

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
Ramada Hotel at
Saskatoon, Saskatchewan

On Wednesday, April 26th, 2006

Volume 139

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:04 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

DARCY KIM ROSSMO, continued:

BY MR. HARDY:

Q Good morning, Dr. Rossmo.

A Good morning.

Q We'll pick up where we left off yesterday. I was just going to turn to your interview of Ron Wilson in October of 1991, and again just to confirm, am I correct that going into that interview you had reviewed Mr. Wilson's original trial testimony and his preliminary hearing testimony?

A We had the original statement that Mr. Wilson had given, we had a follow-up statement that he had given to the police, we had his trial testimony and we had Eugene Williams' interview with him, a statement of that.

Q And his statement to Paul Henderson as well?

A Yes, we did.

Q I'm going to turn you to --

A I think that's five.

Q Okay. I'm going to turn you to the transcript, it's 154640, and, Dr. Rossmo, at the time of the



1 interview, were you aware that the interview was
2 being taped?

3 A Yes, I was aware at the time.

4 Q And did you have any understanding in terms of
5 what use the tape was going to be put to?

6 A To the best of my recollection, there was none of
7 what we did that was meant to be confidential.

8 Q Okay.

9 A It would have been antithetical to our very
10 purpose, and I am quite certain if such agreement
11 had been made or decision made, that it was
12 something that I would remember.

13 Q And you are referring to the portion that we
14 covered with Mr. Boyd yesterday in terms of the
15 understanding between Mr. Asper, Mr. Boyd and the
16 communications made by Mr. Asper to, I believe it
17 was Mr. MacFarlane with respect to the transcript?

18 A That's correct.

19 Q So your recollection would tend to match
20 Mr. Boyd's recollection?

21 A Yes. It would have been difficult for -- or maybe
22 somewhat hypocritical for us to attack justice or
23 the police for not sharing information while at
24 the same time we were withholding information, so
25 I'm very positive we would have remembered any



1 agreement to keep things confidential, and to the
2 best of my recollection, that this was not meant
3 to be kept quiet.

4 Q And perhaps you've already answered the question,
5 but would it have been your expectation at the
6 time that this transcript may be provided to the
7 Department of Justice, the Federal Department of
8 Justice?

9 A I'm not sure I knew that they had an interest in
10 it, but it would have been my expectation that if
11 they had wanted it, it would have been provided to
12 them.

13 Q Okay. I'll just refer you to the very first
14 portion of the transcript, it picks up midstream,
15 and it is yourself speaking, and you state:

16 "... transcribe it all afterward,
17 (inaudible) we're very neutral. We're
18 not coming from the position of pro
19 David Milgaard, pro Justice Department,
20 pro the police. We're trying to be as
21 objective, as academic as possible. We
22 don't have any hidden agendas, we don't
23 have any ulterior motives, we don't have
24 any purpose that we're trying to achieve
25 other than try to examine this case and



1 in a small way try to determine as best
2 you can what might have actually
3 happened."

4 And I take it that this was important for you to
5 express, Dr. Rossmo, in the context of this
6 interview?

7 A Yes, it was.

8 Q And that was an accurate account of your approach
9 to this matter?

10 A Yes, it was.

11 Q If I could turn to page 154643, please, you'll
12 see, and we covered this portion with Mr. Boyd
13 yesterday to some extent, and Mr. Wilson is
14 referring to a statement of David Milgaard and
15 indicating that he agreed with it except for the
16 one point that he had left out and that was the
17 time that they had got stuck and he mentions that
18 they got stuck during a U-turn after asking the
19 lady for directions, and this would be an occasion
20 prior to being stuck at the Danchuks', and do you
21 recall whether you were expecting Mr. Wilson to
22 confirm that they had been stuck on a first
23 occasion prior to being stuck at the Danchuks'?

24 A No, I can't recall what my expectation was at the
25 time of the interview.



1 Q Okay. If we could turn, please, to page 154646,
2 you'll see Mr. Wilson is continuing to speak about
3 the occasion where they were stuck the first time
4 as we've just discussed and also mentions how he
5 and David had been away from the vehicle for a
6 short period of time, and beginning here, Mr. Boyd
7 states:

8 "Do you think there's anything...do you
9 think he could have killed somebody
10 while you were...on his way from the
11 car?"

12 Mr. Wilson:

13 "No."

14 Mr. Boyd:

15 "Do you think it's impossible?"

16 Mr. Wilson:

17 "Totally."

18 Yourself:

19 "And you were with him every other
20 time?"

21 Mr. Wilson:

22 "Yup."

23 Yourself:

24 "So in your mind, you believe he didn't
25 do it."



1 Mr. Wilson:

2 "Exactly."

3 I asked Neil this question yesterday, or Mr. Boyd
4 this question yesterday. Did you consider this
5 to be the main thrust of his recantation?

6 A Yes. This was probably one of the more critical
7 points and it dovetailed with what we had found in
8 terms of our examination of the crime scene with
9 the time, distance and speed factors. I would
10 say, having grown up in Saskatoon, minus 42
11 temperature, that being away from the car for one
12 or two minutes was very, a lot more reasonable
13 than 10 or 15 minutes as well.

14 Q And did you find Mr. Wilson credible on this
15 explanation?

16 A Yes, within the constraints of time with his
17 memory and probably fairly heavy drug use
18 throughout his life.

19 Q Turn to 154650, you'll see near the top of the
20 page, Dr. Rossmo, that you have some questions
21 about Paul Henderson. Do you recall whether you
22 had any concerns with the work that had been
23 conducted by Paul Henderson?

24 A I'm not sure concern is the word I would use, but
25 obviously would be one of the things we wanted to



1 establish with the witnesses, if they felt that
2 the interviews, interviews that we had read had
3 been conducted in a fair and unbiased manner. One
4 of the reasons is if we felt that Paul Henderson's
5 interviews were conducted fairly, it allowed us to
6 put a little more weight on what he had determined
7 from his interviews with the Larry Fisher rape
8 victims because we did not have another
9 information source to triangulate against that.
10 If we had concerns, if Ron Wilson had established
11 concerns about the interview with Paul Henderson,
12 that would make his interviews with the victims
13 more suspect and we would have to re-evaluate what
14 we would do with that.

15 Q And what were your conclusions then in that
16 respect with respect to Mr. Henderson?

17 A We never found any significant differences other
18 than I believe Neil and I have already mentioned
19 about how Ron Wilson said the police treated him
20 and to this day I don't have any reason to believe
21 that from the material that we were provided, that
22 Paul Henderson was biased in his interviews, and
23 I'll put that within a footnote that everyone has
24 a bias when they approach someone, it's impossible
25 for a human to be totally unbiased, but he



1 appeared to be reasonably objective.

2 Q And just to take that a bit further, how did you
3 reconcile then, and let's use the example of
4 police pressure, the version that Mr. Wilson was
5 giving to you and the version as you understood it
6 from the statement to Paul Henderson?

7 A I have a theory. It's only a theory.

8 Q Share it with us, please.

9 A Well, Paul Henderson is the first one to get Ron
10 Wilson to admit that he made a mistake, which is
11 going to be hard for one Ron Wilson. At that
12 point it might be a lot easier for Mr. Wilson to
13 share the blame, "Yes, I lied, but the police made
14 me do it." By the time we get to him he's been
15 interviewed also by Eugene Williams, he's had more
16 time to think about it and he might be more
17 willing just to be frank and say, "Yeah, you know,
18 I just wanted to give up David, it was a lot
19 easier for me," and he's not pulling the police
20 into it any more. In other words, his acceptance
21 is greater at this point of his previous actions.

22 Q And do you recall going through that thought
23 process in terms of reconciling the difference
24 that I just mentioned?

25 A Yes.



1 Q With respect to police pressure?

2 A Yes, at that time, those were my thoughts at that
3 time, and are still my thoughts.

4 Q And a little bit further down the page you ask
5 some questions about Eugene Williams and if we
6 move to the next page, talking about his interview
7 of Mr. Wilson, and this portion here you indicate:

8 "It looks more like a cross-examination
9 at trial..."

10 Mr. Watson states:

11 "Oh, but it was very much a
12 cross-examination. It was pure trial
13 work..."

14 Dr. Rossmo:

15 "Rather than inquiry."

16 And did you have concerns about how Eugene
17 Williams had conducted the interview of Ron
18 Wilson?

19 A I want to stress that that is one of the documents
20 that I did not review before coming here, but I do
21 clearly remember that at the time when I read the
22 transcript of his interview, that it did not
23 appear to me to be unbiased or with the primary
24 goal of fact finding, it appeared to be probing
25 quite deeply into the credibility of Ron Wilson



1 and trying to challenge or I guess trap or catch
2 Ron Wilson. If you would like, I could take a
3 look at the transcript over one of the breaks and
4 give you some specifics.

5 Q Let me ask first, do you recall thinking that his
6 approach was somehow inappropriate given the
7 context?

8 A In my opinion, at that point, at that stage, I
9 believe his role should have been fact finding.

10 Q And then as you were explaining to us, your
11 recollection was that his approach, at least your
12 conclusion on his approach, was something other
13 than that?

14 A Yes.

15 Q And have you given us as much detail as you can in
16 terms of particularizing that view?

17 A Well -- why I believe that should be the case?

18 Q Right.

19 A In the criminal world, unfortunately many of the
20 witnesses, many of the associates are individuals
21 who are marginal, who may not have average I.Q.'s,
22 that may have been damaged physically or
23 psychologically, it's just the nature of that
24 world. Here we have an individual who admittedly
25 has had a drug past, who has been involved in



1 criminal activity, he has decided to change his
2 statement or admit that he lied at trial. It
3 would be very easy to shut him down again, to make
4 him scared, to make him retreat and say, blame
5 Paul Henderson and say, "Yeah, that really didn't
6 happen." That does not get at the truth and I
7 think, at least at this point, the role of
8 justice, would have been trying to obtain as much
9 information as possible and then fit that into a
10 larger framework. No one piece of evidence is,
11 stands alone, it fits in within a larger picture,
12 and if you become confrontational early, you can
13 easily lose the amount of, or the flow of
14 information from people like Ron Wilson.

15 Q I direct you to 154656 -- I'm sorry, 154654.
16 There's a comment made near the middle of the page
17 by yourself talking about material from the
18 Department of Justice and you indicate:

19 "I don't know if you're aware, but
20 when...was it David Asper that asked for
21 the information...from the justice
22 inquiry, they only produced 7% of all
23 the material."

24 Do you recall first of all making this comment
25 and, if so, where this information had come from?



1 A I recall making it. As for the source, it either
2 would have been the media, David Asper or Joyce
3 Milgaard.

4 Q Turn to page 154656, this portion here, you are
5 stating:

6 "No, no, we want to make it as...as
7 relaxed as possible. We're just trying
8 to get a feel for things and get some
9 questions answered. We're not trying to
10 paint any pictures or come in here and
11 try and build up something. One thing
12 we've found is our perception of things
13 has had to shift a few times, as we
14 learn more information, and we find if
15 we prevent ourselves from being locked
16 into one thing we're better able to
17 assimilate the new information as we get
18 it from more people. 'Cause we weren't
19 there."

20 And just in terms of some of the comments that
21 had already been made publicly, perhaps by
22 Mr. Boyd, but I think that perhaps you were part
23 of some of these interviews that took place in
24 terms of conclusions that you had already reached
25 prior to the Ron Wilson interview. I'm just



1 wondering, are you able to reconcile that comment
2 with the fact that some conclusions had already
3 been expressed on the matter by the two of you?

4 A I'm not sure what you mean by reconciled.

5 Q Umm, it just strikes me that here you are
6 stressing that you keep an open mind prior to
7 reaching a conclusion, that things may change and
8 your views on matters may have to change as a
9 result as you learn new information, and I'm
10 wondering if that is consistent with the fact that
11 some conclusions, and perhaps I'm not using the
12 right word where I state conclusion, but had
13 already been made by yourself and Mr. Boyd
14 seemingly in the course of the investigation?

15 A Our interview with Ron Wilson was done in October,
16 so it was one of the last of the activities that
17 we had done. In my mind, when we viewed the crime
18 locations and the timing in Saskatoon, there were
19 some very significant questions that I think at
20 that point we realized there were no answers for.
21 No matter really what Ron Wilson said, that wasn't
22 going to -- I mean, Ron Wilson has already
23 recanted. Now, Ron Wilson may be, could have come
24 up with an explanation for those inconsistencies,
25 but it would not have been the story that he told



1 at trial which would bring in another whole host
2 of problems, so I would not consider what we said
3 at the time to be premature, but there are some
4 other issues like, for example, why did Ron Wilson
5 testify against David Milgaard, what was the role
6 of the police in that. That had shifted a little
7 bit from our, beginning from the -- if we read the
8 statement to Paul Henderson about the police
9 pressuring him, etcetera, versus what he told us,
10 that's one example of a shift.

11 Also, we are still at that
12 point, and maybe still today, trying to understand
13 the overall context in which this murder and the
14 events following it happened.

15 Q So am I hearing you correctly then, following your
16 trip to Saskatoon you were comfortable with the
17 conclusion that there should be a re-opening of
18 the case, but that didn't mean that there weren't
19 several issues that you still wanted answers to
20 following that?

21 A Umm, it's 16 years later and there is still
22 several issues that I don't understand and would
23 be interested in hearing answers to, so yeah, the
24 answer is "yes".

25 Q Turn to page 154658. You will recall I reviewed



1 some of this portion with Mr. Boyd. You state
2 near the middle of the page:

3 "So, what you are saying, I see what
4 you're saying now, and correct me if I'm
5 wrong, but what you're saying is, 'I
6 lied, but it did actually happen,
7 therefore it's not...it's also the
8 truth, in a way.'"

9 If we move down a little bit further you ask:

10 "Did it bother you that David was going
11 to be put away for life?"

12 Mr. Wilson says:

13 "Not really. At that point in time I
14 didn't give a shit."

15 You ask:

16 "Okay, now, did you not give a shit
17 because you thought he had done it, or
18 did you not give a shit because you
19 didn't like him, or didn't care for him,
20 or did you not give a shit because of
21 your mind being messed up on drugs, or
22 ..."

23 Mr. Wilson:

24 "I would say I did not give a shit
25 because it wasn't me...and y'know, I was



1 happy for that. I just wanted to get
2 the hell out of there, and whatever
3 happened, happened. And I figured,
4 well, okay, in two years he'll be out on
5 parole, no big deal. And then I was
6 kind of thinking if he gets out on
7 parole he's going to come looking for
8 me, so, I was paranoid about that."

9 And how did you work this information into your
10 conclusions about Mr. Wilson?

11 A This is perhaps one of the most unflattering
12 explanations that Ron Wilson could provide, and I
13 think if he had come up with a flattering excuse,
14 for example the police pressuring him, that might
15 be looked at a little more carefully or might be
16 something you would consider to be more suspect
17 than one where he just paints himself as weak,
18 selfish, and uncaring, so if he's lying he's
19 certainly not doing it in a way that makes himself
20 look good, so I find that quite credible. It also
21 made sense to me.

22 Q Turn to page 154670. Near the top of the page
23 there's some discussion about George Lapchuk, and
24 would I assume correctly you recall the role of
25 George Lapchuk in the matter involved in the



1 alleged motel re-enactment?

2 A Yes I do.

3 Q And there's some discussion about Mr. Lapchuk, and
4 you state:

5 "Why do you think he at the time,
6 volunteered to give his information to
7 the police?"

8 Mr. Wilson states:

9 "That...I don't have a clue. It came
10 like out of the blue, all of a sudden.
11 He was called up as a witness and I
12 didn't even know it."

13 And did it ever come to your attention, during
14 the course of your review, that Ron Wilson may
15 have been the one that led the police to
16 Mr. Melnyk and Mr. Lapchuk with respect to their
17 information?

18 A No, I did not know that until you mentioned it to
19 me right now.

20 Q And so, if you can look at this now, would it
21 surprise you if he was telling you something other
22 than the truth on this particular point?

23 A I would say I'm not surprised considering Mr.
24 Wilson's history. I don't know if Mr. Wilson is
25 lying here, and as for -- or if he has forgotten,



1 or he has twisted and distorted things. In some
2 ways -- are you familiar with --

3 Q Probably not.

4 A -- the money pit on Oak Island in Nova Scotia?

5 Q Pardon?

6 A The money pit on Oak Island in Nova Scotia?

7 Q No.

8 A There's supposedly treasure there, and they have
9 dug so many times for it that the original --
10 well, no one can determine where that was.

11 In some ways I feel that about
12 Ron Wilson's statements, is he has told things so
13 many times that I wonder how much he really
14 remembers about it really being truth. But
15 obviously, if what you are saying is correct, this
16 is a false statement on his part.

17 Q Okay. I'll turn you to 154673. About the middle
18 of the page you are explaining some of your
19 overall views on the matter, and you state:

20 "Based on what we've been able to find
21 out on our own our thoughts are that the
22 system in the beginning produced...
23 probably produced an incorrect result
24 but not through some huge travesty of
25 justice, more an unfortunate set of



1 weird circumstances. The physical
2 location...I mean, what are the odds of
3 David Milgaard there..."

4 Mr. Boyd:

5 "In the same house..."

6 Yourself:

7 "...at that time..."

8 Mr. Boyd:

9 "...with his wallet found three doors
10 away. As Dennis Cadrain said to us,
11 what are the chances of the two people
12 being under the same roof on the same
13 morning."

14 You state:

15 "The pressure on the police, which,
16 however, we realize would exist in
17 almost any case like that...so that
18 pressure is going to be there. The
19 police didn't appear to be ogres or...I
20 mean, they did have three people tell
21 them these things. One of them who
22 walked in the door, in the first
23 instance. They seem to have been sloppy
24 in a couple of areas."

25 Mr. Watson:



1 "The forensics."

2 You state:

3 "Yeah, (inaudible) the forensics and
4 losing stuff. The state of mind that
5 the three of you were in with the use of
6 drugs and the manic depressive disorder
7 of Albert Cadrain. Maybe a general
8 attitude towards hippies and drugs that
9 could have existed at that time, and a
10 less than enthusiastic defence counsel.
11 Um, and a, y'know, perhaps a jury that
12 was (inaudible). Y'know, the jury are
13 obviously concerned about their
14 community...and the general thought of
15 the time, if someone's tried they're
16 probably guilty. It's not just one nice
17 simple thing."

18 And do you recall what -- it states
19 "(inaudible)", "perhaps a jury that was"; do you
20 know what you stated there?

21 A Could you please back up?

22 Q Well, sure, yeah. If we could go back to the
23 previous page, page 34, 154673, you will see right
24 in this line here, Dr. Rossmo, you state:

25 "... perhaps a jury that was



1 (inaudible)."

2 A Umm, that a jury are obviously concerned with
3 their community.

4 Q I'm just wondering if you recall, where it states
5 (inaudible), what you might have stated to finish
6 that sentence?

7 A I know what I meant, I'm not quite sure what would
8 have been in that particular section.

9 Q What did you mean?

10 A Well David Milgaard was charged with a sexual
11 homicide, that's a horrible crime, it was a
12 stranger predatory crime. This is not a
13 shoplifting or a burglary so the community or the
14 members of the community, the jury, are going to
15 be very concerned about if they make a mistake and
16 they let a dangerous individual back on the
17 street. Those pressures are obviously there.

18 Many instances of criminal
19 investigative failures involve horrible crimes and
20 those errors, the nature of those crimes can
21 sometimes push investigators, judges and
22 prosecutors and juries, even defence counsel, to
23 do things that perhaps in other cases they would
24 not do because of the high stakes.

25 Q And you mentioned the attitude towards hippies at



1 the time being a potential factor. What were your
2 views on that aspect?

3 A Umm, well I was living in Saskatoon at this time,
4 and then in subsequent years the -- we had found a
5 newspaper article regarding a statement made by
6 Chief Kettles about hippies not being welcome in
7 Saskatoon.

8 Saskatoon originally was a
9 temperance colony, I can remember several movies
10 being seized by the police, in the years following
11 1969 I specifically remember going to the very
12 first showing on the very first day of *The*
13 *Exorcist* because my friends and I were concerned
14 that the movie was going to be seized by the
15 police. So there was a certain attitude regarding
16 vice in Saskatoon that might not have existed, or
17 did not exist, in other cities.

18 And I think, also, the crimes of
19 Charles Manson were in the media around this same
20 time, in 1969, in 1970, and there may have been an
21 attitude that, you know, drug-crazed hippie, even
22 though now we would look back on these types of
23 individuals as not being that dangerous, but the
24 attitude in Saskatoon at the time may have been
25 quite different, and in fact I think Neil and I



1 both have that feeling, that the tone of the times
2 in the -- Saskatoon probably influenced everyone's
3 attitude towards David Milgaard and his friends
4 and the crime.

5 Q You also mention, I think your words are, "less
6 than enthusiastic defence counsel"; do you recall
7 what that comment was based upon?

8 A Probably it was based on the fact that Mr. Tallis
9 didn't call any of his own experts and, to this
10 day, we still think the matter of the forensics
11 was very confusing for the jury. However, I would
12 like to state that, based on information I have
13 learned since the Commission has begun, and
14 including the fact we didn't have Mr. Tallis'
15 closing statements to the jury and some of his
16 other, I guess, investigative findings, I'm not
17 sure I agree with that today.

18 Q Okay. Turn to page 154679. Starting, again, at
19 the bottom of the page you state:

20 "Would it be fair to characterize your
21 personality or attitude as...your
22 personality as everyone else sort of
23 being into...more into yourself and
24 protecting yourself and not really that
25 empathetic or concerned about these sort



1 of friends, sort of acquaintances?"

2 Mr. Wilson:

3 "Not exactly. We were all that way at
4 that point in our lives. Like, even
5 Labchuk and Melnick were. Like, look
6 out for yourselves before you
7 do...y'know, give a shit about them. If
8 you get busted, well, too bad. I'm
9 gonna try and get out of here and you
10 take the rap. Big deal."

11 Next page you ask:

12 "Would you say it's sort of a general
13 street youth..."

14 Mr. Wilson:

15 "Yeah, that was a general feeling back
16 then."

17 Mr. Boyd:

18 "Was David Milgaard any different?"

19 Mr. Wilson:

20 "No, I don't believe so, no. He was the
21 same as anybody else."

22 You ask:

23 "So, this general perception of hippies
24 being into love and that y'know, sort of
25 brotherhood and sisterhood wasn't



1 really..."

2 Mr. Wilson:

3 "Not in my age group at that time. Some
4 of the older ones, I would say it was
5 that way, but not with us. They were
6 just getting into that stage. I was
7 gonna just quit school, start to travel
8 and have a good time...and say fuck the
9 system."

10 And was this sort of information important for
11 your analysis, Dr. Rossmo?

12 A It helped paint a backcloth to what had gone on
13 and the motivations of these people. We take a
14 look at Nichol John and Ron Wilson and we wonder
15 why they did what they did, and I think what Ron
16 Wilson, here, is giving us, a sense of what is
17 definitely not a standard middle-class lifestyle
18 that these teenagers were living at the time, half
19 street kid, half hippie, some crime, lots of
20 drugs, a certain amount of transiency and
21 self-centredness. I thought it was very
22 important, it was helpful for both Neil Boyd and
23 myself, to hear this.

24 Q And did it run contrary to thoughts you had, I
25 mean we hear about sort of rules amongst young



1 people or people generally, not to rat out your
2 friends or those sorts of things, and this seems
3 to be that the standard was the opposite of that;
4 did that fit with your understanding of or
5 expectation of matters of that nature?

6 A Well there's the street code and there's what
7 happens in reality. There is no shortage of
8 people that are willing to give up others, and
9 Nichol John and Ron Wilson definitely fit into
10 that category, and I'm sure you would find other
11 people that would not talk to the police at, you
12 know, at the same time from the same group. You
13 can't say it's one or the other.

14 Q Turn next to page 154684. And, again, I touched
15 on this with Mr. Boyd, there's mention -- you
16 actually ask the question:

17 "You did see a knife with him on the
18 trip up?",

19 talking of the trip from Regina to Saskatoon,
20 whether David Milgaard had a knife, and Mr.
21 Wilson says:

22 "Yeah, I'm pretty sure.",
23 and there's some continuing discussion about
24 that. Do you recall receiving that information?

25 A I recall talking to him about it, yes.



1 Q And did -- did their -- did that surprise you,
2 that he was confirming that information with you,
3 or do you recall at the time?

4 A I don't think it surprised me.

5 Q And did you recognize that it was contrary to what
6 was contained in the statement of Paul Henderson
7 on that issue?

8 A Yes.

9 Q And how did you reconcile that difference?

10 A Well I -- again, remember we said that we had two
11 police interviews, Eugene Williams' interview,
12 Henderson's interview, trial statement, so I mean
13 how many, of his previous statements how many of
14 them does this particular piece of information
15 conflict with, how many does it agree with. We
16 know there is a fair bit of variance in some of
17 his, Ron Wilson's, details, so I wasn't surprised.

18 Q Sort of the same explanation you had provided to
19 us earlier on that basis?

20 A Yes.

21 Q Don't think I have any other particular portions I
22 want to draw your attention to.

23 Have you shared everything with
24 us in terms of what you felt was relevant coming
25 from your interview with Mr. Wilson?



1 A Yes, I believe so.

2 Q Okay. I'm going to turn, now, to the report that
3 was completed in October of 1991, and is there
4 anything else significant in terms of your
5 preparation for the writing of the report that we
6 haven't covered?

7 A We may have already touched on it, but I think one
8 of the most important points for me was the time,
9 distance, speed analysis, the choreography that
10 led up to the forensic video dramatization that
11 was produced.

12 Q Okay. And we will touch on those aspects. What
13 was your view, at the time, on the intent of the
14 report?

15 A Well, being in the university, university people
16 always write reports on things. There would have
17 been little point doing what we were doing without
18 permanently recording it in some sort of
19 documents.

20 I remember there was some
21 discussion about what we would do with this. It
22 was, I think fairly early on, something that we
23 wanted to get into the -- our thoughts into the
24 public forum, and that's why we were hoping
25 *Saturday Night* magazine would publish the article



1 that we wrote. The CRC, Criminology Research
2 Centre, report made it part of the library and
3 made it accessible to people, which would have
4 been very standard because Neil Boyd had received
5 a grant so there would have been some expectation
6 of a product at the end of that, but my
7 recollection was the main thing we were trying to
8 do was to get a *Saturday Night*, an article in the
9 magazine like *Saturday Night* magazine, and that
10 never came to pass.

11 Q But were you viewing it, at the time, as something
12 that might be used in support of Mr. Milgaard's
13 second application?

14 A Well what if our conclusions implicated David
15 Milgaard? Then I don't think they would have
16 wanted to use it.

17 Q Sorry?

18 A What if our report had suggested that David
19 Milgaard was guilty?

20 Q I guess I'm speaking of in terms of when you had
21 completed the report did you have that
22 expectation, that it may be used in those efforts?

23 A I don't recall that. I guess in retrospect it's
24 not surprising that it was, but I don't recall
25 that ever being a goal.



1 Q Okay. We'll turn to the report, 000864.

2 A In fact, now I'm just thinking back, it was never
3 clear at the point of time of us being involved
4 with this at the start, it had already been
5 rejected once by the Justice Minister, Kim
6 Campbell, so we had no expectation that there
7 would be a Supreme Court hearing.

8 Q And perhaps that's the better question. After
9 this, after your report, were you even aware of
10 continuing, ongoing efforts of that nature, or do
11 you recall?

12 A Well I'm pretty sure that we knew that the
13 Milgaard family, Asper and Wolch, were not going
14 to give up, but, you know, what was the likelihood
15 of success. And I think, in retrospect, that
16 Neil's analysis about a change in government, or
17 some political involvement, was accurate. To my
18 understanding it wasn't until Prime Minister Brian
19 Mulroney got involved that, you know, anything
20 really happened.

21 Q Take a look at some of the portions of the report
22 with you, try not to cover too much of the same
23 ground as we went over with Mr. Boyd. If we could
24 turn first to page 11, please.

25 COMMISSIONER MacCALLUM: What's the doc.,



1 please?

2 MR. HARDY: Oh, I'm sorry, it's 000864.

3 COMMISSIONER MacCALLUM: Thanks. At 508?

4 MR. HARDY: Sorry.

5 COMMISSIONER MacCALLUM: At page 508?

6 MR. HARDY: Yes, it's at page 508. Sorry,
7 this is a different version than I am working
8 from, I'll try to use the one on the screen then.

9 And you'll recall my --

10 COMMISSIONER MacCALLUM: Just a minute
11 then.

12 MR. HARDY: Okay.

13 COMMISSIONER MacCALLUM: So the doc. ID is
14 040497 at 508? Thank you.

15 BY MR. HARDY:

16 Q And you will recall, we discussed with Mr. Boyd
17 this section of the report, Dr. Rossmo, the
18 problems with the case for the Crown at trial, and
19 do you recall what your view was on the intent of
20 this particular section?

21 A Well whenever you are examining a crime you want
22 to consider evidence supporting guilt and evidence
23 that supports the individual not being guilty, so
24 it was important to know what elements had been
25 produced that suggested David Milgaard was guilty,



1 and then in retrospect, or at least in our
2 opinion, you know, what did we think about those
3 elements, and then there was a separate part of
4 what are the elements or evidence that suggests he
5 is not guilty, and I guess the corollary to all of
6 that is how does this all fit Larry Fisher. So,
7 knowing -- I think that when we initially read the
8 transcript we thought it was a weak case, even
9 before any of the new information was reviewed.

10 Q And am I correct, then, this section was directed
11 towards highlighting your view on those
12 weaknesses?

13 A Correct.

14 Q And what were some of the key areas you focused
15 on?

16 A Well, the forensics, for one.

17 Q And we'll turn to the forensics in a moment. But
18 I see some discussions, and you've mentioned,
19 there were concerns about the timing and the
20 window of opportunity?

21 A Well, perhaps, can I start with the witnesses?

22 Q Sure.

23 A If we just strip away everything Paul Henderson
24 and everyone else did, if we just look at the
25 information available, all of it is problematic.



1 Cadrain sees blood but the
2 Danchuks, the man at the Trav-a-leer hotel, do not
3 see blood. If you have blood on your clothing
4 it's going to be left on things that you sit on.
5 The people -- blood also dries, it doesn't
6 necessarily look like blood, it becomes brown
7 rather than red, and yet Albert Cadrain is seeing
8 David Milgaard two hours later, while people that
9 saw him when the blood would have been fresher
10 don't notice the blood, so that is very strange.

11 We already know that Nichol John
12 has changed her mind about what she is willing to
13 say. Nichol John's statement is physically
14 impossible. She describes Gail Miller being
15 stabbed by David Milgaard, and yet the stab wounds
16 in the coat on Gail Miller when her body was
17 recovered matched the stab wounds in her back, but
18 there are no stab wounds in her uniform. So a lot
19 was going on there. Further, I have seen about 20
20 people stabbed, they generally fall down when they
21 get stabbed, and yet somehow he is able to take
22 her over 100 feet, closer maybe to 150 feet, from
23 the mouth of the alley around the corner of the T.
24 There is no drag marks, there is no blood in the
25 snow, and dragging a person that distance is also,



1 you know, that's quite some feat. She doesn't
2 scream. So Nichol John's statement, even if she
3 stuck to it, was incredibly problematic, if -- and
4 in fact impossible unless she changed it.

5 All Ron Wilson does is he gives,
6 I think for the main part, is Ron Wilson provides
7 a window of opportunity, and yet when we take a
8 look at the movements of the people, the fact that
9 you don't leave your home any earlier than you
10 have to at minus 42 to catch the bus, so the
11 narrow window of victimization that could have
12 occurred for her and where the vehicle had to be,
13 the fact that the vehicle was apparently stuck on
14 20th Street, which was a secondary arterial route,
15 the fact that no one else saw that vehicle or the
16 vehicle wasn't hit, the fact that he claims to go
17 for a 15-minute walk in minus 42-degree weather to
18 try to find someone to push the car out, none of
19 that made any sense and none of that appeared to
20 be credible.

21 So as for the witnesses, and in
22 terms of the, and I'll use the word
23 'choreography', where everyone is supposed to be
24 at various times, none of that appeared to make
25 sense and did not appear to be -- in other words



1 the Crown theory, as presented through these
2 witnesses, did not appear to be possible.

3 Q And what were some other points that you focused
4 on?

5 A The forensics?

6 Q Well, actually we'll save the forensics, I want to
7 turn to that just in a moment. Maybe what I will
8 do is we'll come back to the Nichol John
9 statement. There's been some discussion about
10 that. Maybe the first question is what sort of
11 impact do you -- did you consider the reading-out
12 of that statement at trial to potentially have on
13 the jury?

14 A There's been a lot of psychological research done
15 on the impact of information in how our memories
16 work. One of the findings is that vivid
17 information is a lot more powerful than abstract
18 information, so you, a, quote unquote,
19 "eyewitness" to the crime describing this fight
20 over the purse and actually seeing the stabbing,
21 that -- and I'll bet everyone in this room, when
22 they first read that or encountered that, saw it
23 in their minds, they saw a little movie, a picture
24 of that, so that is pretty powerful.

25 And the other problem is, is



1 that the judge can say all he wants about
2 disregarding it, but psychologically he's not
3 going to be able to remove it and --

4 Q And why not? Why can't we assume that the jury
5 followed the judge's instructions?

6 A Our -- well, they could try all they want, but
7 they don't have control over their minds. I think
8 that shows a lack of understanding of the
9 limitations of the human brain and how our
10 thinking, how our memory, how our perception
11 works. I'll just give you an example.

12 If you can imagine a man who is
13 accused in the newspaper one day of being a child
14 molester and then a week later the police
15 determine, 'oh, well, John Smith is totally
16 innocent and the story was made up'; does anyone
17 in this room believe that that taint goes away,
18 that that stigma is no longer there? Even though
19 you could go, 'oh well yes, obviously it's not
20 true', but it's still something that's going to
21 affect people, and I'll bet you if that individual
22 was a baby -- was used to babysitting people
23 before, his business would drop dramatically.

24 We -- the ability for us to go
25 back in to cleanse such thoughts that flow from



1 such images is very, very limited. It would have
2 been a powerful impact on the jury and it would
3 have been something that no instructions could
4 ever have totally removed.

5 Q Turn to page 13, please, of the report. And
6 there's some review of the first Section 690
7 application, which I think we're familiar with.

8 If we move forward to page 15,
9 begin this section at the bottom, *The Milgaard*
10 *Conviction Revisited: A Coincidence of Errors,*
11 *Omissions and Human Frailties*, and at the top of
12 the next page there is a discussion about forensic
13 evidence. I won't read these portions to you, we
14 covered some of this with Mr. Boyd, but what were
15 your views or critique on this particular aspect?

16 A I'm going to start out by saying at this point in
17 time the information available to us was that
18 David Milgaard was not a secretor, but we knew
19 that the test that was used in 1969 was -- had
20 limitations, and I believe that he has been
21 determined to be a secretor.

22 But based on the evidence
23 presented at trial, we thought that the way it was
24 presented was very confusing for the jury, in fact
25 it was probably confusing for the judge and it



1 even appears to be confusing to some of the
2 scientists involved. But the bottom line is, at
3 the very, very, very best, if Milgaard was a
4 secretor and there were no problems with the
5 evidence, it -- the finding of type A blood or a
6 type A antigen in the semen increases his odds of
7 being guilty of 2.33, 1 over 43 or 44 percent. In
8 other words, it has a slight influence, but it's
9 not dramatic.

10 On -- but the other part of this
11 calculation is this 'how common is the blood
12 leakage into the semen', and Dr. Emson refers to
13 it as being "common". I think one of the problems
14 here is that no one established what that meant,
15 what "common" means. And let me just give you an
16 example.

17 If I say that I look around this
18 room and I see white males, they're common, okay,
19 well there's probably over half the people in this
20 room are white males. If I said to you "common
21 cold is common", well I've used common there in
22 two different ways, but do you have a problem with
23 a cold half the time? No. You might have a cold
24 one week of the year. You would still call it
25 "common", but it's actually only 2 percent of, or



1 one week a year, 2 percent of the total time. So
2 this could be common but be something that only
3 happens one time in 100 or 1 time in 1,000, and it
4 also has to be not something that an individual
5 experiences once in their life, it would have to
6 be something that was occurring all the time.

7 So not knowing what "common"
8 meant was very confusing, and this evidence is
9 much more, the evidence at trial was much more --
10 the forensic evidence at trial was very strongly
11 weighted in favour of Milgaard's innocence. But,
12 by not knowing what "common" meant, I think it
13 slipped through, and it was confusing.

14 Q I'm kind of afraid to engage the debate, but if we
15 assume what likely may have been taken by the jury
16 by Dr. Emson's evidence, that this was not an
17 uncommon event, it was a common event, and given
18 all we know otherwise of that evidence, could an
19 instruction fairly have been given by the judge
20 that the evidence in its totality probably
21 excluded David Milgaard?

22 A I'm not sure I totally understand the question.
23 What I believe is the defence or the judge should
24 have tried to determine what common meant.

25 Q Okay. And I follow you on that, but that didn't



1 happen.

2 A Very important, and I think too, at least the male
3 members of the jury would have some experience in,
4 with how common something like this is, so the
5 vagueness of the word common is the core of the
6 problem here and, as it turns out, it's not common
7 at all.

8 Q Well, let's turn to the next page, page 18, you'll
9 see the last paragraph, I read this to Mr. Boyd:

10 "The jury was not instructed by Chief
11 Justice Bence as to how to interpret the
12 forensic evidence introduced by the
13 prosecutor. In retrospect, if this
14 evidence was considered to be relevant
15 to put to the jury, they would have to
16 have been told that it probably excluded
17 David Milgaard."

18 And is that an accurate account of your position
19 on the matter after your analysis?

20 A Yes. I might have worded it even a little more
21 strongly than just probably excluded.

22 Q And so help me along, because I'm still not there,
23 how could that instruction have been given, given
24 Dr. Emson's evidence, and I realize what you are
25 saying, that that needed to be better defined but



1 it wasn't, and given what his evidence was and how
2 perhaps the jury most likely took that evidence,
3 do you think Chief Justice Bence could have given
4 the instruction that you are suggesting should
5 have been given here?

6 A I'm sorry, maybe a little lost here. I'm not sure
7 what instruction he should have given. What I'm
8 saying is that right when that evidence came up
9 someone should have established what common meant
10 because unless 43 or 44 percent of the male
11 population suffered from that problem all the
12 time, or 100 percent of the population suffered
13 from it 43, 44 percent of the time or some scale
14 in between those two, then this is evidence that
15 supports Milgaard's innocence, and the smaller
16 that number is, the less common it is, the
17 stronger this evidence is in terms of pointing
18 towards Milgaard's innocence, to the point where
19 if it was impossible for blood to leak into semen,
20 then it would have to exonerate him, assuming he
21 was a non-secretor.

22 Q But am I correct then that your approach or your
23 final conclusion here, am I hearing you that it
24 was based upon what you came to understand about
25 Dr. Emson's evidence? The way I read it is you



1 are saying that exactly how it played out at
2 trial, based upon the information that came out at
3 trial, that the judge could have properly
4 instructed in this matter, and again I'm asking
5 you to limit yourself to what we know came out at
6 trial and I'm asking the question whether or not
7 that instruction could have been given, or is this
8 suggestion about instruction that should have been
9 given based upon recognition of new information in
10 the sense that Dr. Emson was wrong with his
11 evidence?

12 A I'm sorry, but I'm not sure how a charge to the
13 jury can rectify a more fundamental problem in
14 terms of the introduction of, or statement, some
15 evidence from an expert that ended up being either
16 incorrect or, at best, highly confusing because it
17 was fake.

18 Q But aren't you saying here that the judge should
19 have instructed the jury that the evidence
20 probably excluded David Milgaard?

21 A I'm saying that the judge probably needed to
22 discuss with him what common meant in this
23 context, because if it was very common, then it
24 would have been evidence slightly probative that
25 would have pointed a little bit towards Milgaard,



1 but only a little bit. I mean, a lot of people
2 have A antigens, 43, 44 percent.

3 Q And at the end of the day, even if we accept
4 Dr. Emson's change in evidence, would it be
5 correct to conclude that David Milgaard was still
6 not eliminated as a suspect on the forensic
7 evidence?

8 A Because David Milgaard is a secretor you mean?

9 Q No, I'm talking, we're still presuming he's a
10 non-secretor at that time.

11 A Okay. Then, I'm sorry, could you repeat the
12 question?

13 Q Even with Dr. Emson's change in evidence, was it
14 still possible to conclude that Mr. Milgaard could
15 have been the donor of the semen?

16 A I don't see how, other than to the degree that
17 perhaps -- again, how uncommon it is, that's
18 another a question. When you ask if something is
19 possible, it could be possible, you know, with one
20 in a thousand or one in a million.

21 Q So if it's possible --

22 A Highly unlikely, certainly enough that, you know,
23 beyond a reasonable doubt would be reached.

24 Q And I guess that's what I'm getting to. I mean,
25 if it's possible, could he have been eliminated?



1 A Well, I think once you reach a certain level, you
2 would have to say no, this person either didn't do
3 it or the odds of him having done it are so low
4 that we have to, unless there's other overwhelming
5 odds, we have to find him not guilty.

6 Q And in your work and in your investigation, did
7 you look into how uncommon that occurrence may be
8 sort of to supplement Dr. Emson's change in
9 evidence?

10 A Well, we had the information from Dr. Ferris, Dr.
11 Markesteyn and our interview with Dr. Emson.

12 Q And that was what you were basing your analysis
13 upon then?

14 A Correct.

15 Q Anything else relevant from the forensic aspect
16 that we haven't touched upon?

17 A The forensic analysis appears to have been sloppy.
18 The contents of the vaginal vault were not
19 retained, the semen that was found all over the
20 nursing uniform, dress that Gail Miller wore by
21 the British when they did their DNA analysis, that
22 was missed, and obviously that was very important,
23 and did you want me to relay the story regarding
24 my encounter with the man from Manchester?

25 Q Okay. You're pretty interesting.



1 A In 1998 or '99 after the DNA evidence had been
2 found that exonerated Milgaard and implicated
3 Fisher, I was doing a presentation at Bramshill,
4 which is an investigator training academy for the
5 British police in England, and I was discussing,
6 it was a comparative case analysis conference and
7 I was talking about geography of crimes,
8 geographic profiling, and I had a few slides on
9 the Milgaard case, and at the conclusion of my
10 presentation I was approached by a man who said
11 that he enjoyed my presentation, but I had a
12 couple of errors in it, and I said, "What were
13 those errors, sir?" He said, "Well, you said the
14 analysis was done in the lab in Birmingham, we
15 actually did it at my lab in Manchester." So I
16 said, "Oh, I didn't realize the forensic science
17 service had a lab in Manchester, I'll correct that
18 in the future," and then he said to me, "You also
19 said that advancements in DNA technology made it
20 possible to exonerate David Milgaard. Let me tell
21 you that conventional serology techniques
22 available in 1969 would have been sufficient to
23 eliminate him."

24 Q And did he particularize that, did he tell you on
25 what basis?



1 A No, no.

2 Q Did you --

3 A I didn't think it appropriate really to ask him --

4 Q Did you --

5 A -- considering I think the fact that trial
6 processes were still ongoing then.

7 Q Okay. And just in terms, before we leave this
8 section, I think you've confirmed for us, you, at
9 the time of your review, were not in possession of
10 former Mr. Justice Tallis' closing argument to the
11 jury --

12 A That's correct.

13 Q -- on this aspect? The next section of the
14 report, it's at page 18, and you begin to discuss
15 the credibility of Ron Wilson's recantation and
16 we've discussed that to some extent already, and I
17 think probably the only question I have that comes
18 from that section is given your own take on Mr.
19 Wilson's credibility, did you think at the time
20 that the case should be re-opened based upon this
21 aspect alone?

22 A That's an interesting question and one I've been
23 thinking about the last couple of days. The
24 bottom line is it's hard to trust people like Ron
25 Wilson; if he lied before, he could be lying now.



1 Of course that's a double-edged sword, saying if
2 he's lying now, then he could have been lying
3 before. It might mean the appropriate mechanism
4 is some sort of sliding response by the Department
5 of Justice. I think if it was a case that was
6 solid and a criminal witness of some dubious
7 credibility changes their statement, that may not
8 be sufficient. However, I think that if this at
9 least prompted a review of the transcript, then
10 there's enough weaknesses in the case that could
11 have led to the Justice Department carrying on
12 further. Am I making myself clear here in terms
13 of the -- Ron Wilson's recantation might lead to a
14 preliminary re-examination of the case. If
15 there's nothing obvious or glaring or key
16 questions that demand an answer, then it may be
17 decided not to pursue it further, but it's, I
18 would say that if you wanted to throw out
19 Milgaard's conviction strictly on the recantation
20 of Ron Wilson's statement, that might be
21 dangerous. However, as I've said before, just a
22 review of the transcript of the trial makes one
23 really wonder about the safety of this particular
24 conviction.

25 Q I'll turn you next to page 25 of the report. You



1 proceed here into a discussion of "The Alternative
2 Scenario: Larry Fisher", and would I be correct
3 that this section was, for the most part, your
4 work, Dr. Rossmo?

5 A Correct.

6 Q And how important, before we get into the details,
7 how important was this factor in your overall
8 consideration of the matter and ultimately your
9 conclusions?

10 A It was very important. As I said yesterday, this
11 was an interesting case because we could look at
12 an alternative, it wasn't a question of is David
13 Milgaard guilty or innocent, it was a question of
14 between Larry Fisher and David Milgaard who
15 appears to be more likely to be innocent and more
16 likely to be guilty. It made it an easier type of
17 analysis.

18 Q I'm going to read some portions to you, actually
19 fairly long portions, but we'll pause with
20 questions in between. You start in the first
21 paragraph and you state:

22 "It is difficult to make the leap from
23 the childhood of Larry Fisher, when he
24 raised young chicks in a shoe box and
25 gave friends rides on his new bicycle,



1 to the stark ugliness of his adult life:
2 sexual brutality, psychiatric
3 confinement, and prison beatings."

4 I'll pause there. You have a footnote and you
5 reference an interview with Marceline Fisher
6 August 1st, 1991, it appears by Peter Edwards of
7 the *Toronto Star*. Am I correct that you actually
8 have a full transcript of that interview that
9 Mr. Edwards conducted with Marceline Fisher in
10 your collection of materials?

11 A Yes, I do.

12 Q And this would of course be -- you didn't actually
13 interview Marceline Fisher yourself?

14 A No.

15 Q I'll just continue forward:

16 "As a young boy he played hockey, he
17 placed pictures of horses on his bedroom
18 walls, and developed an interest in
19 ships during his time as a Sea Cadet.
20 As an adult, he became a strong, hard
21 worker, who did not drink to excess. He
22 also became a savagely violent serial
23 rapist."

24 Next page:

25 "Larry Fisher grew up in Saskatchewan in



1 a single parent home, raised by his
2 mother after his father left, apparently
3 encouraged in this departure by the
4 local RCMP. Fisher's father used to
5 beat his mother and force her and the
6 children out of the house when he
7 brought a woman home for the night. It
8 is not known what effect this had on
9 Larry Fisher; his mother insists he was
10 too young to remember any of it. It is
11 known that Larry had some serious
12 difficulties with his mother, resenting
13 her drinking and her drinking
14 companions.

15 In December of 1967 Larry and
16 Linda Fisher were married in North
17 Battleford. They moved to the working
18 class Riversdale area in Saskatoon a few
19 months later. Linda was pregnant and
20 their daughter, Tammy, was born in late
21 April of 1968. Six months later, the
22 rapes began."

23 In terms of that background information that you
24 had gathered, how important is that sort of
25 information to the analysis that you went on to



1 conduct on this matter?

2 A Not very important.

3 Q Okay. You go on then to give a summary of the
4 various attacks that are being considered, and am
5 I correct that you relied on the summaries that
6 had been provided to you by Centurion Ministries
7 in this respect?

8 A Yes. We did not interview the rape victims and we
9 had no information from the police until I
10 received the RCMP profile sheet in 1992 which was
11 after we had written this report.

12 Q I'm not going to review each one of them for you,
13 or with you, but do you recall, after you had
14 considered these, what your early thoughts were as
15 to the possibility that Larry Fisher was the
16 killer of Gail Miller?

17 A We considered him a very good suspect for the
18 murder of Gail Miller.

19 Q And just in terms of a couple of the summaries, if
20 we turn to the next page, page 27, you'll see
21 sexual assault number 4 is referred to, February
22 21st, 1970, this would have been a year following
23 the Gail Miller murder, a little more so, and I
24 think you are familiar with this particular
25 attack, and you'll note some particular details,



1 for example, when the victim resisted and bit him,
2 Fisher hit her several times in the face,
3 threatening that he could easily break her neck.
4 I just have a question, in terms of considering an
5 assault subsequent to the Gail Miller murder that
6 is similar in some forms, but obviously doesn't
7 reach the same level of violence, how do you
8 reconcile that with any conclusion that it might
9 be the same perpetrator?

10 A I see no difficulty in reconciling it.

11 Q Can you explain that to me?

12 A Well, I ask you why you think there would be a
13 difficulty?

14 Q No, I get to ask the questions.

15 A Okay, I'll assume what you mean here is that if
16 he's progressed to a level of homicidal violence,
17 why in subsequent actions -- I would say the
18 statement, in all due respect, doesn't make sense
19 because the cause of the homicidal violence may
20 not relate to any psychological progression.
21 Often the actions committed by an offender at a
22 crime scene are prompted more by the situation
23 than they are by any sort of internal motivation,
24 so if I could use the example of Mrs. (V10)- in
25 North Battleford, she made a comment to Fisher



1 about how would your mother feel if someone -- how
2 would you feel if someone did this to your mother.
3 Maybe that was the trigger that resulted in that
4 type, that level of violence as opposed to some
5 internal progression or sexual deviant fantasy.

6 The fact that victim number 4
7 here resisted him may not have been the trigger
8 that prompted his violence, he might have enjoyed
9 that resistance. Unfortunately, Larry Fisher
10 doesn't want to talk, so it's hard to understand
11 some of his motivation.

12 I will point out to you someone
13 who I'm sure you are aware of, Clifford Robert
14 Olson, who murdered 11 older children, younger
15 teenagers in the Greater Vancouver area around
16 1981, and in amongst those 11 murder victims
17 Mr. Olson did several sexual assaults, some people
18 he murdered, some people he didn't murder, so it's
19 an erroneous conclusion that just because
20 someone's killed once, they will kill after that.

21 Q And would that knowledge have been known at the
22 time you were looking at this matter in 1991
23 generally by those with expertise in the area?

24 A For people that study those types of predators,
25 yes.



1 Q Move to page 29 of the report.

2 A By the way, I could think of several other rape
3 cases I've been involved on where a murder
4 occurred and then the offender continued to rape,
5 but didn't murder again.

6 Q Okay.

7 A Clifford Olson is not unique in that way.

8 Q Okay. Just past halfway down the page you begin
9 to speak about "The Gail Miller Murder -
10 Saskatoon, January 31, 1969," and what follows for
11 the most part is Linda Fisher's account of
12 information as gathered by Paul Henderson, and I
13 assume as well gathered by yourself during your
14 interview with Linda Fisher, and I think it's the
15 account that you recalled earlier for us. And
16 again, was this sort of information that you were
17 receiving from Linda with respect to her
18 recollections of January 31st, 1969 important
19 information in the context of your overall
20 analysis of Larry Fisher as a suspect?

21 A Yes, it showed his overlap with the victims,
22 routine activities, catching the same bus at the
23 same stop at approximately the same time, the fact
24 that he wasn't at work that day, his reaction to
25 her accusation, the missing knife, I think this



1 played an important role.

2 **Q** Okay. The subheading that follows on page 30 is,
3 "Psychological and Geographic Profiling of Sex
4 Offenders", and what was your expertise at this
5 point respecting profiling generally at the time
6 that you were writing this?

7 **A** Well, at this point in time, end of 1991, I had
8 contributed -- I was approximately just over three
9 years into my doctoral research, so I had read a
10 fair bit of material, had studied a number of
11 cases and had just begun doing geographic
12 profiling, so as I suggested, I was towards the
13 end of the beginning period. The information
14 provided here for the most part is information
15 that was done by others and there's a reference
16 here to the book "Sexual Homicide: Patterns and
17 Motives" and one by Roy Hazelwood, which are still
18 considered very standard texts in this field.

19 **Q** What about psychological profiling, what was your
20 level of knowledge on that topic at the time?

21 **A** I want to be clear that at that time and currently
22 I'm not a psychological profiler, there's certain
23 standards and training that are recognized through
24 a professional body called the ICIAF, the
25 International Criminal Investigative Analysis



1 Fellowship. However, I have read probably every
2 piece of literature I could find on profiling, so
3 I would consider myself to be academically well
4 acquainted with the field and its limitations and
5 some of the findings, but I wouldn't consider
6 myself to be a psychological profiler.

7 Q And, I'm sorry, was that the case then at the
8 point that you were doing this analysis then in
9 1991?

10 A I had done a lot of reading. My research began by
11 going through the extant literature, so I would
12 have read a fair bit by this point.

13 Q Okay. I'll read some of this to you, starting in
14 the first paragraph:

15 "The purpose of criminal profiling is to
16 develop a behavioural composite, a
17 social and psychological profile - of
18 the perpetrator of certain types of
19 crimes. This investigative strategy is
20 based on the premise that the proper
21 interpretation of crime scene evidence
22 can indicate the personality type of the
23 individual or individuals who committed
24 the offence. Certain personality types
25 exhibit similar behavioural patterns and



1 knowledge of such patterns can assist in
2 the investigation of the crime and
3 potential suspects."

4 And we'll see these footnotes throughout this
5 section, and you described that to us to some
6 extent. I take it you were relying on these
7 sources in making these, or many of these
8 statements?

9 A Correct.

10 Q Continue forward from there:

11 "Offences suitable for profiling usually
12 involve incidents where the suspect has
13 demonstrated some consistent form of
14 aberrant behaviour: mutilation,
15 torture, homicides involving a
16 post-mortem cutting, evisceration or
17 body explorations, ritualistic or cult
18 crimes, or apparently motiveless arsons.
19 Profiling is used to identify probable
20 suspects to establish reasonable grounds
21 for police investigation, to develop
22 appropriate interviewing strategies, and
23 to assist generally in the prosecution,
24 trial and sentencing stages of the
25 criminal justice process.



1 Criminal profiling is nothing
2 more than an investigative aid. The
3 probable characteristics of the offender
4 are strictly that - behavioural traits
5 that may or may not apply in a given
6 case. Research and experience indicate,
7 however, that most characteristics will
8 be applicable to most criminals who
9 exhibit the critical elements in that
10 particular type of crime scene.

11 Geographic profiling focuses on
12 the probable spatial behavior of the
13 offender, within the location of the
14 known crime sites. With the
15 intersection in time and place between
16 the victim and the offender, one can
17 consider the dynamics of the crime and
18 its probable antecedents. As
19 psychological profiling provides insight
20 into the likely motivation, behaviour
21 and lifestyle of the offender, it is
22 directly connected to the geographic
23 behaviour of the offender, and so the
24 two profiles can act in tandem to help
25 investigators develop a picture of the



1 person responsible for the crimes in
2 question."

3 I'll just pause there for a moment. You
4 mentioned geographic profiling. I think you
5 confirmed this for us yesterday, it's more than
6 determining the residence of the offender?

7 A That's correct, it's -- we use the geography in
8 any way that can assist us, it may be in terms of
9 the likelihood of crimes being linked, it may be
10 -- I have a case right now where the question is
11 where is the body in a missing person case that's
12 a suspected homicide, so there's a range of
13 different things, different -- we actually talk
14 about different types of strategies that can be
15 used by analysis of the geography to assist the
16 investigation.

17 Q And in terms of what I've read to you, having more
18 expertise in this area now and looking back on
19 what you were stating then, was that information
20 accurate at the time you were providing it in
21 report?

22 A Correct.

23 Q I'll continue forward:

24 "Criminal natural offenders search for
25 and encounter victims in accordance with



1 certain concepts of spatial interaction.
2 Target locations and "activity are
3 awareness spaces" (derived from the
4 residence, work social/entertainment
5 locations, and the connecting travel
6 routes) of suspects can be
7 geographically related. Such a process
8 involves the examination of the key
9 geographic elements of a connected
10 series of offences: first contact
11 points, crime sites, body and evidence
12 recovery locations, and so on."

13 And again, are you comfortable with the accuracy
14 of this information as it was provided then?

15 A Yes, I am.

16 Q "Larry Fisher is best profiled as an
17 "anger/retaliatory" or "punishment"
18 rapist, the least common of all rapists,
19 but the most likely to inflict serious
20 harm or death upon his victim."

21 Do you recall how you had reached that
22 conclusion?

23 A First of all, let me say that that is not strictly
24 correct, there is another type of rapist who is
25 even rarer and more dangerous, a sexual sadist,



1 but they are very rare, and those individuals
2 would often keep their victims detained for hours
3 while they torture them which is clearly not what
4 had happened in this case. This is based on the
5 Groth typology, G-R-O-T-H, which is commonly used
6 by the FBI, there's four categories. The first
7 category is often known as a gentleman rapist or
8 power reassurance which is the most common. The
9 anger/retaliatory appeared to fit with the
10 information that we had available to us about
11 Larry Fisher's actions. He wasn't interested in
12 dating his victims in his mind, he was angry at
13 them, he attacked them with, either physically or
14 sometimes with a knife, in the case of Mrs. (V10)-
15 he actually slit her throat, and he appeared to
16 be, you know, in the scale of these rapes, more
17 brutal than most, so I think within those four
18 categorical groupings, which can be problematic in
19 themselves, any sort of trying to categorize human
20 beings into groups, you can always debate the
21 viability of that because people don't fit into
22 nice little categories, but this appears to, his
23 actions appear to place him within this particular
24 grouping.

25 Q And in terms of those categorizations, again, was



1 that something you were aware of at the time you
2 were doing this analysis?

3 A Yes, it was. I think there's a reference there to
4 the Hazelwood book where these categories were
5 talked about.

6 Q Continue forward from where we left off:

7 "These attackers invoke a sudden, blitz
8 style of attack, with excessive and
9 unnecessary violence. Their purpose is
10 to punish, debase, and degrade their
11 female victims, for whom they have a
12 great deal of anger. These victims are
13 often symbolic, the rapist transferring
14 his anger from some other woman he feels
15 has hurt or wronged him. The attack
16 usually occurs after he has suffered an
17 imagined ego blow from another female.

18 The punishment rapist attacks
19 anywhere, indoors or out, and anytime,
20 with no temporal cycle, or episodic
21 pattern. He chooses victims of
22 opportunity he perceives as vulnerable,
23 and it is not unknown for him to attack
24 more than one victim in a short time
25 period. He may beat his victim before,



1 during, and after the rape, which can
2 involve multiple sexual attacks. His
3 weapon is usually one of opportunity."

4 And we have had a brief discussion yesterday
5 about the (V4)---- (V4)--- matter and I see
6 there's mention here that this type of rape, it's
7 not uncommon for him to attack more than one
8 victim in a short time period, and would that fit
9 with what you are telling us about the, your
10 speculation on the (V4)---- (V4)--- matter
11 yesterday?

12 A If (V4)--- was attacked first, it would, yes.

13 Q Okay. But not necessarily the other way around?

14 A I've seen, I've worked and consulted on many cases
15 where two attacks occurred in a short time period,
16 but I've not been able to think of one where a
17 successful attack was followed by another
18 attack, --

19 Q Okay.

20 A -- but lots of cases where an unsuccessful attack
21 was followed by a successful attack.

22 Q Just continue on from there.

23 "The punishment rapist is a male,
24 usually more than 30 years of age,
25 married or separated, his relationships



1 stormy, characterized by much conflict
2 and fighting. He is of normal
3 intelligence, muscular and stocky in
4 build, likes contact sports, and is
5 probably involved in manual labour or an
6 action-oriented job."

7 I'm curious, how does profiling get this
8 specific, in terms of some of the descriptors
9 that are given in this paragraph?

10 A If you will recall the methodology done for the
11 original FBI studies, they looked at a variety of
12 solved serial rape cases, they looked at clusters
13 of behaviour that would allow these groupings to
14 develop, then they looked at the characteristics
15 of the known offenders associated with those
16 groupings.

17 Q Just reading forward from there:

18 "This type of rapist is usually of low
19 socio-economic status, probably lives in
20 cheap rental property, and may have a
21 record for interpersonal violence or
22 sexual assault. He is impulsive and
23 self-centred, has an explosive temper,
24 and may be a wife or a child beater.
25 His rapes will usually take place in the



1 immediate vicinity of his residence or
2 place of work - his 'comfort one'."

3 And, just in terms of that last aspect, is that
4 accurate information that you are providing
5 there?

6 A Yes.

7 Q And can you help us understand why that's the
8 case?

9 A Well, for a criminal offender, a crime is a risky
10 endeavour. You have to find a victim and access
11 the victim, you to have make sure that you don't
12 get hurt by the victim, you have to make sure that
13 the police don't catch you, that you don't get
14 caught by some bystander, or you don't want to be
15 seen by witnesses, so the location has to meet a
16 number of criteria. One of the best ways to
17 ensure that that location is going to work for you
18 is to have familiarity or awareness with it.

19 It would -- let me maybe just
20 make the point that if you want to understand
21 where a criminal is going to commit his crimes you
22 need to understand where he is engaged in his
23 non-criminal activities, because there is a direct
24 relationship between the two.

25 Q Okay. Read forward from there:



1 "This sort of profile closely matches
2 the crimes and the personal
3 characteristics of Larry Fisher.
4 Additionally, the modus operandi of his
5 attacks has striking similarities:
6 victims selected from his comfort zone,
7 stalked and attacked on the street,
8 sometimes with the presence of a car,
9 victims grabbed from behind with the use
10 or threat of a knife. They were violent
11 rapes, with clothing manipulation as
12 part of the anger. Many of his victims
13 wore uniforms of some sort, perhaps
14 suggesting some deep-rooted hatred of
15 working females or women in uniforms;
16 Fisher's mother wore a uniform to work,
17 first while employed by a dry cleaners,
18 and later, while employed by a
19 hospital."

20 And just one comment out of there. You say:

21 "... sometimes with the presence of a
22 car..."

23 Do you recall where you had gathered that
24 information or which of the attacks you had
25 gathered that from?



1 A The attack that occurred on Wiggins Street Larry
2 Fisher made reference to the victim about wanting
3 to take her to his car.

4 Q Okay. And no others than that, that you can
5 recall?

6 A No.

7 Q Reading forward from there:

8 "All of Fisher's Saskatoon rapes
9 occurred in older, working class,
10 residential neighbourhoods. The alleys
11 that he pulled his victims down were
12 like the alley in which Gail Miller's
13 body was found; protected from
14 observation by garages, fences and
15 vegetation. The police initially
16 thought that there might be a connection
17 between the Miller murder and the
18 Riversdale rapes. They had good reason:
19 same immediate area, same type of alley,
20 the use of a knife, and a brutal sexual
21 assault. Today, all these crimes would
22 be profiled as having been committed by
23 the same type of offender, and given the
24 size of Saskatoon and the Riversdale
25 area in 1969, they would likely be



1 profiled as having been committed by the
2 same offender."

3 And again, looking back on these statements, was
4 that accurate information that you were providing
5 here in your report?

6 A Yes it was.

7 Q Next paragraph:

8 "Does this mean that Larry Fisher killed
9 Gail Miller? While he is definitely a
10 good suspect, such similarities are not
11 proof. And at the same time, while the
12 profile of this murder does not fit a 16
13 year old teenager with no previous
14 history of violence or sex offences, and
15 well outside his 'comfort zone', it does
16 not prove David Milgaard's innocence.
17 Profiling deals with probabilities, not
18 with proof beyond a reasonable doubt.
19 What is more probable here, given all
20 the available evidence, is that Larry
21 Fisher committed this crime, and that
22 David Milgaard did not."

23 And is that an accurate account of some of your
24 conclusions at the end of your analysis on this
25 matter?



1 A Yes, it is.

2 Q And if you looked at this material now, with your
3 expertise, would your conclusions be the same?

4 A Yes, they would be.

5 Q And within the general body of expertise in this
6 area should those conclusions have been as you
7 stated in -- or as you state in 1991? Taking your
8 analysis out of the picture, others looking at
9 this situation in the same way, would you expect
10 their conclusions in 1991 to be the same as yours?

11 A When you say "theirs"?

12 Q Those with expertise in these areas.

13 A Yes, I would.

14 Q Next paragraph:

15 "There is one claim, however, that can
16 be made with a high degree of
17 confidence. The Crown's theory that
18 Gail Miller was murdered as a result of
19 a purse snatching that went wrong is
20 highly improbable. She was almost
21 definitely killed by someone who
22 harboured an incredible amount of anger
23 towards women. Her purse and clothing
24 were taken for psychological reasons,
25 perhaps to mentally prolong the event,



1 perhaps to serve as a souvenir or
2 trophy. It is also probable that
3 whoever committed this crime had done
4 something similar before, and if
5 unchecked, would likely commit other
6 acts of comparable violence in the
7 future."

8 And, again, that would be an accurate account of
9 your analysis at the time?

10 A Yes, it would be.

11 Q Particularly respecting the theory about a purse
12 snatching turning into a rape?

13 A There is no evidence, there is no reason to think
14 this was a purse snatching, I just find that quite
15 an incredible conclusion.

16 Q And, again, would the expertise available in 1991,
17 would you expect, share that opinion?

18 A I don't think, even, you need any sort of
19 criminological expertise or investigative
20 expertise, police investigative expertise, to come
21 to that conclusion.

22 Q What about in 1969-1970, was anything available to
23 comment on that particular theory at that time?

24 A I think that the fact that semen was found at the
25 crime scene, that her clothing had been removed,



1 that it appeared to have been a sexual assault, I
2 think the same conclusion should have been come to
3 in 1969.

4 Q Okay. And just a general --

5 A And I think the police did come to that conclusion
6 because they were linking Gail Miller's murder, in
7 their press release, to the Riversdale rapes.

8 Q Okay. And just a general question on profiling.
9 Is effective profiling possible when the profiler
10 knows who the suspect is?

11 A Yes, it is. In fact, in a case like this where
12 you have two possible suspects, you would want to
13 know information about the suspects to provide a
14 determination.

15 Q Can that knowledge, though, limit the ability of a
16 profiler in some respects in terms of conducting
17 an effective profile?

18 A Psychologic -- this isn't concerning geographic
19 profiling because the procedures are more, I
20 guess, quantitative and scientific rather than the
21 behavioural profilers who engage in more of an
22 art, they usually don't like to know about
23 suspects, they want to develop their analysis from
24 the crime scene. But if your question is who is
25 more likely to be the killer of Gail Miller, David



1 Milgaard or Larry Fisher, then they would want to
2 know that information. It's sort of a different
3 form of analyses.

4 A profiler will develop
5 investigative strategies for investigators, or for
6 a Crown attorney, and they would want to know a
7 lot about the individual, so it really depends on
8 the function and the particular analytic product
9 the profiler is producing. I think it's indirect
10 personality assessments where they do not want to
11 know who the suspects are.

12 Q Okay. You move on to your conclusion in your
13 report, and we've covered some of that, just one
14 paragraph on the next page I'll bring to your
15 attention. As I pointed out with Mr. Boyd, he
16 stated:

17 "There are persistent questions that
18 remain. Why have Saskatoon Police been
19 unwilling to talk about this case? In
20 what way does the case of David Milgaard
21 tie in to the case of Larry Fisher? Why
22 were Fisher's rape victims in Saskatoon
23 never notified? Why did Larry Fisher
24 plead guilty in Regina, rather than
25 Saskatoon? Was the possibility of a



1 mistake in the Gail Miller murder
2 recognized after Fisher's arrest in
3 Winnipeg in 1970? And if so, what did
4 the various authorities do, in response
5 to this possibility?"

6 Again, is that an accurate account of questions
7 you had at the time?

8 A Yes, and which I still have to this day.

9 Q And did you follow up with any further
10 investigation following the release of the report
11 respecting these aspects?

12 A Regarding what the police might know?

13 Q These questions that you pose in this paragraph?

14 A No.

15 Q And were you contacted at all in the course of the
16 RCMP investigation in 1993 into allegations of
17 wrongdoing surrounding these very issues?

18 A I was not.

19 Q And were you aware of their investigation or their
20 final report?

21 A Not until my arrival this week here.

22 Q Okay. And the last portion, the Section 690
23 application, I covered this with Mr. Boyd. I
24 don't think I have any other specific questions
25 arising from the report, but I'm --



1 COMMISSIONER MacCALLUM: What page was
2 that, I'm sorry, Mr. Hardy?

3 MR. HARDY: Oh, I'm sorry, which page were
4 you looking for?

5 COMMISSIONER MacCALLUM: This one here.

6 MR. HARDY: Oh, this page? If we could go
7 out to the full page, 040531.

8 COMMISSIONER MacCALLUM: 531? Thanks.

9 BY MR. HARDY:

10 Q Is there anything specific that we've missed from
11 the report, Dr. Rossmo, that you feel it's
12 important that you comment upon?

13 A One thing. Could we please back up a page and
14 could we focus in on footnote number 52? I think
15 this is important, the information we were able to
16 obtain from Statistics Canada indicated that
17 between October 1st, 1968 and March 1st, 1969
18 there were four rapes reported to the police,
19 three of those were Larry Fisher rapes and one was
20 one other person. What this suggests is that
21 during this time period in Saskatoon rapes were
22 relatively rare, and while we don't have the
23 specific data I would suspect stranger rapes even
24 rarer, so this is an important framework or
25 background for the question of the likelihood of



1 the Gail Miller attack being linked to the
2 Riversdale rapes.

3 Q And, in terms of your contact with Statistics
4 Canada at the time, do you still have the
5 documents associated with this research?

6 A I don't believe so.

7 Q And just so we understand --

8 A This could have -- possibly Neil Boyd does, but
9 the source of it is *Number of rape offences for*
10 *Saskatoon, 1968-69*, Statistics Canada. I'm not
11 sure, there are different ways of getting
12 information from Statistics Canada, this might
13 have been a phone call and they read out us the
14 numbers for our report.

15 Q And, again, would the parameters then be, as you
16 understood them, rapes that were reported to the
17 police in the City of Saskatoon?

18 A That's correct. You can easily double the number
19 of rapes reported to the police to get the total
20 picture because of the low reporting rate of
21 sexual offences, but the reporting rates are
22 higher for stranger offences, they -- the --
23 they're lower for acquaintance rapes.

24 Q Okay.

25 A Most rapes are acquaintance rapes.



1 Q This is a good, a good place to break, Mr.
2 Commissioner.

3 (Adjourned at 10:33 a.m.)

4 (Reconvened at 10:53 a.m.)

5 BY MR. HARDY:

6 Q Dr. Rossmo, we've spoken on a couple of occasions
7 of the (V4)---- (V4)--- matter, and I wanted to
8 show you one further document, and I know I've
9 brought this to your attention during the break
10 and we've talked about it somewhat but I'll get
11 your comments on this. It's a transcript of, I
12 think, a telephone call involving Joyce Milgaard,
13 and if we can turn, please, to tape 31, and it's
14 page 336206 in particular.

15 COMMISSIONER MacCALLUM: Is that the doc.
16 ID?

17 MR. HARDY: This is the document. It looks
18 like the document ID is 336197 and this is page
19 10 of that document.

20 BY MR. HARDY:

21 Q Starting at the top, you will gather from the
22 context, or we know the reference to the 'Toronto
23 lady' is (V4)---- (V4)---, and it states:

24 "... you know we have confirmation that
25 our Toronto lady was attacked on the



1 morning, but it appears after. Well,
2 umm, when we talked to Justice, they,
3 the guy didn't have the file, but his
4 recollection was that it was about 8:00
5 that morning, it would have been after
6 Miller had been killed, so I said to
7 Rossmo, I said "rationalize that for
8 me". And he said "well, if you've got a
9 guy who's extraordinarily methodical and
10 psychopathic, the Gail Miller attack
11 clearly went wrong" -- ...",

12 and maybe I'll pause there for a moment. Do you,
13 just starting into this, do you recall this
14 discussion at all or having a conversation of
15 this nature with Mrs. Milgaard?

16 A I remember discussing the (V4)--- case, I don't
17 remember this particular telephone conversation.

18 Q Okay. Maybe I'll read forward.

19 "... well yeah, and they don't even know
20 that she was raped by Fisher, they think
21 it might have been an attempt, and that
22 the semen might have been connected with
23 some, umm, whoopee the night before.
24 But they said, you know, "if it was a
25 frustrated attempt, and but even if he



1 did rape her, at some point it got out
2 of control and she was killed, he would
3 have become potentially very
4 disorganized and very, very" -- of
5 attacking somebody? Yeah. No, they
6 said, they said that he would be in the
7 same frame of mind as when he was
8 attacking Miller, but -- no. No. They
9 said that he would have been sort of
10 wandering aimlessly in this frenzied
11 state of attack mind and that he would
12 have, you know, it's theoretically
13 possible that he would have encountered
14 this woman and attacked her,
15 inconsistent with his other attacks,
16 because he was confused and dis -- well
17 we don't know, there was something in
18 his right hand but she couldn't see it.
19 Umm, and that, you know, they
20 rationalized it as being, you know, a
21 possibility. They didn't rule it out,
22 which was kind of interesting. No,
23 Rossmo didn't, just in terms of the
24 profile."

25 And does any of that refresh your memory as to a



1 more specific discussion with Joyce Milgaard
2 about the (V4)---- (V4)--- matter?

3 A No. I mean I remember having a discussion, I just
4 can't remember the specifics.

5 Q Does this sound like the type of information that
6 you might have conveyed at that point in time?

7 A I'm sorry, I must admit to some confusion as to
8 what I have said here?

9 Q And I realize it's not difficult to, or it is
10 difficult to follow, and maybe I'll just take you
11 through this as best I can. It sounds like she
12 presented the scenario to you involving (V4)----
13 (V4)--- with the suggestion that that attack had
14 actually taken place at 8:00 in the morning, and
15 then she asked you to rationalize that in terms of
16 Larry Fisher having attacked Gail Miller and then
17 afterwards attacking (V4)---- (V4)---, and I think
18 her comment on what you had said at that time
19 included the following:

20 "... 'if it was a frustrated attempt,
21 and but even if he did rape her, at some
22 point it got out of control and she was
23 killed, he would have become potentially
24 very disorganized ...',

25 that was one aspect. And then I think she also



1 attributes to you the comment that:

2 "... it's theoretically possible that he
3 would have encountered this woman and
4 attacked her ...",

5 and I think it was in part based upon what you
6 were saying about him being in potentially a very
7 disorganized state.

8 A Umm, I'm not sure, knowing what I know now, I
9 would agree with him being in a disorganized
10 state, I think I may be inclined to say I just
11 don't know.

12 If you take as a given that the
13 attack on (V4)--- occurred as reported, and if you
14 take as a given that it happened at 8:00, and then
15 you take as Joyce Milgaard's request for me to
16 rationalize that then I was probably, at the time,
17 coming up with the best explanation I could given
18 those as being established facts. But I'm not
19 positive the (V4)--- attack did occur -- I'm not
20 saying it didn't, I'm just saying that has to be
21 seen with a, as an element of probability, and the
22 time estimate according to what I reviewed from
23 (V4)--- was 7:07 a.m., and that would lead me to
24 see other scenarios as being more probable than
25 this dazed, post-offence behaviour that I seem to



1 be describing here.

2 Q But given the information that you may have been
3 limited to at this time, though, does this sound
4 like a rationalization that you may have given
5 Mrs. Milgaard at the time?

6 A Well, very well could be.

7 Q And as -- would it be something that you would
8 still agree with, that rationalization?

9 A As I said, no, I don't think so. I'm -- I would
10 say that I don't know enough about his
11 post-offence behaviour, or generally individuals'
12 post-offence behaviours here, to say anything. I
13 do know, based on my experience now, that a
14 subsequent attack after a successful one is quite
15 rare.

16 Q Okay.

17 A But if you said, if it was established beyond any
18 doubt it was Larry Fisher who did it then, you
19 know, probably this rationalization is as good as
20 anything.

21 Q Okay. Now I refer you to a letter to the
22 *StarPhoenix*, the document is 324904. This would
23 have been after the release of your report and the
24 heading is *Media should present balance in cases*
25 *such as Milgaard's, StarPhoenix, October 28th,*



1 1991, and it's from Dr. Robin Menzies, Consultant
2 forensic psychiatrist, Royal University Hospital.
3 He states:

4 "Re: Milgaard innocent,
5 criminologists claim in report ...

6 The issue about the
7 blood/semen specimen is not a new one.
8 The fact that it did not link Milgaard
9 to the crime was put to the jury before
10 it reached its verdict.

11 Why this continues to be raised
12 as new evidence is not clear.

13 The criminologists from B.C.
14 suggested the victim may have been
15 chosen because she was wearing a
16 uniform. As the murder took place
17 around 7 a.m. on a frigid January
18 morning in Saskatchewan, the victim, not
19 surprisingly, was wearing a winter coat.
20 Did she have her uniform on over her
21 coat?

22 Milgaard has had the benefit of
23 a trial and his case was reviewed by
24 both higher courts. In contrast, it
25 seems the other individual, frequently



1 cited as a more likely culprit, has been
2 convicted through trial by media.

3 When a case like this is
4 reported, it would be more helpful if a
5 balanced view was presented so that an
6 informed opinion could be made."

7 Do you recall giving consideration to that letter
8 to the editor? We have a response from yourself
9 that follows, and we'll look at that, but do you
10 have a recollection of reading this particular
11 commentary?

12 A It rings a vague bell.

13 Q Okay.

14 A That's all I can say.

15 Q Okay. And if we turn to 324901, and if we can
16 turn that document, please, if that's possible,
17 you will see it's this article here that we'll
18 refer to. It's a November 7th, 1991 letter,
19 apparently from yourself to the *StarPhoenix*,
20 *Milgaard evidence reinterpreted*, and is this
21 starting to ring a bell; do you recall this, Dr.
22 Rossmo?

23 A Umm, could you just give me a moment?

24 Q Sure.

25 A Yes, okay, I remember this.



1 Q Okay. I'll just read a couple portions of your
2 response. You start off stating:

3 "It would appear Dr. Robin
4 Menzies ... has not yet read the report
5 written by Neil Boyd and myself on which
6 he is commenting.

7 While it is true David Milgaard
8 was found guilty of the murder of Gail
9 Miller by a jury of his peers - a matter
10 that should be given great weight - new
11 evidence of probative value has surfaced
12 in recent years, material not available
13 to the jury members at the time of the
14 1970 trial.

15 One of the most crucial issues
16 surrounds the proper assessment of the
17 forensic evidence as presented to the
18 court. I'm not at all sure what Menzies
19 means when he says the semen and blood
20 evidence is not new. A perusal of the
21 analyses of Dr. James Ferris and Dr.
22 Peter Markesteyn and the comments in our
23 own report would show a dramatic
24 reinterpretation of the forensic
25 evidence from that presented by the



1 prosecutor at the trial. Were this
2 matter to occur today, the defence, and
3 not the Crown, would be leading the
4 forensic evidence, as it is generally
5 exculpatory rather than incriminating."

6 And do you recall making those comments?

7 A Yes.

8 Q And I know we've covered this area, do you have
9 anything to state in relation to those comments,
10 are those comments that you feel were accurate at
11 the time?

12 A Royal University Hospital; is that the University
13 Hospital here --

14 Q Yes?

15 A -- in Saskatoon? Umm, actually I find this
16 interesting because it points out an endemic
17 problem with the whole Milgaard matter, which is
18 people coming sometimes to very strong opinions
19 but without having done their homework, and Dr.
20 Menzies, in the way he writes this and signing his
21 name he's a professional and his opinion has some
22 weight, it's therefore incumbent upon him to have
23 done a fair bit of homework before he puts out a
24 public opinion.

25 It's like the police officers



1 who still believe that Milgaard is guilty and
2 Milgaard and Fisher must have done the crime
3 together. Whenever I have had these conversations
4 with people I say, "have you read the trial
5 transcript, have you ever actually done any
6 homework, or is this like a, you know, a
7 shooting-from-the-hip public opinion"? And I
8 think that, in this case, Dr. Menzies, as many
9 others have done, have formed opinions without
10 doing any work.

11 There was an interesting story
12 that happened to Neil and I at the School of
13 Criminology after we had been involved with the
14 Milgaard case. There was a sign up on the
15 bulletin board, or a piece of paper to sign for
16 the release of the individuals whose name I can't
17 remember, they were Canadians that had been
18 convicted in Brazil of a kidnapping, I don't know
19 if you remember the matter, some bank manager who
20 had been kept captive in their house for a number
21 of weeks. And the purpose of this petition was to
22 get them released, and Neil and I wrote some
23 comments on the petition saying, "does anyone know
24 the background to this story? Does anyone know,
25 are they really innocent, or are you just signing



1 this petition for the sake of signing a petition
2 and doing something that's liberally cool?" It
3 was interesting that no one signed the petition
4 after that.

5 But I think it's very important,
6 especially if you are a professional, to make sure
7 you understand the underlying facts before you
8 start throwing your opinion around, and I don't
9 think Mr. Menzies did that, and I don't think
10 other people have done that throughout this whole
11 matter.

12 Q And I know we have had a discussion already about
13 the forensics, but just taking his point that the
14 forensic evidence wasn't new, the blood and semen
15 evidence wasn't new, if I read -- if I give your
16 comment a technical reading, you might -- it might
17 be suggested that in some way you are agreeing
18 with him. You indicate that you are disagreeing
19 with him, but what you indicate ultimately is that
20 Dr. Ferris, Dr. Markesteyn, and yourself and Mr.
21 Boyd, your work shows a dramatic reinterpretation
22 of the forensic evidence as presented at trial.
23 Am I reading that correctly, that -- and maybe I'm
24 not -- but that it could be read to be saying that
25 you are agreeing that there was no new evidence



1 but what your work, Dr. Ferris' work, Dr.
2 Markesteyn's work was doing is providing a new
3 interpretation on the evidence that was available
4 at trial?

5 A Usually when there is a problem with forensic
6 evidence it's not the analyses that's at fault,
7 it's the interpretation of the analyses that's at
8 fault, and I don't think there's ever been any
9 suggestion here that someone did a chemical test
10 the wrong way. What was problematic had to -- was
11 the whole issue of how common or how rare the
12 blood seepage issue was, and that would be the
13 reinterpretation here, but it's critical to the --
14 it's part of the chain of understanding the
15 probability associated with that 43-44 percent for
16 the A antigen, so that's the reinterpretation.

17 Whether it's, I'm not sure we
18 would say it's new evidence, no one went out and
19 found new evidence, but it's a better
20 understanding and a more accurate understanding of
21 that evidence.

22 Q And it's a change from Dr. Emson's original
23 evidence?

24 A Correct. Critically, a critical change.

25 Q And would you qualify your comments here at all if



1 you had been known -- or if you had known of
2 former Mr. Justice Tallis' closing arguments to
3 the jury?

4 A Qualify them in what way? Sorry, the --

5 Q Well I think you advised us that you were not in
6 possession of that closing argument, or the
7 transcript of that closing argument, and I guess
8 I'm picking up on your final words in this section
9 I read to you:

10 "Were this matter to occur today, the
11 defence, and not the Crown, would be
12 leading the forensic evidence, as it is
13 generally exculpatory rather than
14 incriminating."

15 I think what I heard you say is you weren't in
16 possession of that closing argument which makes
17 that argument?

18 A Okay. I understand your question now. No, I
19 don't think it would change, and again I have not
20 read Tallis' closing arguments, however, I have
21 read the Saskatchewan Court of Appeal decision
22 related to Milgaard and it's very clear that the
23 forensic evidence was confusing for people,
24 including the Appellate Court justices, --

25 Q Yeah.



1 A -- including Kim Campbell at a later point in
2 time.

3 Q And I should have asked you that earlier on; that
4 was something that influenced you, then, in your
5 understanding of the matter, the reading of that
6 Court of Appeal judgement?

7 A Yes.

8 Q Okay. Just read forward in this, in your
9 response --

10 COMMISSIONER MacCALLUM: But your answer,
11 sir, is really you don't know because you haven't
12 read Tallis' closing argument?

13 A Umm, well my understanding, from what I have heard
14 about Tallis' argument, is that he makes this
15 point to the jury.

16 COMMISSIONER MacCALLUM: No, but you
17 haven't read it, sir, have you?

18 A Correct.

19 COMMISSIONER MacCALLUM: Okay.

20 BY MR. HARDY:

21 Q I'll read forward in your comments here. The next
22 paragraph:

23 "The case was not reviewed by
24 both higher courts; rather, leave to
25 appeal to the Supreme Court of Canada



1 was denied and the Saskatchewan Court of
2 Appeal could only consider arguments
3 based on points of law, not on points of
4 fact.

5 As to whether Miller wore her
6 uniform overtop of her winter coat
7 (implying this was the only way Larry
8 Fisher could have known she was a
9 nurse's aid), he caught the same bus, at
10 the same time and from the same stop
11 everyday as the victim and thus had many
12 opportunities to observe her.

13 I agree a balanced view is
14 important and that trial by media is
15 inappropriate. However, most reporters
16 who have covered this story have
17 suggested that sufficient doubt has now
18 been raised and that the Department of
19 Justice should reopen the case.

20 While we feel, after months of
21 intensive and independent research, that
22 Milgaard probably did not commit the
23 murder, we concluded our report:
24 'Innocence or guilt is, however, a
25 matter to be decided in a judicial



1 forum, and so we leave this issue for
2 others.' "

3 And that would be an accurate account of your
4 view at the time, Dr. Rossmo?

5 A Yes, it would be.

6 Q And am I correct, Dr. Rossmo, that you continued
7 to have some investigative involvement in this
8 matter after the release of your report, perhaps
9 beyond Mr. Boyd's further involvement?

10 A Yes. I was engaged in the production of a
11 forensic video dramatization, specifically, I
12 believe it was specifically prepared for the
13 purposes of presenting it to the Supreme Court. I
14 also interviewed one witness at the request of
15 David Asper while I was in Saskatoon doing the
16 forensic video dramatization.

17 Q Okay, and I'll cover both of those points. Do you
18 recall what communications preceded the
19 videotaping, who were you in conversation with and
20 what was the request, how did that work or do you
21 recall the context?

22 A What I do recall was a communication with David
23 Asper and he felt that -- and remember, of course,
24 that Asper was associated with Global TV, he
25 thought that with some of the resources from what



1 was then known as STV in Saskatoon could be used
2 to illustrate the improbabilities of the
3 choreography of events as related by the witnesses
4 Wilson and John.

5 Q I'll turn you to a document, 009936, you'll see
6 it's a letter from Mr. Asper to Mr. Brown of the,
7 or the director of appeals, Saskatchewan Justice.
8 The middle two paragraphs of that letter state:

9 "I am as well enclosing my main copy of
10 the forensic dramatization of the
11 evidence of Ron Wilson and Nichol John.
12 It was prepared by D. Kim Rossmo, who is
13 a police officer with the Vancouver City
14 Police. In addition, he is a doctoral
15 student at Simon Fraser University,
16 Department of Criminology, who assisted
17 Professor Neil Boyd in the preparation
18 of their study of this case.

19 As I indicated to you on the
20 phone, the videotape is a very rough
21 first attempt, and in speaking with Mr.
22 Rossmo, I am aware that there will be
23 several changes made over the next week
24 or so. Once he has completed this
25 project, we will of course be



1 distributing copies to all parties
2 concerned, and I can advise that Mr.
3 Fainstein and Beresh have viewed this
4 tape in its present form."

5 And were you aware at the time that you were
6 providing this assistance for purposes of the
7 Supreme Court reference case, or potentially for
8 those purposes?

9 A Yes, I was.

10 Q And we've seen the video previously, I'm not going
11 to show that, I'll reference the video though,
12 it's ID 078511, and I think you've basically
13 explained this to us, but again, what was the
14 video intended to show, Dr. Rossmo?

15 A That the statements of the witnesses, Nichol John
16 and Ron Wilson, were basically physically
17 impossible in terms of the movements of the
18 various parties, Gail Miller, David Milgaard, Ron
19 Wilson. It really called into serious question
20 the window of opportunity the Crown required for
21 the murder to have occurred. I think there were
22 three problematic areas, one was the timing, the
23 time, distance, movement, speed of everyone, the
24 other one was the location of the vehicle when it
25 was stalled on 20th Street, and the third one was



1 the weather conditions, the temperature and the
2 amount of time that Wilson said he was away from
3 the vehicle.

4 Q And tell me about this process, did you do this in
5 a single visit to Saskatoon or was it a longer
6 process than that?

7 A According to my daytimers which I reviewed before
8 I came here, I made two trips, one in January of
9 1992 where I note the work on the project was for
10 two days, and then I returned sometime in
11 February, '92 to do the editing of the tape.

12 Q Okay. And you've provided us with a new document
13 that we didn't previously have that I'll reference
14 as well, 337447. You recognize that document, Dr.
15 Rossmo?

16 A Yes, I do.

17 Q Titled "Dramatizations for the David Milgaard
18 Supreme Court Hearing", it lists some individuals
19 who were involved, and what is that document?

20 A This laid out some, the different scenarios we
21 were going to explore --

22 Q Okay.

23 A -- in the video dramatization.

24 Q If we can turn to the next page, please, you
25 indicate at the top:



1 "The purpose of these dramatizations
2 will be to illustrate the
3 improbabilities in the statements made
4 by Ron Wilson and Nichol Jon. To
5 accomplish this we recreate the scenes
6 as they were described by Wilson and
7 Jon. Paying particular attention to the
8 timing of how the alleged events
9 unfolded.

10 We will be videotaping the
11 following three scenarios:

- 12 - the events as described by Nichol Jon
- 13 - the same events as described by Ron
14 Wilson
- 15 - the route taken by Gail Miller
16 according to both Jon and Wilson."

17 I'm not sure about that last point, but is that
18 generally an accurate account of the videotaping
19 plan that had been put into place?

20 A That's right.

21 Q Just one other portion of this document, if we can
22 turn to two pages forward, please, the next page
23 -- I'm sorry, the next page after that. The
24 document states:

25 "In all of the above scenarios there are



1 certain events where it is critical we
2 show the actual time that would have
3 elapsed.

4 They are:

5 - how long it would take Gail Miller to
6 walk from her house to the bus stop on
7 either of the two routes she is alleged
8 to have travelled. At what point in her
9 journey would she have encountered
10 Wilson, Milgaard, and Jon.

11 - how long would it have taken Ron
12 Wilson to walk five blocks south. Turn
13 around and walk the five blocks north
14 back to his car.

15 - how long would it have taken Wilson,
16 Milgaard, and Jon to travel from Avenue
17 O and 22nd Street to the motel at 22nd
18 Street and Idylwyld Avenue.

19 During the video taping of
20 these events we must ensure that they
21 are recorded uninterrupted, without
22 stopping the camera. During editing the
23 electronic time code recorded onto the
24 tape will be displayed on the screen in
25 order to verify the duration of each



1 event."

2 Did you follow through with those ground rules,
3 so to speak, in preparing and completing the
4 videotape?

5 A Yes, except for Ron Wilson walked east, not south.

6 Q Okay. And in terms of the Supreme Court reference
7 case, were you ever under the impression that you
8 may be called to testify?

9 A I was told that was a possibility by David Asper.

10 Q And just in terms of this continuing involvement,
11 what were your motivations, why did you decide to
12 continue to be involved in this matter?

13 A Actually, this was core to some of the problems
14 that we had written about in our report, it was
15 particularly interesting to me from a geographic
16 perspective, so yes, I found that I was very
17 curious how this would play out and I think today
18 this was a very valuable investigative experience.

19 Q I'll show you another new document that you
20 provided to us, we previously had the fax cover
21 sheet for this document, but we now have the
22 complete document. As I understand it, it's
23 337670, and I believe it's a fax from yourself to
24 Mr. Asper, you'll see in the note it states:

25 "Interview went very well. Picked up



1 some additional background information.
2 Witness is my sister, a school teacher.
3 Good luck."

4 Is that your writing, Dr. Rossmo?

5 A Yes, it is.

6 Q And we'll look at the statement that's attached,
7 and I think you referred to it as a statement that
8 you obtained at about the same time that you were
9 conducting the videotaping work?

10 A Yes.

11 Q Okay.

12 A The first trip, the trip in January.

13 Q And that's with respect to Bernice Keindel; right?

14 A Correct.

15 Q And what's the reference to "The witness is my
16 sister" as contained in that note that I just read
17 to you?

18 A The statements taken, I went to interview her with
19 my sister just so that there was another witness.
20 My sister actually wrote the statements and then
21 witnessed it.

22 Q Okay.

23 COMMISSIONER MacCALLUM: Bernice who?

24 MR. HARDY: Bernice Keindel. I'll turn to
25 the statement.



1 COMMISSIONER MacCALLUM: What's the
2 surname?

3 MR. HARDY: Bernice, B-E-R-N --

4 COMMISSIONER MacCALLUM: Yeah, I've got
5 that. The surname.

6 MR. HARDY: Oh, I'm sorry, Keindel,
7 K-E-I-N-D-E-L.

8 COMMISSIONER MacCALLUM: Thanks.

9 BY MR. HARDY:

10 Q If we can turn to the next page of the statement,
11 please. Is this the statement we've been
12 referring to, Dr. Rossmo?

13 A Yes.

14 Q It notes it was taken January 23rd, 1992 at 11:30
15 at the 20th Street address noted, it's the
16 statement of Miss Bernice Keindel, and I'm going
17 to read this because it's a new document, it's not
18 very long, I'll read this onto the record and I
19 have a couple of questions for you relating to it,
20 it states:

21 "I, Bernice Keindel, of number 403, 1416
22 20th Street W., Saskatoon, Sask., state
23 that I resided at the address of 1406
24 20th Street W. between the years of 1944
25 to 1950 and 1953 to 1980. This house



1 was situated on the north side of 20th
2 Street W. between Avenues N and O. It
3 was located approximately 1/2 block from
4 St. Mary's Church, 20th Street W. and
5 Avenue O, Saskatoon, Sask. The body of
6 Gail Miller was found in the T-alley
7 behind my home on January 31, 1969.

8 I know for a fact that the
9 church bell was not rung on week days as
10 a general rule and certainly not at 7:00
11 a.m. I am sure mass began at 8:00 a.m.
12 in those days. I am sure I was up at
13 7:00 a.m. on the day of the Gail Miller
14 murder and I did not hear the bell. I
15 remember this day well. I was on the
16 parish council for a number of years and
17 I am aware of the fact that there were
18 some problems with the structure of the
19 church tower which prevented the bell
20 from being rung except for very rare
21 occasions.

22 To the best of my recollection,
23 in 1969, traffic at 7:00 a.m. along 20th
24 Street W. in the 1400 block where I
25 lived would have been low to moderate.



1 At a rough guess, and taking into
2 consideration the fact that many people
3 would have left their cars at home
4 because of the minus 42 F weather, I
5 would estimate that in a 5 minute
6 period, no more than 15 to 20 vehicles
7 going in either direction would have
8 passed our house. Some of these people
9 would have been going to work at St.
10 Paul's Hospital, located at 20th Street
11 W. and Avenue P, less than 2 blocks away
12 from my home. 20th Street W. is a
13 fairly major street, used by many
14 commuters.

15 If a vehicle was stuck at the
16 intersection of Avenue O and 20th Street
17 W. at 7:00 a.m. on a weekday, someone
18 would have seen it within 5 minutes at
19 the most and probably much less. There
20 also probably would have been people at
21 the bus stop at Avenue O and 20th Street
22 W., especially considering the weather."

23 So the statement in large part appears to address
24 a couple of issues, one, with respect to the
25 church bells ringing that morning. Do you recall



1 what sort of briefing you had received from Mr.
2 Asper ahead of time and why this information was
3 important?

4 A What I believe was when we were doing the forensic
5 videotape dramatization, that was covered by STV
6 news, it was on, like, the six o'clock news or
7 whatever time, and Ms. Keindel saw that and
8 contacted somebody eventually talking to David
9 Asper about her knowledge and experience living
10 where she did live. Asper contacted me and asked
11 me if I wouldn't mind taking the statement from
12 her. I thought it was interesting because she was
13 able to provide what we suspected, that the
14 traffic flow on 20th Street in 1969 would have
15 been significant enough that you couldn't have
16 just had an abandoned vehicle in the intersection
17 of either N and O and 20th. The reference to the
18 bells I believe had to do with a statement from
19 one of the witnesses, maybe Nichol John, about
20 hearing the church bells ring, but I'm not so
21 certain of that.

22 Q But am I correct that you were directed to these
23 particular issues by Mr. Asper?

24 A I was asked to do the interview by Mr. Asper.

25 Q On these particular issues or with an interest



1 towards these issues?

2 A Well, on the fax there was something about some
3 additional background information, so it may be
4 that Mr. Asper was aware of one or the other of
5 these two points and the other one came up during
6 the interview. By the two points I mean the bell
7 and the traffic.

8 Q For example, do you recall asking Miss Keindel
9 other questions about her recollection of that
10 morning, observations, hearing anything, anything
11 of that nature?

12 A It would surprise me if we didn't ask her if she
13 had seen anything else or heard anything else, but
14 obviously she had no direct knowledge of any other
15 facts of relevance.

16 Q Okay. Otherwise those would have been included in
17 the statement?

18 A Yes.

19 Q And what did you understand was going to be done
20 with this statement?

21 A Well, considering the timing, I would have guessed
22 or presumed that it would be something that David
23 Asper would have wanted to use in terms of the
24 Supreme Court submission.

25 Q So you can't recall with any greater specificity



1 the actual discussion with Mr. Asper in terms of
2 receiving the request to go and obtain this
3 statement?

4 A No.

5 Q I'll also refer you to a letter from Mr. Asper to
6 yourself dated February 5th, 1992, 165771, as I
7 mentioned from Mr. Asper to yourself, and he
8 states:

9 "At long last here is a copy of the RCMP
10 "profile sheet" prepared with respect to
11 Larry Fisher."

12 And do you recall -- and we'll look at the
13 profile sheet in a moment, and I know you are
14 familiar with it. Do you recall receiving this
15 profile sheet?

16 A Yes, I do.

17 Q And why did you want it?

18 A David Asper mentioned that he believed one had
19 been prepared and I obviously was interested in
20 any of the police information associated with
21 either the Fisher crimes or the Milgaard -- or the
22 Milgaard/Miller investigation.

23 Q And maybe we could turn to the profile sheet,
24 062491, and just while we're turning to that, why
25 were you still interested in any information if



1 your investigation and review had been completed?

2 A I'm interested to this day.

3 Q So was it a standing request with Mr. Asper to
4 continue to obtain materials that may speak to the
5 issues that you had reviewed?

6 A Well, again, looking at his letter, he says at
7 long last, so I would guess that this is something
8 he had mentioned to me before while we were
9 involved with it and he had finally obtained it
10 and then passed it on to me at this point.

11 Q And were you going to do anything with this
12 document?

13 A I read it. Our report was complete at that point.
14 I guess -- I'm not sure at this point in time,
15 probably at this point in time the possibility of
16 me attending the Supreme Court related to the
17 forensic video dramatization existed, so it may
18 have been relevant for that.

19 Q Do you recall whether you had any other interest
20 or any other plan to do something with this
21 information?

22 A I don't believe so.

23 Q And you've reviewed the document; am I correct?

24 A Yes, I have.

25 Q And I think I would be fairly stating it that it



1 goes through a comparison of the various attacks
2 that we've been speaking of, including a look at
3 the Gail Miller murder and the circumstances of
4 that murder, and I believe at the end it would be
5 fair to say that the conclusion is, is that the
6 writer says he'll leave the conclusions to the
7 reader of the document. Would I be fair in
8 stating that from your recollection of reviewing
9 this document?

10 A That's what they say.

11 Q And did you have any concerns with the document
12 after you had given it a review?

13 A Yes, I had three or four concerns with it.

14 Q What were those?

15 A Can you move to the point in the document where
16 they talk about the Gail Miller attack?

17 Q Sure, if we can move to page 11, please.

18 A All right. If I could --

19 Q You can touch the screen, Dr. Rossmo.

20 A You see that statement there?

21 Q Yes.

22 A This is taken obviously from the Nichol John
23 statement, so we have a logical fallacy here. If
24 the question that is being examined relates to
25 whether the Fisher murder might be connected to



1 the -- the Fisher rapes might be connected to the
2 Miller murder, you don't take as one of your
3 premises an observation of a witness who saw David
4 Milgaard do the murder, so that's the logical
5 fallacy, you would have to just work from the
6 information that you know regarding the crime
7 scene, otherwise it becomes totally tainted and
8 biased, and we know now today that this did not
9 happen, so this was the biggest problem. It
10 introduces information that was not correct or not
11 factual and sort of belies the whole point of the
12 analysis in the first place.

13 Another issue, there's an attack
14 at (V14) (V14) which is included in the mix when
15 there's no real evidence to point towards anyone
16 having done that, Fisher or -- Milgaard or Fisher
17 having done that. It would have been best to
18 leave that out of the analysis entirely, just work
19 with the knowns.

20 The third problem is that I have
21 some concerns over the methodology, the
22 fundamental -- there's some fundamental aspects of
23 crime linkage, the first is proximity in time and
24 place, events that occur close together in time
25 and are close to each other in terms of geographic



1 distance are more likely to be connected than
2 events that are far apart in time or far apart in
3 distance.

4 Also, the essence of linking
5 crime involves comparing similarities and
6 differences between like events and similarities
7 and differences from unlike events and you need to
8 look at all four of those things. We have not
9 seen here, what we would call the background; in
10 other words, how common were predatory sexual
11 assaults committed by strangers in Saskatoon,
12 particularly in the Riversdale, Pleasant Hill
13 areas during that time period, that is not
14 considered, and yet it's an essential part of
15 doing this.

16 The final thing is it's wrong to
17 leave the conclusions to the reader. Comparative
18 crime analysis or crime linkage is an area that
19 requires a fair bit of expertise, so leaving the
20 conclusions to the reader is not the way to do
21 this. If the report was prepared by competent
22 analysts, they should put their opinions regarding
23 the likelihood of the linkage, and there's nothing
24 wrong with them concluding that they can't say,
25 but there is something wrong with abandoning



1 responsibility of coming to a conclusion.

2 Q Nothing further on that document then?

3 A No.

4 Q And I think we've confirmed you weren't contacted
5 by the RCMP in the course of their 1993
6 investigation; is that correct?

7 A Correct.

8 Q And during Mr. Boyd's testimony we took a look at
9 the 1994 *Canadian Lawyer Weekly* article and you
10 were a co-author of that article?

11 A Yes, to a small amount.

12 Q And I'm not going to turn specifically to it. I
13 understand that you did have some further
14 involvement in these matters, though, generally
15 relating to Larry Fisher and his release from
16 prison in 1994?

17 A Correct.

18 Q And can you tell us about that?

19 A At that time I was working within the Co-ordinated
20 Law Enforcement Intelligence Unit. One morning we
21 were pulled into the briefing room with a
22 surveillance assignment. The sergeant of our team
23 told us that an offender was being released from
24 Agassiz Mountain Prison and that we had a request
25 from the RCMP detachment in that jurisdiction to



1 follow the individual. They wanted to know where
2 he was going to be living, where he was going to
3 be staying because they were concerned about him
4 committing new crimes. He had been convicted of a
5 number of rapes and he was believed to have
6 murdered a woman and that individual was Larry
7 Fisher.

8 Q And so the person who was briefing you, who was it
9 that was providing you with this information?

10 A Sergeant Duke Andrash of the Vancouver Police
11 Department who was a team leader at the
12 Co-ordinated Law Enforcement Unit, Intelligence
13 Unit.

14 Q And he was conveying information from the RCMP?

15 A The RCMP detachment in the area that Agassiz
16 Mountain Prison was.

17 Q And was this something that you, this sort of task
18 something that you commonly attended to?

19 A We would do a number of things in the intelligence
20 unit. Surveillance was part of that.

21 Q And how long did this particular surveillance
22 last?

23 A One day.

24 Q And did Mr. Fisher then leave the jurisdiction?

25 A Yes. We picked him up at the gates of the prison



1 and followed him until he was some distance away
2 from the lower mainland.

3 Q And so in terms of your briefing and the comments
4 that you've just mentioned to us, those were
5 coming from your sergeant or your superior and he
6 was relaying what he said he had heard from the
7 RCMP in terms of their request?

8 A That's correct. It stuck in my mind and I also
9 find it interesting that again police are not
10 monolithic, the RCMP were not monolithic, we had
11 RCMP officers who thought he was responsible for
12 the Miller murder and also from RCMP officers who
13 thought that Fisher was not responsible and
14 Milgaard was, but I would like to stress that this
15 was a fairly, this request was taken fairly
16 seriously. The cost of a day long surveillance
17 involving at least seven police officers is fairly
18 significant, so this wasn't a trivial matter, it
19 was something that would have been considered
20 before it was made and was taken seriously when
21 the request was received.

22 MR. HARDY: Thank you, Dr. Rossmo, those
23 are all of the questions that I have. My friends
24 do have some questions for you. I canvassed the
25 room, Mr. Commissioner, and there are several



1 counsel who have some questions on
2 cross-examination and I believe we've now agreed
3 that Ms. McLean will begin.

4 COMMISSIONER MacCALLUM: Okay.

5 MS. McLEAN: Mr. Commissioner, I had
6 suggested that I go first on this particular
7 witness solely for the reason my questions are
8 confined to a report prepared by Mr. Gibson's
9 client and I think he should follow me.

10 COMMISSIONER MacCALLUM: All right.

11 MS. McLEAN: Other than that, I don't think
12 we should be deviating from the regular order
13 which would have the Milgaard group, camp at the
14 end.

15 COMMISSIONER MacCALLUM: He says he wasn't
16 part of any such thing.

17 MS. McLEAN: I'm sorry?

18 COMMISSIONER MacCALLUM: He says he wasn't
19 part of any such thing.

20 MS. McLEAN: I am. If I could just ask the
21 staff, did we had any success? The document is
22 290115, please. Sorry, Dr. Rossmo, there's some
23 printing difficulties with the staff. As soon as
24 the document is printed they are going to give
25 you a copy so that you can follow along as you



1 want to.

2 BY MS. McLEAN:

3 Q This is a document that was prepared first of all
4 in September of 1993 by Inspector Ron MacKay of
5 the RCMP and you have had an opportunity this
6 morning to review this profile have you?

7 A Umm --

8 Q Briefly?

9 A Briefly, yes.

10 Q Okay. I would like to direct your attention first
11 to the very first part here:

12 "I have reviewed the material provided
13 in this case, exclusive of suspect
14 information, and arrived at a number of
15 opinions as to the probable
16 characteristics and traits of the
17 offender."

18 And what we're speaking of here, this is an
19 analysis of the murder of Gail Miller. Do you
20 have any concerns about providing information --
21 excuse me, I should ask it this way. Do you know
22 what it means to say exclusive of suspect
23 information? Is that a common term that would
24 appear?

25 A Yes, I know what that means.



1 Q And can you explain to us what it would mean?

2 A No information was provided to the profiler on any
3 of the suspects being considered in the crimes, so
4 it's based strictly on information about the
5 crime.

6 Q So they would not have the name of the, of any
7 suspect, they wouldn't have any background
8 information about any particular suspect?

9 A Generally speaking, though, I don't see how that
10 would be totally possible considering the high
11 profile nature of this particular case.

12 Q And that it's being prepared after David Milgaard
13 has actually been released from 23 years in jail?

14 A Correct.

15 Q And I don't know, and I haven't been able to find
16 what material was provided to Inspector MacKay
17 before he prepared this report, so I just want you
18 to keep that in mind as a caveat.

19 A Yes.

20 Q So if you continue on the first page under
21 Victimology, moving down, please, this seems to be
22 a standard boilerplate kind of thing about
23 victims?

24 A It follows the format of a typical behavioural
25 profile. There's some boilerplate disclosure and



1 caveats at the beginning. You have a coverage of
2 the Victimology next.

3 Q Yeah. And do you usually have things in there
4 about whether or not there is sexual experience?

5 A Yes, that would be -- would not be uncommon at
6 all.

7 Q Okay. And the way they are dressed and what they
8 may be carrying?

9 A I think that would be relevant in this case.

10 Q Okay. Moving to the second page, again Crime
11 Scene and Autopsy Analysis, we have standard
12 boilerplate here?

13 A Yeah. I note the temperature doesn't appear to be
14 correct, they have it as minus 35 degrees.

15 Q Uh-huh.

16 A When it was minus 42, minus 50 with wind chill.

17 Q Moving down to the Crime Scene and Autopsy
18 Analysis --

19 A Okay.

20 Q -- the recording the way that Miss Miller's dress
21 is found, rolled down to the waist, zipper and
22 seams on the dress damaged with force, slip rolled
23 down, broken shoulder strap on her bra.

24 A Okay.

25 Q The rest of the clothing found in the disarray



1 that it was.

2 A Okay.

3 Q Next paragraph, reference to the purse being
4 found, a sweater and a boot forming a triangle.
5 Does this have some significance to you?

6 A I'm sorry, I'm just trying to find that part.

7 Q Sorry. It starts with her purse was found in a
8 garbage can, it's this paragraph here, the second
9 full one under the heading of Crime Scene and
10 Autopsy on page 3.

11 A I'm sorry. I don't know what that would mean
12 other than maybe it's just a description of the
13 pattern of where this evidence was found.

14 Q So forming a triangle has no particular
15 significance to you?

16 A No, it doesn't.

17 Q Okay.

18 A I mean, any three points form a triangle.

19 Q Okay. It's just it goes on to say that her wallet
20 probably from her purse was found about one block
21 south of the body, but other contents of the purse
22 were strewn about in the vicinity of the
23 above-noted triangle. Again, triangle has no
24 significance to you there?

25 A No.



1 Q Okay. Next paragraph, reference to the seminal
2 fluid and what I believe is later identified as
3 pubic hair is found in the snow, seminal fluid
4 both on her panties and identified in her vagina?

5 A Okay.

6 Q The next paragraph is simply a recitation of the
7 way the body is found, the same minus 35 comment I
8 presume you want to make, and the knife found.

9 Going to the top of the next
10 page, which is 290117, page 4 of the original
11 report, the beginning part of it is 15 slashing
12 wounds to the front of Gail Miller's throat, none
13 of them fatal, and then the extensive injuries
14 suffered by her, ultimately internal bleeding from
15 the stab wounds being the cause of death.

16 The next paragraph, sir, is what
17 I want to ask you about.

18 "Taking all available information into
19 consideration, it is probable that this
20 crime began as a purse snatching,
21 escalated to sexual assault and
22 culminated in homicide. The possibility
23 of sexual assault being the initial
24 motive, however, cannot be discounted."

25 Do you have comments on that, sir?



1 A I want to start by saying that I have a huge
2 amount of respect for Inspector Ron MacKay and
3 Detective Superintendent Kate Lines, but I would
4 gladly debate this with both of them, who are
5 friends of mine. If it walks like a duck and it
6 quacks like a duck, it probably is a duck. This
7 was a sexual crime. And my only explanation is
8 they might have taken, as one of the information
9 inputs, the Nichol John statement, but that's the
10 same logical fallacy we just discussed regarding
11 the profile sheet.

12 I've investigated lots of purse
13 snatchings, they're not -- they don't turn into
14 sexual assaults, the level of violence is usually
15 associated to sometimes pulling the victim onto
16 the ground. And, remember, we're talking about
17 was it a 5'4" nurse here versus -- and we know
18 this crime was committed by Larry Fisher, he was a
19 labourer, he was strong. But the -- it's not
20 uncommon for a sexual assault or rape to involve
21 theft of the victim's purse contents or wallet, or
22 whatever, after the fact. That is very common.

23 Purse snatchings becoming rapes
24 are incredibly uncommon, so there is no
25 explanation as to this conclusion.



And the statement:

"Taking all available information into
consideration ...",

we certainly don't see anything in the preamble
or the discussion of the report up to this point
that supports that, so my only explanation is
they might have been relying on the John
statement, but that would have been incorrect
because it then already presupposes the
conclusion.

Q Thank you. And just based on something you just
said, if you could go to 290127 of the same
document, and, Dr. Rossmo, that's an appendix at
the back and it says number 2 up at the top of
that. It's just a chart that accompanied a later
report, across the top of the chart are the names
(V1)-, (V2)-----, (V3)-----, (V4)---, and
following through to Miller at the end. And there
is two particular questions here, one is 'take
victim's clothing', and the next one is 'steal
money from purse', and if you look at (V1)-,
"yes", take clothing, (V2)-----, "yes", take
clothing, and then steal money from purse, we've
got a "yes" on (V7)---, a "yes" on (V10)-, and a
"yes" on Miller.



1 Again, as you said, it seems to
2 be not an uncommon thing to steal either an item
3 of clothing or purses or contents of purses or
4 money from the victims as an incidental to a
5 sexual assault?

6 A It's very common.

7 Q Moving back to the profile itself, at 290117, and
8 that's page 4 of the document that you have got,
9 Dr. Rossmo, moving into the *Offender*
10 *Characteristics and Traits*, I don't imagine you
11 would disagree with the conclusion that it's
12 likely a lone male acting alone?

13 A They make a reference to "white male", I'm not
14 sure why they believe it would be white male.

15 Q Okay.

16 A Male, yes, but I don't understand the rationale
17 for white. I don't think you could say unless
18 there was some physical evidence, such as the
19 hair, that might suggest a particular
20 anthropological grouping.

21 Q Or the demographics of Saskatoon in 1969?

22 A That would an indicator, but it couldn't actually
23 be used for suspect prioritisation because the --
24 it would -- how can I -- I'm trying to explain
25 something that's mathematical. If only, let's say



1 for example, 4 percent of the population of
2 Pleasant Hill were First Nations, --

3 Q Uh-huh?

4 A -- you might then have only one out of 20 of the
5 suspects that the police are aware of known sex
6 offenders who is Aboriginal, but you couldn't then
7 prioritise one or the other. The breakdown of the
8 suspects would match the breakdown of the
9 demographics, you couldn't profile based on the
10 race, the only way you can do that would be if you
11 felt there was some association between the
12 victim's race and the offender's race.

13 Q Okay. Bottom of the page, as to age, is there
14 any -- anything in the Miller --

15 A Well the --

16 Q -- homicide that would suggest an age range of the
17 --

18 A Well there is a problem here that no research has
19 been done on purse snatchers, and while I'm not a
20 psychological profiler I am very familiar with the
21 profiling literature literally around the world,
22 and I make it a point to obtain publications,
23 research studies, books that have been done,
24 especially when there's actually empirical data
25 associated with them. And one, I don't believe



1 it's even possible to profile a purse snatcher,
2 because it doesn't have the characteristics that
3 amounts to behaviour necessary.

4 Just think about profiling
5 someone breaking into your car, you don't have
6 enough crime scene behaviour, so you cannot
7 profile the purse snatcher and no one has done a
8 study to give you the data on profiling purse
9 snatchers, and I suspect that would be a very
10 limited endeavour in the first place.

11 So the question is, then, is
12 this profile based on the characteristics of a sex
13 offender or a rapist, which undercuts the original
14 supposition that this was a purse snatching that
15 turned into a sexual assault. I can't explain
16 this, but that's my theory.

17 Q Okay. Next page again, I guess, is back to the
18 motive.

19 "The initial motive of this offender was
20 most likely robbery, hence the damage to
21 her purse strap."

22 And it seems to me that the rest of the things on
23 this page may be stemming from that
24 characterization of the initial motives?

25 A Very likely. I mean this is a very -- standard



1 elements in a profile, but again I come back to
2 you, no one has developed the empirical data for
3 profiling purse snatchers.

4 Q So the first --

5 A So, you know, I don't know what its saying here.
6 We are saying "we have a rapist who really was
7 only going to do a purse snatching but then
8 decides to do a sexual assault and we can profile
9 him on that basis". You see what I am saying?

10 Q Yes.

11 A I'm -- I definitely would like to talk to Ron
12 about this.

13 Q I think you may be joining us, I don't know if you
14 can come back. We're seeing that here, I think,
15 aren't we:

16 "The rapid excalation of violence in
17 this crime ...",

18 I mean that presupposes you've got a purse
19 snatching that rapidly escalates to a sexual
20 assault and then a homicide, doesn't it?

21 A Again, it depends what you mean by "rapid". To
22 this day I don't know the dynamics of what
23 occurred in Gail Miller's murder and so I, you
24 know, I'm -- I don't know how we can say what
25 happened. We just don't know. What if Gail



1 Miller was in a vehicle, what if the sexual
2 assault -- I mean there was certain, there's some
3 evidence that there was a certain amount of
4 cooperation because she takes off her coat, the
5 nurse uniform comes down, the coat comes to be put
6 back on again, so that it might suggest some type
7 of negotiation between the two.

8 Q Are you aware of any research that tells us that
9 either purse snatchers or rapists have dominant
10 mothers?

11 A Yes, I'm aware of research for that on rapists.

12 Q Anything that suggests that rapists are unlikely
13 to complete high school and probably be an abuser
14 of alcohol or drugs?

15 A I believe some of the research we talked about
16 before that was conducted by the FBI on stranger
17 rapists has those elements in it, --

18 Q Yeah.

19 A -- those demographic breakdowns.

20 Q And you are not aware of anything with purse
21 snatchers, but certainly with rapists?

22 A Correct.

23 Q Okay. Anything to suggest -- the next paragraph,
24 sorry this one, the one that starts off that he
25 won't be married but will have sexual experiences,



1 chauvinistic attitudes toward females, and:

2 "... disputes escalating to physical
3 violence. His lifestyle would be seen
4 by himself as 'free' but ... would be
5 closer to ... a street person."

6 Is there any reason to reach that conclusion
7 based on the profile of a rapist, or is that --

8 A Most of that paragraph is -- I have seen similar
9 comments in other profiles.

10 Q Uh-huh?

11 A I've not seen that one sentence, or the elements
12 in that one sentence, so I don't understand it or
13 what its basis is.

14 Q And that sentence is the one I read out:

15 "His lifestyle would be seen by himself
16 as 'free' ...",

17 A Correct.

18 Q "'... but in reality would be closer to
19 that of a street person."

20 A Correct.

21 Q Next paragraph:

22 "Given his limited resources, he would
23 not likely own a vehicle ...",

24 again that presumably is coming from the presumed
25 motive of purse snatching?



1 A Umm, --

2 Q Or is that --

3 A -- no, I have seen similar things in other
4 profiles. They believed that he was a lower
5 socio-economic status.

6 Q For -- is that a profile for a rapist, is that
7 one?

8 A I would -- I have seen such a thing. It would
9 depend on, like, age and likely type of job
10 though.

11 Q Uh-huh. But your street rapist, your stranger
12 rapist, lower socio-economic is a common feature
13 to find in a profile?

14 A Yes.

15 Q Okay.

16 A I would also point out, here, 'it's likely a
17 poorly maintained older vehicle', an awful lot of
18 people do have access to vehicles.

19 Q Uh-huh.

20 A You would have to consider the demographic -- I'm
21 sorry -- the type of area too. Like for example,
22 where I live in Austin, Texas, you need a vehicle.

23 Q Hmm.

24 A It might be a very poorly maintained vehicle but
25 you really can't get along otherwise. If this was



1 Washington, D.C., with a superb metro system, you
2 know, people may not have vehicles. So you have
3 to consider viability of the bus routes and a
4 number of other factors as well.

5 Q Uh-huh. So in 1969, in Saskatoon, is there
6 something that would say that he would not likely
7 own a vehicle, but if he did it would be a poorly
8 maintained older model?

9 A You know, even though I lived here I was young and
10 I didn't have a driver's licence then, so I just
11 don't know.

12 Q Okay. The last paragraph on this page, I think
13 this has been given repeatedly in various medical
14 opinions, that the injuries to Ms. Miller were
15 caused by somebody who was right-handed?

16 A Yes, I've heard that.

17 Q David Milgaard is known to be left-handed.

18 A Correct.

19 Q Can you, can you tell me anything in either
20 profiling generally, or in the research that
21 you've read, that would allow a profiler to make a
22 comment such as the one that's on the bottom here:

23 "The injuries inflicted on the victim
24 suggest that his right is his dominant
25 hand when engaged in activities such as



1 throwing a ball but not necessarily in
2 handwriting."

3 Is there --

4 A I have seen references to left and
5 right-handedness before, I have never seen a
6 statement such as this, and one of the questions
7 might be how many people write with one hand but
8 use their other hand for throwing a ball. There
9 would be maybe a few, but how would you determine
10 who they are from, you know, crime scene analysis.
11 So, no, I've not seen anything like that before.

12 Q And does it seem a little out of place in a
13 profile on a crime scene and on a murder victim?

14 A I have to say I don't understand it.

15 Q I've got a few questions on the other report.
16 It's prepared February 22nd of 1994.

17 I may take a little longer than
18 five minutes, Mr. Commissioner, do you want to
19 break now or --

20 COMMISSIONER MacCALLUM: That would be
21 fine, sure. Are you speaking, now, of his
22 report?

23 MS. McLEAN: No, it's still, it's another
24 report prepared by MacKay.

25 COMMISSIONER MacCALLUM: Oh, okay. So



1 we'll break now.

2 MS. McLEAN: It's a second one and it deals
3 with the Fisher victims. Thank you.

4 COMMISSIONER MacCALLUM: Okay.

5 *(Adjourned at 11:56 a.m.)*

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

7 BY MS. McLEAN:

8 Q When we left off before the lunch I was just about
9 to move into the second report, and it is still
10 document 290115, and the second document I'm going
11 to refer to starts at 290120. This is also a
12 report prepared by Inspector MacKay, and it's
13 dated February the 22nd of 1994, and you've had,
14 again, a brief opportunity to look at this earlier
15 today; correct?

16 A Yes, I have.

17 Q And, prior to today, you hadn't seen either of
18 these reports; had you?

19 A No, I had not.

20 Q And this one seems to be prepared to compare the
21 Miller murder with the known sexual assaults by
22 Larry Fisher and the names of the victims are all
23 itemized on the first page.

24 The very first line of the next
25 page again refers to material reviewed, and it's:



1 "Further to my report of 93-09-16 ...",
2 so that's the September 16th, '93 report that we
3 looked at this morning, he says:

4 "... I have reviewed the material
5 provided on the above sexual assaults
6 and the attempted sexual assaults in
7 order to arrive at an opinion as to the
8 likelihood of the same offender being
9 responsible for all."

10 And then he indicates that they were reviewed
11 independently, collectively, and then compared to
12 the Miller murder.

13 I haven't asked you earlier,
14 what material would you expect -- going back to
15 the first report for a minute -- what material
16 would you expect somebody that's profiling a
17 murder for an offender to be given?

18 A Witness statements, assuming the witnesses or the
19 victims are alive; police, initial police
20 investigation reports; pathology reports or injury
21 reports; all forensic reports; crime scene
22 photographs; the photographs of the general area
23 of the crimes; information about the basic
24 demographics and overall crime rates of the area.

25 Q Okay. Well how would, how would that work with



1 the police reports being given with the statement
2 that's on the first part of the first report,
3 where he indicates:

4 "I have reviewed the material provided
5 in this case, exclusive of suspect
6 information ...",

7 like wouldn't a lot of your suspect information
8 be contained in police reports?

9 A I'm guessing that he means offender information as
10 opposed to suspect information, because you would
11 want the information from any witnesses or the
12 victims regarding what the rapist did, said,
13 sexual activities, language, --

14 Q Uh-huh?

15 A -- appearance, behaviour, etcetera, that would be
16 important. So my -- I believe that he just meant
17 the information on the offender.

18 Q I'm sorry, I couldn't quite hear you?

19 A The information on Larry Fisher.

20 Q Okay. On the -- okay, I'm sorry to keep hopping
21 back and forth between them, 290115. This is the
22 '93 report, and it's profiling the murder of Gail
23 Miller, and there doesn't seem to be any mention
24 here of Mr. Fisher or of any of the other sexual
25 assaults, nor is there a mention by name of Mr.



1 Milgaard, so I'm curious as to what the line
2 "exclusive of suspect information" would mean in
3 these circumstances?

4 A That would mean that this profile was prepared
5 based strictly on the information regarding the
6 Miller murder crime.

7 Q But, again, it would include, or you would expect
8 it to include the police reports at the time of
9 interviews with witnesses, or --

10 A Well in this case there were no witnesses, and the
11 victim is dead, so she can't provide any
12 information.

13 Q Yes.

14 A But there would not be information here on police
15 reports related to suspects.

16 Q Thank you. Back to the second report, 290121,
17 please. *Victimology*, down at the bottom of this
18 page, again seems to be the standard boiler plate
19 about the identity of the victim, where she was,
20 what time it was?

21 A Yes, her age, her race.

22 Q And that's all certainly relevant when you are
23 trying to determine whether or not there may be a
24 connection between these offences?

25 A Correct.



1 Q Would you expect to see something about where the
2 victim worked or how they were dressed or where
3 they had been coming from or going to, apart just
4 from going to their home?

5 A Yes, definitely.

6 Q And that's something that you would want to be
7 considering when you are doing a profile?

8 A Yes.

9 Q And then, again, there doesn't seem to be anything
10 in the, in these outlines, of whether or not any
11 of these people had had, these victims had had
12 money taken from them or their property stolen or
13 anything like, that does not seem to be in the
14 victimology section but it does appear, as we
15 know, on that chart that we looked at this morning
16 at the back?

17 A Yes, this probably wouldn't go in the victimology,
18 it would go in a section dealing with behaviour of
19 the offender at the crime scene.

20 Q Okay. And then moving on to the next page, more
21 on the individual victims, the *Criminal Analysis*
22 is just a, looks like a little introductory
23 paragraph there.

24 And then an analysis of what the
25 offender had said to the victims, particularly



1 about alerting people or screaming or threatening
2 them with a knife, this all appears to be
3 something that ought to be considered when you are
4 trying to see whether there is something similar
5 or not?

6 A Yes, often offenders will use similar language or
7 similar phrases.

8 Q And then physical behaviour, you are talking about
9 the actual activities of the assailant such as
10 pulling them into alleys and forcing them to
11 remove articles of their clothing, that kind of
12 thing?

13 A Correct. I note here, too, reference is made to
14 clothing stolen --

15 Q Uh-huh?

16 A -- from the victims, covering their faces, money
17 stolen from purse.

18 Q Well *Sexual Behaviour*, obviously that's something
19 that's important to consider, what he did and the
20 methodology of the actual attack; you would expect
21 that to be in there?

22 A Yes.

23 Q Can we move to 290124, please, it's the one titled
24 page 11. The first paragraph on this page he
25 seems to find that everybody, with the exception



1 of Ms. (V4)---, is consistent with all seven
2 crimes being committed by the same offender, we
3 know that offender now is Larry Fisher, and I
4 think even in 1991 you were of the view that they
5 were all committed by the same offender?

6 A Well I believe that Larry Fisher had been
7 convicted of all these crimes, I believe he pled
8 guilty to all these crimes, so I don't think
9 that's an open question or was an open question.

10 Q I phrased that badly. The offences, of which
11 Larry Fisher had been convicted, were all similar
12 such that a profiler could identify them as being
13 likely committed by the same offender?

14 A I think the (V10)- offence is a little different.
15 It was in a different city.

16 Q Uh-huh?

17 A I guess, if you didn't know about Larry Fisher,
18 you would have lots of reasons for thinking (V10)-
19 was not the same; it's many years later, it's a
20 more serious assault, and it's some distance, so
21 no, I don't think you would link, it would be that
22 easy to link (V10)- just on the basis of the crime
23 scene behaviours.

24 Q Okay. The bottom of that paragraph we have a
25 conclusion, here, that Ms. (V4)--- was not the



1 victim of the same attacker, so what we're -- if
2 you could just read that section, maybe, to
3 familiarize yourself.

4 A (Witness reading).

5 Q So what we're left with there, if (V4)--- is not
6 the victim of the same attacker, we're left with
7 those two alternates that you testified to
8 yesterday, that either Ms. (V4)--- is wrong in her
9 report of the sexual assault or we've got two of
10 these people out there at seven o'clock at minus
11 42?

12 A I think I gave four possibilities.

13 Q Uh-huh.

14 A Not involved, done by someone else, done by Fisher
15 before the Miller murder, done by Fisher after the
16 Miller murder, but I don't follow Ron's logic
17 here. Just please give me one more moment.

18 Q Yeah.

19 A Okay, I understand better what he's saying now,
20 thank you. And could you -- do you have a
21 question or would you repeat the question for me,
22 please?

23 Q My question now actually is what is the thinking
24 there. You said you didn't understand the logic
25 and perhaps you can --



1 A Well, what Ron has done is he's identified some
2 differences. Unfortunate -- or probably
3 fortunately the (V4)--- offence was fairly brief
4 and from what little I've read of it, she screamed
5 and dropped her books, this happened on Avenue H
6 close to 22nd, both busy streets, that might have
7 been enough for, to make the offender realize that
8 he was in a risky, precarious position, but it
9 lacks really any sexual behaviour. What we don't
10 know here is if this was going to be a similar
11 crime but was truncated by the decision to abort
12 the attack, or if it just was a very different
13 crime. I think, based on the way, the methodology
14 of a profiling, that removing (V4)--- is proper
15 because just too little is known about it.

16 Q And too little known about the actual intent
17 perhaps?

18 A Yes, plus, if I understand, because I have had a
19 conversation, a brief conversation with Inspector
20 MacKay about this report --

21 Q Okay.

22 A -- and my understanding is the intent of this
23 report is to look at the crimes that are known to
24 have been committed by Larry Fisher and then see
25 where does the murder of Gail Miller fit in there,



1 so if that is the approach, you do not want to
2 include unknowns like (V4)--- because that can
3 distort the boundaries of behaviour that are known
4 for a certainty, so (V4)--- probably never should
5 have been included in the first place. It could
6 be a separate question, does (V4)--- fit within
7 those boundaries, but (V4)--- in that way is,
8 would be treated like the Miller murder, not like
9 the other sexual assaults. Is -- did I explain
10 that properly?

11 Q Yeah.

12 A Okay.

13 Q Next page, sort of in the, it's already been
14 highlighted here, it's a review of the (V10)-
15 assault, and then we have the exchange in this
16 section here about what he said to Ms. (V10)-, and
17 then the underlining here of:

18 "His behaviour up to that point in time,
19 although violent, was not life
20 threatening."

21 Do you see any problem with making that kind of a
22 statement?

23 A Well, it assumes that he did not do the Gail
24 Miller murder.

25 Q Okay. And what about the next lines here:



1 "It is also noted that he left the
2 immediate vicinity of the victim
3 momentarily and then returned to
4 asphyxiate her into unconsciousness.

5 This is consistent with an offender who
6 is inexperienced with the act of murder
7 and needed a few moments to reach a
8 decision as to his next act."

9 Is there a problem there with presupposing he
10 hasn't done it before?

11 A I would say that even if he -- well, we know now
12 that Larry Fisher did kill Gail Miller, but that's
13 one murder, that still makes him inexperienced,
14 more experienced obviously than someone who has
15 never done a murder. It's hard to know what is in
16 the offender's mind here.

17 Q Uh-huh.

18 A I think Ron is definitely speculating here and I
19 have no doubt he would agree with that.

20 Q Are you aware of any studies that would support
21 some of these speculative theories here?

22 A No, no, I'm not.

23 Q And then again towards the bottom -- sorry, bottom
24 of that paragraph:

25 "His reference to having served ten



1 years for doing the same thing supports
2 the theory that his personal freedom was
3 of prime concern to him."

4 I don't imagine there's too much difficulty with
5 that. The next line:

6 "His reference to having "slit her
7 throat" suggests a single victim, which
8 is known to be untrue, and this
9 reference is believed to be more in
10 keeping with his verbal threats..."

11 Again, there's a problem with stating "single
12 victim, which is known to be untrue," if that was
13 in fact a reference to Gail Miller?

14 A I don't understand Ron's logic there.

15 Q And there had been, as you recall, 15 slashes to
16 the front of Gail Miller's throat?

17 A Yes.

18 Q So if Mr. Fisher, as we know now did in fact kill
19 Gail Miller, he certainly would not have been
20 telling a falsehood to say that he had slit her
21 throat?

22 A Correct.

23 Q Bottom of the page --

24 A I just don't understand, I don't understand what
25 Ron's trying to say there. I don't see the



1 connection between the "slit her throat" and
2 suggesting a single victim.

3 Q Perhaps it's the use of the word her.

4 A But there was only one victim whose throat he
5 slit. I'm sorry, I'm -- it might be helpful there
6 to look at the actual statement of Mrs. (V10)-.

7 Q Okay. Towards the bottom of the page, the final
8 paragraph:

9 "All things considered, Fisher's
10 behaviour, circa 1968-1970, is not
11 consistent with the behaviour observed
12 within the murder of Gail Miller."

13 I suspect that is a statement that he's making
14 having reference back to his report of 1993, the
15 September report, where he analysed the Miller
16 murder. Are you with me? Is that how you see
17 it?

18 A I don't understand why it has to reference back to
19 his previous report.

20 Q Oh, okay. There's nothing in this report that
21 we're dealing with now, the one that's talking
22 about the sexual assaults, there's nothing in this
23 report that specifically outlined what happened to
24 Gail Miller and the circumstances of that murder,
25 that's what I mean.



1 A Well, I think this is his conclusion, and again,
2 as I said, it's not a conclusion I think that I
3 would come to, and I think it's also missing an
4 important element which is somebody killed Gail
5 Miller and are there other sexual assaults by
6 strangers going on in Riversdale at that time,
7 umm, what are -- who are the other suspects, David
8 Milgaard. To the degree that Miller's murder --
9 and no crime is a carbon copy of another crime,
10 there are variations.

11 Q Uh-huh.

12 A We have some understanding of the variations by
13 looking at the three rapes in Saskatoon, the
14 attempted rape, two rapes in Winnipeg, we have
15 indecent assaults in Winnipeg which I don't think
16 anyone, I've never seen any information on though,
17 and then we have the (V10) (V10)- attempted
18 murder. That gives us an envelope, but certainly
19 not a perimeter for Larry Fisher's behaviour, and
20 then we take the behavioural characteristics and
21 actions and what we do know of the Miller murder,
22 not based on Nichol John or anything problematic
23 like that, then we see how it fits. There are
24 many, many, many reasons, as the police at the
25 time also thought, to see a connection between



1 these two, and then, if you look at David
2 Milgaard's background and try to connect it to it,
3 or you try to look at some yet unknown third party
4 operating as a sexual predator in the area, you
5 know, while Fisher isn't a perfect match, he's a
6 very good match and he's a much better match than
7 David Milgaard, and as far as anyone knows to this
8 date, better match than any other sexual predator
9 in that area, which I don't think there were any.

10 Q

 With this whole paragraph, I mean, we know it's
11 wrong, but at the end of the paragraph, page 13,
12 the next page over, he's talking about the
13 distinction between the murder of Gail Miller and
14 then the next offence known to Larry Fisher after
15 the Miller murder is the (V5)--- one which takes
16 place after David Milgaard had been convicted of
17 the Miller murder and the only violence,
18 gratuitous violence there seems to have been is
19 after she bit him on the finger he:

20 "... hit her on the chin to make her let
21 go. This is not the response to such
22 victim resistance I would expect to see
23 in an offender who had previously
24 exhibited the behaviour seen within the
25 murder of Gail Miller."



1 A That's certainly not an unreasonable conclusion,
2 but as I said before, we don't know what Larry
3 Fisher's triggers were. If we look at his attack
4 on (V10) (V10)-, it may have been what she said
5 regarding his mother that prompted him to do what
6 he did to her and not resistance per se, so it's a
7 little dangerous to limit what could be the
8 violent triggers in an offender just to things
9 like resistance. We know resistance will do that
10 to offenders, but there could be other things such
11 as potential for identification.

12 Q I was just going to say, fear of an identification
13 by the victim will generally leave you with a dead
14 victim; would it not?

15 A Definitely, that could definitely be a factor, so
16 it's -- it's a common error in crime linkage to
17 assume consistency in offender behaviour which is
18 not warranted, human beings have wide variations
19 in their behaviour, so it's usually better to keep
20 a somewhat open mind, but even having said that,
21 there are many more differences. If you were to
22 do a chart showing differences versus the
23 similarities of the Miller murder versus the rape
24 cases and then try to fit anyone else in there,
25 you know, he's your best suspect at this time.



1 Q So for all these reasons, he is therefore not
2 considered to be a likely suspect in that case,
3 you certainly disagree with that. Have you spoken
4 to Inspector MacKay about the conclusions in this
5 report?

6 A I haven't seen this report and I would enjoy a
7 debate with Ron over this, or Kate, you know,
8 because I would like to know -- they may have
9 looked at information that I'm not aware of or may
10 have some logic or thinking that I didn't
11 consider, but if you understand the profiling
12 process, it can often be very lively in terms of
13 discussing the viability of various ideas and the
14 unviability of certain ideas. I know that Ron had
15 said to me that the second report, he'd been asked
16 to look at how closely Larry Fisher, Larry Fisher
17 matched the Miller murder, but he was not looking
18 at the possibility of David Milgaard, or was not
19 directed to look at the possibility of the match
20 with David Milgaard, but really that's what the
21 question came down to at this point in time, is
22 Larry Fisher a better suspect than David Milgaard,
23 and if he is, that provides some strong impetus
24 for the Justice Department to re-open the case.

25 Q Okay. Well, this is done in 1994, the case is



1 opened, it's reviewed, it's been to the Supreme
2 Court and David Milgaard has been out of custody
3 for two and a half years.

4 A I don't know when Ron would have gotten this
5 request. I'm not sure why Ron would have done
6 this at this point in time either.

7 Q I think it's part of the Flicker investigation
8 which was to look into allegations of wrongdoing
9 by the police and potentially justice officials.

10 A Okay. I was unaware of the Flicker investigation
11 until my visit here this month.

12 Q Okay, thank you. Is there anything else that you
13 want to add about profiling or about crime scene
14 analysis or anything that I haven't asked you
15 about?

16 A I think Ron had made a suggestion that the Miller
17 murder be put into the VICLAS system. I don't
18 know if it ever was or if it ever suggested any
19 links to any other crimes. That might be
20 interesting. I don't know the answer to that
21 though.

22 MS. McLEAN: Okay. Thank you, sir.

23 **BY MR. GIBSON:**

24 Q Dr. Rossmo, my name is Bruce Gibbon, I act for the
25 RCMP. We had a chance to chat briefly at the



1 break a couple of times. I brought a lot of
2 documents up with me, I'm hoping that I won't have
3 to go to all of them, but I will take a little bit
4 of time in light of Ms. McLean's recent
5 questioning of you of some of the documentation
6 and some of the analysis done by the RCMP with
7 respect to profiling.

8 If we could call up document
9 062490, and this was a document I think that you
10 indicated you received from the RCMP or through
11 Mr. Asper via the RCMP dealing with some
12 comparisons that were done by the RCMP after you
13 prepared your report in October of 1991; is that
14 correct?

15 A This is the RCMP profile sheet that's referred to?

16 Q Yes.

17 A Yes.

18 Q And you were asked about the reason that there was
19 no conclusion reached with respect to this report
20 and you remember Ms. McLean asked you about that
21 and you thought that there should be a conclusion
22 reached?

23 A Yes, this should not be left up to the reader.

24 Q Oh, I'm sorry, I'm making a mistake, that was
25 still when we were dealing with Mr. Hardy, okay.



1 And it says at the outset here, right at the first
2 line, and I appreciate this is difficult to read,
3 this document, it says:

4 "An application has been filed with
5 Federal Justice, outlining "similar
6 fact" evidence that suggests Larry Earl
7 Fisher is responsible for the murder of
8 Gail Miller, for which Milgaard was
9 convicted."

10 So it appears that that was something that the
11 RCMP were requested to prepare in light of the
12 application under the 690 process. Would you
13 agree with that?

14 A Yes.

15 Q And in your experience, has there been a lot of
16 situations where profilers are asked to do an
17 analysis of crimes in a situation where there is
18 an application on a 690 process that goes to the
19 Supreme Court?

20 A I'm sorry, I don't know. I don't think there are
21 that many applications under Section 690.

22 Q Yes.

23 A It wouldn't surprise me if you told me that that
24 had happened and it would make logical sense, but
25 I'm just personally not aware.



1 Q Okay.

2 A I don't believe Guy Paul Morin was a 690
3 application was it?

4 MS. McLEAN: No.

5 BY MR. GIBSON:

6 Q I'll trust Ms. McLean on that response. And here
7 it references that there was a reason for the
8 report being prepared, it was done at the request
9 of Sergeant Rick Pearson with the RCMP, and were
10 you aware that Rick Pearson was assisting the
11 Federal Department of Justice gathering
12 information on the 690 process?

13 A I'm only aware of what was in this document.

14 Q Okay. And as far as reaching a conclusion with
15 respect to making a comparison on this, that was
16 one of the issues that was going to be before the
17 Supreme Court of Canada dealing with Mr. Fisher,
18 he did in fact testify there was a number of
19 pieces of evidence that were led with relation to
20 a concern about those rapes being connected with
21 the Miller murder, and you were aware of that?

22 A Umm, I'm sorry, could you rephrase the question?

23 Q Okay, certainly. In the 690 process --

24 A Right.

25 Q -- one of the things that was before the Supreme



1 Court had to do with the new information related
2 to Larry Fisher?

3 A Correct.

4 Q And somehow whether Fisher was responsible for not
5 only the crimes that he had pleaded guilty to, but
6 also for the Miller murder?

7 A Umm, I'm not sure if I'm being pedantic here, but
8 wasn't the question before the Supreme Court was
9 the fact that now that Larry Fisher has been
10 identified and is known to be responsible for
11 these rapes, should this case be retried. I'm
12 just saying --

13 Q And perhaps I'm not being as clear as I could be,
14 and I don't mean to try and confuse the issue.

15 A I just -- I'm just saying I don't think the
16 Supreme Court had, as one of their tasks, to
17 determine if Larry Fisher killed Gail Miller.

18 Q Okay. But as far as reaching a conclusion on this
19 report, the Supreme Court was going to be
20 analysing this and do you see that there could be
21 some concern if a conclusion is reached with
22 respect to the report when there is going to be
23 cross-examination and other evidence before the
24 court about areas along that line, there could be
25 some concern about establishing a bias if the



1 report comes out with one conclusion or the other,
2 this way that information is left open for lawyers
3 to deal with that information before the Supreme
4 Court?

5 A Well, if you are saying to me that the assignment
6 given had to do with cataloguing behaviours, *modus*
7 *operandi* and preparing a spread sheet, then this
8 would be appropriate.

9 Q Because clearly there is no conclusion reached and
10 the instructions were to not reach a conclusion,
11 so I suppose --

12 A Then that's fair, though I would --

13 Q -- that's why it was prepared?

14 A -- really say they shouldn't be a conclusion
15 section in the report.

16 Q I'm sorry?

17 A They should not put a conclusion section in the
18 report.

19 Q If those are their directions?

20 A Yeah. If they are not going to reach a
21 conclusion, they should make it clear that, you
22 know, that that would be an issue I would have,
23 and I would also say that -- but I still would say
24 that linkage analysis is a matter for expert
25 opinion, there has been several cases where expert



1 opinion has been presented, and it may also be
2 fair, since I don't know Sergeant Pearson, that he
3 may not have expertise himself and that might be
4 appropriate coming from the RCMP's violent crime
5 analysis branch.

6 Q If we go to the next page of that document, page
7 2, this portion up here, I don't know if we can
8 make that any clearer, again it offers a, I guess
9 a proviso or limitation with respect to the
10 information that was prepared, and again, we don't
11 have the authors here, but would you agree it may
12 be reasonable to not reach a conclusion when the
13 authors clearly state a limitation with respect to
14 some of the information available? It states
15 there:

16 "In some instances a lack of detail made
17 it impossible to effectively perform any
18 analytical function."

19 And clearly there is some jeopardy or peril in
20 reaching a conclusion where the authors feel that
21 they were limited severely by the information
22 that was available to them.

23 A I would agree that lack of detail was frustrating
24 and obviously has an impact on any analyses, but I
25 wouldn't agree that the task is impossible.



1 Q Okay. But again, it may influence whether they
2 want to reach a conclusion if they feel that they
3 do not have adequate information, and I guess
4 that's up to the individual isn't it?

5 A Correct.

6 Q The next point underneath that says:

7 "Another problem was the inability to
8 interview victims or investigators to
9 clarify discrepancies, and also the
10 quality of the report made it difficult
11 to read."

12 So again, some other provisos listed by the
13 authors of the report. Another proviso listed
14 underneath there is:

15 "If more lead time had been allowed, an
16 indepth study would have been possible."

17 So again it appears that this report was cobbled
18 together in a rather quick fashion?

19 A I'm not sure why they couldn't interview victims
20 or investigates. Would that have to do with the
21 time frame?

22 Q It could be with the time and that's why I coupled
23 those two together.

24 A Okay.

25 Q So again there's a reason why there may not be a



1 conclusion reached on this document. You were
2 asked, or at least the point was drawn out by
3 Mr. Hardy about a reference to (V14)- (V14)-, and
4 that is the assault that occurred at (V14) (V14),
5 Saskatchewan, and I think you queried as to why
6 that information would have been part of this
7 analysis?

8 A Yes.

9 Q And were you aware that the (V14)- assault was
10 part of the 690 application on behalf of David
11 Milgaard?

12 A I know I had heard about it, but it wasn't
13 mentioned in any of the material that I had
14 available when I reviewed, that I reviewed before
15 I came here, so what you say does not surprise me,
16 but I just can't say that I remember it.

17 Q And clearly there's no evidence, and that's been
18 established, connecting either Mr. Fisher or Mr.
19 Milgaard to that assault, but nevertheless, that
20 was something that was brought in the application?

21 A True. I think its conclusion, though, just
22 muddies an already difficult comparison.

23 Q If we can go to the next page, please, and it
24 talks about areas of discrepancies, and again it
25 appears that some information that you may have



1 had available and some subsequent information that
2 was available appeared to be different, and again,
3 I think you would agree that the report is based
4 on the information that's available to the author
5 and there may be differences in the conclusion of
6 a report or what is outlined or highlighted in a
7 report depending upon when information is
8 available, and I think that's a fair comment?

9 A Yes.

10 Q And if we look at the four points there, and I'll
11 just read them:

12 "The police report suggests incident
13 occurred --"

14 And this is in reference to (V1)--- (V2)- (V1)-,
15 is the victim here:

16 "The police report suggests incident
17 occurred shortly after 2230 hours while
18 the Centurion report suggests the time
19 is 1930 hours."

20 So again, nothing critical, but a discrepancy
21 there between the two reports.

22 The next point states:

23 "Police report makes no mention of a
24 knife being inserted into the victim's
25 vagina; yet Centurion report claims



1 there was a knife inserted into her
2 vagina."

3 And again, that would be a difference of the
4 information that was available to yourself
5 because I believe you said that Centurion report
6 is what you based it on, but the police report,
7 the initial police report did not indicate that,
8 so again, that may be a difference in a
9 conclusion that could be drawn even later on by
10 Mr. MacKay if he's relying on different
11 information than you had?

12 A Yes. I believe point 2 is a more critical point
13 than point 1 as well.

14 Q Yes, thank you. Number 3 says:

15 "The police statement indicates there
16 was intercourse for 10 minutes yet
17 Centurion claims there was never penal
18 penetration."

19 And again, a difference in the information
20 available to you and the information that was
21 subsequently available to Ron MacKay?

22 A Did Ron have access to the Centurion report?

23 Q Again, I believe that he had information that you
24 had as well as police information.

25 Number 4, the:



1 "Police statement suggests Fisher took
2 her jeans and left when finished."

3 The:

4 "Centurion ...",

5 report:

6 "... claims she put her jeans on and ran
7 to the nearest house after assailant was
8 frightened off."

9 Again, not a huge piece of crucial information,
10 but you would agree different information?

11 A Correct. If we can go to the next page, please,
12 and this is dealing with (V5)-- (V5)---, and the
13 observations here:

14 "(V5)---' recollection of the incident
15 as given to Centurion has changed
16 somewhat from her original statement to
17 police however not felt unusual, given
18 the time frame."

19 But, again, a difference.

20 And if we can go to the
21 observations of that portion:

22 "Centurion report indicates Fisher
23 warned her he had a knife which she
24 could feel pressing against her neck.

25 We are unable to find any mention of a



1 knife in the police report."

2 So, again, a fairly significant detail that's
3 different in the reports?

4 A Yes, that is significant, and concerned what we
5 were interested in.

6 Q Yes. The next point:

7 "Centurion report suggests she was hit
8 numerous times to the extent she was
9 unrecognizable. The police report
10 states she received medical attention
11 that night including multiple
12 superficial abrasions to back and chest,
13 soft tissue injury to jaw and neck,
14 abrasion to upper lip and teeth marks
15 ...",

16 etcetera. Again, a difference in 'beat to
17 unrecognisable' to 'superficial lacerations to
18 the face', so a difference in the description of
19 what happened to the victim?

20 A I'm sorry, where did this particular attack take
21 place?

22 Q It might tell us here. I don't know off the top
23 of my head. This is a -- I'm sorry, this is
24 (V7)--- (V7)---, my apologies.

25 A Okay.



1 Q It's just above there, I looked one up and saw
2 (V5)---' name but it's (V7)--- (V7)---, this is
3 Winnipeg. So, again, a difference in information
4 that would have been available to you based on the
5 Centurion report and information that was
6 available later on with respect to original police
7 reports?

8 A Okay.

9 Q I guess there's, you know, no surprise that people
10 will come to different views if they have
11 different information; is that fair to say?

12 A Well that's a very general statement. There will
13 be variation in details, there always is, the
14 question is how far those variation in details
15 will lead to varying conclusions.

16 Q Now I think you were -- in some of your earlier
17 questioning, Dr. Rossmo, I think you said that
18 profiling itself is merely an investigative tool,
19 it's not an end-all or be-all, it doesn't solve
20 things necessarily, it assists investigators in
21 trying to put them on the right track?

22 A Absolutely.

23 Q And so, with respect to these opinions that we've
24 looked at of Mr. MacKay and Ms. Lines, again there
25 was a degree of subjectivity to those reports?



1 It's not, per se, a mathematical science, 2 plus 2
2 does not always equal 4, there's some personal
3 view that comes into that based upon that person's
4 understanding of statistics, analysis, documents
5 that they have read, training, etcetera?

6 A That's correct, though I will point out that at
7 least with the profile sheet, the one that is
8 before me now, that there is a logic, clear
9 logical error with the introduction of the account
10 of the Miller murder based on Nichol John's
11 statement.

12 Q Yes.

13 A Okay.

14 Q And so, if a person puts in a piece of information
15 that is somewhat incorrect, then it could -- it
16 can affect the overall report, obviously?

17 A Absolutely.

18 Q And, if a person has different information, then
19 that can affect their report as well?

20 A Yes. And, again, with the -- trying to underline
21 the point that a little bit of information being
22 off will lead to -- should only lead to a small
23 departure.

24 Q Okay. If we can look at document, I think you
25 looked at the number, it was 290115, that is



1 Inspector MacKay's report, and I think you had
2 indicated that you had worked with Inspector
3 MacKay in the past and had a good appreciation of
4 his abilities?

5 A Yes, many times we've consulted on cases, and I
6 would say Ron MacKay is a personal friend of mine
7 as well.

8 Q And, obviously, you have some respect for his
9 abilities in this area?

10 A I have an extreme amount of respect for him and an
11 extreme amount of respect for Detective
12 Superintendent Kate Lines of the OPP.

13 Q And, looking at this report, we have two
14 individuals who appear to have put their best
15 efforts into the report, Inspector Kate Lines and
16 Inspector MacKay, and my understanding is that
17 they are both profilers; is that correct?

18 A Yes, both behavioural profilers, and members of
19 the ICIAF.

20 Q And your area of expertise, the area that you
21 pioneered is geographic profiling, although you do
22 have some experience in behavioural profiling,
23 but -- and, again, correct me if I'm wrong -- I
24 think you were magnanimous enough to say that you
25 are not an expert in that area?



1 A That's right, I do not consider myself a
2 psychological profiler, --

3 Q Okay.

4 A -- though I do consider myself as having some
5 expertise in the area.

6 Q Yes.

7 A Especially in the area of what the domain
8 knowledge consists of.

9 Q Thank you. Now at the outset it says:

10 "I have reviewed the material provided
11 in this case, exclusive of suspect
12 information ...",

13 and I think you clarified that for Ms. McLean,
14 and would the reason for not having suspect
15 information in there being that it could somehow
16 taint and influence the profile and steer a
17 person in the wrong direction if they rely on
18 that information?

19 A Well, for this particular analytic product, yes
20 that would be correct.

21 Q Now you were asked with respect to this particular
22 crime, and of course this report says:

23 "Taking all available information into
24 consideration it is probable that this
25 crime began as a purse snatching,



1 escalated to sexual assault and
2 culminated in homicide.",
3 rather. You said that you disagreed that it was
4 probably, started off as a purse snatching, but
5 was likely a sexual assault intention to begin
6 with?

7 A Yes. And let me stress that has nothing to do
8 with, that conclusion has nothing to do with being
9 a psychological or behavioural profiler, it's
10 fairly much police experience and common sense.

11 Q And if you -- and I think you did look at the
12 report, I don't know if it's necessary to put that
13 particular portion up, but the report does say:

14 "The possibility of sexual assault being
15 the initial motive, however, can not be
16 discounted?"

17 A Yes, I remember that's also said.

18 Q So clearly, although there was a concern about the
19 purse snatching with respect to the strap of the
20 purse being ripped and that perhaps would give one
21 some understanding or appreciation that it may
22 have started off as a purse snatching, clearly the
23 report throughout does not discount the
24 possibility that this was a sexual assault or
25 could have been motivated by a sexual assault as



1 the first reason for attacking?

2 A The broken purse strap is, I have to say, very,
3 very, very weak, totally overwhelmed by the other
4 evidence. But you are correct, it does not, this
5 report does not discount the possibility of the
6 crime beginning as a sexual assault, and I believe
7 actually goes on to profile it as a sexual
8 assault.

9 Q Okay. One of the points that you agreed with, you
10 went through a number of aspects of this dealing
11 with offender characteristics and traits, and you
12 agreed with a number of aspects in this, and I
13 would assume that not everything in this report
14 you disagree with, there are a number of things
15 that you agree with and you just have a difference
16 of opinion with respect to the robbery. And
17 again, probably the main point then, of course, is
18 you think that it points towards Miller being
19 murdered by Mr. Fisher and Mr. MacKay reached a
20 different conclusion?

21 A Yes. I would say that probably the -- a majority
22 of the material here I would agree with.

23 Q If we could go to page 8 of this document, please.
24 I think I'm looking for page 8, just one back.
25 And this is the first actual portion of this



1 report, 94-02-22, so this is the second part of
2 that. And if we can call up this portion here,
3 please, it indicates:

4 "The sexual assault cases were reviewed
5 independently, then collectively, and
6 then compared to the Miller murder.
7 Given the limited amount of detail
8 available in all cases under
9 consideration, it should be noted that
10 such limitations, of necessity, carry
11 with them an increased risk of error."

12 And would you agree that that's probably a
13 responsible thing to put in a report like this,
14 where you don't feel you have all of the
15 information, you are dealing with a case that's
16 now about 25 years old and the case is pretty
17 cold?

18 A Yes, it is.

19 Q And I suppose it's not surprising then, and now we
20 know with the DNA evidence, but it's not
21 surprising that opinions can differ, and
22 consequently we have two people that put their
23 mind to this report and came up with a different
24 view than yours, based on different information,
25 and applying their best evidence -- or their best



1 expertise, rather, to the evidence?

2 A So are you asking me is this their best effort?

3 Q It's --

4 A I have seen better reports from Ron.

5 Q I guess what I am asking you is that it's not
6 surprising that you could get experts coming up
7 with different opinions; correct?

8 A That's very common. And I think one of the things
9 that Ron has done is consult with Kate Lines to
10 try to find some overlap in both of their
11 opinions, which is a good methodology. There are
12 some things in here that are a little unusual, or
13 I can't explain, or I don't see the justification
14 for. But, you know, if your question is is
15 Inspector MacKay an ethical and professional and
16 accomplished investigator and profiler, my answer
17 is "yes", but I have strong disagreements in some
18 areas with him at the same time here.

19 Q And would it be fair to say that, if an expert
20 sits down or views one of your profiles or one of
21 your reports, that they may look at it and have
22 some concerns about it as well? It's fairly
23 common I would imagine, in your field, that
24 opinions differ, and if an opinion is asked -- a
25 person is asked to proffer an opinion based on



1 another opinion they may have some differences of
2 opinion about the information that you come up
3 with at the very end?

4 A Actually, in geographic profile that doesn't
5 usually happen, and the reason is that the
6 methodology is more quantitative and performed by
7 a computer, there may be some subjective elements,
8 but it's recognized by Ron MacKay, amongst others,
9 as being a more scientific process than the
10 behavioural profiling. So there is a greater --
11 I'd say the standard of deviation is greater in a
12 behavioural profile than it would be in a
13 geographic profile.

14 Q And so that's quite possible, what I put forth,
15 then?

16 A Yes, and it would not be surprising to see a
17 profiler, Ron especially, be willing to change
18 their opinion with new information. That often
19 happens. That's why, if a new crime occurs in an
20 unsolved series, a profile will often be updated
21 to adjust things.

22 Q Okay. And you indicated that Inspector Lines and
23 Inspector MacKay may have looked at information
24 that you were not aware of, and that obviously
25 could have influenced their opinion, and quite



1 often --

2 A Yes, that's true. We did talk, before, about,
3 like:

4 "I've reviewed the material provided in
5 the case ...",

6 and we don't know what that is. I just wonder if
7 they took Nichol John's observation as being part
8 of the input. I would say that would create the
9 same problem but it might explain some of the
10 conclusions.

11 Q Okay. And I think you were also generous and said
12 that profiling is lively at times and there could
13 be a difference of opinion?

14 A Yes.

15 Q Okay. I've got a couple more areas to cover with
16 you but I don't believe I'll be very long.

17 COMMISSIONER MacCALLUM: Mr. Gibson, I
18 wonder if we could take our break now, 15
19 minutes, and then --

20 MR. GIBSON: Yes. I won't be too long.

21 *(Adjourned at 2:25 p.m.)*

22 *(Reconvened at 2:42 p.m.)*

23 BY MR. GIBSON:

24 Q Dr. Rossmo, I'll switch gears here, away from your
25 expertise as a profiler, and deal with your



1 experience as a police officer. I think you
2 indicated you were with the Vancouver municipal
3 police force for 11 years?

4 A 22.

5 Q 22 years? Forgive me. When did you join? Sorry,
6 we should maybe make that clear.

7 A October 1978 I joined as a civilian working in the
8 communications section, in January 1980 I was
9 sworn in as a police constable.

10 Q Okay. So it was around 11 or 12 years on the
11 force as an active police officer that you became
12 involved in this case, then?

13 A That's correct.

14 Q Thank you. You indicated the other day when you
15 were asked, it may have been this morning, about
16 Eugene Williams' approach in his interview with
17 Ron Wilson, and I think you stated that you
18 thought his role should have been fact-finding at
19 that point?

20 A Yes I do.

21 Q And I believe you went on to state that in the
22 criminal world, witnesses are marginal, they have
23 been damaged. Here Mr. Wilson had a past that
24 involved drug use, he decided to change his
25 statement and lie at trial, and it would be easy



1 to shut him down again, to get him back to sort of
2 his trial evidence?

3 A Yes.

4 Q And is that fair comment as to what you indicated?

5 A Yes.

6 Q And would you agree, then, that an investigator's
7 role is really one of fact-finding, that is what
8 they should be doing?

9 A I would say there is different stages to the role,
10 but initially you try to collect as many of the
11 facts that you can, particularly before you start
12 forming too advanced theories.

13 Q Okay. And I think you, again if I may draw from
14 what you indicated this morning, when you are
15 dealing with some individuals that may not be the
16 most educated, vulnerable individuals in society,
17 that they can be persuaded to take certain views a
18 little bit more readily than someone that's, I
19 guess, a more confident individual?

20 A Yes, that's definitely a possibility.

21 Q So, as an investigator, that's a concern that one
22 should keep in mind; is that fair to say?

23 A Yes.

24 Q If we could have transcript 22671. Dr. Rossmo,
25 did you ever meet Paul Henderson, have you had a



1 chance to meet him in person?

2 A At least once I have.

3 Q Okay. And you obviously had some communication
4 with him during this process, when you were
5 involved in your work on this effort?

6 A Not a lot. Most of it, if -- I mean his materials
7 were provided to us. Most of our communication,
8 though, was with David Asper and Hersh Wolch.

9 Q Okay. This portion here, please.

10 A Can I ask what this document is?

11 Q Yes. Mr. Henderson testified at this Inquiry on
12 January 25th, and he was examined by Mr. Hodson
13 about some matters, and in there you can see --
14 and I'll read a portion of that:

15 "... Dennis, Albert, Ron Wilson, Nichol
16 John; would you want them to think that,
17 quite strongly, that someone else had
18 committed the crime, would that be part
19 of your plan in dealing with them?"

20 That's the question put to Mr. Henderson by Mr.
21 Hodson, and his response would be:

22 "I, I would want, I would want them to
23 subscribe to my strong suspicions, I
24 mean ultimately subscribe to my
25 suspicions that Larry Fisher was the



perpetrator of this murder."

Now, as an investigator, would you have some concerns with someone going out to see individuals and having a theory of the crime, and putting that theory to them, and forcefully wanting them to ascribe to their strong suspicions about a version of a crime rather than gathering the facts from that individual?

A Yes, I would. One of the problems with theories that is formed too early, especially if there is a high degree of buy into the theory, is that we tend to look for evidence that supports our theory and we ignore or downplay evidence that does not support our theory or supports conflicting theories. So, to the degree of it's humanly possible, you want to keep your mind open. You may be juggling multiple theories, this is very difficult to do without a concerted effort, but I think the same thing I would -- that I had just said about Eugene Williams would apply here; the appropriate approach is to see what these people have to tell you and then press them on certain points if you have issues, but you don't want to put ideas in your head, you don't want to drive them away from speaking to you.



1 Q We also heard evidence that Mr. Henderson had also
2 given evidence that introduces the idea of police
3 pressure on witnesses to give them an out, so to
4 speak, and make it easier for them to admit that
5 they lied if you blame someone else rather than
6 take responsibility for it, and I think you
7 indicated in your analysis of Ron Wilson that
8 initially he found it easier to, I guess, come
9 clean about what occurred because of having that
10 out?

11 A And I'm sorry, the question, the question is?

12 Q The question was, is that something that you see
13 as an appropriate way to question someone is to
14 give them an out that may not have occurred, give
15 them information that may never have occurred in
16 order to let them save face?

17 A It's actually a very common police interviewing
18 technique.

19 Q Uh-huh.

20 A "The victim deserved it", you know, "she" -- if --
21 I believe it's part of the standard Reid
22 interviewing technique to teach this. So it's
23 allowed by the courts, it's -- can be effective,
24 sometimes it can be problematic, but I wouldn't be
25 overly critical of it.



1 Q And --

2 A If I was we would have to throw out a lot of
3 police tactics.

4 Q No, and I appreciate that, I know that that's done
5 and I appreciate the answer. One of the things
6 that's been brought to your attention, I suppose
7 recently, is the investigation that was done by
8 the RCMP in 1993 dealing with alleged wrongdoing
9 by police putting pressure on individuals to get
10 them to adopt evidence, and I think you --

11 A Is this Flicker?

12 Q -- just became aware of it? Yes.

13 A Yes, I have been made aware of it.

14 Q And the RCMP were tasked, in 1993, with doing an
15 investigation to determine whether there had been
16 police misconduct or prosecutorial misconduct.

17 A Could I just ask you what time period that their
18 focus was on? I'm not --

19 Q Their focus was on 1969-1970, dealing with the
20 initial investigation and conviction of David
21 Milgaard, --

22 A Okay.

23 Q -- but the actual review occurred in 1993, mostly?

24 A Okay, thank you.

25 Q Now if you are tasked with that investigation



1 where you are trying to uncover if there has been
2 police misconduct do you see, from an
3 investigator's point of view, how that would
4 create difficulties in trying to get at the truth,
5 if someone is going out making assertions about
6 police misconduct when they have no, no evidence
7 of that, and people adopt what's being put to
8 them?

9 A I can see that make -- would make their life a
10 little more difficult. But, for example, we
11 interviewed Ron Wilson, he had nothing negative to
12 say about the police, and I would say that if I
13 was in Mr. Henderson's position, where I believed
14 that David Milgaard was innocent, the fact that
15 the police might be criticized would probably be
16 fairly unimportant in the bigger scheme of things,
17 if you know what I mean.

18 Q Yes. So their approach -- and, again, Mr. Asper
19 was fairly open about that and so was Mr.
20 Henderson, that they felt that they could use that
21 approach if it got to the end that they felt was
22 necessary in order to get at information that
23 would assist David Milgaard?

24 A Well, they tried to give Mr. Wilson an out, and he
25 took it.



1 I would just remind you, we
2 didn't find any evidence of police wrongdoing in
3 the initial investigation of the Miller murder
4 ourselves.

5 Q Okay. But you are aware that that was something
6 that was certainly asserted by many in the
7 Milgaard effort, that there had been that
8 wrongdoing?

9 A Well, I've been a police officer for many years,
10 and you need to have a thick skin.

11 Q Okay. If we could call up another document
12 please, it's 050396, and if you could just call
13 the first portion up so we can identify the
14 document a little more clearly. This is a letter
15 prepared by an Inspector Murray Sawatzky, who
16 headed up that Flicker investigation, the one we
17 were just talking about in 1993, and it's
18 correspondence in August of 1994 to the Office of
19 the Deputy Minister of Justice and the Deputy
20 Attorney General in Alberta, Neil McCrank, and
21 they were providing legal assistance to the RCMP
22 in that investigation. All right?

23 A Okay.

24 Q And in this letter they point out some concerns
25 regarding interviews by Paul Henderson and



1 Mrs. Milgaard, and I'm wondering if we could just
2 have a look at that together. And it says, the
3 first point is the statement of Michael and Mary
4 John to the RCMP investigators, and I don't know
5 if it will be necessary to go to the actual
6 documents but I do have those references if
7 required. Here it's Mr. Henderson was approaching
8 the Johns to try and locate Nichol John, and in
9 that subsequent interview done by the RCMP where
10 they're following up on the allegations with
11 respect to prosecutorial and police wrongdoing
12 they went out and talked to a number of people,
13 and the Johns indicated that Mr. Henderson swore
14 at Mrs. John because she wouldn't give him
15 Nichol's address, later on Henderson was nice at
16 first, became meaner and frightened Mrs. John, and
17 then later Mrs. John telephoned Kelowna RCMP
18 because she was frightened of Henderson, and then
19 Henderson made Mrs. John cry. And, again, I'm not
20 going to go to the actual document unless you
21 would like to, but were you aware of Mr. Henderson
22 approaching Nichol's parents to try and locate
23 Ms. John; were you aware of that going on at the
24 time?

25 A No.



1 Q And, as an investigator, would that, those
2 comments that were obtained from the Johns, would
3 that cause you any concern about that
4 investigator's approach with individuals?

5 A Well, one, I don't have Mr. Henderson's side to
6 this picture.

7 Q Yes.

8 A Two, it seems somewhat reflective of what people
9 said the Saskatoon Police did, and if Mr.
10 Henderson -- I can't put myself in his shoes --
11 but if he strongly believes David Milgaard is
12 innocent I don't suppose Mr. Henderson is always
13 going to play by the Marquis of Queensbury rules.

14 Q And --

15 A If you ask me if I'm shocked by this, I'm not
16 shocked.

17 Q No. And again, with respect to Mr. Henderson's
18 side of things, again you don't have that, and the
19 RCMP certainly tried to sit down with Mr.
20 Henderson and interview him but were unsuccessful
21 to try and get his side. But with respect to
22 doing an investigation --

23 A It's --

24 Q -- on police wrongdoing, would you see how that
25 that may cause some concern if that information is



1 being obtained?

2 A It creates more of a challenge, I don't think an
3 unsurmountable challenge, though.

4 Q If we can go to the next point, there's a
5 statement of Albert Cadrain that the RCMP
6 investigators obtain, and again throughout that
7 document in a number of pages Mr. Cadrain says
8 that Henderson tried to get him to change his
9 story and he gave him what he wanted to hear "just
10 to get him off my ass". Again, as an investigator
11 doing an investigation on that, would that cause
12 you some concern?

13 A I don't believe Albert Cadrain did give Mr.
14 Henderson what Mr. Henderson wanted to hear.

15 Q I think he indicated that he didn't see blood, and
16 that was a statement obtained from Mr. Cadrain,
17 and later on when the RCMP went out to speak with
18 Mr. Cadrain he indicated "eh, the only reason I
19 did that was because Henderson was pressuring me,
20 I did that just to get him off my back".

21 A I'm sorry, I never, don't recall --

22 Q No?

23 A -- Albert Cadrain, in anything I had read, saying
24 Albert Cadrain had not seen blood. I thought he
25 stuck to that story, that he had seen blood?



1 Q Okay. My apologies.

2 A Can I follow up with Dennis Cadrain?

3 COMMISSIONER MacCALLUM: Could you just
4 comment on the first part of the question then?
5 The complaint was that, by Albert, apparently
6 that Henderson tried to get him to change his
7 stories; do you see anything wrong with that, any
8 problems created with that?

9 A Well I think Albert, if Albert said -- this is
10 incorrect, to my knowledge, because I don't
11 believe Albert ever changed his story.

12 COMMISSIONER MacCALLUM: No, that's not my
13 question.

14 MR. GIBSON: No.

15 COMMISSIONER MacCALLUM: Was the effort to
16 try to get him to change his story right or wrong
17 or indifferent?

18 A Well, I don't see any problem with that, he is
19 trying to get another version.

20 COMMISSIONER MacCALLUM: Okay.

21 BY MR. GIBSON:

22 Q So, again, you won't have --

23 A It's inappropriate if he would try to get Albert
24 to lie, I mean, the goal of the interviewer here
25 is to try to get these people to tell the truth.



1 Q Okay. And again, by going out and giving the
2 person a scenario and trying to get them to change
3 their story, you don't have an issue with that,
4 then, --

5 A No.

6 Q -- as an investigator?

7 A But the devil is in the details. If he had
8 offered, you know, for example if he had offered
9 Albert money --

10 Q Yes?

11 A -- or threatened him or inducements, that would be
12 inappropriate, of course.

13 Q Do you again see from an investigator's
14 perspective later on, that you may question the
15 veracity of information obtained from someone
16 where they've indicated that they felt pressured,
17 someone was trying to get them to change their
18 story?

19 A Well, these individuals were pressured to make
20 their comments in the first place. In an ideal
21 world, they would voluntarily come forward, but
22 sometimes that doesn't happen, so no, I don't find
23 it inappropriate that Mr. Henderson put pressure
24 on these people.

25 Q Okay. And if we can go to the next point, the:



1 "Statement of Dennis Cadrain to the RCMP
2 investigators: Dennis indicates to
3 members that Henderson was "...trying to
4 really manipulate Albert..." - "...he
5 writes it in such a way that I had to
6 tell him... I didn't say this...tries to
7 put words in your mouth..."

8 Again, would that cause you some concern as an
9 investigator later on coming along as to the
10 approach that investigator is taking with
11 witnesses if he's trying to manipulate their
12 information?

13 A Investigators should not be putting words in
14 people's mouths.

15 Q Go to the next page, please, on that, number 4,
16 this is reference again in this letter to a
17 telephone conversation between Mr. Henderson and
18 Dennis Cadrain. At pages 8 and 9:

19 "- provides Dennis with misleading
20 information regarding Larry Fisher in
21 attempts to get Dennis to encourage
22 Albert to meet with Henderson."

23 And if we can go to that document, it is 050412,
24 if we can go to page 8 of that particular
25 document, please, and again I'm just going to



1 call up that portion at the bottom, and in that
2 Mr. Henderson is speaking with Dennis Cadrain and
3 he indicates:

4 "Larry Fisher is under a lot of pressure
5 to confess."

6 And I'll skip down a bit:

7 "Now, we've heard today that he's
8 confessed. That may be true or may not
9 be true --"

10 Go to the next page, and again, do you have any
11 concern about that, saying that Larry Fisher may
12 have confessed or putting Larry Fisher's name out
13 there? Again, is that something that you would
14 think would be appropriate when you go out to
15 talk to someone?

16 A I'm not sure it's something that I would do, that
17 it's ideal, but it's done all the time by the
18 police, your cell mate has confessed, why don't
19 you talk, otherwise you'll be the one hung out to
20 dry, you know, it's done very often, so it is
21 pretty hard to criticize Mr. Henderson for
22 employing standard police interviewing techniques.

23 Q And if we can just go to this portion at the
24 bottom here and it says -- right here:

25 "Right. But he's going to, we think,



1 down the line, ah', because the R.C.M.P.
2 is convinced that he's the person. Now,
3 when he does, what that means is, that
4 all the witnesses against David Milgaard
5 suddenly become liars. Now here is
6 Albert's chance to beat them to the
7 punch."

8 "Yeah."

9 And the next line is:

10 "Come forth and say, the bastards made
11 me do to. And I feel badly about it and
12 I want to clear my conscience and help
13 this guy that I've been worried about,
14 heartsick about all these years. He was
15 my pal, the pricks made me do it."

16 Again, do you have a concern about that approach
17 and how a person may then adopt that police
18 pressured them?

19 A In the overall circumstances, no.

20 Q And even in a situation if someone has, as you
21 said earlier, is perhaps a somewhat vulnerable
22 individual, do you have a concern about that kind
23 of questioning being put to them in that they may
24 be more prone to adopt that kind of information?

25 A Well, I think it's important to see here what is



1 the purpose of this. If this is a statement
2 that's going to end up in court, obviously all
3 these comments, these -- I'm trying to think --
4 manipulations by Mr. Henderson can be examined and
5 debated. At least we have a transcript of this
6 interview, unfortunately we don't have a
7 transcript of other key interviews here. I just
8 come back again, this is done all the time by
9 police investigators. I do not fault Mr.
10 Henderson for doing this.

11 Q And obviously --

12 COMMISSIONER MacCALLUM: Are you telling me
13 that the police lie all the time and then -- how
14 am I supposed to know when they stop lying and
15 they start telling the truth?

16 A Police often lie in interviews of offenders, they
17 will arrest two people, say to John, Fred has
18 confessed, it's up to you; say to Fred, John's
19 confessed. There's a pretty substantial body of
20 case law on what police can do and cannot do in
21 interviews.

22 BY MR. GIBSON:

23 Q And again with respect to putting that out to a
24 vulnerable individual, do you have a concern how
25 that can lead to inaccurate information



1 developing, that if a person has had that visited
2 upon them, that they may adopt that, it gives them
3 an out and it simply isn't true, you've obtained
4 wrong or false information?

5 A Yes, it can be problematic. Often it seems to
6 come, to be a major issue in the whole arena of
7 false confessions, that some of these techniques
8 have, with vulnerable individuals, seem to lead to
9 false confessions. I'm not saying whether they
10 are right or wrong, I'm saying what is allowed
11 under law and what is fairly common investigative
12 practice.

13 Q Go back to the document 050396 and go to the
14 second page of that document, 97, that portion
15 there. Again, this is a concern about a taped
16 meeting between Linda Fisher, Mr. Henderson and
17 Joyce Milgaard, and that meeting was taped and I'm
18 going to go to that document itself, it's document
19 265185, if we can go to 265216 of that document.
20 I think I need page 34, if we can go back a couple
21 of pages on that. I'm not sure this is exactly
22 corresponding with what I have here. It's not the
23 same. Go to the previous page on that, 33, sorry,
24 and prior to that, 32. I can't find it. I'll
25 have to leave --



1 MR. HODSON: The doc. ID of the page?

2 MR. GIBSON: I've got a different version
3 of that doc. The actual document ID that I have,
4 the page number is 301889. If you can find that
5 document, I know that's partway in. I thought I
6 had given you the right numbers.

7 A There was something on the bottom of that last
8 page.

9 BY MR. GIBSON:

10 Q That's good, thank you. Just the portion at the
11 top there, and again this is Mr. Henderson
12 speaking with Linda Fisher and they are talking
13 about the knife, the murder weapon, and it says,
14 'Why don't you draw the knife for us here as you
15 recall it. To scale...' and then Mrs. Milgaard
16 just on the way down here indicates, 'Do you have
17 a ... do you have a paring knife in the kitchen?'
18 And go to the bottom of that page, and here Ms.
19 Fisher indicates, 'It doesn't have the fancy
20 wooden handle like...it --' if we can go to the
21 next page, 'It would be sort of brown --' sorry,
22 and this is Mrs. Milgaard says, 'It would be sort
23 of a brown, sort of like a maroon colour,' and
24 then we can go a ways down here, Ms. Fisher
25 indicates, 'The old butcher knives, the old, ah,



1 wooden butcher knives that had the handle... kind
2 of handle.' Underneath that Mr. Henderson says,
3 'Did it have those things?' 'Yeah, yeah.
4 Rivets.' 'I forgot to put those rivets on.' And
5 then a ways down Mr. Henderson indicates, 'That
6 paring knife that you would use for peeling
7 potatoes, or something like that.'

8 Now, subsequent to that Linda
9 Fisher adopts the version of the knife being a
10 paring knife with a maroon colour, a
11 maroon-handled colour. Do you as a police officer
12 have any concern if someone goes out to question a
13 witness about a particular event and raises some
14 points along the line like this where they give
15 the colour of the handle of the knife and also the
16 type of knife to that individual? Would you have
17 a concern as an investigator if that type of
18 information is given to a witness as you are
19 trying to get from them a description of the
20 knife?

21 A I'm really not sure I understand what's going on
22 here, but generally you do not want to be
23 suggestive, you want to let the witness provide in
24 their own words what happened. If you have
25 questions, you want to be as general as possible,



1 so you would say what colour was it versus saying
2 was it purple, so deviations from that are not
3 good if you want to get the most untainted version
4 of events.

5 Q So clearly it's not advisable when you have
6 specific detail on the colour of something to give
7 that individual the colour?

8 A No, you do not want to be suggestive.

9 COMMISSIONER MacCALLUM: I'm sorry, sir,
10 but I thought you just described to me the
11 standard police practice about being suggestive
12 with witnesses, saying that somebody said
13 something which wasn't true in an effort to get
14 this person to say the same thing.

15 A Well, one is --

16 COMMISSIONER MacCALLUM: You say you didn't
17 blame Henderson for doing that because the police
18 did it. Now are you saying that it's not proper
19 to suggest a description of an article to a
20 witness when you want them to describe it?

21 A Well, I guess it would depend on the problem -- if
22 the problem is -- if you are trying to get someone
23 who is voluntarily co-operating with you and you
24 are trying to get them to recall in an untainted
25 fashion what they have in their memory, then you



1 don't want to be suggestive. If your issue is
2 trying to gain that co-operation from a witness
3 who is perhaps a co-confederate in the crime, then
4 other tactics are often employed. Did I explain
5 that clearly, Mr. Commissioner?

6 COMMISSIONER MacCALLUM: That's fine, thank
7 you.

8 BY MR. GIBSON:

9 Q If we can go back to the letter document, 050397
10 is the second page of that document at 396 is the
11 document, 050397 is the page number, and again one
12 of the other concerns that was raised in this
13 correspondence deals with a meeting between Linda
14 Fisher, Paul Henderson, Mrs. Milgaard and Cliff
15 Pambrun who is Linda's uncle, and I'm not sure if
16 you know who Clifford Pambrun is?

17 A No, I don't know.

18 Q You've never heard that name before? And again,
19 if we can go to document 301891, and here there's
20 some discussion about the possibility of Mr.
21 Fisher having borrowed Cliff Pambrun's vehicle and
22 I'm just going to read a portion or two of that,
23 just at the top there, this is Mr. Henderson
24 speaking with Mr. Pambrun, he indicates: 'What
25 I'm thinking is, he might have taken the car out



1 that night --' and he being Larry Fisher,
2 "...borrowed the car from you that night. The car
3 was seen....' Linda Fisher, 'No. Never overnight.
4 I don't think he ever borrowed the car...' next
5 question, or sorry, Cliff Pambrun then indicates,
6 'I don't think he ever borrowed my car, my
7 vehicle, overnight. I don't think he ever did.'

8 If we scroll a ways down there,
9 'How about this scenario? You ah...you and Larry
10 are out drinking one night and...he takes you home
11 and he says let me run the car on home and I'll
12 pick up....' Cliff Pambrun indicates, 'No I don't
13 ever remember that.'

14 If we can go down towards the
15 bottom of that page, Linda Fisher indicates, 'I
16 don't think....I don't think Larry ever borrowed
17 your car overnight.' 'I don't think he ever ever
18 borrowed my vehicle overnight really,' says Mr.
19 Pambrun. Mrs. Milgaard then indicates, 'No I, but
20 the thing is I thought maybe if you'd been out
21 drinking and you had a little too much or
22 something, you could have been out somewhere, you
23 know and he left in your car when you're at
24 somebody's place, or something like that. See why
25 I'm, we're asking you these questions.'



1 Go to the next page and Mr.
2 Pambrun answers, 'He could have taken it while I
3 was in the bar even, you know. What I mean, like,
4 ah, he couldn't get in the bar too because he was
5 too young and maybe he just said well I'll take
6 your car and I'll pick you up when the bar closes
7 or to pick me up or something. That was 3:30 or
8 4:00.'

9 And again, do you have any
10 concern in an investigator going out and
11 repeatedly suggesting to an individual that this
12 individual here, Larry Fisher, borrowed your car
13 and the person who you are asking that question of
14 denies that about three or four times and then
15 eventually after a series of scenarios being put
16 to him again and again, he agrees that it's
17 possible for a period of time? Do you have any
18 concern about repeated suggestions being put to an
19 individual in such a situation here?

20 A Well, he's probing here and the fact that it comes
21 up later rather than sooner does call into
22 question its, the reliability of the information.

23 Q So in that type of a situation where there's that
24 type of questioning, as an investigator would you
25 start to question sort of the veracity of what



1 information is uncovered then?

2 A I consider it less reliable than information that
3 came at the beginning.

4 Mr. Commissioner, I just thought
5 of maybe a more direct way of explaining what I
6 was trying to say before.

7 COMMISSIONER MacCALLUM: Okay.

8 A The tactics for dealing with a witness who you are
9 trying to get to remember something are different
10 than the tactics in dealing with a witness that
11 you believe is lying.

12 COMMISSIONER MacCALLUM: So it's all right
13 to lie to a witness to get him to agree to your
14 perception of what is true, but it's not all
15 right to lie to a witness when all you want is
16 the unvarnished truth from somebody you perceive
17 to be independent; is that right?

18 A Well, whether it's right or not isn't, you know,
19 my decision.

20 COMMISSIONER MacCALLUM: That's what
21 happens?

22 A I'm just going by the relevant case law that I'm
23 aware of regarding police interviewing techniques,
24 but as I said, as well some of these techniques
25 have led to false confessions, so on a



1 psychological basis, not a legal basis, on a
2 psychological basis there are some problems
3 associated with them.

4 COMMISSIONER MacCALLUM: All right, thank
5 you.

6 A Okay.

7 BY MR. GIBSON:

8 Q If I could call up document 337359, please, this
9 is a tape recording of a conversation between Mr.
10 Asper and Mrs. Milgaard and they are discussing
11 the involvement of Paul Henderson and Centurion
12 Ministries and the possible outcome of an
13 interview with Albert Cadrain, and if we can just
14 go to the next page on that, 337360, call up that
15 first portion there, and I'll read some excerpts
16 from this transcript, again it's a discussion in
17 about May of 1990, Mr. Henderson is going to be
18 going out to do some interviews. Mr. Asper
19 indicates:

20 "... in my view it would be great, and I
21 don't know how open he is to this, but
22 it would be a very positive starting
23 point for them to have a chat with
24 Cadrain and get a statement from Cadrain
25 to the ex -- sort of saying, I mean I



1 was talking to Hersh about this, and,
2 you know, I mean it would be just
3 wonderful if we could get a statement
4 from Cadrain saying, "yeah, I knew it
5 was Fisher, lived in the basement, umm,
6 you know, I didn't want to say anything
7 about it because I figured he'd kill
8 me," you know, something like that, and
9 then "I saw Fisher come home with blood
10 on him".

11 Mrs. Milgaard responds:

12 "Oh yeah."

13 Mr. Asper:

14 "You know, something like that."

15 Mrs. Milgaard indicates:

16 "Well that would be nice."

17 Mr. Asper then says:

18 "And then, "and that, you know, when the
19 cops came and asked me about Milgaard,
20 you know, it was easy for me to get off
21 the hook with Fisher by just pointing at
22 Milgaard".

23 If we go down a ways, Mr. Asper's comment where
24 he says I mean -- sorry, just above that, he
25 states:



1 "-- I mean you can even lead him to
2 believe that, even if he's lying, you
3 know, you can, you can have a chat with
4 him to plant the story in his mind, you
5 know, to give him an easy out from the
6 questioning with McCloskey and, you
7 know, I'm gonna say that to Jim."

8 A I'm sorry, who is McCloskey and who is Jim?

9 Q Jim McCloskey is part of Centurion Ministries.

10 A Okay, thank you.

11 Q And again, do you see that as appropriate for an
12 investigator, to go out and interview individuals
13 and try to plant possible scenarios when they go
14 to see a witness even if it's a lie as indicated
15 there?

16 A That's problematic, yes. It's not appropriate.

17 MR. GIBSON: Thank you very much, Dr.
18 Rossmo.

19 **BY MR. ELSON:**

20 Q Mr. Commissioner, I don't think I'm going to be
21 very long. Dr. Rossmo, my name is Richard Elson
22 and I'm one of the counsel for the Saskatoon
23 Police Service.

24 It's probably risky to go over
25 tilled ground, but I wanted just to pursue a



1 little bit the questioning that Mr. Gibson was
2 asking of you with respect to Mr. Henderson's
3 questions and standard police practices.

4 It's my understanding that the
5 manner in which one is investigated, and I think
6 you alluded to it earlier, that the manner in
7 which a police officer may be questioning somebody
8 who is believed to be a suspect as opposed to
9 someone who is not a suspect but may indeed have
10 valuable information, that the manner in which
11 suggestions would be put to those respective
12 witnesses would be different in the course of a
13 police interrogation. Would that be a fair
14 comment?

15 A Yes, but I would also say that people that may not
16 be the criminal offender but are unco-operative
17 with the police who are lying to the police will
18 be treated differently as well.

19 Q All right. And that is if it is believed that the
20 person is lying to the police?

21 A Yes.

22 Q In an instance where the police officer believes
23 that this person, not a suspect, is lying to that
24 police officer, it may be appropriate to put a
25 suggestion to the witness which the police officer



1 does not know to be true, or perhaps even knows to
2 be false, simply for the purposes of testing this
3 witness and testing this witness' story, and to
4 follow my logic further, that if the witness
5 sticks to his guns and sticks to his story in the
6 face of these suggestions, that witness would then
7 appear to be all that much more credible?

8 A Yes, that -- I would agree with that.

9 Q Hence, when we heard Mr. Boyd testify yesterday,
10 he talked about the fact that it was not
11 inappropriate for questioning of witnesses such as
12 Ron Wilson or Nichol John to be, and I'll use his
13 word, persistent?

14 A I would say that if the police are investigating a
15 sexual homicide and they are not persistent, we
16 would be very critical of them, so most
17 definitely.

18 Q Now, with respect to the nature of the
19 questioning, and you've already dealt with it, and
20 again I'm perhaps going over tilled ground and
21 forgive me if I'm doing that, but with respect to
22 the questioning of Ron Wilson, there's a
23 conclusion I've drawn from your testimony, and I
24 would like to ask you whether or not my conclusion
25 is correct, but the conclusion I've drawn from



1 your testimony in describing Mr. Wilson's
2 interaction with you is that the reason for the
3 difference between his evidence or his answers to
4 Mr. Henderson and the answers he gave to you and
5 Mr. Boyd is that when he answered Mr. Henderson's
6 question and admitted for the first time that he
7 lied, he had to give an explanation for his lie
8 and he was faced with two possible explanations;
9 one, he was weak and frail and irresponsible, or
10 secondly, that the police made him do it. Those
11 are the two explanations and he chose the latter
12 of those two explanations?

13 A Correct, though I would like to stress that part
14 of that explanation may be the larger part of it,
15 is to himself.

16 Q And afterwards when he had an opportunity to think
17 about it and perhaps accept responsibility for his
18 own conduct, he did not blame the police when it
19 came time to the interview with you and Mr. Boyd?

20 A Correct.

21 Q Hence, your conclusion that the information he
22 gave to you and Mr. Boyd was more believable than
23 the story he gave to Mr. Henderson?

24 A Yes. The story he gave us painted himself in the
25 worst possible light.



1 Q And that would appear to be an acceptance by
2 Mr. Wilson of his own circumstance and his own
3 irresponsibility?

4 A Yes.

5 Q If we were to contrast that to his testimony here
6 before the Commission, with all of the intendant
7 publicity before this Commission, would you agree
8 with me that it might be more difficult for him to
9 admit his irresponsibility in public glare to the
10 same extent that he would admit that
11 irresponsibility in his interview with you and
12 Mr. Boyd?

13 A I don't know what he said to this Commission, but
14 I would say as a general rule we probably would
15 all have that same difficulty.

16 Q I appreciate that. Now, I don't recall whether we
17 heard it specifically from you, but we did hear it
18 from Mr. Boyd, and that is that Mr. Boyd, in
19 answering Commission Counsel's questions, said
20 that he did not see evidence of a botched
21 investigation or a framing of Mr. Milgaard in the
22 course of the investigation done in 1969. I
23 believe you would have been present when Mr. Boyd
24 testified to that effect yesterday?

25 A Yes, I was, and I agree with that and that's what



1 we wrote in our report.

2 Q You just answered my very next question. When you
3 say you don't see any evidence of any conspiracy,
4 that was based on the information provided to you
5 and that would essentially be information provided
6 to you through the offices of Mr. Wolch and Mr.
7 Asper; is that correct?

8 A Correct, plus what we found ourselves.

9 Q I appreciate that. And when you say that, you
10 didn't see any evidence of any framing of Mr.
11 Milgaard, in part I take it that you are also
12 referring to the conclusion that you and Mr. Boyd
13 drew from the interview you had with Mr. Wilson;
14 namely, that he was not pressed by the police to
15 give the story he did?

16 A Well, the police might have pressed him, but it
17 wasn't inappropriate, he didn't feel in the
18 statement to us that he was treated poorly or
19 badly or maltreated. Yes.

20 Q Thank you for that qualification, because my
21 question was unfair in that respect. So it was
22 not as a result of any inappropriate
23 persistence --

24 A Correct.

25 Q -- on the part of the police. With respect to



1 Nichol John, you did not have the opportunity to
2 interview her because she was not co-operative.
3 What information did you have -- you had the
4 transcript obviously of the trial. What
5 information did you have with respect to Nichol
6 John which allowed you and Mr. Boyd to conclude
7 that this was not a botched investigation and that
8 Mr. Milgaard was not framed?

9 A Mr. Commissioner, may I refer to some notes I made
10 here?

11 COMMISSIONER MacCALLUM: Oh, yes.

12 A Thank you. We had notes re Nichol John's
13 examination-in-chief at trial and notes re Nichol
14 John's witness statements and I believe that is
15 all.

16 BY MR. ELSON:

17 Q Now, you are aware that the statement she gave --

18 A I'm sorry, I show another Nichol John witness
19 statement. Sorry, I have notes -- yeah, I'm
20 sorry, Nichol John's witness statements and Nichol
21 John's testimony at trial.

22 Q Right. And in the testimony at trial, and
23 certainly the matter that was indeed the subject
24 of the appeal before the Saskatchewan Court of
25 Appeal, related to the statement Nichol John gave



1 in May of 1969 and in effect that statement was
2 read in court to the jury. You are aware of that?

3 A Yes, I am.

4 Q In the course of the review, did you have any
5 sense as to whether or not Nichol John had been
6 fed the information which was contained in the
7 statement that was read out in court in the trial
8 in 1970?

9 A I have an opinion on that.

10 Q And what is your opinion?

11 A That it was not, her statement was inconsistent
12 with certain physical facts, so it would be, if
13 you wanted to feed her a statement, that wouldn't
14 be the one to feed her, so I don't believe that
15 happened.

16 Q Just on that point, after your report was prepared
17 in October of 1991, did you have occasion to
18 review -- I'm sorry, I have a tendency to
19 sometimes ask convoluted questions, I should break
20 this up. After October of 1991 you were aware
21 that this matter was heard on reference to the
22 Supreme Court of Canada. Did you have occasion to
23 review the transcript of the evidence presented
24 before the Supreme Court of Canada?

25 A No, I did not.



1 Q So specifically you did not have an opportunity to
2 read the evidence given by Mr. Justice Tallis as
3 he then was?

4 A No, I did not.

5 Q You are aware from the statement given by Nichol
6 John, and we can produce that statement if it's
7 necessary, but you are aware that in the statement
8 Nichol John gave in May of 1969, she made
9 reference to Mr. Milgaard having thrown a compact
10 out the window of the car on the road between
11 Saskatoon and Calgary. Are you aware of that?

12 A Yes, I am.

13 Q So you recall that?

14 A Yes.

15 Q I wonder, Mr. Commissioner, if I could have, I
16 believe it is the transcript of the evidence
17 before the Supreme Court of Canada and it is
18 document number 014865, specifically page 901. We
19 begin at the bottom of the page, the question is
20 asked, "The next specific incident I would
21 like --" and this is a questioning of Mr. Justice
22 Tallis as he then was before the Supreme Court of
23 Canada.

24 "Q The next specific incident I would like
25 to ask you about is the trip from



1 Saskatoon to Calgary. You may recall
2 that there was some evidence with
3 respect to something being thrown out of
4 the car, a make-up compact, or a make-up
5 bag, or make-up purse.

6 Do you recall what David
7 Milgaard told you about that incident?
8 I believe both Nichol John and Ron
9 Wilson attested to that at trial."

10 And the answer Mr. Justice Tallis gave was:

11 "A I recall asking about that. During the
12 course of one of our discussions he
13 confirmed that he had thrown out a
14 compact. The general area, I think it
15 was on the trip to Rosetown. I think
16 there was a reference to Rosetown, or
17 something like that. I am not saying
18 that he used the term "Rosetown".

19 I asked about that in a fair
20 amount of detail. I certainly asked
21 where it came from. He said: "I don't
22 know. It was just there." I asked:
23 "Why did you throw it out" or, "Why did
24 you do that?" And he said, "Well, I
25 don't know. I just threw it out. That



1 is all there was to it."

2 He certainly denied that it had
3 anything to do with the victim because,
4 of course, he said that he had had
5 nothing whatsoever to do with her, that
6 there would be no involvement in that,
7 and that nobody else in the car had
8 either."

9 Considering the fact that this is in Nichol
10 John's statement, and the first time that she
11 gave the statement about the compact was in May
12 of 1969 and that there was no reference to it in
13 any of her earlier statements, you would agree
14 with me that this reinforces the conclusion that
15 you came to earlier, namely that Nichol John's
16 story was not a story that was fed to her?

17 A Again, I have no reason to believe that it was fed
18 to her, and I have some reason to believe it was
19 not fed. It never even entered my mind that it
20 would be a story that was fed to her.

21 Q I also wanted to ask a question, and I have to say
22 your evidence with respect to geographic criminal
23 profiling is very impressive to me, and I have to
24 say I am very impressed by it and I am
25 particularly impressed with your references to the



1 literature and your understanding of that
2 particular subject. Having said that, it would be
3 fair to say that geographic criminal profiling,
4 while there may have been some profiling that
5 existed in 1969 geographic criminal profiling of
6 the kind you have described in your evidence for
7 the last day and a half did not exist in 1969 in
8 the operation of most metropolitan police
9 services?

10 A Correct, but it was common-sensical to look at
11 where everyone was and if these motions, movements
12 were possible in the time frames, and I believe
13 now I've been informed that that was actually a
14 conclusion that Mr. Tallis had come to on his own
15 at that time.

16 Q And you've already indicated in answering both
17 counsel, Commission Counsel's questions and
18 Mr. Gibson's questions, that this is simply an
19 investigative tool, it is not in and of itself
20 proof, in other words it would be inappropriate to
21 get a conviction simply based on profiling absent
22 any physical evidence?

23 A Absolutely.

24 Q If one were -- and I didn't -- it's always a
25 danger in cross-examination asking open-ended



1 questions but I can't resist -- if one were to
2 look at profiling and a police officer were to
3 conduct a profile based on known physical
4 evidence, known evidence of the victim but not
5 knowing specifically the identity of the offender
6 but knowing something, perhaps, of the
7 characteristics of the offender in the course of
8 profiling, what is the difference between -- and
9 then coming to a conclusion as a result of the
10 profiling, what is the difference between a
11 conclusion as a result of profiling and something
12 that we've heard a lot of in this Inquiry, and
13 that is tunnel vision?

14 A Profiling is a -- that's a good question.
15 Profiling is an information management tool, so if
16 we have a major crime investigation police will
17 have a number of suspects that come to their
18 attention, that could be hundreds, that could be
19 thousands, that could be tens of thousands. Just
20 as an example, in the *Paul Bernardo* case in nine
21 months that task force generated 3200 suspects,
22 had 31,000 tips. So the role of profile is like
23 where do we start in our search for a needle for a
24 haystack. It's, "all right, this person is more
25 likely to be looked at than this person, so we'll



1 look at him first".

2 But to solve a crime you need
3 one of three things; you need physical evidence,
4 you need a confession, or you need an eyewitness.
5 Those are the things that are going to allow you
6 to bring the case to Court.

7 Tunnel vision is where you start
8 eliminating options by focusing only on what is
9 your particular theory or viewpoint. There's
10 nothing wrong with prioritisation, it's a means of
11 increasing your efficiency and effectiveness, but
12 -- and this is very standard in a profiling
13 report is you never eliminate a suspect from a
14 profile.

15 If you were to ask me the most
16 probable number to roll if I shook two dice I
17 would say 7, and then you go and you roll a 12,
18 well I was just giving you the most probable
19 starting point that, if you were betting over a
20 course of time, would maximize your odds, it
21 doesn't mean that 12 or 2 are impossible numbers
22 to come up. So there is a considerable
23 difference.

24 Q Like card-counting in blackjack?

25 A They don't like that in Las Vegas.



1 Q What -- how then, from your expertise how does a
2 police service or how do investigators
3 investigating a crime where a suspect suddenly
4 comes to their attention, how do they avoid the
5 danger of tunnel vision? This has been the
6 subject of discussion not only before this Inquiry
7 but before other commissions of inquiry, as I'm
8 sure you are aware.

9 A You may or may not know, I have written an article
10 on this topic that's called *Criminal Investigative*
11 *Failures*, a 'criminal investigative failure' I've
12 defined as an unsolved case like the JonBenet
13 Ramsay murder, an unsuccessful prosecution that
14 should have been successful like O.J. Simpson, or
15 a wrongful conviction such as in the *David*
16 *Milgaard* case, and I try to focus on what are
17 called 'subtle hazards', traps that the best
18 investigators can fall into even when they're
19 well-intentioned, properly trained, etcetera.

20 There seems -- I mean the *David*
21 *Milgaard* case was a very important experience in
22 terms of my knowledge, but it's not been the only
23 one. I'll point to the problems with the missing
24 women investigation in Vancouver, the focus on the
25 white van in the D.C. sniper case, I could give



1 you a long list of other criminal investigations
2 where similar types of problems with tunnel vision
3 or other errors have happened, and there are three
4 errors; errors in understanding probability,
5 errors in or associated to organizational
6 processes like group think; and errors in
7 cognitive biases, of which tunnel vision is just
8 one of many.

9 And that article presents some
10 recommendations, the article will be published in
11 the FBI Law Enforcement Bulletin in two parts this
12 fall, and I am actually trying to write a book on
13 it because it is such a very common problem.

14 There are ways to do it that
15 require some organizational systems to be put into
16 place, such as peer review, having strong
17 managerial control so that people don't come to
18 conclusions too soon, to delineate assumptions, to
19 have a very careful track record, there is -- I
20 believe that document has now been posted on --

21 MR. HARDY: It is a part of our database
22 now.

23 A Okay. And so there's about -- several, I just am
24 loath to kind of go through them all by memory
25 because there are several of them, but by no means



1 is this an uncommon problem and it is certainly a
2 challenging problem.

3 Q But I understand from your answer, and correct me
4 if I'm wrong, that the presence of tunnel vision,
5 assuming it is present in a given case, does not
6 suggest an absence of good faith?

7 A Oh, absolutely not, in fact even when people know
8 of the risks they still fall into those traps.
9 It's just part of how the brain functions.

10 Our brains take lots of
11 shortcuts and not all, those shortcuts are not
12 always -- the reason those shortcuts exist is
13 actually they promote our survival, but they may
14 not lead you to the truth.

15 Q Are you aware of a system of peer review that
16 deals with exactly what you have described,
17 because you indicated that peer review may be one
18 of the processes whereby one can avoid tunnel
19 vision in the course of an investigation, and
20 interestingly enough I believe we heard Detective
21 Karst talk about a fresh set of eyes, he mentioned
22 before this Commission of Inquiry that a fresh set
23 of eyes might have assisted at a certain point in
24 the investigation, and that sounds very similar to
25 me, like the kind of peer review that you are



1 talking about. Are you aware of a police system
2 existing in North America in which that type of
3 peer review is done?

4 A I'm not so sure about North America. I do know,
5 though, in the United Kingdom it is standard
6 practice, through the Association of Chiefs of
7 Police Officers, that if a homicide is unsolved
8 after a year, it goes to an investigator from a
9 completely different agency, and they review the
10 case.

11 Q What about in cases where there is a suspect and,
12 just before charges are laid, the matter is peer
13 reviewed?

14 A I don't believe so, not unless there is some, that
15 some problem becomes identified. Umm, I can think
16 of a famous case where a problem was identified at
17 the voir dire, the evidence was so bad that the
18 judge threw the case out at voir dire, and that
19 case was in -- reviewed by people from outside
20 the -- Scotland Yard because of some errors that
21 had been made.

22 Q In your report -- and we don't need, I don't
23 think, to --

24 COMMISSIONER MacCALLUM: Excuse me, Mr.
25 Elson?



1 MR. ELSON: I'm sorry.

2 COMMISSIONER MacCALLUM: I want to make
3 sure I understand. Well peer review in unsolved
4 crimes is surely not the problem that we seek to
5 address in peer review to determine whether or
6 not there's tunnel vision, because that's the
7 problem here, they too quickly "solved the
8 crime", in quotes?

9 A And I'm sorry, I'm not aware of a mechanism that
10 involves peer review, a mechanism that exists that
11 involves peer review at the stage that it would
12 deal with the type of problem that occurred with
13 David Milgaard, which is not to say one could not
14 be put into place. And perhaps prosecutors, you
15 know, play somewhat of that role.

16 COMMISSIONER MacCALLUM: Well you mentioned
17 strong managerial control, which is probably the
18 same thing?

19 A Actually, yeah, I believe that is a very realistic
20 solution that could be put into place, I'm just
21 not aware of it having been formalised as a
22 structure in a North American police agency.

23 COMMISSIONER MacCALLUM: Well is it not the
24 case sir, though, that before serious charges are
25 laid in any police force as a result of



1 investigations, the primary investigator is going
2 to make the decision to lay the charge, --

3 A Yes.

4 COMMISSIONER MacCALLUM: -- surely their
5 officers, supervisors, have input into whether
6 charges should be laid, how strong the case is?

7 A In an ideal world, but I suspect that it doesn't
8 happen as often as we would like it to, partly
9 because managers may only know a small piece of
10 that puzzle.

11 COMMISSIONER MacCALLUM: Hmm. Okay, Mr.
12 Elson.

13 BY MR. ELSON:

14 Q Thank you, Mr. Commissioner. In your report, I
15 believe this is at page 34 of the report -- I
16 don't need to bring it up -- there's one question,
17 and there is a list of the persistent questions
18 that you and Mr. Boyd identified, and one of them
19 was, and I quote:

20 "Was the possibility of a mistake in the
21 Gail Miller murder recognized after

22 Fisher's arrest in Winnipeg in 1970?"

23 And one could ask the question, also, whether or
24 not the possibility also occurred after Linda
25 Fisher came to the police department in 1980 and



1 gave the statement she did to then, I believe,
2 Corporal Wagner.

3 You, and I want to draw upon
4 your experience as a member of the Vancouver
5 Police Service, assuming that you were at work
6 one night and fresh evidence is brought to you
7 about a case that is closed, about a case where
8 there is a conviction, and the evidence suggests
9 that maybe this conviction ought to be reviewed
10 and ought to be reconsidered, are you aware,
11 during the period of time that you were working
12 with the Vancouver Police Service, whether or not
13 there was any formal policy which gave any
14 guidance to police officers on how to deal with
15 that eventuality?

16 A Well if someone came to me the procedure would be
17 to interview the person, write up a report, and
18 submit it to the appropriate investigative body,
19 so let's say major crime, and then at that point
20 it would be -- a copy would be sent to the
21 inspector of major crime, maybe the sergeants, and
22 then the lead investigator.

23 But if there, if you are asking
24 if there was like an actual mechanism for going
25 beyond just reading that report, I suspect there



1 probably wasn't.

2 Q And you would agree with me that at that --

3 A Do you know the term "falling between the cracks"?

4 Q I'm sorry?

5 A Do you know the term "falling between the cracks"?

6 Q All too well.

7 A We, actually Professor Boyd and I, were talking
8 about this last night, and that is a definite
9 possible scenario, and -- to explain certain
10 things. Umm --

11 Q You would agree with me that the conventional
12 wisdom among police forces, and Saskatoon would
13 not be exclusive in this respect, but the general
14 conventional wisdom is that when a file is closed
15 and the judicial process has dealt with a case to
16 the point of conviction, that file is closed. You
17 might collect information that you receive
18 afterwards, but there is really no methodology for
19 how a police officer or how a police service ought
20 to deal with that information or where that
21 information ought to be sent to?

22 A I would argue that there should be such policies,
23 but if you were to tell me no police force in
24 Canada has such a policy, I would not be
25 surprised.



1 Q And so when we're talking about that there ought
2 to be something -- and I don't think we
3 disagree -- you can have some empathy for a police
4 service that receives this information out of the
5 blue with respect to a closed file, or receives
6 whatever information whether out of the blue or
7 not, and hasn't the faintest idea what it should
8 do with it?

9 A Well I would say the locus responsibility lies
10 with the manager in charge of the investigative
11 unit, and whether there is a policy there or not
12 they have a public duty to make sure it's properly
13 evaluated, if there is a bureaucratic mechanism in
14 place to make it happen it will just be so much
15 easier and more likely to occur though.

16 Q Now, changing gears a second, you made a comment
17 this morning, and I don't know whether it was
18 intended as a throw-away comment, but you made
19 reference to the information you would receive
20 from the man from Manchester, and I don't know
21 that you specifically described that person by
22 name?

23 A I don't know his name.

24 Q And my understanding of what that person said to
25 you is that the state of the knowledge of



1 serology, and the serology evidence in 1969, would
2 have been sufficient to exculpate David Milgaard
3 in 1969-1970, but my understanding of your
4 evidence in answering Mr. Hardy's question was
5 that you didn't ask for an explanation as to why
6 the man from Manchester came to that particular
7 conclusion?

8 A I might have asked him but he was -- he didn't
9 elaborate. I can remember it almost word for
10 word, it stands out very clearly in my mind, and I
11 think he made some reference to "it will come out
12 later".

13 Q Having regard -- and I appreciate that you are not
14 an expert in the science, nor am I -- but having
15 regard to what we know of the science do you
16 believe that conclusion?

17 A Well, I have a great amount of respect for the
18 British forensic science service, so yes I do.

19 Q Would you agree with me, though, that, based on
20 the knowledge of the case from your own
21 investigation and from whatever, basically
22 whatever material might be available, the only way
23 that that conclusion would stand any basis in fact
24 is if David Milgaard were a non-secretor of A
25 antigens?



1 A Well, and again as you say, I'm not a serologist
2 or a forensic scientist. I do know that there are
3 many other types of blood groupings than the
4 standard ABO and it is possible, if you had blood,
5 to eliminate somebody by one of those other
6 mechanisms. All that requires is a non-match on
7 one of them to eliminate an individual. What I am
8 -- I do not know, is what, if any, of those other
9 indicators may be present in bodily fluids other
10 than blood. But that is a, I'm just saying that
11 is a possibility.

12 Q We have had the evidence of Dr. Emson -- and I'm
13 not just talking before this Commission of Inquiry
14 but generally -- the evidence of Dr. Emson, the
15 evidence of Dr. Ferris, the evidence of Dr.
16 Markesteyn. None of those distinguished experts
17 have arrived at anything close to the conclusion,
18 as I understand their evidence, that the man from
19 Manchester gave to you on the occasion of your
20 interaction with him?

21 A Correct, but there is a reason for that.

22 Q All right, I'm all ears, what's the reason for
23 that?

24 A The other three individuals were only aware of
25 very trace amounts of the relevant physical



1 evidence, while in Manchester they apparently
2 uncovered a fair bit of semen on the uniform of
3 Gail Miller, so tests that would be possible --
4 that would not be possible with a trace amount
5 could be possible with larger amounts of fluid.

6 Q I see.

7 COMMISSIONER MacCALLUM: Well what's that
8 to do with serology?

9 A I'm sorry?

10 COMMISSIONER MacCALLUM: What's that to do
11 with serology? The semen was used to -- for DNA,
12 to profile?

13 A Correct.

14 COMMISSIONER MacCALLUM: But you said that
15 this fellow from Manchester said that "my
16 goodness, the evidence, the techniques,
17 serological techniques were available in 1969,
18 they could have come to the -- never mind the
19 DNA"?

20 A Correct.

21 COMMISSIONER MacCALLUM: Right?

22 A Correct.

23 COMMISSIONER MacCALLUM: Well don't you
24 realize that, by relaying this vignette to us,
25 you've put out here a suggestion that a



1 tremendous oversight was made by the police and
2 we have no way to test it?

3 A We'll, we don't --

4 COMMISSIONER MacCALLUM: You simply
5 accepted what the fellow said in Manchester?

6 A Well, a tremendous oversight was made, that's
7 beyond a doubt. There was a huge amount of semen
8 that was on the uniform of Gail Miller that was
9 not found by the RCMP in their lab, that's a
10 significant oversight.

11 COMMISSIONER MacCALLUM: Yes, but are we
12 talking about the same thing? I understand that
13 the man was referring to evidence about blood?

14 A No.

15 COMMISSIONER MacCALLUM: They could have
16 solved the case by blood evidence, never mind the
17 semen?

18 A Well, serology doesn't just refer to blood, it
19 refers to any bodily fluids.

20 COMMISSIONER MacCALLUM: Well what do you
21 understand him to have meant, then, by his
22 comments?

23 A That with the large amounts of semen as opposed to
24 the trace evidence that Emson and others were
25 forced to deal with, and Paynter, that the large



1 amount of semen that they uncovered would have
2 allowed other tests, and that one of those tests
3 would have excluded David Milgaard.

4 COMMISSIONER MacCALLUM: But you don't know
5 which one, you didn't ask him?

6 A Well I -- I believe I asked him for clarification
7 and his words were "it will come out later".

8 BY MR. ELSON:

9 Q But you have no idea of the context or the
10 circumstances under which it would come out later?

11 MR. ELSON: Forgive me, Mr. Commissioner, I
12 have perhaps interrupted you?

13 COMMISSIONER MacCALLUM: No, I'm finished,
14 thanks.

15 BY MR. ELSON:

16 Q You have no idea of the context or the
17 circumstances under which it would, quote, "come
18 out later"?

19 A Well I believe Larry Fisher was still before the
20 courts through that time period.

21 Q And, Mr. Commissioner, I have no idea whether the
22 man from Manchester is scheduled to be a witness?

23 MR. HODSON: I plan on taking the Clapham
24 omnibus to --

25 I became aware of this



1 yesterday from Mr. Rossmo. Michael Barber is an
2 individual that we intend to talk to, who is one
3 of the persons who conducted the DNA work, I
4 don't know if it's the same person or not, but I
5 can assure you and the Commission that we will
6 make every effort to find out who this individual
7 might be and what the information is, and if it
8 is relevant to this Commission, we will bring it
9 forward. And I think Mr. Rossmo has been kind
10 enough to indicate that he and I can talk further
11 about this to try and assist me in finding this
12 person.

13 COMMISSIONER MacCALLUM: Okay.

14 BY MR. ELSON:

15 Q Mr. Commissioner, I only have a few more
16 questions. Dr. Rossmo, when you and Mr. Boyd
17 began collecting the information for the purposes
18 of the 1991 report, as I understand it -- and I
19 don't have the exact dates, forgive me for that --
20 but it would be sometime around August or
21 September of 1991; would that be fair?

22 A Umm, as early as June and as late as August.

23 Q As late as August. In the course of your
24 information gathering -- and maybe back up for a
25 second. I believe you had said, in answering



1 Mr. Hardy's questions, that because you and Mr.
2 Boyd lacked standing some of your requests to
3 interview certain people were routed through the
4 offices of Mr. Wolch and Mr. Asper; is that
5 correct?

6 A Umm, our requests for information were. I believe
7 we -- Neil approached most people directly for
8 interviews of them.

9 Q All right. And so it was, it was Mr. Boyd who
10 made the approach, is that correct?

11 A Correct.

12 Q And it was your understanding -- and I went
13 through the evidence fairly carefully of former
14 chief Joe Penkala last evening, and I did not find
15 any reference either to you or Mr. Boyd, so we
16 don't have any evidence before this Commission of
17 Inquiry as to -- from former Chief Penkala about
18 any requests either from you or from Mr. Boyd, but
19 having said that, were you aware of the media
20 articles and the content of the media coverage
21 leading up to that period of June to August of
22 1991 relative to the review of David Milgaard's
23 conviction?

24 A We read a large number of articles in various
25 newspapers, yes.



1 Q Would it be fair to say that there was -- and I
2 use the word advisedly and I use it carefully --
3 that there was, there appeared to be a media
4 campaign under way with respect to the David
5 Milgaard review, and that there was a good deal of
6 media coverage in which various sides were
7 plotting their ground; would that be a fair
8 assessment of the media coverage leading up to the
9 time before the review done by you and Mr. Boyd?

10 A Yes, it would be.

11 Q And it would be fair to say that the Saskatoon
12 Police Service, and specifically Chief Penkala as
13 he was at the time, were on the hot seat, and that
14 their skills, their competency and indeed their
15 honesty was challenged, and that was evident in
16 the media coverage that existed; would that be
17 fair?

18 A Yes, it would be.

19 Q And were you aware that Chief Penkala -- and when
20 I say 'chief' and 'former chief' it's my
21 understanding that he was retiring in August of
22 1991, so it would be right around the time that
23 this investigation was under way, although he was
24 rarely in the office from May of 1991 on according
25 to his testimony -- were you aware that he had



1 made the decision, as a result of the review that
2 was being -- that was under way under Section 690,
3 that he had made the decision he would not comment
4 to the media at all, and that the only information
5 that he would provide, he would provide to the
6 RCMP on behalf of the federal Department of
7 Justice?

8 A When we were in Saskatoon in September of 1990 I
9 don't believe there was any 690 review under way,
10 it had been rejected by Kim Campbell earlier that
11 year.

12 Q I'm sorry, then I stand corrected. But he had
13 made the decision that he would not give any media
14 statements in response to some of the challenges
15 that had been made?

16 A No, I didn't know what his position was.

17 MR. HODSON: Are you asking August of 1991?

18 MR. ELSON: '91.

19 MR. HODSON: August 14, 1991 was the date
20 of the second application to the Minister.

21 MR. ELSON: Okay.

22 BY MR. ELSON:

23 Q Under the circumstances, and given the nature of
24 the criticism that he was facing, do you have some
25 empathy for Joseph Penkala under those



1 circumstances?

2 A I can understand why he didn't want to talk to the
3 media. I'm not sure I agree with it, and I'm not
4 sure that that would be what I would do in the
5 same circumstances, but I can understand it.

6 Q The other thing I wanted to deal with is one of
7 the persistent questions that you've asked relates
8 to why had the victims of Larry Fisher not been
9 notified, and specifically, obviously, you are
10 referring to the Saskatoon rape victims. Your
11 experience with the Vancouver Police Service, as I
12 understand it, began in 1978; is that correct?

13 A Correct.

14 Q At that time was there a specific policy with
15 respect to the liaison between officers of the
16 Vancouver police and victims of crime for the
17 purpose of keeping those victims of crime updated
18 as to the circumstances of the Court case against
19 the accused perpetrators?

20 A We established the victim services unit to do that
21 in the early 1980s.

22 Q You would agree with me that the establishment of
23 victim service units or victim units within police
24 services in Canada, that that was something that
25 really didn't start across Canada until the early



1 1980s, would that be a fair comment?

2 A Yes, but I don't equate victim services unit with
3 notifying a victim that their case is solved.

4 Q Well were you aware that it was the practice,
5 prior to 1978, that the Vancouver Police Service
6 would keep regular contact with victims of, for
7 example, sexual assaults or rapes, and keep them
8 apprised of the circumstances of the case?

9 A Sir, I think we're talking apples and oranges
10 here. What we're talking about here is notifying
11 a victim that the person that raped her has been
12 arrested and charged and ultimately, I guess,
13 found guilty. There is a very big difference, you
14 may not have a procedure to regularly notify them
15 of the progress of a criminal prosecution, but
16 that's a far cry from not letting a victim know
17 that the man from her neighbourhood that attacked
18 her with a knife is now behind bars.

19 Q Right. Let me, let me put it to you more
20 specifically. We have heard evidence before this
21 Commission of Inquiry, from various police
22 officers who were in the service in 1969 and 1970,
23 that it was not the practice of the Saskatoon
24 Police Service to notify victims of the fact that
25 the person who was the perpetrator had been (1)



1 arrested, or (2) even pled guilty to the offence,
2 and that it was not the practice in 1969 or 1970,
3 and my question to you is what knowledge, if any,
4 do you have related to the history of police work
5 to suggest otherwise, or to suggest that it was
6 otherwise in 1969, 1970, or 1971?

7 A I just find that totally bizarre and I'm not sure
8 I believe it.

9 Q Right.

10 COMMISSIONER MacCALLUM: Did you do it
11 yourself though, sir? You haven't answered that
12 question, did you do it, did you notify victims
13 of the disposition of their cases?

14 A Always.

15 COMMISSIONER MacCALLUM: You did? Okay.

16 BY MR. ELSON:

17 Q But you have no idea what the practice was, of the
18 Vancouver Police Service was, for example, in
19 1969, 1970, or 1971?

20 A No.

21 Q And so it may very well be that the practice of
22 the Vancouver Police Service was no different than
23 what I have just described to you was the
24 practice, or the evidence this Commission has
25 heard was the practice in Saskatoon in 1969, '70,



1 or '71?

2 A I highly doubt it for a number of reasons. For
3 one is that if an offender is arrested you have to
4 prepare for trial, you need your victim.

5 Q Okay.

6 A The fact that an offender says they're going to
7 plead guilty is not that critical because you
8 don't know if they are really going to plead
9 guilty, so there would be a follow-up
10 investigative process involving the victim after
11 the identification of a suspect, especially after
12 the arrest of a suspect.

13 Q You know that, in this case, Mr. Fisher pled
14 guilty very, very quickly after he was arrested --
15 or rather gave an admission and a confession to at
16 least two of the cases very quickly after he was
17 arrested in Winnipeg in, I believe, 1970?

18 A Yes, I also know there too that he did not plead
19 guilty to and the impression of the police and
20 Crown were that the confessions would not stand up
21 in court.

22 Q But you were nonetheless aware, number 1, that he
23 had confessed, and number 2, that he ultimately
24 pled guilty?

25 A I'm aware of those facts.



1 MR. ELSON: Thank you, I have no more
2 questions.

3 COMMISSIONER MacCALLUM: Well, I just want
4 you to answer -- Mr. Elson asked you do you
5 really know what the practice was in 1969
6 notwithstanding the fact that you, as a
7 policeman, after 1978, always told the victims of
8 the disposition of their cases.

9 A Correct.

10 COMMISSIONER MacCALLUM: Do you know if
11 policemen commonly did that in 1969 and '70 in
12 Vancouver?

13 A I believe they did, and I know they would have had
14 to do for court preparation, but I was not there
15 in --

16 COMMISSIONER MacCALLUM: No, why would they
17 have to do it for -- the disposition I said, why
18 would they have to do that?

19 A To prepare the victim for court.

20 COMMISSIONER MacCALLUM: No, the
21 disposition of their case, if it was finished, if
22 the fellow had pled guilty or was found not
23 guilty --

24 A Okay.

25 COMMISSIONER MacCALLUM: -- would the



1 victim be told by the investigating officer or
2 anybody else in 1969 and '70?

3 A I wasn't there in 1969, so I don't know.

4 COMMISSIONER MacCALLUM: You don't know,
5 thank you.

6 MR. WOLCH: Mr. Commissioner, before we go
7 ahead, I wonder if I can address one issue just
8 while I'm thinking of it, and that is this, I
9 think there are about four parties left to
10 cross-examine, I don't know if I'm right about
11 that or not.

12 COMMISSIONER MacCALLUM: How many left,
13 please?

14 MR. WOLCH: There's four.

15 COMMISSIONER MacCALLUM: Yes, uh-huh, four.

16 MR. WOLCH: And so I'm just wondering if we
17 can just address it right now, that we've made
18 arrangements for Mr. Asper to come back and most
19 of us, at least I understand from several
20 counsel, we're not going to finish him on these
21 two days, this is what I'm told. Personally I'll
22 be very brief, but I don't know about others.
23 I'm wondering about the sensibility, if this
24 witness doesn't finish today, and we're going to
25 finish at our usual halfway through Thursday or



1 end of Thursday, why we're sitting on Friday to
2 get a snippet of Mr. Asper's evidence. I just
3 raise that. I'm not trying to --

4 MR. HODSON: I can answer that. His
5 counsel has insisted on it.

6 MR. WOLCH: Well, that's another matter, I
7 can't answer that. I'm just pointing it out as a
8 problem, that's all.

9 COMMISSIONER MacCALLUM: Yes, it's an
10 ongoing problem, but we just simply must get
11 through the witnesses in the time that is needed
12 and it's a time --

13 MR. WOLCH: The reason I'm raising it, sir,
14 is if we're going to finish him on Friday, I see
15 the logic in it. I'm told we won't.

16 MR. HODSON: Let me explain it this way. I
17 was advised Sunday morning, or I was advised on
18 Friday by Mr. SoroChan and Mr. Asper that he had
19 no dates available. I was advised that he could
20 not attend this week and I waited to hear.
21 Sunday morning I got a call saying he was now
22 available Thursday and Friday and could we sit
23 Friday. I sent an Email out to all counsel on
24 Sunday and arrangements were made for us to sit
25 on Friday to accommodate Mr. Asper's request to



1 sit Thursday and Friday. We had Mr. Boyd and Dr.
2 Rossmo scheduled these two days which I felt was
3 sufficient and I still do. I fully expect that
4 we can finish Dr. Rossmo today, or fairly close;
5 if not, we will finish him up very early in the
6 morning. Again, I can't predict how long people
7 are going to take and we'll start with Mr. Asper.

8 It's my understanding, and Mr.
9 Sorochan is not here, he can certainly correct
10 me, but if we can get two days in of Mr. Asper
11 this week, that helps in getting it done, and
12 keep in mind we have eight weeks left and we have
13 very few witnesses left, so to be quite blunt,
14 whenever we can get them in, we will get them in.

15 MR. WOLCH: That's fine, I just thought I
16 would raise it.

17 COMMISSIONER MacCALLUM: Thank you, yeah.
18 Okay, yes, you were going to stand up.

19 **BY MR. KENNEDY:**

20 **Q** Dr. Rossmo, my name is Kennedy and I'm
21 representing the Crown prosecutor T.D.R. Caldwell,
22 the prosecutor of the original trial of Mr.
23 Milgaard.

24 I gather from your evidence and
25 from Neil Boyd's evidence yesterday that you



1 embarked upon this process that you've described
2 with respect to your involvement with the Milgaard
3 case starting out with what might be termed some
4 academic interest on your part in terms of the
5 wrongfully convicted?

6 A I think Neil was interested in wrongful
7 conviction, I was interested more from an
8 examination of a predatory crime.

9 Q But my point being that you weren't asked to look
10 into it by anyone else, you were self appointed in
11 that context?

12 A Correct.

13 Q And as a result of that self appointment, so to
14 speak, Neil Boyd asked for some funding, that
15 funding came through and then you, as a starting
16 point I gather, went to Winnipeg?

17 A The starting point was obtaining document
18 information.

19 Q Okay. And how did you go about doing that?

20 A Well, I think Neil covered a lot of this
21 yesterday, that I believe the trial transcript
22 came from -- my document material mainly came from
23 Neil, but Neil would obtain that from Joyce
24 Milgaard, David Asper, Hersh Wolch, we obtained
25 some material from the Saskatoon Public Library.



1 Q And we went through the actual media newspaper
2 article yesterday that indicated that you and Neil
3 Boyd went to Winnipeg on July 10th, 2001 -- sorry,
4 1991.

5 A I wasn't in Winnipeg in July.

6 Q You were not in Winnipeg in July, you were not in
7 attendance with Neil Boyd the day that --

8 A No.

9 Q -- he was greeted by Mrs. Milgaard at the airport?

10 A No.

11 Q Okay. When was your first personal trip outside
12 of Vancouver with respect to this matter in terms
13 of this investigation that you were embarking
14 upon?

15 A I'm pretty sure it was September, 1991.

16 Q Okay. Were you aware of the media interest in
17 Neil Boyd's attendance in Winnipeg in July of
18 1991? Did he describe that to you, did he give,
19 did he describe that vignette to you about
20 wondering who was on the airplane that was so
21 important that all of this press --

22 A I believe he did.

23 Q Okay. Did it surprise you when you heard that
24 vignette that it appeared that the Milgaards, or
25 Mrs. Milgaard was welcoming Neil Boyd's



1 involvement in this particular matter with open
2 arms?

3 A I wouldn't use those words. Joyce Milgaard was
4 orchestrating a campaign to get her son released,
5 so I guess we found it -- Neil found it
6 surprising. It was a little bit unusual, but it
7 was hardly shocking.

8 Q Would it surprise you that that media event in
9 Winnipeg might give some people the impression
10 that notwithstanding the fact that you were, by
11 all accounts, independent obviously of the
12 Milgaard family, but give independent observers
13 the impression that there was some connection?

14 A Well, there was a connection in that they were
15 giving us information, but there wasn't a bias in
16 our approach. I'm not sure I would come to that
17 conclusion because there was media interest.

18 Q Well, you were self appointed, if you will,
19 volunteers in terms of doing this investigation
20 and embarking upon this process that led to your
21 report in the fall of 1991; correct?

22 A Correct.

23 Q And at no point in time during that process were
24 you ever engaged by or instructed by or tasked by
25 any person or organization, private or public, to



1 continue on with this process that you and Neil
2 Boyd had decided to embark upon; correct?

3 A I think we've covered that.

4 Q Is that a yes, sir?

5 A We were doing it on our own.

6 Q Okay. And you set the parameters of the study
7 that you were doing?

8 A Neil and I did, yes.

9 Q And you decided who you would approach and who you
10 wouldn't approach?

11 A Correct.

12 Q What information you would gather and what
13 information you would not gather?

14 A What information we would try to gather.

15 Q Yes.

16 A Yes.

17 Q And what information you would not try to gather?

18 A I think that we tried to gather as much
19 information as we could.

20 Q Okay. The more information you have, the more
21 validity to the ultimate process and the more
22 validity to your opinions and conclusions at the
23 end?

24 A Correct.

25 Q That's a reasonable assumption to make?



1 A Yes.

2 Q And it's been said before, and you acknowledged it
3 before, but you had no standing in any sort of
4 official sense in terms of this process either in
5 terms of gathering the information or in terms of
6 giving the opinions that you ultimately gave?

7 A Correct.

8 Q Given that that was the case, why would you think
9 that any individual in the justice system in
10 Saskatchewan would be interested in talking to you
11 or would have any duty to talk to you?

12 A Why would I think they would not, sir. They are
13 public officials. This is a matter of some
14 topical interest. It's important for justice to
15 be seen to be done as well as to be done.

16 Q That I understand, but if we put the shoe on the
17 other foot, if I was interested as a lawyer in
18 Saskatoon in a case that you were involved with in
19 Vancouver and I came out to Vancouver and phoned
20 you up and said "I want to do an article for the
21 Saskatchewan Law Review, will you let me see your
22 file," what would the response likely be?

23 A I'm not sure if I would disclose confidential
24 files to you, but that's not the same as not
25 agreeing to meet with you, sir.



1 Q You indicated I think yesterday that you did have
2 access to the exhibits from the original trial?

3 A Correct.

4 Q They were still at the courthouse?

5 A Yes.

6 Q Can you tell me how you accessed those exhibits?

7 A To the best of my recollection, we went into the
8 courthouse and asked to see them.

9 Q Okay. You did that, you recall doing that
10 personally, you and Neil Boyd together?

11 A Yes.

12 Q You indicated, and I think that there was a
13 document that was produced yesterday, that the
14 attempt to speak to Mr. Caldwell was in the latter
15 part of August, 1991? I believe the date was
16 August 29th, approximately 10, 12 days before you
17 came to Saskatoon in the middle part of September?

18 A Well, again, Professor Boyd would have made that
19 contact. I know our hope was to speak to him when
20 we arrived in Saskatoon in September of 1991.

21 Q Okay. And we're on the same wavelength now that
22 that was after the second request for the 690
23 application had already been made?

24 A Correct.

25 Q And you heard Neil Boyd indicate that Mr. Caldwell



1 had said that he did not want to speak to you
2 while this process was going on?

3 A I'm not sure I recall that, but it wouldn't
4 surprise me.

5 Q All right. Is that a reasonable position to take
6 on behalf of the Crown prosecutor who was involved
7 in the original conviction and which conviction is
8 under review by Federal Justice?

9 A Well, I'm not sure why the 690 review would
10 preclude it.

11 Q I'm not asking about whether it would preclude it.
12 I suppose the question is, why would my client be
13 interested in talking to a private individual that
14 had decided that they were going to do an
15 investigation from Vancouver in the context of an
16 event that was being investigated under the
17 *Criminal Code* by Federal Justice? Why do you
18 suggest that you were somehow frustrated or
19 offended that my client declined to speak to you?

20 A Because he was a public official and he played an
21 important role and he chose not to talk about it.
22 This is unfortunately common response sometimes in
23 these types of situations which I don't think is a
24 good one. I can understand him doing it. I don't
25 agree with it.



1 Q But you are, for all intents and purposes, nothing
2 but a private individual. You may be very
3 knowledgeable, you may have some opinions that are
4 better or in the context of this particular event
5 more valid than those of anyone else in the
6 public, but you are just simply a private
7 individual wanting to ask my client about
8 something that took place some 20 years before, or
9 over 20 years before, which is the matter of, or
10 has been the matter of considerable public
11 scrutiny and is presently being looked into by
12 Federal Justice, and my question to you was why in
13 the world would you think that any public official
14 would feel that they were obliged to speak to you
15 as a private individual?

16 A Well, there's no law that requires them to, but in
17 my opinion public officials have certain
18 responsibilities.

19 Q Were you aware, when you came to Saskatoon in
20 September of 1991, that the accusation by the
21 Milgaards' counsel, David Asper, about the
22 misconduct concerning my client in the way that
23 the trial was run had been outstanding and public
24 for in excess of a year?

25 A I'm not sure of the timing. I don't know when



1 that began, so I couldn't tell you what the time
2 frame was.

3 Q I wonder if I could get you to pull up 004752,
4 and, Dr. Rossmo, you'll see in the top right-hand
5 corner that this was a newspaper article from the
6 *Winnipeg Free Press* July 17th, 1990. You'll need
7 to acknowledge for the record, sir.

8 A I'm just reading it. It's dated July 17th, 1990.

9 Q Yes. And I wonder if I could have this paragraph
10 brought up, please. Sorry, this one here. And
11 you'll see in the paragraph starting, "It is
12 painfully obvious," which appears to be a quote
13 from Mr. Asper, and the last sentence of that:

14 "It strikes me that it would be serious
15 misconduct for the Crown not to provide
16 that information to the defence."

17 A matter obviously of disclosure; correct?

18 A Correct.

19 Q And the allegation being that the Crown, who in
20 this particular instance was my client, had been
21 guilty of serious misconduct; correct?

22 A Correct.

23 Q And with that sort of public denunciation that had
24 been outstanding for over a year, I suggest to you
25 that one other reason why my client might not be



1 prepared to talk to any private individual about
2 what had happened 20 to 22 years before was the
3 fact that it was being investigated by the federal
4 authorities, some of these allegations were being
5 investigated by the federal authorities and he
6 wasn't willing to comment to just any private
7 individual that came from Vancouver and wanted to
8 find out what had happened. Is that not
9 unreasonable, or is that not a reasonable position
10 to take?

11 A It's his prerogative. I've already told you that
12 I disagree with that approach by public officials.

13 Q You think that it was unreasonable for him not to
14 talk to any individual that wanted to ask him
15 about this particular case?

16 A No, I've already said I understand why he did what
17 he did.

18 Q But your view is that that was not a reasonable
19 thing for him to do?

20 A My words were I found it disappointing.

21 Q I would like to shift gears just for a moment, Dr.
22 Rossmo, and just make sure that I understand
23 something that you were talking about earlier this
24 morning. I gather that when you talk about coming
25 to a conclusion about linkages between crimes,



1 similar fact evidence, that sort of thing, that is
2 focusing upon the actual evidence, whether it's
3 physical evidence or whether it's eye witness
4 testimony as to the crime itself, whether it's
5 location, timing, night, day, that sort of thing.

6 A Correct.

7 Q And as distinguished from the psychological
8 profiling that we were talking about, or you were
9 talking about this morning, which would be a
10 psychological analysis of the type of individual
11 that would be capable of committing certain sorts
12 of crimes.

13 A They are related analytic products, but separate
14 analytic products.

15 Q Yes. And you indicated that you were aware of
16 some expert testimony that had been granted or
17 given in courts with respect to the linkages
18 question?

19 A Correct.

20 Q Are you aware of any expert evidence that has been
21 given in any court in Canada at any time with
22 respect to psychological profiling?

23 A Yes, I am.

24 Q Can you tell the Commission where that was and
25 what the context of that was?



1 A I really would -- for the cases, I think *Clark* is
2 one case that comes to mind. Profiling is perhaps
3 a layman's term for something that is referred to
4 as criminal investigative analysis and there are,
5 there is some case law in both Canada and the
6 United States, some of it I've written about in my
7 book, but I don't have that handy, I'm not sure I
8 can remember the case law, but either *Clark* or
9 *Moore* was at least one piece, one case where that
10 was allowed in Ontario.

11 Q And was the person that gave that expert evidence
12 a psychologist?

13 A That was, I believe, Detective Superintendent Kate
14 Lines.

15 Q Okay.

16 A If you are asking me if I think does psychological
17 profiling belong in the courts, for the most part
18 my answer is no.

19 COMMISSIONER MacCALLUM: How does she spell
20 her last name, sir, Kate?

21 A L-I-N-E-S.

22 COMMISSIONER MacCALLUM: Okay, thank you.

23 MR. KENNEDY: Thank you, Dr. Rossmo. I
24 have no further questions.

25 BY MR. FRAYER:



1 Q Dr. Rossmo, my name is David Frayer and I
2 represent the Minister of Justice Canada. I just
3 have a few questions to ask you.

4 You were here yesterday when
5 Dr. Boyd -- I'm sorry, Professor Boyd testified?

6 A Yes, I was.

7 Q And you heard his evidence and you were here for
8 the entire day; is that accurate?

9 A That's right.

10 Q And questions were asked by Mr. Hardy with respect
11 to how this whole process started, and it's my
12 understanding that, if I recorded it correctly,
13 that it was as a result of internal funding that
14 had been obtained from the University in British
15 Columbia that permitted you and Professor Boyd to
16 go ahead with this report?

17 A That's correct. Well, to have our expenses
18 funded.

19 Q I'm sorry?

20 A To have our expenses funded.

21 Q To have your expenses funded. In other words, you
22 weren't to get any other remuneration in addition
23 to expenses?

24 A I don't believe so.

25 Q Okay.



1 A I could be wrong on that, but I'm pretty sure it
2 just covered our expense.

3 Q Do you have any recollection as to the amount of
4 the grant?

5 A No, no, I don't.

6 Q And it's my understanding too that insofar as your
7 study was concerned, that Dr. Boyd -- or Professor
8 Boyd was your mentor; am I accurate?

9 A No, actually Professor Paul Brantingham was my
10 senior supervisor in my doctoral research. I had
11 taken one class on multiple murders, a directed
12 readings topics from Professor Boyd, and then we
13 worked together on this project, but no, he was
14 not my Ph.D. mentor.

15 Q In any event, he was a professor and you were a
16 student at the time; is that correct?

17 A That's correct, yes.

18 Q And you were in the third year of your Ph.D.
19 study; is that accurate?

20 A Closer -- second and then third.

21 Q Second and third, okay. In any event, you gave
22 evidence with respect to the interview that Eugene
23 Williams had done of Ron Wilson and you had some
24 comments with respect to the style of the
25 examination and some critique of that examination



1 that we heard about this morning?

2 A Yes.

3 Q And those related directly to the fact that you
4 were of the view that he was cross-examining Ron
5 Wilson, that he wasn't showing the impartiality
6 that he should have been showing that was evidence
7 of bias and things of that nature?

8 A That was my impression, but again, please let me
9 say that I have not reviewed that transcript prior
10 to coming here. I've only read it once and that
11 was in 1991.

12 Q Okay. I'm going to take you then to a portion of
13 the transcript from yesterday's proceedings when
14 Mr. Hardy was examining Professor Boyd, and that's
15 found at 27922, if I could have that brought up,
16 please, 27922, and if we can just look at the
17 bottom at line 18, if we could have that brought
18 up, please, 18 to the bottom, and Mr. Hardy was
19 going through with Professor Boyd, I think it was
20 an interview, and I don't have a doc. ID number
21 for this particular document, but he was going
22 through this with Dr. Boyd and he said:

23 "Q And just continuing on to the bottom of
24 that page, Dr. Rossmo asks some
25 questions of Mr. Wilson of his thoughts



1 on Eugene Williams' interview and I
2 think it becomes evident here that
3 perhaps you both have had a review of
4 that transcript, and on the next page,
5 page 12, Dr. Rossmo states in the middle
6 of the page:

7 "It looked more like a
8 cross-examination at trial..."
9 And then you state a little bit further
10 down:

11 "We did find that a little
12 disappointing, considering the role that
13 he should have..."
14 I take it that this was an accurate
15 account of your views on this particular
16 aspect at the time?"

17 And Professor Boyd said:

18 "A Yes.

19 Q And what was your concern regarding
20 Eugene Williams' approach?

21 A Lack of impartiality."

22 Which is a view that you share with Professor
23 Boyd; is that correct, and you've told us about
24 that this morning?

25 A Yes.



1 Q "Q And you mention a role that perhaps
2 he should have had. What role do you
3 think he should have had in his
4 investigation or in his efforts?"

5 And the response:

6 "A Again, I can only say generally it
7 seemed that there was a lack of
8 impartiality.

9 Q And can you give us any particulars as
10 to what had led you to that conclusion?

11 A I -- you know, I think it's again
12 looking at the evidence as a whole and
13 not developing with any, to any
14 serious extent the arguments that
15 might lie in favour of the validity of
16 the recantation; that is to say, not
17 at least taking on those arguments and
18 explaining why they were not tenable,
19 why, you know, why risking perjury,
20 why wasn't that an important
21 consideration, so the tenor of the
22 commentary seemed dismissive."

23 And then Professor Boyd says:

24 "On the other hand, when I look at that
25 now, I think, well, why wouldn't Eugene



1 Williams want to put Ron Wilson through
2 a cross-examination of a sort, wouldn't
3 that be an appropriate thing to do, so
4 as I say, that's how I felt at the time.
5 When I look at it in retrospect I think,
6 no, that's actually his task, is to be
7 very tough with Ron Wilson and to ensure
8 that under kind of cross-examination
9 that the recantation stands up."

10 Now, that is Professor Boyd's evidence of
11 yesterday. You were here when he made that
12 statement?

13 A Yes, I was.

14 Q And this is one of these sort of present day
15 observations as opposed to what he thought at the
16 time back in 1991?

17 A Correct.

18 Q And do you agree or disagree with what Professor
19 Boyd told us yesterday?

20 A I primarily disagree with this.

21 Q You disagree with this?

22 A Yes.

23 Q And why is that, sir?

24 A I think the most appropriate approach would have
25 been for the first interview to be fact finding



1 and then when that's put together with a larger
2 package for a more intensive interview to take
3 place.

4 Q Not to make any real distinction, but you were a
5 police officer at the time?

6 A Yes.

7 Q Had been a serving police officer for some 12 or
8 13 years, am I accurate, '78 to --

9 A 2001.

10 Q '91?

11 A 2001. Oh, this was 1991.

12 Q Yes. So some 13 years. You were 22 years a
13 policeman. And were you active in police
14 enforcement at the time, at the same time as you
15 were taking your doctorate?

16 A Yes, I was.

17 Q And it's my understanding from Professor Boyd's
18 background that he is a lawyer and a
19 criminologist; is that correct?

20 A Correct.

21 Q Okay. So you as a policeman take issue with what
22 Dr. Boyd, or Professor Boyd now says is his
23 interpretation of what went on during the course
24 of the Williams/Wilson interview?

25 A In terms of the timing of the "cross-examination".



1 Q He didn't put that same proviso on it, you said
2 tread lightly so that you could get the confidence
3 of Mr. Wilson and then be more aggressive in terms
4 of testing his recantation; is that a good
5 synopsis?

6 A I would have done an entirely different interview
7 at a different time.

8 Q And did you ever discuss this with Professor Boyd,
9 how he thought differently now than he did at the
10 time?

11 A No, this was the first I heard about this from
12 Neil Boyd.

13 Q Does it come as a surprise to you?

14 A A little bit.

15 Q Now, there's one other area, and I've already
16 asked Professor Boyd about this, and this is,
17 forms part of your report, it's found at 040520,
18 this is the last area of questioning I have, Dr.
19 Rossmo, if we can go to that document, 040520.
20 That's page 23 of your report.

21 COMMISSIONER MacCALLUM: And what is the
22 doc. ID, please?

23 MR. FRAYER: I'm sorry, I would have to --
24 040495 I -- no, I'm sorry, I would have to deduct
25 23 from --



1 COMMISSIONER MacCALLUM: 040520 is the page
2 number?

3 MR. FRAYER: And it's 497, yes. 040497.

4 COMMISSIONER MacCALLUM: 040 --

5 MR. FRAYER: It's page 23.

6 COMMISSIONER MacCALLUM: -- 497, okay.

7 MR. FRAYER: And if we could just bring up
8 the third paragraph, please.

9 COMMISSIONER MacCALLUM: Counsel, if you
10 wonder why I'm rude enough to keep interrupting
11 you about this, it's that when I go to review my
12 notes I have to review the documents, and if I
13 only have the page number within a document, then
14 I am completely incapable of getting to the
15 document.

16 MR. FRAYER: And I was completely incapable
17 of recording the first, the doc. ID number, so I
18 apologize for that.

19 COMMISSIONER MacCALLUM: Right.

20 BY MR. FRAYER:

21 Q In any event, if we can go to paragraph 3, bring
22 that up, please.

23 "It seems surprising that the Department
24 of Justice did not pursue polygraph
25 testing of Ron Wilson, given that his



1 credibility was the key issue."

2 Now you were the joint authors of this particular
3 report, Dr. Rossmo, are these your words or are
4 they Professor Boyd's words or are they sort of
5 the collective view of the use of polygraph in
6 testing the story that Ron Wilson was telling?

7 A This paragraph was likely written by Neil, but it
8 would have been my view as well.

9 Q And you endorse the report, finally, in its final
10 preparation?

11 A Yes.

12 Q You are co-authors of it?

13 A Correct.

14 Q And it says:

15 "Counsel Ken Watson, representing Ron
16 Wilson, indicated in August of 1990 that
17 his client would be willing to take a
18 polygraph, provided that an independent
19 examiner were agreed upon, and that the
20 results of his previous polygraph tests
21 at trial were made available. Crown
22 Counsel Eugene Williams wrote in
23 response, 'After further consideration
24 of all the circumstances and following a
25 review of the materials obtained to



1 date, it appears that there may be
2 limited value in performing a polygraph
3 test on your client at this time.
4 Consequently, this avenue of
5 investigation will not be pursued
6 further.' "

7 And then you have a footnote that makes reference
8 to an exchange of correspondence between counsel
9 for Ron Wilson, that's Mr. Watson, and Mr.
10 Williams?

11 A Correct.

12 Q And are those the only two documents that you
13 looked at to come to the conclusion as to being
14 surprised by the fact that the Department of
15 Justice didn't pursue this testing?

16 A I note here that I have four documents relevant to
17 this point, which is correspondence between Watson
18 and Williams dated August 9th, August 14th, and
19 September 6th, 1990.

20 Q Okay. And I asked Professor Boyd this yesterday,
21 but during the course of your investigation of
22 this did you ever become aware of the fact that,
23 with respect to the condition imposed by Ken
24 Watson, that is:

25 "... the results of his previous



1 polygraph tests at trial were made
2 available ...",

3 that that's a condition that Mr. Williams and the
4 Department of Justice couldn't meet?

5 A If I recall yesterday, it was they were physically
6 unable to meet it because the relevant information
7 could not be found.

8 Q Exactly.

9 A Is that correct?

10 Q And there was an exchange of correspondence
11 between Mr. Watson and Mr. Williams with respect
12 to his making every endeavour to get to the
13 bureaucracy to see whether -- where the reports of
14 Inspector Roberts were, and the results of the
15 polygraph test, and that met with no result; is
16 that your recollection of that background?

17 A Umm, I don't believe that's in the exchange of
18 correspondence that I had on the file that I just
19 mentioned to you.

20 Q Would you be surprised by the fact that, with
21 respect to previous polygraph tests, that they
22 weren't available, and therefore, that being one
23 of the conditions that Mr. Watson imposed, that
24 the Department of Justice declined doing a
25 polygraph in the letter that Mr. Williams wrote to



1 him in September of 1990?

2 A Are you asking me if I'm being surprised by that?

3 Q Yes?

4 A My answer is "no".

5 Q Okay. So, with respect to the facts that you had
6 in your possession, you had very limited facts,
7 but now, knowing that, would you still be
8 surprised that the Department of Justice didn't
9 pursue polygraph testing given the fact that
10 Mr. Watson imposed conditions that the Department
11 of Justice couldn't meet?

12 A I guess my feelings are that if the Department of
13 Justice could not find this documentation and they
14 then asked Mr. Watson if Mr. Wilson would agree to
15 do the polygraph without that condition, and then
16 Watson refused, then I would say the Department of
17 Justice's position was justified.

18 Q And I think that's the case, generally speaking I
19 think that's the case, the discussions between the
20 two of them broke down because Justice couldn't
21 meet the terms and conditions imposed by
22 Mr. Watson on behalf of Mr. Wilson.

23 A Was it? I'm just saying I don't know if there was
24 any effort to renegotiate based on the
25 correspondence that I had on my file.



1 Q Good. Thank you, sir, those are my questions.

2 COMMISSIONER MacCALLUM: We --

3 MR. HODSON: Who is left and how long?

4 MR. WILSON: The proverbial five.

5 MR. HODSON: Is it a Hodson five or --

6 I'm wondering, it looks like it
7 can't be done in the next couple of minutes.

8 COMMISSIONER MacCALLUM: Well, if it can be
9 done within the next 15 minutes, can I ask
10 everyone in the room if it's possible to stay
11 that long, everybody that means -- that's
12 necessary, that is. Okay?

13 MR. WILSON: I accept the challenge, Mr.
14 Commissioner.

15 COMMISSIONER MacCALLUM: All right, Mr.
16 Wilson, the responsibility has been shifted to
17 your shoulders.

18 BY MR. WILSON:

19 Q Dr. Rossmo, in addition to the expertise which you
20 have exposed here today, you also know something
21 about the nature and effect of conspiracy theory I
22 understand; is that correct?

23 A I know very little about conspiracy theory, sir.

24 Q Oh.

25 A I do know that there is an associated



1 psychological bias that leads us to believe
2 conspiracy -- in conspiracies when they may not
3 exist, would you -- is that what you would like me
4 to talk about?

5 Q Well let me refer you to the paper you mentioned a
6 little earlier, *Criminal Investigative Failures*,
7 337674, and page 6 thereof, please. This is your
8 document, sir?

9 A Yes it is.

10 Q It's dated 2005, and on page 6 you talk about
11 *Cause and Effect Biases*?

12 A Correct.

13 Q And you lead in, there, to some discussion of
14 conspiracy theory?

15 A There is something called the 'fallacy of
16 identity', and it's our desire to believe that big
17 events have to have big causes, so I use the
18 example, here, of the difficulty people have in
19 believing that a loser like Lee Harvey Oswald,
20 with a \$12 cheap rifle, can assassinate the most
21 powerful man in the most powerful nation in the
22 world. Psychologically that is difficult to
23 accept, so we want to bring in the Mafia and the
24 Cubans and the KGB and Vice-President Lyndon B.
25 Johnson to explain what went on. The reality is



1 that sometimes big events can have causes of a
2 very minor nature. The assassination of Archduke
3 Ferdinand of Austria-Hungary that plunged Europe
4 into the First World War. But psychologically
5 we sometimes will create conspiracy theories that
6 sometimes have a fairly minor or single cause.

7 Q Uh-huh. I have read of another author on the
8 subject speaking that "the human condition is such
9 that we have a need to believe there is something
10 more than the here and now." Would that -- would
11 you agree with that?

12 A Yes, I would.

13 Q And that's essentially what you are saying here.
14 As you know, we have a conspiracy theory in the
15 Milgaard affair, an allegation of a frame-up and a
16 coverup reaching all the way from the Saskatoon
17 Police through the Crown prosecutor in Saskatoon,
18 through into the Department of the Attorney
19 General as it then was, the Director of Public
20 Prosecutions, my client, Serge Kujawa, the Deputy
21 Attorney General then, Mr. Ken Lysyk, and the
22 then-Attorney General, Roy Romanow; you are aware
23 that that exists, that allegation was made by the
24 Milgaard people?

25 A Yes, I'm aware of that.



1 Q Yeah.

2 A I, maybe I should be just clear, I'm not sure of
3 the extent of what has -- you know, who's been
4 implicated in the theory, but I am aware of that
5 theory.

6 Q Yeah, okay, and I'm not gonna take you through
7 that, I'm -- but you have said here, under oath,
8 that your investigation disclosed no evidence of a
9 frame of David Milgaard?

10 A During the 1969 to January '70 period, no.

11 Q Yeah, leading to his conviction?

12 A Correct.

13 Q And you saw no evidence of a coverup of that
14 conviction?

15 A We have some questions in the time period where
16 Larry Fisher was arrested, after Larry Fisher was
17 arrested in Winnipeg, which Neil covered,
18 questions we still have to this day.

19 I would maybe like to point out
20 that during the *Fifth Estate* interview of David
21 Milgaard he introduced a cautionary note regarding
22 Larry Fisher, because he said he wouldn't want
23 Larry Fisher to go through what he has gone
24 through, and that was very wise on David's part.
25 So on one hand there are some questions and it's



1 in the public interest to try to get to the answer
2 regarding those questions, there's some very
3 strange things that occurred, but neither myself
4 nor Neil Boyd know what the answer to those
5 questions are, so, while it's an area of some
6 mystery, we don't know that there's been a coverup
7 or a conspiracy.

8 One thing I'll just add is when
9 conspiracies do occur they don't involve a lot of
10 people, because if they do they become, they break
11 down and they become public. It's hard to keep a
12 secret when more than one person knows, so I'll
13 just add that for what it's worth, sir.

14 COMMISSIONER MacCALLUM: Your questions,
15 sir, were about events post-conviction?

16 A Yes.

17 COMMISSIONER MacCALLUM: Okay.

18 A From the point of time of Larry Fisher's arrest to
19 Larry Fisher's incarceration.

20 COMMISSIONER MacCALLUM: Okay.

21 BY MR. WILSON:

22 Q Would you bring up page 8 of this document,
23 please, could you bring up that paragraph? I
24 noted, here, the reference to 'Occam's razor', or
25 the 'Principle of Parsimony', "When more than one



1 explanation for an event is possible we should
2 choose the simplest ..."; correct?

3 A Yes, the one with the fewest number of
4 assumptions.

5 Q Hmm. The late Prime Minister John Diefenbaker had
6 what was perhaps a corollary of this which went
7 like this, that, "if stupidity will explain the
8 matter it is usually not necessary to look
9 further"; would you agree with that as well?

10 A Yes, I would, sir.

11 Q This last line, you agree with that in the
12 application to the existence or non-existence of a
13 conspiracy theory in the Milgaard affair, covering
14 up the so-called wrongful conviction?

15 A Well, again, let me state that I think there's
16 questions we just don't know the answers to, so
17 it's hard to come to a conclusion without having
18 that information. And as I've also said, if there
19 is a conspiracy it's probably a very small
20 conspiracy, not a large one, because it would have
21 erupted or leaked out at some point in time.

22 I think, also, we're very wise
23 to do what -- to try to follow the same standards
24 that we have been saying others should have
25 followed, which is not make our mind up until all



1 the facts are coming in.

2 The fact that there is a
3 Commission of Inquiry looking into trying to
4 determine what went on is very important, it's
5 more -- it's gonna lead, hopefully, to some
6 answers to some questions. And it may be that
7 there was a -- sure, there may have been a
8 conspiracy, there may have been a, as the counsel
9 for the Saskatoon Police Service said, a
10 bureaucratic structure that allowed this thing to
11 fall between the cracks, that's another
12 possibility, we don't know, but we do know that
13 there are some questions that need to be answered.

14 Q But would you agree that simple facts should be
15 left as simple facts without attributing sinister
16 motives to them?

17 A Well I'm not sure we have all the facts, or at
18 least I know in terms of my own opinions I don't
19 have facts on some certain areas, and for those
20 places like the initial investigation we felt we
21 had enough facts to come to the conclusion that
22 this was not a frame-up.

23 Q Okay. I'm not gonna take you any further into
24 that. Thank you.

25 A Okay.



1 MR. O'KEEFE: Mr. Commissioner, I think I
2 can get my questions in through another witness,
3 so I'll stand down.

4 COMMISSIONER MacCALLUM: Yes, thank you.

5 MR. WOLCH: I'll try and be fairly quick.

6 BY MR. WOLCH:

7 Q That Occam's razor we were talking about, that
8 would have some bearing on Larry Fisher as well,
9 that is it's so simple to conclude the fellow
10 doing all the attacks in the neighbourhood did
11 this one instead of the convoluted David Milgaard
12 story?

13 A Absolutely.

14 Q You were asked about notifying victims of crime.
15 Would it be fair to say -- I'm sorry, I should
16 have said I'm Hersh Wolch, David's lawyer, I
17 forgot that.

18 A I know who you are, sir.

19 COMMISSIONER MacCALLUM: Just for the
20 record.

21 MR. WOLCH: For the record.

22 COMMISSIONER MacCALLUM: That's all.

23 BY MR. WOLCH:

24 Q Would it be fair to say that there are victims and
25 then there are victims, by that I mean serious,



1 very serious crimes cry out more for
2 notification -- not that all shouldn't be -- to
3 the victim than less serious? You catch a rapist
4 versus you catch a shoplifter or a break and
5 enter, it's more logical to assume that the need
6 to notify is exasperated in a case where the
7 person may still live in fear of the perpetrator?

8 A Yes, you are absolutely right, a rape is often
9 regarded as the second most serious crime that can
10 happen.

11 And I think I might have been a
12 little confusing previously because there is a
13 notification, there's different notifications, but
14 the key notification is letting your victim know
15 that someone has been arrested or identified as
16 being the perpetrator of the crime, and that's
17 what I don't understand not happening. I can
18 understand about the various stages because
19 there's many in the criminal justice system.

20 Q Okay. Well I want to deal, as fast as I can, with
21 the question of interviews and recanting
22 witnesses, and some time was spent on Mr.
23 Henderson's techniques and how he spoke to
24 witnesses, etcetera, etcetera. Would you agree,
25 this can go on *ad infinitum*, because the RCMP are



1 commenting on what Cadrain, the Cadraains told them
2 about how Henderson talked to him, we don't know
3 how the RCMP questioned the Cadraains, were they
4 leading them, were they helping them along, this
5 -- it can go on forever?

6 A That's --

7 Q But isn't it --

8 A It's a possibility. What it does point out is
9 maybe what some agencies are doing, which is
10 videotaping interviews of people.

11 Q Yes, that's the crucial part, you have video tape,
12 or in Henderson's case you have a tape, it does
13 add some assistance to the people trying to
14 determine credibility?

15 A Yes.

16 Q Now you were asked about whether investigators
17 will feed falsehoods to people who are being
18 interviewed, and in your experience isn't it a
19 fact that there are times when police may suggest
20 to a person that they believe is involved in a
21 crime that they have an eyewitness when, in fact,
22 they don't?

23 A Yes.

24 Q Or they have fingerprints when, in fact, they
25 don't?



1 A Yes.

2 Q Or they may put in a good word and get them a
3 lighter sentence when they have no intention of
4 doing that?

5 A You have to be careful, because now we're getting
6 into the territory of inducements.

7 Q Okay, I'll skip that. But in terms of the
8 evidence they have, they may very well not have
9 it, you know, like you said, "your buddy
10 implicated you, you implicate him", or things like
11 that?

12 A Yes, that does happen.

13 Q And would it not also be correct that, in terms of
14 recanting witnesses, they face a hurdle at the
15 beginning because they're branding themselves
16 normally as a liar; either you are lying now or
17 you are lying then is what I am saying?

18 A Yes, that's true.

19 Q And very often one looks at the motive, or
20 presumed motive for the statements, in order to
21 try and pick and choose which one is more
22 truthful? Some recantations, I would suggest, are
23 viewed with more credibility than others?

24 A Correct.

25 Q For example, if you had some unsavoury character



1 who accused the police officer of brutality and he
2 came forward and said, "look, I lied, I made it
3 up", that would be accepted pretty quickly?

4 A Very likely.

5 Q If you have a spouse who was -- who alleged that
6 the spouse was assaulted by the other spouse and
7 then says, "you know, it's not true, it's -- I
8 want to recant", that would be viewed with more
9 suspicion?

10 A Correct.

11 Q So a lot depends on the overall circumstances on
12 recantations and looking into the motive, or
13 possible motive, of the person.

14 A Yes. And let me just add one thing here, that the
15 new version of events, the recanted version of
16 events can also be compared to other statements
17 and the physical evidence for a separate
18 perspective on its viability.

19 Q Right. But in getting a witness to change a
20 story -- I don't mean that in a bad way -- but in
21 getting a witness to change their position a Paul
22 Henderson would be at a great disadvantage to a
23 police officer; would that not be true?

24 A To a police officer?

25 Q Yes. Well a police officer carries far more



1 authority with the witness?

2 A Oh, I understand, sir.

3 Q Far more power and more ability to influence than
4 a Paul Henderson would have or any other citizen
5 would have?

6 A That's correct.

7 Q A police officer could put the person in custody?

8 A With reasonable grounds for doing so.

9 Q Well, whatever. And in this particular case Paul
10 Henderson also had a huge disadvantage because
11 there was absolutely no motive for a Wilson, or
12 anyone else, to change their story?

13 A Correct.

14 Q It was the opposite, they risked perjury charges?

15 A Yes.

16 Q But every influencing factor would mitigate
17 against changing the story?

18 A Correct.

19 Q So for Paul Henderson, that used some techniques,
20 obviously he has to? He's not going to walk in
21 and say, "Wilson, tell me the truth now and forget
22 about perjury, forget about everything, just do
23 it", he has to appeal to his conscience or
24 something?

25 A Well, he has a difficult challenge in that



1 circumstance, yes.

2 Q Yeah. Now we know, for example, Wilson's very
3 first statement and John's very first statements
4 did not implicate David Milgaard?

5 A That's correct.

6 Q Right?

7 A That's correct.

8 Q So the first recantations, so to speak, were the
9 incriminating statements?

10 A I'm not sure I would use the word "recant" but
11 there was a change in their statements.

12 Q A major change?

13 A Yes, a major change.

14 Q It couldn't be more significant?

15 A No.

16 Q Now what is the last one I want to deal with with
17 you is when you were asked about the motivation
18 for that particular change, I think you were given
19 a choice that either they were weak, frail, and
20 irresponsible or they were manipulated or coerced;
21 do I have it right? I thought I heard that
22 earlier, that there was the two possible
23 explanations, because there must be some
24 explanation as to why Nichol John saw a murder she
25 didn't see?



1 A I'm not sure we ever said those words. We were
2 trying to understand, with Ron Wilson, why he said
3 something that was not true.

4 Q Okay. No, I thought I -- I thought it was Mr.
5 Elson who gave you those two choices, that's what
6 I thought I heard?

7 A Okay. There may be other possibilities.

8 Q Okay. What choices do you see for somebody like
9 Wilson, and particularly John saying she saw a
10 murder, or Wilson now giving opportunity,
11 etcetera, etcetera, heard a confession; what
12 causes that?

13 A Well, I think Mr. Wilson gave us a reasonable
14 insight into what was going on in his mind, I mean
15 it was self-serving, he wanted to get the police
16 off his back, even if the police were being nice
17 they were still an annoyance, he may have been
18 worried about their attention focusing on him, and
19 eventually he may have started to believe that
20 Milgaard really did it because it's a theory being
21 put to him by the authorities.

22 Q Well, that's what I am getting at, is that I don't
23 see his weakness and irresponsibility being
24 mutually exclusive to police manipulation and
25 pressure, I think they go together?



1 A We don't know the specific details of the police
2 interview, we don't have that type of information,
3 all I can tell you is that Mr. Wilson told us that
4 the police did not abuse him.

5 Q Oh, but I'm getting more at the idea of the
6 pressure, the manipulation and possibly feeding
7 the answers that was desired by the authorities?

8 A I, sir, I just don't know what happened during
9 those interviews.

10 Q Have you looked into how Nichol John possibly came
11 up with the attacking the woman for her purse,
12 etcetera, etcetera?

13 A No, I don't know.

14 Q Okay. Because you were asked specifically if you
15 had any evidence of her or Wilson being fed their
16 story, you recall that, by Mr. Elson?

17 A Yes, but we just, all I've reviewed is the
18 statements, the final statements, not the
19 interview of these individuals.

20 Q Okay. Because the final thing I want to ask you,
21 sir, is are you familiar with the Mackie summary
22 document, the 006799? And on page 5, I'll go
23 fairly quickly, take a glance at that and then
24 we'll go to page 5. This is the page I'm most
25 interested in; have you seen that before?



1 A I don't believe so. Who wrote this?

2 Q This was written by the authorities a few weeks
3 prior to the major statements from John and Wilson
4 towards the end of May.

5 A No, I don't believe I have seen this.

6 Q Do you want to take a look at it?

7 A *(Witness reading)*.

8 Q Now, for example, just highlight that little
9 portion there. Now this -- that's an example, you
10 can go back to the full page.

11 But what I am getting at -- and
12 you've read it -- I'm going to suggest to you that
13 this is the foundation for what John and Wilson
14 gave in their May statements?

15 A Was this document written before John gave her --

16 Q Yes.

17 A Okay, thank you.

18 Q Yes.

19 A And, I'm sorry, the question?

20 Q Well, when you were asked a question "was there
21 any evidence of them being fed what went into
22 their statements", would this not be evidence that
23 would suggest that they were fed what they
24 eventually said, it's a heck of a coincidence,
25 that those statements at -- could be said to be



1 founded on this document?

2 A I -- I don't want to say what happened because I
3 just don't have the information.

4 Q Okay. Any comment on the suggestions at the
5 bottom, as to the propriety of that?

6 A That seems appropriate to me, though nowadays
7 hypnosis isn't used, it tends to -- cognitive
8 interviewing seems to have taken its place, but
9 those seem appropriate to me.

10 Q But "where with all present the true story", that
11 would possibly suggest the stories given to date
12 had not been true; would it not?

13 A Well it's clear that Sergeant Mackie doubts the
14 story and that he is trying to get what he
15 believes is the true story.

16 Q Yeah, "even if hypnosis or polygraph are
17 necessary", hypnosis?

18 A Well, a polygraph would be a very standard
19 technique, hypnosis is typically done if somebody
20 remembers -- can't remember something that they
21 viewed. But, really, the issue here is are the
22 witnesses telling you the truth, are the -- so I
23 don't know if hypnosis is really that applicable.

24 Q Okay. But what I am saying is then, and my final
25 question, is that when you answered Mr. Elson that



1 you had no evidence of witnesses, of them being
2 fed, you didn't know about this document?

3 A No, I did not, sir.

4 Q Thank you.

5 MR. HARDY: No redirect.

6 COMMISSIONER MacCALLUM: Dr. Rossmo, thank
7 you very much for coming and testifying.

8 *(Adjourned at 4:59 p.m.)*

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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of our knowledge, skill,
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Official Queen's Bench Court Reporter



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