yes.

04:28 25 **Q** And you've told us earlier today that you had



1 some, some theories yourself from, based on your
2 attendance there and the things that you had
3 observed; you told us you had a theory about the
4 location of where she had been accosted?

04:28 5 A Yes.

6 Q And you had a theory also, you told us, about her
7 coat having been removed and perhaps she had been
8 allowed to have put it back on again?

9 A Yes.

04:29 10 Q And it was obvious as well, because you'd looked
11 at the coat and you'd been present for
12 examinations of it elsewhere, that there were
13 stab -- or what appeared to be stab marks through
14 the coat?

04:29 15 A Right.

16 Q And there weren't any through the dress; correct?

17 A No, that's right.

18 Q So it's perfectly obvious that she's been stabbed
19 after the dress has been pulled down?

04:29 20 A Right. Right.

21 Q Now in the course of your work on this file or
22 other files, and working together with the police,
23 were you ever asked to participate in discussions
24 where you would share your theories about what had
04:29 25 possibly happened?



1 A Not that I recall, no.

2 Q You don't remember attending any meetings, or
3 maybe even casual groupings, where people are
4 talking about trying to figure out what might have
04:30 5 happened to Miss Miller?

6 A No, I didn't attend any meetings, no.

7 Q And you don't recall any casual conversations
8 about it either?

9 A Umm, I don't recall anything that was actually
04:30 10 said with regards to it, no.

11 Q At some point during the investigation of this
12 case did you become aware that there was a witness
13 who claimed that she had seen Miss Miller being
14 stabbed?

04:30 15 A Yes, I heard something about that, yes.

16 Q And that person I'm referring to is Nichol John;
17 do you recognize that name?

18 A Yes.

19 Q Do you recall either participating in or
04:30 20 overhearing conversations amongst other police
21 officers about Nichol John's evidence or her
22 statements?

23 A Umm, I may have, yes, but I had no direct contact
24 with those people.

04:31 25 Q Okay. And can you just explain that; you may have



1 heard the conversations but you had no direct
2 contact?

3 A Yes, with the Nichol John or --

4 Q Oh, okay, you had no contact with the witnesses
04:31 5 themselves?

6 A That's right.

7 Q Okay. That's understood. Did you -- do you
8 recall any discussions about the evidence or the
9 -- or by 'evidence' I mean her statements that she
04:31 10 had allegedly seen a stabbing of Miss Miller?

11 A I didn't have anything to do with that aspect, no.

12 Q Did you overhear any conversations about it or
13 about how troublesome that evidence was?

14 A I may have, yes.

04:31 15 Q And is there anything you can recall today?

16 A Umm, no, not that I can remember.

17 Q Do you recall any discussions or any theories put
18 forward by anybody to account for a discrepancy
19 between Ms. John's claim to have seen a stabbing
04:32 20 by David Milgaard and the difficulty with the fact
21 that the coat had actually been taken off, the
22 dress pulled down, the coat put back on, and that
23 Nichol John didn't see any of that?

24 A No, I had no direct conversation with regards to
04:32 25 that, --



1 Q And did you --

2 A -- no.

3 Q And did you overhear any conversations where
4 anybody appeared to be troubled by that in the
04:32 5 least?

6 A No, I didn't.

7 Q Could we have 006251, please. If it's the right
8 document, sir, it's -- yeah, this part here. I
9 think you were asked earlier, it says:

04:33 10 "At 10:00 a.m. May 23, 1969, the
11 following exhibits were turned over to
12 D/Sgt. Ray Mackie
13 Exhibit "A", Exhibit "F" and Exhibit
14 "E"."

04:33 15 Those are some clothing items in relation to Gail
16 Miller. I think you were asked earlier and said
17 you had no recall of that, sir, am I right?

18 A Yes, that's right.

19 Q Was it common, in your experience as a police
04:33 20 officer and as an exhibits officer, to have
21 investigating officers come to you and ask for
22 exhibits to be given to you to show to witnesses?

23 A Yes.

24 Q Was it common for them to come and collect
04:33 25 clothing from you in order to show them to



1 witnesses?

2 A Yes.

3 Q Okay. So you remember that happening on a number
4 of occasions prior to this, or after this, but not
04:34 5 necessarily on this case?

6 A That's right.

7 Q Okay, thank you, those are all the questions.

8 MR. HODSON: No re-exam.

9 COMMISSIONER MacCALLUM: Thanks very much,
04:34 10 Mr. Kleiv, you are excused.

11 (Adjourned at 4:34 p.m.)

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