

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
Delta Bessborough Hotel at
Saskatoon, Saskatchewan

On Wednesday, August 30th, 2006

Volume 175

Inquiry Proceedings



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MURRAY SAWATSKY, CONTINUED

- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 9:03 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MURRAY SAWATSKY, continued:

BY MR. HODSON:

Q Morning, Mr. Sawatsky. If we could bring up the report 023167, and go to page 242, is where we left off. And just a couple remarks before we start this morning. I think yesterday, Mr. Sawatsky, when we started, you and I were literally on the different pages on a couple of areas, I think you had your paper report and I was referring to matters on the screen, and I think there was a couple of areas where, particularly related to Father Murphy, that you were looking at a different area than I was asking. So I think we've clarified that and we'll try and get with what's on the screen.

The second thing, and I covered this back in June when you started your evidence but I think it's worth repeating with you here, a couple things. Number one, I think you told us that, let's go back to the time you did this investigation, 1992 to 1994 -- and I don't



1 think there's any dispute about this -- number
2 one, your people did not have the DNA results with
3 respect to Larry Fisher, correct, those came in
4 1997?

09:05 5 A That's correct.

6 Q Two, you did not have the benefit of a conviction
7 of Larry Fisher?

8 A Correct.

9 Q And you did not have the benefit of the Government
09:05 10 of Saskatchewan acknowledging David Milgaard to be
11 factually innocent; correct?

12 A Correct.

13 Q So at the time that you people are doing this
14 investigation, from 1992 to 1994, is it fair to
09:05 15 say that David Milgaard's guilt or innocence was,
16 at a minimum, uncertain?

17 A Yes.

18 Q And, as well, I think you told us that you put
19 some weight on the Supreme Court of Canada
09:05 20 reference decision, and in particular their
21 statement that David Milgaard had the benefit of a
22 fair trial; is that correct?

23 A That's correct.

24 Q And that, even though his conviction was set aside
09:05 25 and then the charges stayed, I think you told



1 us -- please correct me if I'm wrong -- but the
2 fact that he had been convicted and the Supreme
3 Court said what they said in April of 1992
4 influenced your thinking and the thinking of your
09:05 5 officers and your approach to the matter; is that
6 fair?

7 A I think that's probably a fair comment.

8 Q Yeah. And so I will try, and I have tried in
9 asking you questions about what you did in 1992 to
09:06 10 1994, to try and put the questions on the basis of
11 what information you would have had at the time,
12 and to try not to say "okay, with what we now
13 know", because didn't know what we now know back
14 when you did your investigation; is that correct?

09:06 15 A That's correct.

16 Q And I appreciate, Mr. Sawatsky, that there will
17 be, and has been, some debate about -- and would
18 you agree with this -- from 1992 to 1994 when you
19 did the investigation, this uncertainty about
09:06 20 David Milgaard's guilt or innocence, there were
21 people that strongly advocated his innocence;
22 correct?

23 A Correct.

24 Q In particular Mr. Wolch, for example, --

09:06 25 A That's correct.



1 Q -- Mrs. Milgaard? So there was a group of people
2 that strongly asserted, based for a number of
3 reasons, that he was innocent; correct?

4 A Correct.

09:06 5 Q The Supreme Court of Canada did not, did not make
6 that finding at the reference, did not find him to
7 be probably innocent for reasons stated in their
8 decision; correct?

9 A Correct.

09:07 10 Q And that was something you knew?

11 A That was something I knew, correct.

12 Q And, as well, is it fair to say that on the other
13 side of the equation there were people who had
14 strong views about his guilt?

09:07 15 A That's correct.

16 Q And that being David Milgaard's guilt. And
17 similarly with Larry Fisher, you would have people
18 on both sides of that fence as well, some thinking
19 he was guilty, some people thinking he was
09:07 20 innocent; is that fair?

21 A That's fair.

22 Q And then, as police officers, tell us what tools
23 or what do you rely upon, I guess, on the question
24 of guilt or innocence at the time? Is it the
09:07 25 information that you have, or can you just



1 elaborate on what, as investigating officers at
2 the time what influences your thinking on that
3 matter then?

09:07 4 A Well I think, in this particular case, our
5 thinking was influenced by the entire
6 investigation itself, and at the investigation --
7 the end of the investigation we were able to draw
8 conclusions about the evidence that we had been
9 able to obtain. Granted, there were areas where
09:08 10 we tried to probe where we perhaps weren't able to
11 get, you know, full evidence, but at the end of
12 the investigation we drew a number of conclusions
13 based on the evidence that we had before us.

14 Q So, in approaching the question of guilt or
09:08 15 innocence of David Milgaard or Larry Fisher back
16 in '92 to '94 in the absence of the DNA, would it
17 be correct to say that you would be influenced by
18 the information you gathered, the information that
19 was presented on both sides of the argument, and
09:08 20 basically what you investigated, that would
21 ultimately influence your thinking and the
22 thinking of your investigators?

23 A That's correct.

24 Q And, on that, you've told us I think back in June
09:08 25 that although this is your report in the sense



1 that it was a report on behalf of, I think, a
2 group of 10 or 12 investigators; is that right?

3 A That's correct.

4 Q And I think you told us that this would represent
09:08 5 the collective thinking of all of the officers
6 involved?

7 A That's correct.

8 Q If we can just go back, I think where we left off,
9 we were dealing with issues on Ron Wilson's -- on
09:09 10 the question of your investigation as to whether
11 or not the police intimidated Ron Wilson to lie.
12 And if we can just go to the next page, and I
13 think this is where we, and we've dealt with this
14 in detail yesterday about the knife, but here's
09:09 15 your comment here where after -- I'm sorry, if we
16 can just go to, sorry, the next page. And I think
17 this talks about the meeting with Inspector
18 Roberts:

19 "... picked out a knife from a group of
09:09 20 five, shown to him by Insp. Roberts. He
21 acknowledged it was similar to the one
22 he saw in the car en route from Regina
23 to Saskatoon. This being a reddish
24 brown coloured bone handled type paring
09:10 25 knife."



1 And I'll ask you this in respect to this comment,
2 and I asked you a similar question yesterday, but
3 what, if any, significance did you as an
4 investigator put on the fact that somehow Ron
09:10 5 Wilson told Inspector Roberts on May 23rd he saw
6 a reddish-brown-coloured bone-handled type paring
7 knife in the car en route to Saskatoon when he
8 said a contradictory statement to Detective Karst
9 the day before when he was asked about a knife
09:10 10 and said "I don't think so, check at Champs Steak
11 House"; do you recall what you made of that
12 distinction at the time?

13 A Well I think that, certainly, there was a question
14 as to why this disclosure would be made. But I
09:10 15 think, in the absence of any indication that there
16 had been improper questioning by Mr. Roberts to
17 get this, you would accept it as a new piece of
18 information.

19 Q And so, at the time, is it correct to say, '92 to
09:11 20 '94, the issue of whether or not David Milgaard
21 had a maroon-handled paring knife was an issue
22 that there was some uncertainty about?

23 A Yes.

24 Q And so that, if he did have the knife, then there
09:11 25 could be -- let me go through this again. If he



1 did have a maroon-handled paring knife in the car,
2 then it may well have been that Inspector Roberts
3 did nothing wrong in getting that information from
4 Ron Wilson because it's truthful?

09:11 5 A That's correct.

6 Q On the other hand, if he didn't have a
7 maroon-handled paring knife, is it fair to say
8 that it's more likely that Inspector Roberts may
9 have done something inappropriate to get that
09:11 10 information from Mr. Wilson?

11 A That's a possibility, yes.

12 Q And, again, are you telling us that, for reasons
13 you stated yesterday, because you didn't have the
14 charts, the interview notes, and because you could
09:11 15 not rely on what Mr. Wilson told you, is this area
16 basically fore -- closed off from you to find out
17 what happened in that meeting?

18 A Well we did have the benefit of the transcripts
19 from the Supreme Court, and also of an interview
09:12 20 of Mr. Roberts, where he basically confirmed what
21 he had told the Supreme Court. And, of course,
22 the finding of the Supreme Court was that there
23 had been no improper conduct on the part of the
24 police in interviewing the witnesses, so we did
09:12 25 have the benefit of that. Personally, I believe



1 that I would have found it helpful if I'd have had
2 more information from Mr. Roberts such as charts
3 to look at, his interview notes and those sorts of
4 things, and those were not available to us.

09:12 5 Q Yeah. Did the fact that Mr. Roberts testified at
6 the Supreme Court, and the findings of the Supreme
7 Court, then influence your thinking when you
8 looked at his conduct in his interviews with Ron
9 Wilson and with Nichol John?

09:12 10 A Yes, I think it did, to the extent that we
11 certainly didn't find any indication that he had
12 done anything wrong. And then of course, as I
13 mentioned a moment ago, we followed up that with
14 an interview where he basically told our
09:12 15 investigators the same thing that he had said at
16 the Supreme Court.

17 Q If we can just scroll down, again this sets out
18 what further information was added after the
19 Inspector Roberts meeting, and I just want to
09:13 20 raise a couple of points here. Let's contrast
21 these last two paragraphs. The last paragraph is
22 the information that -- where Ron Wilson says
23 David Milgaard told him in Calgary that he grabbed
24 a girl, tried to take her purse, he jabbed her
09:13 25 with a knife and put her purse in a trash can, and



1 I think you'd have to agree that that is very
2 incriminating evidence --

3 A Yes, --

4 Q -- with respect to David Milgaard?

09:13 5 A -- I agree, it is.

6 Q And although it's not an eyewitness account, if
7 it's to be believed, it's an admission made the
8 next day that is fairly consistent with the crime
9 scene, in other words the jabbing and the purse in
10 the garbage can; correct?

11 A Correct.

12 Q And so I won't dwell on this point because I think
13 I've covered it sufficiently with the knife and
14 other issues, but here what significance, if any,
15 did you place on the fact that this piece of
16 information was not given to Detective Karst by
17 Ron Wilson, or to others, before he went in to see
18 Inspector Roberts?

09:14 19 A Well, again, this was a new piece of information
20 that came as a result of the interview with Mr.
21 Roberts so it, I placed the same value on it that
22 I did on the preceding comment you made, where it
23 would have been nice to have --

24 Q Yeah?

09:14 25 A -- a little bit more information about how that



1 response came about.

2 Q Let me just go back on this specific piece,
3 though. Two days earlier Ron Wilson says, May 21
4 in Regina I think when he's talking about when he
09:14 5 says for the first time that "we got stuck" and
6 that "David left the car" and that "this must have
7 been the time when he committed the murder", okay,
8 that's what he told the police two days earlier;
9 would you not have expected him to say "and the
09:14 10 reason I know that is because David told me the
11 next day that he had stabbed a girl"? Like in
12 other words that -- to try and understand what, I
13 guess, why it was that Wilson was making
14 admissions to the Saskatoon City Police, or to
09:15 15 Roberts, that he wasn't making to the Saskatoon
16 City Police when it appeared from the record --
17 and I think this is noted in your report -- that
18 the Saskatoon City Police gave him every
19 opportunity and were pushing him to get as much as
09:15 20 they could?

21 A Yes.

22 Q Would you agree with that?

23 A I would agree with that. In fact, the police
24 interviewed him on a number of occasions, and
09:15 25 certainly there is no indications that their



1 interviews weren't thorough and exhaustive.

2 Q So let's just take this last point which Ron
3 Wilson now says he made up and is not true. In
4 looking at trying to understand how it came to be
09:15 5 that Ron Wilson told Inspector Roberts that, or
6 told the police that after meeting with Inspector
7 Roberts, what was it that you and your people
8 considered or concluded about that? Now let's
9 just take the two scenarios. One would be if it
09:16 10 were true, in other words, if this last comment
11 were true, and I think you've told us, well, then
12 maybe Inspector Roberts didn't do anything wrong
13 if he got the truth, but let's take the other side
14 where it's not true.

09:16 15 A And I really think one can look at it both ways
16 because when you look at that statement, you may
17 wonder how it suddenly came about, whether it was,
18 you know, through improper questioning or
19 whatever, but at the end he does mention that he,
09:16 20 that he had told Nichol about that, so on one hand
21 you sort of look at it and say, well, I sort of
22 disbelieve it, but on the other hand, there's
23 possibly an element of truth to that in that he
24 told someone else and you can confirm it by asking
09:16 25 that person, and quite often when a person will



1 lie like that, they don't then say I told someone
2 else because that gives you the opportunity then
3 to go and question that person, so you could kind
4 of look at this statement two ways.

09:17 5 Q So then when you look at that and have Nichol, and
6 Nichol's statement is that she told Ron the
7 morning of the murder at the time, she told Ron
8 that she had witnessed it?

9 A That's correct.

09:17 10 Q I think the question was raised is why would Mr.
11 Wilson tell her the next day something she had
12 already told him the day before, and so that issue
13 there, you are familiar with that inconsistent --
14 or that issue between their two statements?

09:17 15 A I am. Yes, I am.

16 Q Again, let's just go back to Inspector Roberts for
17 a moment and the question is this, that let's just
18 take this last statement in Calgary and accept the
19 premise that that's not true. Would it be your
09:17 20 view, sir, that -- what are the possible
21 explanations as to how it would be that Ron
22 Wilson, after being interviewed by the Saskatoon
23 City Police on many occasions, does not give this
24 very incriminating piece of information to the
09:17 25 Saskatoon City Police when pressed to do so, yet



1 gives other incriminating information, and then
2 after a session with Inspector Roberts gives this
3 new piece of very incriminating information and
4 the premise being that it's not true, what were
09:18 5 the possible scenarios that would give rise to
6 that?

7 A Well, of course it's very difficult to say what
8 was in someone's mind, but it could be that there
9 was something planted there, that there was
09:18 10 improper questioning. It could be that Wilson was
11 trying to be more helpful and thought I'll try and
12 provide, I'll provide more information that's
13 perhaps not true. I guess there could be a number
14 of reasons why he would, you know, come out with a
09:18 15 lie or with something that's not the truth.

16 Q And in your investigation did you have sufficient
17 information to make any conclusions about what
18 happened in that room that may have given rise to
19 Ron Wilson's new information?

09:18 20 A No, we did not.

21 Q And then let's just contrast it with the paragraph
22 before where one of the things that came out of
23 the Inspector Roberts' interview was the compact
24 or cosmetic case being thrown out of the car and
09:19 25 the evidence at trial from Cadrain and John



1 corroborated that, the fact that there was a
2 cosmetic bag or compact or whatever thrown out of
3 the car. Mr. Tallis testified that he was advised
4 by David Milgaard that that happened, so that to
09:19 5 the extent that it's corroborated in those three
6 areas, if you accept that as being true, what do
7 you make of the fact that, or how do you, as an
8 investigator, in looking at trying to figure out
9 what happened with Inspector Roberts when it
09:19 10 appears that some of the information, new
11 information gained after Mr. Wilson meets with
12 Inspector Roberts may well be corroborated by
13 other facts? Do you follow?

14 A Yes, I do. I think what you are suggesting is
09:19 15 that some of the statements that were obtained we
16 were able to corroborate through other means such
17 as you indicated Mr. Milgaard had indicated to
18 Mr. Tallis, that there had been a compact and it
19 had been thrown out the window, and then the other
09:20 20 statement about jabbing with a knife was more
21 difficult to corroborate; in other words, there
22 was no other evidence to support that, so what you
23 make from that is you place more importance or
24 more believability on the one statement than the
09:20 25 other.



1 Q Okay. And then does one influence the other in
2 the sense that if you are looking at what happened
3 with Inspector Roberts, if one of the pieces of
4 new information that came out is in fact
09:20 5 corroborated, what does that tell you, if
6 anything, about the other pieces of information
7 that you are investigating?

8 A Well, I guess it perhaps makes you think that it's
9 possible that the other one is believable, but
09:20 10 still in the absence of anything to corroborate
11 it, it does make it more difficult to rely heavily
12 on it.

13 Q Okay. If we can go to the next page and scroll
14 down here to this paragraph, and again, this is
09:21 15 going through the summary of information, and
16 again keep in mind that what we're looking at is
17 your investigation to find out whether the police
18 coerced or intimidated Ron Wilson to give false
19 evidence, and the paragraph here talks about the
09:21 20 trip when Ron Wilson was being brought to trial
21 and that Ron Wilson told Karst and Mackie:

22 "...of an incident in which Milgaard
23 had, in effect, re-enacted the killing.
24 The re-enactment was for the benefit of
09:21 25 Melnyk, Lapchuk and two girls who had



1 been with Milgaard in a motel..."

2 And I think the evidence that the Commission has
3 heard is to the effect that that information --
4 the motel room incident was not known by the
09:21 5 police or the prosecutors until Ron Wilson
6 volunteered it to the police on his trip from
7 Regina to the trial, that the police then went
8 and investigated, the Crown then interviewed the
9 witnesses and they were called, and can you tell
09:22 10 us, what significance if any did that set of
11 facts have in your probing into whether or not
12 Ron Wilson was intimidated or coerced to lie?

13 A I think that shows evidence that he wasn't, and if
14 you look at sort of Ron Wilson, his evidence or
09:22 15 his statement sort of came out over a long period
16 of time, he was interviewed a number of times, I
17 think two or three times at the outset, and then
18 he was interviewed a number of times after that,
19 and each time he provided a little bit more
09:22 20 information. This particular piece of information
21 of course was corroborated by others. Some of his
22 information wasn't as easily to corroborate and of
23 course when we tried to interview him, he wasn't
24 able to provide us with explanations, so it
09:22 25 certainly, it certainly appears that Wilson either



1 didn't grasp the importance of what he had, what
2 he could provide, or simply, you know, was the
3 type of witness who sort of had to be interviewed
4 extensively to get all the information from.

09:23 5 Q The fact that Mr. Wilson would give this
6 information about Melnyk and Lapchuk to the
7 police, I guess you could look at it one of two
8 ways, is it a case of saying, well, he was
9 intimidated and therefore gave up his friends and
09:23 10 said here's more information, or on the other hand
11 is it the other way, saying that he wasn't
12 intimidated because he volunteered and gave more
13 information. I'm wondering how you -- again, on
14 the issue of Ron Wilson and his relationship with
09:23 15 the police at the time and this intimidation, what
16 if any conclusions did your people reach -- or how
17 did this -- how did the fact that Ron Wilson gave
18 the motel room re-enactment information to the
19 police fit into that inquiry?

09:23 20 A Well, there's certainly no evidence that he was
21 coerced into saying that. It appears to have been
22 volunteered during the interview.

23 Q And then go down to Wilson's recantation, we spent
24 a fair bit of time on this with a number of
09:24 25 witnesses. The first part you mention is that you



1 refer to the 1981/'82 conversation between Ron
2 Wilson and Mrs. Milgaard and we have played I
3 think both of those tapes, or certainly have the
4 transcripts and we've been through those
09:24 5 interviews as to what was said. You say here:

6 "At the time of the interview Ron Wilson
7 did not express any concerns about his
8 treatment by the police nor did he
9 indicate that his 1969 trial testimony
09:24 10 implicating Milgaard was fabricated.
11 His recantation takes place in 1990
12 during his interview with Centurion
13 Ministries investigator, Paul
14 Henderson."

09:24 15 Can you tell us, what was the significance again
16 in trying to understand Ron Wilson's evidence and
17 his later recantation, what was the significance
18 of the 1980/'81 interviews between he and Mrs.
19 Milgaard?

09:25 20 A Well, certainly in 1980 or '81, or '81/'82 I guess
21 when that conversation was taped, he certainly did
22 have the opportunity to tell Mrs. Milgaard that he
23 had been coerced, that his evidence was false,
24 that he had lied and didn't take advantage of
09:25 25 that, and it wasn't until he was interviewed by



1 Mr. Henderson, you know, where evidence of that or
2 statements to that effect were taken.

3 Q Now, you've got -- and what -- are you saying that
4 why didn't he recant in '81/'82?

09:25 5 A Exactly. He had the opportunity and was asked and
6 he didn't recant.

7 Q Now, would you agree that there could be some
8 valid reasons for that?

9 A Yes, there certainly could.

09:25 10 Q And that witnesses, a witness who lied at trial
11 might, for various reasons, it might take some
12 time or some prodding or prompting to get that
13 person to say they lied at trial?

14 A Yes, for sure.

09:25 15 Q And so I suppose the same could be said is why
16 didn't in 1972 he recant. I guess the difference
17 in '80 and '81 is that he was given the
18 opportunity and didn't take it; is that the point?

19 A That's correct.

09:26 20 Q You also make mention, if you can go down to the
21 bottom, a footnote, you say:

22 "Note: Of interest is an exchange
23 between Mrs. Milgaard and Wilson
24 regarding the availability of ten
09:26 25 thousand dollars to anyone that can



1 prove David innocent. Wilson responds
2 that he can't prove it. Later, in the
3 Supreme Court, when asked about his
4 knowledge of the reward Wilson indicated
09:26 5 he did not know about it until that very
6 day in the Supreme Court."

7 Can you tell us, what was of the significance of
8 this information?

9 A I believe, if I recall correctly from the
09:26 10 statement, there was a mention made by Mrs.
11 Milgaard of some money and I think Ron's answer to
12 that was that he couldn't help her or that he, you
13 know, couldn't provide her with any information,
14 so I'm not sure, you know -- beyond that, I'm not
09:26 15 sure what you are asking me, Mr. Hodson.

16 Q Well, it's made as a footnote. If we can just go
17 back to the top, you talk about the Wilson
18 recantation. You told us that the fact that he
19 didn't recant in '81, let's say it's 1981, I think
09:27 20 that's the date, was of some significance in the
21 matter; is that right?

22 A Uh-huh.

23 Q And would that be the credibility of his 1990
24 recantation, is that why you put it there, in
09:27 25 saying that lookit, in looking at the credibility



1 of his 1990 recantation --

2 A Yeah, there's no indication that the reward
3 wouldn't have been available in 1990 as well. I
4 mean, you know, there was an indication that there
09:27 5 was some money. He could have certainly asked for
6 it in 1990. There's no indication that he did,
7 but he could have.

8 Q And so just so that I understand this, so when you
9 are looking at again trying to figure out what
09:27 10 happened to Ron Wilson in 1969/'70 and how his
11 incriminating evidence came about, what he said
12 later on in '81 would be informative; is that
13 right?

14 A Yes.

09:28 15 Q And his recantation in '90 would be informative?

16 A Yes.

17 Q And similarly his subsequent interviews I think by
18 Mr. Williams and then his Supreme Court evidence
19 would also be informative in trying to figure that
09:28 20 out?

21 A That's correct.

22 Q So let's just take a look at the 1981 interview
23 just so that I understand the two aspects of it.
24 One, you are saying that he did not recant at that
09:28 25 time when given an opportunity to do so?



1 A That's correct.

2 Q And are you saying then that means the 1990 recant
3 is more suspect?

09:28

4 A Yes, it's suspect for that, but for a number of
5 other reasons as well.

6 Q Okay. And secondly, the fact that in 1981 Mrs.
7 Milgaard mentions to him a \$10,000 reward, what if
8 anything does that do to the credibility of the
9 1990 recant?

09:28

10 A Well, in my view it certainly strengthens the 1981
11 recant where he's offered money and doesn't, but I
12 think what I was trying to suggest before is that
13 doesn't mean that in 1990 he wouldn't be thinking
14 that money was still available. As I indicated,
15 there's no evidence that he was provided with that
16 or that he asked for it, but certainly in his own
17 mind it could have been something he was thinking
18 of.

09:29

19 Q But if money was a motivator, do you not agree
20 that in 1981 he could have said okay, here's your
21 recant?

22 A Yes.

23 Q Give me my money?

24 A Yes, he certainly could have.

09:29

25 Q And so the fact that he did not recant, as you



1 say, in '81 when the reward was there, would that
2 not be an indicator that the money did not
3 influence his recantation --

4 A Yes.

09:29 5 Q -- later?

6 A Yes.

7 Q Would you agree that as an investigator involved
8 later on in these proceedings in trying to sort
9 out what happened in 1969, 1970 and try to
09:29 10 determine what weight if any could be given to Ron
11 Wilson, as an investigator would the fact that a
12 reward is mentioned to him by Mrs. Milgaard or by
13 anybody in an effort to get a recant, would that
14 be a negative thing for people later on trying to
09:30 15 get to the bottom of things, and maybe I didn't
16 ask that very -- I'm trying to -- here's the point
17 that I want to get at, that when you go to see Ron
18 Wilson in 1992, the fact that a number of people
19 have talked to him, both authorities,
09:30 20 non-authorities, I think you mention it made it
21 very difficult for you to try to get to the bottom
22 of things, and what I'm trying to get at is would
23 the fact that a reward is out there be an issue in
24 your mind in that it may, it either may influence
09:30 25 the witness or, if it doesn't influence the



1 witness, it may give that appearance?

2 A Yes, most definitely.

3 Q And I guess if we take a look at Albert Cadrain,
4 and we've heard extensive evidence about this and
09:31 5 whether the \$2,000 reward did or did not influence
6 his thinking, certainly that was the view of some,
7 is it fair to say that the minute a reward is out
8 there and put into the minds of a witness, that
9 whatever happens later, some people are going to
09:31 10 go back and say, well, lookit, what effect if any
11 did that reward have on this witness?

12 A Yes, I think that's a fair statement.

13 Q And in cases where the offering of a reward, and I
14 think Mr. Wilson's evidence on this is it had no
09:31 15 effect on his decision to recant, but nonetheless,
16 it appears that your investigators pursued that?

17 A Yes, yes, we did.

18 Q And why?

19 A Well, as I had mentioned, we couldn't get any
09:31 20 information from Mr. Wilson, we tried to interview
21 him, so I think it was important for us to try and
22 determine, in the absence of him providing us with
23 anything, it was important for us to try and
24 determine what would lead to a recantation and to
09:32 25 try and see what importance we could place on that



1 recantation, so to follow up and to look into
2 whether or not money was a motivating factor was
3 certainly in our minds something that we wanted to
4 know.

09:32 5 Q Okay. Then if we can just scroll down here, I
6 think here you go through the recantation and
7 describe that and what he recanted to Mr.
8 Henderson, and then down here you say:

9 "The bulk of Wilson's Supreme Court
09:32 10 testimony dealt with his recollection
11 and his recantation of previously stated
12 facts including those set out in his
13 statement to Henderson. Wilson stated
14 the police were polite and although he
09:32 15 was not threatened, through their
16 repeated questioning and their
17 suggestions, he felt a need to agree
18 with them. Wilson gave the police what
19 they wanted to get them off his back.
09:32 20 He acknowledged the police interviewed
21 him numerous times because they may have
22 thought he was holding back on them."

23 And we have been through Mr. Wilson's evidence
24 before the Supreme Court and the citation for
09:33 25 contempt and his post-contempt evidence,



1 etcetera. Was that something that your
2 investigators relied upon, what Mr. Wilson
3 ultimately said to the Supreme Court about how he
4 was treated by the police?

09:33 5 A Yes, yes, we did, because as I mentioned, we
6 weren't able to get very much from him when we
7 tried to interview him.

8 Q And if we can go to 023249, and this is your
9 investigator's comment, your summary, you say:

09:33 10 "They both gave limited accounts of the
11 trip to Saskatoon and Alberta, but said
12 nothing about their encounter with Gail
13 Miller. In both cases, the
14 investigators had reason to believe the
09:33 15 two were not telling the truth in their
16 first statements."

17 And was that your conclusion, Mr. Sawatsky, that
18 the first statements, the March, 1969 statements
19 by Wilson and John, that in both cases
09:34 20 investigators at the time had reason to believe
21 the two were not telling the truth in their first
22 two statements?

23 A Yes, that's correct.

24 Q And then:

09:34 25 "The police thought one, or all three of



1 the group, might be implicated in the
2 murder..."

3 And then so you go on to describe the later
4 meetings. You talk here:

09:34 5 "On May 21st, Wilson implicated David
6 Milgaard and in subsequent interviews
7 May 22/24 he provided additional details
8 to those given on the 21st."

9 Then:

09:34 10 "Until 1990 when he was interviewed by
11 Centurion Ministries investigator Paul
12 Henderson, Wilson's account of the
13 circumstances surrounding the Miller
14 murder was unchanged. Then, and later
09:34 15 in the Supreme Court, he recanted
16 several aspects of his incriminating
17 testimony alleging he told the police
18 what they wanted to hear because of
19 persistent questioning and fear."

09:34 20 And:

21 "Both John and Wilson expressed a fear
22 of Milgaard. It can be surmised their
23 reluctance to talk when first
24 interviewed was directly related to this
09:35 25 concern and also to their apprehension



1 of the police."

2 Can you just elaborate on that last comment?

3 A Yes, certainly, and I think what we're trying to
4 do there is suggest that their initial response to
09:35 5 the police when they said nothing happened was
6 later, through a series of interviews, they were
7 able to provide the police with quite a bit of
8 information, and notwithstanding the fact that
9 Wilson did recant, and part of his recant was
09:35 10 factual and some of it wasn't, it's quite possible
11 that the reason they were reluctant to talk to the
12 police initially was because they were afraid of
13 Milgaard or they simply were afraid of the police,
14 so to speak.

09:35 15 Q Okay.

16 COMMISSIONER MacCALLUM: You state that
17 only as a possibility. Were you convinced of
18 that? It can be surmised is --

19 A Yeah, and I think that's the best we can say
09:35 20 there, My Lord, is I don't think we were convinced
21 either way.

22 COMMISSIONER MacCALLUM: Okay.

23 BY MR. HODSON:

24 Q And would that be influenced by the thought that
09:36 25 this fear may have given rise because they thought



1 he killed Gail Miller, David Milgaard?

2 A It could be, it could be that they thought they
3 would somehow be implicated if they spoke. I
4 guess one could surmise there's any number of
09:36 5 reasons why they weren't forthright when they were
6 first interviewed.

7 Q And would you say, sir, that if the two believed
8 wrongly that David Milgaard had been the murderer
9 of Gail Miller, that that might have caused them
09:36 10 to be more fearful than if someone had said
11 lookit, he didn't kill her; in other words, that
12 their fear might have been premised on the wrong
13 assumption that David Milgaard was the killer?

14 A Correct.

09:36 15 Q You agree with that?

16 A Yes, I do.

17 Q If we can go down to -- go to page 023247 and this
18 is the last, just finish up here, Ute Frank, and
19 we've heard a fair bit of evidence about Ute
09:37 20 Frank. Your report summarizes the interview that
21 your people did in '93, that she was reluctant to
22 talk to the police because she was scared, and it
23 goes on to talk about one of the policemen who
24 interviewed her yelled and screamed at her a lot,
09:37 25 the other was a nice guy:



1 "Frank stated that the details she gave
2 Det. Karst about the evening in the
3 motel room were true, but were totally
4 out of context. She completely left out
09:37 5 the re-enactment scene because she felt
6 if she told anyone, Milgaard would kill
7 her."

8 And we heard from Mr. Tallis as to what Ute Frank
9 told him in 1969 and we also heard from Ute
09:37 10 Frank, and can you tell us, what did your
11 investigators make of whether or not the police
12 were involved in intimidating or coercing Ute
13 Frank to say what she said? Now, she didn't
14 testify at trial, but she gave the police a
09:37 15 statement which she later said was incomplete.

16 A Well, certainly she, Ute Frank indicates that one
17 of the officers perhaps, you know, wasn't nice
18 with her and maybe didn't treat her as well as she
19 would have liked, but there's certainly no
09:38 20 indication that that treatment caused her to say
21 something that wasn't true, or caused her to lie.

22 Q If we can go to 023250, and just at the top, I
23 think this is the concluding part of D.2 which is
24 the heading about intimidation of witnesses. You
09:38 25 conclude:



1 "The techniques used by the
2 investigators during their interviews of
3 these three key witnesses could be
4 viewed as psychologically aggressive.
09:38 5 But, given the fact that they were
6 investigating a rape/murder, the police
7 apparently felt that their techniques
8 were not unreasonable nor unfair. The
9 interviews were accomplished without
09:38 10 violence, or threats of violence and
11 considering the serious nature of the
12 offence, they obviously believed their
13 actions were justified and in the
14 interests of law enforcement.

09:38 15 The police obviously
16 concluded that they had succeeded in
17 getting the truth from Cadrain, John and
18 Wilson because in the end their final
19 versions of what transpired were
09:39 20 corroborated by each other and by
21 certain independent facts and
22 circumstances."

23 I want to just -- so that would have been your
24 concluding remarks, or the team's concluding
09:39 25 remarks about the actions of the police and



1 whether they intimidated or coerced the witnesses
2 to lie?

3 A That's correct.

4 Q Now, when you say here that some of their
09:39 5 techniques could be viewed as psychologically
6 aggressive, can you expand on that at all?

7 A Well, I think certainly the police, once they felt
8 that they were on the right track, you know, tried
9 various techniques and certainly were quite
09:39 10 aggressive in trying to get to the truth.

11 Q Aggressive in what way?

12 A Aggressive in perhaps making suggestions in
13 continual questioning, in maybe asking the same
14 question over and over in order to try and get
09:39 15 statements from the witnesses.

16 Q As an investigator, and we touched on this
17 yesterday, as an investigator, if you learned that
18 a witness has been holding back information, gives
19 you new information that is incriminating and
09:40 20 corroborated, would that be a reason to perhaps be
21 more aggressive in the interviewing?

22 A It may be perhaps, particularly if you believe
23 that there's more information that is being
24 withheld.

09:40 25 Q And I guess the question is where, as an officer,



1 where is the line drawn then in being aggressive
2 in getting the truth and not being too aggressive
3 to get untruths?

09:40 4 A Well, I guess there's sort of two types of
5 witnesses in my mind, there's those who simply
6 volunteer everything because, you know, they
7 provide you a pure version, and then there's those
8 who are withholding for certain means, and I guess
9 what you need to do as an investigator is to try
09:40 10 and satisfy the witness who is reluctant that they
11 can provide you with the information you are
12 seeking, so a reluctant witness may require much
13 more aggressive techniques by the police to try
14 and get to the truth. It may be that you need to
09:41 15 confront them with a statement that somebody else
16 has provided them, you may need to confront them
17 with facts that you know are the truth, it may be
18 any number of things that you may employ to try
19 and get them to tell you what you are after or
09:41 20 what you need to hear.

21 Q And if you could as well, you say that their final
22 versions of what transpired were corroborated by
23 each other and by certain independent facts and
24 circumstances. What are you referring to there?

09:41 25 A Well, we had the benefit, you know, of a number of



1 things that of course the investigators didn't
2 have in 1969, one of them being, of course, what
3 David Milgaard told Mr. Tallis, and some of the
4 things that they talked about with regards to the
09:41 5 compact, the scene of the crime, those sorts of
6 things, out to rob a woman, were all corroborated
7 by David Milgaard to his counsel Mr. Tallis, so we
8 had the benefit of that, so in looking at that and
9 then looking at their statements, we were able to
09:42 10 see that as the statements evolved, they became
11 closer to the truth, and of course the initial
12 denial that anything had happened when they were
13 first confronted by the police, so we had that.
14 We also had the scene where both John and Wilson
09:42 15 had identified certain things at the scene, so
16 there were a number of things that were able to
17 independently corroborate their statements.

18 Q And are you saying that everything Wilson, John
19 and Cadrain said was corroborated by something?

09:42 20 A No, I'm not saying that, I'm saying a number of
21 things they said we were able to corroborate.

22 Q Okay.

23 COMMISSIONER MacCALLUM: Mr. Hodson, before
24 you go on, the witness really didn't answer your
09:42 25 question, and given his expertise in this area,



1 I'm interested in what he might have to say.

2 Sir, you were asked where is the line drawn

3 between being aggressive and using aggressive,

4 psychologically aggressive techniques to get at

09:42 5 the truth and going too far, I'm just

6 paraphrasing. Where is the line?

7 A My Lord, that's --

8 COMMISSIONER MacCALLUM: You really didn't

9 say that.

09:42 10 A Yeah.

11 COMMISSIONER MacCALLUM: And, you know, I'm

12 interested in, you know, particularly in this

13 case these witnesses were very young and one of

14 them complained that the police called her a slut

09:43 15 and so on and that sort of -- the other guy was

16 nice and one was very insulting to her. I

17 recognize the fact that it's a very difficult

18 concept to deal with, but surely there must have

19 come a point when a police officer, a person in

09:43 20 authority and a very imposing presence has to

21 back off a little bit with young people for fear

22 of not getting the truth, simply getting them to

23 say what they perceive the police want them to

24 say just to stop the --

09:43 25 A My Lord --



1 COMMISSIONER MacCALLUM: -- criticism.

2 A I'm not sure that I can answer that question, you
3 know, satisfactory to the hearing here. I guess
4 if a police officer employs techniques that you
09:44 5 then find out later caused the person to say
6 something that wasn't true, then I think they
7 could definitely be criticized.

8 COMMISSIONER MacCALLUM: Well, yes,
9 ultimately I suppose it rests with the finder of
09:44 10 fact in a trial setting to determine whether what
11 they got was the truth or not, but I just
12 wondered if there was any accepted line of
13 demarcation within the police procedures to --

14 A Certainly codes of conduct and standing orders and
09:44 15 stuff tell police, you know, govern police
16 conduct, so certainly, you know, if they cross
17 that line, so to speak, I guess, you know, there
18 could be a complaint and they could certainly be
19 investigated.

09:44 20 COMMISSIONER MacCALLUM: What is the line,
21 though, in your view?

22 A Well --

23 COMMISSIONER MacCALLUM: You can't say?

24 A It's very difficult -- yeah, it's very difficult
09:44 25 to say. I guess in this particular case where the



1 investigator was fairly difficult with Ute Frank
2 and indicated to her that she was a slut and other
3 things, she ended up providing statements which
4 appeared to be the truth. On the other hand, if
09:45 5 those actions would have caused her to say
6 statements, to provide statements that weren't the
7 truth, then I guess we would be more critical of
8 the actions of the officer.

9 COMMISSIONER MacCALLUM: But would you only
09:45 10 judge the officer's conduct by the result?

11 A Oh boy. Yeah, I -- I don't want to suggest for a
12 moment that the end justifies the means, but this
13 is a serious case and I think sometimes your
14 actions are perhaps governed by the seriousness of
09:45 15 the case as well. If it's a very minor offence,
16 perhaps an officer should be less prone to sort of
17 go further than you would, but on a murder case
18 perhaps an officer is justified in pushing a
19 little bit harder, in resorting to means that may
09:45 20 be, in a very minor matter, would be considered
21 odd or unusual to use. I'm -- I apologize, I
22 don't think that I can be much more help than
23 that.

24 COMMISSIONER MacCALLUM: Yeah.

09:45 25 BY MR. HODSON:



1 Q If I might maybe, just by way of example, that if
2 you had -- let's talk about Nichol John for a
3 moment. If you have, and let's focus on the
4 Inspector Roberts time frame, that you have --
09:46 5 leading up to that point I think the record shows
6 that, at least according to Mr. Tallis, that a
7 number of pieces of incriminating evidence had
8 been provided that suggested David Milgaard was in
9 the vicinity around the time of the murder, that
09:46 10 they had stopped a woman for directions, that he
11 had left the car and a number of other things that
12 were suspicious and incriminating, they did not
13 establish that he was involved in the murder but
14 the evidence we've heard is that the police
09:46 15 certainly had strong suspicions if not more. And
16 so, in approaching Nichol John on May 23rd, 1969
17 as a police officer with high suspicions, with
18 information from Wilson -- actually, let me add
19 something. I think, before he went in to see
09:46 20 Wilson, he got Ron Wilson to say that David
21 Milgaard had made an admission. Can you tell us,
22 what are some of the things that you think would
23 be appropriate in questioning her and what would
24 be inappropriate in questioning her?

09:47 25 A I think if you were questioning her along -- to



1 try and get her to confirm some of the things that
2 Wilson had said, and perhaps you used some of his
3 statements and put them to her as things that you
4 believed and asked her to confirm or deny, I don't
09:47 5 think that would be inappropriate.

6 Q For example, to say "your travelling companion
7 just told us that David admitted it, we know he
8 did it, you were in the car, were you with him or
9 did you see it, why didn't you do something",
09:47 10 things of that nature; would that be -- do you see
11 any --

12 A No, I don't see any problem with that, in fact, I
13 know that's done frequently by police
14 investigators.

09:47 15 Q And where -- what would be inappropriate, then,
16 what would be things that -- and let's just focus
17 on Nichol John for a moment?

18 A Well I would think that certainly, if you
19 suggested to her things that -- I think if you
09:48 20 suggested to her things that you believed to be
21 true, that would be appropriate. I think if you
22 suggested to her things that you believed to be
23 not true and simply wanted to try and fabricate or
24 to make -- get a means to an end, I think that
09:48 25 would be probably inappropriate.



1 Q And if we can just talk about the Wilson-John
2 interaction, and I think the evidence we've heard
3 is that before Inspector Roberts interviewed
4 Nichol John he did get from Ron Wilson the very
09:48 5 incriminating statement, the admission, and I take
6 it as, let's put that aside for a moment, let's
7 assume that to be true or that the officer
8 believes that to be true; would that be an
9 influencing factor in approaching Nichol John?

09:48 10 A Very likely. I think he used what he knew when he
11 interviewed Nichol John and likely put some of
12 that to her to try and get her to confirm or deny
13 that that happened.

14 Q And so then let's take a step back to Ron Wilson,
09:49 15 because it seems that one -- if something wrong
16 happened in getting Ron Wilson's statement, that
17 wrong may have been compounded if that was used
18 with Nichol John; would you agree?

19 A Yes.

09:49 20 Q And so, in Inspector Roberts dealing with Ron
21 Wilson and the polygraph, now you're a -- you
22 conducted the polygraph for many years; is that
23 correct?

24 A Yes, I did, for about six.

09:49 25 Q Yeah. And so back in 1969-1970 we've heard some



1 evidence, I think from Mr. Robinson, that the
2 polygraph was an investigative tool in the sense
3 that it was, it was and could be used in an effort
4 to get information from a witness as opposed to
09:49 5 simply testing the truth of what the witness says;
6 would you agree with that?

7 A Yes.

8 Q And that what are some of the ways that a
9 polygraph can, in your view, be used to get
09:49 10 information from a witness like Ron Wilson, and
11 appropriately?

12 A Well I think you could ask, you know, obviously
13 you would have a statement from a witness, you
14 would ask the witness certain things about that
09:50 15 statement and then try and verify whether what
16 they told you in that statement was true, and in
17 this case I believe that Mr. Roberts had some
18 admissions from Mr. Wilson so I'm assuming that he
19 likely tested Mr. Wilson on that statement and
09:50 20 asked him if elements of that statement that he
21 told the police were true. From his Supreme Court
22 testimony I believe he felt that Mr. Wilson was
23 being deceptive, that he wasn't being fully
24 truthful, and therefore would have likely, during
09:50 25 the post-test or after he had completed the



1 charts, during that phase of the interview he
2 would then have tried to go on and get further
3 information from Mr. Wilson because of the results
4 of the polygraph that would have indicated to him
09:50 5 Wilson wasn't being completely truthful.

6 Q And I think Inspector Roberts' evidence was that
7 he used the SKY test, do you suspect, do you know,
8 and did you commit; is that the correct --

9 A That's correct, Suspicion, Knowledge, and You.

09:51 10 Q You. And I think his evidence was that either one
11 or two of those, it's not clear whether one false
12 question was an earlier question, but in any event
13 I think he said he felt Wilson was being deceptive
14 on the "do you suspect" and "do you know" and went
09:51 15 back, and in that case if he went back and said
16 "lookit, this says you're lying, you know more"?

17 A I'm certain that's likely what he would have said
18 to him.

19 Q And, again, anything; do you see any reason to
09:51 20 question that practice?

21 A No, that would have been appropriate, I believe,
22 for him to have done that.

23 Q And that if the polygraph indicated that Mr.
24 Wilson was being deceptive when he said he didn't
09:51 25 know or didn't suspect anybody in relation to Gail



1 Miller, then you are saying that would be
2 appropriate to go further and say "lookit, you
3 know, are lying on that" --

4 A Yes.

09:51 5 Q -- "according to the polygraph"?

6 A Yes, it would.

7 Q What about the -- you talked about putting, is
8 there a difference between interviewing a suspect
9 as opposed to a witness in what you might -- the
09:52 10 techniques you might use?

11 A Probably, initially, not much, but as the
12 statement goes on, and let me explain that. I
13 think, as I've indicated before, when you are
14 interviewing a witness quite often the witness
09:52 15 will just tell you everything in a pure version
16 form, you are then able to clarify elements of
17 that statement through questioning at the end of
18 the statement. You may have a witness who is
19 reluctant to tell you things who you either
09:52 20 believe is withholding information or you are able
21 to verify through other independent means that is
22 withholding information, that may take a more
23 rigorous form of questioning. It's not any
24 different, perhaps, with a suspect. You may talk
09:52 25 to a suspect, ask the suspect if they are



1 responsible for the crime, and the suspect may
2 provide you with a full admission. That isn't
3 as -- that doesn't happen as often as a denial,
4 but then of course your interviews would then be
09:53 5 guided by you trying to then obtain information
6 concerning the offence you are investigating from
7 the suspect, so you may then have to take more
8 aggressive forms of interviewing techniques to try
9 and get your admission from a suspect.

09:53 10 So initially the interviews
11 could be very much the same, but based on the
12 circumstances and the evidence that's coming from
13 the -- or the statements that are coming from the
14 person you are interviewing, you may have to
09:53 15 employ a different technique to try and get the
16 person to tell you what you believe to be true, or
17 you believe the suspect knows, --

18 Q And just --

19 A -- or witness knows, sorry.

09:53 20 Q And just one last point on this. I think the
21 Commissioner raised this in one of his questions
22 about the age of these witnesses. Would you agree
23 that certain witnesses may be able to withstand
24 more aggressive questioning more so than others,
09:53 25 and that the age, demeanour, and position of the



1 witness would be an important factor in the
2 question of how far an officer could go in
3 questioning?

09:54 4 A Very much so. And I think a young person is
5 somebody who, you know, certainly an officer would
6 be conscious of that.

7 In this particular case, My
8 Lord, I think some of these, there's evidence that
9 these were quite street-wise young individuals, so
09:54 10 perhaps they may have been perhaps a bit wiser
11 than their young years, but certainly these were
12 young people and greater care does need to be
13 taken with interviewing young people than perhaps
14 adults who are more experienced and -- in life.

09:54 15 Q And would you agree with this, that one method of
16 aggressive questioning, quite within the bounds,
17 but one method of aggressive questioning of a
18 witness might not get anything from witness A
19 because that witness is strong, but might get
09:54 20 something from witness B because he or she is
21 weak?

22 A Yes.

23 Q In other words, the information obtained by one
24 line of questioning may not be credible because of
09:54 25 the person being interviewed?



1 A That's correct, certain techniques may work with
2 one person and not work with the other.

3 Q Okay. If we can then go down to D.3, this is the
4 Investigative Summary, and I think, Mr.

09:55 5 Commissioner, we've agreed to call this the Mackie
6 summary; is that correct?

7 COMMISSIONER MacCALLUM: Yes, correct.

8 BY MR. HODSON:

9 Q We've called it a number of things. This is --

09:55 10 and you are familiar with this document then,

11 Mr. Sawatsky, that's the five-page document,

12 there's four pages of summary of what's in the

13 police files and then one page of notes or

14 theories, and then the suggestion at the bottom

09:55 15 about bringing these witnesses in for a polygraph?

16 A Yes, I'm familiar with this document.

17 Q In fact 023440, if we could just call that up,

18 it's attached to your report as an appendix. And

19 you are familiar with that document, if we can

09:55 20 actually go to the fifth page?

21 A Yes, I'm familiar with this document.

22 Q And I think this is the summary where we'll spend

23 most of our time dealing with it, so if we can

24 just go back to page 023250, and here in your

09:56 25 report you say:



1 "This issue is about a five
2 page police report which allegedly
3 illustrates the fact the evidence of
4 witnesses John and Wilson was fabricated
09:56 5 by the police.

6 Page five of the report is a
7 'summary' of points which Wolch alleges
8 predict what John and Wilson will say.
9 According to Mr. Wolch these two had not
09:56 10 yet given full statements to the police
11 and the summary is evidence of a strong
12 determination to have the witness'
13 evidence conform a pre-existing theory.
14 Mr. Wolch cites a comment at the bottom
09:56 15 of the summary under the heading
16 'Suggestions' which emphasizes his
17 point:"

18 And let me just stop there. Does that accurately
19 outline what the issue was, or the allegation
09:57 20 that was presented to you?

21 A Yes.

22 Q And is it correct to say that it was, up until the
23 time this summary was prepared, the witnesses did
24 not give incriminating information, the summary
09:57 25 then is a script that the police said "here's what



1 we're saying happened, even though we know it
2 didn't happen, now go out and get Wilson and John
3 to testify, here's the script, get them to say the
4 following and we'll get our conviction"?

09:57 5 A That's --

6 Q Essentially?

7 A That's essentially, yes.

8 Q And that the script was part of the game plan, so
9 to speak, of the police to go out and get Wilson
09:57 10 and John and perhaps Cadrain to give evidence that
11 would fit with what the police said happened;
12 correct?

13 A Correct.

14 Q And, in fact, would it be a bit further -- let me
09:57 15 give you two scenarios. Was it a case where it
16 was -- was the allegation that, lookit, the police
17 thought this is how it happened, legitimately
18 believed this is how it happened, and went out and
19 got the evidence to conform; or, secondly, the
09:58 20 case where the police didn't know how it happened
21 and didn't care, but this was the way to get these
22 witnesses to give evidence to give their
23 conviction -- to get a conviction?

24 A That's correct.

09:58 25 Q And was it the latter one, that's, that was the



1 allegation?

2 A The allegation was the latter one, yes.

3 Q Yes, and so can you tell us, then -- actually, if

4 we can just go to the next page. It looks like

09:58 5 one of the tasks that your people performed was to

6 find out who was the author; is that correct?

7 A That's correct.

8 Q And was a fair bit of time spent by your

9 investigators investigating into this, into the

09:58 10 Mackie summary?

11 A Yes, this summary was investigated very

12 thoroughly.

13 Q And so it appears that:

14 "We then ...",

09:58 15 "... to determine their knowledge of the

16 documents... the report and summary

17 with those in the police reports to

18 establish:

19 ... authorship

09:59 20 ... the date created, and

21 ... verification of details and

22 comparison between when they were known

23 and the date the report was created."

24 And so that would have been sort of the

09:59 25 significant job at the outset, who drafted it,



1 when did they draft it, and who had it?

2 A Yes.

3 Q And I take it that that would be evidence that
4 might be significant to establish this allegation
09:59 5 that it was used as a script for the witnesses?

6 A Correct.

7 Q If we can scroll down. And we have been through
8 this with a number of witnesses, Mr. Sawatsky, but
9 pages 1 to 4 are simply the summary of evidence
09:59 10 based on police reports and statements, you are
11 familiar with that, that --

12 A I am, yes.

13 Q And I think the evidence that we heard from
14 Mr. Mackie, who I believe has acknowledged that he
09:59 15 is the author at least of the fifth page, the
16 summary, but I think the evidence this Commission
17 has heard is that at some time, likely in late
18 April-early May, he put together the summary, and
19 that the first four pages would have been, I
10:00 20 think, prepared by another police officer who
21 would have gone through the file to put together a
22 summary of all the information on the police file
23 that related to David Milgaard as a suspect, it
24 was -- generally that was the evidence. So that
10:00 25 there were, there may be two authors of that, but



1 Mr. Mackie said that he prepared the fifth page.

2 I don't think your investigators got that

3 information from Mr. Mackie at the time?

4 A No, I think we believed it was either Mackie or

10:00 5 Penkala, and weren't able to be certain as to

6 which one of the two.

7 Q If we can then go to the next page, I don't

8 propose to go through this, this just details the

9 investigation. I think you've said that you took

10:00 10 significant steps into this document, who created,

11 I think you sent it to people to look at the

12 language used in it just to compare it with the

13 language used by other officers to see if there

14 were similar words used; is that right?

10:01 15 A Yes, yes.

16 Q If we can go to page 253. And again, pages 1 to 4

17 are the summary of what's in the police reports,

18 it says:

19 "We compared pages 1-4 with

10:01 20 police reports and witness statements in

21 order to verify if the details

22 originated from these sources and

23 whether or not knowledge of the details

24 preceded the date the report was

10:01 25 written."



1 And then you go on to say:

2 "Most of the information set
3 out in pages 1-3 can be verified ...",
4 and there is two exceptions:

10:01 5 "1) Item attributed to Nichol John on
6 page 2: 'Admits seeing nurse (looked
7 like nurse) near funeral home. Asked
8 directions'".

9 And then:

10:01 10 "2) Detail attributed to Lt. Penkala on
11 page 3."

12 And I think what you're saying, and please
13 correct me if I'm wrong, that, other than these
14 two items, the first four pages of the Mackie
15 summary had a source document in the police files
16 that supported what was in the summary?

17 A That's correct.

18 Q And we've heard evidence on item number 1 here,
19 the Nichol John matter, and in her statement of
10:02 20 March 11th, 1969 there is no mention of:

21 "'Admits seeing nurse (looked like
22 nurse) near funeral home. Asked
23 directions'",

24 and there is no police report that is a source
10:02 25 for that either up until, you know, towards the



1 end of April-early May. Do you recall looking at
2 this issue, or what your people concluded as to
3 how it was that this piece of information may
4 have been in the Mackie summary, yet not in a
5 statement or a police report?

10:02

6 A Yeah, I think we concluded that it's likely the
7 summary was drafted by someone who may have had
8 some factual knowledge of this from some other
9 means. Certainly, the bulk of the report could be
10 verified from other sources, but these two
11 statements, this statement in particular we
12 weren't able to verify through any other means
13 except that the author perhaps knew that
14 information him or herself.

10:02

15 Q Okay. So that it would be, and there was some
16 evidence that after the March 11th, 1969 statement
17 to Inspector Riddell, I think there was one or
18 probably two police interviews with Nichol John in
19 April, and there are police reports that we've
20 looked at, there are no statements and there are
21 no notes about those interviews; did your people
22 conclude that this piece of information likely
23 came from one of those interviews but simply
24 wasn't recorded or, if it was recorded, it was not
25 found later?

10:03

10:03

10:03



1 A That's correct, it was possible that that is what
2 happened.

3 Q Did you reach any conclusion that it might have
4 been put in there inappropriately, in other words
10:03 5 fabricated by an officer?

6 A Well certainly, when you look at the document in
7 its entirety, it didn't appear to have been
8 something that was made up or fabricated.

9 Q I mean this point, in other words the other four
10:03 10 pages other than the Penkala point, I think had a
11 source document?

12 A That's correct.

13 Q And did you consider whether or not this piece of
14 information was somehow put in there
10:04 15 inappropriately or deliberately without a source
16 document?

17 A Well I think in our -- we tried to explain how it
18 could have possibly got in there, and I think our
19 best explanation was that perhaps the author had
10:04 20 some independent knowledge of this, and it simply
21 wasn't supported by the documentation at the time.

22 Q Okay.

23 A But I think, when you look at the entire document
24 in its entirety and weigh it, there doesn't appear
10:04 25 to be any impropriety there.



1 Q Okay. If we can go to the next page, and
2 authorship, I think there was a suggestion that
3 Mr. Caldwell may have been involved in either
4 drafting it, because a copy of it was found on his
10:04 5 file in 1991 or 1992; is that correct?

6 A Yeah, that suggestion did come up.

7 Q And was that something you looked at to see
8 whether Mr. Caldwell drafted that document or had
9 it?

10:05 10 A Yes, we did.

11 Q And what would -- I believe the conclusions are
12 that it was a Saskatoon City Police-authored
13 document; is that right?

14 A Yes, those are the conclusions, and I believe this
10:05 15 document was prepared well in advance of Mr.
16 Caldwell being involved in the file.

17 Q And I'll show you, a bit later, your comments
18 about what role you concluded Mr. Caldwell played
19 in this. Is it fair to say that, regardless of
10:05 20 whether it was Penkala or Mackie or whoever, when
21 you looked at this Mackie summary you did so on
22 the basis that the Saskatoon City Police drafted
23 the document, the five-page document, and they did
24 so in advance of the May 21 to 24, 1969 interviews
10:05 25 of Wilson and John?



1 A Yes.

2 Q And so there was no issue, I think your starting
3 point was that it was prepared in advance of the
4 information obtained from Wilson and John May 21
10:05 5 to 24, and therefore it was created by the police
6 at a time that it could have been used to
7 influence the evidence of witnesses?

8 A Right.

9 Q Is that correct?

10:06 10 A That's correct.

11 Q Go to 023255. And then you make mention, here,
12 that:

13 "Both Nichol John and Ron

14 Wilson provided the bulk of their

10:06 15 incriminating information to the police

16 during interviews 69-05-21/24. As noted

17 above, Mr. Wolch claims the summary is

18 evidence of a strong determination to

19 have the evidence conform to a

10:06 20 pre-existing theory. If the

21 investigators' 'brainstorming' meeting

22 took place 69-05-16, this would predate

23 their decisive interviews."

24 And just on that point, Mr. Sawatsky, we've heard

10:06 25 evidence, I think from Mr. Penkala, that there



1 was a meeting May 15-16 of senior officers, and
2 that this Mackie summary was likely, or was
3 considered by them, it was something that was in
4 existence at the time, and I think we've heard
10:07 5 evidence from Mr. Mackie that he prepared the
6 document for Lieutenant Short for the purposes of
7 going to his senior people to get some direction
8 on either eliminate or -- to either eliminate Mr.
9 Milgaard or to conclude charges. So, again,
10:07 10 would that be consistent with what your
11 investigators concluded, although the dates may
12 have been a bit different?

13 A Yes, that was consistent, and I believe there was
14 also an RCMP report authored around that time
10:07 15 where the RCMP -- an RCMP investigator was
16 present --

17 Q Yes?

18 A -- for this interview, or for this brainstorming
19 session as well.

10:07 20 Q We then go on, if we can scroll down just a bit
21 here, you say:

22 "The statements outlined in the summary
23 ...",

24 and when you use the term "summary" I think you
10:07 25 are referring to the fifth page with the heading



1 Summary which is the theory; is that right?

2 A That's correct.

3 Q And let's talk about that. You say:

4 "The statements ... are a mixture of
10:07 5 fact and theory. The author makes no
6 effort to hide the fact that some
7 statements are conjecture. Throughout
8 the text words are used such as:

9 'he seems',

10:08 10 'it would appear that',

11 'may have gone driving',

12 'this would be around funeral home
13 which would coincide with ...'.",

14 etcetera. If we could go to 023444, please. And
10:08 15 just generally, Mr. Sawatsky, when you looked at
16 this document did you see anything improper,
17 unusual, suspicious about this summary document,
18 predating the May 21 interviews, being on the
19 police file, being a police document?

10:08 20 A No. No. This appears very much to be sort of
21 like an operational plan as to what they knew and
22 then what needed to be followed up on.

23 This is not uncommon. Police
24 files contain operational plans all the time. In
10:08 25 fact, over the years, some operational plans have



1 become very sophisticated where they talk about
2 resources, the amount of money that will be
3 required, what techniques will be employed, and
4 even outline the total costs of the operation.
10:09 5 So, to me, this document didn't appear unusual at
6 all in that sense.

7 Q In your experience as a police officer and an
8 investigator in major crimes, was it your practice
9 or was it uncommon to sit down and write out what
10:09 10 you think might have happened, "here are some
11 theories to pursue", you know, "if David Milgaard
12 committed the murder, and I think he did, here's
13 maybe how it happened, here's maybe what Ron
14 Wilson did, here's maybe what John did, we should
10:09 15 go check these theories out because I think this
16 is maybe what happened"?

17 A That's a very common practice. I've done it in
18 many, many investigations I've worked on, in fact
19 it was done many, many times with Mr. Fraser and
10:09 20 Mr. McCrank during this investigation.

21 Q And so is there a danger putting on paper your
22 thoughts or your theories as to what you think
23 might have happened?

24 A No, there isn't, because you then go out and work
10:10 25 on those and, at the end of the day, you may find



1 that you were simply investigating the wrong lead,
2 or something that didn't pan out, or you may have
3 been on the right track and are able to find
4 evidence to support what you earlier believed.

10:10 5 **Q** Is there a risk that, by putting it down on paper
6 as to "here's what I think might have happened or
7 here's what I think did happen" without having the
8 evidence yet, that somehow this might be used by
9 police to get witnesses to conform their evidence
10:10 10 to the theory?

11 **A** I don't think I ever viewed it as that when I put
12 together operational plans and sat down and
13 discussed, you know, potential leads or directions
14 for the investigation to take. I guess that it
10:10 15 exists, but certainly, I never had that concern as
16 an investigator when I did this type of work.

17 **Q** And so would preparing a document such as this
18 summary, would it be your view, then, that that
19 would be an appropriate part of police
10:11 20 investigative work?

21 **A** Yes.

22 **Q** If we can just go back to 023255. At the bottom
23 of the summary, and this is again just your
24 narrative, at the bottom of the summary two points
10:11 25 are outlined under the heading *Suggestions*. The



1 first deals with the idea of having John, Wilson
2 and Cadrain brought to Saskatoon, quote:

3 "... where with all present the true
4 story can be obtained ever (even) if
10:11 5 hypnosis or polygraph are necessary."

6 What was the significance, if any, of that
7 comment in the summary?

8 A I think there was certainly a recognition by the
9 author of the document that it may be difficult to
10:11 10 get the truth from Nichol and Ron Wilson, and that
11 he is suggesting that it may be necessary to
12 employ techniques beyond simple questioning of
13 "did you -- what did you see?"

14 Q If we can then go to the next page. And here's
10:12 15 where you say:

16 "A comparison was made
17 between the details provided by Nichol
18 John and Ronald Wilson in their
19 69-05-21/24 interviews and those
10:12 20 described in the summary. The best that
21 can be said is that their disclosures
22 vaguely conform to the police theories."

23 And if we can go to 023446, and this is in
24 Appendix F to the report, and it's titled
10:12 25 *Comparison of Investigative Summary to May*



1 *Statements of John and Wilson*, can you just --
2 and I'm going to go through this with you in
3 detail, Mr. Sawatsky, if you're able to find it.

4 A I believe -- is that before or after the --

10:12 5 Q It's right after the Mackie summary.

6 A Right after? Okay. Yes, I have it here.

7 Q Got it? And I intend to go through this with you
8 in detail, but can you tell us generally what this
9 document is, and what was the purpose of
10:13 10 conducting this comparison?

11 A Yeah. The purpose here was the investigator would
12 be sitting down, trying to analyse each element of
13 the statement, and make a comparison to try and
14 determine whether or not what Nichol John and Ron
10:13 15 Wilson told the police at the end of the
16 interviews conformed exactly to the document, and
17 see if perhaps there was some evidence that would
18 support the assertion that this document was
19 something that would -- they were -- the police
10:13 20 were going to force them or get them to conform
21 to.

22 Q And so, if the Mackie summary was used to cause
23 Wilson and John to give false evidence that
24 conformed with the script, would you then expect
10:13 25 their ultimate evidence, then, to be consistent



1 with what is in the script?

2 A Exactly.

3 Q And so that was the purpose of the exercise, to go
4 through and compare the script, if I can call it
10:14 5 that -- and I appreciate, Mr. Commissioner, it's
6 the Mackie summary -- but in this context what was
7 being alleged is that if the fifth page of the
8 summary was indeed the script and it was given to
9 the police, and then to John and Wilson, and said
10:14 10 "lookit, here's what we want you to say, say it",
11 that's was what you would check?

12 A That's right, it was given to the police -- the
13 assertion was that it was given to the police and
14 that they would then get the witnesses to conform
10:14 15 to that script.

16 Q And so if the evidence of Wilson and John before
17 the Mackie summary did not conform to what was in
18 the summary, but after their evidence did, would
19 you agree that that would be some evidence to
10:14 20 suggest that the summary may have been a factor in
21 getting that evidence?

22 A Yes, that would certainly be suspicious.

23 Q On the other hand, if what Wilson and John ended
24 up saying after the summary was prepared did not
10:14 25 conform to what was in the summary, what would



1 that tell you?

2 A Well that would certainly tell me that the script
3 wasn't prepared so that they would conform to its
4 contents.

10:15 5 Q And so, if we can just go back a couple of pages
6 to the summary at 444, and just so that we're
7 clear here, I think the document we're gonna go
8 through is that your investigators, I guess, had
9 the information that Wilson and John had given
10:15 10 pre-May '69, and that would have been in their
11 first statement of early March; correct?

12 A Correct.

13 Q Yeah. Then I think your officers took each one of
14 these summaries and looked at that and said okay,
10:15 15 what did Wilson and John each say after, in other
16 words, in May of '69 after the Mackie summary was
17 prepared, and did it conform to what it's alleged
18 to have happened, did it conform to what Mackie
19 put in his summary; is that right?

10:16 20 A That's right.

21 Q If we can then go to 446, and I think you did it
22 on a witness-by-witness basis, so the first one,
23 and I don't think we need, Mr. Commissioner, to
24 bring up the summary. What I can tell you is that
10:16 25 when we go through this document, I think when we



1 see a summary point here, this is taken basically
2 verbatim from page 5 of the Mackie summary, so
3 they take a point in there and then they go
4 through and compare with what came after. Is that
10:16 5 correct, Mr. Sawatsky?

6 A That's correct.

7 Q And so here, summary point -- actually, why don't
8 we just for the first one, just go back to 444,
9 please. I won't do this for every one, but you'll
10:17 10 see in this summary point here, it says:

11 "Wilson appears to be driver of car,
12 therefore, Milgaard would leave car to
13 get purse - having seen Miller closer
14 his sex drive takes over and he forces
10:17 15 her down alley to where she is found."

16 So then if we can go ahead to 446, we see here
17 that summary point is repeated and then it
18 appears, Mr. Sawatsky, your investigators then go
19 and look at what came after; is that right?

10:17 20 A That's right, they analysed what was in the
21 statements, etcetera, after that.

22 Q And so here what is reported after comes from
23 Mr. Karst's May 21 report, it says:

24 "During the conversation with Ronald
10:17 25 Wilson, he admitted attending in



1 Saskatoon with Milgaard and Nickey on
2 the early morning of January 31st and in
3 contradiction of his original and other
4 interviews, he admitted that Milgaard
10:17 5 had left the car when they became stuck
6 at approx. 6:45 that morning, while
7 looking for the Cadrain residence. All
8 Wilson would say at this time was that
9 Milgaard appeared to be puffing and
10:18 10 running, slightly out of breath when he
11 returned to the vehicle, and he admitted
12 that he had since thought that this was
13 the time that Milgaard was probably
14 involved in a murder."

10:18 15 Again, can you tell us, did Ron Wilson in his --
16 let's call it in his May evidence, and what I'm
17 referring to when I say his May evidence, being
18 the May 21 and onward, okay? Did he adopt this
19 summary point that was found in Mackie's summary
10:18 20 in your view?

21 A Well, I think partially, I think you could look at
22 that and say there's some aspects of that that are
23 there.

24 Q And the summary -- and I guess -- what is
10:18 25 inconsistent then?



1 A I think what is inconsistent is that Wilson
2 doesn't talk about Milgaard's sex drive taking
3 over and forcing her down the alley to where she
4 is found, he doesn't suggest that's what happened.

10:19 5 Q And what about the leaving the car to get the
6 purse as opposed to getting stuck and leaving the
7 car?

8 A Exactly, he talks about leaving the car, but he
9 talks about the car being there for a different
10:19 10 purpose.

11 Q And so on this point, what -- and I appreciate at
12 the end you looked at all of the points, but then
13 on this point, are you saying lookit, some of it
14 is -- some of it conforms, but some of it doesn't?

10:19 15 A That's correct, you know, the very first part
16 conforms and then after that it doesn't.

17 Q And then go down to the bottom, the next summary
18 point, and again this is taken:

19 "All were out of funds and may have gone
10:19 20 driving with a view to getting money."

21 And then the next page, and this again comes in
22 May:

23 "Enroute to Saskatoon, Wilson divulged
24 to me that on that trip..."

10:19 25 Etcetera, they,



1 "...discussed B & E's, along with
2 rolling someone and purse snatching as a
3 source of money..."

4 Etcetera, and it appears that that would conform
10:20 5 with what's in the Mackie summary; correct?

6 A Correct.

7 Q But would that also be corroborated by what the
8 witnesses said was true?

9 A That was corroborated by other means, and in fact
10:20 10 was even corroborated in part by Milgaard himself
11 to Mr. Tallis.

12 Q And then if we can go to the next page and then
13 you make a note here on this point, that:

14 "In making this comparison it should be
10:20 15 noted that Wilson's 69-03-11 statement
16 to Riddell there is a suggestion that
17 this group needed money..."

18 And so -- and then you go on to say that:

19 "Milgaard's first interview with the
10:20 20 police ... would have given Karst the
21 basis for this belief as well. He
22 indicates they were in need of money."

23 And the truth was confirmed later. So do I take
24 it from that that although this was in the
10:20 25 summary and it conformed, there was information



1 prior to the summary from Wilson and Mr. Milgaard
2 that might have led the police to believe that
3 that was true and it was later confirmed to be
4 true?

10:21 5 A That's correct.

6 Q The next point, summary point:

7 "On seeing nurse (Miller) she was
8 approached on pretence of getting
9 directions with a view to stealing her
10:21 10 purse. Also Wilson appears to be driver
11 of car, therefore, Milgaard would leave
12 car to get purse - having seen Miller
13 closer his sex drive takes over and he
14 forces her down alley to where she is
10:21 15 found."

16 And then it goes on to provide the summary of the
17 evidence about what transpired this morning, and
18 Wilson's account is the three of them drove into
19 the city, drove around, they met a girl in the
10:21 20 area described above, asked for directions, the
21 asking done by Milgaard, and then:

22 "They drove a short distance further and
23 while making a turn, the vehicle became
24 stuck, as they had no reverse gear. At
10:21 25 this time Milgaard left for help,



1 returning approx 15 minutes later."

2 Can you tell us again what was your conclusion
3 that this summary point was adopted by Mr. Wilson
4 in his later evidence?

10:22 5 A Again, only in part.

6 Q And what part was not consistent?

7 A The "having seen Miller closer his sex drive takes
8 over and forces her down the alley to where she is
9 found," that part was not confirmed.

10:22 10 Q And then go to page 450, and I guess the summary
11 point here:

12 "Wallet and toque are in car and when
13 Milgaard gets keys from Wilson at
14 Cadrains to put suitcase in car, he
10:22 15 disposes of toque and wallet at this
16 time."

17 If I can just pause there. I think the police
18 had found Gail Miller's wallet three or four
19 doors down from the Cadrain house and as well the
10:22 20 toque was found by the next-door neighbour, a
21 toque with what appeared to be blood or some
22 stain on it was found, so that was what the
23 police had at the time, and so here the police
24 report is:

10:22 25 "He states this is where Milgaard took



1 the car keys from him and left the house
2 driving around the block for 10 mins.

3 ..."

4 And no mention of the wallet or toque. Can you
10:23 5 tell us, what was your conclusion on that point?

6 A I don't believe that was confirmed, or that point
7 was confirmed by the witnesses.

8 Q Would you have expected that if Wilson and John
9 were being coerced to conform to this script, that
10:23 10 one or both of them would have said 'when we got
11 to Cadrains we saw David throw the wallet out and
12 he put his toque in the neighbour's yard'?

13 A Yes, I would have expected that.

14 Q And the fact that it's not in either Wilson or
10:23 15 John's statement, what's the significance of that?

16 A The significance of that is that obviously they
17 weren't coerced into saying that and that this
18 script wasn't -- I guess it's an indicator that
19 the script wasn't sort of a plan to get them to
10:23 20 say that.

21 Q If we can go down, summary point:

22 "Purse thrown in garbage on way through

23 --"

24 COMMISSIONER MacCALLUM: Just a minute.

25 MR. HODSON: Sorry.



1 COMMISSIONER MacCALLUM: Sorry, Mr. Hodson.
2 How could they ever be expected to say that when
3 Milgaard was, it was proposed that he get the
4 keys from Wilson at Cadrains and go alone to do
10:24 5 the disposing of the -- how would they ever know
6 anything different? How could they ever confirm
7 that?

8 A They wouldn't have known that, My Lord, unless the
9 police, you know, put that into their minds to
10:24 10 say.

11 BY MR. HODSON:

12 Q I think the Commissioner's question is if -- I
13 think is one explanation as to why Wilson and John
14 wouldn't have adopted that is because they
10:24 15 wouldn't have been in a position to know that; in
16 other words, if Mr. Milgaard left the house, took
17 the car and disposed of the wallet and the toque
18 while they are in the home, they would not have
19 been able to see it.

10:24 20 A They wouldn't have known that, that's correct.

21 Q So in other words, and I think, correct me if I'm
22 wrong, that one explanation as to why this was not
23 perhaps included in Wilson and John's statement is
24 because they would not be in a position to give
10:24 25 that evidence?



1 A They didn't know it happened, that's correct.

2 Q Next point, summary point:

3 "Purse thrown in garbage on way through
4 alley from Avenue "N" to "O" - possibly
10:25 5 when Nichol John returns to the car and
6 is picked up."

7 And then you go through the statement and the
8 information that Ron Wilson says Milgaard told
9 him that:

10:25 10 "...he had jabbed her with a knife and
11 he had put her purse in a trash can and
12 he had thought she would be alright."

13 And again, what is your conclusion on that as far
14 as the conformity?

10:25 15 A Yeah, it doesn't, it's not conforming to the
16 script. There's nothing in the script about that
17 at all.

18 Q Okay. Now, I think -- there's nothing in the
19 script -- let's just be clear. There's nothing in
10:25 20 the script, in the Mackie summary that says Ron
21 Wilson is going to tell us that Milgaard admitted
22 to him in Calgary that he jabbed a girl, there's
23 no conformity there?

24 A Correct. That's what I was getting at with my
10:26 25 last statement.



1 Q Okay. But let's look at the other side, there
2 is -- would you agree there is conformity in that
3 Mr. Wilson is saying he was advised by David
4 Milgaard that he did throw the purse in the trash
10:26 5 can?

6 A Correct.

7 Q And just on that point when we talk about the
8 trash can, I think it became publicized I think in
9 early February, 1969 that Gail Miller's purse was
10:26 10 found in a trash can I think when they were, when
11 the police were following around the garbage truck
12 and found it in the trash can in that alley.

13 Later on when these witnesses are interviewed, and
14 I asked you this same question about driving them
10:26 15 around the vicinity of the area, what are your
16 views about whether it would have been appropriate
17 for the police to introduce this fact in their
18 interviews of Wilson and John; in other words,
19 that -- how would you find out whether they had
10:27 20 any information relating to the purse in the
21 garbage can and can you do so by disclosing that
22 fact?

23 A Yeah, I would suggest that you could, but it's
24 something that you wouldn't do early on in the
10:27 25 interview, I would suggest that, you know, if you



1 are having difficulty with your interview and you
2 believe that they know something about it and they
3 are not telling you, then it may be appropriate to
4 either ask about the description of the purse or
10:27 5 if they had any knowledge of it and then perhaps
6 even to show them or to tell them that you knew,
7 but it certainly wouldn't be appropriate in my
8 view to suggest it at the outset of the interview,
9 but perhaps later on when you are having
10:27 10 difficulty getting the truth.

11 Q Would the concern be that by introducing that fact
12 early on, the risk is that you might influence the
13 witness?

14 A That's correct.

10:27 15 Q If it is a fact that is known, does that change --
16 is there a distinction between facts that are only
17 known by investigators and facts that might be in
18 the public domain?

19 A Yes, yes, there's certainly key material that
10:28 20 investigators try to withhold thinking that only
21 the accused or the witness would have knowledge of
22 that and therefore, if they imparted that, would
23 give more support to your belief that they were
24 telling you the truth.

10:28 25 Q And then scroll down, the next summary point:



1 "All were out of funds and may have gone
2 driving with a view to getting money.
3 Also on seeing nurse (Miller) she was
4 approached on pretence of getting
10:28 5 directions with a view to stealing her
6 purse."

7 And then statement of Wilson, and we've been
8 through this before, is that they asked her for
9 directions and later got stuck. Again, what was
10:28 10 your view on whether there was, whether that
11 summary point was adopted by Ron Wilson?

12 A Well, it was I guess sort of loosely in that there
13 was some confirmation that they were looking for
14 money and that was also confirmed again by
10:29 15 Milgaard himself to Mr. Tallis.

16 MR. HODSON: I see it's 10:30. Probably an
17 appropriate spot to break.

18 COMMISSIONER MacCALLUM: Yes.

19 *(Adjourned at 10:29 a.m.)*

10:50 20 *(Reconvened at 10:50 a.m.)*

21 BY MR. HODSON:

22 Q Can we go to page 023452, please. This is just to
23 finish up the comparison of the summary points in
24 the Mackie summary with what Wilson ended up
10:50 25 saying. Some of these are a bit repetitive of



1 what we've seen. Again, this point about what
2 prompted David Milgaard to leave the car I think
3 was a point you raised, was not to steal a purse
4 or for, because his sex drive took over, but I
10:50 5 think your earlier evidence was what Wilson ended
6 up saying was he left the car because the car got
7 stuck and he went to look for help; is that
8 correct?

9 A That's correct.

10:50 10 Q And I don't propose to go -- I think these
11 summaries just go through and compare those points
12 with some later statements. If we go to the next
13 page, 249 -- sorry, the next page, the conclusion
14 then, and this is the comparison of what's in the
10:51 15 Mackie summary versus what Wilson ended up saying,
16 and it is:

17 "From this comparison, it cannot be said
18 that any of the Saskatoon City Police
19 reports or details in Wilson's
10:51 20 statements directly correspond to any of
21 the specific points outlined in the
22 summary. There are, however, points in
23 the Saskatoon City Police reports and
24 Wilson's statements that could be viewed
10:51 25 as vaguely conforming to some of the



1 points in the summary."

2 And would that have been the conclusion then
3 reached by your investigators?

4 A That's correct.

10:51 5 Q And so as far as Ron Wilson is concerned, what was
6 your conclusion as to whether the Mackie summary
7 was used in an inappropriate way to influence Ron
8 Wilson to give false evidence?

9 A There's certainly no evidence of that.

10:51 10 Q If we go to Nichol John, I think you did the same
11 exercise there, so the first point in the summary
12 point:

13 "This would be around the funeral home
14 which would coincide with statements of
10:52 15 Nichol John."

16 And then it goes on to indicate that on May 22nd
17 she was transported down to 22nd Street during
18 which time she indicates she recalled the brick
19 wall on the east side of the Westwood Funeral
10:52 20 Home, etcetera. So it would appear that the
21 summary point was in fact that Nichol John's
22 later statement was consistent with the summary
23 point; is that fair?

24 A Yes.

10:52 25 Q The next point:



1 "Nichol John knows or suspects results
2 and leaves car. Runs west on 20th
3 Street in 1400 Block and is girl seen by
4 Indyk at S. Mary Church. At this point
10:52 5 she changes her mind about saying
6 anything and goes north on Avenue "O"
7 where she meets car again."

8 And then the report was:

9 "...recalled something of the church but
10:52 10 she could not remember exactly what the
11 involvement was."

12 And again, just your comment on whether there
13 was, whether Nichol John adopted what was in this
14 summary point that I just read to you, what was
10:52 15 your conclusion in that regard?

16 A No, she didn't.

17 Q Next point at the bottom:

18 "This would be around the funeral home
19 which would coincide with statements of
10:53 20 Nichol John."

21 Next page, and I think this is again, we saw this
22 where Nichol John did confirm that she was in the
23 vicinity, so there would appear to be some
24 conformance there; is that correct?

10:53 25 A That's correct.



1 Q Next page, summary point here:

2 "On seeing nurse (Miller) she was
3 approached on pretence of getting
4 directions with a view to stealing her
10:53 5 purse. Also this would be --"

6 I think there's a bunch of points put together
7 here.

8 "This would be around funeral home which
9 would coincide with statement of Nichol
10:53 10 John... Also Nichol John knows or
11 suspects results and leaves car. Runs
12 west on 20th Street in 1400 Block and is
13 girl seen by Indyk at St. Mary Church.
14 At this point she changes her mind about
10:53 15 saying anything and goes north on Avenue
16 "O" where she meets car again. Also
17 purse thrown in garbage on way through
18 alley from Avenue "N" to "O" - possibly
19 when Nichol John returns to car and is
10:54 20 picked up."

21 And then I think the statement of Nichol John is
22 the May 24th statement is gone through, and if we
23 can just go to the next page, here:

24 "- Recalls seeing no one after she left
10:54 25 car and next recollection is of being



1 back in the car, not knowing how she got
2 there.

3 - Seems to recall seeing Milgaard put a
4 purse into a garbage can, but cannot say
10:54 5 at what point this was or where she was
6 at the time."

7 Again, can you comment on that comparison? That
8 was a lengthy summary, but what was the
9 conclusion there, about whether -- just go back
10:54 10 to the previous page -- whether all those summary
11 points were adopted either in part or in their
12 entirety by Nichol John?

13 A No, they weren't adopted. Some I guess, it would
14 be fair to say that in part, but generally they
10:54 15 weren't adopted by Nichol John.

16 Q If we can go to page 458, the conclusion here for
17 Nichol John is:

18 "From this comparison, it cannot be said
19 that any of the Saskatoon City Police
10:55 20 reports or details in John's statements
21 directly correspond to any of the
22 specific points outlined in the summary.
23 There are, however, points in the
24 Saskatoon City Police reports and John's
10:55 25 statements that could be viewed as



1 vaguely conforming to some of the points
2 in the summary."

3 And can you just elaborate on that?

4 A Yes, that's -- I think that's a fair statement.

10:55 5 Certainly some of the things are vaguely
6 consistent, others -- but however, most of it is
7 not.

8 Q And so are you telling us, I think, that your
9 conclusion was that the Mackie summary and the
10:55 10 theories put forward there, that many of them did
11 not find their way into Wilson and John's May
12 statements; is that correct?

13 A That's correct.

14 Q And did you take that as being evidence that
10:55 15 would -- or that that would be evidence -- or tell
16 us how that would fit in with respect to the
17 allegation that the Mackie summary was used to get
18 Wilson and John to give false evidence in
19 accordance with the script?

10:56 20 A That would not support the allegation that they
21 were put up to saying what they said.

22 Q Now, in comparing what's in the summary and with
23 what's in the statements, let's go to the flip
24 side, were there things in Nichol John and Ron
10:56 25 Wilson's May statements that were not in the



1 Mackie summary?

2 A Yes, there were a number of things in their
3 statements that weren't in the Mackie summary.

4 Q And what would that tell you then as far as
10:56 5 whether or not the Mackie summary was used as a
6 script for Wilson and John to give their May
7 statements?

8 A That would certainly support the view that it was
9 not used as a script.

10:56 10 Q If we can go back to 023256, and just to keep this
11 in the logical flow here, I think in your report
12 you are looking at where, if any, this Mackie
13 summary fit into this allegation that the police
14 acted improperly, so this is page 90 of your
10:57 15 report. If we can just scroll back up to the top,
16 please. So the first paragraph, you indicate that
17 a comparison was made between what Wilson and John
18 said in May versus what's in the summary, and
19 that's just what I walked through, and I think you
10:57 20 told us that's important because that will tell
21 you if what's alleged did in fact happen; correct?

22 A Correct.

23 Q Next then you go and say the two main sources who
24 can provide information concerning this issue are
10:57 25 John and Wilson and it appears then that you go



1 and go to talk to them or try and get information
2 from them to see whether or not they will
3 corroborate what has been alleged; is that fair?

4 A That's fair.

10:57 5 Q And so here:

6 "When Nichol John was interviewed by our
7 investigators..."

8 In May of '93,

9 "...she did not support Wolch's claim
10:58 10 that she was told what to say by the
11 police investigators. As noted above,
12 John has no memory "suggesting" she was
13 told what to say, threatened, coerced or
14 in any manner mistreated by the
10:58 15 Saskatoon City Police. John does not
16 discount the fact that as a young
17 sixteen year old she could have been
18 intimidated by the police. But on the
19 other hand, she says she would not have
10:58 20 given a statement relating to a murder
21 that was not true. As well, her parents
22 confirm that at no time did she complain
23 of her treatment by the police."

24 So after talking to Nichol John, what did your
10:58 25 investigators conclude about her version of



1 events in relation to the suggestion that the
2 Mackie summary was a script that was put to her
3 and she was coerced into adopting it?

10:58 4 A Well, Nichol was given the opportunity to tell us
5 that it was a script and that she was forced to
6 conform to it and she said the opposite, that that
7 was not the case.

8 Q Then you go on with Ron Wilson, and:

10:58 9 "...Wilson claims he was coerced by the
10 police and as a result, he fabricated
11 some of the details described in his
12 statements."

13 You go through them. Then:

10:59 14 "When asked for examples of particular
15 police behaviour which illustrate
16 coercion, Wilson alludes to the fear of
17 being charged with the murder and
18 techniques of repeated questioning."

10:59 19 And again, so what -- then the next page goes on
20 to dealings with Mr. Caldwell. So as far as Ron
21 Wilson, did your investigators get anything from
22 Ron Wilson that would support the allegation that
23 the Mackie summary was put to Mr. Wilson as a
24 script and he was coerced, intimidated or told to
10:59 25 follow it?



1 A No.

2 Q Go to the next page, I think here the comment here
3 about -- was there some suggestion -- I think
4 there was a suggestion in your initial interview
10:59 5 with Mr. Wolch that because this was found on Mr.
6 Caldwell's file during the Supreme Court reference
7 or at some point, that there was a possibility
8 that he may have been the author or may have been
9 involved in it; is that fair?

11:00 10 A That's correct.

11 Q And so here your investigators, or you write:

12 "The prosecutor ... states he did not
13 author the report or the summary.

14 Caldwell first saw the documents on
11:00 15 92-03-02 when Saskatoon City Police
16 Inspector Quinn showed it to him as part
17 of inquiries he was making. Caldwell
18 does not recall having seen the
19 investigative summary prior to that
11:00 20 date. He is not familiar with any
21 markings indicating it was received and
22 filed at his office as suggested by Mr.
23 Wolch."

24 And then:

11:00 25 "As to the allegation the police told



1 witnesses what to say, Caldwell believes
2 Wilson and John's 69-05-21 statements
3 are the truth as they could be measured
4 against a body of known facts."

11:00 5 So that would be the summary of what your
6 investigators got from Mr. Caldwell?

7 A That's correct.

8 Q And then here, if we can scroll down, this is the
9 investigator comment then and this relates to the
11:00 10 Mackie summary:

11 "Our analysis of the 'investigative
12 summary' and comparison of the details
13 to reports and statements made by key
14 witnesses, John and Wilson, does not
11:00 15 substantiate Mr. Wolch's claim that when
16 the police interviewed John and Wilson,
17 they forced them to agree to a theory of
18 events already developed.

19 Further, his claim is not
11:01 20 supported by our findings regarding
21 other allegations and issues. For
22 example, other facts corroborate the
23 authenticity of key witness statements,
24 e.g., compact in the car, Milgaard
11:01 25 having a knife, being the vicinity at



1 time of murder, encountering a girl on
2 the sidewalk, and Kenneth Cadrain
3 remembering blood on Milgaard's
4 clothes."

11:01 5 And again, would that fairly summarize your
6 conclusions about the Mackie summary?

7 A That would.

8 Q Now, I think you've told us that there was nothing
9 in the Mackie summary that would give rise to any
11:01 10 basis for criminal charges against the police; is
11 that fair?

12 A That's fair.

13 Q And what about just generally, you talked back in
14 June that as part of your investigation you also
11:01 15 looked at whether or not the conduct of the police
16 investigation, whether what they did was
17 appropriate or not. Can you tell us whether there
18 was anything in the view of you and your
19 investigators inappropriate about, number one, the
11:02 20 drafting of the Mackie summary, and two, any use
21 that may have been made of it?

22 A No, and I think in particular number 2, the use
23 being made of it, I think we looked at that first
24 and then secondly sort of the drafting of it. As
11:02 25 I said before, that's not unusual in police



1 investigations, for investigators to sit down and
2 plan out or articulate what they feel they need to
3 gather by way of evidence to substantiate a
4 charge.

11:02 5 Q And so drafting this summary, the Mackie summary,
6 and I'm talking about the fifth page, in late
7 April, '69, early May, '69, at that stage of the
8 investigation, was it your view that that was good
9 police practice?

11:02 10 A

Yes.

11 Q And did you see anything nefarious or anything
12 wrong, negligent or in any way improper about
13 that?

14 A

I did not. You know, that appears very much to be
15 a supervisor or someone in that position outlining
16 what was available, what next steps need to be
17 taken, and as I've said, I've done that myself on
18 occasion on files.

11:02 19 Q

Go to the next page --

11:03 20 COMMISSIONER MacCALLUM: What was that page
21 number, please?

22 MR. HODSON: It was 023257.

23 COMMISSIONER MacCALLUM: 023257?

24 MR. HODSON: Yes.

11:03 25 BY MR. HODSON:



1 Q Next, the allegation is *Hushing Witnesses*, and
2 this is:

3 "Mr. Wolch and Mrs. Milgaard allege that
4 during their 1980 investigation of
11:03 5 David's conviction, members of the
6 Saskatoon City Police told witnesses
7 that they should not speak with the
8 Milgaard family and investigators. It
9 is suggested that this was part of their
11:03 10 attempt to ensure a cover up of
11 information relating to Milgaard's
12 wrongful conviction and Fisher's guilt."

13 And would that have been your understanding of
14 what the allegation was?

11:03 15 A That's correct.

16 Q So in other words, not a case of saying, well,
17 lookit, the police told the witnesses not to talk
18 to us because, you know, they thought David was
19 guilty and they didn't want us to bother them, but
11:03 20 rather this was part of criminal conduct, part of
21 a larger conspiracy to protect those involved in
22 the cover-up in going out and actively telling
23 witnesses not to talk to Mrs. Milgaard; is that
24 correct?

11:04 25 A That's what I would understand the allegation to



1 be, yes.

2 Q And then again you go through the record about the
3 correspondence exchanged between the chief of
4 police and the solicitors, which we've been
11:04 5 through, and then we go down to Albert Cadrain, it
6 says:

7 "Albert Cadrain states that the police
8 contacted him to inform him that Mrs.
9 Milgaard might be calling to speak with
11:04 10 him. They asked whether or not he
11 wanted to talk with her and his response
12 was no. Cadrain indicated the police
13 did not tell him not to talk to Mrs.
14 Milgaard."

11:04 15 Can you tell us -- and that would have been the
16 information your investigators gathered?

17 A Yes.

18 Q Can you tell us, Mr. Sawatsky, in your experience,
19 I take it you would have had occasion to deal with
11:04 20 witnesses after a -- or have you had a chance to
21 deal with witnesses after an investigation about
22 being contacted by the accused or the accused's
23 families, is that something you've encountered?

24 A I know I've been involved in times where witnesses
11:05 25 have been contacted by the media or other parties.



1 I don't recall necessarily a set of circumstances
2 quite like this, but I do recall saying to
3 witnesses whom I'm contacting that, you know,
4 people are asking questions, they may come and
11:05 5 talk to you, it's your choice whether you talk to
6 them or don't talk to them, and providing them no
7 advice as to whether they should or shouldn't.
8 I've also had someone contact me and say, look, so
9 and so is asking me questions, should I talk to
11:05 10 them, and my advice has generally been that's your
11 choice.

12 Q Okay. So again, just in investigating this
13 allegation that the police went out to talk to
14 these witnesses to tell them not to talk to the
11:05 15 Milgaards as part of a larger criminal wrongdoing,
16 did you then go talk to each of the witnesses to
17 say "did this happen?"

18 A Yes, we did.

19 Q And so Mr. Cadrain said it didn't happen; is that
11:05 20 correct?

21 A That's correct.

22 Q Next page. Ronald:

23 "Wilson testified in the
24 Supreme Court he could not recall being
11:05 25 contacted by Karst, or any other police



1 officers, about the Milgaard's wishing
2 to speak with him. He reiterated this
3 in our interview with him in ..."

4 1993. And would that be an accurate summary,
5 then, of what Mr. Wilson told you?

11:06

6 A Yes, it is.

7 Q "Nichol John stated she was
8 contacted, unannounced, by Mrs. Milgaard
9 about 1980. John refused to speak with
10 her and contacted a solicitor concerning
11 Mrs. Milgaard.

11:06

12 John was contacted by Det.
13 Karst, who indicated he was making her
14 aware of Mrs. Milgaard's desire to
15 contact her. He did not tell her not to
16 speak with Mrs. Milgaard. Rather, he
17 said 'you can if you want.' His purpose
18 was to tell her that questions were
19 being asked."

11:06

20 That would be an accurate summary of what Nichol
21 John told you?

11:06

22 A That's correct.

23 Q Craig:

24 "Melnyk states he was not
25 advised in the 1980's by Saskatoon City

11:06



1 Police that there was an investigation
2 being conducted by the Milgaard family,
3 nor was he directed not to speak to
4 them."

11:06 5 And:

6 "Lapchuk states the Saskatoon
7 City Police did not contact him in
8 regard to the Milgaard investigation."

9 And would that be an accurate summary of what
11:07 10 your investigators concluded?

11 A That is an accurate summary, yes.

12 Q Next page:

13 "On several occasions, Karst
14 has spoken openly to the media on his
11:07 15 role in the Milgaard investigation
16 suggesting he has no apparent desire to
17 cover up the details. The witnesses
18 we've interviewed do not offer support
19 for the allegation that the Saskatoon
11:07 20 City Police told witnesses not to talk
21 to Mrs. Milgaard or her investigators."

22 And would that be an accurate conclusion that
23 your people reached?

24 A Yes, that's an accurate conclusion.

11:07 25 Q Go to the next page, and I'll go through. This is



1 the summary, there is a page and a half here, and
2 I'll go through this with you and get your
3 comments because I think this summarizes what your
4 investigators found with respect to the Saskatoon
11:07 5 City Police. It says:

6 "The substance of Mr. Wolch's
7 complaints of a cover up against the
8 Saskatoon Police Department
9 investigators is that when they learned
11:07 10 in October of 1970 Larry Fisher was
11 responsible for a number of sexual
12 assaults occurring close to the time of
13 the Miller murder they chose to ignore
14 the obvious link between Fisher and
11:08 15 Miller's murder for which David Milgaard
16 was convicted. The other allegations he
17 and his associates pose concerning the
18 police investigation go beyond this
19 suggesting the police coerced witnesses
11:08 20 and concocted much of the case against
21 David Milgaard because of intense
22 pressure to solve the crime. If true,
23 these allegations would mean that the
24 police conspired from the outset of the
11:08 25 Miller murder investigation to



1 wrongfully convict David Milgaard and
2 that when Larry Fisher was apprehended
3 they continued to cover up the facts
4 indicating he was actually responsible."

11:08 5 And would that be a fair summary, Mr. Sawatsky,
6 of the substance of what it was that was being
7 alleged by Mr. Wolch?

8 A Yes.

9 Q And so, just so that we're clear on that, it's --
11:08 10 I think that goes back to sort of deliberate
11 misconduct in investigating, charging and
12 prosecuting and convicting the wrong person
13 knowingly, and then later, when Mr. Fisher comes
14 along, knowingly covering up the connection?

11:09 15 A Correct.

16 Q You then say:

17 "Our review of the Saskatoon
18 Police investigation indicates they
19 undertook a thorough and complete
11:09 20 investigation of the murder using every
21 means at their disposal to collect
22 evidence, to locate witnesses and to
23 identify suspects. Clearly, this
24 process involved an exploration of a
11:09 25 possible connection between unsolved



1 sexual assaults and the Miller
2 rape/murder because some similarities
3 existed between them. The police had
4 exhausted all leads when Albert Cadrain
11:09 5 came forward to implicate David
6 Milgaard. Subsequent interviews of
7 Wilson and John resulted in sufficient
8 evidence to charge Milgaard."

9 Would that be an accurate summary that your
11:09 10 investigators reached?

11 A Yes.

12 Q "The greatest concern expressed
13 by Mr. Wolch about the evidence obtained
14 from John and Wilson is that they
11:09 15 initially denied involvement and later,
16 after extensive interrogation,
17 implicated Milgaard. Although both were
18 obviously reluctant to assist the police
19 in their efforts, we found no evidence
11:09 20 to verify the claim that their
21 statements were fabricated. The reason
22 they were reluctant to speak openly is a
23 matter of some supposition, however,
24 each one has at some point expressed a
11:10 25 fear of David Milgaard. Both were also



1 fairly street wise and not easily
2 intimidated by police questioning so
3 some persistence on the part of the
4 police investigators was clearly
11:10 5 necessary. Many of the details provided
6 by John and Wilson during their
7 interviews were confirmed by other
8 individuals and by other circumstances
9 (e.g. compact, Milgaard's behaviour,
11:10 10 times and locations of events)."

11 And would that be an accurate summary --

12 A Yes, it is.

13 Q -- of your conclusions?

14 A Yes, it is.

11:10 15 Q And just on that latter point, I think you
16 mentioned this earlier, would the information
17 obtained from Mr. Tallis as to what David Milgaard
18 told him in 1969 been a piece of information that
19 was used by your investigators to corroborate or
11:10 20 to determine whether or not what Wilson and John
21 said to the police after their initial interviews
22 could be corroborated?

23 A Very much so, yes.

24 Q Then you say:

11:11 25 "In October of 1970, when



1 Larry Fisher was apprehended for
2 offenses in Manitoba, he confessed to
3 sexual assaults he committed in
4 Saskatoon. Since his crimes were
11:11 5 similar in certain respects to the
6 Miller rape/murder, Mr. Wolch contends
7 the police ought to have (and did)
8 realized he was responsible for this
9 crime too. Our findings do not support
11:11 10 this view. We believe the facts show
11 that once Milgaard was implicated by his
12 friends, and once it was determined that
13 he didn't commit the other sexual
14 assaults, the police saw his crime and
11:11 15 Larry Fisher's crimes as separate
16 matters.

17 Fisher's apprehension came
18 nine months after the Milgaard trial was
19 over, so time itself was an obvious
11:11 20 factor in how the police viewed the two
21 cases.

22 Although there was a feeling
23 of indignation over the accusations made
24 against them, during the course of our
11:11 25 investigation, we found the majority of



1 the former Saskatoon City Police
2 officers very cooperative. They were
3 agreeable and answered our questions in
4 a straightforward manner.

11:11 5 The facts, as we understand
6 them, do not support allegations of
7 wrongdoing by the Saskatoon police."

8 And if we can just go back to the previous page,
9 and just have you comment a bit further on this
11:12 10 last paragraph about the suggestion that:

11 "In October of 1970, when
12 Larry Fisher was apprehended ...",

13 that:

14 "... the police ought to ... (and did)
15 ...",

16 realize that Larry Fisher was responsible for
17 Gail Miller's murder, you say:

18 "Our findings do not support this view."

19 Can you elaborate on that?

11:12 20 A I think at that time Mr. Milgaard had already gone
21 to trial, had been convicted, and I think that
22 file was basically closed, so I don't think there
23 was any connection made by the investigators.

24 There certainly is evidence
11:12 25 that very early on in their own investigation,



1 before they had David Milgaard as a solid suspect,
2 that they were looking at the unsolved crimes as
3 perhaps -- or the unsolved rapes, sorry, as part
4 of this, but I think it's important, and one could
11:13 5 note that they never tried to put those unsolved
6 rapes onto Milgaard. In other words, if they were
7 drawing a connection and saying "well, the same
8 person committed the rapes and the murder", why
9 did they never try to charge David Milgaard with
11:13 10 the rapes? So I think that's further evidence
11 that there was not a connection made, that once
12 they had Milgaard and the evidence, that they
13 simply focused on that and went forward with that.

14 Q And then let's talk about October 1970 when it
11:13 15 became known to the police that Larry Fisher had
16 confessed to at least two of the rapes that the
17 police initially had connected to the murder. Did
18 your investigators find any evidence that any
19 police officer did, in fact, connect, in 1970 or
11:13 20 thereabouts, Larry Fisher to the Gail Miller
21 murder?

22 A No, not at that time.

23 Q And did it surprise you or would it surprise you
24 that no connection was made, if that in fact were
11:13 25 the case, between Larry Fisher's confessions in



1 October '70 and the Gail Miller murder?

2 A That doesn't surprise me, because I believe that
3 once they had all the evidence that they felt was
4 necessary to take forward to charge David
11:14 5 Milgaard, there was no evidence that he was
6 involved in the other crimes so they, I think the
7 police treated it as two separate sets of
8 investigations.

9 Q And so again, I guess as, and with your experience
11:14 10 as a police investigator, if -- I guess it would
11 be eight, nine months after Mr. Milgaard is
12 convicted, although the matter is under appeal,
13 but after he is convicted, to then learn about
14 Larry Fisher's confession to two, to at least two
11:14 15 of the four rapes in and around the time of the
16 Gail Miller murder. Are you -- what is your view,
17 sir, that -- as to whether or not that is
18 something that maybe ought to have been connected
19 by police officers?

11:14 20 A I think it would have been very difficult to make
21 that connection, and certainly there's nothing
22 throughout our investigation, interviewing police
23 officers, reviewing documents, etcetera, that
24 showed that that connection was ever made.

11:15 25 Q And I appreciate that, but as far as -- let me



1 pose this question. As a police officer, what was
2 the influence, in your view, that the conviction
3 had on the police, that once David Milgaard is
4 convicted -- on police officers, I guess, in
11:15 5 considering matters relating to the Gail Miller
6 murder?

7 A Well certainly I would, although I can't put
8 myself in the minds of the police at that time, I
9 can telling you from my own experience that once
11:15 10 you have a conviction and the evidence is tested
11 by the courts and you have a conviction, that as a
12 police officer you believe that you have the right
13 person, and I'm sure that the investigators
14 throughout this file believed they had the right
11:15 15 person. I mean, we now know that that's not the
16 case, but certainly back in 1969 that was the
17 case.

18 Q And then go ahead to 023263. Now I wanted to turn
19 to the investigation related to Mr. Caldwell, and
11:16 20 if we can go to the next page -- and this is in
21 the report -- there are, I think, a couple of sets
22 of allegations here. The first one,
23 *Wrongdoing/Concealed Facts*, and this relates to
24 your investigation as to whether Caldwell was
11:16 25 involved in criminal obstruction of justice; is



1 that correct?

2 A That's correct.

3 Q And the first allegation is *Wrongdoing/Concealed*
4 *Facts*. B.1, which we'll go through in detail, is
5 the allegation that he was aware of the
6 similarities between the rapes and the murder,
7 that he was involved in destroying documents, that
8 he was involved in the Mackie summary, and that
9 his submissions to the National Parole Board were
10 part of, I think, other criminal conduct; would
11 that be a fair summary?

12 A Yes.

13 Q And then, as well, I think there was allegations
14 about disclosure issues, and whether what was and
15 wasn't disclosed, and whether the failure to
16 disclose was a deliberate effort to obstruct
17 justice; is that correct?

18 A That's correct.

19 Q And if we can just go back to page 023197, it's
20 just for the record, to show where these come
21 from. We'll see here, this is at page 10 -- or
22 pardon me -- page 30 of your report, it's
23 outlining these issues related to Mr. Caldwell,
24 and they go to the next page, issues 16 to 24.
25 And these would be issues that originated from Mr.



1 Wolch, Mr. Asper, Mr. Bruce, and Joyce Milgaard;
2 is that correct?

3 A That's correct.

4 Q If we can go back to page 023265, just outline the
11:18 5 general allegation.

6 "The first allegation ...",
7 and you identify the issues numbers:

8 "... is that Caldwell is guilty of
9 wrongdoing, primarily because he
11:18 10 improperly concealed facts during his
11 prosecution of Milgaard. The
12 information concealed was his knowledge
13 of the similarity between Fisher's
14 crimes and the Miller murder. Caldwell
11:18 15 is alleged to have gained this knowledge
16 from media publicity and police reports
17 which made reference to Fisher's
18 crimes."

19 And would that be a fair summary of what the
11:18 20 substance of that allegation was?

21 A That's correct.

22 Q And so would this be a case of what you were
23 investigating was that Mr. Caldwell knew that
24 David Milgaard was innocent, and that someone else
11:18 25 had committed the crime, and that he deliberately



1 took steps to conceal information to convict an
2 innocent person?

3 A Yes, that's what we were investigating.

4 Q And then the next paragraph:

11:18 5 "During Wolch's examination
6 of police and prosecution files, some
7 documents contained references for which
8 he could not account, e.g. yellow
9 notebook, 'C' file. Based on his
11:19 10 examination of the prosecution files
11 Wolch suggests material is missing and
12 questions whether or not it was
13 destroyed ..."

14 And I think this allegation was that, based on
11:19 15 what Mr. Wolch and his group had seen of Mr.
16 Caldwell's file at the Supreme Court reference,
17 the allegation was made that files were
18 deliberately destroyed from the prosecution file;
19 is that correct?

11:19 20 A Correct.

21 Q Then you go on to describe the investigative
22 summary, that's the Mackie summary.

23 "The question posed by Wolch
24 is whether or not Cadrain wrote the
11:19 25 summary and why he denies ever having



1 to you that they are part of or some indicia of
2 other criminal wrongdoing?

3 A That's correct, they could be supportive of, or
4 could be, evidence of wrongdoing. Those actions,
11:20 5 sorry, could be evidence of wrongdoing.

6 Q You then go on and say:

7 "The second allegation ... is
8 that Caldwell withheld evidence
9 including the fact Milgaard was not in
11:20 10 the vicinity at the time of the murder
11 and that Caldwell failed to disclose
12 information ... of two witnesses ...".

13 So yeah, so the one set of allegation of
14 non-disclosure here relates to (V4)--- and people
11:20 15 in the alley, and then also:

16 "The allegation of non
17 disclosure also includes a question
18 concerning Caldwell's actions following
19 his 60-08-25 meeting with Albert
11:21 20 Cadrain. Cadrain told of an incident in
21 1968 involving Milgaard. According to
22 Cadrain, on more than one occasion, he
23 observed Milgaard give teen age females
24 drugs, place them into a bath tub
11:21 25 containing water and have sexual



1 intercourse with them. Caldwell had the
2 Saskatoon police interview Ed
3 Schellenberg who Cadrain said could
4 verify his story. Wolch believes the
11:21 5 lack of documentation on this interview
6 is evidence the police determined that
7 Cadrain made up the story. And since
8 Caldwell knew Cadrain wasn't credible,
9 he was wrong in not disclosing this to
11:21 10 the defence and wrong in using the story
11 in his reports to the Parole Board."

12 Now would that be an accurate representation of
13 that?

14 A Yes.

11:21 15 Q And just so we're clear on that this is, I think,
16 the first time we've introduced the Schellenberg
17 bathtub incident. And is it correct,
18 Mr. Sawatsky, that you investigated, the RCMP
19 investigated this incident because Mr. Wolch
11:21 20 indicated that it was evidence of criminal
21 wrongdoing on the part of Mr. Caldwell?

22 A That's correct, that's why we investigated that.

23 Q And that:

24 "Wolch contends there is a
11:22 25 greater obligation of disclosure on



1 Crown Counsel than that applicable to
2 the trial setting. For example, his
3 major concern is that when it became
4 known in October of 1970 that Larry
11:22 5 Fisher was responsible for the 'rapes',
6 Crown Counsel had a duty to disclose
7 these facts and did not."

8 And that, again, would be a summary of what was
9 alleged?

11:22 10 A That's correct.

11 Q Can you tell us just generally, and I propose to
12 go through this specifically, but the issue of
13 disclosure and a Crown prosecutor's obligation to
14 disclose; what was your understanding as to
11:22 15 whether or not that issue had been dealt with by
16 the Supreme Court reference?

17 A Well, in our view it had, because the Supreme
18 Court specifically commented on that. But I
19 believe Mr. Wolch was of the view that that was
11:22 20 only at the trial setting, that there was other
21 disclosure that should have been made, and this is
22 an example of that, outside of the trial setting.
23 So our approach here was to simply gather as much
24 evidence and information around that as we could,
11:23 25 and then provide it on to Mr. Fraser and Mr.



1 McCrank, who were certainly in a position to make
2 comment as to whether disclosure was adequate or
3 not to answer that allegation.

4 Q And is it correct to say that, to the extent that
11:23 5 the failure to disclose or the deliberate
6 concealing of information as alleged against Mr.
7 Caldwell constituted criminal conduct or the basis
8 for a charge, that's something you investigated?

9 A That's something we investigated, yes.

11:23 10 Q And, secondly, you gathered information about what
11 was disclosed and whether anything was concealed
12 for the purposes of Mr. Fraser and Mr. McCrank
13 considering the other issue about, I guess,
14 professional obligations to disclose; is that
11:23 15 correct?

16 A That's correct.

17 Q If we can scroll through, that the -- it appears
18 that you would have obtained Mr. Caldwell's file,
19 the prosecution file, from the Government of
11:24 20 Saskatchewan; is that correct?

21 A Yes.

22 Q Next page. You say:

23 "None of the documents in
24 Caldwell's prosecution files make
11:24 25 reference to Larry Fisher. There are



1 several documents which make reference
2 to the unsolved sexual assaults -",
3 and then go on to talk about a number of reports,
4 and we have been through all these reports,
11:24 5 Mr. Sawatsky, with Mr. Caldwell and other
6 witnesses. And, again, was one of the initial
7 steps, then, to look at whether there was
8 information on his file about the rapes and Larry
9 Fisher?

11:24 10 A Yes, whether there was any notes or reports.

11 Q You go on to say:

12 "Other documents in
13 Caldwell's file which accompany the
14 laboratory report do not explain its
11:24 15 presence.",
16 talk about this 'different file' comment, we've
17 seen that. You say:

18 "There is no indication in
19 the file that Caldwell queried the
11:25 20 police to determine the significance of
21 any of the references to the other
22 sexual assaults." ;
23 and is that accurate?

24 A Yes, it's accurate.

11:25 25 Q So was it a question of looking at the document,



1 talking to Mr. Caldwell, talking to the police to
2 see whether or not Mr. Caldwell did, in fact,
3 connect the crime and did, in fact, conceal
4 information?

11:25 5 A Exactly, to see if there was any evidence of that.

6 Q Next page. This outlines the interviews of Mr.
7 Caldwell and the interview, here you say:

8 "He rejected the suggestion
9 he had 'all the facts and police files'
11:25 10 and that he was aware of the
11 similarities between the rapes and
12 Miller murder. Caldwell stated he had
13 no recollection of having police reports
14 in his prosecution file which made links
11:25 15 and he was not otherwise aware that the
16 police saw similarities between the
17 rapes and the murder. Caldwell made a
18 point of emphasizing the difference
19 between the police files and his own.
11:25 20 He has no recollection of a 1969 story
21 in a Saskatoon newspaper connecting the
22 murders and the rapes."

23 And would that be an accurate summary, then, of
24 what your investigators found?

11:26 25 A Yes.



1 Q So then if we can go down to the bottom,

2 Investigator Comment:

3 "Caldwell sifted through the
4 material received from the police and
11:26 5 decided what was relevant to his
6 prosecution and what needed to be
7 disclosed to defence counsel. It is
8 clear from his hand written notation on
9 the laboratory report and on the
11:26 10 occurrence report that Caldwell read at
11 least two documents which contained
12 references to other sexual assaults. As
13 far as the other documents (e.g.,
14 statements, modus operandi report) are
11:26 15 concerned, he has no specific
16 recollection now of having read them
17 although it seems clear he did. He
18 apparently put them aside as not being
19 relevant.

11:26 20 Considering the volume and
21 type of material involved, the
22 references in Caldwell's files to the
23 unsolved sexual assaults and similarity
24 of modus operandi between them and the
11:26 25 Miller murder do not represent a



1 significant portion of Caldwell's files.
2 Given this fact, it would seem
3 unreasonable to expect that when the
4 material was first reviewed, or later
11:27 5 Caldwell ought to have become suspicious
6 that someone else other than Milgaard
7 was responsible. Caldwell's belief that
8 he had a strong case against Milgaard -
9 much of it provided by John, Wilson and
11:27 10 Cadrain, would also be a factor when
11 examining his knowledge of the facts."

12 And would that be an accurate summary of what
13 your investigators concluded?

14 A Yes.

11:27 15 Q And so, again, that would relate to whether or not
16 Mr. Caldwell was aware of the similarities between
17 the rapes and the murder and the connection; is
18 that right?

19 A Exactly. And, certainly, we were not able to make
11:27 20 any contention there.

21 Q And then the next issue you looked at is whether
22 he destroyed documents, and it says:

23 "Robert Bruce ...",

24 and you talked about him back in June, he was the
11:27 25 investigator that accompanied Mr. Wolch, I think,



1 at one of the -- at the initial interview; is
2 that right?

3 A That's right.

4 Q And then he later provided you with information
11:27 5 from Mr. Asper; is that correct?

6 A Correct.

7 Q And:

8 "Robert Bruce raised the
9 issue of missing documents ... He
11:27 10 indicated Wolch was provided a copy of
11 the 'prosecution' file in ringed binders
12 which were complete except for sporadic
13 pieces. The document in the binders
14 were numbered consecutively from 001 to
11:28 15 500. It appears as though he compared
16 the contents to the police files - which
17 were also in binders - and found the
18 numbers were prefixed with the letters
19 A,B,C,D and E. He assumed the first
11:28 20 collection were copies of police reports
21 from the 'prosecution' file and the
22 second set from were from the 'police'
23 files. Since the material found in both
24 sets was not identical, he concluded
11:28 25 some reports were missing.



1 Our research suggests Mr.

2 Bruce is mistaken about the material he
3 labels as belonging to the 'prosecution'
4 file. The *binders* to which he makes
5 reference are likely all copies of the
6 *police files* made at different times.

7 The later version, which was prepared by
8 Insp. Quinn's secretary in 1990/91, was
9 numbered with the prefix's while the
10 earlier version was not. We have
11 examined the police files and
12 prosecution files in detail together
13 with any cross references and no
14 inconsistencies have been found."

15 And that -- was that your conclusions?

16 A That was our conclusion.

17 Q Did you spend a fair bit of time going through
18 this, your investigators?

19 A Yes, I recall this as being another issue that a
20 considerable amount of time was spent on.

21 Q And I think the evidence that this Commission has
22 heard from both police and Mr. Caldwell is that
23 the police files, not all the police files,
24 investigation reports were provided to Mr.
25 Caldwell, only portions were, and that later in



1 1990-'91 the police put together a complete
2 collection of the Gail Miller police file,
3 labelled it in binders A, B, C, D, and E, and that
4 those police reports did not correspondence
11:29 5 directly to Mr. Caldwell's file because Mr.
6 Caldwell said he didn't get them all; was that
7 your understanding?

8 A That's my understanding, yes.

9 Q And the allegation that was investigated by your
11:29 10 people was that something nefarious happened, that
11 Mr. Caldwell had all of the police files and
12 deliberately destroyed them as part of some
13 criminal wrongdoing, is that --

14 A That's correct.

11:29 15 Q Go to the next page. Just on this investigation
16 about what was on his file, you indicated that:

17 "Caldwell's prosecution files
18 were accessed by numerous individuals
19 when preparing for the Supreme Court
11:30 20 hearings. Those with access include
21 Saskatchewan Justice solicitors and
22 Mr. David Asper, who indicated he spent
23 several long days reviewing the material
24 in Regina."

11:30 25 And as far as investigating what was on --



1 whether Mr. Caldwell's file, as you reviewed it,
2 was complete or whether documents had been
3 destroyed, can you tell us what was significant,
4 if any, of the fact that, between the time Mr.
11:30 5 Caldwell concluded his prosecution and the time
6 you looked at his file, people had been looking
7 at the file for legitimate purposes?

8 A Yeah, and clearly Mr. Caldwell indicated to us
9 that he, when he did review the file he noticed
11:30 10 that some -- that the documents were not
11 necessarily all the way that they had been. So,
12 clearly, he noticed as well that others had been
13 accessing the file. From our investigation there
14 was nothing sinister about that, it was, appeared
11:31 15 to be legitimate access for legitimate reasons.

16 Q Then next page, I think on the issue of documents
17 destroyed, the *Investigator Comment* is:

18 "It is not possible to
19 determine with certainty if documents
11:31 20 from the prosecution files have been
21 lost or destroyed. Pages in the files
22 are not numbered numerically from top to
23 bottom so it is not possible to say if
24 entire reports or individual documents
11:31 25 are missing. Nevertheless, those



1 reports in the prosecution files appear
2 to be intact, i.e. there are no missing
3 pages, and the reports and other
4 documents found are consistent with what
11:31 5 one would normally expect to find.

6 The facts do not support the
7 inference that file material was
8 deliberately destroyed. After the files
9 were released from Caldwell's Saskatoon
11:31 10 office, numerous individuals had access
11 and consequently, no one can be certain
12 if every document that was part of the
13 files in 1969/70 was there in 1990 and
14 subsequent years."

11:31 15 And that would be your conclusion?

16 A Yes.

17 Q Then we go on to the Mackie summary. It says:

18 "Wolch acknowledges that the
19 investigative summary could have
11:32 20 originated from either the prosecution
21 or the police files. His primary
22 concerns appear to be:
23 (a) a question as to whether Caldwell
24 could have authored the document,
11:32 25 (b) the document shows a link between



1 the (V1)- sexual assault and the
2 Miller murder, and
3 (c) the contents demonstrate the fact
4 Nichol John and Ron Wilson were
11:32 5 later told what to say based on
6 the outline provided in the
7 investigative summary."

8 And you may have touched on this earlier, but the
9 suggestion ranged from that Mr. Caldwell authored
11:32 10 it to being complicit in its use by the police;
11 is that fair?

12 A That's fair.

13 Q And, as well, the reference that in this document
14 there was reference to, I think on page 1, to one
11:32 15 of the sexual assault files; is that correct?

16 A That's correct.

17 Q You say here:

18 "Caldwell states he first saw
19 the 'investigative summary' on 92-03-02
11:32 20 when Saskatoon City Police Inspector
21 Quinn showed it to him as part of
22 inquiries he was making. Later, on
23 March 10th, in the company of Sgt. R.
24 Pearson, he reviewed the file to provide
11:33 25 answers to questions being posed by



1 Federal Justice. He found the
2 investigative summary in a file
3 unfamiliar to him entitled, 'Milgaard -
4 Witness Roberts - Art - Polygraph
11:33 5 Operator'. Caldwell speculated that the
6 summary may have originated from police
7 files which were sent to Sask. Justice
8 in Regina. Caldwell states that the
9 investigative summary was not part of
11:33 10 his file and he is not familiar with
11 'any markings indicating it was received
12 and filed at his office'.

13 Although Caldwell said during
14 our interview in July 1993 that he
11:33 15 didn't recall seeing the investigative
16 summary during his handling of the case
17 in 1969 we felt he could be mistaken.
18 The basis for this was in his
19 recollection that he saw a police report
11:33 20 concerning a statement attributed to
21 Milgaard's father. The statement was to
22 the effect that when Milgaard's father
23 was informed of the police investigation
24 he said he was not surprised and
11:34 25 indicated he had suspected 'something



1 like this might happen'. Caldwell
2 stated he read about this statement in a
3 police report but the only document we
4 could find in either the police or
5 prosecution file which made mention of
6 this account is page four of the
7 investigative summary. Assuming
8 Caldwell is correct in his recollection
9 that nothing is missing from his files,
11:34 10 we concluded he must have read the
11 investigative summary. We
12 re-interviewed Caldwell on this point.
13 He was firm in his response that his
14 recollection was that he saw the
11:34 15 father's comments in a police report,
16 although he concedes that it could have
17 come to him otherwise, eg. told to him
18 verbally and put into his mind as having
19 been seen in print. According to
11:34 20 Caldwell, the investigative summary was
21 not part of his file and there was no
22 reason for him to have it."

23 And, again, would that be an accurate summary of
24 what you found?

11:34 25 A Yes, it is.



1 Q Anything there to elaborate on?

2 A No, simply to say that that comment about, from
3 Milgaard's father was in the investigative
4 summary, so I think it -- and it was obvious Mr.
11:34 5 Caldwell had knowledge of that, so I think our
6 thoughts were that it's possible he may have seen
7 that, but didn't seem to have any independent
8 recall of seeing it.

9 Q Then if we can go down under *Investigator Comment*
11:35 10 you say:

11 "Regardless of which
12 alternative is the correct version,
13 since Caldwell didn't write the summary
14 the fact that he may have read it seems
11:35 15 to have little import. The significant
16 interviews of John and Wilson took place
17 in 60-05-22/24 and Milgaard was charged
18 a week later. Caldwell received the
19 first part of his court brief from the
11:35 20 police in early July. If the summary
21 was part of the material he received
22 then or later, at that stage of the
23 process, the contents would certainly
24 not appear to be relevant to his
11:35 25 prosecution and he would likely have



1 handled the report in the same manner as
2 described in B.1 above."

3 And would that be an accurate --

4 A Yes.

11:35 5 Q -- summary of your conclusions? So whether he did
6 or didn't see it, whether he did or did not have
7 the Mackie summary in 1969-1970 was, in the view
8 of you and your investigators, of no import; is
9 that correct?

11:35 10 A That's correct.

11 Q Next page, 023274, another issue, *Submissions to*
12 *the National Parole Board*, and that:

13 "Mr. Wolch maintains this unusual move
14 is demonstrative of a peculiar interest
11:36 15 in seeing Milgaard denied parole."

16 It appears that your investigators talked to the
17 regional manager of the National Parole Board and
18 it says here that Bisset:

19 "...states it was not unusual, between
11:36 20 1970 and 1977, for a prosecutor to write
21 to the Parole Board. The Board, in
22 fact, would solicit information from any
23 agency that might have input, be it
24 positive or negative."

11:36 25 And then:



1 "An Act was proclaimed in 1992 requiring
2 those in the criminal justice system to
3 provide the National Parole Board with
4 information of the kind provided by
11:36 5 Caldwell."

6 And then it appears your investigators talked to
7 Mr. Kujawa who said:

8 "In his opinion, it would be uncommon
9 for a prosecutor to write the National
11:37 10 Parole Board, however, he has done so on
11 a few occasions on the request of the
12 Board."

13 Next page, I'll just go through these and get to
14 your investigator's comment. You talked to
11:37 15 Perras who was assisting Mr. Caldwell in a minor
16 respect at the trial. Perras did not find this
17 unusual. And then you talked to Mr. Caldwell it
18 appears and he says that he wrote to the board
19 after reading a booklet and attending a course
11:37 20 and:

21 "He felt he had a duty to write the
22 letters because, as Crown prosecutor he
23 had a comprehensive knowledge of the
24 Milgaard case."

11:37 25 And if we can go to the next page, the



1 investigator comment:

2 "It was uncommon, but, presumably not
3 inappropriate, for a Crown prosecutor to
4 send letters to the National Parole
11:37 5 Service concerning a serving prisoner."

6 And was that your investigator's conclusion?

7 A Yes.

8 Q And so is it fair to say that it wasn't anything
9 that you felt was worthy of criminal charges or
11:37 10 anything of that nature?

11 A Yes, that's correct.

12 Q Next, *Allegation: Failure to Disclose*, and again,
13 this was a number of different issues of
14 disclosure, and I take it that it appears that
11:38 15 your group categorized these disclosure issues
16 into various groups; is that right, or subject
17 matters?

18 A That's right.

19 Q So the first one is witnesses relating to Avenue
11:38 20 "O" versus "N", and we have been through this on a
21 number of occasions before, Mr. Sawatsky, but I
22 think this allegation is that Mr. Caldwell had
23 information on his file that would suggest that
24 Gail Miller would have been traveling down Avenue
11:38 25 "O" rather than Avenue "N" and yet at trial the



1 allegation was that Mr. Caldwell put forward to
2 the jury the Crown theory that she was on Avenue
3 "N" when she was approached by the Milgaard
4 vehicle and therefore he breached some duty to
11:39 5 disclose, he had information that would support
6 her being on "O", he didn't disclose it and put
7 forward a position she was on Avenue "N". Is that
8 a fair summary of the basis of the allegation?

9 A That's a fair summary of the allegation.

11:39 10 Q And is this one, I think here, this allegation
11 appears to have its genesis with Mr. Asper; is
12 that correct?

13 A Yes.

14 Q And that's something that Robert Bruce provided to
11:39 15 you I believe that originated from Mr. Asper, that
16 this was one of the issues that Mr. Asper had
17 raised through Mr. Bruce as part of your
18 investigation?

19 A Yes. I believe this allegation came a bit later
11:39 20 after the interview with Mr. Wolch.

21 Q And I think maybe the last line here:

22 "By withholding information that she
23 more than likely would have been on Ave.
24 O, the Crown avoided giving the defence
11:40 25 evidence contradicting the theory on



1 which their case was premised."

2 And if we can go through, I won't go through the
3 details, and actually go to page 023278, and
4 reference is made here to Mr. Caldwell's address
11:40 5 to the jury where he said:

6 "It must be inferred that she set off on
7 foot for the bus line on 20th down
8 either Avenues P -- excuse me, Avenues O
9 or Avenue N, one or the other. She had
11:40 10 to go south from her residence, and the
11 Crown suggests on the evidence that it
12 was down Avenue N proceeding
13 southward..."

14 Etcetera. It says:

11:40 15 "As noted, it is Mr. Asper's contention
16 that in order to rely on the evidence of
17 John and Wilson the Crown needed to
18 advance the Avenue N theory. However,
19 this does not appear to be the case
11:40 20 because in addition to offering the
21 alternative routes of Avenues O or N,
22 Caldwell pointed out to the jury a
23 disagreement between the evidence of
24 John and Wilson concerning what happened
11:41 25 after they encountered the girl on the



1 street."

2 And it goes on as to where the vehicle was.

3 "The judge, in his charge, also made it
4 clear that it was open to them to accept
11:41 5 either Avenue O or N as the route
6 taken."

7 And then goes on to talk about the address to the
8 jury that left that open. And then the next
9 page, you say:

11:41 10 "The facts outlined above suggest
11 Caldwell had no intention of narrowing
12 his case to a theory which tended to
13 show the evidence supported an Avenue N
14 versus an Avenue O theory."

11:41 15 And again, would that be an accurate conclusion
16 of your investigators?

17 A Yes, that's accurate.

18 Q The next one is the two witnesses in the alley
19 which I think are Marie Indyk and the Merrimans
11:41 20 about what they saw. If we can go to the next
21 page. I think if we can go to the top, you say:

22 "There is no indication from either the
23 police files or the prosecution files
24 that the police ever informed Caldwell
11:42 25 about their interview of the



1 Merriman's."

2 And then if we can scroll down:

3 "Mr. Asper states, the fact that Mrs.
4 Indyk was called to testify she didn't
11:42 5 see anything is proof that Caldwell knew
6 the defence had an interest in calling
7 witnesses who didn't see anything.
8 Therefore, he was cognizant of the need
9 to disclose statements of the numerous
11:42 10 individuals who saw nothing unusual
11 around Avenue N and he was clearly wrong
12 in not doing so."

13 And again, would that be a summary of what was
14 being put forward on the Merriman and the Indyk
11:42 15 issue?

16 A Yes, it would.

17 Q Next is the (V4)--- assault, and you're familiar
18 with the (V4)---- (V4)--- assault and later
19 allegations that it was Larry Fisher who committed
11:42 20 the assault?

21 A Yes, I am.

22 Q Can you tell us, again, did your investigators
23 look at this issue of if (V4)---- (V4)--- -- and
24 we've been through, we've actually heard a fair
11:43 25 bit of evidence about the details, but that if



1 (V4)---- (V4---'s account of what happened is
2 accepted as fact, in other words, that it was
3 Larry Fisher who assaulted her at 7:07 a.m. on
4 Avenue H, what was the conclusion of your
11:43 5 investigators as to whether or not that eliminated
6 Larry Fisher as the killer of Gail Miller?

7 A I think our conclusions were that it certainly
8 cast some doubt on that because of the time
9 frames. I believe we tried to re-enact that, we
11:43 10 had investigators walk and run that, the distance
11 between and tried to see if we could match the
12 times, and we discounted the fact that it was
13 likely the same person who committed the murder
14 and committed the assault of (V4)---- (V4)---.

11:43 15 Q So are you saying that the allegation that Larry
16 Fisher assaulted (V4)---- (V4)---, are you telling
17 us that that was evidence that the RCMP relied
18 upon to I guess conclude that Larry Fisher may not
19 have been the perpetrator; in other words, almost
11:44 20 as an alibi for him?

21 A I certainly think it formed part of our
22 conclusions, or part of the reasons why we drew
23 the conclusions we did.

24 COMMISSIONER MacCALLUM: I wonder if we
11:44 25 could be careful about the use of pronouns here.



1 I'm just getting -- so if it was Fisher, on the
2 assumption that Fisher assaulted (V4)--- on
3 Avenue H, would that lead you to doubt that he
4 could have killed Miller?

11:44 5 A Yes, My Lord.

6 COMMISSIONER MacCALLUM: Okay, thank you.
7 Go ahead, Mr. Hodson.

8 BY MR. HODSON:

9 Q Yeah. And so again I think parts of what your
11:44 10 investigation was, to check the credibility of, or
11 at least the timing of what Ms. (V4)---, when she
12 said the assault took place; correct?

13 A That's correct.

14 Q Although she was pretty adamant that it was 7:07
11:44 15 a.m.; was she not?

16 A She was very firm I believe on her time and has
17 maintained that throughout the years.

18 Q And I guess the second thing, is it correct that
19 your investigators would look at whether or not
11:45 20 her identification in 1990 of Larry Fisher as the
21 perpetrator of her assault was credible?

22 A Yes.

23 Q But if you assume that Ms. (V4---'s account is
24 correct both as to time and to perpetrator, and I
11:45 25 think you answered this question, and that it was



1 Larry Fisher who assaulted her at 7:07 a.m., that
2 made it less likely that Larry Fisher killed Gail
3 Miller?

4 A Yes, it made it less likely.

11:45 5 Q Now, this issue relates to the disclosure of the
6 information that Mr. Caldwell had. If we can go
7 to the next page you say:

8 "Wolch suggests the police assumed the
9 same person attacked both Miller and
11:45 10 (V4)---, but since it didn't fit the
11 Milgaard theory, there was no interest
12 in pursuing the link. These details are
13 alleged to have formed part of the file
14 material sent to Caldwell by the police.
11:46 15 Since Caldwell had this information he
16 was obliged to disclose the facts to
17 defence counsel."

18 Now, putting aside who assaulted (V4)---- (V4)---
19 for a moment, based on what you investigated,
11:46 20 what are your thoughts as to whether or not the
21 Saskatoon City Police, with the information they
22 had at the time, namely, (V4)---- (V4)---'s
23 statement, assumed the same person attacked both
24 Gail Miller and (V4)---- (V4)---?

11:46 25 A I think when you look at that in itself, it



1 appears to be rather an odd set of circumstances.
2 It would seem to me as an investigator that it
3 would be unusual that the two would be connected,
4 the crimes themselves are so different, where you
11:46 5 have a stabbing, rape and then a simple touching
6 or -- and I don't mean to suggest that that's not,
7 you know, serious, because it is in the sense of
8 the victim, victimization, but certainly the
9 offences themselves are very, very different.

11:47 10 Q And what about the time factor and the distance
11 between the two locations?

12 A And as I indicated, we tried to re-enact that to
13 sort of see if there's a possibility of a
14 connection, and although you certainly can't
11:47 15 discount it outright, it doesn't sound probable.

16 Q So then you go on to say:

17 "We found no indication Caldwell was
18 given copies of police reports
19 concerning (V4---'s assault. His files
11:47 20 contain an index to witness statements
21 listing her along with the other
22 ninety-four statements. Her original
23 statement was included as number forty."

24 And then:

11:47 25 "Concerning knowledge of the assault on



1 (V4)---- (V4)--- and his failure to
2 disclose relevant facts to the defence,
3 Caldwell states he has no recollection
4 of "...being aware of other similar
11:47 5 crimes," or, "...of any other crimes at
6 all in that time, period." And, in
7 particular, Caldwell has no recollection
8 of the name (V4)--- or the circumstances
9 surrounding her assault.

11:48 10 Mr. Tallis, Milgaard's
11 defence counsel, was not informed about
12 (V4---'s complaint of assault during
13 trial."

14 And I believe, and I stand to be corrected on
11:48 15 this, I believe, Mr. Sawatsky, the evidence we've
16 heard is that the (V4)---- (V4)--- statement on
17 the top, there was some handwritten note,
18 unrelated assault, and I'm not sure if that was
19 on the police report as well, I think it was on
11:48 20 just the statement, and I think there was some
21 evidence from Mr. Caldwell on that, that -- do
22 you recall looking at that issue at all?

23 A I recall, yes, during our investigation I recall
24 some discussion about that and being informed of
11:48 25 that, that someone, likely Mr. Caldwell I think,



1 had looked at that statement and discounted it as
2 being of value to his prosecution.

3 Q Actually, Mr. Caldwell's evidence is that he said
4 someone with the police had written that on the
11:48 5 statement.

6 A Okay. I'm not certain that we ever determined
7 either way.

8 Q Now, next if we can scroll down, this is an *Issue:*
9 *Cadrain's Story About Virgins*, and then:

11:49 10 "According to Saskatoon police
11 occurrence report --"

12 And we've seen this report, it's the August 25,
13 '69 report:

14 "Cadrain told Caldwell he first met
11:49 15 Milgaard in Calgary in the spring of
16 1968. He related a story he had earlier
17 told the police which was to the effect
18 that, on more than one occasion,
19 Milgaard gave teen age females drugs,
11:49 20 placed them in a bath tub containing
21 water and had sexual intercourse with
22 them. The water was to dispose of any
23 blood. Cadrain claimed to have observed
24 this take place and indicated Milgaard
11:49 25 invited him to take part. He said a



1 friend Ed Schellenberg could corroborate
2 his story. The police report states
3 Caldwell asked the police to interview
4 Schellenberg (a reason is not given but
11:49 5 it is apparently for the purposes of
6 assessing Cadrain's credibility)."

7 And then the next page:

8 "As noted earlier, Wolch suspects that
9 since there is no mention of the results
11:50 10 of the Schellenberg interview in the
11 police reports or prosecution files, the
12 police likely found Cadrain made up the
13 story. If this were true then he
14 contends Caldwell had an obligation to
11:50 15 disclose details concerning Cadrain's
16 credibility as a witness to the defence.
17 Further, Wolch feels mention of
18 Cadrain's story in Caldwell's
19 correspondence to the National Parole
11:50 20 Board is totally inappropriate because
21 Cadrain's story was likely fabricated."

22 And that would be a summary, a fair summary of
23 what you were investigating?

24 A Yes.

11:50 25 Q And so in other words, that August 28th, when



1 Albert Cadrain provided this information to Mr.
2 Caldwell, I believe it was in the midst of the
3 preliminary hearing, and are you telling us that
4 the allegation was essentially this, that Mr.
11:50 5 Caldwell knew the story was fabricated, sent the
6 police out to investigate, got information back
7 that confirmed Cadrain had made up the story and
8 therefore he knew Cadrain wasn't credible and yet
9 Caldwell, Mr. Caldwell proceeded to put him on the
11:50 10 stand? Is that essentially it?

11 A That's essentially it, yes.

12 Q And the criminal wrongdoing there would be
13 concealing information about this incident; is
14 that your understanding?

11:51 15 A Correct, yes.

16 Q And then you go on to indicate that:

17 "According to Caldwell, he has no --"
18 Sorry, the police officers at the meeting don't
19 recall, but:

11:51 20 "According to Caldwell, he has no
21 recollection of wanting Schellenberg
22 interviewed, but does not dispute the
23 fact that he may have requested such an
24 interview."

11:51 25 He doesn't recall whether he was interviewed,



1 etcetera. It appears then your officers talked
2 to Ed Schellenberg -- scroll down -- who was
3 interviewed, and:

4 "Schellenberg explained that in 1968 he
5 went to Calgary with Cadrain... Later,
6 in the summer of 1969, two police
7 officers from Saskatoon came to see him.
8 His recollection is that the police
9 officers asked him for information about
10 David Milgaard but he has no memory now
11 of being questioned about Albert
12 Cadrain. He told them about several
13 incidents involving David Milgaard,
14 including a story told to him by Albert
15 Cadrain in 1968 about a bath tub, a girl
16 and blood. He assumed from what he
17 heard that the incident had something to
18 do with a virgin."

19 And then:

20 "Schellenberg was not present during any
21 such activities. He described his
22 discussion with police as a somewhat
23 hurried affair and does not remember the
24 police officers taking notes."

25 And can you tell us, what was the significance of



1 this information your investigators obtained from
2 Mr. Schellenberg as it related to the allegation
3 made by Mr. Wolch?

4 A Well, it certainly supported Cadrain's contention
11:52 5 that he had told somebody else about this and Mr.
6 Schellenberg in fact confirmed that Cadrain had
7 told him, so certainly that provided new evidence
8 to support that allegation.

9 Q Go down to C.5, *Disclosure: Blood on*
11:52 10 *Clothing/Unusual Behaviour*, and I think the
11 allegation here is that Cadrain and Wilson
12 testified they saw blood.

13 "Bruce and Asper indicate the Crown
14 failed to say that the motel manager,
11:53 15 Rasmussen, did not see unusual behaviour
16 nor did they disclose the fact that
17 Rasmussen, John, Danchuk's, and Sharon
18 Williams didn't see blood on his
19 clothing."

11:53 20 Now, let's just leave out Sharon Williams for a
21 moment. All of these witnesses testified at
22 trial and indicated they didn't see blood; is
23 that your understanding?

24 A Yes, that's my understanding.

11:53 25 Q What was the allegation here about the failure to



1 disclose, what was your understanding?

2 A Well, my understanding was that the Crown had
3 failed to disclose this, yet, like I say, or like
4 you said, these witnesses were all called at trial
11:53 5 and were cross-examined I presume and could have
6 been asked that question.

7 Q What did you understand to be the nature of this
8 allegation of wrongdoing then?

9 A Well, that because they didn't see blood on the
11:53 10 clothing, it was evidence of perhaps Mr.
11 Milgaard's innocence.

12 Q Okay. But the fact -- I guess what I'm trying --
13 what is it that Mr. Asper and Mr. Bruce were
14 saying the Crown or the police did wrong, or I
11:53 15 guess this is a Caldwell allegation, what Mr.
16 Caldwell did criminally wrong with respect to
17 Rasmussen, John, Danchuks and Sharon Williams?

18 A Well, I guess when we first received this, we
19 weren't aware that they had testified at trial,
11:54 20 and when we became aware that they had testified
21 at trial, it certainly, in my view, made that
22 allegation, you know, sort of without any
23 foundation.

24 Q Okay. So if we can go to page 285, please, just
11:54 25 one point here in the investigation of Sandra



1 Danchuk, you note here:

2 "Neither Sandra, nor Walter Danchuk
3 recall seeing blood on Milgaard's
4 clothing. Of interest, is

11:54 5 Sandra Danchuk's recollection that while
6 Milgaard was in her house she was under
7 the impression that he had a nosebleed.
8 She cannot say why she believes this to
9 be the case. When interviewed by the
11:54 10 Saskatoon City Police, she told the
11 officer of her belief and he suggested
12 that if she was in any way uncertain,
13 they would not put this into her
14 statement."

11:55 15 And Sandra Danchuk has given similar evidence to
16 the Commission about a vague recollection. What
17 was the significance of this fact to your
18 investigation?

19 A Well, certainly when you looked at this, if you
11:55 20 looked at it with the mandate to investigating
21 wrongdoing, it certainly shows that an
22 investigator said to her 'if you are not certain I
23 won't put it in the statement'. It would seem to
24 me that that is sort of an incriminating piece of
11:55 25 evidence, that if you were out to frame David



1 Milgaard, you would want it, yet the investigator
2 chose quite the opposite route and said, 'well, if
3 you are not certain, don't put it in,' so to me
4 it's not evidence at all of any wrongdoing.

11:55 5 Q And how would David Milgaard having a nosebleed be
6 incriminating?

7 A Well, it could perhaps mean that he had blood on
8 his clothing and then of course that could give
9 rise to the suggestion that she was wrong about a
11:55 10 nosebleed, but she wasn't wrong about the blood on
11 the clothing.

12 Q What about the reverse, what about providing an
13 innocent explanation as to why David Milgaard had
14 blood on his pants?

11:56 15 A And that's certainly the other way to look at it,
16 because we have several witnesses who say they saw
17 blood on his clothing and it certainly, it could
18 have come from him having a nosebleed.

19 Q In your investigation, was it ever suggested to
11:56 20 you by anybody on behalf of David Milgaard that
21 instead of Albert Cadrain lying about seeing blood
22 on David Milgaard, that he may have actually seen
23 blood on David Milgaard from a nosebleed or from
24 some other innocent source?

11:56 25 A No, that was not suggested to us.



1 Q If we can go to 023286, the Kenneth Cadrain
2 information, and we've heard from Kenneth Cadrain
3 in other evidence, but just to summarize, I think
4 you summarize it here, that he was five years of
11:56 5 age at the time and in 1991 he gave information I
6 think to your officers about having a recollection
7 of seeing blood on David Milgaard's clothing on
8 the morning of the murder; is that correct?

9 A That's correct.

11:57 10 Q And you say:

11 "Ken Cadrain was never previously
12 interviewed concerning this matter."

13 I think he was interviewed by Sergeant Pearson;
14 was he not?

11:57 15 A That's correct, yes, he was interviewed by
16 Pearson.

17 Q I think that was his initial -- and I think in his
18 initial interview with Sergeant Pearson, I believe
19 there's nothing in his statement indicating that
11:57 20 he -- I stand to be corrected on this -- I don't
21 think he saw blood. In his first statement to
22 Sergeant Pearson he did not see blood on the
23 clothing, although Mr. Cadrain said he told that
24 to Sergeant Pearson, so there's an issue there,
11:57 25 but later with your officers he did say that he



1 saw significant blood on David Milgaard the
2 morning of the murder; is that correct?

3 A Yes, he did.

4 Q And what did you make of that, the fact that,
5 number one, he was five at the time and it wasn't
6 until 20 some years later that he described seeing
7 blood on David Milgaard, and much more blood than
8 his brother Albert had described?

9 A Yeah, I guess we were somewhat surprised because
10 this is the first time that it had come out. Our
11 mandate here was not to investigate, you know, the
12 guilt or innocence of David Milgaard, so we simply
13 recorded this as another fact coming out in our
14 investigation.

15 MR. HODSON: I see it's 12 o'clock, our
16 noon break.

17 *(Adjourned at 11:58 a.m.)*

18 *(Reconvened at 1:30 p.m.)*

19 BY MR. HODSON:

20 Q Good afternoon. If we could go to 023287 again
21 please, this is just again on the disclosure
22 issue, I think this is disclosure during the
23 course of trial, and I believe your investigators,
24 in fact you were involved in the interview of Mr.
25 Tallis; is that right?



1 A That's correct.

2 Q And, here, the information he gave is:

3 "... that, given disclosure of the day,
4 he may well have received more than he
01:31 5 was entitled to receive. Further,
6 Justice Tallis noted that the aspect of
7 disclosure was dealt with by the Supreme
8 Court and he is not able to comment
9 further on that point."

01:31 10 And was that the information, then, your
11 investigators received from Mr. Tallis?

12 A Yes, it was.

13 Q If we can then go to the next page. Here is the
14 *Investigator Comments* on the failure to disclose
01:31 15 in the trial setting, and you go through the
16 Avenue N theory, and you point out that Mr.
17 Caldwell:

18 "... offered to the jury the possibility
19 Miller could have taken either Avenue N
01:31 20 or Avenue O."

21 And then go on to the next page. You say:

22 "The evidence does not
23 support the allegation Caldwell was
24 aware of information suggesting
01:32 25 witnesses could offer evidence contrary



1 to his theory of events or that he
2 withheld any facts tending to show
3 Milgaard was not in the vicinity. The
4 facts confirm Caldwell had no reason to
01:32 5 withhold information tending to show the
6 evidence supporting an Avenue N vs an
7 Avenue O theory because, contrary to Mr.
8 Asper's claims, in order to rely on the
9 evidence from John and Wilson, the Crown
01:32 10 did not put forth a theory which
11 narrowed the events to Avenue N."

12 And that would have been your investigators'
13 conclusion?

14 A Yes, it would.

01:32 15 Q And then here you say:

16 "We can not answer the
17 argument about Caldwell's knowledge of
18 the need to disclose details about those
19 individuals who saw nothing around
01:32 20 Avenue N the morning of the murder
21 (based on the defence request to call
22 Mrs. Indyk to say she didn't see
23 anything) and whether he was wrong in
24 not disclosing (V4---'s statement.
01:33 25 These questions are legal rather than



1 investigative issues - and ones which it
2 appears the Supreme Court has already
3 decided. (The Court concluded that
4 disclosure was adequate according to the
01:33 5 practice prevailing at the time)."

6 And that would have been your conclusions then?

7 A Yes, it would have been.

8 Q And then the next page, and again I'll just touch
9 on parts of this, Mr. Sawatsky, because I'm not
01:33 10 reading parts of those comments, those are already
11 on the record. But here:

12 "Based on comments in a
13 police report it is believed that prior
14 to calling Cadrain as a witness,
01:33 15 Caldwell had the police interview a
16 friend, Ed Schellenberg ...",

17 you go on to describe that and say:

18 "Although there are no details of
19 Schellenberg's interview in either the
01:33 20 Saskatoon City Police files or the
21 prosecutions files, since Caldwell
22 initiated the interview, it is likely
23 the police did advise him of the results
24 at least verbally. Based on
01:34 25 Schellenberg's 'verification' of



1 Cadrain's story, Cadrain's credibility
2 would not appear to have been in
3 question and there would not have been
4 no need for disclosure of the interview
01:34 5 with Schellenberg. Further, since he
6 believed that what he was told was true,
7 it would appear Caldwell's mention of
8 this information in reports to the
9 National Parole Board was not improper."

01:34 10 And you have got the word "verification" with
11 quotes; what is the significance of that?

12 A The significance of that is that Cadrain had told
13 Mr. Caldwell that that happened, and that he
14 had -- was aware of that, and that Mr. -- he had
01:34 15 told Mr. Schellenberg, and we were now able to
16 interview Mr. Schellenberg, who confirmed the fact
17 that Mr. Cadrain had told him that happened, and
18 also that he had been interviewed by the police
19 back in 1970, or whenever, he had told them as
01:34 20 well.

21 Q Short of talking to David Milgaard about the
22 incident, was there any other way to corroborate
23 whether or not what Mr. Cadrain told Mr. Caldwell
24 was true or not?

01:34 25 A No, there wasn't.



1 Q And then out -- if we can scroll down -- *Outside*
2 *of Trial Setting*, and I think this relates to the
3 disclosure post-conviction and relates to the
4 October 1970 confessions of Larry Fisher and then
01:35 5 subsequent steps; is that correct?

6 A That's correct.

7 Q And here this is, again, this is part of your
8 investigation into Mr. Caldwell. He says:

9 "As noted earlier, Mr. Wolch
01:35 10 is most concerned about the alleged
11 failure of Caldwell to disclose details
12 about Larry Fisher once he was
13 apprehended in October of 1970 ..."

14 "In making this allegation,
01:35 15 Wolch indicates that when Mr. S. Kujawa
16 handled the Milgaard Appeal proceedings,
17 ...",

18 January of 1971:

19 "... he was also aware of such
01:35 20 similarities between the Fisher crimes
21 and the Miller murder and he, too, had a
22 responsibility to disclose the facts to
23 Mr. Tallis."

24 And so do I take it, from that, that the
25 allegation was essentially that Mr. Caldwell



1 became aware in October 1970, or shortly
2 thereafter, about the connection between Larry
3 Fisher and Gail Miller, and that he had a duty to
4 disclose that information to Mr. Tallis or to
01:36 5 David Milgaard, and that he deliberately did not
6 as part of some criminal obstruction?

7 A Yes, that's the substance of that allegation.

8 Q And so that would require you to investigate what
9 Mr. Caldwell knew about Larry Fisher's confessions
01:36 10 in 1970 and what, if anything, he did with them;
11 is that fair?

12 A That's fair.

13 Q And so here:

14 "Caldwell states the only
01:36 15 time his office became involved in
16 matters involving Larry Fisher was to
17 transmit a telephone request, in March
18 of 1971, from the Regina office ... to
19 Deputy Chief Corey. He didn't have a
01:36 20 file or other material relating to
21 Fisher because there was no reason for
22 him to have had same."

23 And the next page:

24 "Caldwell is emphatic in
01:36 25 stating he made no connection between



1 the circumstances of the Miller murder
2 and Fisher's rapes. Our investigation
3 has not revealed evidence suggesting
4 anything to the contrary. Since he made
01:36 5 no connection and had no doubts David
6 Milgaard was properly convicted,
7 Caldwell had nothing to disclose.

8 To summarize, there is
9 nothing arising out of our investigation
01:37 10 to substantiate the allegation Caldwell
11 failed to disclose relevant facts either
12 during his prosecution, or later."

13 And that would be an accurate summary of what
14 your investigators concluded?

01:37 15 A Yes, yes it is.

16 Q The next one is the supplemental issue, the
17 *Relationship With Saskatoon City Police - Defence*
18 *Counsel*. And this is, you say:

19 "During our interview with
01:37 20 Mrs. Milgaard ... she indicated that
21 Caldwell had made comments during an
22 interview with author Peter
23 Carlyle-Gordge to the effect that he and
24 Tallis 'put him away together'. She
01:37 25 believes that the comment indicates



1 collusion on the part of Caldwell and
2 Tallis, and that since there was an
3 assumption of Milgaard's guilt, he was
4 given only a token defence.

01:37 5 She indicated that Ian
6 Disbery, Tallis' assistant during trial,
7 provided David Asper with an Affidavit
8 concerning the defence conduct. She
9 felt that Disbery might be able to
01:38 10 provide information concerning the
11 manner in which Milgaard's case was
12 handled."

13 And would that fairly summarize that allegation?

14 A Yes.

01:38 15 Q And that would be that Mr. Tallis committed
16 criminal obstruction of justice by providing a
17 token defence or colluding with Mr. Caldwell to
18 ensure that David Milgaard was convicted?

19 A That's correct.

01:38 20 Q And one of the avenues Mrs. Milgaard asked you to
21 pursue, then, was to talk to Ian Disbery, who I
22 think was junior counsel to Mr. Tallis at the
23 trial?

24 A That's correct.

01:38 25 Q Next page. Looks as though you talked to Peter



1 Carlyle-Gordge, or looked at his interview to see
2 if you could find mention of this conversation. I
3 think Mrs. Milgaard had -- had indicated that her
4 allegation of collusion was based on something Mr.
01:38 5 Caldwell had said to Mr. Carlyle-Gordge; is that
6 right?

7 A That's right.

8 Q And then here:

9 "Caldwell was asked about his
01:38 10 relationship with the Saskatoon City
11 Police and Defence Counsel, C.F. Tallis,
12 in light of the overall allegation of
13 conspiracy and adequacy of counsel.

14 Caldwell vehemently denied
01:39 15 there was ever any collusion between
16 himself and Mr. Tallis. Prior to the
17 Milgaard case they did work together on
18 a matter dealing with an individual they
19 sought to have declared a dangerous
01:39 20 sexual offender. Caldwell feels the
21 alleged quote of he and Tallis working
22 together to put someone away may relate
23 to this case."

24 And then goes on to give:

01:39 25 "He rejected strongly any suggestion



1 that Mr. Tallis would do such a thing
2 either.

3 Concerning his association
4 with the city police, he has never been
01:39 5 involved in any relationship with the
6 police which would compromise his
7 position as Crown counsel. At the time
8 of the Milgaard investigation, Mr.
9 Tallis acted as counsel for the police
01:39 10 association."

11 And, on that last point, was that one of the
12 grounds or allegations relied upon by the
13 Milgaards in suggesting that Mr. Tallis was
14 somehow involved in criminal wrongdoing is
01:40 15 because he happened to be the lawyer acting for
16 the police association?

17 A I don't believe that was put forward as an
18 allegation, but it certainly was something we
19 uncovered during our investigation, that specific
01:40 20 issue. It's certainly something we uncovered
21 during our investigation and thought worthy of
22 comment.

23 Q And then, if we can go to the next page, you say
24 here:

01:40 25 "Mr. Justice Tallis was



1 interviewed 93-04-29 and the aspect of
2 collusion was mentioned to him. His
3 response was that such a notion was
4 absurd."

01:40 5 And I believe you participated in that interview
6 with Mr. Tallis; is that correct?

7 A That's correct.

8 Q And was he being interviewed, at that time, as a
9 suspect for a criminal offence?

01:40 10 A Yes, he was.

11 Q Did you give him a warning when you interviewed
12 him?

13 A Yes, I believe I did.

14 Q Can you tell us, just generally, what was Mr.
01:40 15 Tallis' reaction to the fact that the police were
16 investigating him for criminal obstruction of
17 justice?

18 A As I recall Mr. Tallis just, after he accepted the
19 warning, simply indicated that he intended to tell
01:41 20 us -- to answer whatever questions he could, and
21 proceeded to do so in an open and forthright
22 manner.

23 Q And as far as the allegation, then, of collusion,
24 I take it that you put that to him that "it has
01:41 25 been alleged that you and Mr. Caldwell colluded to



1 put David Milgaard away"; is that --

2 A Yes, yes I did.

3 Q And his response, as indicated here, was that the
4 notion was absurd?

01:41 5 A Exactly.

6 Q Ian Disbery you talked to as well.

7 "Disbery had no criticism of
8 the manner in which Caldwell, Tallis or
9 the Saskatoon City Police handled their
01:41 10 responsibilities. The relationship
11 between Tallis and Caldwell was a
12 professional one."

13 And the *Investigator Comments*:

14 "No evidence was uncovered
01:41 15 during the course of our investigation
16 to substantiate the inferences of
17 conspiracy and collusion amongst
18 Caldwell, Tallis and the Saskatoon City
19 Police.

01:41 20 The sources mentioned by
21 Mrs. Milgaard do not corroborate her
22 suspicions of collusion.

23 It should be pointed out that
24 both the Crown prosecutor, Mr. Caldwell,
01:42 25 and defence counsel Mr. Tallis, enjoy



1 excellent reputations within the legal
2 community. Mr. Caldwell was senior
3 Crown counsel in Saskatoon for 25 years
4 and those in the criminal justice system
01:42 5 considered Tallis to be one of the most
6 respected and able defence lawyers in
7 Saskatchewan."

8 And would that be a fair summary of your
9 conclusion?

01:42 10 A That's a fair summary. I think one of the things
11 I particularly noted in this file throughout the
12 investigation was the number of times Mr. Caldwell
13 and Mr. Tallis, you know, were complimented to us
14 by others as being very professional, and I'm
01:42 15 suggesting that's likely why we made note of it in
16 our report.

17 Q And as far as the collusion allegation, and so
18 your investigators concluded there was no merit to
19 that?

01:42 20 A That's correct.

21 Q Next page. And would that -- just on that
22 point -- was it -- and we'll talk about this later
23 -- but would that also have been one of the
24 grounds put forward to you by Joyce Milgaard and
01:43 25 her counsel as to why we say David Milgaard is



1 innocent, in other words "he's innocent, and one
2 of the reasons he is is because his defence lawyer
3 colluded with Mr. Caldwell to put him away"?

4 A Yes, I -- Mrs. Milgaard mentioned that. She also
01:43 5 mentioned that he, that Mr. Tallis was
6 incompetent, and that David did not have the
7 benefit of a good trial because he was
8 incompetent. She also mentioned that Mr. Tallis
9 didn't put David on the stand, which he should
01:43 10 have done, and I recall specifically asking Mr.
11 Tallis about that and his answer to me was that
12 his instructions were that he, David did not want
13 to take the stand, and that Mr. Tallis indicated
14 to me that he was always in the habit of taking
01:43 15 written instructions from a client in a situation
16 like that, however, indicated that he didn't have
17 that particular piece of paper available.

18 Q We talked earlier about, when you were doing this
19 investigation, the fact that you didn't have the
01:44 20 benefit of the DNA done in '97, the fact of Larry
21 Fisher's conviction, and the fact of the
22 government's acknowledgment of David Milgaard's
23 factual innocence; correct?

24 A That's correct, yes.

01:44 25 Q And I think you told us that -- and we'll see this



1 later in your report when you talk about your
2 investigative team and their conclusions about
3 whether there was any new information which
4 supports the contention that David Milgaard is
01:44 5 innocent, and you recall that being towards the
6 end of your report?

7 A Yes, yes I do.

8 Q And I want you to comment on how, and I think you
9 told us earlier that what one of your tasks was to
01:44 10 go through and look at each of the grounds put
11 forward by the Milgaards as the reasons they said
12 David Milgaard is innocent and to test those; is
13 that right?

14 A That's right.

01:44 15 Q And let me put it this way; if in fact Mr. Tallis
16 had colluded with Mr. Caldwell to put David
17 Milgaard away and give a token defence, that might
18 be evidence that would be indicative of David
19 Milgaard's innocence?

01:45 20 A Yes.

21 Q Correct?

22 A Yes, it may be, yes.

23 Q That might explain how an innocent person could be
24 convicted?

01:45 25 A Yes.



1 Q When you go through and test that ground and
2 others, and find that there is no merit to them,
3 can you tell us what influence would that have on
4 you and your team's assessment, then, of the
01:45 5 assertion that David Milgaard is innocent?

6 A Well that would certainly be another area that we
7 were unable to sort of substantiate or support as
8 being evidence of a wrongful trial or misconduct
9 on the part of any officials. It would just be
01:45 10 one more piece of evidence that wasn't supported.

11 Q It would be --

12 A It was put forward as conclusive evidence, or put
13 forward as strong evidence that we weren't able to
14 support.

01:45 15 Q Would it have the opposite effect, that if you --
16 put it this way, if you found it to be credible it
17 might tend to show that he is innocent; in finding
18 that it's not credible can you tell us whether it
19 had any effect of making you more convinced than
01:46 20 you otherwise might be of his guilt?

21 A Yes. I think over time and with accumulation of
22 incidents that aren't substantiated, yes, it would
23 have that effect.

24 Q And why?

01:46 25 A Well, simply because you are given a set of



1 circumstances that you are told will show someone
2 is innocent, and as you look at each one of those
3 you find out that they are not supported or you
4 are not able to support them through any evidence
01:46 5 of witnesses or documents or anything, at the end
6 of it you are only left with one conclusion and
7 that is that that information is not -- does not
8 have any foundation or any basis and therefore you
9 would look at the conviction and say, in the
01:46 10 absence of anything else, it must be a proper
11 conviction.

12 Q Okay. Here's the summary on Mr. Caldwell, and you
13 say:

14 "The allegations against Mr.
01:46 15 Caldwell are to the effect that he was
16 well aware of the fact the police saw
17 similarities between the rapes which
18 were committed by Larry Fisher and the
19 circumstances surrounding the murder of
01:47 20 Gail Miller and that he failed to
21 disclose this knowledge to the defence."
22 And his knowledge is purported to come from the
23 media. And if we can scroll down, the police,
24 you've summarized what was provided, indicate:

01:47 25 "Neither then, nor later when Larry



1 Fisher was identified as the assailant
2 did he make any connection between those
3 assaults and the... murder."

4 If we can go to the next page, here you indicate:

01:47 5 "Caldwell's role in

6 facilitating the disposition of Fisher's
7 charges in Regina was a minor one. We
8 could find no evidence from witnesses,
9 or from file material which suggested
01:47 10 Fisher's apprehension caused him to form
11 doubts about Milgaard's conviction.

12 Based on his knowledge of the facts and
13 his personal observations of those
14 involved Caldwell was, and is, resolute
01:47 15 in his belief of Milgaard's guilt.

16 Obviously, Fisher's apprehension did
17 nothing to diminish this belief."

18 You then go on and summarize the National Parole
19 Board and say:

01:48 20 "Very reputable and credible individuals
21 confirm Caldwell's motives in writing
22 the letters were proper ones."

23 And:

24 "When interviewed, Caldwell
01:48 25 was indignant at the allegations made



1 against - not only himself, but others,
2 including counsel for the defence.

3 During our interviews of Mr. Caldwell we
4 found him very open and forthright.

01:48 5 When answering our questions, at no time
6 was he either reticent or evasive; he
7 made every effort to cooperate and to
8 fully explain his role in the
9 prosecution of David Milgaard."

01:48 10 And would that accurately summarize, then, your
11 investigative team's conclusions about Mr.
12 Caldwell?

13 A Yes, it would, and I can point out that I
14 participated in this interview as well of Mr.
01:48 15 Caldwell.

16 Q Of Mr. Caldwell?

17 A Yes.

18 Q And again, the bottom line, was there anything
19 that your investigative team found in their
01:48 20 investigation of Mr. Caldwell that would provide
21 the basis for any criminal charges of obstructing
22 justice or anything of that nature?

23 A No.

24 Q And, short of the standard of evidence that would
01:49 25 give rise to a criminal charge, was there



1 anything -- and with the caveat that you told us
2 certain issues relating to disclosure were left to
3 Mr. McCrank and Mr. Fraser, but apart from that,
4 the work that your team did, did you uncover any
01:49 5 information that caused you, as investigators, to
6 think that he had done anything improper or wrong
7 short of criminal conduct?

8 A No.

9 Q Go to 023297. Now turn to the Department of the
01:49 10 Attorney General and Mr. Kujawa. Go to the next
11 page. And I think this summarizes the allegations
12 against the Attorney General, and is it fair to
13 say that this, the genesis of this allegation is
14 the Michael Breckenridge information?

01:49 15 A Yes.

16 Q And we see here that this is the issue 1, that:

17 "Kujawa had both 'files' at the same
18 time",

19 the Michael Breckenridge information, and we have
01:50 20 been through that in a significant degree, so
21 that would be the first issue, to look at whether
22 there's any merit in what Mr. Breckenridge had to
23 say?

24 A Yes.

01:50 25 Q And the second one is that the direct indictment



1 was unusual and the appearance there, and whether
2 that was part of a coverup scheme; is that fair?

3 A That's fair.

4 Q Go to the next page. And you identify in the
01:50 5 first paragraph these issues, I don't think we
6 need to turn back, they are on page 023198, but
7 these issues would have been generated by your
8 interview with Mr. Wolch and Mrs. Milgaard?

9 A Yes.

01:50 10 Q And then, I think, supplemented by Robert Bruce
11 and David Asper, or information from Mr. Asper
12 through Robert Bruce; is that correct?

13 A Yes.

14 Q And here's:

01:51 15 "... the allegation that the ...
16 Department of the Attorney General, Mr.
17 Kujawa, in particular, took specific and
18 unusual actions to prevent public
19 awareness of Larry Fisher's crimes.
01:51 20 Kujawa is alleged to have had both the
21 Milgaard and Fisher files at his
22 disposal when speaking to the Milgaard
23 appeal and when handling the disposition
24 of Fisher's charges. The Milgaard file
01:51 25 is alleged to have had references to the



1 Fisher crimes and Kujawa should have
2 been concerned about the connection.
3 Mr. Wolch alleges Kujawa's failure to
4 disclose knowledge of evidence which
01:51 5 would call into question the Milgaard
6 conviction was a breach of the duty to
7 disclose evidence which would tend to
8 exculpate the accused ...".

9 And then here:

01:51 10 "This allegation is based
11 primarily on information provided by a
12 former clerk of the Department of the
13 Attorney General, Michael Breckenridge."

14 And is that correct?

01:51 15 A That's correct.

16 Q And apart from what Mr. Breckenridge alleged
17 happened in the offices of Mr. Kujawa, was there
18 any other allegation of deliberate wrongdoing or
19 coverup by Mr. Kujawa, the Department of the
01:52 20 Attorney General, that was not in some way related
21 to what Mr. Breckenridge had said?

22 A I think just perhaps the question around the
23 direct indictment.

24 Q Okay. And I think, was that not part of the
01:52 25 continued coverup though, in other words that the



1 reason they did the direct indictment was to not
2 expose Mr. Fisher in Saskatoon?

3 A Correct, yeah.

4 Q And so that, although Mr. Breckenridge didn't
01:52 5 allege anything specifically about the direct
6 indictment, apart from that one issue was it your
7 understanding that the rest of the allegations
8 that you were investigating against Mr. Kujawa and
9 members of the Attorney General of Saskatchewan
01:52 10 were related to what Mr. Breckenridge had alleged?

11 A Umm, sorry, I think Mr. Breckenridge only made
12 this one allegation about discussions behind
13 closed doors and those sorts of things. The other
14 ones came from Mr. Wolch during --

01:52 15 Q Oh, yes, yeah.

16 A -- the time we spent with him.

17 Q Maybe I didn't ask it very well, but this notion
18 that Mr. Kujawa had both the Fisher file and the
19 Milgaard file and consciously made a decision to
01:53 20 not take steps, or that he connected the two, knew
21 that David Milgaard was innocent, Larry Fisher was
22 guilty, and took deliberate steps to cover up in a
23 planned and deliberate way; we saw the allegation
24 of Michael Breckenridge that that took place or
01:53 25 that there was meetings between Mr. Kujawa and



1 Mr. Romanow that talked about that?

2 A Correct, yeah.

3 Q And, apart from what Mr. Breckenridge was
4 alleging, I'm just trying to get; were there other
01:53 5 things related to that that were made by Mr. Wolch
6 and Mrs. Milgaard?

7 A Yes, I'm sorry, I misunderstood your question.

8 Q Yeah.

9 A Yes.

01:53 10 Q If we can scroll down. And I think this comes out
11 of a, first of all in the letter from Breckenridge
12 to Wolch that there was closed-door meetings
13 between Mr. Romanow, Lysyk, Kujawa concerning
14 discrepancies, and then you go on to describe the
01:54 15 later Breckenridge statement. We have been
16 through these, Mr. Sawatsky, so I won't bring them
17 up. If we can then go to the next page, looks
18 like the very first part of the report looks at
19 what the department had by way of files; is that
20 correct?

21 A Yes.

22 Q And that there was a review done of what Mr.
23 Kujawa would have had in his files?

24 A Yes.

01:54 25 Q And if we can go to the next page, just identify,



1 you in your report:

2 "Listed hereunder are

3 documents relating to, first, David

4 Milgaard and second, Larry Fisher."

01:54 5 I don't propose to go through this because we
6 have been through the same exercise, but I take
7 it that one of your initial investigative steps
8 was to look at what Mr. Kujawa and the Attorney
9 General had on their file relating to David
01:54 10 Milgaard and Larry Fisher; is that correct?

11 A Yes. I see I'm missing that page from my paper
12 report here, but --

13 Q Which one is that, the one on the screen?

14 A Yeah, 135 I don't have. I've got 133 and then
01:55 15 136, so I'm missing 134 and 135, but I'll
16 certainly look at this and --

17 Q Yes, no, and I don't propose to go through it.

18 It's just this point here, in your report you go
19 and list what you found on the Attorney General's
01:55 20 file related to David Milgaard and Larry Fisher?

21 A Yes.

22 Q And so that would be one of the initial steps, is
23 take a look at -- the allegation is that Mr.
24 Kujawa had both files on his desk, that the
01:55 25 Milgaard file had information about the sexual



1 assaults and Fisher, that Mr. Kujawa connected
2 him. So it appears that the first step was what
3 did Mr. Kujawa have by way of paper; is that fair?

4 A That's fair.

01:55 5 Q Go to page 90 -- or pardon me -- 023306. And here
6 you indicate that:

7 "The Saskatchewan Court of
8 Appeal dismissed Milgaard's appeal
9 71-01-05. The following documents
01:55 10 relating to the Milgaard case would have
11 been in Kujawa's file.

12 a) RCMP reports received between ...",
13 March and August '69:

14 "... detailing the facts concerning the
01:56 15 Saskatoon City Police investigation of
16 the Miller murder and their assistance
17 to the city police. Certain witness
18 statements and lab reports were included
19 with the reports."

01:56 20 And:

21 "There are several references
22 in the police reports to 'unsolved
23 sexual assaults', occurring at
24 approximately the same time as the
01:56 25 Miller murder.



1 b) ...",

2 He would have had:

3 "... Caldwell's 'Report on Completed
4 Cases' from the preliminary hearing,
01:56 5 together with a copy of a Saskatoon City
6 Police memo outlining the facts ...",

7 and:

8 "c) Transcripts of the preliminary
9 hearing and trial and related
01:56 10 administrative material ..."

11 So that would have been your conclusions as to
12 what he would have had in the Attorney General or
13 Mr. Kujawa's file; is that correct?

14 A That's correct.

01:56 15 Q And then the next page. You say here:

16 "The first mention of Fisher
17 we were able to locate in the
18 Departmental files is correspondence,
19 date stamped 71-02-09, dealing with
01:57 20 Fisher's outstanding charges. A
21 subsequent letter dated 92-03-18 ...",

22 I think that should be '71:

23 "... from Greenberg to the Department
24 refers to previous correspondence to
01:57 25 which the Department had not replied.



1 The previous correspondence is not on
2 file but it appears to have been sent in
3 early 1971. This would mean that at the
4 time they received letters from Fisher's
01:57 5 lawyer inquiring about the disposition
6 of outstanding charges, the Department
7 was either in the process of concluding,
8 or had already concluded the Milgaard
9 case."

01:57 10 Is that correct?

11 A That's correct.

12 Q And I think at that time, what we have learned is
13 that the appeal was argued in November of 1970,
14 and the Court of Appeal decision I think was
01:57 15 January '71, and then sometime later an
16 application for leave to the Supreme Court later
17 in '71; does that accord with your recollection
18 generally?

19 A Yes, it does.

01:57 20 Q So here we now deal with Michael Breckenridge. It
21 says:

22 "He was interviewed by our
23 investigators 93-05-13. At the
24 commencement of the interview
01:58 25 Breckenridge supplied a three page



1 article in which he makes statements
2 concerning government officials and
3 meetings between Kujawa and Romanow
4 regarding Milgaard/Fisher. According to
01:58 5 Breckenridge, the closed door meetings
6 between Romanow and Kujawa took place in
7 1973."

8 Now is that -- this date, 1973, I think the
9 earlier information suggested that was in '70 or
01:58 10 '71; was that not the case?

11 A That is the case, yes.

12 Q And certainly I think, if we look back at what I
13 think was in the earlier statements or at least
14 what was stated in the press conference, was it
01:58 15 your understanding that the initial allegation was
16 that what Breckenridge observed happening happened
17 in '70-'71?

18 A Yes.

19 COMMISSIONER MacCALLUM: So that's just a
01:58 20 typo there?

21 A That must be a typo there.

22 BY MR. HODSON:

23 Q No, sorry, well let me ask the question again. I
24 think what we will see, and I can bring this up
01:59 25 for you, I think in the interviews with



1 Mr. Breckenridge what he told you is he said to
2 you it was in '73, yet he was earlier reported to
3 have said it was in '71?

4 A Yes, that's correct.

01:59 5 COMMISSIONER MacCALLUM: Oh.

6 BY MR. HODSON:

7 Q So I'm sorry if I didn't ask it, --

8 A Yeah.

9 Q -- but I will get to that about his record of
01:59 10 employment, because I think what the record shows
11 is that Mr. Breckenridge did not start working
12 with the government until 1973; is that correct?

13 A That's correct, I believe from October of '73.

14 COMMISSIONER MacCALLUM: While I'm at it,
01:59 15 sir, if I could just clear one more thing up.

16 When Mr. Hodson asked you if
17 Breckenridge was the only one that had made this
18 allegation about closed-door meetings between
19 Kujawa and Romanow and having both Miller -- the
01:59 20 Milgaard and the Fisher files in front of him,
21 I'm not sure what you said to me, what your
22 answer was. Did -- there was reference made to
23 Mr. Wolch and Mrs. Milgaard as well, but was it
24 the case that allegations through Ms. -- by Mr.
02:00 25 Wolch and Mrs. Milgaard related only to



1 Breckenridge complaint, nobody else, he was the
2 only source?

3 A That's correct, that's correct. If I recall
4 correctly, he was the only source, yeah.

02:00 5 BY MR. HODSON:

6 Q So just to clarify this, and maybe we'll see this
7 as we go through the report, and I'll maybe
8 double-check tonight the May 13th, '93 interview,
9 but I think in that interview Mr. Breckenridge
02:00 10 indicated that the meetings took place in 1973 as
11 opposed to the earlier suggestion that they were
12 in 1971; is that correct? Is that your
13 understanding?

14 A Yes, I believe it is. I would maybe want to check
02:01 15 that as well.

16 Q Okay.

17 A But I think that --

18 Q I'll make a note and come back to that, Mr.
19 Sawatsky. In any event, I think -- it appears
02:01 20 that Mr. Breckenridge:

21 "...was asked to elaborate on the
22 details of his accusations and to
23 describe the contents of the "Milgaard
24 and Fisher" files. He identified the
02:01 25 Milgaard file as containing copies of



1 police reports, a "rap sheet", various
2 pieces of paper, memos and
3 correspondence, some of which were
4 copies and others original. The Fisher
02:01 5 file was at least six inches thick."

6 Now, is that something that you were able to
7 corroborate with your review of the files, or
8 disprove?

9 A Yes, and also through interviews with other
02:01 10 employees who worked there at the time.

11 Q And let me ask you this, can you tell us
12 generally, your investigators, what were your
13 conclusions with respect to the credibility and
14 reliability of what Mr. Breckenridge told you?

02:02 15 A We were unable to confirm what Mr. Breckenridge
16 had initially put forward as an allegation.

17 Q Did you reach any conclusions as to whether it was
18 credible?

19 A It was not credible.

02:02 20 Q It says:

21 "Breckenridge explained his job involved
22 adding correspondence to these files on
23 a continual basis, which he would
24 initial. During the discussion about
02:02 25 the files, he abruptly recalled a



1 memorandum on the Milgaard file stating
2 there was insufficient evidence to
3 prosecute. When pressed on this point,
4 Breckenridge said he could not recall to
02:02 5 whom this memo actually referred."

6 Next page:

7 "Breckenridge says he confronted Kujawa
8 personally about his concerns regarding
9 the files. This took place in
02:02 10 Breckenridge's office area. He does not
11 recall specifically what Kujawa's
12 response was but it was to the effect,
13 "people should mind their own business
14 if they value their jobs." He bases
02:03 15 this recollection on Kujawa's tone and
16 expressions at the time. The word
17 "history" also stands out in his mind
18 when remembering Kujawa's response."

19 He says:

02:03 20 "Breckenridge recalled there was media
21 attention and concern from ridings about
22 both files during the early 1970's."

23 Was that something you were able to verify or
24 corroborate?

02:03 25 A No.



1 Q And then it appears:

2 "When asked why it took him so long to
3 come forward with his information,
4 Breckenridge indicated that the oath of
02:03 5 secrecy would have been in effect for
6 ten years after he left the Department
7 and that he was living in British
8 Columbia for a while and was not aware
9 of the attention these two matters were
02:03 10 receiving."

11 Were you ever able to verify whether there was
12 anything such as an oath of secrecy that would
13 preclude Mr. Breckenridge from coming forward
14 with allegations or information regarding
02:03 15 criminal conduct?

16 A I don't have specific recall of examining that
17 particular point, but I can tell you that I'm not
18 aware of that requirement existing within the
19 department.

02:04 20 Q It says:

21 "Our May 13th interview with
22 Breckenridge was followed by numerous
23 contacts in an effort to have him
24 provide specifics concerning his
02:04 25 allegations and to clarify ambiguous



1 statements. When contacted 93-06-02 he
2 felt that in order to ensure that he
3 "had his facts in order" he preferred to
4 sit down at home and address what he had
02:04 5 to say on paper. On 93-06-25 we
6 received a two page typewritten article
7 submitted by Mr. Breckenridge entitled
8 "The NDP Story", along with a copy of
9 the "Co-Operative Commonwealth
02:04 10 Federation Programme".

11 Is that correct?

12 A That's correct.

13 Q Were you -- did you have any personal contact at
14 all with Mr. Breckenridge?

02:04 15 A I did not.

16 Q Who was the officer that was involved in dealing
17 with Mr. Breckenridge, was it Mr. Templeton?

18 A I would have to look back and see who it was. I
19 don't have a specific recall of that, but I know I
02:05 20 discussed Mr. Breckenridge's, the circumstances
21 around the investigation and interview of him with
22 the investigative team.

23 Q And do you recall what the sense was of those who
24 dealt with Mr. Breckenridge directly, what they
02:05 25 felt about his credibility and reliability?



1 A I believe they felt he was unreliable, and
2 certainly the information he provided was not any
3 evidence of what his claims were.

4 Q And then Robert Perry, it appears he was
02:05 5 interviewed, the private investigator engaged by
6 David Asper, to interview Breckenridge; is that
7 correct?

8 A Yes, that's correct.

9 Q Next page, it says:

02:05 10 "Perry met with Breckenridge on two
11 occasions. During his first meeting on
12 92-05-14, Breckenridge was unable to
13 clearly organize his thoughts, so Perry
14 asked him to write out his own
02:05 15 statement. Later, on 92-05-22,
16 Breckenridge gave Perry his statement.
17 In it Breckenridge indicates he
18 commenced employment with the Department
19 in 1970 or 1971 and he left when Kujawa
02:06 20 threatened his job. An exact
21 termination date is not given."

22 And that's where the initial reference was, Mr.
23 Sawatsky, initially Mr. Breckenridge said 1970 or
24 '71 is when he commenced his employment; correct?

02:06 25 A Correct.



1 Q And I believe, and I'll check this point, when he
2 met with your officers in 1993, he then said that
3 this incident with Romanow, Lysyk and Kujawa
4 happened in '73 as opposed to '70/'71?

02:06 5 A I believe that's correct, yes.

6 Q And here:

7 "On 92-06-14, Mrs. Milgaard met with
8 Breckenridge and Perry for about two
9 hours. Breckenridge's period of
02:06 10 employment was not discussed, nor was
11 Perry given instructions to verify the
12 time later. However, one day later, the
13 Public Service Commission wrote a memo
14 responding to a request from
02:06 15 Breckenridge to verify his period of
16 employment. It shows he worked with the
17 Department from 73-10-03 to 75-06-29."

18 And if I could just call up the document, and
19 this is a document that I think your
02:07 20 investigators obtained, 004193, and just note the
21 date here, I'm going to ask you, it was June 14th
22 that Mr. Perry told you that he and Mrs. Milgaard
23 met with Mr. Breckenridge. Go to the next page.
24 Actually, it's about the seventh page in.

02:07 25 Actually, go to 154087, please. Actually, sorry,



1 you can leave this document up, if you can just
2 scroll ahead until you find the -- right here.
3 There are a number of versions of this document,
4 Mr. Commissioner, on the database. This one is
02:07 5 part of a memorandum that Sergeant Pearson and
6 Murray Brown had, but I believe, Mr. Sawatsky,
7 this is the memorandum referred to in your report
8 that we talked about from the Public Service
9 Commission; is that correct?

02:08 10 A Yes.

11 Q And I think from other sources it's confirmed that
12 the blacked-out name is in fact Michael
13 Breckenridge and it says:

14 "In response to your request, our
02:08 15 records indicate your service with the
16 Saskatchewan government is as follows:"

17 And then has the dates of October, '73 to June,
18 '75, if we can just scroll down, so from records
19 management. So if we can just go back to page
02:08 20 023309, can you tell us, what did you and your
21 investigators conclude about the significance of
22 the fact that the day after Mr. Perry and Mrs.
23 Milgaard met with Michael Breckenridge, that the
24 next day Mr. Breckenridge appears to have
02:08 25 obtained from the Public Service Commission



1 confirmation of his employment record indicating
2 that he did not work with the Department of
3 Justice until 1973?

02:09 4 A I guess one would conclude that it certainly
5 indicates that there may have been some
6 uncertainty about the information he had provided
7 as saying that it was in 1970 when he worked in
8 the department and was aware of this behind closed
9 doors, etcetera. It may be also that there was
02:09 10 some doubt on the part of Mrs. Milgaard as to
11 whether or not his story was true because someone
12 was asking for him to verify his employment, so
13 certainly it was a question around what times he
14 worked at the department.

02:09 15 Q And did you and your investigators make any
16 conclusions about the purpose of Michael
17 Breckenridge making the request that he did on or
18 around June 15th, 1992 and whether that related to
19 his meeting with Mrs. Milgaard and Mr. Perry?

02:09 20 A I guess the connection one would make is that it
21 was likely as a result of that meeting he was
22 either asked to provide it or offered to provide
23 his record of employment.

24 Q And --

02:10 25 COMMISSIONER MacCALLUM: Can I just stop



1 you here? I have to ask this. Mr. Breckenridge
2 apparently told Investigator Perry that he
3 started with the department in '70 or '71, but he
4 didn't -- and he told you, your investigators,
02:10 5 that the incident with the government officials
6 happened in 1973 didn't he?

7 A Yes.

8 COMMISSIONER MacCALLUM: He was actually
9 employed in 1973. Did he ever tell anybody that
02:10 10 the incident with the government officials
11 happened in 1970 or 1971?

12 A That was his first series of statements, is that
13 it happened in 1970 or '71.

14 COMMISSIONER MacCALLUM: Who did he tell
02:10 15 that to?

16 A To Mrs. Milgaard I believe, and Mr. Wolch.

17 MR. HODSON: We can call up his statement.
18 Just give me a moment. I think the evidence
19 we've heard, Mr. Commissioner, is that the
02:11 20 initial statement that he gave to the Milgaards
21 that was used at the September, 1992 press
22 conference indicated that he worked there in
23 '70/'71 and that the incident took place during
24 that time period.

02:11 25 COMMISSIONER MacCALLUM: Oh, okay. That's



1 fine, thank you.

2 MR. HODSON: So I think, and I will get up
3 later today or tomorrow morning the 1993
4 interview. I think it was after issues became,
02:11 5 after it was reported that Mr. Breckenridge
6 didn't work there until 1973, that his version of
7 events then said the incident took place in '73.

8 COMMISSIONER MacCALLUM: Oh, yes, okay.

9 MR. HODSON: So if we go back here -- I'm
02:11 10 not sure if it's in this statement. Just go to
11 the next page. Sorry, just go back, "I was hired
12 to the Blakeney government in approximately 1970
13 or 1971 and then transferred to the Attorney
14 Generals'..." so that was his information. This
02:12 15 is his initial statement as to events surrounding
16 the Milgaard case.

17 COMMISSIONER MacCALLUM: So he really
18 doesn't say when the incident happened, that he
19 observed the incident?

02:12 20 MR. HODSON: Well, if we can go down, go to
21 the next page --

22 COMMISSIONER MacCALLUM: All he said so far
23 is it happened when he was employed in the
24 Attorney General's Department.

02:12 25 MR. HODSON: I can go back perhaps tomorrow



1 morning, Mr. Commissioner, and get the collection
2 of documents that we've put in on the point. My
3 recollection of what, certainly what was
4 communicated at least initially by
02:12 5 Mr. Breckenridge was that the incident -- not
6 only did he work there in '70/'71 and that the
7 incident took place there -- if you can just give
8 me one moment.

9 COMMISSIONER MacCALLUM: Sure, yeah.

02:13 10 MR. HODSON: Go to page 023419, and this is
11 part of the press conference, and we've been
12 through this, this is where Mrs. Milgaard says:

13 "What we're saying is we have
14 information that says Roy Romanow and
02:14 15 this we have said in the letter to the
16 Minister of Justice - that he was in
17 these meetings. I met with him and I
18 thought he was credible. I met with him
19 and private investigators. We made sure
02:14 20 that he was employed where he said he
21 was at that time..."

22 And again, so the initial statements that
23 Mr. Breckenridge gave indicated that he was
24 employed there in '70 or '71 and I believe also,
02:14 25 but I will check the documents and deal with them



1 tomorrow morning, that that's when he alleged was
2 the time of the incident as well.

3 COMMISSIONER MacCALLUM: Yes, I would
4 appreciate if you covered that off, because
02:14 5 Mr. Breckenridge could of course be forgiven for
6 being mistaken as to the dates of, the years of
7 his employment, but he couldn't be forgiven for
8 saying that an incident happened at a time when
9 he was not employed there, if you get what I'm
02:14 10 meaning.

11 BY MR. HODSON:

12 Q I think the evidence we heard from, at least from
13 some witnesses, and perhaps maybe I'll ask this
14 question to you, Mr. Sawatsky, that did you
02:15 15 uncover anything in your investigation that would
16 suggest in 1973 there would be any reason for
17 Mr. Romanow, Mr. Kujawa and Mr. Lysyk, I'm not
18 sure if he was still there at the time, to be
19 reviewing both the Fisher and Milgaard files?

02:15 20 A No, we didn't, but I can also add that we did
21 interview other witnesses who worked there at the
22 time that Mr. Breckenridge did.

23 Q Yes.

24 A And they didn't confirm what Mr. Breckenridge put
02:15 25 forward in his allegations.



1 Q Okay. So if we can just go back to 023309, and
2 I'll maybe come back tomorrow morning,
3 Mr. Commissioner, and simply just go through and
4 we can refresh --

02:15 5 COMMISSIONER MacCALLUM: If you would,
6 please.

7 MR. HODSON: Yeah, what we've seen on those
8 dates.

9 COMMISSIONER MacCALLUM: Thanks.

02:15 10 BY MR. HODSON:

11 Q Back to my question here. So the issue here of
12 when Mr. Breckenridge worked with the Department
13 of Justice, and I think there's been some evidence
14 to suggest that if he worked there in 1970 or '71
02:16 15 when in fact Mr. Kujawa was in fact involved in
16 both handling the Milgaard and Fisher files, that
17 if he did see something, that might be of
18 significance; is that fair?

19 A Yes, that certainly would be.

02:16 20 Q And so just back to the question I had asked you
21 earlier, I think you told us that your team's
22 conclusion was that the fact that Michael
23 Breckenridge went to the Public Service Commission
24 on June 15th -- well, it doesn't say he went there
02:16 25 on that day, he got a reply back on June 15th,



1 1992. If we assume, number one, that it was in
2 response to a request from him, and two, that it
3 was a request made on or before that date, I think
4 you told us that you concluded that it was likely
02:16 5 as a result of his meeting with Mrs. Milgaard and
6 Mr. Perry?

7 A Yes, and I believe I said that there must have
8 been some uncertainty as to his dates of
9 employment for him to make that request.

02:17 10 Q Were your investigators ever able to conclude
11 whether or not Mr. Breckenridge, having presumably
12 received this memorandum from the Public Service
13 Commission, because I believe he gave it to your
14 investigators, did he not, or to your group? Do
02:17 15 you recall how it was obtained in '93?

16 A I'm not certain.

17 Q Presuming that he received that, did your
18 investigators, were you able to find out whether
19 he provided that memorandum on his employment
02:17 20 dates to Joyce Milgaard, Mr. Perry or anybody on
21 behalf of David Milgaard?

22 A No, I don't believe so.

23 Q Did your investigators reach any conclusions as to
24 whether or not it was likely that that
02:17 25 information -- did you consider that question,



1 whether his employment information that he
2 received would have been made known to anybody
3 with the Milgaard group?

02:17 4 A Well, I guess I assumed that there must have been
5 a question raised on the 14th to cause him to make
6 that request and on the 14th he met with Mrs.
7 Milgaard and Mr. Perry, so I'm assuming that it
8 was likely because of a request out of that
9 meeting that would have caused him to seek that
02:18 10 employment record.

11 Q And so what are you saying, I mean, I think you
12 said you couldn't find -- you couldn't determine
13 whether or not that information was given by him
14 to the Milgaards; is that correct?

02:18 15 A That's correct.

16 Q But did your investigators reach any conclusions
17 as to whether -- whether they felt that it was or
18 they believed it was?

19 A I believed it was myself and, you know, we have
02:18 20 Mrs. Milgaard sometime later saying that she has
21 verified his employment records and he worked
22 there at the time, so, I mean, I'm not sure what
23 you draw from that. Either he had told her and
24 she simply ignored that or he hadn't told her and
02:18 25 she didn't know.



1 Q Okay. If we can go down to

2 Wollbaum/Styles/Richter:

3 "Wollbaum, Styles and Richter all worked
4 with Breckenridge for a period of time
02:19 5 in 1973. They strongly reject
6 Breckenridge's version of the events
7 outlined. There was no conversations
8 with Breckenridge or anyone else about
9 the Milgaard and Fisher files. The
02:19 10 files were not discussed, concerns were
11 not identified and their jobs were not
12 threatened in any way."

13 And again, would that be an accurate conclusion
14 of the information you received from those
02:19 15 individuals?

16 A Yes, it would.

17 Q And we've read their statements into the record
18 already, so I don't propose to go through that.
19 Next page, it appears you talked to Mr. Caldwell
02:19 20 about this and:

21 "The only discussions he recalls having
22 with Mr. Kujawa regarding the Milgaard
23 file were ones regarding the last minute
24 testimony of Lapchuk/Melnyk and the
02:19 25 Section 9(2) Canada Evidence Act



1 examination...

2 At no time did Caldwell have
3 occasion to speak with Kujawa about
4 Larry Fisher."

02:19 5 Again, that would be an accurate summary of what
6 your investigators found?

7 A Yes, it is.

8 Q And then as well Mr. MacKay, we've heard evidence
9 from him, it says:

02:20 10 "MacKay was not aware of Kujawa having
11 knowledge to suggest that Milgaard was
12 wrongfully convicted, but believes if
13 any of the solicitors suspected such a
14 miscarriage they would quickly act to
02:20 15 correct such a failure in the system.
16 Such a response would add to the
17 integrity of the Department, both in the
18 minds of the court and the public.

19 MacKay remarked that Kujawa
02:20 20 had full control of the staff of
21 four/five solicitors and that he
22 delegated as he saw fit."

23 And that:

24 "Kujawa dealt with many problems
02:20 25 verbally and did not have a pension for



1 paperwork. If documents were/are not
2 available to explain a decision, this is
3 likely why. This is also why the police
4 might not be informed about the outcome
02:20 5 of a court case."

6 And that would be an accurate summary of what he
7 told you?

8 A Yes, it would.

9 Q And the next page:

02:20 10 "Kujawa states he made absolutely no
11 connection between the Milgaard and
12 Fisher cases. He doesn't see how such a
13 connection could be made by anyone, and
14 is quite certain none was made by anyone
02:21 15 in the Department."

16 And then:

17 "Except for consulting Kujawa about the
18 law, procedures for dealing with a
19 hostile witness, the Saskatoon
02:21 20 prosecutor, T.D.R. Caldwell, did not
21 consult him about the Milgaard case.
22 When he handled the appeal before the
23 Sask. Court of Appeal, Kujawa would only
24 have been interested in the Notice of
02:21 25 Appeal and the trial transcripts. There



1 would be no reason for him to have any
2 portion of Caldwell's prosecution file
3 and he has no recollection of ever
4 having same."

02:21 5 And that again would have been one of your
6 conclusions?

7 A That's correct.

8 Q And as well it says:

9 "Although he has no --"

10 Or:

11 "Pertaining to Fisher, Kujawa states
12 that his office may well have been
13 supplied with material describing the
14 Saskatoon rapes. Although he has no
02:21 15 memory of such being the case, his was a
16 very busy office and if such information
17 was supplied, he made no connection
18 between it and the Milgaard appeal."

19 And:

02:21 20 "Kujawa states his office may have
21 received police reports concerning
22 Fisher's offenses. He probably didn't
23 deal directly with the Saskatoon City
24 Police regarding Fisher as his
02:22 25 Department would have supplied what he



1 needed.

2 Mr. Kujawa vehemently denied
3 that there were closed door meetings
4 concerning Milgaard and Fisher with
02:22 5 Mr. Romanow, or anyone else."

6 Would that be a fair conclusion of what you
7 found?

8 A Yes, it would.

9 Q Next page:

02:22 10 "The information supplied by Michael
11 Breckenridge does not support the
12 allegations. The "Milgaard/Fisher"
13 cases were processed and finalized
14 between 1969 and 1971 but Breckenridge
02:22 15 was not employed there until 1973. He
16 claims to have initialed and put away
17 correspondence on an ongoing basis yet,
18 this is not substantiated by our
19 findings."

02:22 20 And let me just pause on that point. I think his
21 evidence was, or his allegation was that
22 Mr. Breckenridge, when he worked with the
23 Department of Justice, was involved in dealing
24 with paperwork on the Milgaard and Fisher files;
02:22 25 is that correct?



1 A That's correct.

2 Q And again, would there be any reason in 1973 for
3 there to be paperwork and correspondence being
4 handled by Mr. Breckenridge on files that had been
02:23 5 concluded two years earlier?

6 A No, there wouldn't.

7 Q And was that part of Mr. Breckenridge's
8 corroboration, if I can call it that, that go look
9 on the files, you'll see my initials, that's how
02:23 10 you can corroborate that I looked at them?

11 A He certainly held that out to be something that we
12 could look for in our investigation.

13 Q And here:

14 "RCMP reports sent to Kujawa's office
02:23 15 between March and May of 1969, contain
16 several references to the fact the
17 police investigators strongly considered
18 a connection between the Miller murder
19 and two rapes and an attempted rape
02:23 20 occurring in the fall of 1968. As
21 Director of Public Prosecutions, Kujawa
22 may, or may not have read these
23 reports."

24 And we've looked at those reports and dealt with
02:23 25 this issue, so your conclusion was the -- and



1 these are the RCMP reports, that they were there
2 in his office and he may or may not have read
3 them, but you couldn't determine that; is that
4 correct?

02:23 5 A That's correct.

6 Q "None of the materials submitted to
7 Kujawa subsequent to May of 1969
8 contained further references to the
9 early police hypothesis of a connection
02:24 10 between the unsolved rapes and the
11 Miller murder. Clearly, this was
12 because Milgaard was arrested in May and
13 any connection ceased to exist in the
14 minds of the investigators.

02:24 15 To support the allegations it
16 would have been necessary for Kujawa to
17 have:

18 (a) been involved in a conspiracy to
19 concoct the case against Milgaard at the
02:24 20 outset, or

21 (b) to have read the RCMP police
22 reports, and then 14 months later
23 associate Fisher with the early
24 references."

02:24 25 And I'm wondering if you can just elaborate on



1 that comment?

2 A I think it's an attempt to try and show that the
3 only way that in our view he could be involved was
4 either point (a) or point (b) and there certainly
02:24 5 was no evidence of that.

6 Q And just so I understand this, in order for Mr.
7 Kujawa to be -- in order for the allegations that
8 he was involved in the conspiracy and cover up, he
9 would have to have some way of knowing about the
02:25 10 rapes and the connection to the murder; is that
11 right?

12 A That's correct.

13 Q And so one way is that he was involved right at
14 the start and he was aware of the rapes in '69
02:25 15 because he was part of the conspiracy with others
16 to concoct the case against David Milgaard?

17 A Exactly, and of course there's no evidence of
18 that.

19 Q Or the second way would be that he would have to
02:25 20 have read the RCMP reports, the 1969 RCMP reports
21 when they were filed in his office in 1969 and
22 then, as you say, 14 months later associate what
23 he read in those reports with what he learned
24 about Larry Fisher in 1971 or when he first
02:25 25 started handling Fisher; is that what you are



1 saying?

2 A That's correct.

3 Q And so you are trying to connect where he would
4 have had knowledge, where Mr. Kujawa would have
02:25 5 had knowledge of the rapes to when he started to
6 deal with Larry Fisher; is that right?

7 A That's right.

8 Q You say:

9 "Based on our examination of the files
02:25 10 and our interviews of witnesses, the
11 facts do not support the allegation of a
12 connection or cover up within the
13 Department. The available information
14 suggests that at no time did Kujawa, or
02:26 15 anyone else in the Saskatchewan
16 Department of the Attorney General, form
17 a connection between the Milgaard and
18 Fisher cases."

19 And would that have been your conclusion?

02:26 20 A Yes.

21 Q The next page, it says:

22 "Note:

23 During our meeting with Mr. Wolch
24 92-11-26, he was quick to point out that
02:26 25 he never talked to the clerk



1 (Breckenridge) and he considered,
2 "...him to be the least important bit of
3 evidence that we have..." Wolch made no
4 further reference to Breckenridge during
02:26 5 our interview.

6 The issues raised by
7 Breckenridge formed the basis of our
8 investigation, i.e., wrongdoing and
9 obstruction of justice by former
02:26 10 officials of the Department of the
11 Attorney General. Yet, once the
12 investigation was ordered, Wolch
13 rejected the value of what Breckenridge
14 had to offer.

02:26 15 In addition, during the
16 Milgaard press conference, it was made
17 clear that they had confirmed
18 Breckenridge's employment with the
19 Department during the period in
02:26 20 question. This was extremely
21 misleading. The best that can be said
22 about this comment is that perhaps it
23 was an inference drawn from
24 Breckenridge's statement, however, given
02:27 25 the obvious confused nature of



1 Breckenridge's allegations the use of
2 his material was inappropriate and was a
3 misrepresentation of the facts."

02:27 4 And would that be an accurate conclusion of your
5 investigation team?

6 A Yes, it would.

7 Q And if you could just elaborate on that, just the
8 first two paragraphs -- or let's just take the
9 middle paragraph here, and you are saying here
02:27 10 that it was the Breckenridge allegation that
11 formed the basis of the investigation; is that
12 correct?

13 A Yes. I think that was really the genesis of this
14 investigation, was that specific allegation.

02:27 15 Q And so what did you take from the fact that once
16 your investigation started, that the genesis
17 being -- that prompted it, that Mr. Wolch, who I
18 think you described as the informant or the
19 complainant, backed off on that allegation, what
02:27 20 did you read into that or make of that?

21 A Well, I think I indicated in June that there was a
22 number of allegations that Mr. Wolch put forward
23 as being very strong and then a number that he
24 wasn't as strong on, perhaps a bit softer on, this
02:28 25 was one of those, and I guess I would have



1 expected that this, you know, he would have held
2 this up as being very strong. He didn't do that
3 during the initial interview.

02:28 4 Q And what did you make of the fact that the
5 Breckenridge allegations were made in a public
6 press conference, did you put any, at least
7 initially, any weight on that or significance on
8 the fact that the allegations were actually made
9 public before they were provided to the police,
02:28 10 did that give you some sense that there must be
11 more credibility to them than otherwise, otherwise
12 they wouldn't be made public, or the reverse?

13 A Certainly, and I think the fact that there was
14 also an indication that his employment had been
02:28 15 checked out and that he worked at the department
16 at the time.

17 Q Now, can you elaborate on this last paragraph
18 about this, the press conference and the
19 confirming of the employment, where did that fit
02:29 20 in in your investigation of this complaint?

21 A Well, certainly Mrs. Milgaard or Mr. Wolch or
22 whomever, someone from -- either Mr. Wolch, Mr.
23 Asper or Mrs. Milgaard went forward after the
24 interview of Breckenridge where he was asked to
02:29 25 give his employment records, went forward publicly



1 and said that they had confirmed that he worked at
2 the department at the time. If they had knowledge
3 of that, then certainly that was misleading.

4 Q And then as far as your investigation of
02:29 5 Mr. Breckenridge, if it was a case of -- why in
6 November of 1992 didn't you say, okay, well,
7 lookit, if the Breckenridge thing is the least
8 important bit of evidence, why did you feel still
9 an obligation to investigate it?

02:29 10 A I believe we felt an obligation to investigate
11 every single claim and investigate to the best of
12 our ability, notwithstanding that at the end of
13 the investigation it may not have been a very
14 strong allegation.

02:30 15 Q Now, I think you concluded there was no merit to
16 what Mr. Breckenridge had to say; is that -- you
17 said it maybe in different ways.

18 A I think that's fair.

19 Q Did you find any evidence in your investigation of
02:30 20 the Attorney General, Mr. Kujawa, Mr. Romanow, Mr.
21 Blakeney, Mr. Lysyk, Mr. Caldwell, any of the
22 police, anybody involved, that provided any
23 corroboration of Mr. Breckenridge's allegation or
24 the allegations that related to that put forward
02:30 25 by Mr. Wolch and Mrs. Milgaard and Mr. Bruce and



1 Mr. Asper that there was some conspiracy involved
2 amongst these individuals to either frame and/or
3 cover up the matter?

4 A No, there was no evidence of that.

02:30 5 Q Would you have expected, as a police officer in
6 your -- and as an experienced investigator, that
7 if, in 1970-'71, that members of the Attorney
8 General's office and the police department were
9 involved in deliberately framing an individual and
02:30 10 covering up that by having someone -- and then
11 learning about Mr. Fisher and covering up that
12 fact, would you expect to find, in the course of a
13 later investigation, some information that would
14 tend to incriminate that or corroborate that?

02:31 15 A Yes, I would. Even if it's something that, you
16 know, didn't provide adequate or enough evidence
17 on which to base a charge you certainly would
18 expect that you would hear something from someone.
19 I believe we interviewed, well, well over 200
02:31 20 people here, and you would think that, if that had
21 happened, that there would be some evidence come
22 out, some statement, some piece of paper, some
23 piece of correspondence, something that would
24 support that, and that was not the case.

02:31 25 Q Was there anything that your investigators learned



1 that might suggest there was something like a
2 conspiracy or a coverup in play?

3 A I don't recall anything that I could put my finger
4 on.

02:31 5 Q If we can go to the next page, this deals with the
6 direct indictment issue, and here the:

7 "Direct indictment was, and
8 is, an unusual procedure for the Crown
9 to use because Attorney's General
02:32 10 dislike becoming personally involved in
11 a case."

12 "Kujawa states that the use of a direct
13 indictment was the appropriate method
14 ...

02:32 15 The matter was most
16 conveniently dealt with in Regina and
17 this was the reason Fisher was conveyed
18 from Prince Albert for the hearing. The
19 decision also took into account the fact
02:32 20 Kujawa's office had been dealing with
21 all of the key individuals involved,
22 e.g. Fisher's Winnipeg solicitor and the
23 Attorney General. Briefing someone else
24 would be time consuming."

02:32 25 And then scroll down.



1 "MacKay was directed to
2 handle certain aspects of the direct
3 indictment."

4 "Given that he was serving 13
02:32 5 years on the Manitoba charges, this
6 would be acceptable."

7 We're talking about the time frame to get it set
8 up.

9 "Mr. MacKay feels the
02:32 10 accusation that the Department's
11 handling of Fisher was to avoid
12 publicity is purely nonsense. The
13 timing of his appearance (... Christmas
14 season) was not prompted by any ulterior
02:33 15 motive on behalf of anyone in the
16 Department."

17 And then:

18 "According to Greenberg,
19 Fisher's solicitor at the time, the
02:33 20 Direct Indictment may well have been at
21 his request, as a matter of expediency.
22 He was not concerned about the 'delay'
23 and feels the time was justified, given
24 the fact the Saskatchewan Attorney
25 General did not want to deal with their



1 offenses until the Manitoba charges were
2 disposed of."

3 Next page.

4 "Mrs. Milgaard makes the
02:33 5 suggestion the Queen's Bench judge
6 hearing Fisher's case in Regina was
7 unaware of his Manitoba convictions at
8 the time of sentencing. Our
9 investigation clearly shows that he was
02:33 10 so informed."

11 And I think we've heard evidence of that, that it
12 was a concurrent sentence, so that the Manitoba
13 sentence was before the Court; is that your
14 findings?

02:33 15 A Yes.

16 Q And then the *Investigator Comments*, scroll down:

17 "Given the Criminal Code
18 provisions in 1969, Fisher had to appear
19 in Saskatchewan to dispose of the
02:33 20 outstanding Saskatoon rape charges, they
21 could not be waived to Manitoba.

22 Fisher's solicitor did not,
23 and does not, find fault with the use of
24 a direct indictment.

02:34 25 Although use of a Direct



1 Indictment was unusual because of its
2 infrequent use, there is no evidence
3 that the Dept. of the A.G. used the
4 procedure for the wrong reasons, e.g. as
02:34 5 part of a coverup of a miscarriage of
6 justice."

7 And those would have been your conclusions?

8 A Yes, they would.

9 Q And I think, just on that point, we've heard some
02:34 10 evidence I think, Mr. Sawatsky, that there -- and
11 I think your investigation confirms it -- that
12 there were a couple of, maybe, well, three
13 procedures or matters relating to Larry Fisher
14 that were not the ordinary way of dealing with his
02:34 15 charges, is that fair? First of all that there
16 was a direct indictment, and that was unusual?

17 A Yes, and Mr. Kujawa even confirmed that that was
18 an unusual thing to do.

19 Q And, secondly, that Mr. Fisher had his charges
02:34 20 dealt with in Regina as opposed to Saskatoon where
21 the charges originated; is that right?

22 A That's right.

23 Q And third, I think the suggestion that the timing,
24 that it being around Christmas and the fact that
02:35 25 there was little or no publicity was also



1 something that was viewed to be unusual, that the
2 timing was unusual?

3 A That's correct.

4 Q And I'm not, I think there's been a debate on
02:35 5 that, but that -- but that would have been what
6 was put forward to say "lookit, here's what's
7 suspicious about these matters"?

8 A That's correct.

9 Q And I suppose, if one started with the premise
02:35 10 that there was some deliberate effort to cover up
11 and to try and deal with Fisher in a way that
12 people would not become aware of it, one way to do
13 it might be to do it by direct indictment in a
14 different city at a time when the media might not
02:35 15 hear about it; is that fair?

16 A Yes, that is fair.

17 Q And I take it, though, that in your investigation
18 you checked out those unusual circumstances to
19 find out whether there was an innocent explanation
02:35 20 or whether they were part of some grander criminal
21 wrongdoing; is that fair?

22 A That's fair.

23 Q And did you, did you find -- and I think your
24 report reflects this -- that there was some,
02:36 25 'suspicions' is maybe the wrong word, but the



1 Fisher charges were handled differently than
2 normal cases; is that fair?

3 A Yes.

4 Q Or some parts of it?

02:36 5 A Yes. And in particular I recall, in interviewing
6 Mr. Kujawa, he indicated that that was unusual
7 because it meant the Attorney General was becoming
8 directly involved in a case, and that was not the
9 best situation to have. But, other than that,
02:36 10 there was nothing that was unusual about that, no.

11 Q If we can go to the next page, here is your
12 summary:

13 "The allegations against Mr.

14 Kujawa are to the effect that based on
02:36 15 his handling of both the Milgaard appeal
16 file and Fisher's rape charges, he had
17 knowledge of the similarities between
18 the circumstances of the Miller murder
19 and those offences committed by Larry
02:36 20 Fisher. The similarities were such that
21 Kujawa obviously realized doubt was cast
22 on the legitimacy of David Milgaard's
23 conviction. He is said to have engaged
24 in closed door meetings with other
02:37 25 officials, i.e. Messrs. Romanow and



1 Lysyk, to discuss the situation
2 following which steps were taken to
3 discourage employees, such as Michael
4 Breckenridge, from speaking about the
02:37 5 cases. His use of a direct indictment
6 to dispose of the Fisher rape charges
7 was alleged to be evidence of his
8 attempt to avoid publicity and public
9 awareness of the Fisher crimes.

02:37 10 Our investigation establishes
11 that the source of these allegations,
12 Michael Breckenridge, is not a reliable
13 nor, for that matter, a very credible
14 witness. His information is disputed by
02:37 15 not only the other employees but by the
16 facts concerning the period during which
17 he was employed in the Department.

18 The Departmental files
19 indicate that *if* Mr. Kujawa read the
02:37 20 police reports sent to his office early
21 in the Miller murder investigation he
22 would have seen what has already been
23 confirmed - the police were considering
24 the possibility the same person who
02:37 25 raped and murdered Miller may have raped



1 several other woman in Saskatoon in
2 1968. Considering the responsibilities
3 of his office, it is questionable
4 whether or not Mr. Kujawa would have
02:38 5 read the police reports. If he did,
6 later in November of 1971 when he
7 handled the Milgaard appeal and then in
8 March 1971 when he received
9 correspondence about Fisher's desire to
02:38 10 waive charges, he would have had to have
11 linked the early police reports to
12 Fisher. Mr. Kujawa states clearly he
13 made no such link and doesn't know how
14 anyone could. Our findings support this
02:38 15 conclusion."

16 And that would have been your *Investigator's*
17 *Conclusions*?

18 A That's correct.

19 Q Then the next page. The Breckenridge allegations
02:38 20 also touched on Mr. Lysyk and Mr. Romanow; is that
21 correct?

22 A Yes.

23 Q And in that regard, when you interviewed,
24 Mr. Lysyk was a sitting judge, I think, at the
02:38 25 time you interviewed him; is that correct?



1 A That's correct.

2 Q And did you as well, when you interviewed him,
3 give him a warning that you were investigating him
4 for a criminal offence?

02:38 5 A I didn't interview Mr. Lysyk. I did interview
6 Mr. Romanow.

7 Q And did you give him a warning?

8 A I did.

9 Q And do you know if Mr. Lysyk, would that have been
02:38 10 the procedure that your officers would have used,
11 to give him a warning that he was being
12 investigated for a criminal offence?

13 A I would assume they would have, yes.

14 Q And they:

02:39 15 "All were very cooperative
16 and emphatically denied there was any
17 substance to the charges.",
18 and that would have been your conclusion?

19 A That's correct.

02:39 20 Q And if we can quickly go to 023320. Actually, go
21 to the previous page. This part of your
22 investigation is the physical forensic evidence.
23 And then go to the next page. And so, here, the
24 allegations about that:

02:39 25 "Physical/Forensic Evidence Does Not



1 Inculpate Milgaard",
2 and you go through the blanket, hair samples,
3 knives, and the cosmetic bag, and then as well
4 the forensic evidence, and I'll go through parts
02:39 5 of this. But can you tell us generally how did
6 this fit into your investigation, or why were you
7 looking at these matters, and how did they fit
8 into what you were investigating?

9 A These were part of, in a sense, part of the
02:40 10 allegations of Mr. Wolch. Certainly, we wanted to
11 examine the exhibits to the extent we could to
12 disprove or prove the allegations.

13 Q And so is it a case that, if the physical forensic
14 evidence proves that David Milgaard is innocent,
02:40 15 or establishes a likelihood of innocence, that
16 that somehow might be evidence to show that the
17 police and Crown were involved in criminal
18 wrongdoing; was that --

19 A It certainly could be part of it.

02:40 20 Q Or was it a case that this happened to be part of
21 the information or tied in with everything else
22 that was given to you and so you pursued it?

23 A That's correct.

24 Q This might be an appropriate spot to break for the
02:40 25 afternoon.



1 COMMISSIONER MacCALLUM: Yes, as soon as I
2 get a little clarification.

3 Just how could it be part, an
4 allegation that the forensic evidence didn't
02:40 5 prove guilt or perhaps proved innocence, how
6 could that relate to the criminal matters that
7 you were charged with investigating?

8 A I think, My Lord, if suddenly we found in the
9 physical evidence that proved someone else did it
02:41 10 as opposed to David Milgaard, that would,
11 certainly would, could be one ground for belief
12 that there had been some -- somewhere that there
13 had been conspiracy, or that there had been some
14 wrongdoing on the part of some of the officials
02:41 15 that we were investigating.

16 COMMISSIONER MacCALLUM: Okay. They
17 could -- they should have known that they were
18 dealing with an innocent man and --

19 A Possibly.

02:41 20 COMMISSIONER MacCALLUM: -- they continued
21 to prosecute?

22 A Possibly, it could have been that that could have
23 been repressed or withheld as evidence, --

24 COMMISSIONER MacCALLUM: Oh, I see.

02:41 25 A -- and we certainly would have wanted to follow



1 that up --

2 COMMISSIONER MacCALLUM: I see.

3 A -- and we could have drawn a number of conclusions
4 if that happened.

5 BY MR. HODSON:

6 Q I think as we go through it -- I think,
7 Mr. Sawatsky, if you can comment on this -- it
8 appears that most of the focus on the physical
9 evidence is not only what the physical evidence
02:41 10 showed, but how it was handled by the police and
11 Crown; is that fair, that what the police and
12 Crown did with the physical evidence?

13 A That's correct.

14 Q And so we'll go through. I think that's my sense
02:42 15 of the connection, at least, as what's in the
16 report; is that fair?

17 A Yes, that's fair.

18 COMMISSIONER MacCALLUM: I see.

19 *(Adjourned at 2:42 p.m.)*

03:05 20 *(Reconvened at 3:00 p.m.)*

21 BY MR. HODSON:

22 Q Mr. Sawatsky, I'm going to just try and go back to
23 the chronology of Michael Breckenridge's
24 statements just so that I can -- we'll walk
03:06 25 through the documents, and I think an issue had



1 been raised earlier about the dates, and this is
2 all part of the record and has been put in. But
3 the first document, and this is part of the RCMP
4 report, you actually have as appendices the two
03:06 5 Breckenridge statements, so if you can go to page
6 023459.

7 Now, Mr. Commissioner, these
8 statements are also on the record with different
9 doc. IDs, but I'll just use the ones that are part
03:06 10 of the statement.

11 COMMISSIONER MacCALLUM: Sure.

12 BY MR. HODSON:

13 Q This is the first statement of May 22nd, '92.
14 Actually, sorry, let me go to 023461, I'm sorry,
03:06 15 that's the first one. And, again, this is all
16 part of the RCMP report. And at the top, this is
17 March 21, 1992, so this is the very first letter
18 from Mr. Breckenridge to Mr. Wolch, and I'll just
19 go through and highlight that in there. He says:

03:07 20 "I have been watching with
21 interest the David Milgaard case since I
22 worked in the Attorney General's Dept.
23 in Sask. at the time of those cases
24 (Fisher and Milgaard)."

03:07 25 And, again, I think you mentioned earlier that --



1 what was your understanding of when those cases
2 were concluded?

3 A 1971.

4 Q And he says, goes on to talk about:

03:07 5 "My job was to process the criminal
6 files."

7 "Roy Romanow had just been elected and
8 appointed Attorney General ...",

9 and that was in June of 1971. And then he says:

03:07 10 "At the time of those cases
11 there were many closed door meetings
12 ...",

13 and then goes on and says:

14 "I remember delivering both cases to
03:07 15 Serge at the same time."

16 So that's the initial statement.

17 The next statement, if we can
18 go to 023459, this is the second statement that
19 was given May 22nd, '92 after the meeting with
03:08 20 Mr. Perry and here is where he says at the top:

21 "As to events surrounding the
22 Milgaard case:

23 I was hired to the Blakeney
24 gov't in approximately 1970 or 1971, I
03:08 25 worked in the Dept. of Ind and Commerce,



1 the minister was Kim Thorson. After
2 approximately 6 mos. there I transferred
3 to the Attorney General's dept under Roy
4 Romanow."

03:08 5 Again, that is the reference in that statement.

6 Next, if we can go to -- so
7 that was the two statements that he gave. You
8 can go to 15 -- pardon me, 004193, and go to I
9 think the seventh page, this is the Public
03:09 10 Service Commission. So those are the first two
11 statements in March and May of 1992, and this is
12 the June 15th, '92 memorandum of the Public
13 Service Commission to Mr. Breckenridge that
14 indicates he started in 1973, October of '73 in
03:09 15 the Justice Department. That's the document I
16 referred to.

17 Then if we can go to page
18 023420. And here is the press conference of
19 September 19th, 1992 -- and these are all
03:09 20 appendices to the report, Mr. Sawatsky -- and a
21 question is asked, actually if we can just scroll
22 up further, Mrs. Milgaard says:

23 "Perhaps I can tell you what this man
24 told me, very succinctly.",

03:10 25 "... described what took place after one



1 of these closed door meetings. Now Roy
2 Romanow was in this meeting, okay.

3 Kujawa was in the meeting ...",
4 etcetera. Then, if we can scroll down, a

03:10 5 reporter then asks a question:

6 "Can I ask you when exactly that meeting
7 took place? Was it after David's
8 conviction but before his appeal.

9 Mrs. Milgaard: Yeah, it was during 1971
03:10 10 that these meetings took place when ah
11 like the, they had both the files
12 together at that time. And I guess a
13 decision would have had to have been
14 made."

03:10 15 So that, Mr. Sawatsky, I think was the
16 background. Was that your understanding then as
17 far as the timing, or what was your understanding
18 about what was alleged or what Mr. Breckenridge
19 alleged as far as when he worked there and when
03:10 20 this incident, or incidents, took place between
21 Mr. Romanow, Mr. Kujawa?

22 A Yeah, I believe his focus was on 1970 and 1971.

23 Q And then if we can go to 035725, and go to page --
24 this is a continuation report, and if you can go
03:11 25 to page 035736, and this is the RCMP notes of the



1 May 13th, '93 interview with Michael Breckenridge;
2 is that correct?

3 A That's correct.

4 Q And is that, I guess it's Jorgenson at the bottom;
5 is that right?

6 A That is, yes.

7 Q And so here, I've checked, and I -- my
8 understanding is I don't believe Mr. Breckenridge
9 was prepared to be taped for an interview so these
03:11 10 are notes of the RCMP interview, and it says:

11 "... based on an interview of
12 Mr. Breckenridge ...",

13 and then scroll down:

14 "I asked Mr. Breckenridge if the
03:11 15 contents of these two documents ...",
16 and those are the two that I just showed you
17 where he said he worked there in '70-'71:

18 "... are true and correct and he advised
19 that they were."

03:11 20 Those were also the documents where he described
21 the incidents taking place around that time
22 frame. Then the next page:

23 "Breckenridge was questioned
24 about his employment history with the
03:12 25 Sask. Gov't. Initially he felt that he



1 started with the Gov't in 1971 and he
2 believed that he started with the A.G.'s
3 Department in 1972. He was subsequently
4 shown a document that outlines his
03:12 5 employment history with the Gov't. He
6 had no problem with it, and did not
7 disagree with the date on it concerning
8 when he started with the A.G.'s Dept."

9 And so it would appear, Mr. Sawatsky, that it was
03:12 10 at the interview with your officers that he
11 changed the time frame from '70-'71 to '73, both
12 as to his employment and presumably the incident;
13 is that fair?

14 A That's fair.

03:12 15 Q And did you find that to be credible?

16 A No.

17 Q If I can go back to -- is there anything else, Mr.
18 Commissioner, on that?

19 COMMISSIONER MacCALLUM: No, thank you very
03:13 20 much, that's good.

21 BY MR. HODSON:

22 Q If we can go back to page 023320, and go to the
23 next page, this deals with physical evidence. And
24 it appears that, here:

03:13 25 "The police collected



1 numerous items during the course of
2 their investigation of Gail Miller's
3 sexual assault and murder. Many of the
4 items were eliminated as not having any
03:13 5 evidentiary value and were disposed of
6 accordingly."

7 And then you say:

8 "Robert Bruce and David Asper ...
9 question the relevance of several items
03:13 10 ... a blood stained blanket, hair
11 samples and knives found near the scene.
12 The obvious notion being these exhibits
13 might be part of an undisclosed case
14 against Larry Fisher. They challenge
03:14 15 the evidence offered at trial concerning
16 the cosmetic bag and the statement David
17 had a knife enroute to Saskatoon from
18 Regina. The allegation being that this
19 evidence does not inculcate David
03:14 20 Milgaard."

21 And I take it then, just back to the question
22 asked before the break, it appears that the
23 allegations on the physical evidence were tied to
24 this allegation that the authorities in some way
03:14 25 did something criminal or wrong with respect to



1 physical evidence that would inculcate Larry
2 Fisher?

3 A Certainly, and we would want to test that evidence
4 and look at the, its value to our investigation as
03:14 5 well.

6 Q And, for example, we'll see with this bloodstained
7 blanket there was a suggestion that the police had
8 a bloodstained blanket that may well have been
9 associated with Larry Fisher's vehicle, and
03:14 10 somehow was evidence of his involvement in the
11 crime, and that for some reason it wasn't used
12 properly by the authorities; is that correct?

13 A That was the allegation, yes.

14 Q And then with the cosmetic bag, that that was not
03:15 15 proper physical, it was incriminating evidence
16 against David Milgaard but it was contrived or
17 fabricated?

18 A Correct.

19 Q And so, just back to the Commissioner's earlier
03:15 20 question, did your investigators in some way
21 connect or relate this investigation of physical
22 and forensic evidence to the allegations of
23 wrongdoing of various officials?

24 A Yes, that's correct.

03:15 25 Q So here, if we can scroll down, this is a



1 reference to a Saskatoon police report that had a
2 bloodstained blanket, and:

3 "He indicates the blanket may be linked
4 to Larry Fisher in that a Fisher
03:15 5 relative gave a statement concerning a
6 missing blanket."

7 I think, if I can just summarize what is already
8 on the record, I think it was -- there was a
9 statement that said Larry may have used a
03:15 10 relative's car around this time, and there was a
11 blanket missing, and there was a police report on
12 the Gail Miller file that said a woman found a
13 stained blanket on her driveway some miles out of
14 the city, and I think Mr. Bruce had suggested
03:16 15 that the blanket may have been, or was, the
16 blanket that Larry Fisher used when he killed
17 Gail Miller, and that it was the missing blanket
18 from his relative, and that somehow this is
19 evidence that should have been followed up or
03:16 20 wasn't handled properly; is that a fair general
21 summary?

22 A Yes, it is, a very general summary.

23 Q And you talk about:

24 "... blood soaked baby blanket found in
03:16 25 her driveway ... pulled out ... by ..."



1 their dog. The next page. And it appears that
2 it turned out that it was animal stool as opposed
3 to blood on the blanket, and that it wasn't in
4 fact a blanket from Larry Fisher or his relative,
03:16 5 is that the conclusion you reached?

6 A Yes.

7 Q So just down at the bottom:

8 "The Sonnleitner ...",
9 and Sonnleitner is a relative of Larry Fisher:

03:17 10 "... quilt was lost sometime between
11 1967 and the winter of 1969. Given the
12 descriptions of the 'Sonnleitner' quilt
13 and the 'Stretch' blanket, it is
14 unlikely they were one and the same.

03:17 15 We were not able to determine
16 who wrote the note concerning animal
17 stool. Based on this comment it is
18 apparent that the police made a
19 determination that the blanket found by
03:17 20 Stretch was of no evidentiary value."

21 Your conclusion was there was nothing there of
22 evidentiary value, either on the allegations of
23 criminal wrongdoing, or that would be relevant to
24 the issue of who may have killed Gail Miller?

03:17 25 A Correct.



1 Q Next page. *Hair Samples from Miller's sweater*,
2 there was a reference that there was a hair found.
3 If you can just scroll down to the *Investigator's*
4 *Comments*:

03:17 5 "The Miller sweater was not
6 examined for hair, and is no longer
7 available for testing or comparison."

8 So that was something that was pursued and found
9 that there was nothing available to compare; is
03:18 10 that correct?

11 A That's correct.

12 Q Next is the knives, and:

13 "A number of issues focus on
14 concerns about the type of knife used in
03:18 15 her murder and whether either Milgaard
16 or Fisher had knives in their
17 possession.

18 Bruce and Asper question
19 whether or not other knives found in the
03:18 20 area, i.e. a bone handled knife and a
21 pearl handled knife, could have been
22 connected to the murder.

23 Further, they submit that
24 David Milgaard did not have a knife in
03:18 25 his possession. That is, according to



1 his Supreme Court testimony, Milgaard
2 stated he did not recall having any
3 knives in the car en route to Saskatoon
4 from Regina."

03:18 5 Next page. And we have been through this
6 extensively, Mr. Sawatsky, with other witnesses.
7 I'll just touch on a couple of points. The
8 bone-handled knife involving Constable Oliver, if
9 we can scroll down, please, you say:

03:18 10 "As part of his written
11 submission to the Supreme Court,
12 Mr. Wolch refers to this knife as being
13 one which ought to have been tendered as
14 evidence or made available to the
03:18 15 defence. This would have afforded the
16 defence the opportunity to show the
17 knife to Wilson and John and other
18 assault victims to determine if any of
19 them could identify it as a knife they
03:19 20 had seen previously. The blade of this
21 knife is described as being 'identical
22 in size to the entry sites ...'."

23 And I think, is it correct to say that with
24 respect to some of these allegations, that
03:19 25 Mr. Bruce simply took portions of the written



1 argument filed on behalf of David Milgaard to the
2 Supreme Court and said "here, this is, this line
3 of inquiry leads to criminal conduct, investigate
4 this"?

03:19 5 A Yes.

6 Q And the knife was one of those?

7 A Yes, that appeared to be the case.

8 Q And then it appears efforts are made to find the
9 owner of the knife. If we can go to the next
03:19 10 page, at the bottom, *Investigator Comment*:

11 "The trial evidence
12 established that a broken paring knife
13 found at the scene was the murder
14 weapon. Nothing has been brought
03:19 15 forward by our investigation of
16 Bruce/Asper's questions concerning the
17 bone handled and pearl handled knives
18 which would suggest this evidence ought
19 to be questioned."

03:20 20 And that was your conclusion?

21 A Yes.

22 Q So there was nothing with respect of the
23 bone-handled hunting knife that was evidence of
24 any impropriety by the police or Crown; was that
03:20 25 your conclusion?



1 A That's our conclusion, yes.

2 Q Now to the next page. You mention here, under
3 paring knife:

4 "Ronald Wilson testified

03:20 5 Milgaard was in possession of a knife
6 during their trip, which he described as
7 being sort of a paring knife with a
8 reddish brown handle. (In a 1990
9 interview with Eugene Williams, Federal
03:20 10 Justice, Wilson stated that Milgaard had
11 a bone-handled hunting knife, which he
12 obtained from the Aylesbury elevator,
13 which he broke into en route to
14 Saskatoon.)"

03:20 15 And let me just pause there. I think the one
16 allegation was that the police found a
17 bone-handled hunting knife in the vicinity of the
18 murder in addition to the maroon-handled paring
19 knife; correct?

03:21 20 A Correct.

21 Q And it was not provided at trial and tendered as
22 evidence, and there was an allegation by Mr. Asper
23 and Mr. Bruce that somehow the police and Crown
24 did something wrong by either not putting the
03:21 25 knife, the bone-handled knife, in at trial, or



1 showing it to Wilson and John as witnesses, or
2 providing it to Tallis. In other words they
3 did -- they buried it or they took steps to
4 conceal it; is that --

03:21 5 A Yes.

6 Q -- fair?

7 A Yes, that's fair.

8 Q How did you -- so that allegation, how did that
9 square with this comment here about Wilson's
03:21 10 evidence, at least in 1990 that there was
11 bone-handled hunting knife, at least according to
12 him at that time, which was taken from the
13 elevator? Did you find -- did you draw any
14 connection between those two?

03:21 15 A We were unable to draw a connection between the
16 two. A knife of similar description was found by
17 Saskatoon police, you know, in -- near the murder,
18 but there was no --

19 Q Sorry, I --

03:22 20 A -- evidence to indicate they were linked.

21 Q No, and sorry, I didn't ask the question well.
22 Not to link the knives, but how did you square the
23 two allegations, I mean the fact that the
24 suggestion was that the -- that the bone-handled
03:22 25 paring knife should have been put at trial, at



1 trial it should have been put to Wilson and John,
2 Mr. Tallis should have been able to say, "lookit,
3 do you recognize this bone-handled hunting knife",
4 and because the Crown took steps to conceal it, it
03:22 5 wasn't; and then here you appear to be saying
6 "lookit, Ron Wilson said that such a knife was
7 taken from the elevator" -- or not, a bone-handled
8 hunting knife, I'm not suggesting the same
9 knife -- but he describes a knife, and I'm trying
03:22 10 to understand, in your investigation, how did you
11 square those two issues?

12 A I -- I don't think I'm sure what you are getting
13 at there?

14 Q Well I guess, on the previous page, the allegation
03:23 15 is, at least in your report the allegation is that
16 the Crown and the police had a bone-handled
17 hunting knife found at the scene of the crime,
18 they concealed it, and that that's how -- evidence
19 that will somehow exculpate Mr. Milgaard or
03:23 20 inculpate Mr. Fisher; and then the next page of
21 the report you talk about 1990 Ron Wilson saying
22 he, at least in 1990, says that he recalled seeing
23 a bone-handled hunting knife taken from the
24 elevator on the trip to Saskatoon. And I'm just
03:23 25 wondering, they are back to back in the report, I



1 wasn't sure if there was a connection between
2 those two or whether they were separate issues?

3 A No, I don't believe there was a connection, I
4 think the knife that was found at the scene was
03:23 5 different and was not believed to be the same
6 knife that Wilson talked about.

7 Q Okay. That -- so that they were -- you did look
8 at that issue then?

9 A No, I don't think we looked at the issue beyond
03:23 10 that, I think our belief was that they were not
11 related.

12 Q Okay. If you can go down to the bottom, actually
13 over to the next page, there is a comment here
14 that:

03:24 15 "Mr. Tallis' testimony at the
16 Supreme Court touched on the question of
17 whether or not Milgaard told him
18 anything about having a knife in his
19 possession. His recollection is that
03:24 20 David did not indicate that he had a
21 hunting knife although he did make
22 reference to having a knife that could
23 be used for -- perhaps getting into
24 places.",

03:24 25 and the flexible blade. So the information of



1 Mr. Tallis was that according to David he did
2 have a knife, but it was neither a paring knife
3 nor a bone-handled hunting knife, but a
4 flexible-blade knife; is that correct?

03:24 5 A That's correct.

6 Q Go to the next page. Some mention here about what
7 Linda Fisher told the police about knives, and I
8 think initially in her first interview with
9 Mrs. Milgaard and Mr. Henderson she described a
03:25 10 missing knife with wooden handle and rivets; you
11 recall being made aware of that?

12 A Yes.

13 Q And then later on, a couple months later, she told
14 Sergeant Pearson she recalled losing a second
03:25 15 knife, being a bone-handled hunting knife, and I
16 think that was pursued. And the next page. And
17 then:

18 "Our investigators

19 interviewed Linda Fisher on 93-03-16 and
03:25 20 she re-iterated what she told
21 Mrs. Milgaard about her paring knife
22 having rivets. She then went on to say
23 she recalled missing another paring
24 knife. The subject of a second missing
03:25 25 paring knife arose when the



1 investigators showed Fisher a photograph
2 from the Saskatoon City Police files of
3 a knife similar to the murder weapon and
4 asked whether or not it was similar to
03:25 5 the one she was missing."

6 "In response, Linda stated that she was
7 missing a mauve coloured knife similar
8 to the one in the photo. Fisher could
9 not recall when this particular paring
03:26 10 knife went missing in relation to the
11 date of the murder.

12 Linda Fisher's announcement
13 of a second missing paring knife does
14 not sit well in light of the statements
03:26 15 she made during her interview with
16 Mrs. Milgaard and Paul Henderson ... In
17 this interview her response to a
18 question from Henderson asking why she
19 distinctly remembers details concerning
03:26 20 her missing paring knife is that she
21 didn't have a large collection of
22 kitchen knives, that it was her
23 favourite one, the only one she used and
24 that 'I didn't have no other small
03:26 25 paring knife I think I had a butcher



1 knife but I didn't like using that ... I
2 didn't have no other knife to peel
3 potatoes'."

4 And can you comment on, it appears in '93 that
5 Linda Fisher introduces a third missing knife, is
6 that correct, to the two previous ones? The
7 first was a wooden-handled paring knife, the
8 second was the bone-handled hunting knife, and I
9 think neither of those matched either the murder
03:26 10 weapon or the bone-handle hunting knife found in
11 the alley; is that correct?

12 A Correct.

13 Q So in '93 she tells your investigators after
14 looking at a photograph of a knife similar to the
03:27 15 murder weapon, that she's missing a third knife,
16 being mauve coloured, and assuming mauve and
17 maroon are similar, which I think Mrs. Fisher
18 testified she believed to be the case, what -- can
19 you tell us, what was the significance of that to
03:27 20 your investigators?

21 A I think our investigators had some doubts about
22 the credibility of Linda Fisher based on continual
23 changing her story, and I think the other thing is
24 that there was some indication that when she was
03:27 25 interviewed by Mr. Henderson and Mrs. Milgaard,



1 that there may have been a suggestion made of a
2 maroon or red-handled knife. Certainly that would
3 mean that perhaps Linda, even unknowingly or
4 inadvertently, grabbed onto that suggestion.

03:28 5 Q Can you tell --

6 A This certainly was the first time that she had
7 indicated that there was another knife other than
8 the ones that she had mentioned previously.

9 Q So in 1993, and let's, for the purposes of this
03:28 10 discussion, assume that mauve is similar enough to
11 maroon, if in fact she had a credible
12 identification of the murder weapon in '93, would
13 that not be evidence that would be, would tend to
14 incriminate Larry Fisher?

03:28 15 A Yes, yes, I believe it would.

16 Q And we know now, you didn't know then, but at Mr.
17 Fisher's trial she did in fact identify the
18 maroon-handled paring knife as being a knife that
19 was similar or identical to a knife that she had
03:28 20 back in 1969 and had gone missing. Were you aware
21 of that?

22 A I was aware of that, yes.

23 Q Now?

24 A Yes.

03:28 25 Q I guess back in '93 what was it that caused your



1 investigators to conclude that there wasn't -- and
2 maybe I'm reading this wrong, but it appears from
3 this report that not much weight was put on Linda
4 Fisher's 1993 identification of a missing
03:29 5 mauve-coloured knife similar to the murder weapon?

6 A Correct. I don't think we were making the
7 suggestion that she was necessarily lying or
8 trying to mislead, simply that because of the way
9 her story continued to change and because of the
03:29 10 way the suggestion was made to her, that perhaps
11 we could question the reliability of her evidence
12 in that regard.

13 COMMISSIONER MacCALLUM: That's because of
14 the way the suggestion was made to her by Mrs.
03:29 15 Milgaard?

16 A Yes, or Mr. Henderson, I'm not sure which, but I
17 believe there was a suggestion about a maroon or a
18 red-handled knife made to her.

19 BY MR. HODSON:

03:29 20 Q Let me just contrast that. If this had been a
21 case that as a police investigator, the very first
22 time you met with Mrs. Fisher and she had not
23 talked to anybody and you said can you tell me,
24 are you missing any knives and, if so, describe
03:30 25 them for me, and she was able to describe a knife



1 that was very similar to the murder weapon, is
2 that something -- if that had happened in 1993, is
3 that something that your investigators might have
4 said here's some evidence that is incriminating of
03:30 5 Larry Fisher?

6 A Yes, that certainly would have been stronger,
7 bearing in mind that we knew from the trial and
8 the conviction that it was a red-handled knife
9 that had been used, or a maroon-handled knife,
03:30 10 plastic knife that had been used in the murder.

11 Q And was it a question as to why in 1993, why
12 didn't Linda Fisher disclose this missing knife
13 earlier, was that a concern then?

14 A Yes.

03:30 15 Q Go to the next page and the *Investigator Comment*:

16 "Those attempting to establish that
17 Larry Fisher is the real killer contend
18 that the murder weapon and/or other
19 knives found in proximity to Miller's
03:31 20 body could have been from Larry Fisher's
21 residence. Linda Fisher's statements
22 about missing knives are the prime
23 reasons for this assertion.

24 Linda Fisher was interviewed
03:31 25 in 1990 by Mrs. Milgaard and Paul



1 Henderson, Mr. Eugene Williams, and by
2 Sgt. R. Pearson. Again, in 1993, she
3 was seen by our investigators. These
4 numerous interviews were to determine
03:31 5 Linda's knowledge and recollection of
6 important details, such as Larry's
7 whereabouts during the time of the
8 murder, the condition of his clothing,
9 and his access to a paring knife. Linda
03:31 10 Fisher's additional details about the
11 first paring knife and her news about
12 the two additional knives were elicited
13 during these interviews.

14 When Linda Fisher voiced her
03:31 15 suspicions about Larry Fisher in 1980,
16 she said she was missing a paring knife.
17 The description she gave of her missing
18 knife did not entirely compare with the
19 knife entered in evidence at Milgaard's
03:31 20 trial. That is, her knife was smooth
21 edged and not serrated, the handle was
22 wooden and not plastic, and being
23 wooden, her's had rivets. In subsequent
24 interviews with Fisher additional
03:32 25 details concerning this missing paring



1 knife emerged and she also announced she
2 was missing two other knives, one being
3 a paring knife, and the other a bone
4 handled hunting knife."

03:32 5 And if we can just scroll down to the bottom:

6 "The circumstances do not allow us to
7 further authenticate Linda Fisher's
8 stories about her missing knives.
9 Nevertheless, it should be noted that in
03:32 10 his Supreme Court testimony, Larry
11 admits to using a paring knife in his
12 Saskatoon offences which says he took
13 from home or the Pambrun's."

14 And then:

03:32 15 "At trial, the broken paring knife
16 tendered was accepted as being the
17 murder weapon..."

18 Etcetera.

19 "As well, both Nichol John and Ronald
03:32 20 Wilson said that en route to Saskatoon
21 Milgaard had a knife similar to the
22 murder weapon. None of the other knives
23 discussed here were material to the case
24 against David Milgaard. As far as Larry
03:32 25 Fisher's possible involvement is



1 concerned, the facts suggesting he may
2 have had a paring knife *similar to the*
3 *murder weapon* in his possession the
4 morning of the murder are questionable.
03:33 5 And even if he did, we have uncovered no
6 evidence linking him with the scene."

7 Again, would that be an accurate summary?

8 A Yes, it would.

9 Q And just on this identification, and I'm not sure
03:33 10 if you are able to answer this, it may have been
11 one of your investigators, I think we heard
12 evidence from Mrs. Fisher that she may have had
13 trouble just between maroon and mauve being -- I
14 think at the Fisher trial she identified the knife
03:33 15 when she saw it and said yes, that's our knife,
16 and there may have been questions. What was your
17 understanding about whether or not she had
18 identified the murder weapon as being identical
19 to, similar to, or was there some doubt about
03:33 20 whether maroon and mauve were different colours?

21 A Are you talking about at the trial?

22 Q No, in 1993. Let me put it this way. Was it the
23 conclusion of your investigators that Linda Fisher
24 had identified the murder weapon as being similar
03:34 25 to or identical to a knife that had belonged to



1 her and went missing around 1969?

2 A I think her third statement certainly, or her
3 third knife in her statement certainly moves in
4 that direction, that it's closer to the murder
03:34 5 weapon than any of the other two knives that she
6 had talked about.

7 Q But being -- did you conclude that it was a direct
8 match?

9 A No.

03:34 10 Q If we can go to the next page, we'll now deal with
11 the *Cosmetic Bag/Compact*. In your view, was there
12 a distinction between a cosmetic bag and a
13 compact? I see both are used here.

14 A Well, not really I guess. If I thought about it,
03:34 15 I would think that the bag is perhaps what holds
16 the makeup and the compact is just that little
17 square thing that opens up and inside it there's
18 some powder and perhaps a little mirror or
19 something, that's the distinction I would make.
03:34 20 Whether that's correct or not, I'm not certain.

21 Q And if we can go down, we'll see here, and this is
22 an issue that seems to have as its genesis Mr.
23 Asper; is that right, through Mr. Bruce? That's
24 where this allegation came from?

03:35 25 A Yes, it is.



1 Q And:

2 "In his analysis of the Crown's case,
3 Mr. Asper questions the contrast between
4 "cosmetic bag" and "compact". The
03:35 5 following will outline the trial
6 evidence and statements made concerning
7 this issue."

8 And I think, correct me if I'm wrong, the
9 allegation was that, number one, this incident
03:35 10 didn't happen, there was nothing thrown out of
11 the car, whether it be a cosmetic bag or a
12 compact; is that correct?

13 A That's correct.

14 Q And therefore that was evidence of wrongdoing
03:35 15 because that didn't happen?

16 A That's right.

17 Q And as well was there also some reference to, and
18 maybe in support of that contention, that some
19 witnesses used the term compact, some used
03:35 20 cosmetic bag, is that how that tied in?

21 A Yes. I guess one could say that obviously
22 something to do with makeup was thrown out of the
23 window. I don't think we were ever able to
24 determine whether it was a compact bag -- a
03:36 25 cosmetic bag or a compact.



1 Q And did you and your investigators place any
2 significance on the fact that the term cosmetic
3 bag and compact may have been used interchangeably
4 between perhaps not only witnesses, but people
03:36 5 later describing those two?

6 A Certainly that's possible. I don't think we
7 placed a lot of weight on the fact that one person
8 may refer to it as a compact and another person
9 refer to it as a cosmetic bag.

03:36 10 Q Go to the next page. So is it fair to say that
11 this part of the investigation was the event
12 didn't happen; therefore, somehow the police and
13 Crown were involved in criminal conduct in getting
14 Wilson, John and Cadrain to say that it did
03:36 15 happen?

16 A That's correct.

17 Q And here you refer to Nichol John who I think in
18 1993 was able to recall and confirmed her earlier
19 accounts of the incident and recalled describing
03:37 20 part of the bag and a colour and ID, so she had,
21 she was able to tell, or she told your
22 investigators in 1993 that she had a recollection
23 of finding a plastic cosmetic bag containing
24 makeup; is that right?

03:37 25 A Yes, that's right.



1 Q And you talked to her parents, her parents said
2 yes, they recalled Nichol telling them of finding
3 a compact in the glove box of the car. Ron
4 Wilson, when interviewed by your investigators,
03:37 5 stated he has no recollection of a compact,
6 although he had testified to that at trial; is
7 that correct?

8 A That's correct.

9 Q Albert Cadrain confirmed for you --

03:37 10 A I believe that's also one of the things that Mr.
11 Wilson recanted, was the compact or the cosmetic
12 bag.

13 Q Yes. And so Albert Cadrain in '93 told your
14 investigators that he recalled the compact
03:38 15 incident?

16 A That's correct.

17 Q And then David Milgaard was asked in the Supreme
18 Court and:

19 "...he was, "...positive that if there
03:38 20 had been something like that I had
21 thrown out the window that I would have
22 a recollection for that. And I never
23 ever threw any compact out of the window
24 of the car."

03:38 25 And again that would have been, as opposed to



1 your investigators interviewing Mr. Milgaard, you
2 would have taken his evidence from the Supreme
3 Court reference?

4 A That's correct.

03:38 5 Q And then:

6 "Mr. Tallis testified in the Supreme
7 Court that he had discussions with David
8 Milgaard about David throwing a compact
9 out of the car. In response to a
03:38 10 question from Mr. Tallis, David
11 indicated he didn't know where it came
12 from, "it was just there." When asked
13 why he threw it out, he said "well I
14 don't know. I just threw it out. That
03:38 15 is all there was to it." Mr. Tallis
16 also indicated Milgaard denied the
17 compact had anything to do with the
18 victim."

19 And then at the bottom, *Investigator Comment*:

03:38 20 "The facts are that Nichol John found a
21 compact and/or cosmetic bag in the
22 glovebox... Based on the information
23 provided, we are unable to determine
24 exactly what John found, but her
03:39 25 description of the item very closely



1 matches the cosmetic bag and items of
2 makeup said to have belonged to Gail
3 Miller.

4 If the item thrown out by
03:39 5 Milgaard was Miller's cosmetic bag, then
6 Miller must have been accustomed to
7 carrying more than one cosmetic bag.
8 Miller's family said she carried two,
9 possibly three compacts, but there is no
03:39 10 information to suggest she carried more
11 than one cosmetic bag. No compacts were
12 found in her purse or at the scene."

13 So I take it the distinction between cosmetic bag
14 and compact may have been significant in light of
03:39 15 what was found in Gail Miller's purse?

16 A Yes, it may have been.

17 Q So in other words, if she -- the distinction would
18 be important if her purse contained a cosmetic bag
19 and she normally didn't carry more than one, or
03:39 20 similarly with the compact?

21 A Yes, if she normally didn't carry more than one.

22 Q You say:

23 "We are unable to determine, with
24 certainty, what was found in the vehicle
03:39 25 and to whom it belonged. However,



1 several points are clear:

2 (a) either a compact or cosmetic bag,
3 which was not in the vehicle previously,
4 was found in the glovebox shortly after
03:40 5 the group left Saskatoon;

6 (b) Milgaard's actions in throwing it
7 out of the vehicle were peculiar, and in
8 light of all of the other facts of this
9 case, suspicious; and,

03:40 10 (c) David Milgaard was unable to explain
11 his behaviour to his defence counsel."

12 And can you just elaborate on that?

13 A Yeah. I think, you know, we had witnesses telling
14 us that it happened, we had certainly supportive
03:40 15 evidence from Mr. Tallis that Milgaard had told
16 him it happened, so I think we believed in the
17 investigation that that had occurred; therefore,
18 that certainly didn't give any support to the
19 allegation that evidence was contrived or made up.

03:40 20 Q And so let's just focus on the two areas that you
21 look at. The first one is, I think it was put
22 forward by Mr. Bruce and Mr. Asper as here's
23 evidence that somehow the police and/or Crown were
24 involved in criminal wrongdoing by contriving this
03:41 25 cosmetic/compact incident and getting witnesses to



1 give false evidence; would that be a fair summary
2 of the allegation?

3 A Yes.

4 Q Or what you looked into?

03:41 5 A Yes.

6 Q And having looked into it, you concluded that
7 something, either a cosmetic bag or a compact, was
8 in fact thrown out, and therefore did you conclude
9 that Wilson, John and Cadrain were not lying at
03:41 10 trial when they testified as such?

11 A That's correct.

12 Q And what was the significance of Mr. Tallis'
13 evidence and/or statement about what David
14 Milgaard told him about the compact or cosmetic
03:41 15 bag, how did that figure into matters?

16 A Well, I think two things, number one, it certainly
17 strengthened our belief that it in fact happened,
18 but secondly, there's some -- perhaps one could
19 look at it as suspicious that David couldn't
03:41 20 provide an explanation as to why he did that.

21 Q To his counsel?

22 A To his counsel.

23 Q Right. So again -- so on the criminal wrongdoing
24 part, I think you are saying the cosmetic bag
03:42 25 provided no evidence, or the handling of the



1 cosmetic bag or compact provided no evidence on
2 the wrongdoing part?

3 A That's correct, provided no evidence.

4 Q And then part of what you did as well I think in
03:42 5 your investigation, you said is there any evidence
6 or information provided that would cause us to
7 conclude that David Milgaard was innocent and/or
8 Larry Fisher was the perpetrator, right, that was
9 sort of the second ancillary part of what you were
03:42 10 doing?

11 A Yes.

12 Q And can you tell us, what did your investigation
13 into the allegations relating to the compact bag,
14 or the compact or cosmetic bag, how did your
03:42 15 conclusions on that influence your thinking about
16 David Milgaard's guilt or innocence?

17 A Well, certainly it, you know, in the absence of an
18 explanation, it certainly provided some
19 corroborative evidence of the fact that someone
03:43 20 had a compact, that there was a compact in the car
21 that could have been linked to the murder scene.

22 Q And I think you say here was peculiar and
23 suspicious, so it's a case of saying lookit, this
24 is an unanswered question and it's suspicious?

03:43 25 A That's correct.



1 Q What about the fact that -- and so let me back up.
2 So the fact that you then confirmed that something
3 was thrown out and it was suspicious because it
4 was a woman's cosmetic or compact and there was no
03:43 5 explanation, not saying it was necessarily Gail
6 Miller's, but that would be an inference
7 presumably your investigators would draw?

8 A Yes.

9 Q What was the significance, if any, that you and
03:43 10 your investigators placed on the fact that this
11 allegation would be put forward as a grounds of
12 saying here's why David is innocent, because the
13 compact/cosmetic bag is fabricated and you
14 investigate it and conclude that it's not, and
03:43 15 then so quite apart from the cosmetic bag incident
16 itself, did you put any significance on the fact
17 that it was a ground put forward to say here's why
18 we say he's innocent?

19 A Yeah, I think, you know, taken in totality with
03:44 20 all of the allegations, it was another unfounded
21 allegation, so certainly it strengthens the belief
22 that there's nothing that's coming forward that
23 would tend to exonerate Mr. Milgaard.

24 Q But I guess did the fact that it was being put
03:44 25 forward and you and your investigators concluded



1 it didn't have merit, what I'm trying to get at is
2 did that have any impact on your thinking or your
3 group's thinking about David Milgaard's guilt or
4 innocence apart from what you learned about the
03:44 5 cosmetic bag or compact?

6 A I thought I had answered that, but perhaps --

7 Q Well, what I'm trying to get at is did you become
8 more convinced of David Milgaard's guilt because
9 you found the allegation to lack credibility?

03:45 10 A Yes, I think you could draw that inference, that
11 certainly it was another piece of evidence which
12 was supportive of the conviction.

13 Q Next is the *Allegation: Forensic Evidence*
14 *Discredited*, and this relates to the secretor
03:45 15 issue which we will not spend a great deal of time
16 on. If we can go to the next page, and I think
17 what was alleged here, that the allegation was
18 that the frozen semen found at the scene was
19 somehow improperly used to convict David Milgaard;
03:45 20 is that correct?

21 A Yes.

22 Q And do you recall, what was it or what are the
23 things generally that you looked at then, or was
24 it just to examine everything with respect to that
03:46 25 piece of evidence?



1 A Yes, it was to see if there could be any
2 determinations made about that evidence that would
3 be helpful to our investigation.

4 Q And so the first one, the seminal fluid -- scroll
03:46 5 down -- the first issue:

6 "Dr. Markesteyn expressed doubts about
7 the origin of the "yellowish lumps" ..."

8 And:

9 "He suggested the possibility the
03:46 10 substance could have been non human --
11 possibly of canine origin..."

12 And then you go on to say:

13 "Analysis of the two frozen lumps was
14 undertaken by RCMP ... analyst Paynter.
03:46 15 He determined one of the lumps was found
16 to be human seminal fluid."

17 And so did your investigators then conclude that
18 back in 1969 the frozen semen was determined to
19 be of human origin?

03:46 20 A Yes.

21 Q And what did you make then of the allegation or
22 suggestion that it was dog urine, or may have been
23 dog urine?

24 A Well, there was nothing that indicated that to us,
03:47 25 and I believe we tried to go further with that,



1 but there was no substance available, you know, it
2 deteriorated over time.

3 Q And then if we can just go through the next couple
4 of pages, I think they summarize, they go through
03:47 5 the testing of David Milgaard as a secretor and
6 the information that's obtained in 1992 that
7 showed that David Milgaard was in fact an A
8 secretor as opposed to a non-secretor, and I think
9 that was information that came to light through
03:47 10 the Supreme Court reference; is that correct?

11 A That's correct.

12 Q And then to page 340, Dr. Ferris' report, which
13 we've seen on many occasions, indicated that on
14 the assumption that David Milgaard was a
03:47 15 non-secretor, the seminal fluid would tend, if it
16 came from the perpetrator, would tend to exclude
17 him as a suspect; correct? That was the, one of
18 the comments in the Ferris' report?

19 A That's correct.

03:48 20 Q And here, Dr. Ferris was provided with the facts
21 outlined by Ms. MacMillan, she's the serologist
22 who did the secretor test:

23 "In correspondence dated 93-06-04, he
24 agreed that... "In light of this new
03:48 25 evidence and assuming all of the



1 original facts are as presented at the
2 time of the trial the serological
3 analyses would not allow for the
4 exclusion of David Milgaard as being the
03:48 5 origin of the seminal samples."

6 Is that correct?

7 A That's correct.

8 Q So in other words, the two allegations that you
9 investigated were, number one, that the frozen
03:48 10 semen was in fact dog urine and you investigated
11 that, concluded it was not?

12 A Correct.

13 Q And I guess in the alternative, if it wasn't dog
14 urine, it was semen from the perpetrator and David
03:48 15 Milgaard would be excluded as a possible donor of
16 that semen; correct?

17 A Correct.

18 Q And you investigated that and concluded that
19 because he was an A secretor, he could not be
03:48 20 eliminated?

21 A That's correct.

22 Q And in fact if you go to 023341 -- sorry, just
23 scroll up here, I think you say both Larry Fisher
24 and David Milgaard are known to be a type A
03:49 25 secretor as well.



1 "Therefore, based on these two
2 characteristics alone either man could
3 be the source of the seminal fluid."

4 And that would have been your conclusion?

03:49 5 A That's correct.

6 Q If we can go to 023343. Just go to the previous
7 page. This just relates to DNA testing and I
8 think you told us in June that although you looked
9 at the possibility of having DNA testing done on
03:49 10 Gail Miller's clothing during the course of your
11 investigation, it was not done until after your
12 investigation was concluded and it was done by
13 others; is that correct?

14 A That's correct.

03:50 15 Q And one of the reasons I think you indicated was
16 the question of whether the technology of the day
17 would be sufficient to test what was thought at
18 the time to be a minute and the last piece of
19 physical evidence; is that right?

03:50 20 A That's right.

21 Q And so here you talk in your report about the DNA
22 testing, and then if we can go to the next page,
23 under *Investigator Comment*, you say:

24 "Should it be possible to make a
03:50 25 determination from analysis of the



1 panties, the DNA could provide the
2 following results:

3 1) If the results indicate the semen
4 D.N.A. matches David Milgaard, since he
03:50 5 was not a consensual sex partner and
6 even denies being in the vicinity of the
7 crime scene, it would be substantial
8 proof of his culpability."

9 Correct, and that seems to be straightforward?

03:51 10 A That's correct.

11 Q "2) If the results indicate the semen
12 D.N.A. matches Larry Fisher, then the
13 allegation he is actually the person
14 responsible would have substance."

03:51 15 Now, what is the difference between -- with David
16 Milgaard you are saying it would be substantial
17 proof of his culpability and with Larry Fisher it
18 is that the allegation would have substance. Was
19 there a distinction you were trying to draw
03:51 20 there?

21 A Not necessarily, but I think when you look at the
22 two gentlemen, both Mr. Fisher and Mr. Milgaard,
23 we certainly had a lot of other evidence that
24 tended to support Mr. Milgaard may be responsible,
03:51 25 we had witnesses, we had a number of other items,



1 whereas with Mr. Fisher there really wasn't much
2 evidence that tended to show that. We certainly
3 made some attempts during this investigation to
4 interview him and other things, but we really
03:51 5 didn't have any other evidence, so certainly if it
6 would have come back as being him, which we all
7 know it did now, it would certainly point to him
8 and would then require some investigation to try
9 and find other evidence that supported that.

03:52 10 Q And then point three:

11 3) If D.N.A. results do not match either
12 Milgaard or Fisher, given all of the
13 evidence, it is highly probable the
14 semen originated from a consensual sex
03:52 15 partner."

16 And I'm wondering, what about the possibility of
17 a third perpetrator?

18 A Yes, it could have been from an unknown offender,
19 yes, that as well. That's not said in there, but
03:52 20 certainly should have been perhaps.

21 Q If we can go to, just scroll down, *Quality of*
22 *Forensic Evidence*, go through that, if we can go
23 to the investigator comment on page 023345, and
24 just scroll down, you talk about:

03:52 25 "During the post mortem examination,



1 Dr. Emson discarded the vaginal seminal
2 fluid after determining motility of the
3 spermatozoa. The seminal fluid was
4 contaminated with blood which could have
03:53 5 influenced the accuracy of analysis to
6 determine grouping. The sample's value
7 now with the advancement of DNA is
8 significant, but even at the time, it
9 should have been retained until a
03:53 10 determination was made of its value as
11 evidence.

12 Protection of the scene --"

13 Or let me just pause there on that point. Did
14 you and your investigators conclude that there
03:53 15 was anything that -- the fact that the vaginal
16 seminal fluid was not retained, did you determine
17 that that was part of any criminal wrongdoing on
18 the part of anybody or was an error?

19 A It appeared to be an error. It's certainly an
03:53 20 unfortunate error.

21 Q And then:

22 "Protection of the scene --"

23 And I think this issue relates to the frozen
24 semen found in the snow three or four days later
03:53 25 and the questions about the integrity of that



1 sample, and you say:

2 "Protection of the scene until all
3 relevant evidence was gathered would
4 have eliminated any difficulty with the
03:54 5 continuity of the evidence of the
6 seminal fluid found in the snow, but it
7 would not answer questions as to its
8 overall integrity, e.g., as to whether
9 it could have been deposited earlier by
03:54 10 some other person. Although the seminal
11 fluid was found in a back alley to which
12 the public had access, it was in the
13 *immediate area where the body was found.*
14 As well, it could be linked to Miller
03:54 15 based on the fact of pubic hair, of
16 common origin to her, was found embedded
17 in the sample. The inference of these
18 circumstances is that the seminal fluid
19 was from Miller's attacker.

03:54 20 Given all the other facts in
21 this case, it would be highly
22 speculative to suggest that the specimen
23 could have been deposited by some other
24 person. From an investigative
03:54 25 standpoint, the evidentiary integrity of



1 the seminal fluid appears to be intact."

2 And would this have been the response then to the

3 suggestions in I think Dr. Ferris and Dr.

4 Markesteyn's report, that somehow the seminal

03:54 5 fluid, the frozen semen found in the lane, that

6 there was something that was done improperly when

7 that was gathered?

8 A Yeah, and I think what we were trying to suggest

9 was that the, certainly the integrity of that

03:54 10 exhibit would have been stronger had the scene

11 been guarded throughout, from the time of the

12 police coming upon the scene until the time the

13 sample was found, and because the scene wasn't

14 guarded there certainly is a potential to argue

03:55 15 that there was some contamination or that it was

16 something that was placed at the scene later. I

17 think that's what we were trying to suggest there.

18 Q Go to the next page. So here's your summary, and

19 we've touched on these. The first one is the

03:55 20 bloodstained blanket. Actually, just scroll down.

21 Here, your conclusion:

22 "... there is no evidence to link him to

23 the scene of the Miller murder as is the

24 case with David Milgaard."

03:55 25 And that relates to the blanket and those are



1 your conclusions?

2 A That's correct.

3 Q And then:

4 "The question of whether it
03:55 5 was a cosmetic bag or a compact does not
6 appear to have much validity. Not only
7 do the occupants of the car say Milgaard
8 threw out such an item, but when asked
9 about it by his lawyer, Milgaard's
03:56 10 response was to the effect that 'it was
11 just there' and he didn't know why he
12 threw it out."

13 And I think we've touched on that earlier; is
14 that correct?

03:56 15 A That's correct.

16 Q And if we can go to 023349. And there is a part
17 here, *Investigation - David Milgaard*, and one for
18 Larry Fisher. Can you just tell us, generally,
19 what was the purpose of this part of your report?

03:56 20 A Well I think, although our investigation was
21 certainly not to focus on the guilt or innocence
22 of either Milgaard or Fisher, there were a number
23 of allegations raised that, certainly, we would
24 want to look as extensively as we could at both of
03:56 25 those gentlemen, so what we attempted to do was



1 see what evidence we could determine both towards
2 Fisher and towards Milgaard.

3 Q And can you tell us, I think you've said on a
4 number of occasions that the purpose of your
03:56 5 investigation was not to reinvestigate the murder
6 of Gail Miller; is that correct?

7 A That's correct.

8 Q Is it fair to say, though, that in the course of
9 investigating the many allegations of criminal
03:57 10 wrongdoing, that effectively your investigators
11 investigated pretty much everything that they
12 would have investigated if that had been their
13 mandate?

14 A I think that's fair to say, yes. We interviewed
03:57 15 most of the witnesses, examined the same evidence,
16 yes, so I think that's fair to say.

17 Q And so, although that may not have been your
18 purpose, the information gathered from witnesses
19 would be very similar, if not identical, to what
03:57 20 you would investigate if you had investigated the
21 murder of Gail Miller?

22 A Yes, that's a fair statement.

23 Q And I take it that, if you were just doing an
24 investigation into the death of Gail Miller, you
03:57 25 may not have made a number of the inquiries you



1 did in the Flicker investigation; is that correct?

2 A That's correct.

3 Q So at the end of the piece are you telling us
4 that, lookit, because we had effectively done,
03:57 5 although for a different purpose, much of the same
6 investigative work, we're going to put down our
7 findings as to what we found?

8 A Yes.

9 Q Go to the next page. And would it be fair to say
03:58 10 that, in looking at this index, when you looked at
11 this issue of David Milgaard versus Larry Fisher
12 and the information gathered, did you start from
13 scratch and say "let's start from the beginning
14 with no assumptions and look at all the
03:58 15 information", or where did you start as far as
16 your thinking about his guilt or innocence, and
17 I'm talking about David Milgaard?

18 A Yes, I think we started at the beginning and said
19 "okay, what is there as far as evidence is
03:58 20 concerned".

21 Q And to what extent did you focus your
22 investigation on what had been provided to you on
23 behalf of David Milgaard as the reasons they said
24 he was innocent, and in particular the 68 issues
03:59 25 that you identified?



1 A Well if the reasons didn't form, weren't
2 evidentiary, then we didn't focus on them, --

3 Q Okay.

4 A -- so by then we had already examined all of the
03:59 5 allegations.

6 Q No, let me try and rephrase it with, for an
7 example here, the motel room re-enactment, or
8 let's take the compact or the cosmetic bag. What
9 I am trying to get at is did you say lookit, we're
03:59 10 going to do our own investigation, gather all of
11 the facts and make our own conclusions about David
12 Milgaard's guilt or innocence or Larry Fisher's
13 guilt or innocence, or was it a case of you
14 testing what had been put forward to you by Mr.
03:59 15 Wolch and Mrs. Milgaard as being the reasons why
16 they said he was innocent, or was it some
17 combination of the both?

18 A Yes, I think stronger on the second, but to a
19 degree maybe a combination of the both.

04:00 20 Q So stronger on the second in that you focused on
21 the allegations?

22 A We tested the allegations, yes.

23 Q If we can go to the next page. The comment here:

24 "While it was not within the
04:00 25 scope of our investigation to explore



1 David's guilt or innocence, several of
2 the issues surfaced by Wolch, Asper and
3 Mrs. Milgaard touch on this question.
4 Issues 58 and 63 suggest Milgaard did
04:00 5 not have an opportunity to commit the
6 murder because he was not in the
7 vicinity. Issues 60 and 64 deal with
8 the legitimacy of Milgaard's May 1969
9 re-enactment of the murder in a Regina
04:00 10 motel room and issues 65-68 deal with
11 questions posed by Mrs. Milgaard
12 relating to various facets of David's
13 case."

14 And I'm just wondering, from that, would that
04:00 15 have been the focus, then, of what you
16 investigated as far as looking at the question of
17 David Milgaard's innocence?

18 A Yes.

19 Q So the first issue is the allegation that he
04:01 20 wasn't in the vicinity, and here:

21 "... they maintain Milgaard was never
22 separated from Ronald Wilson and
23 therefore didn't have a chance to rape
24 and murder Miller."

04:01 25 And I think this originated from Mr. Bruce and



1 Mr. Asper, this issue, that it:

2 "... was not stuck in an area that would
3 provide for an encounter ...",

4 and:

04:01 5 "... Wolch's contention that it was not
6 possible for Milgaard to have committed
7 the murder because at the critical time
8 he was at the Trav-a-leer Motel."

9 Can you tell us, how did you, did you
04:01 10 reinvestigate this part or what significance did
11 you place on the jury's findings on some of these
12 issues?

13 A I think areas where we could reinvestigate, we
14 investigated as far as we could. Certainly, the
04:01 15 jury findings were -- are important, and were
16 considered as we were conducting this
17 reinvestigation.

18 Q But I suppose, if you had investigated and found
19 that Ron Wilson and Milgaard were never separated,
04:02 20 that might have a bearing on David Milgaard's
21 guilt or innocence?

22 A Yes, it would certainly be something that would be
23 important for us to bring forward, as a result of
24 our investigation.

04:02 25 Q Or that David Milgaard was at the Trav-a-leer



1 motel at the time that the murder was supposed to
2 have taken place?

3 A Yes.

4 Q That would have been significant?

04:02 5 A That would be supportive of an alibi, yes.

6 Q So are you telling us the fact that the jury
7 appeared to discount some of the arguments being
8 put forward to you by Mr. Wolch, Mrs. Milgaard,
9 Mr. Bruce and Mr. Asper, your investigators went
04:02 10 and investigated them anyway?

11 A Yes. And certainly, had we uncovered evidence
12 which we felt was important, we would have brought
13 it forward in our report to be dealt with.

14 Q If we can go to the next page. You say here:

04:02 15 "When taken to the scene of
16 the murder on 69-05-24, Nichol John
17 showed marked emotion. The next day she
18 implicated Milgaard directly in Miller's
19 murder and there is little doubt from
04:03 20 her account they were at the scene."

21 And am I correct, in reading that, that are you
22 saying there that, if her account is to be
23 believed, there is no doubt they were at the
24 scene?

04:03 25 A Yes.



1 Q As opposed to -- did you reach the conclusion that
2 there was little doubt that they were at the scene
3 of the crime?

4 A I think, from her evidence, --

04:03 5 Q Okay.

6 A -- that there was little doubt that they were at
7 the scene.

8 Q Now there is also a mention here about, and I
9 think we saw this in her interview with the RCMP
04:03 10 in '93, about being shown pictures. I think your
11 investigator showed her pictures of the church,
12 the funeral home, and a brick wall, things of that
13 nature, and can you tell us what was the purpose
14 of that and what was the significance of that?

04:03 15 A It was to assist her in recalling whether or not
16 she recognized, you know, pictures of the scene,
17 and as I recall she did identify some of those
18 pictures and said she did recall, I believe, the
19 church, the funeral home, and some other photos.

04:04 20 Q It says:

21 "She also recalled hearing the church
22 bells."

23 Do you recall if your investigators ever followed
24 up to find out whether or not the St. Mary's
04:04 25 Church had church bells and, if so, whether they



1 were operational at the time?

2 A I don't recall whether there was a lot of
3 follow-up. Certainly, I think that's the first
4 time Nichol had ever said that, I don't recall it
04:04 5 ever being said in any of her previous statements.

6 Q And so then the next paragraph talks about the
7 interview in '93 and the photographs, and is it
8 fair to say that the -- in looking at the question
9 of David Milgaard's guilt or innocence in '93,
04:04 10 when your group looked at this, can you tell us
11 the significance of Nichol John's 1993
12 recollection? I mean, you had her statement back
13 in '69, but what she was telling you in 1993?

14 A Well, as I recall, I don't think that I ever
04:05 15 believed that Nichol was a particularly strong
16 witness, and that, you know, certainly some of the
17 things she said in her statement could be
18 corroborated by other means, but there were things
19 that she said in her statement that couldn't. So
04:05 20 certainly she, you know, I guess my wish was that
21 she could have been more forthcoming but simply
22 wasn't able to be so.

23 Q Okay.

24 COMMISSIONER MacCALLUM: That's on the
04:05 25 basis of what she told you in 1993?



1 A Yes, My Lord. And I think perhaps, perhaps just
2 to go a bit beyond that, the fact that we had had
3 a chance to look at her various interviews over
4 the years, and certainly there were things that
04:05 5 changed within those interviews that I guess led
6 me to believe she certainly wasn't a very strong
7 witness. I don't -- I don't think that I ever
8 felt that she was not trying to be truthful with
9 us, just that her recall differed from event to --
04:06 10 or from time to time.

11 COMMISSIONER MacCALLUM: Okay.

12 BY MR. HODSON:

13 Q And, again, this discussion here about Nichol
14 John, I think, relates to the issue of whether or
04:06 15 not David Milgaard was in the vicinity around the
16 time of the murder, and you go through her
17 recollection of being -- of the St. Mary's Church
18 and being in that area, and I take it that -- or
19 tell me, although she didn't have a recall of a
04:06 20 number of events, did you rely upon her statements
21 to you in 1993 and her identification of the
22 photographs as being some evidence that their
23 vehicle may have been in the vicinity on the
24 morning of the murder?

04:06 25 A Yes, we did, we certainly did rely on her



1 evidence, some evidence that they'd been in the
2 vicinity.

3 Q And now here you say:

4 "In testimony at the Supreme
04:07 5 Court, Milgaard states that in searching
6 for Cadrain's residence he was looking
7 for the St. Mary's Cathedral as a
8 landmark. The church is across the
9 street from the murder scene."

04:07 10 Then:

11 "Milgaard was cross-examined about a
12 comment in his March statement that he
13 was stuck in an alley near an apartment
14 block."

04:07 15 Is that, the fact that they were looking for the
16 St. Mary's Church as a landmark, was that
17 something you relied upon to say that they may
18 have been in the vicinity?

19 A Yes, it was.

04:07 20 Q How do you respond to the suggestion that, if they
21 were right in the alley facing St. Mary's Church
22 and that they knew that St. Mary's Church was the
23 landmark that they could find the Cadrain house,
24 then why would they go to the Trav-a-leer Motel to
04:07 25 get directions if they found the landmark they



1 were looking for?

2 A It was dark, perhaps they didn't recognize that it
3 was at the end of the alley, and certainly in the
4 daylight you would be able to see it but at that
04:07 5 time of day it was dark, perhaps they just didn't
6 see it. There was some indication that they maybe
7 drove right by it.

8 Q Okay. If we can go to the next page, you then
9 talk about being in the vicinity:

04:08 10 "Milgaard's counsel ...

11 Tallis, testified in the Supreme Court
12 he recalled Milgaard told him the group
13 did get stuck not long after talking to
14 a lady ...",

04:08 15 and that Tallis said:

16 "... the lady was encountered on the
17 west side of the city."

18 And can you tell us what, as far as what Mr.
19 Tallis either testified in the Supreme Court or
04:08 20 told you, was that information that your
21 investigators relied upon to put David Milgaard
22 in the vicinity?

23 A Yes. I believe Mr. Milgaard had told Tallis that
24 he was stuck in the area that -- and certainly the
04:08 25 crime scene itself indicated a vehicle had turned



1 into the alley and become stuck, or had --
2 certainly was spinning its wheels, and I think
3 that supported, to a degree, the fact that a good
4 likelihood that they were there.

04:09 5 Q And down at the bottom *Wilson Never*
6 *Separated/Opportunity*, this is the argument that
7 David Milgaard and Ron Wilson were never
8 separated, therefore David Milgaard did not have
9 the opportunity to commit the crime; correct?

04:09 10 A Yes.

11 Q And then here:

12 "In Tallis' testimony at the
13 Supreme Court he recalled Milgaard
14 telling him that when the group became
04:09 15 stuck, the two boys exited the vehicle
16 and went in different directions.
17 Tallis could not pin down the length of
18 time the two were away from the vehicle.
19 His recollection was that Milgaard said
04:09 20 'not too long'."

21 So did that answer that allegation, then, the
22 fact that Mr. Milgaard admitted to his lawyer
23 back in 1969 that he and Wilson had been
24 separated?

04:09 25 A Yes.



1 Q Over to the next page. *Investigator Comment:*

2 "Wolch's claim is that

3 Milgaard was at the Trav-a-leer Motel at
4 0700 hrs. Therefore, he wasn't in the
5 vicinity at the time and didn't have a
6 chance to rape and murder Miller.

04:09

7 To suggest Milgaard was at
8 the motel at 0700 hrs. when the murder
9 is likely to have taken place is a
10 narrow interpretation of the evidence
11 and, in particular, of Rasmussen's
12 evidence. According to Rasmussen,
13 Milgaard could have been at the motel as
14 late as 0730 hours which would have
15 allowed him sufficient opportunity to
16 attack Miller and then drive to the
17 motel."

04:10

18 And then next page:

19 "There is no doubt from the
20 evidence of Mr. Tallis and the others
21 involved that Wilson and Milgaard were
22 separated for a period of time when they
23 became stuck. The only question is for
24 how long. If Wilson's evidence is
25 accepted, they were apart for between 10

04:10



1 to 15 minutes."

2 And so those would have been your conclusions?

3 A Yes, they would have been.

4 Q So if we can simplify this, is it a case where
04:10 5 what the Milgaards or their lawyers tell you is
6 that at least one -- and this would be part of
7 many issues put forward to you -- but on these two
8 issues it would be, lookit, David Milgaard is
9 innocent because, number 1, he was never away from
04:10 10 Ron Wilson the morning of the murder; and 2, he
11 wasn't anywhere in the vicinity of where the
12 murder took place at the time the murder took
13 place, and if you find those two facts, or one of
14 those two facts, that proves he didn't do it;
04:11 15 correct, that's what they put forward?

16 A That's what they were suggesting, yes.

17 Q Yeah. Your investigators go out and look at them
18 and, on the first one, you say David told his own
19 lawyer at the time that he was separated from Ron
04:11 20 Wilson, therefore, that allegation isn't
21 substantiated; correct?

22 A Correct.

23 Q And on the not being in the vicinity I think you
24 said, based on Rasmussen's evidence and what Mr.
04:11 25 Tallis said, that would not be substantiated?



1 A That's correct, and the crime scene itself,
2 indicating that someone had been stuck in the
3 alley.

4 Q Okay, but someone, not necessarily the Milgaard
04:11 5 vehicle?

6 A Exactly.

7 Q But so I'm just trying -- so it's a case of
8 saying, okay, you've given us all the reasons, or
9 here's two reasons why you say he's innocent, we
04:11 10 checked them out and find out, at least according
11 to your investigators, they don't have merit; is
12 that correct?

13 A That's correct, yeah.

14 Q Yeah. And would you say, at least on the -- on
04:12 15 these two issues, was it more than not having
16 merit; did you find them to be suspicious and
17 incriminating of David Milgaard?

18 A Yes, they were, they were.

19 Q And so, instead of being two pieces of information
04:12 20 that were intended to have you say, if proven,
21 they would prove his -- it may establish his
22 innocence, but if not proven they may tend to show
23 or be incriminating; is that fair?

24 A That is fair, yes.

04:12 25 Q And was that the case with a number of these



1 admissions with his friends, and that the
2 evidence of Melnyk and Lapchuk was fabricated.
3 That was one allegation. A second allegation
4 that was put forward from time to time was that
04:14 5 the incident may have happened and that David
6 Milgaard may have made a stabbing motion to a
7 pillow and may have admitted that he stabbed her
8 or made comments that he stabbed her, but that it
9 was done so in a joking manner and that it wasn't
04:14 10 serious, and that Melnyk and Lapchuk had lied in
11 giving evidence, or taking it serious when it was
12 really a joke. So, in other words, in both cases
13 the suggestion is that the evidence was improper,
14 on the one hand because it didn't happen; on the
04:14 15 second one, if it did happen it was a joke and
16 the witnesses and the Crown and the police made
17 it look serious when it wasn't. What was your,
18 which of those two, or what did you investigate;
19 which of the allegations on the motel room did
04:14 20 you look into?

21 A Well certainly there was evidence that it
22 happened, because Mr. Milgaard told his counsel
23 that it happened as well, so that strengthened
24 that. And I think, you know, after conducting
04:14 25 interviews of the witnesses it's obvious that the



1 witnesses placed a different interpretation on
2 what they saw, but certainly we had no doubt that
3 the incident happened.

4 Q No, but I guess the question was what was your,
04:15 5 initially when you got into this what were your --
6 were you investigating the allegation that this
7 incident didn't happen and that Melnyk and Lapchuk
8 lied about it and made it up?

9 A Yes.

04:15 10 Q So that, okay, so that was one of the things you
11 looked into?

12 A That's one of the things, yes.

13 Q Okay. And then your investigators concluded that
14 it did happen and then looked at the question of
04:15 15 whether it had been misconstrued; is that right?

16 A That's right.

17 Q If we can go to -- we won't go through this in
18 detail. It looks like you talked to all of the
19 main players involved to get their recollection of
04:15 20 what happened; is that correct?

21 A That's correct.

22 Q And if you can go ahead to page 023367. And here
23 is -- I've skipped over, Mr. Sawatsky, the
24 summaries of the interviews of all of the people
04:16 25 involved and their friends, because we've had that



1 evidence put in in other formats, but it's simply
2 summarizing the information you obtained from
3 those people, and here you referred to Mr.
4 Milgaard's evidence at the Supreme Court where he
04:16 5 says:

6 "... has no recollection, but believes
7 nothing like that took place."

8 And then, down at the bottom, Mr. Tallis'
9 evidence at the Supreme Court saying that:

04:16 10 "... Milgaard said, 'I can't deny doing
11 it, but if I did say it, it was a
12 joke.'"

13 And:

14 "Tallis said Milgaard was stoned and
04:16 15 that 'He didn't recall making any such
16 statements.'"

17 And then, if we go to the next page:

18 "It appears the motel
19 re-enactment is a matter of perception.
04:17 20 The incident took place and may have
21 been a crude and inappropriate response
22 to goading by Milgaard's friends, or it
23 may have been a drug induced
24 re-enactment of his actual crime. Our
04:17 25 investigators indicate all of the



1 witnesses offer their version of events
2 in a believable manner."

3 And so that would have been the conclusion your
4 investigators reached?

04:17 5 A Yes, it is.

6 Q And can you tell us, just as an investigator,
7 what -- keeping in mind that some of the people in
8 the room -- let's, I think you are saying, lookit,
9 everybody said it happened, something happened,
04:17 10 that was what your investigators found?

11 A Yes.

12 Q That an incident happened, and some believed it
13 was serious, some believed it was a joke; correct?

14 A Correct.

04:17 15 Q As an investigator what, what significance, if you
16 are investigating David Milgaard for the murder of
17 Gail Miller, coupled together with the other
18 evidence, is this motel room incident, even with
19 the different perceptions of the people in the
04:18 20 room, significant, and if so how?

21 A Well certainly it's something that is suspicious
22 and, as an investigator, you would certainly
23 investigate it as far as you can and to whatever
24 lengths you can, and simply put it forward as one
04:18 25 more piece of evidence in your file.



1 I think if it didn't happen it
2 would be significant because, you know, that would
3 tend not to be incriminating. But when something
4 like this happens, notwithstanding the various
04:18 5 interpretations, it tends to be incriminating.

6 Q And so back to my earlier question. This was put
7 forward as a ground to you to say, lookit, this
8 motel, something wrong was done by the police,
9 witnesses and Crown in putting forward this motel
04:18 10 room re-enactment, and I think you've told us that
11 there was no criminal wrongdoing arising out of
12 how the police and Crown dealt with this?

13 A No, there wasn't.

14 Q And I believe it was also put forward, or was it
04:18 15 put forward as saying, lookit, check into the
16 motel room thing and when you are done it, when
17 you're done your investigation, you'll then
18 realize that David is innocent or that it somehow
19 establishes innocence?

04:19 20 A That's right, that it would be another piece of
21 evidence that would suggest he is innocent.

22 Q And I suppose if the one assertion that Melnyk and
23 Lapchuk lied at trial and made up the evidence
24 about the motel room incident when in fact it
04:19 25 didn't happen, if it was proven, that would be



1 something that would be supportive of not only
2 criminal wrongdoing by witnesses and/or the state,
3 but it might also be supportive of a claim of
4 innocence?

04:19 5 A Correct.

6 Q The fact that you go and find out that it did
7 happen, at least according to your investigators,
8 what significance did that have in your thinking
9 or your investigation as to whether or not David
04:19 10 Milgaard was guilty or innocent?

11 A Well certainly it tended to support evidence that
12 had been put forward at trial that was heard by a
13 jury, it tended to support that evidence, and
14 would, as a team of investigators, would cause one
04:19 15 to I guess perhaps have another reason to believe
16 that Milgaard could have been responsible.

17 Q What about the suggestion that behaviour like this
18 might be as consistent or more consistent with
19 someone who did not commit the crime? In other
04:20 20 words, if someone had committed the crime it would
21 be unlikely that they would go and re-enact and
22 tell their friends, particularly when they were
23 under police investigation; again, is that
24 something that you considered?

04:20 25 A I would suppose that's another way to look at it.



1 I didn't look at it that way but, certainly, I
2 wouldn't argue that that's another way you could
3 look at it.

4 Q So depending on how you look at it, and perhaps
04:20 5 your starting point, the motel room incident, if
6 it happened, regardless of whether it's a joke or
7 not, some could construe it as being favourable --
8 or being incriminating, others might say it's not
9 incriminating?

04:20 10 A I think that's certainly possible.

11 Q Go to 023369. Just touch on quickly, this is the
12 issue about the interview of Simon Doell, and I
13 think the allegation here was that the Crown
14 theory was that Gail Miller was on Avenue N, and
04:21 15 they had a statement on the police file from Simon
16 Doell who said that he saw Gail Miller at the bus
17 stop on Avenue N, but that 20 years later when
18 they talked to Simon Doell that he said "no,
19 that's not the case", and that there was
04:21 20 something -- something about -- does that
21 summarize what that issue was?

22 A Yes.

23 Q And was there anything that you found in that --
24 actually, we'll go to the next page:

04:21 25 "As far as Doell supporting



1 the Crown assertion that Miller was
2 approached by her assailant on Avenue N.
3 is concerned, Doell had no impact
4 whatsoever on Milgaard's case."

04:21 5 He didn't testify at the trial?

6 A No, he didn't.

7 Q *B.4 Issue: Colin Thatcher as a Suspect:*

8 "Mrs. Milgaard speculated
9 that Colin Thatcher may have committed
04:22 10 Miller's murder and that Merchant's
11 enquiries were launched to determine how
12 much evidence the Milgaard investigation
13 had at that point."

14 What was your understanding just on this, because
04:22 15 I think the one contention back at the time from
16 the Milgaard group was that Larry Fisher had
17 committed the murder, correct?

18 A Correct.

19 Q That was the main contention?

04:22 20 A Correct.

21 Q Was there also a suggestion that, well, maybe
22 Colin Thatcher committed it and not Larry Fisher?

23 A I think Mrs. Milgaard was raising this as
24 something that -- another possibility that we
04:22 25 could look at.



1 Q And, next page:

2 "During our investigation of
3 Mrs. Milgaard's concerns, we were not
4 able to establish any link between
04:22 5 convicted murderer Colin Thatcher and
6 Gail Miller."

7 Did your investigators, in fact, go out to see if
8 there was evidence to establish that Colin
9 Thatcher may have been involved?

04:23 10 A Yes, they did.

11 Q If we can go to the next page. You say:

12 "There is no evidence the
13 Saskatoon City Police ever considered
14 Colin Thatcher a suspect in the Miller
04:23 15 murder investigation and we have found
16 no evidence to suggest they should have.

17 During the course of our
18 investigation of Mrs. Milgaard's
19 allegations, we did not surface any
04:23 20 reasonable basis for pursuing inquiries
21 beyond what has been described."

22 Was there any basis to think that Mr. Thatcher
23 ought to have been a suspect or investigated for
24 the murder of Gail Miller?

04:23 25 A No, there wasn't, and I believe Mr. Thatcher



1 wasn't even in the country at the time. I think
2 he was attending university in the States or
3 something.

4 Q Go to B.5, I think this was another issue that:

04:24 5 "Mrs. Milgaard stated that confirmation
6 of David's innocence could be obtained
7 from the results of an interview
8 conducted by Dr. Denson in the
9 mid-eighties. Milgaard was under the
04:24 10 influence of sodium pentothal during his
11 interview and maintained his innocence
12 throughout."

13 And I think if you can go through to the next
14 page, you say:

04:24 15 "According to Dr. Denson the two Sodium
16 Amytal (pentothal) sessions with
17 Milgaard were failed attempts to put him
18 properly under the influence of the
19 drug. Given this fact, and the
04:24 20 disputable results of the procedure in
21 general, Milgaard's test results cannot
22 be relied upon."

23 Is that an accurate summary of what you did?

24 A Yes, it is.

04:24 25 Q Did you ever consider having Mr. Milgaard take a



1 polygraph test or did you make any inquiries to
2 determine if he had ever been asked to do one or
3 had done one?

4 A I didn't ask if he had ever been asked to do one.
04:24 5 Certainly polygraph is something that could have
6 been considered. However, you know, I made two
7 attempts to interview Mr. Milgaard and wasn't able
8 to get anywhere with either of them, so it's
9 something that I never got to the point where I
04:25 10 could ask that question.

11 Q Okay. If we can go down to the bottom, B.6 is
12 *Psychiatric Records*, and:

13 "According to Mrs. Milgaard, the Yorkton
14 Psychiatric Centre has notes on David.
04:25 15 She has never been given access to these
16 notes which she feels may contain
17 something of value to this
18 investigation."

19 And I think that's in her interview with you,
04:25 20 that something in those records might support
21 David's case; is that correct?

22 A That's correct.

23 Q And it appears that you met with David Milgaard:

24 "During this meeting, Milgaard was asked
04:25 25 for a waiver providing us access to his



1 medical records held at the Yorkton
2 Psychiatric Centre. He declined our
3 request, stating he had the records and
4 would make them available to us. These
04:25 5 records were never made available to
6 us."

7 So I take it that was not further pursued?

8 A That was not pursued any further.

9 Q Next page is *Issue: Admissions:*

04:26 10 "In addition to the issues concerning
11 David Milgaard's innocence surfaced by
12 Mrs. Milgaard, questions were raised
13 about a confession he allegedly made
14 while in prison. The confession was
04:26 15 purportedly made to Ben Dozenko..."

16 And you go on to describe that. And again, can
17 you tell us, what would have prompted you to
18 investigate these admissions, or alleged
19 admissions?

04:26 20 A Well, certainly that would be evidence that would
21 support the fact that there was no wrongful
22 conviction as far as the actions of the police at
23 the time and the Crown and prosecutors at the
24 time.

04:26 25 Q If we can go to page 023376, I think your



1 Investigator Comment here:

2 "Dozenko's recollection that Milgaard
3 confessed while serving time in Stony
4 Mountain Penitentiary cannot be verified
04:27 5 through other independent sources.

6 Other prison acquaintances state
7 Milgaard always maintained his
8 innocence, including Robert Desjarlais,
9 who was never previously interviewed."

04:27 10 So would that be the -- as far as the admissions,
11 did your investigators find anything there that
12 would either support his claim of innocence or be
13 incriminating?

14 A Other than what Mr. Dozenko said, there was no
04:27 15 paperwork or anything to support that, so we
16 didn't find anything.

17 Q And what about Mr. Dozenko's report, was that
18 something that factored into your investigator's
19 thinking?

04:27 20 A I don't recall that as being a particularly strong
21 piece of evidence in my mind.

22 Q If we can then go to the next page, it says:

23 "The issues discussed here were
24 questions about the circumstances
04:27 25 surrounding the Miller rape/murder



1 which, according to David Asper, if
2 properly interpreted, show David
3 Milgaard was not responsible. This
4 included arguments about whether
04:28 5 Milgaard was in the vicinity at the time
6 Miller left her residence or whether he
7 was at the Motel, whether or not he was
8 separated from Wilson and John long
9 enough to complete the rape/murder and
04:28 10 the submission that the motel room
11 re-enactment was a joke.

12 All of these facts concerning
13 these circumstances were heard at trial.
14 The jury obviously made a determination
04:28 15 that the times involved did afford
16 Milgaard the opportunity to commit the
17 rape/murder. No doubt, the evidence of
18 Ronald Wilson and Nichol John played a
19 large role in the jury's decision and
04:28 20 since Mr. Asper argues their evidence
21 was fabricated, his view of the facts
22 excludes their evidence. Thus the
23 argument challenging whether Milgaard
24 was in the vicinity and had the
04:28 25 opportunity."



1 And can you elaborate on that, just that point
2 there, are you saying that what was put forward
3 to you as saying they could not have been in the
4 vicinity was dependent upon Wilson and John's
04:28 5 evidence, at least all of their evidence,
6 incriminating evidence being fabricated?

7 A That's correct.

8 Q It says:

9 "Our investigation did not alter the
04:29 10 facts pertaining to whether or not
11 Milgaard was in the vicinity at the time
12 and as to the length of time separated.
13 The murder scene was close to the
14 Cadrain residence as was the church the
04:29 15 group apparently used as a landmark.
16 Milgaard cannot be placed in the alley
17 near the body unless you rely on Nichol
18 John's 1969 statements but he can be put
19 within several blocks of the scene.
04:29 20 Wilson's evidence at court was that they
21 were separated for 10-15 minutes.
22 Milgaard's trial counsel, C.F. Tallis,
23 stated that sometime after their
24 encounter with a woman Wilson and
04:29 25 Milgaard left the vehicle and went in



1 different directions. The passage of
2 time and the altering of stories (e.g.
3 Wilson) does not allow us to make
4 further determinations on vicinity and
04:29 5 time separated. It should also be noted
6 that these issues were dealt with by the
7 Supreme Court."

8 And would that be an accurate summary of what you
9 concluded about those submissions?

04:29 10 A Yes. Yes, it would.

11 COMMISSIONER MacCALLUM: Excuse me, in the
12 preceding paragraph it says, "No doubt, the
13 evidence --" no, back up, please. Scroll up,
14 please:

04:30 15 "No doubt, the evidence of Ronald Wilson
16 and Nichol John played a large role in
17 the jury's decision."

18 What part of Nichol John's evidence are you
19 saying played a large part in the jury's
04:30 20 decision?

21 A I think what we were suggesting there, My Lord, is
22 that both Ron Wilson and Nichol John testified at
23 trial and they testified to involvement of Mr.
24 Milgaard in the murder and that was obviously
04:30 25 accepted by the jury.



1 COMMISSIONER MacCALLUM: No, but my
2 question was what -- see, Nichol John certainly
3 gave damning evidence to the police, but she
4 didn't do it at trial, she adopted some part of
04:31 5 her statement at trial, but not the very inculp
6 -- not the very part where she said she observed
7 Milgaard stabbing somebody, that was not before
8 the jury. Are you referring to --

9 A No, I believe you are right, that wasn't put to
04:31 10 the jury, but I know that she was challenged on
11 some of the things she said by the Crown and put
12 in as an adverse witness, but --

13 COMMISSIONER MacCALLUM: Yes, that's right.

14 A -- certainly she did make references to the fact
04:31 15 that they were there at the time.

16 COMMISSIONER MacCALLUM: In the vicinity?

17 A In the vicinity.

18 COMMISSIONER MacCALLUM: Is that all you
19 are concerned about in this paragraph, that she
04:31 20 put him in the vicinity?

21 A And that did afford Milgaard the opportunity.

22 COMMISSIONER MacCALLUM: Okay.

23 BY MR. HODSON:

24 Q Just if we can scroll down:

04:31 25 "Another area of concern examined here



1 was the claim that the motel room
2 re-enactment of the murder by Milgaard
3 was a joke. Again, our investigation
4 did not uncover anything to alter the
04:31 5 facts relating to this evidence. It is
6 a matter of perception on the part of
7 those present, several say they saw it
8 as a joke and several did not."

9 And then as well:

04:32 10 "We investigated Mrs. Milgaard's claims
11 that David had steadfastly maintained
12 his innocence during his
13 imprisonment..."

14 And here:

04:32 15 "We found no new evidence to dispute the
16 fact he has professed innocence since
17 his initial arrest."

18 And then the next page:

19 "We had several discussions with David
04:32 20 Milgaard about this investigation but he
21 was not formally interviewed regarding
22 the issues. We relied on his Supreme
23 Court testimony for his version of the
24 facts relating to our enquiry."

04:32 25 Would it have assisted you, Mr. Sawatsky, if you



1 would have been able to get better information
2 from David Milgaard?

3 A I think certainly Mr. Milgaard, in some ways,
4 would have been key to our investigation because
04:32 5 he could have provided us with some basis as to
6 what really happened that morning or, you know,
7 what his version was of what happened that
8 morning. I recall, you know, two interviews that
9 I tried very much to take him there and I guess I
04:33 10 would have expected that he would have been a
11 little bit more prepared to talk about that when
12 he came in, but he simply wasn't prepared to go
13 there. I don't know what the reasons were, but he
14 wasn't prepared to go there.

04:33 15 Q And so was it a case of him coming to see you, but
16 for reasons that maybe weren't clear to you, that
17 he was not able to go back and recall some of
18 these events, or at least share them?

19 A Not so much a case of not able, he didn't even
04:33 20 appear to want to go back. He showed up but had
21 other issues on his mind.

22 MR. HODSON: Okay. I see it's 4:30. This
23 is a good spot to break.

24 (Adjourned at 4:33 p.m.)
25



1 OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

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3 CBC, Official Queen's Bench Court Reporters for the
4 Province of Saskatchewan, hereby certify that the
5 foregoing pages contain a true and correct transcription
6 of our shorthand notes taken herein to the best of my
7 knowledge, skill, and ability.

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